



# Seen, Heard, and Engaged:

Children in Dependency  
Court Hearings

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NATIONAL COUNCIL OF  
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# SEEN, HEARD, AND ENGAGED: CHILDREN IN DEPENDENCY COURT HEARINGS

## Technical Assistance Bulletin

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## **INTRODUCTION**

This technical assistance bulletin was designed to provide information, guidance, and aspirational practice recommendations to dependency courts and dependency court judges with regard to bringing children<sup>1</sup> to court for hearings related to their own dependency cases. It is the policy of the National Council of Juvenile and Family Court Judges (NCJFCJ) that children of all ages be brought to court, unless the judge decides it is not safe or appropriate based on information provided by case participants. This technical assistance brief includes information on best practice support for bringing children to court, the legal framework supporting children’s attendance at and participation in hearings, and the appendices provide concrete tools which will enable courts to successfully engage children of all ages in the hearing process.

## **THE LEGAL FRAMEWORK SUPPORTING CHILDREN IN COURT**

### *Federal Law*

In 2006, Congress recognized the importance of input from children in court proceedings by enacting the Child and Family Services Improvement Act. This act requires, among other things, “procedural safeguards to be put in place 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).

Likewise, the Fostering Connections to Success and Increasing Adoptions Act of 2008 requires, as part of the case review process, a youth-directed transition plan to be created within 90 days of a youth exiting foster care. 42 U.S.C. § 675(5)(H). The transition plan must be detailed with respect to the young person’s future goals and how the youth expects to attain those goals. It should include “specific plans about housing, education, health insurance, mentoring opportunities, continuing support services, work force support, and employment services.” The July 2010 Administration on Children and Families Program Instruction for Fostering Connections states that the court should play an important role in monitoring the development of and reviewing this transition plan.

### *State Legislation*

Many states have developed legislation to include children in the courtroom, partly because of changes in federal law, and partly in response to the recommendations of national organizations and former foster children. Some states, such as Florida<sup>2</sup>, Illinois<sup>3</sup>, Kansas<sup>4</sup>, Louisiana<sup>5</sup>, Mississippi<sup>6</sup>, Missouri<sup>7</sup>, Oregon<sup>8</sup>, Texas<sup>9</sup>, Utah<sup>10</sup>, Maryland<sup>11</sup> have passed state

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<sup>1</sup> For the purposes of this bulletin, the word “children” includes from age zero to the age of majority, and where the word “youth” is used it refers specifically to teenagers and young adults.

<sup>2</sup>Fla. R. Juv. Pro. 8.255(b) (2005).

<sup>3</sup>37 Ill. Comp. Stat. 705/405 (1987).

<sup>4</sup>Kan. Stat. Ann. § 38-2247(a) (2006).

<sup>5</sup>La. Child. Code Ann. art. 662 (1992).

<sup>6</sup>Miss. Code Ann. § 43-21-203 (1980).

<sup>7</sup>Mo. R. RCP. Rule 124.03

legislation outlining the right of children to attend and the circumstances under which to exclude them. The circumstances are usually when exclusion is in the best interests of the child. Others, such as Idaho, Alabama<sup>12</sup>, Tennessee<sup>13</sup> and Virginia<sup>14</sup> base the determination on the age of the child (see also the brand new law in Louisiana<sup>15</sup>). However, most states do not have a relevant law or court rules, and instead leave involvement of children in court to the determination of the judge or magistrate.

## **RESEARCH RELATED TO CHILDREN IN COURT**

While limited social science research has taken place on the impact of and outcomes from children attending court, the few studies that have been completed on this topic support the proposition that children should be more effectively involved in permanency planning and in their court hearings.<sup>16</sup> For example, one study found that children who attended their court hearings were more likely to report they trusted the judge to do what was best for them than children who did not attend their hearings. They also felt that the judge knew enough to make the right decisions. The children that didn't attend their hearings were not as convinced the judge knew enough information.<sup>17</sup>

### *Voices of the Children*

Home At Last, a national outreach and education partnership headed by the Children's Law Center of Los Angeles and supported through a grant by The Pew Charitable Trusts, conducted a national study of participation in court by foster youth. Entitled *My Voice, My Life, My Future*, the Home At Last survey reports that an overwhelming majority of youth respondents stated they attend court only some of the time (73%), followed by never (29%), most of the time (20%), and always (18%). These results were based on foster youths' self reports. The majority of youth who completed the Home At Last survey indicated that when they did attend court, it was helpful. The youth appreciated their involvement, which ranged from being informed about the hearing, to attending the hearing, to speaking to the judge. Satisfaction from attending court hearings did not rely exclusively on the youth speaking to the judge. Being allowed to attend made youth feel that they were more informed about their life and the experience was worthwhile.<sup>18</sup>

## **CHILDREN IN COURT AS A BEST PRACTICE**

In 2012 the National Council of Juvenile and Family Court Judges passed a new best practice recommendation that frames children in court as a presumed practice. If the child

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<sup>8</sup>Or. Rev. Stat. § 419B.875(2)(b) (2008).

