



2005 ASSEMBLY BILL 1135

March 21, 2006 – Introduced by Representatives BERCEAU, ALBERS and KREUSER, cosponsored by Senators MILLER and RISSER. Referred to Committee on Judiciary.

1 **AN ACT** *to amend* 808.04 (3), 808.04 (4), subchapter III (title) of chapter 809
2 [precedes 809.30], 809.30 (title), 809.30 (1) (a), 809.30 (1) (b) 4., 809.30 (1) (d),
3 809.30 (1) (e) and 809.30 (2) (a); and **to create** 48.47, 938.47, 971.17 (7m),
4 973.20 (15) and 980.061 of the statutes; **relating to:** appellate procedure
5 regarding restitution in criminal actions, commitments of persons found not
6 guilty by reason of mental disease or defect, and commitments of sexually
7 violent persons.

Analysis by the Legislative Reference Bureau

Current law establishes the appellate procedures applicable to various types of cases. Under current law, appeals in criminal 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 required to follow a specific set of appeal procedures. Under current law, appeals in cases involving restitution in criminal actions and commitments of persons found not guilty by reason of mental disease or defect follow the criminal appeals process, although there is no specific statutory authority for this. Appeals in cases involving the commitment of sexually

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violent persons follow the civil appeal procedures. This bill establishes one integrated appeal procedure for all of these types of cases.

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

1 **SECTION 1.** 48.47 of the statutes is created to read:

2 **48.47 Motion for postdisposition relief and appeal. (1) APPEAL BY**
3 RESPONDENT. A motion for postdisposition relief from a final order or judgment by a
4 person subject to this chapter shall be made in the time and manner provided in ss.
5 809.30 to 809.32. An appeal from a final order or judgment entered under this
6 chapter or from an order denying a motion for postdisposition relief by a person
7 subject to this chapter shall be taken in the time and manner provided in ss. 808.04
8 (3) and 809.30 to 809.32. The person shall file a motion for postdisposition relief in
9 circuit court before a notice of appeal is filed unless the grounds for seeking relief are
10 sufficiency of the evidence or issues previously raised.

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

14 **(3) EXCEPTIONS.** This section does not apply to a termination of parental rights
15 case under s. 48.43 or to a parental consent to abortion case under s. 48.375 (7).

16 **SECTION 2.** 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 proceeding
18 under s. 971.17 or 973.20, a criminal case, or a case under ch. 48, 51, 55 or, 938, or
19 980 shall be initiated within the time period specified in s. 809.30 (2) or 809.32 (2),
20 whichever is applicable.

21 **SECTION 3.** 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 proceeding under s. 971.17 or 973.20, a criminal case under s. 974.05, or a case under
3 ch. 48 ~~or, 938, or 980~~ shall be initiated within 45 days of entry of the judgment or order
4 appealed from.

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

CHAPTER 809**SUBCHAPTER III****APPEAL PROCEDURE IN COURT OF****APPEALS IN S. 971.17 OR 973.20****PROCEEDINGS, AND CRIMINAL AND****CH. 48, 51, 55, AND, 938, AND****980 CASES**

14 **SECTION 5.** 809.30 (title) of the statutes is amended to read:

15 **809.30 (title) Rule (Appeals in s. 971.17 and 973.20 proceedings and in**
16 **criminal, ch. 48, 51, 55, and, 938, and 980 cases).**

17 **SECTION 6.** 809.30 (1) (a) of the statutes is amended to read:

18 809.30 (1) (a) "Final adjudication" means the entry of a final judgment or order
19 by the circuit court in a s. 971.17 or 973.20 proceeding, in a criminal case, or in a ch.
20 48, 51, 55, ~~or, 938, or 980~~ case, other than a termination of parental rights case under
21 s. 48.43 or a parental consent to abortion case under s. 48.375 (7).

22 **SECTION 7.** 809.30 (1) (b) 4. of the statutes is amended to read:

23 809.30 (1) (b) 4. A subject individual or ward seeking postdisposition relief in
24 a s. 971.17 or 973.20 proceeding or a case under ch. 51 ~~or, 55, or 980~~.

25 **SECTION 8.** 809.30 (1) (d) of the statutes is amended to read:

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1 809.30 (1) (d) “Postdisposition relief” means an appeal or a motion for
2 ~~postdisposition relief~~ under this subchapter from a circuit court’s final adjudication.

3 **SECTION 9.** 809.30 (1) (e) of the statutes is amended to read:

4 809.30 (1) (e) “Prosecutor” means a district attorney, corporation counsel, or
5 other attorney authorized by law to bring a proceeding under s. 971.17 or 973.20 or
6 to prosecute a criminal case or a case under ch. 48, 51, 55, ~~or~~ 938, or 980.

7 **SECTION 10.** 809.30 (2) (a) of the statutes is amended to read:

8 809.30 (2) (a) *Appeal procedure; counsel to continue.* A person seeking
9 postconviction relief in a criminal case; a person seeking postdisposition relief in a
10 case under ch. 48 other than a termination of parental rights case under s. 48.43 or
11 a parental consent to abortion case under s. 48.375 (7); or a person seeking
12 postdisposition relief in a s. 971.17 or 973.20 proceeding or in a case under ch. 51, 55,
13 ~~or~~ 938, or 980 shall comply with this section. Counsel representing the person at
14 sentencing or at the time of the final adjudication shall continue representation by
15 filing a notice under par. (b) if the person desires to pursue postconviction or
16 postdisposition relief unless counsel is discharged by the person or allowed to
17 withdraw by the circuit court before the notice must be filed.

18 **SECTION 11.** 938.47 of the statutes is created to read:

19 **938.47 Motion for postdisposition relief and appeal.** (1) APPEAL BY
20 RESPONDENT. A motion for postdisposition relief from a final order or judgment by a
21 person subject to this chapter shall be made in the time and manner provided in ss.
22 809.30 to 809.32. An appeal from a final order or judgment entered under this
23 chapter or from an order denying a motion for postdisposition relief by a person
24 subject to this chapter shall be taken in the time and manner provided in ss. 808.04
25 (3) and 809.30 to 809.32. The person shall file a motion for postdisposition relief in

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1 circuit court before a notice of appeal is filed unless the grounds for seeking relief are
2 sufficiency of the evidence or issues previously raised.

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

6 **SECTION 12.** 971.17 (7m) of the statutes is created to read:

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

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

19 **SECTION 13.** 973.20 (15) of the statutes is created to read:

20 973.20 **(15) MOTION FOR POSTDISPOSITION RELIEF AND APPEAL.** (a) A motion for
21 postdisposition relief from a final order or judgment by a person subject to this
22 section shall be made in the time and manner provided in ss. 809.30 to 809.32. An
23 appeal by a person subject to this section from a final order or judgment under this
24 section or from an order denying a motion for postdisposition relief shall be taken in
25 the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. The person

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1 shall file a motion for postdisposition relief in the circuit court before a notice of
2 appeal is filed unless the grounds for seeking relief are sufficiency of the evidence or
3 issues previously raised.

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

7 **SECTION 14.** 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 subject to this chapter shall be made in the time and manner provided in ss.
11 809.30 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 subject to this chapter shall be taken in the time and manner provided in ss. 808.04
14 (3) and 809.30 to 809.32. The person shall file a motion for postdisposition relief in
15 circuit court before a notice of appeal is filed unless the grounds for seeking relief are
16 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 15. Effective date.**

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

23

(END)