



**SENATE SUBSTITUTE AMENDMENT 1,
TO 1995 SENATE BILL 209**

May 25, 1995 - Offered by COMMITTEE ON JUDICIARY.

1 **AN ACT to amend** 48.357 (1), 48.357 (2m), 808.04 (4), 809.30 (1) (a), 809.30 (1) (b)
2 and 809.40 (1m); and **to create** 808.04 (7r), 808.07 (2m), 809.108 and 809.62 (2t)
3 of the statutes; **relating to:** staying the execution or enforcement of an order
4 changing the placement of a child pending final resolution of an appeal of that
5 order and providing an expedited procedure for appealing a change in
6 placement order.

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

7 **SECTION 1.** 48.357 (1) of the statutes is amended to read:
8 48.357 (1) The person or agency primarily responsible for implementing the
9 dispositional order may request a change in the placement of the child, whether or
10 not the change requested is authorized in the dispositional order and shall cause
11 written notice to be sent to the child or the child's counsel or guardian ad litem,
12 parent, foster parent, treatment foster parent, guardian and legal custodian. The
13 notice shall contain the name and address of the new placement, the reasons for the
14 change in placement, a statement describing why the new placement is preferable

1 to the present placement and a statement of how the new placement satisfies
2 objectives of the treatment plan ordered by the court. Any person receiving the notice
3 under this subsection or notice of the specific foster or treatment foster placement
4 under s. 48.355 (2) (b) 2. may obtain a hearing on the matter by filing an objection
5 with the court within 10 days of receipt of the notice. Placements shall not be
6 changed until 10 days after such notice is sent to the court unless the parent,
7 guardian or legal custodian and the child, if 12 or more years of age, sign written
8 waivers of objection, except that placement changes which were authorized in the
9 dispositional order may be made immediately if notice is given as required in this
10 subsection. In addition, a hearing is not required for placement changes authorized
11 in the dispositional order except where an objection filed by a person who received
12 notice alleges that new information is available which affects the advisability of the
13 court's dispositional order. If a hearing is held under this subsection and the change
14 in placement would remove a child from a foster home or treatment foster home, the
15 foster parent or treatment foster parent may submit a written statement prior to the
16 hearing. If the court orders a child to be removed from a foster home or treatment
17 foster home, the foster parent or treatment foster parent may appeal that order as
18 provided in s. 809.108. If a foster parent or treatment foster parent with whom a
19 child has been placed for a total of 4 or more years appeals an order removing the
20 child from the foster home or treatment foster home, the court shall stay execution
21 or enforcement of that order until final disposition of the appeal, unless the court
22 finds that there would be a substantial risk of physical or emotional harm to the child
23 if the child remains in the foster home or treatment foster home and that removal
24 from those surroundings is necessary.

25 **SECTION 2.** 48.357 (2m) of the statutes is amended to read:

1 48.357 **(2m)** The child, parent, guardian, legal custodian or any person or
2 agency primarily bound by the dispositional order, other than the person or agency
3 responsible for implementing the order, may request a change in placement under
4 this subsection. The request shall contain the name and address of the place of the
5 new placement requested and shall state what new information is available which
6 affects the advisability of the current placement. This request shall be submitted to
7 the court. In addition, the court may propose a change in placement on its own
8 motion. The court shall hold a hearing on the matter prior to ordering any change
9 in placement under this subsection if the request states that new information is
10 available which affects the advisability of the current placement, unless written
11 waivers of objection to the proposed change in placement are signed by all parties
12 entitled to receive notice under sub. (1) and the court approves. If a hearing is
13 scheduled, the court shall notify the child, parent, foster parent, treatment foster
14 parent, guardian, legal custodian and all parties who are bound by the dispositional
15 order at least 3 days prior to the hearing. A copy of the request or proposal for the
16 change in placement shall be attached to the notice. If all the parties consent, the
17 court may proceed immediately with the hearing. If a hearing is held under this
18 subsection and the change in placement would remove a child from a foster home or
19 treatment foster home, the foster parent or treatment foster parent may submit a
20 written statement prior to the hearing. If the court orders a child to be removed from
21 a foster home or treatment foster home, the foster parent or treatment foster parent
22 may appeal that order as provided in s. 809.108. If a foster parent or treatment foster
23 parent with whom a child has been placed for a total of 4 or more years appeals an
24 order removing the child from the foster home or treatment foster home, the court
25 shall stay execution or enforcement of that order until final disposition of the appeal.

