

2017 DRAFTING REQUEST

Bill

For: **Patrick Snyder (608) 266-0654** Drafter: **swalkenh**

By: **Nicole** Secondary Drafters:

Date: **10/13/2017** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **Rep.Snyder@legis.wisconsin.gov**
 Carbon copy (CC) to: **sarah.walkenhorstbarber@legis.wisconsin.gov**
tamara.dodge@legis.wisconsin.gov
melinda.johns@legis.wisconsin.gov
Nicole.Borgerding@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Appellate procedure changes in actions relating to termination of parental rights

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	swalkenh 10/26/2017	anienaja 10/27/2017			
/P1	swalkenh 11/20/2017		dwalker 10/27/2017		
/P2	swalkenh 11/27/2017	anienaja 11/20/2017	dwalker 11/20/2017		
/P3		eweiss	mbarman		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1		11/27/2017	11/27/2017		
			mbarman 11/27/2017	dwalker 11/27/2017	

EE Sent For:

<END>

→ 12-05-2017
("1")

WISCONSIN LEGISLATIVE REFERENCE BUREAU

Information Services 608-266-0341—Legal Services 608-266-3561



10/12/17

Rachel S. - Leg Council

Rep. Snyder - Foster Care Task Force

→ cc Rachel Snyder (LC)

Nicole.Borgerding@legis.wisconsin.gov (Rep. Snyder)

Margie.Berkowitz@ " (Rep. Doyle)

TPR - appellate procedure 809.107

→ to initiate appeal, parent has to sign petition
(not just attorney)

- may be drafted before?

Per Rachel (LC)

- Judge Foley described the issue

- Confirmed 809.107(2) is the provision to be amended
re "notice of intent"; notice should require signature of
person, not just counsel



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4564(?)
SWB: ...
P1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA-
xref

IN 10/26
Requested by 10/27
P/S

Gen.

- 1 AN ACT ...; **relating to:** appellate procedure in proceedings related to termination
- 2 of parental rights.

Analysis by the Legislative Reference Bureau

This bill requires that a notice of intent to pursue postdisposition or appellate relief in proceedings related to the termination of parental rights be signed by the person on whose behalf the notice is filed. Under current law, in order to initiate an appeal in a termination of parental rights matter, a person must file a notice of intent to pursue postdisposition or appellate relief. Current law allows for this notice to be filed with the signature of counsel on behalf of the person on whose behalf the notice is filed. This bill creates a requirement that the notice of intent must include the signature of the person on whose behalf the notice is filed (sign the notice). The person's counsel, if any, must sign the notice, but may not do so in lieu of the signature of the person on whose behalf the notice is filed.

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

- 3 SECTION 1. 809.107 (2) (bm) 6. of the statutes is created to read:

1 809.107 (2) (bm) 6. For an appellant other than the state, the signature of the
2 appellant on whose behalf the notice of intent is filed. Appellant's counsel, if any,
3 shall also sign the notice, but may not sign in lieu of the appellant.

4

(END)



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4564/P1
SWB:amn

IPZ
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓

Reg'n ✓

M 11/20
Requested today please

This bill makes changes to the appellate procedures applicable in proceedings related to the termination of parental rights.

- 1 AN ACT to create 809.107 (2) (bm) 6. of the statutes; relating to: appellate
- 2 procedure in proceedings related to termination of parental rights.

Analysis by the Legislative Reference Bureau

This bill requires that a notice of intent to pursue postdisposition or appellate relief in proceedings related to the termination of parental rights be signed by the person on whose behalf the notice is filed. Under current law, in order to initiate an appeal in a termination of parental rights matter, a person must file a notice of intent to pursue postdisposition or appellate relief. This bill creates a requirement that the notice of intent must include the signature of the person on whose behalf the notice is filed. The person's counsel, if any, must sign the notice, but may not do so in lieu of the signature of the person on whose behalf the notice is filed.

First the

M/S Analysis

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

- 3 SECTION 1. 809.107 (2) (bm) 6. of the statutes is created to read:
- 4 809.107 (2) (bm) 6. For an appellant other than the state, the signature of the
- 5 appellant on whose behalf the notice of intent is filed. Appellant's counsel, if any,
- 6 shall also sign the notice, but may not sign in lieu of the appellant.

