

Facilitating Effective Child and Youth Participation in the Juvenile Court Process

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*All I ever wanted was to be
heard and not just
dismissed...*

Youth in foster care

Outline of Presentation

- Federal and Oregon State statutes
- Policies of National Judicial and Bar Associations
- Other states' statutes
- Benefits of youth participation
- Concerns and Solutions
- Tips for involving youth in court proceedings

Child and Family Services Improvement Act of 2006

“[P]rocedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.” 42 U.S.C. § 675(5)(C)(iii) (2006).

ORS 419B.875

“(1)(a) **Parties** to proceedings in the juvenile court under ORS 419B.100 and 419B.500 are:

(A) The child or ward;

...

(2) **The rights of the parties** include, but are not limited to:

(a) The right to **notice** of the proceeding and copies of the petitions, answers, motions, and other papers;

(b) The **right to appear with counsel** and . . . To have counsel appointed as otherwise provided by law;

(c) The right to call witnesses, cross-examine witnesses and **participate** in hearings.”

ORS 419B.839

“(1) **Summons** in proceedings to establish jurisdiction under ORS 419.100 **must be served on:**

...

(f) **The child**, if the child is **12 years** of age or older.”

ORPC Rule 1.14 - Client with Diminished Capacity:

“(a) When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of **minority**, mental impairment or for some other reason, **the lawyer shall**, as far as reasonably possible, **maintain a normal client-lawyer relationship with client.**”

OAR 413-010-0180 - Rights of a Child:

“Each child placed in the legal custody of [DHS] has the following rights:

...

(12) To be involved, in accordance with his or her age and ability and with the law, in making major decisions that affect his or her life, to participate in the development of his or her case plan, permanency plan, and comprehensive transition plan and to discuss his or her views about the plans with the judge.”

Oregon Foster Children's Bill of Rights (SB 123, effective Jan. 2014):

Foster kids' essential rights include:

- To be provided with notice and transportation to court hearings and CRB reviews
- To have the ability to make complaints about unsatisfactory care or placement services without fear of retaliation;
- To have a hotline phone number at all times for foster kids to make complaints or grievances about their care, safety, or well-being.

Who is saying what?

- **NCJFCJ** – Judge observations and permit child to address the court gives judges better information and better decisions. Presumption is for child to attend unless not in best interest (based on age, maturity, emotional and physical well being and potential trauma).
- **ABA** – Child should be present at significant court hearings. Having a youth in court emphasizes for the judge and all parties that the hearing is about a child.
- **NACC** – At significant court hearings, children in most circumstances should be present.
- **Pew Commission** – Court should be organized to enable children and parents to participate in a meaningful way in their own court proceedings. Children benefit when they have an opportunity to actively participate in court proceedings as does the quality of decisions when judges can see and hear from key parties.
- **UNLV conference on Representing Children in Families** – Children should be included in their proceedings unless they choose not to or the court finds it harmful for the child to be present. Judges should encourage youth participation in the courtroom.
- **JCIP** – Children 6 years or older should be expected to attend, unless the child refuses after being fully informed, or the Court has a compelling reason to exclude the child. The judge must inquire about the child's absence and make sure that the absence is not due to failure to give notice to, or transportation for the child.

Other States' Statutes:

- Florida
 - The child is a party.
 - The child has a right to be present at all hearings.
 - The court shall inquire and determine the reason for any absence of the child.
- Texas:
 - The child shall attend each permanency hearing unless the court specifically excuses the child's absence.
 - The child may attend in person, by telephone, or by videoconference.
 - The court shall consult with the child in a developmentally appropriate manner regarding the child's permanency plan if the child is four years of age or older and if the court determines it is in the best interest of the child.

Other States' Statutes, cont'd:

- Mississippi:
 - Child is a party.
 - Court may exclude with consent from the child's counsel.
- Missouri:
 - The child is a party.
 - The court has discretion to exclude the youth if not in the youths best interest after considering the emotional maturity of the youth and the nature of the evidence.
- Utah:
 - Child is entitled to notice of and to be present at each hearing, subject to the discretion of the guardian ad litem or the court regarding any possible detriment to the child.

