

174.2

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF:

Name _____ Case No. _____

DOB xx /xx / ____ A male female

ORDER AUTHORIZING SECURE PLACEMENT FOR VIOLATION OF VALID COURT ORDER TO REMAIN IN PLACEMENT

Pursuant to K.S.A. 38-2260

NOW on this ____ day of _____, _____, the Court considers the application for authorization of secure placement, Judge _____ presiding.

- The petitioner appears by _____ **County/District Attorney or designee** **other** _____.
- The child(ren) appears **in person and** **not in person, but** by the child(ren's) guardian *ad litem*, _____.
- _____ *Name of Mother*, the mother, **appears in person pro se** **appears in person, and through her attorney,** _____ **appears not in person, but by and through her attorney** _____ **does not appear.**
- _____ *Name of Father*, the **father** **putative father of** _____ *Name of child*, **appears in person pro se** **appears in person, and through his attorney,** _____ **appears not in person, but by and through his attorney,** _____ **does not appear.**
- _____ *Name of Father*, the **father** **putative father of** _____ *Name of child*, **appears in person pro se** **appears in person, and through his attorney,** _____ **appears not in person, but by and through his attorney,** _____ **does not appear.**
- _____ *Name of Father*, the **father** **putative father of** _____ *Name of child*, **appears in person pro se** **appears in person, and through his attorney,** _____ **appears not in person, but by and through his attorney,** _____ **does not appear.**
- (Other parent appearances)* _____

Interested parties appearing are: _____

The Secretary is present through _____

Also present is/are: _____

THE COURT FINDS:

1. A valid court order to remain in placement was issued in the captioned matter on _____;
2. The child named above and the guardian *ad litem* were present on that date and informed orally of the order and the consequences of a violation of the order to remain in placement. A copy of the order was provided to the child and guardian *ad litem*;
3. The child named above was adjudicated herein on (date) pursuant to subsection (d)(6) (d)(7) (d)(8) (d)(9) (d)(10) (d)(12) of K.S.A. 38-2202;
4. A. Upon a preliminary hearing, there is probable cause to believe that the child named above has violated the order to remain in placement without good cause and placement in a secure facility is necessary for the protection of the child or to assure the presence of the child at the evidentiary hearing, which is scheduled for (Date and time, within 72 hours) ;

or

 B. Upon evidentiary hearing, there is clear and convincing evidence that the child has been provided with the rights set out in K.S.A. 38-2260(d)(2) and (e)(3), and that the child has violated the order to remain in placement without good cause, as follows : _____ ;
_____ ;
- or

 C. Upon hearing of the request for extension of authorization, the child was previously found to have violated the order to remain in placement and has already been placed in a secure facility for **sixty days** or **120 days**;
5. Based on a written report submitted to the Court, all other placement options have been exhausted or are inappropriate to the needs of the child.

THE COURT FURTHER FINDS THAT: *(If this is the first order removing the child from the home, or the first order of removal when the child has been home for six months or longer, the following reasonable efforts and contrary to welfare findings are required, see Notes on Use.)*

- Reasonable efforts have been made and have failed to maintain the family and prevent the unnecessary removal of the child from the child's home, **or**
 - Reasonable efforts have not been made, **or**
 - Reasonable efforts are not required to maintain the child in the home because an emergency exists which threatens the safety of the child, **or**
 - Reasonable efforts **have been made** **have not been made** to facilitate the permanency plan.
- (Specify basis for finding.)* _____

_____.

THE COURT FURTHER FINDS THAT **remaining in the home or returning home would be contrary to the welfare of the child** and/or **immediate placement is in the best interest of the child**, specifically: *(Specify basis for findings)* _____
_____.

THE COURT THEREFORE ORDERS THAT the above named child **shall be** **shall continue to be** placed in the custody of:

The Secretary of Social and Rehabilitation Services, or

_____.

IT IS FURTHER ORDERED that the legal custodian of the child is authorized to place the child in a secure facility. Any order issued upon finding paragraph 4B or 4C shall expire sixty days from today's date. It is further ordered that a copy of this order shall be given to the child named above, the guardian *ad litem*, the child's parents, and the child's legal custodian.

IT IS SO ORDERED.

Judge of the District Court

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Order was served on the following persons as indicated below: *(List name, manner of service, and date.)*

Clerk of the Court/Deputy

Authority

K.S.A. 38-2260.

Notes on Use

This form may be used for the preliminary probable cause hearing (see paragraph 4A), the evidentiary hearing (see paragraph 4B), the placement hearing, and review hearings at 60 and 120 days (see paragraph 4C).

If this is the first order removing the child from the home or the first order of removal when the child has been home for six months or longer (as in an informal supervision), Supreme Court Administrative Order No. 155 applies and requires the use of this form or another form approved by the Supreme Court as meeting ASFA requirements. Failure to make and properly document the findings required by ASFA will result in the loss of federal funding for the placement, or any subsequent placement, of the child in the present case. Federal funding is not available when the court finds reasonable efforts have not been made unless the court also finds the efforts were not required. Finding that reasonable efforts were not made does not bar the court from removing the child from the home and failure to make these findings does not bar the court from removing the child.

The court may enter an *ex parte* order directing that a child be held in a secure facility, which may be a juvenile detention facility (Form 174.1), if the court finds probable cause to believe that the child violated a valid court order to remain in placement without good cause. The court shall hold a preliminary probable cause hearing within 24 hours, not including Saturdays, Sundays or

legal holidays, of the child being taken into custody under the *ex parte* order. Notice of the hearing shall be given orally or in writing to the child's parents, legal custodian and guardian *ad litem*.

At the preliminary probable cause hearing, if the court finds probable cause, in paragraph 4A of this form, to believe that the child violated a valid court order to remain in placement without good cause and that placement in a secure facility is necessary either for the protection of the child or to assure the presence of the child, the court may order the child held in a secure facility pending the evidentiary hearing. If the child admits to the allegations in the application, or enters a no contest statement, the court shall proceed immediately to a placement hearing.

The court shall hold an evidentiary hearing on the application within 72 hours, not including Saturdays, Sundays or legal holidays, of the child's being taken into custody. Notice of the hearing shall be given orally or in writing to the child's parents, legal custodian and guardian *ad litem*. The child shall be provided with the following rights at the evidentiary hearing: to have a guardian *ad litem*, to have a copy of the application, to be informed of the nature and consequences of the proceeding, to confront and cross-examine witnesses, to present evidence, to have a transcript or recording of the proceedings, and to appeal. If the court finds, in paragraph 4B of the form, by clear and convincing evidence, that the child violated a valid court order to remain in placement without good cause and that the foregoing rights have been provided, the court shall proceed immediately to a placement hearing.

During the placement hearing the court may enter a custody order and authorize placement in a secure facility if the court finds that all other placement options have been exhausted or are inappropriate, based upon a written report submitted by the secretary (if the child is in the secretary's custody) or by a public agency independent of the court and law enforcement (if the child is not in the secretary's custody). The authority for secure placement granted by the court shall expire 60 days, including weekends and legal holidays, after it is issued. The court may grant an extension of the authority for two additional periods, in paragraph 4C of the form, each not to exceed 60 days, upon rehearing. Authority to place in a secure facility is not authority to place in an adult jail or lockup.