

355

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE MATTER OF

Name _____, Juvenile
DOB xx /xx / ____ A male female

Case No. _____

**JOURNAL ENTRY OF HEARING ON
MOTION TO IMPOSE DEPARTURE SENTENCE**

Pursuant to K.S.A. 38-2371

Now, on this _____ day of _____, _____, the Court considers evidence and arguments relating to the request to impose a departure sentence, 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.

- There are no appearances.
- 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, having reviewed the file, reviewed the victim impact statement, and considered the evidence and arguments of counsel, makes the following findings, and enters the following orders:

Entry of a departure sentence is not appropriate.

or

There are substantial and compelling reasons to impose a departure sentence, as follows:

(State the substantial and compelling reasons for the departure and the findings of fact.)

; and

The presumptive sentence shall not be imposed, and a departure sentence shall be entered as provided in the sentencing order. (Form 350)

IT IS SO ORDERED this _____ day of _____, _____.

Judge of the District Court

Authority

K.S.A. 38-2371.

Notes on Use

The court shall issue its decision, the basis for its decision, and an appropriate order within 20 days of the hearing on the request to impose a departure sentence. K.S.A. 38-2371(a)(2). The statute further provides guidance in consideration of elements of a crime used as aggravating factors, K.S.A. 38-2371(a)(3), and limitations on the departure sentence, K.S.A. 38-2371(d). The imposition of a departure sentence must be based on substantial and compelling reasons, stated on the record. K.S.A. 38-2371(d). Whether a departure sentence is imposed or not, the sentencing form (Form 350) should be used for the sentence. If, in the course of sentencing, the court removes the juvenile from the home, and if it is the first order removing the juvenile from the home, Supreme Court Administrative Order No. 155 and ASFA apply and Form 312, or another ASFA form approved by the Supreme Court, must be completed and attached to Form 350 for filing.

Although proceedings under the juvenile justice code are considered civil proceedings, an adjudication as a juvenile offender may be a consideration in the imposition of an adult sentence for a subsequent conviction under the criminal code. For this reason *Apprendi v. New Jersey*, 530 U.S. 466 (2000), may be a consideration. The Supreme Court found that it is unconstitutional to remove from a jury the assessment of facts that serve to increase the prescribed range of penalties to which the defendant is exposed.