

Children's participation in foster care hearings

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ABSTRACT

Purpose

Empirical research regarding potential risks and benefits of children's participation in the legal system generally, and in the child dependency legal system in particular, is sparse and mostly characterized by small studies without comparison groups. The current study was designed to address the following questions regarding children's participation in dependency court hearings: (1) Is attending court harmful to children? (2) Is attending court beneficial to children? (3) Is judicial behavior with the child in the courtroom related to potential harms or benefits? and (4) Are there age differences in children's reactions?

Method

The authors measured children's reactions to attending dependency review hearings ($n = 43$) and compared them to a sample of children who did not attend their hearings ($n = 50$). One to 2 weeks following review hearings, both groups of children were interviewed about their reactions to the court process.

Results

Children who attended their hearings reported more positive feelings about the dependency process (e.g., trust in judge, perceived fairness, and more comfort with their guardians ad litem and caseworkers). For children who attended, there was no evidence of high distress immediately preceding or following their hearings. Court observations revealed that more active engagement by judges was related to positive responses from the children. Most children, including both children who attended hearings and those who did not, believed that all children should be able to attend their hearings.

Conclusion

Overall, the findings suggest that policies encouraging children's attendance at dependency hearings are viewed positively by and not harmful to children.

INTRODUCTION

Article 12 of the UN Convention on the Rights of the Child establishes the right of capable children to directly express their views and to be provided the opportunity to be heard in judicial and administrative proceedings. The US is one of very few nations that has not ratified the UN Convention. However, many US courts have recently begun encouraging children's participation, fueled by active foster youth organizations and advocacy groups (ABA, 2009 and HLCLC, 2006). There is now a growing acceptance of the idea that children and youth desire and deserve a voice in legal proceedings that affect them (Hughes, 2007, Jenkins, 2008, Khoury, 2006 and Khoury, 2007). Further, recent federal legislation regarding foster care sets forth a requirement that "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" (Social Security Act, 2006 Amendment).

A brief description of the US child abuse/neglect, often called dependency, court process may provide a useful context for this study. Generally, cases begin with a report of suspected child maltreatment to the child welfare agency or law enforcement. If the details of the report are consistent with child maltreatment concerns, there will be an investigation by child protection workers, law enforcement, or both. The court process starts with a petition to the court for removal of children and/or for an adjudication finding that children are in need of state protection. Hearings are held at the beginning of the case to inform parents of their rights, to determine that the children need to be removed from their home, and eventually to adjudicate that indeed the children meet the legal requirements of the state for child maltreatment (or whatever the state specific standard is). Following the adjudication, the dispositional hearing is held where the rehabilitative plans for the parents and any services or arrangements for the children are ordered. Regular dispositional review hearings, typically every 6 months, but often more frequently, are held after the disposition and throughout the rest of the life of the case. This study focused on children's attendance at these dispositional review hearings. The focus of these review hearings is the progress being made by the parents and any issues related to the child's situation or well-being. Children in the US state where this research was conducted are all required to be represented by an attorney guardian ad litem (GAL) who is in the courtroom with them and who is charged with representing both the child's best interests as well as the child's legal interests. GALs vary as to how much, if any, contact they have with their child clients although they are required to have regular contact by law.

Despite the wide expansion of policy and "best practice" recommendations regarding children's participation in their foster care hearings, there are numerous critics who express concerns that children may be harmed by exposure to painful information or being forced to talk about sensitive matters (Jenkins, 2008). Yet, at this time, little empirical evidence exists that might inform this policy debate or provide guidance regarding children's participation that would maximize intended benefits for children and minimize any risks.

Most recently, Quas, Wallin, Horwitz, Davis, and Lyon (2009) found that children participating in dependency hearings demonstrated low levels of stress, and that increased knowledge about the proceedings was related to lower levels of stress. Work in the UK, utilizing self-reports by

small samples, reported that foster children desired to participate in the decision-making process, desired to have their opinions solicited, and felt concern about a lack of control over decisions about them. Children who attended their formal administrative reviews desired more preparation before proceedings, but felt supported during them (Thomas & O'Kane, 1999). These studies, however, did not include any comparison groups.

