Youth in Court MYTHBUSTERS

COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE

House Bill 22-1038 provides all children/youth with Colorado dependency and neglect (D&N) cases the right to attend and fully participate in all hearings related to their case.[1] Colorado child welfare professionals previously identified several concerns about and/or barriers to child/youth court attendance.[2] The following questions and answers address those concerns and provide practices to combat those concerns.

1 Isn't it more important for children/youth to attend school than court?

81% of Colorado stakeholders cited time away from school as a barrier to youth court attendance, making time away from school the most commonly recognized obstacle to participation. Other obstacles are closely related to this issue, mainly docketing practices, as courts frequently set hearings during school hours and do not account for a child's/youth's schedule. While school attendance is extremely important, the empowerment and skills gained by attending court are also quite beneficial, as shown by current research.

The following practices can help facilitate child/youth participation in court while minimizing time away from school:

- Set hearings outside of school hours whenever possible.
- Follow time specific docketing practices.
- Give priority to cases where the child/youth is present.
- Consider the child's/youth's schedule when calendaring court events.
- Work with the child's/youth's school to ensure that court attendance does not negatively impact their education.

2 Won't children/youth be exposed to sensitive information that they shouldn't hear or be traumatized by the process?

64% of Colorado stakeholders identify exposure to negative information as a concern regarding children/youth in court. While this is a valid apprehension, considering that child welfare proceedings are inherently emotional and frequently adversarial, it does not need to be a barrier to participation. There is a perception that hearings can cause distress for children/youth by exposing them to court examinations that include questions about their parent's behavior as well as their parents willingness to change and seek help. Children/youth often report, however, that they do not hear anything about their parents in court that they didn't already know.[3] Additionally, studies show that children/youth experience lower levels of anxiety after participating in court.[5] In Colorado, stakeholders are also concerned with the fact that hearings are open to the public, which could cause embarrassment or upset for children/youth who are discussing sensitive information in court.

> *"I feel like I'm doing all the work because they aren't calling me, I have to set up meetings and take the time out of my day to do stuff to get my case in order. I have to make sure I'm taking the right classes and get everything ready for my case, and I'm doing everything for my case and then they baby me.""*
>
> – 16 year old Colorado youth in foster care

The following practices can help reduce the possibility of trauma or exposure to inappropriate information:

- Prepare child/youth for court by discussing who will be at the hearing, the purpose of the hearing, expectations and likely outcomes of the hearing, and addressing the child's/youth's questions before the hearing.
- Train judicial officers in strength-based communication skills to help enable them to engage with parents in a positive way.
- Request a closed courtroom if the child/youth is concerned with confidentiality.
- Allow in camera interviews if actual attendance will be traumatic for the child/youth.
- Engage former children/youth in helping to prepare child/youth for court hearings.
- Provide a support person, such as a therapist or victim advocate, for children/youth in court.

3 What if there is an existing protection order?

When there is an outstanding no-contact order between children/youth and a parent, it is possible that the child/youth may be scared of that parent or that the parent's presence may cause undue influence on the child/youth and what the child/youth is willing to say in court. While this concern is legitimate, courts can make accommodations in order for children/youth to feel comfortable and safe attending their hearings.

The following practices can be implemented to mitigate these concerns:

- Require the parent to leave for the portion of the hearing in which the child/youth is present.
- Allow child/youth to meet with the judge in chambers.
- Schedule a separate hearing for the parent if appropriate.

4 Aren't the benefits of court attendance outweighed by the burden of transporting children/youth to court?

Transporting children/youth to court may seem like a hassle, particularly when the child/youth is in a placement far from the courthouse. Additionally, it may not seem worth the time and cost of transportation when hearings are brief and children/youth spend more time driving to the courthouse than being in court. However, the benefits of child/youth attendance are so valuable that professionals should strive to find solutions to transportation issues.

The following suggestions can help alleviate the burden of transportation:

- Schedule hearings to coincide with planned visits or meetings near the courthouse that the child/youth will already be attending.
- Allow child/youth to participate in court proceedings via telephone or webcam.
- Identify a point person at the Department who is responsible for ensuring transportation.
- Include transportation to and from court as a priority with child/youth placement agencies, and include providing transportation in foster care contracts.
- Request that the court allow CASA's to transport child/youth to court.

5 Aren't children/youth too young to fully understand the impact of court and to make informed decisions?

There is a prevalent misperception that children/youth lack good judgment and the maturity to formulate educated opinions. However, according to scholars, "Studies have shown that children as young as 6 years of age have the capability to reason and understand...This is especially true for foster children, who, by necessity, have had to grow up more quickly then [sic] their peers."[6] Moreover, even if children/youth are too young to accurately assess their own needs, empowerment and affirmation of "personhood" are essential to a healthy environment[7] and can be gained through court attendance.

