POLICY REPORT

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CHILDREN'S PRESENCE IN COURT DURING CHILD PROTECTION HEARINGS:

EMPOWERING OR RE-TRAUMATIZING?

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EMPOWERING OR RE-TRAUMATIZING?

This policy brief seeks to challenge the 2012 recommendation of the National Council of Juvenile and Family Court Judges (NCJFCJ) that children of all ages should be present in court for each hearing in child protection proceedings. The paper makes recommendations as to when it is appropriate for children to attend court hearings and what accommodations should be made to minimize stress.

In 2012 the National Council of Juvenile and Family Court Judges passed a new best practice recommendation (Barnes, Khoury & Kelly, 2012: 8, 12):

> It is the policy of the NCJFCJ that children of all ages should be present in court and attend each hearing, mediation, pre-trial conference and settlement conference unless the judge decides it is not safe or appropriate.
>
> The information gained from simply observing a child at a court hearing is invaluable. [A judge] can gain tremendous insight from seeing the young child interact with her parents and caregivers, and it gives the parent and child an opportunity to visit if the child is placed out of home.
>
> There is always a benefit to the judge in observing the strength of the relationship between the parent and the child- What is the parent's affect with the child, how does the parent set limits, do they enjoy each other, how does the parent see discipline, and what is the interaction like? [1]

The NCJFCJ also recommends that the judge ask the child questions set forth in the judicial bench cards produced by the ABA Center on Children and the Law such as: "Do you like where you are staying now? Do you feel sad or miss anyone? (children ages 1-11)"; "Ask for input and opinions of youth ages 12-15 'when appropriate'" (Barnes, Khoury & Kelly, 2012, Appendix A).
This policy appears to have the support of such organizations as Casey Family Programs and the ABA Center on Children and the Law. APSAC cannot support this policy. It is neither evidence-based nor trauma-informed and demonstrates a lack of understanding

[1] In a footnote, Barnes does caution that "[j]udges should also be careful about drawing conclusions based exclusively on interactions the judge might see in court. These observations should be taken in context of reports and testimony of experts and the youth" (Barnes, Khoury & Kelly, 2012, p. 8, ftn. 22).

of child development. In fact, this policy may cause great harm to traumatized children by forcing them into extremely stressful situations, exacerbating PTSD symptoms, and re-traumatizing them by questioning them in the presence of their parents and in the formal setting of the courtroom.

This policy paper seeks to answer the following questions:

- When is it empowering and beneficial-- as opposed to psychologically harmful-- for a traumatized child to appear in court for child protection hearings regarding themselves and their family?
- What accommodations are necessary to enable a competent child's engagement in court proceedings without adversely impacting the child's sense of safety?
- How reliable is the information gleaned by a judge from a child's participation in court? How reliable are the child's statements in response to judicial questioning in the presence of parents, and caregivers or foster parents? Should such questioning by a judge even occur?
- What is the emotional impact of eliciting the child's position in the presence of their parents given the child's inevitable ambivalence and feelings of divided loyalties, guilt and responsibility?
- How likely is it that a judge's observations of parent/child interactions in the formal setting of a courtroom will yield accurate information about the nature of the parent/child relationship?

NCJFCJ's Position

Proponents of the NCJFCJ policy point to several sources that, they claim, provide support for NCJFCJ's recommendations.

Federal Statute

In 2002, Congress enacted the Child and Family Services Improvement Act, requiring, in part, that "procedural safeguards to be put in place to assure that in any permanency hearing held with respect to the child, …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" 42 U.S.C. § 675(5)(C). In enacting this statutory provision, Congress required that the court consult with the child in a manner which ensures that the child's opinion is heard by the judge.

However, Section 11(A) of the act defines the term "age or developmentally appropriate" to mean that "(ii) in the case of a specific child, activities or items that are suitable for the child based on the developmental stage attained by the child with respect to the cognitive, emotional, physical and behavioral capacities of the child."

The Act does not require that all children, no matter what the child's age, developmental capacities or trauma history, attend permanency planning hearings. Several states have passed legislation outlining the right of the child to attend these hearings but allowing for the exclusion of the child if it is in the best interests of the child to do so. [2] Some states have based the determination of when children need not attend on age (s*ee*, e.g., Idaho (below age 8) and Alabama (below age 12)). Most states leave the determination to the judge or magistrate. Some states' legislation permits any party to file a motion to require or excuse the presence of the child (*see*, e.g., Illinois) (Barnes, Khoury & Kelly, 2012).

