



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2910/1
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2001 SENATE BILL 490

March 7, 2002 - Introduced by Senator GEORGE, by request of the Judicial Council.
Referred to Committee on Judiciary, Consumer Affairs, and Campaign
Finance Reform.

1 **AN ACT** *to repeal* 809.40 (1); *to renumber and amend* 808.10, 809.30 (1) (a) and
2 809.30 (1) (b); *to amend* 808.04 (3), 808.04 (4), 809.10 (1) (d), subchapter III
3 (title) of chapter 809 [precedes 809.30], 809.30 (title), 809.30 (2) (title), 809.30
4 (2) (a), 809.30 (2) (b) (intro.), 809.30 (2) (b) 2., 809.30 (2) (b) 3., 809.30 (2) (b) 4.,
5 809.30 (2) (b) 5., 809.30 (2) (b) 6., 809.30 (2) (c) 1., 809.30 (2) (c) 2., 809.30 (2) (d),
6 809.30 (2) (e), 809.30 (2) (f), 809.30 (2) (fm), 809.30 (2) (g) 1., 809.30 (2) (g) 2.,
7 809.30 (2) (h), 809.30 (2) (i), 809.30 (2) (j), 809.30 (2) (k), 809.30 (3), 809.30 (4),
8 809.32 (1) (a), 809.32 (1) (b) 1. (intro.), 809.32 (1) (b) 1. c., 809.32 (1) (b) 2., 809.32
9 (1) (c) (form), 809.32 (1) (d) and (e), 809.32 (1) (f) and (g), 809.32 (2), 809.32 (3),
10 809.32 (4), subchapter IV (title) of chapter 809 [precedes 809.40], 809.40 (title),
11 809.40 (1m), 809.40 (3), 809.62 (1) (intro.), 809.82 (2) (b), 974.02 (1) and 974.02
12 (2); and *to create* 48.297 (8), 808.03 (3), 808.10 (2), 809.30 (1) (c), 809.30 (1) (d),

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1 809.30 (1) (f), 809.30 (1) (g), 809.30 (2) (hm), 938.297 (8), 971.17 (7m) and
2 980.061 of the statutes; **relating to:** appellate procedure.

Analysis by the Legislative Reference Bureau

In criminal cases, current law permits the review of an order denying a motion to suppress evidence or a motion challenging admissibility of a defendant's statement as part of an appeal from a conviction, notwithstanding the fact that the judgment of conviction was entered on a guilty plea. This bill permits review of an order denying a motion to suppress evidence or a motion challenging admissibility of the statement of a child, an expectant mother, or a parent as part of an appeal from a final judgment or order, notwithstanding the fact that the final judgment or order was entered on an admission, consent, or no contest plea to allegations in a petition filed in cases involving children in need of protection or services or a petition to terminate parental rights. This bill also permits the review of orders denying a motion to suppress evidence or a motion challenging admissibility of the statement of a juvenile upon review from a final judgment or order, notwithstanding the fact that the final judgment or order was entered upon a plea of no contest or an admission to the allegations of a petition filed in cases involving juveniles alleged to be delinquent.

Current law requires that a person seeking supreme court review of an adverse court of appeals decision file a petition for review within 30 days of the court of appeals decision. Current law also provides a procedure for seeking reconsideration of a court of appeals decision, but does not toll the time to file a petition for review while the motion for reconsideration is pending. This bill tolls the time for filing a petition for review while a motion for reconsideration is pending in the court of appeals, and establishes revised time limits for filing a petition for review or supplemental petition for review after the court of appeals decides the motion for reconsideration.

Current law establishes the appellate procedures applicable to various types of cases. Under current law, appeals in misdemeanor cases and cases involving children, juveniles alleged to be delinquent, protective services, or persons subject to commitment due to mental health or drug abuse are directed by statutory cross-reference to follow felony appeal procedures. Under current law, appeals in cases involving the commitment of sexually violent persons follow civil appeal procedures. This bill establishes one integrated appeal procedure for appeals in felony and misdemeanor cases, cases involving children, juveniles alleged to be delinquent, protective services, or persons subject to commitment due to mental health or drug abuse, the commitment of sexually violent persons, as well as proceedings related to the commitment of persons found not guilty by reason of mental defect. This bill also creates a procedure for seeking postdisposition relief in cases involving the commitment of sexually violent persons.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.297 (8) of the statutes is created to read:

2 48.297 (8) An order denying a motion to suppress evidence or a motion
3 challenging the admissibility of a statement of a child, an expectant mother, or a
4 parent may be reviewed upon appeal from a final judgment or order notwithstanding
5 the fact that such final judgment or order was entered upon an admission, a consent,
6 or a plea of no contest to the allegations in the petition under s. 48.13 or 48.133 or
7 a petition to terminate parental rights.

8 **SECTION 2.** 808.03 (3) of the statutes is created to read:

9 808.03 (3) REVIEW OF AN ORDER DENYING SUPPRESSION OR EXCLUSION OF EVIDENCE.

