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Administrative Office of the Courts

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DIRECTIVE #15-18
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TO: Assignment Judges
Trial Court Administrators

FROM: Glenn A. Grant, J.A.D.

SUBJECT: Children in Court – Revised Youth Participation in Court Protocol and Permanency Order (CN 10259)

DATE: September 10, 2018

This Directive promulgates the attached revised Children in Court - Youth Participation in Court Protocol (Protocol), as approved by the Judicial Council, which implements 45 CFR 1355.20 and N.J.S.A. 30:4C-61.2 requiring youth to be noticed of their permanency hearings. This Protocol has been in effect since 2015, and is now updated and reissued as a Directive. Providing youth with the opportunity to participate in court allows them to make a meaningful contribution to the proceedings that affect their lives. Data have shown that this opportunity to address the court is a benefit to the court, youth and stakeholders.

The Protocol addresses notice, preparing children for court, transportation, potential objections to a child's participation, logistics and court orders. The attached revised Protocol resolves issues that were identified over the past three years. The revision to the Protocol also necessitated revising the permanency order (CN 10259) (attached), which now provides space for the court to state the reasons if a youth does not appear for the hearing.

Current practices must be maintained so that the Law Guardians and/or the Division of Child Protection and Permanency (DCPP) ensure youth are transported to court. Court staff should accurately record youth appearances in CourtSmart and on the permanency order, and should set forth the reasons on the order when youth do not appear in court. Providing youth the statutorily required opportunity to appear and participate in their court proceedings help them to achieve permanency more efficiently.

By October 12, 2018, please review and make any necessary updates to the vicinage implementation plans that were submitted in 2015; forward the updated implementation plans to Family Division Assistant Director Joanne Dietrich. If there are no updates, please so advise

Assistant Director Dietrich. eCourts will be enhanced to capture relevant data points that will determine how youth participation affects safety, well-being, and permanency.

Attachments
cc: Chief Justice Stuart Rabner
Family Presiding Judges
CIC Judges
Steven D. Bonville, Chief of Staff
Directors and Assistant Directors
Clerks of Court
Special Assistants to the Administrative Director
David Tang, Chief
Family Division Managers
Stephanie Ullman, Assistant Chief
Assistant Family Division Managers

CHILDREN IN COURT - YOUTH PARTICIPATION IN COURT PROTOCOL

REVISED September 10, 2018

History

Pursuant to New Jersey law, children may attend any Children in Court (CIC) hearing, but have the specific right to notice of and an opportunity to attend their permanency hearings (N.J.S.A. 30:4C-61.2). The New Jersey Legislature has recognized the importance of youth involvement in the court process.

This Protocol is designed specifically to implement N.J.S.A. 30:4C-61.2 and 45 CFR 1355.20, which provide the authority for youth attendance and participation at permanency hearings. The primary goal of this Protocol is to maximize the successful implementation of this State statute and federal regulation, and to the greatest extent possible and in accordance with the child's wishes, to have a child appear in the courtroom for his or her permanency hearing and participate in it in a meaningful and appropriate fashion. This Protocol is cognizant of the challenges that may arise when a youth wishes to attend his or her permanency hearing, for instance, obstacles such as the youth's schedule (e.g., school) and the distance between the youth's residence and the courthouse. This Protocol also recognizes the availability of other methods of participation when reasons are provided, including an in-camera interview, writing a letter, or electronic communication. Nothing in this Protocol is intended to preclude a youth from providing a written statement to the court expressing his or her wishes.

This Protocol recognizes that it may be logistically challenging for young children to attend court. It is within the discretion of the law guardian and the court to make a determination as to whether a child's appearance will benefit the child, stakeholders, and/or the decision-making process.

PROTOCOL

Introduction

In 2015, the American Bar Association (ABA) Center on Children and the Law Bar Youth Empowerment Project (Bar Youth Project), a partnership with Casey Family Programs, along with the National Child Welfare Resource Center on Legal and Judicial Issues (Resource Center) provided technical assistance to pilot this Protocol in three (3) counties with varying demographics (i.e., urban, suburban and rural) in an effort to accurately gather and analyze data concerning the issue of youth participation at permanency hearings. This pilot program was a success and the Protocol was then implemented statewide as a requirement.

