

## **ESTABLISHING POLICIES FOR YOUTH IN COURT – OVERCOMING COMMON CONCERNS**

*This document addresses common concerns expressed by judges, attorneys, social workers, and foster parents about youth attending court hearings. The suggested solutions can be tailored to individual jurisdictions.*

### **Common Concerns and Solutions**

#### **#1 Participating in Court Proceedings will Upset Youth**

Youth will become upset during court hearings because they raise emotional and upsetting issues that youth shouldn't be subjected to and they may hear alarming things about their parents.

**Overview:** Most of the time, this concern is exaggerated. Youth are the first to remind us that they have lived through these issues. As long as they are prepared for the hearing, discussions in court will not cause them additional trauma or harm. Moreover, excluding youth from court can be equally (if not more) upsetting, by stripping youth of the opportunity to come to terms with their past and move on and by precluding youth from having a sense of involvement in and control over planning their future. If they do get somewhat upset (but not traumatized), there should be a supportive person to work through the feelings with the youth. In addition, as noted below, if certain parts of the court proceeding raise unusually upsetting issues, the youth can be excluded from that part. Also, youth participation allows the youth 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. This may be therapeutic for the youth to hear parents and others being held accountable for their actions.

#### **Solutions:**

<i>Set clear standards for when youth should be in court and establish a presumption of youth inclusion.</i>
--------------------------------------------------------------------------------------------------------------

- Set a presumptive rule that youth will come to court unless specific circumstances are present.
- Under limited circumstances, detailed below, allow the following justifications for youth not coming to court:
  - Unavoidable trauma, as established by compelling evidence that the youth's participation would be emotionally detrimental to the youth's well being;
  - Strong objection by youth based on the youth's own informed choice. Youth's desire not to participate must be taken into account and may waive the youth's opportunity to be present
- Apply above standards to assess whether to excuse youth from a portion of hearing that may not be in the best interest of the youth to hear.

*Prepare the youth for court hearings.*

The youth's attorney, guardian ad litem (GAL), social worker, and therapist (if any) should inform the youth about the hearings, who will be there, what is expected to happen, and how to talk to the judge.

- The **youth's representative** will inform the youth about each hearing.
  - This information will include the purpose of the hearing, when the hearing will occur, who will be there, what is expected to happen, and how to talk to the judge. There should be other suggested areas to discuss with the youth (e.g. courtroom etiquette)
- The **social worker** will inform the foster parents about each hearing, who will be there, and how to talk to the judge. Note: This enables the foster parents to answer any questions or concerns the youth has about the hearing.
- The youth's **attorney, GAL, or social worker** should contact the caregiver before and after the court hearing to make sure the youth is comfortable and to convey anything that transpired during the hearing that the caregiver may need to know about.
- Develop policy to support this solution. Decide where this policy will appear. Select those that apply:
  - Agency policy – for social workers' obligations related to youth.
  - Agency policy – for therapists' obligations related to youth.
  - Agency policy – for social workers' obligations related to foster parents.
  - Foster parent contracts with agency, if applicable – foster parents' obligations.
  - Contracts with attorneys – attorney obligations.
  - Court rules – attorney obligations and recommended court inquiry to occur if youth isn't present in court.

*Allow a support person to accompany the youth to court.*

- The youth will be offered a support person of his or own choice.
  - Assess how this may impact confidentiality?
  - Are the courts open?

**#2 No One Can Get the Youth to Court and the Court Facility is Not Youth Friendly**

Many youth 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 youth far distances for short hearings. Some youth 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 youth friendly.

## **Solutions:**

*Schedule the hearing to coincide with a planned visit to the area where the courthouse is located.*

- Try to schedule court hearings around planned overnight or weekend visits the youth may have in the area. If a court date is already scheduled, attempt to set up visits or something else the youth can do in the area.
  - Follow this policy when youth live far from the court.
  - Communicate this policy through materials to attorneys, GALs, foster parents, or others.

*Request/require the placement agency to transport the youth.*

- Include transportation to court as a contracted responsibility of the foster parent or group home.
- Request/require the court or agency to pay for transportation to court, regardless of cost, at least once per year or more, if requested by judge.

*Allow youth to participate in court proceedings via telephone or video conference.*

- Develop a court rule(s) to support alternative participation.
- Ensure the court has the technology to have conference calls or video conferencing in courtrooms.

*Create a youth-friendly space in the courthouse (even if it is small).*

- Use a jury room or extra conference room where youth can wait.
- Engage a local school, college, or youth art program in the courthouse to create art, reading or other programs to keep youth occupied.

*Provide some youth an escort to court.*

- Court will provide some youth an escort to court when security assistance is needed because the youth is a flight risk. If necessary, juvenile justice agency will provide support.
- Youth in the juvenile justice system go to court all the time with security assistance. Foster youth may be provided similar security.

### **#3. Attending Court Will Disrupt the Youth's Schedule**

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

**Solutions:**

*Schedule hearing times so youth miss the least amount of school as possible.*

- Schedule hearings before or after school hours or on school holidays and determine at the hearing whether this sort of schedule will be necessary for each school age youth who will be attending court.
- Consult with the youth to ensure there are no conflicts with tests, sports, field trips, and other necessary school related activities.
- Schedule the next hearing at the end of each hearing to make sure the proper accommodations to the youth's schedule are made.