7 (END)

M/S 1-16



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4668/P1
SWB:emw

INSERT
to
LRB
4564/P2

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

SA

1 AN ACT *to amend* 809.107 (6) (am) of the statutes; **relating to:** appellate
2 procedure for postjudgment fact-finding in termination of parental rights
3 matters.

Second's the
Analysis by the Legislative Reference Bureau

~~This~~ bill establishes an additional requirement for filing a motion to remand for postjudgment fact-finding on appeal of a judgment or order related to the termination of parental rights. Under current law, an appellant who intends to appeal on any ground that may require postjudgment fact-finding must file a motion in the court of appeals raising the issue and requesting that the court of appeals retain jurisdiction over the appeal and remand to the circuit court to hear and decide the issue of possible additional fact-finding. This bill establishes a requirement that counsel who files the motion for remand or, if the appellant seeking the remand is unrepresented, the appellant, must file an affidavit in support of the motion for remand which states with specificity the reasons why postjudgment fact-finding is necessary.

INSERT
ANALYSIS
(to
LRB
4564)

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

4 SECTION 1. 809.107 (6) (am) of the statutes is amended to read:

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value

cont'd from
pg 1

INS
1-6

1 809.107 (6) (am) *Motion for remand*. If the appellant intends to appeal on any

2 ground that may require postjudgment fact-finding, the appellant shall file a motion

3 in the court of appeals, within 15 days after the filing of the record on appeal, raising

4 the issue and requesting that the court of appeals retain jurisdiction over the appeal

5 and remand to the circuit court to hear and decide the issue. The appellant's counsel

6 or, if the appellant is not represented by counsel, the appellant, shall file an affidavit

7 in support of the motion stating with specificity the reasons that postjudgment

8 fact-finding is necessary. If the court of appeals grants the motion for remand, it

9 shall set time limits for the circuit court to hear and decide the issue, for the appellant

10 to request transcripts of the hearing, and for the court reporter to file and serve the

11 transcript of the hearing. The court of appeals shall extend the time limit under par.

12 (a) for the appellant to file a brief presenting all grounds for relief in the pending

13 appeal.

(END)

Walkenhorst Barber, Sarah

From: Borgerding, Nicole
Sent: Monday, November 20, 2017 8:32 AM
To: Walkenhorst Barber, Sarah
Subject: Bill Drafts 4564 and 4668
Attachments: LRB 4668_P1.pdf; 17-4564_P1.pdf

Hi Sarah,

I am requesting that the two bill drafts, LRB 4564 and LRB 4668 be collapsed into one. Both of these proposals are relating to the appellate proceedings for the TPR process.

Please let me know if you have any questions. Thank you for all of your help!

Nicole

Nicole Borgerding
Office of State Representative Patrick Snyder
85th Assembly District
608-266-0654

Walkenhorst Barber, Sarah

From: Boardman, David
Sent: Monday, November 20, 2017 9:34 AM
To: Walkenhorst Barber, Sarah
Cc: Borgerding, Nicole
Subject: Permission to Use LRB 4668/P1

Sarah,

Nicole from Rep. Snyder's office told me that she requested you to combine LRB 4564 (TPR Appeals) with Rep. Ballweg's draft, LRB 4668/P1, relating to: appellate procedure for postjudgment fact-finding in termination of parental rights matters. You have permission from our office to work with Nicole with LRB 4668/P1 and combining it.

Thank you,
David

David Boardman
Office of Representative Ballweg

608-266-8077
Room 210 North, State Capitol
Madison, WI 53708

Walkenhorst Barber, Sarah

From: Borgerding, Nicole
Sent: Wednesday, November 22, 2017 11:53 AM
To: Walkenhorst Barber, Sarah
Subject: FW: LRB 4564

From: Plotkin, Adam - OSPD
Sent: Wednesday, November 22, 2017 10:51 AM
To: Borgerding, Nicole <Nicole.Borgerding@legis.wisconsin.gov>
Subject: LRB 4564

Hi Nicole,

Thanks again for meeting this morning. Here is a recap of what we talked about.