The impact of testifying in criminal court regarding sexual abuse victimization has also been studied with children who testified compared to children who did not, both in the short term (Goodman et al., 1992) and in a long-term follow-up (Quas et al., 2005). This set of studies found that the testifiers exhibited more behavioral disturbance in the short term as compared to the non-testifiers but that the adverse effects lessened after the prosecutions were complete. The long-term follow-up (average period of 12 years) did not find adverse effects for the testifiers. Notably, the testifiers viewed the legal system as more fair than the non-testifiers at the follow-up, suggestive of a potential beneficial effect of participating. The researchers did qualify these findings with the caveat that the non-testifiers may not have needed to testify because the alleged perpetrator plead to a lesser charge, so their alleged assailants may have had less severe sentences than the alleged perpetrators of the children who did testify.

In summary, empirical research regarding potential risks and benefits of children's participation in the legal system generally, and in the child dependency legal system in particular, is sparse and mostly characterized by small studies without comparison groups. A few studies offer preliminary support for positive benefits for children's participation and low risk of harm, but no empirical research has attempted to directly evaluate the claims and concerns of policy makers regarding children's participation in their dependency court hearings.

The current study was designed to address the following questions regarding children's participation in dependency court hearings: (1) Is attending court harmful to children? (2) Is attending court beneficial to children? (3) Is judicial behavior with the child in the courtroom related to potential harms or benefits? and (4) Are there age differences in children's reactions?

METHOD

Participants

This study included 93 children involved in the abuse/neglect court system in a single county in the Midwestern region of the United States with 4 juvenile court judges. Forty-three of the participants attended their review hearings; whether children attended the review hearing was not influenced by the researcher. Toward the end of the study, older adolescents were excluded from recruitment because they were already well represented in the sample. Because researchers had no control over child attendance, there is a risk for bias in this sample, where children who did not attend hearings are potentially distinct from those who did attend.

Participants ranged in age from 8 to 18 (*M* age = 12.42 years, *SD* = 3.17; 55% boys). Of those participating, 57% were White, 14% were African American, 10.8% were Latino/a, 3% were Asian, 9% were American Indian, and 5% were categorized as other. At the time of the hearing,

participants' cases had been open between 4.11 and 194.37 months (M length = 36.19 months, $SD = 34.98$) and roughly one-fourth of children were placed with at least 1 biological parent. Of those invited to participate, 23 caseworkers, parents, or GALs declined to permit the child's participation. There were 24 cases where the caregiver did not return calls to schedule a follow-up or refused a follow-up visit and in 3 cases children changed placement and were not successfully located. Thus, 93 of the 150 recruited children participated in the study.

Procedure

Participants were invited to be in the study if they were between the ages of 8 and 18, were placed within a 1-h driving distance of the county, and had a review hearing between February 2008 and February 2009. Participants included children who attended their hearings and were given a brief pre and post hearing survey and a longer interview approximately 10 days after the hearing. Those children who did not attend their hearings only participated in the longer follow up-survey. The hearings of all cases were assessed utilizing a structured observation tool.

MEASURES

Children attending their hearing

For children who attended their hearings, a 4-item survey was administered before the hearing. Children were asked how happy or unhappy and how nervous or relaxed they were at that moment, both measured using pictures of faces to demonstrate 5 different states of emotion from an exaggerated frown (*very unhappy/nervous*) to an exaggerated smile (*very happy/relaxed*).

After the hearing, a brief 3-item questionnaire was administered, which included a question about how the hearing went, with response options illustrating 5 thumb orientations from thumbs-down (*very bad*) to thumbs-up (*very good*). Two questions from the pre-hearing questionnaire (i.e., how happy/unhappy are you feeling right now? how nervous/relaxed are you feeling right now?) were administered to assess state change before and after the hearing.

At the follow-up interviews, children were asked to respond to 31 statements using responses on a Likert-scale from 1 (*disagree completely*) to 5 (*agree completely*). Statements addressed topics including emotional state with regard to court (e.g., I was nervous before going to court), opportunities to present their views about the case (e.g., I was given a chance to tell my side of things), perceptions of parties involved (e.g., my caseworker did a good job telling the judge about my situation), perceptions of the judge (e.g., the judge was nice to me), perceived knowledge of their case (e.g., I know what my family's case plan is), and perceived knowledge of court procedure (e.g., I understand what happens at hearings). To assess the extent to which children want to attend court, participants were asked to state whether they would rather go to court or participate in options that ranged from activities many children want to avoid (e.g., going to the doctor) to activities many children want to participate in (e.g., going to the movies).

