

**§4035. Hearing on jeopardy order petition**

**1. Hearing required.** The court shall hold a hearing prior to making a jeopardy order. [PL 1997, c. 715, Pt. A, §7 (AMD).]

**2. Adjudication.** After hearing evidence, the court shall make a finding, by a preponderance of the evidence, as to whether the child is in circumstances of jeopardy to the child's health or welfare.

A. The court shall make a fresh determination of the question of jeopardy and may not give preclusive effect to the findings of fact made at the conclusion of the hearing under section 4034, subsection 4. [PL 2001, c. 696, §30 (NEW).]

B. The court shall make findings of fact on the record upon which the jeopardy determination is made. [PL 2001, c. 696, §30 (NEW).]

C. The court shall make a jeopardy determination with regard to each parent who has been properly served. [PL 2001, c. 696, §30 (NEW).]  
[PL 2001, c. 696, §30 (AMD).]

**2-A. Conviction or adjudication for certain sex offenses; presumption.** There is a rebuttable presumption:

A. That the person seeking custody or contact with the child would create a situation of jeopardy for the child if any contact were to be permitted and that contact is not in the best interest of the child if the court finds that the person:

(1) Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the person was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the person and the minor victim at the time of the offense; or

(2) Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.

The person seeking custody or contact with the child may produce evidence to rebut the presumption; and [PL 2007, c. 513, §6 (AMD).]

B. That the parent or person responsible for the child would create a situation of jeopardy for the child if the parent or person allows, encourages or fails to prevent contact between the child and a person who:

(1) Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the person was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the person and the minor victim at the time of the offense; or

(2) Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.

The parent or person responsible for the child may produce evidence to rebut the presumption. [PL 2005, c. 366, §7 (NEW).]  
[PL 2007, c. 513, §6 (AMD).]

**3. Grounds for disposition.** If the court determines that the child is in circumstances of jeopardy to the child's health or welfare, the court shall hear any relevant evidence regarding proposed dispositions, including written or oral reports, recommendations or case plans. The court shall then make a written order of any disposition under section 4036. If, after reasonable effort, the department has been unable to serve a parent by the time of the hearing under subsection 1, the court may order any disposition under section 4036 until such time as the parent is served and a jeopardy determination is made with regard to that parent. If possible, this dispositional phase must be conducted immediately after the adjudicatory phase. Written materials to be offered as evidence must be made available to each party's counsel and the guardian ad litem reasonably in advance of the dispositional phase. [PL 2001, c. 696, §31 (AMD).]

**4. Final protection order.** [PL 1997, c. 715, Pt. A, §8 (RP).]

**4-A. Jeopardy order.** The court shall issue a jeopardy order within 120 days of the filing of the child protection petition.

This time period does not apply if good cause is shown. Good cause does not include a scheduling problem.

[PL 1997, c. 715, Pt. A, §9 (NEW).]

#### SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 184, §5 (AMD). PL 1991, c. 176, §2 (AMD). PL 1995, c. 481, §2 (AMD). PL 1997, c. 475, §1 (AMD). PL 1997, c. 715, §§A6-9 (AMD). PL 2001, c. 696, §§30,31 (AMD). PL 2005, c. 366, §7 (AMD). PL 2007, c. 513, §6 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 130th Maine Legislature and is current through October 1, 2022. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.