

1 **AN ACT** *to repeal* 808.04 (7) and 809.30 (1) (b) 2.; and *to amend* 48.465 (1), (2) and
2 (3), 808.04 (3), 808.04 (4), 808.04 (7m), 809.107 (title) and (1), 809.107 (5m),
3 809.30 (title), 809.30 (1) (a), 809.30 (1) (e), 809.30 (2) (a), subchapter IV (title) of
4 chapter 809 [precedes 809.01], 809.40 (title) and (1m), 809.62 (2r) (title) and 809.82
5 (2) (b) of the statutes; **relating to:** appellate procedures for any case under chapter
6 48, other than a parental consent to abortion case.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council’s Special Committee on Review of Permanency for Young Children in the Child Welfare System.

Background on Current Law

The Wisconsin Supreme Court has created, by court order, rules of appellate procedures. These appellate procedures specify what actions are required of the petitioner, respondent, clerk of courts, court reporter, and the state public defender (SPD), and when the actions must occur. The same appellate procedures that apply to an appeal of any case arising under the Criminal Code, Mental Health Act, Protective Services System, Juvenile Justice Code, or Sexually Violent Persons Commitment Code, also apply to most appeals arising under the Children’s Code, with 2 exceptions. There is a separate set of expedited appellate procedures specifically applicable to an appeal in a termination of parental rights (TPR) case and another set of expedited procedures for an appeal in a parental consent to an abortion case.

Bill Draft

This draft makes the expedited appellate procedures for a TPR case applicable to any case in the Children’s Code, except for a parental consent to an abortion case. The separate expedited appellate procedures specifically applicable only to a parental consent to an abortion case will still apply to such cases.

7 **SECTION 1.** 48.465 (1), (2) and (3) of the statutes are amended to read:

1 48.465 (1) APPEAL BY RESPONDENT. A motion for postdisposition relief from a final
2 order or judgment by a person subject to this chapter shall be made in the time and manner
3 provided in ~~ss. 809.30 to 809.32~~ s. 809.107. An appeal from a final order or judgment entered
4 under this chapter or from an order denying a motion for postdisposition relief by a person
5 subject to this chapter shall be taken in the time and manner provided in ~~ss. 808.04 (3)~~ 808.04
6 (7m) and ~~809.30 to 809.32~~ 809.107. The person shall file a motion for postdisposition relief
7 in circuit court before a notice of appeal is filed unless the grounds for seeking relief are
8 sufficiency of the evidence or issues previously raised.

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

12 (3) ~~EXCEPTIONS~~ EXCEPTION. This section does not apply to a ~~termination of parental~~
13 ~~rights case under s. 48.43 or to a parental consent to abortion case under s. 48.375 (7).~~

NOTE: This SECTION amends various cross-references to ensure that the appellate procedures currently applicable only to TPR cases also apply to an appeal from any ch. 48 case other than a parental consent to abortion case.

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

15 808.04 (3) Except as provided in ~~subs. sub.~~ sub. (4) and ~~(7)~~, an appeal in a proceeding under
16 s. 971.17, a criminal case, or a case under ch. ~~48~~, 51, 55, 938, or 980 shall be initiated within
17 the time period specified in s. 809.30 (2) or 809.32 (2), whichever is applicable.

NOTE: This SECTION deletes the requirement that an appeal under ch. 48, stats., be initiated under the appellate procedural timeline currently required for these cases.

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

1 808.04 (4) ~~Except as provided in sub. (7m), an~~ An appeal by the state in a proceeding
2 under s. 971.17, a criminal case under s. 974.05, or a case under ch. 48, 938, or 980 shall be
3 initiated within 45 days of entry of the judgment or order appealed from.

NOTE: This SECTION eliminates the current requirement that if the state
appeals a case under ch. 48, that it initiate the appeal within 45 days
from when the case's judgment or order was entered.

4 **SECTION 4.** 808.04 (7) of the statutes is repealed.

