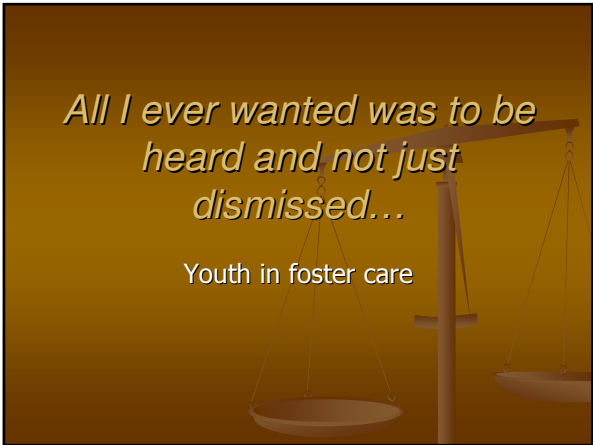


Seen and Heard
Involving Children in Dependency Court

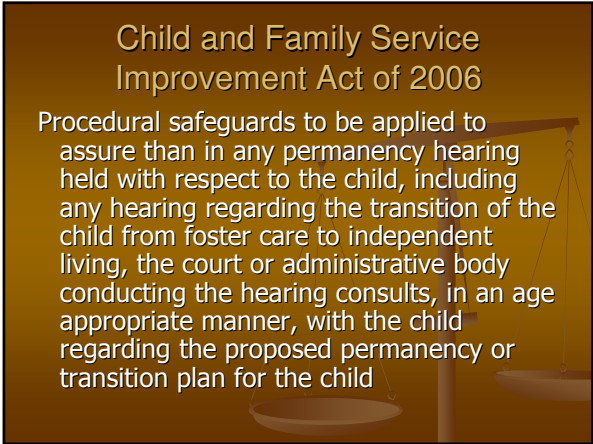
Andrea Khoury
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National Child Welfare Resource Center on Legal and Judicial Issues

Vermont
October 28, 2009



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

Youth in foster care



Child and Family Service Improvement Act of 2006

Procedural safeguards to 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

Does "consult" mean child has to be present in court?

- Feds are saying no – "We do not interpret the term "consult" to require a court representative to pose a literal question to a child or require the physical presence of the child at a permanency plan (service plan review hearing). However, the child's views...must be obtained by the court for consideration during the hearing."

In re Pedro M (NY 2008)

- If the purpose was not to encourage and increase the direct participation of children in Family Court proceedings, the new consultation policy would be just window dressing
- The child will be present and the proceedings are meant to be a two-way conversation between the judge and the child

Fostering Connections to Success and Increasing Adoptions Act 2008

- Transition Plan
 - 90 days before exiting care
 - Plan must be driven by the youth
 - Court should be reviewing this document

Who is saying what?

- NCJFCJ – Resource Guidelines
- ABA – Standards for Representing Children in Abuse and Neglect Cases
- NACC – ABA Standards Amended
- Pew Commission – Fostering the Future
- UNLV conference on Representing Children in Families

Around the country

- Age
 - New Mexico – 14 (compelling v. best interest)
 - Virginia – 12
 - Michigan - 11 (notification)
 - Idaho – 8 (notice and right to be heard)
- Other criteria
 - Minnesota – children have the right
 - Florida – best interests
 - California – children's right

Other state examples

Idaho - I.J.R. 40 (b) – After the adjudicatory hearing, a child eight (8) years of age or older, shall be provided with notice of, and have a right to be heard, either in person or in writing, in any further hearings to be held with respect to the child. The Department of Health and Welfare shall provide this notice and shall confirm to the court that the notice was given

Arizona – Proposed Rule 41(A) – At every substantive dependency hearing, such as the Preliminary Protective Hearing, the Report and Review Hearing and the Permanency Hearings, the child who is the subject of a dependency proceeding shall be present. Upon motion of the child, the court may enter a written order excusing a child from each hearing, for good cause shown. The court shall determine whether counsel for the child had meaningful contact with the client prior to each substantive hearing.

Arkansas -A.C.A. § 9-27-325(c)(1) At the time set for hearing, the court may: Proceed to hear the case only if the juvenile is present or excused for good cause by the court

Oregon - O.R.S § 419B.875 Child is a party and parties are entitled to notice of proceedings and right to appear.