United Nations Convention on the Rights of Children

Article 12 of the UN CRC (1989) (which has not yet been ratified by the US) establishes the right of children, "*capable of forming their own views*," the right to be heard in judicial and administrative hearings "*either directly or through a representative*" (United Nations Convention on the Rights of the Child, 1989) (italics added). Given the provisos quoted above in italics, this international resolution does not provide support for the NCJFCJ's recommendation that children of all ages should be present in court for every hearing in child protection proceedings, especially given that the Child Abuse Prevention and Treatment Act (CAPTA) requires that all children in the United States be appointed some kind of representative in abuse and neglect proceedings (42 U.S.C. § 5106a(b)(2)(B)(xiii) (2017).

Research Findings

Study by Weisz and Colleagues (2011)

As Weisz, Wingrove, Beal & Faith-Slaker (2011) pointed out, there is little empirical evidence regarding the impact of foster children's presence in court. Most of the existing studies up to 2011 involved self-report by small samples and did not use any comparison groups (Weisz et al., 2011). For their study, Weisz and colleagues recruited 150 foster children placed within an hour's drive of court. This sample was drawn from the general foster care population in one county in one jurisdiction in Nebraska. Only 93 of those 150 recruited youth chose to participate in the study and only 43 of those 93 foster children attended their dispositional review hearings. The children who participated in the study were ages 8-18 with a median age of 12.42.

Based on interviews of the children, the study found that children attending the hearings were more likely to view the judge as having made a fair decision than those not in attendance. Those who attended their court hearings reported feeling comfortable in court and were glad they attended. The longer children engaged in conversation with a judge, the more likely they were to report that they would want to go to court again. However, older attendees were less trusting of the judge than those not in attendance.

[2] See, e.g., Florida, Illinois, Kansas, Louisiana, Mississippi, Missouri, Texas, Utah, and Maryland (Barnes, Khoury & Kelly, 2012).

As the researchers themselves acknowledge, they had no control over the youths' attendance in court and therefore, the sample may have been biased in that the children who did not attend may have been different from those who did. This is so particularly if the reason for the child's lack of attendance was due to caseworkers' perceived need to protect particularly vulnerable children. In acknowledging the limitations of this study, the researchers recognized that "[i]t could be that the differences in perceptions of the court are due to underlying group differences—children who attended already perceived the court system more positively before they even attended their hearing" (Weisz et al., 2011, p.271).

The study also found:

> Children who didn't attend were more likely to report they understood why they were not living with their parents compared to the children who did attend. Also supporting this theme, older children who did not attend their hearings self-reported the highest level of understanding with regard to what occurs at hearings" (Weisz et al., 2011, p. 271).

This could explain why these children chose not to attend the hearing.

Despite the mixed results and limitations of this study, the researchers conclude: "Overall, the findings suggest that policies encouraging children's attendance at dependency hearings are viewed positively by and not harmful to children" (Weisz et al., 2011, Abstract). They state further in their abstract:

> [M]ore active engagement of the child by the judge, particularly asking specific questions or offering encouragement, was especially positive. In sum, the current findings support the international and US trend for increased children's participation in their foster care hearings.

The study findings also appear to support giving children the choice to attend and participate in their hearings or not.

ABA Children in Court Pilot Project (2014)

The NCJFCJ maintains that this ABA pilot project in New Jersey lends support to its recommendation that children of all ages should be present in court and attend every hearing. However, this pilot project, funded by Casey Family Programs and the National Child Welfare Resource Center, involves a sample of only 134 youth, several of whom did not attend their permanency hearing due to transportation issues (47%) or a desire not to attend (44%). The 2014 report summarizes the findings during the first year of the pilot project but gives no data about the ages, developmental levels or trauma histories of children in the sample, the severity of the abuse or neglect or intervening variables such as parental treatment, or improvement Readers are also not informed about what accommodations were made to enable the youth's full participation in the hearings. The authors acknowledge that attorneys and case workers reported

"disruptions in court hearings from toddlers and infants" (American Bar Association, 2014, p. 4) but found, based on the surveys, that there was a consensus that having the youth in court resulted in the court, the parties, and the child having a better understanding of the case plan.

