

PROPOSED MODEL RULE REGARDING YOUTH ATTENDANCE AT COURT HEARINGS

RULE ____ YOUTH ATTENDANCE AT HEARINGS

(A) A youth or child who is the subject of an abuse, neglect or dependency case is a party to his/her case and has the right to notice of adjudicatory and dispositional hearings in accordance with the Ohio Rules of Juvenile Procedure.

(B) A youth or child who is the subject of an abuse, neglect or dependency case has the right to attend and is to be encouraged to attend or otherwise participate in any and all hearings related to his/her case if he/she so desires. The Court shall presume that all youth who are subject to an abuse, neglect or dependency case do wish to attend all hearings relating to the case unless the youth, or the youth's attorney, Guardian ad Litem or Court Appointed Special Advocate acting on his/her behalf, expresses otherwise.

(C) At the Court's discretion, a youth or child may participate in such hearings by: attending all or part of the hearing; speaking with the Court in the presence of all parties; speaking to the Court in camera; observing the hearing; otherwise participating by submitting a letter, drawing and/or photograph to the Court and all parties through a Guardian ad Litem or Court Appointed Special Advocate, a foster or kinship caregiver, or the child's attorney.

(D) The Court has discretion to excuse a child or youth from any hearing or any portion of a hearing in the case if the Court finds that to be in the child's or youth's best interest based on factors such as the age of the child, the child's capacity for understanding and participating in the hearing, the nature of the proceeding, and other relevant factors aligned with the child's best interest in the case.

RATIONALE FOR MODEL RULE

Ohio Laws and Juvenile Rules

- Ohio Juv. R. 2(Y) "Party" means a child who is the subject of a juvenile court proceeding, the child's spouse, if any, the child's parent or parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child's custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court."
- Ohio Rev. Code Ann. § 2151.417(F) The court shall give notice of the review hearings held pursuant to this section to every interested party, including, but not limited to, the appropriate agency employees who are responsible for the child's care and planning, the child's parents, any person who had guardianship or legal custody of the child prior to the custody order, the child's guardian ad litem, and the child. The court shall summon every interested party to appear at the review hearing and give them an opportunity to testify and to present other evidence with respect to the child's custody arrangement, including, but not limited to, the following: the case plan for the child; the permanency plan, if one exists; the actions taken by the child's custodian; the need for a change in the child's custodian or caseworker; and the need for any specific action to be taken with respect to the child. The court shall require any interested party to testify or

present other evidence when necessary to a proper determination of the issues presented at the review hearing. In any review hearing that pertains to a permanency plan for a child who will not be returned to the parent, the court shall consider in-state and out-of-state placement options and the court shall determine whether the in-state or the out-of-state placement continues to be appropriate and in the best interests of the child. In any review hearing that pertains to a permanency plan for a child, the court or a citizens board appointed by the court pursuant to division (H) of this section shall consult with the child, in an age-appropriate manner, regarding the proposed permanency plan for the child.

- Ohio Revised Code Ann. 2151.414 § (D)(1) In determining the best interest of a child at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) or (5) of section 2151.353 or division (C) of section 2151.415 of the Revised Code, the court shall consider all relevant factors, including, but not limited to, the following:
 - (a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
 - (b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;
 - (c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;
 - (d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;
 - (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child. For the purposes of division (D)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.
- Ohio Rev. Code Ann. § 2151.35 (A) (1) "Except as otherwise provided by division (A)(3) of this section or in section 2152.13 of the Revised Code, the juvenile court may conduct its hearings in an informal manner and may adjourn its hearings from time to time.... Except cases involving children who are alleged to be unruly or delinquent children for being habitual or chronic truants and except as otherwise provided in section 2152.13 of the Revised Code, all cases involving children shall be heard separately and apart from the trial of cases against adults. The court may excuse the attendance of the child at the hearing in cases involving abused, neglected, or dependent children. The court shall hear and determine all cases of children without a jury, except cases involving serious youthful offenders under section 2152.13 of the Revised Code."

Federal Law

- 42 U.S.C. § 675(5)(C)(iii) (Child and Family Service Improvement Act of 2006) provides that states shall institute case review procedures that assure that:

[P]rocedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, 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;...

Current Policy and Practice Guidance

- “The presence of children in court proceedings that affect them is invaluable, even when they are too young to express themselves.” Hon. Leonard P. Edwards (ret.), Past President, National Council of Juvenile and Family Court Judges
- “Thus, it is our belief that many children and youth, in removal and non-removal cases, who are able to talk with a judge feel better about themselves; and that, in turn, judges obtain a greater understanding of these children and youth by virtue of being able to see them and, with the exception of very young children, talk with them. In the process, judges are often “de-mystified” in the eyes of these children and youth, and become real persons who are interested in their well-being. Additionally, there is restorative benefit to children and youth hearing first-hand from the judge that they are not at fault. Lastly, for older children and youth, the opportunity to speak with a judge also offers a potentially powerful antidote to feelings of helplessness and having no say in their lives.” *PROTOCOLS RELATIVE TO CHILDREN AND YOUTH IN COURT RSA 169-C CHILD PROTECTION CASES FOR USE IN THE NEW HAMPSHIRE CIRCUIT COURTS* (2012)
- “I think each youth that has their head on their shoulders should have their opinions heard of what they would like or want to do in their life. They should be able to go to Court hearings, team meetings, case reviews, or anything else that involves the youth. I think youth should be given the opportunity to attend meetings that have to deal with their life, if you are mature enough for the information. Your team members should work with you to have more responsibilities as you get older, including having your voice heard. Youth should always have a caring, adult supporter to use as a sounding board for their opinions.” *The Overcoming Hurdles in Ohio Youth Advisory Board Foster Youth Rights Handbook* (2009).
- “Child and youth attendance in court reflects best practice ... Youth empowerment and youth investment are some of the main reasons to involve youth in their court hearings. Judges can also establish important relationships with young people and learn a lot about their lives when they take the opportunity to meet and interact with the children and youth whose cases come before them.” Andrea Khoury, *Technical Assistance Brief Supports Child and Youth Engagement in Court* , http://www.casaforchildren.org/site/c.mtjSJ7MPIsE/b.8173527/k.A895/JP_2_Khoury.htm
- “Children should be included in their proceedings unless they choose not to or the court finds it harmful to the child to be present. Judges should also encourage youth to participate in the courtroom.” “Recommendations of the UNLV Conference on Representing Children in Families: Child Advocacy and Justice Ten Years After Fordham.” *Nevada Law Journal* 6, July 27, cited in *ABA Child Law Practice* (December, 2006).