

# INFORMAL ADJUSTMENT AGREEMENT (IAA)

B E N C H  
C A R D



■ La. Ch. C. arts. 628-630

## PURPOSE

IAA may be utilized regardless of whether child is in the parents' custody or that of DCFS; essentially a pre-adjudication diversionary process and viable alternative to prevent unnecessary removals and/or court interventions.

## TIMING AND GENERAL REQUIREMENTS

■ ARTICLES 424.1, 607-8, 628, 630

- IAA may be initiated either before or after CINC Petition filed.
- If child in DCFS custody, consent of DCFS is required for IAA.
- Before CINC Petition filed, court or DA may authorize IAA.
- After CINC Petition filed, court may authorize DA to effect IAA.
- Court may dismiss CINC Petition or allow Petition to remain pending during period of informal adjustment.

**PRACTICE TIP | Appointments:** Parents and children have a right to counsel at all stages of the CINC proceedings. Child representation and public defender programs should have been appointed—whether via Instant Order or thereafter. CASA may have been appointed as well.

## FORM OF AGREEMENT AND APPROVAL

■ ARTICLE 629

- (1) **FORM:** IAA shall set forth terms and conditions in writing; IAA shall be signed by DA, DCFS (if child in DCFS custody), parents, child (if 12 or older), and counsel.
- (2) **APPROVAL:** When child in DCFS custody and CINC Petition has been filed, IAA shall be submitted to court for consideration. If approved, court shall sign it and file it in the record; and IAA is the case plan for services.

**PRACTICE TIP | Requirements:** IAA must clearly delineate parents' obligations and services DCFS will provide. It should be individualized, depending on trajectory of case and issues at time it is executed. Requirements can look similar to safety plans or case plans, or a hybrid, and should be listed in body of IAA (rather than incorporated by reference to the plan).

**PRACTICE TIP | Stipulation:** As with any stipulation, the court shall engage in an examination of parents on the record to determine whether parents understand conditions and implications of IAA. If parents agree to extension of IAA, must be knowing and voluntary.

**PRACTICE TIP | DCFS Supervision:** Whether child is in DCFS custody or not, court may want to consider ordering that the IAA be filed in the court record and issue a specific court order as to whether DCFS is to supervise the case for duration of the IAA. Otherwise, DCFS may not know whether to continue or start to supervise the family.

## EFFECT OF AGREEMENT

■ ARTICLE 630

- IAA shall not be considered an Adjudication.
- Evidence of IAA shall not be admissible at any Adjudication Hearing or criminal trial.
- IAA suspends the proceedings on the acts alleged in CINC Petition. If any terms of IAA are violated, case may proceed to an Adjudication Hearing on the allegations.
- If parents satisfy IAA terms, they are discharged from further supervision, and a pending CINC Petition shall be dismissed with prejudice.
- IAA does not suspend the elapse of time authorizing TPR consistent with Title X of the Children's Code.
- Evidence of an agreement and parents' compliance or lack thereof is admissible in certification for adoption proceeding.
- Any incriminating statement made by parents to person giving counsel or advice and in discussions or conferences incident to IAA shall not be used against declarant over objection in an Adjudication Hearing or criminal trial.
- Any incriminating statement made by parents to person giving counsel or advice and in discussions or conferences incident to IAA may be used in a Disposition Hearing or for purpose of a presentence investigation after a criminal conviction.

**PRACTICE TIP | Purpose:** This Article expressly prohibits the admissibility of incriminating statements in an Adjudication Hearing or criminal trial to promote free and open discussion in attempting to reach an agreement. See Authors' Notes to Article 630(D).

**PRACTICE TIP | Status Hearing:** If an IAA is entered into, Children's Code does not require hearing. However, best practice is to set Status Hearing if court is overseeing IAA, perhaps halfway through its duration. If DCFS is supervising the IAA, court could order that DCFS submit a report to the court and all counsel of record 10 days prior to the Status Hearing and/or the expiration of the IAA with a recommendation to terminate IAA, extend IAA, or develop a new agreement.

## DURATION

ARTICLE 629

- (1) **CHILD NOT IN DCFS CUSTODY:** Period of informal adjustment not to exceed 6 months. See Article 114.
  - May be extended additional period for up to 6 months with consent of all signatories to original agreement.
- (2) **CHILD IN DCFS CUSTODY:** Period of informal adjustment not to exceed 3 months from date of child's entry into DCFS custody.
  - May be extended additional period for up to 3 months with consent of all signatories to original agreement.

**PRACTICE TIP | Effective:** IAA should set forth when agreement becomes effective and when it terminates.

## EXAMPLES OF WHEN TO CONSIDER IAA

- Instanter Safety Plan Order (ISPO) issued, parents are following safety plan, and DCFS wants more time to work with family. (Unlike ISPO, IAA suspends proceedings on the acts alleged in CINC Petition. Court may also dismiss Petition or allow Petition to remain pending during period of informal adjustment.)
- Drug Court or Family Preservation Court case.
- CINC Petition has been filed and child is still in the home.
- Initial need for removal is no longer present.
- Child in DCFS custody, one parent is victim of domestic violence by non-parent, and DCFS working with parent to safely get child back.

See [Informal Adjustment Agreement Template](#) and [Informal Adjustment Agreement Order Template](#).

# TEMPORARY RESTRAINING ORDER (TRO) AND PROTECTIVE ORDER (PO)

BENCH  
CARD



■ La. Ch. C. arts. 617-618

## PURPOSE

TRO and PO protect families from abuse and/or neglect by restraining individuals from harmful conduct and by giving other additional relief; can be used to prevent or eliminate the need for removal of the child by protecting him/her from further abuse and/or neglect.

## PRELIMINARY CONSIDERATIONS

■ ARTICLES 102, 309, 615(B)(2), 617-20, 627, 681

- (1) **PREVENT/ELIMINATE NEED FOR REMOVAL:** After investigation finding justification for report of child abuse or neglect, DCFS may seek TRO/PO and/or Instant Safety Plan Order (ISPO), pursuant to its obligation to provide reasonable efforts to prevent or eliminate need for removal.
- (2) **MANAGE SAFETY IN GENERAL:** Children's Code also allows issuance of PO in the following circumstances:
  - At Continued Custody Hearing (CCH), if court finds child can be safely returned home under PO.
  - At Disposition Hearing, if court places child in custody of a parent or any other relative or suitable person.
  - In any CINC proceeding under court's general authority.
  - Pursuant to Title XV, Chapter 8, Articles 1564 et seq.

**PRACTICE TIP | Other Examples:** TRO/PO can be effective in but are not limited to the following situations:

- Jurisdiction is needed over perpetrator, including non-parent, to temporarily order to refrain from certain actions.
- Eviction of perpetrator from residence would preserve child's safety.
- Awarding person protected use of community property, such as a car, would help person keep child safe.
- Existing custody/visitation order regarding child needs to be modified.
- Ordering perpetrator to pay temporary support would help person keep child safe.
- To prevent parent's/caretaker's contact with a child.
- Parent/caretaker is hesitant or unable to file TRO/PO on his/her own.

**PRACTICE TIP | Petitioner:** Children's Code uses "petitioner" for person seeking TRO/PO since language taken from Domestic Abuse Assistance Act. However, DCFS will often be petitioner in these instances.

**PRACTICE TIP | Defendant/Restrained Person:** Children's Code uses term "defendant," but there is no "defendant" in CINC cases. May be helpful to think of the relevant individuals as the "Restrained Person" (defendant) and the "Person Protected." Restrained Person would be the perpetrator; Person Protected would be the child and could include adults such as one or more of the parents/caretakers. Restrained Person could be parents, significant others, relatives, or someone else living in the home. The [Temporary Restraining Order \(TRO\) Template](#) and [Protective Order \(PO\) Template](#) use "Restrained Person" instead of "defendant."

**PRACTICE TIP | Appointment:** Article 607 directs court to appoint children's counsel "at the time the order setting the first court hearing is signed." Article 608 provides the parents' right to counsel at CCH and "at all stages of the proceedings thereafter." Court has authority to appoint CASA in any CINC proceeding (Article 424.1).

**HELPFUL GUIDANCE | Domestic Violence:** Those with domestic violence experience are well aware that lethality may increase when TRO/PO is requested by an individual.

## TEMPORARY RESTRAINING ORDERS

■ ARTICLE 617

- (1) **FINDINGS:** To grant, court shall find that:
  - TRO is necessary to protect "petitioner," child, and/or any other persons alleged to be an incompetent from abuse or neglect and that good cause has been shown for ex parte order.
- (2) **GRANT:** TRO may include but is not limited to the following relief:
  - Refrain from abusing, neglecting, harassing, or interfering with person or employment or going near residence or place of employment of "petitioner," child, or any person alleged to be incompetent.
  - Use and possession of specified community property, such as automobile.
  - Grant possession of residence or household via eviction or restoration of possession.
  - Allow return to family residence once to recover items accompanied by law enforcement officer.
  - Prohibit transferring, encumbering, or otherwise disposing of property, except when in ordinary course of business or for necessary support of a party or minor child.
  - Other forms of relief not specifically set forth in Article 617.
- (3) **RULE TO SHOW CAUSE WHY PO SHOULD NOT BE ISSUED:**
  - a. **IF TRO GRANTED WITHOUT NOTICE:**
    - Matter shall be set within 10 days (See Article 114); AND
    - Defendant shall be given notice of TRO and hearing on rule to show cause by service as required by law.
  - b. **IF NO TRO GRANTED:**
    - Matter shall be set for hearing on earliest day business of court will permit but, in any case, within 10 days from date of service of petition; AND
    - Defendant shall be given notice by service as required by law.
  - c. **AT PO HEARING:** Petitioner shall prove allegations of abuse or neglect by preponderance of the evidence.
  - d. **IF HEARING CONTINUED:**
    - Make or extend TRO as deem necessary; AND
    - Continuance shall not exceed 10 days.

**PRACTICE TIP | Good Cause:** Immediate and present danger of abuse constitutes "good cause" for TRO.

**PRACTICE TIP | Further Orders:** In [Temporary Restraining Order \(TRO\) Template](#), there is section where court may make further orders as it deems necessary ("Individualized relief to protect child's well-being").

**HELPFUL GUIDANCE | Purpose:** TRO is meant to be temporary and heard immediately.

## PROTECTIVE ORDERS

ARTICLE 618

- (1) **FINDINGS:** To grant, court shall find that:
  - It has jurisdiction over parties and subject matter; AND
  - Parties have entered into consent agreement, or party against whom PO is sought has been given reasonable notice and opportunity to be heard sufficient to protect person's right to due process.
- (2) **GRANT:** PO may include but is not limited to the following relief:
  - Granting relief available under TRO. See [TRO Section 2](#) above.
  - When there is a duty to support a party, a child, or any person alleged to be incompetent living in residence or household, ordering payment of temporary support or provision of suitable housing for them.
  - Awarding temporary custody of or establishing temporary visitation rights and conditions with regard to any minor child or person alleged to be incompetent.
  - Ordering counseling/professional medical treatment for either defendant or abused or neglected person(s), or both.
  - Court is authorized to order other forms of relief not specifically set forth in Article 618.
- (3) **DURATION AND APPEAL:**
  - PO or approved consent agreement shall be for fixed period of time, not to exceed 6 months.
    - It may be extended by court in its discretion after contradictory hearing.
  - PO or extension thereof is only subject to a devolutive appeal.
- (4) **SERVICE OF THE PROTECTIVE ORDER:**
  - PO shall be served on the person the PO applies to in open court at close of hearing or same manner as writ of injunction.
  - Clerk of court shall send copy of PO or any modification of PO to chief law enforcement official of parish where Person(s) Protected resides.
  - Copy of PO is to be retained in file in office of chief law enforcement officer until otherwise directed by court.

**HELPFUL GUIDANCE | Stipulation:** A consent agreement occurs when there is a stipulation to the issuance of the PO. A defendant/Restrained Person(s) may stipulate without any admission; may want to do so, for example, if there is a pending criminal charge.

**PRACTICE TIP | Further Orders:** In [Protective Order \(PO\) Template](#), there is a section where court may make further orders as deems necessary ("Individualized relief to protect child's well-being"). See La. R.S. § 46:2136, Louisiana Uniform Abuse Prevention Order's Order of Protection and [Temporary Restraining Order \(TRO\) and Protective Order \(PO\) Benchbook Section 2](#) for other examples that may be helpful.

**PRACTICE TIP | Custody or Divorce:** If PO is granted, custody and/or divorce case involving parties may be impacted.

**PRACTICE TIP | Modify:** On motion of any party, after notice to the other parties and a hearing, the court may modify prior Order regarding relief granted as authorized by Article 618(D).

## ENFORCEMENT

- There is currently no clear mechanism for criminal enforcement of TRO/PO.
- There is no provision for entry of Orders into Louisiana Protective Order Registry (LPOR) in Articles 617 and 618.

**PRACTICE TIP | Contempt Authority:** Court may always exercise its general contempt authority. See Article 1509(D). Also, PO issued pursuant to Article 1570 can be criminally enforced.

**PRACTICE TIP | Other Articles:** Article 627(D), however, states that if PO is issued or modified at CCH, court shall have Uniform Abuse Prevention Order, pursuant to La. R.S. § 46:2136.2(C), prepared and shall sign Order and clerk shall transmit it to LPOR. Also, in Authors' Notes in Article 618, in discussing TRO and PO, author states "court must file and transmit the Order no later than the following day for entry in the Louisiana Protective Order Registry."

## FULL FAITH AND CREDIT

PO issued in Louisiana or outside of Louisiana that is consistent with Article 618(B) shall be accorded full faith and credit:

- In all 50 states and the District of Columbia; AND
- Tribal lands, U.S. territories, and commonwealths.

See the [Temporary Restraining Order \(TRO\) Template](#) and [Protective Order \(PO\) Template](#).

# INSTANTER SAFETY PLAN ORDER (ISPO) AND INSTANTER ORDER FOR REMOVAL

B E N C H  
C A R D



■ La. Ch. C. arts. 619-620

## PURPOSE

A Temporary Restraining Order (TRO), Protective Order (PO), and/or an Instanter Safety Plan Order (ISPO) may be sought/used to safeguard a child's well-being in his/her home. As a last resort, DCFS can seek an Instanter Order for Removal and Provisional Custody to a Suitable Relative, Suitable Individual, or DCFS.

## ORAL INSTANTER ORDER

■ ARTICLES 619-20

- May be requested and granted, but only if there are exceptional circumstances (written verified Affidavit cannot be secured in time to keep the child safe). Whether granted/denied, written Affidavit should be filed with clerk within 24 hours of Order (See Article 114); if additional information obtained, written addendum should be filed with written Affidavit.

## SAFETY AND RISK ASSESSMENT

- For all requests, DCFS must articulate how child is unsafe without Instanter Order based on assessment of threats of danger, child vulnerability, and parent/caretaker protective capacities and, if requesting removal, why a DCFS In-Home safety plan, TRO/PO, and/or ISPO cannot be initiated to eliminate the need for removal.

**PRACTICE TIP | Child Welfare Assessment and Decision Making Model (CWADM):** Includes an assessment used by DCFS and child welfare stakeholders to determine whether child is safe or unsafe at all junctures of CINC proceeding. Child considered safe: (1) when there are no threats of danger; (2) if there is a threat of danger, child is not vulnerable to the threat of danger; or (3) if there is a threat of danger, parents/caretakers possess sufficient protective capacities to manage threat of danger and keep child safe. If child is determined to be unsafe, the assessment informs the type of safety plan to be sought by DCFS. When the assessment is conducted during an emergent situation, it is possible that an assessment of parental protective capacities may not be completed before the Instanter request. See [Child Welfare Assessment and Decision Making Model \(CWADM\) Benchbook Section 11](#).

## INSTANTER SAFETY PLAN ORDER (ISPO)

■ ARTICLES 603, 606, 619-20, 623

- (1) **OVERVIEW:** Is a court-ordered safety plan used to manage child's safety in the home without changing child's custody; can also limit parent's contact with child, order family to live in alternate location, or other interventions as ordered by court.
- (2) **AFFIDAVIT MUST SHOW:**
  - Reasonable grounds to believe child is in need of care (assert ground(s) codified in Article 606(A));
  - ISPO is necessary to secure child's protection;
  - Safety monitor approved by DCFS to provide oversight of safety plan; AND
  - Whether parents and safety monitor agreed to safety plan.
- (3) **FINDINGS AND RULING OPTIONS:**

Court shall make one of the following for each child:

  - a. **DENY:** No reasonable grounds to believe child is in need of care OR not necessary to secure child's protection. If removal is necessary, deny ISPO and issue Instanter Order for Removal.
  - b. **GRANT:** Reasonable grounds to believe child is in need of care AND safety plan is necessary to secure child's protection;
    - Include written findings of fact in support;
    - Set forth persons (parents and safety monitor) subject to safety plan and conditions necessary for protection of child's health and safety while remaining in the home; AND
    - Order parents' and safety monitors' compliance with terms and conditions of safety plan.

**ESSENTIAL JUDICIAL FINDING | Reasonable Grounds:** Court must determine whether or not: (a) there are reasonable grounds per Article 606(A) to believe child in need of care (and articulate specific ground(s) in Order); (b) ISPO necessary to secure child's protection; (c) safety monitor approved by DCFS to provide oversight; and (d) parents and safety monitor agreed to safety plan.

**PRACTICE TIP | Safety Monitor:** Individuals identified by DCFS to provide oversight of safety plan and ensure plan's provisions are followed and safety threats to child are controlled. A safety monitor may be a professional, paraprofessional, volunteer, or individual who is part of family's network, such as extended family, church members, friends, etc.

# INSTANTER ORDER FOR REMOVAL

ARTICLES 603, 606, 617-20, 622-3, 626, 42 U.S.C. § 671(a)(31)(A)

- (1) **OVERVIEW:** Court can order child removed from his/her parents/ caretakers when child's safety cannot be safeguarded by less restrictive alternatives.
- (2) **AFFIDAVIT MUST SHOW:**
  - a. **NECESSITY OF REMOVAL:**
    - Reasonable grounds to believe child is in need of care (assert ground(s) codified in Article 606(A));
    - Emergency removal is necessary to secure child's protection; AND
    - Efforts taken to prevent child's removal from his/her home or exigent circumstances obviating need for such efforts;
  - b. **SUITABLE RELATIVE/INDIVIDUAL:** Child's safety and welfare can be safeguarded through provisional custody to suitable relative/individual; AND
  - c. **STATE THROUGH DCFS (FOSTER CARE):** Why provisional custody to suitable relative/individual is not appropriate and/or available and should instead be granted to DCFS.
- (3) **FINDINGS:** To grant, court shall make the following written, separate, and individualized findings for each child:
  - a. **REASONABLE GROUNDS:** Reasonable grounds to believe child is in need of care AND emergency removal is necessary to secure child's protection.
  - b. **CONTRARY TO WELFARE:** Continuation of child in his/her home is contrary to child's health, safety, and welfare, and temporary removal is in best interest of child; AND
  - c. **REASONABLE EFFORTS (RE):** Make one of the following:
    - (1) **DCFS made RE:** To prevent or eliminate need for child's removal. Court should consider whether:
      - DCFS sought court interventions such as TRO/PO and/or ISPO as required by Article 619(B);
      - DCFS provided referrals, activities, and/or services (i.e., safety checks, counseling, etc.); AND
      - Removal request made/not made based on improper assumptions or cultural biases.
    - (2) **DCFS did not make RE:** » If necessary, court may order removal even if efforts have not been reasonable.
    - (3) **RE Not Required:** Due to emergency circumstances; articulate reason why court found not required in Order.
      - If DCFS's first contact with family occurred during emergency in which child could not safely remain at home even with reasonable in-home services provided to family, DCFS shall be deemed to have made RE to prevent or eliminate need for removal (Article 619).
- (4) **RULING OPTIONS:**

Court shall make one of the following rulings for each child in the Order:

  - a. **DENY:** No reasonable grounds to believe child is in need of care OR emergency removal is not necessary to secure child's protection. » DCFS may then request ISPO, if appropriate.
  - b. **GRANT:** (1) No reasonable grounds to believe child is in need of care AND emergency removal is necessary to secure child's protection; AND (2) continuation of child in his/her home is contrary to child's health, safety, and welfare AND temporary removal is in best interest of child:

- Include written findings of fact showing necessity for each child's removal;
- Order removal of child from parents' custody; AND
- Order child be placed in least restrictive and most appropriate setting with health, safety, and best interest of child being paramount concern. Unless best interest of child requires different placement, provisional custody shall be placed per priorities outlined in Article 622:
  - (1) **Suitable Relative:** With whom child has been living and agrees to safety plan;
  - (2) **Suitable Relative:** Willing to offer stable home and agrees to safety plan;
  - (3) **Suitable Individual:** Willing to offer stable home (i.e., coach, family friend, fictive kin, teacher, etc.) and agrees to safety plan; OR
  - (4) **State Custody:** Through DCFS, if no suitable relatives/individuals or not in child's best interest.
    - » **If Custody Granted to Relative/Individual:** Include safety plan in the Order, set forth conditions of contact with parents, caretakers, and/or others, and order custodian adhere to conditions of safety plan.