Notice

Pursuant to N.J.S.A. 30:4C-61.2, the court shall provide written notice of the date, time and place of the permanency hearing to the law guardian in advance of the permanency hearing. The Office of Law Guardian shall continue to utilize an age appropriate letter advising the child of the permanency hearing. The law guardian is responsible for personally serving the letter on the child. Proof of said notification shall be provided to the court. In the case of an

adjournment, additional notification will be made by the law guardian. Personal service of the notice by the law guardian will encourage contact between the child and his or her law guardian before the hearing.

Preparation/Debrief

The Division of Child Protection and Permanency (DCP&P) and the law guardian shall prepare the youth for appearances prior to communications with the court. Planning for the hearing should begin well in advance of the scheduled permanency hearing, no less than 30 - 45 days, in order to ensure that the child is prepared and arrangements are made to facilitate his or her presence. After the hearing, DCP&P and the law guardian are responsible for debriefing the youth following their appearance/participation in court.

The Office of Law Guardian has developed appropriate handouts, guidance documents for the youth, and videos that help prepare youth for court. Videos are available here.[1] Advocates for Children of New Jersey also developed a helpful document for youth, which is available here[2].

Transportation

Transportation will be a collaborative effort and one designed to ensure that all youth who wish to attend court are able to do so. The court should initially look to the child welfare agency that has custody of the child to make the necessary transportation arrangements. However, in order to ensure that transportation challenges do not prevent a child's presence at his or her permanency hearing, other options may need to be explored, such as resource parents, relatives, public transportation, the youth arranging his or her own transportation, or the law guardian investigator assisting with transporting the youth to court. Ultimately, if an agreement cannot be reached, the court will resolve the issue of transportation in a summary fashion.

Objections to Child's Participation

If a party, other than the child through his or her attorney, objects to the child's attendance in court, that objection shall be raised no later than five (5) days prior to the permanency hearing. Any objection shall not prevent the child's participation. However, the modality and appropriateness of the child's participation shall be determined, in a summary fashion, at a conference with the court prior to the permanency hearing.

Logistical Issues

The following logistical issues should be considered in order to maximize the successful attendance and participation of youth in a court hearing. Such considerations should include but are not limited to:

- Scheduling permanency hearings to occur outside of school hours so that a youth does not have to miss school.

[1] http://www.state.nj.us/defender/structure/olg/
[2] https://acnj.org/downloads/2017_07_foster_care_youth_in_court_tips.pdf

- Scheduling permanency hearings on a specific day to facilitate the youth's attendance.
- Ensuring proper supervision, if necessary, during the proceeding to enable all parties to fully participate.
- Identifying a private waiting area for youth prior to the start of the court hearing as appropriate and necessary.
- Determining the number of youth who will attend a court hearing on any given day to minimize wait time for all litigants. A member of the CIC staff will track the number of youth scheduled to attend their permanency hearings.

Training

Ongoing training on this protocol should be incorporated into each stakeholder's individual training events.

Court Orders

Standardized CIC orders reflect whether a youth attends and participates in a court hearing. If the youth does not attend court, the order shall provide a reason as to why not.

☐ **In the Matter of:**
☐ **In the Matter of the Guardianship of:**

_____
NJSpirit Participant #:
FC Docket #:

_____
NJSpirit Participant #:
FC Docket #:

New Jersey Division of Child Protection and Permanency,
_____ Plaintiff,

v.

_____
(NJSpirit Participant #:) Defendant,

_____
(NJSpirit Participant #:) Defendant,

_____
(NJSpirit Participant #:) Defendant,

_____
(NJSpirit Participant #:) Defendant,

Superior Court of New Jersey
Chancery Division - Family Part
County of _____
Docket Number: F_ -
NJSpirit Case #: _____

Civil Action

Permanency Order

This matter having been brought before the court on _____, 20__, by the Division of Child Protection and Permanency (the Division), and Deputy Attorney General _____, appearing, and in the presence of:

Defendant _____ ☐ appearing / ☐ not appearing,
☐ noticed / ☐ not noticed, represented by
Attorney _____ ☐ appearing / ☐ not appearing

Defendant _____ ☐ appearing / ☐ not appearing,
☐ noticed / ☐ not noticed, represented by
Attorney _____ ☐ appearing / ☐ not appearing

