

Strategies for Including the Child's Voice in Child Custody Cases

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UNCRC: The child's right to be heard

article 3

- the best interests of the child
- the primary consideration in all actions concerning children
- undertaken by courts of law (and other public and private bodies)

article 12

- the child shall be provided the opportunity to be heard
- in any judicial proceeding affecting the child,
- either directly or through a representative

This session

1. How are children's voices heard when child custody decisions are made?
2. A new strategy: direct trauma-informed advocacy by a trained child's attorney
3. What does the research tell us that children want?

What are the ways a child may be heard in a child custody case?

Through a witness at trial

- custody evaluator
- “reunification” therapist
- child’s therapist

Through a representative appointed for the child

- guardian ad litem
- minor counsel

Participation by child

- child speaks with judge in chambers
- child testifies in open court

Problems with the current ways

- **family court professionals and child representatives**
 - “best interests” assessment
 - substituted judgment
 - parents must pay fees
 - prioritization of contact with both parents
- **direct participation**
 - consequences of testimony in open court
 - interview in chambers –child not prepared

Problems with the current ways

domestic violence/child maltreatment

- **lack of professional education**
- **scepticism in family court**
- **counter-allegations**
- **evidentiary hurdles**
- **child does not disclose to professional**

New strategy: direct legal advocacy for child

- **Attorney trained in domestic violence**
- **Receives direction from child (9 and above)**
- **Child's experience/perspective is prioritized**
- **Trauma informed representation**
- **Relationship building**
- **Counseling of child**
- **Throughout the litigation**

At trial

- **Child's attorney**
 - No report
 - No testimony
 - Acts as an advocate--not a neutral
- **Presents and cross examines witnesses and evidence**
- **Child who testifies--prepared in advance**
- **Credibility of evidence of family violence is enhanced**

How children experience parents' family law proceedings

20-year period

45 studies from 7 different countries

Children and teens

Feedback about experience of separation and family court proceedings

Nuffield Family Justice Observatory

Overview of results

- children overwhelmingly feel unheard in court proceedings
- children want to be more involved in decision making
- children want their views to be taken seriously
- And children who had experienced family violence ?

Custody cases and domestic violence

- **“in divorces marked by ongoing disputes over the custody and care of children....there is often a history of domestic violence in the family and a likelihood of continuing violence after separation.”**

- Janet R. Johnston et al., *Allegations and Substantiations of Abuse in Custody-Disputing Families*, 43 *Fam. Ct. Rev.* 284 (2005); Janet R. Johnston, *High Conflict Divorce*, 4 *The Future of Children* 165, 167 (1994).

Some examples

Cases with:

- child sexual abuse
- exposure to substance abuse
- child victimized by domestic violence

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Comments, questions, feedback?
I'd love to talk!

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