Vermont

- **33 V.S.A. § 5307 – Temporary Care Hearing** (c) The following persons shall be present at the temporary care hearing: (1) The child, unless the child is under 10 years of age and the presence of the child is waived by the child's attorney. For good cause shown, the court may waive the presence of a child who is 10 years of age or older.
- **33 V.S.A. § 5311. Service of summons and petition; no request for temporary care order.** (c) The summons and petition may be served by mailing a copy by certified mail return receipt requested to the child and to the child's parent, guardian, custodian, or care provider. Service of the summons and petition may also be made by any sheriff, deputy, or constable. The court shall provide a copy of the summons to the state's attorney and a copy of the summons and petition to the department and the attorney for the child.

Benefits when youth participate...

- Sense of control
- Understanding the process
- Information for the court
- Empowerment/Participation
- Engage youth in problem solving at all levels – including court
- Accountability of professionals
- Higher quality hearings

Policy and Practice Considerations

- What are youth's wishes?
- How old is the youth?
- What is the developmental level of the youth?
- Will attending court upset the youth?

Policy and Practice Considerations

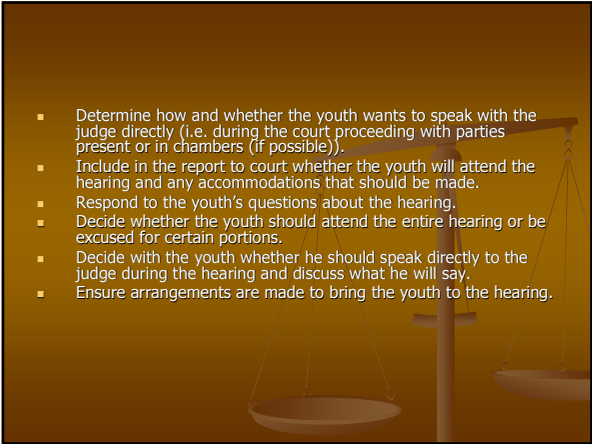
- Will attending court disrupt the youth's routine?
- Will court be confusing or boring to the youth?
- Who will transport the youth?
- Will the court need additional time for the hearings?
- What type of hearing is scheduled?

Tips for involving youth in court proceedings

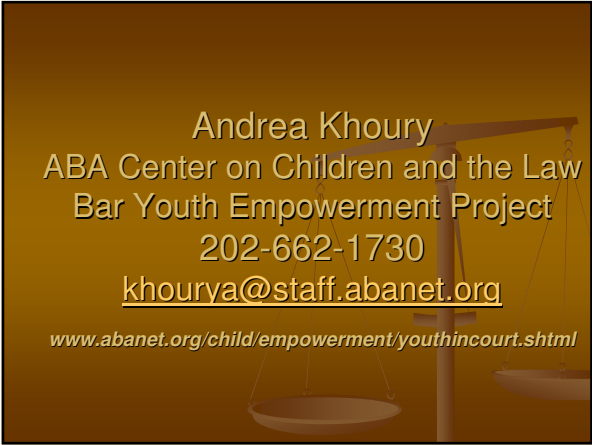
- Have the youth present throughout the hearing
- Present the youth's testimony in chambers
- Arrange in advance visit to the courthouse
- Have the youth wait in a waiting area for the hearing
- Exclude the youth from court during harmful testimony
- Present the child's hearsay statements in court