<sup>9</sup>Tex. Fam. Code Ann. § 263.302 (West 2009).

<sup>10</sup>Utah Code Ann. §78A-6-317 (West 2010).

<sup>11</sup>Md. Code Ann. Cts. & Jud. Proc. § 3-823 (West 2010).

<sup>12</sup>Al. R Juv. P Rule 13

<sup>13</sup>Tenn. Code Ann. § 37-1-121(West 1970).

<sup>14</sup>Va. Code Ann. § 16.1-252 (2008).

<sup>15</sup><http://legis.la.gov/billdata/streamdocument.asp?did=812292>

<sup>16</sup>Weisz, V., Wingrove, T., Beal, S., Faith-Slaker, A. (2011). Children's participation in foster care hearings. *Child Abuse & Neglect*, 35(4), 267-272.

<sup>17</sup>Weisz, id.

<sup>18</sup>Khoury, A., "Seen and Heard: Involving Children in Dependency Court", *Child Law Practice Dec*, 2006 (citing "Home at Last: My Voice, My Life, My Future Foster Youth Participation in Court: A National Survey" (2006)).

is not in court, the stakeholders must explain to the judge the safety or well-being reasons for the child's absence. The judge makes the determination that the child's absence is appropriate for safety or well-being reasons. There is no assumption that a child might be too young to attend. In addition, recommendations are made for stakeholder collaboration to promote children's attendance, the development of policies and protocols in support of children attending hearings, and training for judges to appropriately engage children in hearings based on the child's developmental level.

This new best practice recommendation is consistent with prior NCJFCJ policy including the 1995 Resource Guidelines which has as a primary focus judicial leadership on- and off-the-bench, and the development and articulation of best practices in the handling of child abuse and neglect cases.<sup>19</sup> Since its publication, the *RESOURCE GUIDELINES* has had a strong and meaningful impact on dependency court practice and child welfare reform, which has included widespread acceptance of what have become foundational judicial best practices in child abuse and neglect cases.

### *Model Courts Implementation of the RESOURCE GUIDELINES*

Those dependency jurisdictions participating in the NCJFCJ Dependency Model Courts project have committed to implementing the best practice recommendations outlined in the *RESOURCE GUIDELINES* with the goal of achieving better outcomes for the children and families they serve. Model Courts engage court and other system stakeholders in collaborative efforts to critically examine policies, practices and procedures and to design targeted reform initiatives. Model Courts serve as laboratories for and model systems' change in child abuse and neglect cases.<sup>20</sup> Model Courts either came into the project with courtrooms open to children, or agreed to work on implementing the *RESOURCE GUIDELINES'* children in court best practice.

For example, the Los Angeles Model Court came into the project with children in court from age 4 and up as a policy. The Miami Model Court, one of the first Model Courts in the project (now a Senior Model Court) identified increasing the presence of children at hearings as one of its earliest Model Court goals. The Chicago Model Court enhanced their process where children already attended hearings by providing court-based services to children as they left the courtroom. As Model Courts brought children into the courtroom, the realization came that there was no age which was inappropriate for children to attend hearings and that other circumstances and information were a better basis for analysis as to whether it was appropriate for the child to attend a specific hearing on his or her case.

### *National Child Welfare and Legal Organizational Support*

Many prominent national child welfare and legal organizations have long recognized the critical importance of involvement of children in their dependency court hearings. For example:

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<sup>19</sup> The *RESOURCE GUIDELINES: Supporting Best Practices and Building Foundations for Innovation in Child Abuse and Neglect Cases* (2009), National Council of Juvenile and Family Court Judges, Reno, Nevada (hereafter Supporting Best Practices).

<sup>20</sup> See Supporting Best Practices

### American Bar Association (ABA)

In 2011, the ABA passed *The Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings*. Section 9 outlines a child's right to notice and the right to attend and participate in all hearings related to the child's case.

In 1996, the ABA passed the Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases. The Standards suggest that children should be present during significant court hearings. They provide criteria for lawyers to evaluate when considering whether a child should be present, including whether the child wants to attend, the child's age, and the potential trauma to the child. Lawyers and other children's representatives are urged to consult with therapists, caretakers, or other persons who have specific knowledge of the child regarding whether attending the hearing would be damaging to the child.

### National Association of Counsel for Children (NACC)

In 1999, NACC passed similar standards for representing children in abuse and neglect cases. NACC's standards indicate that children, in most circumstances, should be in attendance during significant court hearings.

