
CHILD AND YOUTH VOICE

A. Presence in Court

1. The Law

Chapter 263 of the Texas Family Code mandates that all children and youth who are in the conservatorship of DFPS attend all permanency hearings. Specifically, [Tex. Fam. Code § 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. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing. [Tex. Fam. Code § 263.302](#).

The law does not require or appear to contemplate that the child will attend an Ex Parte, Adversary Hearing, Status Hearing, or any hearings for Orders to Participate cases filed under 264.203. 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 may (and should) attend permanency hearings by video, telephone, or in person. [Tex. Fam. Code § 263.302](#).

2. Pros of Involving Children in Court Proceedings

There have been many studies by the American Bar Association as well as Court Improvement Programs around the country on this singular issue, and there is simply no question that children in foster care repeatedly express the desire to be involved in decisions about their lives.²⁶³ Children are often told that "the judge makes the decisions." Being involved gives the child a sense of control, helps them understand the process, and provides direct contact with the court which benefits the judge and the child. There are other reasons to engage a child in court, including the following factors: attorneys are not always reliable and informed advocates; hearing quality is better when the judge can hear directly from the child; hearings can present an opportunity for parent-child visitation; and foster parents and relatives caring for the child often attend because they bring the child to the hearing.

3. Cons of Involving Children in Court Proceedings

There are also cons of involving or requiring the presence of children in child protection hearings. A few examples include the following factors: missed time in school and other important events for the child, information shared in court can be emotionally damaging for children, and children at times may not 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.

B. Child and Youth Engagement

Making court a good experience for children and youth is critical. Judges can help make the experience for everyone feel more beneficial by utilizing the following practices and setting expectations for the courtroom:

- 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.
- Restructure dockets and offer to schedule hearings involving children in the afternoon, after school.
- Employ video conferencing as a convenient alternative for children, youth, and their caregivers.
- Invite youth to submit letters or other information to the court.

Generally, every child should appear at every Permanency Hearing. The Family Code 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.²⁶⁴

To hear examples from former youth in care about their different experiences attending permanency hearings watch a replay of the 2021 Judicial Trauma Institute session [Learning from the Experts: A Panel Discussion on Lived Experience](#).²⁶⁵

C. Talking with Children and Youth in Court

Children and youth involved in the child welfare system can often feel disconnected from what is occurring around them. By speaking with youth directly and involving them in the process, they are given the opportunity to share their feelings, desires, and needs. Talking with children can be difficult, below are some questions that can help get the conversation started. Sharing some of your own answers to the questions can create a more natural conversation and help the youth feel more comfortable and willing to share honestly. Acknowledging some of their answers in the moment and later will also let them know you are hearing them. For a full example by age group, consult the New York State Permanent Judicial Commission on Justice for Children’s document [“Tools for Engaging Children in Their Court Proceedings.”](#)²⁶⁶

- Initial Questions
 - Make introductions.
 - Did I pronounce your name correctly?

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- Do you know who everyone is here?
 - How old are you?
 - Tell me about something that has happened to you since I last saw you.
 - School
 - What is your favorite subject?
 - Are there any subjects that you would like to have additional help? (older youth)
 - Have you changed schools during the school year?
 - What would help you do better in school?
 - Have you started to think about college or vocational school? (older youth)
 - Friends
 - What do you do for fun?
 - Who do you do that with?
 - Family
 - When was your last visit with your family?
 - What did you do at your last visit with your siblings?
 - What kind of chores do you have?
 - Health
 - Have you been to the doctor since I last saw you? The dentist?
 - Who would you talk to about health issues?
 - Feelings
 - What do you do when you are happy?
 - What worries you the most?
 - When you think about the future, what are you most concerned about?
 - Wrap-up Questions
 - Did anyone use any words you didn't understand today?
 - Did you want to tell me anything?
 - Do you have any questions?

Making notes on the conversation with the child or youth may be beneficial so that when they return for their next conference, any concerns can be readdressed. Following up on small details can also help create more trusting relationship with the child or youth.

D. Normalcy

1. What Is Normalcy?

[Tex. Fam. Code § 264.001](#) requires court consideration of age-appropriate normalcy activities, defined as an activity or experience:

- That is generally accepted as suitable for a child's age or level of maturity or that is determined to be developmentally appropriate for a child based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for the age or age group; and
- In which a child who is not in the conservatorship of DFPS is generally allowed to participate, including extracurricular activities, cultural and enrichment activities, and employment opportunities. [Tex. Fam. Code § 264.001\(1\)](#).

In addition to the requirements of [Tex. Fam. Code § 263.306\(a-1\)](#), at each Permanency Hearing before a final order is rendered, the court shall review DFPS efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities, including activities not listed in the child's service plan. [Tex. Fam. Code § 263.306\(c\)](#).

[Tex. Fam. Code § 263.5031](#) requires that at each Permanency Hearing After a Final Order the court shall review DFPS efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities as defined by [Tex. Fam. Code § 264.001](#); this may include activities not listed in the child's service plan.

2. Reasonable and Prudent Parent Standard

In determining whether to allow a child in the managing conservatorship of DFPS to participate in an activity, a substitute caregiver must exercise the standard of care of a reasonable and prudent parent. [Tex. Fam. Code § 264.125\(b\)](#).

The 2014 Preventing Sex Trafficking and Strengthening Families Act required states to define a "reasonable and prudent parenting standard."²⁶⁷ In Texas, the standard of care of a reasonable and prudent parent means the standard of care that a parent of reasonable judgment, skill, and caution would exercise in addressing the health, safety, and welfare of a child while encouraging the emotional and developmental growth of the child, taking into consideration:

- The overall health and safety of the child;
- The child's age, maturity, and development level;
- The best interest of the child based on the caregiver's knowledge of the child;
- The appropriateness of a proposed activity and any potential risk factors;

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- The behavioral history of the child and the child’s ability to safely participate in a proposed activity;
 - The importance of encouraging the child’s social, emotional, and developmental growth; and
 - The importance of providing the child with the most family-like experience possible. [Tex. Fam. Code §264.001\(5\)](#).

A foster parent, other substitute caregiver, family relative or other designated caregiver, or licensed child placing agency caring for a child in the managing conservatorship of DFPS is not liable for harm caused to the child resulting from the child’s participation in an age-appropriate normalcy activity approved by the caregiver if, in approving the child’s participation in the activity, the caregiver exercised the standard of care of a reasonable and prudent parent. [Tex. Fam. Code § 264.114\(c\)](#).

3. Normalcy Resources

For a more complete report including the importance of normalcy and tips for encouraging normalcy, please read the Children’s Commission’s May 2019 [Normalcy for Children and Youth in Foster Care Round Table Report](#).²⁶⁸

Capacity Building Center for States, [Having the Normalcy Conversation: A Guide for Discussing Developmentally Appropriate Services for Children, Youth, and Young Adults in Foster Care](#)²⁶⁹

Texas CASA, [Normalcy for Children & Youth in Foster Care](#)²⁷⁰

Texas Council of Child Welfare Boards, [Normalcy for Children Resources](#)²⁷¹