

2021 Kansas Statutes

38-2365. Juvenile offender placed in custody of commissioner; placement; permanency plan; progress report to court; hearing; notification; termination of parental rights. (a) When a juvenile offender has been placed in the custody of the secretary, the secretary shall have a reasonable time to make a placement. If the juvenile offender has not been placed, any party who believes that the amount of time elapsed without placement has exceeded a reasonable time may file a motion for review with the court. In determining what is a reasonable amount of time, matters considered by the court shall include, but not be limited to, the nature of the underlying offense, efforts made for placement of the juvenile offender and the availability of a suitable placement. The secretary shall notify the court, the juvenile's attorney of record and the juvenile's parent, in writing, of the initial placement and any subsequent change of placement as soon as the placement has been accomplished. The notice to the juvenile offender's parent shall be sent to such parent's last known address or addresses. The court shall have no power to direct a specific placement by the secretary, but may make recommendations to the secretary. The secretary may place the juvenile offender in an institution operated by the secretary, a youth residential facility or any other appropriate placement. If the court has recommended an out-of-home placement, the secretary may not return the juvenile offender to the home from which removed without first notifying the court of the plan.

(b) If a juvenile is in the custody of the secretary, the secretary shall prepare and present a permanency plan at sentencing or within 30 days thereafter. If the juvenile is 14 years of age or older and the juvenile is able, the secretary shall prepare the permanency plan in consultation with the juvenile. If a permanency plan is already in place under a child in need of care proceeding, the court may adopt the plan under the present proceeding. The written permanency plan shall provide for reintegration of the juvenile into such juvenile's family or, if reintegration is not a viable alternative, for other permanent placement of the juvenile. Reintegration may not be a viable alternative when: (1) The parent has been found by a court to have committed murder in the first degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 2021 Supp. 21-5402, and amendments thereto, murder in the second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 2021 Supp. 21-5403, and amendments thereto, capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A. 2021 Supp. 21-5401, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, prior to its repeal, or K.S.A. 2021 Supp. 21-5404, and amendments thereto, of a child or violated a law of another state which prohibits such murder or manslaughter of a child;

(2) the parent aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter of a child;

(3) the parent committed a felony battery that resulted in bodily injury to the juvenile who is the subject of this proceeding or another child;

(4) the parent has subjected the juvenile who is the subject of this proceeding or another child to aggravated circumstances as defined in K.S.A. 38-1502, and amendments thereto;

(5) the parental rights of the parent to another child have been terminated involuntarily;

or

(6) the juvenile has been in extended out-of-home placement as defined in K.S.A. 38-2202, and amendments thereto.

(c) If the juvenile is placed in the custody of the secretary, the plan shall be prepared and submitted by the secretary. If the juvenile is placed in the custody of a facility or person other than the secretary, the plan shall be prepared and submitted by a court services officer. If the permanency goal is reintegration into the family, the permanency plan shall

include measurable objectives and time schedules for reintegration.

(d) During the time a juvenile remains in the custody of the secretary, the secretary shall submit to the court, at least every six months, a written report of the progress being made toward the goals of the permanency plan submitted pursuant to subsections (b) and (c) and the specific actions taken to achieve the goals of the permanency plan. If the juvenile is placed in foster care, the court may request the foster parent to submit to the court, at least every six months, a report in regard to the juvenile's adjustment, progress and condition. Such report shall be made a part of the juvenile's court social file. The court shall review the plan submitted by the secretary and the report, if any, submitted by the foster parent and determine whether reasonable efforts and progress have been made to achieve the goals of the permanency plan. If the court determines that progress is inadequate or that the permanency plan is no longer viable, the court shall hold a hearing pursuant to subsection (e).

(e) When the secretary has custody of the juvenile, a permanency hearing shall be held no more than 12 months after the juvenile is first placed outside such juvenile's home and at least every 12 months thereafter. Juvenile offenders who have been in extended out-of-home placement shall be provided a permanency hearing within 30 days of a request from the secretary. The court may appoint a guardian ad litem to represent the juvenile offender at the permanency hearing. At the permanency hearing, the court shall determine whether and, if applicable, when the juvenile will be:

- (1) Reintegrated with the juvenile's parents;
- (2) placed for adoption;
- (3) placed with a permanent custodian; or
- (4) if the juvenile is 16 years of age or older and the secretary has documented compelling reasons why it would not be in the juvenile's best interests for a placement in one of the placements pursuant to paragraphs (1), (2) or (3), placed in another planned permanent arrangement.

