

2007 DRAFTING REQUEST

Bill

Received: **11/05/2007**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Lena Taylor (608) 266-5810**

By/Representing: **Eric**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - civil procedure**

Extra Copies: **Anne Sappenfield, LC**

Submit via email: **YES**

Requester's email: **Sen.Taylor@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Appelate procedure reform

Instructions:

See Attached 03-3780 SB364 Look for 05 version allow a juvenile to appeal an order .

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2 11/12/2007	bkraft 11/20/2007		_____			S&L
/1			nmatzke 11/20/2007	_____	sbasford 11/20/2007	sbasford 01/11/2008	S&L
/2	rnelson2 01/14/2008	bkraft 01/14/2008	rschluet 01/14/2008	_____	lparisi 01/14/2008	lparisi 01/14/2008	

FE Sent For: "1/2" @ intro, 1-25-08 <END>

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/1	rnelson2	1/2 bjk 1/14	nmatzke 11/20/2007		sbasford 11/20/2007	sbasford 01/11/2008	S&L

FE Sent For:

Handwritten signature and date 1/14/08

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/?	rnelson2	1 bjk 11/20	nwn 11/20	nwr/cs 11/20			

FE Sent For:

<END>

Nelson, Robert P.

From: Balinsky, Brett
Sent: Friday, October 26, 2007 4:40 PM
To: Nelson, Robert P.
Subject: FW: Drafting Requests from Senator Taylor

Attachments: MEMO - BB 102607 re-Judicial Council Drafting.doc

Hi Bob,

Just got this in from Sen. Taylor on behalf of the judicial council. Looks like I drafted the first one and you did nos. 2 and 3 several years ago - should we split it up that way? Do we enter this request with Sen. Taylor or the JC as the requester?

Brett

From: Peterson, Eric
Sent: Friday, October 26, 2007 1:39 PM
To: Balinsky, Brett
Subject: Drafting Requests from Senator Taylor

Hi Brett,

Senator Taylor intends to introduce three pieces of legislation at the request of the Judicial Council. I believe that you drafted the original pieces of legislation that I reference in the attached memo.

Please feel free to call me if you have any questions.

Thanks,

Eric M. Peterson

Office of Senator Lena C. Taylor
Committee of Judiciary & Corrections
Room 415 South, State Capitol
PO Box 7882
Madison WI 53707-7882
608-266-5810 office
608-267-2353 fax
608-772-2682 cellular
eric.peterson@legis.wisconsin.gov
http://www.legis.wi.gov/senate/committees/Judiciary_Corrections/



MEMO - BB 102607
re-Judicial C...

INTEROFFICE MEMORANDUM

TO: BRETT BALINKSY
FROM: ERIC PETERSON, OFFICE OF SENATOR TAYLOR
SUBJECT: 3 DRAFTING REQUESTS
DATE: 10/29/2007

~~**Drafting Request 1** -- Make appeals in Wis. Stat. Ch. 980 (Sexually Violent Person Commitment) and sec. 971.17 (Not guilty by reason of mental disease or defect commitment) cases subject to the unified appeal procedures set forth in secs. (Rules) 809.30, .31 and .32.~~

~~Redraft 2007 AB 276 (LRB—0516/1) with the following modifications:~~

- ~~• Section 14 should be revised so as to amend new sec. 980.038 (4) rather than create sec. 980.061 of the statutes.~~
- ~~• Remove references to sec. 973.20 in sections 2-7 and 9-10~~
- ~~• Remove Section 13 of AB 276.~~

~~**Drafting Request 2** -- Toll the time limit for filing or responding to a petition for review in the Supreme Court while a timely motion for reconsideration is pending in the Court of Appeals.~~

- ~~• From 2003 SB 364 (LRB -3780/1) recycle Sections 5, 6 and 16-20~~
- ~~• From the Senate Amendment (2003 LRBa2493/2) recycle and include modifications in Lines 5-9~~

~~**Drafting Request 3** -- Allow a juvenile to appeal an order denying the suppression of evidence or exclusion of the juvenile's statements without having to preserve those issues by taking the case to trial.~~

