

**§4038. Mandated review; review on motion**

**1. Mandated review.** If a court has made a jeopardy order, it shall review the case at least once every 6 months, unless the child has been emancipated or adopted.

[PL 1997, c. 715, Pt. B, §7 (AMD).]

**1-A. No mandated review.** Notwithstanding subsection 1, no subsequent judicial review is required unless petitioned for by any party or unless specifically ordered by the court:

A. When custody has been granted to a person other than a parent or the department; [PL 2007, c. 284, §6 (AMD).]

B. When custody has been granted to a parent who did not have custody at the time the child protection petition was filed; or [PL 2007, c. 284, §6 (AMD).]

C. [PL 2003, c. 408, §4 (RP).]

D. [PL 2003, c. 408, §5 (RP).]

E. When a permanency guardianship has been established pursuant to section 4038-C. [PL 2007, c. 284, §6 (NEW).]

[PL 2007, c. 284, §6 (AMD).]

**2. Review on motion.** The court, the child's parent, custodian or guardian ad litem or a party to the proceeding, except a parent whose rights have been terminated under subchapter VI, may move for judicial review. The moving party shall have the burden of going forward.

[PL 1985, c. 739, §12 (AMD).]

**3. Notice of review.** Notice of the reviews must be given to all parties to the initial proceeding according to District Court Civil Rule 4. Notice may not be given to a parent whose rights have been terminated under subchapter VI. The department shall provide written notice of all reviews and hearings in advance of the proceeding to the foster parent, preadoptive parent and relative providing care. The notice must be dated and signed, must include a statement that the foster parent, preadoptive parent and relative providing care are entitled to notice of and an opportunity to be heard in any review or hearing held with respect to the child and must contain the following language:

"The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records."

A copy of the notice must be filed with the court prior to the review or hearing.

[PL 1997, c. 715, Pt. B, §8 (AMD).]

**3-A. Prehearing conference.** The court may convene a prehearing conference to clarify the disputed issues and review the possibility of settlement.

[PL 2001, c. 559, Pt. CC, §2 (NEW).]

**4. Disposition.**

[PL 1985, c. 739, §13 (RP).]

**5. Hearing.** The court shall hear evidence and shall consider the original reason for the adjudication and disposition under sections 4035 and 4036, the events that have occurred since then and the efforts of the parties as set forth under section 4041. After hearing or by agreement, the court shall make written findings that determine:

A. The safety of the child in the child's placement; [PL 2003, c. 408, §6 (NEW).]

B. The continuing necessity for and appropriateness of the child's placement; [PL 2003, c. 408, §6 (NEW).]

C. The effect of a change in custody on the child; [PL 2003, c. 408, §6 (NEW).]

D. The extent of the parties' compliance with the case plan and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care; [PL 2003, c. 408, §6 (NEW).]

E. A likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship; and [PL 2003, c. 408, §6 (NEW).]

F. If the child is 16 years of age or older, whether or not the child is receiving instruction to aid the child in independent living. [PL 2003, c. 408, §6 (NEW).]

[PL 2003, c. 408, §6 (AMD).]

**6. Disposition.** The court may make any further order, based on a preponderance of evidence, that is authorized under section 4036.

A. [PL 1989, c. 270, §13 (RP).]

B. [PL 1989, c. 270, §13 (RP).]

C. [PL 1989, c. 270, §13 (RP).]

[PL 1989, c. 270, §13 (AMD).]

**7. Review of child in custody of the department.**

[PL 1997, c. 715, Pt. B, §9 (RP).]

**7-A. Permanency planning hearing.**

[PL 2005, c. 372, §4 (RP).]

**8. Placement in qualified residential treatment program; hearing within 60 days.** The court shall conduct a hearing to review the status of a child placed in a qualified residential treatment program and determine the appropriateness of the placement within 60 days after the child enters the program.

A. At the hearing under this subsection, the court shall:

(1) Review a needs assessment of the child conducted by a qualified individual;

(2) Consider whether the needs of the child can be met through an alternative placement in a family foster home as defined in section 8101, subsection 3;

(3) Consider whether the placement of the child in a qualified residential treatment program provides effective and appropriate care for the child in the least restrictive environment; and

(4) Consider whether placement of the child in a qualified residential treatment program is consistent with the short-term and long-term goals for the child as specified in the permanency plan of the child protection case pursuant to section 4038-B. [PL 2021, c. 210, §3 (NEW).]

B. The court shall state, in writing, the reasons for its decision to approve or disapprove under this subsection the continued placement of the child in the qualified residential treatment program. [PL 2021, c. 210, §3 (NEW).]

C. In a hearing under this subsection, records of evaluations of the child and medical, behavioral and mental health records of the child are admissible upon showing that the records contain information relevant to the issues before the court, as long as the records are made available to counsel at least 10 days prior to the hearing. [PL 2021, c. 210, §3 (NEW).]

[PL 2021, c. 210, §3 (NEW).]

**9. Continued placement in qualified residential treatment program; judicial review.** At each review conducted pursuant to this section regarding a child placed in a qualified residential treatment program, the court shall make judicial findings, by a preponderance of the evidence, regarding the child's continued placement. The court shall review the status of a child placed in a qualified residential treatment program at every judicial review and permanency hearing and determine the continued appropriateness of placement in the qualified residential treatment program.

## A. The court shall:

- (1) Determine whether an ongoing needs assessment of the child, as prepared by qualified individuals, supports continued placement of the child in the qualified residential treatment program;
- (2) Determine whether the documentation about the child regarding the child's placement in the qualified residential treatment program supports the conclusion that it is effective and appropriate care for the child in the least restrictive environment; and
- (3) Determine whether the documentation about the child supports the conclusion that continued placement in the qualified residential treatment program is consistent with the short-term and long-term goals for the child as specified in the permanency plan of the child protection case pursuant to section 4038-B. [PL 2021, c. 210, §4 (NEW).]

B. The court shall state, in writing, the reasons for its decision to approve or disapprove under this subsection the continued placement of the child in the qualified residential treatment program. [PL 2021, c. 210, §4 (NEW).]

C. In a review under this subsection regarding the child's continued placement in a qualified residential treatment program, records of evaluations of the child and medical, behavioral and mental health records of the child are admissible upon showing that the records contain information relevant to the issues before the court, as long as the records are made available to counsel at least 10 days prior to the review. [PL 2021, c. 210, §4 (NEW).]  
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**10. Rules concerning judicial review of the placement of children in qualified residential treatment programs.** Notwithstanding any provision of law to the contrary, the Supreme Judicial Court may adopt rules of pleading, practice and procedure with respect to proceedings required by subsections 8 and 9. After the effective date of the rules as adopted or amended, all laws in conflict with the rules are of no further effect.  
[PL 2021, c. 210, §5 (NEW).]

## SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1981, c. 369, §12 (AMD). PL 1983, c. 185 (RPR). PL 1985, c. 739, §§11-14 (AMD). PL 1987, c. 269, §§1,2 (AMD). PL 1989, c. 270, §§13,14 (AMD). PL 1991, c. 176, §3 (AMD). PL 1993, c. 198, §1 (AMD). PL 1997, c. 475, §§2-6 (AMD). PL 1997, c. 715, §§B7-10 (AMD). PL 2001, c. 559, §§CC2,3 (AMD). PL 2001, c. 696, §32 (AMD). PL 2003, c. 408, §§2-6 (AMD). PL 2005, c. 372, §4 (AMD). PL 2007, c. 284, §6 (AMD). PL 2021, c. 210, §§3-5 (AMD).

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