*Work with the Department of Education to ensure youths' court attendance does not negatively impact their schooling.*

- Work with local board of education to ensure that youth's grades are not affected by missing school to attend court
- Ensure that the youth's social worker, attorney, GAL or foster care provider notifies the school in advance of the youth's absence so that it will not be labeled unexcused

*When youth are present, hear their cases first.*

- If the court uses block scheduling, when youth are present for their hearings, hear their cases first to get them out early.
- Develop a court policy to assure this practice is uniformly followed.

**#4 Youth Can't See the Parent**

The court has an outstanding no-contact court order between youth and parent, making it hard to allow the youth to attend court hearings. The youth may be scared of her parent or the parent's presence unduly influences the youth.

**Solutions:**

*Require parent to leave for portion of hearing when youth is present.*

- Authorize exclusion of parent by court rule, under certain circumstances.
- Ask youth's therapist whether it is appropriate to exclude parent from portion of hearing where youth is present using a best interests standard.
  - May not apply at adjudication/trial stages of case.

*Allow youth to meet the judge in chambers.*

- Authorize by court rule to allow youth, under certain circumstances, to meet with the judge in chambers.
  - Ensure attorneys for parties and court reporter are present to preserve the record.

### **#5 Allowing Youth to Speak to the Judge Privately Raises Ethical Issues**

This may be deemed an inappropriate ex parte communication with the judge and may raise due process concerns for the parents. The judge can't promise confidentiality and it may not be clear whether the judge is a mandatory reporter.

#### **Solutions:**

*Allow the attorneys and court reporter to be present when youth speaks with the judge.*

- The judge may not want to speak with the youth privately and instead have the attorneys and court reporter present.
- Make a record of all discussions.

*The judge should not promise confidentiality to the youth..*

- The judge should set the ground rules for conversation with the youth and disclose to parties what he/she shared.
- The judge should inform that youth that anything that the youth said can be shared with the attorneys.

### **#6 Youth's Wishes are not Court Ordered**

Youth 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.

**Overview:** Youth want to be heard and don't expect their wishes to always prevail. Indeed, being included in court proceedings often matters more to the youth than the end result. Allowing them to be part of the process enables the youth to accept and come to terms with a result or court order they don't like.

#### **Solutions:**

*Meet with the youth before court to prepare him.*

- The youth's attorney or GAL and social worker should let the youth know the role of the judge. They should explain that the judge will do what she thinks is in the youth's best interest.

*Have the judge explain her position.*

- The judge should explain the court's order and why the youth's request cannot be accommodated. The judge should also explain what would have to happen for the youth's wishes to be fulfilled.

*Debrief the youth.*

- The youth’s attorney, GAL, social worker, and others should meet with the youth and process what happened after the hearing and ensure the youth understands.

**#7 Parents’ Privacy Rights will be Infringed if the Youth is Present**

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

**Overview:** Often youth know what their parents are doing because they have lived with the issues their whole lives. Most youths’ ideas of what is happening to their parents in prison are worse than reality and it may be good for them to see that their parents are okay and healthy. Youth have to process the truth before they can move on.

**Solutions:**

*Excuse the youth for portions of the hearing.*

- If there are portions of the hearing that may be harmful or that the parents are justified in not letting the youth hear, excuse the youth for that limited portion.
- Set standards for when the youth can be excluded, as determined by a therapist.

**#8 The Court Hearing will not be Meaningful for the Youth**

The judge may not know how to properly engage the youth and the youth will not understand what is going on as much of the court proceeding involves legal “lingo.”

**Solutions:**

*Encourage judges to attend trainings on communicating with system-involved youth.*

- Training may cover ways to move away from using “legal lingo” as it will also benefit parents and caregivers.
- Develop sample questions for judges on various issues (education, health, permanent connections, etc)
- Read available literature on the subject, such as “*With Me, Not Without Me*” and the judicial bench card.

*Hold hearings that are complete and not cursory in length.*

- Encourage judge to engage the youth in conversation and questioning about how the youth is progressing in care.

*Prepare youth for court hearings.*

- Youth’s attorney, GAL or social worker should prepare youth before court hearings. Issues to discuss should include:
  - Who will attend

- Where everyone will sit
  - What will be discussed and why
  - The opportunity for the youth to compose a written statement of what she wants to say to the court
- Develop guidelines, statutory language or agency policy to support this.

**#9 If the Youth Is Present, the Court Hearing will Take Longer**

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

**Overview:** Done properly, hearings will probably take longer, but youth (and parents) deserve time to be heard. In addition, youth’s presence improves the quality of hearings and enables the court to get information and have a “human face” that enhances decision-making.

**#10 The Youth Does not Want to Attend Court Proceedings**

The youth says he doesn’t want to go to court hearings.

**Solutions:**

*Talk with the youth to determine his reasoning.*

- The youth’s attorney, GAL or social worker should determine whether:
  - the youth has been given enough notice
  - the hearing conflicts with something else important to the youth
  - the youth knows how important providing input can be
  - participation in court is presented to the youth in a positive way

*Accommodate the youth’s schedule.*

- The youth’s attorney, GAL, or social worker should ask the court to schedule hearings according to the youth’s schedule

*Don’t require the youth to participate.*

- The youth’s attorney, GAL or social worker should inform the youth of the importance of court involvement and ask why he does not want to participate.
- If the youth still strongly objects court and the child’s representative waives his appearance, do not require him to do so. The court order should document the reason the youth is not present.