### Pew Commission

The Pew Commission on Children in Foster Care 2004 report, *Fostering the Future: Safety, Permanency and Well-Being for Children in Foster Care*, recommends that courts should be organized to enable children and parents to participate in a meaningful way in their own court proceedings. The report states that children benefit when they have the opportunity to actively participate in court proceedings, as does the quality of decisions when judges can see and hear from key parties.

### University of Nevada Las Vegas (UNLV) Conference Recommendations

The 2006 Recommendations of the UNLV Conference on Representing Children in Families: Child Advocacy and Justice Ten Years After Fordham state that children should be included in their proceedings unless they choose not to or the court finds it harmful to the child to be present. Judges should also encourage children to participate in the courtroom.

## **JUDICIAL CONSIDERATIONS FOR BRINGING CHILDREN TO COURT**

The duties of the judge in a dependency case are to insure the best interests of the child, and support the child's safety, permanency, and well-being.<sup>21</sup> A child's presence at each hearing provides the judge with an opportunity to be as fully-informed as possible to make these important decisions. These in-court observations of children, taken with the reports and recommendations of the case stakeholders, can provide the judge with the fullest picture possible related to the child, thereby enabling the judge to make the best decision possible for the child.

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<sup>21</sup> Adoption and Safe Families Act of 1997, 42 U.S.C. § 671 *et. seq.*

### *Benefits of Children’s Attendance in Court*

It is easier to see the benefits of older children and youth in court – they are more easily able to answer questions, to speak for the things which are important to them, and to provide guiding information to the court to assist the judge in safety, permanency, and well-being decision-making. The benefits of involving infants and toddlers can be less obvious and require more knowledge and observation by the judge.

As noted in the 2009 publication entitled *Healthy Beginnings, Healthy Futures: A Judge’s Guide (Healthy Beginnings)*, developed by the American Bar Association Center for Children and the Law, NCJFCJ, and Zero to Three, “[e]ven when a very young child is preverbal, there are many benefits to bringing an infant or toddler to hearings on a regular basis. The information gained from simply observing a child at a court hearing is invaluable. [A judge] can gain tremendous insight from seeing the young child interact with her parent and caregivers, and it gives the parent and child an opportunity to visit if the child is placed out of the home. Having a child present in the courtroom can also highlight how quickly she is growing and just how important speedy, decisive action toward permanency is. Courtroom observations can also help inform decisions about placement, visitation, or therapeutic services.”<sup>22</sup> If those observations are utilized in making those decisions, those observations should be made on the record.

There is always a benefit to the judge in observing the strength of the relationship between the parent and the child – what is the parent’s affect with the child, how does the parent set limits, do they enjoy each other, how does the parent see discipline, and what is the interaction like? Also of great importance is the opportunity to discover early developmental and medical problems that may be going unobserved or untreated.

### *Common Concerns*

Judicial officers frequently express concerns related to children being in the courtroom. These concerns range from best interest of the child issues to ethical issues to issues related to crowded dockets. The ABA Center on Children and the Law Bar-Youth Empowerment Project in partnership with Casey Family Programs and the National Child Welfare Resource Center on Legal and Judicial Issues, developed a list of the top commonly expressed concerns and suggested court policy and practice solutions.

#### *1. Participating in court proceedings will upset the child*

**Concern:** Children will become upset during court hearings because hearings raise emotional and upsetting issues that children shouldn’t be subjected to and they may hear alarming things about their parents.

**Solution:** Children are the first to remind stakeholders that they have lived through and are well aware of the issues that brought them into foster care. As long as they are

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<sup>22</sup> “Judges should also be careful about drawing conclusions based exclusively on interactions the judge might see in court. These observations should be taken in context of reports and testimony of experts and the youth. These observations can also prompt additional questions and evaluations that may prove important to placement and permanency decisions.” *See Healthy Beginnings.*

appropriately prepared for the hearing, discussions in court will not likely cause them additional trauma or harm. Moreover, excluding children from court can be equally (if not more) upsetting, because it strips children of the opportunity to come to terms with their past and move on and precludes children from having a sense of involvement in and control over planning their future.

There should be a supportive person present to help the child with any upsetting information and to work through difficult feelings with the child. The recommendation of service providers and the child's attorney can assist in determining the need for a supportive person. In addition, if certain parts of the court proceeding raise unusually upsetting issues, the child can be excluded from that part of the hearing. A child's participation allows the child to hear how the parent has progressed in meeting court and agency requirements and have a better ability to come to terms with what the court orders. It may be therapeutic for the child to hear parents and others being held accountable for their actions.

### *2. No one can transport the child to court & the court facility is not child-friendly*

Concern: Many children are not placed near the courthouse and can't be easily transported to court hearings. In addition, parties don't have the time or money to transport children far distances for hearings. Some children also may need an escort because they pose a flight risk. Moreover, once they get to court, they have to wait a long time in an area that is not child-friendly.

