

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.