To ensure that court attendance is meaningful regardless of a child/youth's age, professionals can implement the following practices:

- Train judicial officers in strength based communication skills for engaging with children/youth and parents.
- Utilize the ABA Youth Empowerment – Youth in Court Benchcards to help facilitate child/youth engagement.
- Neutralize confusion by explaining the process to the child/youth in an age appropriate manner before the hearing.
- Answer any questions the child/youth may have openly and honestly.
- Allow child/youth to be present for as much of the proceedings as possible.
- Debrief with the child/youth after each hearing to explain what occurred and discuss potential next steps.

6 Won't children/youth become upset if the court doesn't order what they request?

The court makes a decision based on what is in the best interests of the child/youth, and the court may order something different than what the child/youth requests. Research indicates that people are more concerned about being heard and taken seriously than achieving their desired outcome.[8] Even if the judge does not agree with the child/youth's request, the process is still very beneficial.

The following practices can help negate disappointment when the court does not order what the youth requested:

- Meet with the child/youth before court to explain the judge's role and responsibilities. Help the child/youth understand the court's responsibility to make decisions based on what is in the best interest of the child/youth.
- Encourage judges to explain the court's order and the basis for the order, including if appropriate why the child's/youth's request cannot be granted.
- Debrief the child/youth after the hearing, answering any questions the child/youth might have about the court's decision.

7 Won't children/youth have negative experiences since wait times are often long and court facilities are not youth-friendly?

62% of Colorado child welfare professionals cited docketing and long waits as barriers to child/youth attendance in court. While this concern is tied into missing school, even if hearings are set at times that don't interfere with school, children/youth may still become bored and uninterested in the process when they are forced to wait for lengthy periods of time at the courthouse. While only 19% of Colorado stakeholders cited inhospitable court facilities as a barrier to child/youth attendance, the fact that court houses were not designed to host children/youth can make the waiting period even more difficult.[9]

The following practices can help promote more child/youth-friendly court facilities:

- Create a child/youth-friendly waiting area in an extra conference or jury room or by collaborating with a local school, college, or youth program to provide art, reading, or other programs that will occupy child/youth while they wait.
- Provide books or toys in the courtroom.
- Give child/youth a memento for participation; suggestions include a stuffed animal or a pin or sticker recognizing that they spoke in court.
- Follow time certain docketing or engage in a case call to prioritize cases for the docket.

8 Won't children/youth feel disempowered if they do not want to attend court but we require them to attend?

Children/youth shouldn't be forced to attend court. 54% of stakeholder respondents indicated that they were concerned that children/youth would be required to attend court hearings. Child/youth participation and attendance provide valuable benefits; if a child/youth objects to attending it is important to understand the child's/youth's reasoning and or fears. Professionals may be able help alleviate the child's/youth's apprehension through discussion and accommodations to address the child's/youth's concerns.

The following practices can help address the child's/youth's concerns:

- Talk with the child/youth regarding their reasoning for not wanting to attend court. Discuss the date, time, location, and purpose of the hearing, as well as the child's/youth's right to attend and fully participate in the hearing. Ask if the hearing date and time conflict with something important to the child/youth.
- Help the child/youth prepare for court—talk to them about whether they would like to talk to the court, what they would like to say, and how you can help them prepare for it. Examples include rehearsing it, writing it down, drawing a picture, or writing a letter.
- Make any accommodations to address the child's/youth's concerns, such as scheduling around the child's/youth's schedule, requesting a closed court room, helping the child/youth identify a support person, or allowing the child/youth to attend via telephone or video conference.
- Ultimately, do not require child/youth to attend or participate if they truly do not want to.

9 Aren't GALs and Counsel for Youth (CFY) already telling the court the child's/youth's opinions?

The child/youth is often the best person to articulate their positions and/or respond to issues that arise the first time in court.

The following practices are helpful to ensure that children/youth are able to express their opinions in court:

- Establish a presumption of child/youth inclusion in court hearings.
- Work with children/youth to accommodate their concerns about attending court.
- Prepare children/youth for court by discussing the court process, their right to attend and fully participate in court, and the benefits of attending court.
- Allow children/youth to express their positions, regardless of whether professionals agree with their positions.

SOURCES

[1] C.R.S. 19-3-502(4.5).
[2] Genevieve Rotella and Amanda Donnelly, Children and Youth in Colorado Courts: Participation in Dependency and Neglect Proceedings (2014).
[3] Stephanie D. Block et al., *Abused and Neglected Children in Court: Knowledge and Attitudes*, 34 Child Abuse & Neglect 665 (2010).
[4] *Id.* at 663.
[5] *Id.* at 663.; Vicky Weisz et al, *Children's Participation in Foster Care Hearings*, 35 Child Abuse & Neglect, 269 (2011).
[6] Jacklyn Jean Jenkins, *Listen to Me ! Empowering Youth and Courts through Increased Court Participation in Dependency Hearings*, 46 Family Court Review 173 (2008).
[7] Leigh Goodmark, *From Property to Personhood*, 102 West Virginia Law Review 330 & 334 (1999).
[8] Kevin Burke & Steve Leben, Procedural Fairness: A Key Ingredient in Public Satisfaction, 44 Court Review 5 (2007).
[9] Andrea Khoury, Establishing Policies for Youth in Court – Overcoming Common Concerns, 2-3.