

Selected Readings

Involving Youth in Their Child Welfare Proceedings

1. New York State Permanent Judicial Commission on Justice for Children, *Tools for Engaging Children in Their Court Proceedings* (2008) (beginning with children age five and older)

<http://www.nycourts.gov/ip/justiceforchildren/PDF/PJCJC%20Handbook%20-%20Encouraging%20Child%20in%20Court.pdf>

2. New York State Permanent Judicial Commission on Justice for Children, *Hear Me, Hear Me, Hear Me: Voices of Youth in Foster Care Regarding Their Court Proceedings* (videos of youth talking about their court experiences; includes transcripts of the video).

http://www.nycourts.gov/ip/justiceforchildren/digitalstories_REMAKE/index.shtml

Introduction to the Video:

http://www.nycourts.gov/ip/justiceforchildren/digitalstories_REMAKE/introduction.html

3. Jaclyn Jean Jenkins, *Listen to Me! Empowering Youth and Courts Through Increased Youth Participation in Dependency Hearings*, 46 Fam Ct Rev 163 (2008).

http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/empowerment/My_Note.authcheckdam.pdf

4. Andrea Khoury, *Involving Children in Dependency Court*, 36 The Colo Lawyer 49 (Oct 2007).

http://www.caahs.colostate.edu/ccp/PDF/07Oct_Khoury_Dependency%20Court.pdf

5. Andrea Khoury, *With Me, Not Without Me: How to Involve Children In Court*, 26 Child Law Practice 129 (Nov 2007) (publication of the American Bar Association Center on Children and the Law, a program of the ABA's Young Layers Division).

<http://www.kidscounsel.org/ABA-%20How%20to%20Involve%20Children%20in%20Court.pdf>

6. Andrea Khoury, *Seen and Heard: Involving Children in Dependency Court*, 25 Child Law Practice 145 (Dec 2006) (an earlier version of the October 2007 Colorado Lawyer article).

http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/empowerment/seenandheard.authcheckdam.pdf

7. Home At Last and Children's Law Center of Los Angeles, *My Voice, My Life, My Future* (a report in conjunction with the Pew Charitable Trusts).

http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Foster_care_reform/foster_care_MyVoiceMyLifeMyFuture.pdf

8. Donald N. Duquette, *Giving Children Their Say in Court*, Judges' Pay Newsletter of the National CASA Association, November 2011.

http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.7792487/k.982A/JP_12_Duquette.htm

9. Emily Buss, *Failing Juvenile Courts, and What Lawyers and Judges Can Do About It*, 6 Northwestern J of L and Soc Policy 318 (2011).

Certainly more literature exists. These articles provide just a few examples of how to involve youth in their own dependency proceedings.

IT'S MY PARTY AND I CAN COME IF I WANT TO – AN ANALYSIS OF CHILD ATTENDANCE AT CHILD ABUSE PROCEEDINGS; BY ERIC G. SCOTT, ESQ.

In child protection proceedings, there is a fairly robust debate as to whether children should be allowed to attend those proceedings. A significant majority, composed of judges, lawyers, and DHS caseworkers, take the position that children should not be allowed to attend court hearings that involve child protection issues. While there is a great deal of research on the subject by respected experts in psychology and social welfare, much of it suggesting that children should be allowed to attend these proceedings, it would be my intent to look at this issue strictly from the legal perspective.

Any analysis of child attendance at these proceedings should start with a look at the existing law on the subject. The best starting point would be to look at the definition of parties in child protection proceedings. At this point, there is no clear statute that states a child has a right to attend these proceedings. Interestingly enough though, MCL 712A.12 does state that after a petition is filed in a proceeding under the juvenile code, the court can either dismiss the petition or issue a summons (an order from the court) directing the person having custody or control of the child, to appear personally and bring the child before the court at a time and place stated. That statute goes on to state that the court may excuse a child from attending the hearing, but cannot restrict children from attending the hearing. MCL 712A.12 makes no distinction between delinquency and child protection proceedings, and very strongly suggests that children have a right to attend both delinquency and child protection proceedings.

Looking further at the statutes, we find MCL 712A.14, which does apply to delinquency proceedings, but lends support to the proposition that children should attend child protection proceedings. MCL 712A.14(2) states that if a child, taken into custody by law enforcement is not released, the child shall be immediately brought before the court for a preliminary hearing. In addition, MCR 3.934, which mirrors MCL 712A.14(2) also requires the child to be brought before the court. Under this statute, and court rule, it is very clear that the child is not only expected to attend delinquency proceedings, but actually has a right to attend delinquency proceedings. If we apply some logic here, it is not a huge stretch to recognize that many of the children we see as delinquents, also end up as court wards in child protection matters. It make no sense to

require a child to attend a delinquency proceeding, but tell that same child they cannot come to the child protection proceeding in light of the fact that both proceedings are about the welfare of the child.

