

§4034. Request for a preliminary protection order

1. Request. A petitioner may add to a child protection petition a request for a preliminary protection order or may request a preliminary protection order separately from the child protection petition. A request for a preliminary protection order must include a sworn summary of facts to support the request and identify the specific services offered and provided under section 4036-B, subsection 3 to prevent the removal of the child from the home.

[PL 2015, c. 501, §9 (AMD).]

2. Order. If the court finds by a preponderance of the evidence presented in the sworn summary or otherwise that there is an immediate risk of serious harm to the child, it may order any disposition under section 4036. A preliminary protection order automatically expires at the time of the issuing of a final protection order under section 4035 or a judicial review order under section 4038.

[PL 2001, c. 696, §25 (AMD).]

3. Custodial consent. If the custodian consents in writing and the consent is voluntarily and knowingly executed in court before a judge, or the custodian does not appear after proper notice has been given, then the hearing on the preliminary protection order need not be held, except as provided in subsection 4.

[PL 1983, c. 184, §3 (AMD).]

4. Summary preliminary hearing. The court shall schedule a summary preliminary hearing on a preliminary protection order within 14 days but not less than 7 days after issuance of the preliminary protection order, except that counsel for a parent may request that the hearing take place sooner. Upon request of counsel, the court may conduct the summary preliminary hearing as expeditiously as the court determines the interests of justice require. If a parent, custodian or legal guardian appears for the summary preliminary hearing and does not consent to the preliminary protection order, the court shall conduct a hearing at which the petitioner bears the burden of proof. At a summary preliminary hearing, the court may limit testimony to the testimony of the caseworker, parent, custodian, legal guardian, guardian ad litem, foster parent, preadoptive parent or relative providing care and may admit evidence, including reports and records, that would otherwise be inadmissible as hearsay evidence. If after the hearing the court finds by a preponderance of the evidence that returning the child to the child's custodian would place the child in immediate risk of serious harm, it shall continue the order or make another disposition under section 4036. If the court's preliminary protection order includes a finding of an aggravating factor, the court may order the department not to commence reunification or to cease reunification, in which case the court shall conduct a hearing on jeopardy and conduct a permanency planning hearing. The hearings must commence within 30 days of entry of the preliminary protection order.

If the petitioner has not been able to serve a parent, custodian or legal guardian before the scheduled summary preliminary hearing, the parent, custodian or legal guardian may request a subsequent summary preliminary hearing within 10 days after receipt of the petition.

[PL 2015, c. 501, §10 (AMD).]

5. Contents of order. The preliminary protection order must include a notice to the parents and custodians of their right to counsel, as required under section 4032, subsection 2, paragraph G and, if the order was made without consent, notice of the date and time of the summary preliminary hearing. The order must include a notice to the parent or custodian that if a parent or custodian is not served with the petition before the summary preliminary hearing, the parent or custodian is entitled to request a subsequent preliminary hearing within 10 days after receipt of the petition. The order must include a notice that visitation must be scheduled within 7 days of the issuance of the order unless there is a compelling reason not to schedule visitation.

[PL 2001, c. 696, §27 (AMD).]

6. Visitation. When the court issues a preliminary protection order, the court shall order the department to schedule visitation with the child's parents and siblings within 7 days of the issuance of the order, unless there is a compelling reason not to schedule such visitation.

[PL 2001, c. 696, §28 (NEW).]

SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 184, §§3,4 (AMD). PL 1997, c. 715, §§A4,5 (AMD). PL 2001, c. 696, §§25-28 (AMD). PL 2015, c. 501, §§9, 10 (AMD).

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