10 An order denying a motion to suppress evidence or a motion challenging the
11 admissibility of a statement of a defendant under s. 971.31 (10), a juvenile under s.
12 938.297 (8), or a child, expectant mother, or parent under s. 48.297 (8), may be
13 reviewed upon appeal from a final judgment or order notwithstanding the fact that
14 the final judgment or order was entered upon a plea of guilty or no contest, an
15 admission, or a consent to an information, criminal complaint, or petition.

16 **SECTION 3.** 808.04 (3) of the statutes is amended to read:

17 808.04 (3) Except as provided in subs. (4) and (7), an appeal in a criminal case
18 or a case under s. 971.17 or ch. 48, 51, 55 or, 938, or 980 shall be initiated within the
19 time period specified in s. 809.30 (2) or 809.32 (2).

20 **SECTION 4.** 808.04 (4) of the statutes is amended to read:

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1 808.04 (4) Except as provided in sub. (7m), an appeal by the state in either a
2 criminal case under s. 974.05, a proceeding under s. 971.17, or a case under ch. 48
3 ~~or, 938, or 980~~ shall be initiated within 45 days of entry of the judgment or order
4 appealed from.

5 **SECTION 5.** 808.10 of the statutes is renumbered 808.10 (1) and amended to
6 read:

7 808.10 (1) PETITION FOR REVIEW; TIME LIMIT. A decision or order of the court of
8 appeals is reviewable by the supreme court only upon a petition for review granted
9 by the supreme court. ~~The~~ Except as provided in sub. (2), the petition for review shall
10 be filed in the supreme court within 30 days of the date of the decision of the court
11 of appeals.

12 **SECTION 6.** 808.10 (2) of the statutes is created to read:

13 808.10 (2) TOLLING PENDING COURT OF APPEALS RECONSIDERATION. (a) Filing of
14 a motion for reconsideration in the court of appeals under s. 809.24 (1) within 20 days
15 after the date of a decision of the court of appeals tolls the time for filing a petition
16 for review in the supreme court.

17 (b) If the motion for reconsideration is filed in the court of appeals before any
18 petition for review is filed in the supreme court, the 30-day time period to file the
19 petition for review starts on the date on which the court of appeals determines the
20 motion for reconsideration by filing an order denying the motion for reconsideration
21 or an amended decision.

22 (c) If a motion for reconsideration is filed, no party may file a petition for review
23 in the supreme court until the court of appeals issues an order denying the motion
24 for reconsideration or an amended decision.

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1 (d) If a motion for reconsideration is denied and a petition for review was filed
2 before the motion for reconsideration was filed, and if the time for filing a
3 supplemental petition pursuant to s. 809.32 (4) had not expired when the motion for
4 reconsideration was filed, the supplemental petition may be filed within 14 days
5 after the filing of the order denying the motion for reconsideration or within the time
6 remaining to file the supplemental petition at the time that the motion for
7 reconsideration was filed, whichever is greater.

8 (e) If the court of appeals files an amended decision in response to the motion
9 for reconsideration, any party who filed a petition for review, or a supplemental
10 petition pursuant to s. 809.32 (4), prior to the filing of the motion for reconsideration
11 must file with the clerk of the supreme court a notice affirming the pending petition
12 or supplemental petition, a notice withdrawing the pending petition or supplemental
13 petition, or an amendment to the petition for review or supplemental petition within
14 14 days after the date of the filing of the court of appeals' amended decision.

15 **SECTION 7.** 809.10 (1) (d) of the statutes, as affected by Supreme Court Order
16 00-02, is amended to read:

17 809.10 (1) (d) *Docketing statement.* The person shall send the court of appeals
18 an original and one copy of a completed docketing statement on a form prescribed by
19 the court of appeals. The docketing statement shall accompany the court of appeals'
20 copy of the notice of appeal. The person shall send a copy of the completed docketing
21 statement to the other parties to the appeal. Docketing statements need not be filed
22 in appeals brought under s. 809.105, 809.107, 809.32, or 974.06 (7), or in cases in
23 which a party represents himself or herself. Docketing statements need not be filed
24 in appeals brought under s. 809.30 or ~~809.40 (1)~~ 974.05, or by the state or the
25 defendant in permissive appeals in criminal cases under s. 809.50, except that -a-

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1 docketing statement statements shall be filed in cases arising under ehs. ch. 48, 51,
2 55, or 938.

3 **SECTION 8.** Subchapter III (title) of chapter 809 [precedes 809.30] of the
4 statutes is amended to read:

CHAPTER 809**SUBCHAPTER III****FELONY APPEAL PROCEDURE IN
8 COURT OF APPEALS IN CRIMINAL,****CHS. 48, 51, 55, 938, AND 980,****AND OTHER CASES**

11 **SECTION 9.** 809.30 (title) of the statutes is amended to read:

12 **809.30 (title) Rule (Appeals in felony criminal, chs. 48, 51, 55, 938, and**
13 **980, and other cases).**

14 **SECTION 10.** 809.30 (1) (a) of the statutes, as affected by 2001 Wisconsin Act 16,
15 is renumbered 809.30 (1) (e) and amended to read:

16 809.30 (1) (e) "Postconviction relief" means, ~~in a felony or misdemeanor case,~~
17 an appeal or -a motion for postconviction relief under this subchapter from a circuit
18 court's final judgment or order in a criminal case other than a motion under s. 973.19,
19 974.06, or 974.07 (2). In a ch. 48, 51, 55 or 938 case, other than a termination of
20 parental rights case under s. 48.43, it means an appeal or a motion for
21 reconsideration by the trial court of its final judgment or order; in such cases a notice
22 of intent to pursue such relief or a motion for such relief need not be styled as seeking
23 "postconviction" relief.