5 **SECTION 5.** 808.04 (7m) of the statutes is amended to read:

6 808.04 (7m) An appeal from a judgment or order ~~terminating parental rights or denying~~
7 ~~termination of parental rights~~ under ch. 48, except for an appeal of an order for a parental
8 consent to abortion case under s. 48.375 (7), shall be initiated by filing the notice required by
9 s. 809.107 (2) within 30 days after the date of entry of the judgment or order appealed from.
10 Notwithstanding s. 809.82 (2) (a), this time period may not be enlarged unless the judgment
11 or order was entered as a result of a petition under s. 48.415 that was filed by a representative
12 of the public under s. 48.09. An appeal from an order for a parental consent to abortion case
13 under s. 48.375 (7) shall be initiated under s. 809.105.

14 **SECTION 6.** 809.107 (title) and (1) of the statutes are amended to read:

15 **809.107 (title) Appeals in ch. 48 proceedings related to termination of parental**
16 **rights.**

17 **(1) APPLICABILITY.** This section applies to the appeal of ~~an~~ any order or judgment under
18 ~~s. 48.43~~ ch. 48, except an order under s. 48.375 (7), and supersedes all inconsistent provisions
19 of this chapter.

NOTE: SECTIONS 4, 5, and 6 make the current TPR appellate procedures
applicable to any appeal from a judgment or order under ch. 48, except
for an appeal of an order for a parental consent to abortion case.

COMMENT: Under s. 48.915, stats., “an appeal from a judgment granting or denying an adoption must be given preference”. If the applicable appellate procedures for an adoption case are amended to be the same as TPR cases, is s. 48.915, stats., necessary or is it duplicative?

Also, s. 809.24 (4), stats., prohibits a party from filing a motion for reconsideration of a court of appeals decision if the decision is an appeal for a parental consent to abortion or for a TPR case. Should this prohibition also apply to a court of appeals decision issued for other ch. 48 case?

1 **SECTION 7.** 809.107 (5m) of the statutes is amended to read:

2 809.107 (**5m**) NO-MERIT REPORTS. A s. 809.32 no-merit report, response, and
3 supplemental no-merit report may be filed in an appeal from an any order or judgment
4 ~~terminating parental rights~~ under ch. 48 that is appealable under this section. The appointed
5 attorney shall file in the court of appeals and serve on the client-parent the no-merit report
6 and certification within 15 days after the filing of the record on appeal. The appointed attorney
7 shall serve on the client-parent a copy of the transcript and the record on appeal at the same
8 time that the no-merit report is served on the client-parent. The client-parent may file in the
9 court of appeals a response to the no-merit report within 10 days after service of the no-merit
10 report. Within 5 days after the response to the no-merit report has been filed in the clerk’s
11 office, the clerk shall send a copy of the response to the appointed attorney. The attorney may
12 file a supplemental no-merit report and affidavit within 10 days after receiving the response
13 to the no-merit report.

NOTE: This SECTION clarifies that a no-merit report may be filed in an appeal from any order or judgment under ch. 48, except for a parental consent to abortion case. This SECTION does not make substantive changes to current law because a no-merit report may already be filed for any ch. 48 case other than a parental consent to abortion.

14 **SECTION 8.** 809.30 (title) of the statutes is amended to read:

1 **809.30 (title) Rule (Appeals in s. 971.17 proceedings and in criminal, ch. 48, 51, 55,**
2 **938, and 980 cases).**

3 **SECTION 9.** 809.30 (1) (a) of the statutes is amended to read:

4 809.30 (1) (a) “Final adjudication” means the entry of a final judgment or order by the
5 circuit court in a s. 971.17 proceeding, in a criminal case, or in a ch. 48, 51, 55, 938, or 980
6 case, ~~other than a termination of parental rights case under s. 48.43 or a parental consent to~~
7 ~~abortion case under s. 48.375 (7).~~

NOTE: SECTIONS 8 and 9 remove references to all ch. 48 cases found in
the title and in the types of final adjudications that are required to use the
appellate procedures currently applicable to any ch. 48 case other than a
TPR case or parental consent to abortion case.

8 **SECTION 10.** 809.30 (1) (b) 2. of the statutes is repealed.

9 **SECTION 11.** 809.30 (1) (e) of the statutes is amended to read:

10 809.30 (1) (e) “Prosecutor” means a district attorney, corporation counsel, or other
11 attorney authorized by law to represent the state in a criminal case, a proceeding under s.
12 971.17, or a case under ch. 48, 51, 55, 938, or 980.