Other States' Statutes, cont'd:

- Child is entitled to notice if a certain age or older:
 - Tennessee → 14 years
 - Virginia → 12 years
 - Georgia → 14 years
 - Michigan → 11 years
 - Washington → 12 years

Benefits of youth participation:

- Empowerment – some control or influence over their lives
 - Validation
 - Self-advocacy
- Better understanding of the process and how or why decisions were made
 - Firsthand observations
 - Understanding = better acceptance
- Therapeutic
 - Accountability of others
 - Learning life skills
- More information for the court = better decisions
 - Observations & inferences based on child's physical & emotional condition and interactions with others.
 - Direct input from child (no 3dP dilution).
- Keeps the focus on the child
 - And individualized – not “one-size-fits-all”

“The presence of youth in court proceedings that affect them is invaluable, even when they are too young to express themselves. The child alone can give a face to what would otherwise be simply words on paper. . . . [N]othing can substitute for personally evaluating the welfare of the child.”

“[Y]outh often report that the ability to be present in court and privy to the decision making that will chart their future is exactly what they need to enable them to heal and move on – hearing difficult information in an appropriate setting, with support available and the opportunity to express their own views about their life’s course, enables them to come to terms with and work through the abuse and neglect they have suffered.”

Concerns:

- Participating in Court may upset the child
- Transportation issues
- Court facility is not child-friendly
- Scheduling issues/ conflicts
- Child can't see the parent
- Allowing youth to speak to the judge privately raises ethical issues
- Child's wishes are not court ordered
- Parent's privacy rights will be infringed
- The court hearing will not be meaningful for the youth
- Court hearings will take longer
- Youth does not want to attend court proceedings

Participating in Court may upset the child

- Set clear standards for when youth should be in court and establish a presumption of youth inclusion.
- Prepare the youth for court hearings.
- Allow support person to accompany the youth to court.
- Alternative ways to participate.

Set clear standards for when youth should be in court and establish a presumption of youth inclusion:

- Children 6+ should be expected to attend, while respecting their right not to attend.
 - If child is not present, Court should determine whether child: (1) had notice, (2) transportation, and (3) was fully informed.
- Youth should only be excluded for compelling reasons
 - Full exclusion should be avoided. (see “alternatives”)

Prepare the youth for court hearings:

Attorney:

- Notice:
 - When and where hearing is.
- Preparation:
 - Purpose of hearing and issues that will be discussed.
 - Who will be there and what their roles are.
 - What is expected to happen.
 - How to talk to the judge.
 - Courtroom etiquette.
- Debrief:
 - Allow adequate time after hearing to discuss what happened and to answer any questions the youth may have.

Prepare the youth for court hearings:

Social Worker:

- Inform foster parents about each hearing, who will be there, and how to talk to judge.

Attorney, GAL, or social worker:

- Contact caregiver before and after the hearing to make sure youth is comfortable and to convey anything that happened in the hearing that the caregiver may need to know about.

Have a support person accompany the youth to court:

- Support during and after the hearing to aid child in processing difficult information.
- Child's service providers and attorney can assist in determining need for a support person.

Alternative ways to participate:

- Bifurcate hearing
- Partial exclusion
- *In chambers* communication
- Letter/ Drawing
- Teleconference
- Videoconference

Transportation issues:

- Schedule hearing to coincide with a planned visit to the area where the courthouse is located.
- JCIP's recommendations require DHS to ensure youth have transportation.
- Allow youth to participate in court proceedings via telephone or video conference.
- Provide an escort for youth who pose a flight risk.

Court facility is not child-friendly:

- Create a child-friendly space in the courthouse (even if it is small):
 - Soften intimidating space with: posters, stuffed animals, books, and toys.
 - Provide resources such as: computers and materials or handouts to help youth understand the proceedings.
 - Programs such as art or reading can help keep youth occupied while they wait for their case to be called.