24 **SECTION 11.** 809.30 (1) (b) of the statutes is renumbered 809.30 (1) (h) and
25 amended to read:

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1 809.30 (1) (h) “Sentencing” means, ~~in a felony or misdemeanor case,~~ the
2 imposition of a sentence, a fine, or probation. ~~In a ch. 48, 51, 55 or 938 case, other~~
3 ~~than a termination of parental rights case under s. 48.43, it means the entry of the~~
4 ~~trial court’s final judgment or order~~ in a criminal case.

5 **SECTION 12.** 809.30 (1) (c) of the statutes is created to read:

6 809.30 (1) (c) “Final adjudication” means the entry of a final judgment or order
7 by the circuit court in an s. 971.17 proceeding or in a ch. 48, 51, 55, 938, or 980 case,
8 other than a termination of parental rights case under s. 48.43 or a parental consent
9 to abortion case under s. 48.375.

10 **SECTION 13.** 809.30 (1) (d) of the statutes is created to read:

11 809.30 (1) (d) “Person” means any of the following:

12 1. A defendant seeing postconviction relief.

13 2. A party, other than the state, seeking postdisposition relief in a ch. 48 case,
14 other than a termination of parental rights case under s. 48.43 or a parental consent
15 to abortion case under s. 48.375 (7).

16 3. A party, other than the state, seeking postdisposition relief in a ch. 938 case.

17 4. A subject individual or ward seeking postdisposition relief in a ch. 51, 55, or
18 980 case or an s. 971.17 proceeding.

19 5. Anyone who may appeal under s. 51.13 (5), 51.20 (15), or 55.06 (18).

20 **SECTION 14.** 809.30 (1) (f) of the statutes is created to read:

21 809.30 (1) (f) “Postdisposition relief” means an appeal or motion for relief under
22 this subchapter from a circuit court’s final adjudication.

23 **SECTION 15.** 809.30 (1) (g) of the statutes is created to read:

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1 809.30 (1) (g) "Prosecutor" means a district attorney, corporation counsel, or
2 other attorney authorized by law to prosecute a criminal case, a case under ch. 48,
3 51, 55, 938, or 980, or a proceeding under s. 971.17.

4 **SECTION 16.** 809.30 (2) (title) of the statutes is amended to read:

5 809.30 (2) (title) ~~APPEAL OR~~ POSTCONVICTION OR POSTDISPOSITION MOTION BY
6 ~~DEFENDANT.~~

7 **SECTION 17.** 809.30 (2) (a) of the statutes, as affected by Supreme Court Order
8 00-02, is amended to read:

9 809.30 (2) (a) *Appeal procedures; counsel to continue.* A defendant person
10 seeking postconviction relief in a felony criminal case or a person seeking
11 postdisposition relief in a ch. 48 case, other than a termination of parental rights case
12 under s. 48.43 or a parental consent to abortion case under s. 48.375 (7), or a person
13 seeking postdisposition relief in a ch. 51, 55, 938, or 980 case or an s. 971.17
14 proceeding shall comply with this section. Counsel representing the defendant
15 person at sentencing or at the time of the final adjudication shall continue
16 representation by filing a notice under par. (b) if the defendant person desires to
17 pursue postconviction or postdisposition relief unless ~~sooner~~ counsel is discharged
18 by the defendant person or allowed to withdraw by the ~~trial~~ circuit court before the
19 notice must be filed.

20 **SECTION 18.** 809.30 (2) (b) (intro.) of the statutes, as affected by Supreme Court
21 Order 00-02, is amended to read:

22 809.30 (2) (b) *Notice of intent to pursue postconviction or postdisposition relief.*
23 (intro.) Within 20 days after the date of sentencing or final adjudication, the
24 defendant person shall file in circuit court and serve on the ~~district attorney~~

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1 prosecutor and every other party a notice of intent to pursue postconviction or
2 postdisposition relief. The notice shall include all of the following:

3 **SECTION 19.** 809.30 (2) (b) 2. of the statutes is amended to read:

4 809.30 (2) (b) 2. An identification of the judgment or order from which the
5 defendant person intends to seek postconviction or postdisposition relief and the
6 date on which it was ~~granted or~~ entered.

7 **SECTION 20.** 809.30 (2) (b) 3. of the statutes is amended to read:

8 809.30 (2) (b) 3. The name and address of the defendant person and the
9 defendant's his or her trial counsel.