Solution: Transportation of the child to court should be a priority for the judge and for the stakeholders. This is a collaborative opportunity for stakeholders to work together for the best interest of the child to attend each hearing. Solutions include scheduling court hearings around planned overnight or weekend visits the child may have in the area, ensuring transportation to court is a contracted responsibility of the foster parent or group home, and working with birth parents and other relatives to provide court transportation.

The child's time at the courthouse should be efficiently scheduled through the use of time-certain calendaring. This minimizes the time children are away from school and other activities. The courthouse can be made more child-friendly through the use of a jury room or extra conference room where youth can wait and meet with their representatives. Posters, stuffed animals, books and toys can soften a potentially intimidating space. Jurisdictions have engaged local schools, colleges, and children's art programs to bring art, reading or other programs to keep the child occupied. There is no wrong way to make the court space more child-friendly.

### *3. Attending court will disrupt the child's schedule*

Concern: School outcomes are already poor for children in foster care. They shouldn't miss more school to attend court proceedings.

Solution: This concern can be addressed by thoughtful and informed hearing scheduling decisions by the court with input from the child and the stakeholders supporting the child. Examples include scheduling hearings before or after school hours, on days when teachers engage in ongoing education and school is closed, or on school holidays. The court can also

consult with the child to ensure there are no conflicts with tests, sports, field trips, and other necessary school related activities. Scheduling of the next hearing at the end of each hearing will make sure the proper accommodations to the child's schedule are made.

#### *4. Children cannot see the parent*

Concern: The court has a current no-contact court order between the child and parent, making it hard to allow the child to attend court hearings. The child may be scared of her parent or the parent's presence unduly influences the child.

Solution: This concern can be addressed by bifurcating the hearing so that the child can be heard first, the parent after, or through use of technology solutions. The judge can also allow the child to meet with the judge in chambers, without the parents present, and with attorneys for parties and the court reporter present.

#### *5. The child's wishes are not court-ordered*

Concern: The child may not understand that the judge will not always do what they ask and may become upset when they don't get what they want.

Solution: Children want to be heard and don't necessarily expect their wishes to always prevail. Indeed, being included in court proceedings often matters more to the child than the end result. Allowing them to be part of the process enables the child to accept and come to terms with a result or court order they don't like. The judge should explain the ruling and provide the child guidance on what must happen for the child's desired outcome to occur. The child's attorney or guardian ad litem should also advise the child what the role of the judge is and prepare the child for how the judge may rule. After the hearing, the child's attorney or guardian ad litem should review the decision with the child and ensure the child knows why the judge ordered what she did.

#### *6. Parents' privacy rights will be impacted if the child is present*

Concern: Parents have a right to privacy about their issues and may not want the child to hear about their problems, drug use, or mental illness or see them in handcuffs.

Solution: Often children know about their parents' issues because they have lived with the issues their whole lives. Most children's ideas of what is happening to their parents in prison or in rehabilitation are worse than reality and it may be good for them to see that their parents are okay and healthy. The child may also be excused for portions of the hearing when parents' private issues are being discussed.

#### *7. The court hearing will not be meaningful for the child*

Concern: The judge may not know how to properly engage the child and the child will not understand what is going on as much of the court proceeding involves language that is not familiar to the child.

Solution: Court hearings should be accessible to both parents and children, and legal "lingo" should be minimal and legal terms should be clearly explained. Judges should take

advantage of educational opportunities to learn the best ways to communicate with children. Hearings should thoroughly address the child's issues and ensure that the child has been heard. The child should be prepped to speak to the judge and ask any pertinent questions. Please see Appendix A for judicial bench cards which provide age-appropriate guidance on engaging children in the courtroom.

*8. If the child is present, the court hearing will take longer*

Concern: Judges' dockets are full and they don't have enough time for hearings as it is. They can't add more time by including children. This will increase wait times and may require postponing some hearings, which may violate ASFA timelines.

Solution: Children (and parents) deserve time to be heard and their cases to be closely examined. A child's presence improves the quality of hearings and enables the court to get information and have a "human face" that enhances decision-making. Hearings that conform to the recommendations of the *RESOURCE GUIDELINES* will likely take longer at first, though once the judge and stakeholders become accustomed to the substantive requirements, hearing times frequently shorten, and total time the child is in care will also shorten, thereby reducing future hearing needs.<sup>23</sup>

*9. The child does not want to attend court proceedings*

Concern: The child says he doesn't want to go to court hearings.

Solution: Before this request is taken at face-value, the court should ask how the child was notified of the hearing, by whom and when, whether she was encouraged to attend, whether the hearing process was explained to her, whether transportation was made available, and whether there was a school or extracurricular activity conflict. This will help all stakeholders assess how barriers can be removed to support the child's attendance at court. If, after questions about the child's reluctance to attend have been satisfactorily answered, the child still does not want to attend, the judge can decide that the child's attendance would not support his well-being.