Tips for involving youth in court proceedings:

- Have the youth present throughout the hearing
- Present the youth's testimony in chambers
- Arrange in advance visit to the courthouse
- Have the youth wait in a waiting area for the hearing
- Exclude the youth from court during harmful testimony
- Present the child's hearsay statements in court

Scheduling issues/ conflicts:

- Schedule next hearing at the end of each hearing.
- Schedule hearing around youth's school schedule.
- Consult with youth.
- Use time-certain scheduling.
- Work with the Dept. of Education to ensure youths' court attendance does not negatively impact their schooling.
- When youth are present, hear their cases first.

Child can't see the parent:

- Require parent(s) to leave for portion of hearing when youth is present.
- Allow youth to meet the judge *in chambers*.
- Use other alternatives: teleconference, skype, letter, etc.

Allowing youth to speak to the judge privately raises ethical issues:

- Allow the attorneys and court reporter to be present when youth speaks with the judge.
- The judge should not promise confidentiality to the youth.

Child's wishes are not court ordered:

- Meet with the youth before court and explain the possible different outcomes.
- Have the judge explain his or her position.
- Debrief the youth after each hearing.

Parent's privacy rights will be infringed:

- Excuse the youth for certain portions of the hearing.

The court hearing will not be meaningful for the youth:

- Prepare youth for court hearings.
- Debrief youth after each hearing and allow adequate time to answer questions.
- Use child-friendly language and explain legal terms clearly.
- Judges should attend trainings on communicating with system-involved youth.
- Hold hearings that are complete and not cursory in length.

Court hearings will take longer:

- Hearings may take longer at first while everyone learns how to increase youth participation.
- They will likely shorten after the adjustment.
- Better decisions and outcomes will result in reduced need for future hearings.
- Adequate preparation of children before hearings can speed them up.

Youth does not want to attend court proceedings:

- Talk with youth to determine his or her reasoning.
- Accommodate the youth's schedule.
- Don't require the youth to participate.

Tips for youth's representative(s):

- Appropriately Trained
- Familiar with child interviewing techniques
- Caseload
- Role explanation
- Visit client
- Independent investigation
- Youth's voice

Child Representative's role when a youth comes to court:

- Inform the court of any issues
- Prepare client
- Ensure youth is aware of what's happening
- Allow the youth to speak
- Discuss the hearing afterwards

Tips for Attorneys:

- Meet with youth on a regular basis.
- Prepare youth for each hearing.
 - What to expect.
 - Who everyone is.
- Debrief youth after each hearing.
- Have a discussion with youth where they meet in the middle.

Tips for CASA:

- Explain youth's rights to the youth.
- Listen to the youth.
- Establish a relationship and trust with the youth.
- Encourage youth to attend court.
- Sit with youth in court or explain why you are sitting next to DHS.

Tips for DHS:

- Explain your role to the youth.
- Meet/ communicate more often.
- Listen to the youth.
- Tell the youth what you will say in court and explain your reasoning.
- Make sure youth has a phone and knows how to contact his attorney.

Tips for judges/ CRB:

- Encourage youth to attend.
- If youth isn't present, ask why.
- Engage youth in age-appropriate manner (see bench cards).
- Listen to youth.
- Explain the reason for your decision.
- Explain what steps must be taken for youth to achieve what he wants.

Tips for Judges/ CRB part II:

- Have a policy of hearings not heard during school hours.
- Create a MOU with school district – no penalty for absences.
- Use time-specific calendaring.
- Hear youth who are present first.

Tips for Courthouses:

- Provide accommodations to make the court process more meaningful to youth.
- Create a child-friendly waiting area.
- Have a separate room where attorneys can meet privately with youth.

Tips for Foster Parents:

- Make sure youth knows the contact information for his attorney, DHS, and CASA and has a way to contact them.
- Help with transportation to and from school.
- Ask questions and become involved so you can help youth understand what happens in his or her hearings and process the information.

Tips for Youth:

- Attend all hearings.
- Meet with your lawyer before the hearings.
- Make sure your attorney has updated contact information.
- Return his or her calls or e-mails.
- Talk to your lawyer about where you want to live and what services you think you need to meet your goals.
- Ask questions.
- Tell the judge what you think about your placement and any needs that you have.
- Prepare for court ahead of time with your attorney.



Questions?



Youth Panel