

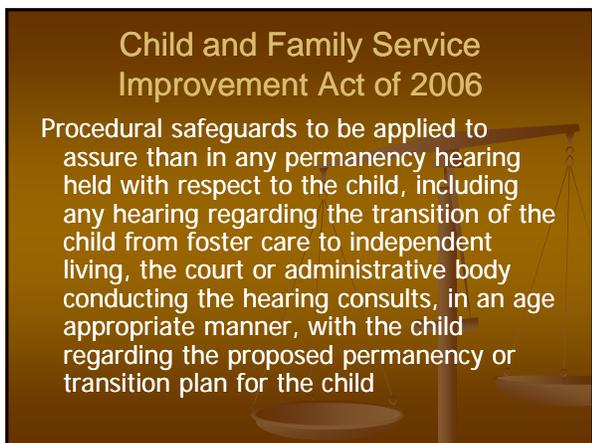
Seen *and* Heard
Involving Children in Dependency Court
Judicial Role

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Issues



*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

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

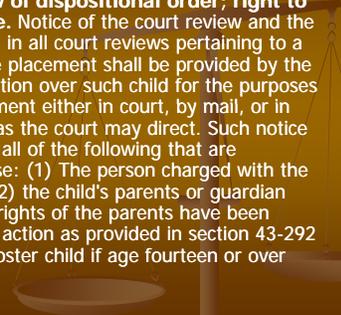
Around the country

- Age
 - Kansas – 14
 - 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



Nebraska

- **§ 43-1314 Review of dispositional order; right to participate; notice.** Notice of the court review and the right of participation in all court reviews pertaining to a child in a foster care placement shall be provided by the court having jurisdiction over such child for the purposes of foster care placement either in court, by mail, or in such other manner as the court may direct. Such notice shall be provided to all of the following that are applicable to the case: (1) The person charged with the care of such child; (2) the child's parents or guardian unless the parental rights of the parents have been terminated by court action as provided in section 43-292 or 43-297; (3) the foster child if age fourteen or over



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



The presence of children in court proceedings that affect them is invaluable, even when they are too young to express themselves. The child's presence alone can give a face to what would otherwise be simply words on paper. Nothing can substitute for personally observing and engaging a child.
-Judge William G. Jones (ret)

Initial Inquiry

- Whether the child is present
- If not, why not?
- Was child given notice?
- Was the child provided transportation?
- Should the hearing be postponed so child can be present?
- Document in court order

Infant

- Make the child "known" to the court—the child needs to become a person with a name
 - Presence at occasional court proceedings
 - Representative who "knows" the child fully and has spent enough time with the child to bring him/her to life for the court. This designee should be allowed to speak in the proceedings
 - Repeated visits over time help the people to remember the child is growing fast and changing rapidly
 - Pictures of child, updated with each court proceeding
- Observe appearance and behavior
 - Does the child appear healthy?
 - Interaction with parents, caregiver, guardian
 - Exhibit appropriate milestones
- Milestones
 - Physical
 - Verbal
 - Responsive
- Refer child for developmental evaluation

Toddler

- Have simple toys available—this allows for something to mutually focus on, helping child to regulate and feel more comfortable
- Learn something about the child that they like and comment—this helps to connect
- If helpful, offer to have a conversation in chambers, making sure it complies with all procedural rules.
- **Communicate with child**
 - Keep language simple and age appropriate.
 - Speak slowly and allow the child time to process the information.
 - Use concrete terms
 - Use names instead of pronouns.
 - Stop at regular intervals to ask the child if he understands and if he has any questions.
 - Ask the child to perform simple age-appropriate tasks (as outlined in the Milestone Chart).

Toddler

- **Sample questions**
 - How old are you?
 - Do you like where you are staying now?
What do you like (not like) about where you are staying now?
Suggest options (e.g., bedroom, pets, people who live there).
 - Do you go to preschool or daycare? What things do you like to do while you are there?
 - What kinds of things did you and your mommy (or daddy) do the last time you saw her (or him)?
 - Do you feel sad or miss anyone? Suggest options (e.g., brothers, sisters, grandparents).

Toddler

- **Observe the child's behavior and appearance**
 - How does the child interact and respond to caregivers, parents, and guardians?
 - Observe the child's demeanor when answering the questions (if verbal)
 - Who does the child look to for help in answering questions?
 - Is he scared? Anxious? Avoidant?
 - Does he look to the caregiver for the "right" answer?
 - Assess whether the child appears healthy and well kept.
 - Does the child exhibit appropriate developmental milestones?