## **CHILDREN IN COURT POLICY AND PRACTICE RECOMMENDATIONS**

Jurisdictions should adopt policy to address the issue of children participating in court hearings. The policy should focus on cultural sensitivity at every stage, and begin with citation to the appropriate federal, state, local laws and court rules, if any, that govern children coming to court in the local jurisdiction. It should also be reviewed periodically and updated with new law, court rules, and agreed-upon practice and policy changes. The recommended policy provisions below are based on judicially-led collaborative systems change processes where all stakeholder groups are represented at the table and contributing to the systems change work, such as those utilized in NCJFCJ Model Courts.<sup>24</sup>

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<sup>23</sup> *Right from the Start: The Courts Catalyzing Change Preliminary Protective Hearing Benchcard Study Report -- Testing a Tool for Judicial Decision-Making*, (2011), National Council of Juvenile and Family Court Judges, Reno, Nevada.

<sup>24</sup> Adapted from Khoury, A., *Engaging Youth in Court: Sample Court Policy*, American Bar Association Center on Children and the Law Child Law Practice, May 2011, Vol. 30 No. 3.

For more information on NCJFCJ Model Courts, please see <http://www.ncjfcj.org/our-work/model-courts>.

*Decide that children should be present at their dependency court hearings.*

As a first step, a court and its judicially-led collaborative can develop a policy, mission statement, or other guiding principle to serve as a focal point for all stakeholders related to bringing children to court. Such a statement can focus on how children feel empowered and in control when they provide input to the decision makers about aspects of their life, and how judges make critical decisions in a child's life about placement, education, permanency, visitation with family, and well-being needs.

An example is the policy of the National Council of Juvenile and Family Court Judges:

It is the policy of the National Council of Juvenile and Family Court Judges that children of all ages should be present in court and attend each hearing, mediation, pre-trial conference, and settlement conference unless the judge decides it is not safe or appropriate.

To support this critical practice, the NCJFCJ makes the following recommendations related to children's participation in dependency court:

- Judges should seek and participate in training on how to best engage children in court.
- Courts should develop policies and protocols to ensure that children have the opportunity to attend all court events.
- Children should be parties to their cases and appointed competent representation.
- Children should receive meaningful notice of and preparation for hearings.
- When children are not present in court, the judge should ask why and make findings as to the reason the child is not present. If the judge does not find good cause for the child's absence, the case should be continued to an expedited time certain to secure the appearance of the child. The court should work with the agency and the caregivers to ensure the child has transportation to court.

*Determine under what circumstances it is acceptable for a child to not be present at her dependency court hearing.*

- The child does not want to attend after being informed about the hearing and its importance.

Generally, children should not be forced to attend their court hearings. However, a judge should not exclude a child because she does not want to attend unless the judge is assured that the child has been fully informed about the hearing and its importance. Further, the judge should know the reasons why the child does not wish to attend and should make a finding accordingly. Finally, age appropriately, the judge should consider requesting a brief written statement from child saying why she does not want to be present in court.

If the child does not want to see her parents or hear what may be said in the court hearing, the judge can speak with the child without her parents present to give her an opportunity to share information and ask questions.

If the child's schedule prevents her from attending, the judge should consider rescheduling the hearing so the child can attend. To prevent scheduling conflicts, children should be included in the scheduling process, and school or extracurricular calendars should be considered.

- Judge determines it's contrary to child's interest.

If a party objects to a child being present for all or part of the hearing, the judge should hear evidence to determine whether there is good cause to exclude a child who desires to be present at her hearing. This good cause standard should be high and, where practical, require a mental health professional's opinion that attending court would be detrimental to the child. If the judge determines that a child should not attend court because it is not in her best interest, then the judge should document in the court order whether the child was present and if not, why not. Requiring such a finding in the court order signals to all parties the importance of having the child present during the hearing and that there must be a reason to exclude the child

*Determine acceptable alternatives to a child's complete participation*

- Temporarily exclude the parent/guardian

The judge may temporarily exclude the parent while the child is present. The parent's attorney may still be present. This allows the child to be involved and the court to gain necessary information from the child, but does not force the child to be in the same room with the parent.

- Have the child attend a portion of the hearing

The judge can speak to the child about issues relating to permanency, placement, school, siblings, and other issues that are important to the child and when the judge discusses issues that will be detrimental to the child to hear, the child can be excused. This, again, allows the child to be involved but not hear potentially harmful information.