Youth who did not come to court did not complete surveys but older youth who did attend mentioned concerns about missing school tests, classes and activities and embarrassment at having to use "court appearance" as an excuse for their absence. A major limitation to this preliminary study is that the youth who did attend court were not necessarily a representative sampling of all children in foster care. Those youth who chose to respond to the survey were a small, self-selected group. Many of the positive findings in the study were based on adult survey responses. These survey respondents constitute a biased sample. No information is reported about any follow-up studies involving this project.

Engaging Youth in Court: A National Analysis (Elstein, Kelly & Trowbridge, 2015)

This study is comprised of assessments conducted in New Jersey, Washington, Colorado (2), Vermont and Delaware. All told, the data consist of survey responses and focus groups involving a total of 389 youth as well as survey responses from foster parents, CASA/GALs, judges, attorneys, case workers and other professionals. Information about the ages of youth responding to the surveys is reported only for Delaware (ages 14-21), Vermont (ages 13-18) and Colorado (ages 14-26). The survey responses suggest that 1) decision-making can improve when youth are in court; and 2) the courtroom experience was positive for most youth.

As with the two studies mentioned above, the findings are based on responses from samples that are not necessarily representative of all youth whose cases come before the court in these jurisdictions. No comparison groups are used in this study. Given the reported ages of youth in the study sample (all over the age of 13), this study also provides no support for the NCJFCJ recommendation that children "of all ages" should be brought to court.

Home at Last: My Voice, My Life, My Future

This work, commissioned by the Pew Commission, is touted as "a national study of participation in court by foster youth" (Barnes, Khoury & Kelly, 2012, p. 6), but can be more accurately described as a compilation of art work, poems and essays by 797 self-selected youth, ages 11-20 (average age of 16) (PEW Commission on Children in Foster Care, 2006). The stories are compelling and certainly demonstrate youths' need to be given a voice in court. However, this work provides support only for a rule that adolescents who want to attend court should be allowed to do so. APSAC agrees with this proposition if the youth is capable of meaningful participation, it is his or her choice to attend and it is in his or her best interests to do so.

Conclusion

As noted above, the Federal statute cited in support of the NCJFCJ recommendations applies only to permanency planning hearings and requires the judge to consult the child "in an age-appropriate manner" 42 U.S.C. § 675(5)(C). The UN CRC applies to children "capable of forming their own views" and includes being heard "either directly or through a representative" (United Nations Convention on the Rights of the Child, 1989). Given these provisions, the lack of sound empirical findings and the age of the participants in studies relied upon by the NCJFCJ, it is hard to understand how the NCJCJ has taken these supposed sources of support and morphed them into the recommendation that children of all ages attend all hearings in abuse and neglect proceedings.

Purpose to be Served by Children's Presence in Court

In addition to the lack of statutory and empirical support for the NCJFCJ's recommendations, one must ask what is the purpose to be served by children's presence in court? How reliable are children's statements made either: 1) in the presence of their parents and foster parents or caregivers; or 2) knowing that their parents are going to hear what they say? How accurate will any conclusions about the nature of the parent/child relationship be if based on judicial observations in the formal and adversarial setting of the courtroom? Under what circumstances is it empowering for children to be in court? At what age and developmental level is it meaningful for a child to appear in court?

Reliability of Children's Statements

Judicial bench cards developed by the ABA Center of Children and the Law have been incorporated into the recommendations of the NCJFCJ. They suggest that judges ask children such questions as: "Do you like where you are staying now? Do you feel sad or miss anyone? (children ages 1-11)" and recommend that judges "[a]sk for input and opinions of youth ages 12-15 'when appropriate.'" (Little guidance is offered as to when it is appropriate.)

This type of direct questioning of children is not in keeping with the science of interviewing children (APSAC Task Force, 2012, pp. 11-13). As Reitman (2011:3-4) points out, "[c]hildren do not respond well to direct questioning... Children will only offer information if they trust that they will not be criticized for it." Experts working with children rely on creating a safe environment and moving away from yes-or-no questions. A lot of care is taken with how to invite children to communicate in a way that is developmentally appropriate. Questioning a child in the presence of both the parent and the foster parent, when the child may be attached to both, puts the child in an untenable position that can be psychologically harmful. Maltreated children still need to please their parents as a normal part of their development (Bowlby, 1969, 1983). Children may feel like they are betraying their birth parents if they say they want to stay

with the foster parent. This sets them up for loss. It is like asking the child, "Would you like us to cut off your right arm or your left arm?" or asking parents to choose just one of their children. Moreover, this kind of questioning in the presence of violent or threatening parents could be terrifying for children (Pantell et al., 2017).