School Age

- Have the agency encourage the child to submit report cards, letters, drawings, or other age-appropriate materials periodically. Refer to anything previously submitted.
- Encourage them to write out questions and concerns
- Review the outcome of the hearing with the child and answer any questions (or ensure that someone else will do so).
- Ensure the child understands what was ordered and why.
- If age appropriate, ask the child what he wants to accomplish before the next hearing
- Consult with the child and his caregiver when scheduling the next hearing so it does not interfere with the child's normal daily routine, including school.
- Keep a school district calendar on the bench to ensure there are no conflicts with state standardized tests.
- Encourage the child to attend the next hearing

School Age

Communicate with the child during the hearing

- Keep language simple and age appropriate.
- Talk with the child about his interests, likes, and dislikes.
- If helpful, offer to have a conversation in chambers, making sure it complies with all procedural rules.
- Provide an age-appropriate list of legal terms to the child before court to which he may refer during the hearing.
- Avoid legal jargon and acronyms.
- Encourage the child to ask questions, particularly if he doesn't understand a question or statement.
- Answer one question at a time.
- Recognize cultural differences in language.
- Avoid abstract questions.
- Recognize that school-age children usually answer questions literally. *For example:* Q: Are you in school now? A: No. The child may be referring to where she is right now (the courtroom) instead of the broader question of whether she attends school.
- Publicly praise the child's accomplishments.

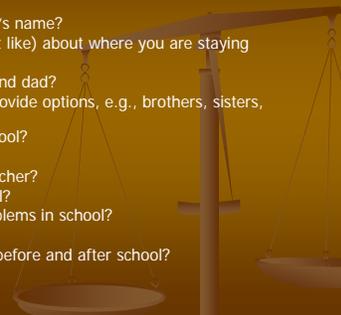
School Age

Observe the child's behavior and appearance

- Observe the child's interaction with caregivers, parents, and guardians.
- Does the child look to them for help, support, advice, etc.?
- Observe the child's physical appearance and health.
 - Is the child appropriately dressed?
 - Does the child look well-nourished?
 - Does the child have appropriate personal hygiene?
- Observe the child's body language.
 - Be mindful of signs that the child may be frustrated or overwhelmed

School Age

- How old are you?
- What is your best friend's name?
- What do you like (or not like) about where you are staying now?
- Do you see your mom and dad?
- Do you miss anyone? Provide options, e.g., brothers, sisters, grandparents.
- Where do you go to school?
- What grade are you in?
- Who is your favorite teacher?
- Who takes you to school?
- Are you having any problems in school?
- Do you have a tutor?
- What do you like to do before and after school?



Adolescents

- All of the school age considerations
- Ask for the youth's input and opinions.
- When appropriate, share court documents with the youth.



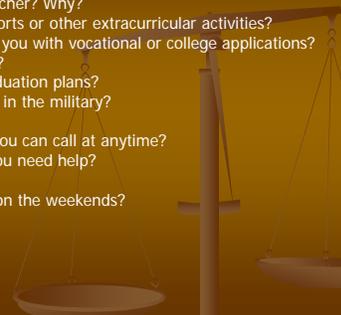
Adolescents

- How old are you?
- What do you like (or not like) about where you are staying now?
- Do you see your mom and dad?
- Do you miss anyone? Provide options, e.g., brothers, sisters, grandparents.
- Where do you go to school?
- What grade are you in?
- Who are some of your friends?
- What courses are you taking?
- Who is your favorite teacher?
- Do you participate in any extracurricular activities?
- Have you thought about a career or what you want to do when you finish school?
- Are you having any problems in school?
- Do you have a tutor?
- What do you do on the weekends?



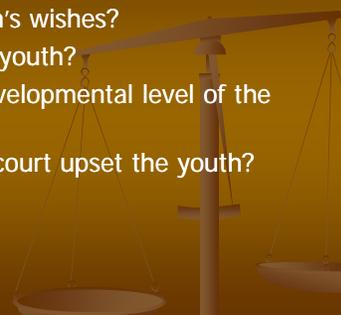
Older Youth

- Who is your favorite teacher? Why?
- Do you participate in sports or other extracurricular activities?
- Is there anyone helping you with vocational or college applications?
- When will you graduate?
- What are your post-graduation plans?
- Do you have an interest in the military?
- Do you have a mentor?
- Do you have someone you can call at anytime?
- Who do you rely on if you need help?
- Do you drive?
- What do you like to do on the weekends?
- Do you have a job?



