

Guidelines for Consulting with Children

1. The Court expects that all children will attend their annual permanency hearings unless the Court determines that there is a compelling reason to waive the child's appearance. Only the Court may waive a child's appearance. All parties will have an opportunity to be heard before the Court makes a waiver decision.
 - If a child is unable or unwilling to attend the hearing in person, the child should participate by telephone or video/Skype.
 - If a child is unable or unwilling to attend the hearing in person or participate by telephone or video/Skype, the child may appear in writing.
 - Child's attorney and/or CASA will review the options with the child and prepare the child for his or her court appearance.
2. If a child is not present at the annual permanency hearing and the child's appearance has not been waived, the Court will ask why the child is not in court. A child's absence due to failure to provide the child with notice or transportation is unacceptable.
3. It is the responsibility of the Department of Human Services/Child Welfare to transport children or arrange for transportation to permanency hearings.
4. The court will speak with the child at the beginning of the permanency hearing. When the conversation ends, children under the age of 14 years will leave the courtroom with a responsible adult unless the Court determines that the child should remain.
 - DHS will arrange in advance for a responsible adult to take the child out of the courtroom. CASA will assist when able.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
TENTH JUDICIAL DISTRICT
FOR UNION AND WALLOWA COUNTIES

IN THE MATTER OF:)	General Order 10-
)	AGE APPROPRIATE
		CONSULTATION FOR CHILDREN
Juvenile Dependency Case Procedures)	IN DEPENDENCY CASES AT
)	REVIEW AND PERMANENCY
)	HEARINGS

Federal rule that requires courts provide for an age appropriate consultation with children before review and permanency hearings in dependency cases. 42 U.S.C. Sec. 675(5)(iii)2 provides: "Procedural safeguards shall 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.."

In order to comply this law the following procedure is hereby ordered:

The child's lawyer should be the one to contact the child to determine if and how the child wishes to have input at the permanency hearing. The Oregon State Bar's Performance Standard for juvenile dependency cases requires a child's lawyer to contact the child or the child's caretaker within 24 hours of appointment and to conduct an interview where appropriate within 72 hours of appointment. In any event, no matter what the age, the child's attorney is required by the Oregon State Bar's Performance Standards to contact the child to observe the child.¹

At one of their meetings with the child, the lawyer for the child will present consultation options to the child. The five consultation options should be presented to the child not later than 20 days before the review or permanency hearing. Generally, if the child is seven years of age or older, the child will be presumed to be able to express their views and will be given the consultation options. Children under seven will not be given the consultation options unless in the lawyer's judgment, based on the child's developmental level, consultation would be appropriate.

It is the professional responsibility of the child's lawyer to prepare the child for court appearances, including helping the child to understand what to expect in court and to prepare the

¹ See Oregon State Bar's Performance Standard ofr Juvenile Dependency cases:

Section 3.5 requires the child's lawyer to: Counsel should comply with Standard 1.2, Implementations 1, 2 and 3, and Standard 1.3, supra, and in addition, upon being retained or appointed, counsel should make an initial contact with the client or the client's caretaker within 24 hours and, where appropriate conduct an initial interview within 72 hours.

Section 3.5 (4) provides: 4. All child clients should, at a minimum, be personally contacted by counsel and/or counsel's trained and qualified staff to determine the client's wishes, if possible, and to assess the client's well-being. It is important for counsel or counsel's staff to observe the child, the child's interactions with others in the home or foster home, and to assess the severity of the injuries and the child's general health and condition. Children four years of age or old enough to communicate should be personally interviewed in private by counsel. Interviews of children should occur away from court

child to speak to the judge. The child's attorney should also debrief their client after each court appearance.

The child has five options to express their concerns and wishes to the judge:

1. Appear in person at the review hearing and speak in open court about his or her feelings. The child will be allowed to leave early after expressing his or her concerns.
2. Appear at the review hearing and speak in chambers with the judge with the child's lawyer and the CASA present. This could be arranged a few days or weeks before the review hearing if necessary.
3. Appear at the hearing by telephone. The child will be allowed to hang up after stating his or her views.
4. Provide input to the judge in writing.
5. Provide input to the judge by telling his or her lawyer or DHS worker how the child feels.