Further, and much stronger support for children attending child protection proceedings, is found in the court rules. Specifically, MCR 3.903(A)(19)(b) states that the parties in a child protection proceeding are the petitioner, the child, the respondent (s), the parent(s), the guardian, or legal custodian of the child. By definition, the child is a person with a right to be present at child protection proceedings. If we look at MRE 615, the rule governing the exclusion of witnesses, the court can exclude witnesses from proceedings, but not parties. Granted there are times when the rules of evidence do not apply in child protection proceedings, but even at these times, one cannot overlook MCR 3.903's clear definition that children are parties in these proceedings. Additional support for children attending these proceedings is found in MCR 2.201, which allows for children to sue, or be sued as a "real party in interest." Under that court rule additional steps have to be undertaken by the court to protect the child's interests, but MCR 2.201 clearly allows for a child to pursue, and participate in legal matters. With these rules in effect how can one exclude a child from child protection proceedings, when it's very clear under the law that child are parties with a right to attend them.

I will admit that I have a strong opinion toward allowing children to attend court proceedings. Much of my opinion is coloured by my experience as a CPS caseworker, and working directly with children in the field. However, my opinion on this subject appears to be supported by the legislative intent implied in the statutes and court rules governing child protection proceedings. The underlying theme of the court rules is that children are to be afforded the same level of rights that their parents have. Consider for a moment *Santosky v Kramer*, 455 US 745 (1982) which states that parents have a "fundamental liberty interest" in knowing and associating with their children. If parents have a fundamental liberty interest in knowing their children, the converse of that is also true in that children also have a fundamental liberty interest in knowing and associating with their parents. As persons with a protected liberty interest, children have a right to be informed of the proceedings, and be heard at them; yet, the courts, the lawyers, and the DHS caseworkers deny the child this very right by excluding them from child protection proceedings. Yes the court appoints

children LGAL's and in some cases attorneys in an effort to protect the child's interests. However, the child is a party with a protected liberty interest that gives them a right to directly address the court.

I submit to you, that if the court were to say to a parent, assuming the parent has not engaged in some type of contemptuous behavior, you cannot come to your own child protection proceeding, such a directive would be reversible error. How is excluding a child from these proceedings any different. In truth it is not. So why is it that we exclude children from child protection proceedings?

Over the years, the primary reason that I have heard for excluding children from child protection proceedings, is to protect them from hearing about their parents' failures to benefit from services. While I am a bit cynical regarding parents succeeding in these cases, not every case or every hearing involves failures on the part of the parents. Sometimes, parents actually do undertake the services, and sometimes parents make significant progress. Children should know about the successes their parents are having. Child protection proceedings are an opportunity to hear both the good things and the bad things that are happening in a case. Excluding children from child protection proceedings serves only to deny children an opportunity to hear about the efforts their parents are making, both the good and the bad. Is that really what we want when we're supposed to protect the child's interests? It would seem not.

Another reason I have heard for excluding children from these proceedings, is to shelter them from knowing about their parents' neglectful and abusive behaviours. What is it we are sheltering them from; these kids actually lived through the neglect and abuse and know what their parents are capable of, sometimes much better than the judges, attorneys, and various experts involved in the case. We can shelter kids all we want, but the truth is they already know what's going on. The child's sense of stability and security is already shaken long before CPS arrives to the home and removes them. We only do more damage to a child's sense of security and stability by keeping them in the dark about the court proceedings; especially when they already know most of what is going on. It is true that children may have their sense of security affected by hearing about their parents' failure at court. But, we have counselors working with these kids from almost the very beginning of DHS involvement; any disruption in security can and often is mitigated by a good therapist

working with the child. Furthermore, DHS caseworkers have to, on a regular basis, tell children in these cases that their parents are not doing well and that termination may have to happen. Does learning the facts straight from the court, instead of a caseworker really protect the child from anything? I suggest to you that it does not.

I spent five and half years as a CPS caseworker here in Michigan, and my home state of Maryland. In that time, I learned a great deal about children one of those things being that kids are amazingly perceptive. They might seem to not understand something, when in fact they understand it far better than the adults in the room might. You'd be shocked at how much a child knows about the goings on in a home without their parent knowing. Children learn by observing, listening, and modeling behaviours. Children listen and watch all the time; that is how they process the world around them. Children in child protection proceedings are no different than any other child in this regard; they just have more experiences to share than the average child. The children we work with in child protection proceedings know exactly what's going on. They know their parent abuses drugs or alcohol. They know that daddy hits mommy every night. Children already know that their parents may have a mental illness, even if a child cannot use those words to name the illness. These children do not need us to shield them; they need us to respect them and be honest with them at all levels. Court should not be this mysterious entity to children where people talk about them behind their backs. Children deserve to be, and have the right to be included at every stage of these proceedings. This is especially true when the process is about them.