1 unless the court finds that there would be a substantial risk of physical or emotional
2 harm to the child if the child remains in the foster home or treatment foster home
3 and that removal from those surroundings is necessary.

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

5 808.04 (4) Except as provided in ~~sub.~~ subs. (7m) and (7r), an appeal by the state
6 in either a criminal case under s. 974.05 or a case under ch. 48 shall be initiated
7 within 45 days of entry of the judgment or order appealed from.

8 **SECTION 4.** 808.04 (7r) of the statutes is created to read:

9 808.04 (7r) An appeal from an order granting or denying a change in placement
10 under s. 48.357 (1) or (2m) shall be initiated by filing the notice required by s. 809.108
11 (2) within 15 days after the date of entry of the order appealed from.
12 Notwithstanding s. 809.82 (2) (b), this time period may not be enlarged.

13 **SECTION 5.** 808.07 (2m) of the statutes is created to read:

14 808.07 (2m) CHANGE IN CHILD'S PLACEMENT; AUTOMATIC STAY. If a foster parent
15 or treatment foster parent appeals an order under s. 48.357 (1) or (2m) changing the
16 placement of a child who has been placed in the home of the foster parent or
17 treatment foster parent for a total of 4 or more years, the court assigned to exercise
18 jurisdiction under ch. 48 or an appellate court shall stay execution or enforcement
19 of that order until final disposition of the appeal, unless either court finds that there
20 would be a substantial risk of physical or emotional harm to the child if the child
21 remains in the foster home or treatment foster home and that removal from those
22 surroundings is necessary.

23 **SECTION 6.** 809.108 of the statutes is created to read:

1 **809.108 Appeals in proceedings related to change in placement. (1)**

2 APPLICABILITY. This section applies to the appeal of an order under s. 48.357 (1) or
3 (2m) and supersedes all inconsistent provisions of this chapter.

4 **(2) INITIATING THE APPEAL.** A person shall initiate an appeal under this section
5 by filing, within the time specified in s. 808.04 (7r), a notice of intent to appeal with
6 the clerk of the trial court in which the judgment or order appealed from was entered.

7 Also within that time period, the person shall serve a copy of the notice on the person
8 representing the interests of the public, opposing counsel, the guardian ad litem
9 appointed under s. 48.235 (1) for the child who is the subject of the proceeding and
10 the child's parent, guardian and legal custodian. The notice shall include the
11 following:

12 (a) The case name and court caption.

13 (b) An identification of the order from which the person filing the notice intends
14 to appeal and the date on which it was granted or entered.

15 (c) The name and address of the person filing the notice of intent to appeal and
16 the person's trial counsel.

17 (d) For a person other than the state, whether the trial counsel for the person
18 filing the notice of intent to appeal was appointed by the state public defender and,
19 if so, whether the person's financial circumstances have materially improved since
20 the date on which the person's indigency was determined.

21 (e) For a person other than the state, whether the person filing the notice of
22 intent to appeal will represent himself or herself or will be represented by retained
23 counsel or requests the state public defender to appoint counsel for the appeal. If the
24 person has retained counsel, the counsel's name and address shall be included.

1 **(3) DUTIES OF CLERK OF TRIAL COURT.** Within 5 days after a notice under sub. (2)
2 is filed, the clerk shall:

3 (a) If the person filing the notice of intent to appeal under sub. (2) requests
4 representation by the state public defender for purposes of the appeal, send to the
5 state public defender's appellate intake office a copy of the notice, a copy of the
6 judgment or order specified in the notice and a list of the court reporters for each
7 proceeding in the action in which the judgment or order was entered.

8 (b) If the person filing the notice of intent to appeal does not request
9 representation by the state public defender for purposes of the appeal, send or
10 furnish to the person, if the person is appearing without counsel, or to the person's
11 attorney, if one has been retained, a copy of the judgment or order specified in the
12 notice and a list of the court reporters for each proceeding in the action in which the
13 judgment or order was entered.