Determining the best interests of the child is a matter of weighing the immediate and long-term consequences and trauma of maltreatment vs. removal from the home. This is never an easy decision even for trained professionals but the complexity of the decision speaks to the question of how can we expect children to decide what's best for them. We shouldn't put that burden on children.

When do children truly understand the purpose of court proceedings and the short- and long-term consequences of the outcomes? At what age and development stage are children aware of the nature of the attorney/client relationship and their role in that relationship? As Emily Buss (1999: 915-916) points out, without that awareness, children's participation in court hearings is meaningless:

> Children do not have a single, fully formed viewpoint that adults can access simply by asking the right questions… Because children's articulation of viewpoints is intimately connected with their understanding of the purpose of the articulation, "participation" without awareness is neither legitimate nor reliable.

Also, many traumatized children have difficulty with expressive language. They simply may not have the words to express the complexity of the emotions they feel.

Furthermore, in custody conflicts in both child protection and divorce proceedings, children need to be given the option to remain neutral (Lamb, 2015; Atwood, 2008; Smart, 2002). When questioned by a judge, children may feel they have to say things even if they don't want to. Even asking these questions may be harmful to children. The adults have to figure out the answer based on social science and data and not based on what children say they want.

Experts who work with children never ask the child, "Where do you want to live?" They do ask questions like, "If you go home, what would that be like?" What are the potential fears and good things that will happen if the child goes home? More direct questions like "Do you like where you are staying now?" and "Do you miss anyone?" will make the child feel responsible for the judge's decision which can be psychologically harmful to the child. This puts the weight of adult responsibility on a child's shoulders.

Moreover, this line of questioning would not be acceptable and would be rigorously challenged in forensic interviewing given that it is too direct and leading. The child's well-being is at stake when questioned that way in court as opposed to being questioned in a safe, supportive environment with people trained to do that. Children often have a lot of ambivalence in child protection proceedings.

Judges are not trained in forensic interviewing of children which requires the skills and experience of a trained professional. As Atwood (2003: 657) points out:

> Studies also show that the manner in which children's views are elicited is often a delicate task requiring an understanding of the child's emotional vulnerabilities. Certain methods of questioning children, such as the practice of repeating the same question in different words, may inadvertently lead a child to give untrue representations of his or her custodial wishes in an effort to please the questioner.

Additionally, before a judge relies upon children's statements in court, should not that judge be required to determine the extent of the child's decision-making capacity? As Mlyniec (1996) points out, in a variety of cases including divorce and custody, adoption, neglect and abuse, medical and mental health treatment, abortion, delinquency, and status offenses, judges are called upon to decide the weight to be given to children's stated preferences. This decision necessarily involves a determination of the child's decision-making capacity. As Mlyniec states:

> [H]earings …seldom last long enough for a **judge** to acquire the information necessary to render an honest and informed decision concerning a **child's** cognitive ability to make the choice at hand (p. 1901).

Pantell and colleagues at the American Academy of Pediatrics (2017: 2-3) point out:

> The purpose of child testimony in court is to provide trustworthy evidence…. The ability of children to provide trustworthy testimony must be considered in terms of a developmental context as well as the circumstances of the event precipitating a court appearance, the ongoing influences in the current home, and the environment and processes leading up to and including appearance in the
> courtroom.

Any examination of the developmental context of a child's ability to provide trustworthy testimony must take into consideration the impact of trauma on brain development. Shonkoff and Garner (2012) and the American Academy of Pediatrics have highlighted how childhood trauma can have an extensive impact on the developing structure of the brain, affecting later learning, behavior and health.

Commentary to B-4(3) of the ABA Standards of Practice for Lawyers Representing Children in Abuse and Neglect Cases (1996) notes the many reasons behind children's expressed preference for returning home:

> A child may desire to live in a dangerous situation because it is all he or she knows, because of a feeling of blame or of responsibility to take care of the parents or because of threats. The child may choose to deal with a known

situation rather than risk the unknown world of a foster home or other out-of-home placement.