**ESSENTIAL JUDICIAL FINDING | Reasonable Grounds:** Court must determine whether or not: (a) there are reasonable grounds per Article 606(A) to believe child in need of care (and articulate specific ground(s) in Order); (b) emergency removal is necessary to secure child's protection; (c) and efforts were taken to prevent removal or exigent circumstances prevented efforts.

**ESSENTIAL JUDICIAL FINDING | Contrary To Welfare:** Federal law only authorizes removal of child from his/her home upon judicial finding that remaining in the home is contrary to child's health, safety, and welfare and that temporary removal is in best interest of child. Finding must be child specific, documented in first written court order sanctioning removal (i.e., written Instanter Order for Removal), and signed and dated by judge. DCFS risks losing Title IV-E funding for child's entire stay in foster care if child removed from home and placed in DCFS custody without this judicial finding.

**ESSENTIAL JUDICIAL FINDING | Reasonable Efforts (RE):** Under State law, judge shall make a finding in Instanter Order as to whether or not DCFS made RE to prevent or eliminate need for child's removal, or that RE were not required per Article 619(B). This RE finding is required in a written court order within first 60 days of child's removal. DCFS risks losing Title IV-E funding for child's entire stay in foster care if child removed and placed in DCFS custody without a judicial finding that RE were made by DCFS or not required by law. Thus, if RE not made initially, it is critical to hold DCFS accountable to timely making them. In any RE finding, child's health and safety shall be paramount concern.

#### HELPFUL GUIDANCE | 4 Reasonable Efforts Considerations:

- (1) What were specific threats of danger that led to removal request?
- (2) What can be done to remove the danger instead of child? (i.e., services, in-home safety plan, PO, etc.)
- (3) Can and will someone child or family knows move into home with child and parents/caretakers to remove the danger to child? Would in-home safety plan or PO help?
- (4) Can and will parents/caretakers and child go live with suitable relative/individual to remove the danger to child? Would in-home safety plan or PO help?

**PRACTICE TIP | Emergency Circumstances:** If DCFS asserts RE were not required, DCFS must articulate immediate danger child in and/or particular circumstances of case preventing DCFS from making efforts to prevent removal. Should only be used in necessary and applicable circumstances (i.e., parent in jail, subjected child to egregious conduct/conditions, etc.).

**PRACTICE TIP | Custody To One Parent:** Child can be removed from one parent and not another even though anticipated CINC Petition will still be filed. Judge can order implementation of safety plan (developed and agreed upon by DCFS) restricting one parent's access to child (and potentially grant custody to the other parent at Disposition) and/or issue PO restricting one parent's access to child giving temporary custody to the other parent (time limited).

**PRACTICE TIP | Contact Relatives:** Per federal law, within 30 days following removal of child and any time after relative identified, DCFS is required to contact all known adult relatives of child to inform them about placement and permanency possibilities for child.

**PRACTICE TIP | DCFS Recommendation:** Sometimes DCFS is not able to recommend custody to relative/individual for policy reasons, which may not be safety related. Courts shall nevertheless grant custody in best interest of child per Article 622 priorities and evidence presented.

**PRACTICE TIP | Clearances/Background Checks:** Court can order DCFS to initiate child welfare background clearance, criminal background check, and assessment of home on potential caregivers as needed.

**PRACTICE TIP | Siblings:** DCFS shall make RE to place siblings in same foster care, guardianship, or adoptive placement. If siblings are removed and not placed together, DCFS shall make RE for frequent visitation or other ongoing interaction between siblings. RE not required if DCFS documents placement together or continued interaction would be contrary to safety or well-being of any siblings. Court's role is to hold DCFS accountable to showing evidence of such reasonable efforts.

## FURTHER ORDERS

ARTICLES 424.1, 575, 607-8, 615, 617-20, 623, 628

Unless dismissing case, court shall also make the following orders:

(1) **ORDER APPOINTMENTS:**

a. **ATTORNEYS FOR CHILD AND PARENTS:**

- Order program approved to represent child be appointed; notice of appointment and service of pleadings;
- Best practice is to refer parents to local Public Defender Office to provide representation at Continued Safety Plan Hearing (CSPH)/Continued Custody Hearing (CCH); order notice of appointment and service of pleadings;

b. **CASA:** Order local CASA program be appointed to advocate for best interest of children and notice of appointment;

- (2) **ORDER DCFS TO FURNISH REPORT OF INVESTIGATION:** To DA within 15 days of issuance of ISPO or CCH;
- (3) **CINC PETITION NOT TIMELY FILED:** Within 45 days of issuance of ISPO, ISPO shall automatically terminate unless extension granted by court based upon showing of good cause and notice to all parties; within 30 days of CCH, child shall be returned to parents unless extension granted by court based upon showing of good cause and notice to all parties;
- (4) **ISSUE PROTECTIVE ORDER:** In addition to or instead of an Instanter Order to protect child and/or adult and help keep child safely in home and/or manage safety and risk concerns/threats (See [Temporary Restraining Order \(TRO\) and Protective Order \(PO\) Benchbook Section 2](#));
- (5) **SET MATTER FOR CSPH/CCH:** CSPH within 3 days of issuance of ISPO or CCH within 3 days of child's removal or entry into custody; order all parties to appear (See Article 114 for time computation);
- (6) **SERVICE/NOTICE OF HEARINGS:** Be made on parties, counsel, CASA, and, for CCH only, foster caregivers (Article 623, 42 U.S.C. § 675(5)(G), 45 C.F.R. § 1356.21(o)); AND
- (7) **ARRANGEMENTS FOR ANY INCARCERATED PARENT:** Be made to attend hearing, either in person or remotely.

**ESSENTIAL JUDICIAL FUNCTION | Assistance and Accommodations:**

Court responsible for providing interpretation, translation, and language assistance services and reasonable accommodations for parties at CSPH/CCH and all subsequent hearings. Interpreters must be familiar with case-related details to provide accurate, meaningful, and effective interpretation.

**PRACTICE TIP | Early Appointment:** Children and parents have right to representation in CINC proceedings. Best practice is to make appointments as early as possible to enable work to begin immediately and provide quality representation. Article 608 references parents' right to counsel at CCH and all stages of proceedings thereafter. However, due process also attaches with issuance of an ISPO, and arguably extends same right to counsel to parents and children in these earlier proceedings due to introduction of DCFS and courts in the family as well as the parents' loss of authority to place the child with any individual/institution except DCFS until the safety plan is terminated. See Article 619.

**PRACTICE TIP | Hold CSPH:** CSPH is not required if parents agree with safety plan (parents' signature on safety plan is evidence of their agreement). However, best practice is to hold CSPH to protect child's safety and parents' due process rights and ensure parties and safety monitor understand terms and conditions of safety plan. If CSPH will not be held, court should include advisements from Article 625 in ISPO.

**PRACTICE TIP | Coordinating Services:** Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful. A multidisciplinary approach is especially critical for youth who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated services and supports; consider having one or more represented at CSPH/CCH as needed.

**PRACTICE TIP | Incarcerated:** To ensure attendance at CSPH/CCH of any parent who is incarcerated, writ or motion should be filed and order issued by court and served on warden or administrator of facility prior to CSPH/CCH. Service should be made in advance of hearing to afford time for the facility to arrange for transportation of parent to court (or video conferencing where parent's physical attendance at hearing is not possible).

**PRACTICE TIP | Alternatives to Removal:** IAA is routinely used in some parishes when a CINC case has been initiated. See [Informal Adjustment Agreement \(IAA\) Benchbook Section 1](#) for more information. Alternatively, if appropriate, it may be helpful to refer the family to Family in Need of Services (FINS) before a CINC Petition is filed. See Articles 743 et seq.

**PRACTICE TIP | Placement Pending CCH:** Suitable relative/individual may seek and obtain an ex parte court order to take provisional custody of child pending CCH.

See [Instanter Safety Plan Order Template](#), [Instanter Order for Removal and Provisional Custody to Suitable Relative or Individual Template](#), and [Instanter Order for Removal and Provisional Custody to Department of Children and Family Services Template](#).

# CONTINUED SAFETY PLAN HEARING (CSPH)

BENCH  
CARD



La. Ch. C. arts. 624-627

## PURPOSE

Revisit findings of the Instant Safety Plan Order (ISPO), an alternative to removal; ensure counsel appointed, advisements given, and parties and safety monitor understand safety plan; parties challenge State and present evidence. Not required if parents agree to safety plan, yet recommended.

## Timing and Continuances

ARTICLES 624, LA. SUP. CT. RULE XXXIII, PART II, SEC. 1-2

- (1) **TIMING:** Shall be held within 3 days of issuance of ISPO (See Article 114); not required if parents previously agreed to safety plan (parents' signature on safety plan is evidence of agreement).
- (2) **CONTINUANCES:** May be continued in compliance with Article 624(B); court shall report continuance exceeding maximum allowed within 10 days to Louisiana Supreme Court, with reasons and copy of Order.

**PRACTICE TIP | Hold CSPH:** Although not required if parents agree with safety plan, best practice is to hold CSPH to protect child's safety and parents' due process rights and ensure parties and safety monitor understand terms and conditions of safety plan.

## Appearances and Appointments

ARTICLES 575, 607-8, 623-4, 627

- (1) **ONLY ADMIT PERSONS WITH PROPER INTEREST/NECESSARY:** Including parents, child, attorneys for child and parents, DA/ADA/DCFS attorney (BGC), DCFS representatives, CASA (if appointed), and safety monitor.
- (2) **CHILDREN ARE PARTIES:** 12 years or older, shall be present unless waived upon motion of child's attorney; include in Order if waived or not. Under age 12, shall be present upon request of child's attorney/court.
- (3) **PARENTS ARE PARTIES:** If absent, hearing may only proceed if cannot be found, served summons, or notified by DCFS. If absentee, court shall order appointment of curator ad hoc (Articles 575 and 627(G)). If incarcerated, verify writ/motion to guarantee parent's attendance filed and Order issued/served on facility before CSPH.
- (4) **ATTORNEYS:** Child shall have attorney appointed and present (Article 607); indigent and absent parents shall be provided representation (Articles 575, 608, and 627(G)) unless right waived by parent per Article 608; should have received copies of Instant Order and Affidavit before CSPH; critical to protect due process rights of child and parents.

**ESSENTIAL JUDICIAL FUNCTION | Assistance and Accommodations:** Court responsible for providing interpretation, translation, language assistance services, and/or reasonable accommodations for parties. Interpreters must be familiar with case-related details to provide accurate, meaningful, and effective interpretation.

**PRACTICE TIP | Appointments:** If not made in ISPO: order program approved to represent child be appointed and refer parents to local Public Defender Office to represent parents; order notice of appointments and service of copy of pleadings. Finding of indigency may be needed for parents. Court can also appoint CASA if not appointed.

**PRACTICE TIP | Determine Paternity/Maternity:** Ensure all biological, legal, and putative parents are legally determined as soon as possible. Decisions made in CINC hearings can affect child's entire life. When child does not know one of his/her parents, child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Timely resolution of paternity/maternity is in best interest of child and essential to due process and avoiding permanency delays.

**PRACTICE TIP | Identify Parents:** If a parent has not been located, direct parent present under oath to provide name, address, and whereabouts for that parent. If identity and whereabouts of an alleged parent is known but filiation has not been legally determined, court can order that DCFS acquire information needed to determine filiation.

**PRACTICE TIP | Coordinating Services:** Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful to have at hearing. Especially critical for youth who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated services and supports.

**PRACTICE TIP | Confidentiality:** If allow other persons to be present, stress confidentiality of case information.

## Notice

ARTICLES 623-4

- Court shall determine if proper notices were made to all parties and counsel; enter required findings in the Order.

## Initial Advisements

ARTICLES 575, 625

Court shall advise parents and may advise child of:

- Nature of proceedings and allegations in terms understandable to parents and children;
- Right to Adjudication Hearing, including rights to call and cross-examine witnesses and appeal; AND
- Right to be represented by counsel and Public Defender Office if indigent.

**PRACTICE TIP | If CSPH Not Held:** Advisements will not be made until Answer Hearing, which may have due process implications. If not held, best practice is to include advisements in ISPO.



## Indian Child Welfare Act (ICWA)

ARTICLES 624-624.1, 25 U.S.C. § 1902

Court shall ask each person before the court whether they know or have reason to know child is:

- Member of or eligible for membership in Federally recognized Indian Tribe; AND
  - Biological child of member of Federally recognized Indian Tribe.
- » Make record of answer in Order for each child; advise all to inform court if subsequently discovered.
- » If know or have to reason to know, see Articles 624 and 624.1 and [Indian Child Welfare Act \(ICWA\) Bench Card](#).

**ESSENTIAL JUDICIAL FINDING | Noncompliance with ICWA:** May result in invalidation of proceedings. Specific membership qualifications make one a member/eligible to be member of Federally recognized Indian Tribe. For example, parents may not realize a marriage in their family made child eligible. Self-identification as Indian, race, and/or child's features are insufficient to meet membership criteria.

## Evidence and Testimony

ARTICLES 607-8, 623-4, LA. SUP. CT. RULE XXXIII, PART III, SUBPART II

- (1) **GENERAL:** State has burden of proof. Hearsay is admissible. Any party may offer evidence.
- (2) **PARENTS/CHILDREN:** Right to testify, confront and cross-examine adverse witnesses, present evidence and witnesses.
- (3) **DCFS:** Testimony should be taken as to whether there are reasonable grounds to believe child is in need of care and continued implementation of safety plan is necessary for child's safety and protection.

**PRACTICE TIP | Engagement:** Court should do all it can to support and encourage meaningful engagement of families. Court is intimidating for most individuals, and stakes could not be higher for parents and children. Be mindful that both parents and children likely have their own history of trauma.

**PRACTICE TIP | Child's Wishes:** Whether present or not, child's attorney shall ensure court hears child's wishes (i.e., safety plan, services, etc.).

**PRACTICE TIP | Stipulations:** May be considered, but do not substitute for required findings. Courts must be a check and balance to actions of DCFS to ensure due process and sound legal findings. Must be sufficient inquiry into circumstances underlying information in Affidavit.

**PRACTICE TIP | Child Welfare Assessment and Decision Making Model (CWADM):** Court should insist on clear articulation from DCFS as to how child is unsafe as it relates to threats of danger, child vulnerability, and caregiver protective capacities and why in-home safety plan is necessary/sufficient to keep child safe. Child considered safe: (1) when there are no threats of danger; (2) if there is a threat of danger, child is not vulnerable to the threat of danger; or (3) if there is a threat of danger, parents/caretakers possess sufficient protective capacities to manage threat of danger and keep child safe. See [Child Welfare Assessment and Decision Making Model \(CWADM\) Benchbook Section 11](#).

## Findings

ARTICLES 626-7

Court shall make the following written, separate, and individualized findings for each child:

(1) **REASONABLE GROUNDS AND SAFETY PLAN NECESSARY/ SUFFICIENT:**

- There are or are not reasonable grounds to believe child is in need of care per Article 606(A); AND
- Continued implementation of safety plan is or is not necessary for child's safety and protection while remaining in his/her home.

**ESSENTIAL JUDICIAL FINDING | Reasonable Grounds:** Court shall determine whether there are reasonable grounds to believe child is in need of care and that continuance of in-home safety plan is necessary/sufficient for safety and protection of child's health and safety pending timely filing of CINC Petition and Adjudication.

**PRACTICE TIP | Specific Ground(s):** Codified in Article 606(A) should be in Order. Gives parents notice of the basis of court's finding, consistent with due process, and guides formation and implementation of case plan (if required).

## Ruling Options

ARTICLES 622, 627

Court shall issue one of the following orders for each child with regard to safety plan:

- (1) **CONTINUED IMPLEMENTATION IS NECESSARY:** » List conditions of safety plan for parents and safety monitor (including safety monitor's name and relationship to parents and order they comply).
- (2) **NOT NECESSARY OR NOT SUFFICIENT:** » If not necessary, order case be dismissed and ISPO be revoked and/or Protective Order (PO) be issued. » If not sufficient for child's safety and protection, court can order child's removal from his/her home.

**PRACTICE TIP | Safety Monitor:** Individual identified by DCFS to provide oversight of safety plan to ensure followed and safety threats to child are controlled (i.e., professional, paraprofessional, volunteer, or individual who is part of family's network, such as extended family, church members, friends, etc.). Make sure safety monitor understands what he/she is agreeing to, role and expectations, and consequences of parents not complying with safety plan. Assess capacity of safety monitor to balance the relationship he/she may have with parents with his/her role as safety monitor (i.e., grandmother is safety monitor for her daughter). While presence at CSPH not required, he/she may have questions or wish to be heard if present.

**PRACTICE TIP | Removal:** If court orders removal, follow Continued Custody Hearing (CCH) articles in Children's Code and use [Continued Custody Order Template](#). There are critical Federal and State law findings, including reasonable efforts and contrary to welfare findings that must be determined in [first court order](#) removing a child from his/her home.

## Further Advisements

ARTICLE 625

If safety plan is continued, court shall advise all persons before court:

- If electronic mail address provided, all service/notice of future proceedings may be sent electronically until notice to court and all parties in writing/open court provided that no longer able to receive service/notice at address;
- Upon receipt of information regarding parent's change of address, DCFS and parent's counsel shall promptly inform court of new address;
- To identify name address, and whereabouts of each parent and any relative/individual willing to offer stable home and all grandparents, parents of sibling with custody and all other adult relatives; AND
- Of their responsibility in achieving timely permanency for child.

## CINC Petition Filed

ARTICLES 646, 649

- If CINC Petition has been filed, court may call upon parents to answer allegations; see [Answer Hearing Bench Card](#).

## Further Orders

ARTICLES 102, 301, 318, 601, 627

Court may make additional orders in best interest of child pending timely filing of CINC Petition and Adjudication, such as:

- (1) **VISITATION/FAMILY TIME:** With another parent, sibling not in care, relatives, for example.
- (2) **PATERNITY/MATERNITY:** DCFS make arrangements for DNA testing on known potential parents; order person complies.
- (3) **FAMILY TEAM MEETINGS (FTM):** DCFS should propose tentative date for next FTM, and court can provide notice and encourage participation.
- (4) **PROTECTIVE ORDER (PO):** Per Article 627(D); can be used instead of or with Continued Safety Plan Order (CSPO) to help keep child safely in home and/or manage safety and risk concerns/threats. See [Temporary Restraining Order \(TRO\) and Protective Order \(PO\) Benchbook Section 2](#).

**PRACTICE TIP | Visitation:** Even though child remains in their home when ISPO is continued, court may still want to specify visitation between child and one of their parents as well as between child's caretakers, siblings, or other family members pending timely filing of CINC Petition and Adjudication. For example, child may have been removed from one parent and not the other parent. Also, child may have sibling that was removed even though child remained in the home.

**PRACTICE TIP | Protective Order (PO):** May want to consider PO when, for example, there is need to prevent contact between a parent/other individual and the child or when an eviction of a perpetrator from residence is needed. Can be used with safety plan to help manage safety threats and keep child in his/her home.