No sooner than 60 days before or no later than 30 days before the review or permanency hearing, the DHS worker will contact the child's lawyer to remind the lawyer to get the input from the child and to offer to present the 5 consultation options to the child if the lawyer wishes. If the lawyer consents, the DHS worker will present the 5 consultation options to the child. If the lawyer objects, it will be the lawyer's duty to present the 5 consultation options to the child and solicit input. Once the child has indicated how they want to express their views, the lawyer will work with the DHS caseworker to facilitate a personal appearance or phone appearance if that is requested.

In any case in which the child is not present and does not provide any input, the Court should inquire why the child is not present or why the child did not give input. The court should confirm that the child's absence is not due to a failure to provide the child with timely notice or transportation.

DATED this _____ day of February, 2010.

Russell B. West
Presiding Judge

Cc: all lawyers in Tenth Judicial District
DHS

JOSEPHINE COUNTY PROTOCOL FOR CONSULTING WITH CHILDREN IN COURT

Federal law 42 U.S.C.A. § 675(5)(c) [~~CHILD AND FAMILY SERVICES IMPROVEMENT ACT~~] requires states to have procedural safeguards in place to ensure that in permanency hearings the court conducting the hearing consults with children, in an age-appropriate manner, regarding the permanency and transition plans proposed for them.

1. It is the policy of this court to encourage the child's participation at an age appropriate level, while also respecting the right of the child not to attend. It is the policy of this court that children ages six and above will attend their permanency hearing(s) unless:
 - a. The child declines to appear after being fully advised by his or her attorney.
 - b. The court determines there is a compelling reason to excuse the child.
2. In any case in which the child is not present, the court shall inquire as to why the child is not present in court, to confirm the child's absence is not due to a failure to provide the child with timely notice or transportation. If the child is not given adequate notice or opportunity for input, the court may reset the hearing.
3. It is the responsibility of DHS to provide the child with appropriate transportation to attend their hearing.
4. It is the professional responsibility of the child's attorney to prepare the child for court appearances. As appropriate, the attorney may be assisted in preparation by the caseworker, CASA, foster parents and/or therapists working with the child. Preparation should include helping the child understand what to expect in court, helping them prepare to speak in court, and advising them that sensitive issues may be discussed. It is also appropriate for the attorney to debrief the child after the court appearance.
5. All participants in the proceeding should use child friendly, jargon-free language when a child is present.
6. Sufficient time should be allocated for a child to be heard.
7. The status check held 2 months prior to the permanency hearing shall be utilized for the court to remind parties about the appropriateness of the child's attendance at the hearing.
8. Exceptions for appearance may be granted on a case-by-case basis at the discretion of the court.
 - a. The court shall give significant weight to the child's attorney and CASA's position when making a determination as to whether there is a compelling reason to excuse the child, or whether other arrangements for the child's participation should be made.

- b. The following factors should be considered when determining if the child should be excused from attending:
- Safety of the child
 - Age and developmental abilities of the child
 - Risk of psychological or emotional harm to the child
 - Wishes of the child
 - Ability of the child to appear and communicate by other means
 - Subject matter and content of review
 - Physical location of the child
- c. Whenever possible, rather than excuse the child completely, the hearing should be bifurcated to allow the child to attend a portion dedicated to receiving the child's input.
- d. A child who is unwilling or unable to appear in person should be given the opportunity to participate by telephone, to submit input in writing, or to consult with the Judge on the record and in the presence of attorneys.



BEST PRACTICE – Consulting with Children at 25th Judicial District Permanency/Review Hearings

December 23, 2009

**

Approved by Judges and Yamhill County Juvenile Dependency Excellence Council (JDEC)

Federal law 42 U.S.C. §675(5)(C)(iii) states, “procedural safeguards shall 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.”

