

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), (1), (1m), (2) (title), (am),
3 (bm) (intro.), (5) (am), (5m), (6) (am) and (d), 809.24 (4), subchapter III (title) of
4 chapter 809 [precedes 809.30] and 809.30 (title) , 809.30 (1) (a), 809.30 (1) (e),
5 809.30 (2) (a), (fm) (title) and (j), subchapter IV (title) of chapter 809 [precedes
6 809.40], 809.40 (title) and (1m), 809.62 (2r) (title) and 809.82 (2) (b) of the statutes;
7 **relating to:** appellate procedures for any case under chapter 48, other than a parental
8 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 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. Specifically, there is a separate set of expedited appellate procedures 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. Under the draft, the expedited appellate

procedures also apply to cases arising from a child in need of protection or services (CHIPS), unborn child in need of protection or services (UCHIPS), or adoption petition. The separate expedited appellate procedures specifically applicable only to a parental consent to an abortion case will still apply to such cases.

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

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

10 (2) ~~APPEAL BY STATE. An appeal by the state from a final judgment or order under this~~
11 ~~chapter may be taken to the court of appeals within the time and manner specified in s. ss.~~
12 ~~808.04 (4) (7m) and in the manner provided for civil appeals under chs. 808 and 809 809.107.~~

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

NOTE: This SECTION makes the current TPR appellate procedures applicable to any appeal from a final judgment or order under ch. 48, except for an appeal of an order for a parental consent to abortion case.

This SECTION also clarifies several procedural provisions regarding the appeals process applicable to an order under the Children's Code. It amends the title of sub. (1) to make clear that any party other than the state, not just a respondent, has the right to appeal. It makes the statute consistent with court appellate procedures by removing the requirement that the appellant must file a motion for postdisposition relief in circuit court before the notice of appeal is filed. It also amends various cross-references to ensure that the appellate procedures currently

applicable only to TPR cases also apply to an appeal from any order under the Children's Code other than a parental consent to abortion case.

Finally, this SECTION changes the timeframe within which the state must file a notice of appeal for any ch. 48 case other than a TPR case. Under current law, the time frame for filing a notice of appeal in a TPR case is 30 days. The timeframe the state has in CHIPS, UCHIPS, and adoption cases is 45 days. This SECTION requires the state to file this notice of intent within the 30-day timeframe.

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

2 808.04 (3) Except as provided in subs. sub. (4) ~~and (7)~~, an appeal in a proceeding under
3 s. 971.17, a criminal case, or a case under ch. 48, ~~51, 55, 938, or 980~~ shall be initiated within
4 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 certain other cases.

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

6 808.04 (4) ~~Except as provided in sub. (7m), an An~~ appeal by the state in a proceeding
7 under s. 971.17, a criminal case under s. 974.05, or a case under ch. 48, ~~938, or 980~~ shall be
8 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, it must initiate the appeal within 45 days from when the case's judgment or order was entered.

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

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

11 808.04 (7m) An appeal from a final judgment or order ~~terminating parental rights or~~
12 ~~denying termination of parental rights~~ under ch. 48, except for an appeal of an order for a
13 parental consent to abortion case under s. 48.375 (7), shall be initiated by filing the notice
14 required by s. 809.107 (2) within 30 days after the date of entry of the judgment or order
15 appealed from. Notwithstanding s. 809.82 (2) (a), this time period may not be enlarged unless

1 the judgment or order was entered as a result of a petition under s. 48.13, 48.133, 48.415 that
2 was filed by a representative of the public under s. 48.09, 48.839, or 48.90. An appeal from
3 an order for a parental consent to abortion case under s. 48.375 (7) shall be initiated under s.
4 809.105.

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

5 SECTION 6. 809.107 (title), (1), (1m), (2) (title), (am), (bm) (intro.), (5) (am), (5m), (6)
6 (am) and (d) of the statutes are amended to read:

7 **809.107 (title) Appeals in ch. 48 proceedings related to termination of parental**
8 **rights.**

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

12 (1m) DEFINITION. In this section, “appellant” means a person who files a notice of intent
13 to pursue postdisposition or appellate relief, the district attorney, corporation counsel, or other
14 attorney authorized by law to represent the state in a case under ch. 48.

