§ 470.40 Determination by court of appeals of appeals from intermediate appellate courts; corrective action upon reversal or modification.

1. Upon reversing or modifying an order of an intermediate appellate court affirming a criminal court judgment, sentence or order, the court of appeals must take or direct such corrective action as the intermediate appellate court would, pursuant to section 470.20, have been required or authorized to take or direct had it reversed or modified the criminal court judgment, sentence or order upon the same ground or grounds.

2. Upon reversing an order of an intermediate appellate court reversing or modifying a criminal court judgment, sentence or order upon the ground that questions of law were erroneously determined by the intermediate appellate court in favor of the party appellant therein, the court of appeals must take or direct corrective action as follows:

(a) If the facts underlying the original criminal court judgment, sentence or order were considered and determined to have been established by the intermediate appellate court, the court of appeals must reinstate and affirm the original criminal court judgment, sentence or order and remit the case to such criminal court for whatever further proceedings may be necessary to complete the action or proceedings therein; provided, however, that where such facts were applied to an erroneous determination of law, the court of appeals may remit the case to the intermediate appellate court for a further determination of the facts;

(b) If the facts underlying the original criminal court judgment, sentence or order were not, or are presumed not to have been, considered and determined by the intermediate appellate court, the court of appeals must remit the case to such intermediate appellate court for determination of the facts.

3. Upon modifying an intermediate appellate court order reversing or modifying a criminal court judgment or order, upon the ground that corrective action taken or directed by the intermediate appellate court was illegal, the court of appeals must either (a) itself take or direct

the appropriate corrective action or (b) remit the case to the intermediate appellate court for appropriate corrective action by the latter.