In Yamhill County, the Juvenile Dependency Excellence Council (JDEC) has devised the following procedure as a means to implement this law. **As of November 1, 2009, all children ages six and above should attend their permanency hearing(s) unless an exception is granted by the Court in advance.** Exceptions may be granted on a case-by-case basis at the discretion of the Court. An exception may be granted if:

- the child declines to attend after being fully informed by their attorney, CASA, or DHS; or
- the Court determines there is a compelling reason to excuse the child.

If any party seeks an exception to this rule, they must notify the Court of their request, in writing, no less than 10 judicial days prior to the respective hearing. In such cases, efforts should be made to allow the child to participate by video conference, telephone, or in writing.

All parties should have the opportunity to be heard before the Court reaches a decision regarding exceptions. Objections shall be filed no less than five judicial days prior to the hearing. Significant weight will be given to the child’s attorney or CASA’s position in the Court’s determination as to whether there is a compelling reason to excuse the child, or to make other arrangements for the child’s participation.

It is the duty of DHS and its contract agencies to provide children with appropriate transportation to attend their hearing(s). It is the responsibility of the child’s attorney to prepare the child for court appearances, including helping them understand what to expect in court, helping them prepare to speak to the judge, and advising them that painful, sensitive issues may be discussed. In the event that no attorney is assigned, the child’s CASA and caseworker will share the responsibility and shall consult as to how best to prepare the child for participating.

The Crime Victim’s Assistance waiting area in the District Attorney’s office will be designated as the “Children’s Space.” Whenever possible, children and their foster parent or custodian should go to this area and wait to be called in to court. If there is no space available, the Attorney Conference Room (Rm. 239) may be used as an alternative.

This policy is being implemented on a trial basis for a period of 120 days. The JDEC will review and consider any feedback as to the efficacy of the policy.

Linn County Dependency Workgroup

A Joint Effort of:

Linn County Circuit Court
CASA of Linn County, Inc.
Department of Justice
Linn County Health Department

Linn County District Attorney
Department of Human Services, Child Welfare
Citizens Review Board
Juvenile Defense Consortium
Family Tree Relief Nursery

Adopted December 4, 2010

POLICY ON CHILDREN IN COURT JUVENILE DEPENDENCY CASES

Whereas the Child and Family Services Improvement Act (42 USCA §675(5)) requires states to have a case review system with respect to each child and further requiring that the court or administrative body conducting the hearing or review shall consult, in an age appropriate manner, with the child regarding proposed permanency or transition planning although the court does not herein reach any decision as to the applicability of this federal statute to the procedures of this court; and

Whereas the Oregon Judicial Department's Juvenile Court Improvement Project views this issue to be of importance and is developing recommended practices; and

The court has conferred with the Linn County Dependency Workgroup to obtain advice and comment, and

The court is aware that some children, especially adolescent children, may wish to appear and speak to the judge, and many other children would either prefer not to appear personally, and

The court would like to confer with older adolescents about their ILP planning and education; and

The court is aware that in many cases it could be hurtful to the child to be present and witness discussions about them and their families and that some children are intimidated by the courtroom process.

Now, therefore the following policy is adopted by the court to maintain as much consistency as possible and assure a child's right to appear when appropriate:

1. This policy applies in all juvenile dependency cases. It does not apply in proceedings to terminate parental rights.
2. The court and DHS shall promote age appropriate court appearances by children in dependency cases as follows:
 - a. All children six years of age and older shall be provided the opportunity to appear in court during dependency proceedings however no child shall be required to appear unless ordered to do so by the court.
 - b. The child's attorney will consult with the child when the child is six years of age or older and after this consultation the child may decide to appear personally or to not appear and have his attorney appear for him and represent his position in court, or he may write a letter to the court which his attorney will provide to the court and to all other parties in the case.
 - c. The child's decision as set forth in 2(b) above may be for more than one court appearance and the child may change his preference for any future court appearance.
3. No relief shall be denied any party for failing to comply with this policy.
4. The court may find good cause to except from this policy in any case.