10 **SECTION 21.** 809.30 (2) (b) 4. of the statutes is amended to read:

11 809.30 (2) (b) 4. Whether ~~defendant's~~ the person's trial counsel was appointed
12 by the state public defender and, if so, whether the defendant's person's financial
13 circumstances have materially improved since the date ~~the defendant's~~ on which his
14 or her indigency was determined.

15 **SECTION 22.** 809.30 (2) (b) 5. of the statutes is amended to read:

16 809.30 (2) (b) 5. Whether the defendant person requests the state public
17 defender to appoint counsel for purposes of postconviction or postdisposition relief.

18 **SECTION 23.** 809.30 (2) (b) 6. of the statutes, as affected by Supreme Court
19 Order 00-02, is amended to read:

20 809.30 (2) (b) 6. Whether a defendant person who does not request the state
21 public defender to appoint counsel will represent himself or herself or will be
22 represented by retained counsel. If the defendant person has retained counsel to
23 pursue postconviction or postdisposition relief, counsel's name and address shall be
24 included.

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1 **SECTION 24.** 809.30 (2) (c) 1. of the statutes, as affected by Supreme Court Order
2 00-02, is amended to read:

3 809.30 (2) (c) 1. If the ~~defendant~~ person requests representation by the state
4 public defender for purposes of postconviction or postdisposition relief, send to the
5 state public defender's appellate intake office a copy of the notice that shows the date
6 on which it was filed or entered, a copy of the judgment or order specified in the notice
7 that shows the date on which it was filed or entered, a list of the court reporters for
8 each proceeding in the action in which the judgment or order was entered, and a list
9 of those proceedings in which a transcript has been filed with the clerk of circuit
10 court.

11 **SECTION 25.** 809.30 (2) (c) 2. of the statutes, as affected by Supreme Court Order
12 00-02, is amended to read:

13 809.30 (2) (c) 2. If the ~~defendant~~ person does not request representation by the
14 state public defender, send or furnish to the ~~defendant~~, ~~if the defendant is~~ person
15 appearing without counsel, or to the ~~defendant's~~ person's attorney if one has been
16 retained, a copy of the judgment or order specified in the notice that shows the date
17 on which it was filed or entered, a list of the court reporters for each proceeding in
18 the action in which the judgment or order was entered, and a list of those proceedings
19 in which a transcript has been filed with the clerk of circuit court.

20 **SECTION 26.** 809.30 (2) (d) of the statutes, as affected by Supreme Court Order
21 00-02, is amended to read:

22 809.30 (2) (d) *Indigency redetermination.* Except as provided in this
23 paragraph, whenever a ~~defendant~~ person whose trial counsel is appointed by the
24 state public defender files a notice under par. (b) requesting public defender
25 representation for purposes of postconviction or postdisposition relief, the ~~district~~

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1 attorney prosecutor may, within 5 days after the notice is served and filed, file in the
2 trial circuit court and serve upon the state public defender a request that the
3 defendant's person's indigency be redetermined before counsel is appointed or
4 transcripts are ~~ordered~~ requested. This paragraph does not apply to a child who is
5 entitled to be represented by counsel under s. 48.23 or 938.23.

6 **SECTION 27.** 809.30 (2) (e) of the statutes, as affected by Supreme Court Order
7 00-02, is amended to read:

8 809.30 (2) (e) *State public defender appointment of counsel; transcript and*
9 *circuit court case record request.* Within 30 days after the state public defender
10 appellate intake office receives the materials from the clerk of circuit court under par.
11 (c), the state public defender shall appoint counsel for the defendant person and
12 request a transcript of the reporter's notes and a copy of the circuit court case record,
13 except that if the defendant's person's indigency must first be determined or
14 redetermined the state public defender shall do so, appoint counsel, and request
15 transcripts and a copy of the circuit court case record within 50 days after the state
16 public defender appellate intake office receives the material from the clerk of circuit
17 court under par. (c).

18 **SECTION 28.** 809.30 (2) (f) of the statutes, as affected by Supreme Court Order
19 00-02, is amended to read:

20 809.30 (2) (f) *Defendant Person not represented by public defender; transcript*
21 *and circuit court case record request.* A defendant person who does not request
22 representation by the state public defender for purposes of postconviction or
23 postdisposition relief shall request a transcript of the reporter's notes, and may
24 request a copy of the circuit court case record, within 30 days after filing a notice
25 under par. (b). A defendant person who is denied representation by the state public

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1 defender for purposes of postconviction or postdisposition relief shall request a
2 transcript of the reporter's notes, and may request a copy of the circuit court case
3 record, within 90 days after filing a notice under par. (b).

4 **SECTION 29.** 809.30 (2) (fm) of the statutes, as affected by Supreme Court Order
5 00-02, is amended to read:

6 809.30 (2) (fm) *Transcript or circuit court case record request in chs. 48 and 938*
7 *proceedings.* A child who has filed a notice of intent to pursue relief from a judgment
8 or order entered in a ch. 48 or 938 proceeding shall be furnished at no cost a transcript
9 of the proceedings or as much of it as is requested, and may request a copy of the
10 circuit court case record. To obtain the transcript or a copy of the circuit court case
11 record at no cost, an affidavit must be filed stating that the person who is legally
12 responsible for the child's care and support is financially unable or unwilling to
13 purchase the transcript or copy of the circuit court case record.