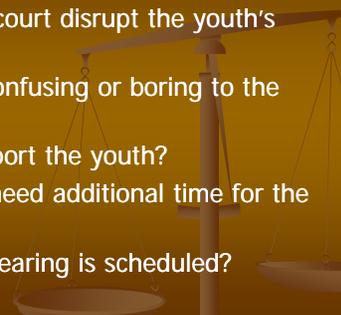
Policy and Practice Considerations

- 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'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

Destination Future Feedback

- Challenge 1: Lack of awareness of the court hearings
- Strategies
 - Send a friendly letter to youth and families about 2 weeks prior to court informing them of date, time, what to expect, what to wear, and other information that would make them feel more comfortable attending
 - Hold workshops for youth to increase their awareness of and self-advocacy in the court process
 - Develop a peer mentor/advocacy partner program for new foster youth that would allow older, more experienced youth to participate in proceedings for younger, newer youth who may not know they system or have the confidence to speak up. The peer mentors also could communicate with youth on court-related issues
 - Establish peer-led classes and trainings about the court process
 - Schedule court hearings months in advance and notify youth and families

Destination Future Feedback

- Challenge 2: Lack of Transportation
- Strategies
 - Require caseworkers to arrange transportation for youth to attend court
 - Decrease the distance between court and youth's placement
 - Allow youth to be present by phone or letter
 - Schedule hearings in the evening or on weekends so that youth do not have to miss school or work

Destination Future Feedback

- Challenge 3: Poor relationships between youth and their attorneys
- Strategies
 - Schedule meetings between attorney and youth prior to court date
 - Develop youth-led training for caseworkers and attorneys
 - Hold the system accountable for the number of attorney visits with the youth to ensure that there are frequent visits and that the youth can develop a relationship with the person who is representing them in court

Destination Future Feedback

- Challenge 4: Youth are not involved in permanency planning
- Strategies
 - Youth should be able to send a letter or otherwise communicate with the judge
 - Youth should be able to make decisions about their permanency
 - Youth should advocate for themselves with their attorney, CASA, caseworker, and GAL
 - More emphasis should be given to ensure that all parties are involved with the youth more frequently than just at a court hearing

What youth say about the courts and legal representation

- They don't like it...
 - When they are not notified about court hearings
 - When they rarely see or talk to their GAL except just before a court hearing
 - When they are told by caseworkers that they shouldn't go to court.
 - When they attend a court hearing, but then are not allowed inside the courtroom.
 - When they attend a court hearing, but the judge does not ask them any questions and sometimes does not talk to them at all
 - When they are not given information about how to prepare for a court hearing, what they can say and what to do.
 - When they can't find out what happened in court if they did not attend
 - When they feel powerless over what happens to them and feel that those decisions are made by people who don't know them at all, including the judge, caseworker, and GAL.

What youth say about the courts and legal representation

- They like it...
 - When they can write letters to the judge and feel like their views are heard by the judge.
 - When they go to court and the judge asks them how they are, how things are going, what they need, and if there is anything they want to say
 - When they go to FCRB or CRB reviews and have their opinions solicited and considered.
 - When there is a GAL to represent them in court so that they don't have to go (but only when they feel comfortable with their GAL)
 - When they have a supportive GAL who takes time to know them and tries to help them

What youth say about the courts and legal representation

- The system should...
 - Require youth to go to a court hearing at least once so that they have that experience and they understand what goes on in the hearings
 - Allow youth to speak in court, but not in front of their parents or foster parents, unless they request it.
 - Give youth the opportunity to speak directly and privately to the judge on a regular basis.
 - Provide youth with orientation and preparation prior to going to a hearing
 - Assist youth in preparing a written statement when asked by the court to do so.
 - Make sure that the attorneys who are supposed to represent them actually take the time to get to know them.

