

## **CHILD PARTICIPATION IN FAMILY AND CHILD PROTECTION MATTERS IN THE UNITED STATES OF AMERICA**

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Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation in family and protection matters. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in the United States of America

Key words: child participation; family law; child protection; children´s rights; justice system; United States

By defining that a specific situation concerns the child, does he/she become a party to the proceedings?

Children are parties in proceedings for adoption, child welfare and juvenile delinquency cases. A child is not a party in custody and child support cases.

Does he/she have the right to legal representation by a lawyer?

Legal representation across the US is required only for delinquency matters. However, each state makes its own rules regarding legal representation in other cases. It is common to appoint counsel in child welfare and adoption matters.

Are there limits to the intervention of this lawyer in comparison with the other parties?

There are no limits.

The lawyer has an ethical duty to represent only the child's opinion, including cases where he/she does not consider the child's opinion in accordance with his or her best interests?

The role of the lawyer varies depending on the type of case. Lawyers in delinquency cases represent only the child's opinions. Lawyers in child welfare and adoption cases advocate for the best interest of the child, but usually communicate the child's opinion to the judge. A second attorney may be

appointed to directly represent the child where there is a conflict between the child's opinion and what the lawyer understands to be their best interest.

How does the child participate in Court proceedings?

Children are welcome to attend court proceedings, but may appear through a lawyer or intermediary. Attendance is mandatory in delinquency cases.

Directly, in front of the judge, or through an intermediary, either the lawyer or another professional? If it is another professional, can you identify it and specify its responsibilities, please?

Mental health professionals and social workers may act as intermediaries. We also use Court Appointed Special Advocates (CASA) to support youth in child welfare cases. They are lay volunteers who may act as intermediaries as well.

If the participation is direct, is it voluntary?

The participation is voluntary in child welfare and adoption matters. It is mandatory for delinquency cases.

In this case, who consults the child if and how he/she wants to participate?

The lawyer or intermediary will consult the child and report to the court.

Are there any institutional protocols on how to do that?

The availability of institutional protocols varies from jurisdiction to jurisdiction.

Are there any informative materials specially prepared for children about its participation?

The availability of informative materials varies from jurisdiction to jurisdiction.

Can you share it with our members?

Please visit [www.childrenslawcenter.org](http://www.childrenslawcenter.org) and look under "Resources" for information.

If the child does not want to participate directly, what alternatives are there in your country to ensure indirect participation?

The child may participate indirectly as explained above.

If there are doubts about what the child really wants or if his/her opinion is really expressed, what's the solution in your country?

The judge has discretion to decide how to proceed. The judge may conduct an informal interview the child in chambers, or formally interview the child in the courtroom. The judge may also appoint an attorney, social worker or mental health professional to speak with the child and then report to the court.

In cases of direct participation, in what procedural phase does it take place?

The child may participate at each procedural phase.

Is there a quantitative limit on consultation with the child?

The child is welcome to provide input at each procedural step. They can speak directly in court or through an intermediary. There can be limits to consultations between court hearings where the child participates indirectly. The limits are intended to minimize anxiety for the child.

The child participates in this delimitation? How?

The child participates in the delimitation through their lawyer or intermediary. Where the child is speaking in court, the judge specifies parameters to avoid repetitive or stressful inquiries.

When the opportunity to participate in the child is offered, what is the extent of options available to the child? I mean, should the child be limited to the aspects considered important by the adults or can the child bring other questions and possibilities?

The focus on the conversation relates to the facts of the case or the nature of the dispute. The child can bring other questions and possibilities related to the specific dispute or their best interest.

How is the courtroom where participation takes place?

Where a child participates in court, the participation takes place in the courtroom.

And the formalities of the child's participation in front of the judge?

Where the child testifies, the child is placed under oath. The child is not placed under oath for informal hearings that follow up on the status of the case or the provision of services.

Is the participation taking place in the regular courtroom or in the office?

The participation may take place in the regular courtroom or judicial chambers at the discretion of the judge in child welfare, domestic relations or adoption cases. Participation in delinquency cases is limited to the courtroom.

Who is present in the courtroom/cabinet?

Cases involving children are closed to the public, except in domestic relations matters. Who for present depends on the type case. Participants generally include the child, the lawyers, social workers or probation officers, parents, the judge and courtroom staff.

How are the people dressed?

Professionals are dressed in professional attire. Non-professionals dress as they wish. Judges wear robes.

Can you present a photo of such an atmosphere?

I do not have access to a photo of the courtroom at this time.

Is there a protocol on how to address questions to the child in family and child protection issues? Who developed it? Can you share it with our members? If there is not, how do you do it?

Protocols can vary from jurisdiction to jurisdiction. Please see materials available through this link.

[www.ncjfcj.org/bench-cards/](http://www.ncjfcj.org/bench-cards/)

Who is allowed to ask questions the child? Are the questions asked directly by the party or are they intermediated by the judge? What are the concerns adopted by the judge to avoid questions that may embarrass or violate the rights of the child? How does the debate unfold around the regularity of questions if the child is present in the atmosphere?

The multiple factors listed in this question are left up to the discretion of the judge and depend on the facts of a case. The younger or more vulnerable the child, the more limits the judge will set.

Is the decision taken in front of the child? If the child wants to, can he/she stay in the room?

The child must be present for decisions in delinquency cases. The child may stay, but is not required to be present, for other types of cases.

Are there any special rules about the consideration of the child's opinion in the context of the reasons for the decision?

Judges are required to consider the opinion of a child, but that opinion may or may not be determinative of the outcome.

What's the weight given to the child's opinion? Is it the age a criteria? Which one? If the child's degree of maturity is taken into account, how is this maturity assessed? By whom? What are the criteria considered?

The weight depends on the facts of a case. In general, the opinions of older or more mature children carry greater weight. The age criteria can be different from jurisdiction to jurisdiction, depending on local law. Where the child testifies in person, the judge assesses maturity within the context of weighing the child's views. Where the child participates indirectly, his or her advocate will report on maturity. Other parties may present their respective views on the child's maturity

How is the decision communicated to the child?

The decision is communicated orally when the child is present. The decision is communicated through written orders when the child is not present.

Are there any protocols for this communication?

Please access this link for information:

[www.ncjfcj.org/bench-cards/](http://www.ncjfcj.org/bench-cards/)

If the child has doubts or questions, is he/she allowed to speak with the judge?

It depends. A child who is present in the courtroom can speak with the judge. A child who is not present may communicate with the judge in writing or request a meeting in chambers.

How do you do that?

Please see answer above.

Does the child have the right to appeal the decision?

The child has the right to appeal final decisions.

## **SUPPLEMENTARY MATERIAL**

Judicial bench cards for child participation

[https://www.courts.ca.gov/documents/BTB\\_XXII\\_VA\\_1.pdf](https://www.courts.ca.gov/documents/BTB_XXII_VA_1.pdf)

photo gallery