14 **SECTION 30.** 809.30 (2) (g) 1. of the statutes, as created by Supreme Court Order
15 00-02, is amended to read:

16 809.30 (2) (g) 1. The clerk of circuit court shall serve a copy of the circuit court
17 case record on the defendant person within 60 days after receipt of the request for
18 the circuit court case record.

19 **SECTION 31.** 809.30 (2) (g) 2. of the statutes, as affected by Supreme Court
20 Order 00-02, is amended to read:

21 809.30 (2) (g) 2. The court reporter shall file the transcript with the circuit court
22 and serve a copy of the transcript on the defendant person within 60 days of the
23 request for the transcript. Within 20 days ~~of~~ after the request for a transcript of
24 postconviction or postdisposition proceedings brought under sub. (2) (h), the court
25 reporter shall file the original with the circuit court and serve a copy of that

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1 transcript on the defendant person. The reporter may seek an extension under s.
2 809.11 (7) for filing and serving the transcript.

3 **SECTION 32.** 809.30 (2) (h) of the statutes, as affected by Supreme Court Order
4 00-02, is amended to read:

5 809.30 (2) (h) *Notice of appeal or postconviction or postdisposition motion.* The
6 defendant person shall file in circuit court and serve on the ~~district attorney~~
7 prosecutor and every other party a notice of appeal or motion seeking postconviction
8 or postdisposition relief within 60 days after the later of the service of the transcript
9 or circuit court case record. ~~A postconviction~~ The person shall file a motion for
10 postconviction or postdisposition relief before a notice of appeal is filed unless the
11 grounds for seeking relief are sufficiency of the evidence or issues previously raised.
12 A motion for postconviction or postdisposition relief under this section may not be
13 accompanied by a notice of motion and is made when filed.

14 **SECTION 33.** 809.30 (2) (hm) of the statutes is created to read:

15 809.30 (2) (hm) *Notice of appeal requirements.* The person filing a notice of
16 appeal under this section shall conform to the requirements under s. 809.10.

17 **SECTION 34.** 809.30 (2) (i) of the statutes, as affected by Supreme Court Order
18 00-02, is amended to read:

19 809.30 (2) (i) *Order determining postconviction or postdisposition motion.*
20 Unless an extension is requested by ~~the defendant~~ a party or the circuit court and
21 granted by the court of appeals, the circuit court shall determine by an order the
22 ~~defendant's~~ person's motion for postconviction or postdisposition relief within 60
23 days after the filing of the motion or the motion is considered to be denied and the
24 clerk of circuit court shall immediately enter an order denying the motion.

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1 **SECTION 35.** 809.30 (2) (j) of the statutes, as affected by Supreme Court Order
2 00-02, is amended to read:

3 809.30 (2) (j) *Appeal from judgment and order.* ~~The defendant person~~ shall file
4 ~~an~~ in circuit court and serve upon the prosecutor and other parties a notice of appeal
5 from the judgment of conviction and sentence or final adjudication and, if necessary,
6 from the order of the ~~trial~~ circuit court on the motion for postconviction or
7 postdisposition relief within 20 days of the entry of the order on the postconviction
8 or postdisposition motion. Appeals in chs. 48, 51, 55, and 938 cases are subject to the
9 docketing statement requirements of s. 809.10 (1) (d) and may be eligible for the
10 expedited appeals program in the discretion of the court.

11 **SECTION 36.** 809.30 (2) (k) of the statutes, as affected by Supreme Court Order
12 00-02, is amended to read:

13 809.30 (2) (k) *Transmittal of record.* Except as otherwise provided in ~~s.~~ ss.
14 809.14 (3) (b) and 809.15 (4) (b) and (c), the clerk of circuit court shall transmit the
15 record on appeal to the court of appeals as soon as prepared but in no event more than
16 40 days after the filing of the notice of appeal ~~by the defendant.~~ Subsequent
17 proceedings in the appeal are governed by the procedures for civil appeals.

18 **SECTION 37.** 809.30 (3) of the statutes, as affected by Supreme Court Order
19 00-02, is amended to read:

20 809.30 (3) **APPEALS BY STATE OR OTHER PARTY; APPOINTMENT OF COUNSEL.** In a case
21 in which the state of Wisconsin, the representative of the public, ~~or~~ any other party,
22 or anyone else who may appeal under s. 51.13 (5), 51.20 (15), or 55.06 (18), appeals
23 and the ~~defendant or subject individual~~ person who is the subject of the case or
24 proceeding is a child or claims or appears to be indigent, the court shall refer the

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1 person who is the subject of the case or proceeding to the state public defender for
2 the determination of indigency and the appointment of legal counsel under ch. 977.