## Order Of Notices and Future Hearings

ARTICLE 623, 625, 627-30, 632, 638, 646, 648

Unless dismiss case, court shall also make the following orders:

- (1) **CINC PETITION NOT FILED:** Within 45 days of issuance of ISPO, CSPO shall automatically terminate unless extension granted by court based upon showing of good cause and notice to all parties;
- (2) **PARTIES, COUNSEL, DCFS, AND CASA:** Be present at all future hearings;
- (3) **SET MATTER FOR ANSWER HEARING:** If CINC Petition has been/will be filed;
- (4) **SERVICE/NOTICE OF HEARINGS:** Be made on parties, counsel, and CASA (if appointed); AND
- (5) **ARRANGEMENTS FOR ANY INCARCERATED PARENT:** Be made to attend hearing, either in person or remotely.

## Case Management

- Ask parents and children if they understand what occurred at hearing; engage conversation about next steps.
- An attorney or court is responsible for completion of Order.
- All attorneys and unrepresented parties should review Order before judge signs it to ensure it accurately reflects proceeding. See [Continued Safety Plan Order Template](#).
- Time permitting, best practice is to sign Order on the same day as the hearing.
- Consider giving attorneys time to meet with clients after hearing to discuss questions/concerns.
- Provide parents with copy of Order immediately following hearing.
- Consider appropriateness of mediation and order if applicable (Article 435 et seq.).

## Possible Next Steps

Articles 628-30, 631-2, 646

- (1) **FILING OF CINC PETITION:** Shall be filed within 45 days of issuance of ISPO and answered at Answer Hearing within 15 days after filed. If not timely filed, Order/safety plan terminates.
- (2) **INFORMAL ADJUSTMENT AGREEMENT (IAA):** Before filing CINC Petition, court or DA may authorize IAA. After filing CINC Petition, court may authorize DA to effect IAA and either dismiss CINC Petition or allow to remain pending.
- (3) **REFER MATTER TO FAMILY IN NEED OF SERVICES (FINS) OFFICER:** Before filing CINC Petition, court or DA may refer matter to FINS intake officer. See Articles 743 et seq.
- (4) **PETITION FOR PROVISIONAL/PERMANENT CUSTODY:** Before Adjudication, any person, including relative of child, may petition court for provisional/permanent legal custody of child.

**PRACTICE TIP | Alternatives for Families:** IAA may be used whether child remains in his/her home or DCFS custody and are routinely used in some parishes when CINC case has been initiated by ISPO. Is a viable alternative to keeping child out of foster care. For example, if IAA initiated after CSPO, DCFS has more time to work with the family before CINC Petition is filed and/or Adjudication. See [Informal Adjustment Agreement \(IAA\) Benchbook Section 1](#) for more information. Alternatively, if appropriate, may be helpful to refer family to FINS before CINC Petition is filed.

# CONTINUED CUSTODY HEARING (CCH)

BENCH  
CARD

La. Ch. C. arts. 624-627



## PURPOSE

Revisit findings of Instant Order (i.e., reasonable grounds, child's safe return home or continued custody, and reasonable efforts); ensure counsel appointed and advisements given; allow parties to challenge State's evidence, present evidence, and advocate through counsel.

## Timing and Continuances

ARTICLE 624, LA. SUP. CT. RULE XXXIII, PART II, SEC. 1-2

- (1) **TIMING:** Shall be held within 3 days of removal. See Article 114.
- (2) **CONTINUANCES:** May be continued for up to 3 days per Article 624; court shall report continuance exceeding maximum allowed within 10 days to Louisiana Supreme Court, with reasons and copy of Order.

## Appearances and Appointments

ARTICLES 575, 607-8, 623-4, 627

- (1) **ONLY ADMIT PERSONS WITH PROPER INTEREST/NECESSARY:** Including parents, child, attorneys for child and parents, DA/ADA/DCFS attorney (BGC), DCFS representatives, CASA (if appointed), and foster caregivers.
- (2) **CHILDREN ARE PARTIES:** 12 years or older, shall be present unless waived upon motion of child's attorney; include in Order if waived or not. Under age 12, shall be present upon request of child's attorney/court.
- (3) **PARENTS ARE PARTIES:** If absent, hearing may only proceed if cannot be found, served summons, or notified by DCFS. If absentee, court shall order appointment of curator ad hoc (Articles 575 and 627(G)). If incarcerated, verify writ/motion to guarantee parent's attendance filed and Order issued/served timely on facility.
- (4) **ATTORNEYS:** Child shall have attorney appointed and present (Article 607); indigent and absent parents shall be provided representation (Articles 575, 608, and 627(G)) unless right waived by parent per Article 608; should have received copies of Instant Order and Affidavit before CCH; critical to protect due process rights of child and parents.

**ESSENTIAL JUDICIAL FUNCTION | Assistance and Accommodations:** Court responsible for providing interpretation, translation, language assistance services, and/or reasonable accommodations for parties. Interpreters must be familiar with case-related details to provide accurate, meaningful, and effective interpretation.

**PRACTICE TIP | Appointments:** If not made in Instant (best practice): order program approved to represent child be appointed and refer parents to local Public Defender Office to represent parents; order notice of appointments and service of copy of pleadings. Finding of indigency may be needed for parents. Court can also appoint CASA if not appointed.

**PRACTICE TIP | Determine Paternity/Maternity:** Ensure all biological, legal, and putative parents are legally determined as soon as possible. Decisions made in CINC hearings can affect child's entire life. When child does not know one of his/her parents, child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Timely resolution of paternity/maternity is in best interest of child and essential to due process and avoiding permanency delays.

**PRACTICE TIP | Identify Parents:** If a parent has not been located, direct parent present under oath to provide name, address, and whereabouts for that parent. If identity and whereabouts of an alleged parent is known but filiation has not been legally determined, court can order that DCFS acquire information needed to determine filiation (i.e., obtain DNA testing, copy of birth certificate, certificate regarding Putative Father Registry, etc.). Court can also direct parent under oath to provide name, address, and whereabouts of any relatives of the child.

**PRACTICE TIP | Foster Caregivers (Foster Parents, Pre-Adoptive Parents, and Relatives):** Are not parties but have legal right to notice and opportunity to be heard at any hearing involving a child in their care. If they do not appear, DCFS shall report whether notice given or diligent efforts made to locate and notify caregiver; hearing may be held in their absence even if notice not given by DCFS. Article 623, 42 U.S.C. § 675(5)(G), and 45 C.F.R. § 1356.21(o).

**PRACTICE TIP | Coordinating Services:** Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful to have at hearing. Especially critical for youth who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated services and supports.

**PRACTICE TIP | Confidentiality:** If allow other persons to be present, stress confidentiality of case information.

## Notice

ARTICLES 607-8, 623-4, 42 U.S.C. § 675(5)(G), 45 C.F.R. § 1356.21(o)

- Court shall determine if proper notices were made to all parties, counsel, and foster caregivers; enter required findings in the Order.

## Initial Advisements

ARTICLES 575, 625

Court shall advise parents and may advise child of:

- Nature of proceedings and allegations in terms understandable to parents and children;
- Right to Adjudication Hearing, including rights to call and cross-examine witnesses and appeal; AND
- Right to be represented by counsel and Public Defender Office if indigent.

# Indian Child Welfare Act (ICWA)

ARTICLES 624-624.1, 25 U.S.C. § 1902

Court shall ask each person before the court whether they know or have reason to know child is:

- Member of or eligible for membership in Federally recognized Indian Tribe; AND
  - Biological child of member of Federally recognized Indian Tribe.
- » Make record of answer in Order for each child; advise all to inform court if subsequently discovered.
- » If know or have to reason to know, see Articles 624 and 624.1 and [Indian Child Welfare Act \(ICWA\) Bench Card](#).

**ESSENTIAL JUDICIAL FINDING | Noncompliance with ICWA:** May result in invalidation of proceedings. Specific membership qualifications make one a member/eligible to be member of Federally recognized Indian Tribe. For example, parents may not realize a marriage in their family made child eligible. Self-identification as Indian, race, and/or child's features are insufficient to meet membership criteria.

## Evidence and Testimony

ARTICLES 623-4, LA. SUP. CT. RULE XXXIII, PART III, SUBPART II

- (1) **GENERAL:** State has burden of proof. Hearsay is admissible. Any party may offer evidence.
- (2) **PARENTS/CHILDREN:** Right to testify, confront and cross-examine adverse witnesses, present evidence and witnesses.
- (3) **DCFS:** Testimony should be taken as to whether child will be unsafe if remain in home and efforts taken to prevent or eliminate need for removal and, after removal, make it possible for child to safely return home, or emergency reason why reasonable efforts were not necessary.
- (4) **SUITABLE RELATIVES/INDIVIDUALS:** Must be evidence that relative/individual being considered for provisional custody is willing and able to provide stable environment, protect child's health and safety, and agrees to safety plan.
- (5) **FOSTER CAREGIVERS:** If attend, court shall ask if they would like to speak regarding care and treatment of child (Article 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o)).

**PRACTICE TIP | Engagement:** Court should do all it can to support and encourage meaningful engagement of families. Court is intimidating for most individuals, and stakes could not be higher for parents and children. Be mindful that both parents and children likely have their own history of trauma.

**PRACTICE TIP | Child's Wishes:** Whether present or not, child's attorney shall ensure court hears child's wishes (i.e., custody, placement, visitation, etc.). If child wishes to be heard but is not able/does not want to be present in courtroom, consider other methods of communication (i.e., audio or visual conferencing, videotaped interview, etc.).

**PRACTICE TIP | Stipulations:** May be considered, but they do not substitute for required findings. Courts must check and balance to actions of DCFS to ensure due process and sound legal findings. Must be sufficient inquiry into circumstances underlying the information in the Affidavit.

**PRACTICE TIP | DCFS Worker:** May have witnessed events prompting Instanter request, observed family dynamics, and/or interacted with child; thus, DCFS testimony should be considered in court's ruling.

**PRACTICE TIP | Foster Caregivers Progress Form:** Foster caregivers can submit to DCFS, who will bring copies to CCH. Form contains hearsay and should be treated as information about child in same way DCFS provides other information to court. As child's day-to-day caregiver, they likely have valuable information to share with court (even in first few days of child's removal).

## Findings

ARTICLES 626-7, 672.1, 45 C.F.R. § 1356.21

Court shall make the following written, separate, and individualized findings for each child:

(1) **REASONABLE GROUNDS AND CONTINUED CUSTODY:**

- There are OR are not reasonable grounds to believe child is in need of care per Article 606(A);
- Continued provisional custody is OR is not necessary for child's safety and protection.

(2) **REASONABLE EFFORTS (RE):**

Even if parties stipulate to all matters, court shall make RE inquiry and one of the following RE findings:

- a. **DCFS Made RE:** To prevent or eliminate need for child's removal and, after removal, make it possible for child to safely return home. Consider whether:
  - DCFS sought court interventions required by Article 619(B): Temporary Restraining Order (TRO)/Protective Order (PO) and/or Instanter Safety Plan Order (ISPO);
  - DCFS provided referrals, activities, and/or services (i.e., safety checks, counseling, child care services, etc.); AND
  - Removal request was made based on improper assumptions or cultural biases.
- b. **DCFS Did Not Make RE:** If necessary, court may order continued custody even if efforts have not been reasonable.
- c. **RE Not Required:** Due to emergency circumstances and/or judicial determination per Article 672.1.

**ESSENTIAL JUDICIAL FINDING | Reasonable Grounds:** Court shall determine whether there are reasonable grounds to believe child is in need of care per Article 606(A) and continuing custody is necessary for child's safety and protection pending timely filing of CINC Petition and Adjudication.

**PRACTICE TIP | Specific Ground(s):** Codified in Article 606(A) should be in Order. Gives parents notice of the basis of court's finding, consistent with due process, and guides formation and implementation of case plan (if required).

**PRACTICE TIP | Child Welfare Assessment And Decision Making Model (CWADM):** Court should insist on clear articulation from DCFS as to how child is unsafe and why TRO/PO, ISPO, Informal Adjustment Agreement (IAA), or other alternatives cannot be initiated to eliminate need for an out-of-home placement. Child is considered safe: (1) when there are no threats of danger; (2) if there is a threat of danger, child is not vulnerable to threat of danger; or (3) if there is a threat of danger, parents/caretakers possess sufficient protective capacities to manage the threat and keep child safe. See [Child Welfare Assessment and Decision Making Model \(CWADM\) Benchbook Section 11](#).

**ESSENTIAL JUDICIAL FINDING | Reasonable Efforts (RE):** Court shall make finding as to whether or not DCFS made RE to prevent or eliminate need for child's removal and, after removal, to make possible for child to safely return home; or court can find RE were not required per Article 626 or 672.1. This RE finding is required in a written court order within first 60 days of child's removal. DCFS risks losing Title IV-E funding for child's entire stay in foster care if child is removed and placed in DCFS custody without a judicial finding that RE were made by DCFS or not required by law; thus, if RE not initially made, critical for court to hold DCFS accountable to timely making them. In any RE finding, child's health and safety shall be paramount concern.

**HELPFUL GUIDANCE | 4 Reasonable Efforts Considerations:** Consider the following 4 questions when determining whether RE were made:

- (1) What were specific threats of danger that led to removal request?
- (2) What can be done to remove the danger instead of the child (i.e., services, in-home safety plan, PO, etc.)?
- (3) Can and will someone child or family knows move into home with child and parents/caretakers to remove danger to child? Would in-home safety plan/PO help?
- (4) Can and will parents/caretakers and child go live with a relative/individual to remove danger to child? Would in-home safety plan/PO help?

**PRACTICE TIP | Emergency Circumstances:** If DCFS asserts RE were not required, DCFS must articulate immediate danger child in and/or particular circumstances of case preventing DCFS from making RE. Should only be used in necessary and applicable circumstances (i.e., parent in jail, subjected child to egregious conduct or conditions, etc.).

## Ruling Options

ARTICLES 603(20) 622, 627, 42 U.S.C. § 671(a)(31)(A)

Court shall make a ruling for each child pending the timely filing of CINC Petition and Adjudication in the Order:

- (1) **RETURN CHILD TO PARENTS:** With or without Safety Plan Order and/or PO; dismiss case;
- (2) **GRANT/CONTINUE PROVISIONAL CUSTODY:** Child shall be placed in least restrictive and most appropriate setting with health, safety, and best interest of child being paramount concern. Unless best interest of child requires different placement, provisional custody shall be placed per priorities outlined in Article 622:
  - a. **Suitable Relative:** With whom child has been living and agrees to conditions of safety plan;
  - b. **Suitable Relative:** Willing to offer stable home and agrees to conditions of safety plan;
  - c. **Suitable Individual:** Willing to offer stable home and agrees to conditions safety plan (i.e., coach, family friend, fictive kin, teacher, etc.); OR
  - d. **State Custody:** Through DCFS (foster care) if no suitable relatives/individuals or not in child's best interest.
    - » **If Placed with Relative/Individual:** Shall include safety plan outlining conditions of contact with parents, caretakers, or others in Order and order custodians adhere to conditions of safety plan.
    - » **If Child Not Placed With Relative:**  
If order 2c or 2d above, court shall:
      - Make specific finding placement with suitable relative not in best interest of child and/or cannot be found; AND
      - Give oral and written reasons for findings, which shall be made part of the record.

**PRACTICE TIP | Custody to One Parent:** Child can be returned to custody of one parent even though anticipated that CINC Petition will still be filed; could order implementation of safety plan (developed and agreed upon by DCFS) restricting other parent's access to child (and potentially grant custody to one parent at Disposition) and/or issue PO restricting other parent's access to child giving temporary custody to one parent (time limited).

**PRACTICE TIP | DCFS Recommendation:** Sometimes DCFS is not able to recommend custody to relative/individual for policy reasons, which may not be safety related. Courts shall nevertheless grant custody in best interest of child per Article 622 priorities and evidence presented.

**PRACTICE TIP | Foster Care is Safety Plan of Last Resort:** Placing a child in State custody (foster care) is child welfare's most drastic and most protective safety intervention. Should be a last resort for State agencies and courts charged with protecting children from harm. Court should hold DCFS accountable to seek all other alternatives for child before placing or continuing child in DCFS custody, including TRO/PO, ISPO, IAA, coordinating services with other agencies/community based supports, FINS, granting custody of child to suitable relative/individual, etc. when safe and in child's best interest to do so.

**PRACTICE TIP | Contact Relatives:** Per federal law, within 30 days following removal of child and any time after relative identified, DCFS required to contact all known adult relatives of child to inform them about placement and permanency possibilities for child.

**PRACTICE TIP | Potential Caregivers:** Court should also press parties and persons before court to consider all potential relative caregivers/individuals that matter to child (i.e., fictive kin, close family friends, or someone child considers family). Consider child's culture, heritage/customs, traditions, religion, etc. in determining custody/placement. See the [Appendices Benchbook Section 12 for Family Connection Form](#) and [Circle of Influence Form](#) that DCFS uses with children and parents to help identify potential caregivers. Some attorneys create "Family Trees."

**HELPFUL GUIDANCE | DCFS Involvement:** If court returns child to parents or grants custody to relative/individual, DCFS will generally no longer be involved in case. However, court can order DCFS continue to monitor/supervise family and/or provide services.

**PRACTICE TIP | Siblings:** DCFS shall make RE to place siblings in same foster care, guardianship, or adoptive placement. If siblings are removed and not placed together, DCFS shall make RE for frequent visitation or other ongoing interaction between siblings. DCFS does not have to make RE if it documents placement together or continued interaction would be contrary to safety or well-being of any siblings. Courts should require DCFS to show evidence that efforts were made. See 42 USC §671(a)(31)(A)).

**PRACTICE TIP | Placement in DCFS Custody:** Court cannot choose child's placement when child in DCFS custody. However, court has authority after contradictory hearing per Article 672(A)(2) to disapprove placement chosen by DCFS.

## Further Advisements

ARTICLE 625

- (1) **CONTINUED/PLACED IN PROVISIONAL CUSTODY OF DCFS:** Court shall advise parents of:
  - The child's need to have a safe and stable relationship with caretakers, either his/her parents or, if necessary, others willing and able to assume parental responsibility, provide permanent home, and have caretaker decisions made as quickly as possible;
  - Their responsibility to: (a) cooperate in preparing a case plan and otherwise in meeting the needs of their child; (b) assist with child's adjustment to other caretakers; (c) notify DCFS and their counsel in writing of their current whereabouts, including address, phone number, and any other contact information, and if fail to do so, law authorizes hearings to be held in their absence; (d) provide electronic mail address parent is willing to receive service and notice of future proceedings and once electronic mail address provided all service and notice of future proceedings may be sent electronically until such time he/she provides notice to court and all parties in writing or in open court he/she is no longer able to receive service/notice at such address; AND
  - Their obligation to contribute to the cost of care and treatment of their child per Article 685.

- (2) **CONTINUED IN PROVISIONAL CUSTODY:** Court shall advise all persons before court:
- If electronic mail address provided, all service/notice of future proceedings may be sent electronically until notice to court and all parties in writing/open court provided that no longer able to receive service or notice at address;
  - Upon receipt of information regarding parent's change of address, DCFS and parent's counsel shall promptly inform court of new address;
  - Identify name address, and whereabouts of each parent and any relative/individual willing to offer stable home and all grandparents, parents of sibling with custody and all other adult relatives; AND
  - Of their responsibility in achieving timely permanency for child.

## CINC Petition Filed

ARTICLES 646, 649

- If CINC Petition filed by CCH, court may call upon parents to answer allegations; utilize [Answer Hearing Bench Card](#).