- ~~• From 2003 SB 364 (LRB -3780/1) recycle sections 2 and 21~~
- ~~• From the Senate Amendment (2003 LRBa2493/2) recycle and include modifications in Lines 3 and 4~~

05-3106

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SA ✓
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regent

1 AN ACT *to renumber and amend* 808.10; *to amend* 808.04 (3), 808.04 (4),
 2 808.04 (7m), 809.62 (1) (intro.), 809.62 (3), 974.02 (1) and 974.02 (2); *to repeal*
 3 *and recreate* 809.24 (4), subchapter III (title) of chapter 809 [precedes 809.30],
 4 809.30 (title), 809.30 (1) (a), 809.30 (1) (b) 4., 809.30 (1) (c), 809.30 (1) (d), 809.30
 5 (1) (e), 809.30 (2) (a), 809.32 (1) (c) (form) and 809.32 (4); and *to create* 808.03
 6 (3), 808.10 (2), 809.32 (5), 809.62 (1m), 938.297 (8), 971.17 (7m) and 980.061 of
 7 the statutes; **relating to:** appellate procedure.

Defendant's
at trial

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 guilt

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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.** 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) or a juvenile under
- 5 s. 938.297 (8) may be reviewed upon appeal from a final judgment or order
- 6 notwithstanding the fact that the final judgment or order was entered upon a plea

1 of guilty or no contest, an admission, or a consent to an information, criminal
2 complaint, or petition.

3 **SECTION 2.** 808.04 (3) of the statutes is amended to read:

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

7 **SECTION 3.** 808.04 (4) of the statutes is amended to read:

8 808.04 (4) Except as provided in sub. (7m), an appeal by the state in either a
9 proceeding under s. 971.17, a criminal case under s. 974.05, or a case under ch. 48
10 or, 938, or 980 shall be initiated within 45 days of entry of the judgment or order
11 appealed from.

12 **SECTION 4.** 808.04 (7m) of the statutes is amended to read:

13 808.04 (7m) An appeal from a judgment or order terminating parental rights
14 or denying termination of parental rights shall be initiated by filing the notice
15 required by s. 809.107 (2) within 30 days after the date of entry of the judgment or
16 order appealed from. If the record discloses that the judgment or order appealed from
17 was entered after the notice required by s. 809.107 (2) was filed, the notice shall be
18 treated as filed on the date that the judgment or order was entered. Notwithstanding
19 s. 809.82 (2) (b), this time period may not be enlarged.

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

22 808.10 (1) PETITION FOR REVIEW: TIME LIMIT. A decision or order of the court of
23 appeals is reviewable by the supreme court only upon a petition for review granted
24 by the supreme court. The Except as provided in sub. (2) and ss. 809.32 (5) and 809.62

BILL

1 court a notice affirming the pending petition, a notice withdrawing the pending
2 petition, or an amendment to the pending petition within 14 days after the date of
3 the filing of the court of appeals' amended decision.

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

9 **SECTION 21.** 809.62 (3) of the statutes is amended to read:

10 809.62 (3) Except as provided in sub. (1m) and s. 809.32 (4) and (5), an opposing
11 party may file a response to the petition within 14 days after the service of the
12 petition.

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

14 **938.297 (8)** An order denying a motion to suppress evidence or a motion
15 challenging the admissibility of a statement of a juvenile may be reviewed upon
16 appeal from a final judgment or order notwithstanding the fact that such final
17 judgment or order was entered upon an admission or a plea of no contest to the
18 allegations in the petition.

19 **SECTION 23.** 971.17 (7m) of the statutes is created to read:

20 971.17 (7m) MOTION FOR POSTDISPOSITION RELIEF AND APPEAL. (a) *Appeal by*
21 *respondent.* A motion for postdisposition relief by a person committed under 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 who has been committed under this section from a final order
24 under this section or from an order denying a motion for postdisposition relief shall
25 be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. The

BILL

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

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

SECTION ~~27~~. Effective date.

9
10 (1) This act takes effect on the first day of the 4th month beginning after
11 publication. ✓

12

(END) ✓

Basford, Sarah

From: Peterson, Eric
Sent: Friday, January 11, 2008 12:49 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-3394/1 Topic: Appellate procedure reform

Please Jacket LRB 07-3394/1 for the SENATE.



