

IN THE DISTRICT COURT OF \_\_\_\_\_ COUNTY, KANSAS

IN THE MATTER OF

Name \_\_\_\_\_, Juvenile Case No. \_\_\_\_\_
DOB xx /xx / \_\_\_\_ A  male  female

**PRESUMPTIVE
JOURNAL ENTRY OF HEARING ON
MOTION TO AUTHORIZE PROSECUTION AS AN ADULT**

Pursuant to K.S.A. 38-2347

Now, on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the Court considers the Motion Requesting Authorization to Prosecute as an Adult, Judge \_\_\_\_\_ presiding.

The Court finds jurisdiction and venue are proper. Notice to parties and those required to receive notice has been given as required by law.

The State appears by \_\_\_\_\_ County/District Attorney or designee.
 The juvenile appears  in person and  not in person, but by the juvenile's attorney,

\_\_\_\_\_.
 The mother  is present  is not present.
 The father  is present  is not present.
 The CSO is present through \_\_\_\_\_.
 The Commissioner is present through \_\_\_\_\_.

Also present is/are: \_\_\_\_\_.

The Court informs the juvenile of the nature of the charge(s) in the complaint, the right to be presumed innocent of each charge, the right to trial without unnecessary delay, the right to confront and cross-examine witnesses appearing in support of the allegations of the complaint, the right to subpoena witnesses, the right to testify or to decline to testify, and the sentencing alternatives the Court may select should the motion be granted.

The Court, having reviewed the file, received the evidence, heard statements of counsel, and made the considerations required by K.S.A. 38-2347(e), makes the following findings, and enters the following orders:

There is a preponderance of evidence that the alleged juvenile offender should be prosecuted as an adult for the offense(s) charged. The present matter shall be dismissed and prosecution initiated under the applicable criminal statute.

or

The evidence is insufficient and the motion to prosecute the juvenile as an adult is denied.

or

The motion should be denied, but the motion alleged one or more of the presumptions as provided in K.S.A. 38-2347(a)(2) and there is a preponderance of evidence that the proceedings should be designated as an extended jurisdiction juvenile prosecution, and they are so designated.

The Court further finds from the evidence that it appears a felony has been committed and there is probable cause to believe the felony has been committed by the juvenile, and such findings were requested by the prosecution. There is no necessity for further preliminary examination as provided for in K.S.A. 22-2902, and the juvenile is bound over to the court having jurisdiction to try the case.

IT IS SO ORDERED.

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Judge of the District Court

Authority

K.S.A. 38-2347.

Notes on Use

K.S.A. 38-2347( c)(1) provides that the court hear the motion to authorize prosecution as an adult prior to any further proceedings on the complaint. At the hearing the court shall inform the juvenile of rights listed in this form. K.S.A. 38-2347(c)(2). If a juvenile who has been served and given notice of the hearing fails to appear, the motion may be heard and determined in the absence of the juvenile. If a juvenile has not been served and given notice of the hearing, then the court may hear and determine the motion in the absence of the juvenile if notice of the hearing has been published in the official county newspaper of the county where the hearing will be held at least once a week for two consecutive weeks. K.S.A. 38-2347(d).

K.S.A. 38-2347(e) lists 8 factors that the court must consider in determining whether or not prosecution as an adult should be authorized, or whether a proceeding should be designated as an extended jurisdiction juvenile prosecution. Subject to K.S.A. 38-2354, reports and information relating to the juvenile's mental and physical status, educational and social history may be considered. K.S.A. 38-2347(e)(8), last paragraph. The motion may be granted upon a finding by a preponderance of the evidence that the alleged juvenile offender should be prosecuted as an adult.

K.S.A. 38-2347(f)(1). In that case 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)(3) provides that if prosecution as an adult is not authorized, the court may designate the proceedings as an extended jurisdiction juvenile prosecution, if the motion to authorize prosecution as an adult was requested pursuant to subsection (a)(2), the subsection delineating applicable presumptions. If the juvenile is not convicted when prosecuted under the criminal code as an adult, the authorization for prosecution as an adult shall not attach and shall not apply to future prosecutions which may be filed as juvenile proceedings. K.S.A. 38-2347(h). If the juvenile is prosecuted as an adult under the presumption subsection, and is not convicted when prosecuted under the criminal code as an adult of an offense listed in the presumption subsection, but is convicted or adjudicated of a lesser included offense, the juvenile shall be a juvenile offender and receive a sentence pursuant to K.S.A. 38-2361. K.S.A. 38-2347(i).