- Talk to the judge in chambers

If the child wants to speak to the judge without being in the courtroom, or the courtroom is unsuitable for another reason, the judge may, adhering to the jurisdiction's laws, court and ethics rules, speak to the child in chambers. The informal setting may be more comfortable for the child. For more information about *Ex Parte Communications with children*, please see *Ex Parte Communications between Children and Judges in Dependency Proceedings* available at

[http://www.americanbar.org/groups/child\\_law/projects\\_initiatives/empowerment/youthincourt.html](http://www.americanbar.org/groups/child_law/projects_initiatives/empowerment/youthincourt.html).

- Use video technology

Video technology is easily accessible and has minimal cost. Many courtrooms are (or can easily be) equipped with internet access and video capabilities. Using such technology, the child can participate in the hearing from home or school. This will allow the child to be involved, while remaining in a familiar setting and without disrupting her schedule. Skype is an increasingly easy means of electronic participation in hearings.

- Letter and hearsay statements

The child, with the assistance of her representative, can write a letter to the judge giving her input into decisions that the judge will make. Some jurisdictions have found forms with specific questions and requests for information or updates helpful in eliciting responses from child. Children must understand that this information will be provided to all parties.

*Ensure that each child has competent representation*

A judge and judicially-led collaborative can develop agreed-upon guidelines and expectations of children’s attorneys as part of a jurisdiction’s policy or practice strategy to bring children to court.

Key to the child’s success during his case and after the case closes is competent, well-trained representation. This is fundamental for all dependency case practice. The child’s attorney should be trained in child welfare law, always attend hearings with the child, and should have met frequently with the child prior to each hearing.

State law varies on the type of representation children receive in dependency court. Regardless of the type of representation, federal law requires that judges “consult” with the child in some manner, which ensures that the child’s opinion is heard by the judge. If the judge doesn’t think this is occurring, the judge should order a lawyer to be appointed or replaced. Also, there may be specific issues that require the judge to appoint legal representation such as:

- The case involves an older youth;
- The youth’s opinion differs from her representative; or
- The case involves complex situations like
  - Special education,
  - Medication, or
  - Residential placement needs.

A judge can ensure competent representation by supporting thorough and regular training requirements of attorneys who represent children, supporting realistic caseloads and competitive compensation for children’s attorneys, and holding attorneys accountable to high-quality advocacy both inside and outside the courtroom.

When the child is involved in both the dependency and juvenile justice systems, the judge should ensure he has all the pertinent information before making sentencing decisions. The

judge should ensure that if the one attorney is not representing the child in both the dependency and juvenile justice cases, the attorneys in both cases work together.

### *Scheduling a child's hearing*

Hearings should be set for a specific time, if possible, in order to minimize the waiting time for the child and other participants. Sitting in a courthouse for several hours can dissuade a child from attending future court hearings. Additionally, time-certain hearings will cut down on the number of people in the waiting area minimizing the chance of a child seeing a parent or caregiver she shouldn't see.

Setting hearings at a time-certain will also minimize the amount of time the child is out of school. Other ways the court can limit school absence, while promoting court participation, include:

- Setting hearings taking into account the child's school schedule. The judge should consult the local public school calendar when scheduling a hearing. There are school holidays, teacher work days, and other days when school is not in session when hearings can be scheduled.
- Setting hearings for after school hours for school-aged children.
- Making every effort to call cases with children present first so the child can leave and get back to school.

If the child's schedule prevents her from attending, the judge should consider rescheduling the hearing so the child can attend. To prevent scheduling conflicts, children should be included in the scheduling process, and school or extracurricular calendars should be considered.

### *Develop and use child-friendly notices of the hearing*

Most courts have a standard procedure for notifying the parties of each dependency hearing. Some place the burden on the court to provide such notice and others place the burden on the child welfare agency. In either case, however, seldom does the child get a personal, written invitation to attend the hearing. Children inconsistently receive informal oral notice from the social worker, attorney, CASA or foster parent. There should be a consistent and mandatory way that children receive notice of the hearings and invitation to attend, in language they can understand. These notices should go directly to the child in their placement, as well as being followed-up by notice and invitation from the case worker, CASA, GAL, and the child's attorney.

### *Prepare the child to attend the hearing*

A court policy and practice strategy to support preparing the child for court should include the court's, attorney's, social worker's, therapist's and other stakeholders' roles and responsibilities related to preparing the child to come to court. Guidelines, statutory language and agency policy can also be jointly developed to support preparing children coming to court.

The way to ensure the most meaningful and least stressful court experience for a child is to properly prepare her for the hearing. The child's representative should role-play the hearing so the child knows what to expect and help the child decide what she's going to say to the judge, learn how to talk to the judge, and learn about courtroom etiquette. Among other things, the child's representative should inform the child:

- Who will be present and what their roles are.
- What questions the judge is likely to ask.
- What topics are likely to be discussed.
- What information the judge gets from the various court reports.
- Whether she will have the opportunity to speak with the judge.
- What she should wear and how she should act.