Study results

- Children with more advanced general legal understanding are less distressed about their hearing and understand more about decisions made in their cases
- Overall, most children do not experience negative emotional reactions to court participation and prior knowledge about the court process may make the experience even more positive
- Children need help understanding the legal system, particularly the decisions made on their behalf
- Teens consider fairness in their overall satisfaction with case outcomes
- Positive perceptions about legitimacy of legal system were associated with lower rates of delinquent behavior

- Children who attended hearings felt
 - They were given a chance to tell their side of things
 - The judge listened to them when they talked in court
 - They were treated fairly during the hearings
 - Their GAL and their case worker did a good job telling the judge about their situation
 - Trust in the judge to do what's best for them
 - Felt nervous about hearings but not upset in court and felt comfortable answering judge's questions
- Children who did not attend hearings reported
 - Lower ratings about whether they were given a chance to tell their attorney GAL about their situation
 - Less positive perceptions about whether the judge knew enough to make the right decision
 - Less confidence about whether someone at the hearing told the judge what they think
 - Less positive perceptions about whether their perspectives are valued

Let's talk about some examples

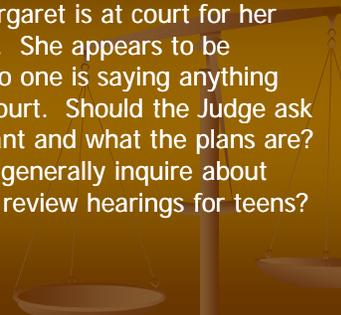
- Jamie is 11 years old and wants to come to court for his review hearing. The GAL knows that his mother's recent arrest for prostitution will be discussed and thinks this will not be appropriate for Jamie to hear. What should the GAL do? Who should decide what Jamie can hear? How could this be handled at court?

■ 16 year old Marcy is at her review hearing and her GAL says that she wants to return home. DHS turns to Marcy and asks her if the real reason she wants to return home is to see her bad news boyfriend without supervision. GAL objects saying child is not a witness and cannot be "cross examined". Should the child be allowed to speak without questioning?

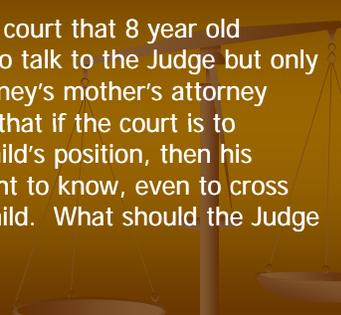
■ Michael is 14. He does not like to come to court – he says it is boring, pointless and the Judge is a "real jerk". The GAL is worried if Michael is forced to come to court, he will act out and maybe even say something inappropriate to the Judge. The Judge's policy is that all children over 14 should be at court. Who should decide what? How could Michael's concerns be addressed?

■ GAL knows 10 year old Luka wants to go home but GAL does not think this is in best interests of Luka and tells court that the child should stay in care. How should the GAL handle Luka's position?

■ 15 year old Margaret is at court for her review hearing. She appears to be pregnant but no one is saying anything about that in court. Should the Judge ask if she is pregnant and what the plans are? Should a court generally inquire about birth control in review hearings for teens?



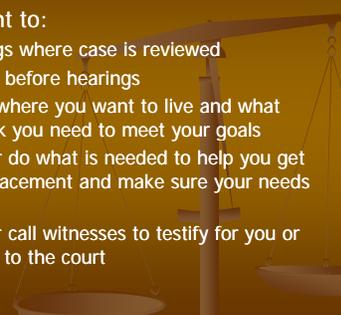
■ A GAL tells the court that 8 year old Barney wants to talk to the Judge but only in private. Barney's mother's attorney objects saying that if the court is to consider the child's position, then his client has a right to know, even to cross examine the child. What should the Judge do?



What we're telling the youth...

■ You have the right to:

- Attend all hearings where case is reviewed
- Meet with lawyer before hearings
- Tell your lawyer where you want to live and what services you think you need to meet your goals
- Have your lawyer do what is needed to help you get an appropriate placement and make sure your needs are met
- Have your lawyer call witnesses to testify for you or present evidence to the court



- Have your lawyer cross examine witnesses
- Tell the judge what you think about your placement and any needs that you have
- Have a judge determine if your needs are being met, if you are in an appropriate placement, and if you are receiving all the services you need to meet your goals
- Have information shared in court be kept confidential and discussed only with people who need to know about it to provide you with care and service
- Ask the judge to appoint another lawyer for you if you do not think your lawyer is representing your interests and wishes or doing their job

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