

YOUTH PARTICIPATION IN COURT PROTOCOL

History

Advocates for Children of New Jersey issued a report in July, 2011 regarding youth involvement in court hearings underscoring that "[A]cross the nation, child welfare and court professionals are increasingly recognizing the importance of involving youth in the decision-making process, including encouraging their attendance when appropriate, at court hearings." Moreover, the National Council of Juvenile and Family Court Judges recently passed a resolution underscoring the importance of youth participation in the court process stating that:

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, regardless of their age, unless the judge decides it *is* not safe or appropriate.

The New Jersey Legislature has recognized the importance of youth involvement in the court process as well by providing children a right to notice of and an opportunity to attend their permanency hearings as codified in N.J.S.A. 30:4C-61.2.

This Protocol is designed specifically to implement N.J.S.A. 30:4C-61.2 and 45 CFR 1355.20 which provide the authority for youth attendance and participation at permanency hearings. The primary goal of this Protocol is to maximize the successful implementation of this State statute and federal regulation, and whenever possible and in accordance with the child's wishes, to have a child appear in court for his or her permanency hearing and participate in it in a meaningful and appropriate fashion. Furthermore, cognizant of the challenges that may arise when a youth wishes to attend his or her permanency hearing, for instance, due to such obstacles as the youth's schedule (e.g. school) and the distance between the youth's residence and the courthouse, this Protocol also recognizes the availability of electronic communication, including but not limited to video and internet technology, to ensure that a child who wishes to be in court can attend his or her hearing. Nothing in this Protocol is intended to preclude a youth from providing a written statement expressing his or her wishes to the court.

PROTOCOL

Introduction

The American Bar Association (ABA) Center on Children and the Law Bar Youth Empowerment Project (Bar Youth Project), a partnership with Casey Family Programs, along with the National Child Welfare Resource Center on Legal and Judicial Issues (Resource Center) will provide technical assistance to pilot this Protocol in three (3) counties with varying demographics (i.e.

urban, suburban and rural) in an effort to accurately gather and analyze data concerning the issue of youth participation at permanency hearings. This pilot program will provide an opportunity to assess the implementation of the Protocol and will inform the ongoing efforts to increase youth participation at this important phase of the process to help ensure meaningful youth participation. In preparation for the pilot program, the participants in the selected counties will participate in a training to assist with the implementation.

Notice

Pursuant to N.J.S.A. 30:4C-61.2, the court shall provide written notice of the date, time and place of the permanency hearing to the law guardian in advance of the permanency hearing. The Office of Law Guardian shall develop an age appropriate letter advising the child(ren) of the permanency hearing. The law guardian is responsible for personally serving the letter on the child(ren). Proof of service shall be filed with the court. Personal service of the notice by the law guardian shall encourage contact between the child and his or her law guardian before the hearing.

Preparation/Debrief

The Division of Child Protection and Permanency (DCP&P) and the law guardian shall prepare the youth for appearances before communications with the court. Planning for the hearing should begin no less than 30 - 45 days before the scheduled permanency hearing. After the hearing, DCP&P and the law guardian are responsible for debriefing the youth following their appearance/participation in court.

DCP&P will work with the Office of Law Guardian to develop appropriate handouts and guidance documents for the youth. Possible options include short videos, booklets, or other materials that help prepare children for court. The preparation of these informational materials shall not delay the commencement of the pilot programs.

Transportation

Transportation will be a collaborative effort and one designed to ensure that all youth who wish to attend court are able to do so. The court should initially look to the child welfare agency that has custody of the child to make the necessary transportation arrangements. However, in order to ensure that transportation challenges do not prevent a child's presence at his or her permanency hearing, other options may need to be explored, such as resource parents, relatives, public transportation, the youth arranging his or her own transportation, or the law guardian investigator assisting with transporting the youth to court. Ultimately, if an agreement cannot be reached, the court will resolve the issue of transportation in a summary fashion.

Objections to Child's Participation

If a party, other than the child through his or her attorney, objects to the child's attendance in court,

that objection shall be raised no later than five (5) days prior to the permanency hearing. Any objection shall not prevent the child's participation. However, the modality and appropriateness of the child's participation shall be adjudicated, in a summary fashion, at a conference with the court prior to the permanency hearing.

Logistical Issues

The following logistical issues should be considered in order to maximize the successful attendance and participation of youth in a court hearing. Such considerations should include but are not limited to:

- Scheduling hearings to occur outside of school hours so that a youth does not experience absence from school.
- How best to ensure proper supervision, *if* necessary, during the proceeding to ensure all parties can fully participate.
- Identification of a private waiting area for youth prior to the start of the court hearing as appropriate and necessary.
- The number of youth who will attend a court hearing on any given day. A member of the Children In Court (CIC) staff will track the number of youth scheduled to attend their permanency hearings.

Training

Statewide training on ways to encourage and enhance a young person's participation in court should be provided periodically to DCP&P staff, judges, law guardians, CASA volunteers and court staff. However, prior to the implementation of this Protocol in the pilot counties, specific training must be provided to all stakeholders participating in the pilot. The ABA will assist in providing this initial training.

Court Orders

Standardized CIC orders will be amended to reflect whether a youth attends a court hearing. Specifically, the permanency hearing order should provide a space to memorialize whether the youth attended the hearing. Until such time as the standardized CIC court orders are amended, the court shall write in the name of the child who attends the hearing on the Order.