The social worker and the foster parent should also prepare the child and answer any questions she may have. The judge might allow the child to sit on the bench as a means of getting the child to relax and be more comfortable in the courtroom environment. The collaborative should also look into ways of separating infants and toddlers and older children in child-friendly waiting areas, to promote their comfort.

The social worker should also inform the child's foster parents about each hearing, who will be there, and how to talk to the judge. This enables the foster parents to answer any questions or concerns the child has about the hearing. The child's attorney, GAL, or social worker should also contact the child's caregiver before and after the court hearing to make sure the child is comfortable, to see if any concerns were raised by the child, and to convey anything that transpired during the hearing that the caregiver may need to know about.

#### *The child should be able to bring a supportive person*

Children are understandably nervous and anxious about appearing in court and speaking to a judge. Having a familiar, trusted person with the child can relieve some of the anxiety and allow the child to speak more openly and have a more meaningful experience. This person can be a relative, the court appointed special advocate (CASA), mentor, teacher, or other trusted adult. Whether or not that individual can actually be present for the hearing will depend on the jurisdiction, but children feel comforted even knowing that the individual is in the building. To implement this policy component, assess how this may impact confidentiality and whether the court is open or can be opened by the judge.

#### *Transporting the child to the hearing*

The collaborative team should develop a means of ensuring that the child is safely transported to court. This should be included in the policy and practice document. Some jurisdictions specifically require the child welfare agency to transport the child to court. Other jurisdictions, while sometimes obligating the child welfare agency to ensure the child's presence in court, allow others to actually provide the transportation. If the youth is old and mature enough, the youth can drive or take public transportation to the hearing.

Transportation might be provided by the case worker, foster parent, CASA, appropriate supportive person attending the hearing, or others in compliance with the laws and rules of

the jurisdiction. The court can request or require that the agency transport the child, and this can be achieved by:

- Including transportation to court as a contracted responsibility of the foster parent or group home; and
- The court or agency paying for transportation to court, regardless of cost, once per year or more.

Transportation to court can be made more efficient by scheduling hearings around activities taking place close to the courthouse, like visits or other appointments for the child.

#### *The judge should ask about child's presence*

In each hearing, the judge should inquire whether the child is present and, if not, why the child isn't present. This should be part of the judge's recognition on the record of all the parties who are present, which should include making note if the child is an infant or toddler and is in the courtroom for the hearing. The development of an agreed-upon policy and practice document enables all stakeholders to know this question is coming and be prepared for it. The question also signals to the parties that the judge values the child's presence and recognizes the importance of having the child's input and empowering the child by allowing her to be involved in the decision-making process. This, combined with instructions by the judge, will help ensure the child's presence.

#### *Age-appropriate interactions*

The child's appearance in court should be meaningful to both the child and the judge. A primary purpose for involving the child in the hearing is to empower and give back some sense of control to the child. Additionally, the judge can also learn things from talking to the child about her case and the judge can gain insight from observing the child interact with caregivers and parents.

Meaningful engagement cannot happen unless the judge knows how to make the child comfortable and ask appropriate questions. Because of the complexity of the court process and the unfamiliar legal language, the judge should take the opportunity to explain the proceeding and his ruling to the child and ensure the child does not have any questions.

If the judge has a young child in court, it is important to be familiar with developmental milestones. Judges should attend trainings for more in depth knowledge on communicating with system involved children in age appropriate ways. For infants and young children from birth to 12 months old, permanency observations might include:

- How does the child interact and respond to caregivers, parents, and guardians?
- Is the child meeting developmental milestones?
- Does the child appear healthy and well-cared for?

Observations of toddlers and preschoolers in the courtroom might also include:

- How does the child act when answering questions (if verbal)?

- Who does the child look to for help answering questions?
- Is he scared? Anxious? Avoidant?
- Does he look to the caregiver for the “right” answer?

A verbal child’s presence in the courtroom also provides an opportunity to ask her questions. The judge should use simple language, speak slowly, and allow the child time to process the question. Younger children can better understand concrete terms and will recognize names better than pronouns. For further guidance, please see the age-appropriate bench cards referenced in Appendix A.

#### *Post-hearing support for the child*

Following the hearing, the child may be confused or have questions. The child’s representative should spend time with the child ensuring that she understands what was ordered, what’s going to happen next, and when the next court hearing will be. The child’s representative should allow the child to ask any questions right after the hearing and provide her contact information so if the child has questions later she can contact the representative. The foster parent should know what happened and how to get in contact with the child’s representative if the child has questions.

The collaborative team should consider ways of getting feedback from children and child on their experiences in the courtroom to assess ways of improving their experience for them.