## Further Orders

ARTICLES 102, 309, 318, 553, 601, 625, 627, LA. R.S. § 17:238(C)

Court may make additional orders in best interest of child pending timely filing of CINC Petition and Adjudication, such as:

- (1) **VISITATION/FAMILY TIME:** Specify visitation between child and parents, caretakers, siblings (half-siblings and that child considers siblings) if not placed together, other family members, and those who matter to child; ensure best interest of child, quality, frequent as possible, and developmentally and age appropriate.
- (2) **PATERNITY/MATERNITY:** DCFS make arrangements for DNA testing on known potential parents; order person complies.
- (3) **POTENTIAL PLACEMENTS:** DCFS: (a) explore all possible relative/individual caregivers; (b) initiate child welfare background clearance, criminal background check, assessment of home or home study on potential caregivers so can be considered for placement by DCFS and/or custody/guardianship prior to or at Disposition; (c) take necessary steps for potential caregivers to complete timely foster care certification, if needed; (d) initiate Interstate Compact on the Placement of Children (ICPC) process for potential placement with out-of-State relatives/individuals.
- (4) **EDUCATION PLAN:** If child in DCFS custody, determine if education plan needed to keep child in school of origin and provide transportation.
- (5) **FAMILY TEAM MEETINGS (FTM):** DCFS should propose tentative date for next FTM and court can provide notice and encourage participation.
- (6) **NOTIFICATION TO CHILD'S ATTORNEY:** DCFS must immediately notify child's attorney of change in placement. See Article 553.
- (7) **PROTECTIVE ORDER (PO):** Per Article 627 can be used instead of or with CCH Order to help keep child safely in home and/or manage safety and risk concerns/threats. See [Temporary Restraining Order \(TRO\) and Protective Order \(PO\) Benchbook Section 2](#).

**HELPFUL GUIDANCE | Foster Care Certification:** DCFS provides "child specific" foster care certification for relatives/individuals with whom child is placed or being considered for placement. Allows relative/individual to receive board rate (monthly financial support) like a certified foster parent. If applicable, court may want to request updates on status of certification at future hearings to ensure timely completion.

## Order of Notices and Future Hearings

ARTICLES 623, 625, 628, 632, 646, 648

Unless dismissing case, court shall also make the following orders:

- (1) **IF CINC PETITION NOT FILED:** Within 30 days of CCH, child be returned to parents unless extension granted by court based upon showing of good cause and notice to all parties;
- (2) **PARTIES, COUNSEL, DCFS, AND CASA:** Be present at all future hearings;
- (3) **SET MATTER FOR ANSWER HEARING:** If CINC Petition has been/ will be filed;
- (4) **SERVICE/NOTICE OF HEARINGS:** Service and notice be made on parties, counsel, CASA (if appointed), and foster caregivers; AND
- (5) **ARRANGEMENTS FOR ANY INCARCERATED PARENT:** Be made to attend hearing, either in person or remotely.

## Case Management

- Ask parents and children if they understand what occurred at hearing; engage conversation about next steps.
- An attorney or the court is responsible for completion of Order. See [Continued Custody Order Template](#), [Order Placing Minor Children in the Provisional Custody of a Suitable Relative or Individual Template](#), and [Order Placing Minor Children in the Provisional Custody of the State of Louisiana Through the Department Of Children and Family Services \(DCFS\) Template](#).
- All attorneys and unrepresented parties should review Order before judge signs to ensure it accurately reflects proceeding.
- Time permitting, best practice is to sign Order on the same day as the hearing.
- Consider giving attorneys time to meet with clients after hearing to discuss questions/concerns.
- Provide parents with copy of Order immediately following hearing.
- Consider appropriateness of mediation and order if applicable (Article 435 et seq.).

**PRACTICE TIP | 2 Short Custody Order Templates:** Are provided in the [Appendix](#) for children's attorneys, DCFS, CASA, relatives, and other caregivers to utilize; include whose custody child is in without providing confidential information from CCH Order. May be used at schools, doctor's offices, etc. Advisable for court to sign Order and make available to those listed above.

## Possible Next Steps

ARTICLES 628-30, 631-2, 646

- (1) **FILING OF CINC PETITION:** Shall be filed within 30 days of CCH and answered at Answer Hearing within 15 days after filed. If not timely filed, child shall be returned to parents.
- (2) **INFORMAL ADJUSTMENT AGREEMENT (IAA):** Before filing CINC Petition (with consent of DCFS if child in DCFS custody), court or DA may authorize IAA. After filing (with consent of DCFS if child in DCFS custody), court may authorize DA effect IAA and either dismiss Petition or allow to remain pending.
- (3) **FAMILY IN NEED OF SERVICES (FINS) OFFICER:** Before filing CINC Petition (with consent of DCFS if child in DCFS custody), court or DA may refer matter to FINS intake officer. See Articles 743 et seq.
- (4) **PETITION FOR PROVISIONAL/PERMANENT CUSTODY:** Before Adjudication, any person, including relative of child, may petition court for provisional or permanent legal custody of child.

**PRACTICE TIP** | [Alternatives to Removal/Adjudication](#): IAA may be used whether child is continued in DCFS custody or not. See [Informal Adjustment Agreement \(IAA\) Benchbook Section 1](#). Alternatively, if appropriate, FINS may be a viable alternative to keeping a youth out of foster care and providing services to family.

### CRITICAL CONSIDERATIONS FOR ALL AT EACH CINC HEARING:

Can the child safely go home today (*if reunification is still possible*)? If not, what needs to happen to make return possible? Who is responsible? What is the timeframe?

# ANSWER HEARING

La. Ch. C. arts. 646-649

BENCH  
CARD



## PURPOSE

Parents appear before the court to answer the CINC Petition. While largely a legal formality, the Answer Hearing allows the court to ensure that parents and children have proper notice and counsel. It is an opportunity to schedule critical meetings and future hearings to ensure case meets statutory timelines.

## Timing and Continuances

ARTICLES 625, 646, 646.1, LA. SUP. CT. RULE XXXIII, PART II, SEC. 1-2

- TIMING:** Shall be held no later than 15 days after Petition filed and prior to Adjudication, or may be immediately held after Continued Custody Hearing (CCH) or Continued Safety Plan Hearing (CSPH) if Petition has been filed (See Article 114). See [Petition for Non-Custodial Child in Need of Care and Order Template](#) and [Petition for Custodial Child in Need of Care and Order Template](#).
- CONTINUANCES:** Court shall report continuance exceeding maximum allowed within 10 days to Louisiana Supreme Court, with reasons and copy of Order.

**PRACTICE TIP | Prehearing Conference:** May be immediately convened at Answer Hearing: (1) demonstrate effectiveness in reducing decision-making delays, discouraging procrastination by counsel, and providing opportunities to discuss alternatives to formal court proceedings and/or early resolution of issues that might otherwise result in continuances/other delays; and (2) required for parents to stipulate that child is in need of care. See Articles 646(C) and 646.1.

**PRACTICE TIP | CINC with/without Removal:** Petition may be filed when child still in custody of parents or when child removed and in provisional custody of a relative/individual/DCFS. Referred by some jurisdictions as “non-custodial” and “custodial” cases or “CINC without removal” and “CINC with removal.”

## Appearances and Appointments

ARTICLES 421.1, 575, 607-8, 623, 635.1-645

- ONLY ADMIT PERSONS WITH PROPER INTEREST/NECESSARY:** Including parents, child, attorneys for child and parents, DA/ADA/DCFS attorney (BGC), DCFS representatives, CASA (if appointed), and foster caregivers.
- CHILDREN ARE PARTIES:** 12 years or older, shall be present unless waived upon motion of child’s attorney; include in Order if waived or not. Under age 12, shall be present upon request of child’s attorney or court.
- PARENTS ARE PARTIES:** If absent, hearing may only proceed if it appears from record parent has been served per Article 640 or 641 and summoned. If absentee, see Articles 575, 608, and 643 for appointment of curator ad hoc. If incarcerated, verify writ/motion to guarantee parent’s attendance filed and Order issued/served timely on facility.
- ATTORNEYS:** Child shall have attorney appointed and present (Article 607); indigent and absent parents shall be provided representation (Articles 575 and 608) unless right waived by parent per Article 608.

## ESSENTIAL JUDICIAL FUNCTION | Assistance and Accommodations:

Court responsible for providing interpretation, translation, language assistance services, and/or reasonable accommodations for parties. Interpreters must be familiar with case-related details to provide accurate, meaningful, and effective interpretation.

**PRACTICE TIP | Appointments:** If not previously appointed, order program approved to represent child be appointed and refer parents to local Public Defender Office to represent parents; order notice of appointments and service of copy of pleadings. Finding of indigency may be needed for parents. Court can also appoint CASA if not appointed.

**PRACTICE TIP | Foster Caregivers (Foster Parents, Pre-Adoptive Parents, And Relatives):** Are not parties but have legal right to notice and opportunity to be heard at any hearing involving a child in their care. If they do not appear, DCFS shall report whether notice given or diligent efforts made to locate and notify caregiver; hearing may be held in their absence even if notice not given by DCFS. Article 623, 42 U.S.C. § 675(5)(G), and 45 C.F.R. § 1356.21(o).

**PRACTICE TIP | Confidentiality:** If court allows other persons to be present, stress confidentiality of case information.

## Notice and Summons

ARTICLES 575, 623, 635.1-645, 42 U.S.C. § 675(5)(G), 45 § C.F.R. 1356.21(o)

- Court shall determine if proper notices were made to all parties, counsel, and foster caregivers; enter required findings in the Order; ensure parties and counsel received copy of Petition before hearing.

## Advisements

ARTICLES 625, 646, 648

- RIGHTS AND RESPONSIBILITIES:** Unless previously advised, court shall advise parents and persons before court of their rights and responsibilities pursuant to Article 625; including that all persons before court shall identify name, address, and whereabouts of each parent and any relative or other individual willing and able to offer wholesome and stable home for child.
- ELECTRONIC EMAIL:** At hearing, parents shall be asked to provide electronic mail address that they are willing to receive service and notice of future proceedings; court shall advise once so provided that all service and notice of future hearings may be sent electronically until notice provided in writing to court and all parties or in open court that no longer able to receive at such address.



## Paternity/Maternity

Court should make a finding as to whether has/has not been established per Louisiana law.

**PRACTICE TIP | Determining Paternity/Maternity:** If a parent has not been located, direct parent present under oath to provide name, address, and whereabouts for that parent. If identity and whereabouts known, but filiation not legally determined, court can order that DCFS acquire information needed to determine filiation (i.e., obtain DNA testing, copy of birth certificate, certificate regarding Putative Father Registry, certificate of results from Clerk of Court showing whether an acknowledgement was filed in the parish of the child's birth, etc.). Court can also direct parent under oath to provide name, address, and whereabouts of any relatives of the child.

## Answer and Findings and Order

ARTICLES 606, 646.1, 647, 649, 658

- (1) **DENY/ADMIT:** Parents may deny or admit allegations in Petition in whole or part with or without consenting to Adjudication (i.e., judgment/child is in need of care per ground(s) in Article 606(A)).
  - » **Factual Basis and Consent Inquiries and Findings:**  
If admit, determine whether allegations admitted form factual basis for finding child is in need of care **AND** whether parents consent to Adjudication.
- (2) **STIPULATE:** Parents may stipulate to Adjudication with or without admitting allegations if:
  - Petitioner and DCFS approve stipulation;
  - Prehearing Conference was convened in accordance with Article 646.1 (Include date in Order);
  - Parents stipulating personally appear;
  - Court fully informed parents of rights according to Article 625;
  - Court fully informed parents of consequences of stipulation, including their responsibility to comply with case plan and correct conditions requiring child to be in care; **AND**
  - Parents knowingly and voluntarily consent to judgment.
  - » **Factual Basis:** If stipulate, court shall determine whether the allegations form factual basis for finding child is in need of care **AND** parents deny **OR** admit allegations.
- (3) **CHILD MAY OBJECT:** In writing or open court, to answer of parents; objections shall be entered into minutes of court.  
\*Best practice is to include objection in Order and, if child objects, set matter for Adjudication Hearing.
- (4) **ORDER:**
  - a. **DISMISS PETITION:** No factual basis for Adjudication.
  - b. **SET MATTER FOR ADJUDICATION HEARING:**
    - A parent denies allegations in whole or part;
    - Find factual basis for Adjudication and a parent does not consent to Adjudication; **OR**
    - Child objects to a parents consent or stipulation to Adjudication.
  - c. **ADJUDICATE CHILD IN NEED OF CARE:**
    - Find factual basis for Adjudication **AND** stipulation requirements met (whether admit allegations or not); **OR**
    - Find factual basis for Adjudication **AND** parents consent to Adjudication.

\* Include specific provision(s) in Article 606(A)(1-8) that forms basis for Adjudication; complete a separate Adjudication Order and include Pre-Disposition orders.

**ESSENTIAL JUDICIAL FINDING AND ORDER | Answer:** Court shall require parents to appear and Answer Petition. Parent may deny or admit allegations of Petition with or without consenting to Adjudication or stipulate to Adjudication with or without admitting to allegations in Petition. Stipulations must meet requirements of Articles 646.1 and 647. Depending on the parents Answer's, court's finding of factual basis for Adjudication, and whether child objects, court will either: (1) dismiss Petition; (2) set matter for Adjudication; or (3) adjudicate child in need of care and complete separate Adjudication Order.

**PRACTICE TIP | Delineating Specific Ground(s):** From Article 606(A), gives parents notice of basis of Adjudication, consistent with due process, and helps guide formation and implementation of case plan or safety plan accordingly.

**HELPFUL GUIDANCE | Different Answers/Admissions in Part:** Parents may answer differently from one another and/or for each child involved. Parents may only admit to some allegations. In such cases, there must be a legal basis for adjudicating the child in need of care per one or more Article 606(A) grounds; due process rights of parents and child must be protected. See Answer Hearing Benchbook Section 6 H(5) for related practice tips.

**ESSENTIAL JUDICIAL FINDING | Indian Child Welfare Act (ICWA):** At every CINC hearing, court shall ask each person, and make record of answer in Order for each child, whether they know or have reason to know child is a member of or eligible for membership in a Federally recognized Indian Tribe and/or biological child of a member of Federally recognized Indian Tribe. Advise all to inform court if any of above information is subsequently discovered. If know or have to reason to know, proceed to Articles 624, 624.1, and 661.1. Court should also inquire as to DCFS's due diligence in locating and contacting Tribe. Noncompliance with ICWA may result in invalidation of proceedings. Petition should have included statement regarding ICWA. See also 25 U.S.C. § 1901 et seq. and Indian Child Welfare (ICWA) Bench Card.

## Further Orders

ARTICLES 102, 309, 318, 601, 627, 672, LA. R.S. § 17:238(C)

- Court may make additional orders in best interest of child, such as orders related to Disposition (see Adjudication Hearing Bench Card), visitation, paternity/maternity, child's education, services, Protective Orders (PO), placement of child when in DCFS custody (Article 672(A)(2)), etc.

**PRACTICE TIP | Potential Placements:** Court can order DCFS to conduct a child protection clearance, criminal background check, and/or assessment of the home/home study on potential relative/individual caregivers so they can be considered for placement by DCFS and/or custody or guardianship at Disposition. Court can order DCFS to initiate Interstate Compact on the Placement of Children (ICPC) process for potential placement with out-of-State relatives/individuals.

**HELPFUL GUIDANCE | Foster Care Certification:** DCFS provides "child specific" foster care certification for relatives/individuals with whom child is placed or being considered for placement. Requires fewer classes than general foster care certification and allows relative/individual to receive board rate (monthly financial support) like a certified foster parent. If relative/individual is interested in becoming child's legal guardian, certification must be completed (along with other DCFS requirements) to receive subsidy after a transfer of guardianship. If applicable, court may want to request updates on status of certifications to ensure timely completion.

## Order of Notices and Future Hearings

ARTICLES 625, 628, 646, 646.1, 648

Unless dismiss Petition, court shall also make the following orders:

- (1) **PARTIES, DCFS, COUNSEL, AND CASA:** Be present at all future hearings;
- (2) **SET MATTER FOR ADJUDICATION AND/OR DISPOSITION HEARING:** Can also set dates for Prehearing Conference and/or discovery deadline; see [Adjudication Benchbook Section 7/Bench Card](#) for additional orders to consider before Disposition;
- (3) **SERVICE/NOTICE OF HEARINGS:** Be made on parties, counsel, CASA and foster caregivers; AND
- (4) **ARRANGEMENTS FOR ANY INCARCERATED PARENT:** Be made to attend hearing, either in person or remotely.

**PRACTICE TIP | Adjudication Order:** If court finds factual basis for Adjudication after an admission and/or stipulation to Adjudication and child does not object, Adjudication Hearing is not needed. However, court must still adjudicate child in need of care and issue Adjudication Order. If matter goes forward to Disposition, court must issue both an Adjudication and Disposition Order.

## Case Management

- Ask parents and children if they understand what occurred at the hearing; engage conversation about next steps.
- An attorney or the court is responsible for completion of Order. See [Answer Hearing Order Template](#).
- All attorneys and unrepresented parties should review Order before judge signs to ensure it accurately reflects proceeding.
- Time permitting, best practice is to sign Order on the same day as the hearing.
- Consider giving attorneys time to meet with clients after hearing to discuss questions/concerns.
- Provide parents with copy of Order immediately following hearing.

## Possible Next Steps

ARTICLES 628, 631, 635-58, 659, 668-70, 678

- (1) **INFORMAL ADJUSTMENT AGREEMENT (IAA):** After filing CINC Petition (with consent of DCFS if child in DCFS custody), court may authorize DA to effect IAA and either dismiss Petition or allow to remain pending during period of informal adjustment.
- (2) **AMENDMENT OF PETITION:** With leave of court petitioner may amend Petition: (1) at any time to cure defects of form or (2) prior to Adjudication Hearing to include new allegations of fact or requests for Adjudication. However, if granted, child/parent may request continuance, which may be granted for such period as required in interest of justice.
- (3) **SPECIAL MOTIONS AND DISCOVERY:** Articles 635 and 651-658 provide various motions and discovery available between filing of Petition and Adjudication and Disposition Hearings.
- (4) **PETITION FOR CUSTODY:** Before Adjudication, any person, including relative of child, may petition court for provisional or permanent legal custody of child.
- (5) **ADJUDICATION HEARING:** If child in custody, shall be held within 45 days of filing Petition; if not in custody, within 105 days of filing of Petition.
- (6) **DISPOSITION HEARING:** May be conducted immediately after Adjudication and shall be conducted within 30 days after Adjudication. Before Disposition, court may order Predisposition Investigation and physical and mental examinations in accordance with Articles 668-670.

**PRACTICE TIP | Alternative to Removal/Adjudication:** IAA may be used whether child is in DCFS custody or not. It is a viable alternative to keeping child out of foster care. For example, child could be returned to parents and IAA used similarly to a safety plan. Or IAA could be entered into while child in DCFS custody to obviate need for Adjudication. See [Informal Adjustment Agreement \(IAA\) Benchbook Section 1](#).

**PRACTICE TIP | Holding Hearings on Same Day:** While law does not prohibit court from holding Adjudication and/or Disposition Hearings (if child adjudicated) on same day as Answer Hearing, court should consider whether time is needed to ensure due process for children and parents. For example, there may be paternity/maternity issues that need to be resolved, medical, sensory, psychological, or psychiatric examinations that need to be conducted, evidence that needs to be obtained, witnesses that need to be secured, placement possibilities to further investigate, case planning to complete, etc.

### CRITICAL CONSIDERATIONS FOR ALL AT EACH CINC HEARING:

Can the child safely go home today (*if reunification is still possible*)? If not, what needs to happen to make return possible? Who is responsible? What is the timeframe?

# ADJUDICATION

La. Ch. C. arts. 659-667

BENCH  
CARD



## PURPOSE

An Adjudication is governed by the rules of evidence applicable to civil proceedings; the court shall determine if allegations of the Child in Need of Care (CINC) Petition have been proven by a preponderance of evidence, which provides the basis for State intervention.

## Prior To Hearing

ARTICLES 646.1, 647, 659-67

- (1) **PREHEARING CONFERENCE:** Is required for parents to stipulate to Adjudication; best practice is to convene before Adjudication regardless of stipulation.
- (2) **TO PREVENT DELAYS:** Court should determine in advance of hearing if actions outlined in Prehearing Conference Order (if held) have been completed in time, service made on parties, witnesses subpoenaed, discovery completed, attendance arranged for any parent who is incarcerated, and motions timely filed.

## Timing and Continuances

ARTICLES 635, 659, LA. SUP. CT. RULE XXXIII, PART II, SEC. 1-2

- (1) **TIMING:** If child in custody, shall commence within 45 days of filing Petition; if not in custody, within 105 days of filing. See Article 114. If not timely commenced, upon motion of child, court shall release child from custody and may dismiss Petition.
- (2) **CONTINUANCES:** Allowed for up to additional 5 days upon extraordinary circumstances, good cause, and notice; if granted, issue order identifying mover and reciting facts justifying continuance; court shall report continuance that exceeds maximum allowable within 10 days to Louisiana Supreme Court, with reasons and copy of Order.

