
YOUTH IN COURT AND YOUTH VOICE

Despite the many improvements Texas has made over the past several years, involving youth in the court process and ensuring their voice is heard and considered continues to be a challenge. The Texas Family Code has been amended many times to make it clear that children and youth must attend hearings, and to place additional duties on attorneys ad litem, judges, and the Department of Family and Protective Services (DFPS or “the Department”) to meet with children in advance of court hearings and provide children and caregivers with notice of court proceedings and with copies of reports filed in advance of each hearing. Yet, children and youth are routinely excluded from meaningful participation, resulting in the feeling that their voices are not heard, and their opinions are not important.

A. The Law

Chapter 263 of the Texas Family Code mandates that all children who are in the conservatorship of DFPS attend all permanency hearings.¹⁴⁸ Specifically, Section 263.302 states that the child shall attend each permanency hearing, unless the court specifically excuses the child’s attendance, and that the court shall consult with the child in a developmentally appropriate manner regarding the child’s permanency plan, if the child is four years of age or older and the court determines it is in the best interest of the child.¹⁴⁹ Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing.¹⁵⁰

The law does not require or appear to contemplate that the child or youth will attend an Ex Parte, Adversary or Status Hearing. Although there are different interpretations, many read the law to say that the child must attend each permanency hearing, unless the judge makes an individual determination that excuses that child from attending a specific hearing. Issuing a blanket order excusing a child from attending permanency hearings or even more generally, for all children to be excused from all permanency hearings, is not considered a best practice. Additionally, and of note, youth who are committed to the Texas Juvenile Justice Department (TJJD) may (and should) attend permanency hearings by video, telephone, or in person.¹⁵¹

B. Pros of Involving Children and Youth in Court Proceedings

There have been many studies by the ABA as well as Court Improvement Programs around the country on this singular issue, and there is simply no question that foster youth repeatedly express the desire to be involved in decisions about their lives.¹⁵² Being involved gives the youth a sense of control, helps them understand the process, and direct contact with the court benefits the judge and the youth. Children are often told that “the judge makes the decisions.” Other reasons: attorneys are not always reliable and informed advocates; hearing quality is better, hearings can present an opportunity for visitation, foster parents and relatives caring for the child often attend because they bring the child to the hearing.

C. Cons of Involving Children and Youth in Court Proceedings

There are also cons of involving or requiring the presence of children in child protection hearings. A few examples include: a perception that it's a waste of time; children miss school and important events; court is emotionally damaging for children and youth; and children and youth at times don't want to attend. Other obstacles include lack of transportation; court dockets are not accommodating; notice is inadequate; and judges are sometimes uncomfortable speaking with and interviewing children.

D. Engaging the Child at the Hearing

There are ways to help make the experience for everyone feel more beneficial. Ensure attorneys and caseworkers do their job by helping prepare the child for the hearing. Learn child-specific interviewing techniques so that engaging the child in conversation is easier. Even young children have the competence to tell adults what they want and need when questioned in an age-appropriate manner. Making court a good experience is critical. Restructure dockets, and schedule hearings involving children and youth in the afternoon, after school. Try using video conferencing or invite youth to submit personal written court reports.

Generally every child should appear at every permanency hearing before and after final orders. The statute presumes that all children will attend their permanency hearings, but also accommodates the occasion when children should be excused from attending by the judge. The expectation is that the court will excuse a child on a case-by-case basis and not operate under a blanket order or rule.

For a more complete report on the benefits of youth in court and practical tips for accommodating their presence, please read the Children's Commission's July 2016 report on Youth Presence in Court Proceedings on the Children's Commission's website.¹⁵³