A judge is ill-equipped to explore the dynamics of the child's stated preference in the context of a half-hour hearing.

Reliability of Judicial Observations of Parent/Child Interactions

For most children, the courtroom is so anxiety-provoking that to expect the judge to gain any valuable information about the parent/child relationship in that context is unrealistic. The child would be significantly affected by anxiety and the foreignness of such a formal, artificial setting. Any observations of the child and the parent/child interaction would not be a genuine reflection of what that child is really experiencing. This may be true for the parents as well. The artificiality of the courtroom setting and the knowledge that the judge is watching compromises the genuineness of the courtroom behavior.

The danger is that judges will make rash decisions based upon a misleading moment in time, an artificial snapshot, thinking, "Well, the children seem fine with their parents" or "They don't seem scared. They look happy." A judge will not be able to look at attachment and what effect anxiety is having in that context.

Furthermore, it is rare that an abusive parent will demonstrate abusive behavior in a one-hour interaction with the child in the formal setting of the courtroom. Children know how not to provoke a parent and how to behave in the presence of an abusive parent. It is not a safe situation for a child to have to disclose abuse in the presence of the abuser. It is the same with adult victims of domestic violence (DV). It is very difficult for them to disclose abuse in the presence of the abuser. All protocols for interviewing victims of DV now reflect this understanding (APSAC Task Force, 2012, pp. 9-10; National Children's Alliance, 2017, pp. 100, 104). On the flip side, what if the parent is emotionally abusive or physically rough with the child in the courtroom? Would the court see the parent as irredeemable? Should a judge's decision be based on that observation?

Given what we know about traumatic bonding (Baker and Schneiderman, 2018), it can be misleading to rely on observations of the parent/child interaction in court. Even if you do not consider traumatic bonding and Stockholm syndrome, it is important to remember that there are good parts of the parent/child relationship sometimes. Most abused children want things to be better. They don't want to get rid of their parents.

As for neglect cases, the danger is that observations of the parent/child interactions in court may cause the judge to minimize, for example, the fact that a parent has a serious drug problem and, over the course of days, weeks, months, is unable to provide the structure in the home in order to meet the child's basic needs. Judges are not going to see anything in a one-half hour hearing that can tell them whether that parent can

effectively parent that child. Moreover, children don't understand neglect. Their standard of normalcy is what they have experienced.

Any professional with expertise in working with children and families would never do an evaluation of a parent/child relationship, family functioning or individual functioning of a child or adult based on a half-hour interaction in a courtroom. Experts would conduct a formal process evaluation.

Empowering Children

No matter the role- "expressed wishes" or "best interests of the child", the attorney should be aware of the fact that most older children want to know what's going on with their case. It is the knowledge that is empowering. Attorneys should ask, "Would you like to know where things are going or not?"

Most often it's appropriate to give older children the option of being present for court hearings. Traumatized children need to feel empowered by having the choice to attend court hearings. It should not be mandatory, however. Many older children want to attend, saying "I want to know what people are saying." It may be empowering for children to know what is being said. They are there to listen, not to be questioned. It is not empowering for children to feel pressured to answer questions by a judge in a court hearing. As Buss (1999:944-945) states

> Empowerment implies experiencing the exercise of control as a good. For reasons closely related to those that might lead children to opt out of the traditional client role, children who accept that role nevertheless may experience its performance as a painful burden. We can think of this phenomenon as another piece of the capacity puzzle-children's emotional and psychological development renders them uniquely dependent upon their parents, which undermines their ability to experience the exercise of control over decisions negatively affecting either parent as a good. This consideration also raises a different kind of developmental issue: to what extent does imposing the empowerment experience on children interfere with their emotional and psychological development in a way that actually causes them significant harm?

If children are competent and want to say something to the judge, careful consideration must be given as to the best way for them to do so. Suggested accommodations include bifurcating the hearing (with attorneys remaining), allowing the child to speak via video conferencing or in the judge's chambers or having the child write a letter to the judge. If any of these accommodations are used, the child must first understand the limits of confidentiality. All parties will have the right to know what is being said by the child.

Recommendations

There should be no direct questioning of the child in the presence of parents/caregivers.