* For Section 1, ask the drafter to ensure that the statute for both private and public TPRs has language that allows the Court of Appeals to extend the deadline to file a Notice of Intent for good cause. s. 808.04 (7m) is the statute that says the notice of intent deadline can not be extended for a private TPR and, by a notwithstanding clause, allows that it can be for a public TPR. So, the drafter should be able to sort out how to rewrite that with the general instructions of wanting allow a good cause extension by the Court of Appeals.

For Section 2, 3 changes.

- * 1) EITHER strike the language on line 11 from "or" to "appellant," OR create two processes - one with a 15 day deadline for a represented appellant, one with a 30 or 45 day deadline for a pro se appellant.
- * 2) On line 12, change "reasons" to "anticipated facts". Although that makes that clause pretty clunky. Though the drafter probably has a better way to write it, a suggestion could be change "the reasons that postjudgment fact-finding is necessary" to "the facts the appellant reasonably anticipates will be established at a fact-finding hearing upon remand."
- 3) ~~Add language requiring the Director of State Courts to create instructions and a form affidavit for pro se appellants.~~

Per Nicole, only 1+ 2 11/22

Thank you again for meeting. This area is always difficult because of the stakes and the interests of kids and their parents.

Adam

--
Adam Plotkin
Legislative Liaison
Office of the State Public Defender
608-264-8572, office
608-235-1779, cell



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4564/P2
SWB:amn&emw

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1P3
RMR

IN 11/27

Requested ASAP today
Please

INSERT

SAV
XRGV
PWF

INS
ANALYSIS

Regen.

1 AN ACT to amend 809.107 (6) (am); and to create 809.107 (2) (bm) 6. of the
2 statutes; relating to: appellate procedure in proceedings related to
3 termination of parental rights.

Analysis by the Legislative Reference Bureau

This bill makes changes to the appellate procedures applicable in proceedings related to the termination of parental rights. *change certain requirements relating to the*

First, the bill requires that a notice of intent to pursue postdisposition or appellate relief in proceedings related to the termination of parental rights be signed by the person on whose behalf the notice is filed. Under current law, in order to initiate an appeal in a termination of parental rights matter, a person must file a notice of intent to pursue postdisposition or appellate relief. This bill creates a requirement that the notice of intent must include the signature of the person on whose behalf the notice is filed. The person's counsel, if any, must sign the notice, but may not do so in lieu of the signature of the person on whose behalf the notice is filed.

Second, the bill establishes an additional requirement for filing a motion to remand for postjudgment fact-finding on appeal of a judgment or order related to the termination of parental rights. Under current law, an appellant who intends to appeal on any ground that may require postjudgment fact-finding must file a motion in the court of appeals raising the issue and requesting that the court of appeals retain jurisdiction over the appeal and remand to the circuit court to hear and decide the issue of possible additional fact-finding. This bill establishes a requirement that counsel who files the motion for remand or, if the appellant seeking the remand is

INS

The bill also extends the deadline for filing the motion for remand if the appellant is not represented by counsel.

unrepresented, the appellant, must file an affidavit in support of the motion for remand which states with specificity the reasons why postjudgment fact-finding is necessary.

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

SECTION 1. 809.107 (2) (bm) 6. of the statutes is created to read:

809.107 (2) (bm) 6. For an appellant other than the state, the signature of the appellant on whose behalf the notice of intent is filed. Appellant's counsel, if any, shall also sign the notice, but may not sign in lieu of the appellant.

SECTION 2. 809.107 (6) (am) of the statutes is amended to read:

809.107 (6) (am) *Motion for remand.* If the appellant intends to appeal on any ground that may require postjudgment fact-finding, the appellant shall file a motion in the court of appeals, within 15 days after the filing of the record on appeal, raising the issue and requesting that the court of appeals retain jurisdiction over the appeal and remand to the circuit court to hear and decide the issue. The appellant's counsel or, if the appellant is not represented by counsel, the appellant, shall file an affidavit in support of the motion stating with specificity the reasons that postjudgment fact-finding is necessary. ² facts the appellant reasonably anticipates will be established If the court of appeals grants the motion for remand, it shall set time limits for the circuit court to hear and decide the issue, for the appellant to request transcripts of the hearing, and for the court reporter to file and serve the transcript of the hearing. The court of appeals shall extend the time limit under par. (a) for the appellant to file a brief presenting all grounds for relief in the pending appeal.