15 (2) (title) APPEAL OR POSTDISPOSITION ~~MOTION~~ RELIEF.

16 (am) *Appeal procedure; counsel to continue.* A person seeking postdisposition or
17 appellate relief shall comply with this section. If the person desires to pursue postdisposition
18 or appellate relief, counsel representing the person during circuit court proceedings ~~under s.~~
19 ~~48.427~~ shall continue representation by filing a notice under par. (bm), unless sooner
20 discharged by the person or by the circuit court, or allowed to withdraw by the circuit court.

1 (bm) *Notice of intent to pursue postdisposition or appellate relief.* (intro.) ~~A person~~
2 An appellant shall initiate an appeal under this section by filing, within 30 days after the date
3 of entry of the judgment or order appealed from, as specified in s. 808.04 (7m), a notice of
4 intent to pursue postdisposition or appellate relief with the clerk of the circuit court in which
5 the judgment or order appealed from was entered. Also within that time period, the appellant
6 shall serve a copy of the notice of intent on the person representing the interests of the public,
7 opposing counsel, the guardian ad litem appointed under s. 48.235 (1) (c) for the child who
8 is the subject of the proceeding, the child's parent and any guardian and any custodian
9 appointed under s. 48.427 (3) (3m) or 48.428 (2). ~~If the record discloses that final adjudication~~
10 ~~occurred after the notice of intent was filed, the notice shall be treated as filed after entry of~~
11 ~~the judgment or order appealed from on the day of the entry of the final judgment or order.~~
12 The notice of intent shall include all of the following:

13 (5) (am) *Notice of abandonment of appeal.* If the ~~person~~ appellant who filed a notice
14 of intent to appeal under sub. (2) and requested a transcript and case record under sub. (4)
15 decides not to file a notice of appeal, that ~~person~~ appellant shall notify the ~~person~~ persons
16 required to be served under sub. (2) of this decision, within 30 days after the service of the
17 transcript and case record under sub. (4).

18 (5m) NO-MERIT REPORTS. A s. 809.32 no-merit report, response, and supplemental
19 no-merit report may be filed in an appeal from an any order or judgment ~~terminating parental~~
20 ~~rights under ch. 48 that is appealable under this section.~~ The appointed attorney shall file in
21 the court of appeals and serve on the ~~client-parent~~ appellant the no-merit report and
22 certification within 15 days after the filing of the record on appeal. The appointed attorney
23 shall serve on the ~~client-parent~~ appellant a copy of the transcript and the record on appeal at
24 the same time that the no-merit report is served on the ~~client-parent~~ appellant. The

1 ~~client-parent~~ appellant may file in the court of appeals a response to the no-merit report within
2 10 days after service of the no-merit report. Within 5 days after the response to the no-merit
3 report has been filed in the clerk's office, the clerk shall send a copy of the response to the
4 appointed attorney. The attorney may file a supplemental no-merit report and affidavit within
5 10 days after receiving the response to the no-merit report.

6 (6) (am) *Motion for remand.* If the appellant intends to appeal on any ground that may
7 require ~~postjudgment~~ postdisposition fact-finding, the appellant shall file a motion in the
8 court of appeals, within 15 days after the filing of the record on appeal, raising the issue and
9 requesting that the court of appeals retain jurisdiction over the appeal and remand to the circuit
10 court to hear and decide the issue. If the court of appeals grants the motion for remand, it shall
11 set time limits for the circuit court to hear and decide the issue, for the appellant to request
12 transcripts of the hearing, and for the court reporter to file and serve the transcript of the
13 hearing. The court of appeals shall extend the time limit under par. (a) for the appellant to file
14 a brief presenting all grounds for relief in the pending appeal.

15 (d) *Guardian ad litem's brief.* If the guardian ad litem appointed under s. 48.235 (1)
16 (e) for the child who is the subject of the proceeding takes the position of the appellant, the
17 guardian ad litem's brief shall be filed within 15 days after the filing of the record on appeal
18 with the court of appeals. If the guardian ad litem takes the position of a respondent, the
19 guardian ad litem's brief shall be filed within 10 days after service of the appellant's brief.