(f) At each permanency hearing, the court shall:

- (1) Make a written finding as to whether reasonable efforts have been made to accomplish the permanency goal and whether continued out-of-home placement is necessary for the juvenile's safety;
- (2) make a written finding as to whether the reasonable and prudent parenting standard has been met and whether the juvenile has regular, ongoing opportunities to engage in age or developmentally appropriate activities. The secretary shall report to the court the steps the secretary is taking to ensure that the reasonable and prudent parenting standard is being met and that the juvenile has regular, ongoing opportunities to engage in age or developmentally appropriate activities, including consultation with the juvenile in an age-appropriate manner about the opportunities of the juvenile to participate in the activities; and
- (3) if the juvenile is 14 years of age or older, document the efforts made by the secretary to help the juvenile prepare for the transition from custody to a successful adulthood. The secretary shall report to the court the programs and services that are being provided to the juvenile which will help the juvenile prepare for the transition from custody to a successful adulthood.

(g) The requirements of this subsection shall apply only if the permanency goal in place at the time of the hearing is another planned permanent arrangement as described in subsection (e)(4). At each permanency hearing held with respect to the juvenile, in addition to the requirements of subsection (f), the court shall:

- (1) Ask the juvenile, if the juvenile is able, by attendance at the hearing or by report to the court, about the desired permanency outcome for the juvenile;

(2) document the intensive, ongoing and, as of the date of the hearing, unsuccessful permanency efforts made by the secretary to return the juvenile home or secure a placement for the juvenile with a fit and willing relative, a legal guardian or an adoptive parent. The secretary shall report to the court the intensive, ongoing and, as of the date of the hearing, unsuccessful efforts made by the secretary to return the juvenile home or secure a placement for the juvenile with a fit and willing relative, a legal guardian or an adoptive parent, including efforts that utilize search technology, including social media, to find biological family members of the children; and

(3) make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the juvenile and provide compelling reasons why it continues to not be in the best interests of the juvenile to return home, be placed for adoption, be placed with a legal guardian or be placed with a fit and willing relative.

(h) Whenever a hearing is required under subsection (e), the court shall notify all interested parties of the hearing date, the secretary, foster parent and preadoptive parent or relatives providing care for the juvenile and hold a hearing. If the juvenile is 14 years of age or older, the court shall require notice of the time and place of the permanency hearing be given to the juvenile. Such notice shall request the juvenile's participation in the hearing by attendance or by report to the court. Individuals receiving notice pursuant to this subsection shall not be made a party to the action solely on the basis of this notice and opportunity to be heard. After providing the persons receiving notice an opportunity to be heard, the court shall determine whether the juvenile's needs are being adequately met; whether services set out in the permanency plan necessary for the safe return of the juvenile have been made available to the parent with whom reintegration is planned; and whether reasonable efforts and progress have been made to achieve the goals of the permanency plan.

(i) If the court finds reintegration continues to be a viable alternative, the court shall determine whether and, if applicable, when the juvenile will be returned to the parent. The court may rescind any of its prior dispositional orders and enter any dispositional order authorized by this code or may order that a new plan for the reintegration be prepared and submitted to the court. If reintegration cannot be accomplished as approved by the court, the court shall be informed and shall schedule a hearing pursuant to subsection (j). No such hearing is required when the parent voluntarily relinquishes parental rights or agrees to appointment of a permanent guardian.

(j) When the court finds any of the following conditions exist, the county or district attorney or the county or district attorney's designee shall file a petition alleging the juvenile to be a child in need of care and requesting termination of parental rights pursuant to the Kansas code for care of children: (1) The court determines that reintegration is not a viable alternative and either adoption or permanent guardianship might be in the best interests of the juvenile;

(2) the goal of the permanency plan is reintegration into the family and the court determines after 12 months from the time such plan is first submitted that progress is inadequate; or

(3) the juvenile has been in out-of-home placement for a cumulative total of 15 of the last 22 months, excluding trial home visits and juvenile in runaway status.

Nothing in this subsection shall be interpreted to prohibit termination of parental rights prior to the expiration of 12 months.

(k) A petition to terminate parental rights is not required to be filed if one of the following exceptions is documented to exist: (1) The juvenile is in a stable placement with relatives;

(2) services set out in the case plan necessary for the safe return of the juvenile have not been made available to the parent with whom reintegration is planned; or

(3) there are one or more documented reasons why such filing would not be in the best interests of the juvenile. Documented reasons may include, but are not limited to: The juvenile has close emotional bonds with a parent which should not be broken; the juvenile is 14 years of age or older and, after advice and counsel, refuses to be adopted; insufficient grounds exist for termination of parental rights; the juvenile is an unaccompanied refugee minor; or there are international legal or compelling foreign policy reasons precluding termination of parental rights.

History: L. 2006, ch. 169, § 65; L. 2010, ch. 163, § 2; L. 2011, ch. 30, § 170; L. 2016, ch. 102, § 19; July 1.