(END)

at a fact-finding hearing upon remand

If the appellant is not represented by counsel, the appellant shall file any motion under this paragraph within 45 days after the filing of the record on appeal.

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No
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J

INSERT ANALYSIS

The bill also expands the authority of the court to grant an extension of time to file the notice of intent.

(END INSERT ANALYSIS)

INSERT 2-1

1 **SECTION 1.** 808.04 (7m) of the statutes is amended to read:
2 808.04 (7m) An appeal from a judgment or order terminating parental rights
3 or denying termination of parental rights shall be initiated by filing the notice
4 required by s. 809.107 (2) within 30 days after the date of entry of the judgment or
5 order appealed from. Notwithstanding s. 809.82 (2) (a), this time period may not be
6 enlarged unless the judgment or order was entered as a result of a petition under s.
7 48.415 that was filed by a representative of the public under s. 48.09.

History: 1977 c. 187; 1979 c. 32 s. 92 (9), (14); 1979 c. 89, 221; 1981 c. 152; 1981 c. 314 ss. 130, 146; 1983 a. 183, 219; 1983 a. 491 s. 23; 1985 a. 182 s. 57; Sup. Ct. Order, 130 Wis. 2d xi, xix (1986); Sup. Ct. Order, 136 Wis. 2d xxv (1987); 1989 a. 56 s. 259; 1989 a. 192; 1991 a. 39; Sup. Ct. Order, 168 Wis. 2d xix (1992); 1993 a. 395; 1995 a. 77, 275; 1997 a. 133; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; 2003 a. 47; 2005 a. 293, 434; 2009 a. 26; 2017 a. 58.

(END INSERT 2-1)

INSERT 2-19

8 **SECTION 2.** 809.82 (2) (b) of the statutes is amended to read:
9 809.82 (2) (b) Notwithstanding par. (a), the time for filing a notice of appeal or
10 cross-appeal of a final judgment or order, other than in an appeal under s. 809.107
11 of a judgment or order that was entered as a result of a petition under s. 48.415 that
12 was filed by a representative of the public under s. 48.09 or an appeal under s. 809.30
13 or 809.32, may not be enlarged.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1981 c. 390 s. 252; 1991 a. 263; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02-01, 2002 WI 120, 255 Wis. 2d xiii; 2005 a. 293.

(END INSERT 2-19)

Walkenhorst Barber, Sarah

From: Borgerding, Nicole
Sent: Monday, November 27, 2017 1:59 PM
To: Walkenhorst Barber, Sarah
Subject: RE: Draft review: LRB -4564/P3

Hi Sarah,

I believe we are good to go on this draft. Please convert to a /1!

From: LRB.Legal
Sent: Monday, November 27, 2017 10:51 AM
To: Borgerding, Nicole <Nicole.Borgerding@legis.wisconsin.gov>
Subject: Draft review: LRB -4564/P3

Draft Requester: Rep. Patrick Snyder

Following is the PDF version of draft LRB -4564/P3.



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4564(P3)
SWB:amn&emw

1
PML

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

No changes

1 AN ACT *to amend* 808.04 (7m), 809.107 (6) (am) and 809.82 (2) (b); and *to create*
2 809.107 (2) (bm) 6. of the statutes; **relating to:** appellate procedure in
3 proceedings related to termination of parental rights.

Analysis by the Legislative Reference Bureau

This bill makes changes to the appellate procedures applicable in proceedings related to the termination of parental rights.