The child _____ ☐ appearing in person,
☐ appearing by phone/video;
☐ appearing in chambers; ☐ not appearing
☐ participating; ☐ not participating

If child did NOT appear/participate, provide reason:

☐ the child submitted a letter in lieu of attending court

represented by:
Law Guardian _____ ☐ appearing / ☐ not appearing,

Division Caseworker/Supervisor _____ ☐ appearing / ☐ not appearing
Division Phone number: _____ ext: _____

Court Appointed Special Advocate _____ ☐ appearing / ☐ not appearing

Resource Family member [initials only] _____ ☐ appearing / ☐ not appearing

Resource Family member [initials only] _____ ☐ appearing / ☐ not appearing

Other: _____ _____ ☐ appearing / ☐ not appearing

The Division's permanent plan for the child(ren) is

_____

_____.

The court, having reviewed the reports submitted by the Division and having considered the parties' arguments, finds by a preponderance of the evidence that the Division's permanent plan for the child(ren) is:

☐ inappropriate and unacceptable to the court because:

_____

_____.

OR

☐ appropriate and acceptable.

Timeframe is _____ and is

☐ inappropriate and unacceptable because

_____

_____.

OR

☐ appropriate and acceptable.

I. Risk/Safety

☐ **a.** The conditions/circumstances leading to the removal of the child(ren) ☐ have been / ☐ are being corrected and it ☐ is / ☐ may soon be safe to return the child because:

_____

_____.

☐ **b.** It is not and will not be safe to return the child(ren) home in the foreseeable future because

_____.

II. Reasonable Efforts

☐ **a.** The Division ☐ has / ☐ has not provided reasonable efforts to finalize the permanent plan, including reunification where appropriate, ☐ including / ☐ failing to include the following:

_____

_____.

☐ **b.** Reasonable efforts to reunify are not required pursuant to previous order of the court dated _____, 20___, for the following reasons,

_____

_____.

III. Termination of Parental Rights

☐ **a.** Termination of Parental Rights followed by Adoption is an appropriate plan because:

_____

_____.

☐ **b.** This case is an exception to the requirement to file Termination of Parental Rights because:

☐ **1.** Child is living with a relative.

☐ **2.** The Division has not provided the services to the family that are necessary to achieve reunification.

☐ **3.** The following compelling reason exists in this case:

_____

_____.

[If section III (b) above is checked, the following section IV <u>must</u> be completed.]

IV. Alternate Permanent Plan

☐ **a.** ☐ A residential treatment / ☐ A specialized care program is appropriate because:

_____

_____.

The Division's plan upon discharge from residential program is appropriate because:

_____

_____.

☐ **b.** An independent living program is appropriate because:

_____

_____.

☐ **c.** Custody with relative _____ (relationship _____) is appropriate because:

_____

_____.

☐ **d.** Kinship Legal Guardianship with (relationship _____) is appropriate because:

_____

_____.

☐ **e.** A short term extension of present placement, followed by reunification with _____ is appropriate because:

_____

_____.

And for the other reasons stated on the record on this date,
It Is on This _____ Day of _____, 20__, Ordered that:

☐ **1.** The child be continued in placement in accordance with the approved plan and the Division is to implement the above permanency plan no later than _____, 20__; if plan is not implemented by this date, a review is scheduled for _____, 20__;

☐ **2.** The child be continued in placement outside the home and the Division shall file to terminate parental rights, the Division shall file for kinship legal guardianship, or the Division shall arrange to have the adoption complaint filed in accordance with the approved plan, no later than _____, 20__; if not filed by this date, a review is scheduled for _____, 20__;

☐ **3.** The child be continued in placement and as the current plan is unacceptable, the Division is to present a new permanent plan to the Court by _____, 20__, and a permanency hearing to be held on _____, 20__;

☐ **4.** All provisions of the FN Multipurpose Order/FG Multipurpose Order of this date attached hereto, outlining specific services are hereby incorporated by reference.

It Is Further Ordered That:

_____

_____

_____

_____
, J.S.C.

These proceedings are confidential. The disclosure of any records, reports or information is strictly prohibited and subject to the penalties of *N.J.S.A.* 9:6-8.10b.

All prior orders not inconsistent with this order shall remain in full force and effect.

Attorneys must review the form of order prior to exiting the courtroom. Failure to do so waives any objections.