### **CONCLUSION**

Children’s lives are turned upside down when they become involved in the child welfare system, especially when they are placed in foster care. They often lose control and predictability over many facets of their day to day lives. Decisions are often made without their input. When court actions are filed, judges decide where the child will live temporarily and permanently, where the child will go to school, when the child will see his parents, siblings, and extended family, along with many other decisions about the child’s well being.

Judges can empower children by ensuring every child has a voice in the decisions being made about and for them in dependency court. When judges observe and interact with children in court, they are powerfully reminded how the young person’s life is being drastically affected. When children participate, judges receive evidence that may not otherwise be available to help them understand the child’s view about a variety of issues that directly affect their lives. This helps judges achieve better and timely outcomes for children and families.

## APPENDIX A

### JUDICIAL BENCHCARDS FOR AGE-APPROPRIATE ENGAGEMENT OF CHILDREN

The American Bar Association Center on Children and the Law Bar-Youth Empowerment Project has developed many materials to support judges, attorneys, Court Appointed Special Advocates (CASAs), Guardians *ad Litem* (GALs) and other stakeholders with meaningfully and appropriately involving children in their court hearings and case planning.

The Bar-Youth Empowerment Project has developed a formal Training and Technical Assistance Package that includes a number of helpful materials for lawyers and judges. Information and additional resources can be found here:

[http://www.americanbar.org/groups/child\\_law/projects\\_initiatives/empowerment/youthincourt.html](http://www.americanbar.org/groups/child_law/projects_initiatives/empowerment/youthincourt.html)

The Bar-Youth Empowerment Project has also a series of benchcards designed to assist judges with meaningfully involving children in their court hearings. Please click on each of the following links to download the benchcards:

[Benchcard for Young Children](#)

[Benchcard for Toddlers](#)

[Benchcard for School-Aged Children](#)

[Benchcard for Adolescents](#)

[Benchcard for Older Youth](#)

## APPENDIX B – RESOURCES

- National Council of Juvenile and Family Court Judges website: [www.ncjfcj.org](http://www.ncjfcj.org)
- Key Principles of Permanency Planning:  
[http://www.ncjfcj.org/sites/default/files/keyprinciples.final\\_permplanning.pdf](http://www.ncjfcj.org/sites/default/files/keyprinciples.final_permplanning.pdf)
- Bar-Youth Empowerment Project of the American Bar Association Center on Children and the Law aims to improve outcomes for children currently in foster care as well as young people who have aged out of care by promoting child participation in court cases that affect them a offering access to legal counseling and representation to children in need of specialized services.  
[http://www.americanbar.org/groups/child\\_law/what\\_we\\_do/projects/empowerment.html](http://www.americanbar.org/groups/child_law/what_we_do/projects/empowerment.html)

A number of helpful articles about child involvement in court are available:

- [Seen and Heard: Involving Children in Dependency Court](#)  
This article includes an overview of national policies addressing children's participation in court, followed by discussion of the benefits of such participation, and concrete suggestions for reforming practice, policy, and systems to better engage children in the court process.
- [Seen and Heard: Involving Children in Dependency Court](#)  
This PowerPoint presentation, developed by Andrea Khoury, reflects the information covered her Child Law Practice article, Seen and Heard: Involving Children in Dependency Court. It includes policies of National Judicial and Bar Associations, information about what is happening around the country related to this issue, and a discussion of benefits when children participate, policy and practice considerations, tips for involving children in court proceedings, and systemic changes to increase child participation in court.
- [With Me, Not Without Me: How to Involve Children in Court](#)  
This article offers tips to help lawyers and judges prepare for children's involvement in child welfare proceeding by: court making courtroom accommodations that help children feel comfortable participating in the court process and asking age-appropriate questions to obtain information from children that will aid the decision-making process.
- [Ex Parte Communications between Children and Judges in Dependency Proceedings](#)  
This article addresses *ex parte* communications from children and youth with the court by reviewing governing rules and laws. Through three case examples, the article provides tips for judges and attorneys, including for jurisdictions that lack case law or court rules on point.

## RESOURCES FOR YOUTH

- [Hearing Your Voice: A Dependency Guide for Youth](#)  
The Bar-Youth Empowerment Project, in partnership with Florida’s Children First and the Florida Court Improvement Program, has developed “[Hearing Your Voice: A Dependency Guide for Youth](#)” The booklet is designed to help youth understand the court process, and empower them to be involved.
- [On Your Own, But Not Alone: A Guide for Florida Youth Transitioning Out of Care](#)  
The Bar-Youth Empowerment Project, in partnership with Florida’s Children First, has developed a “know your rights” manual for youth. The booklet is designed to help youth in Florida prepare for the transition to independence.
- [10 Things to Remember When You Leave Foster Care](#)
- [Know Your Rights!](#)
- [Become Involved!](#)