**HELPFUL GUIDANCE | Extraordinary Circumstances Only:** Major reform goal of Adoption and Safe Families Act (ASFA) is to expediate CINC hearings so earlier and more informed determinations affecting child's health and welfare occur. Thus, Article 659 only authorizes single continuance of up to 5 days and only in extraordinary circumstances.

**PRACTICE TIP | Amendment:** If court allows Petition to be amended, child/parent may request continuance of Adjudication Hearing; may be granted for such period as required in the interest of justice (Article 635).

## Appearances and Appointments

ARTICLES 575, 607-8, 623, 635.1-645, 661

- (1) **ONLY ADMIT PERSONS WITH PROPER INTEREST/NECESSARY:** Including parents, child, attorneys for child and parents, DA/ADA/DCFS attorney (BGC), DCFS representatives, CASA, witnesses under examination, and foster caregivers.
- (2) **CHILDREN ARE PARTIES:** 12 years or older, shall be present unless waived upon motion of child's attorney; include in Order if waived or not. Under age 12, shall be present upon request of child's attorney/court.

- (3) **PARENTS ARE PARTIES:** If absent, hearing may only proceed if it appears from record parent has been served per Article 640 or 641 and summoned. If absentee, see Articles 575, 608, and 643 for appointment of curator ad hoc. If incarcerated, verify writ/motion to guarantee parent's attendance filed and Order issued/served timely on facility.
- (4) **ATTORNEYS:** Child shall have attorney appointed and present (Article 607); indigent and absent parents shall be provided representation (Articles 575 and 608) unless right waived by parent per Article 608.

**ESSENTIAL JUDICIAL FUNCTION | Assistance and Accommodations:** Court responsible for providing interpretation, translation, language assistance services, and/or reasonable accommodations for parties.

## Notice and Summons

ARTICLES 623, 635.1-645, 42 U.S.C. § 675(5)(G), 45 C.F.R. § 1356.21(o)

- Court shall determine if proper notices were made to all parties, counsel, and foster caregivers; enter required findings in the Order.

## Indian Child Welfare Act (ICWA)

ARTICLES 624-624.1, 661.1, 25 U.S.C. § 1902

**Court shall ask each person before the court whether they know or have reason to know child is:**

- Member of or eligible for membership in Federally recognized Indian Tribe; AND
- Biological child of member of Federally recognized Indian Tribe.
  - » Make record of answer in Order for each child; advise all to inform court if subsequently discovered.
  - » If know or have to reason to know, immediately proceed to Article 661.1. See [Indian Child Welfare Act \(ICWA\) Bench Card](#).

**ESSENTIAL JUDICIAL FINDING | Noncompliance With ICWA:**

Noncompliance with ICWA may result in invalidation of proceedings. If a Tribe fails to respond to multiple requests for verification that child is an Indian child and court or DCFS has sought assistance of Bureau of Indian Affairs in contacting Tribe, court may make determination that child is not an Indian child based on information it has available and proceed to Adjudication in accordance with Louisiana Children's Code.

## Evidence and Testimony

ARTICLES 660-5, LA. SUP. CT. RULE XXXIII, PART III, SUBPART II

- (1) **EVIDENCE:** Court shall set order of presenting evidence and conduct hearing according to rules of evidence applicable to civil proceedings unless otherwise provided in Children's Code.
  - Hearsay evidence not admissible unless fits hearsay exception or otherwise allowed in Children's Code.
  - May consider videotape prepared in compliance with Chapter 8 of Title III of Children's Code if relevant.
  - Evidence of prior criminal conviction shall be admissible to prove allegations made under Article 606.
  - Relevant testimony may not be excluded on grounds of privilege, except confessions/communications between attorney and client.
- (2) **PARENTS/CHILDREN:** Right to testify, confront and cross-examine adverse witnesses, present evidence and witnesses.
- (3) **STATE:** State has burden of proving allegations of Petition by a preponderance of evidence.
- (4) **FOSTER CAREGIVERS:** Foster parents, pre-adoptive parents, or relatives caring for the child have a legal right to notice and opportunity to be heard at any hearing involving a child in their care. If attend, court shall ask if they would like to speak regarding care and treatment of child. See Article 623, 42 U.S.C. § 675(5)(G), and 45 C.F.R. § 1356.21(o).
- (5) **EXCLUSION OF WITNESSES:** On own motion or party's motion, court may order non-party witnesses excluded from courtroom. On request of party, order exclusion. In interest of justice, may exempt witnesses from order.

**PRACTICE TIP | Engagement:** Court should do all it can to support and encourage meaningful engagement of families. Court is intimidating for most individuals, and stakes could not be higher for parents and children. Keep in mind that both parents and children likely have their own history of trauma.

**PRACTICE TIP | Child's Wishes:** Whether present or not, child's attorney shall ensure court hears child's wishes. If child wishes to be heard but is not able/does not want to be present in courtroom, consider other methods of communication (i.e., audio or visual conferencing, videotaped interview, in-chambers conference, etc.).

**PRACTICE TIP | Exclusion:** Parties to proceeding cannot be excluded from courtroom. Only children can be taken out during testimony that may not be in their best interest to hear (Article 661(E)). DCFS, CASA, and foster caregivers are not parties and may be sequestered if any party plans to call them as a witness. However, DCFS representative would likely need to remain in court to assist ADA. See La. Code Evid. Art. 615(B)(2).

## Paternity/Maternity

Court should make a finding as to whether paternity/maternity has/had not been established per Louisiana law.

**PRACTICE TIP | Determine Paternity/Maternity:** Ensure all biological, legal, and putative parents are legally determined as soon as possible. Decisions made in CINC hearings can affect child's entire life. When child does not know one of his/her parents, child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Timely resolution of paternity/maternity is in best interest of child and essential to due process and avoiding permanency delays.

**PRACTICE TIP | Identify Parents:** If a parent has not been located, direct parent present under oath to provide name, address, and whereabouts for that parent. If identity and whereabouts of an alleged parent is known but filiation has not been legally determined, court can order that DCFS acquire information needed to determine filiation (i.e., obtain DNA testing, copy of birth certificate, certificate regarding Putative Father Registry, etc.). Court can also direct parent under oath to provide name, address, and whereabouts of any relatives of the child.

## Findings and Orders

ARTICLES 646.1, 647, 649, 666

Court shall make the following written, separate, and individualized findings and orders for each child:

- (1) **DISMISS PETITION:** If evidence demonstrates child is not in need of care NOR child's family in need of services.
- (2) **ADJUDICATE CHILD IN NEED OF CARE:**
  - a. **Parents Stipulate After Prehearing Conference:** Only if Articles 646.1 and 647 stipulation requirements were met and court finds a factual basis for Adjudication; OR
  - b. **Allegations in Petition Proved by State:** Only if proven by preponderance of evidence.
    - » Include specific provision(s) in Article 606(A)(1-8) that forms basis for Adjudication.
- (3) **DISMISS CERTAIN ALLEGATIONS IN PETITION:** Include any allegations not proven in Order.
- (4) **TAKE UNDER ADVISEMENT:** If exceptional circumstances; maximum of 10 days; set forth exceptional circumstances in Order.
- (5) **MAY ADJUDICATE FAMILY IN NEED OF SERVICES:** If evidence demonstrates child's family is in need of services.

**ESSENTIAL JUDICIAL FINDING | Adjudication:** Unless taken under advisement, court shall immediately declare whether evidence warrants a child in need of care Adjudication based upon one or more grounds codified in Article 606(A).

**PRACTICE TIP | One Parent:** At times, Petition makes allegations regarding one parent and not the other (although Petition should address all parents). Still, make determination as to whether State proved child should be adjudicated in need of care by a preponderance of evidence. Consider the other parent's circumstances and relationship with child in determination. If adjudicate child in need of care based on evidence presented, matter of custody to other parent should be determined at Disposition. There is considerable case law in this area.

**PRACTICE TIP | Family in Need of Services (FINS):** While the child's family may be adjudicated as a family in need of services at the Adjudication Hearing, best practice may be to dismiss case, and a FINS Petition could be filed to allow for proper alignment of parties. FINS proceedings bear similarities with CINC proceedings, with some minor differences. For example, Children's Code does not directly address parent's right to appointment of counsel, CASA is not usually involved, and parties may be aligned differently, etc. See Title VII of Children's Code.

## Further Orders

ARTICLES 102, 309, 318, 601, 627, 668-70, 674, 42 U.S.C. § 671

### Upon adjudicating child in need of care, court may make additional orders in best interest of child, such as:

- (1) **PREDISPOSITION INVESTIGATION/REPORT:** DCFS conduct to assist with decisions at Disposition.
- (2) **PHYSICAL/MENTAL HEALTH EVALUATION/EXAMINATION:** Be conducted on parents and/or child to assist in determining fair and just Disposition; file 10 days before Disposition; submit copy to counsel and unrepresented parties.
- (3) **POTENTIAL PLACEMENTS:** DCFS (a) explore all possible relative/individual caregivers; (b) initiate child welfare background clearance, criminal background check, assessment of home or home study on potential caregivers so can be considered for placement by DCFS and/or custody/guardianship; (c) take necessary steps for potential caregivers to complete timely foster care certification, if needed; and (d) initiate Interstate Compact on the Placement of Children (ICPC) process for potential placement with out-of-State relatives/individuals.
- (4) **VISITATION/FAMILY TIME:** Specify visitation pending Disposition between child and parents/caretakers, siblings (half-siblings and those the child considers siblings) if not placed together, other family members, and those who matter to child; ensure time is in best interest of child, quality, frequent as possible, and developmentally and age appropriate.
- (5) **FAMILY TEAM MEETINGS (FTM):** DCFS should propose tentative date for next FTM and court can provide notice and encourage participation.
- (6) **OTHER ORDERS:** Related to paternity/maternity, services, child's education, Protective Orders, placement of child when he/she is in DCFS custody (See Article 672(A)(2)), etc.

**PRACTICE TIP | Potential Caregivers:** All persons and parties before the court have continued obligation to achieve timely permanency for the child. Suitable relatives/individuals must be found as soon as possible, so permanency can be achieved expeditiously if reunification becomes no longer viable. Court's role is to hold persons before court, parties, and DCFS accountable. Identifying other potential placements early on is crucial to reducing further trauma to child who may form secure attachments with current caregivers.

**PRACTICE TIP | Relatives:** Per Federal law, within 30 days following removal and anytime a relative is identified, DCFS is required to contact all known adult relatives of child and to inform them of placement and permanency possibilities. (See 42 U.S.C. § 671).

**HELPFUL GUIDANCE | Foster Care Certification:** DCFS provides "child specific" foster care certification for relatives/individuals with whom child is placed or being considered for placement. Requires fewer classes than general foster care certification and allows relative/individual to receive board rate (monthly financial support) like a certified foster parent. If relative/individual is interested in becoming child's legal guardian, certification must be completed (along with other DCFS requirements) to receive subsidy after a transfer of guardianship. If applicable, court may want to request updates on status of certifications to ensure timely completion.

### CRITICAL CONSIDERATIONS FOR ALL AT EACH CINC HEARING:

Can the child safely go home today (*if reunification is still possible*)? If not, what needs to happen to make return possible? Who is responsible? What is the timeframe?

## Order of Notices and Future Hearings

ARTICLES 424.7, 674-7

### Upon adjudicating child in need of care, court should also make the following orders:

- (1) **PARTIES, COUNSEL, DCFS, AND CASA:** Be present at all future hearings;
- (2) **DCFS CASE PLAN:** Be filed at least 10 days before hearing and copies provided to counsel by mail/email and unrepresented parties by certified mail/email per Article 674;
- (3) **DCFS COURT REPORT:** Be filed at least 10 days before hearing and provide copies to CASA, counsel, and unrepresented parties (Although Children's Code is silent on submission of court report for Disposition Hearing, DCFS policy requires for hearings beginning at Disposition);
- (4) **CASA COURT REPORT:** Be filed before next hearing and copies distributed per Article 424.7;
- (5) **SET MATTER FOR DISPOSITION HEARING:** Within 30 days of Adjudication (unless held immediately after);
- (6) **SERVICE/NOTICE OF HEARINGS:** Be made on parties, counsel, CASA, and foster caregivers; AND
- (7) **ARRANGEMENTS FOR ANY INCARCERATED PARENT:** Be made to attend hearing, either in person or remotely.

**PRACTICE TIP | Disposition Hearing:** Ask if parties have objections to holding Disposition Hearing immediately after Adjudication. Time may be needed to resolve paternity/maternity issues; conduct medical, sensory, psychological, or psychiatric examinations; obtain evidence; secure witnesses; further investigate placement possibilities; file case plan and court reports; etc. If matter goes forward to Disposition, court must issue both an Adjudication Order and Disposition Order.

**PRACTICE TIP | Coordinating Services:** Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful to have at Disposition. Especially critical for youth who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated services and supports.

## Case Management

- Ask parents and children if they understand what occurred at hearing; engage conversation about next steps.
- An attorney or the court is responsible for completion of Order. See [Adjudication Order Template](#).
- All attorneys and unrepresented parties should review Order before judge signs to ensure it accurately reflects proceeding.
- Time permitting, best practice is to sign Order on the same day as the hearing.
- Consider giving attorneys time to meet with clients after hearing to discuss questions and/or concerns.
- Provide parents with copy of Order immediately following hearing.

## Possible Next Steps

ARTICLES 635, 651-658, 700, 710

- (1) **SPECIAL MOTIONS AND DISCOVERY:** Articles 635 and 651-658 provide various motions and discovery available between Adjudication and Disposition Hearings.
- (2) **DISPOSITION HEARING:** May be conducted immediately after Adjudication but shall be conducted within 30 days of Adjudication.

# DISPOSITION HEARING

La. Ch. C. arts. 678-686

BENCH  
CARD



## PURPOSE

Court shall make its post-Adjudication ruling regarding the Disposition (i.e., custody to parent, custody to relative/suitable person, guardianship to nonparent, custody to DCFS, etc.), address case plan and goal if required, and make reasonable efforts findings.

## Prior to Hearing

ARTICLES 424.7, 668-70, 673-4, 676, 688-9

- (1) **CASE PLAN:** DCFS shall file at least 10 days before hearing; upon filing provide copies to counsel by mail/email and unrepresented parties by certified mail/email per Article 674. Any party may file written response.
- (2) **DCFS COURT REPORT:** DCFS policy requires reports beginning at Disposition, even though Children's Code is silent on submission; DCFS file at least 10 days before hearing with copies to counsel, unrepresented parties, and CASA.
- (3) **CASA COURT REPORT:** If appointed, CASA shall file before hearing; distribute copies per Article 424.7.
- (4) **PREDISPOSITION REPORT:** If previously ordered, shall be submitted to court prior to hearing.
- (5) **PHYSICAL/MENTAL EVALUATIONS:** If previously ordered, shall be submitted to court, Petitioner, and counsel.

## Timing and Continuances

ARTICLE 678, LA. SUP. CT. RULE XXXIII, PART II, SEC. 1-2

- (1) **TIMING:** May hold immediately after Adjudication and shall hold within 30 days of Adjudication. See Article 114.
- (2) **CONTINUANCES:** Allowed with notice and good cause if in child's best interest and Order cites facts and mover. Court shall report continuance exceeding maximum allowed within 10 days to Louisiana Supreme Court, with reasons and copy of Judgment.

## Appearances

ARTICLES 575, 607-8, 623, 679, 684

- (1) **ONLY ADMIT PERSONS WITH PROPER INTEREST/NECESSARY:** Including parents, child, attorneys for child and parents, DA/ADA/DCFS attorney (BGC), DCFS representatives, CASA, foster caregivers, and relatives/persons seeking or being considered for custody.
- (2) **CHILDREN ARE PARTIES:** 12 years or older, shall be present unless waived upon motion of child's attorney; include if waived or not in Judgment. Under age 12, shall be present upon request of child's attorney or court.
- (3) **PARENTS ARE PARTIES:** If absent, hearing may only proceed if established on record that parent served but not in attendance/efforts to serve have been unsuccessful; enter findings regarding diligent efforts by curator/DCFS/others to locate that parent. In absence of findings to contrary, efforts to locate parent shall be presumed sufficient; if determine additional search efforts needed, specifically identify those efforts. If incarcerated, verify writ/motion to guarantee parent's attendance filed and Order issued/served timely on facility.

- (4) **ATTORNEYS:** Child shall have attorney appointed and present (Article 607); indigent and absent parents shall be provided representation (Articles 575 and 608) unless right waived by parent per Article 608.

### ESSENTIAL JUDICIAL FUNCTION | Assistance and Accommodations:

Court responsible for providing interpretation, translation, language assistance services, and/or reasonable accommodations for parties.

### PRACTICE TIP | Foster Caregivers (Foster Parents, Pre-Adoptive Parents, and Relatives):

Are not parties but have legal right to notice and opportunity to be heard at any hearing involving a child in their care. If they do not appear, DCFS shall report whether notice given/diligent efforts made to locate and notify caregiver; hearing may be held in their absence even if notice not given by DCFS. (Articles 623 and 679; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o)).

**PRACTICE TIP | Coordinating Services:** Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful to have at hearing. Especially critical for youth who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated services and supports.

## Notice

ARTICLES 623, 679, 684

- Court shall determine if proper notices of hearing were made to all parties, counsel, and foster caregivers; enter required findings in Judgment.

## Evidence and Testimony

ARTICLES 424.5, 424.7, 622(D), 623, 631, 679-81, 683, LA. SUP. CT. RULE XXXIII, PART III, SUBPART II

- (1) **EVIDENCE:** Shall consider report of Predisposition Investigation, case plan (including Youth Transition Plan "YTP," if applicable), mental evaluations, other evidence offered.
- (2) **PARENTS/CHILDREN:** Right to testify, confront and cross-examine adverse witnesses, present evidence and witnesses.
- (3) **CASA:** May be called as witness by any party/court; may request opportunity to appear as witness.
- (4) **RELATIVES/OTHER PERSONS:** Parties may call as witnesses relatives/persons being considered/seeking to be considered for custody/guardianship.
- (5) **FOSTER CAREGIVERS:** Right to be heard regarding child in their care. If attend, court shall ask if they would like to speak regarding care and treatment of child (Articles 623 and 679; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o)).

**PRACTICE TIP | Engagement:** Court should do all it can to support and encourage meaningful engagement of families. Court is intimidating for most individuals, and stakes could not be higher for parents and children. Be mindful that both parents and children likely have their own history of trauma.

**PRACTICE TIP | Child's Wishes:** Whether present or not, child's attorney shall ensure court hears child's wishes (i.e., custody, placement, case plan, etc.). If child wishes to be heard but is not able/does not want to be present in courtroom, consider other methods of communication (i.e., audio or visual conferencing, videotaped interview, etc.).

**PRACTICE TIP | Foster Caregivers Progress Form:** Foster caregivers can give to DCFS, who will submit form to court, parties, and CASA (if appointed) before hearing. Form contains hearsay and should be treated as information about child in same way DCFS provides other information to court. As child's day-to-day caregiver, they likely have valuable information to share with court.