Children not attending their hearing

Children not at court were only administered a follow-up interview, approximately 10 days after their hearing. This survey included 29 items. To the greatest extent possible, we mirrored questions about going to court after those items asked of children who actually attended. The questions about participating in other activities were identical for both groups.

Courtroom observations

Researchers attended hearings for all participants. Before the hearing began, the date, time, and judge overseeing the case were recorded. Researchers also recorded who was in the courtroom (e.g., caseworker, county attorney, etc.). Finally, the researcher documented the duration of the hearing, as well as the judge's final decision.

Researchers documented the time and duration of judicial engagement with the child, as well as the types of information provided and questions asked by the judge from a list of possible statements or questions (e.g., judge provided information about the child's family, judge asked the child about preferences), and documented the child's response. Researchers also assessed other aspects of the child's behavior, including whether the child responded verbally or non-verbally to the judge's questions and the quality of speech (e.g., soft-spoken, faltering, talkative, etc.). The mood of the child and whether the child appeared to be paying attention were also noted. Inter-rater reliability was established among all observers using 20% of the hearings collected. All coders attended and observed the same cases in court to establish reliability. Reliability ratings ranged between .87 and .96 for all courtroom observation items.

RESULTS

Means and standard deviations for children who attended and who did not attend their court hearings are provided in Table 1. For all analyses, skewed data were transformed to meet assumptions of normality for comparisons when warranted.

Table 1Means, standard deviations, and *n* for children attending and not attending dependency hearings.

Item	Children attending			Children not attending		
	<i>M</i>	<i>SD</i>	<i>n</i>	<i>M</i>	<i>SD</i>	<i>n</i>
General case information						
Length of time case open (days)	1,263.91	1,287.16	43	961.82	815.98	50
Age	13.93*	3.17	43	11.02*	2.50	50
Immediate pre/post hearing						
Anxiety before the hearing	3.66	1.14	29	–	–	–
Happy before hearing	4.14	.79	29	–	–	–
Anxiety after the hearing	4.20	.90	35	–	–	–
Happy after hearing	4.26	.70	35	–	–	–
Hearing went well	4.20	.87	35	–	–	–
Court observations						
Length of hearing (min)	16.53*	12.00	43	25.05*	14.48	41
Current situation discussed	2.46*	.58	43	2.60*	.58	45
Visitation discussed	.60	.50	43	.84	.37	50
Communication with family discussed	.28	.45	43	.46	.50	50
Medical issues discussed	.12	.32	43	.36	.49	50
Permanency discussed	1.96	.74	43	1.56	.69	45
Parent attorney presented info	.47	.51	43	.68	.47	50
County attorney presented info	.35	.48	43	.58	.50	50
Judge presented info	.30	.47	43	.66	.48	50
Other person presented info	.19	.39	43	.04	.20	50
Follow-up						
Glad they went to court	4.37	.90	43	–	–	–
Hard to talk in front of everyone	2.26	1.74	42	–	–	–
Felt comfortable answering questions	4.40	.90	43	–	–	–
Did not recall feeling nervous	3.40	1.66	43	–	–	–
Did not feel upset at hearing	3.40	1.66	43	–	–	–
Court was boring	3.16	1.56	43	–	–	–
Would be/was nervous about court	3.40	1.66	43	3.14	1.60	50
Would like to go to court	4.37*	.90	43	2.94*	1.39	50
Judge made a fair decision	4.58*	.70	43	4.10*	1.19	50
I trust the judge	4.67*	.71	43	4.27*	1.17	50
Knowledge of case	4.10*	1.14	43	3.58*	1.43	50
Knowledge of family's case plan	3.69*	1.42	43	2.63*	1.70	50
Talk to caseworker	4.36	.99	43	4.50	.79	50
Talk to GAL	3.81	1.50	43	3.80	1.58	50
Accuracy about judge decision	2.35	.77	34	–	–	–
Understand what happens at hearings	4.18*	1.24	43	2.98*	1.48	50
Know when hearings are	3.21	1.54	43	2.64	1.58	50
Think kids should be able to go to court	4.37	1.02	43	4.00	1.18	50

* Significant mean differences between children attending and not attending court based on *t*-tests reported in text.

Is attending court harmful to children?

