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IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE MATTER OF

Name _____, Juvenile Case No. _____
DOB xx /xx / ____ A male female

PRESUMPTIVE
MOTION TO AUTHORIZE PROSECUTION AS AN ADULT
Pursuant to K.S.A. 38-2347

Comes now the State of Kansas through the District/County Attorney or designee and moves the Court for an order authorizing prosecution of the juvenile named above as an adult. The following is offered in support of the motion:

The juvenile is presumed to be an adult because the age of the juvenile at the time of the offense(s) alleged in the complaint was at least 14 years of age and the offense(s) alleged in the complaint, if committed by an adult, would constitute an off-grid crime, a person felony, a nondrug severity level 1 through 6 felony or drug severity level 1, 2, or 3 felony;

or

The juvenile is presumed to be an adult because the age of the juvenile at the time of the offense alleged in the complaint was at least 14 years of age and the offense alleged in the complaint was committed while the juvenile was in possession of a firearm;

or

The juvenile is presumed to be an adult because the juvenile is charged in the present action with an offense which would constitute a felony if committed by an adult and was adjudicated in a separate juvenile proceeding, in _____ (*court name and case number*), and found therein to have committed an offense which would constitute a felony if committed by an adult, which adjudication occurred on _____, which is prior to the date of the commission of the felony charged in the present action;

or

Prosecution of the juvenile as an adult is justified by the offense charged in the complaint, the characteristics of the juvenile and the circumstances of the alleged offense as follows: (*Enumerate bases for request.*)

The State will present evidence of the offense(s) alleged in the complaint and hereby

requests the Court make such findings as required in a preliminary examination, pursuant to K.S.A. 22-2902, and bind the juvenile over for trial.

Wherefore the State requests the Court set the matter for hearing and authorize prosecution of the juvenile as an adult and make the findings required in a preliminary examination and bind the juvenile over for trial.

County/District Attorney or designee

Authority

K.S.A. 38-2347.

Notes on Use

K.S.A. 38-2347(a)(1) provides that the prosecutor may file a motion requesting that the court authorize prosecution of a juvenile as an adult, under the applicable criminal statute. The motion may be made at any time after the commencement of proceedings, but prior to the beginning of the trial. The statute provides a presumption in specific circumstances, set out in the second through fourth paragraphs in the form. The presumption places the burden on the juvenile to rebut the presumption by a preponderance of the evidence. If, after hearing, the court finds by a preponderance of the evidence, that the juvenile should be prosecuted as an adult, then the court shall direct that the juvenile be prosecuted under the applicable criminal statute and that the juvenile proceedings be dismissed. K.S.A. 38-2347(f)(1). The court may, however, find that prosecution as an adult should not be authorized, and in that case the court may resume the juvenile proceeding or, in the alternative, designate the juvenile proceeding as an extended jurisdiction juvenile prosecution, if the motion to authorize prosecution as an adult alleges a presumption set out in subsection (a)(2). K.S.A. 38-2347(f)(2).

The prosecutor may choose to present evidence at the hearing on the motion that would be presented at a preliminary examination. K.S.A. 38-2347(b). If the court authorizes prosecution as an adult or designates the proceedings as an extended jurisdiction juvenile prosecution, and if the juvenile is present during the hearing, and if the court finds that it appears a felony has been committed and there is probable cause to believe the felony was committed by the juvenile, then the court may find that there is no necessity for further preliminary examination as provided for in K.S.A. 22-2902, and the juvenile shall be bound over for trial. K.S.A. 38-2347(g).

Comments

When the provisions of the statute are met, along with the requirement of counsel, the essentials of due process are satisfied even though the juvenile fails to appear. *State v. Muhammad*, 237 Kan. 850, 703 P.2d 835 (1985).

The sufficiency of evidence supporting the determination to try the juvenile as an adult is upheld. *State v. Hooks*, 251 Kan. 755, 840 P.2d 483 (1992).