14 **(4) TRANSCRIPT.** A person filing a notice of intent to appeal under sub. (2) shall
15 order a transcript of the reporter's notes within 15 days after filing the notice. The
16 court reporter shall file the transcript with the trial court and serve a copy of the
17 transcript on the person filing the notice of intent to appeal within 30 days after the
18 ordering of the transcript.

19 **(5) NOTICE OF APPEAL; TRANSMITTAL OF RECORD.** Within 15 days after service of
20 the transcript, the person filing a notice of intent to appeal under sub. (2) shall file
21 a notice of appeal and docketing statement as provided in s. 809.10 (1) (a) and serve
22 a copy of the notice on the persons required to be served under sub. (2). The clerk of
23 the trial court shall transmit the record to the court of appeals as soon as the record
24 is prepared but in no event more than 15 days after the filing of the notice of appeal.

1 **(6)** SUBSEQUENT PROCEEDINGS IN COURT OF APPEALS; PETITION FOR REVIEW IN
2 SUPREME COURT. Subsequent proceedings in the appeal are governed by the
3 procedures for civil appeals and the procedures under subch. VI, except as follows:

4 (a) The appellant shall file a brief within 15 days after the filing of the record
5 on appeal.

6 (b) The respondent shall file a brief within 10 days after the service of the
7 appellant's brief.

8 (c) The appellant shall file within 10 days after the service of the respondent's
9 brief a reply brief or statement that a reply brief will not be filed.

10 (d) If the guardian ad litem appointed under s. 48.235 (1) (c) for the child who
11 is the subject of the proceeding takes the position of the appellant, the guardian ad
12 litem's brief shall be filed within 15 days after the filing of the record on appeal with
13 the court of appeals. If the guardian ad litem takes the position of a respondent, the
14 guardian ad litem's brief shall be filed within 10 days after service of the appellant's
15 brief.

16 (e) Cases appealed under this section shall be given preference and shall be
17 taken in an order that ensures that a decision is issued within 30 days after the filing
18 of the appellant's reply brief or statement that a reply brief will not be filed.

19 (f) A petition for review of an appeal in the supreme court, if any, shall be filed
20 within 15 days after the date of the decision of the court of appeals. The supreme
21 court shall give preference to a petition for review of an appeal filed under this
22 paragraph.

23 **SECTION 7.** 809.30 (1) (a) of the statutes is amended to read:

24 809.30 (1) (a) "Postconviction relief" means, in a felony or misdemeanor case,
25 an appeal or a motion for postconviction relief other than a motion under s. 973.19

1 or 974.06. In a ch. 48, 51 or 55 case, other than a change in placement case under
2 s. 48.357 (1) or (2m) or a termination of parental rights case under s. 48.43, it means
3 an appeal or a motion for reconsideration by the trial court of its final judgment or
4 order; in such cases a notice of intent to pursue such relief or a motion for such relief
5 need not be styled as seeking “postconviction” relief.

6 **SECTION 8.** 809.30 (1) (b) of the statutes is amended to read:

7 809.30 (1) (b) “Sentencing” means, in a felony or misdemeanor case, the
8 imposition of a sentence, fine or probation. In a ch. 48, 51 or 55 case, other than a
9 change in placement case under s. 48.357 (1) or (2m) or a termination of parental
10 rights case under s. 48.43, it means the entry of the trial court’s final judgment or
11 order.

12 **SECTION 9.** 809.40 (1m) of the statutes is amended to read:

13 809.40 (1m) Subsection (1) does not apply to an appeal from an order denying
14 a petition under s. 48.375 (7), which is governed by the procedures specified in s.
15 809.105, ~~or~~ to an appeal from an order or judgment under s. 48.43, which is governed
16 by the procedures specified in s. 809.107, or to an appeal from an order under s.
17 48.357 (1) or (2m), which is governed by the procedures specified in s. 809.108.

18 **SECTION 10.** 809.62 (2t) of the statutes is created to read:

19 809.62 (2t) This section applies to petitions for review of an appeal under s.
20 809.108, except as provided in s. 809.108 (6) (f).

21 **SECTION 11. Initial applicability.**

22 (1) This act first applies to orders under section 48.357 (1) or (2m) of the
23 statutes, as affected by this act, granted on the effective date of this subsection.

24 **SECTION 12. Effective date.**