Initial results indicated that overall anxiety levels were low for children before attending their hearings, and lower still after the hearings. Interestingly, there was no difference in perceptions of being nervous about going to court for those who attended and those who did not attend their hearing [$t(91) = .75, p = .45$]. In addition, it appears that attending court was not overly arousing for children. Before their hearing, children reported feeling happy. After the hearing, children had a similar level of contentment, and reported that the hearing was good. During the follow-up interview, children recalled that they were not nervous before going to court, that it was not difficult to talk to the judge in front of everyone at their hearing, and they did not feel upset in the courtroom. Children also did not feel strongly that court was boring, regardless of whether or not they attended their hearing [$t(88) = .76, p = .45$]. Age had no effect on any of the anxiety or mood variables.

Is attending court beneficial to children?

An examination of means indicated that children who attended their hearing were glad that they went to court ($M = 4.37$, $SD = .90$), felt comfortable answering the judge's questions while in the courtroom ($M = 4.40$, $SD = .90$), and believed that children should be able to attend their hearings ($M = 4.37$, $SD = 1.02$), regardless of age. All response means fell between *agree* and *strongly agree*. Children also felt more positive about going to hearings when they attended their own [$t(83) = 5.94$, $p = .001$]. Age did not change this effect.

Children were more likely to view the judge as having made a fair decision when they attended their hearing [$t(81) = 2.63$, $p = .01$] and were more trusting of their judge [$t(81) = 2.15$, $p = .04$]. While age had no effect on children's perceptions of fairness, it did impact trust. Specifically, older children who attended their hearings were less trusting of their judge than younger children who attended, and older children who did not attend their hearing were more trusting of the judge than younger children who did not attend. Finally, children who attended their hearings had a better self-perceived understanding of the details of their case [$t(57) = 2.15$, $p = .04$] and reported higher perceptions of knowing what their family's case plan was [$t(89) = 3.23$, $p < .01$]. This was especially true for older adolescents [$F(2, 2) = 1.02$, $p < .01$].

Is judicial behavior with the child in the courtroom related to potential harms or benefits?

The following analyses apply only to children who attended their hearing, and reflect the direct interaction between the child and judge during the hearing. Children who were provided encouragement by their judge during their hearing reported feeling like it was less difficult to talk to the judge in front of others ($r = -.46$, $p < .01$). Further, children were less likely to report feeling upset in court when their judge had provided encouragement ($r = -.34$, $p = .03$), and tended to be more knowledgeable about legal terminology when the judge had been encouraging ($r = .32$, $p = .04$), suggesting that providing encouragement is one way to engage children in the courtroom, and is associated with increased knowledge.

Children were also more comfortable talking when they were asked questions by their judge ($r = -.31$, $p = .04$), and were less upset when the judge asked about their preferences ($r = -.32$, $p = .04$). Having a judge who asked questions was associated with children's self-perceptions about knowing when their hearings would be ($r = .32$, $p = .04$) indicating that children's knowledge and awareness was associated with engagement in the process. Additionally, the longer a child engaged in conversation with his or her judge during the hearing, the more often children would say they would rather go to court than do other activities ($r = .36$, $p = .02$), and that children should go to court ($r = .33$, $p = .03$).

Are there age differences in children's reactions to court attendance?

To address whether findings might vary by age, mean comparisons between younger (ages 8–12) and older (ages 13–18) participants. Results indicate that children who attended their hearings tended to be older [$F(1, 91) = 24.48$, $p < .01$]. Additionally, older children were more likely to report being able to talk to their GAL about their side of things ($r = .30$, $p = .04$) and were more accurate in reporting what the judge decided [$F(1, 91) = 6.83$, $p < .01$]. Older

children understood more details of their case ($r = .26, p = .04$) and terminology in general ($r = .47, p = .01$), with an interaction between age and court attendance for understanding why they were not living with their parents. Specifically, and surprisingly, children who did not attend their hearing reported that they understood why they were not living with their mother or father more so than those who did attend their hearing. Also supporting this theme, older children who did not attend their hearings self-reported the highest level of understanding with regard to what occurs at hearings ($r = .32, p = .03$). Finally, older children were more likely to report knowing when their hearings were ($r = .23, p = .03$) regardless of court attendance.