2
stay

2007 BILL

Insert

SA ✓
x-ref ✓

regen. cat.

1 AN ACT *to create* 808.03 (3) and 938.297 (8) of the statutes; **relating to:**
2 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 defendant 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 of guilt, consent, or no contest plea. 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.

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

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

9 **SECTION 2.** 938.297 (8) of the statutes is created to read:

10 938.297 (8) APPELLATE REVIEW. An order denying a motion to suppress evidence
11 or a motion challenging the admissibility of a statement of a juvenile may be
12 reviewed upon appeal from a final judgment or order notwithstanding the fact that
13 such final judgment or order was entered upon an admission or a plea of no contest
14 to the allegations in the petition.

15 **SECTION 3. Effective date.**

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

18 (END)

2 - Insert 2.14 ->

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3394/2ins

RPN:bjk:awn

stays

1 insert 2-14: ✓

2 SECTION ~~1~~. 971.31 (10) of the statutes is amended to read: ✓

3 ✓ 971.31 (10) An order denying a motion to suppress evidence or a motion
4 challenging the admissibility of a statement of a defendant may be reviewed upon
5 appeal from a final judgment of conviction or order notwithstanding the fact that
6 such the judgment or order was entered upon a plea of guilty or no contest, an
7 admission, or a consent to an information or criminal complaint. ✓

History: 1975 c. 184; 1985 a. 275; 1987 a. 332 s. 64; 1993 a. 227, 486; 1995 a. 352, 387, 456; 1997 a. 205; 2005 a. 277.

end of insert 2-14

Barman, Mike

From: FES User Mike Barman [DOAFiscalEstimates@wisconsin.gov]
Sent: Friday, February 15, 2008 3:16 PM
To: DOAFiscalEstimates@wisconsin.gov; DOAFiscalEstimates@wisconsin.gov;
DOAFiscalEstimates@wisconsin.gov; Rottier, Nancy M - COURTS
Cc: Barman, Mike
Subject: FISCAL ESTIMATE REMINDER - LRB # 07-3394/2 INTRO # SB-419

CTS was previously assigned to provide a 'Original' FISCAL ESTIMATE for LRB #07-3394/2 by 2/1/2008.

Please submit the estimate as soon as possible.

FE Overdue - SCC looking for this FE

Submitted from the web 2/15/2008 3:16:07 PM

Fiscal Estimates URL = <http://fes.doa.state.wi.us>

This message has been generated from the Fiscal Estimate System by FES User Mike Barman. Please click on the following link to respond to Mike Barman.
<mailto:Mike.Barman@legis.state.wi.us?subject=FISCAL%20ESTIMATE%20REMINDER%20-%20LRB%20%2007-3394/2%20INTRO%20%20SB-419&cc=Mike.Barman@legis.state.wi.us> Using the Reply button will send a message to the FES System Mailbox.

Barman, Mike

From: FES User Mike Barman [DOAFiscalEstimates@wisconsin.gov]
Sent: Friday, February 15, 2008 3:16 PM
To: DOAFiscalEstimates@wisconsin.gov; DOAFiscalEstimates@wisconsin.gov;
DOAFiscalEstimates@wisconsin.gov; Rinehart, Mark W - DOJ
Cc: Barman, Mike
Subject: FISCAL ESTIMATE REMINDER - LRB # 07-3394/2 INTRO # SB-419

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FE Overdue - SCC looking for this FE

Submitted from the web 2/15/2008 3:16:28 PM

Fiscal Estimates URL = <http://fes.doa.state.wi.us>

This message has been generated from the Fiscal Estimate System by FES User Mike Barman. Please click on the following link to respond to Mike Barman.
<mailto:Mike.Barman@legis.state.wi.us?subject=FISCAL%20ESTIMATE%20REMINDER%20-%20LRB%20%2007-3394/2%20INTRO%20%20SB-419&cc=Mike.Barman@legis.state.wi.us> Using the Reply button will send a message to the FES System Mailbox.