The prosecutor may choose to present evidence 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).

If a proceeding has been designated an extended jurisdiction juvenile prosecution, and if the prosecution results in a guilty plea or finding of guilt then the court shall enter a juvenile sentence (Form 350), pursuant to K.S.A. 38-2361, and an adult criminal sentence (Form 351). K.S.A. 38-2364.

### Comments

The trial court is required to permit the prosecution to present evidence at a waiver hearing which could be offered at preliminary hearing. *In re Davis*, 234 Kan. 766, 674 P.2d 1045 (1984).

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 eight factors in determining whether a juvenile should be prosecuted as an adult are stated and applied. *State v. Meyers*, 245 Kan. 471, 781 P.2d 700 (1989).

The case discusses the eight factors for consideration to try as an adult. *State v. Cady*, 248 Kan. 743, 811 P.2d 1143 (1991).

Factors may be given different weight and evidence of all factors is not required. *State v. Irvin*, 16 Kan.App.2d 214, 821 P.2d 1019 (1991).

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

The failure to find one or more of the factors does not preclude prosecution as an adult. *State v. Walker*, 252 Kan. 117, 843 P.2d 203 (1992).

This case discusses substantial evidence and abuse of discretion by the trial court in certifying a defendant for prosecution as an adult. *State v. Tran*, 252 Kan. 494, 840 P.2d 680 (1993).

Adequate consideration and weighing of factors in certifying a defendant for prosecution as an adult are considered. *State v. Brown*, 258 Kan. 374, 904 P.2d 985 (1995).

This case discusses the trial court's consideration of all of the factors set out in certifying a defendant to be tried as an adult. *State v. McIntyre*, 259 Kan. 488, 912 P.2d 156 (1996).

This case discusses substantial evidence to certify a juvenile to be prosecuted as an adult. *State v. Kaiser*, 260 Kan. 235, 918 P.2d 629 (1996).

This case discusses substantial evidence to certify a juvenile to be prosecuted as an adult. *State v. Vargas*, 260 Kan. 791, 926 P.2d 223 (1996).

This case discusses substantial evidence to certify a juvenile to be prosecuted as an adult, and insufficiency of evidence pertaining to the factors is not determinative. *State v. Claiborne*, 262 Kan. 416, 940 P.2d 27 (1997).

This case discusses substantial evidence in denial of motion to try a juvenile to be prosecuted as an adult. *In re J.D.J.*, 266 Kan. 211, 967 P.2d 751 (1998).

This case discusses substantial evidence to certify a juvenile to be prosecuted as an adult notwithstanding the judge's failure to mention statutory factors. *State v. Avalos*, 266 Kan. 517, 974 P.2d 97 (1999).

The court is not required to give equal weight to the factors in determining whether to certify a juvenile as an adult. *State v. Valdez*, 266 Kan. 774, 977 P.2d 242 (1999).

This case discusses sufficient evidence in denial of motion to try a juvenile to be prosecuted as an adult. *State v. Stephens.*, 266 Kan. 886, 975 P.2d 801 (1999).

The respondent is deemed adjudicated as a juvenile offender when the conviction is affirmed, but the order authorizing prosecution as an adult is reversed. *State v. Smith*, 268 Kan. 222, 993 P.2d 1213 (1999).

In a hearing to determine whether a juvenile is to be tried as an adult, the juvenile may refuse court-ordered psychological examination; where the juvenile consents, no Miranda warning is required provided the information obtained is not introduced at the trial or used for sentencing. *State v. Davis*, 268 Kan. 661, 998 P.2d 1127 (2000).

A stipulation to the facts contained in the state's motion to prosecute as an adult constituted a rough approximation of factors to be considered by the court. *State v. Luna*, 28 Kan.App.2d 148, 12 P.3d 911 (2000).

The factors concerning certification of juveniles to be tried as an adult must be considered, but there is no requirement that the court mention the factors used or that evidence on every factor be presented. *State v. Medrano*, 271 Kan. 504, 23 P.3d 836 (2001).