3 **SECTION 38.** 809.30 (4) of the statutes, as created by Supreme Court Order
4 00-02, is amended to read:

5 809.30 (4) MOTION TO WITHDRAW AS APPOINTED COUNSEL ~~FOR DEFENDANT~~. (a) If
6 the postconviction, postdisposition, or appellate counsel ~~has been~~ appointed for the
7 defendant person under ch. 977 and seeks to withdraw as ~~appointed counsel, from~~
8 the case, that counsel shall serve a motion to withdraw upon the defendant person
9 and upon the appellate division intake unit in the Madison appellate office of the
10 state public defender. If the motion is filed before the notice of appeal is filed, the
11 counsel shall file the motion ~~shall be filed in the~~ circuit court. If the motion is filed
12 after a notice of appeal has been filed, the counsel shall file the motion ~~shall be filed~~
13 in the court of appeals. Counsel is not required to serve the motion to withdraw on
14 the state public defender when the motion is filed by an assistant state public
15 defender or when a no-merit report is filed with the motion.

16 (b) Within 20 days after receipt of the motion under par. (a), the state public
17 defender shall determine whether successor counsel will be appointed for the
18 defendant person and shall notify the court in which the motion was filed of the state
19 public defender's determination.

20 (c) Before determining the motion to withdraw, the court shall consider the
21 state public defender's response under par. (b) and whether the defendant person
22 waives the right to counsel.

23 (d) When the motion to withdraw is filed in circuit court, appointed counsel
24 shall prepare and serve a copy of the order determining counsel's motion to withdraw
25 upon the defendant person and the appellate division intake unit in the Madison

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1 appellate office of the state public defender within 14 days after the court's
2 determination.

3 **SECTION 39.** 809.32 (1) (a) of the statutes, as created by Supreme Court Order
4 00-02, is amended to read:

5 809.32 (1) (a) *No-merit report.* If an attorney appointed under s. 809.30 (2) (e)
6 or ch. 977 concludes that a direct appeal on behalf of the defendant person would be
7 frivolous and without any arguable merit within the meaning of *Anders v. California*,
8 386 U.S. 738 (1967), and the defendant person requests that a no-merit report be
9 filed or declines to consent to have the attorney close the file without further
10 representation by the attorney, the attorney shall file with the court of appeals 3
11 copies of a no-merit report. The no-merit report shall identify anything in the record
12 that might arguably support the appeal and discuss the reasons why each identified
13 issue lacks merit.

14 **SECTION 40.** 809.32 (1) (b) 1. (intro.) of the statutes, as created by Supreme
15 Court Order 00-02, is amended to read:

16 809.32 (1) (b) 1. (intro.) Prior to the filing of a no-merit report, the attorney
17 shall discuss with the defendant person all potential issues identified by the attorney
18 and the defendant person, and the merit of an appeal on these issues. The attorney
19 shall inform the defendant person that the defendant he or she has 3 options:

20 **SECTION 41.** 809.32 (1) (b) 1. c. of the statutes, as created by Supreme Court
21 Order 00-02, is amended to read:

22 809.32 (1) (b) 1. c. To have the attorney close the file and to proceed without an
23 attorney or with another attorney retained at the defendant's person's expense.

24 **SECTION 42.** 809.32 (1) (b) 2. of the statutes, as created by Supreme Court Order
25 00-02, is amended to read:

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1 ~~or her~~ expense. I have informed ~~the defendant~~ my client that a no-merit report will
2 be filed if ~~the defendant~~ he or she either requests a no-merit report or does not
3 consent to have me close the file without further representation. I have informed ~~the~~
4 ~~defendant~~ my client that the transcripts and circuit court case record will be
5 forwarded at ~~the defendant's~~ his or her request. I have also informed ~~the defendant~~
6 my client that ~~the defendant~~ he or she may file a response to the no-merit report and
7 that I may file a supplemental no-merit report and affidavit or affidavits containing
8 ~~facts~~ matters outside the record, possibly including confidential information, to
9 rebut allegations made in ~~the defendant's~~ my client's response to the no-merit
10 report.

11 Signed:

12 Signature:

13 **SECTION 44.** 809.32 (1) (d) and (e) of the statutes, as affected by Supreme Court
14 Order 00-02, are amended to read:

15 809.32 (1) (d) *Service of copy of no-merit report, transcript, and circuit court*
16 *case record.* The attorney shall serve a copy of the no-merit report on the ~~defendant~~
17 person and shall file a statement in the court of appeals that service has been made
18 upon the ~~defendant~~ person. The attorney shall also serve upon the ~~defendant~~ person
19 a copy of the transcript and circuit court case record within 14 5 days after receipt
20 of a request for the transcript and circuit court case record from the ~~defendant~~ person
21 and shall file a statement in the court of appeals that service has been made upon
22 the ~~defendant~~ person.

23 (e) *Response to no-merit report.* The ~~defendant~~ person may file a response to
24 the no-merit report within 30 days after service of the no-merit report. If the

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1 defendant person files a response, the clerk shall, within 5 days after the filing of the
2 response, send a copy of the response to the attorney who filed the no-merit report.