Some states have statues or policies specifically prohibiting interviewing children about allegations of abuse or neglect in the presence of the alleged maltreating parent. Michigan Compiled Law 722.628c, for example, provides: "During an investigation of suspected child abuse or neglect, the child reported to have been abused or neglected shall not be interviewed in the presence of an individual suspected to have perpetrated the abuse." When Minnesota's differential response system came under intense scrutiny, the Minnesota Governor's Task Force on the Protection of Children (2015:14) recommended that CPS interview the child using "trauma-informed" techniques and "individually first and prior to contact with the child's parents/legal guardians whenever possible."

APSAC fully supports the recommendations of the Minnesota task force in the context of both CPS investigations and direct questioning by a judge during court hearings. These recommendations are consistent with widely accepted protocols for interviewing adult victims of domestic violence (American Medical Association, 1992, p. 8). They help ensure that intimidation and conflicting loyalties will not affect the willingness of victims to make full disclosures about what is happening in the family. Certainly, factors influencing the reliability of victims' statements are equally present, if not more so, in cases involving child victims of maltreatment. These factors are likely to come into play whether the child was being questioned by a judge about the maltreatment or about the child's feelings towards his or her placement or visitation with maltreating parent/s.

Special accommodations should be made for children who participate in court, but children must also be educated about the limits of confidentiality.

In some cases, children will choose to make statements to the court about their preferences regarding placement, treatment and visitation. If so, attorneys for children should advocate for the court to order accommodations that make it easier for the child to communicate to the judge such as those noted above: 1) bifurcating the proceedings (allowing the child to speak first and then wait elsewhere in the courthouse for the rest of the hearing to take place); 2) allowing the child to speak to the judge in chambers with only the lawyers present; 3) having the child testify via closed-circuit TV; or 4) submitting a letter written by the child to the court. However, attorneys need to educate the child about the limits of confidentiality- the child should be informed when communications cannot be kept confidential and must be shared with the parents. That being the case, the child may well be put back into the double bind of being torn between revealing his or her true feelings and not wanting to say anything that displeases the parents.

The NACC (2001:9) calls for attorneys to advocate for the use of court processes that minimize harm to the child, ensuring that the child is "properly prepared and emotionally supported where the child is a witness." APSAC agrees. This is especially true when children must testify about maltreatment allegations. Most states have statutes or rules that permit a court to order accommodations for child witnesses such as testifying outside the presence of alleged perpetrators in both criminal and civil proceedings, among numerous others (Phillips, & Walter, 2013, Vieth, 2008) The US Supreme Court has ruled that such accommodations are not a violation of a criminal defendant's right to confront witnesses. *Maryland v. Craig*, 497 U.S. 836 (1990). APSAC takes the position in favor of a presumption that these options be used, and that a rationale be provided for not using them, any time a minor must testify in a civil child protection proceeding. These accommodations are designed to enhance the reliability of children's testimony. As Lamb (2015: 24) points out: "The stress associated with testifying may interfere with retrieval [from memories] by consuming some cognitive resources."

Pantell and colleagues at the American Academy of Pediatrics (2017: 12) similarly recommend accommodations for children's testimony in court in order to avoid secondary traumatization of the child:

> A growing body of scientific literature on the psychological and physiologic consequences of children witnessing and experiencing violence, as well as appearing in court, has supported modifications of courtroom procedures.

Children need to be educated about the painful things they may hear in court. It is the lawyer's responsibility to prepare the child and to help the child understand what is going to happen at the hearing.

Children need to be educated about the painful things they may hear in court and then be allowed to make the choice whether or not to attend. If children choose to attend court hearings, they need to be prepared for the negative things they may experience in court such as witnessing physical aggression, hearing bad things about their parents or other people they love, seeing parents in handcuffs and shackles or seeing parents arguing with each other. It is the lawyer's responsibility to help the child understand what is going to happen.

Children should be provided a support person if they do attend court proceedings.

If children do attend court hearings, they need to be accompanied by a support person who can answer any questions they may have and who can leave with them if they are bored, restless or want to leave.

A child's presence in court should never be mandatory.

Older children should be allowed to make the choice whether or not to attend. Their presence should never be mandatory. The NCJFCJ agrees that "children should not be forced to attend their court hearings after being informed about the hearing and its importance" (Barnes, Khoury & Kelly, 2012, p. 12). APSAC believes that giving older children the option of attending court is important. However, there should be a rebuttable presumption that children under the age of 13 should not be present in court.