## Judgment of Disposition

ARTICLES 681, 683-4, 686

**Court shall make the following written rulings and findings with reasons in the Judgment and minutes:**

- (1) **NATURE OF DISPOSITION:** Court shall impose least restrictive Dispositional alternative enumerated in Article 681:
  - a. **Remain/Reunify with Parent:** If safe for child to be in custody of a parent, court should so order, with/without continued supervision (i.e., DCFS supervision, in-home safety plan), Protective Order (PO), and/or other terms and conditions.
  - b. **Continue/Grant Custody to Relative/Suitable Person:** If custody not returned/granted to a parent, court shall grant custody to relative unless make specific finding not in best interest of child. If not granted to relative, court shall consider a suitable person (i.e., family friend, teacher, coach, etc.). May order either with/without continued supervision, PO, and/or other terms and conditions.
  - c. **Guardianship to Nonparent:** Court has authority to grant guardianship of child to nonparent if custody to parents or relative/suitable person not appropriate; governed by Title VI of Chapter 19 of Children's Code.
  - d. **Continue/Grant Custody to DCFS (Foster Care):** If above dispositions are not appropriate/available, court can order custody of child to private/public institution (generally DCFS).
  - e. **Commit to Institution for Mental Illness/Intellectual Disabilities:** Court can commit child found to have mental illness to public/private institution for persons with mental illness/intellectual disabilities.
  - f. **Combination:** Court may make such other Disposition/combination of above in child's best interest.
- (2) **OUT-OF-STATE PLACEMENT:** Make finding as to why placement safe, appropriate, and in child's best interest.
- (3) **SET MAXIMUM DURATION:** Disposition shall remain in force until child's 18th birthday, or may expire earlier by own terms or if modified/vacated.
- (4) **SERVICES TO CHILD:** Specify agency, institution, or person to whom child is assigned to secure/provide needed services to child, including, if appropriate, coordination with LDH, OJJ, LDOE, and/or other agencies.
- (5) **TERMS AND CONDITIONS:** Specify other terms and conditions applicable to legal custodian.

**ESSENTIAL JUDICIAL FINDING | Disposition:** Court shall impose least restrictive Dispositional alternative enumerated in Article 681 consistent with the circumstances of case, health and safety of child, and best interest of society; child's health and safety shall be paramount concern.

**ESSENTIAL JUDICIAL FINDING | Contrary to Welfare:** Per Federal law, if removing child from his/her home for first time at Disposition, court shall make a contrary to welfare finding in first written court order removing child. See Disposition Hearing Benchbook Section G and 45 C.F.R. § 1356.21(c).

**PRACTICE TIP | Child Welfare Assessment And Decision Making Model (CWADM):** Court should insist on clear articulation of current safety threat keeping child in an out-of-home placement. Child is considered safe: (1) when there are no threats of danger; (2) if there is a threat of danger, child is not vulnerable to threat of danger; or (3) if there is a threat of danger, parents/caretakers possess sufficient protective capacities to manage the threat and keep child safe. See Child Welfare Assessment and Decision Making Model (CWADM) Benchbook Section 11.

**HELPFUL GUIDANCE | Granting Custody to Parent:** Court may "return" child to a parent's custody or "grant" custody to another parent who did not have custodial rights to the child and/or was not previously legally filiated with the child.

**HELPFUL GUIDANCE | DCFS Involvement:** When court returns child to his/her parents or grants custody to relative/individual, DCFS is generally no longer involved in the case. However, court can order DCFS continue to monitor/supervise family and/or provide services (i.e., DCFS Family Services).

**PRACTICE TIP | Modification:** If child is removed from parents and placed in legal custody of an individual, inform parents of their legal right to motion for Modification of Judgment per Articles 713-717.

**HELPFUL GUIDANCE | Granting Guardianship:** Is a "permanent placement," eliminating further periodic case or permanency reviews. Judgment remains in force until child reaches 18th birthday unless another duration is set by court/modified by law. Court shall retain jurisdiction to enforce, modify, or terminate guardianship. See Article 724.

**HELPFUL GUIDANCE | Financial Support:** Relatives/individuals granted custody/guardianship of child may be eligible for financial support (i.e., Kinship Care Support Program (KCSP), Supplemental Nutrition Assistance Program (SNAP), Family Independence Temporary Assistance Program (FITAP), Child Support Program (CSP), survivor benefits owed to child, child's disability benefits, etc.).

**HELPFUL GUIDANCE | Foster Care Certification/Subsidy:** DCFS provides "child specific" foster care certification for relatives/individuals with whom child is placed or being considered for placement by DCFS and/or guardianship. Requires fewer classes than general foster care certification and allows relative/individual to receive board rate (monthly financial support) like a certified foster parent. If relative/individual is interested in becoming child's legal guardian, foster care certification must be completed (along with other DCFS requirements) to receive a subsidy after granted guardianship. Court may want to request updates on status of certification to ensure timely completion.

**PRACTICE TIP | Siblings:** Per Federal law, DCFS shall make reasonable efforts to place siblings removed from their home in same foster care, guardianship, or adoptive placement, unless DCFS documents that such joint placement would be contrary to safety/well-being of any siblings; and if siblings not so jointly placed, to provide frequent visitation/other ongoing interaction between siblings, unless DCFS documents frequent visitation/other ongoing interaction would be contrary to safety/well-being of any siblings. Court's role is to hold DCFS accountable to showing evidence of such reasonable efforts. 42 U.S.C. § 671(a)(31)(A and B).

**HELPFUL GUIDANCE | Transitions:** When a child will experience a transition of any kind (i.e., change in custody, placement, etc.), be cognizant of impact transition may have on child and consider including transition plan in best interest of child in the Judgment. Regardless of reason for transition, it is critical to child's well-being for judges to collaboratively strategize with all involved to reduce trauma experienced by child. See [Disposition Hearing Benchbook Section G](#).

**PRACTICE TIP | Religious Affiliation/Culture:** If custody granted to anyone other than a parent, court shall, whenever practicable, select individual, agency, or institution of same religious affiliation as child or parents (Article 683(D)). Consider child's culture, heritage/customs, traditions, etc. as well in determining placement/custody options.

**HELPFUL GUIDANCE | Specific Term:** In certain situations, it is helpful for court to set a specific term for Disposition, such as when court grants custody/guardianship to a relative/suitable person.

## Reasonable Efforts (RE) Finding

ARTICLES 672.1, 682, 684(C), 45 C.F.R. § 1356.21, 42 U.S.C. § 671(A)(15)

**If child removed, court shall make the following written, separate, and individualized findings for each child:**

**(1) IF REMOVED BEFORE DISPOSITION:**

- a. **DCFS Made RE to Reunify:** Parents and child; provide brief description of what reunification efforts were made.
- b. **DCFS Failed to Make RE to Reunify:** Provide brief description of further efforts that could/would have shortened separation of family and why. » This finding does not preclude court's other findings and/or orders.

**(2) IF REMOVED AT DISPOSITION:**

- a. **DCFS Made RE to Prevent Removal:** Of child from his/her parents; provide brief description of what preventative efforts were made.
- b. **DCFS Failed to Make RE to Prevent Removal:** Provide brief description of further efforts that could/would have prevented separation of family and why. » This finding does not preclude court's other findings and/or orders.

**(3) RE NOT REQUIRED TO PREVENT REMOVAL OR REUNIFY FAMILY:**

If a judicial determination was made prior to or at Disposition Hearing per Article 672.1 that DCFS was not required to make RE to reunify parents and child, include reason why RE not required in Judgment.

**ESSENTIAL JUDICIAL FINDING | Reasonable Efforts:** If a child is removed from their home, courts and DCFS have ongoing RE obligations under State and Federal law until child is reunified or achieves permanency. DCFS has burden of demonstrating the RE they made to: (1) prevent or eliminate the need for removal; (2) reunify the family; and/or (3) achieve timely permanency for the child. Court shall make these RE findings for each child accordingly in its Orders; thus, holding DCFS accountable. In all RE findings, each child's health and safety shall be paramount concern and should be based on facts and circumstances of each individual case and child. 45 C.F.R. § 1356.21 and 42 U.S.C. § 671(A)(15).

**PRACTICE TIP | Reasonable Efforts Not Required:** DCFS should not change case plan goal (or permanency goal) from reunification to adoption, guardianship, or custody to relative in the case plan until the court has either made a RE to reunify finding or determination that RE to reunify were not required per Article 672.1.

## Case Plan Content

ARTICLES 673, 675, 677, 685, 42 U.S.C. § 671(16), 42 U.S.C. § 675(1)

**Court shall approve or not approve case plan, which if it is a DCFS case, shall at least include the following:**

- (1) **PLACEMENT:** Appropriateness of placement; if substantial distance from parents, reasons why in best interest of child; placement shall be in least restrictive, most family-like setting available in close proximity to parents' home, consistent with best interests and special needs of child.
- (2) **CARE, SERVICES, AND ACTIVITIES:** Plan for providing services to parents, child, and foster parents to improve conditions in parents' home, facilitate safe return of child to own home or other permanent placement, or both; plan for child to receive safe and proper care and be afforded greatest opportunity for normalcy through age or developmentally appropriate activities.
- (3) **VISITATION/FAMILY TIME:** Ensure plan for visitation with parents, siblings (half-siblings and those the child considers siblings), relatives, and other important individuals, which shall include preserving child's valuable relationships and connections by considering frequency and type of visitation.
- (4) **EFFORTS TO RETURN CHILD/FINALIZE PLACEMENT:** Ensure documentation of efforts DCFS is making to safely return child home or finalize child's placement in accordance with permanent plan.
- (5) **ASSESSMENT OF RELATIONSHIPS:** Assess child's relationships with parents, grandparents, and siblings, and develop plan for assuring continuing contact with those whom child has significant relationships; ensure preserved while in foster care.
- (6) **YOUTH 14 AND OLDER:** Shall include written description of programs and services that will help youth prepare to transition from foster care to independent living, i.e., Youth Transition Plan (YTP).
- (7) **OBLIGATION TO CONTRIBUTE:** Shall recommend amount parents are obligated to contribute for cost of care and treatment of child in accordance with Article 685.
- (8) **TERMINATION OF PARENTAL RIGHTS (TPR):** If not filing for TPR, DCFS shall provide documentation of compelling reasons.

**PRACTICE TIP | Paramount Concern:** Health and safety of child shall be the paramount concern in development of the case plan.

**PRACTICE TIP | Shortage of Placements:** Does not justify an assertion that it is in the best interest of child to be placed a substantial distance from his/her parents' home or out-of-State.

**PRACTICE TIP | Disapprove Placement:** Judge cannot choose child's specific placement when he/she is in DCFS custody. However, court has authority to disapprove case plan, in whole or part, which includes child's placement. Judge has separate authority to disapprove placement chosen by DCFS when requirements of Article 672(A)(2) are met.

**PRACTICE TIP | Reasonable and Prudent Parent:** Recognizing greatest opportunity for normalcy lies in the day-to-day decisions affecting child's activities, child's caregiver should be supported in making those decisions through use of reasonable and prudent parent standard as set forth in La. R.S. § 46:283.

**HELPFUL GUIDANCE | Child's Relationships:** Maintaining child's relationships to minimize trauma is an important aspect of case work, especially during time of insecurity while permanent plans have not yet been finalized.

**PRACTICE TIP | Youth Transition Plan (YTP):** Per Federal law, YTP shall be updated every 6 months. Development and implementation of YTP should be considered in RE to achieve permanency for youth. Every child in foster care, age 14 and older, should be actively involved in case planning. 42 U.S.C. § 673(b) and 675.



## Case Plan Finding and Order

ARTICLE 677, 42 U.S.C. § 671(16), 42 U.S.C. § 675(1)

### After court considers content and implementation of case plan and any response filed, court shall:

- (1) **APPROVE:** If protects child's health and safety and in child's best interest; order parties comply therewith; OR
  - (2) **NOT APPROVE:** In whole or part, including reasons why case plan does not protect child's health and safety or not in child's best interest; order DCFS to revise accordingly.
- » **Depending on Disposition, there may not be a case plan to approve (i.e., if grant guardianship, etc.).**

**ESSENTIAL JUDICIAL ORDER | Approval of Case Plan:** Court shall approve or disapprove case plan per Article 677, based on arguments of parties and evidence presented, and enter it into Judgment.

**PRACTICE TIP | Specific Grounds:** Upon which child was adjudicated should guide formation, implementation, and approval of case plan.

**PRACTICE TIP | Case Plan:** Case planning is an integral element of the RE requirement. Make sure case plan: (a) includes elements designed to support increased protective capacities feasible within stated time limitations; and (b) identifies safety and risk issues and conditions for return before court's involvement ends. Proposed services and other case plan activities should address specific issues and be accessible and culturally and linguistically appropriate. Paramount for court to make sure parents and child are involved in case planning process. 42 U.S.C. § 671(16), 42 U.S.C. § 675(1).

**PRACTICE TIP | Disapprove Case Plan:** Court not authorized to revise case plan. If court disapproves case plan, it should enter disapproval in the Judgment and direct DCFS to make necessary revisions. DCFS will revise plan and submit to court until approved. Set deadline for submitting revision. Ideally, issues can be resolved while still at court; party may move to have plan amended during hearing and if DCFS and parties agree, court can approve updated plan.

## Advisements

ARTICLES 309, 623, 682, 684

- (1) **CONTINUED/PLACED IN CUSTODY OF DCFS:** Court shall advise parents:
  - Of procedures governing case plan, case review, and permanency review;
  - Of their obligation to: (a) cooperate with DCFS and comply with requirements of case plan; (b) keep DCFS and their counsel apprised in writing of their current whereabouts, including address, phone number, and any other contact information, of identity and contact information for an absent parent, and contact information for any relative/other individual willing to offer a wholesome and stable home for child; (c) correct conditions requiring child to be in care; and (d) support their child, including their obligation to contribute to his/her care and treatment per Article 685; AND
  - That a TPR Petition may be filed if parent fails to: (a) comply with case plan; (b) make significant measurable progress toward achieving case plan goals; and (c) correct conditions requiring the child to be in care or on any other ground authorized in Article 1015.
- (2) **CONTINUED IN CUSTODY:** Court shall advise all parties and persons before court:
  - Of procedures governing case plan, case review, and permanency review;

- If electronic mail address provided, all service/notice of future proceedings may be sent electronically until notice to court and all parties in writing/open court provided that no longer able to receive service/notice at address;
- Upon receipt of information regarding parent's change of address, DCFS and parent's counsel shall promptly inform court of new address;
- Identify name, address, and whereabouts of each parent and any relative/individual willing to offer stable home and all grandparents, parents of siblings, and all other adult relatives; AND
- Of their responsibility in achieving timely permanency for child.

## Further Findings and Orders

ARTICLES 102, 309, 318, 533, 601, 627, 672, 674, 685, 42 § U.S.C. 671

### Court may make additional orders in best interest of child, such as:

- (1) **PARENTS' CONTRIBUTION:** Parents contribute to cost of care and treatment of child per Article 685.
- (2) **FAMILY TEAM MEETINGS (FTM):** DCFS should propose tentative date for next FTM and court can provide notice and encourage participation.
- (3) **NOTIFICATION TO CHILD'S ATTORNEY:** DCFS must immediately notify child's attorney of change in placement (Article 553).
- (4) **POTENTIAL PERMANENT PLACEMENTS:** DCFS (a) explore all possible permanent placements with results/updates to be presented prior to or at next hearing; (b) initiate child welfare background clearance, criminal background check, and/or assessment of home/home study on potential permanent placements; (c) take necessary steps for potential caregiver to timely complete foster care certification (i.e., to receive guardianship subsidy if applicable); and (d) initiate Interstate Compact on the Placement of Children (ICPC) process with any potential out-of-State placements.
- (5) **OTHER ORDERS:** Orders related to maternity/paternity, PO, child's education, services, mental or physical health examinations, placement when child is in DCFS custody (See Article 672(A)(2)), etc.

**ESSENTIAL JUDICIAL FINDING | Indian Child Welfare Act (ICWA):** At every CINC hearing, court shall ask each person whether they know or have reason to know child is a member of or eligible for membership in a Federally recognized Indian Tribe and biological child of a member of Federally recognized Indian Tribe. Advise all to inform court if any of above information is subsequently discovered. If know or have to reason to know, proceed per Articles 624, 624.1, 661.1, and 25 U.S.C. § 1901 et seq. Inquire as to DCFS's due diligence in locating and contacting Tribe. See [Indian Child Welfare Act \(ICWA\) Bench Card](#).

**PRACTICE TIP | Parents' Contribution:** Article 675(B)(4) requires DCFS to recommend amount for "parental contribution" (which is not child support per La. R.S. § 9:315 et seq.). Article 685 allows judge to determine and order parental contribution and ensures due process for parents prior to the order, specifies enforcement mechanisms available once order rendered, and distinguishes parental contribution from child support. Court should ask DCFS whether there is a child support order; if so, an order for contribution for cost and care shall not be made. If valid child support order is subsequently signed, previous order for parental contribution shall terminate by operation of law. Failure to significantly contribute towards child's care and support is one ground listed as basis for TPR (Article 1015). Thus, it is critical that parents understand consequences of failure to contribute per Articles 675(B)(4) and 685.

## Order of Notices and Future Hearings

ARTICLES 424.7, 623, 674, 688-9

### Court shall also make the following orders:

- (1) **PARTIES, COUNSEL, DCFS, AND CASA:** Be present at all future hearings;
- (2) **DCFS CASE PLAN:** Be filed at least 10 days before hearing; copies provided to counsel by mail/email and unrepresented parties by certified mail/email per Article 674;
- (3) **DCFS COURT REPORT:** Be filed at least 10 days before hearing; copies distributed to CASA prior to or at same time filed; served upon counsel by mail/email and certified unrepresented parties by certified mail/email per Article 689;
- (4) **CASA COURT REPORT:** Be filed before next hearing; copies distributed per Article 424.7;
- (5) **SET DATES/TIMES FOR NEXT HEARING(S):**
  - **Revised Case Plan/Status Hearing:** Set if court did not approve case plan or other issues to address or resolve;
  - **Case Review Hearing:** Shall be held within 3 months of Disposition if child removed before Disposition or within 6 months if child removed at Disposition; no more than 6 months after removal;
  - **Initial Permanency Hearing:** Shall be held within 9 months after Disposition Hearing if child removed before Disposition or within 12 months if removed at Disposition; but no more than 12 months after removal; if judicial determination made per Article 672.1, may be held immediately or shall be held within 30 days;
- (6) **SERVICE/NOTICE OF HEARINGS:** Service and notice be made on parties, counsel, CASA, and foster caregivers; AND
- (7) **ARRANGEMENTS FOR ANY INCARCERATED PARENT:** Be made to attend hearing, either in person or remotely.

## Case Management

- An attorney or the court is responsible for the completion of the Judgment. See [Judgment of Disposition Template](#).
- All attorneys and unrepresented parties should review Judgment before judge signs to ensure it accurately reflects proceeding.
- Time permitting, best practice is to sign Judgment on the same day as the hearing.
- Consider giving attorneys time to meet with clients after hearing to discuss questions and/or concerns.
- Provide parents with copy of Judgment immediately following hearing.

## Possible Next Steps

ARTICLES 330-8, 700, 710, 1004, 1004.1, 42 U.S.C. § 675(5)(E)(i)-(iii)

- (1) **APPEAL:** Any person directly affected may appeal findings or orders of court; shall be taken within 15 days from mailing of notice of Judgment.
- (2) **TPR Petition:** At any time, court on its own motion may order filing of the TPR Petition on any ground authorized by Article 1015. If the child is in DCFS custody for 17 of last 22 months, DCFS shall file a TPR Petition unless there is a compelling reason that is documented as to why it is not in the child's best interest. Court's role is to hold DCFS accountable to showing such compelling reasons.

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### CRITICAL CONSIDERATIONS FOR ALL AT EACH CINC HEARING:

Can the child safely go home today (*if reunification is still possible*)? If not, what needs to happen to make return possible? Who is responsible? What is the timeframe?

# CASE REVIEW HEARINGS

BENCH  
CARD



La. Ch. C. arts. 687-700

## PURPOSE

For the court to review the: continuing necessity for and appropriateness of child's placement; progress toward mitigating causes necessitating placement in foster care; safety of the child; extent of case plan compliance by parents and DCFS; and likely date by which child may achieve permanency.

## Prior to Hearing

ARTICLES 424.7, 673-4, 676, 688-9, 691

- (1) **CASE PLAN:** DCFS shall file at least 10 days before hearing; upon filing provide copies to counsel by mail/email and unrepresented parties by certified mail/email per Article 674. Any party may file written response.
- (2) **DCFS COURT REPORT:** DCFS shall file at least 10 days before hearing; distribute copies to CASA prior to/at same time filed; serve counsel by mail/email and unrepresented parties by certified mail/email per Article 689. Any party may file written response.
- (3) **CASA COURT REPORT:** If appointed, CASA shall file before hearing; distribute copies per Article 424.7.

