



1995 SENATE BILL 70

February 14, 1995 - Introduced by Senators ROSENZWEIG, DARLING, BURKE and FITZGERALD, cosponsored by Representatives LADWIG, KRUSICK, KLUSMAN, DUFF, ZIEGELBAUER, DOBYNS, HASENOHRL, SILBAUGH, GOETSCH, HAHN, OWENS, KREIBICH and OURADA. Referred to Committee on Judiciary.

1 **AN ACT to amend** 48.29 (1), 48.29 (2) and 48.422 (5); and **to create** 48.29 (1d) and
2 48.38 (5) (g) of the statutes; **relating to:** substitution or disqualification of a
3 judge who has disapproved a permanency plan under the children's code.

Analysis by the Legislative Reference Bureau

Under current law, subject to certain exceptions, a permanency plan, that is, a plan designed to ensure that a child is reunified with his or her family whenever possible, or that the child quickly attains a placement or home providing long-term stability, must be prepared for each child who is placed in an out-of-home placement. Currently, a permanency plan must be reviewed every 6 months by the court assigned to exercise jurisdiction under the children's code (juvenile court) or by a panel appointed by the juvenile court. This bill provides that, if a judge of the juvenile court reviews and disapproves a child's permanency plan, that disapproval is not grounds for substituting or disqualifying that judge in any proceeding under the children's code, including a termination of parental rights proceeding, relating to the child who is the subject of the permanency plan.

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:

4 **SECTION 1.** 48.29 (1) of the statutes is amended to read:
5 48.29 (1) Except as provided in sub. ~~subs.~~ (1d) and (1g), the child, or the child's
6 parent, guardian or legal custodian, either before or during the plea hearing, may file

1 a written request with the clerk of the court or other person acting as the clerk for
2 a substitution of the judge assigned to the proceeding. Upon filing the written
3 request, the filing party shall immediately mail or deliver a copy of the request to the
4 judge named therein. In a proceeding under s. 48.12 or 48.13 (12), only the child may
5 request a substitution of the judge. Whenever any person has the right to request
6 a substitution of judge, that person's counsel or guardian ad litem may file the
7 request. Not more than one such written request may be filed in any one proceeding,
8 nor may any single request name more than one judge. This section shall not apply
9 to proceedings under s. 48.21.

10 **SECTION 2.** 48.29 (1d) of the statutes is created to read:

11 48.29 (1d) No person may request the substitution of a judge in any proceeding
12 under this chapter solely on the grounds that the judge previously disapproved a
13 permanency plan under s. 48.38 (5) for the child who is the subject of the proceeding.

14 **SECTION 3.** 48.29 (2) of the statutes is amended to read:

15 48.29 (2) If the request for substitution of a judge is made for the judge
16 scheduled to conduct a waiver hearing under s. 48.18, the request shall be filed before
17 the close of the working day preceding the day that the waiver hearing is scheduled.
18 Except as provided in ~~sub.~~ subs. (1d) and (1g), the judge may allow an authorized
19 party to make a request for substitution on the day of the waiver hearing. If the
20 request for substitution is made subsequent to the waiver hearing, the judge who
21 conducted the waiver hearing may also conduct the plea hearing.

22 **SECTION 4.** 48.38 (5) (g) of the statutes is created to read:

23 48.38 (5) (g) If a judge reviews and disapproves a permanency plan under this
24 subsection, that disapproval is not grounds to disqualify or substitute that judge

1 from any proceeding under this chapter relating to the child who is the subject of the
2 permanency plan.

3 **SECTION 5.** 48.422 (5) of the statutes is amended to read:

4 48.422 (5) Any nonpetitioning party, including the child, shall be granted a
5 continuance of the hearing for the purpose of consulting with an attorney on the
6 request for a jury trial or concerning a request for the substitution of a judge. No
7 person may request the substitution of a judge in a termination of parental rights
8 proceeding solely on the grounds that the judge previously disapproved a
9 permanency plan under, s. 48.38 (5) for the child who is the subject of the proceeding.

10 **SECTION 6. Initial applicability.**

11 (1) This act first applies to requests for substitution of a judge or motions to
12 disqualify a judge made on the effective date of this subsection.

13

(END)