

§4038. Mandated review; review on motion

1. Mandated review. If a court has made a jeopardy order, it shall review the case at least once every 6 months, unless the child has been emancipated or adopted.

[PL 1997, c. 715, Pt. B, §7 (AMD).]

1-A. No mandated review. Notwithstanding subsection 1, no subsequent judicial review is required unless petitioned for by any party or unless specifically ordered by the court:

A. When custody has been granted to a person other than a parent or the department; [PL 2007, c. 284, §6 (AMD).]

B. When custody has been granted to a parent who did not have custody at the time the child protection petition was filed; or [PL 2007, c. 284, §6 (AMD).]

C. [PL 2003, c. 408, §4 (RP).]

D. [PL 2003, c. 408, §5 (RP).]

E. When a permanency guardianship has been established pursuant to section 4038-C. [PL 2007, c. 284, §6 (NEW).]

[PL 2007, c. 284, §6 (AMD).]

2. Review on motion. The court, the child's parent, custodian or guardian ad litem or a party to the proceeding, except a parent whose rights have been terminated under subchapter VI, may move for judicial review. The moving party shall have the burden of going forward.

[PL 1985, c. 739, §12 (AMD).]

3. Notice of review. Notice of the reviews must be given to all parties to the initial proceeding according to District Court Civil Rule 4. Notice may not be given to a parent whose rights have been terminated under subchapter VI. The department shall provide written notice of all reviews and hearings in advance of the proceeding to the foster parent, preadoptive parent and relative providing care. The notice must be dated and signed, must include a statement that the foster parent, preadoptive parent and relative providing care are entitled to notice of and an opportunity to be heard in any review or hearing held with respect to the child and must contain the following language:

"The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records."

A copy of the notice must be filed with the court prior to the review or hearing.

[PL 1997, c. 715, Pt. B, §8 (AMD).]

3-A. Prehearing conference. The court may convene a prehearing conference to clarify the disputed issues and review the possibility of settlement.

[PL 2001, c. 559, Pt. CC, §2 (NEW).]

4. Disposition.

[PL 1985, c. 739, §13 (RP).]

5. Hearing. The court shall hear evidence and shall consider the original reason for the adjudication and disposition under sections 4035 and 4036, the events that have occurred since then and the efforts of the parties as set forth under section 4041. After hearing or by agreement, the court shall make written findings that determine:

A. The safety of the child in the child's placement; [PL 2003, c. 408, §6 (NEW).]

B. The continuing necessity for and appropriateness of the child's placement; [PL 2003, c. 408, §6 (NEW).]

C. The effect of a change in custody on the child; [PL 2003, c. 408, §6 (NEW).]

D. The extent of the parties' compliance with the case plan and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care; [PL 2003, c. 408, §6 (NEW).]

E. A likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship; and [PL 2003, c. 408, §6 (NEW).]

F. If the child is 16 years of age or older, whether or not the child is receiving instruction to aid the child in independent living. [PL 2003, c. 408, §6 (NEW).]

[PL 2003, c. 408, §6 (AMD).]

6. Disposition. The court may make any further order, based on a preponderance of evidence, that is authorized under section 4036.

A. [PL 1989, c. 270, §13 (RP).]

B. [PL 1989, c. 270, §13 (RP).]

C. [PL 1989, c. 270, §13 (RP).]

[PL 1989, c. 270, §13 (AMD).]

7. Review of child in custody of the department.

[PL 1997, c. 715, Pt. B, §9 (RP).]

7-A. Permanency planning hearing.

[PL 2005, c. 372, §4 (RP).]

SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1981, c. 369, §12 (AMD). PL 1983, c. 185 (RPR). PL 1985, c. 739, §§11-14 (AMD). PL 1987, c. 269, §§1,2 (AMD). PL 1989, c. 270, §§13,14 (AMD). PL 1991, c. 176, §3 (AMD). PL 1993, c. 198, §1 (AMD). PL 1997, c. 475, §§2-6 (AMD). PL 1997, c. 715, §§B7-10 (AMD). PL 2001, c. 559, §§CC2,3 (AMD). PL 2001, c. 696, §32 (AMD). PL 2003, c. 408, §§2-6 (AMD). PL 2005, c. 372, §4 (AMD). PL 2007, c. 284, §6 (AMD).

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