NOTE: SECTIONS 10 and 11 eliminate the ability of any party, including
the state, to appeal a ch. 48 order or judgment under the current appellate
timeline. It does so by deleting references to ch. 48 cases in the
definition of “person” and the definition of “prosecutor”.

13 **SECTION 12.** 809.30 (2) (a) of the statutes is amended to read:

14 809.30 (2) (a) *Appeal procedure; counsel to continue.* A person seeking postconviction
15 relief in a criminal case; ~~a person seeking postdisposition relief in a case under ch. 48 other~~
16 ~~than a termination of parental rights case under s. 48.43 or a parental consent to abortion case~~
17 ~~under s. 48.375 (7);~~ or a person seeking postdisposition relief in a s. 971.17 proceeding or in
18 a case under ch. 51, 55, 938, or 980 shall comply with this section. Counsel representing the
19 person at sentencing or at the time of the final adjudication shall continue representation by

1 filing a notice under par. (b) if the person desires to pursue postconviction or postdisposition
 2 relief unless counsel is discharged by the person or allowed to withdraw by the circuit court
 3 before the notice must be filed.

NOTE: This SECTION removes reference to all ch. 48 cases found in the
 appellate procedures currently applicable to any ch. 48 case other than a
 TPR case or parental consent to abortion case.

4 **SECTION 13.** Subchapter IV (title) of chapter 809 [precedes 809.01] of the statutes is
 5 amended to read:

6 **CHAPTER 809**

7 **SUBCHAPTER IV**

8 **APPEAL PROCEDURE IN COURT OF APPEALS**

9 **~~IN TERMINATION OF PARENTAL RIGHTS,~~**

10 **~~CH. CHS. 48 AND 799, TRAFFIC REGULATION, AND~~**

11 **~~MUNICIPAL ORDINANCE VIOLATION, AND~~**

12 **~~PARENTAL CONSENT TO ABORTION CASES~~**

13 **SECTION 14.** 809.40 (title) and (1m) of the statutes are amended to read:

14 **809.40 (title) Rule (~~Appeals in termination of parental rights, ch. chs. 48 and 799,~~**
 15 **~~traffic regulation, and municipal ordinance violation, and parental consent to abortion~~**
 16 **~~cases).~~**

17 **(1m)** An appeal from an order denying a petition under s. 48.375 (7) is governed by the
 18 procedures specified in s. 809.105, and an appeal from ~~an~~ any other order or judgment under
 19 ~~s. 48.43~~ ch. 48 is governed by the procedures specified in s. 809.107.

NOTE: This SECTION requires that the appellate procedures applicable to
 any appeal from an order or judgment under ch. 48 filed with the court
 of appeals, other than an appeal of a parental consent to abortion case,
 are the appellate procedures currently applicable only to TPR cases.

1 **SECTION 15.** 809.62 (2r) (title) of the statutes is amended to read:

2 809.62 **(2r)** (title) APPLICATION TO ~~TERMINATION OF PARENTAL RIGHTS~~ CH. 48 CASES.

NOTE: This SECTION amends the title of a statute that authorizes a TPR appeal to bypass the court of appeals upon certification by the court of appeals or the supreme court's own motion.

3 **SECTION 16.** 809.82 (2) (b) of the statutes is amended to read:

4 809.82 **(2)** (b) Notwithstanding par. (a), the time for filing a notice of appeal or
5 cross–appeal of a final judgment or order, other than in an appeal under s. 809.107 of a
6 judgment or order that was entered as a result of a petition under s. 48.13, 48.133, or 48.415
7 that was filed by a representative of the public under s. 48.09, 48.839, or 48.90 or an appeal
8 under s. 809.30 or 809.32, may not be enlarged.

NOTE: This SECTION clarifies that the time for filing a notice of appeal or cross–appeal in a ch. 48 case may be enlarged.

9 **SECTION 17. Initial applicability.**

10 (1) APPELLATE PROCEDURES. This act first applies to a notice to pursue postdisposition
11 relief under chapter 48 of the statutes filed on the effective date of this subsection.

NOTE: This SECTION specifies that the changes to the appellate procedures listed in this draft first apply to cases in which a notice to pursue postdisposition relief for any ch. 48 case is filed on the effective date of this draft.

12

(END)