GAL prepares the child

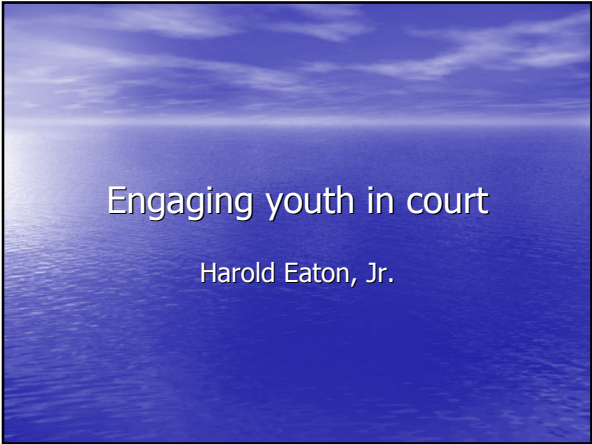
- Provide the youth with at least 2 weeks notice of the hearing.
- Let the youth know that he may have to wait for a couple of hours and to bring school work or other things to occupy his time.
- Discuss who will be present at the hearing and what their roles are.
- Determine whether the youth wants a supportive person present during the hearing.
- Explain your role as guardian ad litem and that you have to advocate for the youth's best interests.
- Let the youth know what is in the GAL's report to the court.
- Tell the youth that you will tell the judge what she wants.
- Discuss what is expected to happen.
- Let the youth read the child welfare agency's report to the court (or tell the youth the pertinent portions) and find out whether the youth has any responses.
- Find out what the youth wants to tell the judge to know.
- If the youth's position is different than yours, request alternative counsel be appointed.



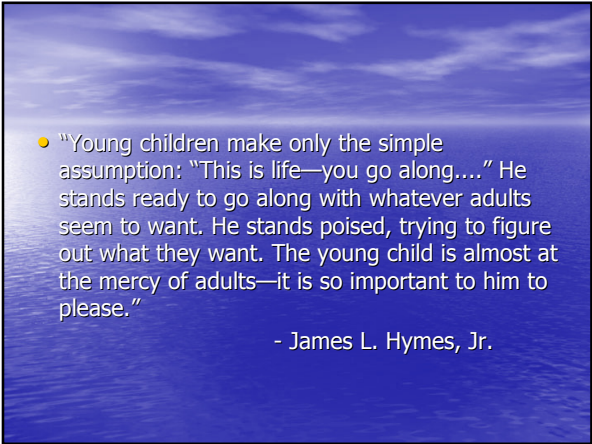
- Determine how and whether the youth wants to speak with the judge directly (i.e. during the court proceeding with parties present or in chambers (if possible)).
- Include in the report to court whether the youth will attend the hearing and any accommodations that should be made.
- Respond to the youth's questions about the hearing.
- Decide whether the youth should attend the entire hearing or be excused for certain portions.
- Decide with the youth whether he should speak directly to the judge during the hearing and discuss what he will say.
- Ensure arrangements are made to bring the youth to the hearing.



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Should children be in court?

- What is the law?
- What has experience shown?

The law:

- 33 VSA § 5307-Temporary Care Hearing
- If child is under 10, presence may be waived by child's attorney.
- If child is 10 or older, presence may be waived by the court for good cause shown.

Prior Law

- If the court finds that it is to the best interest and welfare of the child, his presence may be temporarily excluded, except while a charge of his delinquency is being heard at the hearing on the petition. 33 VSA § 5523(c).
- This provision was not carried forward in the recent revisions to Title 33.

Federal law:

- The court is required to confer with the child in an age appropriate manner concerning any permanency plan or transition plan for children over age 16.

Bottom line:

- Vermont law expressly provides for attendance of child only at temporary care hearings.
- Federal law mandates court "confer" with the child at permanency or transition plan hearings.
- Question: At what other times should the child be there.
- Second question: When does the child get to decide on attendance?

Concerns

- What are the most common concerns about having children in court?
- That the court proceeding is too stressful/traumatic for the child.
- That the child will be disruptive to the proceedings.

Specific case issues

- Certain cases increase the risk of stress/trauma to the child.
- Physical/mental abuse by parent.
- Contested merits hearings.
- Cases of high conflict between parents.

Unrecognized trauma

- Is there a trauma which goes largely unrecognized that comes from the child feeling like they have no role in the court process?

Benefits from child in court

- Increased understanding of the process.
- Opportunity to interact with the judge.
- Putting a "face" on the case.
- Decreased stress to the child.
- Ability to expedite hearings.

Strategies to reduce the potential for trauma

- Use of a dedicated children’s room.
- Create a friendly courtroom environment.
- Stuffed animals for young children.

Importance of interaction with child in transition plan

- Meeting medical needs of child in transition.
- Meeting educational needs of child in transition.
- Addressing housing issues.
- Encouraging child for gains made during foster care.
- More frequent hearings if necessary as time for transition approaches.

• “There is always one moment in childhood when the door opens and lets the future in.”

-Graham Greene