## Timing and Continuances

ARTICLES 603(22), 687, 692, 711, LA. SUP. CT. RULE XXXIII, PART II, SEC. 1-2

- (1) **TIMING:** 3 months after Disposition Hearing if child removed before Disposition (see Article 114); within 6 months after if child removed at Disposition, but not more than 6 months after removal; hold at least every 6 months thereafter until permanently placed or upon motion of party for good cause or court's own motion.
- (2) **CONTINUANCES:** Court shall report continuance exceeding maximum allowed within 10 days to Louisiana Supreme Court, with reasons and copy of Order.

**PRACTICE TIP | Hold Simultaneously:** Case Review and Permanency Hearings may be held simultaneously; however, findings and orders shall be separated for each type of hearing; DCFS Court Report should address information required for both types of hearings.

## Appearances

ARTICLES 575, 607-8, 643, 694-8

- (1) **ONLY ADMIT PERSONS WITH PROPER INTEREST/NECESSARY:** Including parents, child, attorneys for child and parents, DA/ADA/DCFS attorney (BGC), DCFS representatives, CASA, foster caregivers, witnesses under examination, and intervenors (if granted).
- (2) **CHILDREN ARE PARTIES:** 12 years or older, shall be present unless waived upon motion of child's attorney; include if waived or not in Order. Under age 12, shall be present upon request of child's attorney or court.
- (3) **PARENTS ARE PARTIES:** If parent absent but established on record parent was served or efforts to serve unsuccessful, hearing may proceed. If incarcerated, verify writ/motion to guarantee parent's attendance filed and Order issued/served timely on facility.

- (4) **ATTORNEYS:** Child shall have attorney appointed and present (Article 607); indigent and absent parents shall be provided representation (Articles 575 and 608) unless right waived by a parent per Article 608.

### ESSENTIAL JUDICIAL FUNCTION | Assistance and Accommodations:

Court responsible for providing interpretation, translation, and language assistance services and reasonable accommodations for parties.

### PRACTICE TIP | Foster Caregivers (Foster Parents, Pre-Adoptive Parents, and Relatives):

Are not parties but have legal right to notice and opportunity to be heard at any hearing involving a child in their care. If they do not appear, DCFS shall report whether notice given/diligent efforts made to locate and notify caregiver; hearing may be held in their absence even if notice not given by DCFS. (Articles 623 and 696; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o)).

### PRACTICE TIP | Service and Treatment Providers:

Can provide valuable information to court concerning family's progress (i.e., therapists, teachers, domestic violence advocates, parenting instructors, etc.). Allows for coordination of services with court-approved treatment goals and recommendations for additional services. If not available to attend hearing, request that DCFS provide information on parent's participation and progress. Ideally, written reports from all service providers should be provided to court and counsel/unrepresented parties in advance of hearing.

### PRACTICE TIP | Coordinating Services:

Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful to have at hearing. Especially critical for youth who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated services and supports.

### PRACTICE TIP | Reunification:

If reunification with absent parent is case plan goal, DCFS shall make continuing diligent efforts to locate absent parent and notify him/her of nature and outcome of hearing and promptly notify court of any new address that becomes known.

## Intervention

ARTICLE 697

- Court has discretion to allow intervention upon showing of good cause that intervention facilitates permanent plan for child and ensures best interest; may limit nature and extent of participation upon motion and showing of good cause.

**PRACTICE TIP | Case Law:** There is significant case law on intervention, especially in certain jurisdictions.

## Notice

ARTICLES 623, 640-1, 643, 693, 696, 42 U.S.C. § 675(5)(G), 45 C.F.R. § 1356.21(O)

- Court shall determine if proper notices of hearing were made to all parties, counsel, and foster caregivers; enter required findings in Order.

## Evidence and Testimony

ARTICLES 424.5, 424.7, 696, 699, LA. SUP. CT. RULE XXXIII, PART III, SUBPART II

- (1) **EVIDENCE:** Consider all relevant evidence offered but may limit admissibility or weight of any evidence deemed unreliable, cumulative, or unduly dilatory.
- (2) **PARENTS/CHILDREN:** Right to testify, confront and cross-examine adverse witnesses, present evidence and witnesses.
- (3) **CASA:** May be called as witness by any party or court; may request opportunity to appear as witness.
- (4) **FOSTER CAREGIVERS:** Right to be heard regarding child in their care. If attend, court shall ask if they would like to speak regarding the care and treatment of child. Articles 623 and 696; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

**PRACTICE TIP | Engagement:** Court should do all it can to support and encourage meaningful engagement of families in CINC proceedings. Court is intimidating for most individuals, and stakes could not be higher for parents and children. Keep in mind that both parents and children likely have their own history of trauma.

**PRACTICE TIP | Child's Wishes:** Whether present or not, child's attorney shall ensure court hears child's wishes (i.e., custody, placement, case plan and goal, services, visitation, etc.). If child wishes to be heard but is not able or does not want to be present in courtroom, consider other methods of communication, such as audio or visual conferencing, videotaped interview, or in-chambers conference.

**PRACTICE TIP | Foster Caregivers Progress Form:** Foster caregivers can give to DCFS, who will submit form to court, parties, and CASA (if appointed) before hearing. Form contains hearsay and should be treated as information about child in same way DCFS provides other information to court. As child's day-to-day caregiver, they likely have valuable information to share with court.

## Case Plan Content

ARTICLES 673, 675, 677, 685, 42 U.S.C. § 671(16), 42 U.S.C. § 675(1)

**Court shall approve or not approve case plan, which if it is a DCFS case, shall at least include the following:**

- (1) **PLACEMENT:** Appropriateness of placement; if substantial distance from parents, reasons why in best interest of child; placement shall be in least restrictive, most family-like setting available in close proximity to parents' home, consistent with best interests and special needs of child.
- (2) **CARE, SERVICES, AND ACTIVITIES:** Plan for providing services to parents, child, and foster parents to improve conditions in parents' home, facilitate safe return of child to own home or other permanent placement, or both; plan for child to receive safe and proper care and be afforded greatest opportunity for normalcy through age or developmentally appropriate activities.
- (3) **VISITATION/FAMILY TIME:** Ensure plan for visitation with parents, siblings (half-siblings and those the child considers siblings), relatives, and other important individuals, which shall include preserving child's valuable relationships and connections by considering frequency and type of visitation.
- (4) **EFFORTS TO RETURN CHILD/FINALIZE PLACEMENT:** Ensure documentation of efforts DCFS is making to safely return child home or finalize child's placement in accordance with permanent plan.
- (5) **ASSESSMENT OF RELATIONSHIPS:** Assess child's relationships with parents, grandparents, and siblings, and develop plan for assuring continuing contact with those whom child has significant relationships; ensure preserved while in foster care.
- (6) **YOUTH 14 AND OLDER:** Shall include written description of programs and services that will help youth prepare to transition from foster care to independent living, i.e., Youth Transition Plan (YTP).
- (7) **OBLIGATION TO CONTRIBUTE:** Shall recommend amount parents are obligated to contribute for cost of care and treatment of child in accordance with Article 685.
- (8) **TERMINATION OF PARENTAL RIGHTS:** If not filing for TPR, DCFS shall provide documentation of compelling reasons.

**PRACTICE TIP | Paramount Concern:** Health and safety of child shall be the paramount concern in development of case plan.

**PRACTICE TIP | Shortage of Placements:** Does not justify an assertion that it is in the best interest of child to be placed a substantial distance from his/her parents' home or out-of-State.

**PRACTICE TIP | Disapprove Placement:** Judge cannot choose child's specific placement when he/she is in DCFS custody. However, court has authority to disapprove case plan, in whole or part, which includes child's placement. Judge has separate authority to disapprove placement chosen by DCFS when requirements of Article 672(A)(2) are met.

**PRACTICE TIP | Reasonable and Prudent Parent:** Recognizing greatest opportunity for normalcy lies in the day-to-day decisions affecting the child's activities, child's caregiver should be supported in making those decisions through use of the reasonable and prudent parent standard as set forth in La. R.S. § 46:283.

**HELPFUL GUIDANCE | Child's Relationships:** Maintaining child's relationships to minimize trauma is an important aspect of case work, especially during a time of insecurity while permanent plans have not yet been finalized.

**PRACTICE TIP | Youth Transition Plan (YTP):** Per Federal law, YTP shall be updated every 6 months. Development and implementation of YTP should be considered in reasonable efforts to achieve permanency for youth. Every child in foster care, age 14 and older, should be actively involved in case planning. 42 U.S.C. § 673(b) and 675.

## Case Plan Finding and Order

ARTICLE 700, 42 U.S.C. § 671(16), 42 U.S.C. § 675(1)

After court considers content and implementation of case plan and any response filed, court shall:

- (1) **APPROVE:** If protects child's health and safety and in child's best interest; order parties comply therewith; OR
- (2) **NOT APPROVE:** In whole or part, including reasons why case plan does not protect child's health and safety or not in child's best interest; order DCFS to revise accordingly.

**ESSENTIAL JUDICIAL ORDER | Approval of Case Plan:** Court shall approve or disapprove case plan per Article 677, based on arguments of parties and evidence presented and enter it into written Order.

**PRACTICE TIP | Specific Grounds:** Upon which the child was adjudicated should guide ongoing implementation and review of case plan.

**PRACTICE TIP | Case Planning:** Is an integral element of the reasonable efforts requirement. Make sure case plan: (a) includes elements designed to support increased protective capacities feasible within stated time limitations; and (b) identifies safety and risk issues and conditions for return before court's involvement ends. Proposed services and other case plan activities should address specific issues and be accessible and culturally and linguistically appropriate. Paramount for court to make sure parents and child are involved in case planning process. 42 U.S.C. § 671(16), 42 U.S.C. § 675(1).

**PRACTICE TIP | Disapprove Case Plan:** Court not authorized to revise case plan. If court disapproves case plan, it should enter disapproval in the Order and direct DCFS to make necessary revisions. DCFS will revise plan and submit to court until approved. Set deadline for submitting revision. Ideally, issues can be resolved while still at court; party may move to have plan amended during hearing and if DCFS and parties agree, court can approve updated plan.

**PRACTICE TIP | Case Plan Goal:** Should not be changed from reunification to adoption, custody, or guardianship until court has either made a reasonable efforts finding to reunify the family or made an Article 672.1 judicial determination that reasonable efforts to reunify are not required.

## Advisements

ARTICLE 700

### Court shall advise parents of:

- Their obligation to cooperate with DCFS, comply with requirements of case plan, including duty to keep DCFS apprised of current address, and correct conditions requiring child to be in care;
- Their continuing responsibility to support timely achievement of permanency for the child and advise DCFS and court of whereabouts, including the address, cellular number, telephone number, and any other contact information, of all grandparents, all parents of a sibling where such parent has legal custody of such sibling, and all other adult relatives of child; AND
- That TPR Petition may be filed based on grounds in Article 1015, including failure to: (a) make significant progress toward achieving case plan goals; (b) comply with case plan; and (c) correct conditions requiring child to be in care.

## Further Findings and Orders

ARTICLES 309, 618, 672(A)(2), 677, 669, 681-4, 710, 712, 42 U.S.C. § 671(A)(31)(A)

Court may make additional orders in best interest of child, such as:

- (1) **CUSTODY/GUARDIANSHIP:** Court retains jurisdiction over custody and may maintain or modify current Disposition to return or grant custody to a parent, with or without continuing supervision and/or issuing Protective Order (PO); grant custody to relative/suitable person, guardianship to nonparent; etc.
- (2) **PLACEMENT AND DCFS CUSTODY:** Court cannot choose placement when child in DCFS custody. However, court has authority to disapprove placement chosen by DCFS if Article 672(A)(2) requirements are met.
- (3) **VISITATION/FAMILY TIME:** Court has continued jurisdiction to modify in all CINC proceedings under Article 309.
- (4) **SECURE/PROVIDE SERVICES:** Court has authority to order an agency, institution, person to whom child is assigned to secure or provide services to child, including coordination with LDH, OJJ, LDOE, etc.
- (5) **TERMS AND CONDITIONS:** Court can specify other terms and conditions applicable to legal custodian.
- (6) **POTENTIAL PERMANENT PLACEMENTS:** Court can order DCFS to (a) explore all possible permanent placements with results/updates to be presented prior to or at next hearing; (b) initiate child welfare background clearance, criminal background check, and/or assessment of home/home study on potential permanent placements; (c) take necessary steps for potential caregiver to timely complete foster care certification (i.e., to receive guardianship subsidy if applicable); and (d) initiate Interstate Compact on the Placement of Children (ICPC) process with any potential out-of-State placements.
- (7) **FAMILY TEAM MEETINGS (FTM):** DCFS should propose tentative date for next FTM and court can provide notice and encourage participation.
- (8) **SANCTIONS PER ARTICLE 712:** Court can order for DCFS failure to comply with permanency planning requirements.
- (9) **OTHER ORDERS:** Related to maternity/paternity, PO, child's education, services, mental or physical health examinations, etc.

**ESSENTIAL JUDICIAL FINDING | Indian Child Welfare Act (ICWA):** At every CINC hearing, court shall ask each person whether they know or have reason to know child is a member of or eligible for membership in a Federally recognized Indian Tribe and biological child of a member of Federally recognized Indian Tribe. Advise all to inform court if any of above information is subsequently discovered. If know or have to reason to know, proceed per Articles 624, 624.1, 661.1, and 25 U.S.C. § 1901 et seq. Inquire as to DCFS's due diligence in locating and contacting Tribe. See [Indian Child Welfare Act \(ICWA\) Bench Card](#).

**PRACTICE TIP | Reasonable Efforts (RE) Finding:** Not required in Case Review Order. However, courts have an ongoing obligation to hold DCFS accountable to making RE to prevent removal, reunify family, and/or achieve permanency. Only exception to RE to reunify the family occurs when court finds RE not required per Article 672.1.

**PRACTICE TIP | Child Welfare Assessment and Decision Making Model (CWADM):** The Adoption and Safe Families Act (ASFA) requires courts to address the ongoing safety of child at Case Review Hearing. Court should insist on clear articulation of current safety threat keeping child in an out-of-home placement. Child is considered safe: (1) when there are no threats of danger; (2) if there is a threat of danger, child is not vulnerable to threat of danger; or (3) if there is a threat of danger, parents/caretakers possess sufficient protective capacities to manage the threat and keep child safe. See [Child Welfare Assessment and Decision Making Model \(CWADM\) Benchbook Section 11](#).

**HELPFUL GUIDANCE | Visitation:** To preserve valuable relationships and connections in best interest of child, court should consider frequency and type of visitation and if other visitation or contact is needed. Visitation planning and scheduling includes an ongoing assessment of child's established and significant relationships with parents, grandparents, siblings, relatives, or other important individuals in child's life. As long as case plan goal remains reunification, preserving and enhancing parent-child relationship while providing for safety and well-being of child is crucial for many reasons (i.e., maintaining attachment, reducing trauma, providing ability to put parenting skills into practice, etc.), including child's future transition back into the custody of parents. Initiating or continuing visitation and/or contact with relatives/individuals is not only critical for child's well-being but is also important if reunification becomes no longer viable.

## Case Management

- An attorney or the court is responsible for completion of Order. See [Case Review Order Template](#).
- All attorneys and unrepresented parties should review Order before judge signs to ensure it accurately reflects proceeding.
- Time permitting, best practice is to sign the Order on the day as the hearing.
- Consider giving attorneys time to meet with clients after hearing to discuss questions and/or concerns.
- Provide parents with copy of Order immediately following the hearing.

## Possible Next Steps

ARTICLES 330-8, 700, 710, 1004, 1004.1, 42 U.S.C. § 675(5)(E)(I)-(III)

- (1) **APPEAL:** Any person directly affected may appeal findings or orders of court; shall be taken within 15 days from mailing of notice of Judgment.
- (2) **TPR Petition:** At any time, court on its own motion may order filing of TPR Petition on any ground authorized by Article 1015. If child in DCFS custody for 17 of last 22 months, DCFS shall file TPR Petition unless a compelling reason why filing is not in best interest of child is documented in case plan.

## Order of Notices and Future Hearings

ARTICLES 424.7, 674, 688-9, 702

### Court may also make the following orders:

- **PARTIES, COUNSEL, DCFS, AND CASA:** Be present at all future hearings;
- **DCFS CASE PLAN:** Be filed at least 10 days before hearing; copies provided to counsel by mail/email and unrepresented parties by certified mail/email per Article 674;
- **DCFS COURT REPORT:** Be filed at least 10 days before hearing; copies distributed to CASA prior to or at same time filed; served upon counsel by mail/email and unrepresented parties by certified mail/email per Article 689 (DCFS policy requires reports beginning at Disposition, although Children's Code is silent on submission for the Permanency Hearing);
- **CASA COURT REPORT:** Be filed before next hearing; copies distributed per Article 424.7;
- **SET DATES/TIMES FOR NEXT HEARING(S):**
  - **Revised Case Plan/Status Hearing:** Set if court did not approve case plan or other issues to address or resolve;
  - **Permanency Hearing:** Initial shall be held within 9 months after Disposition Hearing if removed before or within 12 months if removed after and then at least every 12 months thereafter until permanently placed (or earlier upon motion per Article 702(B)); may be held immediately or shall be held within 30 days of an Article 672.1 judicial determination;
  - **Next Case Review Hearing:** Shall be held at least once every 6 months until child is permanently placed (or earlier upon motion per Article 692(B));
- **SERVICE/NOTICE OF HEARINGS:** Be made on parties, counsel, CASA, and foster caregivers; AND
- **ARRANGEMENTS FOR ANY INCARCERATED PARENT:** Be made to attend hearing, either in person or remotely.

**PRACTICE TIP | Schedule Earlier:** Courts retain ability to schedule hearings to occur earlier than maximum allowable timeframes and should do so whenever practicable and in child's best interest. Even though case plan is generally updated every 6 months (unless otherwise ordered sooner), best practice is to conduct review hearings a minimum of every 3 months or, in some cases, more frequently. Holding review hearings every 3 months allows court and parties to resolve issues with case plan and keep case moving forward towards achieving permanency more expeditiously.

### CRITICAL CONSIDERATIONS FOR ALL AT EACH CINC HEARING:

Can the child safely go home today (*if reunification is still possible*)? If not, what needs to happen to make return possible? Who is responsible? What is the timeframe?

# PERMANENCY HEARINGS

La. Ch. C. arts. 701-711

BENCH  
CARD



## PURPOSE

For the court to determine the child's permanent plan (given that foster care is meant to be temporary), which is to be stable and lasting and occur as soon as possible, and to make reasonable efforts findings.

## Prior to Hearing

ARTICLES 424.7, 673-4, 676, 688-9, 691

- (1) **CASE PLAN:** DCFS shall file at least 10 days before hearing; upon filing provide copies to counsel by mail/email and unrepresented parties by certified mail/email per Article 674. Any party may file written response.
- (2) **DCFS COURT REPORT:** DCFS policy requires reports beginning at Disposition, even though Children's Code is silent on submission; DCFS files at least 10 days before hearing with copies to counsel, unrepresented parties, and CASA.
- (3) **CASA COURT REPORT:** If appointed, CASA shall file before hearing; distribute copies per Article 424.7.

## Timing and Continuances

ARTICLES 672.1, 702, 711, LA. SUP. CT. RULE XXXIII, PART II, SEC. 1-2

- (1) **TIMING:** If removed before Disposition Hearing, hold within 9 months after Disposition Hearing. If removed at Disposition Hearing, hold within 12 months of Disposition Hearing. Hold every 12 months after initial hearing until permanently placed or upon motion of party for good cause or court's own motion. If Article 672.1 judicial determination made, may hold hearing immediately and shall hold within 30 days of ruling. See Article 114.
- (2) **CONTINUANCES:** Court shall report continuance exceeding maximum allowed within 10 days to Louisiana Supreme Court, with reasons and copy of Order.

**PRACTICE TIP | Hold Simultaneously:** Case Review and Permanency Hearings may be held simultaneously; however, findings and orders shall be separated for each type of hearing; DCFS Court Report should address information required for both types of hearings.

## Intervention

ARTICLE 707

- Court has discretion to allow upon showing of good cause that intervention facilitates permanent plan for child and ensures best interest of child; may limit nature and extent of participation upon motion and showing of good cause.