NOTE: SECTION 6 makes the current TPR appellate procedures applicable to any appeal from a final judgment or order under ch. 48 case, except for an appeal of an order for a parental consent to abortion case. It changes the definition of an appellant to include a district attorney, corporation counsel, or other attorney authorized to represent a state in ch. 48 cases so that these appellate procedures are applicable to the state. It also makes various technical changes.

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 9 and 10 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.

Reference to a criminal case in SECTION 10 is removed because it is redundant to s. 971.17, stats. Also, this change clarifies that s. 809.30, stats., applies only after a sentencing event in a criminal case for a first appeal as a right or where authorized by a specific statute.

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 general appellate timeline required under current law.

13 **SECTION 12.** 809.30 (2) (a), (fm) (title) and (j) of the statutes are 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

1 a case under ch. 51, 55, 938, or 980 shall comply with this section. Counsel representing the
 2 person at sentencing or at the time of the final adjudication shall continue representation by
 3 filing a notice under par. (b) if the person desires to pursue postconviction or postdisposition
 4 relief unless counsel is discharged by the person or allowed to withdraw by the circuit court
 5 before the notice must be filed.

6 (fm) (title) *Transcript and circuit court case record request in ~~chs. 48 and~~ ch. 938*
 7 *proceedings.*

8 (j) *Appeal from judgment and order.* The person shall file in circuit court and serve on
 9 the prosecutor and any other party a notice of appeal from the judgment of conviction and
 10 sentence or final adjudication and, if necessary, from the order of the circuit court on the
 11 motion for postconviction or postdisposition relief within 20 days of the entry of the order on
 12 the postconviction or postdisposition motion. A notice of appeal filed under this section shall
 13 conform to the requirements set forth in s. 809.10. Appeals in cases under chs. 48, 51, 55, and
 14 938 are subject to the docketing statement requirements of s. 809.10 (1) (d) and may be eligible
 15 for the expedited appeals program in the discretion of the court.

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

16 **SECTION 13.** Subchapter IV (title) of chapter 809 [precedes 809.40] of the statutes is
 17 amended to read:

18 **CHAPTER 809**

19 **SUBCHAPTER IV**

20 **APPEAL PROCEDURE IN COURT OF APPEALS**

21 **IN TERMINATION OF PARENTAL RIGHTS,**

22 **CH. CHS. 48 AND 799, TRAFFIC REGULATION, AND**

1 MUNICIPAL ORDINANCE VIOLATION, AND
2 PARENTAL CONSENT TO ABORTION CASES

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

4 809.40 (title) Rule (Appeals in termination of parental rights, ch. chs. 48 and 799,
5 traffic regulation, and municipal ordinance violation, and parental consent to abortion
6 cases).

7 (1m) An appeal from an order denying a petition under s. 48.375 (7) is governed by the
8 procedures specified in s. 809.105, and an appeal from an any other final order or judgment
9 under 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.

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

11 809.62 (2r) (title) APPLICATION TO TERMINATION OF PARENTAL RIGHTS CH. 48 CASES.

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

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

13 809.82 (2) (b) Notwithstanding par. (a), the time for filing a notice of appeal or
14 cross-appeal of a final judgment or order, other than in an appeal under s. 809.107 of a
15 judgment or order that was entered as a result of a petition under s. 48.13, 48.133, 48.415 that
16 was filed by a representative of the public under s. 48.09, 48.839, or 48.90 or an appeal under
17 s. 809.30 or 809.32, may not be enlarged.

NOTE: This SECTION makes the enlargement of time that is available
under current law for filing a notice of intent to appeal or cross-appeal in
a TPR case applicable to any ch. 48 case, including a private TPR case.

18 SECTION 17. Initial applicability.

1 (1) APPELLATE PROCEDURES. This act first applies to a notice of intent to pursue
2 postdisposition relief under chapter 48 of the statutes filed on the effective date of this
3 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.

4

(END)