

## Consulting with Children at Permanency Hearings

By Clatsop Circuit Judge Paula Brownhill

Federal law, 42 U.S.C. §675(5)(C)(iii), enacted over two years ago, provides that in any permanency hearing the court must consult with the child in an age-appropriate manner regarding the permanency or transition plan for the child.

The Oregon Juvenile Court Improvement Project has convened a workgroup to develop protocols to implement this law. Clatsop County's Dependency Team, made up of various dependency court participants, developed local procedures without waiting for JCIP protocols. I have always encouraged children's participation in their permanency hearings, and our new procedures incorporate this practice. **The rule is that all children, regardless of age, will attend their permanency hearings unless the court grants an exception.**

The court holds docket call on Thursdays at 11:15 a.m., two weeks before each permanency hearing. If a party wants an exception to the rule that the child must attend the hearing, the party will make the request in person at docket call or in writing prior to docket call. The judge will decide whether or not to allow the exception. Exceptions will be granted if the child is in residential treatment and incapable of participating because of developmental delays or mental illness.

Exceptions may be granted if a child refuses to attend the hearing. The court will give these children an opportunity to speak privately in chambers. If the child still declines to participate, the judge will ask the child to submit comments in writing or by audio or video tape or to draw a picture or to convey her feelings through an attorney or CASA or caseworker. I feel strongly that children should participate if possible since the plans we develop will have profound effects on them.

When children attend permanency hearings, they may participate at the beginning and be excused for the remainder of the hearing. Although they are welcome to stay throughout the hearing, children often are bored with legal talk and court proceedings. Many prefer to speak and leave, and that is perfectly okay. In some cases, DHS or the child's lawyer or CASA may ask if the child may participate by telephone, and those requests usually are allowed. One goal is to obtain the child's input on the permanency plan, which may be done by telephone even though I would rather see the child in person.

Young children and infants also should attend permanency hearings. Although it may not be possible to consult with them, it helps the judge to see children. In a recent training, we learned that judges should require an infant's presence in court so the judge can see for herself how the infant looks. It is especially helpful to see infants with their mothers to observe first-hand how the mother interacts with her baby.