APSAC supports older children's interests in being present in court to listen but not to respond to questions. It is empowering for a child to be given the option of attending court in order to hear what's being said. Sometimes (but not always) children want to know what's going on. That knowledge can be empowering. When children are kept in the dark, they feel like they don't matter and will often fill the gap in information with distortions about what may be happening that may not be accurate. APSAC advocates that there be a rebuttable presumption that older children who want to be in court should be allowed to do so, provided that, after consultation with the child's therapist, case worker, educators, family members and/or foster parents, the child's attorney determines that the child has the ability to be present, and to understand and process what is going on with a support person present with them in the courtroom. In making the determination regarding the child's attendance in court, those who know the child will need to look at the child's trauma history and how contact with the parent, the environment of the courtroom, the adversarial nature of legal proceedings, etc, may trigger past traumas and cause the child to regress and to exhibit harmful past coping mechanisms such as dissociation or the fight--or-flight response (Black-Pond & Henry, 2008).

There should be clear reasons for the child's presence which should never be for observations of the child or the parent-child interaction. The only legitimate reason would be because the child wants to be there to understand how these decisions about his or her life are being made.

In DC courts, children must have a desire to be in court and it must be in that child's best interests. Many children want to remain oblivious to the whole court process in order to survive emotionally. There needs to be an individualized determination by the attorney in the first instance. The attorney knows the child better than the judge and is in contact with the child's therapist, social worker and caregivers. Only where a party to the proceeding objects to the child's absence and can articulate a specific reason should the judge get involved.

The Washington DC guidelines could be a model for other jurisdictions:

> E-2 Child Participation in Hearings: Age appropriate children are encouraged to be present at court hearings. Some children benefit from being present in court and hearing directly from the judge and other parties about issues fundamental to their lives. A decision to exclude the child from the hearing should be made

> based on a particularized determination that the child does not want to attend, is too young to sit through the hearing, would be severely traumatized by such attendance, or for other good reason would be better served by nonattendance. There may be other reasons for the child's nonattendance. The … [attorney] should consult the child, therapist, caretaker, or any other knowledgeable person in determining the effect on the child of being present at the hearing. (Superior Court of the District of Columbia, p. 25).

The decision about a child's attendance in court should be left up to the child's representative.

Statutes or rules should leave it up to the discretion of the child's lawyer to determine whether or not the child should be present in court. This proposal is in keeping with the recommendations of Judge Leonard Edwards included in a 2006 ABA Child Law Practice article:

> "The best approach to children's participation in court is to have excellent representation of the child, whether it's by GAL attorney, CASA or some combination. There must be a representative who will talk to the child before court, develop a relationship with the child, ensure that the voice of the child is heard in court, and if the child wants to attend, make sure the child is present. The discussion of whether youth should be included in court hearings should be done on a case-by-case approach led not by a rule but by an interview with child and informed decision by counsel" Edwards (2006).

A child's decision to remain neutral should be respected.

As noted above, many children may not want to feel pressured to answer questions about their preferences in child protection proceedings. Commentary to Section B-4(2) to the ABA Standards of Practice for Lawyers who represent children in Abuse and Neglect Cases (1996) stresses the importance of honoring these feelings:

> [T]he child may not want to assume the responsibility of expressing a position because of loyalty conflicts or the desire not to hurt one of the other parties. The lawyer should clarify with the child whether the child wants the lawyer to take a position or remain silent with respect to that issue or wants the preference expressed only if the parent or other party is out of the courtroom.

Attorneys should employ trauma-informed interviewing techniques.

Lawyers for children need to put into practice the trauma-informed practices recommended by the NCTSN. These recommendations include resisting practices that may re-traumatize the child, and interviewing children in a quiet space "outside the presence of other persons who may contribute to the client feeling threatened" (National Child Traumatic Stress Network).

Attorneys should have mandatory pre-service and in-service training.

Court rules should require that attorneys for children should develop some expertise about child development and the impact of trauma.

Further research is needed.

Safety is paramount. There is a pressing need for research that looks at how the child's presence in court hearings relates to safety outcomes such as re-reporting and re-entry into foster care after reunification. To what extent does the presence of the child in the courtroom enhance or detract from the accuracy of judicial decisions in the context of child protection proceedings?

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