DISCUSSION

The present study drew from the general foster care population in one county to assess the experiences and perspectives of a more general sample. We found no evidence of harm to children who attended child protection hearings, either at the time of the hearing or a week later. Children reported that they felt comfortable at the hearings and that they were glad they attended. Children who attended their hearings reported fairly strong agreement with statements that children should be able to attend their hearings in general and that they themselves desired to do so. In addition to the absence of negative experiences, we found a number of benefits for children who participated including higher levels of trust in the judge, more positive assessments of the fairness of the judge's decision and more knowledge and understanding of their case.

Finally, youth attending court tended to be older, and older youth also had a greater understanding of their case and court information, and were more accurate in recalling the judge's decision.

Our findings suggest that direct encouragement and/or questioning from judges to children conferred positive benefits to the children. These conclusions derive from statistical relationships between what was observed in the courtroom during the hearing and the child's self-reported attitudes and perceptions at the 1-week follow up. So, they are not a product of a generally positive set of child perceptions, but a real relationship between the judge's behavior and the child's later recollection of their experience. Thus, not only do these findings suggest that children's participation is not especially harmful to them, they also indicate that judges can make the court experience less stressful and more comfortable for children by adopting brief and encouraging direct interactions with the children in the courtroom.

Limitations

This study is limited by its placement in a single juvenile court jurisdiction and the small sample size. Given that we found a relationship between judicial behavior and children's outcomes, future studies should seek to include multiple jurisdictions with larger samples of judges and children. In terms of sample, this study is further limited by the unavoidable non-randomization of the attendee and non-attendee groups. As a general rule, this court encouraged, but did not require, children's attendance at dependency hearings. The researchers were made aware of

some of the reasons that children did not attend hearings, which included issues with transportation, differences in the caseworkers' motivation to arrange for the children to attend, and protection of particularly vulnerable children. It is this latter group that might be particularly important to keep in mind when interpreting the data. It could be that the differences in perceptions of the court are due to underlying group differences—children who attended already perceived the court system more positively before they even attended their hearing.

A final methodological limitation worth noting has to do with the measures chosen by the researchers. While the researchers are satisfied that their measures generally accomplished the goals of this preliminary study, reliance on them does limit the interpretability of this data. Specifically, these measures have not been tested and shown to be valid and reliable indicators of children's perceptions and understanding of the court process. It would certainly advance the field if, in the future, researchers were to create and standardize measures of this kind.

Of particular interest to the researchers is the methodological difficulty in measuring children's perceptions of procedural fairness. The advocates for children's participation in hearings suggest its importance because children want to be heard and want to be informed. These factors have been included in various models of adult's judgments of procedural fairness or justice. Preliminary research in this area (Wingrove, Beal, & Weisz, 2011) suggests a strong developmental component to procedural justice judgments. The lack of a developmentally sensitive model of procedural and distributive justice for children and adolescents limits our ability to accurately assess key potential benefits of participation in hearings.

IMPLICATIONS AND FUTURE RESEARCH

Children in the child welfare system are at heightened risk of involvement in the juvenile justice system and later in the adult criminal justice system (Stewart, Livingston, & Dennison, 2008). Research on legal socialization suggests that children's experiences with the legal system (primarily law enforcement) affect their respect for it and their perceptions of the legitimacy of legal authority (Fagan & Tyler, 2005). There is beginning research that further suggests that these perceptions of legal authority affect engagement in illegal behavior for youth (Fagan & Tyler, 2005) similar to the impact for adults (Tyler, 1990). Thus, encouraging children's attendance may increase their respect for the legal system and that respect may serve as a buffering factor for children with many risks for future legal involvement.

As always, more research is needed to address the limitations and extend the findings of this research. Further, the social science construct of procedural justice may capture the goals of the children's participation "movement" and it may be one of the significant benefits of attending hearings. To significantly further this field of research, there is a clear need for developmentally sensitive models of procedural justice that can be used to better understand children's perceptions and to more validly and reliably assess those perceptions.

Despite the limitations of the present study, the findings are consistent with the small extant literature that children's attendance at foster care hearings is not harmful to them (Quas et al.,

2009). Indeed, such attendance appears to provide benefits of more positive perceptions of the court and more understanding of the child's own situation. Active engagement of the child by the judge, particularly asking specific questions or offering encouragement, was especially positive. In sum, the current findings support the international and US trend for increased children's participation in their foster care hearings.

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