**PRACTICE TIP | Case Law:** There is significant case law on intervention, especially in certain jurisdictions.

## Appearances

ARTICLES 607-8, 643, 704-8

- (1) **ONLY ADMIT PERSONS WITH PROPER INTEREST/NECESSARY:** Including parents, child, attorneys for child and parents, DA/ADA/DCFS attorney (BGC), DCFS representatives, CASA, foster caregivers, witnesses under examination, and intervenors (if granted).
- (2) **CHILDREN ARE PARTIES:** 12 years or older, shall be present unless waived upon motion of child's attorney; include if waived or not in Order. Under age 12, shall be present upon request of child's attorney or court.
- (3) **PARENTS ARE PARTIES:** If parent absent but established on record parent was served or efforts to serve unsuccessful, hearing may proceed. If incarcerated, verify writ/motion to guarantee parent's attendance filed and Order issued/served timely on facility.
- (4) **ATTORNEYS:** Child shall have attorney appointed and present (Article 607); indigent and absent parents shall be provided representation (Articles 575 and 608) unless right waived by a parent per Article 608.

### ESSENTIAL JUDICIAL FUNCTION | Assistance and Accommodations:

Court responsible for providing interpretation, translation, and language assistance services and reasonable accommodations for parties.

### PRACTICE TIP | Foster Caregivers (Foster Parents, Pre-Adoptive Parents, and Relatives):

Are not parties but have legal right to notice and opportunity to be heard at any hearing involving a child in their care. If they do not appear, DCFS shall report whether notice given/diligent efforts made to locate and notify caregiver; hearing may be held in their absence even if notice not given by DCFS. (Articles 623 and 705; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o)).

**PRACTICE TIP | Coordinating Services:** Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful to have at hearing. Especially critical for youth who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated services and supports.

**PRACTICE TIP | Reunification:** If reunification with absent parent is the case plan goal, DCFS shall make continuing diligent efforts to locate absent parent and notify him/her of nature and outcome of hearing and promptly notify court of any new address that becomes known.

**PRACTICE TIP | Confidentiality:** If court allows other persons to be present, stress confidentiality of case information.

## Notice

ARTICLES 623, 640-1, 643, 703-8, 42 U.S.C. § 675(5)(G), 45 C.F.R. § 1356.21(O)

- Court shall determine if proper notices of hearing were made to all parties, counsel, and foster caregivers; enter required findings in Order.

## Evidence and Testimony

ARTICLES 424.5, 424.7, 706-9, LA. SUP. CT. RULE XXXIII, PART III, SUBPART II

- (1) **EVIDENCE:** Consider: (a) all relevant evidence offered but may limit admissibility or weight of any evidence deemed unreliable, cumulative or dilatory; and (b) evidence presented and arguments of parties when determining permanent plan and reasonable efforts, including permanency recommendations made by DCFS and CASA.
- (2) **PARENTS/CHILDREN:** Right to testify, confront and cross-examine adverse witnesses, present evidence and witnesses.
- (3) **CASA:** May be called as witness by any party or court; may request opportunity to appear as witness.
- (4) **FOSTER CAREGIVERS:** Right to be heard regarding child in their care. If attend, court shall ask if they would like to speak regarding care and treatment of child. Articles 623 and 705; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

**PRACTICE TIP | Child's Wishes:** Whether present or not, child's attorney shall ensure court hears child's wishes (i.e., permanent plan, custody, placement, services, visitation, etc.). If child wishes to be heard but is not able or does not want to be present in courtroom, consider other methods of communication, such as audio or visual conferencing, videotaped interview, or in-chambers conference.

**PRACTICE TIP | Foster Caregivers Progress Form:** Foster caregivers can give to DCFS, who will submit form to court, parties, and CASA (if appointed) before hearing. Form contains hearsay and should be treated as information about child in same way DCFS provides other information to court. As child's day-to-day caregiver, they likely have valuable information to share with court.

## Permanent Plan Considerations

ARTICLES 702

**Court shall consider the child's permanent plan according to the following priorities:**

- (1) **REUNIFICATION WITH PARENTS:** Set specified time period consistent with child's age and need for safe and permanent home; parents must be complying with case plan and making significant measurable progress toward goals and correcting conditions requiring child to be in care.
- (2) **IF REUNIFICATION IS NO LONGER VIABLE:**
  - a. **ADOPTION;**
  - b. **PLACEMENT WITH LEGAL GUARDIAN;**
  - c. **PLACEMENT IN LEGAL CUSTODY OF A RELATIVE; OR**
  - d. **ALTERNATIVE PERMANENT LIVING ARRANGEMENT (APLA):** Only allowed if child is 16 or 17 years old. DCFS shall document in case plan and report compelling reason for recommending this plan.

**PRACTICE TIP | Child Welfare Assessment And Decision Making Model (CWADM):** Court should insist on clear articulation of current safety threat keeping child in an out-of-home placement. Child is considered safe: (1) when there are no threats of danger; (2) if there is a threat of danger, child is not vulnerable to threat of danger; or (3) if there is a threat of danger, parents/caretakers possess sufficient protective capacities to manage the threat and keep child safe. See [Child Welfare Assessment and Decision Making Model \(CWADM\) Benchbook Section 11](#).

**PRACTICE TIP | Trial Placement:** DCFS policy allows for trial placement of child with one or both parents if the home is determined to be safe, but there are still some transition concerns and/or items left to resolve. Court could order child remain in DCFS custody and set transition period with goal date for reunification. If child moved to parents home with DCFS retaining custody, court can gain information at next hearing about how the child and parents are doing in the home together (in such cases, consider setting hearing sooner than timeline for Case Review or Permanency Hearings).

**PRACTICE TIP | ASFA Exception:** Some courts approve an "ASFA exception" or "ASFA extension" to give parents more time, but there is no such provision in the law. Instead, court would maintain reunification as permanent plan per findings required in 702(C)(1). If reunification remains permanent plan or concurrent permanent plan, more frequent case reviews (or Status Hearings) should be scheduled to ensure continued progress.

**PRACTICE TIP | Siblings:** Per Federal law, DCFS shall make reasonable efforts to place siblings removed from their home in same foster care, guardianship, or adoptive placement, unless DCFS documents that such joint placement would be contrary to safety/well-being of any siblings; and if siblings not so jointly placed, to provide frequent visitation/other ongoing interaction between siblings, unless DCFS documents frequent visitation/other ongoing interaction would be contrary to safety/well-being of any siblings. Court's role is to hold DCFS accountable to showing evidence of such reasonable efforts. See 42 USC § 671(a)(31)(A and B).

**HELPFUL GUIDANCE | Adoption:** If permanent plan for child is adoption, hold DCFS accountable for expeditiously completing adoption for child. Finding relatives, individuals, and/or foster parents able to adopt child and resolving other matters necessary to complete adoption (i.e., prompt certification of relatives/individuals, timely filing of TPR Petition, proof Adoption Petition filed, surrender documents obtained, etc.) is not only critical to show reasonable efforts but also for child's well-being and security.

**HELPFUL GUIDANCE | Guardianship:** Provides more expedient permanency than adoption because it does not require termination of parental rights. May be preferred by relative caregivers who do not want to jeopardize familial bonds by adopting the child. If relative/individual is interested in becoming child's legal guardian, foster care certification must be completed (along with other DCFS requirements) to receive subsidy. Court may want to request updates on status of certification to ensure timely completion.

**PRACTICE TIP | Custody:** Can offer a more expedient resolution to the case than keeping the child in foster care. However, permanent plan of adoption or guardianship to a relative shall be considered before custody to a relative.

**HELPFUL GUIDANCE | Financial Support:** Relatives and other persons granted custody and/or guardianship of child may be eligible for financial support (i.e., Kinship Care Support Program (KCSP), Supplemental Nutrition Assistance Program (SNAP), Family Independence Temporary Assistance Program (FITAP), Child Support Program (CSP), survivor benefits owed to child, child's disability benefits, etc.).

**PRACTICE TIP | APLA:** Per Article 603(22), APLA is a plan of last resort, not a permanent placement. DCFS is still required to identify and establish permanent connections for the youth if court approves APLA as child's permanent plan.



## Rulings and Findings

ARTICLES 672.1, 682, 702, 710, 712, 1269.2, 42 U.S.C. § 671(A)(15)(E); 42 U.S.C. § 675(5); 45 C.F.R. § 1356.21(B)-(H)

### Court shall make the following written, separate, and individualized findings and orders for each child:

- (1) **PERMANENT PLAN FOR CHILD:** Court shall set most appropriate permanent plan in child's best interest based on:
  - a. Child's health and safety is paramount concern;
  - b. Child's need for continuing contact with relatives who child has significant relationship per Article 1269.2;
  - c. Consult, in age-appropriate manner, with child regarding proposed plan; AND
  - d. Consider in-State and out-of-State options if child will not be returned to parents.
- (2) **REASONABLE EFFORTS (RE):** Court shall make one of the following determinations for each child as to RE made by DCFS based on facts and circumstances of case and efforts articulated by DCFS:
  - a. DCFS made RE: To reunify parents and child OR finalize child's placement in alternative safe and permanent home according to child's permanent plan.
  - b. DCFS did not make RE: This finding does not preclude court's other findings and/or orders; OR
  - c. RE to Reunify Finding Not Required: Due to an Article 671.2 judicial determination that reunifying parents and child not required.
- (3) **IF OUT-OF-STATE PLACEMENT:** Whether placement is safe, appropriate, and otherwise in best interest of child.
- (4) **ALTERNATIVE PERMANENT LIVING ARRANGEMENT (APLA):**
  - Why, as of date of hearing, APLA is best permanent plan for child; AND
  - Provide compelling reasons to not return home, be placed for adoption, with legal guardian, or with fit and willing relative.

**ESSENTIAL JUDICIAL FINDING | Child's Permanent Plan:** While parties, DCFS, and CASA may propose permanent plan for child, per Federal and State law, court determines appropriate permanent plan in child's best interest per Article 702 within the mandatory timeframes.

**ESSENTIAL JUDICIAL INQUIRY | APLA:** If youth's permanent plan is APLA, court shall ask youth about desired permanency outcome. DCFS shall document compelling reason for Title IV-E purposes.

**ESSENTIAL JUDICIAL FINDING | Reasonable Efforts:** Court shall make written and individualized findings as to whether RE were/were not made by DCFS to: (1) reunify parents and child or (2) finalize child's placement in an alternative safe and permanent home according to child's permanent plan. Per State law, findings shall be made at each Permanency Hearing (Article 702); per Federal law, these findings shall be made within 12 months from date the child is considered to have entered foster care and at least once every 12 months while child remains in foster care. However, if court makes judicial determination that RE to reunify not required per Article 672.1 (which is in line with Federal law), permanent plan shall be determined by court and a RE determination shall be made immediately or within 30 days of court's Article 672.1 ruling and at least once every 12 months thereafter until permanency. Determining child's permanent plan and making these findings within mandated timeframes are critical for State to maintain its ongoing Title IV-E foster care eligibility for child.

**PRACTICE TIP | Examples of Efforts to Reunify May Include:** Ensuring case plan is related to achieving reunification, providing quality visitation (or such opportunities), helping parents achieve case goals and timely access services and supports, seeking needed court interventions (i.e., Protective Order), etc.

### PRACTICE TIP | Examples of Efforts to Achieve Permanency Include:

Ensuring case plan is reasonably related to achieving permanency, providing quality visitation with potential permanent placements, timely assessments of relatives/other individuals, prompt foster care certification of relatives/other individuals, making diligent efforts to find possible placements with relatives/other individuals, timely initiation of ICPC and background checks, involving youth in development of their YTP, implementing YTP, planning for transition to adulthood, timely seeking TPR, making efforts to complete adoption, etc.

**PRACTICE TIP | Reasonable Efforts Not Required:** After a written motion is filed per Article 672.1, DCFS shall have burden of demonstrating by clear and convincing evidence that reunification efforts were not required based on grounds listed. DCFS should not change case plan goal (or permanency goal) from reunification to adoption, guardianship, or custody to relative in case plan until court has either made a RE to reunify finding or determination that RE to reunify were not required per Article 672.1.

**HELPFUL GUIDANCE | Transitions:** When a child will experience a transition of any kind (i.e., change in custody, placement, etc.), be cognizant of impact transition may have on child and consider including transition plan in best interest of child in the Order. Regardless of reason for transition, it is critical to child's well-being for judges to collaboratively strategize with all involved to reduce trauma experienced by child. See [Disposition Hearing Benchbook Section G](#).

## Advisements

ARTICLE 702

### Court shall give advisements to parents in conformity with Article 702, including advising:

- (1) **IF PERMANENT PLAN REUNIFICATION:** Parents of obligation to achieve case plan goals and correct conditions requiring child to come into care within time period specified by court; otherwise, alternative permanent plan for child will be selected, and TPR Petition may be filed; AND
- (2) **IF PERMANENT PLAN ADOPTION:** Parents of their authority to voluntarily surrender child and consent to adoption before the filing of a TPR Petition.

## Further Findings and Orders

ARTICLES 309, 618, 672(A)(2), 677, 681-4, 710, 712

### Court may make additional orders in best interest of child, such as:

- (1) **CUSTODY/GUARDIANSHIP:** Court retains jurisdiction over custody/guardianship and may maintain or modify current Disposition to return or grant custody to a parent, with or without continuing supervision and/or issuing Protective Order (PO); grant custody to relative/suitable person, guardianship to nonparent; etc.
- (2) **CASE PLAN:** Case plan is typically reviewed at Case Review Hearing. However, on its own motion or motion of any party for good cause shown, court may consider content/implementation of case plan or any response filed concerning it.
- (3) **PLACEMENT AND DCFS CUSTODY:** Court cannot choose placement when child in DCFS custody. However, court has authority to disapprove placement chosen by DCFS if Article 672(A)(2) requirements are met.
- (4) **VISITATION/FAMILY TIME:** Court has continued jurisdiction to modify in all CINC proceedings under Article 309.
- (5) **SECURE/PROVIDE SERVICES:** Court has authority to order agency, institution, person to whom child is assigned to secure or provide services to child, including coordination with LDH, OJJ, LDOE, etc.
- (6) **TERMS AND CONDITIONS:** Court can specify other terms and conditions applicable to legal custodian.
- (7) **POTENTIAL PERMANENT PLACEMENTS:** Court can order DCFS to (a) explore all possible permanent placements with results/updates to be presented prior to or at next hearing; (b) initiate child welfare background clearance, criminal background check, and/or assessment of home/home study on potential permanent placements; (c) take necessary steps for potential caregiver to timely complete foster care certification (i.e., to receive guardianship subsidy if applicable); and (d) initiate Interstate Compact on the Placement of Children (ICPC) process with any potential out-of-State placements.
- (8) **FAMILY TEAM MEETINGS (FTM):** DCFS should propose tentative date for next FTM and court can provide notice and encourage participation.
- (9) **SANCTIONS PER ARTICLE 712:** Court can order for DCFS failure to comply with permanency planning requirements.
- (10) **OTHER ORDERS:** Related to facilitating timely achievement of each child's permanent plan including, for example, if adoption permanent plan: filing of TPR Petition, proof that Adoption Petition filed, surrender documents, etc.; paternity/maternity, PO, child's education, services, mental or physical health examinations, etc.

**ESSENTIAL JUDICIAL FINDING | Indian Child Welfare Act (ICWA):** At every CINC hearing, court shall ask each person whether they know or have reason to know child is a member of or eligible for membership in a Federally recognized Indian Tribe and biological child of a member of Federally recognized Indian Tribe. Advise all to inform court if any of above information is subsequently discovered. If know or have to reason to know, proceed per Articles 624, 624.1, 661.1, and 25 U.S.C. § 1901 et seq. Inquire as to DCFS due diligence in locating and contacting Tribe. See [Indian Child Welfare Act \(ICWA\) Bench Card](#).

**PRACTICE TIP | Modify Case Plan:** If permanent plan ordered by court is different from permanency goal recommended by DCFS, other circumstances in case have changed, or new information has come to light, case plan should be modified accordingly. Additional or different services may be needed than those identified in most recent case plan. Visitation schedule may need to be modified if, for example, goal is no longer reunification (i.e., may want to increase frequency of visits with potential relative/other adoptive placement).

**HELPFUL GUIDANCE | Visitation:** To preserve valuable relationships and connections in best interest of child, court should consider frequency and type of visitation and if other visitation or contact is needed. Visitation planning and scheduling include an ongoing assessment of child's established and significant relationships with parents, grandparents, siblings, relatives, and other important individuals in child's life. As long as permanent plan remains reunification, preserving and enhancing parent-child relationship while providing for safety and well-being of child is crucial for many reasons (i.e., maintaining attachment, reducing trauma, providing ability to put parenting skills into practice, etc.), including child's future transition back into custody of parents. Initiating or continuing visitation and/or contact with relatives/individuals is not only critical for child's well-being but also important if reunification becomes no longer viable.

## Order of Notices and Future Hearings

ARTICLES 424.7, 674, 688-9

### Court may also make the following orders:

- (1) **PARTIES, COUNSEL, DCFS, AND CASA:** Be present at all future hearings;
- (2) **DCFS CASE PLAN:** Be filed at least 10 days before hearing; copies provided to counsel by mail/email and unrepresented parties by certified mail/email per Article 674;
- (3) **DCFS COURT REPORT:** Be filed at least 10 days before hearing and provide copies to CASA, counsel, and unrepresented parties;
- (4) **CASA COURT REPORT:** Be filed before next hearing; copies distributed per Article 424.7;
- (5) **SET DATES/TIMES FOR NEXT HEARING(S):**
  - **Status Hearing/Revised Case Plan:** Set if other issues to address or resolve or case plan review requested and court did not approve case plan.
  - **Next Case Review Hearing:** Shall be held at least once every 6 months after initial until child is permanently placed (or earlier upon motion per Article 692(B));
  - **Next Permanency Hearing:** Shall be held at least every 12 months after initial until child is permanently placed (or earlier upon motion per Article 702(B)); if an Article 672.1 judicial determination made, hearing may be held immediately or shall be held within 30 days;
  - **If Adoption Permanent Plan:** Timelines for hearings are different; see Articles 1042 and 1146.
- (6) **SERVICE/NOTICE OF HEARINGS:** Be made on parties, counsel, CASA, and foster caregivers; AND
- (7) **ARRANGEMENTS FOR ANY INCARCERATED PARENT:** Be made to attend hearing, either in person or remotely.

**PRACTICE TIP | Schedule Earlier:** Courts retain ability to schedule hearings to occur earlier than maximum allowable timeframes and should do so whenever practicable and in child's best interest. Best practice is to conduct review hearings every 3 months or, in some cases, more frequently, even though case plan is generally updated every 6 months (unless otherwise ordered sooner). Holding review hearings every 3 months allows court and parties to resolve issues with case plan and keep case moving forward towards achieving permanency more expeditiously.

**PRACTICE TIP | Open Court:** May schedule future hearings and serve notice in open court.

## Case Management

- An attorney or the court is responsible for completion of Order. See [Permanency Order Template](#).
- All attorneys and unrepresented parties should review Order before judge signs to ensure it accurately reflects proceeding.
- Time permitting, best practice is to sign the Order on the day as the hearing.
- Consider giving attorneys time to meet with clients after hearing to discuss questions and/or concerns.
- Provide parents with copy of Order immediately following the hearing.

## Possible Next Steps

ARTICLES 330-8, 700, 710, 1004, 1004.1, 42 U.S.C. § 675(5)(E)(i)-(iii)

- (1) **APPEAL:** Any person directly affected may appeal findings or orders of court; shall be taken within 15 days from mailing of notice of Judgment. See Article 332(A).
- (2) **TPR Petition:** At any time, court on its own motion may order filing of TPR Petition on any ground authorized by Article 1015. If child in DCFS custody for 17 of last 22 months, DCFS shall file TPR Petition unless a compelling reason why filing is not in best interest of child is documented in case plan.

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### **CRITICAL CONSIDERATIONS FOR ALL AT EACH CINC HEARING:**

Can the child safely go home today (*if reunification is still possible*)? If not, what needs to happen to make return possible? Who is responsible? What is the timeframe?