

2003 SENATE BILL 364

December 30, 2003 – Introduced by Senator ZIEN, by request of Wisconsin Judicial Council. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT** *to renumber and amend* 808.10; *to amend* 808.04 (3), 808.04 (4),
2 809.62 (1) (intro.), 809.62 (3), 974.02 (1) and 974.02 (2); *to repeal and recreate*
3 subchapter III (title) of chapter 809 [precedes 809.30], 809.30 (title), 809.30 (1)
4 (a), 809.30 (1) (b) 4., 809.30 (1) (c), 809.30 (1) (d), 809.30 (1) (e), 809.30 (2) (a),
5 809.32 (1) (c) (form) and 809.32 (4); and *to create* 48.297 (8), 808.03 (3), 808.10
6 (2), 809.32 (5), 809.62 (1m), 938.297 (8), 971.17 (7m) and 980.061 of the statutes;
7 **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

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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, and the opposing party's responses, 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 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 directed by statutory cross-reference to follow a set of appeal procedures. Under current law, appeals in cases involving the commitment of sexually violent persons follow a different set of 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.

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.

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

2 **808.03 (3) REVIEW OF AN ORDER DENYING SUPPRESSION OR EXCLUSION OF EVIDENCE.**

3 An order denying a motion to suppress evidence or a motion challenging the
4 admissibility of a statement of a defendant under s. 971.31 (10), a juvenile under s.
5 938.297 (8), or a child, expectant mother, or parent under s. 48.297 (8), may be
6 reviewed upon appeal from a final judgment or order notwithstanding the fact that
7 the final judgment or order was entered upon a plea of guilty or no contest, an
8 admission, or a consent to an information, criminal complaint, or petition.

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

10 **808.04 (3)** Except as provided in subs. (4) and (7), an appeal in a proceeding
11 under s. 971.17, a criminal case, or a case under ch. 48, 51, 55 ~~or~~, 938, or 980 shall
12 be initiated within the time period specified in s. 809.30 (2) or 809.32 (2).

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

14 **808.04 (4)** Except as provided in sub. (7m), an appeal by the state in either a
15 proceeding under s. 971.17, a criminal case under s. 974.05, or a case under ch. 48
16 ~~or~~, 938, or 980 shall be initiated within 45 days of entry of the judgment or order
17 appealed from.

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

20 **808.10 (1) PETITION FOR REVIEW; TIME LIMIT.** A decision or order of the court of
21 appeals is reviewable by the supreme court only upon a petition for review granted
22 by the supreme court. The Except as provided in sub. (2) and ss. 809.32 (5) and 809.62
23 (1m), the petition for review shall be filed in the supreme court within 30 days of the
24 date of the decision of the court of appeals.

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

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

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

10 **SECTION 7.** Subchapter III (title) of chapter 809 [precedes 809.30] of the
11 statutes, as affected by Supreme Court Order 02-01, is repealed and recreated to
12 read:

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

19 **SECTION 8.** 809.30 (title) of the statutes, as affected by Supreme Court Order
20 02-01, is repealed and recreated to read:

21 **809.30 (title) Rule (Appeals in s. 971.17 proceedings and in criminal and**
22 **chs. 48, 51, 55, 938, and 980 cases).**

23 **SECTION 9.** 809.30 (1) (a) of the statutes, as affected by Supreme Court Order
24 02-01, is repealed and recreated to read:

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

5 **SECTION 10.** 809.30 (1) (b) 4. of the statutes, as affected by Supreme Court
6 Order 02–01, is repealed and recreated to read:

7 809.30 (1) (b) 4. A subject individual or ward seeking postdisposition relief in
8 an s. 971.17 proceeding or a ch. 51, 55, or 980 case.

9 **SECTION 11.** 809.30 (1) (c) of the statutes, as affected by Supreme Court Order
10 02–01, is repealed and recreated to read:

11 809.30 (1) (c) “Postconviction relief” means an appeal or motion for relief under
12 this subchapter from a circuit court’s final judgment or order in a criminal case, other
13 than an appeal, motion, or petition under s. 302.113 (7m) or (9g), 973.19, 973.195,
14 974.06, or 974.07 (2).

15 **SECTION 12.** 809.30 (1) (d) of the statutes, as affected by Supreme Court Order
16 02–01, is repealed and recreated to read:

17 809.30 (1) (d) “Postdisposition relief” means an appeal or motion for relief
18 under this subchapter from a circuit court’s final adjudication.

19 **SECTION 13.** 809.30 (1) (e) of the statutes, as affected by Supreme Court Order
20 02–01, is repealed and recreated to read:

21 809.30 (1) (e) “Prosecutor” means a district attorney, corporation counsel, or
22 other attorney authorized by law to bring a proceeding under s. 971.17 to prosecute
23 a criminal case or a case under ch. 48, 51, 55, 938, or 980.