First, the bill changes certain requirements relating to the notice of intent to pursue postdisposition or appellate relief in proceedings related to the termination of parental rights. Under current law, in order to initiate an appeal in a termination of parental rights matter, a person must file a notice of intent to pursue postdisposition or appellate relief. This bill creates a requirement that the notice of intent must include the signature of the person on whose behalf the notice is filed. The person's counsel, if any, must sign the notice, but may not do so in lieu of the signature of the person on whose behalf the notice is filed. The bill also expands the authority of the court to grant an extension of time to file the notice of intent.

Second, the bill establishes an additional requirement for filing a motion to remand for postjudgment fact-finding on appeal of a judgment or order related to the termination of parental rights. Under current law, an appellant who intends to appeal on any ground that may require postjudgment fact-finding must file a motion in the court of appeals raising the issue and requesting that the court of appeals retain jurisdiction over the appeal and remand to the circuit court to hear and decide the issue of possible additional fact-finding. This bill establishes a requirement that counsel who files the motion for remand or, if the appellant seeking the remand is

1 support of the motion stating with specificity the facts the appellant reasonably
2 anticipates will be established at a fact-finding hearing upon remand. If the court
3 of appeals grants the motion for remand, it shall set time limits for the circuit court
4 to hear and decide the issue, for the appellant to request transcripts of the hearing,
5 and for the court reporter to file and serve the transcript of the hearing. The court
6 of appeals shall extend the time limit under par. (a) for the appellant to file a brief
7 presenting all grounds for relief in the pending appeal.

8 **SECTION 4.** 809.82 (2) (b) of the statutes is amended to read:

9 809.82 (2) (b) Notwithstanding par. (a), the time for filing a notice of appeal or
10 cross-appeal of a final judgment or order, other than in an appeal under s. 809.107
11 of a judgment or order that was entered as a result of a petition under s. 48.415 that
12 was filed by a representative of the public under s. 48.09 or an appeal under s. 809.30
13 or 809.32, may not be enlarged.

14 (END)

Walker, Dan

From: Borgerding, Nicole
Sent: Monday, November 27, 2017 2:20 PM
To: LRB.Legal
Subject: Draft Review: LRB -4564/1


Please Jacket LRB -4564/1 for the ASSEMBLY.

Barman, Mike

From: Borgerding, Nicole
Sent: Tuesday, December 05, 2017 1:41 PM
To: LRB.Legal
Subject: Fiscal Estimates for Foster Forward Legislative Package

Good afternoon,

I am requesting the fiscal estimates be started for the following proposals. Please let me know if you have any other questions!

- LRB 4466/1
- LRB 4564/1 
- LRB 4562/1
- LRB 4468/1
- LRB 4767/1
- LRB 4929/3
- LRB 4764/1
- LRB 4766/1
- LRB 4582/1
- LRB 4850/1
- LB 4576/1
- LRB 4925/2

Thank you for all of your help,

Nicole

Parisi, Lori

From: Parisi, Lori
Sent: Wednesday, December 13, 2017 3:38 PM
To: Rep.Snyder
Subject: LRB 17-4564/1 (un-introduced)(FE by DA attached for your review)(Subject: appellate procedure changes in actions related to termination of parental rights)

Attachments: FE-4564_DA.pdf



MEMORANDUM

TO Representative Snyder

FROM LRB

SUBJECT Fiscal estimate for **LRB-4564/1**

Fiscal estimate received from DOA and copy sent to requester via e-mail: **12/13/2017**

Per your request, the attached fiscal estimate was prepared for your unIntroduced 2017 session draft, **LRB-4564/1**

The fiscal estimate was prepared by DA (original).

If you have questions about attached fiscal estimate, you may contact the state agency representative who prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss the options under the fiscal estimate procedure.

TO LRB Program Assistants

SUBJECT Fiscal estimate received for an unIntroduced bill draft

- If redrafted, please insert this cover sheet and attached early fiscal estimate into the drafting file after the draft's old version (the version the fiscal estimate was based on) and before the redrafted version.
- If introduced, please make sure the attached fiscal estimate is for the current version. Write the draft's new introduction number below and give this packet to Mike or Lori to reprocess the fiscal estimate (with introduction number included).

THIS DRAFT WAS INTRODUCED AS 2017

AB 778