This policy was approved by the Dependency Workgroup on: 12:04.10

Date of Draft: November 4, 2009

Final Approval: December 4, 2010

Protocol for Dependency Proceedings

1. Children who are the subject of dependency proceedings in the Malheur County Juvenile Court will generally be expected to appear at permanency hearings. It is the policy of the Court to encourage the child's participation at an age appropriate level, while also respecting the right of the child not to attend. In general, the Court welcomes the presence of and participation by children in all Dependency Court matters.
2. Children of all ages shall appear at their permanency and hearing and should appear at review hearings unless
 - a. The child declines to appear after being fully advised by his or her attorney and/or CASA, or
 - b. The Court determines that there is a compelling reason to exclude the child.
3. The following principles shall apply when determining if exclusion is appropriate:
 - a. Significant weight should be given to the position of the child's attorney in the Court's determination as to whether there is a compelling reason to exclude the child from all or a portion of the proceeding.
 - b. Whenever possible, rather than exclude the child completely, the hearing should be bifurcated to allow the child to attend a portion dedicated to receiving the child's input.
 - c. If the child is excluded, the court may allow the child to be heard in camera in the presence of the judge, court reporter and attorneys, on the record in chambers to provide input.
4. The following factors may be considered by the court in determining whether to exclude the child:
 - a. Safety of the child.
 - b. Age and developmental abilities of the child.
 - c. The risk of psychological or emotional harm to the child.
 - d. The wishes of the child.

- e. The position of the child's attorney.
 - f. The position of CASA.
 - g. The ability of the child to appear and communicate by other means, such in writing, by phone or by video.
 - h. The subject matter and content of the review.
 - i. The physical location of the child, such as an out of county treatment program.
5. Whether the child appears or not, the child shall be provided with the opportunity to provide written input to the Court. This input may be in the form of letters, drawings, a questionnaire, or other age appropriate means. In the case of very young children who do not appear, submission of photographs to the Court is encouraged.
 6. All parties will have the opportunity to be heard before the Court reaches its conclusion regarding exclusion of the child from all or a portion of the proceedings. In no event, however, will a child be forced to appear on the request of a parent.
 7. In any case where the child is not present, the Court will inquire as to why the child is not present in court, to determine whether the child's absence is not due to a failure to provide the child with timely notice or transportation.
 8. Transportation to and from Court will be arranged and insured by the DHS caseworker.
 9. It is the professional responsibility of the child's attorney to prepare the child for Court appearances. Preparation should include age and developmentally appropriate information to help the child understand what to expect in court, assistance in preparing what to say in court, and preparation of the child regarding painful or sensitive issues that may be discussed. Proper demeanor and attire should be discussed. The attorney may be assisted in preparation by the case worker, CASA, foster parents, therapists working with the child and/or Juvenile Victim's Advocate, as appropriate. It is also appropriate for the attorney to debrief the child after the Court appearance.
 10. All participants in the proceeding should make an effort to use child-friendly language at any proceedings attended by the child.
 11. Sufficient time should be allocated for the child to be heard. In multiple child cases, care will be taken to allow sufficient time for each child to be

heard. In the case of school age children, afternoon appearances will be encouraged.

12. Notice that the child is declining to appear shall be made to all parties within one week of the hearing, and may be done in the Court or CASA report.
13. In matters other than permanency and review hearings, the appearance of the child will be determined by the child's attorney, in consultation with the case worker, CASA, and foster parents; with primary consideration being the child's age and developmental abilities and the subject matter of the proceeding. Nothing in this protocol should be construed to limit the ability of any party to call witnesses in contested matters.
14. The Court will provide a letter annually to all area schools with a copy of this protocol enclosed, requesting that children not be penalized for missing school to attend court proceedings and to request the assistance and cooperation of the schools in facilitating court appearances. The Court will provide each school age child who appears with a letter from the Court to take to the school-explaining that the child was absent due to a court appearance and that the Court appearance was necessary.
15. The Malheur County Juvenile Department will provide a safe and secure waiting area for children, to avoid unwanted encounters with family members or other persons and to protect the privacy of the child. DHS, CASA or a foster parent will be the child at all times in the waiting area. Age appropriate toys or other materials will be available for the child while waiting.
16. Whenever appropriate given the dynamics and parties to the case, permanency and review hearing will be conducted in a "round table" format in Courtroom one, with all parties-sitting at the table with the judge.