24 **SECTION 14.** 809.30 (2) (a) of the statutes, as affected by Supreme Court Order
25 02–01, is repealed and recreated to read:

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1 809.30 (2) (a) *Appeal procedures; counsel to continue.* A person seeking
2 postconviction relief in a criminal case or a person seeking postdisposition relief in
3 a ch. 48 case, other than a termination of parental rights case under s. 48.43 or a
4 parental consent to abortion case under s. 48.375 (7), or a person seeking
5 postdisposition relief in an s. 971.17 proceeding or a ch. 51, 55, 938, or 980 case shall
6 comply with this section. Counsel representing the person at sentencing or at the
7 time of the final adjudication shall continue representation by filing a notice under
8 par. (b) if the person desires to pursue postconviction or postdisposition relief unless
9 counsel is discharged by the person or allowed to withdraw by the circuit court before
10 the notice must be filed.

11 **SECTION 15.** 809.32 (1) (c) (form) of the statutes, as affected by Supreme Court
12 Order 02–01, is repealed and recreated to read:

13 809.32 (1) (c) (form)

14 CERTIFICATION BY ATTORNEY

15 I hereby certify that I have discussed with my client all potential issues
16 identified by me and by my client and the merit of an appeal on these issues, and I
17 have informed my client that he or she must choose one of the following 3 options:
18 1) to have me file a no–merit report; 2) to have me close the file without an appeal;
19 or 3) to have me close the file and to proceed without an attorney or with another
20 attorney retained at his or her expense. I have informed my client that a no–merit
21 report will be filed if he or she either requests a no–merit report or does not consent
22 to have me close the file without further representation. I have informed my client
23 that the transcripts and circuit court case record will be forwarded at his or her
24 request. I have also informed my client that he or she may file a response to the
25 no–merit report and that I may file a supplemental no–merit report and affidavit or

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1 affidavits containing matters outside the record, possibly including confidential
2 information, to rebut allegations made in my client's response to the no-merit report.

3 Signed:

4 Signature:

5 **SECTION 16.** 809.32 (4) of the statutes, as affected by Supreme Court Order
6 02-01, is repealed and recreated to read:

7 **809.32 (4)** NO-MERIT PETITION FOR REVIEW; PETITIONS. (a) *Petition and*
8 *supplemental petition.* If a fully briefed appeal is taken to the court of appeals and
9 the attorney is of the opinion that a petition for review in the supreme court under
10 s. 809.62 would be frivolous and without any arguable merit, the attorney shall
11 advise the person of the reasons for this opinion and that the person has the right
12 to file a petition for review. If requested by the person, the attorney shall file a
13 petition satisfying the requirements of s. 809.62 (2) (d) and (f) and the person shall
14 file a supplemental petition satisfying the requirements of s. 809.62 (2) (a), (b), (c),
15 and (e).

16 (b) *Time limit.* Except as provided in sub. (5) and s. 808.10, the petition and
17 supplemental petition shall both be filed within 30 days after the date of the decision
18 or order of the court of appeals.

19 (c) *Responses time limit.* Except as provided in sub. (5), an opposing party may
20 file a response to the petition and supplemental petition within 14 days after the
21 service of the supplemental petition.

22 **SECTION 17.** 809.32 (5) of the statutes is created to read:

23 **809.32 (5)** NO-MERIT PETITION FOR REVIEW; EFFECT OF MOTION FOR
24 RECONSIDERATION. (a) *Petition.* If a motion for reconsideration is timely filed in the
25 court of appeals under s. 809.24 (1), no party may file a petition or a supplemental

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1 petition in the supreme court until after the court of appeals issues an order denying
2 the motion for reconsideration or an amended decision.

3 (b) *Supplemental petition.* If a motion for reconsideration in the court of
4 appeals under s. 809.24 (1) is denied and a petition for review was filed before the
5 motion for reconsideration was filed, and if the time for filing a supplemental petition
6 under this subsection had not expired when the motion for reconsideration was filed,
7 the supplemental petition may be filed within 14 days after the filing of the order
8 denying the motion for reconsideration or within the time remaining to file the
9 supplemental petition at the time that the motion for reconsideration was filed,
10 whichever is greater.

11 (c) *Notice affirming, withdrawing, or amending pending petition or*
12 *supplemental petition.* If the court of appeals files an amended decision in response
13 to the motion for reconsideration under s. 809.24 (1), any party who filed a petition
14 for review or a supplemental petition for review under this subsection prior to the
15 filing of the motion for reconsideration must file with the clerk of the supreme court
16 a notice affirming the pending petition or supplemental petition, a notice
17 withdrawing the pending petition or supplemental petition, or an amendment to the
18 pending petition or supplemental petition within 14 days after the date of the filing
19 of the court of appeals' amended decision.