3 **SECTION 45.** 809.32 (1) (f) and (g) of the statutes, as created by Supreme Court
4 Order 00-02, are amended to read:

5 809.32 (1) (f) *Supplemental no-merit report.* If the attorney is aware of facts
6 outside the record that rebut allegations made in the defendant's person's response,
7 the attorney may file, within 30 days after receipt of the defendant's person's
8 response, a supplemental no-merit report and an affidavit or affidavits, including
9 facts matters outside the record. The supplemental report and affidavit or affidavits
10 shall be served on the defendant person, and the attorney shall file a statement in
11 the court of appeals that service has been made upon the defendant person.

12 (g) *Remand for fact-finding prior to decision.* If the defendant person and the
13 attorney allege disputed facts regarding matters outside the record, and if the court
14 determines that the defendant's person's version of the facts, if true, would make
15 resolution of the appeal under sub. (3) inappropriate, the court shall remand the case
16 to the circuit court for an evidentiary hearing and fact-finding on those disputed
17 facts before proceeding to a decision under sub. (3).

18 **SECTION 46.** 809.32 (2) of the statutes, as affected by Supreme Court Order
19 00-02, is amended to read:

20 809.32 (2) NOTICE OF APPEAL, STATEMENT ON TRANSCRIPT, SERVICE OF COPIES. The
21 attorney also shall file in circuit court a notice of appeal of the judgment of conviction
22 or final adjudication and of any order denying a postconviction or postdisposition
23 motion. The notice of appeal shall be identified as a no-merit notice of appeal and
24 shall state the date on which the no-merit report is due and whether the due date
25 is calculated under par. (a) or (b). The clerk of circuit court shall transmit the record

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1 in the case to the court pursuant to s. 809.15. The attorney also shall file a statement
2 on transcript complying with the requirements of s. 809.11 (4), except that copies of
3 the transcript need not be provided to other parties. All papers filed with the court
4 under this subsection, except the transcript, shall be served on the state and every
5 other party in accordance with s. 809.80 (2) (b). The no-merit report, notice of appeal,
6 and statement on transcript must be filed within whichever of the following is later:

7 (a) One hundred eighty days after the service upon the defendant person of the
8 transcript and circuit court case record requested under s. 809.30 (2) (e).

9 (b) Sixty days after the entry of the order determining a postconviction or
10 postdisposition motion.

11 **SECTION 47.** 809.32 (3) of the statutes, as affected by Supreme Court Order
12 00-02, is amended to read:

13 809.32 (3) DECISION ON NO-MERIT REPORT. In the event that the court of appeals
14 finds determines that further appellate proceedings would be frivolous and without
15 any arguable merit, the court of appeals shall affirm the judgment of conviction or
16 final adjudication and the denial of any postconviction or postdisposition motion and
17 relieve the attorney of further responsibility in the case. The attorney shall advise
18 the defendant person of the right to file a petition for review to the supreme court
19 under s. 809.62.

20 **SECTION 48.** 809.32 (4) of the statutes, as affected by Supreme Court Order
21 00-02, is amended to read:

22 809.32 (4) NO-MERIT PETITION FOR REVIEW. If a fully briefed appeal is taken to
23 the court of appeals and the attorney is of the opinion that a petition for review in
24 the supreme court under s. 809.62 would be frivolous and without any arguable
25 merit, the attorney shall advise the defendant person of the reasons for this opinion

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1 and that the ~~defendant~~ person has the right to file a petition for review. If requested
2 by the ~~defendant~~ person, the attorney shall file a petition satisfying the
3 requirements of s. 809.62 (2) (d) and (f) and the ~~defendant~~ person shall file a
4 supplemental petition satisfying the requirements of s. 809.62 (2) (a), (b), (c), and (e).
5 The Except as provided in s. 808.10, the petition and supplemental petition shall
6 both be filed within 30 days after the date of the decision or order of the court of
7 appeals. An opposing party may file a response to the petition and supplemental
8 petition within 14 days after the service of the supplemental petition.

9 **SECTION 49.** Subchapter IV (title) of chapter 809 [precedes 809.40] of the
10 statutes is amended to read:

CHAPTER 809

SUBCHAPTER IV

~~CHAPTERS 48, 51, 55 AND~~ APPEALPROCEDURE IN COURT OF APPEALSIN TERMINATION OF PARENTAL RIGHTS,CH. 799, TRAFFIC REGULATION,

MUNICIPAL ORDINANCE VIOLATION,

AND MISDEMEANOR PARENTALCONSENT TO ABORTION CASES APPEAL~~PROCEDURE IN COURT OF APPEALS~~

21 **SECTION 50.** 809.40 (title) of the statutes is amended to read:

22 **809.40** (title) **Rule (Applicability Appeals in termination of parental**
23 **rights, ch. 799, traffic regulation, municipal ordinance violation, and**
24 **parental consent to abortion cases).**

25 **SECTION 51.** 809.40 (1) of the statutes is repealed.

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1 **SECTION 52.** 809.40 (1m) of the statutes is amended to read:

2 809.40 **(1m)** ~~Subsection (1) does not apply to an An appeal from an order~~
3 denying a petition under s. 48.375 (7), ~~which~~ is governed by the procedures specified
4 in s. 809.105, ~~or to and an appeal from an order or judgment under s. 48.43, which~~
5 is governed by the procedures specified in s. 809.107.

6 **SECTION 53.** 809.40 (3) of the statutes, as affected by Supreme Court Order
7 00-02, is amended to read:

8 809.40 **(3)** Any civil appeal to the court of appeals under sub. ~~(1) or~~ (2) is subject
9 to the docketing statement requirement of s. 809.10 (1) (d) and may be eligible for the
10 expedited appeals program in the discretion of the court.

11 **SECTION 54.** 809.62 (1) (intro.) of the statutes is amended to read:

12 809.62 **(1)** (intro.) A party may file with the supreme court a petition for review
13 of an adverse decision of the court of appeals pursuant to s. 808.10 ~~within 30 days~~
14 ~~of the date of the decision of the court of appeals.~~ Supreme court review is a matter
15 of judicial discretion, not of right, and will be granted only when special and
16 important reasons are presented. The following, while neither controlling nor fully
17 measuring the court's discretion, indicate criteria that will be considered:

18 **SECTION 55.** 809.82 (2) (b) of the statutes is amended to read:

19 809.82 **(2)** (b) Notwithstanding the provisions of par. (a), the time for filing a
20 notice of appeal or cross-appeal of a final judgment or order other than in an appeal
21 under s. 809.30 or 809.40 ~~(1)~~ 809.32 may not be enlarged.

22 **SECTION 56.** 938.297 (8) of the statutes is created to read:

23 938.297 **(8)** An order denying a motion to suppress evidence or a motion
24 challenging the admissibility of a statement of a juvenile may be reviewed upon
25 appeal from a final judgment or order notwithstanding the fact that such final

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1 judgment or order was entered upon an admission or a plea of no contest to the
2 allegations in the petition.

3 **SECTION 57.** 971.17 (7m) of the statutes is created to read:

4 971.17 **(7m)** MOTION FOR POSTDISPOSITION RELIEF AND APPEAL. (a) *Appeal by*
5 *respondent.* A motion for postdisposition relief by a person committed under this
6 section shall be made in the time and manner provided in ss. 809.30 to 809.32. An
7 appeal by a person who has been committed under this section from a final order
8 under this section or from an order denying a motion for postdisposition relief shall
9 be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. The
10 person shall file a motion for postdisposition relief in the circuit court before a notice
11 of appeal is filed unless the grounds for seeking relief are sufficiency of the evidence
12 or issues previously raised.

13 (b) *Appeal by state.* An appeal by the state from a final judgment or order under
14 this section may be taken to the court of appeals within the time specified in s. 808.04
15 (4) and in the manner provided for civil appeals under chs. 808 and 809.

16 **SECTION 58.** 974.02 (1) of the statutes, as affected by 2001 Wisconsin Act 16,
17 is amended to read:

18 974.02 **(1)** A motion for postconviction relief other than under s. 974.06 or
19 974.07 (2) by the defendant in a criminal case shall be made in the time and manner
20 provided in ss. 809.30 and ~~809.40~~ to 809.32. An appeal by the defendant in a criminal
21 case from a judgment of conviction or from an order denying a postconviction motion
22 or from both shall be taken in the time and manner provided in ss. 808.04 (3), and
23 ~~809.30 and 809.40~~ to 809.32. An appeal of an order or judgment on habeas corpus
24 remanding to custody a prisoner committed for trial under s. 970.03 shall be taken

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1 under ss. 808.03 (2) and 809.50, with notice to the attorney general and the district
2 attorney and opportunity for them to be heard.

3 **SECTION 59.** 974.02 (2) of the statutes is amended to read:

4 974.02 (2) An appellant is not required to file a postconviction motion in the
5 ~~trial~~ circuit court prior to an appeal if the grounds are sufficiency of the evidence or
6 issues previously raised.

7 **SECTION 60.** 980.061 of the statutes is created to read:

8 **980.061 Motion for postdisposition relief and appeal. (1) APPEAL BY**
9 **RESPONDENT.** A motion for postdisposition relief from a final order or judgment by a
10 person committed under this chapter shall be made in the time and manner provided
11 in ss. 809.30 to 809.32. An appeal from a final order or judgment entered under this
12 chapter or from an order denying a motion for postdisposition relief by a person
13 committed under this chapter shall be taken in the time and manner provided in ss.
14 808.04 (3) and 809.30 to 809.32. The person shall file a motion for postdisposition
15 relief in circuit court before a notice of appeal is filed unless the grounds for seeking
16 relief are sufficiency of the evidence or issues previously raised.

17 **(2) APPEAL BY STATE.** An appeal by the state from a final judgment or order
18 under this chapter may be taken to the court of appeals within the time specified in
19 s. 808.04 (4) and in the manner provided for civil appeals under chs. 808 and 809.

20 **SECTION 61. Effective date.**

21 (1) This act takes effect on the first day of the 4th month beginning after
22 publication.

23 **(END)**