20 (d) *Responses.* If a motion for reconsideration is denied and a petition for review
21 or a supplemental petition had been filed before the motion for reconsideration was
22 filed, and if the time for filing a response to the petition or supplemental petition had
23 not expired when the motion for reconsideration was filed, a response to the petition
24 or the supplemental petition may be filed within 14 days of the order denying the
25 motion for reconsideration. If a supplemental petition is filed under par. (b), the

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1 responding party may file a response to the supplemental petition within 14 days
2 after service of the supplemental petition. After the petitioning party files the notice
3 affirming or withdrawing the pending petition or supplemental petition or an
4 amendment to the pending petition or supplemental petition under par. (c), the
5 responding party must file a response to the notice or amendment within 14 days
6 after service of the notice or amendment. The response to the notice or amendment
7 may be an affirmation of the responding party's earlier response or a new response.

8 **SECTION 18.** 809.62 (1) (intro.) of the statutes is amended to read:

9 809.62 **(1)** (intro.) A party may file with the supreme court a petition for review
10 of an adverse decision of the court of appeals pursuant to s. 808.10 ~~within 30 days~~
11 ~~of the date of the decision of the court of appeals.~~ Supreme court review is a matter
12 of judicial discretion, not of right, and will be granted only when special and
13 important reasons are presented. The following, while neither controlling nor fully
14 measuring the court's discretion, indicate criteria that will be considered:

15 **SECTION 19.** 809.62 (1m) of the statutes is created to read:

16 809.62 **(1m)** (a) If a motion for reconsideration is timely filed in the court of
17 appeals under s. 809.24 (1), no party may file a petition for review in the supreme
18 court until after the court of appeals issues an order denying the motion for
19 reconsideration or an amended decision.

20 (b) If a motion for reconsideration is denied and a petition for review had been
21 filed before the motion for reconsideration was filed, and if the time for filing a
22 response to the petition had not expired when the motion for reconsideration was
23 filed, a response to the petition may be filed within 14 days of the order denying the
24 motion for reconsideration.

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1 (c) If the court of appeals files an amended decision in response to the motion
2 for reconsideration under s. 809.24 (1), any party who filed a petition for review prior
3 to the filing of the motion for reconsideration must file with the clerk of the supreme
4 court a notice affirming the pending petition, a notice withdrawing the pending
5 petition, or an amendment to the pending petition within 14 days after the date of
6 the filing of the court of appeals' amended decision.

7 (d) After the petitioning party files the notice affirming or withdrawing the
8 pending petition or an amendment to the pending petition under par. (c), the
9 responding party must file a response to the notice or amendment within 14 days
10 after service of the notice or amendment. The response may be an affirmation of the
11 responding party's earlier response or a new response.

12 **SECTION 20.** 809.62 (3) of the statutes is amended to read:

13 809.62 (3) Except as provided in sub. (1m) and s. 809.32 (4) and (5), an opposing
14 party may file a response to the petition within 14 days after the service of the
15 petition.

16 **SECTION 21.** 938.297 (8) of the statutes is created to read:

17 938.297 (8) An order denying a motion to suppress evidence or a motion
18 challenging the admissibility of a statement of a juvenile may be reviewed upon
19 appeal from a final judgment or order notwithstanding the fact that such final
20 judgment or order was entered upon an admission or a plea of no contest to the
21 allegations in the petition.

22 **SECTION 22.** 971.17 (7m) of the statutes is created to read:

23 971.17 (7m) MOTION FOR POSTDISPOSITION RELIEF AND APPEAL. (a) *Appeal by*
24 *respondent.* A motion for postdisposition relief by a person committed under this
25 section shall be made in the time and manner provided in ss. 809.30 to 809.32. An

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1 appeal by a person who has been committed under this section from a final order
2 under this section or from an order denying a motion for postdisposition relief shall
3 be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. The
4 person shall file a motion for postdisposition relief in the circuit court before a notice
5 of appeal is filed unless the grounds for seeking relief are sufficiency of the evidence
6 or issues previously raised.

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

10 **SECTION 23.** 974.02 (1) of the statutes is amended to read:

11 974.02 (1) A motion for postconviction relief other than under s. 974.06 or
12 974.07 (2) by the defendant in a criminal case shall be made in the time and manner
13 provided in ss. 809.30 and ~~809.40~~ 809.32. An appeal by the defendant in a criminal
14 case from a judgment of conviction or from an order denying a postconviction motion
15 or from both shall be taken in the time and manner provided in ss. 808.04 (3), and
16 809.30 and ~~809.40~~ to 809.32. An appeal of an order or judgment on habeas corpus
17 remanding to custody a prisoner committed for trial under s. 970.03 shall be taken
18 under ss. 808.03 (2) and 809.50, with notice to the attorney general and the district
19 attorney and opportunity for them to be heard.

20 **SECTION 24.** 974.02 (2) of the statutes is amended to read:

21 974.02 (2) An appellant is not required to file a postconviction motion in the
22 ~~trial~~ circuit court prior to an appeal if the grounds are sufficiency of the evidence or
23 issues previously raised.

24 **SECTION 25.** 980.061 of the statutes is created to read:

