



LOUISIANA

CHILD IN NEED OF CARE BENCHBOOK

F O R

JUVENILE JUDGES

PREPARED BY

Louisiana Supreme Court, Louisiana Judicial College, and
Pelican Center for Children and Families



GENERAL INFORMATION

The Louisiana Child in Need of Care Benchbook for Juvenile Judges

Prepared by the Louisiana Supreme Court, Louisiana Judicial College, and Pelican Center for Children and Families

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The Louisiana Child In Need of Care Judicial Benchbook was written for Louisiana judges by child welfare and legal stakeholders from across Louisiana. The information contained in this Benchbook is intended to provide useful information regarding the subjects covered but may not contain all relevant information or recent changes to the law or local court rules. The information contained herein is not intended to be construed as legal advice or considered a substitute for statutory, procedural, or other legal authority.

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Juvenile Courts in Louisiana perform their duties in Child in Need of Care (“CINC”) cases without manifestation, by word or conduct, of bias or prejudice, including, but not limited to, bias or prejudice based upon race, gender, national origin, disability, age, sexual orientation, language, or socioeconomic status.

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INTRODUCTION



The people of Louisiana recognize the family as the most fundamental unit of human society; that preserving families is essential to a free society; that the relationship between parent and child is preeminent in establishing and maintaining the well-being of the child; that parents have the responsibility for providing the basic necessities of life as well as love and affection to their children; that parents have the paramount right to raise their children in accordance with their own values and traditions; that parents should make the decisions regarding where and with whom the child shall reside, the educational, moral, ethical, and religious training of the child, the medical, psychiatric, surgical, and preventive health care of the child, and the discipline of the child; that children owe to their parents respect, obedience, and affection; that the role of the state in the family is limited and should only be asserted when there is a serious threat to the family, the parents, or the child; and that extraordinary procedures established by law are meant to be used only when required by necessity, and then with due respect for the rights of the parents, the children, and the institution of the family, and only to the extent that such procedures are not prohibited by the Louisiana Constitution of 1974, as amended.

La. Ch. C. art. 101.

A. PRELIMINARY CONSIDERATIONS

Child in Need of Care (CINC)¹ is a highly specialized area of law. The cases are unique and involve the application of not only the Louisiana Children’s Code but also numerous Federal laws as well as policy considerations. They require you, as judges, to make the most important of all decisions and sometimes extremely difficult ones that can forever impact a child and family’s life.

This Benchbook is designed to support a judiciary empowered to improve outcomes for children and families in Louisiana, with the child’s health and safety being the paramount concern. While this work will require increased time and effort on the part of courts, attorneys, the Department of Children and Family Services (DCFS), and other stakeholders, the aim is to bring our State in line with State and Federal laws and best practice and expedite permanency and decrease the trauma experienced by families and children involved in CINC proceedings.

A sizeable workgroup across the State and profession² created this Benchbook to assist you in making the most informed decisions possible. Taking time to engage with families and understand the complete picture of a case can be challenging with a full docket. However, your role and the time you give to the parents and children before you can never be underestimated.

¹ Louisiana is unique in calling these cases Child in Need of Care. It speaks to how we understand that our children (and parents) may indeed be in need of care. In Louisiana, there was a point in time that our flag said: “We care for our own.” We understand that child welfare is another way of saying that we, as fellow citizens, want our children to fare well.

² The collaboration we have in Louisiana is noteworthy and has been recognized nationally. Such collaboration is typified by the name of our annual child welfare conference “Together We Can.”

B. ORIENTATION

The Benchbook contains a section dedicated to every CINC proceeding in Title VI of the Louisiana Children’s Code (i.e., Informal Adjustment Agreement, Instanter Order, Continued Custody Hearing, etc.).³ Each section contains 4 parts: Introduction, Outline, Overview, and an Appendix.⁴ The Introduction is a summary of State and Federal law provisions governing the proceeding and highlights some “Practice Tips” and “Helpful Guidance” further explicated in the Overview. The Outline is a table of contents for the Overview. The Overview is the core of the section. It provides a detailed and comprehensive guide to the relevant Children’s Code provisions for the proceeding and applicable Federal laws along with “Practice Tips” and “Helpful Guidance.” Finally, each Appendix includes a bench card and court document templates for the proceeding. The bench cards are meant to be a quick reference of key findings and orders to be made at each hearing, along with essential judicial functions for that hearing. The court document templates contain the required State and Federal law findings and model orders⁵ for the hearing, including Title IV-E of the Social Security Act requirements and best practices. Editable Word Document versions of these templates may be found at: www.clarola.org (Children’s Law Advocacy Resource Online website). Editable versions are provided so that the court or attorney completing the order can delete irrelevant sections. There are Appendices at the end of the Benchbook that include a list of acronyms, DCFS Court Reports,⁶ and other helpful information. Please note that when “Article(s)” are referenced throughout the Benchbook, these are Articles from the Louisiana Children’s Code

C. OVERARCHING PRACTICE PRINCIPLES

There are 10 overarching practice principles that should help guide the court in every CINC proceeding pursuant to Title VI of the Louisiana Children’s Code.

(1) Court’s Role

The court ensures due process and fundamental fairness for every family that comes before the court. For example, determining whether notice is proper must be done in every hearing—whether an attorney raises the issue or not. The requirement of notice is based on State law, Federal law, and the United States Constitution. The advisements required by law to make to parents at hearings are also critical.

The court’s role is to be a check and balance on Executive Branch action. One aspect of the court’s oversight is to hold DCFS accountable to the responsibilities it has under Federal and State law. For example, the court is required to assure DCFS makes reasonable efforts to prevent or eliminate the need for a child’s removal from the home, reunify the family if the child has been removed, and achieve timely permanency. While DCFS proposes a case plan for the family, the court’s role is to review the case plan and determine if it protects the health and safety of the child and is in the child’s best interest. Although the court may not order a specific placement if the child is in DCFS custody, judges have the authority to disapprove a placement that the court deems not in the best interest of the child. The court also has ongoing authority to make visitation and custody orders throughout the life of the CINC proceeding, as well as other orders that may be necessary. Hearings should not be a rubber stamp for agency recommendations.

(2) Parties

The participation of children and parents at CINC hearings cannot be undervalued. Early engagement of parents has been shown to expedite reunification, so that the child can return safely home, which is the primary goal of the CINC process when appropriate. It is incumbent on judges to create an environment where parents and children are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.

When there are unidentified, alleged, and/or absent parents, DCFS must make ongoing efforts to locate parents and establish filiation. To this end, the court should also question parents present in court for identifying information about the co-parents who

³ By way of clarification, Judicial Certification of Children for Adoption (Title X), Surrender of Parental Rights (Title XI), and Adoption of Children (Title XII) are not included in this Benchbook.

⁴ The final section “Child Welfare Assessment and Decision Making Model (CWADM)” is short and, thus, does not include an introduction or outline.

⁵ In addition to court orders, there are also Affidavits, Petitions, court reports, and other templates in some sections.

⁶ Use of the DCFS Court Report templates provided in this Benchbook for Disposition Hearings, Case Review Hearings, and Permanency Hearings are being implemented in a phased-in approach across the State.

are not present, or who may not have been identified to DCFS. Parents have a legal right to know that there is a CINC proceeding regarding their child and to be involved, and children have a right to know who their parents are. When a child does not know who one of his/her parents is, that also means the child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Children before the court may be affected for their entire life if this information remains unknown.

The right of the child to be present at CINC hearings is clearly set forth in the Children's Code, and the court and the child's attorney have a duty to ensure the child's presence in court when appropriate. Although some raise concerns about having children in court, engaging even young children in planning their future and keeping them safe can be empowering and reduce their anxiety and confusion about the court process.

Youth can be particularly vulnerable to the concerning outcomes that often befall former foster children. Judges can support youth in having a voice in the case by embracing a popular youth mantra: "Nothing about me without me." This holds true not only in the courtroom but also in planning and implementing the plan for transition to adulthood. Judicial oversight ensures that groundwork is laid to promote permanent connections and stability.

(3) Attorney Role and Appointments

Assistant District Attorneys, DCFS attorneys (Bureau of General Counsel), parent attorneys, and child attorneys should be properly trained and well-versed in the relevant laws. The court plays a role in expecting attorneys to do their job and come to court prepared with a clear position on each case.

The 2018 Child and Family Services Review (CFSR) conducted on Louisiana's child welfare system revealed the need for improvement in legal representation of parents and children. Early appointment by the court of counsel is one important indicator of quality legal representation for parents and children. For this reason, best practice is to appoint the children's representation program and make the referral to the local Public Defender's Office for parents at the earliest possible juncture (i.e., in the Instant Order if one is granted). As soon as it becomes clear that there is an absentee parent, a curator ad hoc should be appointed.

Courts should encourage attorneys to meaningfully engage with their clients before and after court. Attorneys should be meeting with their clients in advance of hearings, and this is the impetus for including parent contact information in the Affidavit in Support of Instant Order templates. The court might consider giving attorneys time and space after hearings to address immediate client questions and concerns. The Order templates also require DCFS to notify the child's attorney immediately upon a change in the child's placement so that the attorney has access to the child and the child has access to the attorney.

(4) Alternatives to Removal and/or Placement in Foster Care

Louisiana has identified the need to promote alternatives to removing children from their families and placing them in foster care based on the volume of research showing the trauma that removal causes to children and parents and the negative lifelong consequences. The Benchbook contains sections on Instant Safety Plan Orders, Informal Adjustment Agreements, Temporary Restraining Orders and Protective Orders, all of which are available to the court in this vein.

In addition, the Benchbook emphasizes that whenever it is safe to do so children should reside with a parent in tandem with safety plans, Protective Orders, and/or other terms and conditions if appropriate. For example, an Instant Safety Plan Order should be requested instead of an Instant Order for Removal whenever safe to do so. Foster care is and should be the safety plan of last resort. When a child is in DCFS custody, DCFS should be able to articulate at each hearing if there are safety concerns preventing a child from returning home with one or more of the safety options listed above, notwithstanding case plan progress.

If it is not safe for a child to reside with a parent, the child should reside with a suitable relative or other individual known to the child. Safety plans, Protective Orders, and/or other terms and conditions can be ordered by the court to manage any identified safety and risk issues. Thus, an Instant Order for Removal and Provisional Custody to a Suitable Relative or Individual should be granted instead of an Instant Order for Removal and Provisional Custody to DCFS whenever possible. Similarly, transferring custody or legal guardianship to a suitable relative or other individual are less restrictive placements than foster care. Courts should require early assessment of relatives and other individuals that matter to the child whether in State or out-of-State and look towards every available person in the child's network as a resource and/or potential placement.

(5) Reasonable Efforts

DCFS is legally required to make reasonable efforts to: (1) prevent or eliminate the need for removal; (2) reunify the family; and (3) achieve timely permanency for the child. The court is obligated to determine whether DCFS efforts are reasonable or not by making diligent inquiry into the specific facts and circumstances of the case. The court must then make written findings for each child.

The court's reasonable efforts inquiry begins with DCFS's request for an Instanter Order for Removal—whether made in person, on the telephone or in writing. The judge's duty is to ask about efforts made by DCFS to prevent removal and determine whether those efforts are reasonable. For example: What actions has DCFS taken? What services has DCFS offered? What court interventions have been sought? What family members have been identified? If the agency asserts that reasonable efforts are not required, the court must be satisfied with the articulated exception. The court is required to make reasonable efforts findings (as well as contrary to the welfare findings) in the first court order sanctioning a removal.

While "reasonable efforts" is an ongoing inquiry, the Children's Code requires specific findings at the Continued Custody, Disposition, and Permanency Hearings if the child is not placed in parental custody (unless there is a judicial determination that they are not required per applicable State and Federal law). Regarding the Continued Custody Hearing, a stipulation to the information contained in the Affidavit in Support of Instanter Order for Removal is not sufficient for the reasonable efforts findings, and the State risks losing Federal funding for the child if these findings are not correctly made. For the Disposition Hearing, reasonable efforts determinations must be made if the child was removed prior to Disposition or is removed at Disposition.

At Permanency Hearings, the court is required to determine whether DCFS made reasonable efforts to reunify the parent(s) and child (unless a judicial determination has been made that reasonable efforts are not required by law) and/or to finalize the child's placement in an alternative safe and permanent home in accordance with the permanent plan. Finalizing placement in accordance with the child's permanent plan could include inquiry into timely filing of the Termination of Parental Rights Petition, early initiation of the Interstate Compact on the Placement of Children process, completion of child-specific certification for relatives and individuals, effectively involving youth in planning transition to adulthood, implementing the Youth Transition Plan, and thoroughly searching for permanent connections for youth.

(6) Stipulations

The Children's Code requires a Pre-Hearing Conference if there is a stipulation at the Answer or Adjudication Hearings. This conference helps assure that any stipulation by a parent is knowing and voluntary. It should be noted that if a child objects to the stipulation, best practice is to hold the Adjudication Hearing.

The judge is to be present at the Pre-Hearing Conference, and there must be a separate and signed Pre-Hearing Conference Order reciting the actions taken. These conferences can be valuable even when there is not a stipulation.

There is nothing in State law authorizing stipulations at the Continued Custody Hearing. Courts must be aware that even if there are stipulations, specific findings must be made at the Continued Custody Hearing, Answer, and Adjudication to comply with State and Federal laws, including Title IV-E. Consequently, the Order templates for the hearings contain the required findings.

(7) Timelines

The Adoption and Safe Families Act (ASFA) requires strict adherence to timelines in child welfare cases due to the history of children languishing in foster care. Delays in achieving permanency further traumatize separated parents and children. In addition, failure to meet statutory timelines can impact Federal funding received by DCFS for the child. Commencing hearings within required timeframes and then recessing them does not satisfy the mandated timelines and will not cure the jeopardy to Federal funding.

If the court grants a continuance or permits a delay in any hearing that exceeds the maximum allowable times established by the Children's Code, the court is mandated by Supreme Court Rule XXXIII, Part II, Sections 1 and 2 to report such continuance. The report must be made within 10 days to the Louisiana Supreme Court, along with the reasons for the delay and a copy of the order.

(8) Foster Caregivers (Foster Parents, Pre-Adoptive Parents, and Relatives)

State and Federal law is clear that foster parents, pre-adoptive parents, and relatives (“foster caregivers”), while not parties, have the right to notice and an opportunity to be heard at all CINC hearings involving the child in their care. If a foster caregiver is not present at the hearing, DCFS has to report whether notice was given or what diligent efforts were made to locate and notify the caregiver. However, the hearing may be held in the caregiver’s absence even if notice was not given by DCFS. If present, the court is required by law to solicit information from the foster caregiver regarding the care and treatment of the child.

There is a new “Foster Caregiver Progress Form” that may be completed by foster caregivers to provide information about the care and treatment of the child to the court. DCFS will submit the form to the court, parties, and CASA (if appointed) at each hearing if completed by the foster caregiver, whether present at the hearing or not. The form is provided in the final Appendices to the Benchbook.

From the start of the case until the child is permanently placed, DCFS has a duty to identify and assess the child’s relatives and other individuals with whom the child or family has a relationship. The court can help assure these assessments are both initiated and timely completed. If DCFS is not able to recommend placement in a home based on its assessment, the court can always consider a transfer of custody and/or legal guardianship to the relative or individual.

(9) Indian Child Welfare Act

The Federal Indian Child Welfare Act (ICWA) affords special protections for abused and neglected children who are or may be eligible for membership in a federally recognized Indian Tribe. The inquiries regarding ICWA are to be made by the court in every hearing pursuant to Federal and State law. While ICWA may not be relevant in most Louisiana cases, there are severe repercussions if ICWA is not followed in those cases where it applies. There is a Bench Card specific to ICWA in the final Appendices to the Benchbook that elucidates the standards and steps to take if ICWA is at issue in a case.

(10) Child Welfare Assessment and Decision Making Model (CWADM)

Judges and all legal stakeholders should be familiar with the Child Welfare Assessment and Decision Making Model (CWADM), which is the framework DCFS uses to assess safety and risk, so that courts and DCFS have the best possible information upon which to make decisions with and for families involved with DCFS.

Three core principles are used to determine whether a child is safe or unsafe: (1) threats of danger to the child; (2) the child’s vulnerability to the identified threats of danger; and (3) the caretaker’s protective capacities. The threat of danger considers whether the caretaker’s behavior or family situation is likely to result in imminent harm to the child. The child’s vulnerability considers the extent to which a child can protect himself from the identified threats of danger. The caretaker’s protective capacities consider the way a caretaker thinks, feels, and/or acts and whether those capacities can prevent or control the threats of danger.

CWADM is presented in Section 11 of the Benchbook.

D. FINAL WORDS

The Benchbook is a dynamic, living document. It will be updated as changes arise. For instance, when Louisiana implements State or Federal legislation, such as the Family First Services Prevention Act, the relevant provisions of the Benchbook will be modified accordingly. Your feedback is welcome.



The Louisiana Supreme Court, Louisiana Judicial College, and Pelican Center for Children and Families thank you for the hard work you do on behalf of Louisiana’s children and families.

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LOUISIANA
CHILD IN NEED OF CARE BENCHBOOK
FOR JUVENILE JUDGES

SECTION

1

INTRODUCTION

A. GENERAL CONSIDERATIONS

An Informal Adjustment Agreement (IAA) is essentially a pre-adjudication diversionary process. It is a viable alternative to prevent unnecessary removals and/or court interventions.¹

An IAA may be utilized regardless of whether the child is still in the custody of his/her parents or Department of Children and Family Services (DCFS). In practice, the IAA is used more frequently when a child is not in DCFS custody. If a Child in Need of Care (CINC) Petition has been filed and the child is still in the home (an “out-of-custody” or “in-home” case), an IAA may be a suitable outcome rather than adjudicating the child in need of care. IAAs are routinely used in some parishes when a CINC case has been initiated by an Instant Safety Plan Order (ISPO)² since the ISPO has a short duration for correcting the conditions of abuse or neglect.

Still there are situations when an IAA may be appropriate for a child who is in DCFS custody. For example, the judge may have granted an Instant Order for Removal with Provisional Custody to DCFS, but at the Continued Custody Hearing (CCH), some of the issues for removal are rectified, and an IAA would be an appropriate resolution of the case.

Attorneys can certainly request that either the court or DA consider an IAA in a particular case. For example, an IAA can be discussed at a CCH or Continued Safety Plan Hearing (CSPH), Answer Hearing, or Pre-Hearing Conference, or even prior to the presentation of evidence at an Adjudication.

B. INITIATION AND APPOINTMENTS

An IAA may be initiated either before or after the filing of a CINC Petition. The decision to proceed with an IAA is generally in the hands of the DA and/or the court (and requires the consent of DCFS if the child is in DCFS custody). The DA may authorize an IAA before a CINC Petition is filed or refer the matter to an intake officer as a Family in Need of Services (FINS) case. The court may also authorize an IAA before the filing of a CINC Petition. After a CINC Petition has been filed, the court authorizes the DA to effect it.

Parents and children have a right to counsel at all stages of the CINC proceedings. The child representation and public defender programs should have been appointed—whether via Instant Order or thereafter. CASA may have been appointed as well.

C. FORM OF AGREEMENT AND APPROVAL

An IAA requires the agreement of the DA, the child’s parents (both parents is best practice if appropriate), all counsel of record, and informed consent of the child (if 12 years of age or older). If the child is in DCFS custody, DCFS shall also consent to the agreement. The Children’s Code does not specifically reference CASA as a signatory to the agreement, but CASA may be included if that is in the child’s best interest.

¹ With the passage of the Family First Prevention Services Act, there will be an increased emphasis on preventing the removal of children from their families. See Family First Prevention Services Act of 2017, H.R. 253, 115th Cong. (2017-2018), <https://www.congress.gov/bills/115/congress/house-bill/253/text>; see also <http://familyfirstact.org/about-law>.

² While an ISPO does not require the agreement of the parents, the IAA does.

The IAA should address what the parents need to do to keep the child in the home or have the child returned and set forth all the requirements that must be met by the parents.³ The terms of the agreement can be likened to the provisions of a DCFS case plan and/or safety plan. For example, the parents may be required to have safe and stable housing that meets the needs of the family, undergo a mental health assessment and follow all recommendations, participate in a substance abuse treatment program, follow the safety plan provisions, etc.⁴ The terms and conditions should be specifically delineated in the agreement itself rather than incorporating the case plan/safety plan by reference. It should be clear to the parents what needs to be accomplished to successfully complete the agreement and also what services DCFS will provide.

If a CINC Petition has been filed and the child is in DCFS custody, the agreement should be submitted to the court for review. If the court approves the agreement, it shall be signed and filed into the record.

D. DURATION AND HEARING

An IAA can last up to 12 months if the child is not in DCFS custody. For these cases, the maximum length of an initial IAA is 6 months and can be extended up to an additional 6 months, if agreed to by all parties to the original agreement. If the child is in DCFS custody, an IAA can last up to 6 months. For these cases the maximum length of an initial IAA is 3 months and can be extended up to an additional 3 months, if agreed to by all parties to the original agreement. Any agreement to extend the time period must be knowing and voluntary.

If an IAA is entered into, the Children's Code does not require that a hearing be set. However, best practice is to set a Status Hearing if the court is overseeing the IAA, perhaps halfway through its duration.

Whether a signatory to the agreement or not, DCFS will be involved in these cases if the court so orders. DCFS will refer the family to the services set forth in the agreement. DCFS will also monitor the parents' efforts with the terms of the agreement and report these efforts to the court. Thus, when DCFS is supervising the case, the court should require DCFS to file a court report even though not required by the Children's Code. If DCFS is supervising the IAA, the court can 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 the IAA, extend the IAA, or develop a new agreement.

E. EFFECT AND NEXT STEPS

An IAA suspends the proceedings on the acts alleged in the Petition. If the parents successfully complete the terms and conditions of the IAA, they are discharged from supervision. If a CINC Petition was previously filed, it shall be dismissed with prejudice.

If the IAA is not successful, the case can be re-evaluated for the next steps. For example, the case may proceed to Adjudication if a CINC Petition was previously filed. (The DA could move to terminate the IAA and set the matter for Adjudication.). Or the DA could file a CINC Petition if one has not already been filed. In addition, the DA could decide not to go forward with the case. There could also be a referral to another program, such as FINS. The determination about how to proceed will be based on the individual circumstances of the case and any remaining safety concerns.

If the case proceeds to an Adjudication, evidence of the IAA cannot be admitted. Incriminating statements made by parents in discussions attempting to reach an agreement may not be admitted as evidence at an Adjudication Hearing or a criminal trial. However, incriminating statements made by a parent incident to the IAA may be considered at a Disposition Hearing or for the purposes of a presentence investigation after a criminal conviction

³ If there is an ISPO and an IAA is then put into place, the conditions in the ISPO would be superseded by the IAA. It is likely that best practice is to put the ISPO provisions into the IAA.

⁴ It may also be possible to include terms for older children to meet, such as attending school or counseling.






F. ENFORCEMENT

The Children’s Code does not set forth any enforcement mechanism for the IAA. Of course, if there is court involvement, the court may always exercise its general contempt authority. Pursuant to Article 1509(D), an adult person adjudged guilty of contempt of court in connection with a juvenile proceeding may be fined (\$500 or less), imprisoned (6 months or less), or both.

G. EXAMPLES OF WHEN TO CONSIDER AN IAA

- The court issued an ISPO, parents are following the safety plan, and DCFS wants more time to work with the family. (Unlike an ISPO, the IAA suspends proceedings on the acts alleged in CINC Petition. The court may also dismiss the CINC Petition or allow the Petition to remain pending during the period of informal adjustment.).
- There is a Drug Court or Family Preservation Court case.
- A CINC Petition has been filed with the child remaining in the home (“out-of-custody” or “in-home” or “court-ordered Family Services” case).
- There was an initial need for removal that is no longer present.
- The child is in DCFS custody, one of the parents is a victim of domestic violence by a significant other who is not a parent, and DCFS is working with the parent to safely get the child back with that parent.

OUTLINE

-  **A. TIMING AND GENERAL REQUIREMENTS**
-  **B. FORM OF AGREEMENT AND APPROVAL**
-  **C. DURATION**
-  **D. EFFECT OF AGREEMENT**
-  **E. APPENDIX**
 - (1) INFORMAL ADJUSTMENT AGREEMENT BENCH CARD
 - (2) INFORMAL ADJUSTMENT AGREEMENT TEMPLATE
 - (3) INFORMAL ADJUSTMENT AGREEMENT ORDER TEMPLATE



OVERVIEW

A. TIMING AND GENERAL REQUIREMENTS

ARTICLES 424.1, 607-8, 628, 630

(1) TIMING:⁵

- An IAA may be initiated either before or after a CINC Petition is filed.
- If the child is in DCFS custody, the consent of DCFS is required for an IAA.

(2) PRIOR TO THE FILING OF A CINC PETITION:

- The court or DA may authorize an IAA.

PRACTICE TIPS:

- **Appointment of Attorneys:** Parents and children have a right to counsel at all stages of the CINC proceedings. The child representation and public defender programs should have been appointed—whether via an Instanter Order or thereafter.
- **Appointment of CASA:** CASA may have already been appointed as well. If the court decides to appoint CASA, it would order that the local CASA program be appointed, subject to the assignment of a qualified CASA volunteer, to advocate for the best interest of the child in the proceedings and that the program be given notice of appointment and served with a copy of the pleadings.
- **Refer to Family in Need of Services (FINS):** The court or DA may refer the matter to a FINS intake officer as a FINS case. While referring a matter to FINS is not a regular practice, it is authorized.

(3) AFTER THE FILING OF A CINC PETITION:

- The court may authorize the DA to effect an IAA.
- As to the CINC Petition the court may:
 - Dismiss the CINC Petition; OR
 - Allow the CINC Petition to remain pending during the period of informal adjustment.

PRACTICE TIP:

- **Suspend:** If the court suspends the proceedings while leaving the Petition pending, the timeframes for CINC hearings need not be met.

⁵ In computing a period of time prescribed by law, the date of the event after which the period begins to run is not included; the last day of the period is included but if a legal holiday—including Saturdays and Sundays—then the period runs until the end of the next day which is not a legal holiday. La. Ch. C. art. 114.

B. FORM OF AGREEMENT AND APPROVAL

ARTICLE 629

(1) WRITING:

- The IAA shall set forth the terms and conditions in writing.

PRACTICE TIPS:

- **Terms and Conditions:** An IAA must clearly delineate the parents' obligations and services DCFS will provide in the agreement itself. It should be individualized, depending on the circumstances of the case and issues at the time it is executed. The requirements, terms, and conditions can look similar to safety plans or case plans, or a hybrid, and should be listed in the body of the IAA (rather than being incorporated by reference to the plan). It should be clear to the parents what needs to be accomplished to successfully complete the IAA and also what services DCFS will provide.
- **Understandable:** To ensure everyone grasps the terms of the IAA, best practice is to use clear wording that can be understood by those with a 6th grade reading level.

HELPFUL GUIDANCE:

- **Obligations of Parents:** An IAA may include multiple obligations that the parents must fulfill including, but not limited, to the following provisions:
 - Maintain safe and stable housing that meets the needs of the family;
 - Allow access to the home during scheduled and/or unscheduled home visits;
 - Participate in a substance use assessment and follow all recommendations;
 - Attend, participate, and successfully complete a substance abuse treatment program, if indicated by the assessment;
 - Cooperate with random urine, hair, and/or fingernail drug and/or alcohol screens as requested by DCFS and/or the treatment provider;
 - Participate in a mental health assessment and follow all recommendations;
 - Participate in a psychological evaluation and/or psychiatric evaluation and follow all recommendations;
 - Follow all of the safety plan provisions as follows: _____;
 - Attend scheduled court hearings and/or Family Team Meetings (FTM);
 - Participate in scheduled visits; AND
 - Participate in and successfully complete a parenting education program approved by DCFS and show understanding of child safety needs.
- **Supports/Services for Children:** The IAA could also include supports and services for the child, if indicated, to help make for a holistic plan.⁶ For example:
 - Participate in substance abuse counseling or a 12-step recovery group (i.e., Alateen); AND/OR
 - Participate in individual or family counseling.

⁶ It is important to have the input of all services and supports to make the agreement effective and workable.

(2) SIGNATURE:

- The IAA shall be signed by:
 - DA;
 - DCFS, if the child is in DCFS custody;
 - Parents;
 - Child, if 12 or older; AND
 - All counsel of record.
-

PRACTICE TIPS:

- **Stipulation:** As with any stipulation, the court shall engage in an examination of parents on the record to determine whether the parents understand the conditions of the agreement, as well as the implications of the IAA.
 - **Parents:** All parents should be part of the agreement if at all possible, whether they are living together or not.⁷ DCFS has an obligation to attempt to locate all parents.
-

(3) APPROVAL:

- When the child is in DCFS custody, and the CINC Petition has been filed, the IAA shall be submitted to the court for consideration.
 - If the IAA is approved the:
 - Court shall sign it and file it in the record; AND
 - IAA is the case plan for services.
-

HELPFUL GUIDANCE:

- **Court Involvement:** The Children's Code is silent with regard to court approval when a CINC Petition is filed, and the child is not in DCFS custody. However, in some jurisdictions, the IAA is submitted to the court in these instances.
 - **DCFS Supervision:** Whether the child is in DCFS custody or not, the 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 the duration of the IAA. Otherwise, DCFS may not know whether to continue or start to supervise the family.
 - **Model DCFS Case Plans:** The terms of the IAA may model case plans and/or safety plans utilized in a DCFS Family Services/Foster Care case. They should be individualized for the family and address the underlying safety concerns. The terms and conditions should be specifically delineated in the agreement itself. All requirements that parents must fulfill and the services that DCFS will provide should be clear.
-

C. DURATION

(1) CHILDREN NOT IN DCFS CUSTODY:

- When the child is not in DCFS custody, the period of informal adjustment is not to exceed 6 months.
- The IAA may be extended:
 - For 1 additional period;
 - Not to exceed 6 months; AND
 - With the consent of all signatories to the original agreement.

⁷ However, caution should be exercised if one of the parents is perpetrating violence on the other parent. A Protective Order (PO) may be appropriate in those circumstances along with an IAA involving the parent who is the victim.

PRACTICE TIPS:

- **Duration:** The IAA should set forth when the agreement becomes effective and when it terminates.
- **Hearing Not Required:** If an IAA is entered into, the Children’s Code does not require that a hearing be set. However, best practice is to set a Status Hearing if the court is overseeing the IAA, perhaps halfway through its duration.
- **Extension:** If the parents agree to an extension, that agreement must be knowing and voluntary.
- **12 Months Total:** The IAA can last for a total of up to 12 months if the child is not in DCFS custody.

(2) CHILDREN IN DCFS CUSTODY:

- When the child is in DCFS custody, the period of informal adjustment is not to exceed 3 months from the date of the child’s entry into foster care.
- The IAA may be extended:
 - For 1 additional period;
 - Not to exceed 3 months; AND
 - With the consent of all signatories to the original agreement.

PRACTICE TIPS:

- **Hearing Not Required:** If an IAA is entered into, the Children’s Code does not require that a hearing be set. However, best practice is to set a Status Hearing if the court is overseeing the IAA, perhaps halfway through its duration.
- **Extension:** If the parents agree to an extension, that agreement must be knowing and voluntary.
- **6 Months Total:** The IAA can last for a total of up to 6 months if the child is in DCFS custody.
- **Court Report:** If DCFS is supervising the IAA, the court can 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.

HELPFUL GUIDANCE:

- **Duration:** The shorter duration for children in DCFS custody is due to the importance of expediting permanency.

D. EFFECT OF AGREEMENT

ARTICLE 630

(1) SUSPENDS/DOES NOT SUSPEND:

- An IAA suspends the proceedings on the acts alleged in the CINC Petition.
- An IAA does not suspend the elapse of time authorizing the termination of parental rights (TPR) consistent with Title X.

PRACTICE TIP:

- **TPR:** If a CINC Petition has been filed, the Notice that is served with the CINC Petition alerts parents that a TPR Petition may be filed. Nevertheless, advisements to the parents by the court should also make this clear.

(2) ADJUDICATION:

- An IAA shall not be considered an Adjudication.
- Evidence of the IAA shall not be admissible at any Adjudication Hearing or a criminal trial.
- If any terms of the IAA are violated, the case may proceed to an Adjudication Hearing on the allegations.

HELPFUL GUIDANCE:

- **Possible Next Steps:** If the agreement is not fully completed, the case can be re-evaluated for next steps. The case may proceed immediately to Adjudication if a CINC Petition was previously filed, for example. Or the DA could file a CINC Petition if one has not already been filed. In addition, the DA could decide not to go forward with the case. There could also be a referral to another program, such as FINS. The determination about how to proceed will be based on the individual circumstances of the case and any remaining safety concerns.

(3) SATISFYING THE TERMS:

- If the parents satisfy the terms of the IAA, then:
 - They are discharged from further supervision; AND
 - The pending complaint or CINC Petition shall be dismissed with prejudice.

(4) CERTIFICATION FOR ADOPTION:

- The following is admissible in a certification for an adoption proceeding:
 - Evidence of an IAA; AND
 - The parents' compliance or lack thereof.

(5) INCRIMINATING STATEMENTS:

- Any incriminating statement made by the parents to a person giving counsel or advice and in discussions or conferences incident to an IAA shall not be used against the declarant over an objection in an Adjudication Hearing or criminal trial.
- Any incriminating statement made by the parents to a person giving counsel or advice and in discussions or conferences incident to an IAA may be used in a Disposition Hearing in the court 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 in order to promote free and open discussion in attempting to reach an agreement. See Authors' Notes to Article 630(D).

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



APPENDIX



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](#).

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

INFORMAL ADJUSTMENT AGREEMENT

PURSUANT TO LOUISIANA CHILDREN’S CODE ARTICLE 628, et seq., the parties to this proceeding submit the following Informal Adjustment Agreement:

I.

THE PARTIES TO THIS PROCEEDING are the minor child(ren), _____, the parent(s) of the minor children, _____ and _____, the State of Louisiana, and the Louisiana Department of Children and Family Services (DCFS).

II.

THE TERMS AND CONDITIONS of this Informal Adjustment Agreement are as follows:

The requirements of this agreement start on ____ day of _____, 20____, and continue to be in force until ____ day of _____, 20____, unless ended sooner by the Court or extended by agreement of all parties; *(check all that are applicable as to each parent)*

A. PARENT: _____

- Parent will have safe and stable housing that meets the needs of the family as determined by DCFS;
- Parent will allow DCFS staff members into his/her home and all rooms during scheduled and/or unscheduled home visits;

Parent will report any changes in the household, including phone number, address, and employment to DCFS within seventy-two (72) hours;

Parent will participate in a mental health assessment;

Parent will follow the recommendations of the mental health assessment;

Parent will participate in a: psychological evaluation and follow all recommendations; *(and/or)*

psychiatric evaluation and follow all recommendations;

Parent will participate in a substance use assessment and will follow all recommendations;

Parent will attend, participate, and successfully complete a substance abuse treatment program, if indicated by the assessment;

While providing care, Parent will not use substances that affect his/her ability to keep the child(ren) safe;

Parent will cooperate with random urine, hair, and/or fingernail drug and/or alcohol screens as requested by DCFS and/or the treatment provider;

All of the following safety plan provisions will be followed: _____

_____;

Parent will visit with his/her child(ren), _____,
at _____ or by agreement of DCFS and the Parent;

Parent will attend scheduled Court hearings and/or Family Team Meetings (FTM);

Parent will participate in and successfully complete a parenting education program approved by DCFS and show understanding of child safety needs;

Parent will sign consent forms so that DCFS can get reports and updates from all providers to share with the parties;

Other: _____
_____.

B. PARENT: _____

Parent will have safe and stable housing that meets the needs of the family as determined by DCFS;

Parent will allow DCFS staff members into his/her home and all rooms during scheduled and/or unscheduled home visits;

Parent will report any changes in the household, including phone number, address, and employment to DCFS within seventy-two (72) hours;

Parent will participate in a mental health assessment;

Parent will follow the recommendations of the mental health assessment;

Parent will participate in a: psychological evaluation and follow all recommendations; *(and/or)*

psychiatric evaluation and follow all recommendations;

Parent will participate in a substance use assessment and will follow all recommendations;

Parent will attend, participate, and successfully complete a substance abuse treatment program, if indicated by the assessment;

While providing care, Parent will not use substances that affect his/her ability to keep the child(ren) safe;

Parent will cooperate with random urine, hair, and/or fingernail drug and/or alcohol screens as requested by DCFS and/or the treatment provider;

All of the following safety plan provisions will be followed: _____

_____;

Parent will visit with his/her child(ren), _____,
at _____ or by agreement of DCFS and the Parent;

Parent will go to scheduled Court hearings and/or Family Team Meetings (FTM);

Parent will participate in and successfully complete a parenting education program approved by DCFS and show understanding of child safety needs;

Parent will sign consent forms so that DCFS can get reports and updates from all providers to share with the parties;

Other: _____
_____.

III.

THIS AGREEMENT CONTAINS all the terms and conditions of this Informal Adjustment Agreement. Any changes to the terms and conditions of this agreement must be in writing and agreed to by all the parties and approved by the Court.

IV.

BY SIGNING BELOW, the parties acknowledge the terms and conditions of this Informal Adjustment Agreement and agree to abide by the above terms and conditions.

Parent of the minor child(ren)

Parent of the minor child(ren)

Minor child

Minor child

Public Defender
Attorney for parent
LA. BAR NO.: _____
(Address)
(City, State, Zip Code)
(Office Number)
(Email Address)

Public Defender
Attorney for parent
LA. BAR NO.: _____
(Address)
(City, State, Zip Code)
(Office Number)
(Email Address)

Assistant District Attorney
Attorney for the State of Louisiana
LA. BAR NO.: _____
(Address)
(City, State, Zip Code)
(Office Number)
(Email Address)

(SLLS/ALSC/MHAS)
Attorney for minor child(ren)
LA. BAR NO.: _____
(Address)
(City, State, Zip Code)
(Office Number)
(Email Address)

Department of Children and Family Services Representative
(Address)
(City, State, Zip Code)
(Office Number)
(Email Address)

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

INFORMAL ADJUSTMENT AGREEMENT ORDER

IT IS ORDERED, ADJUDGED, AND DECREED that the Informal Adjustment Agreement entered into on the _____ day of _____, 20____, by the parties, _____, and other undersigned signatories, _____, is accepted by the court.

IT IS FURTHER ORDERED that the proceedings on the acts alleged in the Child in Need of Care (CINC) Petition remain pending during the period of informal adjustment.

IF A PETITION HAS BEEN FILED, IT IS FURTHER ORDERED that the CINC Petition is hereby:

Dismissed; *(OR)*

Not dismissed.

IT IS FURTHER ORDERED that the Department of Children and Family Services (DCFS)

Supervise Not supervise the Informal Adjustment Agreement.

IT IS FURTHER ORDERED that DCFS shall submit a report to the court and all counsel of record 10 days prior to the Status Hearing *(and/or)* expiration of the agreement with a recommendation to terminate the agreement, extend the agreement, or develop a new agreement.

IT IS FURTHER ORDERED that the local CASA program be and is hereby appointed, unless previously appointed, subject to the assignment of a qualified volunteer to advocate for the best interest of the child(ren),

_____, in these proceedings. CASA must be given notice of appointment and served with a copy of the pleadings filed herein.

IT IS FURTHER ORDERD THAT: _____

A STATUS HEARING is set for _____ day of _____, 20_____, at _____ am/___pm.

THUS DONE AND SIGNED ON THIS _____ day of _____, 20_____, in _____

_____, Louisiana.

JUDGE

Please serve the agreement and order on all signatories and counsel of record as follows:

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Child(ren)'s Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Assistant District Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Department of Children and Family Services Staff/Representative:

Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

CASA:

Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Other:

Role: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

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

La. Ch. C. arts. 617-618

LOUISIANA
CHILD IN NEED OF CARE BENCHBOOK
FOR JUVENILE JUDGES

SECTION

2

INTRODUCTION

A. GENERAL CONSIDERATIONS

Title VI of Chapter 6 of the Louisiana Children’s Code provides for the issuance of a Temporary Restraining Order (TRO) and Protective Order (PO). The court may issue a TRO or PO pursuant to this Chapter without an existing Child in Need of Care (CINC) proceeding. To eliminate the need for removal of the child, the Department of Children and Family Services (DCFS) may proceed to safeguard the child’s well-being in the home by seeking a TRO or PO or an Instanter Safety Plan Order (ISPO) to protect him/her from further abuse or neglect.¹ In addition, there is nothing in the Children’s Code prohibiting the issuance of a TRO or PO at any time during the life of a CINC case.

B. REASONABLE EFFORTS FINDINGS IN INSTANTER ORDER FOR REMOVAL

If DCFS requests an Instanter Order for Removal, the court is required to determine whether DCFS made reasonable efforts to prevent or eliminate the need for removal, including whether DCFS has requested a TRO under Article 617, a PO under Article 618, and/or an ISPO under Article 619.² Thus, for every Instanter Order for Removal, the court shall inquire whether a TRO, PO, or ISPO was sought unless reasonable efforts were not required for that particular case. See [Instanter Safety Plan Order and Instanter Order for Removal Benchbook Section 3](#). If one of these measures was not sought but could have prevented or eliminated the need for the removal (and there is no exception to reasonable efforts), the court shall consider this information in its reasonable effort’s determination.

C. EXISTING CUSTODY OR VISITATION ORDER PER ARTICLE 612

As part of its preliminary investigation, DCFS shall immediately assess whether there is an existing visitation or custody order or agreement involving the alleged perpetrator and the child.³ Article 612(2) requires that DCFS request a TRO, PO, or ISPO if: (1) there is an existing visitation or custody order involving the alleged perpetrator and the child;⁴ and, (2) DCFS determines that any such order would put the child’s health and safety at risk.

As a general matter, a court exercising juvenile jurisdiction has continuing jurisdiction over CINC proceedings pursuant to Title VI and exclusive authority to modify any custody determination rendered, including the consideration of visitation rights (except as provided in Article 313).⁵

D. CHILDREN’S CODE LANGUAGE

Article 617 TROs and Article 618 POs have not been widely utilized in Louisiana. This may be due in part to the language in these articles. The TRO and PO process in Title VI of Chapter 6, of the Children’s Code is modeled upon the parallel authority of district courts to provide relief in cases of domestic abuse. See Domestic Abuse Assistance Act under La. R.S. § 46:2131 et seq. and La. Ch. C. Art. 1564 et seq. Yet, the Domestic Abuse Assistance Act provisions are not wholly compatible with the Children’s Code articles. For example, Articles 617 and 618 use the term “petitioner” as if the petitioner is an individual. However, the Authors’ Notes at the beginning of Title VI of Chapter 6, indicate that the petitioner can be DCFS. The Children’s Code also utilizes the term “defendant” when there is no defendant in CINC cases in the commonly used sense of the word defendant.⁶

¹ See La. Ch. C. art. 615.

² La. Ch. C. art. 619(B).

³ La. Ch. C. art. 612(2).

⁴ The DCFS investigation is ongoing.

⁵ See La. Ch. C. arts. 309 and 313.

⁶ Indeed, the caption in Article 617 and 618 pleadings should be the same as it would be in any other CINC pleading: “State in the Interest of [Minor Children].”

It may be helpful to think of the relevant individuals as the “Restrained Person” (called “defendant” in the Children’s Code) and the “Person Protected.” The Restrained Person(s) would be the perpetrator; the Person Protected would be the child and could include adults such as one or more of the parents⁷ or caretakers. The Restrained Person(s) could undoubtedly be parents but could also be significant others, relatives, or someone else living in the home. The [Temporary Restraining Order \(TRO\) Template](#) and [Protective Order \(PO\) Template](#) provided uses “Restrained Person” instead of “defendant.”

Articles 617 and 618 are silent regarding attorney appointment. Looking to Right to Counsel in Title VI, Chapter 4, Article 607 directs the court to appoint children’s counsel “at the time the order setting the first court hearing is signed.”⁸ Article 608 provides the parents’ right to counsel at the Continued Custody Hearing (CCH) and “at all stages of the proceedings thereafter.” The court has the authority to appoint CASA in any CINC proceeding.⁹

E. FILING OF CINC PETITION

Nothing in the TRO or PO provisions prohibit a CINC Petition from being filed if a PO is issued. However, Articles 617 and 618 do not require such a filing. On the other hand, if a PO is issued at the CCH, a CINC Petition requesting that the child be adjudicated in need of care shall be filed within 30 days of the hearing to determine continued custody.¹⁰

F. DEFINITIONS

The Children’s Code references TROs, POs, and ISPOs together in Articles 615 and 619(B). Nothing prohibits the issuance of both a TRO or PO and an ISPO.¹¹ Here are short summaries for each of these forms of relief:

1. TRO (Article 617)

A TRO may be sought on behalf of a child and/or the child’s parent. A TRO is a court order that may be issued *ex parte*¹² (without a hearing) if good cause is shown that it is necessary to protect children, adults, and incompetents from abuse or neglect until there is a hearing on whether a PO will be issued. The hearing on the PO shall be held within 10 days of the granting of the TRO (unless continued for another 10 days). The TRO lapses if the hearing is not held within the 10-day timeframe. A TRO is meant to be temporary and heard immediately. The relief provided in a TRO may include, but is not limited to, ordering individuals to refrain from abuse and neglect; granting possession of community property and/or a residence; allowing a return to the residence for personal necessities; and/or, prohibiting the transfer of property. Notice of the TRO and the hearing on the PO shall be given by service of process to the person(s) who the order is restraining.¹³

2. PO (Article 618)

A PO may be sought on behalf of a child and/or the child’s parent. A PO is a court order issued after notice and a hearing to bring about the cessation of abuse or neglect of children, adults, and incompetents that can last up to 6 months (although it may be extended by the court and may also be modified). The relief provided in a PO may include the relief provided in a TRO plus an award of temporary custody, visitation and/or support, and/or an order for counseling or professional medical treatment. A PO is given full faith and credit.

⁷ The plural form of “parent” is used throughout the Benchbook for simplicity, even though at times only one parent has been identified in a case.

⁸ If the court appoints an attorney for the child in a TRO/PO proceeding, then the question arises whether the defendant/Restrained Person would also be entitled to an attorney. Domestic Abuse Act Assistance protective orders require that an attorney be appointed for the person against whom an order is issued if the applicant has been afforded a court-appointed attorney. La. C. Civ. Proc. art. 3603.1B.

⁹ See La. Ch. C. art. 424.1.

¹⁰ La. Ch. C. 632(A).

¹¹ It may be a rare instance, though, when DCFS would pursue both a TRO/PO and ISPO. One issue that DCFS considers in safety decision making is whether the parent has protective capacity. If a parent does not file for a TRO/PO against a perpetrator to protect the safety of the child, then that may show a lack of protective capacity. On the other hand, there may be circumstances of domestic violence in which it would be too dangerous for a parent to file for such a TRO/PO.

¹² *Ex Parte*, Black’s Law Dictionary (11th ed. 2019) (“Done or made at the instance and for the benefit of one party only, and without notice to, or argument by, anyone having an adverse interest; of, relating to, or involving court action taken or received by one party without notice to the other, usu. for temporary or emergency relief.”).

¹³ See La. C. Civ. Proc. art. 1314.

3. ISPO (also referred to as a Court Ordered Safety Plan) (Article 619)

DCFS may seek an ISPO on behalf of a child. If the court determines that the child’s welfare can be safeguarded with an ISPO and without removing the child from his/her parent’s custody, the court shall issue an order providing findings of fact supporting the necessity of an ISPO. This court-ordered safety plan is requested by DCFS to manage the safety of a child while custody remains with his/her parents. The ISPO can restrict a parent’s contact with the child, or it can include the child living with the parent in an alternate location or other interventions as ordered by the court. For example, the child and the parent may reside with a relative or other individual. The court shall also order the parent’s compliance with the terms and conditions of the ISPO as determined by or agreed upon by DCFS and as necessary to protect the child’s health and safety while remaining in the parents’ custody. If the court orders an ISPO, then a Continued Safety Plan Hearing (CSPH) may be held but is not required in certain circumstances. If an ISPO is granted, a CINC Petition shall be filed within 45 days of its issuance, or else the ISPO will terminate by operation of law.

G. TRO/PO AND ARTICLE 1564 ET SEQ.¹⁴

In addition to the TRO/PO authorized by Title VI, Chapter 6, there is also the Domestic Abuse Assistance TRO/PO authorized by Title XV, Chapter 8 (Article 1564, *et seq.*), of the Children’s Code. The remedies in these two parts of the Children’s Code have similarities and differences. In Title XV, Chapter 8, any parent, adult household member, local protection unit of DCFS, or a DA may seek relief on behalf of any child or any person alleged to be incompetent. Title VI generally refers to “the petitioner” without defining such; however, DCFS is clearly authorized to seek these orders pursuant to Articles 612(2), 615, and 619(B). In Title XV, Chapter 8, the protection is for domestic abuse (as defined by Article 1565), which includes physical or sexual abuse; Title VI, Chapter 6, applies when there is any form of abuse or neglect as defined by Article 603.

Both Chapters sanction the restraint, possession, use, support, and custody orders that have been discussed above. Article 1564 *et seq.* authorizes additional orders, including medical evaluations and that costs be paid by the perpetrator. Article 1564 *et seq.* also allows a PO to protect a child under the age of 18 who has been sexually molested to last at least until the child is 18 years of age (unless modified or terminated after a contradictory hearing). Unlike 1564 *et seq.*, Articles 617 and 618 do not allow for criminal enforcement.¹⁵ The TROs and POs in Article 1564 *et seq.* are included in the Louisiana Uniform Abuse Prevention Order forms on the Louisiana Supreme Court website and put into the Louisiana Protective Order Registry (LPOR).

H. EXAMPLES OF WHEN TO CONSIDER A TRO/PO:

Article 617 and 618 orders can be effective in but are not limited to the following situations:

- Jurisdiction is needed over the perpetrator, including the non-parent, to temporarily order to the perpetrator to refrain from certain actions.
- Eviction of the perpetrator from the residence would preserve the child’s safety.
- Awarding the Person(s) Protected use of community property, such as a car, would help the person keep the child safe.
- Existing custody or visitation order allowing access to a child needs to be modified.
- Ordering the perpetrator to pay temporary support would help the person keep child safe.
- To prevent parent’s/caretaker’s contact with a child.
- Parent/caretaker is hesitant or unable to file a TRO or PO on his/her own.¹⁶

¹⁴ La. Ch. C. 1564 *et seq.* was originally the same as the Domestic Abuse Assistance Act in the Louisiana Revised Statutes but has been changed some since its original enactment.

¹⁵ See La. R.S. § 14:79. Of course, the court may always exercise its general contempt authority.

¹⁶ Those with domestic violence experience are well aware that lethality may increase when a TRO and/or PO is requested by an individual.

OUTLINE



PRELIMINARY CONSIDERATIONS

- A. PREVENT OR ELIMINATE THE NEED FOR REMOVAL
- B. MANAGE SAFETY IN GENERAL
- C. EXAMPLES OF WHEN TO CONSIDER TRO/PO



TEMPORARY RESTRAINING ORDER

- A. FINDINGS
- B. GRANT
- C. RULE TO SHOW CAUSE WHY A PROTECTIVE ORDER SHOULD NOT BE ISSUED
- D. ENFORCEMENT



PROTECTIVE ORDER

- A. FINDINGS
- B. GRANT
- C. DURATION AND APPEAL
- D. SERVICE OF THE PROTECTIVE ORDER
- E. ENFORCEMENT
- F. MODIFICATION OF PROTECTIVE ORDER
- G. FULL FAITH AND CREDIT



APPENDIX

- 1. TEMPORARY RESTRAINING ORDER (TRO) AND PROTECTIVE ORDER (PO) BENCH CARD
- 2. PETITION FOR PROTECTION FROM ABUSE OR NEGLECT TEMPLATE
 - a. AFFIDAVIT/VERIFICATION FOR PERSON PROTECTED TEMPLATE
 - b. AFFIDAVIT/VERIFICATION FOR PETITIONER TEMPLATE
- 3. TEMPORARY RESTRAINING ORDER (TRO) TEMPLATE
- 4. PROTECTIVE ORDER (PO) TEMPLATE



OVERVIEW: PRELIMINARY CONSIDERATIONS

A. PREVENT OR ELIMINATE THE NEED FOR REMOVAL

ARTICLES 615-20

- The court may issue a TRO/PO to prevent or eliminate the need for removal of the child in order to protect him/her from further abuse and/or neglect.
- DCFS may seek a TRO/PO and/or an ISPO instead of an Instant Order for Removal, and, per Article 619(B), shall make reasonable efforts to prevent or eliminate the need for removal by requesting a TRO/PO and/or ISPO, if appropriate under the circumstances.¹⁷

B. MANAGE SAFETY IN GENERAL

ARTICLES 102, 309, 627, 681

In addition to preventing removal initially, the Children's Code allows for issuance of a PO in the following circumstances:

- At the CCH, if the court finds that the child can be safely returned home under a PO (Article 627).
- At the Disposition Hearing, if the court places the child in the custody of a parent or any other relative or suitable person.
- In any CINC proceeding under the court's general authority.
- Pursuant to Title XV, Chapter 8, Articles 1564 et seq.

PRACTICE TIP:

- **Examples of When to Consider a TRO/PO:** In a TRO pursuant to La. R.S. § 46:2135, for example, the court can issue orders:
 - Jurisdiction is needed over the perpetrator, including a non-parent, to temporarily order them to refrain from certain actions.
 - Eviction of the perpetrator from the residence would preserve the child's safety.
 - Awarding the person protected use of community property, such as a car, would help the person keep the child safe.
 - Existing custody or visitation order allowing access to a child needs to be modified.
 - Ordering the perpetrator to pay temporary support would help the person keep the child safe.
 - To prevent a parent's/caretaker's contact with a child.
 - Parent/caretaker is hesitant or unable to file TRO/PO on his/her own.¹⁸

¹⁷ As stated in the Introduction, there is nothing prohibiting the issuance of both a TRO/PO and an ISPO in the Children's Code. It may be a rare instance when DCFS would pursue both a TRO/PO and ISPO, however. One issue that DCFS considers in safety decision making is whether the parent has protective capacities. If a parent does not file for a TRO/PO against a perpetrator, that may show a lack of protective capacity. On the other hand, there may be circumstances of domestic violence in which it would be too dangerous for a parent to file such a TRO/PO.

¹⁸ Those with domestic violence experience are well aware that lethality may increase when a TRO and/or PO is requested by an individual.

OVERVIEW: TEMPORARY RESTRAINING ORDER

A. FINDINGS

To grant, the court shall find that based on the alleged abuse or neglect, as defined in Articles 603(2) and (18):

- The restraining order is necessary to protect a “petitioner,”¹⁹ any child, or any other persons alleged to be an incompetent from the abuse or neglect; AND
- Good cause has been shown for an issuance of an ex parte order.²⁰

HELPFUL GUIDANCE:

- **Good Cause:** Immediate and present danger of abuse constitutes good cause for an ex parte issuance of a TRO.

B. GRANT

The TRO may include but is not limited to the following relief:

- (1) Direct the “defendant”²¹ to refrain from abusing, neglecting, harassing, or interfering with the person or employment or going near the residence or place of employment of the petitioner, the child, or any person alleged to be incompetent, on whose behalf a petition was filed.
- (2) Award a party use and possession of specified community property, such as an automobile.
- (3) Grant possession to the petitioner of the residence or household to the exclusion of the defendant, by evicting the defendant or restoring possession to the petitioner where:
 - The residence is jointly owned in equal proportion or leased by the defendant and the petitioner or the person on whose behalf the petition is brought.
 - The residence is solely owned by the petitioner or the person on whose behalf the petition is brought.
 - The residence is solely leased by defendant and defendant has a duty to support the petitioner or the person on whose behalf the petition is brought.
- (4) Allow a party to return to the family residence once to recover his/her personal clothing and necessities if accompanied by a law enforcement officer.
- (5) Prohibit either party from transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business, or for the necessary support of the party or the minor child.
- (6) The court is authorized to order other forms of relief not specifically set forth in Article 617.

PRACTICE TIPS:

- **Possession of Residence:** The court will want to make a finding on the record, if appropriate, that one of the 3 provisions, listed in #3 above, regarding possession of the residence applies in the case.

¹⁹ As explained in the Introduction, the Children’s Code uses the term “petitioner” since the language was taken from the Domestic Abuse Assistance Act. However, DCFS will often be the petitioner here. See Chapter 6 Authors’ Notes. The purpose of this Children’s Code article appears to be to protect children and the non-perpetrating parent or caretaker.

²⁰ Ex Parte, Black’s Law Dictionary (11th ed. 2019) (“Done or made at the instance and for the benefit of one party only, and without notice to, or argument by, anyone having an adverse interest; of, relating to, or involving court action taken or received by one party without notice to the other, usu. for temporary or emergency relief.”).

²¹ Similar to use of the term petitioner, the Children’s Code uses the term “defendant” since this article was modeled on the Domestic Abuse Assistance Act. However, there is no defendant in CINC cases in the commonly used sense of the word “defendant.”

- **Further Orders:** In the [Temporary Restraining Order \(TRO\) Template](#), there is a section where the court may make further orders as it deems necessary (“Individualized relief to protect the child’s well-being”).
- **Examples of Further Orders from Louisiana Revised Statutes:** For example, in a TRO pursuant to La. R.S. § 46:2135, the court can issue orders:
 - Awarding temporary custody of a minor child (or persons alleged to be incompetent).
 - Awarding or restoring possession to the petitioner of all separate property and all personal property, including but not limited to telephones or other communication equipment, computers, medications, clothing, toiletries, social security cards, birth certificates or other forms of identification, tools of the trade, checkbooks, keys, automobiles, photographs, jewelry, or other items or personal effects of the petitioner and restraining the defendant/Restrained Person(s) from transferring, encumbering, concealing, or disposing of the personal or separate property of petitioner.
 - Granting to petitioner the exclusive care, possession, or control of any pets belonging to or under the care of the petitioner or minor child residing in the residence or household of either party, and directing the defendant/Restrained Person(s) to refrain from harassing, interfering with, abusing, or injuring any pet, without legal justification, known to be owned, possessed, leased, kept, or held by either party or a minor child residing in the residence or household of either party.
- **Examples from Louisiana Uniform Abuse Prevention Order:** There may be forms of relief under the Louisiana Uniform Abuse Prevention Orders that would be helpful to include in these cases.²² For example:
 - Ordering the defendant/Restrained Person(s) not to go within 100 yards of the residence, apartment complex, or multiple family dwelling of the Person(s) Protected.
 - Ordering the defendant/ Restrained Person(s) to stay away from the school of the Person(s) Protected.
 - Ordering the defendant/Restrained Person(s) not to contact the Person(s) Protected personally, through a third party, or via public posting, by any means, including written, telephone, or electronic (text, email, messaging, or social media) communication without the express written permission of this court.

C. RULE TO SHOW CAUSE WHY A PROTECTIVE ORDER SHOULD NOT BE ISSUED

- (1) **If a TRO is granted without notice:**
 - The matter shall be set within 10 days;²³ AND
 - The defendant shall be given notice of the TRO and the hearing on the rule to show cause by service of process as required by law.
- (2) **If no TRO is granted:**
 - The matter shall be set for hearing on the earliest day that the business of the court will permit but, in any case, within 10 days from the date of service of the petition; AND
 - The defendant shall be given notice by service of process as required by law.
- (3) **At the PO Hearing:**
 - The petitioner shall prove the allegations of abuse or neglect by a preponderance of the evidence.
- (4) **If the hearing is continued:**
 - The court shall make or extend the TRO as it deems necessary; AND
 - The continuance shall not exceed 10 days.

HELPFUL GUIDANCE:

- **Purpose:** A TRO is meant to be temporary and heard immediately.

²² The court can refer to LPOR on the Louisiana Supreme Court website: https://www.lasc.org/court_managed_prog/LPOR/LPOR_forms/LPOR_01.pdf.

²³ In computing a period of time prescribed by law, the date of the event after which the period begins to run is not included; the last day of the period is included but if a legal holiday—including Saturdays and Sundays—then the period runs until the end of the next day which is not a legal holiday. La. Ch. C. art. 114.

- **Appointment of Attorneys:** Article 617 is silent regarding attorney appointment for any of the parties. Right to Counsel, Title VI, Chapter 4, of the Children’s Code, Article 607 directs the 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 the CCH and “at all stages of the proceedings thereafter.” If the court appoints an attorney for the child in a TRO/PO proceeding, then the question arises whether the defendant/Restrained Person(s) would also be entitled to an attorney. For a Domestic Abuse Assistance Act PO, an attorney shall be appointed for the person against whom an order is issued if the applicant has been afforded a court-appointed attorney.²⁴
- **Appointment of CASA:** The court has the authority to appoint CASA in any CINC proceeding.²⁵

D. ENFORCEMENT

Article 617 does not mention criminal enforcement of the TRO. La. R.S. § 14:79 sets forth the criminal offenses for violating a TRO/PO but does not include a TRO issued under Article 617. Thus, there is currently no mechanism for criminal enforcement of the TRO. There is no provision in Article 617 providing for entry of the order into the LPOR.

PRACTICE TIPS:

- **Louisiana Protective Order Registry (LPOR):** However, in the Authors’ Notes to Article 618, in discussing the TRO and PO, it states the “court must file and transmit the order no later than the following day for entry in the Louisiana Protective Order Registry.”
- **Article 1569 TRO:** On the other hand, a TRO issued pursuant to Article 1569 can be criminally enforced. Article 1569 sets forth the process for entry of the order into LPOR.
- **Contempt:** The court may always exercise its general contempt authority. Pursuant to Article 1509(D), an adult person adjudged guilty of contempt of court in connection with a juvenile proceeding may be fined (\$500 or less), imprisoned (six months or less), or both.

HELPFUL GUIDANCE:

- **Federal Laws:** There are Federal laws that may be enforceable in some of these cases, whether a TRO is issued or not. The Louisiana Supreme Court has a comprehensive listing of Federal domestic violence laws: https://www.lasc.org/court_managed_prog/LPOR/LPOR_Fed_laws_and_appendices.pdf. The United States Attorney’s Office can be contacted for more information and to potentially refer a case for investigation.

²⁴ La. C. Civ. Proc. art. 3603.1(B).

²⁵ See La. Ch. C. art. 424.1.

OVERVIEW: PROTECTIVE ORDER

A. FINDINGS

To grant, the court shall find that:

- It has jurisdiction over the parties and the subject matter;
- The PO would end the abuse or neglect of a party, any minor child, or any person alleged to be incompetent; AND
- Either the:
 - Parties have entered into a consent agreement; OR
 - Party against whom the order is sought has been given reasonable notice and an opportunity to be heard that is sufficient to protect that person's right to due process.

HELPFUL GUIDANCE:

- **Consent Agreement:** 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. A defendant/Restrained Person(s) may want to do so, for example, if there is a pending criminal charge.

B. GRANT

The PO may include but is not limited to the following relief:

1. Granting the relief available under a TRO as enumerated in Article 617. See [Temporary Restraining Order \(TRO\) Section B](#) above.
2. When there is a duty to support a party, any minor child, or any person alleged to be incompetent living in the residence or household, ordering payment of temporary support or provision of suitable housing for them.
3. Awarding temporary custody of or establishing temporary visitation rights and conditions with regard to any minor child or person alleged to be incompetent.

PRACTICE TIPS:

- **Supervisors for Supervised Visitation:** If supervised visitation is advisable, the court has a number of supervisors to consider, such as DCFS (if there is an open and ongoing case), supervised visitation providers (however, there could be costs associated), family or other suitable individuals.²⁶ Special attention should be given if the defendant's/Restrained Person's family member is considered as a possible supervisor.
- **Definition of Supervised Visitation:** The court may want to refer to the definition of supervised visitation in La. R.S. § 9:362(7) when considering such an order: "'Supervised visitation' means face-to-face contact between a parent and a child which occurs in the immediate presence of a supervising person approved by the court under conditions which prevent any physical abuse, threats, intimidation, abduction, or humiliation of either the abused parent or the child. The supervising person shall not be any relative, friend, therapist, or associate of the parent perpetrating family violence. With the consent of the abused parent, the supervising person may be a family member or friend of the abused parent. At the request of the abused parent, the court may order that the supervising person shall be a police officer or other competent professional. The parent who perpetrated family violence shall pay any and all costs incurred in the supervision of visitation. In no case shall supervised visitation be overnight or in the home of the violent parent."

²⁶ The court "inherently possesses all powers necessary for the exercise of its juvenile jurisdiction and the enforcement of its lawful orders. It has authority to issue such writs and orders as may be necessary or proper in aid of its jurisdiction." La. Ch. C. art. 318.

4. Ordering counseling or professional medical treatment for either the defendant or the abused or neglected person(s), or both.
5. The court is authorized to order other forms of relief not specifically set forth in Article 618.

PRACTICE TIPS:

- **Order Template:** In the [Protective Order \(PO\) Template](#), there is a section where the court may make further orders as it deems necessary (“Individualized relief to protect the children’s well-being”)
- **Evaluations:** For example, in a PO pursuant to La. R.S. § 46:2136, the court can:
 - Order a medical or mental health evaluation, or both, of the perpetrator to be conducted by an independent court-appointed evaluator who qualifies as an expert in the field of domestic abuse. The evaluation shall be conducted by a person who has no family, financial, or prior medical or mental health relationship with the perpetrator or his/her attorney of record; AND
 - After a medical or mental health evaluation has been completed and a report issued, the court may order counseling or other medical or mental health treatment as deemed appropriate.
- **Facility:** In addition to an evaluation, the court can also issue a PO for the person to be brought to a facility if he/she meets criteria.
- **Further Examples:** There may be forms of relief in the Louisiana Uniform Abuse Prevention Order’s that would be helpful to include in these cases.²⁷ For example:
 - Ordering the defendant/Restrained Person(s) not to go within 100 yards of the residence, apartment complex, or multiple family dwelling of the Person(s) Protected.
 - Ordering the defendant/ Restrained Person(s) to stay away from the school of the Person(s) Protected.
 - Ordering the defendant/ Restrained Person(s) not to contact the Person(s) Protected personally, through a third party, or via public posting, by any means, including written, telephone, or electronic (text, email, messaging, or social media) communication without the express written permission of this court.
 - In addition, the court may want to consider ordering the defendant/Restrained Person(s) to submit to a substance use assessment or the person protected to undergo a trauma screening or make a referral to drug court.
- **Custody/Divorce:** A custody and/or divorce case involving the parties may be impacted if a PO is issued.

C. DURATION AND APPEAL²⁸

- **The PO or approved consent agreement:**
 - Shall be for a fixed period of time, not to exceed 6 months; AND
 - May be extended by the court, after a contradictory hearing, in its discretion.
- **The PO or extension thereof is only subject to a devolutive appeal.**

D. SERVICE OF THE PROTECTIVE ORDER

- The PO is to be served on the person to whom the PO applies in open court at the close of the hearing or in the same manner as a writ of injunction.
- The clerk of the court is to send a copy of the PO or any modification of the order to the chief law enforcement official of the parish where the person or Person(s) Protected resides. A copy of the PO is to be retained in the file in the office of the chief law enforcement officer until otherwise directed by the court.

²⁷ The court can refer to LPOR on the Louisiana Supreme Court website: https://www.lasc.org/court_managed_prog/LPOR/LPOR_forms/LPOR_03.pdf.

²⁸ In computing a period of time prescribed by law, the date of the event after which the period begins to run is not included; the last day of the period is included but if a legal holiday—including Saturdays and Sundays—then the period runs until the end of the next day which is not a legal holiday. La. Ch. C. art. 114.

 **HELPFUL GUIDANCE:**

- **Enforcement/Confidentiality:** These provisions do not comport with the fact that an Article 618 PO cannot be enforced by law enforcement or with the confidential nature of CINC proceedings.

E. ENFORCEMENT

- Like Article 617, Article 618 does not mention criminal enforcement of the PO. La. R.S. § 14:79 sets forth the criminal offenses for violating POs but does not include a PO issued under this section. Thus, there is currently no clear mechanism for criminal enforcement of an Article 618 PO. There is no provision in Article 618 for entry of the order into the LPOR.

 **PRACTICE TIPS:**

- **Louisiana Protective Order Registry (LPOR):** Article 627(D), however, states that if a PO is issued or modified at the CCH, the court shall have a Uniform Abuse Prevention Order, pursuant to La. R.S. 46:2136.2(C), prepared and shall sign the order and the clerk shall transmit it to LPOR. Also, in the Authors' Notes in Article 618, in discussing the TRO and PO, the author states that the "court must file and transmit the order no later than the following day for entry in the Louisiana Protective Order Registry."
- **Article 1570 PO:** A PO issued pursuant to Article 1570 can be criminally enforced. Article 1570 sets forth the process for entry of the order into LPOR.
- **Contempt:** The court may always exercise its general contempt authority. Pursuant to Article 1509(D), an adult person adjudged guilty of contempt of court in connection with a juvenile proceeding may be fined (\$500 or less), imprisoned (6 months or less), or both.
- **Federal Laws:** There are Federal laws that may be enforceable in some of these cases, whether a PO is issued or not. The Louisiana Supreme Court has a comprehensive listing of Federal domestic violence laws: https://www.lasc.org/court_managed_prog/LPOR/LPOR_Fed_laws_and_appendices.pdf. The United States Attorney's Office can be contacted for more information and to potentially refer a case for investigation.

F. MODIFICATION OF PROTECTIVE ORDER

- After notice to the other parties and a hearing, the court may modify a prior order regarding the relief granted as authorized by Article 618(A).

 **PRACTICE TIP:**

- **Motion to Modify:** A Motion to Modify will need to be filed, served, and set for hearing if any party wants the court to make changes to the Order. At a hearing on the modification, the court may make the PO more restrictive or less restrictive, dissolve the Order, or extend it.

G. FULL FAITH AND CREDIT

- Any 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.²⁹

²⁹ See 18 U.S.C. § 2265.



APPENDIX



APPENDIX

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](#).

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

PETITION FOR PROTECTION FROM ABUSE OR NEGLECT
Pursuant to Louisiana Children’s Code Articles 617 and 618

This Petition is the: *(Please check one of the following)*

- Initial Petition.
- Supplemental and Amending Petition.

The Petition of: *(Please check one of the following)*

- Louisiana Department of Children and Family Services (DCFS) through undersigned counsel
- Other: _____

respectfully represents:

I.

Petitioner files this Petition to protect the following persons:

Minor child(ren): _____ (DOB: __/__/____);
 _____ (DOB: __/__/____);
 _____ (DOB: __/__/____);
 _____ (DOB: __/__/____);

Adult(s): _____ (DOB: __/__/____);
 Relationship to minor child(ren) _____
 _____ (DOB: __/__/____);
 Relationship to minor child(ren) _____.

Petitioner files this Petition to restrain the following persons:

Adult(s): _____ (DOB: __/__/__);
Relationship to minor child(ren) _____

Relationship to minor child(ren) _____.

II.

Address of Person(s) on whose behalf the Petition is filed (hereinafter "Person(s) Protected"):

_____.

Address of Person (s) Petition is seeking to restrain (hereinafter "Restrained Person(s)"):

_____.

III.

DCFS: *(Please check one of the following)*

- has conducted a preliminary investigation regarding a report of child abuse or neglect.
- has not conducted a preliminary investigation regarding a report of child abuse or neglect.

IV.

In order to safeguard the minor child(ren)'s well-being in the home, Petitioner requests that an *ex parte* Temporary Restraining Order be issued immediately without bond: *(Please check all that apply)*

- Prohibiting the Restrained Person(s) from abusing, neglecting, harassing, or interfering with the person(s) on whose behalf the Petition is filed or their place of employment.
- Prohibiting the Restrained Person(s) from going near the residence of or place of employment of the Person(s) Protected.
- Awarding to the Person(s) Protected, _____, the use and possession of the following community property: _____

_____.

Granting to the Person(s) Protected, _____, possession of the residence or household to the exclusion of the Restrained Person(s) located at: _____

Said residence is presently occupied by: _____

and: *(Please check one of the following)*

Jointly owned in equal proportion by the Restrained Person(s) and Person(s) Protected, _____

Jointly leased in equal proportion by the Restrained Person(s) and Person(s) Protected, _____

Solely owned by the Person(s) Protected, _____

Solely leased by the Restrained Person(s) who has a duty to support the Person(s) Protected, _____ (adult and/or minor children).

Prohibiting the Restrained Person(s) and Person(s) Protected from transferring, encumbering, or otherwise disposing of property mutually owned or leased by them, except when in the ordinary course of business or for their necessary support or the support of the minor children.

Allowing _____ to return to the residence located at _____, accompanied by a law enforcement officer one time to recover his or her personal clothing and necessities. A representative of _____ (Sheriff's Office) be ordered to effectuate this return.

Further ordering the following (examples include, but are not limited to: not to go within 100 yards of the Person(s) Protected, not to go to the school of the Person(s) Protected, etc.): _____

V.

Petitioner desires that a rule issue herein: *(Please check all that apply)*

Ordering the Restrained Person(s) to show cause why the orders requested in Paragraph IV should not be made into Protective Orders.

Ordering the Restrained Person(s) to show cause why he/she should not be ordered to pay temporary support or provide suitable housing. There is a duty to support: _____
_____ (a party, minor children, and/or person alleged to be incompetent living in the residence or household).

Ordering the Restrained Person(s) to show cause why he/she should not be ordered to seek counseling or professional medical treatment.

Ordering the Person(s) Protected to show cause why he/she should not be ordered to seek counseling or professional medical treatment.

Ordering the restrained and/or Person(s) Protected to show cause why temporary custody of the minor child(ren), _____, should not be awarded to _____.

Ordering the restrained and/or Person(s) Protected to show cause why temporary visitation of the minor child(ren), _____, should not be awarded to _____.

VI.

Petitioner desires that after a contradictory hearing, the following orders be made:

Awarding to the Person(s) Protected, _____, the use and possession of the following community property: _____
_____.

Granting to the Person(s) Protected _____ possession of the residence or household located at:

No. & Street Apt. No. City State Zip Code
to the exclusion of the Restrained Person(s) by evicting him/her and ordering him/her to surrender any keys to the residence and ordering _____ (Sheriff's Office) to evict the Restrained Person(s).

Said residence is presently occupied by _____

and: *(Please check one of the following)*

Jointly owned in equal proportion by the Restrained Person(s) and Person(s) Protected,

_____.

Jointly leased in equal proportion by the Restrained Person(s) and Person(s) Protected,

_____.

Solely owned by the Person(s) Protected, _____.

Solely leased by the Restrained Person(s) who has a duty to support the Person(s) Protected,
_____ (adult and/or minor children).

Prohibiting the Restrained Person(s) and Person(s) Protected from transferring, encumbering, or otherwise disposing of property mutually owned or leased by them, except when in the ordinary course of business or for their necessary support or the support of the minor children.

Temporary custody of the minor child(ren), _____,
be awarded to _____.

Temporary visitation rights of the minor child(ren), _____,
be awarded to _____.

The visitation to be:

Unsupervised

Supervised. _____ to supervise the visits.

Exchange of the minor children as follows: _____
_____.

Other details as follows: _____
_____.

Further order the following (examples include, but are not limited to: not to go within 100 yards of the Person(s) Protected, not to go to the school of the Person(s) Protected, etc.):

_____.

PRAYER

WHEREFORE, Petitioner prays that service and citation issue herein, and that: *(Please check all that apply)*

- Ex parte* orders appointing an interpreter be granted.
- Ex parte* orders requested in Paragraph IV be granted.
- A rule to show cause why Protective Orders as requested in Paragraphs V and VI should not be granted.
- Restrained Person(s) be advised of penalties for Contempt.
- All other equitable relief as the Court deems proper and necessary.

Respectfully submitted,

Signature

Telephone Number

Title

Agency

Print Name

Address

Please Serve: _____
personally at his/her home or place of employment at the following address:

OR

AFFIDAVIT/VERIFICATION FOR PERSON(S) PROTECTED

STATE OF LOUISIANA

PARISH OF _____

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the State and parish aforesaid, personally came and appeared _____, **Person(s) Protected**, in the foregoing Petition for Protection from Abuse, who, after being duly sworn by me, did depose and say that he/she has read the allegations contained therein and declared them to be true and correct to the best of her/his knowledge, information, and belief.

Affiant further said that she/he believes that the requested relief is needed to protect against abuse or neglect and safeguard the minor child(ren)'s well-being in the home.

Affiant further said that she/he is aware that any false statement made under oath contained in the foregoing Petition and this affidavit shall constitute perjury and shall be punishable by a fine of not more than one thousand dollars (\$1,000.00), or by imprisonment, with or without hard labor, for not more than five (5) years, or both.

AFFIANT

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 20_____,
in the Parish of _____, Louisiana.

_____, NOTARY

(Bar Roll # or Notary Public #)

My Commission expires _____.

AFFIDAVIT/VERIFICATION FOR PETITIONER TEMPLATE

STATE OF LOUISIANA

PARISH OF _____

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the State and parish aforesaid, personally came and appeared _____,

DCFS Representative/ _____ in the foregoing Petition for Protection from Abuse, who, after being duly sworn by me, did depose and say that she/he has read the allegations contained therein and declared them to be true and correct to the best of her/his knowledge, information, and belief.

Affiant further said that she/he believes that the requested relief is needed to protect against abuse or neglect and safeguard the minor child(ren)'s well-being in the home.

Affiant further said that she/he is aware that any false statement made under oath contained in the foregoing Petition and this affidavit shall constitute perjury and shall be punishable by a fine of not more than one thousand dollars (\$1,000.00), or by imprisonment, with or without hard labor, for not more than five (5) years, or both.

AFFIANT

AGENCY

PHONE NUMBER

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 20_____,

in the Parish of _____, Louisiana.

_____, NOTARY

(Bar Roll # or Notary Public #)

My Commission expires _____.

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

**TEMPORARY RESTRAINING ORDER (TRO)
PURSUANT TO LOUISIANA CHILDREN'S CODE ARTICLE 617**

This matter came before the Court on the filing of a petition by: *(Please check one of the following)*

Louisiana Department of Children and Family Services (DCFS) through counsel

Other: _____

to safeguard the child(ren)'s well-being in the home.

I. PERSONS

This restraining order pertains to the following persons:

Restrained Person(s) (the person(s) who is/are not allowed to contact the Person(s) Protected in the manner set forth below):

_____ (DOB: __/__/__);

_____ (DOB: __/__/__).

Person(s) Protected (the person(s) who is/are to be protected in the manner set forth below):

_____ (DOB: __/__/__);

_____ (DOB: __/__/__);

_____ (DOB: __/__/__);

_____ (DOB: __/__/__);

_____ (DOB: __/__/__).

II. FINDINGS

This order is issued: *(Please check one of the following)*

- Ex parte.*
- After notice and opportunity for hearing given to the Restrained Person(s).

THE COURT FURTHER FINDS:

That it has jurisdiction over the parties and the subject matter;

That the Restrained Person(s) has/have been or will be provided with reasonable notice and an opportunity to be heard; and

That there is good cause to believe that the TRO is necessary to protect the Person(s) Protected from abuse or neglect by the Restrained Person(s).

III. ORDERS

Based on the above findings:

THE COURT HEREBY ENTERS A TEMPORARY RESTRAINING ORDER WITHOUT BOND.

THE COURT FURTHER ORDERS: *(Please check all that apply)*

- THE RESTRAINED PERSON(S) IS/ARE ORDERED NOT TO abuse, neglect, harass or interfere with the Person(s) Protected or their place of employment.

Employment

Address

City/State

Zip Code

- THE RESTRAINED PERSON(S) IS/ARE ORDERED NOT TO go near the residence of or place of employment of the Person(s) Protected.

- THE PERSON(S) PROTECTED, _____, IS AWARDED use and possession of the following community property: _____

- THE PERSON(S) PROTECTED, _____, IS/ARE GRANTED possession of the residence or household to the exclusion of the Restrained Person(s) located at: _____ pursuant to Article 617(3)(a), (b) or (c).

NEITHER THE RESTRAINED NOR THE PERSON(S) PROTECTED SHALL transfer, encumber, or otherwise dispose of property mutually owned or leased by them, except when in the ordinary course of business or for their necessary support or the support of the minor children.

IS/ARE ALLOWED to return to the residence located at _____
one time accompanied by a law enforcement officer to recover his or her personal clothing and necessities.

A REPRESENTATIVE OF _____ (Sheriff's Office) IS ORDERED to accompany _____ to the residence located at _____ to recover her/his personal clothing and necessities.

The following individualized relief to protect the children's well-being: _____

_____.

IT IS FURTHER ORDERED THAT:

THE **RESTRAINED PERSON(S)** SHOW CAUSE WHY THE FOLLOWING SHOULD NOT BE ORDERED:

TO PAY temporary support or provide suitable housing for the minor child(ren) and/or others.

THAT TEMPORARY CUSTODY OF, AND/OR TEMPORARY VISITATION WITH, the minor child(ren), _____, be established.

TO OBTAIN counseling or professional medical treatment.

THE **PERSON(S) PROTECTED** SHOW CAUSE WHY THE FOLLOWING SHOULD NOT BE ORDERED:

THAT TEMPORARY CUSTODY OF, AND/OR TEMPORARY VISITATION WITH, the minor child(ren), _____, be established.

THAT _____ OBTAIN counseling or professional medical treatment.

IT IS FURTHER ORDERED THAT THE LOCAL CASA PROGRAM is appointed, subject to the assignment of a qualified volunteer, to advocate for the best interest of the minor child(ren) in these proceedings. The local CASA program must be given notice of appointment and served with a copy of the pleadings filed herein.

IT IS FURTHER ORDERED THAT THE PARTIES show cause on _____
at _____ a.m./p.m. in Division/Section _____ why the above Temporary Restraining Order
and other relief requested should not be made Protective Orders.

<p>DATE OF ORDER</p>	<p>TIME OF ORDER</p>	<p>ORDER EFFECTIVE THROUGH 11:59 PM ON</p>	<p>SIGNATURE OF JUDGE</p> <p>___ Order issued <i>ex parte</i> ___ Order issued after notice and opportunity for hearing given to Restrained Person(s).</p>
<p>_____ Month/day/year</p>	<p>___ A.M. ___ P.M.</p>	<p>_____ Month/day/year</p>	<p>_____ PRINT OR STAMP JUDGE'S NAME</p>

NOTICE TO RESTRAINED PERSON(S) – VIOLATION OF ORDER
PURSUANT TO LA. CH. CODE ARTICLE 1509D,
A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR
CONTEMPT OF COURT BY A FINE OF NOT MORE THAN \$500 OR BY
CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH.
THIS ORDER SHALL BE ENFORCED
BY ALL COURTS OF THE STATE OF LOUISIANA.

FULL FAITH AND CREDIT pursuant to 18 U.S.C. § 2265

The issuing court certifies that it has jurisdiction over the parties and the subject matter under the laws of the State of Louisiana; that the Restrained Person(s) was/were given reasonable notice and an opportunity to be heard sufficient to protect the right to due process before this order was issued; or if the order was issued *ex parte*, the court ordered that the Restrained Person(s) be given reasonable notice and an opportunity to be heard within the time required by the laws of the State of Louisiana, and in any event, within a reasonable time after the order was issued, sufficient to protect the due process rights.

Please serve:

Restrained Person(s) was/were served at close of hearing.

Date _____ Clerk/Bailiff _____

DISTRIBUTION OF NOTICE

Please send notice and copy of order to all parties and counsel of record as follows:

Restrained Person(s): _____

Person(s) Protected: _____

DCFS Staff/Representative: _____

Bureau of General Counsel: _____

Assistant District Attorney: _____

CASA: _____

All Counsel of Record as follows: _____

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

**PROTECTIVE ORDER (PO)
PURSUANT TO LOUISIANA CHILDREN'S CODE ARTICLE 618**

This matter came before the Court on a Temporary Restraining Order (TRO) and the filing of a petition by:

(Please check one of the following)

- Louisiana Department of Children and Family Services (DCFS) through counsel
- Other: _____

seeking a protective order to safeguard the minor child(ren)'s well-being in the home.

This is a: *(Please check one of the following)*

- Protective Order. *(OR)*
- Modified Protective Order.

I. PERSONS

This restraining order pertains to the following persons:

Restrained Person(s) (the person(s) who is/are not allowed to contact the Person(s) Protected in the manner set forth below):

_____ (DOB: __/__/__);
 _____ (DOB: __/__/__);
 _____ (DOB: __/__/__).

Person(s) Protected (the person(s) who is/are to be protected in the manner set forth below):

_____ (DOB: __/__/__);
 _____ (DOB: __/__/__);
 _____ (DOB: __/__/__);

_____ (DOB: __/__/____);

_____ (DOB: __/__/____).

II. FINDINGS

The Court hereby finds that it has jurisdiction over the parties and the subject matter.

The Court hereby finds that the Restrained Person(s) has been provided with reasonable notice and an opportunity to be heard.

The Court finds that based on the Petition for Protection from Abuse and the evidence presented at the contradictory hearing, a Protective Order will bring about the cessation of abuse or neglect.

III. ORDERS

THE COURT HEREBY ENTERS A PROTECTIVE ORDER.

THE COURT FURTHER ORDERS: *(Please check all that apply)*

THE RESTRAINED PERSON(S) IS/ARE ORDERED NOT TO abuse, neglect, harass or interfere with the Person(s) Protected or employment.

<i>Employment</i>	<i>Address</i>	<i>City/State</i>	<i>Zip Code</i>

THE RESTRAINED PERSON(S) IS/ARE ORDERED NOT TO go near the residence of or place of employment of the Person(s) Protected.

THE PERSON PROTECTED, _____, IS AWARDED use and possession of the following community property: _____

_____.

THE PERSON(S) PROTECTED, _____, IS/ARE GRANTED possession of the residence or household to the exclusion of the Restrained Person(s) located at: _____
_____, pursuant to Article 617(3)(a), (b) or (c).

NEITHER THE RESTRAINED NOR THE PERSON(S) PROTECTED SHALL transfer, encumber, or otherwise dispose of property mutually owned or leased by them, except when in the ordinary course of business or for their necessary support or the support of the minor children.

IS/ARE ALLOWED to return to the residence located at _____
one time accompanied by a law enforcement officer to recover his/her personal clothing and necessities.

A REPRESENTATIVE OF _____ (Sheriff's Office) IS ORDERED to accompany _____ to the residence located at _____ to recover his/her personal clothing and necessities.

Payment of temporary support or provision of suitable housing is hereby ordered to be paid to _____ by _____ as follows:

For the minor child(ren): _____

Beginning on _____ \$ _____ per week month other: _____

Payment by mail to: _____.

Payment by direct deposit: _____.

Payment by: _____.

For the Person(s) Protected: _____,

Beginning on _____ \$ _____ per week month other: _____

Payment by mail to: _____.

Payment by direct deposit: _____.

Payment by: _____.

Temporary custody of the minor child(ren), _____,
is/are awarded to _____.

Temporary visitation rights of the minor child(ren), _____,
is/are awarded to _____.

The visitation shall be:

- Unsupervised. *(OR)*
- Supervised and _____ is to supervise the visits.
- Exchange of the minor children as follows: _____
_____.
- Other details as follows: _____
_____.

Counseling or professional medical treatment is ordered for _____
_____ as follows: _____.

The following individualized relief to protect the minor children's well-being: _____

_____.

THE LOCAL CASA PROGRAM is appointed, subject to the assignment of a qualified volunteer, to advocate for the best interest of the minor child(ren) in these proceedings. The local CASA program must be served with a copy of the pleadings filed herein.

THE RESTRAINED PERSON(S) must be served with a copy of this Order.

DATE OF ORDER <hr/> Month/day/year	TIME OF ORDER <hr/> <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	ORDER EFFECTIVE THROUGH 11:59 PM ON <hr/> Month/day/year	<hr/> SIGNATURE OF JUDGE ____ Order issued after notice and opportunity for hearing given to Restrained Person(s). <hr/> PRINT OR STAMP JUDGE'S NAME
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NOTICE TO RESTRAINED PERSON(S) – VIOLATION OF ORDER
PURSUANT TO LA. CH. CODE ARTICLE 1509(D),
A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR
CONTEMPT OF COURT BY A FINE OF NOT MORE THAN \$500 OR BY
CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH.
THIS ORDER SHALL BE ENFORCED
BY ALL COURTS OF THE STATE OF LOUISIANA.

FULL FAITH AND CREDIT pursuant to 18 U.S.C. § 2265

The issuing court certifies that it has jurisdiction over the parties and the subject matter under the laws of the State of Louisiana; that the Restrained Person(s) was/were given reasonable notice and an opportunity to be heard sufficient to protect the right to due process before this order was issued; or if the order was issued *ex parte*, the court ordered that the Restrained Person(s) be given reasonable notice and an opportunity to be heard within the time required by the laws of the State of Louisiana, and in any event, within a reasonable time after the order was issued, sufficient to protect the due process rights.

Restrained Person(s) was/were served at close of hearing.

Date _____ Clerk/Bailiff _____

DISTRIBUTION OF NOTICE

Please send notice and copy of order to all parties and counsel of record as follows:

Restrained Person(s): _____

Person(s) Protected: _____

DCFS Staff/Representative: _____

Bureau of General Counsel: _____

Assistant District Attorney: _____

CASA: _____

All Counsel of Record as follows: _____

INSTANTER SAFETY PLAN ORDER AND INSTANTER ORDER FOR REMOVAL

La. Ch. C. arts. 619-620

LOUISIANA
CHILD IN NEED OF CARE BENCHBOOK
FOR JUVENILE JUDGES

SECTION

3

INTRODUCTION

A. GENERAL CONSIDERATIONS

The liberty interest in family relationships granted by the 14th Amendment to the United States Constitution is a fundamental right affording the highest constitutional protection to parents¹ in the care, custody, and management of their children.² Because this is a fundamental right, State intervention must be “limited and should only be asserted when there is a serious threat to the family, the parents, or the child . . . extraordinary procedures established by law are meant to be used only when required by necessity, and then with due respect for the rights of the parents, the children, and the institution of the family, and only to the extent that such procedures are not prohibited by the Louisiana Constitution of 1974, as amended.”³ It is the judge’s responsibility to ensure that the constitutional due process rights of all children and parents involved in Child in Need of Care (CINC) cases are protected.

Families are the cornerstone of our society, and judges should avoid unnecessary separation of the child and family if the child can remain safely in the home.⁴ When the State is forced to intervene on behalf of abused and neglected children and decide whether to place children outside the home, it must consider the emotional impact of separation on the child. If it can be safely implemented, the best plan is the least restrictive environment – the child’s own home. Each child and family deserve to be treated fairly and holistically, regardless of how and why they come before the court. Judicial determinations to remove a child from a parent should only be made based on legally sufficient evidence that a child cannot be safe at home.

Judges charged with reviewing the decision to remove a child are in a challenging and powerful position that can dramatically affect a child’s entire future.⁵ When children are removed from their parents, they can end up separated from siblings, extended family, friends, community, and belongings. These children may be placed with adults and other children who are strangers to them, who may not look like them, speak their language, or follow their family’s customs and traditions. They may be disconnected from school, activities, friends and adults they trust. Removing a child is a colossal decision and one that should not be made lightly or quickly.

Chapter 6 of the Louisiana Children’s Code authorizes the use of extraordinary remedies to protect a child either before or after a formal CINC Petition is filed. After a preliminary investigation, the Department of Children and Family Services (DCFS) may proceed to safeguard the child’s well-being in the home by seeking a Temporary Restraining Order (TRO) (Article 617) and Protective Order (PO) (Article 618) and/or an Instanter Safety Plan Order (ISPO) (also referred to as a Court Ordered Safety Plan) (Articles 619 and 620). If DCFS does not believe that a TRO, PO, and/or ISPO are sufficient to keep the child safe in his/her home, an Instanter Order for Removal and Provisional Custody to a Suitable Relative,⁶ Suitable Individual,⁷ or the State through DCFS (i.e., foster care) may be sought. Federal law also requires that DCFS make reasonable efforts to place siblings together.⁸

1 The plural form of “parent” is used throughout the Benchbook for simplicity, even though at times only one parent has been identified in a case.

2 See *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

3 La. Ch. C. art. 101.

4 See Gatowski, S., Miller, N., Rubin, S., Escher, P., & Maze, C. (2016) *Enhanced resource guidelines: Improving court practice in child abuse and neglect cases*. Reno, NV: National Council of Juvenile and Family Court Judges, p. 14 [hereinafter Gatowski].

5 *Id.* at 107.

6 La. Ch. C. art. 603(20) defines relative “as an individual with whom the child has established a significant relationship by blood, adoption, or affinity. Affinity means relationship by marriage.”

7 La. Ch. C. art. 603(20) defines other suitable individual as “a person with whom the child enjoys a close established significant relationship, yet not a blood relative, including a neighbor, godparent, teacher and close friend of the parent.”

8 The *Fostering Connections to Success and Increasing Adoptions Act of 2008* (P.L. 110-351) amended Title IV-E plan provisions to require that Title IV-E agencies make reasonable efforts to place siblings removed from their home in the same foster care, adoption, or guardianship placement or, if that is not possible, facilitate visits or ongoing contacts for siblings that cannot be placed together, unless it is contrary to the safety or well-being of any of the siblings to do so.

Historically, State agencies and courts have felt that a child's physical safety can best be served by removal, thus avoiding the chances of repeat maltreatment or continued abuse or neglect. However, a growing body of evidence now suggests that removal and placement in foster care may be more harmful to a child's psychological well-being than remaining in a troubled home environment, at least when the child could remain safely with his/her parents or caretakers if a safety plan was instituted, a PO was issued, and/or services were provided to the family to eliminate the threat of danger to the child. Consequently, Federal and State law focuses on the reasonableness of DCFS efforts to prevent or eliminate the need to remove the child from his/her home.⁹

B. SAFETY PLANS¹⁰ AND INSTANTER ORDERS

Judges and all legal stakeholders should be familiar with the Child Welfare Assessment and Decision Making Model (CWADM). The CWADM is a framework DCFS uses to assess safety and risk and the needs and strengths of children and families throughout the life of a case so that courts and DCFS have the best possible information upon which to make decisions with and for families involved with DCFS. A formal safety assessment is required either when a threat of danger is identified, or at specific intervals during the life of a case. Three variables are considered to determine whether a child is safe or unsafe: (1) threats of danger to the child; (2) the child's vulnerability to the identified threats of danger; and (3) the caretaker's protective capacities. The threat of danger considers whether the caretaker's behavior or family situation is likely to result in imminent harm to the child. The child's vulnerability looks at the extent to which a child can protect himself/herself from the identified threats of danger. The caretaker's protective capacities consider the way a caretaker thinks, feels, and/or acts and whether those capacities can prevent or control the threats of danger. When the Safety Assessment is conducted during an emergent situation, it is possible that an assessment of parental protective capacities was not able to be completed before an Instantanter request. See the [Child Welfare Assessment and Decision Making Benchbook Section 11](#) for more information.

If the child is unsafe, DCFS must determine which type of safety plan (with foster care being the plan of last resort) is needed to mitigate or eliminate the threat of danger to the child. Safety plans substitute for or enhance the parents' or caretakers' protective capacities. A safety plan is a plan to assure a child's health and safety by imposing conditions for the child to safely remain in the home, or, after a child has been removed from the home, for the continued placement of the child with a relative or other individual or, if necessary, DCFS and terms for contact between the child and his/her parents or other persons.¹¹

There are two main types of safety plans sought at this stage of the CINC process: In-Home and Out-of-Home. In-home safety planning includes DCFS In-Home Safety Plans (without a court order) and ISPO. Out-of-home safety plans include the Instantanter Order for Removal and Provisional Custody to a Suitable Relative or Individual and Instantanter Order for Removal and Provisional Custody to DCFS (i.e., foster care). In any Affidavit in Support of an Instantanter Order or oral request, DCFS should clearly articulate how the child is unsafe based on the assessment of threats of danger, child vulnerability, and the parents' or caretakers' protective capacities.

The TRO (Article 617) and PO (Article 618) can also serve as a type of safety plan that can be used with or separate from a DCFS In-Home Safety Plan and/or an Instantanter Order. See [Temporary Restraining Order \(TRO\) and Protective Order \(PO\) Benchbook Section 2](#).

(1) In-Home Safety Plan: DCFS In-Home Safety Plan (DCFS Policy)

A DCFS In-Home Safety plan is the least restrictive safety plan. It is a DCFS-initiated mechanism used to help cooperative parents manage safety without a court order. The DCFS Family Services unit handles these cases. A DCFS In-Home Safety Plan cannot restrict the contact between the child and his/her parents and otherwise infringe upon parental rights. Unlike the ISPO, this type of safety plan can also be used with a legal or non-legal caretaker or guardian to manage the child's safety. A CINC Petition may or may not be filed when there is a DCFS In-Home Safety Plan; but only the child's parents would be parties, not a legal or non-legal caretaker or guardian.

⁹ See Authors' Introductory Notes to Title VI of the Louisiana Children's Code.

¹⁰ See DCFS CW Policy 4-521: Types of Safety Plans, <http://www.dcfslouisiana.gov/page/511>.

¹¹ La. Ch. C. art. 603(27).

(2) In-Home Safety Plan: Instanter Safety Plan Order (Articles 619 and 620)¹²

If DCFS files an Affidavit in Support of an ISPO, the court must determine whether there are reasonable grounds to believe that the child is in need of care and that the implementation of a safety plan is necessary (or sufficient) to secure the child’s protection. The ISPO is an important option for keeping children in their home. This court-ordered safety plan is requested by DCFS to manage the safety of a child while custody remains with his/her parents. It is used when a threat of danger to a child is identified that he/she is vulnerable to, and his/her parents do not have sufficient protective capacities to manage the threat. This type of safety plan can restrict the parent’s contact with the child or include the child living with his/her parent’s in an alternative location or other interventions as ordered by the court. For example, the child and his/her parents may reside with a relative or other individual. However, the law does not allow this type of safety plan to be used with anyone other than the parents of the child; it cannot be used with other legal or non-legal caretakers or guardians. A DCFS In-Home Safety Plan and/or a PO may be a more appropriate remedy to use with a caretaker if needed to manage safety and risk issues regarding a child and his/her caretakers.

The ISPO orders the parents and safety monitor¹³ to comply with the terms and conditions of the safety plan as determined by or agreed upon by DCFS and as necessary to protect the child’s health and safety while remaining in the parent’s custody. Safety monitors are individuals identified by DCFS to provide oversight of the safety plan to ensure the plan’s provisions are followed and the safety threats to the child are controlled. A safety monitor may be a professional, paraprofessional, volunteer, or individual who is part of the family’s network, such as extended family, church members, friends, etc. Per DCFS policy, the safety monitor must be approved by DCFS, and DCFS should have weekly contact with the safety monitor to ensure compliance with the safety plan. DCFS asks the parents and safety monitor to sign a safety plan form to indicate their agreement to its conditions.

(3) Out of Home Safety Plans: Instanter Order for Removal and Provisional Custody to Suitable Relative or Suitable Individual or DCFS (Articles 619 and 620)

Placement pending the timely filing of the CINC Petition and Adjudication must be in the least restrictive and most appropriate setting and the health and safety shall be the paramount concern. Unless the best interest of the child requires a different placement, provisional custody shall be placed in accordance with the priorities outlined in Article 622. The court must make a diligent inquiry regarding the options for custody. DCFS may not have requested provisional custody to a suitable relative or individual for policy reasons, which may not be safety related. Sometimes, DCFS does not have adequate time to assess the relative or individual (i.e., child welfare background clearance, criminal background check, assessment of home or home study, etc.) before the Instanter request.¹⁴ Yet, the court should still inquire as to the possibility of granting provisional custody of the child to a suitable relative or individual. Federal legislation and extensive research support the notion that placement or custody with a relative, close or distant, or fictive kin is considered the least restrictive placement option when the child’s own home is not possible.¹⁵ Research shows that placement with relatives maintains the child’s connections with his/her family, and children generally fare better in many child well-being factors when placed with a relative.¹⁶

To increase the chances that a child will be placed with a relative, DCFS is required to notify all known adult relatives of the child and inform them about placement and custody options available to relatives with regard to the child. This notification is to occur no later than 30 days following the child’s removal and anytime (even beyond the 30 days) a relative is identified.¹⁷ If the court issues an Instanter Order for Removal and Provisional Custody to a Suitable Relative or Individual, there must be a safety plan setting forth the conditions of contact with the parents and/or third parties. If the judge decides to grant provisional custody of the child to a suitable relative or individual, and DCFS did not request it, the judge can order that DCFS conduct a child welfare background clearance and criminal background check on members of the home and an assessment of the home or home study as needed.

12 La. Ch. C. art. 612(A)(2) requires that DCFS request a Temporary Restraining Order, Protective Order, or Instanter Safety Plan Order if: (1) There is an existing visitation or custody order involving the alleged perpetrator and the child; and, (2) DCFS determines that any such order would put the child’s health and safety at risk.

13 The singular form of “safety monitor” is used throughout this section, even though at times there may be more than one safety monitor.

14 “At the minimum, a CPS clearance in the Clearance module in ACCESS, a criminal background check, and Form 417 should be completed prior to requesting temporary custody to a relative or individual.” DCFS CW Policy 4-521: Types of Safety Plans, <http://www.dcf.louisiana.gov/page/511>.

15 See 42 U.S.C. § 675 (5); National Conference of State Legislatures. (2019) The Child Welfare Placement Continuum: What’s Best for Children; Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau.

16 See Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau; Center on Children and the Law. (2016) Judicial Tip Sheet: Kin First. Washington, DC: American Bar Association; Issue Brief, Strong Families (2019) Why Should child protection agencies adopt a kin-first approach? Casey Family Programs.

17 42 U.S.C. 671 (a)(29).

As a last resort, the court has the authority to grant provisional custody to DCFS pending the timely filing of the CINC Petition and Adjudication. Of course, the court may determine that the issuance of an Instanter Order for Removal is not necessary to secure the child's protection. In that instance, DCFS could seek an ISPO.

C. DISTINGUISHING PARENTS AND CARETAKERS

In addition to a parent, a child can be removed from a caretaker, whether the caretaker has legal custody of the child or not. In such cases, the caretaker does not become a party to the CINC case and is not entitled to the appointment of an attorney. The law only provides the right to an appointed attorney for parents. While DCFS has the authority to investigate a caretaker to determine if a child is unsafe or safe living with that person, an ISPO cannot be used with a caretaker. A DCFS In-Home Safety Plan and/or a PO may be a more appropriate remedy to use with a caretaker if needed to manage safety and risk issues regarding the child and the caretaker.

D. ORAL INSTANTER ONLY IN EXCEPTIONAL CIRCUMSTANCES

An ISPO or Instanter Order for Removal may be issued ex parte. An oral Instanter Order should only be used in exceptional circumstances. Exceptional circumstances are when the child's protection cannot be delayed long enough to prepare written documentation and transmit it to the judge to sign the written Order. Whether the judge grants or denies the Oral Instanter Order, a written verified complaint (Affidavit) must be filed with the clerk of court within 24 hours. All facts previously relayed orally must be contained in the Affidavit.

E. REASONABLE GROUNDS, CONTRARY TO THE WELFARE FINDINGS, AND REASONABLE EFFORTS

There are critical findings that the court must make in any Instanter Order. The ISPO and Instanter Order for Removal require a reasonable grounds determination. For either type of Instanter Order for Removal, the court must make two additional findings: reasonable efforts and contrary to the welfare findings.

(1) Reasonable Grounds

The court must look to Article 606(A) for the reasonable grounds' inquiry. For an ISPO, the court must determine whether there are reasonable grounds to believe that an ISPO is necessary to secure the child's protection and manage the safety of the child while the child remains with his/her parents pending the timely filing of the CINC Petition and Adjudication. For removal, the court must determine whether or not there are reasonable grounds to believe that the child is in need of care, an emergency removal is necessary to secure the child's protection, and the child's safety and welfare can be safeguarded by placing the child in the provisional custody of a suitable relative or individual capable of protecting the health and safety of the child or DCFS pending the timely filing of the CINC Petition and Adjudication.

(2) Contrary to Welfare Findings

Federal law only authorizes removal of a child from his/her home upon a judicial finding that remaining in the home is contrary to the child's health, safety, and welfare and that a temporary removal is in best interest of the child. The contrary to welfare finding must be child-specific, documented in the first written court order (i.e., written Instanter Order for Removal) sanctioning removal, and signed and dated by the judge. DCFS risks losing Title IV-E funding for the child's entire stay in foster care if the child is removed from the home and placed in DCFS custody without this judicial finding.¹⁸

18 45 C.F.R. § 1356.21(c); 42 U.S.C. § 472(a)(2)(A)(ii); 42 U.S.C. § 479(B); See also Child Welfare Policy Manual, Section 8.3A.6, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp?citID=37

(3) Reasonable Efforts

Both courts and DCFS have “reasonable efforts”¹⁹ obligations under State and Federal law until the child is reunified with his/her parents or achieves permanency. DCFS has the burden of demonstrating the reasonableness of efforts to: (1) prevent or eliminate the need for removal; (2) reunify the family; and/or (3) achieve timely permanency for the child. The court shall make findings as to the reasonableness of DCFS efforts for each child accordingly in its Orders, thus holding DCFS accountable. In all reasonable effort findings, each child’s health and safety shall be the paramount concern, based on the facts and circumstances of each individual case and child.²⁰

Under State law, the judge shall make a finding in the Instanter Order as to whether or not DCFS made reasonable efforts to prevent or eliminate the need for the child’s removal, or that reasonable efforts were not required per Article 619(B). This reasonable efforts finding is required in a written court order within first 60 days of the child’s removal. DCFS risks losing Title IV-E funding for the child’s entire stay in foster care if the child is removed from his/her home and placed in DCFS custody without a judicial finding that reasonable efforts were made by DCFS or were not required by law. Thus, if reasonable efforts were not made initially, it is critical for the court to hold DCFS accountable going forward to making reasonable efforts to prevent or eliminate the child’s removal within first 60 days of the child’s removal.²¹

DCFS must initially make reasonable efforts to provide the assistance and services needed to preserve the family and prevent removing the child from his/her home. Reasonable efforts require that DCFS provide accessible, available, and culturally appropriate services that will help families remedy the conditions that brought the child and family to the attention of DCFS.

As to the reasonable efforts finding in the written Instanter Order, the court has a few options. The court must first consider whether DCFS could have provided reasonable in-home services to the family or did provide such services (i.e., substance abuse, mental health, counseling, etc.) and activities (i.e., home visits and safety checks) to prevent the need for removal and keep the child safe in the home. As part of the reasonable efforts determination, the court must also ascertain whether or not DCFS requested a TRO pursuant to Article 617, PO pursuant to Article 618, and/or ISPO pursuant to Article 619.

However, if the court determines that DCFS’s first contact with the family occurred during an emergency where the child could not safely remain at home even with reasonable in-home services provided to the family, the judge may find that reasonable efforts were not required. DCFS must articulate the nature and circumstances of the substantial and immediate danger and exigent circumstances in the request for the Instanter Order.

If DCFS has not made reasonable efforts to prevent or eliminate the need for removal of the child from his/her home, the court must make such a finding in the written Order and may impose sanctions pursuant to Article 712. However, the court may still find the child should be removed even if DCFS efforts have not been reasonable.

¹⁹ La. Ch. C. art. 603(25) defines reasonable efforts as “the exercise of ordinary diligence and care by department case workers and supervisors and shall assume the availability of a reasonable program of services to children and their families.”

²⁰ See 42 U.S.C. § 671(a)(15)(E) and 672(a)(1); 45 C.F.R. § 1356.21(h)(2), 45 C.F.R. § 1356.21(b)(2) and 1356.71(d)(1)(i); See also Child Welfare Policy Manual, Section 8.3C.4, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?cittID=59 Edwards, Leonard. “Overcoming Barriers to Making Meaningful Reasonable Efforts Findings.” ABA Child Practice Today. January 29, 2019, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/overcoming-barriers-to-making-meaningful-reasonable-efforts-find/; Edwards, Leonard. (2014). Reasonable Efforts: A Judicial Perspective, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=210§ionid=2&articleid=5428> (“Congress designed the law to ensure child welfare agencies provide families with services to prevent disruption of the family unit, and to respond to the problems of unnecessary removals and foster care drift. The reasonable efforts requirement is an enforcement mechanism to guarantee that each State provides adequate preventative and reunification services.”); Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>.

²¹ Id.

F. APPOINTMENTS AND NOTICE

An essential part of granting an Instanter Order is the appointment of representation programs for the parents and children. Parents and children have a right to representation at the CSPH²² and CCH and beyond. Best practice is to appoint as early as possible to enable work to begin immediately. If the court grants an Instanter Order, it shall also order that the program approved to represent the child be appointed in the CINC proceedings. For parents, best practice is for the court to order that the parents be referred to the Indigent Parent Representation Program (or local Public Defender Office)²³ to provide representation for the parents at the Continued Safety Plan Hearing (CSPH) or Continued Custody Hearing (CCH). At or after the CSPH or CCH, there will need to be a finding of indigency for the Indigent Parent Representation Program (or local Public Defender Office) to continue to represent the parents in the CINC proceedings. The court should order notice of appointments and of the CSPH or CCH and arrange for copies of the pleadings to be emailed as soon as possible to the representation programs and in advance of service so that the attorneys may prepare for the hearings and due process is afforded to the families.

The local Court Appointed Special Advocate (CASA) program should also be appointed to perform its own investigation and advocate for the best interest of the children. If appointed, the court must order that CASA and the representation programs be provided with notice of the appointment and of the CSPH or CCH and served a copy of the pleadings. The court should order notice be given to parents and caretakers of the CSPH or CCH, which must include the nature of the allegations. The court must also order DCFS to give notice of the CCH to any foster caregiver (i.e., foster parent, pre-adoptive parent, or relative) providing care for the child.²⁴

G. NEXT STEPS

If the court orders an ISPO, the court must set the CSPH date within 3 days of the issuance of the written Instanter Order. Similarly, if the court issues an Instanter Order for Removal, the court must set the CCH date within 3 days of the child's removal or entry into custody.

However, if the court issues an ISPO, and the parents agree to the safety plan, a CSPH is not mandatory. The signature of the parents on the safety plan agreement shall constitute evidence of such agreement. The Affidavit in Support of the ISPO should state whether the parents agreed or did not agree to the safety plan. Yet, best practice is to hold the CSPH whether the parents agree to the safety plan or not, for several important reasons.

Holding the CSPH allows the court to spend time determining if the ISPO is necessary or sufficient for the child's safety and protection. Having parties in court and hearing directly from a judge can be critical to ensuring everyone involved understands the conditions of the safety plan and the seriousness of the order. Holding the CSPH allows the court, attorneys, and DCFS to make sure the parents understand what they are agreeing to, the expectations, and the consequences of not following the safety plan. The court can also make sure the safety monitor understands the agreement, their role and expectations, and the consequences of the parents not complying with the safety plan. The court can assess the safety monitor's capacity to balance the relationship they may have with the parents with their role as safety monitor (i.e., grandmother is a safety monitor for her daughter). Although not required to appear for the CSPH, the safety monitor may also have questions or wish to be heard at the hearing.

Some courts hold the CSPH, even when parents have agreed to the safety plan, because of the due process implications of not having the hearing. Parents who sign a safety plan before a hearing are usually doing so without the benefit of counsel; children also have no benefit of counsel at the time the safety plan is signed. Holding a CSPH allows parents and children the opportunity to meet with counsel. It gives the child, who is also a party to the CINC case, a chance to speak or object to the safety plan. There is reason to believe that consultation with an attorney at this stage may lead to increased compliance with the safety plan.

22 La. Ch. C. art. 608 references parents' right to counsel at the CCH and all stages of the proceedings thereafter. However, due process also attaches with the issuance of an ISPO, and arguably extends the same right to counsel to parents and children in these earlier proceedings due to the introduction of DCFS and the courts in the family as well as the parents' loss of authority to place the child with any individual or institution except DCFS until the safety plan is terminated. See La. Ch. C. art. 619.

23 See La. Ch. C. arts. 575 and 608.

24 See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).










If there is no CSPH, some of the critical matters that prepare a case for the CINC Petition and Answer Hearing may not occur. Significantly, neither parents nor children will receive the important advisements set forth in Children’s Code Article 625. If the CSPH is not held, courts are recommended to include the Article 625 advisements in the ISPO. To reinforce these advisements, it is also recommended that DCFS include them in the safety plan form that the parent signs.

If DCFS has indicated in the written Affidavit that any of the parties has a disability and/or language barrier, the court will need to arrange for assistance and/or accommodations prior to the CSPH or CCH. If DCFS did not, the court should inquire. This responsibility of the court is pursuant to both State and Federal law. There must be ample time for legal interpreters to review pertinent legal documents prior to the court proceeding. Interpreters must be familiar with the case-related details to provide an accurate, meaningful, and effective interpretation.

The Children’s Code allows for relatives and other individuals to apply to the court for an ex parte order to take provisional custody of the child pending a CCH (Article 622(A)). At any time prior to Adjudication, a relative or other person may petition the court for provisional or permanent custody of the child (Article 631(B)).

The State has 45 days from the issuance of an ISPO to file a CINC Petition (if no extension has been granted). Otherwise, the ISPO terminates. Once the CCH is held, and if the child is continued in custody (with a suitable relative or individual or DCFS), the State has 30 days to file a CINC Petition (unless an extension is granted). Otherwise, the Continued Custody Order terminates, and the child must be returned home.

OUTLINE

-  **A. MECHANISM TO REQUEST INSTANTER ORDER**
-  **B. FILING OF THE WRITTEN VERIFIED COMPLAINT (AFFIDAVIT)**
-  **C. SAFETY ASSESSMENT**
-  **D. INSTANTER SAFETY PLAN ORDER FINDINGS AND RULING OPTIONS**
-  **E. INSTANTER ORDER FOR REMOVAL FINDINGS AND RULING OPTIONS**
-  **F. FURTHER ORDERS**
-  **G. CASE MANAGEMENT**
-  **H. POSSIBLE NEXT STEPS**
-  **I. APPENDIX**
 - (1) INSTANTER SAFETY PLAN ORDER AND INSTANTER ORDER FOR REMOVAL BENCH CARD**
 - (2) AFFIDAVIT IN SUPPORT OF INSTANTER SAFETY PLAN ORDER TEMPLATE**
 - (3) INSTANTER SAFETY PLAN ORDER TEMPLATE**
 - (4) AFFIDAVIT IN SUPPORT OF INSTANTER ORDER FOR REMOVAL AND PROVISIONAL CUSTODY TO SUITABLE RELATIVE OR INDIVIDUAL TEMPLATE**
 - (5) INSTANTER ORDER FOR REMOVAL AND PROVISIONAL CUSTODY TO SUITABLE RELATIVE OR INDIVIDUAL TEMPLATE**
 - (6) AFFIDAVIT IN SUPPORT OF INSTANTER ORDER FOR REMOVAL AND PROVISIONAL CUSTODY TO DEPARTMENT OF CHILDREN AND FAMILY SERVICES TEMPLATE**
 - (7) INSTANTER ORDER FOR REMOVAL AND PROVISIONAL CUSTODY TO DEPARTMENT OF CHILDREN AND FAMILY SERVICES TEMPLATE**
 - (8) ADDENDUM TO AFFIDAVIT FOR INSTANTER ORDER TEMPLATE**



OVERVIEW

A. MECHANISM TO REQUEST INSTANTER ORDER

ARTICLES 619-20

(1) WRITTEN INSTANTER:

- A written Instanter Order may be issued by the judge ex parte²⁵ upon a written verified complaint (Affidavit) that an ISPO be implemented with the parents of the child or that a child be removed from his/her home and placed in the provisional custody of a suitable relative or individual or the State through DCFS (i.e., foster care).

(2) ORAL INSTANTER:

- In exceptional circumstances (when the protection of the child cannot be delayed long enough to prepare written documentation for the judge to sign the written order), the facts supporting the issuance of an Instanter Order and the exceptional circumstances may be relayed orally, including by phone, by a peace officer, district attorney (DA), or employee of the Department's Child Welfare Division, to the judge. In response, the judge may orally order that an ISPO be implemented with the parents of the child (upon request by DCFS), or that a child be removed and placed in the provisional custody of a suitable relative or individual or DCFS.

HELPFUL GUIDANCE:

- **Exceptional Circumstances:** Ordinarily, a personal appearance by the affiant who executes the written Affidavit is envisioned.²⁶ An oral Instanter Order should only be requested if the immediate removal of the child from his/her home is needed, such as when the Affidavit cannot be secured in time to keep the child safe, or there is an immediate need for an ISPO and the Affidavit cannot be written in time to maintain the child safely in the home. For example, there can be exceptional circumstances when an investigator does not have the ability to leave the premises to prepare a written Affidavit and keep the child safe, or the court is not open because it is in the middle of the night, and the child will be unsafe if not removed from his/her home immediately. The judge can deny an oral instanter request because the circumstances are not exceptional.
- **Written Affidavit:** Whether the judge grants or denies the Oral Instanter Order, a written Affidavit shall be filed with the clerk of court within 24 hours, and the court shall thereafter issue a written Instanter Order. All factual information previously relayed orally must be contained in the written Affidavit. If additional information is obtained (other than what was provided orally), a written addendum to the oral Instanter Order should be filed with the written Affidavit. An Affidavit filed after the child has been placed shall indicate whether the child was released to his/her parents or caretakers or remains removed.

²⁵ Ex Parte, Black's Law Dictionary (11th ed. 2019) ("Done or made at the instance and for the benefit of one party only, and without notice to, or argument by, anyone having an adverse interest; of, relating to, or involving court action taken or received by one party without notice to the other, usu. for temporary or emergency relief.").

²⁶ See La. Ch. C. art. 619, Authors' Introductory Notes.

B. FILING OF THE WRITTEN VERIFIED COMPLAINT (AFFIDAVIT)

ARTICLES 606, 619

A peace officer, DA, or employee of the Department's Child Welfare Division may file one of the following Affidavits to request a written Instanter Order:

(1) Affidavit in Support of ISPO must allege facts that show:

- There are reasonable grounds to believe child is in need of care (assert ground(s) codified in Article 606(A)); an ISPO is necessary to secure the child's protection and manage the safety of the child while the child remains with the parents pending the timely filing of the CINC Petition and Adjudication; a safety monitor has been approved by DCFS to provide oversight; and, whether the parents and safety monitor agreed to the safety plan. This Affidavit can only be filed by the State (DCFS) and can only be used with the parents of the child.

(2) Affidavit in Support of Instanter Order of Removal and Provisional Custody to Suitable Relative or Individual must allege facts that show:

- There are reasonable grounds to believe that the child is in need of care (assert ground(s) codified in Article 606(A)); emergency removal is necessary to secure the child's protection; efforts taken to prevent child's removal from the home or exigent circumstances that obviated the need for such efforts; and, the child's safety and welfare can be safeguarded by placing the child in the provisional custody of a suitable relative or individual pending the timely filing of the CINC Petition and Adjudication.

(3) Affidavit in Support of Instanter Order of Removal and Provisional Custody to State through DCFS must allege facts that show:

- There are reasonable grounds to believe that the child is in need of care (assert ground(s) codified in Article 606(A)); emergency removal is necessary to secure the child's protection; efforts taken to prevent child's removal from the home or exigent circumstances that obviated the need for such efforts; and, why provisional custody to a suitable relative or individual is not appropriate and/or available and should be granted to DCFS pending the timely filing of the CINC Petition and Adjudication.

C. SAFETY AND RISK ASSESSMENT

DCFS makes certain considerations when assessing whether the child is safe or unsafe and the type of safety plan necessary (and to be sought) if the child is determined to be unsafe. The Child Welfare Assessment and Decision Making Model (CWADM) is an assessment used by DCFS and child welfare stakeholders to help identify whether the child is safe or unsafe at all junctures of the CINC proceedings. A child is considered safe when: (1) there are no threats of danger; (2) if there is a threat of danger, the child is not vulnerable to the threat of danger; or (3) if there is a threat of danger, the parents or caretakers possess sufficient protective capacities to manage the threat of danger and keep the child safe. For all requests, DCFS must articulate how the child is unsafe without an Instanter Order based on an assessment of threats of danger, child vulnerability, and parent/caretaker protective capacities. Even in an emergency removal, DCFS should still be able to articulate the threats of danger identified that prompted the request for removal. When the assessment is conducted during an emergent situation, it is possible that an assessment of parental protective capacities could not be completed before for the Instanter request. See [Child Welfare Assessment and Decision Making Model \(CWADM\) Section 11](#).

D. INSTANTER SAFETY PLAN ORDER FINDINGS AND RULING OPTIONS

ARTICLES 603, 606, 619-20, 623

- (1) ESSENTIAL JUDICIAL FINDING – INSTANTER SAFETY PLAN ORDER:** The court shall make one of the following findings and rulings for each child:

a. **DENY:**

- **Not Necessary:** The court shall issue an order denying the request for the issuance of the ISPO if it finds:
 - The issuance of an ISPO is not necessary to secure the child’s protection; OR
 - There are no reasonable grounds, pursuant to Article 606(A), to believe the child is in need of care.
- **Not Sufficient:** If the court determines that the issuance of an ISPO is not sufficient to secure the child’s protection but that an emergency removal is necessary, the court shall issue an:
 - Order denying the request for the issuance of the ISPO; AND
 - Instanter Order for Removal and Provisional Custody to a Suitable Relative or Individual or DCFS, as stated below.

b. **GRANT**

- **Necessary and Sufficient:** The court shall issue an order granting the request for the issuance of the ISPO if it finds:
 - The issuance of an ISPO is necessary to secure the child’s protection; AND
 - There are reasonable grounds, pursuant to Article 606(A), to believe the child is in need of care.
- **The ISPO shall:**
 - Include findings of fact supporting the necessity for the ISPO to safeguard the child’s welfare;
 - Set forth persons (parents and safety monitor) subject to the safety plan and conditions of the safety plan as determined by or agreed upon by DCFS and necessary for the protection of the child’s health and safety while remaining in the home; AND
 - Order the parents and safety monitor to comply with the terms and conditions of safety plan.

 **PRACTICE TIP:**

- **Specific Ground(s):** Best practice is to include the specific ground(s) codified in Article 606(A) in the written order. The grounds should put the parents on notice and guide the development of the case plan or safety plan if either is needed.

 **HELPFUL GUIDANCE:**

- **Safety Monitor:** Generally, DCFS will only request an ISPO if they have approved a suitable safety monitor for the child and parents. Safety monitors are individuals identified by DCFS to provide oversight of the safety plan to ensure the plan’s provisions are followed and the safety threats to the child are being controlled. A safety monitor may be a professional, paraprofessional, volunteer, or individual who is part of the family’s network, such as extended family, church members, friends, etc. The safety monitor must agree to the safety plan and be able to place the child’s safety and needs above his/her relationship with the parents.
- **Safety Plan Agreement:** The safety plan agreement is an agreement between the parents and DCFS. DCFS asks the parents and safety monitor to sign the form to indicate their agreement to its conditions. Per Article 624, the parents’ signature on the safety plan shall constitute evidence of their agreement with the plan.
- **Protective Order (PO):** A PO pursuant to Article 618 may be appropriate to order with the ISPO to further protect the child from other individuals who may be putting the child at risk for abuse or neglect. For example, a PO may be appropriate when there is a non-parent who needs to be part of the proceedings and/or ordered to do or not do something to protect the safety of the child. See [Temporary Restraining Order \(TRO\) and Protective Order \(PO\) Benchbook Section 2](#).
- **Caretakers:** In addition to a parent, a child can be removed from a caretaker, whether the caretaker has legal custody of the child or not. In such cases, the caretaker does not become a party to the CINC case and is not entitled to the appointment of an attorney; the law only provides the right to an appointed attorney for parents. While DCFS has the authority to investigate a caretaker to determine if a child is unsafe or safe living with that person, an ISPO cannot be used with a caretaker. A DCFS In-Home Safety Plan and/or a PO may be a more appropriate remedy to use with a caretaker if needed to manage safety and risk issues regarding the child and caretaker.

E. INSTANTER ORDER FOR REMOVAL FINDINGS AND RULING OPTIONS

ARTICLES 603, 606, 619-20, 622-3, 672, 45 C.F.R. § 1356.21

(1) FINDINGS: To grant, the court must make the following written, separate, and individualized findings of fact for each child and explicitly document them in the court order signed and dated by the judge:

- a. **ESSENTIAL JUDICIAL FINDING - REASONABLE GROUNDS TO BELIEVE CHILD IS IN NEED OF CARE:** There are reasonable grounds, pursuant to Article 606(A), to believe the child is in need of care and an emergency removal is necessary to secure the child's protection.

PRACTICE TIP:

- o **Specific Ground(s):** Best practice is to include the specific ground(s) codified in Article 606(A) in the written order. The grounds should guide the development of the case plan or safety plan if either is needed.

- b. **ESSENTIAL JUDICIAL FINDING - CONTRARY TO WELFARE:** The continuation of the child in his/her home is contrary to the child's health, safety, and welfare AND temporary removal is in the best interest of the child.

PRACTICE TIP:

- o **Essential Judicial Finding in First Court Order Removing a Child:** Federal law only authorizes removal of a child from his/her home upon a judicial finding that remaining in the home is contrary to the child's health, safety, and welfare and that a temporary removal is in best interest of child. This finding must be child specific, documented in the first written court order (i.e., written Instanter Order for Removal) sanctioning removal, and signed and dated by judge. DCFS risks losing Title IV-E funding for the child's entire stay in foster care if the child is removed from the home and placed in DCFS custody without this judicial finding.²⁷

c. ESSENTIAL JUDICIAL FINDING - REASONABLE EFFORTS:

- **DCFS MADE OR DID NOT MAKE REASONABLE EFFORTS:** DCFS made or did not make reasonable efforts to prevent or eliminate the need for removal of the child from his/her home. The court should consider whether:
 - DCFS sought court interventions such as a TRO (Article 617), PO (Article 618), and/or ISPO (Article 619) as required by Article 619(B);
 - DCFS provided referrals, activities, and/or services (i.e., safety checks, counseling, child care services, etc.) to the family; AND
 - A removal request was not made based on improper assumptions or cultural biases.

²⁷ See 45 C.F.R. § 1356.21(c); 42 U.S.C. § 472(a)(2)(A)(ii); 42 U.S.C. § 479(B); See also Child Welfare Policy Manual, Section 8.3A.6, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp?citiD=37

PRACTICE TIPS:

- **Federal and State Law Requirements:** Both courts and DCFS have “reasonable efforts” obligations under State and Federal law. “Reasonable efforts” findings are judicial rulings that DCFS has or has not provided appropriate services at different times during a child welfare case. If the child has been removed from the custody of his/her parents, the courts and DCFS have ongoing reasonable efforts obligations under State and Federal law until the child is reunified with his/her parents or achieves permanency. DCFS has the burden of demonstrating the reasonableness of its efforts to: (1) prevent or eliminate the need for removal; (2) reunify the family; and/or (3) achieve timely permanency for the child. The court shall make findings as to the reasonableness of DCFS efforts for each child in its Orders. In all reasonable effort findings, each child’s health and safety shall be the paramount concern, based on the facts and circumstances of the individual case and child.²⁸
- **Federal and State Law Implications:** Under State law, the judge shall make a finding in the Instanter Order as to whether or not DCFS made reasonable efforts to prevent or eliminate the need for the child’s removal, or that reasonable efforts were not required per Article 619(B). This reasonable efforts finding is required in a written court order within the first 60 days of the child’s removal. DCFS risks losing Title IV-E funding for the child’s entire stay in foster care if the child is removed from his/her home and placed in DCFS custody without a judicial finding that reasonable efforts were made by DCFS or were not required by law. Thus, if reasonable efforts were not made initially, it is critical for the court to hold DCFS accountable going forward to making reasonable efforts to prevent or eliminate the child’s removal within the first 60 days of the child’s removal.²⁹
- **Definition of Reasonable Efforts:** Reasonable efforts are defined in Article 603 as “the exercise of ordinary diligence and care by department caseworkers and supervisors and shall assume the availability of a reasonable program of services to children and their families.” Reasonable efforts to prevent or eliminate the need for the child’s removal from the home require that DCFS provide accessible, available, and culturally appropriate services that will help families remedy the conditions that brought the child and family to the attention of DCFS.

HELPFUL GUIDANCE:

- **4 Reasonable Efforts Questions to Consider:** The judge should consider the following 4 questions when determining whether reasonable efforts were made:
 1. What were the specific threats of danger that led to the request for removal of the child?
 2. What can be done to remove the danger instead of the child? (Examples: preventative services, in-home safety plan, PO, etc.)
 3. Can and will someone the child or family knows move into the home with the child and parents or caretakers to remove the danger to the child? Would an in-home safety plan or PO help?
 4. Can and will the parents or caretakers and child go live with a relative or other individual to remove the danger to the child? Would an in-home safety plan or PO help?
- **Examples of Reasonable Efforts to Prevent or Eliminate Need for Removal Include (but are not limited to):** DCFS initiated in-home safety plan when appropriate, safety checks, home visits, referrals or services (i.e., child care services, counseling, health-care services, behavioral health evaluation and treatment, parenting education or support services and training, civil legal services), court interventions (i.e., TRO/PO and/or ISPO), etc.

²⁸ See 42 U.S.C. § 671(a)(15)(E) and 672(a)(1); 45 C.F.R. § 1356.21(h)(2), 45 C.F.R. § 1356.21(b)(2) and 1356.71(d)(1)(i); See also Child Welfare Policy Manual, Section 8.3C.4, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citiID=59 Edwards, Leonard. “Overcoming Barriers to Making Meaningful Reasonable Efforts Findings.” ABA Child Practice Today. January 29, 2019, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/overcoming-barriers-to-making-meaningful-reasonable-efforts-find/; Edwards, Leonard. (2014). Reasonable Efforts: A Judicial Perspective, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=210§ionid=2&articleid=5428> (“Congress designed the law to ensure child welfare agencies provide families with services to prevent disruption of the family unit, and to respond to the problems of unnecessary removals and foster care drift. The reasonable efforts requirement is an enforcement mechanism to guarantee that each State provides adequate preventative and reunification services.”); Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>.

²⁹ Id.

- **Past Intervention:** The court should determine whether DCFS has had previous contact with this family that contributed to or resulted in a valid finding and consider how past interactions may be influencing DCFS’s response to the family now.
- **Cultural and Religious Background, Customs, and Traditions:** It is important for the court to question whether the family’s cultural and religious background, customs, and traditions have been taken into account in evaluating the events and circumstances that led to the request for removal; and, whether the parents’ or caretakers’ tribal liaison have been asked if there is a culturally-based explanation for the allegations in the Affidavit. Consider the following questions:
 1. What is the family’s cultural or religious background?
 2. What are the customs and/or traditions the family practices?
 3. Did DCFS allow his/her assumptions to form an opinion about the situation?
 4. Am I allowing my assumptions to form an opinion about the situation?

Judges should be cognizant of the fact that implicit biases can arise in CINC cases. For example, this might happen when a particular family is known in the community due to prior criminal or DCFS involvement (i.e., “Here comes another Jones child”). However, it is incumbent on the system to ensure that each case is examined for the specific issues arising at this time with this child regarding these parents. The issue is not the child’s affiliation but whether the child is currently safe or unsafe, and what type of safety plan is needed if the child is unsafe. Assumptions are sometimes made when a parent is receiving medical-assisted drug-treatment, such as suboxone or methadone. For example, some may not approve if a parent has a dependence on such treatment. But the assessment should stay focused on whether these facts affect the safety of the child. See Child Welfare Assessment and Decision Making Model (CWADM) Section 11. There are biases that we all have related to race and class. Indeed, a notable amount of research has documented the over-representation of certain ethnic and racial populations, including African Americans and Native Americans, in the child welfare system compared to their representation in the general population. The judge’s role is to question the removal decision when there is an appearance of bias or assumption in the decision. Otherwise, the family is not being accorded due process, and the system fails the family.³⁰

- **Sanctions Regarding Reasonable Efforts:** If DCFS did not make reasonable efforts to prevent or eliminate the need for the child’s removal, the court may impose sanctions pursuant to Article 712 as it deems appropriate.
- **Court Can Still Remove:** Even if DCFS’s efforts have not been reasonable, the court may still find that the child’s removal is necessary and make other Instantaner findings and orders.

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- **REASONABLE EFFORTS WERE NOT REQUIRED:** Reasonable efforts to prevent or eliminate the child’s removal from the home were not required; clearly articulate in the Order the reason(s) why reasonable efforts were found not to be required.
 - Per Article 626, DCFS shall be deemed to have made reasonable efforts if DCFS’s first contact with the family occurred during an emergency in which the child could not safely remain at home even with reasonable in-home services provided to the family.

 **PRACTICE TIPS:**

- **Emergency Circumstances:** If DCFS asserts that emergency circumstances precluded reasonable efforts to prevent or eliminate the need for removal, the judge should require DCFS to articulate the immediate danger the child is in and/or the particular circumstances of the case that are preventing DCFS from making reasonable efforts. The emergency exception should only be used in unavoidable circumstances.

³⁰ See Child Welfare Information Gateway. (2016). Racial disproportionality and disparity in child welfare, Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau, https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf; Ellis, Krista. “Race and Poverty Bias in the Child Welfare System: Strategies for Child Welfare Practitioners.” ABA Child Practice Today. December 17, 2019, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/race-and-poverty-bias-in-the-child-welfare-system---strategies-f/.

- **Examples of Emergency Circumstances:** The child was in substantial immediate danger in the parent's or caretaker's care; the parents or caretakers are in jail, violated or refused to enter into an in-home safety plan, violated an ISPO or PO, whereabouts are unknown, committed or attempted to murder another child of the parent or any other child, subjected the child to egregious conduct or conditions (including any of the grounds for termination of parental rights pursuant to Article 1015), committed a felony that resulted in serious bodily injury to the child, or any other child; and/or the children have been abandoned, tortured, experienced chronic sexual abuse, etc.

(2) RULING OPTIONS:

a. DENY:

- **Not Necessary:** The court shall issue an order denying the request for removal and provisional custody if it finds:
 - The emergency removal is not necessary to secure the child's protection; OR
 - There are no reasonable grounds, pursuant to Article 606(A), to believe the child is in need of care.

▣ PRACTICE TIP:

- **Instanter Safety Plan Order (ISPO):** If the court finds that a removal is not necessary, DCFS may then request an ISPO, if appropriate.

b. GRANT:

- **Necessary:** The court shall issue an order granting the request for removal and provisional custody if it finds:
 - The emergency removal is necessary to secure the child's protection and there are reasonable grounds, pursuant to Article 606(A), to believe the child is in need of care; AND
 - The continuation of the child in his/her home is contrary to the child's health, safety, and welfare and temporary removal is in the best interest of the child.
- **The Order shall:**
 - Include findings of fact supporting the necessity of each child's removal;
 - Order removal of the child from his/her parents' custody;
 - Order the child be placed in the provisional custody of a suitable relative or individual or the State through DCFS; AND
 - Include a safety plan in the order if provisional custody is granted to a suitable relative or individual that sets forth conditions of contact with the parents, caretakers, and/or other third parties and orders that the provisional custodian(s) adhere to the conditions of the safety plan.
- **Priorities of Placement Outlined in Article 622:** Placement must be in the least restrictive and most appropriate setting with the health, safety, and best interest of the child being the paramount concern. Per Article 622, unless the best interest of the child requires a different placement, a child who appears to be a child in need of care and whose immediate removal is necessary for his/her protection from further abuse or neglect shall be placed, pending the CCH, in accordance with the following priorities:
 - 1. Suitable Relative with Whom Child Has Been Living:**
 - In the home of a suitable relative who is of the age of majority and with whom the child has been living in a wholesome and stable environment if the relative is willing and able to continue to offer such environment for the child pending the timely filing of the CINC Petition and Adjudication. The relative must also agree to the conditions of the safety plan, which includes the conditions of contact with parents, caretakers, and/or other third parties.
 - 2. Suitable Relative Willing to Offer Stable Home:**
 - In the home of a suitable relative who is of the age of majority if the relative is willing and able to offer a wholesome and stable environment for the child pending the timely filing of the CINC Petition and Adjudication. The relative must also agree to the conditions of the safety plan, which includes the conditions of contact with parents, caretakers, and/or other third parties.

3. Suitable Individual Willing to Offer Stable Home:

- In the home of a suitable individual who is of the age of majority if he/she is willing and able to offer a wholesome and stable environment for the child pending the timely filing of the CINC Petition and Adjudication. The individual must also agree to the conditions of the safety plan, which includes the conditions of contact with parents, caretakers, and/or other third parties. (For example, family friend, fictive kin, someone associated with the family like a teacher or coach, etc.).

HELPFUL GUIDANCE:

- **Safety Plan Order if Child Placed with Suitable Relative or Individual:** If the court grants provisional custody to a suitable relative or individual, the court shall include a safety plan in the order that sets forth conditions of contact with parents, caretakers, and/or other third parties and orders that the provisional custodian adhere to the conditions of the safety plan.
- **Definition of Relatives:** Article 603(20) defines “relative” as an individual with whom the child has established a significant relationship by blood, adoption, or affinity. Affinity means a relationship by marriage.
- **Preference to Relatives Per Federal Law:** For States to receive funding for foster care and adoption assistance, Federal law under Title IV-E of the Social Security Act requires that States “consider giving preference to an adult relative over a nonrelated caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards.”³¹ Per the Fostering Connections to Success and Increasing Adoptions Act, within 30 days following the removal of the child and any time following those 30 days that a relative is identified, DCFS is required to contact all known adult relatives of the child and to inform them about placement and permanency possibilities for the child. Title IV-E of the Social Security Act also requires all States to exercise due diligence to identify and provide notice to all grandparents, all parents of a sibling of the child, where such parent has legal custody of the sibling, and other adult relatives of the child (including any other adult relatives suggested by the parents) that (1) the child has been or is being removed from the custody of his/her parents; (2) the options the relative has to participate in the care and placement of the child; and (3) the requirements to become a foster parent to the child. These Federal laws are based on evidence that placement with relatives maintains the child’s connections with his/her family, and children generally fare better in many child well-being factors when placed with a relative.³²
- **DCFS Policy Regarding Contacting Relatives:** DCFS policy requires DCFS to exercise due diligence to identify and provide notice to the following relatives within the first 10 days of a child entering foster care and not later than 30 days: all adult grandparents; all parents of a sibling of the child, where such parent has legal custody of such sibling; and other adult relatives of the child (including any other adult relatives suggested by the parents). The DCFS worker is supposed to mail a letter to notify all identified adult relatives that their relative has entered foster care. One exception would be documented proof of domestic or family violence by the relative, which would jeopardize the safety of the child in DCFS custody.
- **Suitable Individuals and Cultural Considerations:** The court can also consider granting provisional custody of the child to individuals with whom the child has a significant relationship (also referred to as “fictive kin,” “suitable persons,” or “suitable individuals”). These are individuals who are not related by blood, marriage, or adoption to the child but could be close family friends or someone the child considers family. It is important to consider the child’s culture, heritage or customs, traditions, religion, etc., in determining placement and custody options. For example, some children may call a close friend their “auntie” even though they are not blood related. However, the auntie may be the best placement for the child but overlooked if there is no thorough inquiry.

³¹ 42 U.S.C. § 671(a)(29).

³² See Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>; Center on Children and the Law. (2016) Judicial Tip Sheet: Kin First. Washington, DC: American Bar Association, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/july-2016/judicial-tip-sheet-kin-first/; Issue Brief, Strong Families (2019) Why Should child protection agencies adopt a kin-first approach? Casey Family Programs, <https://www.casey.org/kin-first-approach/>; National Conference of State Legislatures. (2019) The Child Welfare Placement Continuum: What’s Best for Children?, <https://www.ncsl.org/research/human-services/the-child-welfare-placement-continuum-what-s-best-for-children.aspx>; Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/placement.pdf>.

- **Identifying Potential Caregivers:** See [Appendices Benchbook Section 12](#) for [Family Connection Form](#) and [Circle of Influence Form](#) DCFS uses with children and parents to help identify potential caregivers. Also, some attorneys create “Family Trees” to help identify potential caregivers.
- **Parents of Half-Siblings:** If there are half-siblings, the court should consider granting custody of the child to his/her half-sibling’s parents if appropriate and safe to do so. The half-sibling’s parents may already have a relationship with the child, but even if not, that parent may be willing to take custody to keep the siblings together.³³
- **Home Studies and Background Checks and Clearances:** DCFS policy does not support requesting custody to a relative or individual unless a home study has been conducted, including a child welfare background clearance and criminal background check. In most circumstances, DCFS will not have sufficient time to conduct a comprehensive home study to recommend a provisional custody for the Instanter. However, the judge can order DCFS to initiate child welfare background clearance, criminal background check, assessment of home or home study, foster care certification, and/or the Interstate Compact on the Placement of Children (ICPC) on potential caregivers as needed.
- **Financial Support:** Relatives and other individuals who are granted custody of the child may be eligible for financial support, for example, through the Kinship Care Subsidy Program (KCSP), Supplemental Nutrition Assistance Program (SNAP), Family Independence Temporary Assistance Program (FITAP), and/or Child Support Program (CSP). If one or both parents of the child is deceased, the caregiver may also be eligible for survivor benefits owed to the child. The caregiver may also be eligible to receive the child’s disability benefits (if the child is entitled to them).³⁴

4. State Custody: Through DCFS (foster care).

PRACTICE TIPS:

- **Foster Care is the Safety Plan of Last Resort:** Placing a child in State custody (i.e., foster care) is child welfare’s most drastic and most protective safety intervention. It should be a last resort for State agencies and courts charged with protecting children from harm.³⁵ The court should hold DCFS and parties accountable to seek all other alternatives for the child before placing or continuing the child in DCFS custody.³⁶
- **Placement with Suitable Relative or Individual:** If the court decides not to grant custody to a suitable relative or individual, DCFS can still place the child with a relative or fictive kin and has a duty to assess such individuals for placement to meet Federal and State law with regard to prioritizing placements with relatives or fictive kin.
- **Placement and Visitation with Siblings:** Placing siblings together should be a priority. If siblings will be removed from their home, the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) requires that DCFS make reasonable efforts to place siblings together unless DCFS documents that such a joint placement would be contrary to the safety or well-being of any of the siblings. Although these reasonable efforts findings need not be reflected in the Instanter Order, they are nevertheless critical to the well-being of the children in the case. In the case of siblings removed from their home who are not so jointly placed, Fostering Connections requires that DCFS provide for frequent visitation or other ongoing interaction between the siblings unless DCFS documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.³⁷ Thus, courts should require DCFS to show evidence at the CCH that such efforts were made and at other relevant stages of the CINC proceeding.

³³ See Child Welfare Information Gateway. (2019). Sibling issues in foster care and adoption. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/siblingissues.pdf>.

³⁴ See <http://dcfs.louisiana.gov/page/grandparent-relative-caregiver> for more information. DCFS has legal and custodial information available on their website for kinship caregivers: <http://dcfs.louisiana.gov/page/kinship-caregivers-legal-and-custodial-information-fact-sheets>.

³⁵ See Church, Christopher. “Unnecessary Removals: The Most Unjust Adverse Childhood Experience.” Children’s Bureau Express. October 2019, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=210§ionid=2&articleid=5428>; Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/placement.pdf>; Child Welfare Information Gateway. (2020). Court hearings for the permanent placement of children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/planning.pdf>.

³⁶ Id.

³⁷ See 42 U.S.C. § 671(a)(31)(A) and 42 U.S.C. § 671(a)(31)(B).

- **Sibling-Type Relationship:** Judges should also be cognizant that a child may have a sibling-type relationship and bond with another child that is not a biological sibling but who is just as significant to the child.
- **Court's Authority Concerning Placement:** While the court has the authority to determine the custody of the child (i.e., grant provisional custody to a suitable relative or individual or DCFS) if the court grants custody of the child to DCFS, it has no authority to order a specific placement of the child (i.e., foster parents the child will be placed with by DCFS). However, the court has authority after a contradictory hearing and best interest finding to disapprove of placement chosen by DCFS per Article 672(A)(2). For example, after a contradictory hearing, the court could determine that the placement chosen by DCFS is not in the child's best interest if the child is not placed with his/her siblings.

• **OVERALL GUIDANCE:**

- **DCFS Recommendation:** Sometimes, DCFS is not able to recommend custody to a relative or individual in the request for the Instanter Order for policy reasons, which may not be safety related. Courts should nevertheless grant custody in the best interest of the child in accordance with the priorities set forth in Article 622, and based on the evidence presented.
- **Custody to One Parent:** The child can be returned to the custody of one parent even though it is anticipated that a CINC Petition will still be filed. See *State ex rel. P.D.J., 200 So.3d 916* (La. App. 2016) where the court says: “La. Ch. C. art. 627 states that, following a hearing, the court may return the child to the parents or, in accordance with La. Ch. C. art. 622 dealing with placement of children pending a CCH, may place the child in the custody of a suitable relative, other suitable individual, or the DCFS. In this case, the juvenile court determined that the children should not be returned to the mother at that point, but that placement with the father was suitable. Contrary to the arguments made by the mother, the placement of custody with the father did not end the CINC proceedings. It was merely a step in the process.” In these cases, the judge can deny the Instanter Order of Removal and either issue an ISPO (upon request of DCFS) that restricts the other parent’s access to the child and later grant custody to that parent at Disposition or a PO giving temporary custody to that parent (however, this is time limited).
- **Appropriateness of Custody:** The court should consider whether the custodian will be able to meet the needs of the child based on the child’s age, development, history of trauma, heritage or customs, culture, language, and medical, emotional, and behavioral needs.

F. FURTHER ORDERS

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

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

(1) APPOINTMENTS:

- a. **Attorneys for Child:**
 - Order that the program approved to represent the child in that jurisdiction be appointed to represent the child in the CINC proceedings; AND
 - Order notice of appointment and service of a copy of the pleadings be made to the program. The court should arrange for copies to be emailed as soon as possible and in advance of service so that they can begin work as quickly as possible.
- b. **Attorneys for Parents:**³⁸
 - Best practice is for the court to order that the parent be referred to the Indigent Parent Representation Program (or local Public Defender Office) to provide representation for the parent at the CSPH³⁹ or CCH; AND
 - Order notice of appointment and service of a copy of the pleadings be made to the office. The court should arrange for copies to be emailed as soon as possible and in advance of service so that they can begin work as quickly as possible.

³⁸ See La. Ch. C. arts. 575 and 608.

³⁹ La. Ch. C. art. 608 references parents’ right to counsel at the CCH and all stages of the proceedings thereafter. However, due process also attaches with the issuance of an ISPO, and arguably extends the same right to counsel to parents and children in these earlier proceedings due to the introduction of DCFS and the courts in the family as well as the parents’ loss of authority to place the child with any individual or institution except DCFS until the safety plan is terminated. See La. Ch. C. art. 619.

PRACTICE TIP:

- **Early Appointment:** Parents and children have a right to representation in CINC cases. Best practice is to make appointments as early as possible to enable work to begin immediately. If the court staff faxes or emails copies of the Instanter Order and Affidavit to the local child representation program and Indigent Parent Representation Program as soon as feasible, the attorneys will be better prepared for the hearing and the programs can also determine if any conflict attorneys will be needed. This should enhance the quality of legal representation and fairness to families while also helping to avoid unnecessary delays.

C. CASA:

- Order that the local CASA program be appointed, subject to the assignment of a qualified CASA volunteer, to advocate for the best interest of the child in the proceedings and that the program be provided notice of appointment and served with a copy of the pleadings.

HELPFUL GUIDANCE:

- **Role:** CASA volunteers are sworn officers of the court appointed by judges to advocate for the best interests of children in CINC cases. CASA volunteers visit with children to get to know them and find out important information, such as how they are doing in the placement, what kind of services are needed, and how school is going. The CASA volunteer may also talk to professionals working on the case, the child's family or foster caregivers, teachers, and others. They can review important documents relating to the case, such as summaries on the parent and/or child's progress. The CASA volunteer prepares reports for the court about what they have learned about the child. In the report, they make independent recommendations to the court about what should happen in the case to have the best outcome for the child—to keep the child safe and promote the child's well-being. Unlike the children's attorney, the CASA volunteer does not advocate for the wishes of the child unless those wishes are in the child's best interest. The CASA volunteer can also monitor the case plan and advocate to make sure the plan is followed and serves the best interests of the child. The court appoints the local CASA program, subject to the assignment of a qualified volunteer. If available, then a CASA volunteer will be assigned to the case. The Children's Code requires the CASA program to be established in compliance with the National CASA Association standards and the volunteer to be trained in accordance with those standards.
- **Presence at Hearings:** For confidentiality reasons, CASA volunteers may only be present at hearings regarding the child if they are appointed by the court. CASA volunteers can provide useful information about the child to help the court make a sound decision about the child's future.
- **Instanter Safety Plan Order (ISPO):** CASA may be appointed in an ISPO even though the child is not removed from the home. In fact, the CASA volunteer's advocacy for the child may help prevent the child's future removal from his/her home. The local CASA program will determine if they have enough CASA volunteers to advocate for the child.

(4) DCFS FURNISH REPORT OF INVESTIGATION: Order DCFS to furnish a report of its investigation to the office of the DA within 15 days of the date of the issuance of the ISPO or date of the CCH. (Please Note: Article 615 requires that the report be furnished within 30 days, but DCFS prefers it to be furnished within 15 days).

(5) CINC PETITION NOT FILED: If the CINC Petition is not filed within 45 days of the issuance of the ISPO, the safety plan shall automatically terminate unless an extension is granted by the court based upon a showing of good cause and notice to all parties; If the CINC Petition is not filed within 30 days of the CCH, the child shall be returned to the parents unless an extension is granted by the court based upon a showing of good cause and notice to all parties.

(6) TEMPORARY RESTRAINING ORDER (TRO) AND PROTECTIVE ORDER (PO): Issue a TRO/PO to protect a child and/or adult in addition to or instead of an ISPO or Instanter Order For Removal to help keep the child safely in the home and/or manage the safety and risk concerns or threats. See [Temporary Restraining Order \(TRO\) and Protective Order \(PO\) Benchbook Section 2](#).

(7) SET MATTER FOR CONTINUED SAFETY PLAN HEARING (CSPH) OR CONTINUED CUSTODY HEARING (CCH):

- Clerk to notify all parties of the date, time, and location of the hearing and that all parties of interest appear, which shall be set within 3 days of the issuance of the ISPO for the CSPH or after the child’s removal or entry into custody for the CCH;⁴⁰
- Sheriff’s Office to serve parents with a summons commanding them to appear at court for the hearing;
- DCFS shall provide notice to the parents of the date, time, and location of the hearing as well as the nature of the allegations;
- Notice of the CSPH or CCH be made on the child and parent representation programs and CASA (if appointed);
- For CCH, DCFS shall provide notice to any foster caregiver⁴¹ providing care for the child of the date, time, and location of the CCH Hearing and that the recipient has the right to attend and be heard; AND
- Arrangements for any parent, who is incarcerated, be made to attend the hearing, either in person or remotely.

☰ PRACTICE TIPS:

- **Continued Safety Plan Hearing (CSPH) - Not Required if Parents Agree to Safety Plan:** If the court orders an ISPO and the parents are in agreement with the safety plan, the court does not have to order or hold CSPH. Per Article 624, the parents’ signature on the safety plan shall constitute evidence of their agreement with the plan. Whether both parents of the child must agree to the safety plan to preclude ordering a CSPH depends on the facts of the case. However, to protect the safety of the child and the due process rights of the parents, the CSPH should be held if both parents do not agree to the safety plan.
- **Continued Safety Plan Hearing (CSPH) - Recommend Holding:** While the CSPH is not required if the parents agree with the safety plan, best practice is to hold a CSPH to protect the child’s safety and the parents’ due process rights and ensure parties and the safety monitor understand the terms and conditions of the safety plan. If the CSPH will not be held, the court should include the advisements from Article 625 in the ISPO order.
- **Include Other Agencies:** Coordinating services with the Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful, and the court may want to consider having one or more represented at the CSPH or CCH. This could be especially critical for youth who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated services and supports.
- **Incarcerated:** To ensure the attendance of any parent who is incarcerated at the CSPH or CCH, a writ or motion should be filed and an order issued by the court and served on the warden or administrator of the facility prior to the CSPH or CCH. Service should be made in advance of the hearing to afford time for the facility to arrange for transportation of the parent to court (or video conferencing where the parent’s physical attendance at the hearing is not possible).

• OVERALL GUIDANCE:

- **ESSENTIAL JUDICIAL FUNCTION - ASSISTANCE SERVICES AND SPECIAL ACCOMMODATIONS:** Under State and Federal law, the court is responsible for providing interpretation, translation, and/or language assistance services for parties to CINC hearings and/or reasonable accommodations for parties to CINC hearings with disabilities. When the court appoints counsel for indigent persons, it is also responsible for appointing and paying for a qualified interpreter or translator for indigent persons with these needs to assist in communication with counsel in all phases of the preparation and presentation of the case.⁴² The court should consider these obligations in preparation for the CSPH or CCH. There must be ample time for legal interpreters to review pertinent legal documents with the party prior to the court proceeding⁴³ Interpreters must be familiar with the case-related details to provide accurate, meaningful, and effective interpretation.⁴⁴

⁴⁰ In computing a period of time prescribed by law, the date of the event after which the period begins to run is not included; the last day of the period is included, but if a legal holiday—including Saturdays and Sundays—then the period runs until the end of the next day which is not a legal holiday. La. Ch. C. art. 114.

⁴¹ See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

⁴² See C.C.P. Art. 192.2; La. R.S. § 46:2364; 42 U.S.C. § 3711; 28 U.S.C. § 604(a)(14), (15), and (16), § 1827, and § 1828; see also https://www.lasc.org/language_access and https://www.lasc.org/District_Court_Rules?p=TitleI.

⁴³ See National Consortium of Interpreter Education Centers. (2009). Best practices American Sign Language and English interpretation within legal settings. U.S. Department of Education, Rehabilitation Services CFDA #84.160A and B, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind, <http://www.interpretereducation.org>

⁴⁴ Id.

G. CASE MANAGEMENT

- Identify tasks to be accomplished by the court and/or various parties for the CSPH or CCH.
- An attorney or the court is responsible for the completion of the Order. 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](#).

H. POSSIBLE NEXT STEPS

ARTICLES 622, 628-30, 631-2

- (1) TERMINATION OF INSTANTER SAFETY PLAN ORDER (ISPO):** If the child is still in the home and an ISPO has been issued, a CINC Petition requesting that the child be adjudicated in need of care shall be filed within 45 days of the issuance of the ISPO.
- **Automatically Terminated:** If the CINC Petition is not timely filed, the ISPO shall automatically terminate.
 - **Extension:** Upon showing of good cause and notice to all parties, the court may grant, deny, or restrict a requested extension of time for filing the CINC Petition in accordance with the best interests of the child. If an extension is granted, the court shall issue a written order reciting the particular facts justifying the extension.
- (2) TERMINATION OF INSTANTER ORDER FOR REMOVAL:** If a child is continued in custody prior to Adjudication, a CINC Petition requesting that the child be adjudicated in need of care shall be filed within 30 days of the CCH.
- **Automatically Terminated:** If the CINC Petition is not timely filed, the Instanter Order shall automatically terminate, and the child shall be returned to the parents.
 - **Extension:** Upon showing of good cause and notice to all parties, the court may grant, deny, or restrict a requested extension of the time for filing the CINC Petition in accordance with the best interests of the child. If an extension is granted, the court shall issue a written order reciting the particular facts justifying the extension.
- (3) INFORMAL ADJUSTMENT AGREEMENT (IAA):** Before filing a CINC Petition, the court or DA may authorize an IAA. If the child is in the provisional custody of DCFS, with the consent of DCFS, the court or DA may authorize an IAA.

 **PRACTICE TIP:**

- **Alternatives to Removal:** An IAA may be used whether the child is in DCFS custody or not, and is a viable alternative to removal. IAA's are routinely used in some parishes when a CINC case has been initiated by an ISPO. See [Informal Adjustment Agreement \(IAA\) Benchbook Section 1](#) for more information.

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- (4) REFER MATTER TO FAMILY IN NEED OF SERVICES (FINS) OFFICER:** Before filing a CINC Petition, the court or DA may refer the matter to a FINS intake officer as a FINS case. See Articles 743 *et seq.*

 **PRACTICE TIP:**

- **Alternative to Removal:** If appropriate, FINS may also be a viable alternative to keeping the youth out of foster care and providing services to the family.

- (5) PLACEMENT PENDING A CONTINUED CUSTODY HEARING:** Prior to the CCH, a suitable relative or individual may seek and obtain an ex parte⁴⁵ court order to take provisional custody of the child pending the CCH. Unless the best interests of the child require a different placement, the child shall be placed in accordance with the priorities set forth in Article 622.
- (6) PETITION FOR PROVISIONAL OR PERMANENT CUSTODY:** At any time prior to Adjudication, any person, including a relative of the child, may Petition the court for the provisional or permanent legal custody of the child.

⁴⁵ Ex Parte, Black's Law Dictionary (11th ed. 2019) ("Done or made at the instance and for the benefit of one party only, and without notice to, or argument by, anyone having an adverse interest; of, relating to, or involving court action taken or received by one party without notice to the other, usu. for temporary or emergency relief.").



APPENDIX

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](#).

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

AFFIDAVIT IN SUPPORT OF INSTANTER SAFETY PLAN ORDER

BEFORE ME, the undersigned authority, personally came and appeared, _____, who being duly sworn, did depose and state:

I.

That affiant is an employee of the Department of Children and Family Services in the Parish of _____, State of Louisiana;

II.

That affiant's responsibilities include investigating reports of possible child abuse and/or neglect and/or of supervising families;

III.

That on the _____ day of _____, 20_____, a report of alleged

was received by said office concerning the following child(ren):

_____ Date of Birth: ____/____/____

Race: _____ Gender: _____;

_____ Date of Birth: ____/____/____

Race: _____ Gender: _____;

_____ Date of Birth: ____/____/____

Race: _____ Gender: _____;

IV.

That _____ is a parent of said child(ren), whose date of birth is _____, and current address, email address, and telephone number are _____;

That _____ is a parent of said child(ren), whose date of birth is _____, and current address, email address, and telephone number are _____;

In the event that the parent(s) was not caring for the child(ren), the caretaker(s) is _____, who does does not have legal custody of said child(ren), and the caretaker's current address, email address, date of birth, and telephone number are _____;

The safety monitor(s) are: _____, their telephone number is _____, and their relationship to the family is: _____;

V.

That, as a result of that report, affiant conducted an initial investigation and is continuing in that investigation;

VI.

That during the course of said investigation, affiant has acquired personal knowledge of the following facts: _____

_____;

VII.

That there is good cause to believe that said child(ren) is/are vulnerable to the identified threats of danger and cannot adequately be protected, without the implementation of a safety plan, due to the following diminished parent/caretaker protective capacities, if known, and threats of danger that the child is vulnerable to: _____

_____;

For the reasons stated above, the affiant requests an Instanter Safety Plan Order as an alternative to removal of the child(ren) and to ensure the child(ren)'s safety while in the home, provided the family will comply with the conditions set forth in the order.

VIII.

There is good cause to believe that the child(ren)'s health and safety can be safeguarded without removal, if certain safety plan conditions are ordered pending the completion of this investigation or filing of reports to the District Attorney's Office, and the resolution of this case, and that an Instanter Safety Plan Order should issue herein ordering compliance with the following conditions:

_____;

IX.

(Please select the applicable checkboxes)

That the above conditions have been fully discussed with and agreed upon by the parent(s), _____, and safety monitor.

The attached Safety Plan, signed by the parent(s) and safety monitor, in the presence of _____, a Department of Children and Family Service employee(s), is evidence of the consent of the parent(s) to the Safety Plan. *(OR)*

That the parent(s), _____, have not signed or agreed to the conditions of the safety plan.

X.

The family provided the following information regarding interpretation, translation, and/or language assistance needs and/or accommodation needs for physical, mental and/or other conditions:

XI.

Pursuant to Ch. C. art. 620, all information relayed and attested to herein, is the same information previously relayed orally to the Court if an Oral Instant Order was requested.

AFFIANT

ADDRESS

CITY, STATE, ZIP

PHONE NUMBER

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____,

20_____, in the Parish of _____, Louisiana.

_____, NOTARY

(Bar Roll # or Notary Public #)

My Commission expires _____.

STATE OF LOUISIANA
IN THE INTEREST OF

DOCKET NUMBER: _____

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

INSTANTER SAFETY PLAN ORDER

THE COURT, considering the Affidavit(s) attached hereto and executed by _____ on the _____ day of _____, 20 _____, and being of the opinion and confirming that at present or at the time of the issuance of the Oral Instanter Safety Plan Order, and continuing to be present for the following child(ren), _____;
and parent(s), _____,
/caretaker(s), _____.

I. REASONABLE GROUNDS FINDINGS

THE COURT FINDS that there are: *(Please check the applicable box for each child)*

reasonable grounds to believe the child(ren), _____, is in need of care in accordance with Article 606(A) _____ (1-8) and that a safety plan is necessary to secure the protection of the child(ren) while remaining in their home;

The persons subject to the safety plan include:

the parent(s), _____,

and the safety monitor(s), _____,

and their relationship to the family is _____.

not reasonable grounds to believe the child(ren), _____, is in need of care and/or a safety plan is not necessary to secure the protection of the child(ren).

reasonable grounds to believe the child(ren), _____, is in need of care and that a safety plan is not sufficient to secure the protection of the child(ren), but that the continuation of the

child(ren) in the home of their parents/caretakers would be contrary to their health, safety, and welfare and temporary removal of the child(ren) from their parents/caretakers is in their best interest.

II. FINDINGS AND RULINGS

Based upon the findings above:

IT IS ORDERED BY THE COURT that: *(Please check the applicable box for each child)*

the following safety plan conditions are necessary for the safety and protection of the child(ren)'s, _____, health and safety while remaining in their home, pending the timely filing of the Child in Need of Care Petition and Adjudication and that the parent(s) and safety monitor comply with these conditions:

- (1) _____
- (2) _____
- (3) _____
- (4) _____
- (5) _____

the request for an Instanter Safety Plan is denied for child(ren)_____. The Court further orders (the case be dismissed, an Instanter Order for Removal or Protective Order be issued, etc.):

_____.

III. FURTHER ORDERS

IT IS FURTHER ORDERED BY THE COURT that the Oral Instanter Safety Plan Order, issued at _____ o'clock ____ . m., on the _____ day of _____, 20 _____, is hereby confirmed;

IT IS FURTHER ORDERED BY THE COURT that _____ be and is hereby appointed to represent the child(ren) in these proceedings and that said program shall be given notice of appointment and served with a signed copy of the pleadings filed herein;

IT IS FURTHER ORDERED BY THE COURT that the parents be referred to the District _____ Public Defender Office to provide representation for the parents at the Continued Safety Plan Hearing, and such office shall be given notice of appointment and served with a signed copy of the pleadings

filed herein pending further orders of this Court;

IT IS FURTHER ORDERED, pursuant to La. Ch. C. art. 424.1, that the local CASA program be appointed, subject to the assignment of a qualified CASA volunteer, to advocate for the best interest of the child(ren) in these proceedings and that the program be given notice of appointment and served with a copy of the pleadings filed herein;

IT IS FURTHER ORDERED BY THE COURT that the **DEPARTMENT OF CHILDREN AND FAMILY SERVICES** furnish a report of its investigation to the **OFFICE OF THE DISTRICT ATTORNEY** within fifteen (15) days of the date of the Continued Safety Plan Hearing or from the date of this Order, if the parent(s) and safety monitor have signed the safety plan;

IT IS FURTHER ORDERED BY THE COURT that if the Child in Need of Care Petition is not filed within 45 days of the issuance of this Order, this Instanter Safety Plan Order will automatically terminate unless an extension is granted by the Court based upon a showing of good cause and notice to all parties;

IT IS FURTHER ORDERED BY THE COURT that the following Protective Order be issued in compliance with Article 627: _____;

IT IS FURTHER ORDERED BY THE COURT that this matter: *(Please check one of following)*

be set for a Continued Safety Plan Hearing at _____ o'clock _____ . m., on the _____ day of _____, 20 _____, and that all parties of interest are hereby ordered to appear;

IT IS FURTHER ORDERED BY THE COURT that pursuant to Ch. C. Art. 619(E) that the **DEPARTMENT OF CHILDREN AND FAMILY SERVICES** shall provide written notice to the parent(s) of the date, time, and location of the Continued Safety Plan Hearing; and, the Sheriff's Office or any peace officer is authorized to serve a summons upon parent(s) of the child(ren) to appear for the Continued Safety Plan Hearing which, if so served, shall expressly notify the parent(s) that the Court may issue a binding order in their absence if he/she fails to appear; notice of the Continued Safety Plan Hearing be made on CASA and the child and parent representation programs; and for any parent(s) incarcerated, _____ arrange for the parent(s) to attend the hearing, either in person or remotely.

not be set for a Continued Safety Plan Hearing considering that the parent(s), _____, _____, have agreed to the safety plan in accordance with Article 624(A).

THUS DONE AND SIGNED ON THIS _____ day of _____, 20_____, in
_____, Louisiana.

JUDGE

DISTRIBUTION OF NOTICE

Please serve all parties and counsel of record as follows:

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Child(ren)'s Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Assistant District Attorney/Bureau of General Counsel: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Please send notice and copy of Order as follows:

Department of Children and Family Services Staff/Representative:

Street: _____

City, State, Zip: _____

Fax Number: (____) _____

Email Address: _____

CASA: _____

Street: _____

City, State, Zip: _____

Fax Number: (____) _____

Email Address: _____

Other: _____

Role: _____

Street: _____

City, State, Zip: _____

Fax Number: (____) _____

Email Address: _____

STATE OF LOUISIANA

IN THE INTEREST OF

_____ DOB: _____

_____ DOB: _____

_____ DOB: _____

Filed: _____

DOCKET NUMBER: _____

SECTION: _____

COURT: _____

PARISH OF _____

STATE OF LOUISIANA

DEPUTY CLERK: _____

**AFFIDAVIT IN SUPPORT OF INSTANTER ORDER FOR REMOVAL AND PROVISIONAL CUSTODY
TO A SUITABLE RELATIVE OR OTHER SUITABLE INDIVIDUAL**

BEFORE ME, the undersigned authority, personally came and appeared, _____,
who being duly sworn, did depose and state:

I.

That affiant is an employee of the Department of Children and Family Services in the Parish of _____
_____, State of Louisiana;

II.

That affiant's responsibilities include investigating reports of possible child abuse and/or neglect and/or
supervising families;

That on the _____ day of _____, 20_____, a report of alleged

was received by said office concerning the following child(ren):

_____ Date of Birth: ____/____/____

Race: _____ Gender: _____;

_____ Date of Birth: ____/____/____

Race: _____ Gender: _____;

_____ Date of Birth: ____/____/____

Race: _____ Gender: _____;

III.

That _____ is a parent of said child(ren), whose date of birth is _____,
and current address, email address, and telephone number are _____
_____;

That _____ is a parent of said child(ren), whose date of birth is _____,
and current address, email address, and telephone number are _____
_____;

In the event that the parent(s) was not caring for the child(ren), the caretaker(s) is _____
_____, who does does not have legal custody of said child(ren), and the
caretaker's current address, email address, date of birth, and telephone number are _____

_____;

IV.

That, as a result of that report, affiant conducted an initial investigation and is continuing in that investigation;

V.

That during the course of said investigation, affiant has acquired personal knowledge of the following facts:

_____;

VI.

That there is good cause to believe that a safety plan, without removal, cannot control for the identified
threat(s) of danger to the child(ren), who is/are vulnerable to the threat(s) and that said child(ren) cannot adequately be
protected due to the following diminished parent/caretaker protective capacities, if known, and threats of danger that
the child is vulnerable to: _____

_____;

For the reasons stated above, the affiant believes that the continuation of the child(ren) in the home of the parents/caretakers is contrary to their health, safety, and welfare and that it is in the best interests of the child(ren) to be placed in the provisional custody of a suitable relative or other suitable individual.

VII.

(Please check one of the following)

The following preventative services and/or court interventions (Temporary Restraining Order, Protective Order, Instanter Safety Plan Order, etc.) have been offered to prevent the necessity of removal of said child(ren) to no avail: _____

_____ ; (OR)

The facts alleged above indicate that there is a substantial, immediate danger to the child(ren) herein which precludes the provision of preventative services or court interventions as an alternative to removal of said child(ren). Specifically, the Department's contact with the family was during an emergency, and preventative services would not have eliminated the need for removal pursuant to Ch. C. art. 626(C) due to: _____

_____ ;

VIII.

The family provided the following information about relatives and/or fictive kin who are available for placement of the child(ren): _____
_____ ;

The family provided the following information regarding interpretation, translation, and/or language assistance needs and/or accommodation needs for physical, mental and/or other conditions: _____

_____ ;

IX.

That there is good cause to believe that the child(ren) should be removed pending the completion of this investigation or filing of reports to the District Attorney's Office, and the resolution of this case, and that an Instanter

Order should be issued herein granting provisional custody of said child(ren) to the following suitable relative or suitable individual capable of protecting the health and safety of the child(ren): _____;

X.

The above-named relative or individual has agreed to a safety plan regarding the child(ren)'s contact with the parents or third parties as follows: _____

_____.

THEREFORE, PURSUANT TO CH. C. ART. 619, IT IS REQUESTED THAT THE CHILD(REN) SUBJECT TO THIS ORDER BE PLACED IN THE PROVISIONAL CUSTODY OF THE IDENTIFIED RELATIVE OR INDIVIDUAL.

Pursuant to Ch. C. art. 620, all information relayed and attested to herein, is the same information previously relayed orally to the Court if an Oral Instanter Order was requested.

AFFIANT

ADDRESS

CITY, STATE, ZIP

PHONE NUMBER

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 20_____, in the Parish of _____, Louisiana.

_____, NOTARY

(Bar Roll # or Notary Public #)

My Commission expires _____

STATE OF LOUISIANA
IN THE INTEREST OF

DOCKET NUMBER: _____

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

**INSTANTER ORDER FOR REMOVAL AND PROVISIONAL CUSTODY
TO A SUITABLE RELATIVE OR OTHER SUITABLE INDIVIDUAL**

THE COURT, considering the Affidavit attached hereto and executed by _____ on the _____ day of _____, 20 _____, and being of the opinion and confirming that at present or at the time of the issuance of the Oral Instanter Order, and continuing to be present for the following child(ren),

_____ and the following parent(s), _____, /caretaker(s), _____.

I. REASONABLE GROUNDS AND CONTRARY TO WELFARE FINDINGS

THE COURT FINDS that there are: *(Please check the applicable box for each child)*

reasonable grounds to believe the child(ren), _____, is in need of care in accordance with Article 606(A) _____ (1-8) and emergency removal is necessary to secure the child(ren)'s protection and the continuation of the child(ren) in the home of their parents/caretakers would be contrary to their health, safety, and welfare and temporary removal of the child(ren) from their parents/caretakers is in their best interest.

not reasonable grounds to believe the child(ren), _____, is in need of care and/or emergency removal is not necessary to secure the child(ren)'s protection.

II. REASONABLE EFFORTS FINDINGS

THE COURT FINDS that the Department: *(Please check the applicable box for each child continuing custody outside home)*

made the following reasonable efforts with the child(ren)'s health and safety as the paramount concern to prevent or eliminate the need for removal of the child(ren) and to make it possible for the child(ren) to remain with the parents/caretakers, including the following preventative services (mental health/substance abuse,

parenting, etc.) and/or court interventions (Temporary Restraining Order, Protective Order, Instant Safety Plan Order, etc.) have been offered to no avail: _____

_____.

was not required to make reasonable efforts to prevent or eliminate the need for removal of the child(ren) and to make it possible for the child(ren) to return home based on exigent circumstances articulated by the Department that the child(ren) were in substantial, immediate danger and/or the particular circumstances of the case occurred during an emergency in which the child(ren) could not safely remain at home even with reasonable in-home services provided to the family.

failed to make reasonable efforts to prevent or eliminate the need for removal of the child(ren), _____, from the home.

III. FINDINGS AND RULINGS

Based upon the findings above:

IT IS ORDERED BY THE COURT that: *(Please check the applicable box for each child)*

child(ren), _____, be hereby placed in the provisional custody of the following suitable relative(s) or suitable individual(s), _____, pending the timely filing of a Child in Need of Care Petition and Adjudication, according to the priorities outlined in Article 622 and for the purposes of placement in the least restrictive and most appropriate setting.

THE COURT FINDS that said relative(s)/individual(s) is capable of protecting the health and safety of the child(ren) and agrees to comply with the following safety plan setting forth the conditions of contact with the parent(s) and/or other third parties: _____

_____.

child(ren), _____, not be removed from the custody of parents/caretakers and that the request for an Instant Order of Provisional Custody is denied. The court further orders (e.g., the case be dismissed, Protective Order be issued, etc.): _____

_____.

IV. FURTHER ORDERS UPON GRANTING REMOVAL

IT IS FURTHER ORDERED BY THE COURT that the ORAL INSTANTER ORDER placing the child(ren), _____, in custody, issued at _____ o'clock ____ . m., on the _____ day of _____, 20 _____, is hereby confirmed;

IT IS FURTHER ORDERED BY THE COURT that _____, be and is hereby appointed to represent the child(ren) in these proceedings and that said program be given notice of appointment and served with a signed copy of the pleadings filed herein;

IT IS FURTHER ORDERED BY THE COURT that the parents be referred to the District _____ Public Defender Office to provide representation for the parents at the Continued Custody Hearing, and such office shall be given notice of appointment and served with a signed copy of the pleadings filed herein pending further orders of this Court;

IT IS FURTHER ORDERED, pursuant to La. Ch. C. art. 424.1, that the local CASA program be appointed, subject to the assignment of a qualified CASA volunteer, to advocate for the best interest of the child(ren) in these proceedings and that the program be given notice of appointment and served with a copy of the pleadings filed herein;

IT IS FURTHER ORDERED BY THE COURT that the **DEPARTMENT OF CHILDREN AND FAMILY SERVICES** furnish a report of its investigation to the **OFFICE OF THE DISTRICT ATTORNEY** within fifteen (15) days of the date of the Continued Custody Hearing;

IT IS FURTHER ORDERED that if the Child in Need of Care Petition is not filed within 30 days of the Continued Custody Hearing, unless an extension is granted by the Court based upon a showing of good cause and notice to all parties, child(ren) be returned to their parent(s);

IT IS FURTHER ORDERED BY THE COURT that the following Protective Order be issued in compliance with Article 627: _____;

IT IS FURTHER ORDERED BY THE COURT that this matter be set for a Continued Custody Hearing at _____ o'clock _____ m., on the _____ day of _____, 20 _____, and that all parties of interest are hereby ordered to appear;

IT IS FURTHER ORDERED BY THE COURT pursuant to Ch. C. Art. 619(E) that the **DEPARTMENT OF CHILDREN AND FAMILY SERVICES** shall provide written notice to the parents/caretakers of the date, time, and location of the Continued Custody Hearing including the nature of the allegations; and, the Sheriff's Office or any peace officer is authorized to serve a summons upon parents/caretakers of the child(ren) to appear for the Continued Custody Hearing which, if so served, shall expressly notify the parents/caretakers that the Court may issue a binding order in their absence if they fail to appear; notice of the Continued Custody Hearing be made on CASA and the child and parent representation programs; and for any parent(s) incarcerated, _____ arrange for the parent(s) to attend the hearing, either in person or remotely;

IT IS FURTHER ORDERED BY THE COURT pursuant to La. Ch. C. Art. 623 that the **DEPARTMENT OF CHILDREN AND FAMILY SERVICES** shall give notice to any foster parent, pre-adoptive parent, adoptive parent, and relative providing care for the child(ren) of the date, time, and location of the Continued Custody Hearing and that the recipient has the right to attend and be heard regarding the care and treatment of the child(ren);

THUS DONE AND SIGNED ON THIS _____ day of _____, 20_____, in _____, Louisiana.

JUDGE

DISTRIBUTION OF NOTICE

Please serve all parties and counsel of record as follows:

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Child(ren)'s Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Assistant District Attorney/Bureau of General Counsel: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Please send notice and copy of order as follows:

Department of Children and Family Services Staff/Representative:
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

CASA: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Other: _____
Role: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

STATE OF LOUISIANA

IN THE INTEREST OF

_____ DOB: _____

_____ DOB: _____

_____ DOB: _____

Filed: _____

DOCKET NUMBER: _____

SECTION: _____

COURT: _____

PARISH OF _____

STATE OF LOUISIANA

DEPUTY CLERK: _____

**AFFIDAVIT IN SUPPORT OF INSTANTER ORDER FOR REMOVAL AND PROVISIONAL CUSTODY
TO THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

BEFORE ME, the undersigned authority, personally came and appeared, _____, who being duly sworn, did depose and state:

I.

That affiant is an employee of the Department of Children and Family Services in the Parish of _____, State of Louisiana;

II.

That affiant's responsibilities include investigating reports of possible child abuse and/or neglect and/or of supervising families;

That on the _____ day of _____, 20_____, a report of alleged _____

was received by said office concerning the following child(ren):

_____ Date of Birth: ____/____/____

Race: _____ Gender: _____;

_____ Date of Birth: ____/____/____

Race: _____ Gender: _____;

_____ Date of Birth: ____/____/____

Race: _____ Gender: _____;

III.

That _____ is a parent of said child(ren), whose date of birth is _____,
and current address, email address, and telephone number are _____
_____;

That _____ is a parent of said child(ren), whose date of birth is _____,
and current address, email address, and telephone number are _____
_____;

In the event that the parent(s) was not caring for the child(ren), the caretaker(s) is _____
_____, who does does not have legal custody of said child(ren), and the
caretaker's current address, email address, date of birth, and telephone number are _____

_____;

IV.

That, as a result of that report, affiant conducted an initial investigation and is continuing in that investigation;

V.

That during the course of said investigation, affiant has acquired personal knowledge of the following facts:

_____;

VI.

That there is good cause to believe that a safety plan, without removal, cannot control for the identified
threat(s) of danger to the child(ren), who is/are vulnerable to the threat(s) and that said child(ren) cannot adequately be
protected due to the following diminished parent/caretaker protective capacities, if known, and threats of danger that
the child is vulnerable to: _____

_____;

For the reasons stated above, the affiant believes that the continuation of the child(ren) in the home of the parents/caretakers is contrary to their health, safety, and welfare and that it is in the best interests of the child(ren) to be placed in the temporary custody of the State of Louisiana through the Department of Children and Family Services.

VII.

(Please check one of the following)

The following preventative services and/or court interventions (Temporary Restraining Order, Protective Order, Instanter Safety Plan Order, etc.) have been offered to prevent the necessity of removal of said child(ren) to no avail: _____

_____ ; (OR)

The facts alleged above indicate that there is a substantial, immediate danger to the child(ren) herein which precludes the provision of preventative services or court interventions as an alternative to removal of said child(ren). Specifically, the Department's contact with the family was during an emergency, and preventative services would not have eliminated the need for removal pursuant to Ch. C. art. 626(C) due to: _____

_____ ;

VIII.

The family provided the following information about relatives and/or fictive kin who are available for placement of the child(ren): _____
_____ ;

The family provided the following information regarding interpretation, translation, and/or language assistance needs and/or accommodation needs for physical, mental and/or other conditions: _____

_____ ;

IX.

That there is good cause to believe that the child(ren) should be removed pending the completion of this investigation or filing of reports to the District Attorney's Office, and the resolution of this case, and that an Instanter

Order should be issued herein granting provisional custody of said child(ren) to the **STATE OF LOUISIANA** through the **DEPARTMENT OF CHILDREN AND FAMILY SERVICES**.

X.

That should an instanter order issue herein, the necessary steps will be taken to ensure the protection of the child(ren) in the least restrictive setting as soon as possible, to place the child(ren) together, if possible, to do so, and, if not, to afford reasonable contact and visitation with each other. THEREFORE, PURSUANT TO CH. C. ART. 619, IT IS REQUESTED THAT THE ABOVE-NAMED CHILD(REN) BE PLACED IN THE CUSTODY OF THE **STATE OF LOUISIANA** THROUGH THE **DEPARTMENT OF CHILDREN AND FAMILY SERVICES**.

Pursuant to Ch. C. art. 620, all information relayed and attested to herein, is the same information previously relayed orally to the Court if an Oral Instanter Order was requested.

AFFIANT

ADDRESS

CITY, STATE, ZIP

PHONE NUMBER

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 20 _____, in the

Parish of _____, Louisiana.

_____, NOTARY

(Bar Roll # or Notary Public #)

My Commission expires _____.

STATE OF LOUISIANA
IN THE INTEREST OF

DOCKET NUMBER: _____

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

**INSTANTER ORDER FOR REMOVAL AND PROVISIONAL CUSTODY
TO THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

THE COURT, considering the Affidavit attached hereto and executed by _____ on the _____ day of _____, 20 _____, and being of the opinion and confirming that at present or at the time of the issuance of the Oral Instanter Order, and continuing to be present for the following child(ren),

_____ and the following parent(s), _____, /caretaker(s), _____.

I. REASONABLE GROUNDS AND CONTRARY TO WELFARE FINDINGS

THE COURT FINDS that there are: *(Please check the applicable box for each child)*

reasonable grounds to believe the child(ren), _____, is in need of care in accordance with Article 606(A) _____ (1-8) and emergency removal is necessary to secure the child(ren)'s protection and the continuation of the child(ren) in the home of their parents/caretakers would be contrary to their health, safety, and welfare and temporary removal of the child(ren) from their parents/caretakers is in their best interest.

not reasonable grounds to believe the child(ren), _____, is in need of care and/or emergency removal is not necessary to secure the child(ren)'s protection.

II. REASONABLE EFFORTS FINDINGS

THE COURT FINDS that the Department: *(Please check the applicable box for each child continuing custody outside home)*

made the following reasonable efforts with the child(ren)'s health and safety as the paramount concern to prevent or eliminate the need for removal of the child(ren) and to make it possible for the child(ren) to remain

with the parents/caretakers, including the following preventative services (mental health/substance abuse, parenting, etc.) and/or Court interventions (Temporary Restraining Order, Protective Order, Instant Safety Plan Order, etc.) have been offered to no avail: _____

_____.

was not required to make reasonable efforts to prevent or eliminate the need for removal of the child(ren) and to make it possible for the child(ren) to return home based on exigent circumstances articulated by the Department that the child(ren) were in substantial, immediate danger and/or the particular circumstances of the case occurred during an emergency in which the child(ren) could not safely remain at home even with reasonable in-home services provided to the family.

failed to make reasonable efforts to prevent or eliminate the need for removal of the child(ren), _____, from the home.

III. RULINGS AND FINDINGS

Based upon the findings above:

IT IS ORDERED BY THE COURT that: *(Please check the applicable box for each child)*

child(ren), _____, be hereby placed in the provisional custody of the **STATE OF LOUISIANA** through the **DEPARTMENT OF CHILDREN AND FAMILY SERVICES** pending the timely filing of a Child in Need of Care Petition and Adjudication, according to the priorities outlined in Article 622 and for the purposes of placement in the least restrictive and most appropriate setting, said child(ren) to be placed together, if possible, and, if not, to be afforded reasonable contact and visitation with each other.

child(ren), _____, not be removed from the parents/caretakers and that the request for an Instant Order of Provisional Custody is denied. The Court further orders (e.g., the case be dismissed, Protective Order be issued, etc.): _____

_____.

IV. FURTHER ORDERS UPON GRANTING REMOVAL

IT IS FURTHER ORDERED BY THE COURT that the Oral Instanter Order placing the child(ren) _____ in custody, issued at _____ o'clock ____ . m., on the _____ day of _____, 20 _____, is hereby confirmed;

IT IS FURTHER ORDERED BY THE COURT that _____, be and is hereby appointed to represent the child(ren) in these proceedings and that said program be given notice of appointment and served with a signed copy of the pleadings filed herein;

IT IS FURTHER ORDERED BY THE COURT that the parents be referred to the District _____ Public Defender Office to provide representation for the parents at the Continued Custody Hearing, and such office shall be given notice of appointment and served with a signed copy of the pleadings filed herein pending further orders of this Court;

IT IS FURTHER ORDERED, pursuant to La. Ch. C. art. 424.1, that the local CASA program be appointed, subject to the assignment of a qualified CASA volunteer, to advocate for the best interest of the child(ren) in these proceedings and that the program be given notice of appointment and served with a copy of the pleadings filed herein;

IT IS FURTHER ORDERED BY THE COURT that the **DEPARTMENT OF CHILDREN AND FAMILY SERVICES** furnish a report of its investigation to the **OFFICE OF THE DISTRICT ATTORNEY** within fifteen (15) days of the date of the Continued Custody Hearing;

IT IS FURTHER ORDERED that if the Child in Need of Care Petition is not filed within 30 days of the Continued Custody Hearing, unless an extension is granted by the Court based upon a showing of good cause and notice to all parties, child(ren) be returned to their parent(s);

IT IS FURTHER ORDERED BY THE COURT that the following Protective Order be issued in compliance with Article 627: _____;

IT IS FURTHER ORDERED BY THE COURT that this matter be set for a Continued Custody Hearing at _____ o'clock _____ . m., on the _____ day of _____, 20 _____, and that all parties of

interest are hereby ordered to appear;

IT IS FURTHER ORDERED BY THE COURT pursuant to Ch. C. Art. 619(E) that the **DEPARTMENT OF CHILDREN AND FAMILY SERVICES** shall provide written notice to the parents/caretakers of the date, time, and location of the Continued Custody Hearing including the nature of the allegations; and, the Sheriff's Office or any peace officer is authorized to serve a summons upon parents/caretakers of the child(ren) to appear for the Continued Custody Hearing which, if so served, shall expressly notify the parents/caretakers that the Court may issue a binding order in their absence if they fail to appear; notice of the Continued Custody Hearing be made on CASA and the child and parent representation programs; and for any parent(s) incarcerated, _____ arrange for the parent(s) to attend the hearing, either in person or remotely;

IT IS FURTHER ORDERED BY THE COURT pursuant to La. Ch. C. Art. 623 that the **DEPARTMENT OF CHILDREN AND FAMILY SERVICES** shall give notice to any foster parent, pre-adoptive parent, adoptive parent, and relative providing care for the child(ren) of the date, time, and location of the Continued Custody Hearing and that the recipient has the right to attend and be heard regarding the care and treatment of the child(ren);

THUS DONE AND SIGNED ON THIS _____ day of _____, 20_____, in _____, Louisiana.

JUDGE

DISTRIBUTION OF NOTICE

Please serve all parties and counsel of record as follows:

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Child(ren)'s Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Assistant District Attorney/Bureau of General Counsel: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Please send notice and copy of order as follows:

Department of Children and Family Services Staff/Representative:
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

CASA: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Other: _____
Role: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

ADDENDUM TO AFFIDAVIT IN SUPPORT OF INSTANTER ORDER

That, during the course of said investigation, affiant has acquired personal knowledge of the following additional facts: _____

AFFIANT

ADDRESS

CITY, STATE, ZIP

PHONE NUMBER

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 20_____, in

the Parish of _____, Louisiana.

_____, NOTARY

(Bar Roll # or Notary Public #)

My Commission expires _____.

CONTINUED SAFETY PLAN HEARING (CSPH)

La. Ch. C. arts. 624-627

LOUISIANA
CHILD IN NEED OF CARE BENCHBOOK
FOR JUVENILE JUDGES

SECTION

4

INTRODUCTION

A. GENERAL CONSIDERATIONS

Families are the cornerstone of our society, and judges should avoid unnecessary separation of the child and family if the child can remain safely in the home. There is growing evidence that removal and placement in foster care may be more harmful to the child's psychological well-being than remaining in a troubled home environment, at least when the child could remain safely with his/her parents¹ if a safety plan was instituted, a Protective Order (PO) was issued, and/or services were provided to the family to eliminate the threat of danger to the child.²

A CSPH follows the issuance of an Instant Safety Plan Order (ISPO), providing an opportunity to revisit the findings in the ISPO. The ISPO is an important option for keeping children in their homes. This court-ordered safety plan is used to manage safety when custody of the child remains with the child's parents. It is sought when a threat of danger to the child is identified that he/she is vulnerable to, and the parents do not have sufficient protective capacities to manage the threat. One of the purposes of the CSPH is to determine if maintaining the safety plan ordered by the ISPO is necessary or sufficient to manage any threats of danger to the child. At this hearing, the State has the burden of proof.

Both the ISPO and the Continued Safety Plan Order (CSPO) require the parents and safety monitor³ to comply with the conditions of the safety plan. Safety monitors are individuals identified by the Department of Children and Family Services (DCFS) to provide oversight of the safety plan to ensure the plan's provisions are followed and safety threats to the child are controlled. A safety monitor may be a professional, paraprofessional, volunteer, or individual who is part of the family's network, such as extended family, church members, friends, etc.

The parents and safety monitor are asked by DCFS to sign a safety plan form to indicate their agreement to its conditions. If the parents agree with the safety plan (for example, evidenced by their signature on the safety plan form), a CSPH is not required to be held. Yet, best practice is to hold the CSPH, whether the parents agree to the safety plan or not, for several important reasons.

One of the primary purposes of the CSPO is to prevent a child from being removed from his/her home. Holding the CSPH allows the court to spend time determining if the ISPO is sufficient to prevent a future removal. The ISPO can be sought by DCFS, for example, when an in-home DCFS safety plan was not sufficient to manage the safety threats and court intervention is needed. Thus, having parties in court and hearing directly from a judge is essential to ensure that everyone involved understands the conditions of the safety plan and seriousness of the ISPO. Holding the CSPH allows the court, as well as DCFS and attorneys, to make sure the parents understand what they are agreeing to, the expectations, and the consequences of not following the safety plan. If the safety monitor is present at the CSPH, the court can also make sure the safety monitor understands what he/she is agreeing to, the role and expectations, and the consequences of the parents not complying with the safety plan. The court can assess the safety monitors' capacity to balance the relationship he/she may have with the parents and his/her role as a safety monitor (i.e., grandmother is a safety monitor for her daughter). Even though the safety monitor is not required to be present, he/she may also have questions or wish to be heard at the CSPH.

1 The plural form of "parent" is used throughout the Benchbook for simplicity, even though at times only one parent has been identified in a case.

2 Gatowski, S., Miller, N., Rubin, S., Escher, P., & Maze, C. (2016) Enhanced resource guidelines: Improving court practice in child abuse and neglect cases. Reno, NV: National Council of Juvenile and Family Court Judges, p. 14 [hereinafter Gatowski].

3 The singular form of "safety monitor" is used throughout this section, even though at times there may be more than one safety monitor.

Some courts hold the CSPH, even when parents have agreed to the safety plan, because of the due process implications of not having the hearing. Parents who sign a safety plan before a hearing are usually doing so without the benefit of counsel; children also have no benefit of counsel at the time the safety plan is signed. Holding a CSPH allows parents and children the opportunity to meet with counsel to make sure they understand what they are agreeing to and the requirements. It gives the child, who is also a party to the Child in Need of Care (CINC) case, a chance to speak or object to the safety plan. There is reason to believe that consultation with an attorney at this stage may lead to increased compliance with the safety plan.

If no CSPH is held, some of the critical matters that prepare a case for the CINC Petition and Answer Hearing will not occur. Significantly, neither parents nor children will receive the important advisements set forth in Children's Code Article 625. Courts should include the Article 625 advisements in the ISPO. To reinforce these advisements, it is also recommended that DCFS include them in the safety plan form that the parent signs.

B. TIMING, NOTICE, AND PRESENCE

If held, the CSPH shall occur within 3 days of the issuance of the ISPO.⁴ With notice and good cause, a continuance may be granted for up to 3 days if it is in the best interest of the child. Examples of good cause for a continuance include, for instance, a child not being present, notice not being given to a safety monitor, etc.

All parties to the CINC case should be present at the hearing. A CSPH should involve all parents—even if all parents are not subject to the safety plan. DCFS has a duty to make diligent efforts to find all parents of the child. A separate attorney or curator for each parent should be present at every hearing and protect their interests.

In addition to a parent, a child can be removed from a caretaker, whether the caretaker has legal custody of the child or not. In such cases, the caretaker does not become a party to the CINC case and is not entitled to the appointment of an attorney; the law only provides the right to an appointed attorney for parents. While DCFS has the authority to investigate a caretaker, an ISPO cannot be used with a caretaker. A TRO and/or PO may be a more appropriate court intervention to use with a caretaker to manage safety threats to the child. See [Temporary Restraining Order \(TRO\) and Protective Order \(PO\) Benchbook Section 2](#).

The safety monitor is also not a party to the CINC case. However, it is advisable for the safety monitor to be present at the hearing for the reasons stated above.

Having all parties and the safety monitor present and participating in the hearings is critical for moving the case forward and having a more meaningful hearing. Children are parties to the hearing, and their voice is invaluable to decision-making. The child's attorney has an obligation to inform the child of the right to be present at the hearing and facilitate such presence if appropriate. The Children's Code mandates that children who are 12 and older be present at this hearing unless the children's attorney moves to waive their presence. Children younger than 12 shall be present if the children's attorney or court so requests. The court does not have discretion in this decision. The presence of children at court is not up to DCFS; however, DCFS is to help facilitate the children's presence at court.

The judge should engage in an inquiry related to the child's presence at court. For example, if an attorney moves to waive the child's presence, the judge should inquire as to the reason for the request. If the child is present, does the child wish to be heard? The court has an oversight role in CINC cases and, as such, should make every effort to ensure that the child has been given enough information about the court process and an opportunity to be engaged.

While some may argue that attending court hearings is traumatic to children, it is important to remember that they have already lived through the trauma that brought their family into contact with DCFS and engaging them in planning their future and protecting their safety can actually be empowering.⁵ The CASA volunteer, if appointed, may be a support to the child in court.

⁴ In computing a period of time prescribed by law, the date of the event after which the period begins to run is not included; the last day of the period is included but if a legal holiday—including Saturdays and Sundays—then the period runs until the end of the next day which is not a legal holiday. La. Ch. C. art. 114.

⁵ Gatowski, *supra* note 2, at 72.

Nationally, there is a growing acceptance and understanding of the importance of involving children and youth in child welfare decision-making. Child welfare experts recognize the benefits of child and youth participation and the importance of the rights of children and youth. Federal law asserts that the views of children and youth should be considered when decisions relating to them are made, and their views must be considered when determining what is in their best interests.⁶

For all parties present, the court is responsible for providing and paying for interpretation, translation, and/or language assistance services and reasonable accommodations for those with disabilities. There must be ample time for legal interpreters to review pertinent legal documents prior to the court proceeding. Interpreters must be familiar with the case-related details to provide an accurate, meaningful, and effective interpretation.

C. APPOINTMENTS, INITIAL ADVISEMENTS, AND INQUIRIES

Parents and children have a right to counsel at all stages of the CINC proceedings⁷ The program representing children should have been appointed in the ISPO, and best practice is for parents to be referred to the Indigent Parent Representation Program (or local Public Defender Office in the ISPO. Parents' attorneys should have received a copy of the Instanter Order and Affidavit prior to the CSPH. A finding of indigency for parents may need to be made at the CSPH (See Article 608). The court can also appoint CASA if they were not appointed in the ISPO. The court should make these appointments and findings at the CSPH if not yet made, including ordering notice of appointments and service of copy of pleadings.

One of the judge's critical functions is to safeguard due process at every stage of a CINC case. For this reason, the judge should inquire whether counsel had sufficient opportunity to consult with the child and the parents prior to the presentation of evidence at the CSPH. At the beginning of the CSPH, the court should give initial advisements to the parents and may also do so for the child. It is also the judge's duty, pursuant to the Children's Code and Federal law, to make sufficient inquiries and findings regarding the Indian Child Welfare Act (ICWA) at this hearing.

D. EVIDENCE AND TESTIMONY

The State has the burden of proving that there are reasonable grounds to believe the child is in need of care and that the continued implementation of the safety plan is necessary for the child's safety and protection. Hearsay evidence is admissible at the CSPH.

Judges and all legal stakeholders should be familiar with the Child Welfare Assessment and Decision Making Model (CWADM). The CWADM is a framework DCFS uses to assess safety and risk and the needs and strengths of children and families throughout the life of a case, so that courts and DCFS have the best possible information upon which to make decisions with and for families. A formal safety assessment is required either when a threat of danger is identified or at specific intervals during the life of a case. Three variables are considered to determine whether a child is safe or unsafe: (1) threats of danger to the child; (2) the child's vulnerability to the identified threats of danger; and (3) the caretaker's protective capacities. The threat of danger considers whether the caretaker's behavior or family situation is likely to result in imminent harm to the child. The child's vulnerability looks at the extent to which a child can protect himself/herself from the identified threats of danger. The caretaker's protective capacities consider the way a caretaker thinks, feels, and/or acts and whether those capacities can prevent or control the threats of danger. DCFS must articulate how the child is unsafe without a CSPO based on an assessment of threats of danger, child vulnerability, and parent/caretaker protective capacities. See the [Child Welfare Assessment and Decision Making Benchbook Section 11](#) for more information.

⁶ Authors' Introductory Notes to Title VI of the Louisiana Children's Code; Gatowski, *supra* note 2, at 109-110.

⁷ La. Ch. C. art. 608 references parents' right to counsel at the CCH and all stages of the proceedings thereafter. However, due process also attaches with the issuance of an ISPO, and arguably extends the same right to counsel to parents and children in these earlier proceedings due to the introduction of DCFS and the courts in the family as well as the parents' loss of authority to place the child with any individual or institution except DCFS until the safety plan is terminated. See La. Ch. C. art. 619.

The court's role at the CSPH is to be a check and balance on the actions of DCFS; these actions have profound consequences for children and families. Without sufficient inquiry into the circumstances underlying the information stated in the Affidavit, the court does not ensure that the fundamental liberty interest of families to remain intact is upheld. Sometimes there are reasonable grounds as to one child but not as to another child within the same family. Thus, the findings must be individualized.

If the child is present in court, the child may choose to testify as to his/her wishes, and the court shall consider this testimony in its rulings. If the child is not present or does not want to testify, it is the child attorney's role to make the child's wishes clear.

E. ORDERS

There are several possible rulings the court can make at the CSPH. First, if the court determines that the safety plan is not necessary for the child's safety and protection, the court can order that the case be dismissed and the safety plan be revoked; if the court dismisses the case, the court can still issue a PO (See Article 618). Second, if the court determines that the safety plan is necessary, the court shall order that the parents and safety monitor comply with the conditions of the safety plan. Finally, if the court determines that a safety plan will not adequately protect the child and keep him/her safe, the court can remove the child from his/her parents. In this situation, the court must follow the Continued Custody Hearing (CCH) articles in the Children's Code and should use the [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 the first court order removing a child from his/her home. See [Continued Custody Hearing \(CCH\) Benchbook Section 5](#) for more information before ordering a removal.

In keeping with the court's inherent authority and to meet the child's needs for continuity and stability, the court may make additional orders at the CSPH that are in the best interest of the child pending the timely filing of the CINC Petition and Adjudication. Court orders may address family time/visitation, such as when one parent is not part of the safety plan but has a relationship with the child and visitation with that parent is appropriate. The court can also order that the child be provided family time with other relatives or siblings or half-siblings who are not in his/her home. Family connections are critical to many children in CINC cases. The court plays an important role in making sure children maintain familial and fictive kin connections even though DCFS is involved in the family's life.

An attorney or the court is responsible for completion of the CSPO. All attorneys and unrepresented parties should review the order before the judge signs it to ensure it accurately reflects the proceeding. Time permitting, best practice is to sign the Order on the same day as the hearing.

F. MODIFICATION

If the court grants the CSPO, the court retains the authority to modify it. While the Children's Code does not provide a specific modification provision for a court-ordered safety plan, some courts will grant a joint motion to modify the CSPO if agreed upon by all parties. Best practice is for the safety monitor to also sign the modified safety plan.

G. NEXT STEPS

The court shall make further advisements per Article 626 to the parents if the case is not dismissed at the CSPH. It is important to ascertain if the parents and child understood what occurred at the hearing. As role models, judges can exemplify the importance of engaging parents and children in the case. The process is more successful for all involved when the approach is collaborative (rather than punitive).

If the State decides to file a CINC Petition requesting that the child be adjudicated in need of care, the Petition shall be filed within 45 days of the issuance of the ISPO (unless the court has granted an extension for good cause). Otherwise, the CSPO will automatically terminate if the Petition is not timely filed.

If a CINC Petition has been filed by the time of the CSPH, the court can order the parents to answer the Petition at that time. Or the court can set the date and time for the Answer Hearing. Additionally, the court can set dates for the discovery deadline, Pre-Hearing Conference, and Adjudication or Adjudication and Disposition. The court may want to identify tasks to be accomplished by the various parties for the next hearing.

The court or the district attorney (DA) may want to consider proceeding with an Informal Adjustment Agreement (IAA) if appropriate and all parties agree. Some parishes routinely use IAAs after a CSPO is issued. An IAA can be implemented before or after a CINC Petition is filed. If an IAA is initiated after a CSPO, for example, DCFS has more time to work with the family before a CINC Petition is filed and/or Adjudication. The IAA requires fewer court appearances and, if successful, obviates the need for Adjudication. See [Informal Adjustment Agreement \(IAA\) Benchbook Section 1](#). 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.

OUTLINE

-  **A. TIMING AND CONTINUANCES**
-  **B. APPEARANCES AND APPOINTMENTS**
-  **C. NOTICE**
-  **D. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS**
-  **E. INITIAL ADVISEMENTS**
-  **F. INDIAN CHILD WELFARE ACT (ICWA)**
-  **G. EVIDENCE AND TESTIMONY**
-  **H. FINDINGS**
-  **I. RULING OPTIONS**
-  **J. FURTHER ADVISEMENTS**
-  **K. CINC PETITION FILED**
-  **L. FURTHER ORDERS**
-  **M. ORDER OF NOTICES AND FUTURE HEARINGS**
-  **N. CASE MANAGEMENT**
-  **O. MODIFICATION**
-  **P. POSSIBLE NEXT STEPS**
-  **Q. APPENDIX**
 - (1) CONTINUED SAFETY PLAN HEARING BENCH CARD**
 - (2) CONTINUED SAFETY PLAN ORDER TEMPLATE**



OVERVIEW

A. TIMING AND CONTINUANCES

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

(1) TIMING:

- **Within 3 Days of Issuance of ISPO:** CSPH shall be held within 3 days from the issuance of the ISPO (See Article 114).⁸
- **Unless Agree with Safety Plan:** However, if the parents previously agreed with the safety plan, a CSPH is not required to be held. A parent's signature on the safety plan shall constitute evidence of his/her agreement with the plan.

PRACTICE TIP:

- **Best Practice is to Hold CSPH:** Some courts hold the CSPH, even when parents have agreed to the safety plan, because of the due process implications of not having the hearing. Parents who sign a safety plan before a hearing are usually doing so without the benefit of counsel; children also have no benefit of counsel at the time the safety plan is signed. Holding a CSPH allows parents and children the opportunity to meet with counsel to make sure they understand what they are agreeing to and the requirements. It gives the child, who is also a party to the Child in Need of Care (CINC) case, a chance to speak or object to the safety plan. There is reason to believe that consultation with an attorney at this stage may lead to increased compliance with the safety plan. If no CSPH is held, some of the critical matters that prepare a case for the CINC Petition and Answer Hearing will not occur. Significantly, neither parents nor children will receive the important advisements set forth in Children's Code Article 625. If the CPSH will not be held, courts are recommended to include the Article 625 advisements in the ISPO and DCFS in the safety plan form that the parents sign.

(2) CONTINUANCES:

- **Conditions:** The court may grant a requested continuance for up to an additional 3 days only:
 - After notice to all parties;
 - Upon finding of good cause; AND
 - Upon determining the continuance is in the best interest of the child.
- **Report to Louisiana Supreme Court (LASC):** If a continuance is granted, or a delay permitted, that exceeds the maximum allowable times established by the Children's Code, the court is mandated by Supreme Court Rule XXXIII, Part II, Sections 1 and 2, to report such continuance within 10 days to LASC, along with the reasons for the delay and a copy of the Order. See https://www.lasc.org/children_families/timelinessreport.pdf for a copy of the report that must be submitted by the court to LASC. See also Louisiana District Court Rules, Title V, Chapter 42, Rule 42.1, for more information.

B. APPEARANCES AND APPOINTMENTS

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

- (1) PROPER INTEREST OR NECESSARY:** At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. The court shall not admit any other person unless it determines that the person has a proper interest in or is necessary to the proceedings.

⁸ In computing a period of time prescribed by law, the date of the event after which the period begins to run is not included; the last day of the period is included but if a legal holiday—including Saturdays and Sundays—then the period runs until the end of the next day which is not a legal holiday. La. Ch. C. art. 114.

PRACTICE TIP:

- **Include Other Agencies:** Coordinating services with the Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful, and the court may want to consider having one or more represented at the CSPH. This multi-disciplinary approach could be especially critical for youth who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated services and supports.

HELPFUL GUIDANCE:

- **Privacy:** Limiting the number of persons present in the courtroom protects the privacy of children in CINC cases. The judge is mandated to exclude all but the listed persons unless first determining the person has a proper interest or is necessary to the proceedings. Law students or social workers studying juvenile procedure might qualify as persons with proper interest. If the court allows other persons to be present, the court should stress the confidentiality of the case information.

(2) ESSENTIAL JUDICIAL FUNCTION - ASSISTANCE SERVICES AND SPECIAL ACCOMMODATIONS: Under State and Federal law, the court is responsible for providing interpretation, translation, and/or language assistance services for parties to CINC hearings and/or reasonable accommodations for parties to CINC hearings with disabilities. When the court appoints counsel for indigent persons, it is also responsible for appointing and paying for a qualified interpreter or translator for indigent persons with these needs to assist in communication with counsel in all phases of the preparation and presentation of the case.⁹ The court should consider these obligations in preparation for the CSPH. There must be ample time for legal interpreters to review pertinent legal documents with the party prior to the court proceeding.¹⁰ Interpreters must be familiar with the case-related details to provide accurate, meaningful, and effective interpretation.¹¹

(3) CHILDREN: Children are parties and shall be present at the hearing unless an exception below applies.

- **12 and Older:** If the child is 12 years of age or older, he/she shall be present in court unless his/her presence is waived by the court upon motion of the child's attorney
- **Below 12:** If the child is below the age of 12 years, he/she shall be present in court upon request of the child's attorney or the court.
- **Waive:** The court shall state in the Order whether or not the court waived the presence of the child at the hearing.

HELPFUL GUIDANCE:

- **Waiving Presence at the Hearing:** The child's attorney has an obligation to inform the child of the right to be present at the hearing and facilitate such presence, if appropriate. The judge should engage in an inquiry related to the child's presence at court. If the child's attorney moves to waive the child's presence, for example, the court should ascertain the reason underlying the request. If the child is present, does the child wish to be heard? The court has an oversight role in CINC cases and, as such, should make every effort to ensure that the child has been given enough information about the court process and an opportunity to be engaged in the process.

⁹ See C.C.P. Art. 192.2; La. R.S. § 46:2364; 42 U.S.C. § 3711; 28 U.S.C. § 604(a)(14), (15), and (16), § 1827, and § 1828; see also https://www.lasc.org/language_access and https://www.lasc.org/District_Court_Rules?p=Title1.

¹⁰ See National Consortium of Interpreter Education Centers. (2009). Best practices American Sign Language and English interpretation within legal settings. U.S. Department of Education, Rehabilitation Services CFDA #84.160A and B, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind, <http://www.interpretereducation.org>

¹¹ Id.

- **Importance of Presence at the Hearing:** Having all parties present and participating in the hearing is critical for moving the case forward and having a more meaningful hearing. Children are parties to the CINC Proceedings, and their voice is invaluable to decision-making. Having children present can also assist the court in making decisions about a case. Interacting with the child and observing potential medical issues, delays, etc., provides needed information to the court. Although challenging, courts should try to schedule hearings so that children can be present and participate as much as possible. Scheduling to allow the child to attend hearings necessitates knowing about the child’s school schedule and other activities. There are different ways to hold hearings given some of the issues that arise with having children in court. For example, some judges hold their hearings in conference rooms instead of courtrooms to be less intimidating to children and parents. Other judges develop creative solutions, such as holding the hearing at a group home or scheduling the hearing after school.
- **Remaining in the Courtroom:** Prior to the commencement of the hearing, the court shall determine whether it is in the child’s best interest for the child to remain in the courtroom during the testimony of the witnesses. If the court has concerns about the child’s presence in the courtroom, an option could be that the child be brought outside of the courtroom with someone they trust. While some may argue that attending court hearings is traumatic to children, it is important to remember that they have already lived through the trauma that brought them into the courtroom. Engaging them in planning their future and protecting their safety can actually be empowering.¹² Some courts in Louisiana have created sensory rooms for children at the courthouse to address the potential trauma of attending court, such as the Calming Studio located in Caddo Parish Juvenile Court.¹³ Some courts provide a therapy dog to help emotionally support children in court.¹⁴ The CASA volunteer (if appointed) may also be a support to the child in court.

(4) PARENTS: Parents of the child are parties and shall be present at the hearing.

 **PRACTICE TIPS:**

- **Effect of Nonappearance by a Parent:** If the parent is absent, the hearing may proceed if he/she cannot be found, was served a summons, or was notified by DCFS.
- **Absentee:** The court shall order the appointment of a curator for any parent who is an absentee.¹⁵
- **Incarcerated:** To ensure the attendance of any parent who is incarcerated at the CSPH, a writ or motion should have been filed and an order issued by the court and served on the warden or administrator of the facility prior to the CSPH. Service should be made sufficiently in advance of the hearing to afford time for the facility to arrange for transportation of the parent to court (or video conferencing where the parent’s physical attendance at the hearing is not possible).
- **Direct Parent Present to Identify Other Parents:** If a parent has still not been located, the judge should direct the parent who is present under oath to provide name, address, and whereabouts for any parent who has not been located and emphasize the importance of identifying and locating any absent parents.
- **Determining Paternity/Maternity:** The court must ensure that efforts by DCFS are thorough and diligent in locating and involving all legal and putative parents and that paternity or maternity of all children is legally determined. If the identity and whereabouts of an alleged parent is known but filiation has still not been legally determined, the 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.).

¹² Gatowski, *supra* note 2, at. 72.

¹³ This article provides more information about the Calming Studio: <https://www.shreveporttimes.com/story/news/2019/07/24/caddo-parish-juvenile-court-calm-room-studio/1804662001/> as does this video: <https://www.youtube.com/watch?v=URA4WtXqu1M>.

¹⁴ These articles provide more information about how therapy dogs have been used in courts: https://www.americanpress.com/news/local/juvenile-court-introduces-therapy-dog-program/article_%20f449e71c-3fc2-11e7-a03e-4b861db8938b.html See also LA. Rev. Stat. § 15:285, which allows for witnesses who are either under 18 years of age or who have a developmental disability as defined by LA. Rev. Stat. § 28:451.2 to have a facility dog, if available, accompany them while testifying in court.

¹⁵ La. Ch. C. art. 575; La. Ch. C. art. 608; La. Ch. C. art. 627(G); La. C.C. 47 626(G) (An absent person in Louisiana is “one who has no representative in this state and whose whereabouts are not known and cannot be ascertained by diligent effort.”).

- **Order DNA Testing:** The court can order that DCFS make arrangements for DNA testing immediately and that the alleged parent complies with the DNA testing.

HELPFUL GUIDANCE:

- **Identification of Parents or Legal Custodians:** Courts should ensure all biological, legal, and putative parents are legally established as soon as possible. Decisions made in CINC hearings can affect a child's entire life if this information remains unknown. When a child does not know who one of his/her parents is, that also means the child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Timely resolution of filiation and paternity or maternity issues is in the best interest of the child and essential to due process and avoiding permanency delays.
- **Maternity:** There may be cases where there is an issue with maternal filiation. However, Louisiana law has not been amended to contemplate situations when, for example, two women are married and one gives birth to a child during the marriage. Louisiana filiation laws for paternity would likely be instructive for similar maternity issues.

(5) ATTORNEYS, APPOINTMENTS, AND WAIVERS:

- a. **Parents:** The Indigent Parents' Representation Program shall provide qualified legal counsel, including curatorship appointments, to indigent or absent parents in CINC cases unless a parent waives his/her right to counsel (See Articles 575 and 608).
 - **Right to Counsel:** The parents of a child who is the subject of a CINC proceeding shall be entitled to qualified, independent counsel at all stages of the proceedings thereafter.¹⁶
 - **Found to Be Indigent:** The court should determine whether it needs to make a finding of indigency for one or both parents. If a parent is found to be indigent (financially unable to afford counsel) and the parent has not previously been appointed counsel, the court shall order that the parent be referred to the Indigent Parents' Representation Program (best practice is to refer the parents to the local Public Defender Office, see Article 575) and that the program or office shall provide representation and be given notice of appointment and served with notice and a copy of the pleadings. Best practice is for parents to be referred to the local Public Defender Office in the ISPO so counsel for parents are present at the CSPH and hearings thereafter, and for the court to make an indigency finding at the CSPH, if necessary.
 - **Waiver of Right to Counsel:** A parent may waive his/her right to qualified, independent counsel. However, before accepting a waiver of counsel, the court shall ensure that the parent was informed of his/her rights enumerated under Article 608 and the possible consequences.

PRACTICE TIPS:

- **Appointment in CSPO:** Appointment of counsel for parents at this juncture depends on the language in the ISPO. If the ISPO appointed the program or office for the CINC proceedings, then no further action is needed. However, if the ISPO appointed the program or office only for the CSPH, then the language above needs to be written in the CSPO.
- **Prior to Hearing:** The judge should inquire as to whether counsel had sufficient opportunity to consult with the parents prior to the hearing and that they received a copy of the Affidavit and Instanter Order.

¹⁶ La. Ch. C. art. 608 references parents' right to counsel at the CCH and all stages of the proceedings thereafter. However, due process also attaches with the issuance of an ISPO, and arguably extends the same right to counsel to parents and children in these earlier proceedings due to the introduction of DCFS and the courts in the family as well as the parents' loss of authority to place the child with any individual or institution except DCFS until the safety plan is terminated. See La. Ch. C. art. 619.

HELPFUL GUIDANCE:

- **Due Process:** Protecting the interest of the parent is an important role of the parent’s attorney and ensures due process for the parent. The parent’s attorney should zealously advocate for the parent whether the parent is present or not.
- **Conflicts of Interest:** Judges must be cognizant of possible conflicts with related and previous cases both at the CSPH and at later junctures in the case. For example, parents who are married or living together may have or may develop divergent legal positions in the CINC case. It may also be a conflict for one attorney to represent multiple fathers or mothers in a case. When there is a curator ad hoc for an absent parent, the curator may not be able to represent a parent who is located due to a conflict.

- b. **Children:** An attorney for the child shall be present at every hearing, assert the child’s wishes, and protect the legal interests of the child even if the child is not present (Article 607).¹⁷
- **Appointment:** The program for child representation should have been appointed in the ISPO. If not, the court shall order that the program approved to represent children in that jurisdiction be appointed to represent the child in all CINC proceedings and given notice of appointment and served with notice and a copy of the pleadings.

PRACTICE TIP:

- **Prior to Hearing:** The judge should inquire as to whether counsel had sufficient opportunity to consult with the child prior to the hearing and that they received copies of the Instanter Order and Affidavit.

HELPFUL GUIDANCE:

- **Due Process:** Protecting the interest of the child is an important role of the child’s attorney and ensures due process for the child. The child’s attorney should zealously advocate for the child whether the child is present or not.
- **Conflicts of Interest:** Judges must be cognizant of possible conflicts of interest that may arise in the representation of children in CINC cases, both at the beginning of the case and as the case progresses. With regard to current clients, for example, there could be a conflict representing two siblings if one has sexually perpetrated on the other. It would also be a conflict for a child’s attorney to represent both a teenage mother and her baby if the baby is in care. Further, a conflict may be present if siblings’ wishes are divergent, and the attorney cannot make a colorable argument for the differing positions.

- c. **State:** An assistant district attorney (ADA), an attorney the ADA designates, or a DCFS attorney (Bureau of General Counsel/ BGC) should be present at the hearing.

(6) DCFS: A DCFS staff member or representative(s) should be present at the hearing.

(7) CASA: For confidentiality reasons, CASA should only be present at hearings if the court appointed them.

- **Appointments:** If CASA was not previously appointed, the court can order that the local CASA program be appointed, subject to the assignment of a qualified CASA volunteer, to advocate for the best interest of the child in these proceedings and that the program be notified of appointment and served with a copy of the pleadings (Article 424.1).

¹⁷ LA. SUP. CT. RULE XXXIII, PART III, SUBPART II.

HELPFUL GUIDANCE:

- **Role:** CASA volunteers are sworn officers of the court appointed by judges to advocate for the best interests of children in CINC cases. CASA volunteers visit with children to get to know them and find out important information, such as how they are doing in the placement, what kind of services are needed, and how school is going. The CASA volunteer may also talk to professionals working on the case, to the child’s family, teachers, and others. They can review important documents relating to the case, such as summaries on the parent and/or child’s progress. The CASA volunteer prepares reports for the court about what they have learned about the child. In the report, they make independent recommendations to the court about what should happen in the case to have the best outcome for the child—to keep the child safe and promote the child’s well-being. Unlike the children’s attorney, the CASA volunteer does not advocate for the wishes of the child unless those wishes are in the child’s best interest. The CASA volunteer can also monitor the case plan and advocate to make sure the plan is followed and serves the best interests of the child. The court appoints the local CASA program, subject to the assignment of a qualified volunteer. If available, then a CASA volunteer will be assigned to the case. The Children’s Code requires the CASA program to be established in compliance with the National CASA Association standards and the volunteer to be trained in accordance with those standards.¹⁸

(8) SAFETY MONITOR: The individual who agreed to be the safety monitor should be present at the CSPH but is not required to be.

PRACTICE TIP:

- **Purpose:** Safety monitors are individuals identified by DCFS to provide oversight of the safety plan and ensure the plan’s provisions are followed and the safety threats to the child are being controlled. A safety monitor may be a professional, paraprofessional, volunteer, or individual who is part of the family’s network such as extended family, church members, friends, etc. If the safety monitor is present at the hearing, the court should make sure the safety monitor understands what he/she is agreeing to, the role and expectations, and the consequences of the parents not complying with the safety plan. The court can assess the safety monitor’s capacity to balance his/her relationship with the parents and his/her role as a safety monitor (i.e., grandmother is a safety monitor for her daughter). The safety monitor may also have questions or wish to be heard at the CSPH.

(9) AUTHORIZED OFFICERS OF THE COURT AND WITNESSES:

- **Authorized officers of the court:** As designated by the judge may be present at the CSPH.
- **Witnesses:** Under examination may be present at the hearing.

C. NOTICE

ARTICLES 623-4

The court shall determine if proper notices of the hearing were made to all parties and counsel of record, and enter required findings in the Order.

PRACTICE TIP:

- **DCFS Duty to Notify:** DCFS shall notify the court of each party’s address and shall have a continuing duty to provide current information to the court about each party’s whereabouts.

¹⁸ La. Ch.C. art. 116(2.1) and (2.2).

D. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS

The court should consider whether any of the following Federal laws or regulations apply to this case:

- Americans with Disabilities Act (ADA);
- Service Members Civil Relief Act (SMCRA);
- Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA); (OR)
- Interstate Compact on the Placement of Children (ICPC). See [Disposition Hearing Benchbook Section 8 D](#) for more information on ICPC.

E. INITIAL ADVISEMENTS

ARTICLES 575, 625

The court shall advise the parents and may advise the child, insofar as practicable, of the:

- Nature of the proceedings and allegations in terms understandable to the parent and child;
- Right to an Adjudication Hearing, including the rights to call and cross-examine witnesses and the right to appeal; AND
- Right to be represented by counsel and the right of indigent parents to representation by the Indigent Parents' Representation Program in accordance with Article 608.

HELPFUL GUIDANCE:

- **Acknowledgment from Parents:** It is recommended that the judge have the parents acknowledge on the record and/or execute a written acknowledgment of advisement and understanding of these rights.
- **Understand:** It is important to make sure the parents, children, safety monitor, and others present understand what is happening. Judges are encouraged to ask:
 - Do you understand what this hearing is about? (Explain the purpose of the hearing).
 - Do you understand the Instant Order? (Review the Instant Order with parties).
 - Were you involved in any mediation process used before this hearing? If yes, what was the outcome?
 - What family members and/or other important people should be involved in this process?
- **CSPH Not Held:** If the CSPH is not held because the parents agreed to the safety plan, these Article 625 advisements will not be made until the Answer Hearing, which may have due process implications. If the CSPH is not held, courts should include the Article 625 advisements in the ISPO. To reinforce the advisements, it is also recommended that DCFS include them in the safety plan form that the parent signs.

F. ESSENTIAL JUDICIAL FINDING: INDIAN CHILD WELFARE ACT (ICWA)

ARTICLES 624-624.1, 25 U.S.C. § 1902

(1) INQUIRY: The court shall ask each person before the court and make a record of the answer in the CSPH Order for each child:

- As to whether they know or have reason to know that the child is a member of a Federally recognized Indian Tribe or eligible for membership in a Federally recognized Indian Tribe and is the biological child of a member of a Federally recognized Indian Tribe; AND
- To inform the court if they subsequently discover information indicating that the child is a member of a Federally recognized Indian Tribe or eligible for membership in a Federally recognized Indian Tribe and is the biological child of a member of a Federally recognized Indian Tribe.

(2) REASON TO KNOW: If the court has reason to know that a child in the CINC case is an Indian child or is eligible for membership in a Federally recognized Indian Tribe, the court:

- May enter any order for placement in accordance with Article 627, but the court shall thereafter proceed as if the child is an Indian child; AND
- Shall follow Article 624 and 624.1. See [Indian Child Welfare Act \(ICWA\) Bench Card](#) in [Appendices Benchbook Section 12](#).

(3) INVALIDATION OF PROCEEDINGS: Noncompliance with the provisions of ICWA may result in invalidation of the proceedings, including any subsequent adoption.

PRACTICE TIP:

- **CSPH Not Held:** If the CSPH is not held because the parents agreed to the safety plan, an ICWA finding cannot be made until the Answer Hearing, which may have repercussions.

HELPFUL GUIDANCE:

- **Federally Recognized Tribes:** Not all Indian Tribes are Federally recognized. For example, only four of Louisiana’s Indian Tribes are currently Federally recognized tribes: the Chitimacha Tribe of Louisiana, the Coushatta Tribe of Louisiana, the Jena Band of Choctaw Indians, and the Tunica-Biloxi Indian Tribe of Louisiana. But ICWA will apply if the child belongs to any “Federally recognized” tribe (even outside of Louisiana).
- **Eligibility:** Be cognizant that there are specific membership qualifications that make one a member or eligible to be a member of a Federally recognized Indian Tribe. For example, sometimes, a parent may not realize that a marriage in their family made their child eligible for such membership. Self-identification as an Indian, race, and/or the child’s features are not sufficient to meet the membership criteria to consider.

(4) ACTIVE EFFORTS: Efforts involved in ICWA are very different from the reasonable efforts required by the Adoption and Safe Families Act (ASFA). Active efforts are required, and they are affirmative, active, thorough, and timely efforts intended to maintain or reunite an Indian child with his/her family. This is why it is critical for courts to proceed pursuant to the Federal ICWA and the regulations promulgated thereunder if the court finds that there is reason to know that the child is an Indian child ¹⁹

G. EVIDENCE AND TESTIMONY

Articles 607-8, 623-4, LA. SUP. CT. RULE XXXIII, PART III

(1) GENERAL:

- **Burden of Proof:** The State has the burden of proving that there are reasonable grounds to believe that the child is in need of care and that the continued implementation of the safety plan prior to the timely filing of the CINC Petition and Adjudication is necessary for the child’s safety and protection.
- **Order:** The order of presenting evidence at the hearing is set by the court.
- **Hearsay:** Hearsay evidence is admissible at the CSPH.
- **Parties:** Any party may offer evidence.

¹⁹ For more information on ICWA, please see https://clarola.org/index.php?option=com_k2&view=item&id=1284:la-icwa-quick-reference-guide&Itemid=116; see also Murphy, Bob. (2020) McGirt Injects Steroids into the Indian Child Welfare Act. American Bar Association, Children’s Rights Litigation, https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/winter2021-mcgirt-injects-steroids-into-the-indian-child-welfare-act/?utm_medium=email&utm_source=salesforce_353772&sc_sid=00265681&utm_campaign=MK20CNTT&promo=MKCONTENT1&utm_content=&additional4=&additional5=&sfmc_j=353772&sfmc_s=52961351&sfmc_l=2198&sfmc_jb=4007&sfmc_mid=100027443&sfmc_u=10232975.

(2) PARENTS:

- **Rights:** Parents may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.
- **CINC Petition:** If a CINC Petition has been filed at the time of the hearing, the court may also call upon the parent to answer its allegations. See [Answer Hearing Benchbook Section 6](#).

PRACTICE TIP:

- **Stipulation:** While the judge may consider stipulations, they do not substitute for court's required findings.

(3) CHILDREN:

- **Rights:** Children may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.
- **Wishes:** If the child is present in court the child may choose to testify as to his/her wishes, and the court shall consider the child's testimony in the matter.
- **Methods:** Any testimony given by a child may be taken by:
 - A videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of the Louisiana Children's Code;
 - An in-chambers conference attended only by the judge and court reporter and by counsel for the child, the petitioner, and the parents; OR
 - If no party objects and the parties agree as to the procedure, the child may be examined "in chambers, on or off the record, and with or without parents and/or counsel being present."²⁰
- **Exclusion:** Prior to the commencement of the hearing, the court shall determine whether it is in the child's best interest for the child to remain in the courtroom during the testimony of the witnesses.

PRACTICE TIPS:

- **Child Present or Not:** Whether present or not, the child's attorney shall make sure the court hears the child's wishes (i.e., regarding safety plan, services, etc.).²¹
- **Methods of Communication:** If the child wishes to be heard but is not able to present or does not want to be present in the courtroom, the court should consider the use of other methods of communication, such as audio or visual conferencing.
- **Well-Being:** The court should inquire about the child's physical, emotional, and mental health and educational needs and identify any gaps in services needed by the child.

(4) DCFS:

- **Instantner:** Testimony of the DCFS representative should be provided as to the circumstances underlying the request for the Instantner.
- **Safe or Unsafe:** Testimony should be provided regarding the individualized reasons that each child in the case will be unsafe unless the safety plan is continued.

²⁰ Watermeier v. Watermeier, 462 So. 2d 1272, 1275 (La. App. 5th Cir.), cert. denied, 464 2d 301 (La. 1985).

²¹ LA. SUP. CT. RULE XXXIII, PART III, SUBPART II.

PRACTICE TIPS:

- **DCFS Testimony:** The DCFS worker very well may have witnessed events that prompted the request for the Instantter Order, observed the family dynamics, and/or interacted with the child. Hence, DCFS testimony should be considered in the court's ruling.
- **Child Welfare Assessment and Decision Making Model (CWADM):** Is a framework DCFS uses to assess safety and risk, so that courts and DCFS have the best possible information upon which to make decisions with and for families involved with DCFS. Three core principles are used to determine whether a child is safe or unsafe: (1) threats of danger to the child; (2) the child's vulnerability to the identified threats of danger; and (3) the caretaker's protective capacities. A child is considered safe when: (1) there are no threats of danger, (2) if there is a threat of danger, the child is not vulnerable to the threat of danger; or (3) if there is a threat of danger, the parents or caretakers possess sufficient protective capacities to manage the threat of danger and keep the child safe. The threat of danger considers whether the caretaker's behavior or family situation is likely to result in imminent harm to the child. The child's vulnerability considers the extent to which a child can protect himself/herself from the identified threats of danger. The caretaker's protective capacities consider the way a caretaker thinks, feels, and/or acts and whether those capacities can prevent or control the threats of danger. 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 CSPO is necessary and sufficient to keep the child safe. See [Child Welfare Assessment and Decision Making Model \(CWADM\) Benchbook Section 11](#).
- **Check and Balance:** Courts provide a check and balance on the actions of DCFS to ensure due process for families and sound legal findings. Courts should make diligent inquiry into the circumstances underlying the information in the Affidavit.

(5) OTHER WITNESSES: On its own motion or the motion of any party, the court may order that non-party witnesses be excluded from the courtroom. On request of a party, the court shall order exclusion.

PRACTICE TIPS:

- **Cannot Exclude Parties:** Parties to a proceeding cannot be excluded from the courtroom. Only children can be taken out of the courtroom during testimony that may not be in their best interest to hear.
- **DCFS and CASA are Not Parties:** Neither DCFS nor CASA are parties to CINC proceedings. DCFS staff member or a CASA volunteer may be excluded if any party plans to call them as a witness. However, a DCFS representative would likely need to remain in court to assist the ADA. See La. Code Evid. Art. 615(B)(2).
- **Exemption:** In the interest of justice, the court may exempt any witness from its order.

▼

OVERALL GUIDANCE:

- **Engagement:** The court should do all that it can to support and encourage the meaningful engagement of families in CINC proceedings.²² Testifying in court is stressful for many parents and children. Court is intimidating for most individuals (including non-party witnesses), and the stakes could not be higher for parents and children in CINC cases. Many parents and children are coming into court with a history of trauma. Regardless of the trajectory of the case, parents and children may benefit from having their voice heard. It is critical for the judge to consider information provided by the parents and children, and to convey to the parents and children that their testimony is being given due consideration in the court's ruling. Positive engagement is critical to successful outcomes in the case.²³ Judges must create an environment where parents and children are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.²⁴

²² Gatowski, *supra* note 2, at 68.

²³ *Id.*

²⁴ Gatowski, *supra* note 2, at 16.

H. FINDINGS

ARTICLES 626-7

- **ESSENTIAL JUDICIAL FINDING - REASONABLE GROUNDS AND SAFETY PLAN:** The court shall make the following written, separate, and individualized findings of fact *for each child* and explicitly document them in the CSPH Order signed and dated by the judge. The court shall determine whether:
 - There are or are not reasonable grounds, pursuant to Article 606(A), to believe that the child is in need of care; AND
 - The continued implementation of the safety plan is or is not necessary for the child's safety and protection while remaining in his/her home pending the timely filing of the CINC Petition and Adjudication.

HELPFUL GUIDANCE:

- **Specific Grounds:** Best practice is to include specific ground(s) codified in Article 606(A) in the CSPO. Reference to specific grounds gives parents notice of the basis of the court's finding, consistent with due process, and guides the formation and implementation of the safety plan and/or case plan.
-

I. RULING OPTIONS

ARTICLES 622, 627

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

(1) CONTINUED IMPLEMENTATION IS NECESSARY:

- **NECESSARY:** If the court determines that the continued implementation of the safety plan is necessary for the child's safety and protection, the court shall:
 - Order that the safety plan conditions are necessary for the safety and protection of the child's health and safety, while remaining in his/her home, pending the timely filing of the CINC Petition and Adjudication;
 - Order that the parents and safety monitor comply with the conditions of the safety plan; AND
 - List the conditions of the safety plan that the parents and safety monitor shall comply with in the CSPO.

PRACTICE TIP:

- **Persons Subject to Safety Plan:** The court should include the name of the parents and safety monitor subject to the safety plan so that everyone understands who is involved in the safety plan. The Order should also include the safety monitor's relationship to the family.
-

(2) SAFETY PLAN IS NOT NECESSARY OR NOT SUFFICIENT:

- **NOT NECESSARY:** If the court determines that the safety plan is not necessary for the child's safety and protection, the court can order that the:
 - Safety plan is not necessary; AND
 - Child be removed from his/her home.
- **NOT SUFFICIENT:** If the court determines that the safety plan is not sufficient for the child's safety and protection, the court can order the:
 - Safety plan is not sufficient; AND
 - That the child be removed from the home.

PRACTICE TIP:

- **Not Sufficient:** Alternatively, the court may find that the safety plan is not sufficient, but there are reasonable grounds to believe the child is in need of care and that a removal is necessary for the child's safety and protection. In this situation, the court should follow the CCH articles in the Children's Code and use the [Continued Custody Order Template](#) instead of the [Continued Safety Plan Order Template](#). There are critical Federal and State law findings, including reasonable efforts and contrary to welfare findings that must be determined in the [first court order](#) removing child.

J. FURTHER ADVISEMENTS

ARTICLE 625

- **If the safety plan is continued, the court shall advise all persons before the court:**
 - **Electronic Mail Address:** If a parent provides an electronic mail address at which the parent is willing to receive service and notice of future proceedings, then all service or notice of future proceedings may be sent electronically until such time as the parent provides notice to the court and all parties in writing or open court that he/she is no longer able to receive service or notice at such address;
 - **Current Whereabouts:** Advise the parents of their responsibility to notify DCFS and their counsel in writing of their current whereabouts, including their address, cellular number, telephone number, and any other contact information, and that if they fail to do so, the law authorizes hearings to be held in their absence;
 - **Contact Information:** To identify on record the name, address, and whereabouts of each parent and any relative or other individual willing and able to offer a wholesome and stable home for the child; all grandparents, all parents of a sibling where such parent has legal custody of such sibling, and all other adult relatives of the child; AND
 - **Achieve Permanency:** Of their responsibility in achieving timely permanency for the child.

PRACTICE TIP:

- **Electronic Mail Address:** If a parent has not provided an electronic mail email at which they can be served, judges should encourage parents to do so. Having an email address to send notice helps ensure the parents receive the notice. For example, when a parent does not have a stable home to live in, and their address continues to change, it is helpful to have an email address to send them notice.

K. CINC PETITION FILED

ARTICLES 646, 649

- **If at the time of the CSPH, a CINC Petition has been filed, the court may:**
 - Call upon the parents to answer the allegations in accordance with Articles 646 and 649. See [Answer Hearing Benchbook Section 6](#).

L. FURTHER ORDERS

ARTICLES 102, 301, 318, 601, 627

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

- (1) VISITATION/FAMILY TIME:** Even though the child remains in his/her home when a safety plan is continued, the court has authority to specify visitation between the child and one of his/her parents as well as between the child's caretakers, siblings, or other family members pending the timely filing of the CINC Petition and Adjudication. For example, the child may have been removed from one parent and not the other parent. Also, the child may have a sibling who was removed even though the child remained in the home. For more information, see the visitation/family time section in [Continued Custody Hearing \(CCH\) Benchbook Section 5](#).²⁵
- (2) PATERNITY OR MATERNITY:** If the identity and whereabouts of an alleged parent is known but filiation has still not been legally determined, the 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.), including ordering that DCFS make arrangements for DNA tests to determine the paternity/maternity of any alleged parents and that the alleged parents comply.
- (3) FAMILY TEAM MEETING (FTM):** If there is an open DCFS Family Services case, DCFS should propose a tentative date for the next FTM. The court can provide notice of and encourage participation by all parents, caretakers, children, CASA workers, and attorneys for children and parents as applicable.

PRACTICE TIP:

- **Set Tentative Date for Next FTM:** Facilitating a tentative or confirmed date and time for the next FTM while everyone is at the hearing, and including the tentative date in the Order, helps ensure FTMs are timely held. Without enough notice of the FTM date and time, some team members may have difficulty participating. FTMs should be conducted at least every 6 months.

HELPFUL GUIDANCE:

- **Purpose:** FTMs are facilitated by DCFS, and they are important because FTMs are where case planning occurs for the family. It is also where parents, children, and other stakeholders and supports give needed input on the services and assistance needed and to be provided.
- **Name Change:** FTMs were previously called Family Team Conferences (FTC) in DCFS Family Services cases involving in-home safety plans.

-
- (4) PROTECTIVE ORDER (PO):** The court can issue or modify a PO in compliance with Article 627(D).
-

²⁵ See also <https://www.childwelfare.gov/topics/systemwide/assessment/family-assess/progress/visitation/> for more resources.

PRACTICE TIP:

- **Examples:** PO can be used instead of or with the CSPO to help keep the child safely in the home and/or manage the safety and risk concerns or threats. For example, a PO may be helpful to use when the child was removed from a caretaker other than the parent. The court may want to consider a PO when, for example, there is a need to prevent a parent or other individual's contact with the children or when eviction of the perpetrator from the residence is needed. See [Temporary Restraining Order \(TRO\) and Protective Order \(PO\) Benchbook Section 2](#).

M. ORDER OF NOTICES AND FUTURE HEARINGS

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

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

- (1) CINC PETITION NOT FILED:** If the CINC Petition is not filed within 45 days of the issuance of the ISPO, the CSPO shall automatically terminate unless an extension is granted by the court based upon a showing of good cause and notice to all parties;
- (2) FUTURE HEARINGS:** The parents of the child, all attorneys of record, a DCFS representative, and CASA (if appointed) be present at all future hearings.
- (3) SET MATTER FOR ANSWER HEARING IF CINC PETITION HAS BEEN OR WILL BE FILED:**
 - **If the CINC Petition has been or will be filed, the court shall order:**
 - Clerk to notify all parties of the date, time, and location of the Answer Hearing and that all parties of interest appear, which shall be set within 15 days of the date of filing of the CINC Petition;
 - Sheriff's Office to serve parents with a summons commanding him/her to appear at court for the Answer Hearing;
 - DCFS shall provide notice to the parents of the date, time, and location of the Answer Hearing as well as the nature of the allegations;
 - Notice of the Answer Hearing shall be made on counsel of record and CASA (if appointed); AND
 - Arrangements for any parent, who is incarcerated, be made to attend the Answer Hearing, either in person or remotely.

N. CASE MANAGEMENT

(1) ENGAGEMENT:

- Specifically, ask parents, the safety monitor, and child if they understand what occurred at the hearing and engage them in a conversation about the next steps.
- Advise parents of the importance of their active participation in all proceedings.
- Advise parents of the rigorous timeframes for child abuse and neglect cases outlined in State and Federal laws.
- Advise parents of the consequences for failure to appear at any further court hearings.
- Ensure that parents and children have contact information for caseworkers and attorneys and understand the process to request court review if necessary.
- Ask if there are any questions for the court.
- It is helpful for children and parents to be able to meet very briefly with their attorneys after the hearing so that the attorneys can address immediate issues.

(2) PREPARATION FOR THE NEXT HEARING:

- Identify tasks to be accomplished by the various parties for the next hearing.
- Make oral findings and orders that all participants can understand.

- Consider the appropriateness of mediation, and order if applicable (Article 435 et seq.).
- An attorney or the court is responsible for the completion of the Order. See [Continued Safety Plan Order Template](#).
- All attorneys and unrepresented parties should review the Order before the judge signs it to ensure it accurately reflects the proceeding.
- Time permitting, best practice is to sign the Order on the same day as the hearing.
- Ensure all Orders are written, signed, copied, and distributed at the end of the hearing.
- Provide parents with a copy of the Order immediately following the hearing.

O. MODIFICATION

- The court retains the authority to modify the CSPO. While the Children’s Code does not provide a specific modification provision for court-ordered safety plans, some courts will grant a joint motion to modify the CSPO if agreed upon by all parties. Best practice is for the safety monitor to also sign the modified safety plan.

P. POSSIBLE NEXT STEPS

Articles 628-30, 631-2, 646

(1) FILING OF CINC PETITION: The CINC Petition shall be filed within 45 days of the issuance of the ISPO and answered at the Answer Hearing within 15 days after the Petition is filed.

(2) TERMINATION OF SAFETY PLAN ORDER:

- **Automatically Terminated:** If the CINC Petition is not timely filed, the ISPO shall automatically terminate.
- **Extension:** Upon showing of good cause and notice to all parties, the court may grant, deny, or restrict a requested extension of the time for filing the CINC Petition in accordance with the best interests of the child. If an extension is granted, the court shall issue a written Order reciting the particular facts justifying the extension.

(3) INFORMAL ADJUSTMENT AGREEMENT (IAA):

- **Before CINC Petition:** Before filing a CINC Petition, the court or DA may authorize an IAA.
- **After CINC Petition:** After filing a CINC Petition, the court may authorize the DA to effect an IAA and either dismiss the CINC Petition or allow it to remain pending during the period of informal adjustment.

 **PRACTICE TIP:**

- **Alternatives for Families:** The court or DA may want to consider proceeding with an IAA if appropriate and all parties agree. Some parishes routinely use IAAs after an ISPO and/or CSPO is issued. An IAA can be implemented before or after a CINC Petition is filed. If an IAA is initiated after a CSPO, for example, DCFS has more time to work with the family before a CINC Petition is filed and/or Adjudication. The IAA requires fewer court appearances and, if successful, obviates the need for Adjudication. See [Informal Adjustment Agreement Benchbook Section 1](#).

(4) REFER MATTER TO FAMILY IN NEED OF SERVICES (FINS) OFFICER: Before filing a CINC Petition, the court or DA may refer the matter to a FINS intake officer. See Articles 743 et seq.

(5) PETITION FOR PROVISIONAL OR PERMANENT CUSTODY: At any time prior to Adjudication, any person, including a relative of the child, may petition the court for the provisional or permanent legal custody of the child.

HELPFUL GUIDANCE:

- **If Foster Care is Potential Disposition:** This Article aligns with Articles 681(A)(1), 683, and 622(D) and gives any person or relative the authority to seek court review (prior to Adjudication) of their claim to custody of a child in which foster care is a potential Disposition.



APPENDIX

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.

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

CONTINUED SAFETY PLAN ORDER

THIS CAUSE came for hearing on the ____ day of _____, 20 __, pursuant to an Instanter Safety Plan Order dated the _____ day of _____, 20 __, concerning the following child(ren), _____, and parent(s), _____ /caretaker(s), _____.

I. APPEARANCES

The child(ren), _____, is/are present.

The child(ren), _____, is not present and:

(Please check the applicable box for each child)

the child, _____, is age 12 or older, counsel moved to waive the child's appearance, and the court grants the waiver.

the child, _____, is younger than 12 years of age, and counsel did not request the child's appearance.

_____.

Parent _____

Department of Children and Family Services

Parent's Attorney _____

Staff/Representative _____

Parent _____

Foster Parent(s), Pre-adoptive Parent(s), Relative(s)

Parent's Attorney _____

Providing Care for Child(ren) _____

Caretaker(s) _____

Child(ren) Attorney(s) _____

Assistant District Attorney _____

Bureau of General Counsel _____

Others _____

II. NOTICE

THE COURT FINDS that: *(Please check the applicable boxes for each parent)*

the parent(s), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was given by the Department.

the parent(s), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was not given by the Department for the following reason:

_____.

III. INITIAL ADVISEMENTS

The Court advised the parent(s) of the nature of the proceedings; the allegations; the right to an Adjudication hearing including the right to call and cross-examine witnesses and the right to appeal; the right to be represented by counsel; and, the right to representation by the Indigent Parents' Representation Program if indigent.

The Court advised the child(ren) in terms understandable to the child(ren) of the nature of the proceedings and the allegations.

IV. INDIAN CHILD WELFARE ACT (ICWA)

The Court asked each person whether he or she knows or has reason to know that the child(ren) is a member of a federally recognized Indian Tribe or is eligible for membership in a federally recognized Indian Tribe and is the biological child of a member of a federally recognized Indian Tribe, pursuant to 25 U.S.C. § 1903. The Court has instructed each person before the Court to inform the Court if he or she subsequently discovers information indicating that the child(ren) is a member of a federally recognized Indian Tribe or eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian Tribe, pursuant to 25 U.S.C. § 1903.

THEREFORE, the Court finds there is reason to know child(ren), _____,
 no reason to know that child(ren), _____, is a member of a federally recognized Indian Tribe or eligible for membership in a federally recognized Indian Tribe and is the biological child of a member of a federally recognized Indian Tribe, pursuant to 25 U.S.C. § 1903, at this time.

V. FINDINGS

THE COURT FINDS that there are: *(Please check the applicable box for each child)*

reasonable grounds to believe the child(ren), _____,
is in need of care in accordance with Article 606(A) _____ (1-8) and that the continuation of the safety plan is
necessary for the safety and protection of the child(ren) while remaining in their home;

The persons subject to the safety plan include:

The parent(s), _____,

The safety monitor(s) and their relationship to the family is: _____

_____.

not reasonable grounds to believe the child(ren), _____,
is in need of care and that the continuation of the safety plan is not necessary or sufficient for the safety and protection
of the child(ren).

VI. RULINGS

Based upon the findings above and the evidence presented:

IT IS ORDERED BY THE COURT that: *(Please check one of following for each child)*

the following safety plan conditions are necessary for the safety and protection of the child(ren), _____
_____, health and safety, while remaining in their home, pending the timely filing
of the Child in Need of Care Petition and Adjudication and that the parent(s) and safety monitor(s) comply with these
conditions:

(1) _____;

(2) _____;

(3) _____;

(4) _____;

(5) _____.

the safety plan is not necessary or sufficient to secure the protection of the child(ren), _____
_____, and that (the case be dismissed/safety plan be revoked, Protective Order be
issued, etc.): _____.

VII. APPOINTMENTS

IT IS ORDERED BY THE COURT that if not previously ordered: *(Please check the applicable boxes)*

_____ be and is hereby appointed to represent the child(ren) in these proceedings and that said program be given notice of appointment and served with a signed copy of the pleadings filed herein.

that the parent(s), _____, is/are found to be indigent and is/are referred to the District _____ Public Defender Office who shall provide for representation and that said program be given notice of appointment and served with a signed copy of the pleadings filed herein.

that the District _____ Public Defender Office shall provide for a curator ad hoc to locate absent parent(s), _____, and that said program be served with a signed copy of the pleadings filed herein.

that the local CASA program be and is hereby appointed, subject to the assignment of a qualified volunteer to advocate for the best interest of the child(ren) in these proceedings. CASA must be provided notice of appointment and served with a copy of the pleadings filed herein.

VIII. FURTHER ADVISEMENTS

The Court advised the parent(s) that once an electronic mail address is provided all service and notice of future proceedings may be sent electronically until such time, they provide notice to the Court and all parties in writing or in open Court that they are no longer able to receive service or notice at such address.

The Court advised the Department and the parent's counsel of their responsibility to promptly inform the Court of a new mailing address or electronic mail address, upon receipt of information regarding a parent's change of address.

The Court directed all persons before the Court to identify the name, address, and whereabouts of each parent and any relative or other individual willing and able to offer a wholesome and stable home for the child(ren).

The Court advised all persons before the Court of their responsibility in achieving timely permanence for the child(ren).

The Court advised all persons before the Court of their responsibility to identify the name, address, and whereabouts of all grandparents, all parents of a sibling where such parent has legal custody of such sibling, all other adult relatives of the child(ren) and any other individual willing and able to offer a wholesome and stable home for the child(ren).

IX. FURTHER ORDERS

THE COURT FURTHER ORDERS the following as necessary and appropriate: *(Please check box if applicable)*

IT IS FURTHER ORDERED that pending the filing of a Child in Need of Care Petition and Adjudication and/or establishment of a case plan, visitation/family time between the child(ren) and parent(s) and shall occur as follows:

and at all other times agreed by the parties.

IT IS FURTHER ORDERED that pending the filing of a Child in Need of Care Petition and Adjudication and/or establishment of a case plan, visits between separated siblings and/or with significant family members or other individuals shall occur as follows: _____

and at all other times agreed by the parties.

IT IS FURTHER ORDERED that the Department make arrangements to motion for DNA tests to determine the paternity/maternity of any alleged parents and that alleged parents comply.

IT IS FURTHER ORDERED that prior to every Family Team Meeting (FTM) hereafter conducted in this case, the Department shall provide reasonable notice of said FTM to all parent(s), caretaker(s), children, CASA workers, and attorneys for child(ren) and attorneys for parent(s).

The initial FTM is tentatively on the _____ day of _____, 20____, at _____ am/____pm.

IT IS FURTHER ORDERED that the following Protective Order be issued and/or modified in compliance with Article 627: _____

IT IS FURTHER ORDERED that _____

X. ORDER OF NOTICES AND FUTURE HEARINGS

IT IS FURTHER ORDERED BY THE COURT that if the Child in Need of Care Petition is not filed within 45 days of the issuance of the Instant Safety Plan Order this order will automatically terminate unless an extension is granted by the Court based upon a showing of good cause and notice to all parties.

IT IS FURTHER ORDERED that the parent(s) of the child(ren), the DCFS representative(s), all attorneys of record, and CASA be present at all future hearings.

IT IS FURTHER ORDERED that: *(check if CINC Petition has been or will be filed)*

This matter be set for Answer Hearing, the clerk shall notify all parties of the date, time, and location of the hearing and that all parties of interest appear; the Sheriff's Office serve the parent(s) with a summons commanding him or her to appear at Court for the hearing; the Department provide notice to the parent(s) of the date, time, and location of the hearing as well as the nature of the allegations; notice of the hearing be made on counsel of record and CASA (if appointed); and for any parent(s) incarcerated, _____ arrange for the parent(s) to attend the hearing, either in person or remotely.

This matter has been set for **ANSWER** on the _____ day of _____, 20____, at _____ am/ __pm.

THUS DONE AND SIGNED ON THIS _____ day of _____, 20 _____, in _____, Louisiana.

JUDGE

DISTRIBUTION OF NOTICE

Please serve all parties and counsel of record as follows:

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Child(ren)'s Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Assistant District Attorney/Bureau of General Counsel: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Please send notice and copy of order as follows:

Department of Children and Family Services Staff/Representative:
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

CASA: _____

Street: _____

City, State, Zip: _____

Fax Number: (____) _____

Email Address: _____

Other: _____

Role: _____

Street: _____

City, State, Zip: _____

Fax Number: (____) _____

Email Address: _____

CONTINUED CUSTODY HEARING (CCH)

La. Ch. C. arts. 624-627

LOUISIANA
CHILD IN NEED OF CARE BENCHBOOK
FOR JUVENILE JUDGES

SECTION

5

INTRODUCTION

A. General Considerations

The liberty interest in family relationships granted by the 14th Amendment to the United States Constitution is a fundamental right affording the highest constitutional protection to parents¹ in the care, custody, and management of their children.² Because this is a fundamental right, State intervention must be “limited and should only be asserted when there is a serious threat to the family, the parents, or the child...extraordinary procedures established by law are meant to be used only when required by necessity, and then with due respect for the rights of the parents, the children, and the institution of the family, and only to the extent that such procedures are not prohibited by the Louisiana Constitution of 1974, as amended.”³ It is the judge’s responsibility to see that all children and each parent are afforded their constitutional rights to due process.

Families are the cornerstone of our society, and judges should avoid unnecessary separation of the child and family if the child can remain safely in the home.⁴ When the State is forced to intervene on behalf of abused and neglected children and decide whether to place children outside the home, it must consider the emotional impact of separation on children. If it can be safely implemented, the best plan is the least restrictive environment for a child, which is generally a child’s own home. Each child and family deserve to be treated fairly and holistically, regardless of how and why they enter the court system. Judicial determinations to remove a child from a parent should only be made based on legally sufficient evidence that a child cannot be safe at home.

There is well-documented scientific research on the psychological and physiological impact on a child removed from his/her home. The extent of the impact can depend upon a number of factors, such as age, stage of development, race, family structure, and type of abuse or neglect experienced. Additional factors such as the child’s socio-economic background, culture, customs, and traditions may also be significant. The impact of removing a child from his/her home when these factors are present can far outweigh the harm allegedly inflicted on a child by his/her parents. Dr. Alan Shapiro, Assistant Clinical Professor of Pediatrics at Albert Einstein College of Medicine, has examined the acute and long-term harms caused by family separation.⁵ According to Dr. Shapiro, “separation can impact children in various ways, including developmental regression, depression, difficulty sleeping, and acute stress.” Dr. Shapiro also notes that “[t]he younger you are when you’re exposed to stress...the more likely you will have negative health outcomes caused by dysregulation of stress response.” That dysregulated stress response, in turn, “leads to architectural changes in the brain—which means that in the future children might end up with serious learning, developmental and health problems.” Dr. Shapiro further asserts that the separation of children from families may also lead to long-term chronic medical conditions like cardiovascular disease, hypertension, obesity, and decreased longevity.⁶

1 The plural form of “parent” is used throughout the Benchbook for simplicity, even though at times only one parent has been identified in a case.

2 See *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

3 La. Ch. C. art. 101.

4 Gatowski, S., Miller, N., Rubin, S., Escher, P., & Maze, C. (2016) Enhanced resource guidelines: Improving court practice in child abuse and neglect cases. Reno, NV: National Council of Juvenile and Family Court Judges, p. 14 [hereinafter Gatowski].

5 Goydarzi, Sara. (2018) Separating families may cause lifelong health damage, *Scientific American*, <https://www.scientificamerican.com/article/separating-families-may-cause-lifelong-health-damage/>

6 Judges are encouraged to obtain training in Trust-Based Relational Intervention (TBRI®) and to encourage other child welfare stakeholders involved in their CINC cases to obtain TBRI® training. See <https://crossroadsnola.org/tbri/> for training opportunities in your area. Listed on the California Clearinghouse for Evidence Based practices, TBRI® is an attachment-based, trauma-informed intervention that is designed to meet the complex needs of vulnerable children. TBRI® educates and equips caregivers with knowledge and skills that empower them to provide healing care for a child who has experienced trauma. In addition to successful use by families, TBRI® has been used in multiple settings to effect change, including intensive home programs, residential treatment centers, schools, and courtrooms.

Exposure to trauma in childhood can both stunt cognitive development and alter a child’s brain structure in profound ways.⁷ A groundbreaking 17,000-patient study called the Adverse Child Experiences (ACEs) Study, conducted by Kaiser Permanente and the Centers for Disease Control and Prevention, found that exposure to traumatic events in childhood is strongly correlated with increased risk of suicide attempts, drug addiction, depression, chronic obstructive pulmonary disease, heart disease, and liver disease.⁸

In addition to the physical and emotional ills that befall children placed in foster care, the long-ranging effects of removal decisions are staggering. A study⁹ that tracked at least 15,000 children between 1990 and 2002 found higher delinquency rates, higher teen birth rates, and lower earnings among children placed in foster care as compared to similarly situated children who remained at home.¹⁰ A recent investigative report that conducted a confidential survey of 6,000 prison inmates from 12 States determined that 1 in 4 inmates had been in foster care.¹¹

Judges charged with reviewing the decision to remove children are in a challenging and powerful position that can affect a child’s entire future.¹² When children are removed from their parents, they can end up separated from siblings, extended family, friends, community, and belongings. These children may be placed with adults and other children they do not know, who may not look like them, speak their language, or follow their family’s customs. They may be disconnected from school, activities, and adults they trust. Removing a child is a colossal decision and one that should be made when necessary to keep the child safe, but with due respect for the rights of parents, children, and the institution of the family.

Given the constitutional rights of parents and the grave harms and long-term consequences children who are removed from their homes may face, the significance of the Continued Custody Hearing (CCH) cannot be underestimated. To have a fair, productive, and comprehensive hearing, judges need accurate, up-to-date information.¹³ Consequently, one of the court’s primary goals should be to make the CCH as complete and meaningful as possible. A thorough CCH may require a substantial preliminary investment of resources and time. Still, this investment can lead to better outcomes for children and their families while decreasing the considerable court and Department of Children and Family Services’ (DCFS) costs accumulated during an out-of-home placement. The court should conduct an in-depth inquiry concerning the circumstances of the case and hear from all parties and interested persons present. It is important to make sure the parents, children, and relatives present are engaged and understand what is happening at this critical hearing.¹⁴ Early engagement impacts whether or not families are eventually reunified, which is the goal of this process when possible. “When parties leave the hearing with the perception that they were treated fairly by a court that is concerned about their interests and is actively encouraging a working relationship among the parties, there is a stronger likelihood that court intervention can be ended quickly.”¹⁵

B. Timing, Presence, and Notice

The CCH shall take place within 3 days after the child has been removed—unless the child has been released to the care of his/her parents or caretakers in the interim or a continuance is granted for up to 3 days for good cause (in accordance with the best interest of the child).¹⁶

7 Carnes, Stephanie. (2018) The trauma of family separation will haunt children for decades, HUFFINGTON POST, https://www.huffingtonpost.com/entry/opinioncarnes-family-separation-trauma_us_5b2bf535e4b00295f15a96b2

8 More detailed information about the study can be found in “Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults,” published in the American Journal of Preventive Medicine in 1998, Volume 14, pages 245–258, [https://www.ajpmonline.org/article/S0749-3797\(98\)00017-8/abstract](https://www.ajpmonline.org/article/S0749-3797(98)00017-8/abstract)

9 In order to avoid results attributable to family background, extreme cases of abuse or neglect were screened out and instead, “on the margins” cases were used. The study defines “on the margins” decisions as instances where there was disagreement by child protection investigators as to whether removal was necessary. By using the removal tendencies of investigators as an instrumental-variable (i.e., a variable that induces change in the explanatory variable but has no effect on the dependent variable), the study identifies the effects of foster care placement on child outcomes for school-aged children. This study provided the first “viable, empirical evidence of the benefits of keeping kids with their families,” and confirms that children who remain in their home have better long-term well-being outcomes than children who were removed and placed in foster care.

10 Joseph J. Doyle, Jr., Child Protection and Child Outcomes: Measuring the Effects of Foster Care, 97 Am. Econ. Rev. 1583 (2007).

11 Bauer, L. & Thomas, J. (2007) Throwaway Kids. Kansas City, KS: The Kansas City Star, <https://www.kansascity.com/news/special-reports/article238206754.html>.

12 Gatowski, supra note 4, at 107.

13 Id.

14 Gatowski, supra note 4, at 108. Parents may be angry and emotionally distraught during the CCH, and the adversarial nature of court proceedings can heighten tensions. The court should take active steps to neutralize hostilities, gain the cooperation of the parties, and assist parties in attacking the problem rather than each other.

15 Gatowski, supra note 4, at 108-109.

16 In computing a period of time prescribed by law, the date of the event after which the period begins to run is not included; the last day of the period is included but if a legal holiday—including Saturdays and Sundays—then the period runs until the end of the next day which is not a legal holiday. La. Ch. C. art. 114.

CINC proceedings are closed to the public, which means the court should only admit persons with a proper interest in or are necessary to the proceedings. These include parents, children, district attorney (DA)/assistant district attorney (ADA) or DCFS attorney (Bureau of General Counsel/BGC), DCFS representatives, Court Appointed Special Advocate (CASA) (if appointed), and foster caregivers (i.e., foster parents, pre-adoptive parents, and relatives) caring for the child. Foster caregivers are not parties but, per State and Federal law, have a right to notice and an opportunity to be heard at all CINC hearings (including the CCH) involving a child in their care.¹⁷

Parents and children have a right to counsel at all stages of the CINC proceedings. The child representation and public defender programs should have already been appointed in the Instanter Order, but if not, they should be appointed at the CCH. If necessary, the court can make indigency findings for parents at the CCH. However, most parents appearing before the court in a CINC case require appointed attorneys. If CASA was not appointed in the Instanter Order, the court may appoint them at the CCH as well.

Having all parties present and participating in the hearings is critical for moving the case forward. The court should ensure that DCFS efforts are diligent and thorough in locating and involving all legal and putative parents. The court must make a thorough inquiry regarding notice if any party or foster caregiver is absent from the court proceeding. If the parent cannot be found or has been served a summons or notified by DCFS to appear and fails to appear, the hearing may be held in the parent's absence. However, if the court determines additional search efforts are needed, it should specifically identify those efforts. If additional efforts are needed, this could be good cause for a continuance. Parents have the right to participate in the CCH. To ensure the attendance at the CCH of any parent who is incarcerated at the CCH, a writ or motion should have been filed and an order issued by the court and served on the warden or administrator of the facility prior to the CCH. Service should be made sufficiently in advance of the hearing to afford time for the facility to arrange for transportation of the parent to court (or video conferencing where the parent's physical attendance at the hearing is not possible).

The children's attorney has an obligation to inform the child of the right to be present at the hearing and facilitate such presence if appropriate. The Children's Code mandates that children 12 years of age and older be present at this hearing unless the child's attorney moves to waive his/her presence. Children younger than age 12 shall be present if required by the court or child's attorney. If the children are not present and should be, there may be good cause for a continuance. The presence of children at court is not up to DCFS; however, if the child is in DCFS custody, DCFS must facilitate the children's presence at court.

The judge should engage in an inquiry related to the child's presence at court. For example, if the child's attorney moves to waive the child's presence, the judge should inquire as to the reason for the request. If the child is present, does the child wish to be heard? The court has an oversight role in CINC cases and, as such, the court should make every effort to ensure that the child has been given enough information about the court process and an opportunity to be engaged in the process.

The child is a party to the hearing, and his/her voice is invaluable to decision-making. While some may argue that attending court hearings is traumatic to children, it is important to remember that they have already lived through the trauma that brought them into care. Engaging children in planning their future and protecting their safety can actually be empowering.¹⁸ The CASA volunteer and/or foster caregiver may also be a support to the child in court.

Having children present can also assist the court in making decisions about a case. Interacting with the child and observing potential medical issues, delays, etc. provides needed information to the court. Although challenging, courts should try to schedule hearings so that children can be present and participate as much as possible. This necessitates knowing about the child's schooling and other activities.

Nationally, there is a growing acceptance and understanding of the importance of involving children and youth in child welfare decision-making.¹⁹ Child welfare experts recognize the benefits of child and youth participation and the importance of the rights of children and youth. Federal law asserts that the views of children and youth should be considered when decisions relating to them are made, and their views must be considered when determining what is in their best interest.²⁰

¹⁷ See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

¹⁸ Gatowski, *supra* note 4, at 72.

¹⁹ Gatowski, *supra* note 4, at 108-109.

²⁰ *Id.*

The court should ask parties and persons before the court if they know of any relatives, fictive kin, or other individuals willing and able to offer a wholesome and stable home for the child. The court should ask that such individuals be identified on the record in order for DCFS to assess them for placement and permanency purposes. The court should further ask all parties and persons before the court if they know the identity and whereabouts of any alleged parents not present in court as well as siblings of the child and his/her parents.²¹

For all parties present, the court is responsible for providing interpretation, translation, and/or language assistance services and reasonable accommodations for those with disabilities. There must be ample time for legal interpreters to review pertinent legal documents with the party prior to the court proceeding. Interpreters must be familiar with the case-related details to provide accurate, meaningful, and effective interpretation.

C. Initial Advisements and Inquiries

At the beginning of the CCH, the court should give initial advisements pursuant to Article 625 to the parents and may also do so for the child. It is also the judge's responsibility, pursuant to the Children's Code and Federal law, to make sufficient inquiries and findings regarding the Indian Child Welfare Act (ICWA) at this hearing. If the court knows or has reason to know that a child is an Indian child, it shall proceed according to Articles 624 and 624.1.

One of the judge's critical functions is to safeguard due process at every stage of a CINC case. For this reason, the judge should inquire whether counsel had sufficient opportunity to consult with the child and the parent prior to the presentation of evidence at the CCH.

D. Testimony and Evidence

The State has the burden of proving that the initial removal was necessary, there are reasonable grounds to believe the child is in need of care, and continued provisional custody of the child is necessary for his/her safety and protection pending the timely filing of the CINC Petition and Adjudication. Hearsay evidence is admissible at the CCH.

Testimony should be taken regarding whether the child will be unsafe if he/she remains in the home, and the efforts taken to prevent or eliminate the need for removal or make it possible to safely return the child home or emergency reason why reasonable efforts were not necessary.

Judges and all legal stakeholders should be familiar with the Child Welfare Assessment and Decision Making Model (CWADM). The CWADM is a framework DCFS uses to assess safety and risk and the needs and strengths of children and families throughout the life of a case so that courts and DCFS have the best possible information upon which to make decisions with and for families involved with DCFS. A formal safety assessment is required either when a threat of danger is identified, or at specific intervals during the life of a case. There are 3 core variables considered to determine whether a child is safe or unsafe: (1) threats of danger to the child; (2) the child's vulnerability to the identified threats of danger; and (3) the caretaker's protective capacities to manage the threats of danger and keep the child safe. The threat of danger considers whether the caretaker's behavior or family situation is likely to result in imminent harm to the child. The child's vulnerability looks at the extent to which a child can protect himself/herself from the identified threats of danger. The caretaker's protective capacities look at the way a caretaker thinks, feels, and/or acts and whether those capacities can prevent or control the identified threats of danger. See the [Child Welfare Assessment and Decision Making Benchbook Section 11](#) for more information.

DCFS must articulate how the child is unsafe without a Continued Custody Order based on an assessment of threats of danger, child vulnerability, and parent/caretaker protective capacities. When the Safety Assessment is conducted during an emergent situation, it is possible that an assessment of parental protective capacities was not able to be completed. However, even in an emergency removal, DCFS should still be able to articulate the threats of danger identified that prompted the request for removal, and the current threats of danger.

²¹ La. Ch. C. art. 625.

While judges may consider stipulations, they do not substitute for the court's required findings at the CCH. The court must make a diligent inquiry about the need for continuing custody. While an attorney may make a strategic decision to stipulate that the child is in need of care, the judge must still find that the standard has been met. The Affidavit alone is insufficient for the required findings.

The court's role at the CCH is to be a check and balance on the actions of the State. The actions of DCFS have profound consequences on children and families. Without sufficient inquiry into the circumstances underlying the information stated in the Affidavit and the efforts taken by the State prior to removal, the court does not ensure Federal and State law mandates are met and that the fundamental liberty interest of families is upheld. A record shall be made of the grounds for the decision, reasonable efforts, and whether the finding of continued custody is in the child's best interest.

If the child is present in court, the child may choose to testify as to his/her wishes, and the court must consider this testimony in its rulings. If the child is not present or does not want to testify, the child's attorney shall make the child's wishes clear.

If a suitable relative or individual is seeking provisional custody of the child, evidence must be presented showing this person is willing and able to provide a stable environment and protect the child's health and safety. Foster caregivers have a right to be heard at the CCH regarding a child in their care. If they attend, the court shall ask them if they would like to speak regarding the care and treatment of the child. Foster caregivers can complete a Foster Caregiver Progress Form and give it to DCFS, who will provide copies of the form to the court at the CCH. The Foster Caregiver Progress Forms contain hearsay information and should be treated as information about the child in the same way DCFS provides other information to the court. As the child's day-to-day caregiver, foster caregivers likely have valuable information to share with the court (even within the first few days of the child's removal).

E. Reasonable Grounds and Reasonable Efforts Findings

There are two specific, written, and individualized findings that the court shall make for each child in the CCH Order: reasonable grounds and reasonable efforts findings.

a. Reasonable Grounds

The court shall determine whether there are reasonable grounds to believe that the child is in need of care according to Article 606(A) and continued provisional custody of the child is necessary for the child's safety and protection pending the timely filing of the CINC Petition and Adjudication. Sometimes there are reasonable grounds as to one child but not as to another child within the same family, thus findings must be individualized to each child.

b. Reasonable Efforts

DCFS is legally required to make reasonable efforts²² to: (1) prevent or eliminate the need for removal; (2) reunify the family; and (3) achieve timely permanency for the child. The court is obligated to determine whether DCFS efforts are reasonable by making diligent inquiry into the specific facts and circumstances of the case. In any reasonable efforts finding, the child's health and safety shall be the paramount concern. The court must then make written findings for each child.²³

22 La. Ch. C. art. 603(25) defines reasonable efforts as "the exercise of ordinary diligence and care by department case workers and supervisors and shall assume the availability of a reasonable program of services to children and their families."

23 See 42 U.S.C. § 671(a)(15)(E) and 672(a)(1);, 45 C.F.R. § 1356.21(h)(2), 45 C.F.R. § 1356.21(b)(2) and 1356.71(d)(1)(i); See also Child Welfare Policy Manual, Section 8.3C.4, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?ciID=59 Edwards, Leonard. "Overcoming Barriers to Making Meaningful Reasonable Efforts Findings." ABA Child Practice Today. January 29, 2019, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/overcoming-barriers-to-making-meaningful-reasonable-efforts-find/; Edwards, Leonard. (2014). Reasonable Efforts: A Judicial Perspective, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=210§ionid=2&articleid=5428> ("Congress designed the law to ensure child welfare agencies provide families with services to prevent disruption of the family unit, and to respond to the problems of unnecessary removals and foster care drift. The reasonable efforts requirement is an enforcement mechanism to guarantee that each State provides adequate preventative and reunification services."); Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>.

Under State law, the judge shall make a finding at the CCH as to whether or not DCFS made reasonable efforts to prevent or eliminate the need for the child's removal and, after removal, to make it possible for the child to safely return home. Alternatively, the court can find that reasonable efforts were not required per Article 626 or 672.1. The mandatory reasonable efforts finding is required to be made in a written court order within the first 60 days of the child's removal. DCFS risks losing Title IV-E funding for the child's entire stay in foster care if the child is removed from his/her home and placed in DCFS custody without a judicial finding that reasonable efforts were made by DCFS or alternatively, were not required by law. Thus, if reasonable efforts to prevent the child's removal from his/her home were not made initially, it is critical for the court to hold DCFS accountable going forward to making them within the first 60 days of the child's removal.²⁴

DCFS must initially make reasonable efforts to provide the assistance and services needed to preserve the family and prevent removing the child from his/her home. After the child has been removed, the court shall determine whether reasonable efforts were made to make it possible for the child to safely return home. Reasonable efforts require that DCFS provide accessible, available, and culturally appropriate services that will help families remedy the conditions that brought the child and family to the attention of DCFS. Due to the physical and psychological harms and long-term impact of removing children from their families, reasonable efforts by DCFS to preserve the family are a critical prevention strategy.

As to the reasonable efforts finding in the written CCH Order, the court has a few options. The court must first consider whether DCFS could reasonably have provided services to the family or attempted to or did provide services (i.e., substance abuse and/or mental health treatment, trauma therapy, parenting classes, counseling, home visiting program, safety checks/home visits, etc.) and activities (i.e., home visits and safety checks) to make it possible for the child to safely return home.²⁵ As part of its inquiry, the court should evaluate whether the need for immediate placement of the child could be eliminated by providing additional services and/or implementing court orders, such as an Instanter Safety Plan Order (ISPO), Temporary Restraining Order (TRO) per Article 617, or Protective Order (PO) per Article 618, concerning the conduct of the child's parents or caretakers.

However, if the court determines that DCFS's first contact with the family occurred during an emergency where the child could not safely remain at home or return home even with reasonable in-home services provided to the family, the judge may find that reasonable efforts were not required. The court may also find that reasonable efforts were not required if the court has made a judicial determination pursuant to Article 672.1. DCFS must articulate the nature and circumstances of the substantial and immediate danger and exigent circumstances at the CCH.

If DCFS has not made reasonable efforts, the court may impose sanctions pursuant to Article 712. However, the court may still find the child's safety and well-being warrant continued out of home placement even if DCFS's efforts to prevent removal were not reasonable.

F. Ruling Options Regarding Custody

Even if the court finds that there are reasonable grounds and that DCFS has made reasonable efforts (or such efforts were not required in the case), the court should still order the child be returned to one or both of the parents if it is safe to do so. The court has several options and may order the child be: (1) returned to his/her parents and dismiss the case; (2) returned to his/her parents pending the timely filing of the CINC Petition and Adjudication and issue a PO; (3) returned to his/her parents pending the timely filing of the CINC Petition and Adjudication and order a safety plan; or (4) removed from the custody of one parent and not the other parent even though it is anticipated that a CINC Petition will still be filed and issue a PO and/or safety plan as needed.

In addition to a parent, a child can be removed from a caretaker, whether the caretaker has legal custody of the child or not. In such cases, the caretaker does not become a party to the CINC case and is not entitled to the appointment of an attorney. The law only provides the right to an appointed attorney for parents, not caretakers. While DCFS has the authority to investigate a caretaker, a TRO

²⁴ Id.

²⁵ Id.

and/or PO may be a more appropriate court intervention to use with a caretaker to manage safety concerns with regard to the child. See Temporary Restraining Order (TRO) and Protective Order (PO) Benchbook Section 2.

If the court determines that the child cannot be returned to one or both parents, the court shall seek to place provisional custody of the child in the least restrictive and most appropriate setting with the health, safety, and best interest of the child being the paramount concern. The Children’s Code prioritizes placing provisional custody with suitable relative²⁶ and other suitable individuals²⁷ over DCFS.²⁸

If the child cannot be placed with a parent, then provisional custody pending the timely filing of the CINC Petition and Adjudication should be granted to an adult relative with whom the child has been living if that relative agrees to the safety plan (which includes the conditions of contact with the parents and other third parties). If there is no adult relative with whom the child has been living, the court shall then look to give provisional custody to an appropriate adult relative who agrees to the safety plan. When relatives are not an option at the CCH, the court shall make written findings to that effect. The court shall then consider placing the child in the provisional custody of another adult. Another suitable person could be a coach, neighbor, family friend, parent of a classmate, or another appropriate individual who agrees to the safety plan. If there are no suitable relatives or other individuals available to place the child with, the court can then look to give provisional custody to DCFS. The court should inquire and place on the record if there are any relatives, fictive kin, or other individuals willing and able to offer a wholesome and stable home for the child that the parents want DCFS to consider for placement or permanency.

Pursuant to Article 631(B), an individual (relative or other person) can petition for provisional or permanent legal custody of the child after the CCH and before Adjudication.

If siblings have been removed from their home, Federal law requires that DCFS make reasonable efforts to place siblings together unless DCFS documents that such a joint placement would be contrary to the safety or well-being of any of the siblings. Although these reasonable efforts findings need not be reflected in the actual CCH Order, they are nevertheless critical to the well-being of the children in the case. Thus, courts should examine such efforts at the CCH and other relevant stages of the CINC proceeding to determine if siblings can be safely reunited.

“The relationships people share with siblings are often the longest-lasting they will ever have. Siblings are there from the beginning, and they are often still around after parents and even spouses and children are gone.”²⁹ Sibling relationships are particularly vital to children from disorganized or dysfunctional families.³⁰ These relationships assume even greater importance when children from these families enter the foster care system.³¹

The research shows that when siblings are separated from each other, many children feel “they have lost a part of themselves,” adding to the pain and anxiety they experience over removal from their parents and home.³² Too often, children in foster care are not placed with their siblings and have infrequent contact with them. At least one Federal district court has found that placing siblings separately and denying them sibling visits violates their right to freedom of association pursuant to the 1st Amendment and substantive due process under the 14th Amendment.³³ Unless contrary to their safety and well-being, supporting and sustaining the sibling bonds of children who have been placed in foster care should be a priority for the child welfare system and the court. Thus, judges should inquire as to the placement of siblings together—whether half or full siblings. Placement considerations may include a child’s significant relationship and bond with another child with whom they have been raised. Judges should also help ensure family time/visitation between siblings when appropriate and safe to do so, as sibling visits can lessen the trauma of separation.

If the child is continued in or placed in DCFS custody, the court shall give further advisements to parties and persons before the court in conformity with Article 625.

26 La. Ch. C. art. 603(20) defines relative “as an individual with whom the child has established a significant relationship by blood, adoption, or affinity. Affinity means relationship by marriage.”

27 La. Ch. C. art. 603(20) defines other suitable individual as “a person with whom the child enjoys a close established significant relationship, yet not a blood relative, including a neighbor, godparent, teacher and close friend of the parent.”

28 Indeed, the Children’s Code does allow for relatives and other individuals to apply to the court for an ex parte order to take provisional custody of the child pending a CCH. See La. Ch. C. art. 622(A).

29 Glover, Linda. (1997) Overcoming barriers to keeping siblings together. Connections, reprinted at <https://affcn.org/overcoming-barriers-to-keeping-siblings-together/>.

30 Gatowski, supra note 4, at 85.

31 Id.

32 Kernan, Emily. Keeping siblings together: past, present, and future. National Center for Youth Law, <https://youthlaw.org/publication/keeping-siblings-together-past-present-and-future/>.

33 Barbara Elias-Pericful, The Constitutional Rights of Children, Texas Bar Journal Vol. 73 No.9 750, 753 (2010).

G. Further Orders

The court may make additional orders at the CCH that are in the best interest of the child. These include orders regarding family time/visitation with the parents, siblings, and/or other family members pending the timely filing of the CINC Petition and Adjudication. The Authors' Notes to Article 627 make it clear that the court has the authority to make orders regarding visitation relying on its inherent authority pursuant to Article 318 and on the child's need for stability and continuity pursuant to Article 102.

Frequent and meaningful contact between parents and children has shown to be a predictor of safe and lasting reunification in CINC cases. The terms "contact" and "family time" are used here based on the premise that the use of the term "visitation" does not adequately communicate the intimacy and importance of the parent/child relationship. When appropriate for children, frequent family time can help maintain healthy connections and lessen the negative impact of separation for both the child and the family. Instead of a one-size-fits-all family time plan, contact should be specifically tailored to meet the individual needs of the child and family before the court. Visits should be scheduled at a time that best allows the parent to participate and disrupts the child's schedule as minimally as possible.³⁴

Judges should inquire about the family time/visitation schedule, including the frequency and those to be included in the visits, and make sure the unique circumstances of the case and the age and development of the child have been carefully considered. Consistent with child safety, relationships between and among children, parents, and siblings are vital to child well-being. Judges must ensure that quality and appropriate family time is an integral part of every case plan. Family time should be liberal and presumed unsupervised unless there is a demonstrated safety risk to the child.³⁵ Family time should not be used as a case compliance reward or consequence. If siblings are not placed together, sibling family time apart from parental family time should be considered. Judges should also be cognizant that a child may have a sibling-type relationship and bond with another child who is not a biological sibling but just as significant to the child.

Judges should encourage the application of the Quality Parenting Initiative (QPI), which focuses on a team approach to parenting the child during the duration of the case. DCFS has adopted QPI, but judges are in a unique position to make sure QPI is being utilized in the case. When QPI is successful, parents, foster caregivers, kinship caregivers, DCFS staff members, and CASA work as a team to support the child.³⁶

In addition to family time/visitation orders, the court may make other orders at the CCH. If the identity and whereabouts of an alleged parent is known but filiation has not been legally established, the court can order that DCFS make arrangements to acquire the information needed to prove 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.). If a parent has not been located, the judge should direct the parent who is present under oath to provide the name, address, and whereabouts for any absent parent as well as any relatives of the child. The court may issue a PO in addition to the CCH Order. For example, such an action might be useful when the court grants custody of the child to one parent pending the filing of the CINC Petition and Adjudication but contact with the other parent or a caretaker needs to be restricted.

The court can order DCFS to initiate a child welfare background clearance, criminal background check, and/or an assessment of the home or home study on suitable relatives and other individuals who may be potential placements for the child. The court can also order DCFS to initiate the Interstate Compact on the Placement of Children (ICPC) process for the child's potential placement with an out-of-State relative or other individual.

³⁴ Gatowski, *supra* note 4, at 85.

³⁵ Gatowski, *supra* note 4, at 139.

³⁶ See <http://www.dcfslouisiana.gov/page/471> and <https://www.qpi4kids.org/what-is-qpi/> for more information on QPI.

The court may also enter orders related to the child's education. The Every Student Succeeds Act (ESSA), passed in 2015, specifically addresses the needs of children in the child welfare system. Of particular note:

1. DCFS must assure that students in foster care remain in their school of origin unless it is not in their best interest, and, if it is not in their best interest, that must be documented in the case record;
2. Children in foster care can enroll immediately in a new school when a school change is necessary, even if the child cannot produce normally required enrollment documents and school records;
3. Enrolling schools are responsible for contacting the school last attended by the child to obtain relevant education records;
4. It is the responsibility of the local school district to obtain cost-effective transportation, and if there are barriers, the school district should reach out to DCFS to discuss on a child-specific basis; AND
5. Every school district must designate a point of contact for child welfare agencies.

Louisiana law is in line with the first and fourth of these provisions.³⁷ Specifically, with regard to transportation, Louisiana law provides that if the foster care placement is outside the public school's jurisdiction, the school board is responsible for providing free transportation for the child to and from a designated location within that school district that is located nearest to the child's residence and determined to be appropriate by the school board and approved by DCFS. DCFS shall be responsible for providing the child's transportation between that location and the child's residence. The practice of implementation, however, may vary from the law. For example, in some parishes, the district may provide all the transportation for the child.

In addition to ESSA and State law, the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections) includes several requirements related to education and the child's case plan, namely:

1. Assurances that the placement of the child in foster care takes into account the current educational setting and proximity to the school and that the State agency has coordinated with local educational agencies to ensure the child remains in same school where appropriate;
2. If remaining in that school is not in the best interest of the child, assurances by the State and local education agencies to provide immediate enrollment and transfer of records to a new school; AND
3. Consideration of reasonable travel for the child to remain in his/her current school.³⁸

Finally, the court can also order that DCFS give reasonable notice³⁹ of Family Team Meetings (FTMs) to parents, caretakers, foster caregivers, children, CASA workers, and attorneys for the children and parents. FTMs are important because this is where case planning for the family occurs. It is also when parents and children and other stakeholders and service providers give input and updates on the services and assistance the family needs and/or is receiving. Without enough notice of the FTM date and time, some team members may have difficulty participating. If the child is in DCFS custody or has an open DCFS Family Services case, DCFS should propose a tentative date for the next FTM. The court can provide notice of and encourage participation by all parents, caretakers, children, foster caregivers, CASA workers, and attorneys for children and parents as applicable.

An attorney or the court is responsible for completion of the CCH Order. All attorneys and unrepresented parties should review the order before the judge signs it to ensure it accurately reflects the proceeding. Time permitting, best practice is to sign the Order on the same day as the hearing.

³⁷ See La. R.S. § 17:238.

³⁸ Fostering Connections to Success and Increasing Adoptions Act, Public Law 110-351.

³⁹ DCFS policy requires at least 15 days' notice.

H. Next Steps

It is important to ascertain if the parents and child understood what occurred at the hearing. As role models, judges can exemplify the value of engaging parents and children in the case. Research shows that reunification is more likely when the family is engaged and actively participates in the process. Asking the parents and children questions and getting to know them can go a long way towards this engagement. The process is more successful for all involved when the approach is collaborative (rather than punitive). When the hearing has concluded, the court may want to give attorneys a short time to talk to their clients. In this way, children and parents can have the information and/or reassurances they need to be able to leave the courthouse with lessened anxiety and know what is expected of them and what will happen next.


















If the CINC Petition has been filed by the time of the CCH, the court can order the parents to answer the Petition at that time. Or the court can set an Answer Hearing. Additionally, the court can set dates for the discovery deadline, Prehearing Conference, and Adjudication or Adjudication and Disposition. The court may want to identify tasks to be accomplished by the various parties for the next hearing.

The State has 30 days from the CCH to file a CINC Petition (unless an extension is granted). The CINC Petition shall be answered within 15 days after filing. If the CINC Petition is not timely filed, the CCH Order terminates, and the child shall be returned to the parents. However, if the order terminates, it does not preclude the filing of a CINC Petition or the filing of another Instant Order regarding the parents and children involved in the case.

Prehearing Conferences can help identify and dispose of issues in the case. Such conferences promote efficiency and reduce decision-making delays. Prehearing Conferences are required for stipulations at the Answer Hearing.

A Prehearing Conference can be used to consider alternatives to formal CINC proceedings. For example, the court or DA may want to consider proceeding with an Informal Adjustment Agreement (IAA) if appropriate, in the child's best interest, and all parties agree. An IAA can be implemented before or after a CINC Petition is filed. The IAA requires fewer court appearances and, if successful, obviates the need for Adjudication and is a viable alternative to keeping the child out of foster care. See Informal Adjustment Agreement (IAA) Benchbook Section 1. Another example of an alternative to formal court proceedings that could be considered at a Prehearing Conference is a voluntary transfer of custody or a referral to a Family in Need of Services (FINS) intake officer.

OUTLINE

-  **A. TIMING AND CONTINUANCES**
-  **B. APPEARANCES AND APPOINTMENTS**
-  **C. NOTICE**
-  **D. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS**
-  **E. INITIAL ADVISEMENTS**
-  **F. INDIAN CHILD WELFARE ACT (ICWA)**
-  **G. EVIDENCE AND TESTIMONY**
-  **H. FINDINGS**
-  **I. RULING OPTIONS**
-  **J. FURTHER ADVISEMENTS OF RESPONSIBILITIES TO THE PARENTS**
-  **K. FURTHER ADVISEMENTS OF RESPONSIBILITIES TO ALL PERSONS**
-  **L. FURTHER ORDERS**
-  **M. CINC PETITION FILED**
-  **N. ORDER OF NOTICES AND FUTURE HEARINGS**
-  **O. CASE MANAGEMENT**
-  **P. POSSIBLE NEXT STEPS**
-  **Q. APPENDIX**
 - (1) CONTINUED CUSTODY HEARING BENCH CARD**
 - (2) CONTINUED CUSTODY ORDER TEMPLATE**
 - (3) ORDER PLACING MINOR CHILDREN IN THE PROVISIONAL CUSTODY OF A SUITABLE RELATIVE OR INDIVIDUAL TEMPLATE**
 - (4) ORDER PLACING MINOR CHILDREN IN THE PROVISIONAL CUSTODY OF THE STATE OF LOUISIANA THROUGH THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES (DCFS) TEMPLATE**



OVERVIEW

A. TIMING AND CONTINUANCES

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

(1) TIMING:⁴⁰ The CCH (sometimes referred to as the 72-hour or shelter hearing) shall be held within 3 days after the child has been removed. See Article 114.

(2) CONTINUANCES:

- **Conditions:** The court may grant a requested continuance for up to 3 days only:
 - After notice has been given to all parties and any foster caregiver;
 - Upon a finding of good cause; AND
 - Upon determining the continuance is in the best interest of the child.
- **Report to Louisiana Supreme Court (LASC):** If a continuance is granted, or a delay permitted, that exceeds the maximum allowable times established by the Children’s Code, the court is mandated by Supreme Court Rule XXXIII, Part II, Sections 1 and 2, to report such continuance within 10 days to LASC, along with the reasons for the delay and a copy of the order. See https://www.lasc.org/children_families/timelinessreport.pdf for a copy of the report that must be submitted by the court to LASC. See also Louisiana District Court Rules, Title V, Chapter 42, Rule 42.1, for more information.

B. APPEARANCES AND APPOINTMENTS

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

(1) PROPER INTEREST OR NECESSARY: At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. The court shall not admit any other person unless it determines that the person has a proper interest in or is necessary to the proceedings.

☰ PRACTICE TIP:

- **Include Other Agencies:** Coordinating services with the Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful, and the court may want to consider having one or more represented at the CCH. This multi-disciplinary approach could be especially critical for youth who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated services and supports.

☰ HELPFUL GUIDANCE:

- **Privacy:** Limiting the number of persons present in the courtroom protects the privacy of children in CINC cases. The judge is mandated to exclude all but the listed persons unless first determining the person has a proper interest or is necessary to the proceedings. Law students or social workers studying juvenile procedure might qualify as persons with proper interest. If the court allows other persons to be present, the court should stress the confidentiality of the case information.

⁴⁰ In computing a period of time prescribed by law, the date of the event after which the period begins to run is not included; the last day of the period is included but if a legal holiday—including Saturdays and Sundays—then the period runs until the end of the next day which is not a legal holiday. La. Ch. C. art. 114.

(2) ESSENTIAL JUDICIAL FUNCTION - ASSISTANCE SERVICES AND SPECIAL ACCOMMODATIONS: Under State and Federal law, the court is responsible for providing interpretation, translation, and/or language assistance services for parties to CINC hearings and/or reasonable accommodations for parties to CINC hearings with disabilities. When the court appoints counsel for indigent persons, it is also responsible for appointing and paying for a qualified interpreter/translator for indigent persons with these needs to assist in communication with counsel in all phases of the preparation and presentation of the case.⁴¹ There must be ample time for legal interpreters to review pertinent legal documents with the party prior to the court proceeding.⁴² Interpreters must be familiar with the case-related details to provide accurate, meaningful, and effective interpretation.⁴³

(3) CHILDREN: Children are parties and shall be present at the hearing unless an exception below applies.

- **12 and Older:** If the child is 12 years of age or older, he/she shall be present in court unless his/her presence is waived by the court upon motion of the child's attorney.
- **Below 12:** If the child is below the age of 12 years, he/she shall be present in court upon request of the child's attorney or the court.
- **Waive:** The court shall state in the Order whether or not the court waived the presence of the child at the hearing.

HELPFUL GUIDANCE:

- **Waiving Presence at the Hearing:** The child's attorney has an obligation to inform the child of the right to be present at the hearing and facilitate such presence, if appropriate. The judge should engage in an inquiry related to the child's presence at court. If the child's attorney moves to waive the child's presence, for example, the court should ascertain the reason underlying the request. If the child is present, does the child wish to be heard? The court has an oversight role in CINC cases and, as such, should make every effort to ensure that the child has been given enough information about the court process and an opportunity to be engaged in the process.
- **Importance of Presence at the Hearing:** Having all parties present and participating in the hearing is critical for moving the case forward and having a more meaningful hearing. Children are parties to the CINC Proceedings, and their voice is invaluable to decision-making. Having children present can also assist the court in making decisions about a case. Interacting with the child and observing potential medical issues, delays, etc., provides needed information to the court. Although challenging, courts should try to schedule hearings so that children can be present and participate as much as possible. Scheduling to allow the child to attend hearings necessitates knowing about the child's school schedule and other activities. There are different ways to hold hearings given some of the issues that arise with having children in court. For example, some judges hold their hearings in conference rooms instead of courtrooms to be less intimidating to children and parents. Other judges develop creative solutions, such as holding the hearing at a group home or scheduling the hearing after school.
- **Remaining in the Courtroom:** Prior to the commencement of the hearing, the court shall determine whether it is in the child's best interest for the child to remain in the courtroom during the testimony of the witnesses. If the court has concerns about the child's presence in the courtroom, an option could be that the child be brought outside of the courtroom with someone he/she trusts. While some may argue that attending court hearings is traumatic to children, it is important to remember that they have already lived through the trauma that brought them into the courtroom. Engaging them in planning their future and protecting their safety can actually be empowering.⁴⁴ Some courts in Louisiana have created sensory rooms for children at the courthouse to address the potential trauma of attending court, such as the Calming Studio located in Caddo Parish Juvenile Court.⁴⁵ Some courts provide a therapy dog to help emotionally support children in court.⁴⁶ The CASA volunteer (if appointed) or foster caregiver (if present) may also be a support to the child in court.

⁴¹ See C.C.P. Art. 192.2; La. R.S. § 46:2364; 42 U.S.C. § 3711; 28 U.S.C. § 604(a)(14), (15), and (16), § 1827, and § 1828; see also https://www.lasc.org/language_access and https://www.lasc.org/District_Court_Rules?p=TitleI.

⁴² See National Consortium of Interpreter Education Centers. (2009). Best practices American Sign Language and English interpretation within legal settings. U.S. Department of Education, Rehabilitation Services CFDA #84.160A and B, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind, <http://www.interpretereducation.org>

⁴³ Id.

⁴⁴ Gatowski, supra note 4, at 72.

⁴⁵ This article provides more information about the Calming Studio: <https://www.shreveporttimes.com/story/news/2019/07/24/caddo-parish-juvenile-court-calm-room-studio/1804662001/>; see also this video: <https://www.youtube.com/watch?v=URA4WtXqu1M>.

⁴⁶ These articles provide more information about how therapy dogs have been used in courts: https://www.americanpress.com/news/local/juvenile-court-introduces-therapy-dog-program/article_%20f449e71c-3fc2-11e7-a03e-4b861db8938b.html See also LA. Rev. Stat. § 15:285, which allows for witnesses who are either under 18 years of age or who have a developmental disability as defined by LA. Rev. Stat. § 28:451.2 to have a facility dog, if available, accompany them while testifying in court.

(4) PARENTS: Parents of the child are parties and should be present at the hearing.**PRACTICE TIPS:**

- **Effect of Nonappearance of Parent:** If the parent is absent, the hearing may proceed if he/she cannot be found, was served a summons, or was notified by DCFS.
- **Absentee:** The court shall order the appointment of a curator for any parent who is an absentee.⁴⁷
- **Incarcerated:** To ensure the attendance of any parent who is incarcerated at the CCH, a writ or motion should have been filed and an order issued by the court and served on the warden or administrator of the facility prior to the CCH. Service should be made sufficiently in advance of the hearing to afford time for the facility to arrange for transportation of the parent to court (or video conferencing where the parent's physical attendance at the hearing is not possible).
- **Direct Parent Present to Identify Other Parents:** If a parent has still not been located, the judge should direct the parent who is present under oath to provide name, address, and whereabouts for any parent who has not been located and emphasize the importance of identifying and locating any absent parents.
- **Determining Paternity/Maternity:** The court must ensure that efforts by DCFS are thorough and diligent in locating and involving all legal and putative parents and that paternity or maternity of all children is legally determined. If the identity and whereabouts of an alleged parent is known but filiation has still not been legally determined, the 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.), including ordering that DCFS make arrangements for DNA tests to determine the paternity/maternity of any alleged parents and that the alleged parents comply.
- **Direct Parent Present to Identify Potential Relative Caregivers:** Establishing paternity or maternity is also critical for finding potential relative caregivers for the child; thus, the court may also want to direct the parents under oath to identify relatives of the child.

HELPFUL GUIDANCE:

- **Identification of Parents or Legal Custodians:** Courts should ensure all biological, legal, and putative parents are legally established as soon as possible. Decisions made in CINC hearings can affect a child's entire life if this information remains unknown. When a child does not know who one of his/her parents is, that also means the child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Timely resolution of filiation and paternity or maternity issues is in the best interest of the child and essential to due process and avoiding permanency delays.
- **Maternity:** There may be cases where there is an issue with maternal filiation. However, Louisiana law has not been amended to contemplate situations when, for example, two women are married and one gives birth to a child during the marriage. Louisiana filiation laws for paternity would likely be instructive for similar maternity issues.

(5) ATTORNEYS, APPOINTMENTS, AND WAIVERS:

- a. **Parents:** The Indigent Parents' Representation Program shall provide qualified legal counsel, including curatorship appointments, to indigent or absent parents in CINC cases unless a parent waives his/her right to counsel (See Articles 575 and 608).

⁴⁷ La. Ch. C. art. 575., La. Ch. C. art. 608, La. Ch. C. art. 627(G); An absent person in Louisiana is "one who has no representative in this state and whose whereabouts are not known and cannot be ascertained by diligent effort." La. C.C. 47 626(G).

- **Right to Counsel:** The parents of a child who is the subject of a CINC proceeding shall be entitled to qualified, independent counsel at the CCH and at all stages of the proceedings thereafter.
- **Found to Be Indigent:** The court should determine whether it needs to make a finding of indigency for one or both parents. If a parent is found to be indigent (financially unable to afford counsel) and the parent has not previously been appointed counsel, the court shall order that the parent be referred to the Indigent Parents' Representation Program (best practice is to refer the parents to the local Public Defender Office, see Article 575) and that the program or office shall provide representation and be given notice of appointment and served with notice and a copy of the pleadings. Best practice is for parents to be referred to the local Public Defender Office in the Instanter Order so counsel for parents are present at the CCH and hearings thereafter, and for the court to make an indigency finding at the CCH, if necessary.
- **Waiver of Right to Counsel:** A parent may waive his/her right to qualified, independent counsel. However, before accepting a waiver of counsel, the court shall ensure that the parent was informed of his/her rights enumerated under Article 608 and the possible consequences.

 **PRACTICE TIP:**

- **Prior to Hearing:** The judge should inquire as to whether counsel had sufficient opportunity to consult with the parents prior to the hearing and that they received a copy of the Affidavit and Instanter Order.

 **HELPFUL GUIDANCE:**

- **Due Process:** Protecting the interest of the parent is an important role of the parent's attorney and ensures due process for the parent. The parent's attorney should zealously advocate for the parent whether the parent is present or not.
- **Conflicts of Interest:** Judges must be cognizant of possible conflicts of interest that may arise in representation of parents at all junctures in the case. For example, parents who are married or living together may have or may develop divergent legal positions in the CINC case. It may also be a conflict for one attorney to represent multiple fathers or mothers in a case. When there is a curator ad hoc for an absent parent, the curator may not be able to represent a parent who is located due to a conflict.

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- b. **Children:** An attorney for the child shall be present at every hearing, assert the child's wishes, and protect the legal interests of the child even if the child is not present (Article 607).⁴⁸
 - **Appointment:** The program for child representation should have been appointed in the Instanter Order. If not, the court shall order that the program approved to represent children in that jurisdiction be appointed to represent the child in all CINC proceedings and be given notice of appointment and served with notice and a copy of the pleadings.

 **PRACTICE TIP:**

- **Prior to Hearing:** The judge should inquire whether counsel had sufficient opportunity to consult with the child prior to the hearing and that they received a copy of Affidavit and Instanter.

⁴⁸ LA. SUP. CT. RULE XXXIII, PART III.

HELPFUL GUIDANCE:

- **Due Process:** Protecting the interest of the child is an important role of the child’s attorney and ensures due process for the child. The child’s attorney should zealously advocate for the child whether the child is present or not.
- **Conflicts of Interest:** Judges must be cognizant of possible conflicts of interest that may arise in the representation of children at all junctures in the case. With regard to current clients, for example, there could be a conflict representing two siblings if one has sexually perpetrated on the other. It would also be a conflict for a child’s attorney to represent both a teenage mother and her baby if the baby is in care. Further, a conflict may be present if siblings’ wishes are divergent, and the attorney cannot make a colorable argument for the differing positions.

- c. **State:** An ADA, an attorney the ADA designates, or a DCFS attorney (Bureau of General Counsel/BGC) should be present at the hearing.

(6) DCFS: A DCFS staff member or representative(s) should be present at the hearing.

(7) CASA: For confidentiality reasons, CASA should only be present at the hearing if the court has appointed them.

- **Appointments:** If CASA was not previously appointed, the court can order that the local CASA program be appointed, subject to the assignment of a qualified CASA volunteer, to advocate for the best interest of the child in these proceedings and that the program be notified of appointment and served with a copy of the pleadings (Article 424.1).

HELPFUL GUIDANCE:

- **Role:** CASA volunteers are sworn officers of the court appointed by judges to advocate for the best interests of children in CINC cases. CASA volunteers visit with children to get to know them and find out important information, such as how they are doing in the placement, what kind of services are needed, and how school is going. The CASA volunteer may also talk to professionals working on the case, the child’s family, the foster caregivers, teachers, and others. They can review important documents relating to the case, such as summaries on the parent and/or child’s progress. The CASA volunteer prepares reports for the court about what they have learned about the child. In the report, they make independent recommendations to the court about what should happen in the case to have the best outcome for the child—to keep the child safe, promote the child’s well-being, and help find a permanent placement for the child. Unlike the children’s attorney, the CASA volunteer does not advocate for the wishes of the child unless those wishes are in the child’s best interest. The CASA volunteer can also monitor the case plan and advocate to make sure the plan is followed and serves the best interests of the child. The court appoints the local CASA program, subject to the assignment of a qualified volunteer. If available, then a CASA volunteer will be assigned to the case. The Children’s Code requires the CASA program to be established in compliance with the National CASA Association standards and the volunteer to be trained in accordance with those standards.⁴⁹

(8) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD: Foster caregivers (i.e., foster parents, relatives, or pre-adoptive parents) providing care for the child have a legal right to receive notice of and be present at the hearing. The court may permit the hearing to be held in the person’s absence even if they were not properly notified.⁵⁰

⁴⁹ La. Ch.C. art. 116(2.1) and (2.2).

⁵⁰ See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

HELPFUL GUIDANCE:

- **Federal Law:** The Adoption and Safe Families Act (ASFA) of 1997⁵¹ gave foster caregivers the right to notice and to be heard in “certain” court hearings regarding the care and treatment of the child.⁵² The Safe and Timely Interstate Placement of Foster Children Act of 2006 amended ASFA to clarify that the right to notice and be heard extends to “any” court proceeding held with respect to the child.⁵³ This Federal legislation was enacted to emphasize the crucial role of the child’s daily caregiver and the valuable information that the caregiver can provide to the court to make informed decisions that are in the best interest of the child. Notably, the Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases, by the National Council of Juvenile and Family Court Judges, discusses the importance of giving these caregivers notice and the opportunity to be heard at all hearings regarding a child in their care.
- **State Law:** In Louisiana, the rights of foster caregivers are included in the Louisiana Children’s Code, the Louisiana Revised Statutes, and DCFS policy. Article 623 of the Children’s Code aligns with the rights outlined in the Safe and Timely Interstate Placement of Foster Children Act of 2006.⁵⁴ It clarifies that DCFS has an obligation to give notice to “foster parents, pre-adoptive parents,⁵⁵ and relatives caring for a child at any court hearing regarding the child” and that the notice shall “state the date, time, and place of the hearing and inform the recipient of his right to attend and be heard.”⁵⁶ Article 623 also clarifies that the court has an obligation to solicit information regarding the care and treatment of the child from the foster caregiver who appears at a hearing regarding the child. Further, DCFS and the courts have an obligation to uphold the Foster Parent Bill of Rights provided in Louisiana Revised Statute § 46:286.13. Under the Foster Parent Bill of Rights, foster parents have a right to be informed of court hearings and legal and administrative actions as authorized by law in a timely manner in recognition of the importance of their role as foster parents.⁵⁷
- **Value of Attending Hearings:** Foster caregivers are encouraged to attend CINC hearings regarding the child in their care. CINC hearings offer opportunities to solve scheduling conflicts, such as visits and appointments, and challenges the child may be facing. Early and ongoing communication, respect, and support between caregivers, the court, the parents, and DCFS are important for the child’s well-being and getting him/her the supports and services needed as soon as possible (which is also critical for the Quality Parenting Initiative (QPI)⁵⁸ to be successful). Foster caregivers can also provide assistance and support to the child if they attend the hearing. Some hearings may include difficult information for the child to hear or long wait times. The caregiver’s presence at the hearing may better situate them to support the child during and after the hearing. Also, while on court premises, before or after the hearing, there may be an opportunity for wholesome and productive interaction and communication between the caregiver and the child, the parents, DCFS, CASA, the attorneys, and/or others involved in the case.
- **Zoom or Other Virtual Platform:** If the hearing is held via Zoom or by another virtual platform, the court should allow the foster caregivers to attend and give them the opportunity to be heard. DCFS will provide the link to the foster caregivers.

(9) AUTHORIZED OFFICERS OF THE COURT AND WITNESSES:

- **Authorized officers of the court:** as designated by the judge may be present at the hearing.
- **Witnesses:** under examination may be present at the hearing.

⁵¹ 42 U.S.C. § 601 (1997).

⁵² The Adoption and Safe Families Act of 1997, 42 U.S.C. § 601 (2006), extends the rights of notice and to be heard to foster parents as well as to anyone else who is providing care for the child.

⁵³ 42 U.S.C. § 601 (2006); 42 U.S.C. § 675(5)(G).

⁵⁴ See La. Ch. C. art. 623(C), comment (a) (“Since the adoption of the Children’s Code in 1991, as implied by Article 624, the department has had the responsibility for notifying parents and other parties, such as any legal custodian of the child, of the scheduling of any continued custody hearing. By common understanding and custom, the department also notified those persons of any subsequent proceeding, including the adjudication and disposition hearings. This new Article makes that obligation explicit. In addition, it reflects the new duty imposed by Federal statute for the department to give such notice to any foster parent, pre-adoptive parent, and relative providing care as a condition for the continued receipt of Federal funds per the Safe and Timely Interstate Placement of Foster Children Act of 2006.”); La. Ch. C. art 623(E), comment (b) (“Paragraph E complies with the Safe and Timely Interstate Placement of Foster Children Act of 2006, that requires that ‘the foster parents (if any) of a child and any pre-adoptive parent or relative providing care for the child are provided with notice of, and a right to be heard in, any proceeding to be held with respect to the child.’ 42 U.S.C. § 675(5)(G) (emphasis added). In particular, it clarifies the foster parent or caretaker’s right to be heard. It also emphasizes the role of the child’s daily caretaker and the insight that the caretaker can provide.”).

⁵⁵ There is no definition provided for “pre-adoptive parent” in the Louisiana Children’s Code. DCFS policy defines “pre-adoptive parent” as “certified caregiver who has signed an agreement with the Department of Children and Family Services indicating that they intend to adopt a child who has been freed for adoption.”

⁵⁶ La. Ch. C. art. 623.

⁵⁷ La. R.S. § 46:286.13.

⁵⁸ See <https://www.qpi4kids.org/what-is-qpi>, for more information on QPI.

C. NOTICE

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

(1) PARTIES AND COUNSEL OF RECORD: The court shall determine if proper notices of the hearing were made to all parties and counsel of record, and enter required findings in the Order.

PRACTICE TIP:

- **DCFS Duty to Notify:** DCFS shall notify the court of each party's address and shall have a continuing duty to provide current information to the court about each party's whereabouts.
-

(2) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD:⁵⁹

- **Notice and Right to Be Heard:** The court shall determine whether DCFS:
 - Gave notice of the date, time, and place of the CCH to any foster caregiver providing care for the child; AND
 - Informed the recipient of his/her right to attend and be heard at the hearing.
- **Fails to Appear:** If a foster caregiver fails to appear the hearing, DCFS shall report to the court whether notice was given or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person's absence.

D. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS

The court should consider whether any of the following Federal laws or regulations apply to this case:

- Americans with Disabilities Act (ADA);
- Service Members Civil Relief Act (SMCRA);
- Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA); AND/OR
- Interstate Compact on the Placement of Children (ICPC), as codified in La. Ch. C. art. 1608 et seq.
 - **ICPC Generally:** ICPC is an agreement between all 50 States, Washington, D.C., and the U.S. Virgin Islands. It provides for the movement and safe placement of children between States when the children are sent out of State for placement in foster care or as a preliminary step to a possible adoption. The process involves several steps and goes from the local or field level in one State, through the central or State office of each State, to the local level in the other State for investigation. At the conclusion of the investigation, a report is sent from the local level to the State administration and back to Louisiana. The process usually takes several months to complete, so it is recommended that this process begins as soon as a potential out-of-State caregiver is identified and determined to be a suitable potential placement or resource. If the receiving State finds that the proposed placement is contrary to the interests of the child based on the receiving State's criteria, DCFS may not place the child with that caregiver. The judge still has authority to grant custody or guardianship to the out-of-State caregiver without ICPC approval. Still, there would be no supervision of the home and may be other severe repercussions. See [Disposition Hearing Benchbook Section 8 E](#) for more information on ICPC.

E. INITIAL ADVISEMENTS

ARTICLES 575, 625

The court shall advise the parents and may advise the child, insofar as practicable, of the:

- Nature of the proceedings and allegations in terms understandable to the parent and child;

⁵⁹ See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

- Right to an Adjudication Hearing, including the rights to call and cross-examine witnesses and the right to appeal; AND
- Right to be represented by counsel and the right of indigent parents to representation by the Indigent Parents' Representation Program in accordance with Article 608.

HELPFUL GUIDANCE:

- **Acknowledgment from Parents:** It is recommended that the judge have the parents acknowledge on the record and/or execute a written acknowledgment of advisement and understanding of these rights.
- **Understand:** It is important to make sure the parents, children, and others present understand what is happening. Judges are encouraged to ask:
 - Do you understand what this hearing is about? (Explain the purpose of the hearing).
 - Do you understand the Instant Order? (Review the Instant Order with parties).
 - Were you involved in any mediation process used before this hearing? If yes, what was the outcome?
 - What family members and/or other important people should be involved in this process?

F. ESSENTIAL JUDICIAL FINDING: INDIAN CHILD WELFARE ACT (ICWA)

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

- (1) INQUIRY:** The court shall ask each person before the court and make a record of the answer in the CCH Order for each child:
- As to whether they know or have reason to know that the child is a member of a Federally recognized Indian Tribe or eligible for membership in a Federally recognized Indian Tribe and is the biological child of a member of a Federally recognized Indian Tribe; AND
 - To inform the court if they subsequently discover information indicating that the child is a member of a Federally recognized Indian Tribe or eligible for membership in a Federally recognized Indian Tribe and is the biological child of a member of a Federally recognized Indian Tribe.
- (2) REASON TO KNOW:** If the court has reason to know that a child in the CINC case is an Indian child or is eligible for membership in a Federally recognized Indian Tribe, the court:
- May enter any order for placement in accordance with Article 627, but the court shall thereafter proceed as if the child is an Indian child; AND
 - Shall follow Article 624 and 624.1. See also the [Indian Child Welfare Act \(ICWA\) Bench Card](#) in [Appendices Benchbook Section 12](#).
- (3) INVALIDATION OF PROCEEDINGS:** Noncompliance with the provisions of ICWA may result in invalidation of the proceedings, including any subsequent adoption.

HELPFUL GUIDANCE:

- **Federally Recognized Tribes:** Not all Indian Tribes are Federally recognized. For example, only four of Louisiana's Indian Tribes are currently Federally recognized tribes: the Chitimacha Tribe of Louisiana, the Coushatta Tribe of Louisiana, the Jena Band of Choctaw Indians, and the Tunica-Biloxi Indian Tribe of Louisiana. But ICWA will apply if the child belongs to any "Federally recognized" tribe (even outside of Louisiana).
- **Eligibility:** Be cognizant that there are specific membership qualifications that make one a member or eligible to be a member of a Federally recognized Indian Tribe. For example, sometimes, a parent may not realize that a marriage in their family made their child eligible for such membership. Self-identification as an Indian, race, and/or the child's features are not sufficient to meet the membership criteria to consider.

- **Active Efforts:** Efforts involved in ICWA are very different from the reasonable efforts required by ASFA. Active efforts are required, and they are affirmative, active, thorough, and timely efforts intended to maintain or reunite an Indian child with his/her family. It is also critical for courts to proceed pursuant to the Federal ICWA and the regulations promulgated thereunder if the court finds that there is reason to know that the child is an Indian child.⁶⁰

G. EVIDENCE AND TESTIMONY

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

(1) GENERAL:

- **Burden of Proof:** The State has the burden of proving that the initial removal was necessary and that there are reasonable grounds to believe the child is in need of care and that continued provisional custody of the child pending the timely filing of the CINC Petition and Adjudication is necessary for his/her safety and protection.
- **Order:** The court sets the order of presenting evidence at the hearing.
- **Relevant Evidence:** The court shall consider all relevant evidence offered by the parties.
- **Hearsay:** Hearsay evidence is admissible at the CCH.

PRACTICE TIP:

- **Stipulations:** While judges may consider stipulations, they do not substitute for the court's required findings at the CCH. Diligent inquiry about the need for continuing custody must be made. While an attorney may make a strategic decision to stipulate that the child is in need of care, the court must still find that the standard has been met. The Affidavit alone is not sufficient for the required findings.

(2) PARENTS:

- **Rights:** Parents may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.
- **If CINC Petition Filed:** If a CINC Petition has been filed at the time of the CCH, the court may also call upon the parent to answer its allegations. See [Answer Hearing Benchbook Section 6](#).

(3) CHILDREN:

- **Rights:** Children may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.
- **Wishes:** If the child is present in court the child may choose to testify as to his/her wishes, and the court shall consider the child's testimony in the matter.
- **Methods of Testimony:** Any testimony given by a child may be taken by:
 - A videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of the Louisiana Children's Code;
 - An in-chambers conference attended only by the judge and court reporter and by counsel for the child, the petitioner, and the parents; OR
 - If no party objects and the parties agree as to the procedure, the child may be examined "in chambers, on or off the record, and with or without parents and/or counsel being present."⁶¹
- **Exclusion:** Prior to the commencement of the hearing, the court shall determine whether it is in the child's best interest for the child to remain in the courtroom during the testimony of the witnesses.

⁶⁰ For more information on ICWA, please see https://clarola.org/index.php?option=com_k2&view=item&id=1284:la-icwa-quick-reference-guide&Itemid=116; see also Murphy, Bob. (2020) *McGirt Injects Steroids into the Indian Child Welfare Act*. American Bar Association, Children's Rights Litigation, https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/winter2021-mcgirt-injects-steroids-into-the-indian-child-welfare-act/?utm_medium=email&utm_source=salesforce_353772&sc_sid=00265681&utm_campaign=MK20CNTT&promo=MKCONTENT1&utm_content=&additional4=&additional5=&sfmc_j=353772&sfmc_s=52961351&sfmc_l=2198&sfmc_jb=4007&sfmc_mid=100027443&sfmc_u=10232975.

⁶¹ *Watermeier v. Watermeier*, 462 So. 2d 1272, 1275 (La. App. 5th Cir.), cert. denied, 464 2d 301 (La. 1985)

PRACTICE TIPS:

- **Child Present or Not:** Whether present or not, the child’s attorney shall make sure the court hears the child’s wishes (i.e., regarding custody, services, visitation, etc.).⁶²
- **Methods of Communication:** If the child wishes to be heard but is not able to present or does not want to be present in the courtroom, the court should consider the use of other methods of communication, such as audio or visual conferencing.
- **Well-Being:** The court should inquire about the child’s physical, emotional, and mental health and educational needs and identify any gaps in services needed by the child.

(4) DCFS:

- **Instantner:** Testimony of the DCFS representative should be provided as to the circumstances underlying the request for the Instantner.
- **Safe or Unsafe:** Testimony should be taken regarding the individualized reasons that each child in the case will be unsafe if he/she remains in the care of the parents or caretakers. The Child Welfare Assessment and Decision Making Model (CWADM) includes an assessment used by DCFS and child welfare stakeholders to determine whether the child is safe or unsafe at all junctures of CINC proceedings. The court should insist on a clear articulation from DCFS as to how the child is unsafe as it relates to threats of danger, child vulnerability, and caregiver protective capacities and why an in-home safety plan and/or PO cannot be initiated to eliminate the need for removal. The threat of danger considers whether the caretaker’s behavior or family situation is likely to result in imminent harm to the child. The child’s vulnerability considers the extent to which a child can protect himself/herself from the identified threats of danger. The caretaker’s protective capacities consider the way a caretaker thinks, feels, and/or acts and whether those capacities can prevent or control the threats of danger. See [Child Welfare Assessment and Decision Making Model \(CWADM\) Section 11](#).
- **Reasonable Efforts:** Testimony must be taken regarding the reasonable efforts to prevent or eliminate the need for removal and, after removal, to make it possible for the child to safely return home, or the emergency reason why such efforts were not necessary.

PRACTICE TIP:

- **DCFS Testimony:** The DCFS worker very well may have witnessed events that prompted the request for the Instantner Order, observed the family dynamics, and/or interacted with the child. Hence, DCFS testimony should be considered in the court’s ruling.

(5) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD: The court shall solicit and consider information regarding the care and treatment⁶³ of the child from any foster caregiver providing care for the child who appears for the CCH.

⁶² LA. SUP. CT. RULE XXXIII, PART III, SUBPART II.

⁶³ Neither State nor Federal law provides a definition for “care and treatment of the child,” but DCFS policy states that it “includes information that the foster parent, relative, or pre-adoptive parent feels is critical to the safety and well-being of the child, such as how the child is doing physically, developmentally, emotionally, behaviorally, mentally, socially, and academically and what supports or services are needed for the child or caregiver to properly care for the child.”

PRACTICE TIPS:

- **Valuable Information that Must be Considered:** The court should value the role of the child’s daily caregiver and the insight they can provide about how the child is doing and what he/she needs. This is especially important at the CCH. Because of their day-to-day care of the child, foster caregivers have useful information that the court, DCFS, CASA (if appointed), and parties to the CINC case need to make crucial decisions regarding the child’s well-being. Thus, their role in the court process is to provide current and accurate oral and/or written information about their observations of how the child is doing so that judges can make informed decisions in the best interest of the child.
- **Solicit Information:** While foster caregivers are not parties, they have a legal right to be present and heard at any CINC hearing regarding a child in their care. There are at least 2 ways the court can solicit and consider information from caregivers. The caregiver can: (1) submit a Foster Caregiver Progress Form to DCFS prior to the hearing, or (2) attend and speak at the hearing, or both.
- **Submit a Foster Caregiver Progress Form:** The Foster Caregiver Progress Form is one of the ways foster caregivers can exercise their right to be heard but is not required. If the caregiver chooses to complete the form, they will submit it to DCFS, who will bring copies of the form to the CCH. The form can be submitted to DCFS even though the caregiver may not attend the hearing. These forms contain hearsay information and should be treated as information about the child in the same way DCFS provides other information to the court. Even if the caregiver submits the form, they still have the right to attend and be heard at any CINC hearing regarding the child in their care. See the [Foster Caregiver Progress Form Template](#) in the [Appendices Benchbook Section 12](#).
- **Speak at the Hearing:** In accordance with State and Federal law, if the foster caregiver attends the hearing, the court must solicit information from the caregiver about the care and treatment of the child (even if they submitted a Foster Caregiver Progress Form). At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. This includes foster caregivers. After the court hears arguments from parties and receives evidence, if another party has not called on the caregiver to testify, the judge should call on them to see if they would like to speak. Some caregivers may wish only to attend and not speak. Judges may allow the caregiver to use the form to guide them when they speak and/or may want to utilize the form to ask the caregiver questions.⁶⁴

(6) SUITABLE RELATIVE OR OTHER SUITABLE INDIVIDUAL: If there is a relative or individual seeking provisional custody of the child, there must be evidence presented showing that the person is willing and able to provide a stable environment and protect the child’s health and safety.

(7) OTHER WITNESSES: On its own motion or the motion of any party, the court may order that non-party witnesses be excluded from the courtroom. On request of a party, the court shall order the exclusion.

PRACTICE TIPS:

- **Cannot Exclude Parties:** Parties to a proceeding cannot be excluded from the courtroom. Only the child can be taken out of the courtroom during testimony that may not be in their best interest to hear. See Article 661(E).
- **DCFS and CASA are Not Parties:** Neither DCFS nor CASA are parties to CINC proceedings. A DCFS staff member or a CASA volunteer may be excluded if any party plans to call them as a witness. However, a DCFS representative would likely need to remain in court to assist the ADA. See La. Code Evid. Art. 615(B)(2).

⁶⁴ See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

- **Foster Caregivers Are Not Parties:** Foster caregivers are not parties. While they have a right to be heard at any CINC hearing regarding a child in their care, they may be excluded and asked to be present only when they speak. However, it is encouraged that they are allowed to remain during the duration of the hearing. Allowing them to be present at the hearing communicates that they are a valued partner in ensuring the child’s well-being. Because they provide day-to-day care to the child, it is also important for them to stay abreast of developments in the case and have the opportunity to meet and communicate with those involved in the case (i.e., the child’s attorney, parents and relatives of the child, the CASA volunteer, etc.). The caregiver’s presence at the hearing may better situate them to support the child during and after the hearing.⁶⁵
- **Exemption:** In the interest of justice, the court may exempt any witness from its order.
- **Closing a Hearing:** Sequestration is different from closing a hearing upon motion of a party. Closing a hearing means that no one is present except for the parties.

- **OVERALL GUIDANCE:**

- **Engagement:** The court should do all that it can to support and encourage the meaningful engagement of families in CINC proceedings.⁶⁶ Testifying in court is stressful for many parents and children. Court is intimidating for most individuals (including non-party witnesses), and the stakes could not be higher for parents and children in CINC cases. Many parents and children are coming into court with a history of trauma. Regardless of the trajectory of the case, parents and children may benefit from having their voice heard. It is critical for the judge to consider information provided by the parents and children, and to convey to the parents and children that their testimony is being given due consideration in the court’s ruling. Positive engagement is critical to successful outcomes in the case.⁶⁷ Judges must create an environment where parents and children are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.⁶⁸

H. FINDINGS

ARTICLES 626-7, 672.1, 45 CFR §1356.21

The court shall make the following written, separate, and individualized findings of fact for each child and explicitly document them in the CCH Order signed and dated by the judge:

- (1) ESSENTIAL JUDICIAL FINDING - REASONABLE GROUNDS AND CONTINUED CUSTODY:** The court shall determine whether:
- There are OR are not reasonable grounds, pursuant to Article 606(A), to believe that the child is in need of care;
 - Continued custody is OR is not necessary for the child’s safety and protection pending the timely filing of CINC Petition and Adjudication.

PRACTICE TIP:

- **Specific Ground(s):** Best practice is to include the specific ground(s) codified in Article 606(A) in the Continued Custody Order. Reference to specific grounds gives parents notice of the basis of the court’s finding, consistent with due process, and guides the formation and implementation of the case plan (if required).

⁶⁵ Id.

⁶⁶ Gatowski, *supra* note 4, at 68.

⁶⁷ Id.

⁶⁸ Gatowski, *supra* note 4, at 16.

(2) ESSENTIAL JUDICIAL FINDING - REASONABLE EFFORTS:

- a. **DCFS MADE OR DID NOT MAKE REASONABLE EFFORTS:** The court shall determine whether DCFS made reasonable efforts to prevent or eliminate the need for removal of the child from his/her home and, after removal, to make it possible for the child to safely return home. The court should consider whether:
- DCFS sought court interventions such as TRO (Article 617), PO (Article 618), and/or ISPO (Article 619) as required by Article 626;
 - DCFS provided referrals, services, and/or services (i.e., safety checks, counseling, child care services, etc.) to the family; AND
 - A removal request was not made based on improper assumptions or cultural biases.

PRACTICE TIPS:

- **Federal and State Law Requirements:** Both courts and DCFS have “reasonable efforts” obligations under State and Federal law. “Reasonable efforts” findings are judicial rulings as to whether DCFS has or has not provided appropriate services at different times during a child welfare case. If the child has been removed from the custody of his/her parents, the courts and DCFS have ongoing reasonable efforts obligations under State and Federal law until the child is reunified with his/her parents or achieves permanency. DCFS has the burden of demonstrating the reasonableness of its efforts to: (1) prevent or eliminate the need for removal; (2) reunify the family; and/or (3) achieve timely permanency for the child. The court shall make findings as to the reasonableness of DCFS efforts for each child in its Orders. In all reasonable efforts findings, each child’s health and safety shall be the paramount concern, based on the facts and circumstances of the individual case and child.⁶⁹
- **Federal and State Law Implications:** Under State law, the judge shall make a finding at the CCH as to whether or not DCFS made reasonable efforts to prevent or eliminate the need for the child’s removal and, after removal, to make it possible for the child to safely return home. Alternatively, the court can find that reasonable efforts were not required per Article 626 or 672.1. This reasonable efforts finding is required in a written court order within the first 60 days of the child’s removal. DCFS risks losing Title IV-E funding for the child’s entire stay in foster care if the child is removed from his/her home and placed in DCFS custody without a judicial finding that reasonable efforts were made by DCFS or were not required by law. Thus, if reasonable efforts to prevent or eliminate the child’s removal from his/her home are not made initially, it is critical for the court to hold DCFS accountable going forward to making them within the first 60 days of the child’s removal.⁷⁰
- **Definition of Reasonable Efforts:** Reasonable efforts are defined in Article 603 as “the exercise of ordinary diligence and care by department caseworkers and supervisors and shall assume the availability of a reasonable program of services to children and their families.” Reasonable efforts to prevent or eliminate the need for the child’s removal from the home require that DCFS provide accessible, available, and culturally appropriate services that will help families remedy the conditions that brought the child and family to the attention of DCFS.

HELPFUL GUIDANCE:

- **4 Reasonable Efforts Questions to Consider:** The judge should consider the following 4 questions when determining whether reasonable efforts were made:

⁶⁹ See 42 U.S.C. § 671(a)(15)(E) and 672(a)(1); 45 C.F.R. § 1356.21(h)(2), 45 C.F.R. § 1356.21(b)(2) and 1356.71(d)(1)(i); See also Child Welfare Policy Manual, Section 8.3C.4, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?cittID=59 Edwards, Leonard. “Overcoming Barriers to Making Meaningful Reasonable Efforts Findings.” ABA Child Practice Today. January 29, 2019, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/overcoming-barriers-to-making-meaningful-reasonable-efforts-find/; Edwards, Leonard. (2014). Reasonable Efforts: A Judicial Perspective, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=210§ionid=2&articleid=5428> (“Congress designed the law to ensure child welfare agencies provide families with services to prevent disruption of the family unit, and to respond to the problems of unnecessary removals and foster care drift. The reasonable efforts requirement is an enforcement mechanism to guarantee that each State provides adequate preventative and reunification services.”); Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>.

⁷⁰ Id.

1. What were the specific threats of danger that led to the request for removal of the child?
 2. What can be done to remove the danger instead of the child? (Examples: preventative services, in-home safety plan, PO, etc.)
 3. Can and will someone the child or family knows move into the home with the child and parents or caretakers to remove the danger to the child? Would an in-home safety plan or PO help?
 4. Can and will the parents or caretakers and the child go live with a relative or other individual to remove the danger to the child? Would an in-home safety plan or PO help?
- **Examples of Reasonable Efforts to Prevent or Eliminate Need for Removal Include (but are not limited to):** DCFS initiated in-home safety plan when appropriate, safety checks, home visits, referrals or services (i.e., child care services, counseling, health-care services, behavioral health evaluation and treatment, parenting education or support services and training, civil legal services), court interventions (i.e., TRO/PO and/or ISPO), etc.
 - **Past Intervention:** The court should determine whether DCFS has had previous contact with this family that contributed to or resulted in a valid finding and consider how past interactions may be influencing DCFS's response to the family now.
 - **Cultural and Religious Background, Customs, and Traditions:** It is important for the court to question whether the family's cultural and religious background, customs, and traditions have been taken into account in evaluating the events and circumstances that led to the removal; and, whether the parents' or caretakers' Tribal liaison have been asked if there is a culturally-based explanation for the allegations in the Affidavit. Consider the following questions:
 1. What is the family's cultural or religious background?
 2. What are the customs and/or traditions the family practices?
 3. Did DCFS allow its assumptions to form an opinion about the situation?
 4. Am I allowing my assumptions to form an opinion about the situation?

Judges should be cognizant that implicit biases can arise in CINC cases. For example, bias might arise when a particular family is known in the community due to prior criminal or DCFS involvement (i.e., "Here comes another Jones child"). However, it is incumbent on the system to ensure that each case is examined for the specific issues arising at this time with this child regarding these parents. The issue is not the child's affiliation but whether the child is currently safe or unsafe, and what type of safety plan is needed if the child is unsafe. Assumptions are sometimes made when a parent is receiving medical-assisted drug-treatment, such as suboxone or methadone. For example, some may not approve if a parent has a dependence on such treatment. But the assessment should stay focused on whether these facts affect the safety of the child. See [Child Welfare Assessment and Decision Making Model \(CWADM\) Section 11](#). There are biases that we all have related to race and class. Indeed, a notable amount of research has documented the overrepresentation of certain ethnic and racial populations, including African Americans and Native Americans, in the child welfare system compared to their representation in the general population. The judge's role is to question the removal decision when there is an appearance of bias or assumption in the decision. Otherwise, the family is not being accorded due process, and the system fails the family.⁷¹

- **Sanctions Regarding Reasonable Efforts:** If DCFS did not make reasonable efforts to prevent or eliminate the need for the child's removal or make it possible for the child to safely return home, the court may impose sanctions pursuant to Article 712 as it deems appropriate.
- **Court Can Still Make Other CCH Findings and Orders:** Even if DCFS efforts have not been reasonable, the court may still find that the child should remain in an out of home placement and make other CCH findings and orders.

71 See Child Welfare Information Gateway. (2016). Racial disproportionality and disparity in child welfare, Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf; Ellis, Krista. "Race and Poverty Bias in the Child Welfare System: Strategies for Child Welfare Practitioners." ABA Child Practice Today. December 17, 2019, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/race-and-poverty-bias-in-the-child-welfare-system---strategies-f/.

- b. **REASONABLE EFFORTS WERE NOT REQUIRED:** The court may find that reasonable efforts to prevent or eliminate the child's removal from his/her home were not required for the following reasons to be clearly articulated in the CCH Order:
- If the court has made a judicial determination per Article 672.1 that they were not required; OR
 - If DCFS's first contact with the family occurred during an emergency in which the child could not safely remain at home even with reasonable in-home services provided to the family. In such instances, DCFS shall be deemed to have made reasonable efforts (Article 626).

PRACTICE TIPS:

- **Emergency Circumstances:** If DCFS asserts that emergency circumstances precluded reasonable efforts to prevent or eliminate the need for removal, the judge should require DCFS to articulate the immediate danger the child is in and/or the particular circumstances of the case that prevented DCFS from making reasonable efforts. This exception should only be used in necessary and applicable circumstances.
 - **Examples of Emergency Circumstances:** The child was in substantial immediate danger in the parent's or caretaker's care; the parents or caretakers are in jail, violated or refused to enter into an in-home safety plan, violated an ISPO or PO, whereabouts are unknown, committed or attempted to murder another child of the parent or any other child, subjected the child to egregious conduct or conditions (including any of the grounds for termination of parental rights pursuant to Article 1015), committed a felony that resulted in serious bodily injury to the child or any other child; and/or the children have been abandoned, tortured, experienced chronic sexual abuse, etc.
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I. RULING OPTIONS

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

The court shall make one of the following rulings for each child pending the timely filing of the CINC Petition and Adjudication in the CCH Order:

- (1) RETURN CHILD TO PARENTS:** With or without a Safety Plan and/or PO.
- a. **Return Child to Parents:** If the child's safety can be secured by returning the child to his/her parents, the court shall issue an order:
 - To return the child to his/her parents and dismiss the case.
 - b. **Return Child to Parents and Order Safety Plan:** If the child's safety can be secured by returning the child to his/her parents with the implementation of a safety plan, the court shall issue an order:
 - To return the child to his/her parents subject to a safety plan developed and agreed upon by DCFS and pending the timely filing of the CINC Petition and Adjudication; AND
 - Compliance with the conditions of the safety plan.
 - c. **Return Child to Parents and Order Protective Order(s):** If the child's safety can be secured by returning the child to his/her parents with the implementation of a PO, the court shall issue an order:
 - To return the child to his/her parents; AND
 - Of such PO pending the timely filing of the CINC Petition and Adjudication as deemed necessary for the protection and welfare of the child.

☰ PRACTICE TIP:

- **Protective Order (PO) Procedure:** If a PO is issued or modified, the judge shall follow the provisions in Article 627(E).

☰ HELPFUL GUIDANCE:

- **Granting Custody to a Parent:** In some cases, the court may not be “returning” the child to a parent’s custody but “granting” custody to a parent who did not have custodial rights to the child and/or was not previously legally filiated with the child.
- **Custody to One Parent:** The child can be returned to the custody of one parent even though it is anticipated that a CINC Petition will still be filed. See State ex rel. P.D.J., 200 So.3d 916 (La. App. 2016) where the court says: “La. Ch. C. art. 627 states that, following a hearing, the court may return the child to the parents or, in accordance with La. Ch. C. art. 622 dealing with the placement of children pending a CCH, may place the child in the custody of a suitable relative or individual or the DCFS. In this case, the juvenile court determined that the children should not be returned to the mother at that point, but that placement with the father was suitable. Contrary to the arguments made by the mother, the placement of custody with the father did not end the CINC proceedings. It was merely a step in the process.” In these cases, the judge can order the child be returned to the custody of one parent and either issue a Safety Plan Order that restricts the other parent’s access to the child and later (if safe for the child to do so) grant custody to that one parent at Disposition or through a PO giving temporary custody to one parent. (However, this is time limited unless the CINC Petition is filed.).
- **Child Welfare Assessment and Decision Making Model (CWADM):** At each hearing, the court should insist on a clear articulation of the current safety threat keeping the child in foster care/in an out-of-home placement. Children should be returned home immediately once all safety threats have been eliminated. The CWADM is an assessment used by DCFS (and should be used by all child welfare stakeholders) to determine whether a child is safe or unsafe at all junctures of the CINC proceeding. A child is considered safe when: (1) there are no threats of danger; (2) if there is a threat of danger, the child is not vulnerable to the threat of danger; or (3) if there is a threat of danger, the parents or caretakers possess sufficient protective capacities to manage the threat of danger and keep the child safe. The threat of danger considers whether the caretaker’s behavior or family situation is likely to result in imminent harm to the child. The child’s vulnerability considers the extent to which a child can protect himself/herself from the identified threats of danger. The caretaker’s protective capacities consider the way a caretaker thinks, feels, and/or acts and whether those capacities can prevent or control the threats of danger. The court should insist on a clear articulation from DCFS as to how the child is unsafe as it relates to threats of danger, child vulnerability, and parent/caregiver protective capacities and why TRO/ PO, ISPO, IAA, or other alternatives cannot be initiated to eliminate the need for the child’s removal. At each hearing, the court should make the following inquires to see if the child is now safe to return home:
 - Are the threats of danger to the child still present?
 - Is the child still vulnerable to those threats?
 - Does the parent/caretaker still lack protective capacities?

See also the [Child Welfare Assessment and Decision Making Model \(CWADM\) Section 11](#).

(2) GRANT OR CONTINUE PROVISIONAL CUSTODY: The court shall place custody of the child in the least restrictive and most appropriate setting with the health, safety, and best interest of child being the paramount concern.

- **Continued Provisional Custody:** If the court determines that there are reasonable grounds to believe the child is in need of care and continued provisional custody is necessary for the child’s protection, the court shall:
 - Order provisional custody of the child be placed with a suitable relative, suitable individual, or DCFS in accordance with the priorities of placement outlined in Article 622 pending the timely filing of the CINC Petition and Adjudication;
 - Include specific oral and written reasons for its findings, which shall be made a part of the record of the proceeding; AND

- Include a safety plan in the order if provisional custody is granted to a suitable relative or individual that sets forth conditions of contact with the parents, caretakers, and/or other third parties and order that the provisional custodians adhere to the conditions of the safety plan.
- **Priorities of Placement Outlined in Article 622:** Unless the best interest of the child requires a different placement, a child who appears to be a child in need of care and whose removal is necessary for his/her protection from further abuse or neglect shall be placed in accordance with the following priorities:
 - a. **Suitable Relative with Whom Child Has Been Living:**
 - In the home of a suitable relative who is of the age of majority and with whom the child has been living in a wholesome and stable environment if the relative is willing and able to continue to offer such environment for the child pending the timely filing of the CINC Petition and Adjudication. The relative shall also agree to the conditions of the safety plan, which includes the conditions of contact with the parents, caretakers, and/or other third parties.
 - b. **Suitable Relative Willing to Offer Stable Home:**
 - In the home of a suitable relative who is of the age of majority if the relative is willing and able to offer a wholesome and stable environment for the child pending the timely filing of the CINC Petition and Adjudication. The relative shall also agree to the conditions of the safety plan, which includes the conditions of contact with the parents, caretakers, and/or other third parties.
 - c. **Suitable Individual Willing to Offer Stable Home:**
 - In the home of a suitable individual who is of the age of majority if he/she is willing and able to offer a wholesome and stable environment for the child pending the timely filing of the CINC Petition and Adjudication. (for example, family friend, fictive kin, someone associated with the family like a teacher or coach, etc.). The individual must also agree to the conditions of the safety plan, which includes the conditions of contact with the parents, caretakers, and/or other third parties.

HELPFUL GUIDANCE:

- **Safety Plan Order if Child Placed with Suitable Relative or Individual:** If the court grants provisional custody to a suitable relative or individual, the court shall include a safety plan in the order that sets forth conditions of contact with the parents, caretakers, and/or other third parties and order that the provisional custodian adhere to the conditions of the safety plan.
- **Definition of Relatives:** Article 603(20) defines “relative” as an individual with whom the child has established a significant relationship by blood, adoption, or affinity. Affinity means a relationship by marriage.
- **Obligation to Find Potential Caregivers:** All persons and parties before the court have a continuing obligation to achieve timely permanency for the child. It is critical for relatives and other individuals to be found as soon as possible so that permanency can be achieved expeditiously if reunification becomes no longer viable. Identifying other potential placements early on in the case is crucial to reducing further trauma to a child who may form secure attachments with caregivers. The court’s role is to continue to hold persons before the court, parties, and DCFS accountable to these obligations. See the [Appendices Benchbook Section 12 for the Family Connection Form and Circle of Influence Form](#) DCFS uses with children and parents to help identify potential caregivers. Some attorneys create “Family Trees” to help identify potential caregivers.
- **Preference to Relatives Per Federal Law:** For States to receive funding for foster care and adoption assistance, Federal law under Title IV-E of the Social Security Act requires that the State “consider giving preference to an adult relative over a nonrelated caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards.”⁷² Per the Fostering Connections to Success and Increasing Adoptions Act, within 30 days following the removal of the child and any time after that a relative is identified, DCFS is required to contact all known adult relatives of the child and to inform them about placement and permanency possibilities for the child. Title IV-E of the Social Security Act also requires all States to exercise due diligence to identify and provide notice to all grandparents, all parents of a sibling of the child, where such parent has legal custody of the sibling, and other adult

relatives of the child (including any other adult relatives suggested by the parents) that (1) the child has been or is being removed from the custody of his/her parents; (2) the options the relative has to participate in the care and placement of the child; and (3) the requirements to become a foster parent to the child. These Federal laws are based on evidence that placement with relatives maintains the child's connections with his/her family, and children generally fare better in many child well-being factors when placed with a relative.⁷³

- **DCFS Policy Regarding Contacting Relatives:** DCFS policy requires DCFS to exercise due diligence to identify and provide notice to the following relatives within the first 10 days of a child entering foster care and not later than 30 days: all adult grandparents; all parents of a sibling of the child, where such parent has legal custody of such sibling; and other adult relatives of the child (including any other adult relatives suggested by the parents). The DCFS worker is supposed to mail a letter to notify all identified adult relatives that their relative has entered foster care. One exception would be documented proof of domestic/family violence by the relative, which would jeopardize the safety of the child in DCFS custody.
- **Suitable Individuals and Cultural Considerations:** The court should press parties and persons before the court to consider not only biological relatives but also individuals with whom the child has a significant relationship (also referred to as “fictive kin,” “suitable persons,” or “suitable individuals”). These are individuals who are not related by blood, marriage, or adoption to the child but could be close family friends or someone the child considers family. It is important to consider the child's culture, heritage/customs, traditions, religion, etc., in determining placement and custody options. For example, some children may call a close friend their “auntie” even though they are not related by blood. However, the auntie may be the best placement for the child but overlooked if no thorough inquiry is made.
- **Parents of Half-Siblings:** If there are half-siblings, the court should consider granting custody of the child to the sibling's parent if appropriate and safe to do so. The sibling's parent may already have a relationship with the half-sibling, but even if not, that parent may be willing to take custody to keep the siblings together.⁷⁴
- **Home Studies and Background Checks and Clearances:** DCFS policy does not support requesting custody to a relative or individual unless a home study has been conducted, including a child welfare background clearance and criminal background check. In most circumstances, DCFS will not have sufficient time to conduct a comprehensive home study to recommend a custody transfer at the CCH. However, if the judge orders a custody transfer at the CCH to a suitable relative or individual, the judge may order the completion of the home study, child welfare background check clearance, and criminal background check if they had not been previously completed. These are also a required part of the process for relatives or individuals to become a certified foster care placement for the child.
- **Financial Support Relatives or Individuals:** Relatives and other persons who are granted custody and/or guardianship (i.e., at Disposition Hearing) of the child may be eligible for financial support, for example, through the Kinship Care Support Program (KCSP), Supplemental Nutrition Assistance Program (SNAP), Family Independence Temporary Assistance Program (FITAP), and/or Child Support Program (CSP). If one or both parents of the child are deceased, the caregiver may also be eligible for survivor benefits owed to the child. The caregiver may also be eligible to receive the child's disability benefits (if the child is entitled to them).⁷⁵ However, if the relative or individual is foster care certified and the child receives disability or survivor benefits, the caregiver would have to choose between those benefits and the monthly foster care board rate (which they can choose the higher of the amounts).⁷⁶

73 See Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>; Center on Children and the Law. (2016) Judicial Tip Sheet: Kin First. Washington, DC: American Bar Association, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/july-2016/judicial-tip-sheet-kin-first/; Issue Brief, Strong Families (2019) Why Should child protection agencies adopt a kin-first approach? Casey Family Programs, <https://www.casey.org/kin-first-approach/>; National Conference of State Legislatures. (2019) The Child Welfare Placement Continuum: What's Best for Children?, <https://www.ncsl.org/research/human-services/the-child-welfare-placement-continuum-what-s-best-for-children.aspx>; Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/placement.pdf>.

74 See Child Welfare Information Gateway. (2019). Sibling issues in foster care and adoption. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/siblingissues.pdf>.

75 See <http://dcfs.louisiana.gov/page/grandparent-relative-caregiver> for more information available through DCFS's Kinship Navigator Program. There is information available regarding custody and guardianship.

76 See <http://dcfs.louisiana.gov/page/grandparent-relative-caregiver> for more information. DCFS has legal and custodial information available on their website for kinship caregivers: <http://dcfs.louisiana.gov/page/kinship-caregivers-legal-and-custodial-information-fact-sheets>.

- d. **State Custody:** Through DCFS (foster care).
- In foster care under the supervision of DCFS until further orders of the court.

PRACTICE TIPS:

- **Foster Care is the Safety Plan of Last Resort:** Placing a child in State custody (i.e., foster care) is child welfare’s most drastic and most protective safety intervention. It should be a last resort for State agencies and courts charged with protecting children from harm.⁷⁷ The court should hold DCFS accountable to seek all other alternatives for the child before placing or continuing the child in DCFS custody, including an in-home safety plan, PO, IAA, coordinating services with other agencies or community based supports, referring family to Family in Need of Services (FINS) if appropriate, granting custody of child to suitable relative or individual, etc. Also, finding potential relative caregivers as early as possible is crucial to reducing further trauma to a child who may form a secure attachment with their current caregivers.⁷⁸
- **Placement with Relative or Suitable Person:** If the court decides not to grant custody or guardianship to a relative or suitable person, DCFS can still *place* a child with relatives and fictive kin. In fact, DCFS has a duty to assess such individuals for placement to meet Federal and State legislation with regard to prioritizing relative or fictive kin permanency goals when reunification is no longer viable.⁷⁹
- **Child Specific Certification for the Relative or Suitable Person:** DCFS provides “child specific” foster care certification for relatives and others who the child knows and may be a good placement (and potential permanent plan placement). This certification requires fewer classes than general foster care certification and allows the relative or individual to receive a board rate (monthly financial support) like a certified foster parent. The child can be placed with the caregiver prior to completing the certification but the caregiver will not receive retroactive financial assistance. Thus, DCFS should provide the caregiver with the information set forth above about the other forms of potential financial support. However, if the child receives disability or survivor benefits, this would be in place of the monthly board rate (they can choose the higher of the amount). If applicable, the court may want to request updates on status of certification at future hearings to ensure timely completion.
- **Federal Requirement to Place Siblings Together:** Placing siblings together should be a priority. Per Federal law, DCFS shall make reasonable efforts to place siblings removed from their home in the same foster care, guardianship, or adoptive placement, unless DCFS documents that such joint placement would be contrary to the safety or well-being of any siblings; and if siblings are not so jointly placed, to provide frequent visitation or other ongoing interaction between siblings, unless DCFS documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any siblings.⁸⁰ Thus, courts should require DCFS to show evidence at the CCH that such efforts were/are being made.⁸¹
 - “The relationships people share with siblings are often the longest-lasting they will ever have. Siblings are there from the beginning, and they are often still around after parents and even spouses and children are gone.”⁸² Sibling relationships are particularly vital to children from disorganized or dysfunctional families.⁸³ These relationships assume even greater importance when children from these families enter the foster care system.⁸⁴
 - The research shows that when siblings are separated from each other, many children feel “they have lost a part of themselves,” adding to the pain and anxiety they experience over removal from their parents and home.⁸⁵

77 See Church, Christopher. “Unnecessary Removals: The Most Unjust Adverse Childhood Experience.” Children’s Bureau Express. October 2019, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=210§ionid=2&articleid=5428>; Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/placement.pdf>; Child Welfare Information Gateway. (2020). Court hearings for the permanent placement of children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/planning.pdf>.

78 Id.

79 42 U.S.C. § 671(a)(29).

80 See 42 USC § 671(a)(31)(A) and B)).

81 Id.

82 See Glover, Linda. (1997) Overcoming barriers to keeping siblings together. Connections, reprinted at <https://affcny.org/overcoming-barriers-to-keeping-siblings-together/>.

83 Gatowski, supra note 4, at 85.

84 Id.

85 Kernan, Emily. Keeping siblings together: past, present, and future. National Center for Youth Law, <https://youthlaw.org/publication/keeping-siblings-together-past-present-and-future/>.

At least one Federal district court has found that placing siblings separately and denying them sibling visits violates their right to freedom of association pursuant to the First Amendment and substantive due process under the 14th Amendment.⁸⁶ Unless contrary to their safety and well-being, supporting and sustaining the sibling bonds of children who have been placed in foster care should be a priority for the child welfare system and the court. Thus, judges should inquire as to the placement of siblings together—whether half or full siblings. Judges should also help ensure family time (visitation) between siblings when appropriate and safe to do so.

- **Sibling-Type Relationship:** Judges should also be cognizant that a child may have a sibling-type relationship and bond with another child that is not a biological sibling but just as significant to the child (i.e., another child to whom they were raised with).⁸⁷
- **Court's Authority Concerning Placement:** While the court has the authority to change custody, if the child is in DCFS custody, the court has no authority to order a specific placement for the child (i.e., foster parents the child will be placed with by DCFS). However, pursuant to Article 672(A)(2), the court does have the authority to disapprove the placement chosen by DCFS and order DCFS to choose a more suitable placement. Per Article 672(A)(2), there must be a contradictory hearing and the judge may disapprove the placement upon finding that the placement is not in the child's best interest. For example, after a contradictory hearing, the court could determine that the placement chosen by DCFS was not in the child's best interest because the child was not placed with his/her siblings.⁸⁸

e. **Best Interest Finding Required If Child Not Placed with Relative:**

- If the court does not return the child home (or grant custody to a parent) or place the child with a suitable relative, the court shall:
 - Make a specific finding that placement with a suitable relative is not in the best interest of the child and/or a suitable relative cannot be found; AND
 - Give specific oral and written reasons for its findings, which shall be made part of the record of the proceeding.

• **OVERALL GUIDANCE:**

- **DCFS Recommendation:** Sometimes, DCFS is not able to recommend custody to a relative or individual at the CCH for policy reasons, which may not be safety related. Courts should nevertheless grant custody in the best interest of the child in accordance with the priorities set forth in Article 622, and based on the evidence presented.
- **Petition for Provisional or Permanent Custody:** At any time prior to Adjudication, any person, including a relative of the child, may petition the court for the provisional or permanent legal custody of the child (Article 631(B)).
- **DCFS Family Services:** When the court returns the child to his/her parents or grants provisional custody to a suitable relative or individual, DCFS will generally no longer be involved in the case (because DCFS does not have custody of the child). However, the court can order that DCFS continue to monitor the family and/or provide services. In such cases, DCFS will usually open a DCFS Family Services case to provide supervision and support to the family. In these instances, it is advised that the court also continue to oversee the case.
- **Appropriateness of Custody:** The court should consider whether the custodian will be able to meet the needs of the child based on the child's age, development, history of trauma, heritage/customs, culture, language, and medical, emotional, and behavioral needs.

⁸⁶ Barbara Elias-Perciful, *The Constitutional Rights of Children*, Texas Bar Journal Vol. 73 No.9 750, 753 (2010).

⁸⁷ See 42 USC § 671(a)(31)(A) and B)).

⁸⁸ The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) amended Title IV-E plan provisions to require that Title IV-E agencies make reasonable efforts to place siblings removed from their home in the same foster care, adoption, or guardianship placement or, if that is not possible, facilitate visits or ongoing contacts for siblings that cannot be placed together, unless it is contrary to the safety or well-being of any of the siblings to do so.

- **Changes in Placement or Custody:** Research shows that multiple placements (and changes in custody) break the bonds of trust and attachment formed by the child and consequently harm the child. Multiple placements (and changes in custody) compound the original trauma of abuse and neglect, often leading to long-term adjustment and attachment difficulties. It is critical to minimize the number of times placement (and/or custody) changes for a child.⁸⁹
- **Short Custody Order Templates:** In addition to the Continued Custody Order Template, there are 2 short Order templates for children’s attorneys, DCFS, CASA, and relatives and other caregivers to utilize. These template orders state whose custody the child is in without providing the confidential information that is contained in the CCH Order. These one-page Orders may be used at schools, doctor’s offices, etc. It is advisable for the court to sign the applicable Order and make it available to those listed above at the conclusion of the CCH. See 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 in the Appendix of this section.

J. FURTHER ADVISEMENTS OF RESPONSIBILITIES TO THE PARENTS

ARTICLE 625

If the child is placed in or continued in the provisional custody of DCFS, the court shall advise the parents of:

- The child’s need to have a safe and stable relationship with caretakers, either his/her parents or, if necessary, others who are willing and able to assume parental responsibility, provide a permanent home, and have these caretaker decisions made as quickly as possible;
- Their responsibility to cooperate in preparing a case plan and otherwise in meeting the needs of their child;
- Their responsibility to assist the child’s adjustment to other caretakers;
- Their responsibility to notify DCFS and their counsel in writing of their current whereabouts, including their address, cellular number, telephone number, and any other contact information, and that if they fail to do so, the law authorizes hearings to be held in their absence;
- Their responsibility to provide an electronic mail address at which the parent is willing to receive service and notice of future proceedings and that once an electronic mail address is provided all service and notice of future proceedings may be sent electronically until such time he/she provides notice to the court and all parties in writing or in open court that he is no longer able to receive service or notice at such address; AND
- Their obligation to contribute to the cost of care and treatment of their child as provided in Article 685.

HELPFUL GUIDANCE:

- **Case Plan:** When the family is involved in a DCFS Family Services or Foster Care Case, DCFS creates a case plan for the parents and child. The case plan is reviewed by the court at the Disposition Hearing. Per Federal law, the initial case plan must be prepared within 60 days after the child enters DCFS custody. However, DCFS policy requires the case plan to be initiated within 30 days of when the child enters DCFS custody or a Family Services case is opened and finalized within 45 days. The case plan should be confined to the grounds upon which the court adjudicates the child in need of care and identify the safety issues to be resolved before the court’s involvement ends including helping to enhance the parent’s protective capacities in relation to the identified threats of danger.

⁸⁹ Casey Family Programs. (2018) What impacts placement stability?, <https://www.casey.org/placement-stability-impacts/>.

K. FURTHER ADVISEMENTS OF RESPONSIBILITIES TO ALL PERSONS

ARTICLE 625

If the child is continued in the provisional custody of a suitable relative or individual or DCFS, the court shall advise all persons before the court:

- **Email Address:** If a parent provides an electronic mail address at which the parent is willing to receive service and notice of future proceedings, then all service or notice of future proceedings may be sent electronically until such time as the parent provides notice to the court and all parties in writing or open court that he/she is no longer able to receive service or notice at such address;
- **Current Whereabouts:** Advise the parents of their responsibility to notify DCFS and their counsel in writing of their current whereabouts, including their address, cellular number, telephone number, and any other contact information, and that if they fail to do so, the law authorizes hearings to be held in their absence;
- **Contact Information:** To identify on record the name, address, and whereabouts of each parent and any relative or other individual willing and able to offer a wholesome and stable home for the child; all grandparents, all parents of a sibling where such parent has legal custody of such sibling, and all other adult relatives of the child; AND
- **Achieve Permanency:** Of their responsibility in achieving timely permanency for the child.

 **PRACTICE TIP:**

- **Electronic Mail Address:** If a parent has not provided an electronic mail email address at which they can be served, judges should encourage parents to do so. Having an email address to send notice helps ensure the parents receive the notice. For example, when a parent does not have a stable home to live in, and their address continues to change, it is helpful to have an email address to send them notice.
-

L. CINC PETITION FILED

ARTICLES 646, 649

If at the time of the CCH, a CINC Petition has been filed, the court may:

- Call upon the parents to answer the allegations in accordance with Articles 646 and 649. See [Answer Hearing Benchbook Section 6](#).

M. FURTHER ORDERS

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

The court may make additional orders at the CCH that are in the best interest of the child (See Article 627, Authors' Notes) and pending the timely filing of the CINC Petition and Adjudication, such as:

- (1) VISITATION/FAMILY TIME:** The court has authority to specify visitation/family time between the child and his/her parents, caretakers, siblings, or other family members. If siblings are not placed together, the court should order (when appropriate for the children and safe to do so) that the visitation/family time between the siblings take place in addition to the family visits.⁹⁰

⁹⁰ For more resources on visitation/family time, see: <https://www.childwelfare.gov/topics/systemwide/assessment/family-assess/progress/visitation/>.

HELPFUL GUIDANCE:

- **Visitation and Rights of Parents:** If a child has been removed from his/her parents' custody, the parents should still be invited to attend all medical appointments, school conferences and activities (including eating lunch with the child at school), sports and extracurriculars, and other important events involving the child (unless there is an order otherwise preventing this, such as a criminal no contact order).
- **Unsupervised:** Family time should be liberal and presumed unsupervised unless there is a demonstrated safety risk to the child.
- **Benefits of Visitation/Family Time:** The safety and well-being of children should always be paramount in considerations of family time. Visitation planning and scheduling should be an ongoing assessment of the child's established and significant relationships with his/her parents, grandparents, siblings, relatives, and other important individuals in the child's life. Judges should ensure the plan for family time is in the best interest of the child, individualized, and promotes permanency. While the individual needs of the child, the child's development and age, and the circumstances of the family must be assessed to determine the frequency, visitation/family time can:
 - Promote healthy attachment and reduce the negative effects of separation for the child and parents;
 - Establish and strengthen the parent-child relationship;
 - Ease the pain of separation and loss for the child and parents;
 - Keep hope alive for the parents and enhance their motivation to change;
 - Involve parents in the child's everyday activities and keep them abreast of the child's development;
 - Help parents gain confidence in their ability to care for their child and allow parents to learn and practice new skills;
 - Provide a setting for the caseworker or parenting coach to suggest how to improve parent-child interactions;
 - Allow foster caregivers to support birth parents and model positive parenting skills;
 - Provide information to the court on the family's progress (or lack of progress) toward their goals;
 - Facilitate family assessments and can help the court determine whether reunification is the best permanency option for the child; AND
 - Help with the transition to reunification.
- **Considerations for Frequency:** Judges should make sure that everyone knows that children and parents can visit more frequently than the visitation plan established by DCFS (unless they are expressly prohibited for a specific safety reason from doing so). The following are critical considerations when determining the frequency and quality of visitation/family time:
 - Judges should ensure that the child's age, attachments, connections, and development have been considered when determining the frequency, length, and timing of the visits;
 - Efforts should be made to ensure that transportation and logistics are not barriers to visitation or visitation frequency;
 - Efforts should be made to ensure that visits take place in the most natural setting or least restrictive setting that can assure the child's safety and well-being;
 - Efforts should be made to respect the child's routines (i.e., eating, sleeping, and other consistent daily patterns) in scheduling visits; AND
 - Visits should be as proactive as possible and offer opportunities for mutual enjoyment for the parents and child (i.e., play), opportunities to develop predictable and nurturing care (i.e., engaging in family or child-care routines such as meal time), and opportunities for developmental stimulation (i.e., reading) to help parents understand the child's skills and needs and how to promote their learning.

- **Locations:** It is ideal to have family visits in a natural setting rather than at the office. There are family visitation centers that can be utilized for family time. Parks and library conference rooms may be an option. The family home or a relative's home can also be considered unless there are safety issues. If families are having issues making family time happen for a particular scheduled visit, creativity should be encouraged. For example, the use of videoconferencing may be an option from time to time for those children old enough to benefit from videoconferencing. Videoconferencing can also be used between vital in-person visits to increase the amount of much-needed contact. Some parents read a bedtime story to their children multiple nights per week, for instance, through FaceTime, Zoom, Duo, etc.
- **Not to be Used as Incentive or Disincentive:** Visitation is a right of both parents and children in CINC cases. The fashioning of visitation should be based on promoting the important connection between the parents and child. Visitation between parents and children should not be used as an incentive or disincentive for parents with regard to mitigating the reasons for State intervention.
- **Documentation:** Ensure family time is well documented so the court will have sufficient evidence moving forward to order reduced or increased restrictions, reunification, or termination of parental rights.
- **Family Violence:** The court should inquire as to whether DCFS assessed the family members for family violence during initial contact with the family and at other periodic intervals. The court should ask if DCFS gathered and reviewed information needed, such as current and previous PO's, police reports, and stalking behavior to enhance decision-making when determining supervised, unsupervised, and therapeutic visitation. Judges should assess the risk posed by perpetrators to lessen perpetrator-generated safety threats to children. Judges should ensure that guidelines and appropriate interventions are established for the perpetrator in cases where supervised visitation is granted. The court may want to refer to the definition of supervised visitation in Louisiana Revised Statutes § 9:362(7) when considering such an order.

(2) PATERNITY OR MATERNITY: If the identity and whereabouts of an alleged parent is known but filiation has still not been legally determined, the 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.), including ordering that DCFS make arrangements for DNA tests to determine the paternity/maternity of any alleged parents and that the alleged parents comply.

(3) POTENTIAL PLACEMENTS: The court can order DCFS to:

- Explore all possible relative or individual placements (i.e., fictive kin, people who matter to the child, etc.) with results and/or updates on results to be presented prior to or at Disposition;
- Initiate a child welfare background clearance, criminal background check, and/or assessment of home or home study on potential caregivers so that they can be considered for placement by DCFS and/or for custody or guardianship at Disposition;
- Take necessary steps for potential caregivers to complete timely foster care certification, if needed (i.e., to receive guardianship subsidy if applicable, etc.); AND/OR
- Initiate ICPC process for potential placement with any out-of-State relatives or individuals. See [Disposition Hearing Benchbook Section 8.E](#) for more information on ICPC.

HELPFUL GUIDANCE:

- **Importance of Relative Search:** Federal law requires early identification and notification of relatives in child abuse and neglect cases. When courts and DCFS have not conducted thorough relative searches and reunification is ruled out, they can be faced with the difficult choice of deciding between the adoption by a foster parent with whom the child has bonded and a relative who is appropriate but did not previously know of the child's need for a permanent home.

(4) EDUCATION PLAN: If the child is continued or placed in DCFS custody, the court can order DCFS coordinate with the appropriate local education agencies to ensure that the child remains enrolled in the school in which the child was enrolled at the time of placement. If changing schools is in the child’s best interest, then DCFS must document the reasons.

HELPFUL GUIDANCE:

- **Educational Stability:** Children and youth in foster care represent one of the most vulnerable student subgroups in the country.⁹¹ Studies find that children in foster care are much more likely to struggle academically and fall behind in school than their peers.⁹² The ESSA sets forth provisions protecting children in foster care as it relates to their education and schooling. Specifically, it allows a child placed in foster care to remain in their school of origin or be enrolled in a school without delay. Some reasons that a child should stay in the school of origin include close peer connections, established teacher and/or staff relationships, comfort with and/or success at the school, provision of tutoring (many schools no longer provide tutoring) and other accommodations, better opportunities to join sports teams and other desired activities, and previous school changes and disruptions. The ESSA also requires transportation to be provided for the child to the school of origin, even if the child moves out of that school district. The child welfare agency and the local educational agency (LEA) must ensure this transportation is provided and appropriate. Some of these provisions of the ESSA are codified in the Louisiana Revised Statutes.⁹³ Although the child has the right to educational stability, the judge may want to make specific orders to help move the process along more expeditiously. The judge can also disapprove the case plan if the plan for the child’s education is not sufficient.
- **Special Education:** Many of the children who come through the child welfare system either need or are already receiving special education services. The Federal Individuals with Disabilities Education Act (IDEA), along with its State counterparts, ensure that children with disabilities receive a free appropriate public education designed to meet their unique learning needs. The Act addresses which children will receive full and individualized evaluations for eligibility, what special education and other related services are deemed necessary and where and when these services will be provided. IDEA also covers who is allowed to make these decisions for each child, a responsibility made more complicated when a child is involved in the foster care system. The birth or legal parent usually possesses the right to act as their child’s IDEA parent unless limited by the court or when parental rights are terminated. A foster caregiver may also act as the IDEA parent. However, if a foster child is in a congregate care setting—a group home, Psychiatric Residential Treatment Facility (PRTF), hospital, etc.—or the IDEA parent available is not deemed appropriate or eligible, either the Local Educational Agency (LEA) or the CINC judge has the authority to appoint a “surrogate parent” to make education decisions for the child. Pursuant to the IDEA, DCFS staff member cannot act as the surrogate parent.
- **Response to Intervention (RTI) and Multi-tiered Systems (MTTS):** Under ESSA, the MTTS and RTI were created to avoid the overidentification of learning disabilities before implementing academic interventions to meet the students’ needs. MTTS or RTI requires school systems to implement interventions over 16-18 weeks driven by students and their individual performance. Interventions can be difficult for children in foster care because of their mobility. Judges can help by directing DCFS to sign a release so that schools will include intervention data, MTTS or RTI status with all educational records of foster youth as they transfer schools.

91 For more information on Educational Stability for Children and Youth in Foster Care see: <https://www.childwelfare.gov/topics/systemwide/service-array/education-services/meeting-needs/educational-stability/>; U.S. Department of Education and U.S. Department of Health and Human Services. (2016) Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, <https://resources.finalsite.net/images/v1535746984/tulsaschoolsorg/h07q5pxet7fifpizhlm/FosterCareGuidance.pdf>.

92 Id.; Heimpal, Daniel. “The Chronicle of Social Change, “The Case of ‘V. Doe’ Could Have Major Implications for the Education of Foster Youth Nationwide.” Youth & Family News, The Imprint. January 18, 2018, <https://chronicleofsocialchange.org/education/case-v-doe-major-implications-education-foster-youth-nationwide/29467> (“Greater than 1/3 of all youth in foster care will have 5 or more school changes by the time they turn 18, and each change can cost 4 to 6 months of academic progress.”).

93 La. R.S. § 17:238C (“The governing authority of each public and secondary school shall establish a policy to ensure that a child who is in foster care pursuant to placement through the Department of Children and Family Services shall be allowed to remain enrolled in the public school in which the child was enrolled at the time he entered foster care for the duration of the child’s stay in the custody of the State or until he completes the highest grade offered at the school if the Department of Children and Family Services determines that remaining in that school is in the best interest of the child. If the foster care placement is outside the jurisdictional boundaries of the public school in which the child is enrolled, the governing authority of such school shall be responsible for providing free transportation for the child to and from a designated location which is within that school district and is located nearest to the child’s residence and is determined to be appropriate by such governing authority and the Department of Children and Family Services. The Department of Children and Family Services shall be responsible for providing the child’s transportation between that location and the child’s residence.”).

(5) FAMILY TEAM MEETING (FTM): If the child is in DCFS custody or has an open DCFS Family Services case, DCFS should propose a tentative date for the next FTM. The court can provide notice of and encourage participation by all parents, caretakers, children, foster caregivers, CASA workers, and attorneys for children and parents as applicable.

PRACTICE TIP:

- **Set Tentative Date for Next FTM:** Facilitating a tentative or confirmed date and time for the next FTM while everyone is at the hearing and including the tentative date in the Order helps ensure FTMs are timely held. Without enough notice of the FTM date and time, some team members may have difficulty participating. FTMs should be conducted at least every 6 months.

HELPFUL GUIDANCE:

- **Purpose:** FTMs are facilitated by DCFS, and they are important because FTM's are where case planning occurs for the family. FTMs are where parents and children and other stakeholders and supports give input on the services and assistance needed and to be provided.

(6) NOTIFICATION TO CHILD'S ATTORNEY: If the child is in custody of DCFS, the court can order that DCFS notify the child's attorney electronically or otherwise, immediately after a change of placement of the child occurs. Because of the due process implications, it is advisable that DCFS do so no later than 24 hours after the change of placement. Children must have access to their attorneys, and attorneys must have access to their clients.⁹⁴ The notification shall include the address and contact number of the placement.

PRACTICE TIP:

- **Due Process:** The child's attorney must know how to contact their client, and the child must know how to contact his/her attorney. Otherwise, there will be due process implications. See Article 553: "A child shall have the right to communicate...with counsel at all times."

(7) PROTECTIVE ORDER (PO): The court can issue or modify a PO in compliance with Article 627(D).

PRACTICE TIP:

- **Examples:** PO can be used with parents, caretakers, and/or other individuals to help keep the child safely in the home and/or manage the safety and risk concerns or threats when the child is removed. For example, a PO may be helpful to use when the child was removed from a caretaker other than the parent. The court may want to consider a PO when, for example, there is a need to prevent a parent or other individual's contact with the children or when eviction of the perpetrator from the residence is needed. See [Temporary Restraining Order \(TRO\) and Protective Order \(PO\) Benchbook Section 2](#).

⁹⁴ See La. Ch. C. art. 553.

HELPFUL GUIDANCE:

- **Quality Parenting Initiative (QPI):** Judges should also encourage the application of QPI, which focuses on a team approach to parenting the child during the duration of the case. QPI has been adopted by DCFS, but judges are in a unique position to make sure QPI is being utilized in the case. When QPI is successful, birth parents, foster caregivers, kinship caregivers, DCFS staff members, and CASA work together to support the child. QPI can be implemented at the start of the case with the first placement of the child.⁹⁵

N. ORDER OF NOTICES AND FUTURE HEARINGS

ARTICLES 623, 625, 628-32, 646, 648

Unless dismissing the case, the court shall also include the following in the order:

- (1) CINC PETITION NOT FILED:** If the CINC Petition is not filed within 30 days of the CCH, the child shall be returned to the parents unless an extension is granted by the court based upon showing of good cause and notice to all parties;
- (2) FUTURE HEARINGS:** The parents of the child, all attorneys of record, a DCFS representative, and CASA (if appointed) be present at all future hearings;
- (3) SET MATTER FOR ANSWER HEARING IF CINC PETITION HAS BEEN OR WILL BE FILED**

If the CINC Petition has been or will be filed, the court shall order:

- Clerk to notify all parties of the date, time, and location of the Answer Hearing and that all parties of interest appear, which shall be set within 15 days of the date of filing of the CINC Petition;
- Sheriff's Office to serve parents with a summons commanding him/her to appear at court for Answer Hearing;
- DCFS shall provide notice to the parents of the date, time, and location of the Answer Hearing as well as the nature of the allegations;
- Notice of the Answer Hearing shall be made on counsel of record and CASA (if appointed);
- DCFS shall provide notice to any foster caregiver providing care for the child of the date, time, and location of the Answer Hearing and that the recipient has the right to attend and be heard; AND
- Arrangements for any parent, who is incarcerated, be made to attend the Answer Hearing, either in person or remotely.

O. CASE MANAGEMENT

(1) ENGAGEMENT

- Specifically, ask parents and children if they understand what occurred at the hearing and engage them in a conversation about the next steps.
- Ask parents (and children, if appropriate) if there is anything the court and other stakeholders involved could do to support their efforts to reunify their family (if reunification is still viable)?
- Advise parents of the importance of their active participation in all proceedings.
- Advise parents of the rigorous timeframes for child abuse and neglect cases outlined in State and Federal laws.
- Advise parents of the consequences for failure to appear at any further court hearings.
- Ensure that parents and children have contact information for caseworkers and attorneys and understand the process to request court review if necessary.
- Ask if there are any questions for the court.
- It is helpful for children and parents to be able to meet very briefly with their attorneys after the hearing so that the attorneys can address immediate issues.

⁹⁵ See <http://www.dcfslouisiana.gov/page/471> and <https://www.qpi4kids.org/what-is-qpi/> for more information on QPI.

(2) PREPARATION FOR THE NEXT HEARING

- Identify tasks to be accomplished by the various parties for the next hearing.
- Make oral findings and orders that all participants can understand.
- Consider the appropriateness of mediation, and order if applicable (Article 435 et seq.).
- An attorney or the court is responsible for the completion of the 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](#) in the [Appendix](#).
- All attorneys and unrepresented parties should review the Order before the judge signs it to ensure it accurately reflects the proceeding.
- Time permitting, best practice is to sign the Order on the same day as the hearing.
- Ensure all Orders are written, signed, copied, and distributed at the end of the hearing.
- Provide parents with a copy of the Order immediately following the hearing.

P. POSSIBLE NEXT STEPS

ARTICLES 628-32, 646

(1) FILING OF CINC PETITION: The CINC Petition shall be filed within 30 days of the CCH and answered at the Answer Hearing within 15 days after the Petition is filed.

(2) TERMINATION OF CONTINUED CUSTODY ORDER:

- **Automatically Terminated:** If the CINC Petition is not timely filed, the child shall be returned to the parents.
- **Extension:** Upon a showing of good cause and notice to all parties, the court may grant, deny, or restrict a requested extension of the time for filing the CINC Petition in accordance with the best interests of the child. If an extension is granted, the court shall issue a written order reciting the particular facts justifying the extension.

(3) INFORMAL ADJUSTMENT AGREEMENT (IAA):

- **Before CINC Petition:** Before a CINC Petition is filed, the court or DA may authorize an IAA.
- **After CINC Petition:** After a CINC Petition is filed (and with the consent of DCFS if the child is in the provisional custody of DCFS), the court may authorize the DA to effect an IAA. The court may dismiss the Petition or allow the Petition to remain pending during the period of informal adjustment.

☰ PRACTICE TIP:

- **Alternative to Removal and/or Adjudication:** An IAA may be used whether the child is in DCFS custody or not. It is a viable alternative to keeping the child out of foster care. For example, the child could be returned to his/her parents and an IAA could be used similarly to a safety plan. Or an IAA could be entered into while the child is in DCFS custody to prevent the need for filing of the CINC Petition and/or Adjudication. See [Informal Adjustment Agreement \(IAA\) Benchbook Section 1](#) for more information.

(4) REFER MATTER TO FAMILY IN NEED OF SERVICES (FINS) OFFICER: Before a CINC Petition is filed, the court or DA may refer the matter to a FINS intake officer. See Articles 743 et seq.

PRACTICE TIP:

- **Alternative to Removal:** If appropriate, FINS may also be a viable alternative to keeping a youth out of foster care and providing services to the family.
-

(5) PETITION FOR PROVISIONAL OR PERMANENT CUSTODY: At any time prior to Adjudication, any person, including a relative of the child, may petition the court for the provisional or permanent legal custody of the child.

HELPFUL GUIDANCE:

- **If Foster Care is Potential Disposition:** This Article aligns with Articles 681(A)(1), 683, and 622(D) and gives any person or relative the authority to seek court review (prior to Adjudication) of their claim to custody of a child in which foster care is a potential Disposition.



APPENDIX

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 be 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?

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

CONTINUED CUSTODY ORDER

THIS CAUSE came for hearing on the ____ day of _____, 20__, pursuant to an Instanter Order dated the _____ day of _____, 20__, concerning the removal of the following child(ren), _____, and parent(s), _____ /caretaker(s), _____.

I. APPEARANCES

The child(ren), _____, is/are present.

The child(ren), _____, is not present and:

(Please check the applicable box for each child)

the child, _____, is age 12 or older, counsel moved to waive the child's appearance, and the court grants the waiver.

the child, _____, is younger than 12 years of age, and counsel did not request the child's appearance.

_____.

Parent _____

Department of Children and Family Services

Parent's Attorney _____

Staff/Representative _____

Parent _____

Foster Parent(s), Pre-adoptive Parent(s), Relative(s)

Parent's Attorney _____

Providing Care for Child(ren) _____

Caretaker(s) _____

Child(ren) Attorney(s) _____

Assistant District Attorney _____

Bureau of General Counsel _____

Others _____

II. NOTICE

THE COURT FINDS that: *(Please check the applicable boxes for each parent)*

the parent(s), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was given by the Department.

the parent(s), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was not given by the Department for the following reason:

_____.

THE COURT FINDS that: *(Please check the applicable boxes)*

the foster parent(s), pre-adoptive parent(s), or relative(s), _____, providing care for the child(ren), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was given by the Department; and, that diligent efforts were made by the Department to locate and notify the absent caregiver.

the foster parent(s), pre-adoptive parent(s), or relative(s), _____, providing care for the child(ren), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was not given by the Department; and, that diligent efforts were not made or were made by the Department to locate and notify the absent caregiver.

III. INITIAL ADVISEMENTS

The Court advised the parent(s) of the nature of the proceedings; the allegations; the right to an Adjudication Hearing; the right to be represented by counsel; and, the right to representation by the Indigent Parents' Representation Program if indigent.

The Court advised the child(ren) in terms understandable to the child(ren) of the nature of the proceedings and the allegations.

IV. INDIAN CHILD WELFARE ACT (ICWA)

The Court asked each person whether he or she knows or has reason to know that the child(ren) is a member of a federally recognized Indian Tribe or is eligible for membership in a federally recognized Indian Tribe and is the biological child of a member of a federally recognized Indian Tribe, pursuant to 25 U.S.C. § 1903. The Court has instructed each person before the Court to inform the Court if he or she subsequently discovers information indicating

that the child(ren) is a member of a federally recognized Indian Tribe or eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian Tribe, pursuant to 25 U.S.C. § 1903.

THEREFORE, the Court finds there is reason to know child(ren), _____,
 no reason to know that child(ren), _____, is a member of a federally recognized Indian Tribe or eligible for membership in a federally recognized Indian Tribe and is the biological child of a member of a federally recognized Indian Tribe, pursuant to 25 U.S.C. § 1903, at this time.

V. REASONABLE GROUNDS FINDINGS

THE COURT FINDS that there are: *(Please check the applicable box for each child)*

reasonable grounds to believe the child(ren), _____, is in need of care in accordance with Article 606(A) _____ (1-8) and that continued provisional custody is necessary for their safety and protection.

not reasonable grounds to believe the child(ren), _____, is in need of care and that continued provisional custody is not necessary for their safety and protection.

VI. REASONABLE EFFORTS FINDINGS

THE COURT FINDS that the Department: *(Please check the applicable box for each child continuing custody outside home)*

made the following reasonable efforts with the child(ren)'s, _____, health and safety as the paramount concern to prevent or eliminate the need for the child(ren)'s removal and make it possible for the child to safely return home, including the following services (mental health, substance abuse, parenting, etc.) and/or court interventions (Temporary Restraining Order, Protective Order, Instanter Safety Plan Order, etc.) have been offered to no avail: _____

_____.

was not required to make reasonable efforts to prevent or eliminate the need for the child(ren)'s, _____, removal and make it possible for the child(ren) to return home based on the emergency circumstances articulated by the Department that the child(ren) were in substantial, immediate danger and/or the particular circumstances of the case occurred during an emergency in which the child(ren) could not safely remain at home even with reasonable in-home services provided to the family.

failed to make reasonable efforts to prevent or eliminate the need for removal of the child(ren),
_____, from the home.

VII. FINDINGS AND RULINGS

Based upon the findings above and the evidence presented:

IT IS ORDERED BY THE COURT that: *(Please check the applicable box for each child)*

child(ren), _____, be returned to their parents and that (the case be dismissed, safety plan implemented and compliance with it ordered, Protective Order be issued, etc.):

_____;

child(ren), _____, be hereby placed or continued in the provisional custody of the following suitable relative(s), _____, according to the priorities outlined in Article 622 and for the purposes of placement in the least restrictive and most appropriate setting pending the timely filing of the Child in Need of Care Petition and Adjudication;

THE COURT FINDS that said relative(s) is capable of protecting the health and safety of the child(ren) and agrees to comply with the following safety plan setting forth the conditions of contact with the parent(s) and/or other third parties: _____

_____;

child(ren), _____, be hereby placed or continued in the provisional custody of the following suitable individual(s), _____, according to the priorities outlined in Article 622 and for the purposes of placement in the least restrictive and most appropriate setting pending the timely filing of the Child in Need of Care Petition and Adjudication;

THE COURT FINDS that said individual(s) is capable of protecting the health and safety of the child(ren) and agrees to comply with the following safety plan setting forth the conditions of contact with the parent(s) and/or other third parties: _____

_____;

THE COURT FINDS that placing child(ren) in the custody of a suitable relative is not in the child(ren)'s best interest for the following reasons: _____

_____;

child(ren), _____, be hereby placed or continued in the provisional custody of the STATE OF LOUISIANA through the **DEPARTMENT OF CHILDREN AND FAMILY SERVICES**,

according to the priorities outlined in Article 622 and for the purposes of placement in the least restrictive and most appropriate setting pending the timely filing of the Child in Need of Care Petition and Adjudication, said child(ren) to be placed together, if possible, and, if not, to be afforded reasonable contact and visitation with each other;

THE COURT FINDS that placing child(ren) in the custody of a suitable relative is not in the child(ren)'s best interest for the following reasons: _____
_____.

VIII. APPOINTMENTS

IT IS ORDERED BY THE COURT that _____ be and is hereby appointed, if not previously appointed, to represent the child(ren) in these proceedings and that said program be given notice of appointment and served with a signed copy of the pleadings filed herein.

IT IS ORDERED BY THE COURT that the parent(s), _____, is/are found to be indigent and is/are referred to the District _____ Public Defender Office to provide for representation and that said program be given notice of appointment and served with a signed copy of the pleadings filed herein.

IT IS ORDERED BY THE COURT that the District _____ Public Defender Office shall provide for a curator ad hoc to locate absent parent(s), _____, and that said program be given notice of appointment and served with a signed copy of the pleadings filed herein.

IT IS ORDERED that the local CASA program be and is hereby appointed, unless previously appointed, subject to the assignment of a qualified volunteer to advocate for the best interest of the child(ren) in these proceedings. CASA must be given notice of appointment and served with a copy of the pleadings filed herein.

IX. FURTHER ADVISEMENTS

The Court advised the parent(s) of the child(ren)'s need to have a safe and stable relationship with caretakers, either their parents or, if necessary, others who are willing and able to assume parental responsibility and provide a permanent home, and to have these caretaker decisions made as quickly as possible.

The Court advised the parent(s) of their responsibility to cooperate in preparing a case plan and otherwise in meeting the needs of their child(ren), and if their child(ren) cannot return home safely, to assist the child(ren)'s

adjustment to other caretakers, and to contribute to the cost of care and treatment of their child(ren) as provided in Children's Code Article 685.

The Court advised the parent(s) to notify the Department and their counsel in writing of their current whereabouts including their mailing address, cellular number, telephone number, electronic mail address, and any other contact information, and that if they fail to do so, the law authorizes hearings to be held in their absence.

The Court advised the parent(s) that once an electronic mail address is provided all service and notice of future proceedings may be sent electronically until such time they provide notice to the Court and all parties in writing or in open Court that they are no longer able to receive service or notice at such address.

The Court advised the Department and the parent's counsel of their responsibility to promptly inform the Court of a new mailing address or electronic mail address, upon receipt of information regarding a parent's change of address.

The Court advised all persons before the Court of their responsibility in achieving timely permanence for the child(ren).

The Court advised all persons before the Court of their responsibility to identify the name, address, and whereabouts of all grandparents, all parents of a sibling where such parent has legal custody of such sibling, all other adult relatives of the child(ren) and any other individual willing and able to offer a wholesome and stable home for the child(ren).

The Court directed all persons before the Court to identify the name, address, and whereabouts of each parent and any relative or other individual willing and able to offer a wholesome and stable home for the child(ren).

X. FURTHER ORDERS UPON CONTINUED CUSTODY

THE COURT FURTHER ORDERS the following as necessary and appropriate: *(Please check box if applicable)*

IT IS FURTHER ORDERED that pending the filing of a Child in Need of Care Petition and Adjudication and/or establishment of a case plan, visitation/family time between the parents and children shall occur as follows:

and at all other times agreed by: _____.

IT IS FURTHER ORDERED that pending the filing of a Child in Need of Care Petition and Adjudication and/or establishment of a case plan, visits between separated siblings and/or with significant family members or other individuals shall occur as follows: _____

_____ and at all other times agreed by: _____.

IT IS FURTHER ORDERED that the Department make arrangements to motion for DNA tests to determine the paternity/maternity of any alleged parents and that alleged parents comply.

IT IS FURTHER ORDERED that the Department immediately assess all possible suitable relative and individual caregivers with the results and/or updates to be presented at the _____ Hearing.

IT IS FURTHER ORDERED that the Department initiate child welfare background clearance, criminal background check, and/or assessment of the home or home study on the following relative(s) or individual(s), _____.

IT IS FURTHER ORDERED that the Department initiate an Interstate Compact for Placement of Children (ICPC) process for the following out-of-state relative(s) and/or individual(s), _____.

IT IS FURTHER ORDERED that it is in the best interest of the child for the Department to coordinate with the appropriate local education agencies to ensure that the child(ren) remain enrolled in the school in which the child(ren) was enrolled at the time of placement change the school the child(ren) is enrolled in.

IT IS FURTHER ORDERED that prior to every Family Team Meeting (FTM) hereafter conducted in this case, the Department shall provide reasonable notice of said FTM to all parent(s), caretaker(s), foster caregivers, CASA workers, and attorneys for child(ren) and parent(s)/caretaker(s).

A **Family Team Meeting** is tentatively on the _____ day of _____, 20____, at _____ am/___pm.

IT IS FURTHER ORDERED that the Department notify the child's attorney immediately, electronically or otherwise, when there is an emergency change in the child's specific placement when child is in custody of the State, and within _____ hours after a change of placement of the child occurs. The notification shall include the address and contact number of the placement.

IT IS FURTHER ORDERED that _____

**XI. ORDER OF FUTURE HEARINGS AND RETURN OF CHILD
UPON FINDING OF CONTINUED CUSTODY**

IT IS FURTHER ORDERED that if the Child in Need of Care Petition is not filed within 30 days of this hearing, unless an extension is granted by the Court based upon a showing of good cause and notice to all parties, child(ren) be returned to their parent(s).

IT IS FURTHER ORDERED that the parent(s) of the child(ren), all attorneys of record, the DCFS representative(s), and CASA be present at all future hearings.

IT IS FURTHER ORDERED that: *(check if CINC Petition has been or will be filed)*

This matter be set for Answer Hearing, the clerk shall notify all parties of the date, time, and location of the hearing and that all parties of interest appear; the Sheriff's Office serve the parent(s) with a summons commanding him or her to appear at Court for the hearing; the Department provide notice to the parent(s) of the date, time, and location of the hearing as well as the nature of the allegations; notice of the Answer Hearing be made on the child and parent representation programs and CASA (if appointed); the Department provide notice to foster parents, pre-adoptive parents, or relatives providing care for the child of the date, time, and location of the hearing and right to attend and be heard; and for any parent(s) incarcerated, _____ arrange for the parent(s) to attend the hearing, either in person or remotely.

This matter has been set for **ANSWER** on the _____ day of _____, 20____, at _____ am/___pm.

THUS DONE AND SIGNED ON THIS _____ day of _____, 20____, in _____, Louisiana.

JUDGE

DISTRIBUTION OF NOTICE

Please serve all parties and counsel of record as follows:

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Child(ren)'s Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Assistant District Attorney/Bureau of General Counsel: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Please send notice and copy of order as follows:

Department of Children and Family Services Staff/Representative:
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

CASA: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Other: _____
Role: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

**ORDER PLACING MINOR CHILDREN IN THE PROVISIONAL CUSTODY
OF A SUITABLE RELATIVE OR INDIVIDUAL**

IT IS HEREBY ORDERED BY THE COURT that the following minor child(ren) be placed in the provisional custody of _____:

_____ Date of Birth: _____

_____ Date of Birth: _____

_____ Date of Birth: _____.

IT IS FURTHER ORDERED BY THE COURT:

That _____ program is representing the child(ren) in these proceedings; and
The local CASA program has been appointed, subject to the assignment of a qualified volunteer, to advocate for the best interest of the child(ren) in these proceedings.

THUS DONE AND SIGNED ON THIS _____ day of _____, 20_____, in _____, Louisiana.

JUDGE

DISTRIBUTION OF ORDER

Department of Children and Family Services Representative _____

Assistant District Attorney or Bureau of General Counsel _____

Child(ren)'s Attorney _____

CASA _____

Foster Parent, Pre-Adoptive Parent, Relatives Providing Care for Child _____

STATE OF LOUISIANA

IN THE INTEREST OF

_____ DOB: _____

_____ DOB: _____

_____ DOB: _____

Filed: _____

DOCKET NUMBER: _____

SECTION: _____

COURT: _____

PARISH OF _____

STATE OF LOUISIANA

DEPUTY CLERK: _____

**ORDER PLACING MINOR CHILDREN IN THE PROVISIONAL CUSTODY
OF THE STATE OF LOUISIANA THROUGH THE
DEPARTMENT OF CHILDREN AND FAMILY SERVICES (DCFS)**

IT IS HEREBY ORDERED BY THE COURT that the following minor child(ren) be placed in the provisional custody of the **STATE OF LOUISIANA** through the **DEPARTMENT OF CHILDREN AND FAMILY SERVICES**:

_____ Date of Birth: _____

_____ Date of Birth: _____

_____ Date of Birth: _____.

IT IS FURTHER ORDERED BY THE COURT:

That _____ program is representing the child(ren) in these proceedings; and

The local CASA program has been appointed, subject to the assignment of a qualified volunteer, to advocate for the best interest of the child(ren) in these proceedings.

THUS DONE AND SIGNED ON THIS _____ day of _____, 20____, in _____, Louisiana.

JUDGE

DISTRIBUTION OF ORDER

Department of Children and Family Services Representative _____

Assistant District Attorney or Bureau of General Counsel _____

Child(ren)'s Attorney _____

CASA _____

Foster Parent, Pre-Adoptive Parent, Relatives Providing Care for Child _____

ANSWER HEARING

La. Ch. C. arts. 646-649

LOUISIANA
CHILD IN NEED OF CARE BENCHBOOK
FOR JUVENILE JUDGES

SECTION

6

INTRODUCTION

A. BACKGROUND

If the State decides to move forward with a Child in Need of Care (CINC) case after a Continued Custody Hearing (CCH) or Continued Safety Plan Hearing (CSPH) or after receiving the results of an investigation from the Department of Children and Family Services (DCFS), the State may file a CINC Petition requesting that the court adjudicate the child in need of care. A CINC Petition may be filed when a child is still in the custody of his/her parents¹ or when the child has been removed and is in the provisional custody of a relative, other individual, or DCFS. Some jurisdictions refer to the difference between these types of cases as “non-custodial” and “custodial” cases or “CINC without removal” and “CINC with removal.”

The Petition shall specifically set forth the grounds for adjudicating the child in need of care, as per Louisiana Children’s Code Article 606(A). The Petition shall use the form and contents as outlined in Articles 633 and 634, including in particular Article 634(3). The Petition shall also include a statement as to whether the Petitioner knows or has reason to know that the child is an Indian Child and facts to support the statement in accordance with the Indian Child Welfare Act (ICWA). See the [Petition for Non-Custodial Child in Need of Care and Order Template](#) and [Petition for Custodial Child in Need of Care and Order Template](#) in the [Appendix](#).

Even though the Answer Hearing tends to be brief, it is procedurally very important. The parents are required to personally appear before the court to answer the Petition. This formal appearance ensures that the parents’ counsel has been engaged and offers an opportunity to schedule future conferences and hearings.

B. PREHEARING CONFERENCES

One practice in the Children’s Code that is sometimes underutilized is the Prehearing Conference. It may be held at the Answer Hearing, or the date may be set at the Answer Hearing. This conference can be used to discuss alternatives to an Adjudication, such as an Informal Adjustment Agreement (IAA). See [Informal Adjustment Agreement \(IAA\) Benchbook Section 1](#). At the conference, the parties may also determine stipulations, simplify issues, review exhibits, and negotiate the allegations. The State may also amend the Petition. The conference provides time to discuss whether interpreters or special accommodations are needed and whether children should be present in the courtroom when certain witnesses testify.

If a parent stipulates, a Prehearing Conference shall be held prior to the stipulation. This prerequisite helps guarantee that a parent’s stipulation and consent to the judgment are both voluntary and intelligent and in the best interest of the child. The court is required to render a separate Order of the actions taken at the Prehearing Conference.

C. TIMING, NOTICE, AND PRESENCE

The Answer Hearing shall be held no later than 15 days after the filing of the Petition and prior to the Adjudication Hearing. For more information about computation of time, please see Article 114. Parents and children are parties to the case and shall be present at the Answer Hearing. There are times when important decisions are made at the Answer Hearing. Thus, the child’s presence at the hearing is important, and waiver requests should be closely examined.

¹ The plural form of “parent” is used throughout the Benchbook for simplicity, even though at times only one parent has been identified in a case.

The court shall confirm that the parents received proper service. For parents who reside in Louisiana, proper service of the Petition, summons, and notice is (1) via personal service, domiciliary service, certified mail, or an electronic mail address if the parent expressly designated such an address in a pleading or at the CCH or CSPH or other hearing at which the parent personally appeared and (2) made not less than 15 days prior to commencement of the Adjudication Hearing. For parents who reside outside of Louisiana, proper service is (1) via certified mail return receipt requested to the address in the Petition or an electronic mail address if the parent expressly designated such an address in a pleading or at the CCH or CSPH or other hearing at which the parent personally appeared and (2) made not less than 5 days prior to commencement of the Adjudication Hearing. If service is proper and the parent is absent, the hearing may be held in the parent's absence.

The Answer Hearing is an important time to question DCFS and parents present in court regarding paternity (and maternity in certain cases). The court must ensure that efforts by DCFS are thorough and diligent in locating and involving all legal and putative parents. Paternity and maternity of all children involved in the case needs to be legally determined. When a child does not know who one of his/her parents is, that also means the child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Children before the court may suffer negative consequences for their entire life if this information remains unknown.

Parents and children have a right to counsel at all stages of the CINC proceedings. The court should determine whether it needs to make a finding of indigency for one or both parents. Some courts will have already done so if there was a CSPH or CCH. If not, and the parent is found to be indigent at the Answer Hearing, the court shall order that the parent be referred to the Indigent Parents' Representation Program (or Public Defender Office) and that the program/office shall provide representation and be given notice of the appointment and served with a copy of the pleadings filed. If a parent is absent, a curator ad hoc may need to be appointed at the Answer Hearing if not previously appointed.

Due process requires that parents in CINC cases have sufficient time to meet and speak to their attorneys before making decisions about their answer to the Petition; children also must have quality representation and meet with their attorney in all CINC proceedings. Part of the role of the judge is to safeguard due process for the families that come before the court. To that end, the court should ensure that parents and children² have had enough time to understand the proceedings, ask questions, and discuss and process the information and allegations with their attorney prior to the case being called. Under Federal and State law, foster caregivers (i.e., foster parents, pre-adoptive parents, and relatives) providing care for the child also have a right to be present and heard at the Answer Hearing.³

For all parties present, the court is responsible for providing and paying for interpretation, translation, and/or language assistance services and reasonable accommodations for those with disabilities. There must be ample time for legal interpreters to review pertinent legal documents prior to the court proceeding. Interpreters must be familiar with the case-related details to provide an accurate, meaningful, and effective interpretation.

D. ANSWER OPTIONS

The parents may deny the allegations of the Petition, stipulate that the child is in need of care with or without admitting the allegations of the Petition, and/or admit the allegations of the Petition with or without consenting to the Adjudication (i.e., consent to judgment or agree child is in need of care). The court may also find that the matter should be dismissed.

If a parent denies the allegations in the Petition, the matter shall be set for an Adjudication Hearing. If a parent stipulates after a Prehearing Conference is held, the parent may do so with or without admitting to the allegations of the Petition. Stipulations may only be made if the requirements of ARTICLES 646.1 AND 647 have been met, so that the due process rights of parents are protected.

² Rules of the Supreme Court of Louisiana, Rule XXXIII Part III Subpart II Standard 7 requires: "Regardless of the age of the child, counsel for the child must engage in regular and meaningful communication with the child in a developmentally appropriate manner, and should personally meet with the child no later than 15 days after appointment, prior to all court hearings, and when advised of any change in circumstances affecting the child." See https://www.lasc.org/Supreme_Court_Rules?p=RuleXXXIII.

³ See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

If the child disagrees with the stipulation, best practice is to hold the Adjudication Hearing. The Children’s Code speaks to the “objection” of a child to the answer of his/her parents but does not mention the effect of such an objection. There are multiple reasons why a child may want to have a hearing, and as a party, would be entitled to such a hearing if not in agreement with the stipulation.\

If the parent admits to the allegations of the Petition, the court is required to determine whether there is or is not a factual basis for adjudicating the child in need of care. If the court concludes that there is no adequate factual basis for the admission, it shall refuse it and, instead, enter a denial. If the court determines that there is a factual basis for a CINC Adjudication, the court shall ascertain whether the parent consents to the Adjudication.

Sometimes, a parent may agree to the conduct alleged in the Petition but may not agree that the child is in need of care (i.e., consent to Adjudication or consent to the judgment). If the parent does not consent, the court shall order that the matter be set for an Adjudication Hearing. At a Prehearing Conference, the parties can discuss the allegations and potential amendments to the Petition prior to the Adjudication Hearing. If there is a stipulation after a Prehearing Conference or admission with consent to Adjudication, factual basis finding by the court, and the child does not object to the answer, the court shall order the child adjudicated in need of care.

The Children’s Code is not clear about what should happen if parents provide different answers at the hearing. For example, sometimes one parent stipulates, and the other does not. Some courts set the matter for an Adjudication Hearing based on the view that it is the child who is adjudicated in need of care, and the child cannot be adjudicated as to one parent and not the other. This is in line with the view that a child is not “in need of care” if there is a parent who can care for the child. A minority view is that each parent should be adjudicated against separately.

E. ADJUDICATING THE CHILD IN NEED OF CARE AT THE ANSWER HEARING

If the court finds a factual basis for Adjudication after an admission and/or stipulation to Adjudication and the child does not object, an Adjudication Hearing is not needed. However, the court must still adjudicate the child in need of care and issue an Adjudication Order. See [Adjudication Benchbook Section 7](#) and [Adjudication Order Template](#).

The Adjudication Order should delineate the ground(s) for its findings pursuant to Article 606(A) and should, where appropriate, precisely describe the conduct on which the court is basing its finding. For example, if the courts finds that the child is in need of care based upon Article 606(A)(5), that the conduct of the parent constitutes a crime against the child, the court should specify the conduct and the related crime. Such a finding gives the parent notice of the basis of the Adjudication, consistent with due process, and helps guide the formation and implementation of the case plan or safety plan accordingly.

The court must also set the matter for a Disposition Hearing if the child is adjudicated at the Answer Hearing. Occasionally, a court will move to Disposition at the Answer Hearing after adjudicating the child in need of care. However, this may not be best practice if more information needs to be gathered to assist with the important decisions made at Disposition. If the matter goes to Disposition at the Answer Hearing, the court must issue both an Adjudication Order and Disposition Order. See [Disposition Hearing Benchbook Section 8](#) and [Judgment of Disposition Template](#).

An attorney or the court is responsible for the completion of the Answer Order (and Adjudication Order and Judgment of Disposition, if needed). All attorneys and unrepresented parties should review the order before the judge signs it to ensure it accurately reflects the proceeding. Time permitting, best practice is to sign the Order on the same day as the hearing. Time permitting, best practice is for the judge to sign the Order on the same day as the hearing.

F. ENGAGEMENT AND ADVISEMENTS

It is important to ensure the parents and children present are engaged and understand what is happening at the hearing and in the case. The CINC process can be complicated and confusing. Judges are encouraged to ask if the parties understand what the hearing is about and the allegations in the Petition. While judges are sometimes hesitant to engage with parties, the truth is that families engaged

in the CINC process achieve much better outcomes than those who are not.⁴ Engaging parties can be hard to do and requires patience. But parents and children are likely to respond to encouragement, positive feedback, and being heard.⁵

A critical component of the court's role at the hearing is to advise parents and persons before the court of their rights and responsibilities. If the parent stipulates, the court shall fully inform the parent of the consequences of a stipulation before adjudicating the child in need of care. It is best practice to have parents acknowledge the advisements on the record and/or execute a written acknowledgment of advisement and understanding of rights.

G. NEXT STEPS

Depending on what has occurred at the Answer Hearing, the court should either set the matter for an Adjudication Hearing, a Disposition Hearing (if the court adjudicated the child and completed the Adjudication Order), and/or a Case Review Hearing (if the court adjudicated the child and completed the Adjudication Order and the court ruled on the Dispositional alternative and the case plan, if needed, and completed the Judgment of Disposition).

If the child is continued in custody pursuant to Article 627, the Adjudication Hearing shall commence within 45 days of the filing of the Petition. If the child is not in custody, the hearing shall commence within 105 days of the filing of the Petition. If the Disposition Hearing is not conducted immediately after the Adjudication, it shall be conducted within 30 days after the Adjudication. Continuances may be granted for Adjudication (Article 646) and Disposition (Article 659) per the Children's Code.

The court may also authorize the district attorney (DA) to effect an IAA at this juncture of the case. See [Informal Adjustment Agreement \(IAA\) Benchbook Section 1](#). An IAA must be entered into with the consent of DCFS if the child is in the provisional custody of DCFS. The court may dismiss the CINC Petition or allow it to remain pending during the period of informal adjustment. The IAA is a viable alternative to keeping children out of foster care. For example, a child could be returned to his/her parents and an IAA could be used similarly to a safety plan. Or an IAA could be entered into while the child is in DCFS custody to prevent the need for Adjudication.

Articles 635 and 651-658 provide various motions and discovery that can take place between the filing of the Petition and the Adjudication and Disposition Hearings. At any time prior to Adjudication, any person, including a relative of the child, may Petition the court for the provisional or permanent legal custody of the child pursuant to Article 631.

4 "Parent advocates" (sometimes called "parent mentors" or "parent partners") are parents who have successfully gone through the CINC process and regained custody of their children and can also help engage parents who have an open CINC case. There is credibility and an understanding that comes with having personal experience with a CINC case. This is one reason why a multidisciplinary representation model, a model that provides peer support to parents and children (i.e., parent advocate or former foster youth) in addition to an attorney and/or social worker, has proved to be beneficial in Orleans Parish and in other States. For more information about the multidisciplinary representation model, please see https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january--december-2019/providing-parents-multidisciplinary-legal-representation-signifi/. The Extra Mile in Lafayette has a stand-alone Parent Partner program: <https://theextramileregioniv.com/frc/>.

5 See Sankaran, Vivek. "My Name Is Not 'Respondent Mother': The Need for Procedural Justice in Child Welfare Cases." ABA Child L. Prac. Today. 2018, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2992&context=articles>; see also <https://www.ncjfcj.org/child-welfare-and-juvenile-law/trauma-informed-courts/>.

OUTLINE

-  **A. TIMING AND CONTINUANCES**
-  **B. PREHEARING CONFERENCE**
-  **C. APPEARANCES AND APPOINTMENTS**
-  **D. NOTICE AND SUMMONS**
-  **E. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS**
-  **F. ADVISEMENTS**
-  **G. PATERNITY/MATERNITY**
-  **H. ANSWER AND FINDINGS AND ORDERS**
-  **I. FURTHER ORDERS**
-  **J. ORDER OF NOTICES AND FUTURE HEARINGS**
-  **K. CASE MANAGEMENT**
-  **L. POSSIBLE NEXT STEPS**
-  **M. APPENDIX**

- (1)** Answer Hearing Bench Card
- (2)** Petition For Non-Custodial Child In Need Of Care And Order Template
- (3)** Petition For Custodial Child In Need Of Care And Order Template
- (4)** Answer Order Template



OVERVIEW

A. TIMING AND CONTINUANCES

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

(1) TIMING: The Answer Hearing shall be held no later than 15 days after the filing of the CINC Petition and prior to the Adjudication Hearing (See Article 114).⁶ However, the court can order the parents to answer the Petition upon completion of the CSPH or CCH if it was filed prior to or during the CSPH or CCH.

(2) CONTINUANCES:

- a. **Report to Louisiana Supreme Court (LASC):** If a continuance is granted, or a delay permitted, that exceeds the maximum allowable times established by the Children’s Code, the court is mandated by Supreme Court Rule XXXIII, Part II, Sections 1 and 2, to report such continuance within 10 days to LASC, along with the reasons for the delay and a copy of the Order. See https://www.lasc.org/children_families/timelinessreport.pdf for a copy of the report that must be submitted by the court to LASC. See also Louisiana District Court Rules, Title V, Chapter 42, Rule 42.1, for more information.

B. PREHEARING CONFERENCE

ARTICLES 646, 646.1

A Prehearing Conference may be immediately convened at the Answer Hearing (or counsel may also move to convene), or a date may be set for the conference, to address any of the following issues:⁷

- Alternatives to formal court proceedings and/or other prevention mechanisms such as an IAA;
- Efforts to identify and locate an absent parent;
- Paternity/Maternity;
- Whether interpreters or special accommodations are needed;
- Simplification of the issues, including the elimination of frivolous claims or defenses;
- Amendments to the Petition;
- Child’s presence at hearings;
- Material facts and issues without controversy and controverted;
- Proof, stipulations regarding the authenticity of documents, admissibility of evidence;
- Expert testimony;
- Discovery;
- Identification of witnesses, documents, exhibits; AND
- Other such matters as may aid in the disposition of the action.
- The Prehearing Conference may be attended by the DA/assistant district attorney (ADA), DCFS, counsel for all parties, unrepresented parties, and such other persons as the court deems proper.
- The court shall render a separate Order reciting the actions taken at the Prehearing Conference. It is not sufficient to merely state that the Prehearing Conference occurred. See Article 646.1(C).

⁶ In computing a period of time prescribed by law, the date of the event after which the period begins to run is not included; the last day of the period is included but if a legal holiday—including Saturdays and Sundays—then the period runs until the end of the next day which is not a legal holiday. La. Ch. C. art. 114.

⁷ Gatowski, S., Miller, N., Rubin, S., Escher, P., & Maze, C. (2016) Enhanced resource guidelines: Improving court practice in child abuse and neglect cases. Reno, NV: National Council of Juvenile and Family Court Judges, p. 61 (Many jurisdictions use pre-adjudicatory settlement conferences to facilitate non-trial resolutions of contested matters. NCJFCJ Enhanced Resource Guidelines [hereinafter Gatowski]).

PRACTICE TIPS:

- **Stipulation:** One of the requirements for a parent to stipulate that the child is in need of care is that a Prehearing Conference is held in accordance with Articles 646.1 and 647.
- **Purpose:** Best practice is to hold a Prehearing Conference even if it is not required by a stipulation. Such conferences have demonstrated effectiveness in reducing decision-making delays, discouraging procrastination by counsel, and providing opportunities to discuss alternatives to formal court proceedings and/or the early resolution of issues that might otherwise result in continuances or other delays.

C. APPEARANCES AND APPOINTMENTS

ARTICLES 424.1, 575, 607-8, 623, 635.1-645

(1) PROPER INTEREST OR NECESSARY: At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. The court shall not admit any other person unless it determines that the person has a proper interest in or is necessary to the proceedings.

HELPFUL GUIDANCE:

- **Privacy:** Limiting the number of persons present in the courtroom protects the privacy of children in CINC cases. The judge is mandated to exclude all but the listed persons unless first determining the person has a proper interest or is necessary to the proceedings. Law students or social workers studying juvenile procedure might qualify as persons with proper interest. If the court allows other persons to be present, the court should stress the confidentiality of the case information.

(2) ESSENTIAL JUDICIAL FUNCTION - ASSISTANCE SERVICES AND SPECIAL ACCOMMODATIONS: Under State and Federal law, the court is responsible for providing interpretation, translation, and/or language assistance services for parties to CINC hearings and/or reasonable accommodations for parties to CINC hearings with disabilities. When the court appoints counsel for indigent persons, it is also responsible for appointing and paying for a qualified interpreter/translator for indigent persons with these needs to assist in communication with counsel in all phases of the preparation and presentation of the case.⁸ There must be ample time for legal interpreters to review pertinent legal documents with the party prior to the court proceeding.⁹ Interpreters must be familiar with the case-related details to provide accurate, meaningful, and effective interpretation.¹⁰

(3) CHILDREN: Children are parties and shall be present at the hearing unless an exception below applies.

- **12 and Older:** If the child is 12 years of age or older, he/she shall be present in court unless his/her presence is waived by the court upon motion of the child's attorney.
- **Below 12:** If the child is below the age of 12 years, he/she shall be present in court upon request of the child's attorney or the court.
- **Waive:** The court shall state in the Order whether or not it waives the appearance of the child at the hearing.

⁸ See C.C.P. Art. 192.2; La. R.S. § 46:2364; 42 U.S.C. § 3711; 28 U.S.C. § 604(a)(14), (15), and (16), § 1827, and § 1828; see also https://www.lasc.org/language_access and https://www.lasc.org/District_Court_Rules?p=TitleI.

⁹ See National Consortium of Interpreter Education Centers. (2009). Best practices American Sign Language and English interpretation within legal settings. U.S. Department of Education, Rehabilitation Services CFDA #84.160A and B, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind, <http://www.interpretereducation.org>

¹⁰ Id.

HELPFUL GUIDANCE:

- **Waiving Presence at the Hearing:** The child’s attorney has an obligation to inform the child of the right to be present at the hearing and facilitate such presence, if appropriate. The judge should engage in an inquiry related to the child’s presence at court. If the child’s attorney moves to waive the child’s presence, for example, the court should ascertain the reason underlying the request. If the child is present, does the child wish to be heard? The court has an oversight role in CINC cases and, as such, should make every effort to ensure that the child has been given enough information about the court process and an opportunity to be engaged in the process.
- **Importance of Presence at the Hearing:** Having all parties present and participating in the hearing is critical for moving the case forward and having a more meaningful hearing. Children are parties to the hearing, and their voice is invaluable to decision-making. Having children present can also assist the court in making decisions about a case. Interacting with the child and observing potential medical issues, delays, etc., provides needed information to the court. Although challenging, courts should try to schedule hearings so that children can be present and participate as much as possible. Scheduling to allow the child to attend hearings necessitates knowing about the child’s school schedule and other activities. There are different ways to hold hearings given some of the issues that arise with having children in court. For example, some judges hold their hearings in conference rooms instead of courtrooms to be less intimidating to children and parents. Other judges develop creative solutions, such as holding the hearing at a group home or scheduling the hearing after school.

(4) PARENTS: Parents of the children are parties and shall be present at the hearing.

PRACTICE TIPS:

- **Effect of Nonappearance of Parent:** If it appears from the record that a parent has been served in accordance with Article 640 or 641 and summoned to any hearing, and that parent fails to appear at the hearing, the court shall permit the hearing to be held in that parent’s absence.
- **Curator Ad Hoc Appointed Prior to Answer Hearing:**¹¹ If a curator ad hoc was appointed prior to the Answer Hearing and fails to locate the parent, the curator ad hoc shall attend the Answer Hearing, submit a note of evidence on the record indicating the efforts made to locate the parent, and proceed contradictorily unless the parent is subsequently served or waives objection to jurisdiction. Proceedings held contradictorily with the curator ad hoc shall be of full force and legal effect against the parent. However, if a curator ad hoc was appointed prior to the Answer Hearing and the parent is subsequently served in accordance with Article 640 or 641 or is located by the curator ad hoc, the curator ad hoc shall be required only to attend the Answer Hearing and submit a note of evidence on the record indicating the efforts made to locate the parent (Article 644). If a curator ad hoc is appointed, DCFS shall identify efforts made to locate the parent to the curator ad hoc within 15 days of its receipt of a copy of the Order appointing the curator ad hoc (Article 645).
- **Incarcerated Parent:** To ensure the attendance of any parent who is incarcerated at the Answer Hearing, a writ or motion should have been filed and an order issued by the court and served on the warden or administrator of the facility prior to the Answer Hearing. Service should be made sufficiently in advance of the hearing to afford time for the facility to arrange for transportation of the parent to court (or video conferencing where the parent’s physical attendance at the hearing is not possible).

¹¹ See La. Ch. C. art. 575; La. Ch. C. art. 643.

(5) ATTORNEYS, APPOINTMENTS, AND WAIVERS:

- a. **Parents:** The Indigent Parents' Representation Program shall provide qualified legal counsel, including curatorship appointments, to indigent or absent parents in CINC cases unless a parent waives his/her right to counsel (See Articles 575, 608, and 643).
- **Right to Counsel:** The parents of a child who is the subject of a CINC proceeding shall be entitled to qualified, independent counsel at the CCH and at all stages of the proceedings thereafter.
 - **Found to Be Indigent:** The court should determine whether it needs to make a finding of indigency for one or both parents. If a parent is found to be indigent (financially unable to afford counsel) and the parent has not previously been appointed counsel, the court shall order that the parent be referred to the Indigent Parents' Representation Program (best practice is to refer the parents to the local Public Defender Office, See Article 575) and that the program or office shall provide representation and be given notice of appointment and served with notice and a copy of the pleadings.
 - **Waiver of Right to Counsel:** A parent may waive his/her right to qualified, independent counsel. However, before accepting a waiver of counsel, the court shall ensure that the parent was informed of his/her rights enumerated under Article 608 and the possible consequences of this waiver. The court should exercise caution in any request to waive the right to counsel.

HELPFUL GUIDANCE:

- **Prior to Hearing:** The judge should inquire whether counsel had sufficient opportunity to consult with the parents prior to the hearing.
- **Due Process:** Protecting the interest of the parent is an important role of the parent's attorney and ensures due process for the parent. The parent's attorney should zealously advocate for the parent whether the parent is present or not.
- **Conflicts of Interest:** Judges must be cognizant of possible conflicts of interest that may arise in representation of parents at all junctures in the case. For example, parents who are married or living together may have or may develop divergent legal positions in the CINC case. It may also be a conflict for one attorney to represent multiple fathers or mothers in a case. When there is a curator ad hoc for an absent parent, the curator may not be able to represent a parent who is located due to a conflict.

- b. **Children:** An attorney for the child shall be present at every hearing, assert the child's wishes, and protect the legal interests of the child even if the child is not present (Article 607).¹²
- **Appointment:** The program for child representation should have been appointed if there was an Instanter Order. If not previously appointed, the court shall order that the program approved to represent the child in that jurisdiction be appointed to represent children in all CINC proceedings and be given notice of appointment and served with notice and a copy of the pleadings.

HELPFUL GUIDANCE:

- **Prior to Hearing:** The judge should inquire whether counsel had sufficient opportunity to consult with the child prior to the hearing and that they received a copy of Petition.
- **Due Process:** Protecting the legal interest of the child is an important role of the child's attorney and ensures due process for the child. The child's attorney should zealously advocate for the child's wishes whether the child is present or not.
- **Conflicts of Interest:** Judges must be cognizant of possible conflicts of interest that may arise in the representation of children at all junctures in the case. With regard to current clients, for example, there could be a conflict representing two siblings if one has sexually perpetrated on the other. It would also be a conflict for a child's attorney to represent both a teenage mother and her baby if the baby is in care. Further, a conflict may be present if siblings' wishes are divergent, and the attorney cannot make a colorable argument for the differing positions.

¹² LA. SUP. CT. RULE XXXIII, PART III, SUPART II.

- c. **State:** An ADA, an attorney the ADA designates, or a DCFS attorney (Bureau of General Counsel/BGC) representing the State should be present at the hearing.

(6) DCFS: A DCFS staff member or representative(s) should be present at the hearing.

(7) Court Appointed Special Advocate (CASA): For confidentiality reasons, CASA should only be present at hearings if the court appointed them.

- **Appointments:** If CASA was not previously appointed, the court can order that the local CASA program be appointed, subject to the assignment of a qualified CASA volunteer, to advocate for the best interest of the child in these proceedings and that the program be notified of appointment and served with a copy of the pleadings (Article 424.1).

 **HELPFUL GUIDANCE:**

- o **Role:** CASA volunteers are sworn officers of the court appointed by judges to advocate for the best interests of children in CINC cases. CASA volunteers visit with children to get to know them and find out important information, such as how they are doing in the placement, what kind of services are needed, and how school is going. The CASA volunteer may also talk to professionals working on the case, the child's family, the foster caregivers, teachers, and others. They can review important documents relating to the case, such as summaries on the parent and/or child's progress. The CASA volunteer prepares reports for the court about what they have learned about the child. In the report, they make independent recommendations to the court about what should happen in the case to have the best outcome for the child—to keep the child safe, promote the child's well-being, and help find a permanent placement for the child. Unlike the children's attorney, the CASA volunteer does not advocate for the wishes of the child unless those wishes are in the child's best interest. The CASA volunteer can also monitor the case plan and advocate to make sure the plan is followed and serves the best interests of the child. The court appoints the local CASA program, subject to the assignment of a qualified volunteer. If available, then a CASA volunteer will be assigned to the case. The Children's Code requires the CASA program to be established in compliance with the National CASA Association standards and the volunteer to be trained in accordance with those standards.¹³

(8) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD: Foster caregivers (i.e., foster parents, relatives, or pre-adoptive parents) providing care for the child have a legal right to receive notice of and be present at the Answer hearing. The court may permit the hearing to be held in the person's absence even if they were not properly notified. See [Continued Custody Hearing \(CCH\) Benchbook Section 5 G\(5\)](#) for more information.¹⁴

OVERALL GUIDANCE:

- **Engagement:** The court should do all that it can to support and encourage the meaningful engagement of families in CINC proceedings.¹⁵ Testifying in court is stressful for many parents and children. Court is intimidating for most individuals (including non-party witnesses), and the stakes could not be higher for parents and children in CINC cases. Many parents and children are coming into court with a history of trauma. Regardless of the trajectory of the case, parents and children may benefit from having their voice heard. It is critical for the judge to consider information provided by the parents and children, and to convey to the parents and children that their testimony is being given due consideration in the court's ruling. Positive engagement is critical to successful outcomes in the case.¹⁶ Judges must create an environment where parents and children are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.¹⁷

¹³ La. Ch.C. art. 116(2.1) and (2.2).

¹⁴ See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

¹⁵ Gatowski, *supra* note 7, at 68.

¹⁶ *Id.*

¹⁷ Gatowski, *supra* note 7, at 16.

D. NOTICE AND SUMMONS

ARTICLES 575, 607-8, 623, 635.1-645, 42 U.S.C. § 675(5)(G), 45 C.F.R. § 1356.21(o)

The court shall determine if proper notices of the hearing were made, and enter required findings in the Order as required.

(1) COUNSEL OF RECORD: Upon the filing of a Petition, the court shall provide notice and a copy of the Petition to the program designated for the jurisdiction to provide counsel for the child and representing indigent parents (Public Defender Office).

(2) PARENTS:

- a. **Service on Every Parent:** The following shall be served in a sealed envelope on every parent of the child who is the subject of the CINC proceeding:
 - A copy of the Petition;
 - Notice of the nature of the hearing in accordance with Article 639; AND
 - The rights of the parent, as provided in Article 639.
- b. **Service for Resident Parent:** When the Petition is filed, the court shall issue a summons commanding resident parents of the child to appear before the court at the designated time and place for the Answer Hearing. If a parent resides within Louisiana, service of the Petition, summons, and notice shall be made as soon as possible, and not less than 15 days prior to the commencement of the Adjudication Hearing on the matter, by any means outlined in Article 640.
- c. **Service for Nonresident Parent:** If a parent does not reside within Louisiana, service of the Petition and notice, and summons if issued by the court, shall be made not less than 5 days prior to the commencement of the Adjudication Hearing, by any means outlined in Article 641.

HELPFUL GUIDANCE:

- **Location of Parents:** Notwithstanding any other provision of the law to the contrary, DCFS shall obtain and provide to the DA/ADA all available information pertinent to the location of every parent, including names and addresses of known relatives and any parents of a sibling where such parent has legal custody of the sibling, and any information available from the parent locator service. If a curator ad hoc is appointed, DCFS shall supply efforts to locate the parent to the curator ad hoc within 15 days of its receipt of a copy of the Order appointing the curator ad hoc. DCFS shall fully cooperate with any court which has authority with respect to the placement of a child in foster care or for adoption for the purpose of locating a parent of the child, including making available all information obtained from the Federal Parent Locator Service.
- **Dual Paternity:** Article 638 explicitly states that “every parent of the child” shall be served. Thus, it implicitly acknowledges the concept of dual paternity established by LASC. See Authors’ Notes in Articles 638 and 1193 for more information.
- **Content of Summons:** The summons shall command parents to appear to answer the Petition in accordance with Article 646 and may also command the presence of necessary participants for a Prehearing Conference convened in accordance with Article 646.1.
- **Failure to Appear:** If a properly served person fails to appear in response to a summons, the court may order that such person be taken into custody and immediately brought before the court.
- **Appoint Curator Ad Hoc:** If a parent cannot be served in accordance with Article 640 or 641, the court shall appoint an attorney at law (best practice is to appoint the local Public Defender Office per Article 575 in the Order) as curator ad hoc for the parent and service shall be made on the curator ad hoc. Upon appointment of curator ad hoc, a copy of the letter of appointment shall be forwarded to DCFS and the DA. See duties of the curator ad hoc in Article 644.

- **Unidentified Father:** If a father is unidentified, it is not necessary to appoint a curator ad hoc for that parent. The father shall be considered unidentified if:
 - The biological father’s name is not provided on the birth certificate;
 - There is no presumed father; AND
 - No party to the proceedings or the mother, if not a party, is able to provide a first and last name of a putative father or alias sufficient to provide a reasonable possibility of identification and location.

(3) CHILDREN: When the Petition is filed, the court shall issue a summons commanding the child to appear before the court at the designated time and place for the Answer Hearing.

(4) OTHER PERSONS: When the Petition is filed, the court shall issue a summons commanding such other persons as the court deems proper to appear before the court at the designated time and place for the Answer Hearing.

HELPFUL GUIDANCE:

- **Content:** The summons may command the presence of necessary participants for a Prehearing Conference convened in accordance with Article 646.1.
- **Failure to Appear:** If a properly served person fails to appear in response to a summons, the court may order that such person be taken into custody and immediately brought before the court.

(5) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD:

- **Notice and Right to Be Heard: The court shall determine whether DCFS:**
 - Gave notice of the date, time, and place of the Answer Hearing to any foster caregiver providing care for the child; AND
 - Informed the recipient of his/her right to attend and be heard at the hearing.
- **Fails to Appear:** If a foster caregiver fails to appear at a hearing, DCFS shall report to the court whether notice was given or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person’s absence.
- **Solicit Information:** The court shall solicit and consider information regarding the care and treatment¹⁸ of the child from any foster caregiver providing care for the child who appears for the Answer Hearing.¹⁹

PRACTICE TIPS:

- **Valuable Information that Must be Considered:** The court should value the role of the child’s daily caregiver and the insight they can provide to the court about how the child is doing and what he/she needs. Because of their day-to-day care of the child, foster caregivers have useful information that the court, DCFS, CASA, and parties to the CINC case need to make crucial decisions regarding the child’s well-being. Thus, their role in the court process is to provide current and accurate oral and/or written information about their observations of how the child is doing so that judges can make informed decisions in the best interest of the child.

¹⁸ Neither State nor Federal law provides a definition for “care and treatment of the child,” but DCFS policy states that it “includes information that the foster parent, relative, or pre-adoptive parent feels is critical to the safety and well-being of the child, such as how the child is doing physically, developmentally, emotionally, behaviorally, mentally, socially, and academically and what supports or services are needed for the child or caregiver to properly care for the child.”

¹⁹ See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

- **Solicit Information:** While foster caregivers are not parties, they have a legal right to be heard at any CINC hearing regarding a child in their care. There are at least 2 ways the court can solicit and consider information from caregivers. The caregiver can: (1) submit a Foster Caregiver Progress Form to DCFS prior to the hearing or (2) attend and speak at the hearing, or both.²⁰
- **Submit a Foster Caregiver Progress Form:** The Foster Caregiver Progress Form is one of the ways foster caregivers can exercise their right to be heard but is not required. If the caregiver chooses to complete the form, they will submit it to DCFS, who will bring copies of the form to the hearing. The form can be submitted to DCFS even though the caregiver may not attend the hearing. These forms contain hearsay information and should be treated as information about the child in the same way DCFS provides other information to the court. Even if the caregiver submits the form, they still have the right to attend and be heard at any CINC hearing regarding the child in their care. See the [Foster Caregiver Progress Form Template](#) in the [Appendices Benchbook Section 12](#).
- **Speak at the Hearing:** In accordance with State and Federal law, if the foster caregiver attends the hearing, the court shall solicit information from the caregiver about the care and treatment of the child (even if they submitted a Foster Caregiver Progress Form). At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. This includes foster caregivers. After the court hears from parties, if another party has not called on the caregiver to speak, the judge should call on them to see if they would like to speak. Some caregivers may wish only to attend and not speak. Judges may allow the caregiver to use the form to guide them when they speak and/or may want to utilize the form to ask the caregiver questions.²¹

E. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS

The court should consider whether any of the following Federal laws or regulations apply to this case:

- Americans with Disabilities Act (ADA);
- Service Members Civil Relief Act (SMCRA);
- Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA); AND/OR
- Interstate Compact on the Placement of Children (ICPC), as codified in La. Ch. C. art. 1608 et seq.
- **ICPC Generally:** ICPC is an agreement between all 50 States, Washington, D.C., and the U.S. Virgin Islands. It provides for the movement and safe placement of children between States when the children are sent out of State for placement in foster care or as a preliminary step to a possible adoption. The process involves several steps and goes from the local or field level in one State, through the central or State office of each State, to the local level in the other State for investigation. At the conclusion of the investigation, a report is sent from the local level to the State administration and back to Louisiana. The process usually takes several months to complete, so it is recommended that this process begins as soon as a potential caregiver out of State is identified and determined to be a suitable potential placement or resource. If the receiving State finds that the proposed placement is contrary to the interests of the child, DCFS may not place the child with that caregiver. The judge still has authority to grant custody or guardianship to the out-of-State caregiver without ICPC approval. Still, there would be no supervision of the home and may be other severe repercussions. See [Disposition Hearing Benchbook Section 8 E](#) for more information on ICPC.

F. ADVISEMENTS

ARTICLES 625, 646, 648

(1) PARENTS:

- a. **General AdviseMENTS:** Unless so advised at a previous hearing, the court shall advise the parents of their rights and responsibilities pursuant to Article 625, including:

²⁰ Id.

²¹ Id.

- The nature of the proceedings and allegations in terms understandable to them;
 - The right to an Adjudication Hearing, including the rights to call and cross-examine witnesses and the right to appeal;
 - The right to be represented by counsel and the right of indigent parents to representation by the Indigent Parents' Representation Program in accordance with Article 608;
 - If the parent provides an electronic mail address at which the parent is willing to receive service and notice of future proceedings, then all service or notice of future proceedings may be sent electronically until such time as the parent provides notice to the court and all parties in writing or open court that he/she is no longer able to receive service or notice at such address; AND
 - Responsible for notifying DCFS and their counsel in writing of their current whereabouts, including their address, cellular number, telephone number, and any other contact information, and that if they fail to do so, the law authorizes hearings to be held in their absence.
- b. **DCFS Custody:** If the child is in DCFS custody, the court shall also advise the parents of their rights and responsibilities pursuant to Article 625, including:
- The child's need to have a safe and stable relationship with caretakers, either his/her parents or, if necessary, others who are willing and able to assume parental responsibility, provide a permanent home, and have these caretaker decisions made as quickly as possible;
 - Their responsibility to cooperate in preparing a case plan and otherwise in meeting the needs of their child;
 - Their obligation to contribute to the cost of care and treatment of their child or in the alternative, child support pursuant to R.S. § 9:315 et seq., as provided in Article 685; AND
 - Their responsibility to assist the child's adjustment to other caretakers.

 **PRACTICE TIP:**

- **Parent's Email:** If a parent has not provided an email address at which they can be served, judges should encourage parents to do so. Having an email address to send notice helps ensure the parents receive the notice. For example, when a parent does not have a stable home to live in, and their address continues to change, it is helpful to have an email address to send them notice.

 **HELPFUL GUIDANCE:**

- **Acknowledgment from Parents:** If the parents have not already done so, it is recommended that the judge have the parents acknowledge on the record and/or execute a written acknowledgment of advisement and understanding of rights.
- **Engage with Parents, Children, and Relatives Present:** It is important to make sure the parents, children, and relatives present are engaged and understand what is happening. Judges are encouraged to ask:
 - Do you understand what this hearing is about? (Explain the purpose of the hearing).
 - Do you understand the allegations in the Petition? (Review the Petition with parties).
 - Were you involved in any mediation process used before this hearing? If yes, what was the outcome?
 - What family members and/or other important people should be involved in this process?

(2) ALL PERSONS BEFORE COURT:

- a. **General Advisements:** Unless so advised at a previous hearing, the court shall advise all persons before the court of their rights and responsibilities pursuant to Article 625, including:
- To identify the name, address, and whereabouts of each parent and any relative or other individual willing and able to offer a wholesome and stable home for the child; all grandparents, all parents of a sibling where such parent has legal custody of such sibling, and all other adult relatives of the child; AND
 - Of their responsibility in achieving timely permanency for the child.

HELPFUL GUIDANCE:

- **Continued Obligation to Find Potential Caregivers:** All persons and parties before the court have a continuing obligation to achieve timely permanency for the child. It is critical for relatives and other individuals to be found as soon as possible so that permanency can be achieved expeditiously if reunification becomes no longer viable. Finding these potential placements early on in the case is also crucial to reducing further trauma to a child who may form secure attachments with caregivers. The court's role is to continue to hold persons before the court, parties, and DCFS accountable to these obligations. See [Appendices Benchbook Section 12](#) for the [Family Connection Form](#) and [Circle of Influence Form](#) DCFS uses with children and parents to help identify potential caregivers. Also, some attorneys create "Family Trees" to help identify potential caregivers.
- **Preference to Relatives Per Federal Law:** For States to receive funding for foster care and adoption assistance, Federal law under Title IV-E of the Social Security Act requires that the State "consider giving preference to an adult relative over a nonrelated caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards."²² Per the Fostering Connections to Success and Increasing Adoptions Act, within 30 days following the removal of the child and any time after that a relative is identified, DCFS is required to contact all known adult relatives of the child and to inform them about placement and permanency possibilities for the child. Title IV-E of the Social Security Act also requires all States to exercise due diligence to identify and provide notice to all grandparents, all parents of a sibling of the child, where such parent has legal custody of the sibling, and other adult relatives of the child (including any other adult relatives suggested by the parents) that (1) the child has been or is being removed from the custody of his/her parents; (2) the options the relative has to participate in the care and placement of the child; and (3) the requirements to become a foster parent to the child. These Federal laws are based on evidence that placement with relatives maintains the child's connections with his/her family, and children generally fare better in many child well-being factors when placed with a relative.²³
- **Suitable Individuals and Cultural Considerations:** The court should press parties and persons before the court to consider not only biological relatives but also individuals with whom the child has a significant relationship (also referred to as "fictive kin," "suitable persons," or "suitable individuals"). These are individuals who are not related by blood, marriage, or adoption to the child but could be close family friends or someone the child considers family or has a relationship with. It is important to consider the child's culture, heritage or customs, traditions, religion, etc., in determining placement and custody options. For example, some children may call a close friend their "auntie" even though they are not related by blood. However, the auntie may be the best placement for the child but overlooked if there is no thorough inquiry is made.

²² 42 U.S.C. § 671(a)(29).

²³ See Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>; Center on Children and the Law. (2016) Judicial Tip Sheet: Kin First. Washington, DC: American Bar Association, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/july-2016/judicial-tip-sheet-kin-first/; Issue Brief, Strong Families (2019) Why Should child protection agencies adopt a kin-first approach? Casey Family Programs, <https://www.casey.org/kin-first-approach/>; National Conference of State Legislatures. (2019) The Child Welfare Placement Continuum: What's Best for Children?, <https://www.ncsl.org/research/human-services/the-child-welfare-placement-continuum-what-s-best-for-children.aspx>; Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/placement.pdf>.

G. PATERNITY OR MATERNITY

The court should make a finding as to whether or not:

- Paternity or maternity has or has not been established pursuant to Louisiana law for each child in the case.

PRACTICE TIPS:

- **Direct Parent Present to Identify Other Parents:** If a parent has still not been located, the judge should direct the parent who is present under oath to provide name, address, and whereabouts for any parent who has not been located and emphasize the importance of identifying and locating any absent parents.
- **Determining Paternity/Maternity:** The court must ensure that efforts by DCFS are thorough and diligent in locating and involving all legal and putative parents and that paternity or maternity of all children is legally determined. If the identity and whereabouts of an alleged parent is known but filiation has still not been legally determined, the 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.), including ordering that DCFS make arrangements for DNA tests to determine the paternity/maternity of any alleged parents and that the alleged parents comply.
- **Direct Parent Present to Identify Potential Relative Caregivers:** Establishing paternity or maternity is also critical for finding potential relative caregivers for the child; thus, the court may also want to direct the parents under oath to identify relatives of the child.

HELPFUL GUIDANCE:

- **Identification of Parents or Legal Custodians:** Courts should ensure all biological, legal, and putative parents are legally established as soon as possible. Decisions made in CINC hearings can affect a child's entire life if this information remains unknown. When a child does not know who one of his/her parents is, that also means the child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Timely resolution of filiation and paternity or maternity issues is in the best interest of the child and essential to due process and avoiding permanency delays.
- **Maternity:** There may be cases where there is an issue with maternal filiation. However, Louisiana law has not been amended to contemplate situations when, for example, two women are married and one gives birth to a child during the marriage. Louisiana filiation laws for paternity would likely be instructive for similar maternity issues.

H. ANSWER AND FINDINGS AND ORDERS

ARTICLES 606, 646.1, 647, 649, 658

ESSENTIAL JUDICIAL FINDING AND ORDER - ANSWER: At the Answer Hearing, the court shall require the parents to appear and Answer the Petition. The parent may deny or admit the allegations of the Petition with or without consenting to the Adjudication according to Article 606(A) (i.e., consenting to judgment or agreeing that the child is in need of care) or stipulate to the Adjudication, with or without admitting to the allegations in the Petition. However, stipulations may only be made if the requirements of Articles 646.1 and 647 have been met. Depending on the parents Answer's, the court's finding of whether there is a factual basis for Adjudication, and whether the child's objects, the court will either: (1) dismiss the Petition, (2) set the matter for Adjudication, or (3) adjudicate the child in need of care and complete a separate Adjudication Order.

(1) DENY OR ADMIT THE ALLEGATIONS OF THE PETITION:

- **Find:** The court may find that:
 - After being advised of his/her rights by the court and his/her attorney;
 - A parent denies OR admits the allegations of the Petition in whole or part.
- **Factual Basis and Consent Inquiries and Finding:** If a parent admits, the court shall determine whether the allegations admitted form a factual basis for finding the child is in need of care per Article 606(A) AND whether the parent consents to the Adjudication.

 **PRACTICE TIP:**

- **Adjudication:** Some parents admit to the allegations of the Petition, but they do not agree that the child is in need of care and want an Adjudication Hearing.

(2) STIPULATE AFTER PREHEARING CONFERENCE:

- a. **Prehearing Conference:** A parent may stipulate that the child is in need of care according to Article 606(A), with or without admitting the allegations of the Petition, only if:
 - The Petitioner and DCFS approve the stipulation;
 - A Prehearing Conference was convened in accordance with Article 646.1;
 - The parent stipulating personally appears;
 - The court fully informed the parent of his/her rights according to Article 625;
 - The court fully informed the parent of the consequences of the stipulation, including his/her responsibility to comply with the case plan and correct the conditions requiring the child to be in care; AND
 - The parent knowingly and voluntarily consents to the judgment (consent to Adjudication).²⁴
- b. **Findings:**
 - **Allegations of the Petition:** After the requirements for Articles 646.1 and 647 have been met, the court may find and enter into the Order that:
 - The parent stipulates that the child is in need of care according to Article 606(A) and knowingly and voluntarily consents to Adjudication;
 - With OR without admitting the allegations of the Petition; AND
 - After being advised of his/her rights by the court and his/her attorney.
 - **For Factual Basis and Admission Inquires and Findings:** If a parent stipulates, the court shall determine and enter into the Order whether the allegations form a factual basis for finding the child is in need of care and whether the parent denies or admits the allegations.

 **PRACTICE TIP:**

- **Include Date:** Best practice is to include the date the Prehearing Conference was convened in the Answer Order.

²⁴ Parents’ attorneys are guided in their practice by the Louisiana Public Defender Board “Trial Court Performance Standards for Attorneys Representing Parents in Child in Need of Care and Termination of Parental Rights Cases,” <http://lpdb.la.gov/Supporting%20Practitioners/Standards/txtfiles/pdfs/2011%20CINC%20Standards.pdf>. Those standards state: “The primary and most fundamental obligation of an attorney representing a parent in a child in need of care or a termination of parental rights case is to provide zealous and effective representation for his/her client at all stages of the process.” Judges play an important role in helping to ensure due process for all parents in their courts.

HELPFUL GUIDANCE:

- **Purpose of Stipulation:** The purpose of the stipulation is to provide an alternative to parents who wish to stipulate that the child is in need of care rather than defend themselves at a trial.
- **Requirements of Stipulation:** The requirements of Articles 646.1 and 647 uphold due process rights of parents. The advisements are similar to the instruction that must precede the acceptance of a guilty plea in a criminal prosecution to ensure that it is knowingly and voluntarily made. The prerequisite of consultation at a Prehearing Conference seeks to ensure that a parent's stipulation is both voluntary and intelligent and in the best interest of the child. The prerequisite of court instruction about continuing parental responsibilities are parallel to Article 682, which imposes similar requirements upon the court when entering or confirming an order removing the child from parental custody following a formal hearing and Adjudication.
- **Example of Stipulating Without Admission:** A parent may decide to stipulate without admission, for example, when there are pending criminal charges against him.

(3) CHILD MAY OBJECT: A child may object, in writing or open court, to an answer of his/her parent, which objections should be entered in the Order, not just the minutes of the proceedings.

PRACTICE TIPS:

- **Order:** Best practice is to include in the Order whether the child objected to the answer of a parent or not.
- **Set for Adjudication Hearing:** If the child disagrees with a parent's answer, best practice is to hold the Adjudication Hearing. The Children's Code speaks to the "objection" of the child to the answer of his/her parents but does not mention the effect of such an objection. There are multiple reasons why a child may want to have a hearing, and as a party, would be entitled to such a hearing if not in agreement with the stipulation.

(4) ORDER:

- a. **DISMISS PETITION:** If the court finds no factual basis for Adjudication, it shall order the:
 - Matter be dismissed.
- b. **SET MATTER FOR ADJUDICATION HEARING:** The court shall set the matter for Adjudication Hearing if:
 - A parent denies allegations in whole or part;
 - The court finds a factual basis for Adjudication and a parent does not consent to Adjudication; OR
 - The child objects to a parent's consent or stipulation to Adjudication.
- c. **ADJUDICATE CHILD IN NEED OF CARE:** The court shall adjudicate the child in need of care in accordance with Article 606(A) if the court:
 - Finds a factual basis for Adjudication and Articles 646.1 and 647 stipulation requirements have been met (whether the parents admit or deny allegations); OR
 - Finds a factual basis for Adjudication and parents consent to Adjudication.

» Include the specific provision(s) in Article 606(A) (1-8) that forms the basis for the Adjudication; the Answer Order should make it clear that a separate Adjudication Order (including Pre-Disposition orders) should be completed.

☰ PRACTICE TIPS:

- **Court Must Adjudicate Even If Stipulation/Admission:** Even if the court finds a factual basis for Adjudication after an admission and/or stipulation to Adjudication and the child does not object, the court must still adjudicate the child in need of care and issue an Adjudication Order. In this Adjudication Order, the court must set the matter for a Disposition Hearing unless the Disposition occurs immediately following the Adjudication. If the matter goes forward to Disposition, the court must issue both an Adjudication and Disposition Order. See [Adjudication Benchbook Section 7](#) and [Adjudication Order Template](#) and [Disposition Hearing Benchbook Section 8](#) and [Judgment of Disposition Order Template](#).
- **Specific Ground(s) for Adjudication:** The Adjudication Order should delineate the grounds for its findings from 606(A) and should, where appropriate, describe precisely the conduct the court is relying on. For example, if finding the child in need of care under 606(A)(5), that the conduct of the parent constitutes a crime. The Adjudication Order should delineate the specific ground(s) from Article 606(A) upon which the court bases its finding for Adjudication and should, where appropriate, describe precisely the conduct of the parent the court is relying upon. For example, if finding the child in need of care under Article 606(A)(5), that the conduct of the parent constitutes a crime against the child, the court should articulate the conduct and which crime. This clarity on the part of the court gives the parent notice of the basis of the Adjudication, consistent with due process, and helps guide the formation and implementation of the case plan or safety plan accordingly.
- **Amendment of Petition:** With leave of court, the petitioner may amend the Petition at any time to cure defects of form. With leave of court, prior to Adjudication Hearing, the petitioner may amend the Petition to include new allegations of fact or requests for Adjudication. However, if such leave is granted, the child or parent may request continuance of the Adjudication Hearing. A continuance may be granted for such period as is required in the interest of justice (see Article 635).
- **Deny or Admit in Part:** If parents admit to some, but not all, of the allegations set forth in the Petition, the court may set the matter for an Adjudication Hearing as to one or more of the grounds codified in Article 606(A). The court's decision may take into account the parties' positions (i.e., State decides to amend the Petition and remove the allegations that are denied). If the court finds a basis for an Adjudication based on a parent's admission to part of the allegations (i.e., neglect), parties may still want the matter to go to an Adjudication Hearing on a specific ground asserted in the Petition, but not admitted. A Prehearing Conference may also be immediately convened. There, parties and counsel can discuss amendments to the allegations before the court makes its ruling, or the State may move to amend the Petition (see Article 635); otherwise, if the Petition is not amended accordingly, there may be due process implications if the child is adjudicated based on a partial admission of the allegations set forth in the Petition.
- **Parents Answer Differently:** The purpose of an Adjudication is to determine if the child is in need of care. The Children's Code is not clear as to what should happen if parents provide different answers as to the allegations of the Petition (for example, one parent stipulates, and one does not). In these instances, some courts set the matter for an Adjudication Hearing/Trial, taking the stance that it is the child who is adjudicated and that a child cannot be adjudicated as to one parent and not the other. Other courts take the stance that the court should adjudicate the child as to the parent who admitted to the allegations set forth in the Petition, relieving them of the obligation to attend the Adjudication Hearing/Trial. (In these instances, the court will set the matter for an Adjudication Hearing/Trial as to the parent who denied the allegations set forth in the Petition, and the parent who admitted may still attend the Adjudication Hearing/Trial because they remain a party with a legal interest in the case.). However, a child should not be adjudicated in need of care if one of the parents can care for the child. Therefore, given the purpose of Adjudication, if the parents answer differently, best practice would be to set the matter for Adjudication Hearing/Trial and for all parents to be present.
- **Different Answer for Each Child:** If a parent admits to the allegations set forth in the Petition as to one child and not another child, the court should adjudicate the child to whom the parent admitted to the allegations and set the matter for an Adjudication Hearing/Trial as to the other child. This is sometimes seen in cases where one child was sexually abused, and the other was not.

- **OVERALL GUIDANCE:**

- **ESSENTIAL JUDICIAL FINDING – Indian Child Welfare Act (ICWA):** The court shall ask each person whether they know or have reason to know that the child is a member of or eligible for membership in a Federally recognized Indian Tribe and a biological child of a member of a Federally recognized Indian Tribe. Further, the court shall advise all to inform the court if any of the above information is subsequently discovered. If the court knows or has reason to know, the court shall follow Articles 624, 624.1, 661.1 and should utilize [Indian Child Welfare Act \(ICWA\) Bench Card](#). The court should also inquire as to DCFS's due diligence in locating and contacting the Tribe. Noncompliance with ICWA may result in an invalidation of the proceedings, including a subsequent adoption. The CINC Petition should have included a statement regarding ICWA. See also 25 U.S.C. § 1901 et seq.
- **Form and Content of Petition:** The Petition shall use the form and contents as outlined in Articles 633 and 634, including in particular Article 634(3). The Petition shall also include a statement as to whether the Petitioner knows or has reason to know that the child is an Indian Child and facts to support the statement in accordance with the Indian Child Welfare Act (ICWA).

I. FURTHER ORDERS

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

- The court may make additional orders at the Answer Hearing that are in the best interest of the child (See Article 627, Authors' Notes), such as orders related to Disposition, visitation (Article 309), paternity or maternity, child's education, services, Protective Orders (PO), and placement of the child when they are in DCFS custody (Article 672(A)(2)), etc.

PRACTICE TIPS:

- **Potential Caregivers or Placements:** The judge may order DCFS to:
 - Explore all possible relative or individual caregivers (i.e., fictive kin, people who matter to the child, etc.) with results and/or updates on results to be presented at Disposition;
 - Initiate a child welfare background clearance, criminal background check, and/or assessment of home or home study on potential caregivers so that they can be considered for placement by DCFS and/or for custody or guardianship at Disposition;
 - Take necessary steps for potential caregivers to complete timely foster care certification, if needed (i.e., to receive guardianship subsidy if applicable, etc.); AND/OR
 - Initiate ICPC process for potential placement with any out-of-State relatives or individuals. See [Disposition Hearing Benchbook Section 8 E](#) for more information on ICPC.
- **Child Specific Certification:** DCFS provides “child specific” foster care certification for a relative or other individual with whom the child is placed or being considered for placement. The certification requires fewer classes than general foster care certification and allows the relative/individual to receive a board rate (monthly financial support) like a certified foster parent. If the relative or individual is interested in becoming the child's legal guardian, the certification would have to be completed (along with other DCFS requirements) to receive a subsidy after a transfer of guardianship. The court may want to request updates on status of certification to ensure timely completion.

J. ORDER OF NOTICES AND FUTURE HEARINGS

ARTICLES 625, 646, 646.1, 648

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

(1) FUTURE HEARINGS: The parents of the child, all attorneys of record, DCFS representative(s), and CASA (if appointed) be present at all future hearings.

(2) SET MATTER FOR ADJUDICATION AND/OR DISPOSITION HEARING:

- Clerk to notify all parties of the date, time, and location of the hearing and that all parties of interest appear;
- Sheriff's Office to serve the parents with a summons commanding him/her to appear at court for the hearing;
- DCFS to provide notice to the parents of the date, time, and location of the hearing as well as the nature of the allegations;
- Notice of the hearing shall be made on counsel of record and CASA (if appointed); AND
- DCFS to provide notice to any foster caregiver providing care for the child of the date, time, and location of the hearing and that the recipient has the right to attend and be heard.

PRACTICE TIPS:

- **Adjudication Hearing Not Needed:** If the court finds a factual basis for Adjudication after an admission and/or stipulation to Adjudication and the child does not object to his/her parents admission or stipulation, an Adjudication Hearing is not needed. However, the court must still adjudicate the child in need of care and issue an Adjudication Order. If the matter goes forward to Disposition, the court must still issue both an Adjudication and Disposition Order. See [Adjudication Benchbook Section 7](#) and [Adjudication Order Template](#) and [Disposition Hearing Benchbook Section 8](#) and [Judgment of Disposition Order Template](#).
 - **Set Dates and Times in Adjudication Order:** Best practice is to set the date and time for the Prehearing Conference, Adjudication Hearing, and Discovery deadline in the Order.
 - **Notice or Schedule Hearings in Open Court:** The court may schedule future hearings and serve notice in open court (Article 646).
-

(3) ARRANGEMENTS FOR ANY INCARCERATED PARENT: Be made to attend hearing, either in person or remotely.

K. CASE MANAGEMENT

(1) ENGAGEMENT:

- Specifically, ask parents and children if they understand what occurred at the hearing and engage them in a conversation about the next steps.
- Ask parents (and children, if appropriate) if there is anything the court and other stakeholders involved could do to support their efforts to reunify their family (if reunification is still viable)?
- Advise parents of the importance of their active participation in all proceedings.
- Advise parents of the rigorous timeframes for child abuse and neglect cases outlined in State and Federal laws.
- Advise parents of the consequences for failure to appear at any further court hearings.
- Ensure that parents and children have contact information for caseworkers and attorneys and understand the process to request court review if necessary.
- Ask if there are any questions for the court.
- It is helpful for children and parents to be able to meet very briefly with their attorneys after the hearing so that the attorneys can address immediate issues.

(2) PREPARATION FOR NEXT HEARING:

- Identify tasks to be accomplished by the various parties for the next hearing.
- Make oral findings and orders that all participants can understand.
- Consider the appropriateness of mediation, and order if applicable (Article 435 et seq.).
- An attorney or the court is responsible for the completion of the Answer Order. See [Answer Order Template](#).
- All attorneys and unrepresented parties should review the Order before the judge signs it to ensure it accurately reflects the proceeding.
- Time permitting, best practice is to sign the Order on the same day as the hearing.
- Ensure all Orders are written, signed, copied, and distributed at the end of the hearing.
- Provide parents with a copy of the Order immediately following the hearing.

L. POSSIBLE NEXT STEPS

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

(1) INFORMAL ADJUSTMENT AGREEMENT (IAA):

- After the filing of a CINC Petition, and with the consent of DCFS, if the child is in the provisional custody of DCFS, the court may authorize the DA to effect an IAA. The court may dismiss the Petition or allow the Petition to remain pending during the period of informal adjustment.

📖 PRACTICE TIP:

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

(2) AMENDMENT OF PETITION: With leave of court, the petitioner may amend the Petition at any time to cure defects of form. With leave of court, prior to Adjudication Hearing, the petitioner may amend the Petition to include new allegations of fact or requests for Adjudication. However, if such leave is granted, the child or parent may request continuance of the Adjudication Hearing. A continuance may be granted for such period as is required in the interest of justice.

(3) SPECIAL MOTIONS AND DISCOVERY: Articles 635 and 651-658 provide various motions and discovery that can take place between the filing of the Petition and the Adjudication and Disposition Hearings.

(4) PETITION FOR CUSTODY: At any time prior to Adjudication, any person, including a relative of the child, may petition the court for the provisional or permanent legal custody of the child.

📖 HELPFUL GUIDANCE:

- **If Foster Care is Potential Disposition:** This Article aligns with Articles 681(A)(1), 683, and 622(D) and gives any person or relative the authority to seek court review (prior to Adjudication) of their claim to custody of a child in which foster care is a potential Disposition.
- **Timing for Petition for Custody:** The Children's Code is not clear as to when the court should review this matter. The request is likely meant to be decided at Disposition because custody of a child involved in a CINC case is not ruled upon unless, and until, the court goes to Disposition. Once a child has been found in need of care due to the actions of a parent or caretaker, the question of future custody to another parent or caretaker is an issue of Disposition subject to a Predisposition Investigation. Thus, if a relative or other person has filed a petition for the child's custody, the resolution of that claim is properly reserved for the Disposition Hearing. See also the Authors' Notes for Article 666.

- **Provisional versus Permanent:** It is important for judges to consider the consequences of granting provisional versus permanent legal custody of a child. If provisional custody is granted, the court should continue holding review hearings until permanent custody is resolved. If permanent legal custody of a child is granted to a person, the CINC case and DCFS involvement would end, and, thus, the court case would be closed. This is important for courts to keep in mind when making these decisions, especially if services and supports would still benefit the child and/or family.

(5) ADJUDICATION HEARING:

- **Timing:** If the child is not adjudicated at the Answer Hearing and has been continued in custody pursuant to Article 627, the Adjudication Hearing shall commence within 45 days of the filing of the CINC Petition. If the child is not in custody, the hearing shall commence within 105 days of the filing of the Petition.
- **Continuance:** After notice to the opposing party and upon a showing of good cause, the court may grant, deny, or condition a requested continuance of the proceeding in extraordinary circumstances. The hearing may be continued for up to 5 additional days. If a continuance is granted, the court shall issue a written order identifying the mover and reciting the particular facts justifying the continuance.
- **Not Timely Commenced:** If the hearing has not commenced timely, upon motion of the child, the court shall release a child continued in custody and may dismiss the Petition.

PRACTICE TIP:

- **Timing Considerations:** While the law does not prohibit the court from holding the Adjudication Hearing on the same day as the Answer Hearing, the court should consider whether time is needed to ensure due process for the children and parents. For example, there may be paternity or 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, etc.

(6) DISPOSITION HEARING:

- **Timing:** The Disposition Hearing may be conducted immediately after the Adjudication and shall be conducted within 30 days after the Adjudication.
- **Continuance:** After notice to the opposing party and upon a showing of good cause, the court may grant, deny, or restrict a requested continuance of the hearing in accordance with the best interests of the child. If a continuance is granted, the court shall issue a written Order identifying the mover and reciting the particular facts justifying the continuance.

PRACTICE TIP:

- **Timing Considerations:** While the law does not prohibit the court from holding the Disposition Hearing on the same day as the Answer Hearing, the court should consider whether time is needed to ensure due process for the child and parents. For example, there may be paternity or 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.



APPENDIX

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

- (1) 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](#).
- (2) 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

- (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 or 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. 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

- (1) 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.
- (2) 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/maternal 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?

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

PETITION FOR NON-CUSTODIAL CHILD IN NEED OF CARE

NOW INTO COURT, through undersigned counsel, comes the State of Louisiana (the State), petitioner herein, who upon information and belief respectfully represents:

I. CHILD(REN) AND PARENTS

The minor child(ren) and parent(s) involved in this matter are:

(1) CHILD'S NAME: _____ DOB: _____ RACE/SEX: _____

PLACE OF BIRTH: _____

CURRENT ADDRESS: _____

PARENT: _____

CURRENT ADDRESS: _____

TELEPHONE AND EMAIL (if known): _____

PARENT: _____

CURRENT ADDRESS: _____

TELEPHONE AND EMAIL (if known): _____;

(2) CHILD'S NAME: _____ DOB: _____ RACE/SEX: _____

PLACE OF BIRTH: _____

CURRENT ADDRESS: _____

PARENT: _____

CURRENT ADDRESS: _____

TELEPHONE AND EMAIL (if known): _____

PARENT: _____

CURRENT ADDRESS: _____

TELEPHONE AND EMAIL (if known): _____;

(3) CHILD'S NAME: _____ DOB: _____ RACE/SEX: _____

PLACE OF BIRTH: _____

CURRENT ADDRESS _____

PARENT: _____

CURRENT ADDRESS: _____

TELEPHONE AND EMAIL (if known): _____

PARENT: _____

CURRENT ADDRESS: _____

TELEPHONE AND EMAIL (if known): _____;

II. INDIAN CHILD WELFARE ACT

The Petitioner: *(Please check the applicable boxes)*

Knows or has reason to know that _____ is/are an Indian child(ren). The facts that support the above statement are: _____
_____.

Does not know/have reason to know that _____ is/are an Indian child(ren). The facts that support the above statement are: _____
_____.

III. FACTUAL BASIS FOR ADJUDICATION

On or about _____, the Department of Children and Family Services (DCFS), in the Parish of _____, received a report of _____
_____ regarding the minor child(ren), _____.

The minor child(ren) is/are in need of care based on Louisiana Children's Code Article(s) _____.

With regard to the PARENT, _____, of the minor child(ren),
_____, the PARENT: _____

(include facts that give rise to CINC finding; also, include relevant court involvement and DCFS history);

With regard to the PARENT, _____, of the minor child(ren),
_____, the PARENT: _____

_____;

(including facts that give rise to CINC finding; also, include relevant court involvement and DCFS history);

IV. PRAYER

At this time the State is requesting that the child(ren) be adjudicated as a child in need of care as it does not believe the minor child(ren)'s safety can otherwise be protected;

WHEREFORE, the petitioner prays that the PARENT, _____,
 and PARENT, _____, of the minor child(ren) be served with a copy of this Petition and cited to Answer, and after all due proceedings are had, that the above-named minor child(ren) be adjudicated as child(ren) in need of care with an appropriate disposition entered.

RESPECTFULLY SUBMITTED,

ASSISTANT DISTRICT ATTORNEY
BAR ROLL NO. _____

PLEASE SERVE THE FOLLOWING WITH NOTICE AND COPY OF THIS PETITION:

- 1) Parent(s) Of Minor Child(ren)
- 2) Attorney(s) for Parent(s) of Minor Child(ren)
- 3) Attorney(s) for Minor Child(ren)
- 4) DCFS
- 5) CASA

PLEASE GIVE NOTICE TO:

- 6) District Attorney

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

NON-CUSTODIAL CINC PETITION ORDER

Considering the foregoing petition:

IT IS HEREBY ORDERED THAT AN APPEARANCE TO ANSWER Hearing is set for _____ day of _____, 20____, at _____ am/ __pm.

IT IS ORDERED BY THE COURT that if not previously ordered: *(Please check the applicable boxes)*

_____ be and is hereby appointed to represent the child(ren) in these proceedings and that said program be given notice of appointment and served with a signed copy of the pleadings filed herein.

that the parent(s), _____, is/are be referred to the District _____ Public Defender Office who shall provide for representation and that said program be given notice of appointment and served with a signed copy of the pleadings filed herein.

that the District _____ Public Defender Office shall provide for a curator ad hoc to locate absent parent(s), _____, and that said program be given notice of appointment and served with a signed copy of the pleadings filed herein.

that the local CASA program be and is hereby appointed, subject to the assignment of a qualified volunteer to advocate for the best interest of the child(ren) in these proceedings. CASA must be given notice of appointment and served with a copy of the pleadings filed herein.

THUS DONE AND SIGNED ON THIS _____ day of _____, 20____, in _____, Louisiana.

JUDGE

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

PETITION FOR CUSTODIAL CHILD IN NEED OF CARE

NOW INTO COURT, through undersigned counsel, comes the State of Louisiana (the State), petitioner herein, who upon information and belief respectfully represents:

I. CHILD(REN) AND PARENTS

The minor child(ren) and parent(s) involved in this matter are:

(1) CHILD'S NAME: _____ DOB: _____ RACE/SEX: _____

PLACE OF BIRTH: _____

CURRENT ADDRESS: _____

PARENT: _____

CURRENT ADDRESS: _____

TELEPHONE AND EMAIL (if known): _____

PARENT: _____

CURRENT ADDRESS: _____

TELEPHONE AND EMAIL (if known): _____;

(2) CHILD'S NAME: _____ DOB: _____ RACE/SEX: _____

PLACE OF BIRTH: _____

CURRENT ADDRESS: _____

PARENT: _____

CURRENT ADDRESS: _____

TELEPHONE AND EMAIL (if known): _____

PARENT: _____

CURRENT ADDRESS: _____

TELEPHONE AND EMAIL (if known): _____;

(3) CHILD'S NAME: _____ DOB: _____ RACE/SEX: _____

PLACE OF BIRTH: _____

CURRENT ADDRESS: _____

PARENT: _____

CURRENT ADDRESS: _____

TELEPHONE AND EMAIL (if known): _____

PARENT: _____

CURRENT ADDRESS: _____

TELEPHONE AND EMAIL (if known): _____;

II. INDIAN CHILD WELFARE ACT

The Petitioner: *(Please check the applicable boxes)*

Knows or has reason to know that _____ is/are an Indian child(ren). The facts that support the above statement are: _____

Does not know/have reason to know that _____ is/are an Indian child(ren). The facts that support the above statement are: _____

III. FACTUAL BASIS FOR ADJUDICATION

On or about _____, the Department of Children and Family Services (DCFS), in the Parish of _____, received a report of _____ regarding the minor child(ren), _____.

The minor child(ren) is/are in need of care based on Louisiana Children's Code Article(s) 606(A) _____.

With regard to the PARENT, _____, of the minor child(ren),
_____, the PARENT: _____
_____;

(include facts that give rise to CINC finding; also, include relevant court involvement and DCFS history);

With regard to the PARENT, _____, of the minor child(ren),
_____, the PARENT: _____
_____;

(including facts that give rise to CINC finding; also, include relevant court involvement and DCFS history);

IV. PRAYER

At this time the State is requesting that the child(ren) be adjudicated as a child in need of care as it does not believe the minor child(ren)'s safety can otherwise be protected;

WHEREFORE, the petitioner prays that the PARENT, _____,
 and PARENT, _____, of the minor child(ren) be served with a copy of this
Petition and cited to Answer, and after all due proceedings are had, that the above-named minor
child(ren) be adjudicated as child(ren) in need of care with an appropriate disposition entered.

RESPECTFULLY SUBMITTED,

ASSISTANT DISTRICT ATTORNEY

BAR ROLL NO. _____

PLEASE SERVE THE FOLLOWING WITH NOTICE AND COPY OF THIS PETITION:

- 1) Parent(s) of Minor Child(ren)
- 2) Attorney(s) for Parent(s) of Minor Child(ren)
- 3) Attorney(s) for Minor Child(ren)
- 4) DCFS
- 5) CASA

PLEASE GIVE NOTICE TO:

- 6) District Attorney

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

ORDER

Considering the foregoing petition:

IT IS HEREBY ORDERED THAT AN APPEARANCE TO ANSWER Hearing is set for _____ day of _____, 20____, at _____ am/____ pm in _____.

IT IS ORDERED BY THE COURT that if not previously ordered: *(Please check the applicable boxes)*

_____ be and is hereby appointed to represent the child(ren) in these proceedings and that said program be given notice of appointment and served with a signed copy of the pleadings filed herein.

that the parent(s), _____, is/are referred to the District _____ Public Defender Office who shall provide for representation and that said program be given notice of appointment and served with a signed copy of the pleadings filed herein.

that the District _____ Public Defender Office shall provide for a curator ad hoc to locate absent parent(s), _____, and that said program be served with a signed copy of the pleadings filed herein.

that the local CASA program be and is hereby appointed, subject to the assignment of a qualified volunteer to advocate for the best interest of the child(ren) in these proceedings. CASA must be given notice of appointment and served with a copy of the pleadings filed herein.

THUS DONE AND SIGNED ON THIS _____ day of _____, 20____, in _____, Louisiana.

JUDGE

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

ANSWER ORDER

THIS CAUSE came for an Answer Hearing pursuant to Louisiana Children’s Code Articles 646-649 on the _____ day of _____, 20____, pursuant to a Petition filed on the _____ day of _____, 20____, concerning the following child(ren), _____, and the following parent(s), _____.

I. APPEARANCES

The child(ren), _____, is/are present.

The child(ren), _____, is not present and:

(Please check the applicable box for each child)

the child, _____, is age 12 or older, counsel moved to waive the child’s appearance, and the court grants the waiver.

the child, _____, is younger than 12 of age, and counsel did not request the child’s appearance.

_____.

Parent _____

Department of Children and Family Services

Parent’s Attorney _____

Staff/Representative _____

Parent _____

Foster Parent(s), Pre-adoptive Parent(s), Relative(s)

Parent’s Attorney _____

Providing Care for Child(ren) _____

Caretaker(s) _____

Child(ren) Attorney(s) _____

Assistant District Attorney _____

Bureau of General Counsel _____

Others _____

II. NOTICE

THE COURT FINDS that: *(Please check the applicable boxes)*

- the parent(s), _____, has been properly served and summoned.
- the parent(s), _____, has not been properly served and summoned.

THE COURT FINDS that: *(Please check the applicable boxes)*

- the foster parent(s), pre-adoptive parent(s), or relative(s), _____, providing care for the child(ren), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was given by the Department; and, that diligent efforts were made by the Department to locate and notify the absent caregiver.
- the foster parent(s), pre-adoptive parent(s), or relative(s), _____, providing care for the child(ren), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was not given by the Department; and, that diligent efforts were not made or were made by the Department to locate and notify the absent caregiver.

III. APPOINTMENTS

IT IS ORDERED BY THE COURT that if not previously ordered: *(Please check the applicable boxes)*

- _____ be and is hereby appointed to represent the child(ren) in these proceedings and that said program be given notice of appointment and served with a signed copy of the pleadings filed herein.
- that the parent(s), _____, is/are found to be indigent and is/are referred to the District _____ Public Defender Office who shall provide for representation and that said program be given notice of appointment and served with a signed copy of the pleadings filed herein.
- that the District _____ Public Defender Office shall provide for a curator ad hoc to locate absent parent(s), _____, and that said program be served with a signed copy of the pleadings filed herein.
- that the local CASA program be and is hereby appointed, subject to the assignment of a qualified volunteer to advocate for the best interest of the child(ren) in these proceedings. CASA must be provided notice of appointment and served with a copy of the pleadings filed herein.

IV. ADVISEMENTS

The Court advised the parent(s) of the nature of the proceedings; the allegations; the right to an Adjudication Hearing; the right to be represented by counsel; and the right to representation by the Indigent Parents' Representation Program if indigent.

The Court advised the parent(s) that once an electronic mail address is provided all service and notice of future proceedings may be sent electronically until such time as they provide notice to the Court and all parties in writing or in open Court that they are no longer able to receive service or notice at such address.

The Court advised the Department and the parent's counsel of their responsibility to promptly inform the Court of a new mailing address or electronic mail address, upon receipt of information regarding a parent's change of address.

The Court directed all persons before the Court to identify the name, address, and whereabouts of each parent and any relative or other individual willing and able to offer a wholesome and stable home for the child(ren).

The Court advised all persons before the Court of their responsibility in achieving timely permanency for the child(ren).

The Court advised all persons before the Court of their responsibility to identify the name, address, and whereabouts of all grandparents, all parents of a sibling where such parent has legal custody of such sibling, all other adult relatives of the child(ren) and any other individual willing and able to offer a wholesome and stable home for the child(ren).

If the child is in the custody of the State:

The Court advised the parent(s) of the child(ren)'s need to have a safe and stable relationship with caretakers, either their parents or, if necessary, others who are willing and able to assume parental responsibility and provide a permanent home, and to have these caretaker decisions made as quickly as possible.

The Court advised the parent(s) of their responsibility to cooperate in preparing the case plan and otherwise in meeting the needs of their child(ren), and if their child(ren) cannot return home safely, to assist the child(ren)'s adjustment to other caretakers, and to contribute to the cost of care and treatment of their child(ren) as provided in Children's Code Article 685.

The Court advised the parent(s) to notify the Department and their counsel in writing of their current whereabouts, including their mailing address, cellular number, telephone number, electronic mail address, and any other contact information, and that if they fail to do so, the law authorizes hearings to be held in their absence.

V. PATERNITY/MATERNITY

THE COURT FINDS that: *(Please check the applicable boxes)*

paternity/maternal has been determined for child(ren), _____, pursuant to Louisiana laws.

paternity/maternal has not been determined for child(ren), _____, pursuant to Louisiana laws.

VI. ANSWER

THE COURT FINDS that: *(Please check the applicable boxes for each parent)*

the parent(s), _____, **deny** the allegations of the Petition after being advised of their rights.

the parent(s), _____, **admit** the allegations of the Petition after being advised of their rights;

If admitting, the Court finds that: *(Please check the applicable box)*

there is a factual basis for Adjudication;

there is not a factual basis for Adjudication;

If admitting, the Court further finds that: *(Please check the applicable box)*

the parent consents to Adjudication of child(ren), _____.

the parent does not consent to Adjudication of child(ren), _____.

the parent(s), _____, **stipulate** that the child(ren), _____, are in need of care and knowingly and voluntarily consent to the judgment:

without admitting to the allegations of the Petition after being advised of their rights by the Court and their attorney;

and admit to the allegations of the Petition after being advised of their rights by the Court and their attorney;

If admitting, the Court finds that: *(Please check the applicable box)*

there is a factual basis for Adjudication;

there is not a factual basis for Adjudication;

If there has been a stipulation, whether admitting or not admitting:

The requirements of Article 647 have been met and a Pre-Hearing Conference was convened in accordance with Article 646.1 on the _____ day of _____, 20____.

THE CHILD(REN), *(Please check the applicable box)*

_____, object to the answer of the parent(s).

_____, do not object to the answer of the parent(s).

VII. ORDER

THE COURT ORDERS that: *(Please check the applicable box)*

the matter be dismissed pursuant to Article 658 for child(ren), _____.

the matter be set for an Adjudication Hearing for child(ren), _____.

child(ren), _____, are adjudicated in need of care in accordance with Article 606(A) _____ (1-8) and a separate Adjudication Order (including Pre-Disposition Orders) shall be completed.

VIII. FURTHER ORDERS

IT IS FURTHER ORDERED that _____

IX. ORDERS OF NOTICES AND FUTURE HEARINGS

IT IS FURTHER ORDERED that the parent(s) of the child(ren), all attorneys of record, the DCFS representative(s), and CASA be present at all future hearings.

IT IS FURTHER ORDERED that:

This matter be set for Adjudication Hearing Disposition Hearing, the clerk shall notify all parties of the date, time, and location of the hearing and that all parties of interest appear; the Sheriff's Office serve the parent(s) with a summons commanding him or her to appear at Court for the hearing; the Department provide notice to the parent(s) of the date, time, and location of the hearing as well as the nature of the allegations; notice of the hearing be made on the child and parent representation programs and CASA (if appointed); the Department provide notice to foster parents, pre-adoptive parents, or relatives providing care for the child of the date, time, and location of the hearing and right to attend and be heard; and for any parent(s) incarcerated, _____ arrange for the parent(s) to attend the hearing, either in person or remotely.

This matter has been set for a **PRE-HEARING CONFERENCE** on the _____ day of _____, 20____, at _____ am/___pm.

This matter has been set for **ADJUDICATION** on the _____ day of _____, 20____, at _____ am/___pm.

This matter has been set for **DISPOSITION** on the _____ day of _____, 20____, at _____ am/___pm.

The Discovery deadline is: _____.

THUS DONE AND SIGNED ON THIS _____ day of _____, 20____, in _____, Louisiana.

JUDGE

DISTRIBUTION OF NOTICE

Please serve all parties and counsel of record as follows:

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Child(ren) Attorney(s): _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Assistant District Attorney/Bureau of General Counsel:

Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Please send notice and copy of order as follows:

Department of Children and Family Services Staff/Representative:

Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

CASA: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Other: _____
Role: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

ADJUDICATION

La. Ch. C. arts. 659-667

LOUISIANA
CHILD IN NEED OF CARE BENCHBOOK
FOR JUVENILE JUDGES

SECTION

7

INTRODUCTION

A. GENERAL CONSIDERATIONS

The Adjudication Hearing is a trial under the rules of evidence applicable to civil proceedings. At its conclusion, the court will determine whether the State has proven the allegations in the Child in Need of Care (CINC) Petition by a preponderance of evidence. Adjudication provides the basis for State intervention if the child is proven to be a child in need of care.

The manner in which the Adjudication is conducted has important long-term implications for the child and family: ensuring an Adjudication is held as soon as possible can reduce the length of time a child spends in foster care or out of their home. The time in which Adjudication is completed may control the timing of later judicial proceedings.¹

If the State proves its burden, the Adjudication Order should set forth the precise grounds for finding the child in need of care so that Disposition, case planning, and later court review can be focused on the need for State intervention. A clear record of the facts established at Adjudication may be useful in later legal proceedings as it may foreclose factual disputes or may provide important evidence that would otherwise be unavailable.²

B. TIMING, NOTICE, PARTIES, AND INQUIRIES

The Adjudication Hearing shall commence within 45 days of the filing of the CINC Petition if the child is in the custody of the Department of Children and Family Services (DCFS) (i.e., foster care). If the child is not in DCFS custody, the Adjudication Hearing shall commence within 105 days of the filing of the Petition. A continuance may be granted but only for up to an additional 5 days and in extraordinary circumstances after notice to opposing parties and a showing of good cause. For more information about computation of time, please see Article 114.

The legal rights of interested parties are affected by the Adjudication; therefore, parties are entitled to notice as a matter of constitutional rights and Federal and State law. As in all CINC hearings, the parents³ and children have a right to be present, as do foster caregivers (i.e., foster parents, pre-adoptive parents, and relatives) caring for the child and Court Appointed Special Advocates (CASA) (if appointed). The court shall confirm that proper notice was given. Written notice of the date, time, and place of the Adjudication Hearing shall be served and return made in the same manner as the Petition on all parties and also counsel of record at least 15 days prior to the hearing unless the parties have been notified in open court at a prior hearing. DCFS is required to give notice of the Adjudication to parents as well as to foster caregivers.

It is important to determine all biological and legal parents of the child as soon as possible. When a child does not know who one of his/her parents is, that also means the child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Children before the court may be affected for their entire life if this information remains unknown.

The court should ask DCFS about the steps taken to locate and involve all legal and putative parents and whether paternity and maternity of all children is legally determined. If a parent has not been located, the judge should question the parent who is present about the identity and/or whereabouts of the other parent and emphasize the importance of this information. Finding the child's parents is also critical to identifying other potential relative caregivers for the child; thus, the court may want to also direct the parents under oath to identify relatives of the child.

¹ Gatowski, S., Miller, N., Rubin, S., Escher, P., & Maze, C. (2016) Enhanced resource guidelines: Improving court practice in child abuse and neglect cases. Reno, NV: National Council of Juvenile and Family Court Judges, p. 179 [hereinafter Gatowski].

² Gatowski, supra note 1, at 180.

³ The plural form of "parent" is used throughout the Benchbook for simplicity, even though at times only one parent has been identified in a case.

Before the case is called, the judge should inquire whether counsel for the parents and children had sufficient opportunity to consult with their clients. This ensures due process for the family. Effective Adjudication Hearings require adequate court time and properly trained and prepared lawyers. Lawyers must be expected to do their job and come to court with a clear position on the case after consulting with their client.⁴

Once the case is called, it is the judge's duty, pursuant to the Children's Code and Federal law, to make sufficient inquiries and findings regarding the Indian Child Welfare Act (ICWA). The court shall ask whether any person knows or has reason to know that the child is a member of or eligible for membership in a Federally recognized Indian Tribe and is the biological child of a member of a Federally recognized Indian Tribe. If not, the court may proceed after instructing each person before the court to inform the court if he/she subsequently discovers information indicating the child is an Indian child or subject to the Act. However, if the court finds that there is reason to know that the child is an Indian child, the court shall immediately proceed pursuant to ICWA. See Articles 624. 624.1, and 661.1 and the [Indian Child Welfare Act \(ICWA\) Bench Card](#) in [Appendices Benchbook Section 12](#).⁵ If a Tribe fails to respond to multiple requests for verification that the child is an Indian child and the court or DCFS has sought the assistance of the Bureau of Indian Affairs in contacting the Tribe, the court may make the determination that the child is not an Indian child based on the information it has available and proceed to Adjudication pursuant to Title VI of the Children's Code.

C. PREHEARING CONFERENCES

One practice in the Children's Code that is sometimes underutilized is the Prehearing Conference held in advance of the Adjudication. This conference can be used to discuss alternatives to an Adjudication, such as an Informal Adjustment Agreement (IAA). At the conference, the parties may also determine stipulations, simplify issues, review exhibits, and negotiate the allegations. The State may also amend the Petition. The conference can be a time to discuss whether the child should be present in the courtroom when certain witnesses testify.

If a parent wants to stipulate that the child is in need of care, a Prehearing Conference shall be held prior to the stipulation. This prerequisite helps guarantee that a parent's stipulation and consent to the judgment are both voluntary and intelligent and in the best interest of the child. The court is required to render a separate Order of the actions taken at the Prehearing Conference.

D. EVIDENCE

The Adjudication Hearing shall be conducted according to the rules of evidence applicable to civil proceedings unless the Children's Code provides otherwise. The State has the burden of proving the allegations of the Petition by a preponderance of evidence. The order of presenting evidence at the hearing is set by the court, which is a departure from the standard rules of procedure whereby the parties to an action control the order of presentation of the evidence. This judicial oversight ensures that the hearing is conducted efficiently considering the State, parents, and child are all represented by counsel. Hearsay evidence is not admissible at the Adjudication Hearing unless it fits within one of the established exceptions to the hearsay rule or is otherwise allowed by the Children's Code.

Testifying in court is stressful for many parents given the high stakes in CINC cases. Parents may have been traumatized themselves. On the other hand, it can be helpful for some parents to feel that their voice is heard. Engaging with parents in a non-judgmental and non-blaming manner is a helpful approach in CINC cases.

The child may choose to testify as to his/her wishes, and the court shall consider that testimony in rendering its decision. Any testimony given by a child may be taken by a videotaped interview or by closed-circuit television (see Title III, Chapter 8); an in-chambers conference attended only by the judge and court reporter and by counsel for the child, petitioner, and parents; or an "in chambers, on or off the record, and with or without parents and/or counsel being present" if no party objects and the parties agree as to the procedure.⁶

⁴ Gatowski, *supra* note 1, at 259.

⁵ For more information on ICWA, please see https://clarola.org/index.php?option=com_k2&view=item&id=1284:la-icwa-quick-reference-guide&Itemid=116; see also Murphy, Bob. (2020) McGirt Injects Steroids into the Indian Child Welfare Act. American Bar Association, Children's Rights Litigation, https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/winter2021-mcgirt-injects-steroids-into-the-indian-child-welfare-act/?utm_medium=email&utm_source=salesforce_353772&sc_sid=00265681&utm_campaign=MK20CNTT&promo=MKCONTENT1&utm_content=&additional4=&additional5=&sfmc_j=353772&sfmc_s=52961351&sfmc_l=2198&sfmc_jb=4007&sfmc_mid=100027443&sfmc_u=10232975.

⁶ *Watermeier v. Watermeier*, 462 So. 2d 1272, 1275 (La. App. 5th Cir.), cert. denied, 464 2d 301 (La. 1985).

E. STIPULATION

When the parent stipulates that the child is in need of care and consents to the judgment at the Adjudication Hearing, a contradictory hearing is not needed if all of the requirements for a stipulation are met. The Petition must clearly and completely state the facts that are the basis for court intervention. If there is a stipulation with admission to the allegations, the judge will then have the information needed to determine whether a stipulation is appropriately representative of the circumstances of the case. The court must determine whether there is a factual basis for the Adjudication, even if the parent stipulated. If there is not, the matter must be set for an Adjudication Hearing.

F. ORDERS

If the court finds that the State did not prove the allegations set forth in the Petition by a preponderance of evidence, the court shall dismiss the Petition. On the other hand, if the court finds the State proved the allegations, the child shall be adjudicated in need of care. The court should include the specific provision(s) in Article 606(A) (1-8) that form the basis for the Adjudication (for example, 606(A)(2) for neglect). In exceptional circumstances, the court may take the matter under advisement for a maximum of 10 days.

The Children's Code allows the court to find that the evidence demonstrates that the child is not a child in need of care, but instead that the child's family is in need of services. While this is an option in the law, best practice may be to dismiss the case, and a Family in Need of Services (FINS) Petition could be filed to allow proper alignment of the parties. FINS proceedings bear similarities to the CINC proceedings with some minor differences. For example, the Children's Code does not directly address the parents' right to appointment of counsel, CASA is not usually involved, and the parties may be aligned differently.

As stated above, the court shall order the child adjudicated in need of care if it finds the Articles 646.1 and 647 stipulation requirements were met and there is a factual basis for Adjudication. Again, the Order should clearly include which provision(s) in Article 606(A) is the basis of the Adjudication. Otherwise, a stipulation will not have been knowing and voluntary. In addition, the grounds help guide the development of the case plan or safety plan if either is needed. All parties should understand the parental behavior and safety issues that must be remedied for DCFS involvement to end.

The foster caregivers have a right to be heard at any CINC hearing regarding a child in their care.⁷ They may have valuable information to share with the court at Adjudication about the needs of the child and, if present, should be heard.

The court may make additional orders at the Adjudication Hearing that are in the best interest of the child. Article 309 gives the court continued jurisdiction over visitation in all CINC proceedings. Visitation planning and scheduling should occur for the child and parents, grandparents, siblings, relatives, and other important individuals to the child. The court retains authority to make other orders as needed, such as those related to the child's education, paternity or maternity, necessary services, and/or to promote the child's well-being.⁸

The court may order that physical and/or mental health evaluations⁹ be conducted on the parent and/or the child in advance of the Disposition Hearing. If the court so orders, these evaluations should be provided to counsel in advance of the Disposition Hearing.

The Children's Code also allows for a Predisposition Investigation to be conducted by DCFS at this juncture of the CINC case. Although not widely used, they can be helpful in informing the decisions that must be made at the Disposition Hearing. For example, a Predisposition Investigation would provide the court with a thorough assessment of relatives and other significant individuals who may be available to accept custody and/or guardianship of the child, which could assist when choosing the most appropriate dispositional alternative. While the court report that is submitted by DCFS in advance of the hearing should include some of this information, a report from a Predisposition Investigation may be more comprehensive.

⁷ See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

⁸ La. Ch. C. art. 318.

⁹ La. Ch. C. art. 669.

Any relatives and/or individuals who may be willing and able to take custody and/or guardianship of the child need to be assessed at the earliest juncture possible in CINC cases and by the time of the Disposition Hearing. The court may have ordered DCFS to conduct a child welfare background clearance, criminal background check, and/or assessment on the home or home study on a relative or other individual at a previous hearing, for example. If not, the court may want to consider doing so in the Adjudication Order.

In addition, if there are out-of-State relatives or other individuals who may be potential placements for the child, DCFS should have initiated the Interstate Compact on the Placement of Children (ICPC) process. There are certain circumstances where the court can order DCFS to request expedited placement of a child from Louisiana into another State, although the receiving State may not honor this request.

An attorney or the court is responsible for the completion of the Adjudication Order. All attorneys and unrepresented parties should review the Order before the judge signs it to ensure it accurately reflects the proceeding. Time permitting, best practice is to sign the Order on the same day as the hearing.

G. ENGAGING THE PARTIES

It is important to make sure the parents and children present are engaged and understand what is happening at the Adjudication. The CINC process is complicated and confusing to all who have never been involved in case. Judges should ask if the parties understand what the hearing is about and the consequences of the ruling. While judges are sometimes concerned about engaging with parties, the truth is that families who are engaged in the CINC process fare much better than those who are not.¹⁰ Engaging parties can be hard to do and requires patience. But parents and children are more likely to respond to encouragement, positive feedback, and being heard.¹¹

The court should consider giving the attorneys a little time to meet with their clients at the conclusion of the Adjudication Hearing. Parents and children may have questions and concerns after the hearing. It is best for the family if immediate issues can be addressed while they are still at court.















H. NEXT STEPS

The Disposition Hearing may be conducted immediately after the Adjudication, but must be conducted no later than 30 days after the Adjudication. Upon setting the matter for Disposition, the court should order that the case plan be filed with the court 10 days prior to the Disposition Hearing and copies of the case plan be provided to counsel by mail or email and unrepresented parties by certified mail or email per Article 674. In addition, per DCFS Policy, the court report for the Disposition should also be filed 10 days prior to Disposition and copies provided to counsel, unrepresented parties, and CASA. As with all CINC hearings, incarcerated parents have a right to be present at the Disposition Hearing. Arrangements for incarcerated parents to attend the Disposition Hearing must be made prior to the hearing, either in person or remotely.

¹⁰ Parent advocates" (sometimes called "parent mentors" or "parent partners") are parents who have successfully gone through the CINC process and regained custody of their children and can also help engage parents who have an open CINC case. There is credibility and an understanding that comes with having personal experience with a CINC case. This is one reason why a multidisciplinary representation model, a model that provides peer support to parents and children (i.e., parent advocate or former foster youth) in addition to an attorney and/or social worker, has proven to be beneficial in Orleans Parish and in other States. For more information about the multidisciplinary representation model, please see https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january--december-2019/providing-parents-multidisciplinary-legal-representation-signifi/. The Extra Mile in Lafayette has a stand-alone Parent Partner program: <https://theextramileregioniv.com/frc/>.

¹¹ See Sankaran, Vivek. "My Name Is Not 'Respondent Mother': The Need for Procedural Justice in Child Welfare Cases." ABA Child L. Prac. Today. 2018, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2992&context=articles>; see also <https://www.ncjfcj.org/child-welfare-and-juvenile-law/trauma-informed-courts/>.

OUTLINE

-  **A. PRIOR TO HEARING**
-  **B. TIMING AND CONTINUANCES**
-  **C. APPEARANCES AND APPOINTMENTS**
-  **D. NOTICE AND SUMMONS**
-  **E. INDIAN CHILD WELFARE ACT (ICWA)**
-  **F. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS**
-  **G. EVIDENCE AND TESTIMONY**
-  **H. PATERNITY/MATERNITY**
-  **I. FINDINGS AND ORDERS**
-  **J. FURTHER ORDERS**
-  **K. ORDER OF NOTICES AND FUTURE HEARINGS**
-  **L. CASE MANAGEMENT**
-  **M. POSSIBLE NEXT STEPS**
-  **N. APPENDIX**
 - (1) ADJUDICATION BENCH CARD**
 - (2) ADJUDICATION ORDER TEMPLATE**



OVERVIEW

A. PRIOR TO HEARING

ARTICLES 646, 646.1, 647, 659-67

Timeliness of the Adjudication Hearing is critical. The Children's Code only allows for continuances in extraordinary circumstances and for a maximum of 5 days. For this reason, it is important for the court to take steps in advance of the Adjudication Hearing to ensure that the hearing will go forward in a timely fashion.

(1) Prehearing Conference:

A Prehearing Conference must be convened for a parent to stipulate to Adjudication. In addition, the court may want to consider convening a Prehearing Conference before the hearing commences to address any of the following:¹²

- Alternatives to formal court proceedings and/or other prevention mechanisms such as an IAA;
- Efforts to identify and locate an absent parent;
- Paternity or maternity;
- Whether interpreters or special accommodations are needed;
- Simplification of the issues, including the elimination of frivolous claims or defenses;
- Amendments to the Petition;
- Child's presence at hearings;
- Material facts and issues without controversy and controverted;
- Proof, stipulations regarding the authenticity of documents, admissibility;
- Expert testimony;
- Discovery;
- Identification of witnesses, documents, exhibits; AND
- Other such matters as may aid in the disposition of the action.
- The Prehearing Conference may be attended by the district attorney (DA), DCFS, counsel for all parties, unrepresented parties, and such other persons as the court deems proper.
- The court shall render a separate Order reciting the action(s) taken at the Prehearing Conference. It is not sufficient to merely state that the Prehearing Conference occurred. See Article 646.1(C).

PRACTICE TIPS:

- **Stipulation:** One of the requirements for a parent to stipulate that the child is in need of care is that a Prehearing Conference is held in accordance with Articles 646.1 and 647.
- **Purpose:** Best practice is to hold a Prehearing Conference, even if it is not required by a stipulation. Such conferences have demonstrated effectiveness in reducing decision-making delays, discouraging procrastination by counsel, and providing opportunities to discuss alternatives to formal court proceedings and/or the early resolution of issues that might otherwise result in continuances or other delays.
- **Before Adjudication Hearing:** If a Prehearing Conference was held at the Answer Hearing or subsequent thereto, the court will have rendered a separate Order of the actions that have or will be taken. Prior to the Adjudication Hearing, the court should confirm that any steps outlined in that Order have been completed.

¹² Gatowski, *supra* note 1, at 61 (Many jurisdictions use pre-adjudicatory settlement conferences to facilitate non-trial resolutions of contested matters).

(2) SUBPOENAS: If witnesses have been subpoenaed for the Adjudication Hearing, the court should determine in advance whether the subpoenas have been properly served. Otherwise, the Adjudication Hearing may be delayed.

(3) PROPER NOTICE AND LOCATION OF PARENTS: The court must ensure that the parties receive proper notice of the Adjudication. It is the responsibility of DCFS to provide updated information to the court and counsel regarding the location of all known parents. If a parent is incarcerated and DCFS does not so advise the court and parties, then the proper orders may not be in place in advance of the hearing to ensure the parents attendance.

B. TIMING AND CONTINUANCES

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

(1) TIMING:

- **In Custody:** If the child is in continued custody pursuant to Article 627, the Adjudication Hearing shall commence within 45 days of the filing of the CINC Petition (See Article 114).
- **Not in Custody:** If the child is not in custody pursuant to Article 627, the Adjudication Hearing shall commence within 105 days of the filing of the CINC Petition.¹³
- **Not Timely Commenced:** If the hearing has not been commenced timely, upon motion of the child, the court shall release a child continued in custody and may dismiss the CINC Petition.

HELPFUL GUIDANCE:

- **Timing:** Because of these time constraints, it is important that all discovery be completed, and all motions are timely filed.
 - **Scheduling:** Courts retain the ability to schedule hearings to occur earlier than maximum allowable timeframes and should do so whenever practicable and in the child's best interest.
-

(2) CONTINUANCES:

- **Requirements:** The court may grant, deny, or condition a requested continuance of the Adjudication Hearing for up to an additional 5 days:
 - After notice to the opposing party;
 - Upon showing of good cause; AND
 - In extraordinary circumstances.
- If a continuance is granted, the court shall:
 - Issue a written Order:
 - Identifying the mover; AND
 - Reciting the particular facts justifying the continuance.
- **Report to Louisiana Supreme Court (LASC):** If a continuance is granted, or a delay permitted, that exceeds the maximum allowable times established by the Children's Code, the court is mandated by Supreme Court Rule XXXIII, Part II, Sections 1 and 2, to report such continuance within 10 days to LASC, along with the reasons for the delay and a copy of the Order. See https://www.lasc.org/children_families/timelinessreport.pdf for a copy of the report that must be submitted by the court to LASC. See also Louisiana District Court Rules, Title V, Chapter 42, Rule 42.1, for more information.

¹³ In computing a period of time prescribed by law, the date of the event after which the period begins to run is not included; the last day of the period is included but if a legal holiday—including Saturdays and Sundays—then the period runs until the end of the next day which is not a legal holiday. La. Ch. C. art. 114.

PRACTICE TIPS:

- **Amendment of Petition:** If the court allows the CINC Petition to be amended per Article 635, the child or parent may request a continuance of the Adjudication Hearing. A continuance may be granted for such period as is required in the interest of justice.
- **Contempt:** The contempt articles are always available to the court, if for example, delays are due to individual or agency action or inaction (Articles 1503 et seq.).

HELPFUL GUIDANCE:

- **Extraordinary Circumstances:** The standard of “extraordinary circumstances” is used to underscore the importance of expeditious decision-making.
- **Adoption and Safe Families Act of 1997 (ASFA):** One of the major reform goals of ASFA is to expediate court proceedings so that earlier determinations affecting the child’s health and welfare occur. Thus, Article 659 only authorizes a single continuance of 5 days. See Article 114 for more information about computation of time.

C. APPEARANCES AND APPOINTMENTS

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

(1) PROPER INTEREST OR NECESSARY: At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. The court shall not admit any other person unless it determines that the person has a proper interest in or is necessary to the proceedings.

HELPFUL GUIDANCE:

- **Privacy and Confidentiality:** Limiting the number of persons present in the courtroom protects the privacy of children in CINC cases. The judge is mandated to exclude all but the listed persons unless first determining the person has a proper interest or is necessary to the proceedings. Law students or social workers studying juvenile procedure might qualify as persons with proper interest. If the court allows other persons to be present, the court should stress the confidentiality of the case information.

(2) ESSENTIAL JUDICIAL FUNCTION - ASSISTANCE SERVICES AND SPECIAL ACCOMMODATIONS:

Under State and Federal law, the court is responsible for providing interpretation, translation, and/or language assistance services for parties to CINC hearings and/or reasonable accommodations for parties to CINC hearings with disabilities. When the court appoints counsel for indigent persons, it is also responsible for appointing and paying for a qualified interpreter/translator for indigent persons with these needs to assist in communication with counsel in all phases of the preparation and presentation of the case.¹⁴ There must be ample time for legal interpreters to review pertinent legal documents with the party prior to the court proceeding.¹⁵ Interpreters must be familiar with the case-related details to provide accurate, meaningful, and effective interpretation.¹⁶

¹⁴ See C.C.P. Art. 192.2; La. R.S. § 46:2364; 42 U.S.C. § 3711; 28 U.S.C. § 604(a)(14), (15), and (16), § 1827, and § 1828; see also https://www.lasc.org/language_access and https://www.lasc.org/District_Court_Rules?p=TitleI

¹⁵ See National Consortium of Interpreter Education Centers. (2009). Best practices American Sign Language and English interpretation within legal settings. U.S. Department of Education, Rehabilitation Services CFDA #84.160A and B, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind, <http://www.interpretereducation.org>

¹⁶ Id.

(3) CHILDREN: Children are parties and shall be present at the hearing unless an exception below applies.

- **12 and Older:** If the child is 12 years of age or older, he/she shall be present in court unless his/her presence is waived by the court upon motion of the child's attorney.
- **Below 12:** If the child is below the age of 12 years, he/she shall be present in court upon request of the child's attorney or the court.
- **Waive:** The court shall state in the Order whether or not the court waived the presence of the child at the hearing.

HELPFUL GUIDANCE:

- **Waiving Presence at the Hearing:** The child's attorney has an obligation to inform the child of the right to be present at the hearing and facilitate such presence, if appropriate. The judge should engage in an inquiry related to the child's presence at court. If the child's attorney moves to waive the child's presence, for example, the court should ascertain the reason underlying the request. If the child is present, does the child wish to be heard? The court has an oversight role in CINC cases and, as such, should make every effort to ensure that the child has been given enough information about the court process and an opportunity to be engaged in the process.
- **Importance of Presence at the Hearing:** Having all parties present and participating in the hearing is critical for moving the case forward and having a more meaningful hearing. Children are parties to the CINC Proceedings, and their voice is invaluable to decision-making. Having children present can also assist the court in making decisions about the case. Interacting with the child and observing potential medical issues, delays, etc., provides needed information to the court. Although challenging, courts should try to schedule hearings so that children can be present and participate as much as possible. Scheduling to allow the child to attend hearings necessitates knowing about the child's school schedule and other activities. There are different ways to hold hearings given some of the issues that arise with having children in court. For example, some judges hold their hearings in conference rooms instead of courtrooms to be less intimidating to children and parents. Other judges develop creative solutions, such as holding the hearing at a group home or scheduling the hearing after school.
- **Remaining in the Courtroom:** Prior to the commencement of the hearing, the court shall determine whether it is in the child's best interest for the child to remain in the courtroom during the testimony of the witnesses. If the court has concerns about the child's presence in the courtroom, an option could be that the child be brought outside of the courtroom with someone he/she trusts. While some may argue that attending court hearings is traumatic to children, it is important to remember that they have already lived through the trauma that brought them into the courtroom. Engaging them in planning their future and protecting their safety can actually be empowering.¹⁷ Some courts in Louisiana have created sensory rooms for children at the courthouse to address the potential trauma of attending court, such as the Calming Studio located in Caddo Parish Juvenile Court.¹⁸ Some courts provide a therapy dog to help emotionally support children in court.¹⁹ The CASA volunteer (if appointed) or foster caregiver (if present) may also be a support to the child in court.

(4) PARENTS: Parents of the children are parties and shall be present at the hearing.

¹⁷ Gatowski, *supra* note 1, at 72.

¹⁸ This article provides more information about the Calming Studio: <https://www.shreveporttimes.com/story/news/2019/07/24/caddo-parish-juvenile-court-calm-room-studio/1804662001/>; see also this video: <https://www.youtube.com/watch?v=URA4WtXqu1M>.

¹⁹ These articles provide more information about how therapy dogs have been used in courts: https://www.americanpress.com/news/local/juvenile-court-introduces-therapy-dog-program/article_%20f449e71c-3fc2-11e7-a03e-4b861db8938b.html See also LA. Rev. Stat. § 15:285, which allows for witnesses who are either under 18 years of age or who have a developmental disability as defined by LA. Rev. Stat. § 28:451.2 to have a facility dog, if available, accompany them while testifying in court.

PRACTICE TIPS:

- **Effect of Nonappearance by a Parent:** If it appears from the record that a parent has been served in accordance with Article 640 or 641 and summoned to any hearing, and that parent fails to appear at the hearing, the court shall permit the hearing to be held in that parent’s absence.
- **Incarcerated:** To ensure the attendance of any parent who is incarcerated at the Adjudication Hearing, a writ or motion should have been filed and an order issued by the court and served on the warden or administrator of the facility prior to the Adjudication Hearing. Service should be made sufficiently in advance of the hearing to afford time for the facility to arrange for transportation of the parent to court (or video conferencing where the parent’s physical attendance at the hearing is not possible).

(5) ATTORNEYS, APPOINTMENTS, AND WAIVERS:

- a. **Parents:** The Indigent Parents’ Representation Program shall provide qualified legal counsel, including curatorship appointments, to indigent or absent parents in CINC cases unless a parent waives his/her right to counsel (See Articles 575, 608, and 643).
 - **Right to Counsel:** The parents of a child who is the subject of a CINC proceeding shall be entitled to qualified, independent counsel at the CCH and at all stages of the proceedings thereafter.
 - **Found to Be Indigent:** The court should determine whether it needs to make a finding of indigency for one or both parents. If a parent is found to be indigent (financially unable to afford counsel) and the parent has not previously been appointed counsel, the court shall order that the parent be referred to the Indigent Parents’ Representation Program (best practice is to refer the parents to the local Public Defender Office, see Article 575) and that the program or office shall provide representation and be given notice of appointment and served with notice and a copy of the pleadings.
 - **Waiver of Right to Counsel:** A parent may waive his/her right to qualified, independent counsel. However, before accepting a waiver of counsel, the court shall ensure that the parent was informed of his/her rights enumerated under Article 608 and the possible consequences of this waiver. The court should exercise caution in any request to waive the right to counsel.

HELPFUL GUIDANCE:

- **Appointment:** Generally, attorneys for the parents should have been previously appointed. However, there may be instances where an attorney still needs to be appointed for a parent at the Adjudication Hearing. For example, a parent found to be indigent may have previously waived his/her right to an indigent defense attorney but was unable to retain a private attorney. Also, a parent may have been recently identified, in which case, he/she would have a right to an appointed attorney if indigent.
- **Prior to Hearing:** The judge should inquire whether counsel had sufficient opportunity to consult with the parents prior to the hearing.
- **Due Process:** Protecting the interest of the parent is an important role of the parent’s attorney and ensures due process for the parent. The parent’s attorney should zealously advocate for the parent whether the parent is present or not.
- **Conflicts of Interest:** Judges must be cognizant of possible conflicts of interest that may arise in representation of parents at all junctures in the case. For example, parents who are married or living together may have or may develop divergent legal positions in the CINC case. It may also be a conflict for one attorney to represent multiple fathers or mothers in a case. When there is a curator ad hoc for an absent parent, the curator may not be able to represent a parent who is located due to a conflict.

- b. **Children:** An attorney for the child shall be present at every hearing, assert the child’s wishes, and protect the legal interests of the child even if the child is not present (Article 607).²⁰
- **Appointments:** The program for child representation should have already been appointed. If it was not, the court shall order that the program approved to represent the child in that jurisdiction be appointed to represent children in all CINC proceedings and be given notice of appointment and served with notice and a copy of the pleadings.

HELPFUL GUIDANCE:

- **Prior to Hearing:** The judge should inquire whether counsel had sufficient opportunity to consult with the child prior to the hearing.
- **Due Process:** Protecting the legal interest of the child is an important role of the child’s attorney and ensures due process for the child. The child’s attorney should zealously advocate for the child’s wishes whether the child is present or not.
- **Conflicts of Interest:** Judges must be cognizant of possible conflicts of interest that may arise in the representation of children at all junctures in the case. With regard to current clients, for example, there could be a conflict representing two siblings if one has sexually perpetrated on the other. It would also be a conflict for a child’s attorney to represent both a teenage mother and her baby if the baby is in care. Further, a conflict may be present if siblings’ wishes are divergent, and the attorney cannot make a colorable argument for the differing positions.

- c. **State:** An assistant district attorney (ADA), an attorney the ADA designates, or a DCFS attorney (Bureau of General Counsel/ BGC) representing the State should be present at the hearing.

(6) DCFS: A DCFS staff member or representative(s) should be present at the hearing.

(7) CASA: For confidentiality reasons, CASA should only be present at the hearing if the court appointed them.

- **Appointments:** : If CASA was not previously appointed, the court should order that the local CASA program be appointed, subject to the assignment of a qualified CASA volunteer, to advocate for the best interest of the child in these proceedings and that the program be notified of appointment and served with a copy of the pleadings (Article 424.1).

(8) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD: Foster caregivers (i.e., foster parents, relatives, or pre-adoptive parents) providing care for the child have a legal right to receive notice of and be present at the Adjudication hearing. The court may permit the hearing to be held in the person’s absence even if they were not properly notified. See [Continued Custody Hearing \(CCH\) Benchbook Section 5 G\(5\)](#) for more information.²¹

(9) AUTHORIZED OFFICERS OF THE COURT AND WITNESSES:

- **Authorized officers of the court:** As designated by the judge may be present at the hearing.
- **Witnesses:** Under examination may be present at the hearing.

D. NOTICE AND SUMMONS

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

The court shall determine if proper notices of the hearing were made to all parties, counsel of record, and foster caregivers, and enter required findings in the Order.

(1) PARTIES AND COUNSEL OF RECORD: Written notice of the date, time, and place of the Adjudication Hearing shall be served and return made in the same manner as the Petition on all parties and also counsel of record at least 15 days prior to the hearing unless the parties have been notified in open court at a prior hearing. See [Answer Hearing Benchbook Section 6 D](#) and Articles 635.1-645 for more information.

²⁰ LA. SUP. CT. RULE XXXIII, PART III.

²¹ See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

(2) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD:

- **Notice and Right to Be Heard:** The court shall determine whether DCFS:
 - Gave notice of the date, time, and place of the Adjudication Hearing to any foster caregiver providing care for the child; AND
 - Informed the recipient of his/her right to attend and be heard at the hearing.
- **Fails to Appear:** If a foster caregiver fails to appear at a hearing, DCFS shall report to the court whether notice was given or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person's absence.

E. ESSENTIAL JUDICIAL FINDING: INDIAN CHILD WELFARE ACT (ICWA)

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

(1) INQUIRY: The court shall ask each person before the court and make a record of the answer in the Adjudication Order for each child:

- As to whether they know or have reason to know that the child is a member of a Federally recognized Indian Tribe or eligible for membership in a Federally recognized Indian Tribe and is the biological child of a member of a Federally recognized Indian Tribe; AND
- To inform the court if they subsequently discover information indicating that the child is a member of a Federally recognized Indian Tribe or eligible for membership in a Federally recognized Indian Tribe and is the biological child of a member of a Federally recognized Indian Tribe.

(2) REASON TO KNOW: If the court has reason to know that a child is an Indian child or is eligible for membership in a Federally recognized Indian tribe, the court shall immediately proceed pursuant to the Federal ICWA and the regulations promulgated thereunder. See the [Indian Child Welfare Act \(ICWA\) Bench Card](#) in [Appendices Benchbook Section 12](#).**(3) FAILURE TO VERIFY:** If a Tribe fails to respond to multiple requests for verification that the child is an Indian child and the court or DCFS has sought the assistance of the Bureau of Indian Affairs in contacting the Tribe, the court may make the determination that the child is not an Indian child based on the information it has available and proceed to Adjudication in accordance with the Louisiana Children's Code.**(4) INVALIDATION OF PROCEEDINGS:** Noncompliance with the provisions of ICWA may result in invalidation of the proceedings, including any subsequent adoption.**HELPFUL GUIDANCE:**

- **Federally Recognized Tribes:** Not all Indian Tribes are Federally recognized. For example, only 4 of Louisiana's Indian Tribes are currently Federally recognized tribes: the Chitimacha Tribe of Louisiana, the Coushatta Tribe of Louisiana, the Jena Band of Choctaw Indians, and the Tunica-Biloxi Indian Tribe of Louisiana. But ICWA will apply if the child belongs to any "Federally recognized" tribe (even outside of Louisiana).
- **Eligibility:** Be cognizant that there are specific membership qualifications that make one a member or eligible to be a member of a Federally recognized Indian Tribe. For example, sometimes, a parent may not realize that a marriage in their family made their child eligible for such membership. Self-identification as an Indian, race, and/or the child's features are not sufficient to meet the membership criteria.
- **Active Efforts:** Efforts involved in ICWA are very different from the reasonable efforts required by ASFA. Active efforts are required, and they are affirmative, active, thorough, and timely efforts intended to maintain or reunite an Indian child with his/her family. This is yet another reason why courts must proceed pursuant to ICWA and the regulations promulgated thereunder if the court finds that there is reason to know that the child is an Indian child.²²

²² For more information on ICWA, please see https://clarola.org/index.php?option=com_k2&view=item&id=1284:la-icwa-quick-reference-guide&Itemid=116; see also Murphy, Bob. (2020) McGirt Injects Steroids into the Indian Child Welfare Act. American Bar Association, Children's Rights Litigation, https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/winter2021-mcgirt-injects-steroids-into-the-indian-child-welfare-act/?utm_medium=email&utm_source=salesforce_353772&sc_sid=00265681&utm_campaign=MK20CNTT&promo=MKCONTENT1&utm_content=&additional4=&additional5=&sfmc_j=353772&sfmc_s=52961351&sfmc_l=2198&sfmc_jb=4007&sfmc_mid=100027443&sfmc_u=10232975.

F. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS

The court should consider whether any of the following Federal laws or regulations apply to this case:

- Americans with Disabilities Act (ADA);
- Service Members Civil Relief Act (SMCRA);
- Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA); AND/OR
- Interstate Compact on the Placement of Children (ICPC), as codified in La. Ch. C. art. 1608 et seq.
 - **ICPC Generally:** ICPC is an agreement between all 50 States, Washington, D.C., and the U.S. Virgin Islands. It provides for the movement and safe placement of children between States when the children are sent out of State for placement in foster care or as a preliminary step to a possible adoption. The process involves several steps and goes from the local or field level in one State, through the central or State office of each State, to the local level in the other State for investigation. At the conclusion of the investigation, a report is sent from the local level to the State administration and back to Louisiana. The process usually takes several months to complete, so it is recommended that this process begins as soon as a potential caregiver out of State is identified and determined to be a suitable potential placement or resource. If the receiving State finds that the proposed placement is contrary to the interests of the child based on the receiving State's criteria, DCFS may not place the child with that caregiver. The judge still has authority to grant custody or guardianship to the out-of-State caregiver without ICPC approval. Still, there would be no supervision of the home and may be other severe repercussions. See [Disposition Hearing Benchbook Section 8 E](#) for more information on ICPC.

G. EVIDENCE AND TESTIMONY

ARTICLES 660-665, LA. SUP. CT. RULE XXXIII, PART II, SUBPART II

(1) EVIDENCE

- a. **Order:** The order of presenting evidence at the hearing is set by the court.
- b. **No Jury:** The Adjudication Hearing shall be held before the court without a jury.
- c. **Rules of Evidence:** Unless otherwise provided in the Children's Code, the Adjudication Hearing shall be conducted according to the rules of evidence applicable to civil proceedings.
- d. **Hearsay:** Hearsay evidence is not admissible at the Adjudication Hearing unless it fits within one of the established exceptions to the hearsay rule or otherwise allowed in the Children's Code.
- e. **Videotape:** The court may consider as evidence any videotape which is prepared in compliance with Chapter 8 of Title III of the Children's Code and relevant to the proceeding.
- f. **Criminal Convictions:** Evidence of a prior criminal conviction shall be admissible in proceedings brought under Title VI of the Children's Code to prove allegations made under Article 606. Such proof shall be by certified copy of the judgment of conviction or certified copy of the minute entry of conviction in accordance with the Louisiana Code of Evidence.
- g. **Evidence of Child Abuse and Neglect:** Testimony or other evidence relevant to the abuse or neglect of a child or the cause of such condition may not be excluded on any ground of privilege, except in the cases of confessions or communications between an attorney and his client or confidential communications between a priest, rabbi, duly ordained minister, or Christian Science practitioner and his confidential communicant.

PRACTICE TIPS:

- **Presentation of Evidence:** This Article is a departure from the normal rules of procedure whereby the parties to the action control the order of presentation of the evidence. The reason for placing the responsibility for the order of trial with the court is to ensure that the hearing is conducted efficiently and fairly in light of the fact that the State, the parents, and the child may each be represented by counsel. The lawyer for the child may be aligned with the State or the parents or neither, depending on the particular facts in the case. Thus, a pre-set order of the trial may be unworkable.
- **Attorney-Client and Clergymen Privilege:** The only testimonial privilege that may be claimed in a CINC proceeding is the attorney-client privilege and the communicant to clergymen privilege.

- (2) STATE:** The State has the burden of proving the allegations of the CINC Petition by a preponderance of evidence.
- (3) PARENTS:** Parents may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.
- (4) CHILDREN:** Children may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.
- **Wishes:** If the child is present in court the child may choose to testify as to his/her wishes, and the court shall consider the child's testimony in the matter.²³
 - **Methods of Testimony:** Any testimony given by a child may be taken by:
 - A videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of the Louisiana Children's Code;
 - An in-chambers conference attended only by the judge and court reporter and by counsel for the child, the petitioner, and the parents; OR
 - If no party objects and the parties agree as to the procedure, the child may be examined "in chambers, on or off the record, and with or without parents and/or counsel being present."²⁴
 - **Exclusion:** Prior to the commencement of the hearing, the court shall determine whether it is in the child's best interest for the child to remain in the courtroom during the testimony of the witnesses.

 **PRACTICE TIPS:**

- **Child Present or Not:** Whether present or not, the child's attorney shall make sure the court hears the child's wishes.
- **Methods of Communication:** If the child wishes to be heard but is not able to present or does not want to be present in the courtroom, the court should consider the use of other methods of communication, such as audio or visual conferencing.
- **Well-Being:** Although this is the Adjudication, the court should still inquire about the child's physical, emotional, and mental health and educational needs and identify any gaps in services needed by the child.

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- (5) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD:** The court shall solicit and consider information regarding the care and treatment²⁵ of the child from any foster caregiver providing care for the child who appears for the Adjudication Hearing.²⁶

 **PRACTICE TIPS:**

- **Valuable Information that Must be Considered:** The court should value the role of the child's daily caregivers and the insight they can provide to the court about how the child is doing and what he/she needs. Because of their day-to-day care of the child, foster caregivers have useful information that the court, DCFS, CASA, and parties to the CINC case need to make crucial decisions regarding the child's well-being. Thus, their role in the court process is to provide current and accurate oral and/or written information about their observations of how the child is doing so that judges can make informed decisions in the best interest of the child.
- **Solicit Information:** While foster caregivers are not parties, they have a legal right to be heard at any CINC hearing regarding a child in their care. There are at least 2 ways the court can solicit and consider information from caregivers. The caregiver can: (1) submit a Foster Caregiver progress form to DCFS prior to the hearing or (2) attend and speak at the hearing, or both.

²³ LA. SUP. CT. RULE XXXIII, PART III, SUBPART II.

²⁴ *Watermeier v. Watermeier*, 462 So. 2d 1272, 1275 (La. App. 5th Cir.), cert. denied, 464 2d 301 (La. 1985).

²⁵ Neither State nor Federal law provides a definition for "care and treatment of the child," but DCFS policy states that it "includes information that the foster parent, relative, or pre-adoptive parent feels is critical to the safety and well-being of the child, such as how the child is doing physically, developmentally, emotionally, behaviorally, mentally, socially, and academically and what supports or services are needed for the child or caregiver to properly care for the child."

²⁶ See La. Ch. C. art 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

- **Submit a Foster Caregiver Progress Form:** The Foster Caregiver Progress Form is one of the ways foster caregivers can exercise their right to be heard but is not required. If the caregiver chooses to complete the form, they will submit it to DCFS, who will bring copies of the form to the hearing. The form can be submitted to DCFS even though the caregiver may not attend the hearing. These forms contain hearsay information and should be treated as information about the child in the same way DCFS provides other information to the court. Even if the caregiver submits the form, they still have the right to attend and be heard at any CINC hearing regarding the child in their care. See the [Foster Caregiver Progress Form Template](#) in the [Appendices Benchbook Section 12](#).
- **Speak at the Hearing:** In accordance with State and Federal law, if the foster caregiver attends the hearing, the court shall solicit information from the caregiver about the care and treatment of the child (even if they submitted a Foster Caregiver Progress Form). At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. This includes foster caregivers. After the court hears from parties and evidence is presented, if another party has not called on the caregiver to speak, the judge should call on them to see if they would like to speak. Some caregivers may wish only to attend and not speak. Judges may allow the caregiver to use the form to guide them when they speak and/or may want to utilize the form to ask the caregiver questions.²⁷

(6) OTHER WITNESSES: On its own motion or the motion of any party, the court may order that non-party witnesses be excluded from the courtroom. On request of a party, the court shall order the exclusion.

 **PRACTICE TIPS:**

- **Cannot Exclude Parties:** Parties to a proceeding cannot be excluded from the courtroom. Only the child can be taken out of the courtroom during testimony that may not be in their best interest to hear. (ARTICLE 661(E)).
- **DCFS and CASA are Not Parties:** Neither DCFS nor CASA are parties to CINC proceedings. DCFS staff member or a CASA volunteer may be excluded if any party plans to call them as a witness. However, a DCFS representative would likely need to remain in court to assist the ADA. See La. Code Evid. Art. 615(B)(2).
- **Foster Caregivers Are Not Parties:** Foster caregivers are not parties. While they have a right to be heard at any CINC hearing regarding the child in their care, they may be excluded and asked to be present only when they speak. The caregiver’s presence at the hearing may also better situate them to support the child during and after the hearing.²⁸
- **Exemption:** In the interest of justice, the court may exempt any witness from its order.

• **OVERALL GUIDANCE:**

- **Engagement:** The court should do all that it can to support and encourage the meaningful engagement of families in CINC proceedings.²⁹ Testifying in court is stressful for many parents and children. Court is intimidating for most individuals (including non-party witnesses), and the stakes could not be higher for parents and children in CINC cases. Many parents and children are coming into court with a history of trauma. Regardless of the trajectory of the case, parents and children may benefit from having their voice heard. It is critical for the judge to consider information provided by the parents and children, and to convey to the parent and children that their testimony is being given due consideration in the court’s ruling. Positive engagement is critical to successful outcomes in the case.³⁰ Judges must create an environment where parents and children are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.³¹

27 Id.

28 Id.

29 Gatowski, *supra* note 1, at 68.

30 Id.

31 Gatowski, *supra* note 1, at 16.

H. PATERNITY OR MATERNITY

The court should make a finding as to whether or not:

- Paternity or maternity has or has not been established pursuant to Louisiana law as to each child in the case.

PRACTICE TIPS:

- **Direct Parent Present to Identify Other Parents:** If a parent has still not been located, the judge should direct the parent who is present under oath to provide name, address, and whereabouts for any parent who has not been located and emphasize the importance of identifying and locating any absent parents.
- **Determining Paternity/Maternity:** The court must ensure that efforts by DCFS are thorough and diligent in locating and involving all legal and putative parents and that paternity or maternity of all children is legally determined. If the identity and whereabouts of an alleged parent is known but filiation has still not been legally determined, the 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.), including ordering that DCFS make arrangements for DNA tests to determine the paternity/maternity of any alleged parents and that the alleged parents comply.
- **Direct Parent Present to Identify Potential Relative Caregivers:** Establishing paternity or maternity is also critical for finding potential relative caregivers for the child; thus, the court may also want to direct the parents under oath to identify relatives of the child.

HELPFUL GUIDANCE:

- **Identification of Parents or Legal Custodians:** Courts should ensure all biological, legal, and putative parents are legally established as soon as possible. Decisions made in CINC hearings can affect a child's entire life if this information remains unknown. When a child does not know who one of his/her parents is, that also means the child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Timely resolution of filiation and paternity or maternity issues is in the best interest of the child and essential to due process and avoiding permanency delays.
- **Maternity:** There may be cases where there is an issue with maternal filiation. However, Louisiana law has not been amended to contemplate situations when, for example, two women are married and one gives birth to a child during the marriage. Louisiana filiation laws for paternity would likely be instructive for similar maternity issues.

I. FINDINGS AND ORDERS

ARTICLES 646.1, 647, 649, 666

- **ESSENTIAL JUDICIAL FINDING AND ORDERS – ADJUDICATION:** Following the Adjudication Hearing, unless taken under advisement, the court shall immediately declare whether the evidence warrants a child in need of care Adjudication based upon one or more grounds codified in Article 606(A). The court shall make the following written, separate, and individualized findings and orders for each child:

(1) DISMISS PETITION: If the court finds that the evidence demonstrates that the:

- Child is neither a child in need of care NOR the child's family in need of services;
- The court should order that the Petition be dismissed.

PRACTICE TIPS:

- **Custody:** If the court dismisses the Petition, the child's custody arrangement generally reverts to the status prior to DCFS involvement.
- **Allegations as to One Parent:** Petition makes allegations regarding one parent and not the other (although the Petition should address all parents). Still, the court shall make a determination as to whether the State proved the child should be adjudicated in need of care by a preponderance of evidence. The court should consider the other parent's circumstances and relationship with the child in its determination. If the court adjudicates the child in need of care based on the evidence presented, the matter of custody to the other parent would then be determined at Disposition. There is considerable case law in this area. See, for example, *In Re State in Interest of Thoman*, 253 La. 496, 218 So. 2d 571 (1969), *Wood v. Beard*, 290 So. 2d 675 (La. 1974), and *State ex rel. P.D.J.*, 200 So.3d 916 (La. App. 2016).³²

(2) ADJUDICATE CHILD IN NEED OF CARE:**a. STIPULATION:**

- **Prehearing Conference:** Per Articles 646.1 and 647, the parents may stipulate that the child is in need of care according to Article 606(A), with or without admitting the allegations of the Petition if:
 - The Petitioner and DCFS approve the stipulation;
 - A Prehearing Conference was convened in accordance with Article 646.1;
 - The parent stipulating personally appears;
 - The court fully informed the parent of his/her rights according to Article 625;
 - The court fully informed the parent of the consequences of the stipulation, including his/her responsibility to comply with the case plan and correct the conditions requiring the child to be in care;
 - The parent knowingly and voluntarily consents to the judgment.³³
- **Findings:**
 - **Allegations of the Petition:** After the requirements for Articles 646.1 and 647 have been met, the court may find and enter into the Order that:
 - The parent stipulates that the child is in need of care according to Article 606 and knowingly and voluntarily consents to Adjudication;
 - With OR without admitting the allegations of the Petition; AND
 - After being advised of his/her rights by the court and his/her attorney.
 - **For Factual Basis and Admission:** If the parent stipulates, the court shall determine and enter into the Order whether the allegations form a factual basis for finding the child in need of care and whether the parent denies or admits the allegations.
 - **Order:** If the court finds the stipulation requirements per Articles 646.1 and 647 were met and there is a factual basis for the Adjudication; the court shall adjudicate the child in need of care and include the specific provision(s) in Article 606(A) (1-8) that form the basis for Adjudication.

PRACTICE TIP:

- **Include in Adjudication Order:** Best practice is to include in the Order the date the Prehearing Conference was convened.

³² See also *State ex rel. P.D.J.*, 200 So.3d 916 (La. App. 2016), where the court states: "La. Ch. C. art. 627 states that, following a hearing, the court may return the child to the parents or, in accordance with La. Ch. C. art. 622 dealing with placement of children pending a continued custody hearing, may place the child in the custody of a suitable relative, other suitable individual, or DCFS." In this case, the juvenile court determined that the children should not be returned to the mother at that point, but that placement with the father was suitable. Contrary to the arguments made by the mother, the placement of custody with the father did not end the CINC proceedings. It was merely a step in the process.

³³ Parents' attorneys are guided in their practice by the Louisiana Public Defender Board "Trial Court Performance Standards for Attorneys Representing Parents in Child in Need of Care and Termination of Parental Rights Cases," <http://lpdb.la.gov/Supporting%20Practitioners/Standards/btfiles/pdfs/2011%20CINC%20Standards.pdf>. Those standards state: "The primary and most fundamental obligation of an attorney representing a parent in a child in need of care or a termination of parental rights case is to provide zealous and effective representation for his/her client at all stages of the process." Judges play an important role in helping to ensure due process for all parents in their courts.

HELPFUL GUIDANCE:

- **Purpose of Stipulation:** The purpose of the stipulation is to provide an alternative to parents who wish to stipulate that the child is in need of care rather than defend themselves at a trial.
- **Requirements of Stipulation:** The requirements of ARTICLES 646.1 AND 647 uphold the due process rights of parents. The advisements are similar to the instruction that must precede the acceptance of a guilty plea in a criminal prosecution to ensure that it is knowingly and voluntarily made. The prerequisite of consultation at a Prehearing Conference seeks to ensure that a parent's stipulation is both voluntary and intelligent and in the best interest of the child. The prerequisite of court instruction about continuing parental responsibilities is parallel to ARTICLE 682, which imposes similar requirements upon the court when entering or confirming an order removing the child from parental custody following a formal hearing and Adjudication.

b. ALLEGATIONS PROVED BY STATE:

- **Findings and Order:** If the court finds that the State proved the allegations set forth in the Petition by a preponderance of evidence, the court shall order that the child be adjudicated in need of care and include the specific provision(s) in Article 606(A) (1-8) that form the basis for Adjudication.

(3) DISMISS CERTAIN ALLEGATIONS IN PETITION: If the court finds that the State did not prove allegations of the Petition by a preponderance of evidence, the court shall include in the Order:

- Which grounds in Article 606(A) were not proven by the State.

PRACTICE TIP:

- **Adjudicate if One or More Grounds Proven:** If the court finds the State proved one or more of the grounds in 606(A), the child shall be adjudicated in need of care.

(4) TAKE UNDER ADVISEMENT: If the court finds that there are exceptional circumstances warranting the court's advisement, the court shall include in the Order that:

- Considering the exceptional circumstances, the court will take the matter under advisement for a maximum of 10 days.

(5) ADJUDICATE THE CHILD'S FAMILY IN NEED OF SERVICES: If the court finds that the evidence demonstrates that the child is not a child in need of care, but that the child's family is a family in need of services, the court may order that the:

- Child's family be adjudicated in need of services.

PRACTICE TIPS:

- **Considerations:** 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 the case, and a FINS Petition could be filed to allow for proper alignment of the parties. FINS proceedings bear similarities to the CINC proceedings with some minor differences. For example, the Children's Code does not directly address the parents right to appointment of counsel, CASA is not usually involved, and the parties may be aligned differently. See Title VII of Children's Code.
- **Distinguishing Between DCFS Family Services and FINS:** DCFS Family Services is a program provided by DCFS to support families in keeping their child safe in their home. FINS is not a program provided by DCFS and is governed by Title VII of the Children's Code.

- **OVERALL GUIDANCE:**

- **Specific Ground(s) for Adjudication:** The Adjudication Order should delineate the specific ground(s) from Article 606(A) upon which the court bases its finding for Adjudication and should, where appropriate, describe precisely the conduct of the parent the court is relying upon. For example, if finding the child in need of care under 606(A)(5), that the conduct of the parent constitutes a crime against the child, the court should articulate the conduct and which crime. This clarity on the part of the court gives the parent notice of the basis of the Adjudication, consistent with due process, and helps guide the formation and implementation of the case plan or safety plan accordingly.
- **Petition for Child's Custody:** Once a child has been found in need of care, the question of future custody to another parent or caretaker is an issue of Disposition. Thus, if a relative or other person has filed a petition for custody of the child, the resolution of that claim is properly reserved for the Disposition Hearing.
- **Change in Disposition:** After hearing the evidence presented at the Adjudication Hearing, the court may determine that the child could safely be returned home on the date of the hearing (See [Child Welfare Assessment and Decision Making Model \(CWADM\) Benchbook Section 11](#) for more information) or immediate removal is necessary to protect the safety of the child. Instead of making these orders in the Adjudication Order, the court should consider holding the Disposition Hearing on the same day as the Adjudication and order the appropriate dispositional alternative. See [Disposition Hearing Benchbook Section 8](#).

J. FURTHER ORDERS

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

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

(1) PREDISPOSITION INVESTIGATION AND REPORT: Order that a Predisposition Investigation be conducted in accordance with Article 668 by DCFS and, if completed by DCFS, a written report of the investigation and findings be submitted to the court prior to the Disposition Hearing.

 **HELPFUL GUIDANCE:**

- **Purpose:** One of the purposes of the Predisposition Investigation is to evaluate the various possibilities for the child's placement, including the alternatives enumerated in Article 681. See [Disposition Hearing Benchbook Section 8 \(A\)\(4\)](#) for more information.

(2) PHYSICAL AND/OR MENTAL HEALTH EVALUATION AND EXAMINATIONS: Order physical and/or mental health evaluations and examinations be conducted in accordance with Article 669 on the parents and/or child if they may be helpful in determining a fair and just Disposition. The court should advise that the examinations are to be filed with the court at least 10 days prior to the Disposition Hearing with a copy to counsel of record and unrepresented parties.

 **PRACTICE TIPS:**

- **Contribution:** The court should give the parents a reasonable opportunity to be heard as to whether they have the ability to contribute to the cost of an ordered physical or mental health examination. If the court finds that the parents have the ability to contribute after being heard, the court should order the parents to do so.

- **Poverty:** The court should be aware that many child neglect cases are inextricably linked to poverty. The court should be mindful that contributions to the cost of an evaluation may be a significant barrier to reunification when the family lives in poverty.³⁴

(3) POTENTIAL PLACEMENTS:

- Order DCFS to explore all possible relative or individual caregivers (i.e., fictive kin, people who matter to the child, etc.) with results and/or updates on results to be presented at a subsequent hearing;
- Order DCFS to initiate a child welfare background clearance, criminal background check, and/or assessment of home or home study on potential caregivers so that they can be considered for placement by DCFS and/or for custody or guardianship at a subsequent hearing;
- Order DCFS to take necessary steps for potential caregivers to complete timely foster care certification, if needed (i.e., to receive guardianship subsidy if applicable, etc.); AND/OR
- Order DCFS to initiate ICPC process for potential placement with any identified out-of-State relatives or individuals. See [Disposition Hearing Benchbook Section 8 E](#) for more information on ICPC.

HELPFUL GUIDANCE:

- **Continued Obligation to Find Potential Caregivers:** All persons and parties before the court have a continuing obligation to achieve timely permanency for the child. It is critical for relatives and other individuals to be found as soon as possible so that permanency can be achieved expeditiously if reunification becomes no longer viable. Identifying other potential placements early on in the case is crucial to reducing further trauma to a child who may form secure attachments with caregivers. The court's role is to continue to hold persons before the court, parties, and DCFS accountable to these obligations. See [Appendices Benchbook Section 12](#) for the [Family Connection Form](#) and [Circle of Influence Form](#) DCFS uses with children and parents to help identify potential caregivers. Some attorneys create "Family Trees" to help identify potential caregivers.
- **Preference to Relatives Per Federal Law:** For States to receive funding for foster care and adoption assistance, Federal law under Title IV-E of the Social Security Act requires that the State "consider giving preference to an adult relative over a nonrelated caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards."³⁵ Per the Fostering Connections to Success and Increasing Adoptions Act, within 30 days following the removal of the child and any time after that a relative is identified, DCFS is required to contact all known adult relatives of the child and to inform them about placement and permanency possibilities for the child. Title IV-E of the Social Security Act also requires all States to exercise due diligence to identify and provide notice to all grandparents, all parents of a sibling of the child, where such parent has legal custody of the sibling, and other adult relatives of the child (including any other adult relatives suggested by the parents) that (1) the child has been or is being removed from the custody of his/her parents; (2) the options the relative has to participate in the care and placement of the child; and (3) the requirements to become a foster parent to the child. These Federal laws are based on evidence that placement with relatives maintains the child's connections with his/her family, and children generally fare better in many child well-being factors when placed with a relative.³⁶

³⁴ For more information on the linkages between child welfare and poverty, see: <https://www.childwelfare.gov/topics/can/factors/>.

³⁵ 42 U.S.C. § 671(a)(29).

³⁶ See Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>; Center on Children and the Law. (2016) Judicial Tip Sheet: Kin First. Washington, DC: American Bar Association, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/july-2016/judicial-tip-sheet-kin-first/; Issue Brief, Strong Families (2019) Why Should child protection agencies adopt a kin-first approach? Casey Family Programs, <https://www.casey.org/kin-first-approach/>; National Conference of State Legislatures. (2019) The Child Welfare Placement Continuum: What's Best for Children?, <https://www.ncsl.org/research/human-services/the-child-welfare-placement-continuum-what-s-best-for-children.aspx>; Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/placement.pdf>.

- **Suitable Individuals and Cultural Considerations:** The court should press parties and persons before the court to consider not only biological relatives but also individuals with whom the child has a significant relationship (also referred to as “fictive kin,” “suitable persons,” or “suitable individuals”). These are individuals who are not related by blood, marriage, or adoption to the child but could be close family friends or someone the child considers family or has a relationship with. It is important to consider the child’s culture, heritage or customs, traditions, religion, etc., in determining placement and custody options. For example, some children may call a close friend their “auntie” even though they are not related by blood. However, the auntie may be the best placement for the child but overlooked if no thorough inquiry is made.
- **Child Specific Certification:** DCFS provides “child specific” foster care certification for a relative or other individual with whom the child is placed or being considered for placement. The certification requires fewer classes than general foster care certification and allows the relative or individual to receive a board rate (monthly financial support) like a certified foster parent. If the relative or individual is interested in becoming the child’s legal guardian, the certification would have to be completed (along with other DCFS requirements) to receive a subsidy after a transfer of guardianship. The child can be placed with the relative or suitable person prior to completion of the certification but they will not receive retroactive financial assistance. However, if the child receives disability or survivor benefits, this would be in place of the monthly board rate (they can choose the higher of the amount). If applicable, the court may want to request updates on status of certification to ensure timely completion.

(4) VISITATION/FAMILY TIME: Court has authority to specify visitation/family time between the child and his/her parents, siblings,³⁷ family members, or others who matter to the child pending the Disposition. The safety and well-being of children should always be paramount in considerations of family time. Visitation planning and scheduling should be an ongoing assessment of the child’s established and significant relationships with parents, grandparents, siblings, relatives, and other important individuals in the child’s life. Judges should ensure the plan for family time is in the best interest of the child, individualized, and promotes permanency. If siblings (including half-siblings and those the child considers siblings) are not placed together, the court should order (when appropriate for the child and safe to do so) that the visitations/family time between the siblings take place in addition to the family visits. For more helpful guidance on visitation/family time, see Continued Custody Hearing (CCH) Benchbook Section 5 M(1).

(5) FAMILY TEAM MEETING (FTM): If the child is in DCFS custody or has an open DCFS Family Services case, DCFS should propose a tentative date for the next FTM. The court can provide notice of and encourage participation by all parents, caretakers, children, foster caregivers, CASA workers, and attorneys for children and parents as applicable.

PRACTICE TIP:

- **Set Tentative Date for Next FTM:** Facilitating a tentative or confirmed date and time for the next FTM while everyone is at the hearing and including the tentative date in the Order helps ensure FTMs are timely held. Without enough notice of the FTM date and time, some team members may have difficulty participating. FTMs should be conducted at least every 6 months.

HELPFUL GUIDANCE:

- **Purpose:** FTMs are facilitated by DCFS, and they are important because FTMs are where case planning occurs for the family. FTMs are where parents and children and other stakeholders and supports give input on the services and assistance needed and to be provided.

³⁷ See Child Welfare Information Gateway. (2019). Sibling issues in foster care and adoption. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/siblingissues.pdf>.

(6) OTHER ORDERS: The court may also make orders related to paternity or maternity, child's education, services, Protective Orders (PO), and placement of the child when he/she is in DCFS custody (Article 672(A)(2)), etc.

K. ORDER OF NOTICES AND FUTURE HEARINGS

ARTICLES 424.7, 674-7

Upon adjudicating the child in need of care, the court shall also include the following in the order:

- (1) FUTURE HEARINGS:** The parents of the child, all attorneys of record, a DCFS representative, and CASA (if appointed) be present at all future hearings.
- (2) CASE PLAN:** DCFS shall file case plan with the court at least 10 days prior to the Disposition Hearing and upon filing shall provide copies to counsel by mail or email and unrepresented parties by certified mail or email if requirements of Article 674 are met. See [Disposition Hearing Benchbook Section 8 A \(1\)](#) for more information.
- (3) COURT REPORT FILED BY DCFS:** DCFS file its court report at least 10 days prior to the Disposition Hearing and provide copies to CASA, counsel, and unrepresented parties (Although Children's Code is silent on submission of the court report for the Disposition Hearing, DCFS policy requires court reports to be filed for hearings beginning at Disposition). See [Disposition Hearing Section 8 A\(2\)](#) for more information.
- (4) COURT REPORT FILED BY CASA:** CASA file its court report report prior to the Disposition Hearing and shall distribute a copy of such report prior to or at the time it is submitted to the court, to all counsel of record, any unrepresented party, and DCFS. See [Disposition Hearing Section 8 A\(3\)](#) for more information.
- (5) SET MATTER FOR DISPOSITION HEARING:**
 - Clerk to notify all parties of the date, time, and location of the hearing and that all parties of interest appear;
 - Sheriff's Office to serve the parents with a summons commanding him/her to appear at court for the hearing;
 - DCFS to provide notice to the parents of the date, time, and location of the hearing as well as the nature of the allegations; AND
 - Notice of the hearing shall be made on counsel of record and CASA (if appointed); AND
 - DCFS to provide notice to any foster caregiver providing care for the child of the date, time, and location of the hearing and that the recipient has the right to attend and be heard.

PRACTICE TIPS:

- **Timing of Disposition Hearing:** The court should ask if parties have an objection to holding the Disposition Hearing immediately after the Adjudication. Time may be needed to resolve paternity or maternity issues; conduct medical, sensory, psychological, or psychiatric examinations; obtain evidence; secure witnesses; further investigate placement possibilities; file case plan and court reports; etc.
 - **Include Other Agencies:** Coordinating services with the Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful, and the court may want to consider having one or more represented at the Disposition Hearing. This multi-disciplinary approach could be especially critical for youth who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated services and supports.
 - **Notice or Schedule Hearings in Open Court:** The court may schedule future hearings and serve notice in open court.
-

(6) ARRANGEMENTS FOR ANY INCARCERATED PARENT: Be made to attend hearing, either in person or remotely.

L. CASE MANAGEMENT

(1) ENGAGEMENT:

- Specifically, ask parents and children if they understand what occurred at the hearing and engage them in a conversation about the next steps.
- Ask parents (and children, if appropriate) if there is anything the court and other stakeholders involved could do to support their efforts to reunify their family (if reunification is still viable)?
- Advise parents of the importance of their active participation in all proceedings.
- Advise parents of the rigorous timeframes for child abuse and neglect cases outlined in State and Federal laws.
- Advise parents of the consequences for failure to appear at any further court hearings.
- Ensure that parents and children have contact information for caseworkers and attorneys and understand the process to request court review if necessary.
- Ask if there are any questions for the court.
- It is helpful for children and parents to be able to meet very briefly with their attorneys after the hearing so that the attorneys can address immediate issues.

(2) PREPARATION FOR NEXT HEARING:

- Identify tasks to be accomplished by the various parties for the next hearing.
- Make oral findings and orders that all participants can understand.
- Consider the appropriateness of mediation, and order if applicable (Article 435 et seq.).
- An attorney or the court is responsible for the completion of the Adjudication Order. See Adjudication Order Template.
- All attorneys and unrepresented parties should review the Order before the judge signs it to ensure it accurately reflects the proceeding.
- Time permitting, best practice is to sign the Order on the same day as the hearing.
- Ensure all Orders are written, signed, copied, and distributed at the end of the hearing.
- Provide parents with a copy of the Order immediately following the hearing.

M. POSSIBLE NEXT STEPS

ARTICLES 330, 622(D), 631, 667-8, 681, 683, 700, 710

(1) SPECIAL MOTIONS AND DISCOVERY: Articles 635 and 651-658 provide various motions and discovery that can take place between the filing of the Petition and the Adjudication and Disposition Hearings.

(2) DISPOSITION HEARING:

- **Timing:** The Disposition Hearing may be conducted immediately after the Adjudication and shall be conducted within 30 days after the Adjudication.
- **Continuance:** After notice to the opposing party and upon a showing of good cause, the court may grant, deny, or restrict a requested continuance of the hearing in accordance with the best interests of the child. If a continuance is granted, the court shall issue a written Order identifying the mover and reciting the particular facts justifying the continuance.

(3) VACATION OF ADJUDICATION:

- **Motion:** On motion of the child or a parent, an Adjudication shall be vacated, and a new Adjudication Hearing ordered if, after a contradictory hearing, the court finds that:
 - The Adjudication was obtained by fraud or mistake sufficient to justify vacating the Adjudication;
 - The court making the Adjudication lacked jurisdiction; OR
 - New evidence not previously discoverable by due diligence requires vacating the Adjudication in the interest of justice. A motion based on this ground must be brought within 1 year of the Adjudication.
- **Interest of Justice:** In the interest of justice, the court may vacate an Adjudication prior to Disposition.

(4) APPEAL: The appeal process in CINC proceedings is governed by Title III of Chapter 9 of the Children's Code (Articles 330-338). Timelines for appeals in CINC proceedings differ from timelines for appeals in the Louisiana Code of Civil Procedure. In CINC proceedings, an appeal may be taken only after a Judgment of Disposition.



APPENDIX

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/has 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.

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

ADJUDICATION ORDER

THIS CAUSE came for Adjudication pursuant to Louisiana Children’s Code Articles 659-667 on the _____ day of _____, 20____, pursuant to a Child in Need of Care Petition filed on the _____ day of _____, 20____, concerning the following child(ren), _____, _____, and parent(s), _____.

I. APPEARANCES

The child(ren), _____, is/are present.

The child(ren), _____, is not present and: *(Please check the applicable box for each child)*

the child, _____, is age 12 or older, counsel moved to waive the child’s appearance, and the court grants the waiver.

the child, _____, is younger than 12 years of age, and counsel did not request the child’s appearance.

_____.

Parent _____	Department of Children and Family Services
Parent’s Attorney _____	Staff/Representative _____
Parent _____	Foster Parent(s), Pre-adoptive Parent(s), Relative(s)
Parent’s Attorney _____	Providing Care for Child(ren) _____
Caretaker(s) _____	_____
Child(ren) Attorney(s) _____	Assistant District Attorney _____
_____	Bureau of General Counsel _____
Others _____	

II. NOTICE

THE COURT FINDS that: *(Please check the applicable boxes)*

- the parent(s), _____, has been properly served and summoned.
- the parent(s), _____, has not been properly served and summoned.

THE COURT FINDS that: *(Please check the applicable boxes)*

- the foster parent(s), pre-adoptive parent(s), or relative(s), _____, providing care for the child(ren), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was given by the Department; and, that diligent efforts were made by the Department to locate and notify the absent caregiver.
- the foster parent(s), pre-adoptive parent(s), or relative(s), _____, providing care for the child(ren), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was not given by the Department; and, that diligent efforts were not made or were made by the Department to locate and notify the absent caregiver.

III. INDIAN CHILD WELFARE ACT

The Court asked each person whether he or she knows or has reason to know that the child(ren) is a member of a federally recognized Indian Tribe or is eligible for membership in a federally recognized Indian Tribe and is the biological child of a member of a federally recognized Indian Tribe, pursuant to 25 U.S.C. § 1903. The Court has instructed each person before the Court to inform the Court if he or she subsequently discovers information indicating that the child(ren) is a member of a federally recognized Indian Tribe or eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian Tribe, pursuant to 25 U.S.C. § 1903.

THEREFORE, the Court finds that there is reason to know child(ren), _____, no reason to know that child(ren), _____, is a member of a federally recognized Indian Tribe or eligible for membership in a federally recognized Indian Tribe and is the biological child of a member of a federally recognized Indian Tribe, pursuant to 25 U.S.C. § 1903, at this time.

IV. PATERNITY/MATERNITY

THE COURT FINDS that: *(Please check the applicable boxes)*

paternity/maternality has been determined for child(ren), _____, pursuant to Louisiana laws.

paternity/maternality has not been determined for child(ren), _____, pursuant to Louisiana laws.

V. FINDINGS AND ORDER

THE COURT FINDS that: *(Please check the applicable boxes)*

the evidence does not warrant an Adjudication of child(ren), _____, in need of care or family in need of services.

the parent(s), _____, **stipulate** that the child(ren), _____, are in need of care and knowingly and voluntarily consent to the judgment:

without admitting to the allegations of the Petition after being advised of their rights by the Court and their attorney;

and admit to the allegations of the Petition after being advised of their rights by the Court and their attorney;

If admitting, the Court finds that: *(Please check the applicable box)*

there is a factual basis for Adjudication;

there is not a factual basis for Adjudication;

If there has been a stipulation, whether admitting or not admitting:

The requirements of Article 647 have been met, and a Pre-Hearing Conference was convened in accordance with Article 646.1 on the _____ day of _____, 20____.

the following grounds in Article 606(A) were not proven/dismissed by the State as to: _____

the State proved the allegations set forth in the Petition by a preponderance of the evidence and the evidence warrants a Child in Need of Care Adjudication in accordance with Article 606(A).

the evidence demonstrates that the child's family is in need of services.

considering exceptional circumstances, the Court will take the matter under advisement for a maximum of 10 days.

VI. ORDER

THE COURT ORDERS that: *(Please check the applicable boxes)*

the matter be dismissed for child(ren), _____.

child(ren), _____, are adjudicated in need of care in accordance with Article 606(A) _____ (1-8).

the family of the child(ren), _____, is adjudicated in need of services and, therefore, proceed to a Disposition in accordance with Chapters 10 and 12 of Title VII of the Children's Code.

VII. FURTHER ORDERS

THE COURT FURTHER ORDERS the following as necessary and appropriate: *Please check the applicable boxes*):

IT IS FURTHER ORDERED that a Predisposition Investigation be conducted by _____ in accordance with Article 668, and a written report of the investigation and findings be submitted to the court prior to the Disposition Hearing.

IT IS FURTHER ORDERED that a physical evaluation and examination be conducted in accordance with Article 669 on parent(s), _____ / child(ren), _____.

IT IS FURTHER ORDERED that a mental evaluation and examination be conducted in accordance with Article 669 on parent(s), _____ / child(ren), _____.

IT IS FURTHER ORDERED that the Department make arrangements to motion for DNA tests to determine the paternity/maternity of any alleged parents and that alleged parents comply.

IT IS FURTHER ORDERED that the Department immediately assess all possible placements with suitable relatives and individuals with the results and/or updates to be presented at the Disposition Hearing.

IT IS FURTHER ORDERED that the Department initiate child welfare background clearance, criminal background check, and/or assessment of the home or home study on the following relative(s) or individual(s), _____.

IT IS FURTHER ORDERED that the Department initiate an Interstate Compact for Placement of Children (ICPC) process for the following out-of-state relative(s) and/or individual(s), _____.

IT IS FURTHER ORDERED that the following visitation rights between the child(ren), _____, and the parents, caretakers, siblings, or other family members of the child(ren) pending the Disposition are established: _____.

IT IS FURTHER ORDERED that prior to every family team meeting (FTM) hereafter conducted in this case, the Department shall provide reasonable notice of said FTM to all parent(s), caretaker(s), child(ren), foster caregivers, CASA workers, and attorneys for child(ren) and attorneys for parent(s)/caretaker(s).

The next date for FTM is tentatively set for the _____ day of _____, 20____, at _____ am/___pm.

IT IS FURTHER ORDERED that: _____.

VIII. ORDERS OF NOTICES AND FUTURE HEARINGS

IT IS FURTHER ORDERED that the parent(s) of the child(ren), all attorneys of record, the DCFS representative(s), and CASA be present at all future hearings.

IT IS FURTHER ORDERED that the case plan shall be filed with the Court at least 10 days prior to the Disposition Hearing and that, upon filing, copies shall be provided by mail or email to counsel and unrepresented parties by certified mail or electronic mail in accordance with Article 674.

IT IS FURTHER ORDERED that the Department file its court report with the Court at least 10 days prior to the Disposition Hearing and that copies be provided to CASA, counsel, and unrepresented parties.

IT IS FURTHER ORDERED that CASA shall file its court report with the Court at least 10 days prior to the Disposition Hearing and copies be distributed to counsel, unrepresented parties, and DCFS prior to at the same time submitted to the Court.

IT IS FURTHER ORDERED that:

Upon ordering the matter be set for Disposition Hearing, the clerk shall notify all parties of the date, time, and location of the hearing and that all parties of interest appear; the Sheriff's Office serve the parent(s) with a summons commanding him or her to appear at Court for the hearing; the Department shall provide notice to the parent(s) of the date, time, and location of the hearing; notice of the hearing be made on the child and parent representation programs and CASA (if appointed); the Department provide notice to any foster parent, pre-adoptive parent, or relative providing care for the child(ren) of the date, time, and location of the hearing and recipients right to attend and be heard; and for any parent(s) incarcerated, _____ arrange for the parent(s) to attend the hearing, either in person or remotely.

This matter has been set for **DISPOSITION** on the _____ day of _____, 20____, at _____ am/ __pm.

THUS DONE AND SIGNED ON THIS _____ day of _____, 20____, in _____, Louisiana.

JUDGE

DISTRIBUTION OF NOTICE

Please serve all parties and counsel of record as follows:

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Child(ren) Attorney(s): _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Assistant District Attorney/Bureau of General Counsel:

Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Please send notice and copy of order as follows:

Department of Children and Family Services Staff/Representative:

Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

CASA: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Other: _____
Role: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

DISPOSITION HEARING

La. Ch. C. arts. 678-686

LOUISIANA
CHILD IN NEED OF CARE BENCHBOOK
FOR JUVENILE JUDGES

SECTION

8

INTRODUCTION

A. GENERAL CONSIDERATIONS

The Disposition Hearing is a critical hearing in the Child in Need of Care (CINC) process. At this hearing, the court will make its post-adjudication ruling regarding the child’s Disposition (i.e., custody to a parent, custody or guardianship to a relative or suitable person, custody to the Department of Children and Family Services (DCFS), etc.). One of the most important decisions the court will make in a CINC proceeding is whether to remove or continue the removal of the child from his/her parents¹ custody.

Families are the cornerstone of our society, and judges should avoid unnecessary separation of the child and family if the child can remain safely in his/her home.² The best plan is the one that is least restrictive and most family like. Judicial determinations to remove a child from his/her parents should only be made based on legally sufficient evidence that a child cannot remain safe in the parent’s custody.

There is well-documented scientific research on the psychological and physiological impact removing a child from his/her home. The extent of the impact can depend upon a number of factors, such as age, stage of development, race, family structure, and type of abuse or neglect experienced. Additional factors such as the child’s socio-economic background, culture, customs, and traditions may also be significant. The impact of removal of a child from the home when these factors are present can far outweigh the harm allegedly inflicted on a child by his/her parents.

Dr. Alan Shapiro, Assistant Clinical Professor of Pediatrics at Albert Einstein College of Medicine, has examined the acute and long-term harms caused by family separation.³ According to Dr. Shapiro, “separation can impact children in various ways, including developmental regression, depression, difficulty sleeping, and acute stress.” Dr. Shapiro also notes that “[t]he younger you are when you’re exposed to stress...the more likely you will have negative health outcomes caused by dysregulation of stress response.” That dysregulated stress response, in turn, “leads to architectural changes in the brain—which means that in the future children might end up with serious learning, developmental and health problems.” Dr. Shapiro further asserts that the separation of children from families may also lead to long-term chronic medical conditions like cardiovascular disease, hypertension, obesity, and decreased longevity.⁴

Exposure to trauma in childhood can both stunt cognitive development and alter a child’s brain structure in profound ways.⁵ A groundbreaking 17,000-patient study called the Adverse Child Experiences (ACEs) Study, conducted by Kaiser Permanente and the Centers for Disease Control and Prevention, found that exposure to traumatic events in childhood is strongly correlated with increased risk of suicide attempts, drug addiction, depression, chronic obstructive pulmonary disease, heart disease, and liver disease.⁶

1 The plural form of “parent” is used throughout the Benchbook for simplicity, even though at times only one parent has been identified in a case.

2 Gatowski, S., Miller, N., Rubin, S., Escher, P., & Maze, C. (2016) Enhanced resource guidelines: Improving court practice in child abuse and neglect cases. Reno, NV: National Council of Juvenile and Family Court Judges, p. 14 [hereinafter Gatowski].

3 Goydarzi, Sara. (2018) Separating families may cause lifelong health damage, *Scientific American*, <https://www.scientificamerican.com/article/separating-families-may-cause-lifelong-health-damage/>

4 Judges are encouraged to obtain training in Trust-Based Relational Intervention (TBRI®) and to encourage other child welfare stakeholders involved in their CINC cases to obtain TBRI® training. See <https://crossroadsnola.org/tbri/> for training opportunities in your area. Listed on the California Clearinghouse for Evidence Based practices, TBRI® is an attachment-based, trauma-informed intervention that is designed to meet the complex needs of vulnerable children. TBRI® educates and equips caregivers with knowledge and skills that empower them to provide healing care for a child who has experienced trauma. In addition to successful use by families, TBRI® has been used in multiple settings to effect change, including intensive home programs, residential treatment centers, schools, and courtrooms.

5 Carnes, Stephanie. (2018) The trauma of family separation will haunt children for decades, HUFFINGTON POST, https://www.huffingtonpost.com/entry/opinioncarnes-family-separation-trauma_us_5b2bf535e4b00295f15a96b2.

6 More detailed information about the study can be found in “Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults,” published in the *American Journal of Preventive Medicine* in 1998, Volume 14, pages 245–258, [https://www.ajpmonline.org/article/S0749-3797\(98\)00017-8/abstract](https://www.ajpmonline.org/article/S0749-3797(98)00017-8/abstract)

In addition to the physical and emotional ills that befall children placed in foster care, the long-range effects of removal decisions are staggering. A study⁷ that tracked at least 15,000 children between 1990 and 2002 found higher delinquency rates, higher teen birth rates, and lower wage earnings among children placed in foster care as compared to similarly situated children who remained in their homes.⁸ A recent investigative report that conducted a confidential survey of 6,000 prison inmates from 12 States determined that 1 in 4 inmates had been in foster care.⁹

Judges tasked with the authority to decide whether or not to continue a child in an out of home placement are in a challenging and powerful position that can impact a child's entire future.¹⁰ When children are removed from their parents, they may end up separated from siblings, extended family, friends, community, and belongings. These children may be placed with adults and other children they do not know, who might not look like them, speak their language, or follow their family's customs. They may be disconnected from school, activities, and adults they trust. Removing a child is a colossal decision and one that should be made only when necessary to keep the child safe, but with due respect for the rights of parents, children and the institution of the family. Given the constitutional rights of parents and the grave harm and long-term consequences children removed from their homes may face, the significance of the Disposition Hearing is profound.

If the child does not remain in DCFS custody, routine court review can end. The court may order the Judgment of Disposition remain in force until the child reaches his/her 18th birthday or order a different duration. The court retains continuing jurisdiction over all subsequent custody matters regarding a child adjudicated in need of care, including visitation. Any party to the action has the authority to seek a modification of Disposition when the facts and law deem it appropriate.

If legal custody is awarded to DCFS, the court must review and approve both the case plan and recommended goal for the family at the Disposition Hearing. Similarly, if the court orders DCFS supervision when DCFS does not have custody of the child, there may still be a case plan for the court to review (i.e., child in custody of parent, child in custody of a relative, etc.).

B. PRIOR TO THE HEARING

The Children's Code requires DCFS to submit the initial case plan at least 10 days prior to the Disposition Hearing. While the Children's Code does not specifically require that DCFS also submit a court report (or court letter) in advance of the hearing, DCFS policy directs such submission at least 10 days prior to the hearing.¹¹ If the court has appointed a Court Appointed Special Advocate (CASA), the CASA program will also submit a report to the court. While no specific timing is required (unless set forth in local court rules), it is best practice for CASA to submit its report 10 days prior to the hearing.

The court may have ordered that physical and/or mental health evaluations be conducted on a parent and/or the child in advance of the Disposition Hearing. The Children's Code also allows the court to order a Predisposition Investigation after Adjudication to help assist the court in making decisions at the Disposition Hearing. A Predisposition Investigation will provide the case worker with a thorough assessment of the circumstances, needs, and social history of the child and his/her family. It also requires an assessment of the child's established and significant relationship with a parent, grandparent, sibling, or other relatives which should be preserved. While the court report that is submitted by DCFS in advance of the hearing should include some of this information, a report from a Predisposition Investigation may be more comprehensive.

Any relatives and/or individuals willing and able to be considered for custody and/or guardianship of the child need to be assessed at the earliest juncture possible in CINC cases and ideally by the time of this hearing. For this reason, the court may have ordered DCFS to conduct a background check and/or a home study on a relative or other individual at the Continued Custody or Adjudication Hearing, for example.

7 In order to avoid results attributable to family background, extreme cases of abuse or neglect were screened out and instead, "on the margins" cases were used. The study defines "on the margins" decisions as instances where there was disagreement by child protection investigators as to whether removal was necessary. By using the removal tendencies of investigators as an instrumental-variable (i.e., a variable that induces change in the explanatory variable but has no effect on the dependent variable), the study identifies the effects of foster care placement on child outcomes for school-aged children. This study provided the first "viable, empirical evidence of the benefits of keeping kids with their families," and confirms that children who remain in their home have better long-term well-being outcomes than children who were removed and placed in foster care.

8 Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 *Am. Econ. Rev.* 1583 (2007).

9 Bauer, L. & Thomas, J. (2007) *Throwaway Kids*. Kansas City, KS: The Kansas City Star, <https://www.kansascity.com/news/special-reports/article238206754.html>.

10 Gatowski, supra note 2, at 107.

11 DCFS Policy 6-808 "Disposition" (August 17, 2020).

C. TIMING, NOTICE, AND PRESENCE

The Disposition Hearing may be conducted immediately after the Adjudication Hearing but shall occur within 30 days of the Adjudication Hearing. The articles regarding Disposition allow for continuances with notice and good cause if in the child's best interest, with no maximum timeframes specified. Sometimes a continuance is requested when relatives or other individuals have not been assessed, previously ordered evaluations have not been completed, or an individual seeking to be considered as a custodian is not available to testify at the hearing. The contempt articles are always available to the court if appropriate; for example, if investigations and/or evaluations previously ordered to be completed prior to the hearing have not been completed on time, or the case plan is unnecessarily delayed.

At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. The court shall not admit any person who does not have a proper interest in or is not necessary to the proceedings. As in all CINC hearings, the parents and children have a right to be present, as do foster caregivers (i.e., foster parents, pre-adoptive parents, and relatives) caring for the child and CASA (if appointed).

The court shall confirm that proper notice was given to parties and counsel. Written notice of the date, time, and place of the hearing shall be served and return made in the same manner as a Petition on all parties and counsel of record at least 15 days prior to the hearing unless the parties have been notified in open court at a prior hearing. DCFS also has a duty to provide notice to the parents and foster caregivers, and the court shall confirm that notice was properly given. The court should determine whether notice has been proper if any party or appropriate person is absent at the hearing.

For all parties present, the court is responsible for providing and paying for interpretation, translation, and/or language assistance services and reasonable accommodations for those with disabilities.¹² There must be ample time for legal interpreters to review pertinent legal documents prior to the court proceeding.¹³ Interpreters must be familiar with the case-related details to provide an accurate, meaningful, and effective interpretation.¹⁴

Both the parent's voice and that of the child—whether in person or through the child's attorney—should inform the significant decisions made at Disposition. Effective Disposition Hearings require adequate court time and properly trained and prepared lawyers. Lawyers must be expected to do their job and come to court with a clear position on the case after consulting with their client.¹⁵ Before the case is called, the judge should inquire whether counsel for the parent and counsel for the child had sufficient opportunity to consult with their clients, thereby ensuring due process for the family.

D. EVIDENCE AND TESTIMONY

The Disposition Hearing requires the court to consider several items, including the Predisposition Report (if ordered), the case plan (which includes the Youth Transition Plan (YTP) for youth 14 years of age and older), any reports of mental evaluation, and all other evidence offered by the child or the State relating to the proper Disposition. Because the Dispositional alternatives include granting custody to a relative or guardianship to a relative or other suitable person, parties may want to call any person seeking to be considered as a witness. Foster caregivers also have a right to be heard at the Disposition Hearing and, as the day-to-day caregivers of the child, likely have valuable information for the court.¹⁶

¹² For more information see: https://www.lasc.org/language_access and https://www.lasc.org/District_Court_Rules?p=Title. See also: C.C.P. Art. 192.2, R.S. 46 § 2364, (42 U.S.C. §3711), 28 U.S.C. § 604(a)(14), (15), and (16), § 1827, and § 1828.

¹³ National Consortium of Interpreter Education Centers (March 2009) Best Practices American Sign Language and English Interpretation within Legal Settings, p.30. (<http://www.interpretereducation.org>).

¹⁴ Id.

¹⁵ Gatowski, *supra* note 2, at 259.

¹⁶ See La. Ch. C. arts. 623 and 679; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

E. DISPOSITIONAL ALTERNATIVES

The court has multiple alternatives for custody or guardianship at its disposal. While there is discretion, the court must impose the least restrictive alternative authorized. The least restrictive Disposition is for custody of the child to remain with or be granted to the child's parents, with or without other terms and conditions (such as continuing supervision and/or a Protective Order (PO)). If the court decides to grant custody of a child to a parent who the child has not seen for some time or does not know, for example, the court could require a transition plan as one of the terms and conditions of the order transferring custody.¹⁷

If there are half-siblings, the court should consider granting custody of the child to the sibling's parent if the parent is willing and if appropriate and safe to do so. The sibling's parent may already have a relationship with the half-sibling but even if not, that parent may be inclined to take custody to keep the siblings together.

Judges and all legal stakeholders should be familiar with the Child Welfare Assessment and Decision Making Model (CWADM). The CWADM is a framework DCFS uses to assess safety and risk and the needs and strengths of children and families throughout the life of a case so that courts and DCFS have the best possible information upon which to make decisions with and for families involved with DCFS. A formal safety assessment is required at specific intervals during the life of a case, including at Disposition. If a child has been previously removed from his/her parents, the court should determine if the child can be returned home or removal is still necessary. To make this determination, the court will have to inquire about the current status of: (1) any threats of danger to the child; (2) the child's vulnerability to the threat of danger; and (3) the parent's protective capacities to manage the threats of danger and keep the child safe. The essential inquiries at every CINC hearing should include: 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?

If the court determines that custody of the child should not be granted or returned to a parent at the Disposition Hearing, the court shall advise the parents of their responsibilities and the procedures in CINC cases, as set forth in Article 682. The court must then look to granting custody or guardianship to a relative or other suitable person with a safety plan, PO, and/or other terms and conditions (i.e., court-ordered DCFS supervision) when it is necessary for the safety and protection of the child. The court should consider any potential caregivers proposed by the parents to assess whether they can protect the child's safety and ensure permanency in a timely fashion. The court should confirm that DCFS has investigated all available information on relatives and other persons who have a relationship with the child and/or family and may be a potential caregiver. Updates on this information (i.e., child welfare background clearance, criminal background check, assessment of a home or home study, and/or Interstate Compact on the Placement of Children¹⁸ (ICPC)) should be available by the Disposition Hearing. There are certain circumstances where the court can order DCFS to request expedited placement of a child from Louisiana into another State. However, the receiving State does not have to honor that request. If a relative or individual is identified out-of-State and the child is not in DCFS custody, a courtesy assessment of the home can be requested to obtain information regarding the family outside the ICPC process. The out-of-State agency is not legally obligated to conduct a courtesy assessment, however cooperation amongst State agencies to complete the requested courtesy assessment is seldom denied.

If the court grants custody or guardianship to an out-of-State relative or individual, the court shall provide specific written findings in the order as to why the placement is safe, appropriate, and in the child's best interest. In order for DCFS to place a child with a relative or individual in another state, the ICPC home study must be approved. The ICPC process does not have to be completed for the court to grant custody or guardianship of the child to a relative or individual out-of-State but DCFS will not monitor the placement in that circumstance.

If the court does not grant custody to a relative at the Disposition Hearing, the court shall make specific findings as to why this is not in the child's best interest (unless the court grants custody to one or both parents). While the Children's Code states that these specific written findings shall become part of the record, best practice is to include them in the Judgment of Disposition.

¹⁷ Gatowski, *supra* note 2, at 214.

¹⁸ La. Ch. C. art. 1608 et seq.

If the court determines that custody or guardianship of the child cannot be granted to a relative or suitable person, then the court may grant or maintain custody of the child to or with the State through DCFS. DCFS is responsible for determining the child's placement, although a court can disapprove the placement in certain circumstances per Article 672(A)(2). If DCFS has not placed the child with his/her siblings, the court should ascertain whether DCFS has made reasonable efforts to place siblings in the same placement or otherwise arranged for visitation. However, DCFS does not have to make reasonable efforts if it documents that placement of siblings together or continued interaction would be contrary to the safety or well-being of any siblings.¹⁹ The court's role is to hold DCFS accountable to showing evidence of such efforts.

The court shall give specific written reasons for its Disposition findings in the Judgment of Disposition. Unless a judicial determination has been made that they are not required under Article 672.1, reasonable efforts findings shall be made regarding efforts to reunify the family if the child was removed prior to the Disposition and the court maintains the custody of the child with DCFS at the Disposition Hearing. If the child is removed at Disposition for the first time, reasonable efforts findings shall be made regarding efforts to prevent or eliminate the need for removal unless an Article 672.1 judicial determination has been made that reasonable efforts are not required. The court shall also make the contrary to the welfare finding if the child is removed at Disposition for the first time.

At times it may be helpful to coordinate services with Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies to prevent removal, expediate reunification, and achieve permanency for child. The court may want to consider having one or more represented at the Disposition Hearing. This multi-disciplinary 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.

F. CASE PLAN

If the legal Disposition of the case is to grant custody to DCFS or to a parent or relative with court-ordered DCFS supervision, the judge must rule on the initial case plan submitted by DCFS. The reasonableness of the case plan is critical to an accurate determination of the parents' willingness and ability to make the adjustments necessary for the safety of their child. Both DCFS and the court bear joint responsibility for the development of the case plan. DCFS proposes the case plan but the court reviews the plan and either approves or disapproves it (in whole or part).

The specific grounds upon which the child was adjudicated should guide the formation, implementation, and approval of the case plan. The case plan should identify the safety and risk issues and conditions for return of the child, including the measures designed to enhance the parent's protective capacities to manage the identified threats of danger. The judge should carefully review the case plan and consider the arguments of the parties and evidence presented to determine whether the proposed services address these issues, are accessible, and are culturally and linguistically appropriate. Court review should ensure that the case plan requirements are important elements of parental rehabilitation and feasible within the stated time limitations.²⁰

The case plan should include a recommended monetary contribution that the parent pays to the State. The court can make the determination for a monetary contribution pursuant to Article 685, rather than taking the recommendation of the State. However, no monetary contribution should be required if there is already a child support order against the parent, or if one is instituted in the future.

The case plan should also identify any needs of the child and the services to be provided to meet those needs. In addition, the case plan should set forth the terms and conditions of visitation/family time with parents and siblings as well as other relatives or individuals in the best interest of the child. It should be noted that visitation should not be used as a mechanism to reward or punish parents or children, but should be liberal, presumed unsupervised, and occur as frequent as possible unless there is a demonstrated safety risk to the child.

¹⁹ For all placements, the State must make a "reasonable effort" to place siblings in the same foster care, kinship guardianship, or adoptive placement. If the siblings are removed from their home and not jointly placed, the State must make a "reasonable effort" for frequent visitation or other ongoing interaction between the siblings. The State does not have to make a "reasonable effort" if the State documents that such a joint placement or continued interaction would be contrary to the safety or well-being of any of the siblings. Retrieved from: <http://www.ncsl.org/print/cyf/FosteringConnectionsSummary.pdf>.

²⁰ La. Ch. C. Article 684, Authors' Notes.

The court should take time reviewing the case plan to confirm that all parties understand it and what is expected of them. If the court is dissatisfied with the proposed case plan or any parts therein, it can disapprove it and require DCFS to revise the plan.²¹

The initial case plan must be prepared within 60 days after the child enters DCFS custody. However, DCFS policy requires the case plan to be initiated within 30 days of when the child enters DCFS custody or a Family Services case is opened and finalized within 45 days. The Children’s Code mandates that the case plan be filed at least 10 days before the Disposition Hearing. While this practice is not followed in some jurisdictions, it is an important step in achieving timely permanency and ensuring due process. Parties have the right to respond to the case plan and will not be able to do so if it is not filed timely. Courts should insist on timely filing.

It is of paramount importance that the judge ensures parental involvement in the case planning process. Parents should have an opportunity to object to the case plan and have their objections heard by the judge or documented in writing with the assistance of counsel. Children should also be involved in their own case planning when appropriate.²² Federal law requires that children 14 and older be actively engaged in the development of their case plan.²³

The case plan should include a case plan goal proposed by DCFS. Most case plans start with a concurrent goal of reunification and adoption. The court will either approve or not approve the initial case plan in whole or part, which includes the case plan goal. If the court does not approve any part of the case plan, best practice is to order DCFS to make revisions and schedule a hearing to review the revisions (for example, within 30 days). Sometimes all parties can come to an agreement at the hearing so that another hearing is not necessary. Still, the Judgment of Disposition should clearly reflect any specific amendments made and that all parties agree to the amended case plan.

An attorney or the court is responsible for completing the Judgment of Disposition. All of the attorneys and unrepresented parties should review the judgment before the judge signs it to ensure it accurately reflects the proceeding. An attorney or the court is responsible for completing the Judgment. Time permitting, best practice is to sign the Judgment on the same day as the hearing, or as soon thereafter as possible.

G. NEXT STEPS

The Disposition Hearing is a complicated hearing. The court should ask the parents and children if they understand what occurred at the hearing and ask if they have any questions. In addition, it can be helpful for attorneys to have the opportunity to meet briefly with their clients right after the hearing to address immediate concerns.

If applicable, the court should ask questions about transition planning at the hearing. Depending on the age of the child, best practice may be to transition the child to the parent’s home rather than having an instantaneous upheaval. In some jurisdictions, DCFS promulgates a transition calendar with the input of all involved. The court can order a transition period with a goal date for reunification.

When a transition of any kind occurs for the child (i.e., change in placement or custody, etc.), it is critical to the child’s well-being for judges to collaboratively strategize with all involved to reduce the trauma experienced by the child in the transition. DCFS has developed tools to try to minimize this trauma, including a guide for planful transitions. Transition plans can include multiple, extended visits, such as overnight visits as well as other additional contacts including Zoom, FaceTime, etc. to ensure the most positive experience possible for the child.²⁴ These activities should occur both prior to the move and after the move to provide the child a less traumatic separation from previous caregivers and connect to the new caregivers.

²¹ Gatowski, *supra* note 2, at 230.

²² Gatowski, *supra* note 2, at 214.

²³ Gatowski, *supra* note 2, at 219.; For more information about Federal laws supporting youth in foster care transitioning to adulthood, please see: https://www.americanbar.org/content/dam/aba/administrative/child_law/youthengagement/quick-reference-guide-laws.pdf.

²⁴ DCFS Policy 6-305 “Guidelines for Care Setting Decision Making for Children Under Age Six” (March 15, 2019).

If custody is granted to the State through DCFS, the order is subject to Federal statute and regulations known as “permanency planning” requirements. There are two separate components of permanency planning: (1) the initial case plan and its review hearing process and (2) the identification of a permanent plan for the child and its review process. While not a requirement, it is advisable for courts to follow the review hearing process in a court-ordered DCFS supervised case (i.e., DCFS Family Services case) as well.




The court will want to schedule the initial Case Review Hearing in the Judgment of Disposition. The initial Case Review Hearing shall be set within 3 months of the Disposition if the child was removed prior to Disposition or within 6 months if the child was removed at Disposition. However, the hearing can certainly be set sooner than these timeframes and should be driven by the facts and circumstances in each individual case. Additionally, the court could set a Status Hearing if there are issues that need to be addressed or resolved prior to the Case Review Hearing. For example, if parts of the case plan need to be revised, the court should set a hearing. Or, if the child has recently moved to a new placement, the court may want to see how the child is adjusting sooner rather than waiting for the Case Review Hearing.

While it may be difficult to do, the parents’ and children’s schedules should be taken into consideration when scheduling subsequent hearings. For example, if parents are working it is critical that they not be required to miss too many days since family stability is an important component of CINC cases. Similarly, a child’s school schedule should be discussed before the date and time of any hearing is set.

Some courts schedule the initial Permanency Hearing in the Judgment of Disposition. A court may certainly set a subsequent Case Review Hearing at the same time as the Permanency Hearing.

Any person directly affected may appeal the Judgment of Disposition findings or orders of the court.

OUTLINE

-  **A. PRIOR TO THE HEARING**
-  **B. TIMING AND CONTINUANCES**
-  **C. APPEARANCES**
-  **D. NOTICE**
-  **E. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS**
-  **F. EVIDENCE AND TESTIMONY**
-  **G. JUDGMENT OF DISPOSITION**
-  **H. REASONABLE EFFORTS FINDINGS**
-  **I. CASE PLAN CONTENT**
-  **J. CASE PLAN FINDING AND ORDER**
-  **K. ADVISEMENTS**
-  **L. FURTHER ORDERS**
-  **M. ORDER OF NOTICES AND FUTURE HEARINGS**
-  **N. MODIFICATION OF DISPOSITION**
-  **O. CASE MANAGEMENT**
-  **P. POSSIBLE NEXT STEPS**
-  **Q. APPENDIX**

(1) DISPOSITION HEARING BENCH CARD

(2) JUDGMENT OF DISPOSITION TEMPLATE

(3) DEPARTMENT OF CHILDREN AND FAMILY SERVICES DISPOSITION COURT REPORT TEMPLATE

OVERVIEW

A. PRIOR TO THE HEARING

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

(1) CASE PLAN FILED BY DCFS:

- **FILING:** DCFS shall file a copy of the case plan with the court at least 10 days prior to the Disposition Hearing, which shall include the YTP if the child is 14 years of age or older. See the [Department of Children and Family Services Case Plan Template](#) and [Department of Children and Family Services Youth Transition Plan \(YTP\) Template](#) in the [Appendices Benchbook Section 12](#).
- **PROVIDE COPIES:** Upon filing, DCFS shall provide a copy of the case plan to:
 - Counsel of record either by mail or electronic mail; AND
 - Any unrepresented party either by certified mail at his/her last known address or by electronic mail at the address expressly designated by the party in a pleading, at the Continued Custody Hearing (CCH) or Continued Safety Plan Hearing (CSPH), or at any other hearing at which the party personally appeared before the court, unless otherwise ordered by the court for good cause.
- **RESPONSE:** Any party may file a written response to the case plan as submitted.

PRACTICE TIPS:

- **Timing for Development of Case Plan:** Federal and State law require that the case plan be developed no later than 60 days from a child entering DCFS custody. However, DCFS policy provides shorter timelines for developing the case plan.²⁵ When the child is in DCFS custody, DCFS initiates the case plan within 30 days of the child entering foster care and finalizes the plan within 45 days.²⁶ When the case involves a DCFS Family Services case (i.e., child is in the custody of his/her parents, in-home safety plan, etc.), DCFS initiates the case plan within 30 days of DCFS opening the Family Services case and finalizes the plan within 45 days. The case plan must be updated every 6 months after that until the case is closed.²⁷
- **CASA Can Request Copy:** CASA can request a copy of the case plan (Article 424.6).
- **Transmission by Email:** Service by electronic mail is complete upon transmission but is not effective if the serving party learns the transmission did not reach the party to be served.
- **Purpose of Response:** Filing a response puts the parties on notice of potential issues relevant to the case plan. However, the Children's Code does not require a written response.

HELPFUL GUIDANCE:

- **Signed by Family Members:** Per DCFS policy, case plans should be signed by the family members who participated in developing it.

²⁵ See La. Ch. C. arts. 673-674; 45 § C.F.R. 1356.21; see also Child Welfare Information Gateway. (2018). Case planning for families involved with child welfare agencies. Washington, DC; U.S. Department of Health and Human Services, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/caseplanning.pdf>.

²⁶ DCFS Policy 6-810 "Legally Mandated Case Plan" (August 17, 2020).

²⁷ Id.

- **Family Team Meetings (FTM):** FTMs are facilitated by DCFS and are important because FTMs are where case planning occurs for the family. It is also where parents and children and other stakeholders and supports give valuable input on the case plan, including the services and assistance to be provided or needed. FTMs should include all parents, foster caregivers, CASA, children, and attorneys for the children and attorneys for the parents. Parents and children may permit others to participate in FTMs. Courts should ensure that an FTM was held prior to the Disposition Hearing and that the court has the most current case plan. It is recommended that the FTM be held as closely in time to the hearing as possible (but with enough time for filing the case plan 10 days in advance of the hearing) so that the court can approve the case plan before it is acted upon. Efforts to hold timely and meaningful FTMs support reasonable efforts findings to achieve reunification and/or permanency.

(2) DISPOSITION COURT REPORT FILED BY DCFS:

PRACTICE TIPS:

- **DCFS Policy:** The Children’s Code does not provide a specific article regarding the filing of a court report by DCFS for the Disposition Hearing. However, per DCFS policy, DCFS files a court report prior to the Disposition Hearing (similar to the requirements set forth in Articles 688 and 689 regarding Case Review Reports) to provide the court and parties with information needed at the Disposition Hearing for the court to make required findings. Some jurisdictions call these court reports “court letters,” while others call them according to the hearing name (i.e., Disposition Report, Permanency Report, etc.). Filing the report 10 days in advance helps move the case forward and achieve timely permanency. Adequate representation is harder to achieve when reports or amendments are distributed the day of the hearing or even a few days before a hearing.
- **Provide Copies:** In practice, DCFS provides a copy of the court report to counsel of record, CASA, and unrepresented parties, but there are no provisions in the Children’s Code specifying this requirement. It is recommended that DCFS serve a copy of the court report along with the case plan (which is governed by Article 674 and specified above). If the information provided in the report is considered by the court, there are due process concerns if parties are not able to review it prior to the hearing.
- **Content:** The content of the court report will generally include efforts to assess relatives or other individuals for potential placement, the current placement of the child, conditions for return of the child to his/her home, current information about how the child is doing, updates on visitation, proposed Dispositional alternatives with reasons, and the recommended case plan goal. The court report may also have multiple attachments, including the [Foster Caregiver Progress Form](#) if the foster caregivers providing care for the child chose to submit the form to DCFS prior to the Disposition Hearing. Other attachments may include the [Family Connections Form](#) and [Circle of Influence Form](#) (See the [Appendices Benchbook Section 12](#)). For more information see the Department of Children and Family Services Disposition Court Report Template in the Appendices of Disposition Hearing Benchbook Section 8. **IMPORTANT:** Use of the DCFS Court Report templates provided in this Benchbook for Disposition Hearings, Case Review Hearings, and Permanency Hearings are being implemented in a phased-in approach across the State.
- **Response:** The Disposition Chapter in the Children’s Code does not discuss submission of the court report and, thus, does not mention filing a response to this report. As allowed by Article 691 concerning the Case Review Report, parties should be given the opportunity to file a written response to the court report prior to the Disposition Hearing as long as the response is submitted to counsel of record and any unrepresented party at least 5 days prior to the Disposition Hearing.
- **Timing of Response:** Court reports are not always timely filed. The court has discretion to allow a response later than 5 days prior to the hearing when the filing of the court report is delayed and/or when it is in the best interest of the child.

(3) COURT REPORT FILED BY CASA:

- **FILING:** If the court has appointed CASA, the CASA program shall submit reports to the court. See the [CASA Court Report Template](#) in the [Appendices Benchbook 12](#).
 - **DISTRIBUTE COPIES:** CASA shall distribute a copy of such reports prior to or at the time it is submitted to the court, to:
 - All counsel of record;
 - Any unrepresented party; AND
 - DCFS.
-

☰ PRACTICE TIPS:

- **Timing of Submission:** The Children’s Code does not provide how many days before the Disposition Hearing that the court report should be filed with the court. However, it is recommended that it be submitted within the same timeframe as required for the DCFS Case Review Report (i.e., at least 10 days prior to the Disposition Hearing).
 - **Exception to Submission:** CASA reports may be subject to a Protective Order (PO) upon the request of the CASA volunteer, a party or party’s attorney, or by the action of the judge. If a PO is contemplated, the request should be made at the time the report is filed.
 - **Mode of Distribution:** This article permits a more informal distribution of the court report. Each court by local rule may determine how counsel of record, DCFS, and unrepresented parties receive copies of CASA reports.
-

(4) PREDISPOSITION INVESTIGATION AND REPORT:

- **FILING:** Following Adjudication, the court may have ordered a Predisposition Investigation and that a written report of the investigation and findings be submitted to the court prior to the Disposition Hearing.
 - **ADVISE OF THE FACTUAL CONTENTS AND CONCLUSIONS:** The court shall advise the Petitioner, counsel for the child, and counsel for the parents of the factual contents and the conclusions of the Predisposition Report and any other reports considered by the court.
-

☰ PRACTICE TIP:

- **No Specific Timing for Filing:** Unlike the case plan, the Children’s Code does not provide how many days before the Disposition Hearing that the Predisposition Report must be submitted to the court if DCFS conducted the Predisposition Investigation. However, it is recommended that it be submitted within the same timeframe as required for the case plan (at least 10 days prior to the Disposition Hearing).
-

☰ HELPFUL GUIDANCE:

- **Purpose of Predisposition Investigation and Report:** One of the purposes of the Predisposition Investigation is to evaluate the various possibilities for the child’s placement, custody, or guardianship, including the alternatives enumerated in Article 681. The investigation shall include the circumstances, needs, and social history of the child and his/her family and the circumstances surrounding the factual allegations of the Petition. It shall also assess whether the child has an established and significant relationship with a parent, grandparents, sibling, or other relative which should be preserved in the best interests of the child. If so, DCFS shall include in the case plan arrangements for the child’s continuing contact with such individuals while the child is in foster care.
- **Contact:** Contact includes in-person visitation as well as more limited arrangements such as phone calls, Zoom or FaceTime visits, texts, letters, emails, or simply the exchange of personal information.

(5) PHYSICAL AND MENTAL EVALUATIONS OR EXAMINATIONS:

- **FILING:** Following the Adjudication, the court can order that physical and/or mental health evaluations and examinations be conducted in accordance with Article 669 on parents and/or children if they may be helpful in determining a fair and just Disposition.
- **PROVIDE COPIES TO COUNSEL OF RECORD:** If the court has ordered a mental examination of the child or his/her parents pursuant to Article 669, the court shall provide the Petitioner and counsel for the child and parents with copies of reports submitted in connection with such mental examinations.

☰ PRACTICE TIPS:

- **No Specific Timing for Filing:** Unlike the case plan, the Children’s Code does not provide how many days before the Disposition Hearing that the physical and/or mental health evaluations and examinations should be submitted to the court. However, it is recommended that they be submitted within the same timeframe as required for the case plan (at least 10 days prior to the Disposition Hearing).
- **Physical Examinations:** It may or may not be an oversight in the Children’s Code, but Article 670(B) does not include “physical examinations” even though Article 669 allows the court to order them prior to the Disposition Hearing. It is likely that physical examinations should also be submitted in the same manner as mental examinations.

• OVERALL GUIDANCE:

- **Importance of Timing:** Timelines for submitting case plans and court reports are not followed in some jurisdictions, but they should be. Filing the case plan and court report at least 10 days in advance of the hearing is important for moving the case forward and achieving timely permanency. Parties have the right to review the case plan and report and respond to them (see above); however, they will not be able to respond if DCFS does not timely file these documents and provide copies to counsel of record, unrepresented parties, and CASA (if appointed). Adequate representation is harder to achieve when reports or amendments are delayed, since such delays can make it impossible for counsel to follow up on the information provided and consult with their clients.
- **Local Court Rules and Orders:** When the Children’s Code does not provide a specific procedure on timing or mode of service, such as for court reports, CASA reports, or physical examinations, courts may want to consider setting those requirements by local court rule. Additionally, the court can include such in its written Orders.

B. TIMING AND CONTINUANCES

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

- (1) TIMING:**²⁸ The Disposition Hearing may be conducted immediately after the Adjudication but shall be held within 30 days following the Adjudication. See Article 114 for more information about time computation.

☰ HELPFUL GUIDANCE:

- **Adoption and Safe Families Act (ASFA):** One of the major reform goals of ASFA is to expedite court proceedings so that earlier determinations affecting the child’s health and welfare occur.

²⁸ In computing a period of time prescribed by law, the date of the event after which the period begins to run is not included; the last day of the period is included but if a legal holiday—including Saturdays and Sundays—then the period runs until the end of the next day which is not a legal holiday. La. Ch. C. art. 114.

(2) CONTINUANCES:

- **Requirements:**
 - The court may grant or restrict a requested continuance of the Disposition Hearing:
 - After notice to the opposing party;
 - Upon a showing of good cause; AND
 - If in the best interests of the child.
 - If a continuance is granted, the court shall:
 - Issue a written order:
 - Identifying the mover; AND
 - Reciting the particular facts justifying the continuance.
- **Report to Louisiana Supreme Court (LASC):** If a continuance is granted, or a delay permitted, that exceeds the maximum allowable times established by the Children’s Code, the court is mandated by Supreme Court Rule XXXIII, Part II, Sections 1 and 2, to report such continuance within 10 days to LASC, along with the reasons for the delay and a copy of the Judgment of Disposition. See https://www.lasc.org/children_families/timelinessreport.pdf for a copy of the report that must be submitted by the court to LASC. See also Louisiana District Court Rules, Title V, Chapter 42, Rule 42.1, for more information.

☰ PRACTICE TIPS:

- **Good Cause for Continuance:** For example, if a previously ordered evaluation is not completed, this may be good cause for a continuance.
- **Contempt:** The contempt articles (Articles 1503 et seq.) are always available to the court, if appropriate, when investigations and/or evaluations previously ordered to be completed prior to this hearing have not been completed on time, or the case plan is unnecessarily delayed.

C. APPEARANCES

ARTICLES 607-8, 623, 679, 684

- (1) PROPER INTEREST OR NECESSARY:** At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. The court shall not admit any other person unless it determines that the person has a proper interest in or is necessary to the proceedings.

☰ PRACTICE TIP:

- **Include Other Agencies:** Coordinating services with the Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful. The court may want to consider having one or more of these agencies represented at the hearing. 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.

HELPFUL GUIDANCE:

- **Privacy and Confidentiality:** Limiting the number of persons present in the courtroom protects the privacy of children in CINC cases. The judge is mandated to exclude all but the listed persons unless first determining the person has a proper interest or is necessary to the proceedings. Law students or social workers studying juvenile procedure might qualify as persons with proper interest. If the court allows other persons to be present, the court should stress the confidentiality of the case information.

(2) ESSENTIAL JUDICIAL FUNCTION - ASSISTANCE SERVICES AND SPECIAL ACCOMMODATIONS: Under State and Federal law, the court is responsible for providing interpretation, translation, and/or language assistance services for parties to CINC hearings and/or reasonable accommodations for parties to CINC hearings with disabilities. When the court appoints counsel for indigent persons, it is also responsible for appointing and paying for a qualified interpreter/translator for indigent persons with these needs to assist in communication with counsel in all phases of the preparation and presentation of the case.²⁹ There must be ample time for legal interpreters to review pertinent legal documents with the party prior to the court proceeding.³⁰ Interpreters must be familiar with the case-related details to provide accurate, meaningful, and effective interpretation.³¹

(3) CHILDREN: Children are parties and shall be present at the hearing unless an exception below applies.

- **12 and Older:** If the child is 12 years of age or older, he/she shall be present in court unless his/her presence is waived by the court upon motion of the child's attorney.
- **Below 12:** If the child is below the age of 12 years, he/she shall be present in court upon request of the child's attorney or the court.
- **Waive:** The court shall state in the Judgment whether or not the court waived the presence of the child at the hearing.

HELPFUL GUIDANCE:

- **Waiving Presence at the Hearing:** The child's attorney has an obligation to inform the child of the right to be present at the hearing and facilitate such presence, if appropriate. The judge should engage in an inquiry related to the child's presence at court. If the child's attorney moves to waive the child's presence, for example, the court should ascertain the reason underlying the request. If the child is present, does the child wish to be heard? The court has an oversight role in CINC cases and, as such, should make every effort to ensure that the child has been given enough information about the court process and an opportunity to be engaged in the process.
- **Importance of Presence at the Hearing:** Having all parties present and participating in the hearing is critical for moving the case forward and having a more meaningful hearing. Children are parties to the CINC Proceedings, and their voice is invaluable to decision-making. Having children present can also assist the court in making decisions about a case. Interacting with the child and observing potential medical issues, delays, etc., provides needed information to the court. Although challenging, courts should try to schedule hearings so that children can be present and participate as much as possible. Scheduling to allow the child to attend hearings necessitates knowing about the child's school schedule and other activities. There are different ways to hold hearings given some of the issues that arise with having children in court. For example, some judges hold their hearings in conference rooms instead of courtrooms to be less intimidating to children and parents. Other judges develop creative solutions, such as holding the hearing at a group home or scheduling the hearing after school.

²⁹ See C.C.P. Art. 192.2; La. R.S. § 46:2364; 42 U.S.C. § 3711; 28 U.S.C. § 604(a)(14), (15), and (16), § 1827, and § 1828; see also https://www.lasc.org/language_access and https://www.lasc.org/District_Court_Rules?p=TitleI.

³⁰ See National Consortium of Interpreter Education Centers. (2009). Best practices American Sign Language and English interpretation within legal settings. U.S. Department of Education, Rehabilitation Services CFDA #84.160A and B, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind, <http://www.interpretereducation.org>

³¹ Id.

- **Remaining in the Courtroom:** Prior to the commencement of the hearing, the court shall determine whether it is in the child's best interest for the child to remain in the courtroom during the testimony of the witnesses. If the court has concerns about the child's presence in the courtroom, an option could be that the child be brought outside of the courtroom with someone he/she trusts. While some may argue that attending court hearings is traumatic to children, it is important to remember that they have already lived through the trauma that brought them into the courtroom. Engaging them in planning their future and protecting their safety can actually be empowering.³² Some courts in Louisiana have created sensory rooms for children at the courthouse to address the potential trauma of attending court, such as the Calming Studio located in Caddo Parish Juvenile Court.³³ Some courts provide a therapy dog to help emotionally support children in court.³⁴ The CASA volunteer (if appointed) or foster caregiver (if present) may also be a support to the child in court.

(4) PARENTS: Parents of the children are parties and shall be present at the hearing.

☰ PRACTICE TIPS:

- **Effect of Nonappearance of Parent:** If a parent is absent, the hearing may only proceed if it is established on the record that the parent was served but is not in attendance or that efforts to serve the parent have been unsuccessful.
- **Parent is Absent:** When a parent is absent,³⁵ the court shall enter findings regarding the diligent efforts made by the curator, DCFs, and others to locate that parent. In the absence of findings to the contrary, efforts to locate the parent shall be presumed sufficient. If the court determines that additional search efforts are needed, it shall specifically identify those efforts.
- **Unidentified Father:** If a father is unidentified, it is not necessary to appoint a curator ad hoc for that parent. The father shall be considered unidentified if:
 - The biological father's name is not provided on the birth certificate;
 - There is no presumed father; AND
 - No party to the proceedings or the mother, if not a party, is able to provide a first and last name of a putative father or alias sufficient to provide a reasonable possibility of identification and location.
- **Incarcerated Parent:** To ensure the attendance of any parent who is incarcerated at the Disposition Hearing, a writ or motion should have been filed and an order issued by the court and served on the warden or administrator of the facility prior to the Disposition Hearing. Service should be made sufficiently in advance of the hearing to afford time for the facility to arrange for transportation of the parent to court (or video conferencing where the parent's physical attendance at the hearing is not possible).
- **Direct Parent Present to Identify Other Parents:** If a parent has still not been located, the judge should direct the parent who is present under oath to provide name, address, and whereabouts for any parent who has not been located and emphasize the importance of identifying and locating any absent parents.

³² Gatowski, supra note 2, at 72.

³³ This article provides more information about the Calming Studio: <https://www.shreveporttimes.com/story/news/2019/07/24/caddo-parish-juvenile-court-calm-room-studio/1804662001/> as does this video: <https://www.youtube.com/watch?v=URA4WtXqu1M>.

³⁴ These articles provide more information about how therapy dogs have been used in courts: https://www.americanpress.com/news/local/juvenile-court-introduces-therapy-dog-program/article_%20f449e71c3fc2-11e7-a03e-4b861db8938b.html See also LA. Rev. Stat. § 15:285, which allows for witnesses who are either under 18 years of age or who have a developmental disability as defined by LA. Rev. Stat. § 28:451.2 to have a facility dog, if available, accompany them while testifying in court.

³⁵ La. Ch. C. art. 684(D). An absent person in Louisiana is "one who has no representative in this state and whose whereabouts are not known and cannot be ascertained by diligent effort." La. C.C. 47 626(G).

- **Determining Paternity/Maternity:** The court must ensure that efforts by DCFS are thorough and diligent in locating and involving all legal and putative parents and that paternity or maternity of all children is legally determined. If the identity and whereabouts of an alleged parent is known but filiation has still not been legally determined, the 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.), including ordering that DCFS make arrangements for DNA tests to determine the paternity/maternity of any alleged parents and that the alleged parents comply.
- **Direct Parent Present to Identify Potential Relative Caregivers:** Establishing paternity or maternity is also critical for finding potential relative caregivers for the child; thus, the court may also want to direct the parents under oath to identify relatives of the child.

HELPFUL GUIDANCE:

- **Identification of Parents or Legal Custodians:** Courts should ensure all biological, legal, and putative parents are legally established as soon as possible. Decisions made in CINC hearings can affect a child's entire life if this information remains unknown. When a child does not know who one of his/her parents is, that also means the child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Timely resolution of filiation and paternity or maternity issues is in the best interest of the child and essential to due process and avoiding permanency delays.
- **Maternity:** There may be cases where there is an issue with maternal filiation. However, Louisiana law has not been amended to contemplate situations when, for example, two women are married and one gives birth to a child during the marriage. Louisiana filiation laws for paternity would likely be instructive for similar maternity issues.

(5) ATTORNEYS:

- a. **Parents:** The Indigent Parents' Representation Program shall provide qualified legal counsel, including curatorship appointments, to indigent or absent parents in CINC cases unless a parent waives his/her right to counsel (See Articles 575, 608, and 643).
- b. **Children:** An attorney for the child shall be present at every hearing, assert the child's wishes, and protect the legal interests of the child even if the child is not present (Article 607).³⁶
- c. **State:** An assistant district attorney (ADA), an attorney the ADA designates, or a DCFS attorney (Bureau of General Counsel/ BGC) representing the State should be present at the hearing.

PRACTICE TIPS:

- **Due Process:** Judges play an important role in helping to ensure due process for all parents and children in their courts. The child's attorney and the parent attorneys should zealously advocate for their clients whether they are present or not.
- **Clients Consult with Attorneys:** Before the case is called, the judge should inquire whether counsel for the parents and counsel for the child had sufficient opportunity to consult with their clients, thus, ensuring due process for the family.

(6) DCFS: DCFS staff member or representative should be present at the hearing.

(7) CASA: May be present if the court appointed them.

³⁶ LA. SUP. CT. RULE XXXIII, PART III, SUBPART II.

(8) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD: Foster caregivers (i.e., foster parents, relatives, or pre-adoptive parents) providing care for the child have a legal right to receive notice of and be present at the Disposition Hearing. The court may permit the hearing to be held in the person's absence even if they were not properly notified. See Continued Custody Hearing (CCH) Benchbook Section 5 B(8) for more information.³⁷

(9) AUTHORIZED OFFICERS OF THE COURT AND WITNESSES:

- **Authorized officers of the court:** As designated by the judge, may be present at the hearing.
- **Witnesses:** Under examination may be present at the hearing.

D. NOTICE

ARTICLES 623, 679, 684, 42 U.S.C. § 675(5)(G), 45 C.F.R. § 1356.21(o)

The court shall determine if proper notices of the hearing were made to all parties, counsel of record, and foster caregivers, and enter required findings in the Order.

(1) PARTIES AND COUNSEL: Written notice of the date, time, and place of the Disposition Hearing shall be served and return made in the same manner as a Petition on all parties and also counsel of record at least 15 days prior to the hearing unless the parties have been notified in open court at a prior hearing. See Answer Hearing Benchbook Section 6 D and Articles 635.1-645 for more information.

(2) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD:

- **Notice and Right to Be Heard:** The court shall determine whether DCFS:
 - Gave notice of the date, time, and place of the Disposition Hearing to any foster caregiver providing care for the child; AND
 - Informed the recipient of his/her right to attend and be heard at the hearing.
- **Fails to Appear:** If a foster caregiver fails to appear at a hearing, DCFS shall report to the court whether notice was given or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person's absence.

E. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS

The court should consider whether any of the following Federal laws or regulations apply to this case:

- **Americans with Disabilities Act (ADA);**
- **Service Members Civil Relief Act (SMCRA);**
- **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA); (OR)**
- **Interstate Compact on the Placement of Children (ICPC), as codified in La. Ch. C. art. 1608 et seq.**
 - **ICPC Generally:** ICPC is an agreement between all 50 States, Washington, D.C., and the U.S. Virgin Islands. It provides for the movement and safe placement of children between States when the children are sent out of State for placement in foster care or as a preliminary step to a possible adoption. The process involves several steps and goes from the local or field level in one State, through the central or State office of each State, to the local level in the other State for investigation. At the conclusion of the investigation, a report is sent from the local level to the State administration and back to Louisiana. The process usually takes several months to complete, so it is recommended that this process begins as soon as a potential caregiver out of State is identified and determined to be a suitable potential placement or resource. If the receiving State finds that the proposed placement is contrary to the interests of the child based on the receiving State's criteria, DCFS may not place the child with that caregiver. The judge still has authority to grant custody or guardianship to the out-of-State caregiver without ICPC approval. Still, there would be no supervision of the home and may be other severe repercussions

³⁷ See La. Ch. C. arts. 623 and 679; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

- **Split Authority Regarding Parents:** There is split authority amongst courts on the question of whether the ICPC is applicable when courts or DCFS seek to place a child in the custody of an out-of-State parent. The authors find no clear authority from Louisiana appellate courts on the issue, though courts that have refused to apply ICPC to out-of-State parents have persuasive reasoning. See *In re R.S.*, 235 A.3d 914 (Ct. App. Md. 2020). In *R.S.*, the court found that the plain language of the ICPC excludes parents from its scope. The language of the ICPC, as codified in Article 1610(B), states that the law applies to “placements in foster care or as a preliminary to possible adoption.” Placing the child with a parent is not a foster care placement or a pre-adoptive placement. The plain language of ICPC would appear not to include placements with parents. Further, *R.S.* found that applying the provisions of ICPC to parents would be unconstitutional because parents have a fundamental liberty interest in the care, custody, and management of their children.³⁸ The court in *R.S.* found that such a broad and unreviewable discretion would give the agency the power to effectively terminate a parent’s relationship with a child with no judicial finding of unfitness and violate the parent’s due process rights.
- **ICPC Regulations Regarding Parents:** The ICPC Regulations state that placements with parents are subject to the ICPC, except when:
 - a. **A placement with a parent from whom the child was not removed:** When the court places the child with a parent from whom the child was not removed, and the court has no evidence that the parent is unfit, does not seek any evidence from the receiving state that the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent, the receiving state shall have no responsibility for supervision or monitoring for the court having made the placement, OR
 - b. **Sending court makes parent placement with courtesy check:** When a sending court or agency seeks an independent (not ICPC-related) courtesy check for placement with a parent from whom the child was not removed, the responsibility for credentials and quality of the courtesy check rests directly with the sending court or agency and the person or party in the receiving state who agree to conduct the courtesy check without invoking the protection of the ICPC home study process.
 - **Neither (a) or (b) would prohibit a sending state from requesting an ICPC.** The ICPC language can be confusing because certain terms are defined by the ICPC Regulations and not by each individual State.
- **Expedited Placement in Another State:** Policy allows for DCFS in Louisiana (as the sending State) to request an expedited home study in the receiving State in certain circumstances. First, the potential placement must be a parent (although see discussion above regarding placement with out-of-State parents), stepparent, grandparent, adult uncle or aunt, adult brother or sister, or the child’s guardian. Second, the child is not in the home of the parent from whom the child was removed. Third, at least one of the following is met: (a) unexpected dependency due to sudden or recent incarceration, incapacitation (unable to care for a child due to a medical, mental, or physical condition), or death of a parent or guardian; (b) the child sought to be placed is 4 years of age or younger, including older siblings sought to be placed with the same proposed placement resource; (c) the court finds that any child in the sibling group sought to be placed has a substantial relationship³⁹ with the proposed placement resource; or (d) the child is currently in an emergency placement.⁴⁰ For example, the court can request the expedited placement of a child from Louisiana into another State if the child’s placement has been disrupted in-State and there is a possible placement resource out-of-State.
- **Court’s Role in Expedited Placement in Another State:** The DCFS policy for an expedited request requires the court to sign an order with the finding that the expedited placement of a Louisiana child into another State is necessary; the court’s contact information should be written in the order. The court should send the order to the local or regional office within 2 working days of the hearing. Under those circumstances, the court ordered request for DCFS to request expedited placement of a child from Louisiana into another State, can be submitted expediently, however there a number of reasons the receiving State may or may not be able to honor completion of the home study expeditiously. When the court orders an expedited request for the child’s placement across State lines via the ICPC process, the ICPC home study requests are ordered and referred by the court on a proposed expedited placement basis. In addition, it is important to note that although a placement referral might appear to meet criteria, for an expedited home study, not all placements meet the expedited placement criteria.

³⁸ *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

³⁹ DCFS Policy 11-260 “Special Case Situations in ICPC” (December 1, 2014) (“Substantial relationship” means the proposed placement has a familial or mentoring role with the child, has spent more than cursory time with the child, and has established more than a minimal bond with the child.).

⁴⁰ *Id.*

- **ICPC and Visits:** For ICPC purposes, a visit is defined as a temporary stay to provide a child with a social or cultural experience of short duration. A visit shall not last longer than 30 days or, for a school-aged child, the period of a school vacation. ICPC approval is not required for visits.⁴¹ In advance of a visit, DCFS may request that the receiving State conduct a child welfare background clearance, criminal background check, and/or assessment of the caregiver’s home. If appointed, CASA may also be able to conduct a courtesy walk-through of the home in the receiving State. The court, however, can approve an out-of-State visit without these requirements. If an ICPC request for a home study has been requested and it is incomplete at the time the child goes for a visit, the child is not allowed to visit beyond 30 days. After 30 days has elapsed and the child is still on the “visit,” the visit will be deemed an illegal placement.

F. 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: The court may consider evidence at the Disposition Hearing which would not be admissible at the Adjudication Hearing, including hearsay. The court shall consider:

- The report of the Predisposition Investigation (if ordered prior to the Disposition Hearing per Article 668);
- The case plan;
- Any reports of mental evaluation; AND
- All other evidence offered by the child or the State relating to the proper Disposition.

PRACTICE TIPS:

- **Parents:** Children’s Code Article 680 states that the court shall consider evidence offered by the child or the State but does not mention the parents. Presumably, this is an oversight, and the court must also consider evidence offered by parents because they are parties to the case.
 - **Additional Evidence the Court Should Consider:** The Children’s Code articles regarding the Disposition Hearing do not require the court to consider the court reports submitted by DCFS and CASA or physical evaluations. However, the court should consider this information if it is timely submitted and properly before the court, and all parties were given the opportunity to review the reports or evaluations.
-

(2) PARENTS: Parents may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.

(3) CHILDREN: Children may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.

- **Wishes:** If the child is present in court the child may choose to testify as to his/her wishes, and the court shall consider his/her testimony in the matter.⁴²
- **Methods of Testimony:** Any testimony given by a child may be taken by:
 - A videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of the Louisiana Children’s Code;
 - An in-chambers conference attended only by the judge and court reporter and by counsel for the child, the petitioner, and the parents; OR
 - If no party objects and the parties agree as to the procedure, the child may be examined “in chambers, on or off the record, and with or without parents and/or counsel being present.”⁴³
- **Exclusion:** Prior to the commencement of the hearing, the court shall determine whether it is in the child’s best interest for the child to remain in the courtroom during the testimony of the witnesses.

⁴¹ See American Public Human Services Association, https://aphsa.org/AAICPC/AAICPC/icpc_faq_2.aspx.

⁴² LA. SUP. CT. RULE XXXIII, PART III.

⁴³ *Watermeier v. Watermeier*, 462 So. 2d 1272, 1275 (La. App. 5th Cir.), cert. denied, 464 2d 301 (La. 1985).

PRACTICE TIPS:

- **Child Present or Not:** Whether present or not, the child’s attorney shall make sure the court hears the child’s wishes (i.e., regarding custody, placement, services, case plan, etc.).
- **Methods of Communication:** If the child wishes to be heard but is not able to present or does not want to be present in the courtroom, the court should consider the use of other methods of communication, such as audio or visual conferencing.
- **Well-Being:** The court should inquire about the child’s physical, emotional, mental health and educational needs and identify any gaps in services needed by the child.

(4) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD: The court shall solicit and consider information regarding the care and treatment ⁴⁴ of the child from any foster caregiver providing care for the child who appears for the Disposition Hearing.⁴⁵

PRACTICE TIPS:

- **Valuable Information to Consider:** The court should value the role of the child’s daily caregivers and the insight they can provide to the court about how the child is doing and what he/she needs. Because of their day-to-day care of the child, foster caregivers have useful information that the court, DCFS, CASA, and parties to the CINC case need to make crucial decisions regarding the child’s well-being. Thus, their role in the court process is to provide current and accurate oral and/or written information about their observations of how the child is doing so that judges can make informed decisions in the best interest of the child.
- **Solicit Information:** While foster caregivers are not parties, they have a legal right to be heard at any CINC hearing regarding a child in their care. There are at least 2 ways the court can solicit and consider information from caregivers. The caregiver can: (1) submit a Foster Caregiver Progress Form to DCFS prior to the hearing and/or (2) attend and speak at the hearing, or both.
- **Submit a Foster Caregiver Progress Form:** The Foster Caregiver Progress Form is one of the ways foster caregivers can exercise their right to be heard but is not required. If the caregiver chooses to complete the form, they will submit it to DCFS, who will bring copies of the form to the hearing. The form can be submitted to DCFS even though the caregiver may not attend the hearing. These forms contain hearsay information and should be treated as information about the child in the same way DCFS provides other information to the court. Even if the caregiver submits the form, they still have the right to attend and be heard at any CINC hearing regarding the child in their care. See the [Foster Caregiver Progress Form Template](#) in the [Appendices Benchbook Section 12](#).
- **Speak at Hearing:** In accordance with State and Federal law, if the foster caregiver attends the hearing, the court shall solicit information from the caregiver about the care and treatment of the child (even if they submitted a Foster Caregiver Progress Form). At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. This includes foster caregivers. After the court hears from parties and evidence is presented, if another party has not called on the caregiver to speak, the judge should call on them to see if they would like to speak. Some caregivers may wish only to attend and not speak. Judges may allow the caregiver to use the form to guide them when they speak and/or may want to utilize the form to ask the caregiver questions.⁴⁶

⁴⁴ Neither State nor Federal law provides a definition for “care and treatment of the child,” but DCFS policy states that it “includes information that the foster parent, relative, or pre-adoptive parent feels is critical to the safety and well-being of the child, such as how the child is doing physically, developmentally, emotionally, behaviorally, mentally, socially, and academically and what supports or services are needed for the child or caregiver to properly care for the child.”

⁴⁵ See La. Ch. C. arts. 623 and 679; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

⁴⁶ Id.

(5) CASA: CASA (if appointed) may be called as a witness in the proceedings by any party or by the court and may request of the court the opportunity to appear as a witness.

☰ PRACTICE TIP:

- **Recommendations for Permanency and Services:** Judges should consider CASA's recommendations for permanency and services necessary for the child. If that information is not included in the CASA report, the court should ask the CASA volunteer for those recommendations and reasons for them. All parties should have the opportunity to examine CASA's permanency recommendations.

(6) ANY PERSONS OR RELATIVES OF THE CHILD: Parties may call any persons or relatives being considered and/or seeking to be considered for provisional (i.e., with supervision of DCFS) or permanent custody or guardianship as witnesses.

☰ HELPFUL GUIDANCE:

- **Dispositional Alternatives:** One of the main purposes of the Disposition Hearing is for the court to consider the dispositional alternatives for the child. Thus, it is likely that parties will need to call persons to testify regarding the possible alternatives.
- **Petition for Provisional Custody or Permanent Custody:** Prior to the Adjudication, Article 631 allows for any person, including a relative of the child, to Petition the court for the provisional or permanent legal custody of the child. This Article aligns with Articles 681(A)(1), 683, and 622(D) and gives any person or relative the authority to seek court review (prior to Adjudication) of their claim to custody of a child in which foster care is a potential Disposition.
- **Timing:** The Children's Code is not clear as to when the court should review this matter. The request is likely meant to be decided at Disposition because custody of a child involved in a CINC case is generally not ruled upon unless and, until, the case goes to Disposition. Thus, if a relative or other individual has filed a Petition for the child's custody, the resolution of that claim is properly reserved for the Disposition Hearing. See also the Authors' Notes for Article 666.
- **Provisional versus Permanent:** It is important for judges to consider the consequences of granting provisional versus permanent legal custody of a child. If provisional custody is granted, the court should continue holding review hearings until permanent custody is resolved. If permanent legal custody of a child is granted to a person, the CINC case and DCFS involvement would end, and, thus, the court case would be closed. This is important for courts to keep in mind when making these decisions, especially if supervision, services, and/or supports would still benefit the child and/or family.

(7) OTHER WITNESSES:

- On its own motion or the motion of any party, the court may order that non-party witnesses be excluded from the courtroom. On request of a party, the court shall order the exclusion.

☰ PRACTICE TIPS:

- **Cannot Exclude Parties:** Parties to a proceeding cannot be excluded from the courtroom. Only the child can be taken out of the courtroom during testimony that may not be in their best interest to hear. See Article 661(E).
- **DCFS and CASA are Not Parties:** Neither DCFS nor CASA are parties to CINC proceedings. DCFS staff members or a CASA volunteer may be excluded if any party plans to call them as a witness. However, a DCFS representative would likely need to remain in court to assist the ADA. See La. Code Evid. Art. 615(B)(2).

- **Foster Caregivers Are Not Parties:** Foster caregivers are not parties. While they have a right to be heard at any CINC hearing regarding a child in their care, they may be excluded and asked to be present only when they speak. However, it is encouraged that they are allowed to remain during the duration of the hearing. Allowing them to be present at the hearing communicates that they are a valued partner in ensuring the child’s well-being. Because they provide day-to-day care to the child, it is also important for them to stay abreast of developments in the case and have the opportunity to meet and communicate with those involved in the case (i.e., the child’s attorney, parents and relatives of the child, the CASA volunteer, etc.). The caregiver’s presence at the hearing may better situate them to support the child during and after the hearing.⁴⁷
- **Exemption of Witnesses:** In the interest of justice, the court may exempt any witness from its order.
- **Closing a Hearing:** Sequestration is different from closing a hearing upon motion of a party. Closing a hearing means that no one is present except for the parties.

• **OVERALL GUIDANCE:**

- **Engagement:** The court should do all that it can to support and encourage the meaningful engagement of families in CINC proceedings.⁴⁸ Testifying in court is stressful for many parents and children. Court is intimidating for most individuals (including non-party witnesses), and the stakes could not be higher for parents and children in CINC cases. Many parents and children are coming into court with a history of trauma. Regardless of the trajectory of the case, parents and children may benefit from having their voice heard. It is critical for the judge to consider information provided by the parents and children, and to convey to the parents and children that their testimony is being given due consideration in the court’s ruling. Positive engagement is critical to successful outcomes in the case.⁴⁹ Judges must create an environment where parents and children are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.⁵⁰

G. JUDGMENT OF DISPOSITION

ARTICLES 681, 683-4, 686

- **ESSENTIAL JUDICIAL FINDING - REMOVAL OF CHILD FROM PARENTS’ CUSTODY:** If the court finds that the child’s welfare cannot be adequately safeguarded without a removal from his/her parents, the court can order that the child be removed from his/her home (Article 682). The child’s health and safety shall be the paramount concern in the court’s consideration of removal. Federal law only authorizes removal of a child from his/her home upon a judicial finding that remaining in the home is contrary to the child’s health, safety, and welfare and that a temporary removal is in best interest of child. This finding must be child specific and documented and signed and dated by the judge in the first written court order sanctioning removal. DCFS risks losing Title IV-E funding for the child’s entire stay in foster care if the child is removed from the home and placed in DCFS custody without this judicial finding.⁵¹
 - **First Court Order Removing Child:** Federal law requires that the judge make written, individualized findings of fact as to each child, and explicitly document in the court order signed and dated by the judge, the necessity to remove each child to safeguard his/her welfare, which shall include:
 - The continuation of the child in the home of his/her parents is contrary to the child’s health, safety, and welfare; AND
 - Temporary removal from the parents and placement in custody of a suitable individual, suitable relative, or DCFS would be in the best interest of the child

⁴⁷ Id.

⁴⁸ Gatowski, *supra* note 2, at 68.

⁴⁹ Id.

⁵⁰ Gatowski, *supra* note 2, at 16.

⁵¹ See 45 C.F.R. § 1356.21(c); 42 U.S.C. § 472(a)(2)(A)(ii); 42 U.S.C. § 479(B); see also Child Welfare Policy Manual, Section 8.3A.6, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp?citiD=37

- **Separate Findings for Each Child:** If the contrary to welfare findings do not apply to all children in the case, then the judge must make separate findings for each child in the Judgment.
- **ESSENTIAL JUDICIAL FINDING – DISPOSITION OF CHILD:** The court shall impose the least restrictive Dispositional alternative enumerated in Article 681 consistent with the circumstances of the case, health and safety of the child, and the best interest of society. The child’s health and safety shall be the paramount concern. If custody of the child is granted to anyone other than a parent, the court shall, whenever practicable, select an individual, agency, or institution of the same religious affiliation as the child or parents (See Article 683(D)).
 - (1) **THE NATURE OF THE DISPOSITION:** The court shall make the following written rulings and findings with reasons in the Judgment of Disposition and include in the minutes:
 - a. **REMAIN OR REUNIFY WITH PARENTS:**
 - **Remain with Parents:** If the child can remain safely in the custody of the parents, the court should order the:
 - Child remain in the custody of the parents, with or without continued supervision (i.e., DCFS supervision, in-home safety plan), PO, and/or other terms and conditions.
 - **Reunify with Parents:** If the child can be safely returned to the custody of a parent, the court should order the:
 - Child be returned to the custody of the parent or parents, with or without continued supervision with or without continued supervision (i.e., DCFS supervision, in-home safety plan), PO, and/or other terms and conditions.

HELPFUL GUIDANCE:

- **Least Restrictive:** When the State is forced to intervene on behalf of abused and neglected children and decide whether to place children outside the home, it must consider the emotional impact of separation on the child. If it can be safely implemented, the best plan is the least restrictive environment for the child, which is generally the child’s own home. Federal legislation and extensive research support the notion that placement or custody with a relative, close or distant, or fictive kin is considered the least restrictive placement option when the child’s own home is not possible.⁵²
- **Child Welfare Assessment and Decision Making Model (CWADM):** If the child has been removed from his/her parents and reunification is the case plan goal, the court should insist on a clear articulation of the current safety threat keeping the child in foster care/in an out-of-home placement Children should be returned home immediately once all safety threats have been eliminated. The CWADM includes an assessment used by DCFS (and should be used by all child welfare stakeholders) to determine whether a child is safe or unsafe at all junctures of the CINC proceeding. A child is considered safe when: (1) there are no threats of danger, (2) if there is a threat of danger, the child is not vulnerable to the threat of danger; or (3) if there is a threat of danger, the parents or caretakers possess sufficient protective capacities to manage the threat of danger and keep the child safe. A child is considered unsafe when: (1) there are identified threats of danger; (2) the child is vulnerable to a threat of danger; and (3) the parent or caretaker does not possess sufficient protective capacities to manage the threat of danger and keep the child safe. The threat of danger considers whether the caretaker’s behavior or family situation is likely to result in imminent harm to the child. The child’s vulnerability considers the extent to which a child can protect himself/herself from the identified threats of danger. The caretaker’s protective capacities consider the way a caretaker thinks, feels, and/or acts and whether those capacities can prevent or control the threats of danger. At each hearing, the court should make the following inquires to assess what barriers if any exist, that make it unsafe for the child to return home:
 - Are the threats of danger to the child still present?
 - Is the child still vulnerable to those threats?
 - Does the parent or caretaker still lack the necessary protective capacities?

⁵² 42 U.S.C 675(5); National Conference of State Legislatures. (2019) The Child Welfare Placement Continuum: What’s Best for Children?; and Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau.

If the child can be safely returned to (or placed in) the custody of a parent or parents, the court should order the child be returned and, if needed for the child's protection and safety, could consider ordering an in-home safety plan, PO, and/or other terms and conditions. Other terms and conditions could include ongoing supervision by DCFS and/or another agency. Courts should consider carefully whether parents can provide a minimally adequate standard of care for their child. All issues in the case do not need to be resolved before a child can return home. A child should be returned home when he/she can be safe in the home, which may or may not also require supportive services and protective supervision.⁵³ See [Child Welfare Assessment and Decision Making Model \(CWADM\) Benchbook Section 11](#).

- o **DCFS Family Services:** When the court returns the child to his/her parents or grants provisional custody to a suitable relative or individual, DCFS will generally no longer be involved in the case (because DCFS does not have custody of the child). However, the court can order that DCFS continue to monitor the family and/or provide services. In such cases, DCFS will usually open a DCFS Family Services case to provide supervision and support to the family. In these instances, it is advised that the court also continue to oversee the case.
- o **Granting Custody to Parent:** In some cases, the court may not be returning the child to a parent's custody but rather "granting" custody to another parent who did not have custodial rights to the child and/or was not previously legally filiated with the child.⁵⁴

b. CONTINUE OR GRANT CUSTODY TO RELATIVE OR SUITABLE PERSON:

- **Relative:** If the child cannot remain with or return to the custody of a parent, the court shall order the:
 - Child remain in the continued custody, or be placed in the custody, of a relative, with or without continued supervision (i.e., DCFS supervision, in-home safety plan), PO, and/or other terms and conditions unless the court has made a specific finding made part of the record that such placement is not in the best interest of the child. See Article 683(B).
- **Suitable Person:** If the child cannot remain with or return to the custody of a parent or custody cannot be continued or granted to a relative, the court shall order the child:
 - Remain in the continued custody, or be placed in the custody, of a suitable person, with or without continued supervision (i.e., DCFS supervision, in-home safety plan), PO, and/or other terms and conditions.

 **PRACTICE TIPS:**

- o **Inform Parents of Right to Modify Judgment:** If the child is removed from his/her parents and placed in the legal custody of a relative or individual, the court should inform the parents of their legal right to seek a Motion to Modify the Disposition per Articles 713-717.
- o **Definition of Relatives:** Article 603(20) defines "relative" as an individual with whom the child has established a significant relationship by blood, adoption, or affinity. Affinity means relationship by marriage.
- o **Suitable Individual vs. Suitable Person:** Article 603(20) defines an "other suitable individual" as a person with whom the child enjoys a close established significant relationship, yet not a blood relative, including a neighbor, godparent, teacher, and close friend of the parent. The Children's Code does not, however, define "suitable person." This is probably an oversight in the Children's Code, and the definition for an "other suitable individual" is likely equivalent to a "suitable person" in Article 681.

⁵³ Gatowski, *supra* note 2, at 229.

⁵⁴ Gatowski, *supra* note 2, at 214.

HELPFUL GUIDANCE:

- **Obligation to Find Potential Caregivers:** All persons and parties before the court have a continuing obligation to achieve timely permanency for the child. It is critical for relatives and other individuals to be found as soon as possible so that permanency can be achieved expeditiously if reunification becomes no longer viable. Identifying other potential placements early on in the case is crucial to reducing further trauma to a child who may form secure attachments with caregivers. The court's role is to continue to hold persons before the court, parties, and DCFS accountable to these obligations. See the [Appendices Benchbook Section 12](#) for the [Family Connection Form](#) and [Circle of Influence Form](#) DCFS uses with children and parents to help identify potential caregivers. Some attorneys create "Family Trees" to help identify potential caregivers.
- **Preference to Relatives Per Federal Law:** For States to receive funding for foster care and adoption assistance, Federal law under Title IV-E of the Social Security Act requires that the State "consider giving preference to an adult relative over a nonrelated caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards."⁵⁵ Per the Fostering Connections to Success and Increasing Adoptions Act, within 30 days following the removal of the child and any time after that a relative is identified, DCFS is required to contact all known adult relatives of the child and to inform them about placement and permanency possibilities for the child. Title IV-E of the Social Security Act also requires all States to exercise due diligence to identify and provide notice to all grandparents, all parents of a sibling of the child, where such parent has legal custody of the sibling, and other adult relatives of the child (including any other adult relatives suggested by the parents) that (1) the child has been or is being removed from the custody of his/her parents; (2) the options the relative has to participate in the care and placement of the child; and (3) the requirements to become a foster parent to the child. These Federal laws are based on evidence that placement with relatives maintains the child's connections with his/her family, and children generally fare better in many child well-being factors when placed with a relative.⁵⁶
- **Suitable Individuals and Cultural Considerations:** The court should press parties and persons before the court to consider not only biological relatives but also individuals with whom the child has a significant relationship (also referred to as "fictive kin," "suitable persons," or "suitable individuals"). These are individuals who are not related by blood, marriage, or adoption to the child but could be close family friends or someone the child considers family. It is important to consider the child's culture, heritage, customs, traditions, religion, etc., in determining placement and custody options. For example, some children may call a close friend their "auntie" even though they are not related by blood. However, the auntie may be the best placement for the child but overlooked if no thorough inquiry is made.
- **Parents of Half-Siblings:** If there are half-siblings, the court should consider granting custody or guardianship of the child to the sibling's parent if willing and appropriate and safe to do so. The sibling's parent may already have a relationship with the half-sibling but even if not, that parent may be inclined to take custody to keep the siblings together.⁵⁷
- **Financial Support for Relatives or Individuals:** Relatives and other persons who are granted custody and/or guardianship of the child may be eligible for financial support, for example, through the Kinship Care Support Program (KCSP), Supplemental Nutrition Assistance Program (SNAP), Family Independence Temporary Assistance Program (FITAP), and/or Child Support Program (CSP). If one or both parents of the child are deceased, the caregiver may also be eligible for survivor benefits owed to the child. The caregiver may also be eligible to receive the child's disability benefits (if the child is entitled to them). However, if the relative or individual is foster care certified and the child receives disability or survivor benefits, the caregiver would have to choose between those benefits and the monthly foster care board rate (They can choose the higher of the amounts).⁵⁸

⁵⁵ 42 U.S.C. § 671(a)(29).

⁵⁶ See Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>; Center on Children and the Law. (2016) Judicial Tip Sheet: Kin First. Washington, DC: American Bar Association, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/july-2016/judicial-tip-sheet-kin-first/; Issue Brief, Strong Families (2019) Why Should child protection agencies adopt a kin-first approach? Casey Family Programs, <https://www.casey.org/kin-first-approach/>; National Conference of State Legislatures. (2019) The Child Welfare Placement Continuum: What's Best for Children?, <https://www.ncsl.org/research/human-services/the-child-welfare-placement-continuum-what-s-best-for-children.aspx>; Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/placement.pdf>.

⁵⁷ See Child Welfare Information Gateway. (2019). Sibling issues in foster care and adoption. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/siblingissues.pdf>.

⁵⁸ See <http://dcfs.louisiana.gov/page/grandparent-relative-caregiver> for more information. DCFS has legal and custodial information available on their website for kinship caregivers: <http://dcfs.louisiana.gov/page/kinship-caregivers-legal-and-custodial-information-fact-sheets>.

- c. **GUARDIANSHIP TO NONPARENT:** If custody to parents or a suitable relative or person is not appropriate or available, the court has authority to grant guardianship of the child to a nonparent. Guardianship is governed by Chapter 19 of Title VI of the Louisiana Children’s Code.

PRACTICE TIPS:

- **Jurisdiction:** The court shall retain jurisdiction to enforce, modify, or terminate guardianship. See Article 724.
- **Authority of Guardian (Articles 116 and 718-724.1):** Guardianship means the judicial placement of a child under the duty and authority of a guardian to make decisions in matters having a permanent effect on the life and development of the child. A guardian has greater authority than a legal custodian and only slightly less authority than that exercised by a natural or adoptive parent. Guardian(s) are given legal authority over the child until the child turns 18 years of age, which includes: physical custody of the child; protecting the child; training and providing reasonable discipline for the child; providing food and shelter; enrolling and making educational decisions for the child; and, making medical decisions for the child.
- **Permanent Placement:** Placement of a child with a guardian is a “permanent placement,” eliminating further periodic case or permanency reviews. The Judgment of Disposition granting guardianship remains in force until the child reaches his/her 18th birthday unless another duration is set by the court or modified by law.
- **DCFS No Longer Involved in Case:** Since DCFS is no longer involved once guardianship is granted, DCFS-provided services and supports will generally not be available to the family unless a DCFS Family services case is opened with the family.
- **Modification:** Any party has the right to seek a modification of the guardianship judgment, as may be needed. The modification process is governed by Articles 713-717.
- **Parental Rights:** Guardianship does not require that the parents’ rights to the child be surrendered or terminated. Thus, guardianship could be useful in cases where, for example, a grandparent can care for the child, and adoption is not an option.
- **Parent Contact:** In the Judgment granting guardianship, the court can specify the conditions regarding the parent’s contact with the child. The court’s authority to limit the frequency of visitation includes the authority to forbid contact with the parents altogether. If there is proof by clear and convincing evidence that parental contact would cause substantial harm to the child, contact can be constitutionally limited.⁵⁹

HELPFUL GUIDANCE:

- **Parents’ Obligation:** The parents still have an obligation to financially support the child even when guardianship of the child has been granted to someone else.
- **Financial Support and Guardianship Subsidy:** There are certain circumstances where the guardian may be eligible to receive a guardianship subsidy from the State. If the relative or individual is interested in becoming the child’s legal guardian, foster care certification must be completed (along with other DCFS requirements) to receive a subsidy after transfer of guardianship. The court may want to request updates on the status of the certification to ensure timely completion. The guardian may also be eligible for some of the financial support listed under [Continue or Grant Custody to Relative or Suitable Person](#) section above.⁶⁰

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- d. **CONTINUE OR GRANT CUSTODY WITH/TO PRIVATE OR PUBLIC INSTITUTION (DCFS):** If custody to parents or custody or guardianship to a suitable relative or person is not appropriate or available, the court can order the child remain in the continued custody, or be placed in the custody, of a private or public institution (generally this means DCFS).

⁵⁹ La. Ch. C. art. 723, 2011 Comments (citations omitted).

⁶⁰ DCFS now has information and resources available on their website for kinship caregivers: <http://dcfs.louisiana.gov/page/kinship-navigator>.

PRACTICE TIPS:

- **Commit the Child:** When no institution, social agency, or association so licensed for care or placement of the child is available to the court, the court may commit the child to some other institution, social agency, or association which in the court's judgment is suitable for such child.
- **Licensed:** If the court commits a child to a private institution or agency, it shall select one that has been licensed under State law if licensure is required by law for such an institution or agency.

HELPFUL GUIDANCE:

- **Foster Care is the Safety Plan of Last Resort:** Placing a child in State custody (i.e., foster care) is child welfare's most drastic and most protective safety plan. It should be a last resort for State agencies and courts charged with protecting children from harm.⁶¹ The court should hold DCFS accountable to seek all other dispositional alternatives for the child before placing or continuing the child in DCFS custody, including an in-home safety plan, PO, IAA, coordinating services with other agencies or community based supports, referring family to Family in Need of Services (FINS) if appropriate, granting custody of the child to relative or suitable person, etc. Also, finding potential relative caregivers as early as possible is crucial to reducing further trauma to a child who may form a secure attachment with his/her current caregivers.⁶²
- **Placement with Relative or Suitable Person:** If the court decides not to grant custody or guardianship to a relative or suitable person, DCFS can still *place* a child with a relative or suitable person and, in fact, has a duty to assess such individuals for placement to meet Federal and State legislation with regard to prioritizing relative or fictive kin permanency goals when reunification is no longer viable.⁶³
- **Child Specific Certification:** DCFS provides "child specific" foster care certification for a relative or other individual with whom the child is placed or being considered for placement. The certification requires fewer classes than general foster care certification and allows the relative or individual to receive a board rate (monthly financial support) like a certified foster parent. If the relative or individual is interested in becoming the child's legal guardian, the certification would have to be completed (along with other DCFS requirements) to receive a subsidy after a transfer of guardianship. The court may want to request updates on the status of the certification to ensure timely completion.
- **Court's Authority Concerning Placement:** While the court has the authority to change custody of the child, if the child is in DCFS custody, the court has no authority to order a specific placement for the child (i.e., foster parents the child will be placed with by DCFS). However, pursuant to Article 672(A)(2), the court does have the authority to disapprove the placement chosen by DCFS and order DCFS to choose a more suitable placement. Per Article 672(A)(2), there must be a contradictory hearing and the judge may disapprove the placement upon finding that the placement is not in the child's best interest. For example, after a contradictory hearing, the court could determine that the placement chosen by DCFS is not in the child's best interest if the child is not placed with his/her siblings.⁶⁴
- **Court's Role in Placement:** If the child is in DCFS custody, the court should address the child's current placement to ensure that the child is safe, and to determine whether the child's health, educational, cultural, religious, and emotional needs are being met. This may include but is not limited to the following:
 - Ensuring DCFS has made reasonable efforts to place siblings together;⁶⁵
 - Reviewing information regarding the child's well-being and overall adjustment to his/her placement and to school;

61 See Church, Christopher. "Unnecessary Removals: The Most Unjust Adverse Childhood Experience." Children's Bureau Express. October 2019, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=210§ionid=2&articleid=5428>; Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/placement.pdf>; Child Welfare Information Gateway. (2020). Court hearings for the permanent placement of children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/planning.pdf>.

62 Id.

63 42 U.S.C. § 671(a)(29).

64 The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351).

65 Id.

- Evaluating the specific services being provided to see if they are meeting the child’s physical, emotional, and educational needs;
- Examining the steps DCFS is taking to ensure foster caregivers are following the “reasonable and prudent parent standard” and that the child has regular opportunities to participate in age- or developmentally-appropriate events such as sports, field trips, and overnight activities;
- Ensuring that all health and education information is up-to-date and that the child is receiving health and education services;
- Ensuring that the caregivers of a child with a trauma history have the specialized training and support needed for the placement to succeed;⁶⁶
- Ensuring that a child’s connections to his/her cultural heritage, religion, ethnicity, and traditions are preserved and promoted; AND
- Asking DCFS to explain how the placement is appropriate to prepare the child for his/her transition into the permanent placement (i.e., reunification, adoption, guardianship, custody with a relative, etc.).⁶⁷

e. **COMMIT TO PUBLIC OR PRIVATE INSTITUTION FOR MENTAL ILLNESS OR INTELLECTUAL DISABILITIES:** The court can commit a child found to have a mental illness to a public or private institution for persons with mental illness or intellectual disabilities per Article 683.

 **PRACTICE TIPS:**

- **Cannot Require State to Pay:** The court cannot commit custody of the child to a private institution for persons with mental illness or intellectual disabilities and require the State to pay. See *State in Interest of Sapia*, 387 So. 2d 41 (La. Ct. App. 1980).
- **Licensed:** If the court commits a child to a private institution or agency, it shall select one that has been licensed under State law if licensure is required by law for such an institution or agency.
- **Commit the Child:** When no institution, social agency, or association so licensed for care or placement of the child is available to the court, the court may commit the child to some other institution, social agency, or association which in the court’s judgment is suitable for such child.

 **HELPFUL GUIDANCE:**

- **Mental Illness:** A child shall not be committed to a public or private mental institution or institution for persons with mental illness unless the court finds, based on psychological or psychiatric evaluation:
 - That the child has a mental disorder, other than an intellectual disability;
 - The mental disorder has a substantial adverse effect on his ability to function; AND
 - The mental disorder requires care and treatment in an institution.

⁶⁶ Courts are encouraged to attend TBRI Fridays, sponsored by Crossroads NOLA, and encourage others to attend as well: <https://crossroadsnola.org/tbri/>.

⁶⁷ Gatowski, *supra* note 2, at 268.

- **Representation of Child with Mental Illness:** When the child is in the custody of DCFS, this finding shall not be made without the representation of the child by an attorney appointed from the Mental Health Advocacy Service, unless such attorneys are unavailable as determined by the director or the child retains private counsel who shall represent only the interest of the child. The Mental Health Advocacy Service’s attorney so appointed shall continue to represent the child in any proceeding relating to admission, change of status, or discharge from the mental hospital or psychiatric unit. Upon modification of the Disposition to a placement other than a mental hospital or psychiatric unit, the Mental Health Advocacy Service’s attorney shall be relieved of representation of the child.
- **Intellectual Disabilities:** A child shall not be committed to a public or private institution for persons with intellectual disabilities unless the court finds, based on psychological or psychiatric evaluation:
 - That the child has an intellectual disability;
 - The intellectual disability has a substantial adverse effect on his ability to function; AND
 - The intellectual disability requires the care and treatment in an institution.

f. **COMBINATION:** The court may make such other Disposition or combination of the above Dispositions as it deems to be in the best interest of the child.

g. **BEST INTEREST FINDING REQUIRED IF CHILD NOT PLACED WITH RELATIVE:**

- If the court does not return the child to his/her home or grant custody to a parent or place the child with a relative, the court shall:
 - Make a specific finding that placement with a suitable relative is not in the best interest of the child; AND
 - Give specific findings, which shall be made part of the record of the proceeding (Article 683(B)).

(2) OUT-OF-STATE PLACEMENT: If the court makes an out-of-State placement, the court shall provide specific written findings in the order as to why the placement is safe, appropriate, and in the child’s best interest (Article 684(C)). See information about ICPC above.

(3) SET MAXIMUM DURATION: The court shall set the maximum duration of the Disposition in the Judgment. A Judgment of Disposition shall remain in force only until a child reaches his/her 18th birthday, or may expire earlier by its own terms or if it is modified or vacated.

PRACTICE TIP:

- **Judgment of Disposition:** The [Judgment of Disposition Template](#) has 2 boxes for the duration of the Disposition: One is for the duration to be until the child’s 18th birthday unless sooner modified or terminated, and the “other” box is where the court would order a transition plan or other alternative duration of Disposition.

HELPFUL GUIDANCE:

- **Specific Term:** Often, the court will want to order that the Disposition remain in force until a child reaches his/her 18th birthday unless sooner modified or terminated by the court. In certain situations, it may be advisable for the court to set a specific term for the Disposition instead, such as when the court grants custody or guardianship to a relative or other suitable individual. Here are a few examples:
 - The court grants custody to the youth’s basketball coach for 2 years; the coach is willing to care for the child while the parent serves out his prison sentence.

- An aunt from Arkansas has come down for the hearing. The court determines she is suitable. Since she has never met the child, who is 3 years old, it is advisable for the child to have some visits with the aunt before custody transfers to the aunt. Thus, the court can order a “transition plan,” which includes visits of increasing frequency, and set custody to be transferred on a specific date after the transitional period.

(4) SERVICES TO THE CHILD: The court shall specify the agency, institution, or person to whom the child is assigned, including the responsibilities of any other agency, institution, or person having legal responsibility to secure or provide services to the child which the court has determined are needed.

PRACTICE TIP:

- **Identify Services:** The court is required to identify any services that the child needs and allocate responsibilities of both the legal custodian and any agencies (i.e., DCFS, LDH, OJJ, LDOE, Office for Citizens with Developmental Disabilities, etc.) to ensure that such services are in fact provided to the child.

(5) TERMS AND CONDITIONS: The court should specify any other applicable terms and conditions that apply to the legal custodian.

PRACTICE TIPS:

- **Transition Plan:** If the Disposition includes a change in custody, transfer of guardianship, or a move of any kind, judges should be cognizant of the impact the transition may have on the child.⁶⁸ Judges should consider including a transition plan that is in the best interest of the child in the Judgment. DCFS policy recognizes that it is traumatic for a child to be moved from one caregiving setting to another even when the change is made in the best interests of the child or to achieve permanency for the child. When a move will occur, it is critical to the child’s well-being, regardless of the reason, for judges to collaboratively strategize with all involved to reduce the trauma experienced by the child.⁶⁹ DCFS has developed tools to try to minimize this trauma, including a guide for planful transitions. Transition plans can include multiple, extended visits, such as overnight visits as well as other additional contacts via Zoom, FaceTime, etc., to ensure the most positive experience possible for the child.⁷⁰ These activities should occur both prior to the move and after the move to provide the child a less traumatic separation from previous caregivers and to enhance the connection to the new caregivers⁷¹

⁶⁸ See Touchpoints. Preparing Children for Transitions. Milwaukee, WI: Coalition for Children, Youth, Families, <https://wifostercareandadoption.org/cms/assets/uploads/2017/10/touchpoints3.pdf>; Child Welfare Information Gateway. (2016). Reunification: Bringing your children home from foster care. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/reunification.pdf>; Child Welfare Information Gateway. (2018). Helping your foster care child transition to your adopted child. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau, https://www.childwelfare.gov/pubPDFs/f_transition.pdf.

⁶⁹ DCFS Policy 6-300 “Guidelines for Selecting a Care Setting/Replacement Resource” (April 1, 2019).

⁷⁰ DCFS Policy 6-305 “Guidelines for Care Setting Decision Making for Children Under Age Six” (March 15, 2019).

⁷¹ Id

- **Reunification or Trial Placement:** It is important for judges to know that DCFS policy allows for a trial placement of the child with his/her parents if the home is determined to be safe, but there are still some transition concerns and/or items left to resolve. DCFS policy states that: “If trial placement back with the parent with the Department maintaining custody is in the child’s best interest, it should not exceed 90 days as long as the child is safe, and the parent is progressing in his/her case plan. Trial placement should only be initiated when the parent’s home is deemed safe.”⁷² In this case, the court would order that the child remain in DCFS custody, and DCFS could choose a “trial placement” for the child with his/her parents. The court could also order a transition period with a goal date for reunification. If the child is moved to the parent’s home with DCFS retaining custody, the court can gain information at the next hearing about how the child and parent are doing in the home together (in such cases, the court should consider setting a hearing sooner than the timeline for Case Review or Permanency Hearings).

- **OVERALL GUIDANCE:**

- **Federal Requirement to Place Siblings Together:** Per Federal law, DCFS shall make reasonable efforts to place siblings removed from their home in the same foster care, guardianship, or adoptive placement, unless DCFS documents that such joint placement would be contrary to the safety or well-being of any siblings; and if siblings are not so jointly placed, to provide frequent visitation or other ongoing interaction between siblings, unless DCFS documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any siblings. Thus, courts should require DCFS to show evidence that such efforts were made.⁷³
- **Sibling-Type Relationship:** Judges should also be cognizant that a child may have a sibling-type relationship and bond with another child who is not a biological sibling but just as significant to the child.
- **Importance of Placing Full and Half Siblings Together:** The child’s significant relationships and bonds with another child with whom he/she has been raised should also be considered for placement (when the child is in DCFS custody), custody, guardianship, and visitation.⁷⁴ The research shows that when siblings, including those the child considers siblings, are separated from each other, many children feel “they have lost a part of themselves,” adding to the pain and anxiety they experience over removal from their parents and home.⁷⁵ Unless contrary to their safety and well-being, supporting and sustaining the sibling bonds of children who have been placed in foster care or otherwise removed from their homes should be a priority for the child welfare system and the court.
- **Changes in Placement/Custody:** Research shows that multiple placements (and changes in custody) break the bonds of trust and attachment formed by the child and consequently harm the child. Multiple placements (and changes in custody) compound the original trauma of abuse and neglect, often leading to long-term adjustment and attachment difficulties. It is critical to minimize the number of times placement changes for a child.⁷⁶

⁷² DCFS Policy 6-2000 “Planning for Exit from Foster Care Custody” (April 1, 2020).

⁷³ See 42 USC § 671(a)(31)(A) and B).

⁷⁴ See Child Welfare Information Gateway. (2019). Sibling issues in foster care and adoption. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/siblingissues.pdf>.

⁷⁵ Kernan, Emily. Keeping siblings together: past, present, and future. National Center for Youth Law, <https://youthlaw.org/publication/keeping-siblings-together-past-present-and-future/>.

⁷⁶ See Touchpoints. Preparing Children for Transitions. Milwaukee, WI: Coalition for Children, Youth, Families, <https://wifostercareandadoption.org/cms/assets/uploads/2017/10/touchpoints3.pdf>; Child Welfare Information Gateway. (2016). Reunification: Bringing your children home from foster care. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/reunification.pdf>; Child Welfare Information Gateway. (2018). Helping your foster care child transition to your adopted child. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau, https://www.childwelfare.gov/pubPDFs/f_transition.pdf.

H. REASONABLE EFFORTS FINDINGS

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

- **ESSENTIAL JUDICIAL FINDING - REASONABLE EFFORTS:** If the child has been removed from the custody of his/her parents, the courts and DCFS have an ongoing reasonable efforts obligation under State and Federal law until the child is reunified with his/her parents or achieves permanency. DCFS has the burden of demonstrating the reasonableness of efforts they made to: (1) prevent or eliminate the need for removal; (2) reunify the family; and/or (3) achieve timely permanency for the child. The court shall make reasonable efforts findings specific to each child in its Orders, thus holding DCFS accountable. In all reasonable efforts findings, each child's health and safety shall be the paramount concern and should be based on the facts and circumstances of each individual case and child.⁷⁷

The court shall make the following written, separate, and individualized findings for each child in the Judgment:

- (1) If Removed Prior to Disposition:** If a removal was made prior to Disposition, the court shall enter a finding in the Judgment of Disposition as to whether DCFS has made reasonable efforts to:
 - Reunify the parents and child; AND
 - In support of its determination, the court shall enter a brief description of what reunification efforts were made and why further efforts could or would not have shortened separation of the family.
- (2) If Removed At Disposition:** If the child is being removed from his/her parents at the Disposition, the court shall enter a finding in the Judgment of Disposition as to whether DCFS made reasonable efforts to:
 - Prevent or eliminate the need for removal of the child from his/her home; AND
 - In support of its determination, the court shall enter a brief description of what preventative efforts were made and why further efforts could or would not have prevented the separation of the family.
- (3) REASONABLE EFFORTS NOT REQUIRED:** If the court has made a judicial determination that reasonable efforts were not required per Article 672.1, it shall make a written, separate, and individualized finding in the Judgment that reasonable efforts were not required.
 - Per Judicial Determination:** Per Article 672.1, at any time in a CINC proceeding when a child is in the custody of DCFS, a motion may be filed for a judicial determination that efforts to reunify the parents and child are not required. DCFS shall have the burden of demonstrating by clear and convincing evidence that reunification efforts are not required, considering the health and safety of the child and the child's need for permanency. Reasonable efforts to reunify the parents and child are not required if the court determines one of the reasons outlined in Article 672.1 are met.

PRACTICE TIPS:

- **Definition of Reasonable Efforts:** Reasonable efforts are defined in Article 603 as “the exercise of ordinary diligence and care by department caseworkers and supervisors and shall assume the availability of a reasonable program of services to children and their families.”

⁷⁷ See 42 U.S.C. § 671(a)(15)(E) and 672(a)(1); 45 C.F.R. § 1356.21(h)(2), 45 C.F.R. § 1356.21(b)(2) and 1356.71(d)(1)(i); See also Child Welfare Policy Manual, Section 8.3C.4, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=59 Edwards, Leonard. “Overcoming Barriers to Making Meaningful Reasonable Efforts Findings.” ABA Child Practice Today. January 29, 2019, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/overcoming-barriers-to-making-meaningful-reasonable-efforts-find/; Edwards, Leonard. (2014). Reasonable Efforts: A Judicial Perspective, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=210§ionid=2&articleid=5428> (“Congress designed the law to ensure child welfare agencies provide families with services to prevent disruption of the family unit, and to respond to the problems of unnecessary removals and foster care drift. The reasonable efforts requirement is an enforcement mechanism to guarantee that each State provides adequate preventative and reunification services.”); Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>.

- **Prevent or Eliminate the Need for Removal:** Under Federal law, within the first 60 days of a child’s removal from his/her home, the judge shall make a finding as to whether DCFS did or did not exercise reasonable efforts to prevent or eliminate the need for removal of the child or that reasonable efforts were not required per applicable State or Federal law. DCFS risks losing Title IV-E funding for the child’s entire stay in foster care if the child is removed from his/her home and placed in DCFS custody without a judicial finding that reasonable efforts were made by DCFS or were not required by law. Thus, if these reasonable efforts were not made initially, it is critical for the court to hold DCFS accountable going forward to making them within first 60 days of the child’s removal.⁷⁸ Per State law, if the child is removed at Disposition, the court shall make this reasonable efforts finding in the Judgment of Disposition. Reasonable efforts require that DCFS provide accessible, available, and culturally appropriate services that will help families remedy the conditions that brought the child and family to the attention of DCFS.
 - **4 Reasonable Efforts Questions to Consider:** The judge should consider the following 4 questions when determining whether reasonable efforts were made to prevent or eliminate the child’s removal:
 - (1) What were the specific threats of danger that led to the request for removal of the child?
 - (2) What can be done to remove the danger instead of the child? (Examples: preventative services, in-home safety, PO, etc.)
 - (3) Can and will someone the child or family knows move into the home with the child and parents or caretakers to remove the danger to the child? Would a court-ordered safety plan or PO help?
 - (4) Can and will the parents or caretakers and child go live with a relative or other individual to remove the danger to the child? Would a court-ordered safety plan or PO help?
 - **Examples of Preventing or Eliminating the Need for Removal Include (but are not limited to):** A DCFS initiated In-Home Safety Plan, safety checks, home visits, referrals/services (i.e., childcare services, counseling, health-care services, behavioral health evaluation and treatment, parenting education or support services and training, civil legal services), court interventions (i.e., Temporary Restraining Order (TRO), PO, and/or court-ordered safety plan), etc.
- **Reunify the Family:** When the goal is family reunification, DCFS should be held accountable for meeting its obligation to provide appropriate services to assist the parents in their effort to reunify with their child unless the court finds that reasonable efforts were not required per Article 672.1. The court must make a thorough inquiry and provide specific factual findings about the efforts DCFS is making and/or made to reunify the child with his/her parents and whether such efforts were reasonable. The court should identify any areas where DCFS efforts are inadequate and enter orders to address the inadequacies. State’s determine at which hearing this finding must be entered into the Order.⁷⁹ Louisiana the Children’s Code requires the reasonable efforts to reunify the family finding in the Judgment of Disposition and all Permanency Orders.
 - **Examples of Reunifying the Family Include (but are not limited to):** Conducting a thorough Dispositional alternative investigation, developing and/or updating the case plan with the parents, ensuring the case plan is reasonably related to achieving reunification, providing quality visitation time (or at least opportunities for them to take place) between the parents and the child, making diligent efforts to establish paternity/maternity, maintaining (or attempting to maintain) ongoing contact with the parents, helping (or attempting to help) parents achieve case plan goals and involving parents in the case planning process, assisting (or attempting to assist) parents in timely accessing appropriate and effective services and supports needed to address the conditions for the removal/safety concerns, conducting appropriate assessments with the family to identify safety concerns and ways to address them, facilitating FTMs with the parents, seeking court interventions (i.e., TRO, PO, and/or court-ordered safety plan), etc.
- **DCFS Did Not Make Reasonable Efforts:** If the court finds that DCFS did not make reasonable efforts, this finding does not preclude the court’s other findings and/or orders.
- **Case Plan Goal:** The case plan goal (or permanency goal) should not be changed from reunification to adoption or guardianship until the court has made a determination per Article 672.1 that reasonable efforts to reunify the parents and child are not required. If the court makes this determination, the Permanency Hearing may be held immediately or shall be held within 30 days (See Article 702).

⁷⁸ Id.

⁷⁹ Gatowski, *supra* note 2, at 267

I. CASE PLAN CONTENT

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

The case plan shall be designed to achieve placement in the least restrictive, most family-like, and most appropriate setting available; and in close proximity to the parents' homes, consistent with the best interest and special needs of the child. See the [Department of Children and Family Services Case Plan Template](#) in the [Appendices Benchbook Section 12](#). The health and safety of the child shall be the paramount concern in the development of the case plan. If this is a DCFS case, the case plan shall at least include:

(1) PLACEMENT:

- A description of the type of home or institution in which the child is placed, including a discussion of the child's health and safety and the appropriateness of the placement; AND
- If the placement is a substantial distance from the home of the parents or in a different State, the reasons why it is in the best interests of the child.

PRACTICE TIPS:

- **Court's Authority Concerning Placement:** While the court has the authority to change custody, if the child is in DCFS custody, the court has no authority to order a specific placement for the child. However, the court may disapprove the case plan per Article 677 and/or disapprove the placement chosen by DCFS per Article 672(A)(2).
- **Shortage of Placements:** The fact that there may be a shortage of placements in Louisiana does not justify an assertion that it is in the best interest of the child to be placed a substantial distance from his/her parents' home or placed out-of-State.
- **Long-Term Permanency:** Per DCFS policy, placement with a family willing to provide long-term permanency to the child should the child be unable to return to the parents must be a priority. Additionally, except in unusual situations, all children ages 5 and under should be placed in care settings capable of providing long-term permanency due to the young age and critical developmental needs of the child. This can be achieved when children are placed with relatives or when unrelated families are selected based on their willingness and ability to provide safe and long-term permanency.

(2) CARE, SERVICES, AND ACTIVITIES:

- A plan for assuring that the child receives safe and proper care;
- That services are provided to the parents, child, and foster parents to improve the conditions in the parents' home, facilitate the safe return of the child to his own home or other permanent placement of the child, or both;
- Discussion of the appropriateness of the services that have been provided to the child under the plan; AND
- A plan for assuring that the child is afforded the greatest opportunity for normalcy through engagement in age or developmentally appropriate activities on a regular basis.⁸⁰

HELPFUL GUIDANCE:

- **Safety and Risk Assessment:** If a child is placed outside a parent's home, the court should determine the continuing necessity of an out-of-home placement at the hearing. At each hearing, the court should insist on a clear articulation of the current safety concerns keeping the child in care. The child should be returned home immediately once it is safe to do so regardless of whether the case plan is complete. Foster care is the safety plan of last resort. See [Child Welfare Assessment and Decision Making \(CWADM\) Benchbook Section 11](#) for more information.

⁸⁰ See Preventing Sex Trafficking and Strengthening Act (2014), which established a normalcy provision for foster youth under the "reasonable prudent parent standard." Act, H.R. 4980; see also <https://www.ncsl.org/research/human-services/preventing-sex-trafficking-and-strengthening-families-act-of-2014.aspx> and https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/october-2016/the-reasonable-and-prudent-parent-standard/.

- **Assessing Services for Parents:** The following are important questions to ask when assessing services for the parents:
 - **Safety:** Does the case plan include tasks addressing changes in behaviors, commitments, and attitudes related to safety?
 - ▶ The case plan should be precise when detailing the expected outcomes and what parental behaviors must change.
 - ▶ Listing services people must attend, directing them to “follow all treatment recommendations,” does not allow the court to measure progress, only to measure attendance or participation. An example of how to measure progress would be: “Alan will demonstrate an ability and willingness to delay his own needs to provide food, supervision, and attention for his daughter Kayla.”
 - **Threats of Danger and Protective Capacities:** Does the case plan follow logically from the identified threats of danger and deficits in protective capacities in the home?
 - ▶ The case plan should lay out an effective and expedient strategy to equip parents to ensure the child’s safety. The case plan should reduce threats of danger over time and increase protective capacity. For example, a case plan calling for the parent to “learn about child development” may fail if it does not address the specific threats of danger the child is facing and/or the protective capacities the parent is lacking.
 - ▶ Some parents must deal with their own experiences of being victimized to develop protective capacities.
 - ▶ Specific mental health issues may make a parent so ill-prepared for being protective that those issues must be addressed first.
- **Foster Parents and Services:** While services are not necessarily directly provided to foster parents in the case plan, support is provided to foster parents to facilitate the provision of some services.
- **Age-Appropriate Activities:** The child shall be consulted in an age-appropriate manner about his/her interests and the opportunities available to him/her.
- **Normalcy:** Recognizing the greatest opportunity for normalcy lies in the day-to-day decisions affecting the child’s activities, the child’s caretaker should be supported in making those decisions through the use of the reasonable and prudent parent standard as set forth in La. R.S.. § 46:283.⁸¹
- **Cultural/Religious Connection:** An aspect of case planning that is often over looked includes the need for cultural and/or religious connection and/or activities for children. The presence or absence of such activities may depend on the practices of the placement rather than based on the needs of the child. The court can make inquiries into this important part of some children’s lives and determine whether the case plan adequately addresses these needs. For example, consider a child who has been raised as a member of a particular church, but the foster care placement does not practice any religion. The child may suffer by not continuing to attend church in this placement. How will the case plan address the need for the child to continue in this activity? Or, if a child has been raised without any religious practice and is placed in a home where the foster parents expect the child to attend church frequently, this could be very uncomfortable for the child. Thus, the court should assess DCFS’s proposed plan to address the child’s cultural and/or religious background.
- **Educational Stability:** Children and youth in foster care represent one of the most vulnerable student subgroups in the country.⁸² Studies find that children in foster care are much more likely to struggle academically and fall behind in school than their peers.⁸³ The ESSA sets forth provisions protecting children in foster care as it relates to their education and schooling. Specifically, it allows a child placed in foster care to remain in their school of origin or be enrolled in a school without delay. Some reasons that a child should stay in the school of origin include close peer connections, established teacher and/or staff relationships, comfort with and/or success at the school, provision of tutoring (many schools no longer provide tutoring) and other accommodations, better opportunities to join sports teams and other desired

⁸¹ See also https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/october-2016/the-reasonable-and-prudent-parent-standard/.

⁸² For more information on Educational Stability for Children and Youth in Foster Care see: <https://www.childwelfare.gov/topics/systemwide/service-array/education-services/meeting-needs/educational-stability/>; U.S. Department of Education and U.S. Department of Health and Human Services. (2016) Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, <https://resources.finalsite.net/images/v1535746984/tulsaschoolsorg/h07q5pxet7fifpizh2lm/FosterCareGuidance.pdf>.

⁸³ Id.; Heimpal, Daniel. “The Chronicle of Social Change, “The Case of ‘V. Doe’ Could Have Major Implications for the Education of Foster Youth Nationwide.” Youth & Family News, The Imprint. January 18, 2018, <https://chronicleofsocialchange.org/education/case-v-doe-major-implications-education-foster-youth-nationwide/29467/> (“Greater than 1/3 of all youth in foster care will have 5 or more school changes by the time they turn 18, and each change can cost 4 to 6 months of academic progress.”).

activities, and previous school changes and disruptions. The ESSA also requires transportation to be provided for the child to the school of origin, even if the child moves out of that school district. The child welfare agency and the local educational agency (LEA) must ensure this transportation is provided and appropriate. Some of these provisions of the ESSA are codified in the Louisiana Revised Statutes.⁸⁴ Although the child has the right to educational stability, the judge may want to make specific orders to help move the process along more expeditiously. The judge can also disapprove the case plan if the plan for the child’s education is not sufficient.

- **Special Education:** Many of the children who come through the child welfare system either need or are already receiving special education services. The Federal Individuals with Disabilities Education Act (IDEA), along with its State counterparts, ensure that children with disabilities receive a free appropriate public education designed to meet their unique learning needs. The Act addresses which children will receive full and individualized evaluations for eligibility, what special education and other related services are deemed necessary and where and when these services will be provided. IDEA also covers who is allowed to make these decisions for each child, a responsibility made more complicated when a child is involved in the foster care system. The birth or legal parent usually possesses the right to act as their child’s IDEA parent unless limited by the court or when parental rights are terminated. A foster caregiver may also act as the IDEA parent. However, if a foster child is in a congregate care setting—a group home, Psychiatric Residential Treatment Facility (PRTF), hospital, etc.—or the IDEA parent available is not deemed appropriate or eligible, either the Local Educational Agency (LEA) or the CINC judge have the authority to appoint a “surrogate parent” to make education decisions for the child. Pursuant to the IDEA, a DCFS staff member cannot act as the surrogate parent.
- **Response to Intervention (RTI) and Multi-tiered Systems (MTTS):** Under ESSA, the MTTS and RTI were created to avoid the overidentification of learning disabilities before implementing interventions to meet the students’ needs. MTTS or RTI requires school systems to implement academic interventions over 16-18 weeks driven by students and their individual performance. Interventions can be difficult for children in foster care because of their mobility. Judges can help by directing DCFS to sign a release so that schools will include intervention data, MTTS or RTI status with all educational records of foster youth as they transfer schools.
- **Trauma and Behavioral Health Screen (TBH):** It is DCFS policy for children in foster care and DCFS Family Services from birth to age 18 to receive trauma and behavioral health screening initially and every 6 months. DCFS utilizes the Trauma and Behavioral Health Screen (TBH) and when indicated by the TBH score, the agency will refer the child for treatment. DCFS usually provides updates in its court reports. The court may want to consider the appropriateness of and/or need for services in light of the results of the screening.

(3) VISITATION/FAMILY TIME:

- A plan for visitation (also called “family time”).

PRACTICE TIPS:

- **Court’s Authority Over Visitation:** The Children’s Code articles regarding the Disposition Hearing provide that the court can either approve or disapprove the case plan. It does not state the court has the authority to change anything in the case plan. Although the plan for visitation between the child and his/her parents, siblings, and others is included in the case plan, Article 309 does give the court continued jurisdiction over visitation in all CINC proceedings.

⁸⁴ La. R.S. § 17:238C (“The governing authority of each public and secondary school shall establish a policy to ensure that a child who is in foster care pursuant to placement through the Department of Children and Family Services shall be allowed to remain enrolled in the public school in which the child was enrolled at the time he entered foster care for the duration of the child’s stay in the custody of the State or until he completes the highest grade offered at the school if the Department of Children and Family Services determines that remaining in that school is in the best interest of the child. If the foster care placement is outside the jurisdictional boundaries of the public school in which the child is enrolled, the governing authority of such school shall be responsible for providing free transportation for the child to and from a designated location which is within that school district and is located nearest to the child’s residence and is determined to be appropriate by such governing authority and the Department of Children and Family Services. The Department of Children and Family Services shall be responsible for providing the child’s transportation between that location and the child’s residence.”).

- **DCFS Requirements for Visitation:** The case plan should set out the visitation plan for the child with his/her parents, siblings (if not placed together or not in care), and others with whom the child has significant relationships (see below). DCFS policy sets minimum requirements for visitation/family time, which states:⁸⁵
 - “The minimum requirements for visits between foster children and biological family are as follows, as long as such visitation is in the best interest of the child: Visits between parents and children shall occur at least every 2 weeks unless case circumstances prevent visiting or indicate otherwise. In the first 6 months of placement and the two months preceding an anticipated reunification date, every effort shall be made to hold visits more often and increase the length of visits...Documentation in the case record should include frequency and quality of parent and child visitation.
 - Visits between siblings should be offered at least monthly, and preferably more often, if appropriate for case circumstances.
 - When parents are incarcerated, and the reason for incarceration is not related to the child’s abuse or neglect, then DCFS shall make exhaustive efforts to facilitate visitation between parents and their children in foster care.
 - If the child has established significant relationships with other relatives, such as grandparents, and it is in the child’s best interest, these relationships should be preserved to the extent possible through continued contacts during foster care placement. These contacts should include visitation as well as other arrangements, such as email, telephone calls, letters, and the exchange of personal information, cards, or pictures.
 - If the child has established significant relationships with other individuals such as friends, teachers, church members, godparents, or others, every effort should be made to allow the child to have ongoing contact with these individuals as well.”
- **Visitation and Rights of Parents:** If a child has been removed from his/her parents’ custody and reunification is still the case plan goal, the parents should still be invited to attend all medical appointments, school conferences and activities (including eating lunch with the child at school), sports and extracurriculars, and other important events involving the child (unless there is an order otherwise preventing this, such as a criminal no contact order).
- **Court’s Role in Visitation and Ongoing Obligation:** At the Disposition Hearing, one of the court’s roles is to ensure the adequacy of the case plan, which includes preserving valuable relationships and connections that are in the best interest of the child by considering the frequency and type of visitation and if other visitation or contact is needed. Visitation planning and scheduling should be an ongoing assessment of the child’s established and significant relationships with parents, grandparents, siblings, relatives, and other important individuals in the child’s life. The safety and well-being of children should always be paramount in considerations of family time. Judges should ensure the plan for family time is in the best interest of the child, individualized, and age and developmentally appropriate for the child.
 - **Reunification:** As long as the permanent plan remains reunification, preserving and enhancing the parent-child relationship while providing for the safety and well-being of the child is crucial for many reasons (i.e., maintaining attachment, reducing trauma, providing ability to put parenting skills into practice, etc.), including the child’s future transition back into the custody of his/her parents. Initiating or continuing visitation and/or contact with relatives or individuals is critical for the child’s well-being.
 - **Permanency:** It is also important if reunification becomes no longer viable (i.e., if a child is placed with foster parents by DCFS) that visitation with relatives or other individuals who are being considered as a permanent placement for the child are included in the visitation schedule. For example, there may be a relative living out-of-State that could be a permanent placement for the child. Establishing and/or maintaining contact with that relative early on would be critical in lessening the child’s difficulties adjusting if later moved to live with that relative.
 - **Frequency:** Although DCFS policy provides a minimum requirement for visitation, the court should consider ordering more frequent visitation than the minimum based on the best interest of the child.

85 DCFS Policy 6-915 “Visitation and Continuing Contact with Biological Family” (September 3, 2020).

- **Unsupervised Visits:** Family time should be frequent, liberal, and presumed unsupervised unless there is a demonstrated safety risk to the child.
- **Change in Circumstances:** Anytime there is a change in the child’s circumstances, placement, custody, and/or permanent plan, the court should consider if changes need to be made to the visitation schedule to better serve the best interest of the child. This may include increasing or decreasing frequency or lengths of visits, moving to less or more supervision, and adding or removing visits and/or contact with siblings, other family members, or significant individuals.
- **Methods of Contact:** The court should consider increasing contact through virtual and other means. Contact may include in-person visitation as well as more limited arrangements such as phone calls, Zoom or FaceTime, texts, letters, emails, or simply the exchange of personal information. For a considered discussion of visitation/family time, please see [Continued Custody Hearing \(CCH\) Benchbook Section 5 M](#).⁸⁶
- **Visitation Not to be Used as Incentive or Disincentive:** Visitation is a right of both parents and children in CINC cases. The fashioning of visitation should be based on promoting the important connection between the parents and child. Visitation between parents and children should not be used as an incentive or disincentive for parents with regard to mitigating the reasons for State intervention.

(4) EFFORTS TO RETURN CHILD OR FINALIZE PLACEMENT:

- Documentation of the efforts DCFS is making to safely return the child home; OR
- Documentation of the efforts DCFS is making to finalize the child’s placement in an alternative safe and permanent home in accordance with the child’s permanent plan.
 - **Adoption or Placement in Another Permanent Home:** For children whose permanent plan is adoption or placement in another permanent home, this documentation shall include child-specific recruitment efforts such as the use of State, regional, and national adoption exchanges, including electronic exchange systems, to facilitate orderly and timely in-State and interstate placements.
 - **Guardianship:** For children whose permanent plan is guardianship, the documentation shall include the facts and circumstances supporting guardianship, including the reasons that the plan is in the best interest of the child and that reunification with a parent and adoption are not appropriate permanent plans. The documentation shall also address the suitability and commitment of the proposed guardian to offer a wholesome, stable home for the child throughout minority.
 - **Alternative Permanent Living Arrangement:** For children whose permanent plan is placement in the least restrictive, most family-like alternative permanent living arrangement, the documentation shall include the intensive, ongoing, and as of the date of the hearing, efforts made by DCFS to return the child home or secure a placement for the child with a fit and willing relative, including adult siblings, a legal guardian, or an adoptive parent.

(5) ASSESSMENT OF RELATIONSHIPS:

- Assessment of the child’s relationships with his/her parents, grandparents, and siblings, including a plan for assuring that continuing contact with any relative by blood, adoption, or affinity with whom the child has an established and significant relationship is preserved while the child is in foster care.⁸⁷
- **Preservation:** The preservation of such relationships shall be considered when the child’s permanent plan is determined.

HELPFUL GUIDANCE:

- **Maintaining Relationships:** This part of the case plan should be different from the visitation schedule. DCFS should be assessing the child’s relationships with his/her parents, grandparents, siblings, and other individuals with whom the child has a significant relationship. This assessment is important for DCFS to conduct to support its recommendation to the court regarding the child’s permanent plan. It is also critical in showing the “reasonable efforts” taken to preserve the quality of

⁸⁶ For more resources on visitation/family time, see: <https://www.childwelfare.gov/topics/systemwide/assessment/family-assess/progress/visitation/>.

⁸⁷ La. Ch. C. art. 675, 2001 Comment (“Maintaining these relationships is an important case work goal, especially during a time of insecurity while the permanent plans have not yet been finalized.”).

these relationships for the child, which goes towards reasonable efforts findings to achieve permanency. Courts should utilize this assessment to modify the visitation schedule (as stated above) and in consideration of the Disposition.

(6) YOUTH 14 YEARS OF AGE AND OLDER:

- When appropriate, the case plan shall include a written description of the programs and services that will help the child prepare to transition from foster care to independent living, i.e., “Youth Transition Plan” (YTP). See the [Department of Children and Family Services Youth Transition Plan \(YTP\) Template](#) in the [Appendices Benchbook Section 12](#).

☰ PRACTICE TIPS:

- **Federal Law Regarding Youth Transition Plan (YTP):** Pursuant to Preventing Sex Trafficking and Strengthening Families Act of 2014, the YTP shall be updated every 6 months. The development of the YTP, including its implementation, 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 the case planning. In addition, the child may select up to 2 individuals (excluding those normally on his/her case planning team, his/her foster parent, and case worker) to be involved in developing the case plan. See 42 U.S.C. § 673(b) and 675.
- **DCFS Policy Regarding Youth Transition Plan (YTP):** According to DCFS policy, this plan is to be written, individualized, thorough, and developed in collaboration with the youth and any individual, department, or agency assuming his/her custody, care, or responsibility.⁸⁸ The plan must “identify the programs, services, and facilities to be used to assist the child in achieving a successful transition and address the needs of the child including, but not limited to, education, health, permanent connections, living arrangements, independent living skills, and employment; for LGBTQ youth, LGBTQ programs and services should be identified.”⁸⁹ DCFS shall ensure that all records in its files relevant to securing needed services in the community in which the youth will live shall be immediately transmitted to the appropriate service provider.

☰ HELPFUL GUIDANCE:

- **Reasonable Efforts Implications:** The development of the YTP, including the efforts to involve the youth in its development, and its implementation should be considered in reasonable efforts to achieve a permanent placement for the youth.
- **Youth Engagement:** DCFS must provide the youth with assistance and support in developing a YTP that is personalized at the direction of the youth, includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports and employment services, and is as detailed as the child may elect. Courts should engage youth in court proceedings and encourage their participation.
- **DCFS Disposition Court Report:** The court report should provide more information about youth who are 14 and older, such as the youth’s permanent connections and relationships to siblings not in care, and what the youth has learned from independent living classes.

(7) OBLIGATION TO CONTRIBUTE:

- If the child has been committed to the custody of a person other than the parents, the case plan shall *recommend* an amount the parents are obligated to contribute for the cost of care and treatment of their child in accordance with Article 685.⁹⁰

⁸⁸ DCFS Policy 6-810 “Legally Mandated Case Plan” (August 17, 2020).

⁸⁹ *Id.*

⁹⁰ La. Admin Code. tit. 67, Pt V, § 3501.

(8) TERMINATION OF PARENTAL RIGHTS:

- DCFS must provide documentation of the compelling reasons for determining that filing a petition for termination of parental rights would not be in the best interest of the child, when appropriate.

HELPFUL GUIDANCE:

- **Authority to File TPR Petition:** See Articles 1004 and 1004.1 for the persons and agencies who have a legal right to file a petition to terminate parental rights (TPR), including the timing and grounds for which a TPR may or must be filed.

J. CASE PLAN FINDING AND ORDER

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

- **ESSENTIAL JUDICIAL FINDING AND ORDER- APPROVE OR DISAPPROVE CASE PLAN:** The court shall approve or disapprove the case plan per Article 677, based on the arguments of the parties and evidence presented and enter written findings into the Judgment of Disposition. Depending on the Disposition, there may not be a case plan to approve (i.e., if grant guardianship, etc.).
 - (1) APPROVE:** The court shall enter a written order in the Judgment of Disposition approving of the case plan and order parties comply therewith, if it:
 - Protects the health and safety of the child; AND
 - Is in the best interest of the child.
 - (2) NOT APPROVE:** If the court does not approve the case plan it shall enter specific written reasons for its finding in the Judgment of Disposition that the plan:
 - Does not protect the health and safety of the child; OR
 - Is not in the best interest of the child.

PRACTICE TIPS:

- **Specific Grounds:** The specific grounds upon which the child was adjudicated should guide the formation, implementation, and approval of the case plan.
- **Joint Responsibility of Case Plan:** DCFS proposes the case plan but the court's role is to review and either approve or disapprove the case plan and order DCFS to revise it if needed. Court review should ensure the case plan includes elements designed to support increased protective capacities that are feasible within stated time limitations.
- **Safety and Risk Issues and Conditions of Return:** The case plan should identify the safety and risk issues and conditions of the child's return before the court's involvement ends, including helping to enhance the parent's protective capacities to the identified threats of danger. It is paramount for the court to ensure the parents and child's involvement in the case planning process. The judge should carefully review the case plan and consider the arguments of the parties and evidence presented to determine whether the proposed services and other case plan activities address specific issues, are accessible, and are culturally and linguistically appropriate.
- **Permanent Plan:** All case plan goals should include the action steps necessary to achieve the most appropriate permanent plan for the child.
- **Court Does Not Approve:** The court is not authorized to revise the case plan itself. If the court does not approve the case plan, it should so find in the Judgment and direct DCFS to make the necessary revisions. Another court hearing should be scheduled for the court to approve or disapprove the revised case plan (sometimes referred to as a "Case Plan Review Hearing"). Best practice is not to wait until the Case Review Hearing to review the revised case plan. Otherwise, DCFS will not be able to implement the changes timely. Some courts return within 30 days or less days of the hearing to consider

the revision. Per DCFS policy, DCFS will revise the plan and submit it to the court until it is approved. See also Article 700(A)(2). The court should set a deadline for DCFS to submit the revision.

- **Set Deadline for Revising:** It is helpful to set a deadline for revising the case plan in the Judgment of Disposition to ensure that the children and parents receive supports and services in a timely manner.
- **Resolve During Hearing if Possible:** However, best practice is to resolve any parts of the case plan not approved while still at court. This can be accomplished if a party moves to have the case plan amended during the hearing. If, after reviewing it, all parties agree to the amendments proposed, the judge can approve the amended case plan. If the case plan is amended and approved at the Disposition Hearing, the Judgment should clearly delineate the specific changes made and that the court approved the “amended” case plan.
- **Child Not in DCFS Custody:** Even if the child is not in DCFS custody, there still may be a case plan developed that the judge needs to review (i.e., child is in custody of a parent, child is in custody of a relative, DCFS is supervising the family, etc.).

HELPFUL GUIDANCE:

- **Reasonable Efforts and Case Planning:** Case planning is an integral element of DCFS’s burden of showing reasonable efforts have been made to prevent removal, reunify the family, and/or achieve permanency. Each case plan must specifically include a description of the services and supports offered and provided and the progress that has been made since the previous hearing to prevent removal of the child from his/her parents’ custody, reunify the family if the child has been removed, or achieve permanency (if reunification is no longer the appropriate plan for the child).⁹¹
- **Reasonableness of Case Plan:** The reasonableness of the case plan is critical to an accurate determination of the parents’ willingness and ability to make the adjustments found necessary for the safe return of their child.⁹² The case plan should be geared towards enhancing parental protective capacities, including but not limited to: changes in parental behavior that must be achieved; services to be provided to help achieve these changes; and the deadlines and respective responsibilities of each party, including DCFS, in providing services and achieving the case plan goal. The case plan should also identify any needs of the child and the services to be provided to meet those needs. Finally, the case plan should set forth the terms and conditions of visitation/family time with parents and siblings. The visitation schedule should also include in-person visits and other contact with relatives and important individuals to the child. The case plan must help the child maintain all these significant connections. In addition, if there are potential relative or fictive kin placements, visits would be critical to establishing or re-establishing relationships prior to placement. The court should take time to review the case plan to ensure that all parties understand it and what is expected of them.
- **Concurrent Planning-Case Plan Goals:** The case plan will include a case plan goal (also referred to as permanency goal in DCFS policy). At the Disposition Hearing, the court should inquire as to the case plan goal DCFS is recommending. If the court does not approve the case plan goal, it may disapprove the case plan and order DCFS to revise the case plan. DCFS case plan goals may include reunification (including custody to one parent), adoption, custody to a relative, guardianship, and APLA (only for a child who is 16 or 17 years old) and a concurrent goal that includes any two of these options. Most case plans start with a concurrent goal of reunification and adoption. All case plan goals should include the action steps necessary to achieve the most appropriate permanent plan for the child.⁹³
- **Distinguishing Case Plan Goal and Permanent Plan:** While DCFS will set a case plan goal for the child when he/she enters foster care, the court will determine the permanent plan at the Permanency Hearing.
- **Concurrent Planning-Reasonable Efforts and Timely Permanency:** According to DCFS policy, concurrent planning is the process of making efforts with a family to achieve more than one case plan goal for a child simultaneously. The concurrent planning process can be an effective means of securing more timely permanency for a child and reducing the time spent in DCFS custody. When concurrent planning is appropriate, both goals should be given equal effort by DCFS. To achieve permanency through any goal for the child, the case worker will practice full disclosure with the parents,

⁹¹ See 42 U.S.C. § 1356.1; 42 U.S.C. § 675; Edwards, Leonard. (2014). Reasonable Efforts: A Judicial Perspective, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=210§ionid=2&articleid=5428>.

⁹² La. Ch. C. Article 684 Authors’ Notes.

⁹³ See CW Policy 6-840 Permanent Plan Goal: Reunify with Parents or Principal Caretakers; CW Policy 6-802 “Case Plan Goal Establishment and Concurrent Planning” (October 1, 2019).

child, and foster caregivers concerning all options for permanency for the child. This should include clarification as to when a concurrent goal is developed and when reunification will cease to be an option for the parents and the child.

K. ADVISEMENTS

ARTICLES 309, 623, 682, 684

(1) PARENTS: In all cases in which the child is removed from his/her parents' custody and assigned to DCFS, the court shall advise the parents of the following: (best practice is to include advisements in the written Judgment of Disposition):

- The procedures governing the case plan, case review, and permanency review;
- Their obligation to:
 - Cooperate with DCFS and comply with the requirements of their case plan;
 - Keep DCFS and their counsel apprised in writing of their current whereabouts, including address, cellular number, telephone number, and any other contact information, of the identity and contact information for an absent parent; and contact information for any relative or other individual willing to offer a wholesome and stable home for the child;
 - Correct the conditions requiring the child to be in care; AND
 - Support their child, including their obligation to contribute to the care and treatment of their child as provided in Article 685.
- That a petition to terminate their parental rights may be filed:
 - If the parent fails to comply with the case plan;
 - If the parent fails to make significant measurable progress toward achieving case plan goals; AND
 - If the parent fails to correct conditions requiring the child to be in care or on any other ground authorized in Article 1015.

(2) ALL PERSONS: In all cases in which the child is removed from his/her parents' custody and assigned to DCFS, the court shall advise the parties and all person before the court of the following: (best practice is to include advisements in the written Judgment of Disposition):

- The procedures governing the case plan, case review, and permanency review;
- Their continuing responsibility to:
 - Notify DCFS and the court in writing regarding the whereabouts, including address, cellular number, telephone number, and any other contact information, of an absent parent and the identity and whereabouts, including address, cellular number, telephone number, and any other contact information, of any relative or other individual willing and able to offer a wholesome and stable hand stable home for the child; AND
 - Support the achievement of timely permanency for the child and the requirement that those persons advise DCFS and the court in writing of the whereabouts, 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 the child.

L. FURTHER FINDINGS AND ORDERS

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

The court may make additional orders in the best interest of child, such as:

(1) PARENTS' CONTRIBUTION:⁹⁴

- a. **Findings and Order:** As part of any Judgment of Disposition committing a child to the custody of a person other than the parents, the court may order a parent to contribute to the cost of care and treatment of the child if:
 - The parent has been given a reasonable opportunity to be heard; AND
 - The court has considered the following factors:
 - The best interest of the child;
 - The recommendation of DCFS;
 - The ability of the parent to pay;

⁹⁴ La. Admin Code. tit. 67, Pt V, § 3501.

- The obligation of the parent to support the child;
 - The needs of the child; AND
 - Any other relevant factor.
- b. **Manner of Payment:**
- **DCFS Custody:** When the child is in DCFS custody, the payments by the parents shall be made directly to DCFS. Upon receipt, the payments shall be deposited in the State treasury (except when otherwise provided by Federal law). The payments are not designated for the specific child. If there is a default by the parent, DCFS may exercise all administrative and legal alternatives provided by law or regulation for enforcement.
 - **Custody/Guardianship of Nonparent:** When a caretaker other than DCFS is providing care for the child, the payments by the parent shall be made according to the court's order. If there is a default by the parent, the caretaker, if receiving the contributions, or DCFS may proceed against the parent as provided by law for failure to pay.
- c. **Relationship to Child Support:**
- **Not Considered Child Support:** An order for parental contribution in accordance with Article 685 shall not be considered child support pursuant to Louisiana Revised Statutes § 9:315 et seq.
 - **Do Not Order if Obligated to Pay Child Support:** The court shall not order a contribution in accordance with Article 685 if the parent is obligated to pay child support pursuant to Louisiana Revised Statutes § 9:315 et seq.
- d. **Termination of Order:** If a valid child support order has been signed in accordance with Louisiana Revised Statutes § 9:315 et seq., a previous order for parental contribution to the cost of care and treatment shall terminate by operation of law.

HELPFUL GUIDANCE:

- **Due Process:** Article 675(B)(4) requires DCFS to recommend an amount for “parental contribution.” Parental contribution in accordance with this Article shall not be considered child support pursuant to La. R.S. § 9:315 et seq. Article 685 allows the judge to determine and order the parental contribution. Article 685 ensures due process for the parents prior to the order, specifies the enforcement mechanisms available once the order is rendered, and distinguishes the parental contribution from child support. The court should ask DCFS whether there is a child support order. If a child support order has been established, an order for parental contribution shall not be made. Further, if a valid child support order is subsequently signed, a previous order for parental contribution shall terminate by operation of law (Article 675(D)). Failure of a parent to significantly contribute towards the child's care and support is one ground listed as a basis for TPR (Article 1015). Thus, it is critical that parents understand the consequences of failing to contribute per Articles 675(B)(4) and 685.
- **Not Child Support:** Parental contribution is not the same as child support. Parental contribution is not sent to or processed by Child Support Enforcement (CSE) and should not result in legal collection proceedings by CSE.
- **Referral to Child Support:** DCFS only refers parents to child support if the child is Title IV-E eligible. The child has to meet poverty guidelines to be Title IV-E eligible. If a child support order is established during the pendency of the CINC case, then DCFS will need to delete the required monthly contribution set forth in the case plan.
- **Child Support Preferred:** Under Article 685, child support is to be preferred to parental contribution.
- **Child Support Order:** If during the pendency of the CINC case, a child support order is established, then DCFS should delete the required monthly contribution that is set forth in the case plan and the court should modify the Judgment accordingly.
- **No Obligation to Pay:** Per DCFS policy, all parents shall be assessed for parental contributions unless:
 - There is an active Office of Juvenile Justice custody case;
 - There is an existing child support order;
 - Parental rights have been terminated;
 - An adoption is pending;
 - A child is in a non-paid placement (i.e., relative placement);

- The parent has no income; AND/OR
- The parent receives social security benefits.
- **Ability to Pay:** The DCFS procedure for calculating parental contributions is based on a percentage of the parents adjusted gross income. DCFS Title IV-E analysts utilize a formula to determine what the parent will pay if there is no child support order already in place. In its discretion, the court may modify the DCFS recommendation based upon the parent's ability to pay or other factors. DCFS may recommend that parental contributions not be ordered if good cause exists in a particular case. Examples of good cause include but are not limited to short-term foster care placements, pending adoption proceedings, cases of rape or incest, potential noncustodial parent placement, or imminent termination of parental rights.
- **Poverty Implications:** The court should be aware that many child welfare cases are inextricably linked to poverty. The court should be mindful that contributions to the cost and care of treatment may be a significant barrier to reunification when the family lives in poverty.⁹⁵

(2) FAMILY TEAM MEETING (FTM): If the child is in DCFS custody or has an open DCFS Family Services case, DCFS should propose a tentative date for the next FTM. The court can provide notice of and encourage participation by all parents, caretakers, children, foster caregivers, CASA workers, and attorneys for children and parents as applicable.

■ PRACTICE TIP:

- **Set Tentative Date for Next FTM:** Facilitating a tentative or confirmed date and time for the next FTM while everyone is at the hearing and including it in the Judgment helps ensure FTMs are timely held. Without enough notice of the FTM date and time, some team members may have difficulty participating. FTMs should be conducted at least every 6 months.

■ HELPFUL GUIDANCE:

- **Purpose:** FTMs are facilitated by DCFS, and they are important because FTMs are where case planning occurs for the family. FTMs are where parents and children and other stakeholders and supports give valuable input on the services and assistance needed and to be provided.

(3) EDUCATION PLAN: If the child is continued/placed in DCFS custody, the court can order DCFS coordinate with the appropriate local education agencies to ensure that the child remains enrolled in the school in which the child was enrolled at the time of placement. If changing schools is in the child's best interest, then DCFS must document the reasons.

(4) POTENTIAL PERMANENT PLACEMENTS: The court can order DCFS to:

- Explore all possible relative or individual caregivers (i.e., fictive kin, people who matter to the child, etc.) with results and/or updates on results to be presented at a future hearing;
- Initiate a child welfare background clearance, criminal background check, assessment of home or home study on potential caregivers so that they can be considered for placement by DCFS and/or for custody or guardianship at a future hearing;
- Take steps necessary for potential caregivers to complete timely foster care certification, if needed (i.e., to receive guardianship subsidy if applicable, etc.); AND/OR
- Initiate ICPC process for potential placement with any out-of-State relatives or individuals.

⁹⁵ See Child Welfare Information Gateway. (2016). Racial disproportionality and disparity in child welfare, Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf; Ellis, Krista. "Race and Poverty Bias in the Child Welfare System: Strategies for Child Welfare Practitioners." ABA Child Practice Today. December 17, 2019, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/race-and-poverty-bias-in-the-child-welfare-system---strategies-f/.

(5) NOTIFICATION TO CHILD’S ATTORNEY: If the child is in the custody of DCFS, the court can order that DCFS notify the child’s attorney electronically or otherwise, immediately after a change of placement of the child occurs. Because of the due process implications, it is advisable that DCFS do so no later than 24 hours after the change of placement. Children must have access to their attorneys, and attorneys must have access to their clients.⁹⁶ The notification shall include the address and contact number of the placement.

 **PRACTICE TIP:**

- **Due Process:** The child’s attorney must know how to contact their client, and the child must know how to contact his/her attorney. Otherwise, there will be due process implications. See Article 553: “A child shall have the right to communicate...with counsel at all times.”
-

(6) OTHER ORDERS: The court may make other orders related to maternity or paternity, PO, child’s education, services, mental or physical health examinations, placement of the child when they are in DCFS custody (See Article 672(A)(2)), etc.

(7) OTHER FINDINGS

- **ESSENTIAL JUDICIAL FINDING - INDIAN CHILD WELFARE ACT (ICWA):** Per ICWA, at every CINC hearing, the court shall ask each person whether they know or have reason to know that the child is a member of or eligible for membership in a Federally recognized Indian Tribe and a biological child of a member of a Federally recognized Indian Tribe. Further, the court shall advise all to inform the court if any of the above information is subsequently discovered. If the court knows or has reason to know, the court shall follow Articles 624, 624.1, 661.1. The court should also inquire as to DCFS’s due diligence in locating and contacting the Tribe. Noncompliance with ICWA may result in an invalidation of the proceedings, including a subsequent adoption. See also the [Indian Child Welfare Act \(ICWA\) Bench Card](#) and 25 U.S.C. § 1901 et seq.

M. ORDER OF NOTICES AND FUTURE HEARINGS

ARTICLES 424.7, 623, 674, 688-9

The court should also include the following in the Judgment of Disposition:

- (1) FUTURE HEARINGS:** The parents of the child, all attorneys of record, a DCFS representative, and CASA be present at all future hearings.
- (2) CASE PLAN:** DCFS shall file case plan with the court at least 10 days prior to the Case Review/Permanency Hearing(s) and upon filing shall provide copies to counsel by mail or email and unrepresented parties by certified mail or email if requirements of Article 674 are met.
- (3) COURT REPORT FILED BY DCFS:** DCFS file its court report at least 10 days prior to the Case Review/Permanency Hearing(s) and provide copies to CASA, counsel, and unrepresented parties (Although Children’s Code is silent on submission of the court report for the Permanency Hearing, DCFS policy requires court reports to be filed for hearings starting at Disposition).
- (4) COURT REPORT FILED BY CASA:** CASA should file its court report prior to the Case Review/Permanency Hearing(s) and shall distribute a copy of such reports prior to or at the time it is submitted to the court, to all counsel of record, any unrepresented party, and DCFS.
- (5) SET MATTER FOR APPROPRIATE HEARINGS:**
 - **Revised Case Plan or Status Hearing:** Set if court did not approve the case plan or there are other issues that need to be addressed or resolved.
 - **Initial Case Review Hearing:** Shall be set within 3 months of the Disposition if the child was removed before the Disposition or within 6 months if child removed at Disposition, but no more than 6 months after removal (or earlier upon motion per Article 692(B)).

⁹⁶ See La. Ch. C. art. 553.

- **Initial Permanency Hearing:** Shall be held within 9 months after the Disposition Hearing if the child is removed before Disposition or within 12 months if the child is removed at Disposition, but no more than 12 months after removal (or earlier upon motion per Article 702(B)).⁹⁷ However, if the court has made a judicial determination that reasonable efforts to reunify the family are not required per Article 672.1, a Permanency Hearing may be conducted immediately and shall be held within 30 days of the determination.

(6) SERVICE OR NOTICE OF HEARINGS:

- Clerk to notify all parties of the date, time, and location of the hearing and that all parties of interest appear;
- Sheriff's Office to serve the parents with a summons commanding him/her to appear at court for the hearing;
- DCFS to provide notice to the parents of the date, time, and location of the hearing as well as the nature of the allegations;
- Notice of the hearing shall be made on counsel of record and CASA (if appointed); AND
- DCFS to provide notice to any foster caregiver providing care for the child of the date, time, and location of the hearing and that the recipient has the right to attend and be heard.

(7) ARRANGEMENTS FOR ANY INCARCERATED PARENT: Be made to attend the hearing, either in person or remotely.

PRACTICE TIPS:

- **Notice or Schedule Hearings in Open Court:** The court may schedule future hearings and serve notice in open court.
 - **Scheduling:** When calendaring the next hearing, all parties, including the parents, should be asked if the scheduling works for them and, if not, find options for a different day/time.
 - **Schedule Earlier:** The timelines for the hearings are driven by ASFA. Courts retain the ability to schedule hearings to occur earlier than the maximum allowable timeframes and should do so whenever practicable and in the child's best interest. Best practice is to conduct review hearings a minimum of every 3 months. Even though the case plan is generally updated every 6 months (unless otherwise ordered sooner), holding these hearings every 3 months allows the court and parties to resolve issues with the case plan and keeps the case moving forward towards achieving permanency more expeditiously. The information should drive the timing of hearings.
-

N. MODIFICATION OF DISPOSITION

ARTICLES 713-7

- The court may modify a Judgment of Disposition on its own motion or motion of the district attorney (DA), DCFS, the child, or his parents.

PRACTICE TIP:

- **Same Docket Number:** If there is a motion to modify the Disposition, that should be filed with the same docket number as the original case. A motion to modify should not create a new case.

⁹⁷ See La. Ch. C. art. 603(22).

O. CASE MANAGEMENT

(1) ENGAGEMENT:

- Specifically, ask the parents and children if they understand what occurred at the hearing and engage them in a conversation about the next steps.
- Ask parents (and children, if appropriate) if there is anything the court and other stakeholders involved could do to support their efforts to reunify their family (if reunification is still viable)?
- Advise parents of the importance of their active participation in all proceedings.
- Advise parents of the rigorous timeframes for child abuse and neglect cases outlined in State and Federal laws.
- Advise parents of the consequences for failure to appear at any further court hearings.
- Ensure that parents and children have contact information for case workers and attorneys and understand the process to request court review if necessary.
- Ask if there are any questions for the court.
- It is helpful for children and parents to be able to meet briefly with their attorneys after the hearing so that the attorneys can address immediate issues.

(2) PREPARATION FOR NEXT HEARING

- Identify tasks to be accomplished by the various parties for the next hearing.
- Make oral findings and orders that all participants can understand.
- An attorney or the court is responsible for the completion of the Judgment of Disposition. See the [Judgment of Disposition Template](#) in the [Appendix](#).
- All of the attorneys and unrepresented parties should review the Judgment of Disposition before the judge signs it to ensure it accurately reflects the proceeding.
- Time permitting, best practice is to sign the Judgment on the same day as the hearing.
- Ensure all orders are written, signed, copied, and distributed at the end of the hearing.
- Provide parents with a copy of the Judgment of Disposition immediately following the hearing.

P. POSSIBLE NEXT STEPS

ARTICLES 330-8, 700, 701-11, 710, 1004, 1004.1, 42 U.S.C. § 675(5)(E)(i)-(iii)

(1) HEARING TO APPROVE REVISED CASE PLAN: If the court does not approve of the case plan (and the issues in the case plan cannot be resolved at the Disposition Hearing), the court must find that it does not approve of the case plan in the Judgment of Disposition and best practice is for the court to schedule another hearing for it to approve or disapprove the amended case plan (sometimes referred to as a “Case Plan Review Hearing”). It is not advisable to wait until the first scheduled Case Review Hearing to review the revised case plan. Otherwise, DCFS will not be able to implement the changes timely. Some courts return within 30 days or earlier of the Disposition Hearing to consider the revision.

(2) STATUS HEARING: The court may want to set a Status Hearing if there are issues that need to be addressed or resolved. For example, if the child has recently moved to a new placement, the court may want to see how the child is adjusting sooner rather than waiting for the Case Review Hearing.

(3) CASE REVIEW HEARING: The court should notify all parties in open court of the date and time of the first Case Review Hearing, which shall be set within 3 months of the Disposition if the child was removed prior to Disposition or within 6 months if the child was removed at Disposition, but in no case more than 6 months after removal. Case Review Hearings shall be held at least every 6 months until the child is permanently placed⁹⁸ (or earlier upon motion per Article 692(B)).

⁹⁸ La. Ch. C. art. 603(22).

(4) PERMANENCY HEARING: The first Permanency Hearing shall be set within 9 months after the Disposition Hearing if the child was removed prior to Disposition or within 12 months if removed at Disposition, but in no case more than 12 months after removal. These shall be held at least every 12 months until the child is permanently placed⁹⁹ (or earlier upon motion per Article 702(B)). However, if a judicial determination is made per Article 672.1, a Permanency Hearing may be conducted immediately and shall be held within 30 days of the determination.

(5) APPEAL: Any person directly affected may appeal the findings or orders of the court. Appeal shall be taken within 15 days from the mailing of the notice of the judgment. See Article 332(A).

HELPFUL GUIDANCE:

- **Governing Law:** The appeal process in CINC proceedings is governed by Title III of Chapter 9 of the Children’s Code (Articles 330-338). In CINC proceedings, an appeal may be taken only after a Judgment of Disposition. Timelines for appeals in CINC proceedings differ from timelines for appeals in the Louisiana Code of Civil Procedure.

(6) TERMINATION OF PARENTAL RIGHTS PETITION: See Article 1004 and 1004.1 for the persons and agencies who have a legal right to file the petition to terminate parental rights (TPR), including the timing and grounds for which a TPR may or must be filed.

PRACTICE TIPS:

- **Court on Own Motion:** At any time, including in any hearing in a CINC proceeding, the court on its own motion may order the filing of a TPR Petition on any ground authorized by Article 1015 (Article 1004(A)).
- **DCFS Shall File TPR Petition:** If a child has been in DCFS custody for 17 of the last 22 months, DCFS shall file and pursue to judgment a petition to terminate the parental rights (TPR) of the parent or parents. However, DCFS has discretion not to file a petition to terminate parental rights if DCFS has documented in the case plan a compelling reason why filing is not in the best interest of the child. The court’s role is to hold DCFS accountable to showing such compelling reasons.
- See also 42 U.S.C. § 675(5)(E)(i)-(iii) and 675(5)(F)(i)-(ii).

⁹⁹ Id.



APPENDIX

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.

• • •

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?

STATE OF STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

JUDGMENT OF DISPOSITION

THIS CAUSE came for a Disposition Hearing on the ____ day of _____, 20____, the court having previously adjudicated the following named minor child(ren), _____, in need of care.

I. APPEARANCES

The child(ren), _____, is/are present.

The child(ren), _____, is not present and: *(Please check the applicable box for each child)*

the child, _____, is age 12 or older, counsel moved to waive the child’s appearance, and the court grants the waiver.

the child, _____, is younger than 12 years of age, and counsel did not request the child’s appearance.

_____.

Parent _____ Department of Children and Family Services

Parent’s Attorney _____ Staff/Representative _____

Parent _____ Foster Parent(s), Pre-adoptive Parent(s), Relative(s)

Parent’s Attorney _____ Providing Care for Child(ren) _____

Caretaker(s) _____

Child(ren) Attorney(s) _____ Assistant District Attorney _____

_____ Bureau of General Counsel _____

Others _____

II. NOTICE

THE COURT FINDS that: *(Please check the applicable boxes for each parent)*

the parent(s), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was properly served.

the parent(s), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was provided in open court at a prior hearing which was attended by the parent(s).

the parent(s), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was not provided in open court at a prior hearing and was not properly served.

THE COURT FINDS that: *(Please check the applicable boxes)*

the foster parent(s), pre-adoptive parent(s), or relative(s), _____, providing care for the child(ren), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was given by the Department; and, that diligent efforts were made by the Department to locate and notify the absent caregiver.

the foster parent(s), pre-adoptive parent(s), or relative(s), _____, providing care for the child(ren), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was not given by the Department; and, that diligent efforts

were not made or were made by the Department to locate and notify the absent caregiver.

III. TESTIMONY AND EVIDENCE

THE COURT has considered the testimony of the following witness(es): _____

_____.

THE COURT considered the following evidence: *(Please check the applicable boxes)*

report of the Predisposition Investigation;

the case plan (including the Youth Transition Plan, if applicable);

- any reports of mental evaluation;
- information regarding care and treatment of the child from any foster parent, pre-adoptive parent, or relative providing care for the child who appeared at the hearing;
- all other evidence offered.

IV. CUSTODY FINDINGS AND ORDERS

Based upon the evidence presented:

IT IS ORDERED BY THE COURT that: *(Please check the applicable box for each child)*

child(ren), _____, remain in the custody of parent(s),
 _____, with the following terms and conditions (i.e. Protective
 Order, continuing supervision): _____
 _____;

child(ren), _____, be returned to custody of parent(s),
 _____, with the following terms and conditions (i.e. Protective
 Order, continuing supervision): _____
 _____;

child(ren), _____, be placed in the custody of parent(s),
 _____, with the following terms and conditions (i.e. Protective
 Order, continuing supervision): _____
 _____;

child(ren), _____, be removed from the custody of parent(s),
 _____, with the following terms and conditions (i.e. Protective Order,
 continuing supervision): _____
 _____;

If the child(ren) are removed at Disposition, THE COURT FINDS that the continuation of the child(ren),
 _____, in the home of their parent(s) would be contrary to their health,
 safety, and welfare and removal of the child(ren) from their parent(s) is in their best interest.

child(ren), _____, be placed in the custody of relative(s), _____, with the following terms and conditions (i.e. Protective Order, continuing supervision): _____;

If custody is not granted to a relative, THE COURT FINDS that placing child(ren) in the custody of a suitable relative is not in the child(ren)'s best interest for the following reasons:

_____;

child(ren), _____, be placed in the custody of suitable person, _____, with the following terms and conditions (i.e. Protective Order, continuing supervision): _____;

_____, be granted guardianship of child(ren), _____, subject to the following terms and conditions (i.e. Protective Order, continuing supervision): _____;

child(ren), _____, be placed/remain in the custody of the State of Louisiana through the Department of Children and Family Services subject to the following conditions: _____;

commit child(ren), _____, found to have mental illness per Article 683 to: _____.

THE COURT FURTHER ORDERS that: *(Please check the applicable boxes for each child)*

If the placement is out-of-State, the court makes the following findings as to why the placement is safe, appropriate, and in the child(ren)'s, _____, best interest: _____.

The maximum duration of the Disposition shall be:

Until majority, unless modified or vacated, for the child(ren) _____.

Other: _____.

HAVING FOUND, pursuant to Article 684(A)(3) that _____
(agency, institution, or person) has legal responsibility to secure or provide the following services to the
child which the court has determined are needed _____
and hereby orders the following: _____
_____.

IT IS FURTHER ORDERED that the following terms and conditions apply to the legal custodian of the following
child(ren): _____
_____.

The Court's Disposition is the least restrictive, consistent with the circumstances of the case, the health and
safety of the child(ren), and the best interest of society.

V. REASONABLE EFFORTS FINDING

For child(ren) removed prior to Disposition: *(Please check the following boxes that apply for each child removed from their home before
Disposition)*

THE COURT FINDS that the Department made the following reasonable efforts to reunify the child(ren),
_____, with his or her parents, with the health and safety as the paramount concern,
including the following findings of what reunification efforts were made: _____

_____.

THE COURT FINDS that the Department failed to make reasonable efforts to reunify the child(ren) with his or her
parent(s);

THE COURT FINDS the following further efforts could have shortened the separation of the family:

_____.

THE COURT FINDS that the Department was not required to make reasonable efforts to reunify the child(ren) with his or her parent(s) based on the following reasons (i.e., judicial determination according to Article 672.1 or per applicable federal law, such as aggravated circumstances): _____
_____.

For child(ren) removed at Disposition: *(Please check the following boxes that apply for each child removed from their home at Disposition)*

THE COURT FINDS that the Department made the following reasonable efforts to prevent or eliminate the need for removal of the child(ren), _____, and to make it possible for the child(ren) to remain with the parent(s), with the child(ren)'s, health and safety as the paramount concern, including the following findings of what preventive efforts were made: _____
_____.

THE COURT FINDS that the Department failed to make reasonable efforts to prevent or eliminate the need for removal of the child(ren) from the home;

THE COURT FINDS the following further efforts could have prevented the separation of the family:

_____.

THE COURT FINDS that the Department was not required to make reasonable efforts to prevent or eliminate the need for removal of the child(ren) based on the following reasons (i.e., judicial determination according to Article 672.1 or per applicable federal law, such as aggravated circumstances): _____
_____.

VI. CASE PLAN FINDING AND ORDER

THE COURT FINDS AND ORDERS: *(Please check one of the following if the Disposition requires approval of case plan)*

That the case plan submitted by the Department and dated _____, is approved as it is consistent with the health and safety of the child(ren) and in the best interest of the child(ren), and all parties are ordered to comply therewith.

That the case plan submitted by the Department and dated _____, is not approved as it is not consistent with the health and safety of the child(ren) or is otherwise not in the best interest of the child(ren) for the following reason(s): _____

AND ORDERS THE DEPARTMENT TO REVISE THE PLAN ACCORDINGLY.

VII. ADVISEMENTS

The Court informed the parent(s) about the case plan, case review and permanency review procedure, as provided for in Title VI, Chapters 15 and 16 of the Children’s Code.

The Court informed the parent(s) of their obligation to cooperate with the Department, comply with the requirements of the case plan, including their duty to keep the Department apprised of their current whereabouts, including address, cellular number, telephone number, and any other contact information, and correct the conditions requiring the child to be in care.

The Court informed the parent(s) that a petition to terminate their parental rights may be filed based upon their failure to comply with the requirements of the case plan, failure to make significant measurable progress toward achieving case plan goals and to correct the conditions requiring the child to be in care, or on any other ground authorized by Article 1015.

The Court informed all persons before the court that it is their continuing responsibility to notify the Department and the court in writing regarding the whereabouts, including address, cellular number, telephone number, and any other contact information, of an absent parent and the identity and whereabouts, including address, cellular number, telephone number, and any other contact information, of any relative or other individual willing and able to offer a wholesome and stable home for the child.

The Court informed the parties and all persons before the Court of their continuing responsibility to support the achievement of timely permanency for the child(ren) and further direct such individuals to advise the Department and court in writing of the 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 the child(ren).

The Court informed the parent(s) of their obligation to support their child(ren), including their obligation to contribute to the care and treatment of their child as provided in Article 685.

VIII. FURTHER ORDERS

THE COURT FURTHER ORDERS the following as necessary and appropriate *(Please check applicable boxes)*:

IT IS FURTHER ORDERED that the parent(s), _____, contribute to the cost of care and treatment of the child in the following amount: \$_____ based on the factors listed in Article 685(A) and as follows: _____.

IT IS FURTHER ORDERED that prior to every family team meeting (FTM) hereafter conducted in this case, the Department shall provide reasonable notice of said FTM to all parent(s)/caretaker(s), foster caregivers, CASA workers, and attorneys for child(ren) and parent(s)/caretaker(s).

A **Family Team Meeting** is tentatively set for _____ day of _____, 20____, at _____ am/___pm.

IT IS FURTHER ORDERED that the Department notify the child’s attorney immediately, electronically or otherwise, when there is an emergency change in the child’s specific placement when child is in custody of the State, and within _____ hours after a change of placement of the child occurs. The notification shall include the address and contact number of the placement.

IT IS FURTHER ORDERED that the Department immediately assess all possible permanent placements with the results and/or updates to be presented at the _____ Hearing.

IT IS FURTHER ORDERED that the Department initiate child welfare background clearance, criminal background check, and/or assessment of the home or home study on the following relative(s) or individual(s), _____.

IT IS FURTHER ORDERED that the Department initiate an Interstate Compact for Placement of Children (ICPC) process for the following out-of-State relative(s) and/or individual(s), _____.

IT IS FURTHER ORDERED that it is in the best interest of the child for the Department to coordinate with the appropriate local education agencies to ensure that the child(ren) remain enrolled in the school in which the child(ren) was enrolled at the time of placement change the school the child(ren) is enrolled in.

IT IS FURTHER ORDERED that _____
_____.

IX. ORDER OF NOTICES AND FUTURE HEARINGS

IT IS FURTHER ORDERED that the parent(s) of the child(ren), the DCFS representative(s), all attorneys of record, CASA be present at all future hearings.

IT IS FURTHER ORDERED that the case plan shall be filed with the Court at least 10 days prior to the Case Review and Permanency Hearing and that, upon filing, copies shall be provided by mail or email to counsel and unrepresented parties by certified mail or electronic mail in accordance with Article 674.

IT IS FURTHER ORDERED that the Department file its court report with the Court at least 10 days prior to the Case Review and Permanency Hearing and that copies be provided to CASA, counsel, and unrepresented parties.

IT IS FURTHER ORDERED that CASA shall file its court report with the Court at least 10 days prior to the Case Review and Permanency Hearing and copies be distributed to counsel, unrepresented parties, and DCFS prior to at the same time submitted to the Court.

IT IS FURTHER ORDERED that:

Upon ordering the matter be set for _____ Hearing(s), the clerk shall notify all parties of the date, time, and location of the hearing(s) and that all parties of interest appear; the Sheriff's Office serve the parent(s) with a summons commanding him or her to appear at Court for the hearing(s); the Department shall provide notice to the parent(s) of the date, time, and location of the hearing(s); notice of the hearing(s) be made on the child and parent representation programs and CASA (if appointed); the Department provide notice to any foster parent, pre-adoptive parent, or relative providing care for the child(ren) of the date, time, and location of the hearing(s) and recipients right to attend and be heard; and for any parent(s) incarcerated, _____ arrange for the parent(s) to attend the hearing, either in person or remotely.

A Hearing to **REVIEW/APPROVE REVISED CASE PLAN** is set for _____ day of _____, 20____, at _____ am/___pm.

A **STATUS** Hearing is set for _____ day of _____, 20____, at _____ am/___pm.

The **CASE REVIEW** Hearing is set for _____ day of _____, 20____, at _____ am/___pm.

The **PERMANENCY** Hearing is set for _____ day of _____, 20____, at _____ am/___pm.

THUS DONE AND SIGNED ON THIS _____ day of _____, 20____, in

_____, Louisiana.

JUDGE

DISTRIBUTION OF NOTICE

Please serve all parties and counsel of record as follows:

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Child(ren) Attorney(s): _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Assistant District Attorney/Bureau of General Counsel:

Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Please send notice and copy of order as follows:

Department of Children and Family Services Staff/Representative:

Street: _____

City, State, Zip: _____

Fax Number: (____) _____

Email Address: _____

CASA: _____

Street: _____

City, State, Zip: _____

Fax Number: (____) _____

Email Address: _____

Other: _____

Role: _____

Street: _____

City, State, Zip: _____

Fax Number: (____) _____

Email Address: _____

DISPOSITION COURT REPORT

Department of Children and Family Services

. . .

****IMPORTANT:** Use of the DCFS Court Report templates provided in this Benchbook for Disposition Hearings, Case Review Hearings, and Permanency Hearings are being implemented in a phased-in approach across the State.

Date ____ / ____ / ____

Judge's Name _____

Court _____

Court Address _____

Docket Number	
Hearing Type and Date	DISPOSITION / /
Child(ren)'s Information	Name: _____ DOB: ____ / ____ / ____ Age: ____ Date Entered Care/DCFS Involvement: ____ / ____ / ____ Date Freed for Adoption: ____ / ____ / ____ Current Custody Status: <input type="checkbox"/> Custody of Parent/Legal Guardian <input type="checkbox"/> Custody of Relative/Suitable Individual <input type="checkbox"/> DCFS Custody <input type="checkbox"/> Other _____
Parent's Information	Name: _____ Legal/Biological/Alleged/Deceased: _____ Child(ren): _____ Address: _____
Parent's Information	Name: _____ Legal/Biological/Alleged/Deceased: _____ Child(ren): _____ Address: _____

SALUTATION

This letter is to provide the court with information for the Disposition Hearing.

PRELIMINARY INFORMATION

Date Adjudicated Child in Need of Care:

If known, grounds from Adjudication Order Article 606(A) (please check all applicable):

- (1) Abuse (2) Neglect (3) Absence of Parent (4) Criminal Prosecution
- (5) Crime Against Child (6) Trafficking (7) Commercial Trafficking (8) Genital Mutilation

Brief summary of reason child(ren) entered care/DCFS involved:

See attached Case Plan: Federal Compliance Section "Reason Child(ren) entered Foster Care or Agency Involvement."

Date of Current Case Plan: _____ / _____ / _____

Date Next Case Plan is Due: _____ / _____ / _____

Tentative Date of Next FTM: _____ / _____ / _____

NOTICE OF DATE, TIME, AND LOCATION OF DISPOSITION HEARING

Notice to Parents: Documentation attached? Yes No

If no, give explanation of notice provided/reason: _____

If parent has been absent, list all steps taken to locate parent: _____

Notice to Foster Caregivers: Documentation attached? Yes No

If no, give explanation of notice provided/reason: _____

ICWA

Do you know, or do you have reason to know, that any of the child(ren) are members of a federally recognized Indian Tribe or eligible for membership in a federally recognized Indian Tribe?

Yes No If yes, list child(ren) and tribal affiliation. _____

Since the last hearing, is there additional information that the agency has learned about any of the parents' or child(ren)'s Indian tribe membership/eligibility? Yes No

If yes, what additional information has the agency received? _____

If applicable, what steps has the agency taken since the last hearing to determine child(ren)'s eligibility for membership in a federally recognized Indian Tribe? _____

If applicable, has the tribal entity responded? Yes No If yes, please attach documentation.

LEGAL RELATIONSHIPS/TESTING RESULTS

Please complete this section if any of the child(ren) have parents who are not married and/or there is an alleged parent:

	Parent: Of:	Parent: Of:
Has the Birth Certificate been obtained? Is the parent's name on the Birth Certificate?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
Was an acknowledgment filed in the parish of the child's birth? Did you obtain the Certificate of Results from the Clerk of Court?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please attach.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please attach.</i>
If no acknowledgment has been filed, did you check the Putative Father Registry? Did you obtain the Certificate regarding the Putative Father Registry?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please attach.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please attach.</i>

Since the last hearing, have DNA testing results been received by the agency for any of the parents?

Yes No If yes, please attach results and state parent name(s): _____

Describe efforts to locate absent parents and any additional information about alleged and/or absent parents:

EXISTING ORDERS

Type of Order	Is there an Order?	If copy of Order not attached, list case number, parish, parties involved, and date order signed. If child support, list amount of Order.
Family Law Orders regarding any of the children in this case	<input type="checkbox"/> Yes. <i>If yes, attach copy or fill out next box.</i> <input type="checkbox"/> No	
Temporary Restraining Orders and/or Protective Orders involving the parties	<input type="checkbox"/> Yes. <i>If yes, attach copy or fill out next box.</i> <input type="checkbox"/> No	
Child Support Order involving any parent and one or more of the children	<input type="checkbox"/> Yes. <i>If yes, attach copy or fill out next box.</i> <input type="checkbox"/> No	

SIGNIFICANT RELATIONSHIPS AND RELATIVES/OTHER SUITABLE INDIVIDUALS

Was a Pre-Disposition Investigation completed by DCFS? Yes No

Please identify and describe significant relationships the child has with parents, siblings (those in care and those not in care), grandparents, other relatives, and other individuals:

List all relatives or other suitable individuals that have been provided as possible placement/custody/permanent options for child:

Child	Name of Relative/ Fictive Kin	Address/Phone <i>(If not in Family Connections Form)</i>	Has written notice been sent to this person? If so, list date sent.	Is this person interested in being a placement resource?	Comments/Progress/Outcomes
			<input type="checkbox"/> Yes <input type="checkbox"/> No ___/___/____		

See attached Family Connections Form and Circle of Influence Form.

What steps have been taken to maintain contact with all persons who matter to each child?

Please complete the following if any of the children are not currently placed with a parent/relative and one or more of the individuals listed above has been/is being assessed for placement:

Child	Prospective Placement	Has an Agency Background Clearance been completed? If yes, indicate results	Have criminal records checks been completed? If yes, indicate results	Is home study complete? If yes, what is recommendation? If no, what is status?	If residing out of state, has an ICPC request been submitted? If yes, date submitted.
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No ___/___/____
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No ___/___/____
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No ___/___/____

		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No ____/____/____
--	--	--	--	--	--

CURRENT STATUS OF CHILD(REN)

	Child:	Child:
Initial Medical and Dental Information. Include significant findings/recommendations.		
Initial Developmental Information		
Trauma and Behavioral Health Assessment Date assessment completed: _____ / _____ / _____ Are referrals indicated? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Describe any behavioral or mental health needs/concerns and how being addressed		
Identify with specific religion? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please state religion:		
Have culture and/or traditions important to them? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:		
Any known needs about the child's sexual orientation and/or gender identity? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:		
Attending school of origin? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, please explain:		
Name of School/Grade		
Describe Strengths and Challenges Re: Education		
Participate in extracurricular activities or want to? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please list:		

Describe any educational needs/interventions and how they are being addressed:

As a precursor to classification of 504/IEP/IAP/"gifted," are any of the children involved with a Response to Intervention ("RTI")(also called "Targeted Teaching")? Yes No

If yes, state each child's name and what date the RTI began and the interventions being utilized:

For more information about the child(ren), please see attached Case Plan: Federal Compliance Section "Educational Stability," Child Functioning, Cumulative Medical Record, and Cumulative School/Educational Record.

PLACEMENT

Complete for all children not in the custody of his/her parents and any child(ren) in foster care.

Are all children in this case placed together?

Yes, children are placed together Not placed together N/A (no siblings in care)

	Child:	Child:
Caregiver Name(s) Date of Placement		
Type of Placement	<input type="checkbox"/> Relative <input type="checkbox"/> Other Individual <input type="checkbox"/> Certified Foster Home <input type="checkbox"/> Therapeutic Foster Home <input type="checkbox"/> Group Home <input type="checkbox"/> Psychiatric Residential Treatment Facility <input type="checkbox"/> Other:	<input type="checkbox"/> Relative <input type="checkbox"/> Other Individual <input type="checkbox"/> Certified Foster Home <input type="checkbox"/> Therapeutic Foster Home <input type="checkbox"/> Group Home <input type="checkbox"/> Psychiatric Residential Treatment Facility <input type="checkbox"/> Other:
History of Previous Placements: <i>Include name, type, and dates of each</i>		
Describe Child's Adjustment to Current Placement		
QPI <i>(co-parenting between foster caregivers and parents)</i>		
Certification Update for Relatives/Individuals Not Yet Certified. <i>Include Date Referral Made to Home Development and Current Status</i>		
Foster Caregiver Progress Form completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, attach form	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, attach form

If siblings in this case are not placed together, state

- Barriers to placement together:**
- Efforts to place siblings together:**
- Contrary to safety or well-being (please explain):**

If not placed together, what is the plan for sibling visitation (unless contrary to safety or well-being)?

Please give current status of sibling visitation (# of visits to date, quality of visits, barriers, etc.):

Describe any additional information pertinent to each child:

YOUTH 14 AND OLDER

Identify the youth's permanent connections: _____

Since the last hearing, describe the relationship between the youth and each identified permanent connection, including visitation and other forms of consistent contact: _____

Please describe the youth's connections with siblings not in care: _____

Is the youth receiving independent living classes? Yes No

What has the youth learned from these classes? _____

Describe progress with the youth preparing to live independently: _____

Is the youth currently living independently? Yes No If yes, please describe adjustment: _____

For more information, please see attached Youth Transition Plan (YTP).

CURRENT STATUS OF THE PARENTS

Describe the current situation with each parent (Exp. Housing, Substance Use Concerns, etc.): _____

SAFETY AND RISK ASSESSMENT

Threats of danger at the time of initial safety assessment: _____

Describe current threats of danger, if any, as it relates to all parents and each child's vulnerability to the identified threats: _____

List what protective capacities need to be enhanced for each parent, if any: _____

What is the current Structured Decision Making (SDM) level/recommendation for each household? _____

Date(s) of SDM: _____ / _____ / _____

Conditions for Return to Parents' Care/Custody, if applicable (i.e., Why can't child go home today?): _____

Conditions for Closure (DCFS no longer involved): _____

CASE PLAN

See attached Case Plan.

Was the case plan developed with the parents and child(ren)? Yes No

If no, please explain why not: _____

Were the attorneys invited to the FTM? Yes No

Did they participate? Yes No

Please list any referrals made by the agency to date for parents and child(ren), describe the reason for referral, and progress thus far: _____

VISITATION

See attached Case Plan "Visitation" Section (before Basic Obligations and after Federal Compliance) for visitation schedule.

Current status of visits between parents and each child (include how many to date and observations regarding their interactions): _____

Are there any barriers to in-person visits with parents? Yes No

If yes, please explain (e.g., distance, transportation, rules at jail/prison): _____

If parent visitation is supervised, please list persons who may supervise in addition to DCFS and locations other than DCFS office where visitation may occur: _____

Please explain what will be needed to increase frequency and/or length of visits and to move parent from supervised to unsupervised visitation, if applicable: _____

If there are others who matter to the child, please explain what contacts/visitation child has with them outside of visitation with parents and/or recommendations to increase contact with them: _____

In addition to in-person visits, please state plan for amount and frequency of contact as follows:

Name	Telephone	FaceTime, Duo, Zoom, Skype
Parent(s):		
Sibling(s):		
Grandparent(s):		
Other relatives:		
Other individuals:		

DCFS RECOMMENDED DISPOSITION AND REASONS

Child:	Child:
<input type="checkbox"/> Custody to remain with the following parent(s): <hr/> <input type="checkbox"/> without supervision of DCFS <input type="checkbox"/> with supervision of DCFS <input type="checkbox"/> with protective order <input type="checkbox"/> with the following terms/conditions:	<input type="checkbox"/> Custody to remain with the following parent(s): <hr/> <input type="checkbox"/> without supervision of DCFS <input type="checkbox"/> with supervision of DCFS <input type="checkbox"/> with protective order <input type="checkbox"/> with the following terms/conditions:
<input type="checkbox"/> Return of legal custody to parent from whom child(ren) removed <input type="checkbox"/> without supervision of DCFS <input type="checkbox"/> with supervision of DCFS <input type="checkbox"/> with protective order <input type="checkbox"/> with the following terms/conditions:	<input type="checkbox"/> Return of legal custody to parent from whom child(ren) removed <input type="checkbox"/> without supervision of DCFS <input type="checkbox"/> with supervision of DCFS <input type="checkbox"/> with protective order <input type="checkbox"/> with the following terms/conditions:

<input type="checkbox"/> Custody to the following parent: <hr/> <input type="checkbox"/> without supervision of DCFS <input type="checkbox"/> with supervision of DCFS <input type="checkbox"/> with protective order <input type="checkbox"/> with the following terms/conditions:	<input type="checkbox"/> Custody to the following parent: <hr/> <input type="checkbox"/> without supervision of DCFS <input type="checkbox"/> with supervision of DCFS <input type="checkbox"/> with protective order <input type="checkbox"/> with the following terms/conditions:
<input type="checkbox"/> Custody to the following relative/individual: <hr/> <input type="checkbox"/> with protective order <input type="checkbox"/> with the following terms/conditions:	<input type="checkbox"/> Custody to the following relative/individual: <hr/> <input type="checkbox"/> with protective order <input type="checkbox"/> with the following terms/conditions:
<input type="checkbox"/> Guardianship to the following relative/individual: <hr/> <input type="checkbox"/> with protective order <input type="checkbox"/> with the following terms/conditions:	<input type="checkbox"/> Guardianship to the following relative/individual: <hr/> <input type="checkbox"/> with protective order <input type="checkbox"/> with the following terms/conditions:
<input type="checkbox"/> Continue custody with the State of Louisiana through DCFS <input type="checkbox"/> with the following terms/conditions: OR <input type="checkbox"/> Place custody with the State of Louisiana through DCFS <input type="checkbox"/> with the following terms/conditions:	<input type="checkbox"/> Continue custody with the State of Louisiana through DCFS <input type="checkbox"/> with the following terms/conditions: OR <input type="checkbox"/> Place custody with the State of Louisiana through DCFS <input type="checkbox"/> with the following terms/conditions:
<input type="checkbox"/> Commit the child to a public or private institution; transfer to LDH custody as follows: <input type="checkbox"/> with the following terms/conditions:	<input type="checkbox"/> Commit the child to a public or private institution; transfer to LDH custody as follows: <input type="checkbox"/> with the following terms/conditions:
Please provide the reasons for the recommendation Disposition above:	Please provide the reasons for the recommendation Disposition above:

<p>Has the child's religious preference been taken into account in this recommendation? Please explain.</p>	<p>Has the child's religious preference been taken into account in this recommendation? Please explain.</p>
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DCFS EFFORTS TO PREVENT REMOVAL AND/OR REUNIFY FAMILY

If removal is recommended at Disposition for the first time, please state efforts by DCFS to prevent removal:

- Services Provided: _____
- Other Assistance: _____
- Court Interventions Requested: _____

If recommending continued custody with DCFS at Disposition, please state the recent efforts by DCFS to reunify the family:

- Services Provided: _____
- Other Assistance: _____
- Court Interventions Requested: _____

DCFS RECOMMENDED CASE PLAN GOAL AND REASONS FOR CHILDREN IN FOSTER CARE

<p>Child:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reunification <input type="checkbox"/> Custody to Another Parent <input type="checkbox"/> Adoption <input type="checkbox"/> Guardianship <input type="checkbox"/> Custody to a Relative <input type="checkbox"/> APLA (if 16 or 17 years old) <input type="checkbox"/> Concurrent Plan: 	<p>Child:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reunification <input type="checkbox"/> Custody to Another Parent <input type="checkbox"/> Adoption <input type="checkbox"/> Guardianship <input type="checkbox"/> Custody to a Relative <input type="checkbox"/> APLA (if 16 or 17 years old) <input type="checkbox"/> Concurrent Plan:
<p>Reasons underlying recommendation:</p>	<p>Reasons underlying recommendation:</p>

OTHER RECOMMENDATIONS

- Approve the case plan as presented by DCFS.
- Approve the case plan goal as presented by DCFS.
- Find that the child's placement is approved as the most appropriate, least restrictive setting.
- That the following services are needed for the child(ren) and/or parents: _____

That a hearing be set for: _____

Sincerely,

Case Worker

Supervisor

ATTACHMENTS

	Attached?
Case Plan and attachments	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Youth Transition Plan	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Documentation of Court Notices	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
ICWA Letter(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Certificate of Results (Paternity Acknowledgment)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Putative Father Registry Certificate of Results	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
DNA Testing Results	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Family Law/Other Orders	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Family Connections Form	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Circle of Influence Form	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Foster Caregiver Progress Form(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Evaluations/Assessments for Child(ren)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Evaluations/Assessments for Parent(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
School 1 Form	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Child(ren)'s Report Card	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Other:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

cc (with attachments): ADA/BGC, Parent Attorneys, Children's Attorney(s), Unrepresented Parties, CASA

CASE REVIEW HEARINGS

La. Ch. C. arts. 687-700

LOUISIANA
CHILD IN NEED OF CARE BENCHBOOK
FOR JUVENILE JUDGES

SECTION

9

INTRODUCTION

A. BACKGROUND

If the custody of a child was granted or continued with the Department of Children and Family Services (DCFS) at the Disposition Hearing, then Federal and State statutes and regulations impose permanency planning requirements. The law ensures periodic judicial review of the status of children placed in foster care to help secure a permanent placement for them as soon as possible. Foster care is, and should always be, the safety plan of last resort. It is designed to offer temporary care in times of family crisis and is not meant to be a substitute for family. There are two separate components of permanency planning:

- (1) The initial case plan (Articles 671-677) and its review hearing process (Articles 687-700); and,
- (2) The identification of a permanent plan for the child and its review hearing process. If the child remains in foster care for a year and the identification of a permanent plan is required, then a Permanency Hearing¹ is mandated pursuant to Articles 701-711.

While not a strict requirement of the law, if there is a DCFS Family Services case (i.e., court-ordered safety plan, etc.) where the child is not in DCFS custody, some courts provide oversight by holding Case Review Hearings.

B. GENERAL CONSIDERATIONS

The Children's Code requires the court to determine the following at the Case Review Hearing:

- (1) The continuing necessity for and appropriateness of the child's placement;²
- (2) The extent of compliance with the case plan by the parents³ and DCFS;
- (3) The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement; and,
- (4) A likely date by which the child may be permanently placed,⁴ including whether the child could return home safely to the custody of his/her parents.

In addition, the Federal Adoption and Safe Families Act (ASFA) requires that the Case Review Hearing address the ongoing safety of the child.⁵ Case Review Hearings provide an opportunity to monitor progress and revise the case plan to ensure that it is tailored (and continues to be tailored) to achieve reunification and/or another permanent plan if reunification is no longer viable. Case reviews provide time to determine what progress has been made on the plan since the last hearing – both by the parents and by DCFS. DCFS and the court bear joint responsibility for the case plan. DCFS proposes the case plan but after hearing arguments from parties and considering all the evidence presented, the court reviews the plan and either approves or disapproves it and has the authority to order DCFS to revise it accordingly.

The case plan process must involve parents and children and their supports. Judges can help to assure meaningful parent and child participation in the process. When the goal for the family is reunification, the case plan should focus on services and supports designed to enhance the parental protective capacities needed for the child to return home safely. The requirements must be feasible within

1 "Permanency Hearing" and "Permanency Review Hearing" are used interchangeably in the Children's Code. The Children's Code also uses "Dispositional Review Hearing" instead of "Permanency Hearing" and "Permanency Review Hearing." For purposes of this Benchbook, "Permanency Hearing" will be used.

2 See Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>.

3 The plural form of "parent" is used throughout the Benchbook for simplicity, even though at times only one parent has been identified in a case.

4 See La. Ch. C. art. 603(22).

5 42 U.S.C. § 629.

the stated time limitations.⁶ The case plan should not be a one-size-fits-all document or a checklist but rather an evolving document that effectuates long-term change. If one of the requirements specified in the case plan is not geared towards enhancing protective capacities, modifications to the plan should be made. If the parent is participating in a required service, but the behavior of the parent is not changing in a way that increases protective capacity, perhaps the service is not appropriate, not needed, or not the right service. On the other hand, if a parent has demonstrated a change to his/her behavior and the service has not yet been completed, perhaps that service can be moved off of the case plan.

No matter how carefully initial case planning is examined at the Disposition Hearing, periodic, thorough judicial review is needed to keep cases moving toward successful completion.⁷ Thus, the Children’s Code requires DCFS to provide a likely date for the child to be reunified with the parent or placed for adoption or guardianship at the Case Review Hearing. If reunification is not the permanent plan, the court should study the steps taken by DCFS since the last hearing to achieve the permanent plan. For example, if the child is 14 years of age or older, the Case Review Hearing is a time to look closely at the Youth Transition Plan (YTP) and confirm DCFS is taking reasonable steps to implement it.

Reviews should not be a rubber stamp of agency recommendations. Effective Case Review Hearings require adequate court time and properly trained and prepared lawyers. Lawyers must be expected to do their job and come to court with a clear position on the case after consulting with their client.⁸

C. PRIOR TO THE HEARING AND TIMING OF THE HEARING

Case Review Court Reports (some jurisdictions call these “court letters”) shall be filed at least 10 days in advance of the Case Review Hearing. This provision is not followed in some jurisdictions, but it is required and helps move the case forward to achieve timely permanency. For example, if the report references a particular service and the attorney wants to follow up or subpoena the service provider, the attorney will need sufficient time to do so before the hearing.

Similarly, DCFS shall file a copy of the case plan with the court at least 10 days before any scheduled Case Review Hearing. Upon filing, DCFS shall provide a copy to counsel of record and any unrepresented party. Court Appointed Special Advocates (CASA), if appointed, are also entitled to a copy of the case plan upon request. The 10-day requirement allows time for counsel to file a response to the case plan, which can help identify issues for the hearing. Strict adherence to the 10-day mandate is critical for counsel to consult with their clients and effectively advocate for parents and children in these court proceedings. A court report is also generally filed by CASA (if appointed) prior to the hearing. Judges should consider CASA’s “best interest” recommendations for permanency and services needed by the child.

The initial Case Review Hearing is to occur within 3 months after the Disposition Hearing if the child was removed prior to Disposition (i.e., removed on an Instanter Order and removal continued after Continued Custody Hearing (CCH)) or within 6 months after the Disposition Hearing if the child was removed at Disposition. The Children’s Code does not allow for continuances at the Case Review Hearing.

After the initial one, Case Review Hearings are to be held at least every 6 months or upon motion of a party for good cause or the court’s own motion. However, the circumstances of the case should drive the timing of the next hearing. At certain stages of the case, it may be critical to set the next hearing much sooner than 6 months.

Per DCFS policy, the case plan is updated every 6 months from entry into foster care and/or the opening of a DCFS Family Services case. The case plan update may or may not coincide with ongoing judicial reviews, depending on when the child entered DCFS custody or when the DCFS Family Services case was opened. DCFS should submit the most current case plan with each Case Review Court Report and advise the court whether the plan has been updated since the last hearing. The Youth Transition Plan (YTP) is a mandatory part of the case plan for youth 14 years of age and older.⁹

⁶ La. Ch. C. art. 684, Authors’ Notes.

⁷ Gatowski, S., Miller, N., Rubin, S., Escher, P., & Maze, C. (2016) Enhanced resource guidelines: Improving court practice in child abuse and neglect cases. Reno, NV: National Council of Juvenile and Family Court Judges, p. 257 [hereinafter Gatowski].

⁸ Id. at 259.

⁹ For more information about Federal laws supporting youth in foster care transitioning to adulthood, please see: https://www.americanbar.org/content/dam/aba/administrative/child_law/youthengagement/quick-reference-guide-laws.pdf.

D. NOTICE AND APPEARANCES

At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. The court shall not admit any person who does not have a proper interest in or is not necessary to the proceeding. As in all CINC hearings, the parents and children have a right to be present, as do foster caregivers (i.e., foster parents, pre-adoptive parents, and relatives) caring for the child¹⁰ and CASA (if appointed). The court must confirm that proper notice was given to parties and counsel. Fifteen days prior to the hearing, notice to the parties and counsel shall be served and a return made in the same manner as a Petition unless the parties have previously been notified in open court. In addition, DCFS has a duty to provide notice to the parents and foster caregivers, and the court must confirm that notice was properly given.

For all parties present, the court is responsible for providing and paying for interpretation, translation, and/or language assistance services and reasonable accommodations for those with disabilities. There must be ample time for legal interpreters to review pertinent legal documents prior to the court proceeding. Interpreters must be familiar with case-related details to provide an accurate, meaningful, and effective interpretation.

Before the case is called, the judge should inquire whether counsel for the parent and counsel for the child had sufficient opportunity to consult with their clients, thereby safeguarding due process for the family.

E. INTERVENTION

Unlike CINC proceedings that occur before the initial Case Review Hearing, a person, agency, or organization can move to intervene at the Case Review Hearing. There must be good cause for such intervention; it must facilitate the permanent placement of the child and ensure the child's best interest is protected. The court has discretion in deciding whether to allow intervention. If the court grants intervention, the court may limit the nature and extent of the intervenor's participation in the hearing for good cause upon motion by any party. For example, a court could allow intervention for purposes of presence at the Case Review Hearing but not allow the intervenor access to the court or DCFS files. There is significant case law on intervention, especially in certain jurisdictions.

F. EVIDENCE AND TESTIMONY

Parties have the right to call witnesses and present evidence at the Case Review Hearing. Witnesses may be sequestered at the hearing. DCFS staff members and CASA volunteers are not parties to the case and, too, may be sequestered. However, a DCFS representative would likely need to remain in the courtroom to assist the assistant district attorney (ADA). Of course, sequestration is different from closing a hearing upon motion of a party since a closed hearing is one in which only the parties are present.

Testifying in court is stressful for many parents and children. Court is intimidating for most individuals (including non-party witnesses), and the stakes could not be higher for parents and children in these cases. Many parents and children are coming to court with a history of trauma. Nevertheless, some parents and children may benefit from having their voice heard. It is critical for the judge to consider information provided by the parents and children, and to convey that their testimony is being taken into account in the court's ruling. Judges must create an environment where parents and children are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.¹¹

The child can testify if present or appearing by audiovisual conferencing. Whether the child is present or not, the child's attorney should make sure the court hears the child's wishes regarding custody, placement, the case plan, services, etc. Foster caregivers also have a right to be heard at the Case Review Hearing and, as the day-to-day caregivers of the child, likely have valuable information for the court.

¹⁰ See La. Ch. C. arts. 623 and 696; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

¹¹ Gatowski, *supra* note 7, at 16.

It can also be helpful to hear testimony of therapists, teachers, domestic violence advocates, parenting instructors, and other service providers at review hearings. These witnesses can provide useful information to the court concerning the family’s progress and their recommendations. If a provider is not available to attend the hearing, a written report from the provider should be attached to DCFS’s court report. The court should also be clear about DCFS efforts to obtain needed services and supports for the family.

G. CASE: CONTENT HIGHLIGHTS

Central to the case plan is the placement of the child (referred to as the “child care setting” in the case plan). The judge cannot order a specific individual placement when a child is in DCFS custody. However, the judge is given the authority and responsibility to review the case plan, listen to evidence and arguments with respect to the case plan, and either accept the case plan or disapprove it in whole or part.

The elements of the case plan related to the child are often contingent on the placement. Thus, if the court disapproves the placement chosen by DCFS, then the court should carefully review the case plan to see if other parts of the plan need to be revised accordingly. Separate law (Art. 672(A)(2)) also gives the court the authority to disapprove a placement chosen by DCFS after a contradictory hearing.

DCFS must make diligent efforts to assess any relatives and/or fictive kin identified as possible placements by parents, children, attorneys, CASA, relatives, therapists, foster caregivers, and others. In addition, Federal law requires DCFS to make reasonable efforts to place siblings together unless DCFS documents that such a joint placement would be contrary to the safety or well-being of any of the siblings. Although these reasonable efforts findings need not be reflected in the Case Review Order, they are nevertheless critical to the well-being of the child in the case. In the case of siblings removed from their home who are not so jointly placed, Federal law requires that DCFS provide for frequent visitation or other ongoing interaction between the siblings unless DCFS documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.¹² Judges should also be cognizant that a child may have a sibling-like relationship and bond with another child that is not a biological sibling but just as significant to the child.¹³ Thus, courts should require DCFS to show evidence that such efforts continue through other relevant stages of the CINC proceedings.

Effective October 1, 2021, Louisiana will have to comply with the Family First Prevention Services Act (H.R. 5456 (P.L. 115-123)), signed into law as part of the Bipartisan Budget Act on February 9, 2018, which will make significant changes to the placement of children in congregate care (i.e., group homes, qualified residential treatment programs, etc.).¹⁴

Another critical part of the case plan is visitation—with parents, siblings, relatives, and other important persons in the child’s life. Visitation should not be used as a mechanism to reward or punish parents or children. The court’s role is to help safeguard valuable relationships and connections by considering the frequency and type of visitation. In the case of separated siblings, DCFS must make reasonable efforts to provide frequent visits or other interaction (again, unless contrary to the safety or well-being of any of the siblings). The Authors’ Notes to Article 309 clarify that the court has continuing jurisdiction over visitation and custody. This indicates that the court can make its own orders with regard to visitation.

The case plan should incorporate the recommendations of professionals, including but not limited to psychologists, psychiatrists, therapists, and addictive disorder specialists. If available, these recommendations should be specifically stated in the case plan; in that way, there is no confusion by any party regarding what is expected of the parents.

The case plan must address education for school-aged children. The judge can reject the case plan if the action items for the child’s education are not sufficient. The Every Student Succeeds Act (ESSA) allows a child placed in foster care to remain in his/her school of origin and for transportation to be provided for the child to the school of origin, even if the child moves out of that school district. DCFS and the school district must partner to ensure this transportation is provided. In addition, the case plan should state whether the child has an Individualized Education Program (IEP) or 504 Accommodation Plan and is receiving the services outlined in the educational plan.

¹² See 42 U.S.C. § 671(a)(31)(A) and 42 U.S.C. § 671(a)(31)(B).

¹³ 42 U.S.C. § 671(a)(31)(A) and 42 U.S.C. § 671(a)(31)(B); see also <https://www.ncsl.org/print/cyf/FosteringConnectionsSummary.pdf>.

¹⁴ See <https://familyfirstact.org/about-law>.

An aspect of case planning that is often overlooked includes the need for cultural and/or religious connection and/or activities for children. The presence or absence of such activities may depend on the practices of the placement rather than based on the needs of the child. The court can make inquiries into this important part of some children's lives and determine whether the case plan adequately addresses these needs. For example, consider a child who has been raised as a member of a particular church, but the foster care placement does not practice any religion. The child may suffer by not continuing to attend church in this placement. How will the case plan address the need for the child to continue in this activity? Or, if a child has been raised without any religious practice and is placed in a home where the foster parents expect the child to attend church frequently, this could be very uncomfortable for the child. Thus, the court should assess the DCFS proposed plan to address the child's cultural and/or religious background.

The Children's Code requires the case plan to afford the child the greatest opportunity for normalcy. See Article 675(B)(3). Children in foster care should be able to engage in age- or developmentally-appropriate activities, such as spending the night at a friend's house. The greatest opportunity for normalcy lies in the day-to-day decisions affecting the child's activities. However, at times, there may be tension between this concept of "normalcy" set forth in the Children's Code and the reasonableness of the child's wishes, tempered by the oversight that foster caregivers provide to children.¹⁵

For youth 14 years of age and older, the YTP must be reviewed by the court when reviewing the case plan. DCFS must provide the youth with assistance and support in developing a transition plan that is personalized at the direction of the youth, includes specific options for housing, health insurance, education, local opportunities for mentors, continuing support services, workforce supports and employment services, and is as detailed as the youth may elect. Federal law requires that youth play an active role in the planning for their present and future, and courts should make sure youth feel involved in this process. DCFS is responsible for implementing the YTP, and courts should regularly review the progress of the implementation of the YTP.

H. REASONABLE EFFORTS

The court is not required by State law to make reasonable efforts findings at Case Review Hearings. But courts have an ongoing obligation to hold DCFS accountable for making reasonable efforts to prevent or eliminate the need for removal, reunify the family, and/or achieve a permanency. The only exception to the reasonable efforts to reunify mandate occurs when the court finds that reasonable efforts to reunify the family is not required per Article 672.1. In sum, even if a reasonable efforts finding is not required by law at a particular hearing, the court should make ongoing inquiries as to the reasonable efforts being made by DCFS.¹⁶ See [Disposition Hearing Benchbook Section 8 H](#) for more information on reasonable efforts findings.¹⁷

I. ORDERS

The court continues to have jurisdiction to make rulings about custody in CINC cases. The court may maintain or modify the current Disposition as provided in Articles 681 to 683. For example, if a relative has been recently identified and assessed, the court could decide to grant custody or guardianship to the relative with or without ongoing supervision (i.e., DCFS supervision, safety plan, etc.) and/or issuing a PO. Or, if a non-custodial parent has been located, the court could decide to grant custody of the child to that parent with or without ongoing supervision (i.e., DCFS supervision, a safety plan, etc.) and/or issuing a PO.

The court should determine the continuing necessity of the removal of the child from his/her parents at each hearing. Indeed, ASFA requires that the ongoing safety of the child be assessed at the Case Review Hearing. The DCFS Case Review Court Report should provide information about whether safety concerns remain that prevent the child's return home. Children should be returned home

¹⁵ See Preventing Sex Trafficking and Strengthening Act (2014), which established a normalcy provision for foster youth under the "reasonable prudent parent standard." Act, H.R. 4980; see also <https://www.ncsl.org/research/human-services/preventing-sex-trafficking-and-strengthening-families-act-of-2014.aspx> and https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/october-2016/the-reasonable-and-prudent-parent-standard/.

¹⁶ See Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>.

¹⁷ See La. Ch. C. arts. 672.1 and 702; 42 U.S.C. § 671(a)(15)(E); 42 U.S.C. § 675(5); and 45 C.F.R. § 1356.21(b)-(h); see also Child Welfare Policy Manual, Section 8.3A.6, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp?citID=37

immediately once they can safely be returned, regardless of whether the case plan has been completed. The child's return home can be accomplished with a period of supervision by DCFS, although such supervision by DCFS is not a requirement.

The Child Welfare Assessment and Decision Making Model (CWADM) is a framework DCFS uses to assess safety and risk and the needs and strengths of children and families throughout the life of a case so that courts and DCFS have the best possible information upon which to make decisions with and for families involved with DCFS. A formal safety assessment is required at specific intervals during the life of a case, including at Case Review Hearings. If a child has been previously removed from his/her parents, the court should determine if the child can be returned home or whether an out-of-home placement is still necessary. To make this determination, the court will have to inquire about the current status of: (1) any threats of danger to the child; (2) the child's vulnerability to the threats of danger; and (3) the parent's protective capacities to manage the threats of danger and keep the child safe. The essential inquiries at every CINC hearing should include: 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? See the [Child Welfare Assessment and Decision Making Model \(CWADM\) Benchbook Section 11](#) for more information.

If the child cannot be safely returned home, the court should continually consider whether a transfer of custody or guardianship is in the child's best interest as opposed to maintaining the child in DCFS custody. The goal of this process is for a child's stay in foster care to be shortened whenever feasible and safe to do so.

At Case Review Hearings, the court will either approve or disapprove the case plan in whole or part. If the court disapproves any part of the case plan, best practice is to order DCFS to make revisions and schedule a hearing to review the revisions as soon as possible. Sometimes all parties can come to an agreement at the hearing, so that another hearing is not necessary. Still, the Case Review Order should clearly reflect specific amendments made and that all parties agree to the amended case plan.

Upon determination by the court that DCFS has failed to comply with the requirements in the Case Review Hearing articles, the court has several sanctions at its disposal. Article 712 sets forth these options.

An attorney or the court is responsible for completing the Order. All the attorneys and unrepresented parties should review the order before the judge signs it to ensure it accurately reflects the proceeding. Time permitting, best practice is to sign the Order on the same day as the hearing.

J. ENGAGING AND ADVISING THE PARTIES

It is important to make sure the parents and children present are engaged and understand both what is happening at the Case Review Hearing and in the case as a whole. The CINC process is complicated and can be confusing to all who have never been involved before. Judges are encouraged to ask if the parties understand what the hearing is about and what the different parts of the case plan entail. While judges are sometimes concerned about engaging with parties, the truth is that families who are engaged in the CINC process fare much better than those who are not.¹⁸ Engaging parties can be hard to do and requires patience. But parents and children are more likely to respond better to encouragement, positive feedback, and being heard.¹⁹ Judges must create an environment where parents and children are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.²⁰

The court must continue to advise parents of their responsibilities at each hearing, including Case Review Hearings. The parents are to cooperate with DCFS, comply with the requirements of the case plan, and correct the conditions requiring the child to be in care. As the case goes on, parents may have new information about adults (relatives or other individuals) who are possible short-term and long-term placements for the child. The court must remind parents of their responsibility to support the achievement of timely permanency

¹⁸ Parent advocates (sometimes called "parent mentors" or "parent partners") are parents who have successfully gone through the CINC process and regained custody of their children and can also help engage parents who have an open CINC case. There is credibility and an understanding that comes with having personal experience with a CINC case. This is one reason why a multidisciplinary representation model, a model that provides peer support to parents and children (i.e., parent advocate or former foster youth) in addition to an attorney and/or social worker, has proved to be beneficial in Orleans Parish and in other States. For more information about the multidisciplinary representation model, please see https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january--december-2019/providing-parents-multidisciplinary-legal-representation-signifi/. The Extra Mile in Lafayette has a stand-alone Parent Partner program: <https://theextramileregioniv.com/frc/>.

¹⁹ See Sankaran, Vivek. "My Name Is Not 'Respondent Mother': The Need for Procedural Justice in Child Welfare Cases." ABA Child L. Prac. Today. 2018, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2992&context=articles>; see also <https://www.ncjfcj.org/child-welfare-and-juvenile-law/trauma-informed-courts/>.

²⁰ Gatowski, supra note 7, at 16.

for the child and advise, or update DCFS and the court of the whereabouts of grandparents, parents of a sibling (who has legal custody of that sibling), and all other adult relatives of the child.

While the focus is often on the parents' responsibilities in CINC cases, parents have rights as well as important information to share about their children. When DCFS has custody of the child, the rights retained by parents are set forth in Article 116(24). Visitation is a right outlined in this article, as is the right to determine religious affiliation. If the child has been removed from the parent's custody, parents should still be invited to attend all medical appointments, school conferences and activities (including eating lunch with the child at school), sports and extracurriculars, and other important events involving the child (unless there is an order otherwise preventing this, such as a criminal no contact order). The court can use the hearing to remind the parties of the rights that parents retain in CINC cases.²¹

In addition to the importance of the court's role in advising the parties, the attorneys, of course, have a duty to do so. Part of the attorney's duties includes answering questions and explaining orders to parents and children. It is often advisable to allow attorneys a little time after the hearing concludes to relay information, reassure clients, and address immediate issues.

K. NEXT STEPS

When reunification is expected, the court should ask questions about transition planning at the hearing. Depending on the age of the child, best practice may be to transition the child to the parent's home rather than suddenly moving. In some jurisdictions, DCFS promulgates a transition calendar with the input of all involved. The court can order a transition period with a goal date for reunification.

When a change of any kind occurs for the child (i.e., change in placement or custody), it is critical to the child's well-being for judges to collaboratively strategize with all involved to reduce the trauma experienced by the child in the move. DCFS has developed tools to try to minimize this trauma, including a guide for planful transitions. Transition plans can include multiple, extended visits, such as overnight visits as well as other additional contacts including Zoom, FaceTime, etc., to ensure the most positive experience possible for the child.²² These activities should occur both prior to the move and after the move to provide the child a less traumatic separation from previous caregivers and greater prospect of connecting to the new caregivers.

The court should schedule the next Case Review Hearing and/or Permanency Hearing. The initial Permanency Hearing shall be held at least within 9 months if the child was removed prior to Disposition or within 12 months if the child was removed at Disposition. If a judicial determination that reasonable efforts to reunify the family were found to not be required per Article 672.1, a Permanency Hearing may be conducted immediately and shall be held within 30 days of the determination.

The Permanency Hearing shall be held at least every 12 months thereafter (or earlier upon motion per Article 702(B)). The Case Review and Permanency Hearings may certainly occur simultaneously if the findings and orders are separated for each type of hearing. Regardless of the frequency of mandatory review, the court can conduct hearings more frequently than the minimum intervals. While review hearings are mandated at least every 6 months after the initial one, it is advisable to hold reviews at 2- or 3-month intervals at particularly critical stages of a case. In certain circumstances, parties should also be able to bring matters back to court on short notice.²³

Depending on the timing of the review hearing and the permanent plan in the case, the court should also inquire as to the status of the filing of the Petition to Terminate Parental Rights (TPR). The Children's Code requires the TPR Petition be filed if the child has been in DCFS custody for 17 of the last 22 months unless DCFS has documented in the case plan a compelling reason why filing it is not in the child's best interest. The timely filing of the TPR Petition goes towards reasonable efforts on the part of DCFS to achieve the permanent plan for the child.

²¹ See <http://www.dcfslouisiana.gov/page/471> and <https://www.qpi4kids.org/what-is-qpi/>, for more information on Quality Parenting Initiative (QPI).
















²² DCFS Policy 6-305 "Guidelines for Care Setting Decision Making for Children Under Age Six" (March 15, 2019).

²³ Gatowski, *supra* note 7, at 260.

L. APPEAL

Any party may appeal the orders of the Case Review Hearing.

OUTLINE

-  **A. PRIOR TO THE HEARING**
-  **B. TIMING AND CONTINUANCES**
-  **C. APPEARANCES**
-  **D. INTERVENTION**
-  **E. NOTICE**
-  **F. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS**
-  **G. EVIDENCE AND TESTIMONY**
-  **H. CASE PLAN CONTENT**
-  **I. CASE PLAN FINDING AND ORDER**
-  **J. ADVISEMENTS**
-  **K. FURTHER FINDINGS AND ORDERS**
-  **L. ORDER OF NOTICES AND FUTURE HEARINGS**
-  **M. CASE MANAGEMENT**
-  **N. POSSIBLE NEXT STEPS**
-  **O. APPENDIX**
 - (1) CASE REVIEW HEARINGS BENCH CARD**
 - (2) CASE REVIEW ORDER TEMPLATE**
 - (3) DEPARTMENT OF CHILDREN AND FAMILY SERVICES CASE REVIEW REPORT TEMPLATE**

OVERVIEW

A. PRIOR TO THE HEARING

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

(1) CASE PLAN FILED BY DCFS

- **FILING:** DCFS shall file a copy of the case plan with the court at least 10 days prior to the Case Review Hearing, which shall include the YTP if the child is 14 years of age or older. See the [Department of Children and Families Case Plan Template](#) and [Department of Children and Family Services Youth Transition Plan \(YTP\) Template](#) in the [Appendices Benchbook Section 12](#).
- **PROVIDE COPIES:** Upon filing, DCFS shall provide a copy of the case plan to:
 - Counsel of record either by mail or electronic mail; AND
 - Any unrepresented party either by certified mail at his/her last known address or by electronic mail at the address expressly designated by the party in a pleading, at the CCH or CSPH, or at any other hearing at which the party personally appeared before the court, unless otherwise ordered by the court for good cause.
- **RESPONSE:** Any party may file a written response to the case plan as submitted.

PRACTICE TIPS:

- **Timing for Development of Case Plan:** Federal and State law require that the case plan be updated every 6 months after it is initially developed and until the case is closed.²⁴ If the Case Review Hearing is held less than 6 months since the previous hearing, the case plan may not have changed.
- **CASA Can Request Copy:** CASA can request a copy of the case plan (Article 424.6).
- **Transmission by Email:** Service by electronic mail is complete upon transmission but is not effective if the serving party learns the transmission did not reach the party to be served.
- **Purpose of Response:** Filing a response puts the parties on notice of potential issues relevant to the case plan. However, the Children's Code does not require a written response.

HELPFUL GUIDANCE:

- **Signed by Family Members:** Per DCFS policy, case plans should be signed by the family members who participated in developing it.
- **Family Team Meetings (FTM):** FTMs are facilitated by DCFS and are important because FTMs are where case planning occurs for the family. It is also where parents and children and other stakeholders and supports give valuable input on the case plan, including the services and assistance to be provided or needed. FTMs should include all parents, foster caregivers, CASA, children, and attorneys for the children and attorneys for the parents. Parents and children may permit others to participate in FTMs. Courts should ensure that an FTM was held prior to the Case Review Hearing and that the court has the most current case plan. It is recommended that the FTM be held as closely in time to the hearing as possible (but with enough time for filing the case plan 10 days in advance of the hearing) so that the court can review the case plan before it is acted upon. Efforts to hold timely and meaningful FTMs support reasonable efforts findings to achieve reunification and/or permanency.

²⁴ DCFS Policy 6-810 "Legally Mandated Case Plan" (August 17, 2020).

(2) CASE REVIEW COURT REPORT FILED BY DCFS:

- **FILING:** DCFS²⁵ shall file a copy of the Case Review Court Report with the court at least 10 days prior to every scheduled Case Review Hearing.²⁶
- **PROVIDE COPIES:** DCFS shall serve a copy of the Case Review Court Report upon:
 - Counsel of record either by mail or electronic mail; AND
 - Any unrepresented party either by certified mail at his/her last known address or by DCFS by electronic mail at the address expressly designated by the party in a pleading, at the CCH or CSPH, or at any other hearing at which the party personally appeared before the court prior to or at the same time it is filed with the court.
- **CONTENT:** The Case Review Court Report shall review the status of the child and address the following (but is not limited to):
 - The continuing necessity for and appropriateness of the placement;
 - The extent of compliance with the case plan;
 - The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care; AND
 - A likely date by which the child may be returned home or placed for adoption or guardianship granted. See [Department of Children and Family Services Case Review Court Report Template](#) in the [Appendix](#). **IMPORTANT:** Use of the DCFS Court Report templates provided in this Benchbook for Disposition Hearings, Case Review Hearings, and Permanency Hearings are being implemented in a phased-in approach across the State.
- **RESPONSE:** Parties may file a written response to the Case Review Court Report:
 - As long as the response is submitted to counsel of record and any unrepresented party at least 5 days prior to the Case Review Hearing.

☰ PRACTICE TIPS:

- **Court Report or Letter:** Some jurisdictions call these court reports “court letters,” while others call them according to the hearing name (i.e., Case Review Report, Permanency Report, etc.).
- **Transmission by Email:** Service by electronic mail is complete upon transmission but is not effective if the serving party learns the transmission did not reach the party to be served.
- **Foster Caregiver Progress Form:** The Foster Caregiver Progress Form may be attached to the court report if the foster caregivers providing care for the child chose to submit the form to DCFS prior to the Case Review Hearing. See the [Foster Caregiver Progress Form Template](#) in the [Appendices Benchbook Section 12](#).
- **Assessment of Child’s Relationships:** The report should include an assessment of the current status of the child’s established and significant relationships with others.²⁷ This is critical for courts to know in determining whether changes need to be made to visitation, placement, custody, etc., and whether reasonable efforts requirements are being met.
- **Purpose of Response:** This provision puts the parties on notice of potential issues relevant to the court report. However, the Children’s Code does not require a written response.
- **Timing of Response:** Court reports are not always timely filed. The court has discretion to allow a response later than 5 days prior to the hearing when the filing of the court report is delayed and/or when it is in the best interest of the child.
- **Case Review and Permanency Hearings Held Simultaneously:** When Case Review and Permanency Hearings are held at the same time the DCFS Court Report should address the information required for both types of hearings.

(3) COURT REPORT FILED BY CASA:

- **FILING:** If the court has appointed CASA, the CASA program shall submit reports to the court. See [CASA Court Report Template](#) in the [Appendices Benchbook Section 12](#).

²⁵ La. Ch. C. art. 688 states the “custodial agency” instead of DCFS, but in most cases in Louisiana the custodial agency will be DCFS.

²⁶ The option for an administrative review body to review the case is preserved by La. Ch. C. art. 688, although currently all case review is conducted by courts. Case reviews by an administrative review body is allowed by Federal law.

²⁷ La. Ch. C. art. 690, Comment 2001.

- **DISTRIBUTE COPIES:** CASA shall distribute a copy of such reports prior to or at the time it is submitted to the court to:
 - All counsel of record;
 - Any unrepresented party; AND
 - DCFS.

 **PRACTICE TIPS:**

- **Timing of Submission:** The Children’s Code does not provide how many days before the Case Review Hearing that the court report should be filed with the court. However, it is recommended that it be submitted within the same timeframe as required for the DCFS Case Review Court Report (i.e., at least 10 days prior to the hearing).
- **Exception to Submission:** CASA reports may be subject to a Protective Order (PO) upon the request of the CASA volunteer, a party or party’s attorney, or by the action of the judge. If a PO is contemplated, the request should be made at the time the report is filed.
- **Mode of Distribution:** This article permits a more informal distribution of the court report. Each court by local rule may determine how counsel of record, DCFS, and unrepresented parties receive copies of CASA reports.

▼

OVERALL GUIDANCE:

- **Importance of Timing:** Timelines for submitting case plans and court reports are not followed in some jurisdictions, but they should be. Filing the case plan and court report at least 10 days in advance of the hearing is important for moving the case forward and achieving timely permanency. Parties have the right to review the case plan and report and respond to them (see above); however, they will not be able to respond if DCFS does not timely file these documents and provide copies to counsel of record, unrepresented parties, and CASA (if appointed). Adequate representation is harder to achieve when reports or amendments are delayed since that can make it impossible for counsel to follow up on the information provided.
- **Local Court Rules and Orders:** While the Children’s Code does not provide a specific procedure on timing or mode of service, such as for court reports, CASA reports, or physical examinations, courts may want to consider setting those requirements by local court rule. Additionally, the court can include such in its written Orders.
- **Contempt:** The contempt articles (Articles 1503 et seq.) are always available to the court, if appropriate, when investigations and/or evaluations previously ordered to be completed prior to this hearing have not been completed on time, or the case plan or Case Review Court Report is unnecessarily delayed.

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B. TIMING AND CONTINUANCES

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

(1) TIMING:²⁸

- **Initial Case Review Hearing:**
 - The court may grant or restrict a requested continuance of the Disposition Hearing:
 - **If Removed Prior to Disposition Hearing:** A Case Review Hearing shall be conducted by the court 3 months after the Disposition Hearing if the child was removed prior to Disposition (i.e., removed on an Instanter Order or at a CCH); OR
 - **If Removed at Disposition Hearing:** A Case Review Hearing shall be conducted by the court within 6 months after the Disposition Hearing if the child was removed at Disposition, but in no case more than 6 months after removal of the child from his/her parents.

²⁸ In computing a period of time prescribed by law, the date of the event after which the period begins to run is not included; the last day of the period is included but if a legal holiday—including Saturdays and Sundays—then the period runs until the end of the next day which is not a legal holiday.” La. Ch. C. art. 114.

- **On-Going Case Review Hearings:**

- **Every 6 Months Thereafter:** A Case Review Hearing shall be conducted at least once every 6 months after the initial Case Review Hearing and until:
 - The child is permanently placed;²⁹ OR
 - The motion of a party for good cause shown or upon the court's own motion.

(2) CONTINUANCES:

- **Report to Louisiana Supreme Court (LASC):** If a continuance is granted, or a delay permitted, that exceeds the maximum allowable times established by the Children's Code, the court is mandated by Supreme Court Rule XXXIII, Part II, Sections 1 and 2, to report such continuance within 10 days to LASC, along with the reasons for the delay and a copy of the Order. See https://www.lasc.org/children_families/timelinessreport.pdf for a copy of the report that must be submitted by the court to LASC. See also Louisiana District Court Rules, Title V, Chapter 42, Rule 42.1, for more information.

PRACTICE TIPS:

- **Adoption and Safe Families Act (ASFA):** One of the major reform goals of ASFA is to expedite court proceedings so that earlier determinations affecting the child's health and welfare occur. Nothing is prohibiting the court from having these hearings sooner than these timeframes. For example, the court should hold a hearing if there is an issue with the family that needs to be addressed. The information should drive the timing of the hearing.
 - **Simultaneous Hearings:** Article 711 expressly approves the use of simultaneous Case Review and Permanency Hearings. In fact, this may be advisable so that the case plan and permanent plan are reviewed in tandem with one another. In such instances, findings and orders must be separated for each type of hearing.
-

C. APPEARANCES

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

- (1) PROPER INTEREST OR NECESSARY:** At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. The court shall not admit any other person unless it determines that the person has a proper interest in or is necessary to the proceedings.
-

PRACTICE TIPS:

- **Service Providers:** Persons who provide services to the parents and children, such as therapists, teachers, domestic violence advocates, and parenting instructors, can often provide valuable information to the court concerning the family's progress and recommendations for additional services. If a particular service provider is not available to attend the hearing, the court should make certain that DCFS staff members have obtained detailed information on the participation and progress of the parents in that service. Ideally, written reports from all service providers should be provided to the court and parties in advance of the hearing. The involvement of service and treatment providers at reviews help coordinate services with court-approved treatment goals.³⁰
- **Include Other Agencies:** Coordinating services with the Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful, and the court may want to consider having one or more represented at the Case Review Hearing. This multi-disciplinary approach is especially critical for youth

²⁹ See La. Ch. C. art. 603(22).

³⁰ Gatowski, *supra* note 7, at 263.

who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated services and supports.

HELPFUL GUIDANCE:

- **Privacy and Confidentiality:** Limiting the number of persons present in the courtroom protects the privacy of children in CINC cases. The judge is mandated to exclude all but the listed persons unless first determining the person has a proper interest or is necessary to the proceedings. Law students or social workers studying juvenile procedure might qualify as persons with proper interest. If the court allows other persons to be present, the court should stress the confidentiality of the case information.

(2) ESSENTIAL JUDICIAL FUNCTION - ASSISTANCE SERVICES AND SPECIAL ACCOMMODATIONS: Under State and Federal law, the court is responsible for providing interpretation, translation, and/or language assistance services for parties to CINC hearings and/or reasonable accommodations for parties to CINC hearings with disabilities. When the court appoints counsel for indigent persons, it is also responsible for appointing and paying for a qualified interpreter or translator for indigent persons with these needs to assist in communication with counsel in all phases of the preparation and presentation of the case.³¹ There must be ample time for legal interpreters to review pertinent legal documents with the party prior to the court proceeding.³² Interpreters must be familiar with the case-related details to provide accurate, meaningful, and effective interpretation.³³

(3) CHILDREN: Children are parties and shall be present at the hearing unless an exception below applies.

- **12 and Older:** If the child is 12 years of age or older, he/she shall be present in court unless his/her presence is waived by the court upon motion of the child's attorney.
- **Below 12:** If the child is below the age of 12 years, he/she shall be present in court upon request of the child's attorney or the court.

Waive: The court shall state in the Order whether or not the court waived the presence of the child at the hearing. See [Disposition Hearing Benchbook Section 8 C\(3\)](#) for more on the importance of children's presence at hearings.

(4) PARENTS: Parents of the children are parties and shall be present at the hearing.

PRACTICE TIPS:

- **Effect of Nonappearance of Parent:** If a parent is absent, the hearing may only proceed if it is established on the record that the parent was served but is not in attendance or that efforts to serve the parent have been unsuccessful.
- **Reunification Case Plan Goal:** If reunification with the absent parent is the case plan goal, DCFS shall:
 - Make continuing diligent efforts to locate the absent parent;
 - Notify him/her of the nature and outcome of the hearing;
 - Promptly inform the court of known or discovered address; AND
 - Promptly inform the court of any new address that becomes known through the case planning process.
- **Unidentified Father:** If a father is unidentified, it is not necessary to appoint a curator ad hoc for that parent. The father shall be considered unidentified if:

³¹ See C.C.P. Art. 192.2; La. R.S. § 46:2364; 42 U.S.C. § 3711; 28 U.S.C. § 604(a)(14), (15), and (16), § 1827, and § 1828; see also https://www.lasc.org/language_access and https://www.lasc.org/District_Court_Rules?p=TitleI.

³² See National Consortium of Interpreter Education Centers. (2009). Best practices American Sign Language and English interpretation within legal settings. U.S. Department of Education, Rehabilitation Services CFDA #84.160A and B, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind, <http://www.interpretereducation.org>

³³ Id.

- The biological father's name is not provided on the birth certificate;
 - There is no presumed father; AND
 - No party to the proceedings or the mother, if not a party, is able to provide a first and last name of a putative father or alias sufficient to provide a reasonable possibility of identification and location.
- **Incarcerated:** To ensure the attendance of any parent who is incarcerated at the Case Review Hearing, a writ or motion should have been filed and an order issued by the court and served on the warden or administrator of the facility prior to the Case Review Hearing. Service should be made sufficiently in advance of the hearing to afford time for the facility to arrange for transportation of the parent to court (or video conferencing where the parent's physical attendance at the hearing is not possible).
 - **Direct Parent Present to Identify Other Parents:** If a parent has still has not been located, the judge should direct the parent who is present under oath to provide name, address, and whereabouts for any parent who has not been located and emphasize the importance of identifying and locating any absent parents.
 - **Determining Paternity/Maternity:** The court must ensure that efforts by DCFS are thorough and diligent in locating and involving all legal and putative parents and that paternity or maternity of all children is legally determined. If the identity and whereabouts of an alleged parent is known but filiation has still not been legally determined, the 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.), including ordering that DCFS make arrangements for DNA tests to determine the paternity/maternity of any alleged parents and that the alleged parents comply.
 - **Direct Parent Present to Identify Potential Relative Caregivers:** Establishing paternity or maternity is also critical for finding potential relative caregivers for the child; thus, the court may also want to direct the parents under oath to identify relatives of the child.

 **HELPFUL GUIDANCE:**

- **Identification of Parents or Legal Custodians:** Courts should ensure all biological, legal, and putative parents are legally established as soon as possible. Decisions made in CINC hearings can affect a child's entire life if this information remains unknown. When a child does not know who one of his/her parents is, that also means the child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Timely resolution of filiation and paternity or maternity issues is in the best interest of the child and essential to due process and avoiding permanency delays.
- **Maternity:** There may be cases where there is an issue with maternal filiation. However, Louisiana law has not been amended to contemplate situations when, for example, two women are married and one gives birth to a child during the marriage. Louisiana filiation laws for paternity would likely be instructive for similar maternity issues.

(5) ATTORNEYS:

- a. **Parents:** The Indigent Parents' Representation Program shall provide qualified legal counsel, including curatorship appointments, to indigent or absent parents in CINC cases unless a parent waives his/her right to counsel (See Articles 575, 608, and 643).
- b. **Children:** An attorney for the child shall be present at every hearing, assert the child's wishes, and protect the legal interests of the child even if the child is not present (Article 607).³⁴
- c. **State:** An ADA, an attorney (ADA), an attorney the ADA designates, or a DCFS attorney (Bureau of General Counsel/BGC) representing the State should be present at the hearing.

³⁴ LA. SUP. CT. RULE XXXIII, PART III.

PRACTICE TIPS:

- **Due Process:** Judges play an important role in helping to ensure due process for all parents and children in their courts. The child's attorney and the parent attorneys should zealously advocate for their clients whether they are present or not.
- **Clients Consult with Attorneys:** Before the case is called, the judge should inquire whether counsel for the parents and counsel for the child had sufficient opportunity to consult with their clients, thus, ensuring due process for the family.

(6) DCFS: DCFS staff member or representative should be present at the hearing.

(7) CASA: May be present if the court appointed them.

(8) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD: Foster caregivers (i.e., foster parents, relatives, or pre-adoptive parents) providing care for the child have a legal right to receive notice of and be present at the Case Review Hearing. The court may permit the hearing to be held in the person's absence even if they were not properly notified. See [Continued Custody Hearing \(CCH\) Benchbook Section 5 B\(8\)](#) for more information.³⁵

(9) AUTHORIZED OFFICERS OF THE COURT AND WITNESSES:

- **Authorized officers of the court:** As designated by the judge, may be present at the hearing.
- **Witnesses:** Under examination may be present at the hearing.

(10) INTERVENOR: If intervention granted (see [Intervention Section D](#) below).

D. INTERVENTION

ARTICLE 697

(1) REQUIREMENTS: The court has discretion to allow any interested person, agency, or organization to intervene in a Case Review Hearing if good cause is shown such that the intervention:

- Facilitates permanent placement of the child; AND
- Ensures the best interest of the child is protected.

(2) LIMITATIONS: The court may limit the nature and extent of the intervenor's participation in the Case Review Hearing:

- Upon motion of a party; AND
- For good cause shown.

(3) HELPFUL GUIDANCE:

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

E. NOTICE

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

The court shall determine if proper notices of the hearing were made to all parties, counsel of record, and foster caregivers, and enter required findings in the Order.

(1) PARTIES AND COUNSEL: Written notice of the date, time, and place of the Case Review Hearing shall be served and return made in the same manner as a Petition on all parties and also counsel of record at least 15 days prior to the hearing unless the parties have been notified in open court at a prior hearing. Any party who has received notice of the Case Review Hearing and does not appear shall be deemed to have waived his/her right to be present. See [Answer Hearing Benchbook Section 6 D](#) and Articles 635.1-645 for more information.

³⁵ See La. Ch. C. arts. 623 and 695; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

(2) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD:

- **Notice and Right to Be Heard:** The court shall determine whether DCFS:
 - Gave notice of the date, time, and place of the Case Review Hearing to any foster caregiver providing care for the child; AND
 - Informed the recipient of his/her right to attend and be heard at the hearing.
- **Fails to Appear:** If a foster caregiver fails to appear at a hearing, DCFS shall report to the court whether notice was given or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person's absence.³⁶

F. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS

The court should consider whether any of the following Federal laws or regulations apply to this case:

- **Americans with Disabilities Act (ADA);**
- **Service Members Civil Relief Act (SMCRA);**
- **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA); (OR)**
- **Interstate Compact on the Placement of Children (ICPC), as codified in La. Ch. C. art. 1608 et seq.**
 - **ICPC Generally:** ICPC is an agreement between all 50 States, Washington, D.C., and the U.S. Virgin Islands. It provides for the movement and safe placement of children between States when the children are sent out of State for placement in foster care or as a preliminary step to a possible adoption. The process involves several steps and goes from the local or field level in one State, through the central or State office of each State, to the local level in the other State for investigation. At the conclusion of the investigation, a report is sent from the local level to the State administration and back to Louisiana. The process usually takes several months to complete, so it is recommended that this process begins as soon as a potential caregiver out of State is identified and determined to be a suitable potential placement or resource. If the receiving State finds that the proposed placement is contrary to the interests of the child based on the receiving State's criteria, DCFS may not place the child with that caregiver. The judge still has authority to grant custody or guardianship to the out-of-State caregiver without ICPC approval. Still, there would be no supervision of the home and may be other severe repercussions. See [Disposition Hearing Benchbook Section 8 D](#) for more information on ICPC.

G. EVIDENCE AND TESTIMONY

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

- (1) EVIDENCE:** The court shall consider all relevant evidence offered by the parties. The court may limit the admissibility or weight of any evidence which it deems unreliable, cumulative, or unduly dilatory.
- (2) PARENTS:** Parents may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.
- (3) CHILDREN:** Children may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.
- **Wishes:** If the child is present in court the child may choose to testify as to his/her wishes, and the court shall consider the child's testimony in the matter.³⁷
 - **Methods of Testimony:** Any testimony given by a child may be taken by:
 - A videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of the Louisiana Children's Code;
 - An in-chambers conference attended only by the judge and court reporter and by counsel for the child, the petitioner, and the parents; OR
 - If no party objects and the parties agree as to the procedure, the child may be examined "in chambers, on or off the record, and with or without parents and/or counsel being present."³⁸
 - **Exclusion:** Prior to the commencement of the hearing, the court shall determine whether it is in the child's best interest for the child to remain in the courtroom during the testimony of the witnesses.

³⁶ See La. Ch. C. arts. 623 and 695; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

³⁷ LA. SUP. CT. RULE XXXIII, PART II, SUBPART II

³⁸ *Watermeier v. Watermeier*, 462 So. 2d 1272, 1275 (La. App. 5th Cir.), cert. denied, 464 2d 301 (La. 1985).

PRACTICE TIPS:

- **Child Present or Not:** Whether present or not, the child’s attorney shall make sure the court hears the child’s wishes (i.e., regarding custody, placement, services, case plan, etc.).³⁹
- **Methods of Communication:** If the child wishes to be heard but is not able to present or does not want to be present in the courtroom, the court should consider the use of other methods of communication, such as audio or visual conferencing.
- **Well-Being:** The court should inquire about the child’s physical, emotional, mental health and educational needs and identify any gaps in services needed by the child.

(4) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD: The court shall solicit and consider information regarding the care and treatment⁴⁰ of the child from any foster caregiver providing care for the child who appears for the Case Review Hearing.⁴¹

PRACTICE TIPS:

- **Valuable Information to Consider:** The court should value the role of the child’s daily caregivers and the insight they can provide to the court about how the child is doing and what he/she needs. Because of their day-to-day care of the child, foster caregivers have useful information that the court, DCFS, CASA, and parties to the CINC case need to make crucial decisions regarding the child’s well-being. Thus, their role in the court process is to provide current and accurate oral and/or written information about their observations of how the child is doing so that judges can make informed decisions in the best interest of the child.
- **Solicit Information:** While foster caregivers are not parties, they have a legal right to be heard at any CINC hearing regarding a child in their care. There are at least 2 ways the court can solicit and consider information from caregivers. The caregiver can: (1) submit a Foster Caregiver Progress Form to DCFS prior to the hearing and/or (2) attend and speak at the hearing, or both.
- **Submit a Foster Caregiver Progress Form:** The Foster Caregiver Progress Form is one of the ways foster caregivers can exercise their right to be heard but is not required. If the caregiver chooses to complete the form, they will submit it to DCFS, who will bring copies of the form to the hearing. The form can be submitted to DCFS even though the caregiver may not attend the hearing. These forms contain hearsay information and should be treated as information about the child in the same way DCFS provides other information to the court. Even if the caregiver submits the form, they still have the right to attend and be heard at any CINC hearing regarding the child in their care. See the [Foster Caregiver Progress Form Template](#) in the [Appendices Benchbook Section 12](#).
- **Speak at Hearing:** In accordance with State and Federal law, if the foster caregiver attends the hearing, the court shall solicit information from the caregiver about the care and treatment of the child (even if they submitted a Foster Caregiver Progress Form). At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. This includes foster caregivers. After the court hears from parties and evidence is presented, if another party has not called on the caregiver to speak, the judge should call on them to see if they would like to speak. Some caregivers may wish only to attend and not speak. Judges may allow the caregiver to use the form to guide them when they speak and/or may want to utilize the form to ask the caregiver questions.⁴²

³⁹ LA. SUP. CT. RULE XXXIII, PART III.

⁴⁰ Neither State nor Federal law provides a definition for “care and treatment,” but DCFS policy states that it “includes information that the foster parent, relative, or pre-adoptive parent feels is critical to the safety and well-being of the child, such as how the child is doing physically, developmentally, emotionally, behaviorally, mentally, socially, and academically and what supports or services are needed for the child or caregiver to properly care for the child.”

⁴¹ See La. Ch. C. arts. 623 and 695; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

⁴² Id.

(5) CASA: CASA (if appointed) may be called as a witness in the proceedings by any party or by the court and may request of the court the opportunity to appear as a witness.

PRACTICE TIP:

- **Recommendations for Permanency and Services:** Judges should consider CASA's recommendations for permanency and services necessary for the child. If that information is not included in the CASA report, the court should ask the CASA volunteer for those recommendations and reasons for them. All parties should have the opportunity to examine CASA's permanency recommendations.

(6) OTHER WITNESSES: On its own motion or the motion of any party, the court may order that non-party witnesses be excluded from the courtroom. On request of a party, the court shall order the exclusion.

PRACTICE TIPS:

- **Cannot Exclude Parties:** Parties to a proceeding cannot be excluded from the courtroom. Only the child can be taken out of the courtroom during testimony that may not be in their best interest to hear. See Article 661(E).
- **DCFS and CASA are Not Parties:** Neither DCFS nor CASA are parties to CINC proceedings. DCFS staff or a CASA volunteer may be excluded if any party plans to call them as a witness. However, a DCFS representative would likely need to remain in court to assist the ADA. See La. Code Evid. Art. 615(B)(2).
- **Foster Caregivers Are Not Parties:** Foster caregivers are not parties. While they have a right to be heard at any CINC hearing regarding a child in their care, they may be excluded and asked to be present only when they speak. However, it is encouraged that they are allowed to remain during the duration of the hearing. Allowing them to be present at the hearing communicates that they are a valued partner in ensuring the child's well-being. Because they provide day-to-day care to the child, it is also important for them to stay abreast of developments in the case and have the opportunity to meet and communicate with those involved in the case (i.e., the child's attorney, parents and relatives of the child, the CASA volunteer, etc.). The caregiver's presence at the hearing may better situate them to support the child during and after the hearing.⁴³
- **Exemption of Witnesses:** In the interest of justice, the court may exempt any witness from its order.
- **Closing a Hearing:** Sequestration is different from closing a hearing upon motion of a party. Closing a hearing means that no one is present except for the parties.

OVERALL GUIDANCE:

- **Engagement:** The court should do all that it can to support and encourage the meaningful engagement of families in CINC proceedings.⁴⁴ Testifying in court is stressful for many parents and children. Court is intimidating for most individuals (including non-party witnesses), and the stakes could not be higher for parents and children in CINC cases. Many parents and children are coming into court with a history of trauma. Regardless of the trajectory of the case, parents and children may benefit from having their voice heard. It is critical for the judge to consider information provided by the parents and children, and to convey to the parents and children that their testimony is being given due consideration in the court's ruling. Positive engagement is critical to successful outcomes in the case.⁴⁵ Judges must create an environment where parents and children are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.⁴⁶

⁴³ Id.

⁴⁴ Gatowski, *supra* note 7, at 68.

⁴⁵ Id.

⁴⁶ Gatowski, *supra* note 7, at 16.

H. CASE PLAN CONTENT

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

The case plan shall be designed to achieve placement in the least restrictive, most family-like, and most appropriate setting available, and in close proximity to the parents' homes, consistent with the best interest and special needs of the child. See the [Department of Children and Families Case Plan Template](#) in the [Appendices Benchbook Section 12](#). The health and safety of the child shall be the paramount concern in the development of the case plan. The case plan shall at least include:

(1) PLACEMENT:

- A description of the type of home or institution in which the child is placed, including a discussion of the child's health and safety and the appropriateness of the placement; AND
- If the placement is a substantial distance from the home of the parents or in a different State, the reasons why it is in the best interests of the child.

PRACTICE TIPS:

- **Court's Authority Concerning Placement:** While the court has the authority to change custody, if the child is in DCFS custody, the court has no authority to order a specific placement for the child. However, the court has authority after contradictory hearing and best interest finding to disapprove the placement chosen by DCFS per Article 672(A)(2).
- **Shortage of Placements:** The fact that there may be a shortage of placements in Louisiana does not justify an assertion that it is in the best interest of the child to be placed a substantial distance from his/her parents' home or placed out-of-State.
- **Long-Term Permanency:** Per DCFS policy, placement with a family willing to provide long-term permanency to the child should the child be unable to return to the parents must be a priority. Additionally, except in unusual situations, all children ages 5 and under should be placed in care settings capable of providing long-term permanency due to the young age and critical developmental needs of the child. This can be achieved when children are placed with relatives or when unrelated families are selected based on their willingness and ability to provide safe and long-term permanency.

(2) CARE, SERVICES, AND ACTIVITIES:

- A plan for assuring that the child receives safe and proper care;
- That services are provided to the parents, child, and foster parents to improve the conditions in the parents' home, facilitate the safe return of the child to his own home or other permanent placement of the child, or both;
- Discussion of the appropriateness of the services that have been provided to the child under the plan; AND
- A plan for assuring that the child is afforded the greatest opportunity for normalcy through engagement in age or developmentally appropriate activities on a regular basis.⁴⁷

HELPFUL GUIDANCE:

- **Safety and Risk Assessment:** If a child is placed outside a parent's home, the court should determine the continuing necessity of an out-of-home placement at the hearing. At each hearing, the court should insist on a clear articulation of the current safety concerns that necessitate keeping the child in care. The child should be returned home immediately once it is safe to do so regardless of whether the case plan is complete. Foster care is the safety plan of last resort. See [Child Welfare Assessment and Decision Making \(CWADM\) Benchbook Section 11](#) for more information.
- **Assessing Services for Parents:** The following are important questions to ask when assessing services for the parents:
 - **Safety:** Does the case plan include tasks addressing changes in behaviors, commitments, and attitudes related to safety?

⁴⁷ See Preventing Sex Trafficking and Strengthening Act (2014), which established a normalcy provision for foster youth under the "reasonable prudent parent standard." Act, H.R. 4980.

- ▶ The case plan should be precise when detailing the expected outcomes and what parental behaviors must change.
- ▶ Listing services people must attend, directing them to “follow all treatment recommendations,” does not allow the court to measure progress, only to measure attendance or participation. An example of how to measure progress would be: “Alan will demonstrate an ability and willingness to delay his own needs to provide food, supervision, and attention for his daughter Kayla.”
- **Threats of Danger and Protective Capacities:** Does the case plan follow logically from the identified threats of danger and deficits in protective capacities in the home?
 - ▶ The case plan should lay out an effective and expedient strategy to equip parents to ensure the child’s safety. The case plan should reduce threats of danger over time and increase protective capacity. For example, a case plan calling for the parent to “learn about child development” may fail if it does not address the specific threats of danger the child is facing and/or the protective capacities the parent is lacking.
 - ▶ Some parents must deal with their own experiences of being victimized to develop protective capacities.
 - ▶ Specific mental health issues may make a parent so ill-prepared for being protective that those issues must be addressed first.
- **Foster Parents and Services:** While services are not necessarily directly provided to foster parents in the case plan, support is provided to foster parents to facilitate the provision of some services.
- **Age-Appropriate Activities:** The child shall be consulted in an age-appropriate manner about his/her interests and the opportunities available to him/her.
- **Normalcy:** Recognizing the greatest opportunity for normalcy lies in the day-to-day decisions affecting the child’s activities, the child’s caretaker should be supported in making those decisions through the use of the reasonable and prudent parent standard as set forth in La. R.S. § 46:283.⁴⁸
- **Cultural/Religious Connection:** An aspect of case planning that is often overlooked includes the need for cultural and/or religious connection and/or activities for children. The presence or absence of such activities may depend on the practices of the placement rather than based on the needs of the child. The court can make inquiries into this important part of some children’s lives and determine whether the case plan adequately addresses these needs. For example, consider a child who has been raised as a member of a particular church, but the foster care placement does not practice any religion. The child may suffer by not continuing to attend church in this placement. How will the case plan address the need for the child to continue in this activity? Or, if a child has been raised without any religious practice and is placed in a home where the foster parents expect the child to attend church frequently, this could be very uncomfortable for the child. Thus, the court should assess DCFS’s proposed plan to address the child’s cultural and/or religious background.
- **Educational Stability:** Children and youth in foster care represent one of the most vulnerable student subgroups in the country.⁴⁹ Studies find that children in foster care are much more likely to struggle academically and fall behind in school than their peers.⁵⁰ The ESSA sets forth provisions protecting children in foster care as it relates to their education and schooling. Specifically, it allows a child placed in foster care to remain in their school of origin or be enrolled in a school without delay. Some reasons that a child should stay in the school of origin include close peer connections, established teacher and/or staff relationships, comfort with and/or success at the school, provision of tutoring (many schools no longer provide tutoring) and other accommodations, better opportunities to join sports teams and other desired activities, and previous school changes and disruptions. The ESSA also requires transportation to be provided for the child to the school of origin, even if the child moves out of that school district. The child welfare agency and the local educational agency (LEA) must ensure this transportation is provided and appropriate. Some of these provisions of the

⁴⁸ See also https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/october-2016/the-reasonable-and-prudent-parent-standard/.

⁴⁹ For more information on Educational Stability for Children and Youth in Foster Care see: <https://www.childwelfare.gov/topics/systemwide/service-array/education-services/meeting-needs/educational-stability/>; U.S. Department of Education and U.S. Department of Health and Human Services. (2016) Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, <https://resources.finalsite.net/images/v1535746984/tulsaschoolsorg/h07q5pxet7fifpizh2lm/FosterCareGuidance.pdf>.

⁵⁰ Id.; Heimpal, Daniel. “The Chronicle of Social Change, “The Case of ‘V. Doe’ Could Have Major Implications for the Education of Foster Youth Nationwide.” Youth & Family News, The Imprint. January 18, 2018, <https://chronicleofsocialchange.org/education/case-v-doe-major-implications-education-foster-youth-nationwide/29467/> (“Greater than 1/3 of all youth in foster care will have 5 or more school changes by the time they turn 18, and each change can cost 4 to 6 months of academic progress.”).

ESSA are codified in the Louisiana Revised Statutes.⁵¹ Although the child has the right to educational stability, the judge may want to make specific orders to help move the process along more expeditiously. The judge can also disapprove the case plan if the plan for the child’s education is not sufficient.

- **Special Education:** Many of the children who come through the child welfare system either need or are already receiving special education services. The Federal Individuals with Disabilities Education Act (IDEA), along with its State counterparts, ensure that children with disabilities receive a free appropriate public education designed to meet their unique learning needs. The Act addresses which children will receive full and individualized evaluations for eligibility, what special education and other related services are deemed necessary and where and when these services will be provided. IDEA also covers who is allowed to make these decisions for each child, a responsibility made more complicated when a child is involved in the foster care system. The birth or legal parent usually possesses the right to act as their child’s IDEA parent unless limited by the court or when parental rights are terminated. A foster caregiver may also act as the IDEA parent. However, if a foster child is in a congregate care setting—a group home, Psychiatric Residential Treatment Facility (PRTF), hospital, etc.—or the IDEA parent available is not deemed appropriate or eligible, either the Local Educational Agency (LEA) or the CINC judge have the authority to appoint a “surrogate parent” to make education decisions for the child. Pursuant to the IDEA, a DCFS staff member cannot act as the surrogate parent.
- **Response to Intervention (RTI) and Multi-tiered Systems (MTTS):** Under ESSA, the MTTS and RTI were created to avoid the overidentification of learning disabilities before implementing interventions to meet the students’ needs. MTTS or RTI requires school systems to implement academic interventions over 16-18 weeks driven by students and their individual performance. Interventions can be difficult for children in foster care because of their mobility. Judges can help by directing DCFS to sign a release so that schools will include intervention data, MTTS or RTI status with all educational records of foster youth as they transfer schools.
- **Trauma and Behavioral Health Screen (TBH):** Trauma and Behavioral Health Screen (TBH): It is DCFS policy for children in foster care and DCFS Family Services from birth to age 18 to receive trauma and behavioral health screening initially and every 6 months. DCFS utilizes the Trauma and Behavioral Health Screen (TBH) and when indicated by the TBH score, the agency will refer the child for treatment. DCFS should provide updates in its court reports. The court may want to consider the appropriateness of and/or need for services in light of the results of the screening.

(3) VISITATION/FAMILY TIME:

- A plan for visitation (also called “family time”).

PRACTICE TIPS:

- **Court’s Authority Over Visitation:** The Children’s Code articles regarding the Case Review Hearing provide that the court can either approve or disapprove the case plan. It does not state the court has the authority to change anything in the case plan. Although the plan for visitation between the child and his/her parents, siblings, and others is included in the case plan, Article 309 does give the court continued jurisdiction over visitation in all CINC proceedings.
- **DCFS Requirements for Visitation:** The case plan should set out the visitation plan for the child with his/her parents, siblings (if not placed together or not in care), and others with whom the child has significant relationships (see below). DCFS policy sets minimum requirements for visitation/family time, which states:⁵²

51 La. R.S. § 17:238C (“The governing authority of each public and secondary school shall establish a policy to ensure that a child who is in foster care pursuant to placement through the Department of Children and Family Services shall be allowed to remain enrolled in the public school in which the child was enrolled at the time he entered foster care for the duration of the child’s stay in the custody of the State or until he completes the highest grade offered at the school if the Department of Children and Family Services determines that remaining in that school is in the best interest of the child. If the foster care placement is outside the jurisdictional boundaries of the public school in which the child is enrolled, the governing authority of such school shall be responsible for providing free transportation for the child to and from a designated location which is within that school district and is located nearest to the child’s residence and is determined to be appropriate by such governing authority and the Department of Children and Family Services. The Department of Children and Family Services shall be responsible for providing the child’s transportation between that location and the child’s residence.”).

52 DCFS Policy 6-915 “Visitation and Continuing Contact with Biological Family” (September 3, 2020).

- “The minimum requirements for visits between foster children and biological family are as follows, as long as such visitation is in the best interest of the child: Visits between parents and children shall occur at least every 2 weeks unless case circumstances prevent visiting or indicate otherwise. In the first 6 months of placement and the two months preceding an anticipated reunification date, every effort shall be made to hold visits more often and increase the length of visits...Documentation in the case record should include frequency and quality of parent and child visitation.
 - Visits between siblings should be offered at least monthly, and preferably more often, if appropriate for case circumstances.
 - When parents are incarcerated, and the reason for incarceration is not related to the child’s abuse or neglect, then DCFS shall make exhaustive efforts to facilitate visitation between parents and their children in foster care.
 - If the child has established significant relationships with other relatives, such as grandparents, and it is in the child's best interest, these relationships should be preserved to the extent possible through continued contacts during foster care placement. These contacts should include visitation as well as other arrangements, such as email, telephone calls, letters, and the exchange of personal information, cards, or pictures.
 - If the child has established significant relationships with other individuals such as friends, teachers, church members, godparents, or others, every effort should be made to allow the child to have ongoing contact with these individuals as well.”
- **Visitation and Rights of Parents:** If a child has been removed from his/her parents’ custody and reunification is still the case plan goal, the parents should still be invited to attend all medical appointments, school conferences and activities (including eating lunch with the child at school), sports and extracurriculars, and other important events involving the child (unless there is an order otherwise preventing this, such as a criminal no contact order).
 - **Court’s Role in Visitation and Ongoing Obligation:** At the Case Review Hearing, one of the court’s roles is to ensure the adequacy of the case plan, which includes preserving valuable relationships and connections that are in the best interest of the child by considering the frequency and type of visitation and if other visitation or contact is needed. Visitation planning and scheduling should be an ongoing assessment of the child’s established and significant relationships with parents, grandparents, siblings, relatives, and other important individuals in the child’s life. The safety and well-being of children should always be paramount in considerations of family time. Judges should ensure the plan for family time is in the best interest of the child, individualized, and age and developmentally appropriate for the child.
 - **Reunification:** As long as the case plan goal remains reunification, preserving and enhancing the parent-child relationship while providing for the safety and well-being of the child is crucial for many reasons (i.e., maintaining attachment, reducing trauma, providing ability to put parenting skills into practice, etc.), including the child’s future transition back into the custody of his/her parents. Initiating or continuing visitation and/or contact with relatives or individuals is critical for the child’s well-being.
 - **Permanency:** It is also important if reunification becomes no longer viable (i.e., if a child is placed with foster parents by DCFS) that visitation with relatives or other individuals who are being considered as a permanent placement for the child are included in the visitation schedule. For example, there may be a relative living out-of-State that could be a permanent placement for the child. Establishing and/or maintaining contact with that relative early on would be critical in lessening the child’s difficulties adjusting if later moved to live with that relative.
 - **Frequency:** Although DCFS policy provides a minimum requirement for visitation, the court should consider ordering more frequent visitation than the minimum based on the best interest of the child.
 - **Unsupervised Visits:** Family time should be frequent, liberal, and presumed unsupervised unless there is a demonstrated safety risk to the child.
 - **Change in Circumstances:** Anytime there is a change in the child’s circumstances, placement, custody, and/or permanent plan, the court should consider if changes need to be made to the visitation schedule to better serve the best interest of the child. This may include increasing or decreasing frequency or lengths of visits, moving to less or more supervision, and adding or removing visits and/or contact with siblings, other family members, or significant individuals.

- **Methods of Contact:** The court should consider increasing contact through virtual and other means. Contact may include in-person visitation as well as more limited arrangements such as phone calls, Zoom or FaceTime, texts, letters, emails, or simply the exchange of personal information. For a considered discussion of visitation/family time, please see [Continued Custody Hearing \(CCH\) Benchbook Section 5 N\(1\)](#).⁵³
- **Visitation Not to be Used as Incentive or Disincentive:** Visitation is a right of both parents and children in CINC cases. The fashioning of visitation should be based on promoting the important connection between the parents and child. Visitation between parents and children should not be used as an incentive or disincentive for parents with regard to mitigating the reasons for State intervention.

(4) EFFORTS TO RETURN CHILD OR FINALIZE PLACEMENT:

- Documentation of the efforts DCFS is making to safely return the child home; OR
- Documentation of the efforts DCFS is making to finalize the child’s placement in an alternative safe and permanent home in accordance with the child’s permanent plan.
 - **Adoption or Placement in Another Permanent Home:** For children whose permanent plan is adoption or placement in another permanent home, this documentation shall include child-specific recruitment efforts such as the use of State, regional, and national adoption exchanges, including electronic exchange systems, to facilitate orderly and timely in-State and interstate placements.
 - **Guardianship:** For children whose permanent plan is guardianship, the documentation shall include the facts and circumstances supporting guardianship, including the reasons that the plan is in the best interest of the child and that reunification with a parent and adoption are not appropriate permanent plans. The documentation shall also address the suitability and commitment of the proposed guardian to offer a wholesome, stable home for the child throughout minority.
 - **Alternative Permanent Living Arrangement:** For children whose permanent plan is placement in the least restrictive, most family-like alternative permanent living arrangement, the documentation shall include the intensive, ongoing, and as of the date of the hearing, efforts made by DCFS to return the child home or secure a placement for the child with a fit and willing relative, including adult siblings, a legal guardian, or an adoptive parent.

(5) ASSESSMENT OF RELATIONSHIPS:

- Assessment of the child’s relationships with his/her parents, grandparents, and siblings, including a plan for assuring that continuing contact with any relative by blood, adoption, or affinity with whom the child has an established and significant relationship is preserved while the child is in foster care.⁵⁴
- **Preservation:** The preservation of such relationships shall be considered when the child’s permanent plan is determined.

HELPFUL GUIDANCE:

- **Maintaining Relationships:** This part of the case plan should be different from the visitation schedule. DCFS should be assessing the child’s relationships with his/her parents, grandparents, siblings, and other individuals with whom the child has a significant relationship. This assessment is important for DCFS to conduct to support its recommendation to the court regarding the child’s permanent plan. It is also critical in showing the “reasonable efforts” taken to preserve the quality of these relationships for the child, which goes towards reasonable efforts findings to achieve permanency. Courts should utilize this assessment to modify the visitation schedule (as stated above) and/or the Disposition.

⁵³ For more resources on visitation/family time, see: <https://www.childwelfare.gov/topics/systemwide/assessment/family-assess/progress/visitation/>.

⁵⁴ La. Ch. C. art. 675, 2001 Comment (“Maintaining these relationships is an important case work goal, especially during a time of insecurity while the permanent plans have not yet been finalized.”).

(6) YOUTH 14 YEARS OF AGE AND OLDER:

- When appropriate, the case plan shall include a written description of the programs and services that will help the child prepare to transition from foster care to independent living, i.e., “Youth Transition Plan” (YTP). See the [Department of Children and Family Services Youth Transition Plan \(YTP\) Template](#) in the [Appendices Benchbook Section 12](#).

☰ PRACTICE TIPS:

- **Federal Law Regarding Youth Transition Plan (YTP):** Pursuant to Preventing Sex Trafficking and Strengthening Families Act of 2014, the YTP shall be updated every 6 months. The development of the YTP, including its implementation, 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 the case planning. In addition, the child may select up to 2 individuals (excluding those normally on his/her case planning team, his/her foster parent, and case worker) to be involved in developing the case plan. See 42 U.S.C. § 673(b) and 675.
- **DCFS Policy Regarding Youth Transition Plan (YTP):** According to DCFS policy, this plan is to be written, individualized, thorough, and developed in collaboration with the youth and any individual, department, or agency assuming his/her custody, care, or responsibility.⁵⁵ The plan must “identify the programs, services, and facilities to be used to assist the child in achieving a successful transition and address the needs of the child including, but not limited to, education, health, permanent connections, living arrangements, independent living skills, and employment; for LGBTQ youth, LGBTQ programs and services should be identified.”⁵⁶ DCFS shall ensure that all records in its files relevant to securing needed services in the community in which the youth will live shall be immediately transmitted to the appropriate service provider.

☰ HELPFUL GUIDANCE:

- **Reasonable Efforts Implications:** The development of the YTP, including the efforts to involve the youth in its development, and its implementation should be considered in reasonable efforts to achieve a permanent placement for the youth.
- **Youth Engagement:** DCFS must provide the youth with assistance and support in developing a YTP that is personalized at the direction of the youth, includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports and employment services, and is as detailed as the child may elect. Courts should engage youth in court proceedings and encourage their participation.
- **DCFS Case Review Court Report:** The court report should provide more information about youth who are 14 and older, such as the youth’s permanent connections and relationships to siblings not in care, and what the youth has learned from independent living classes.

(7) OBLIGATION TO CONTRIBUTE:

- If the child has been committed to the custody of a person other than the parents, the case plan shall *recommend* an amount the parents are obligated to contribute for the cost of care and treatment of their child in accordance with Article 685.⁵⁷

(8) TERMINATION OF PARENTAL RIGHTS:

- DCFS must provide documentation of the compelling reasons for determining that filing a petition for termination of parental rights would not be in the best interest of the child, when appropriate.

⁵⁵ DCFS Policy 6-810 “Legally Mandated Case Plan” (August 17, 2020).

⁵⁶ *Id.*

⁵⁷ La. Admin Code. tit. 67, Pt V, § 3501.

HELPFUL GUIDANCE:

- **Authority to File TPR Petition:** See Articles 1004 and 1004.1 for the persons and agencies who have a legal right to file a petition to terminate parental rights (TPR), including the timing and grounds for which a TPR may or must be filed.

I. CASE PLAN FINDING AND ORDER

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

- **ESSENTIAL JUDICIAL FINDING AND ORDER– APPROVE OR DISAPPROVE CASE PLAN:** The court shall approve or disapprove the case plan per Article 700, based on the arguments of the parties and evidence presented and should enter written findings into the Order.
 - (1) APPROVE:** The court shall approve the case plan and order parties comply therewith, if it finds the plan is:
 - Consistent with the health and safety of the child.
 - (2) NOT APPROVE:** The court can disapprove the case plan and order DCFS to revise if it finds the plan is:
 - Not appropriate, in whole or part.

PRACTICE TIPS:

- **Specific Grounds:** The specific grounds upon which the child was adjudicated should guide the ongoing implementation and review of the case plan.
- **Joint Responsibility of Case Plan:** DCFS proposes the case plan but the court's role is to review and either approve or disapprove the case plan and order DCFS to revise it if needed. Court review should ensure the case plan includes elements designed to support increased protective capacities that are feasible within stated time limitations.
- **Safety and Risk Issues and Conditions of Return:** The case plan should identify the safety and risk issues and conditions of the child's return before the court's involvement ends, including helping to enhance the parent's protective capacities to the identified threats of danger. It is paramount for the court to ensure the parents and child's involvement in the case planning process. The judge should carefully review the case plan and consider the arguments of the parties and evidence presented to determine whether the proposed services and other case plan activities address specific issues, are accessible, and are culturally and linguistically appropriate.
- **Permanent Plan:** All case plan goals should include the action steps necessary to achieve the most appropriate permanent plan for the child.
- **Court Does Not Approve:** The court is not authorized to revise the case plan itself. If the court does not approve the case plan, it should so find in the Judgment and direct DCFS to make the necessary revisions. Another court hearing should be scheduled for the court to approve or disapprove the revised case plan (sometimes referred to as a "Case Plan Review Hearing"). Best practice is not to wait until the next Case Review Hearing to review the revised case plan. Otherwise, DCFS will not be able to implement the changes timely. Some courts return within 30 or less days of the hearing to consider the revision. Per DCFS policy, DCFS will revise the plan and submit it to the court until it is approved. See also Article 700(A)(2). The court should set a deadline for DCFS to submit the revision.
- **Set Deadline for Revising:** It is helpful to set a deadline for revising the case plan in the Order to ensure that the children and parents receive supports and services in a timely manner.
- **Resolve During Hearing if Possible:** However, best practice is to resolve any parts of the case plan not approved while still at court. This can be accomplished if a party moves to have the case plan amended during the hearing. If, after reviewing it, all parties agree to the amendments proposed, the judge can approve the amended case plan. If the case plan is amended and approved at the Case Review Hearing, the Order should clearly delineate the specific changes made and that the court approved the "amended" case plan.

- **Child Not in DCFS Custody:** Even if the child is not in DCFS custody, there still may be a case plan developed that the judge needs to review (i.e., child is in custody of a parent, child is in custody of a relative, DCFS is supervising the family, etc.).

HELPFUL GUIDANCE:

- **Federal Law and Reasonable Efforts:** Per Federal law, if a child is placed in DCFS custody, DCFS must initially develop and continue to revise a case plan that ensures the child's placement is in the least restrictive, most family-like setting available in close proximity to the parents' home, consistent with the best interests and special needs of the child. The case plan is an integral element of the reasonable efforts requirement. Each case plan must specifically include a description of the services and supports offered and provided and the progress that has been made since the previous hearing to prevent removal of the child from his/her parents' custody, reunify the family if the child has been removed, or achieve permanency.⁵⁸
- **Reasonableness of Case Plan:** The reasonableness of the case plan is critical to an accurate determination of the parents' willingness and ability to make the adjustments found necessary for the safe return of their child.⁵⁹ The case plan should be geared towards enhancing parental protective capacities, including but not limited to: changes in parental behavior that must be achieved; services to be provided to help achieve these changes; and the deadlines and respective responsibilities of each party, including DCFS, in providing services and achieving the case plan goal. The case plan should also identify any needs of the child and the services to be provided to meet those needs. Finally, the case plan should set forth the terms and conditions of visitation/family time with parents and siblings. The visitation schedule should also include in-person visits and other contact with relatives and important individuals to the child. The case plan must help the child maintain all these significant connections. In addition, if there are potential relative or fictive kin placements, visits would be critical to establishing or re-establishing relationships prior to placement. The court should take time to review the case plan to ensure that all parties understand it and what is expected of them.
- **Concurrent Planning-Case Plan Goals:** The case plan will include a case plan goal (also referred to as permanency goal in DCFS policy). At the Case Review Hearing, the court should inquire as to the case plan goal DCFS is recommending. If the court does not approve the case plan goal, it may disapprove the case plan and order DCFS to revise the case plan. DCFS case plan goals may include reunification (including custody to one parent), adoption, custody to a relative, guardianship, and APLA (only for a child who is 16 or 17 years old) and a concurrent goal that includes any two of these options. Most case plans start with a concurrent goal of reunification and adoption. All case plan goals should include the action steps necessary to achieve the most appropriate permanent plan for the child.⁶⁰
- **Distinguishing Case Plan Goal and Permanent Plan:** While DCFS will set a case plan goal for the child when he/she enters foster care, the court will determine the permanent plan at the Permanency Hearing. See [Disposition Hearing Benchbook Section 8](#) for more information on case plan goals and concurrent planning.

J. ADVISEMENTS

ARTICLE 700

At the conclusion of the Case Review Hearing, the court shall inform the parents of the following:

- **Obligation to Cooperate:** It is their obligation to cooperate with DCFS, comply with the requirements of the case plan, including their duty to keep DCFS apprised of their current address, and to correct the conditions requiring the child to be in care;

⁵⁸ See 42 U.S.C. § 1356.1; 42 U.S.C. § 675; Edwards, Leonard. (2014). Reasonable Efforts: A Judicial Perspective, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=210§ionid=2&articleid=5428>.

⁵⁹ La. Ch. C. art. 684, Authors' Notes.

⁶⁰ See CW Policy 6-840 Permanent Plan Goal: Reunify with Parents or Principal Caretakers; CW Policy 6-802 "Case Plan Goal Establishment and Concurrent Planning" (October 1, 2019).

- **Responsibility to Support Timely Permanency:** It is their continuing responsibility to support the achievement of timely permanency for the child and to advise DCFS and the court in writing of the 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 the child; AND
- **Possibility of Termination of Parental Rights (TPR):** A TPR Petition may be filed based on their failure to comply with the case plan, failure to make significant measurable progress toward achieving case plan goals and to correct the conditions requiring the child to be in care, or on any other ground authorized by Article 1015.

HELPFUL GUIDANCE:

- **Obligation to Find Potential Caregivers:** All persons and parties before the court have a continuing obligation to achieve timely permanency for the child. It is critical for relatives and other individuals to be found as soon as possible so that permanency can be achieved expeditiously if reunification becomes no longer viable. Identifying other potential placements early on in the case is crucial to reducing further trauma to a child who may form secure attachments with caregivers. The court's role is to continue to hold persons before the court, parties, and DCFS accountable to these obligations. See the [Appendices Benchbook Section 12](#) for the [Family Connection Form](#) and [Circle of Influence Form](#) DCFS uses with children and parents to help identify potential caregivers. Some attorneys create "Family Trees" to help identify potential caregivers.
- **Preference to Relatives Per Federal Law:** For States to receive funding for foster care and adoption assistance, Federal law under Title IV-E of the Social Security Act requires that the State "consider giving preference to an adult relative over a nonrelated caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards."⁶¹ Per the Fostering Connections to Success and Increasing Adoptions Act, within 30 days following the removal of the child and any time after that a relative is identified, DCFS is required to contact all known adult relatives of the child and to inform them about placement and permanency possibilities for the child. Title IV-E of the Social Security Act also requires all States to exercise due diligence to identify and provide notice to all grandparents, all parents of a sibling of the child, where such parent has legal custody of the sibling, and other adult relatives of the child (including any other adult relatives suggested by the parents) that (1) the child has been or is being removed from the custody of his/her parents; (2) the options the relative has to participate in the care and placement of the child; and (3) the requirements to become a foster parent to the child. These Federal laws are based on evidence that placement with relatives maintains the child's connections with his/her family, and children generally fare better in many child well-being factors when placed with a relative.⁶²
- **Suitable Individuals and Cultural Considerations:** The court should press parties and persons before the court to consider not only biological relatives but also individuals with whom the child has a significant relationship (also referred to as "fictive kin," "suitable persons," or "suitable individuals"). These are individuals who are not related by blood, marriage, or adoption to the child but could be close family friends or someone the child considers family. It is important to consider the child's culture, heritage, customs, traditions, religion, etc., in determining placement and custody options. For example, some children may call a close friend their "auntie" even though they are not related by blood. However, the auntie may be the best placement for the child but overlooked if no thorough inquiry is made.

⁶¹ 42 U.S.C. § 671(a)(29).

⁶² See Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>; Center on Children and the Law. (2016) Judicial Tip Sheet: Kin First. Washington, DC: American Bar Association, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/july-2016/judicial-tip-sheet-kin-first/; Issue Brief, Strong Families (2019) Why Should child protection agencies adopt a kin-first approach? Casey Family Programs, <https://www.casey.org/kin-first-approach/>; National Conference of State Legislatures. (2019) The Child Welfare Placement Continuum: What's Best for Children?, <https://www.ncsl.org/research/human-services/the-child-welfare-placement-continuum-what-s-best-for-children.aspx>; Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/placement.pdf>.

K. FURTHER FINDINGS AND ORDERS

ARTICLES 309, 618 672(A)(2), 677, 681-4, 710, 712, 42 USC § 671(a)(31)(A)

The court may make additional orders in the best interest of child, such as:

(1) CUSTODY/GUARDIANSHIP: The court retains jurisdiction over custody and guardianship and may maintain or modify the current Disposition, which may include the following dispositional alternatives provided in Articles 681-683:⁶³

- Leave the child in the custody of his/her parents, with or without continuing supervision of DCFS (i.e., in-home safety plan) and/or issuing a PO;
- Return the child to the custody of (or grant custody to) parents, with or without continuing supervision of DCFS (i.e., in-home safety plan) and/or issuing a PO;
- Place the child in the custody of a relative or suitable person;
- Grant guardianship of the child to a nonparent;
- Remove the child from parental custody and place the child in the custody of a private or public institution or agency (i.e., DCFS) (If the court orders that a child be removed, it must also make contrary to welfare and reasonable efforts findings per State and Federal law).⁶⁴
- Commit a child found to have a mental illness to a public or private institution for persons with mental illness; OR
- Grant other such Disposition or combination of the above Dispositions as the court deems to be in the best interest of the child. See [Disposition Hearing Benchbook Section 8 G](#) for more information on dispositional alternatives.

PRACTICE TIPS:

- **Child Welfare Assessment and Decision Making Model (CWADM):** If the child has been removed from his/her parents and reunification is still the case plan goal, the court should insist on a clear articulation of the current safety threat keeping the child in foster care/in an out-of-home placement. Children should be returned home immediately once all safety threats have been eliminated regardless of whether the case plan has been completed. The CWADM includes an assessment used by DCFS (and should be used by all child welfare stakeholders) to help identify whether a child is safe or unsafe at all junctures of the CINC proceeding. A child is considered safe when: (1) there are no threats of danger; (2) if there is a threat of danger, the child is not vulnerable to the threat of danger; or (3) if there is a threat of danger, the parents or caretakers possess sufficient protective capacities to manage the threat of danger and keep the child safe. A child is considered unsafe when: (1) there are identified threats of danger; (2) the child is vulnerable to a threat of danger; and (3) the parent or caretaker does not possess sufficient protective capacities to manage the threat of danger and keep the child safe. At each hearing, the court should make the following inquiries to see if the child is now safe to return home:
 - Are the threats of danger to the child still present?
 - Is the child still vulnerable to those threats?
 - Does the parent or caretaker still lack the necessary protective capacities?

If the child can be safely returned to (or placed in) the custody of a parent, the court should order the child be returned and, if needed for the child's protection and safety, could consider ordering an in-home safety plan, PO, and/or other terms and conditions. Other terms and conditions could include ongoing supervision by DCFS and/or another agency. Courts should consider carefully whether parents can provide a minimally adequate standard of care for their child. All issues in the case do not need to be resolved before a child can return home. A child should be returned home when he/she can be safe in the home, which may or may not also require supportive services and protective supervision.⁶⁵ See [Child Welfare Assessment and Decision Making Model \(CWADM\) Benchbook Section 11](#).

⁶³ La. Ch. C. art. 309 ("A court exercising juvenile jurisdiction shall have exclusive authority to modify any custody determination rendered, including the consideration of visitation rights in CINC proceedings.")

⁶⁴ See 45 C.F.R. § 1356.21(c); 42 U.S.C. § 472(a)(2)(A)(ii); 42 U.S.C. § 479(B); See also Child Welfare Policy Manual, Section 8.3A.6, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp?citID=37

⁶⁵ Gatowski, supra note 7, at 229.

- **DCFS Family Services:** When the court returns the child to his/her parents or grants provisional custody to a suitable relative or individual, DCFS will generally no longer be involved in the case (because DCFS does not have custody of the child). However, the court can order that DCFS continue to monitor the family and/or provide services. In such cases, DCFS will usually open a DCFS Family Services case to provide supervision and support to the family. In these instances, it is advised that the court also continue to oversee the case.
- **Granting Custody to Parent:** In some cases, the court may not be “returning” the child to a parent’s custody but rather “granting” custody to another parent who did not have custodial rights to the child and/or was not previously legally filiated with the child.⁶⁶
- **Parents of Half-Siblings:** If there are half-siblings, the court should consider granting custody of the child to the sibling’s parent if appropriate and safe to do so. The sibling’s parent may already have a relationship with the half-sibling, but even if not, that parent may be willing to take custody to keep the siblings together.⁶⁷

(2) PLACEMENT IN DCFS CUSTODY: While the court has the authority to change custody of the child, if the child is in DCFS custody, the court has no authority to order a specific placement for the child (i.e., foster parents the child will be placed with by DCFS). However, pursuant to Article 672(A)(2), the court does have the authority to disapprove the placement chosen by DCFS and order DCFS to choose a more suitable placement. Per Article 672(A)(2), there must be a contradictory hearing and the judge may disapprove the placement upon finding that the placement is not in the child’s best interest. For example, after a contradictory hearing, the court could determine that the placement chosen by DCFS is not in the child’s best interest if the child is not placed with his/her siblings.⁶⁸

PRACTICE TIPS:

- **Disapprove Case Plan:** Alternatively, the judge is given the authority and responsibility to review the case plan, listen to evidence and arguments with respect to the case plan, and either approve, disapprove, in whole or in part, or approve the updated case plan. Thus, because the placement of the child is central to the case plan (referred to as the “Child’s Care Setting” in the case plan), the court (alternatively to disapproving the placement pursuant to Article 672(A)(2)) could reject the case plan in part due to not approving the placement chosen by DCFS.
- **Revise Case Plan:** The elements of the case plan related to the child are often contingent on the placement. Thus, if the court disapproves the placement, the court should carefully review the case plan to see if other parts of the plan need to be revised accordingly.
- **Court’s Role in Placement:** If the child is in DCFS custody, the court should address the child’s current placement to ensure that the child is safe, and to determine whether the child’s health, educational, cultural, religious, and emotional needs are being met. This may include but is not limited to the following:
 - Ensuring DCFS has made reasonable efforts to place siblings together;⁶⁹
 - Reviewing information regarding the child’s well-being and overall adjustment to his/her placement and to school;
 - Evaluating the specific services being provided to see if they are meeting the child’s physical, emotional, and educational needs;
 - Examining the steps DCFS is taking to ensure foster caregivers are following the “reasonable and prudent parent standard” and that the child has regular opportunities to participate in age- or developmentally-appropriate events such as sports, field trips, and overnight activities;

⁶⁶ Gatowski, *supra* note 7, at 214.

⁶⁷ See Child Welfare Information Gateway. (2019). Sibling issues in foster care and adoption. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/siblingissues.pdf>.

⁶⁸ The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) amended Title IV-E plan provisions to require that Title IV-E agencies make reasonable efforts to place siblings removed from their home in the same foster care, adoption, or guardianship placement or, if that is not possible, facilitate visits or ongoing contacts for siblings that cannot be placed together, unless it is contrary to the safety or well-being of any of the siblings to do so.

⁶⁹ *Id.*

- Ensuring that all health and education information is up to date and that the child is receiving health and education services;
 - Ensuring that the caregivers of a child with a trauma history have the specialized training and support needed for the placement to succeed;⁷⁰
 - Ensuring that a child’s connections to his/her cultural heritage, religion, ethnicity, and traditions are preserved and promoted; AND
 - Asking DCFS to explain how the placement is appropriate to prepare the child for his/her transition into the permanent placement (i.e., reunification, adoption, guardianship, custody with a relative, etc.).⁷¹
- **Full or Half Siblings:** If a child is not placed with siblings, the court must ascertain whether DCFS has made reasonable efforts to place siblings in the same placement.⁷² The research shows that when siblings are separated from each other, many children feel “they have lost a part of themselves,” adding to the pain and anxiety they experience over removal from their parents and home.⁷³ Unless contrary to their safety and well-being, supporting and sustaining the sibling bonds of children who have been placed in foster care should be a priority for the child welfare system and the court. Thus, judges should inquire as to the placement of siblings together—whether half or full siblings. This also may include a child’s significant relationship with another child with whom he/she has been raised.⁷⁴
 - **Changes in Placement or Custody:** Research shows that multiple placements (and changes in custody) break the bonds of trust and attachment formed by the child and consequently harm the child. Multiple placements (and changes in custody) compound the original trauma of abuse and neglect, often leading to long-term adjustment and attachment difficulties. It is critical to minimize the number of times placement changes for a child.⁷⁵

(3) VISITATION: The court has continued jurisdiction to modify visitation in all CINC proceedings per Article 309. To preserve valuable relationships and connections in the best interest of the child, the court should consider the frequency and type of visitation and if other visitation or contact is needed. Visitation planning and scheduling includes an ongoing assessment of the child’s established and significant relationships with his/her parents, grandparents, siblings, relatives, or other important individuals in the child’s life. As long as the case plan goal remains reunification, preserving and enhancing the parent-child relationship while providing for the 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 the child’s future transition back into the custody of parents. Further, 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.

PRACTICE TIP:

- **Disapprove Case Plan:** Because the visitation schedule is an element of the case plan, the court could alternatively disapprove the case plan in part due to not approving of the visitation schedule.

⁷⁰ Courts are encouraged to attend TBRI Fridays, sponsored by Crossroads NOLA, and to encourage others to attend as well: <https://crossroadsnola.org/tbri/>.

⁷¹ Gatowski, *supra* note 7, at 268.

⁷² See Child Welfare Information Gateway. (2019). Sibling issues in foster care and adoption. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/siblingissues.pdf>.

⁷³ Kernan, Emily. Keeping siblings together: past, present, and future. National Center for Youth Law, <https://youthlaw.org/publication/keeping-siblings-together-past-present-and-future/>.

⁷⁴ See 42 USC § 671(a)(31)(A) and B).

⁷⁵ See Touchpoints. Preparing Children for Transitions. Milwaukee, WI: Coalition for Children, Youth, Families, <https://wifostercareandadoption.org/cms/assets/uploads/2017/10/touchpoints3.pdf>; Child Welfare Information Gateway. (2016). Reunification: Bringing your children home from foster care. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/reunification.pdf>; Child Welfare Information Gateway. (2018). Helping your foster care child transition to your adopted child. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau, https://www.childwelfare.gov/pubPDFs/f_transition.pdf.

(4) SECURE OR PROVIDE SERVICES TO CHILD: The court has authority to order an agency, institution, or person to whom the child is assigned, including the responsibilities of any other agency, institution, or person having legal responsibility to secure or provide services to the child which the court has determined are needed.

PRACTICE TIPS:

- **Located in Disposition Hearing Articles:** This provision (Article 684(A)(3)) is located in the Disposition Hearing articles; however, it is not prohibited by the articles governing Case Review Hearings.
 - **Identify Services:** The court is required to identify any services that the child needs and to allocate responsibilities of both the legal custodian and any agencies (i.e., DCFS, LDH, OJJ, LDOE, Office for Citizens with Developmental Disabilities, etc.) to ensure that such services are in fact provided to the child.
-

(5) TERMS AND CONDITIONS: The court can specify any other applicable terms and conditions that apply to the legal custodian.

PRACTICE TIPS:

- **Located in Disposition Hearing Articles:** This provision (Article 684(A)(3)) is also located in the Disposition Hearing articles; however, it is not prohibited by the articles governing Case Review Hearings.
- **Transition Plan:** If the Disposition is modified to include a change in custody, transfer of guardianship, or a move of any kind, judges should be cognizant of the impact the transition may have on the child.⁷⁶ Judges should consider including a transition plan that is in the best interest of the child in the Order. DCFS policy recognizes that it is traumatic for a child to be moved from one caregiving setting to another even when the change is made in the best interests of the child or to achieve permanency for the child. When a move will occur, it is critical to the child's well-being, regardless of the reason, for judges to collaboratively strategize with all involved to reduce the trauma experienced by the child.⁷⁷ DCFS has developed tools to try to minimize this trauma, including a guide for planful transitions. Transition plans can include multiple, extended visits, such as overnight visits as well as other additional contacts via Zoom, FaceTime, etc., to ensure the most positive experience possible for the child.⁷⁸ These activities should occur both prior to the move and after the move to provide the child a less traumatic separation from previous caregivers and to enhance the connection to the new caregivers.⁷⁹
- **Reunification or Trial Placement:** It is important for judges to know that DCFS policy allows for a trial placement of the child with his/her parents if the home is determined to be safe, but there are still some transition concerns and/or items left to resolve. DCFS policy states that: "If trial placement back with the parent with the Department maintaining custody is in the child's best interest, it should not exceed 90 days as long as the child is safe, and the parent is progressing in his/her case plan. Trial placement should only be initiated when the parent's home is deemed safe."⁸⁰ In this case, the court would order that the child remain in DCFS custody, and DCFS could choose a "trial placement" for the child with his/her parents. The court could also order a transition period with a goal date for reunification. If the child is moved to the parent's home with DCFS retaining custody, the court can gain information at the next hearing about how the child and parent are doing in the home together (in such cases, the court should consider setting a hearing sooner than the timeline for Case Review or Permanency Hearings).

⁷⁶ See Touchpoints. Preparing Children for Transitions. Milwaukee, WI: Coalition for Children, Youth, Families, <https://wifostercareandadoption.org/cms/assets/uploads/2017/10/touchpoints3.pdf>; Child Welfare Information Gateway. (2016). Reunification: Bringing your children home from foster care. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/reunification.pdf>; Child Welfare Information Gateway. (2018). Helping your foster care child transition to your adopted child. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, https://www.childwelfare.gov/pubPDFs/f_transition.pdf.

⁷⁷ DCFS Policy 6-300 "Guidelines for Selecting a Care Setting/Replacement Resource" (April 1, 2019).

⁷⁸ DCFS Policy 6-305 "Guidelines for Care Setting Decision Making for Children Under Age Six" (March 15, 2019).

⁷⁹ Id.

⁸⁰ DCFS Policy 6-2000 "Planning for Exit from Foster Care Custody" (April 1, 2020).

(6) POTENTIAL PLACEMENTS: The court can order DCFS to:

- Explore all possible suitable relative or individual placements with results and/or updates on results to be presented prior to or at the next Case Review/Permanency Hearing;
 - Initiate child welfare background clearance, criminal background check, assessment of home or home study on potential permanent placements so that they can be considered for placement by DCFS and/or custody or guardianship at the Permanency Hearing(s);
 - Take steps necessary to complete timely foster care certification (i.e., to receive guardianship subsidy if applicable); AND/OR
 - Initiate ICPC process for potential placement with any out-of-State relatives or individuals.
-

☰ PRACTICE TIP:

- **Information on Potential Caregivers:** Courts should confirm that DCFS has investigated all available information on relatives and other individuals who are potential permanent placements. The court can order that updates be available for the judge at the next hearing. DCFS should also provide this information in its court report. See also [Appendices Benchbook Section 12](#) for the [Family Connection Form](#) and [Circle of Influence Form](#) DCFS uses with children and parents to help identify potential caregivers and supports.
-

(7) FAMILY TEAM MEETING (FTM): If the child is in DCFS custody or has an open DCFS Family Services case, DCFS should propose a tentative date for the next FTM. The court can provide notice of and encourage participation by all parents, caretakers, children, foster caregivers, CASA workers, and attorneys for children and parents as applicable.**☰ PRACTICE TIP:**

- **Set Tentative Date for Next FTM:** Facilitating a tentative or confirmed date and time for the next FTM while everyone is at the hearing and including it in the Order helps ensure FTMs are timely held. Also, without enough notice of the FTM date and time, some team members may have difficulty participating. FTMs should be conducted at least every 6 months.
-

☰ HELPFUL GUIDANCE:

- **Purpose:** FTMs are facilitated by DCFS, and they are important because FTMs are where case planning occurs for the family. FTMs are where parents and children and other stakeholders and supports give valuable input on the services and assistance needed and to be provided.
-

(8) SANCTIONS PER ARTICLE 712: Upon determination by the court that DCFS has failed to comply with permanency planning requirements, including those in the Case Review Hearing Articles, the court may:

- Subpoena agency witnesses to testify regarding the failure to comply.
- Order the agency or appropriate representatives to show cause why a contempt order should not issue.
- Order that the agency not seek Federal reimbursement for the cost of the child's care where the court finds that reasonable efforts were not made.
- Submit a report of noncompliance to appropriate State and Federal agencies.
- Refer the agency representative found responsible for the failure to comply to the appropriate department personnel for administrative reprimand or other administrative sanctions.

HELPFUL GUIDANCE:

- **Discretion:** The court has discretion to issue subpoenas and contempt orders.

(9) OTHER ORDERS: The court may make other additional orders at the Case Review Hearing that are in the best interest of the child as necessary and appropriate (Article 102 and 309), such as orders related to DNA tests or other measures to determine paternity/maternity and filiation if still needed, PO (Article 627), child’s education, services, mental or physical health examinations of the child and/or parents, etc. See also Article 627, Authors’ Notes.

(10) OTHER FINDINGS:

- **ESSENTIAL JUDICIAL FINDING - INDIAN CHILD WELFARE ACT (ICWA):** Per ICWA, at every CINC hearing, the court shall ask each person whether they know or have reason to know that the child is a member of or eligible for membership in a Federally recognized Indian Tribe and a biological child of a member of a Federally recognized Indian Tribe. Further, the court shall advise all to inform the court if any of the above information is subsequently discovered. If the court knows or has reason to know, the court shall follow Articles 624, 624.1, 661.1. The court should also inquire as to DCFS’s due diligence in locating and contacting the Tribe. Noncompliance with ICWA may result in an invalidation of the proceedings, including a subsequent adoption. See also the [Indian Child Welfare Act \(ICWA\) Bench Card](#) and 25 U.S.C. § 1901 et seq.
- **ESSENTIAL JUDICIAL FINDING - REASONABLE EFFORTS INQUIRY:** A reasonable efforts finding is not required in the Case Review Order. However, courts have an ongoing obligation to hold DCFS accountable to making reasonable efforts to prevent removal, reunify the family, and/or achieve permanency. The only exception to the reasonable efforts to reunify the family finding occurs when the court finds that reasonable efforts to reunify the family are not required per Article 672.1. Even if a reasonable efforts finding is not required by law at the particular hearing, the court should make ongoing inquiries as to the reasonable efforts being made by DCFS.⁸¹ See [Disposition Hearing Benchbook Section 8 H](#) for more information on reasonable efforts findings.⁸²

L. ORDER OF NOTICES AND FUTURE HEARINGS

ARTICLES 424.7, 674, 688-9, 702

The court should also include the following orders:

- (1) FUTURE HEARINGS:** The parents of the child, all attorneys of record, a DCFS representative, and CASA be present at all future hearings.
- (2) CASE PLAN:** DCFS shall file case plan with the court at least 10 days prior to the Case Review/Permanency Hearing(s) and upon filing shall provide copies to counsel by mail or email and unrepresented parties by certified mail or email if requirements of Article 674 are met.
- (3) COURT REPORT FILED BY DCFS:** DCFS file its court report at least 10 days prior to the Case Review/Permanency Hearing(s) and provide copies to CASA, counsel, and unrepresented parties (Although Children’s Code is silent on submission of the court report for the Permanency Hearing, DCFS policy requires court reports to be filed beginning at Disposition).
- (4) COURT REPORT FILED BY CASA:** CASA should file its court report prior to the Case Review/Permanency Hearing(s) and shall distribute a copy of such reports prior to or at the time it is submitted to the court, to all counsel of record, any unrepresented party, and DCFS.
- (5) SET MATTER FOR APPROPRIATE HEARINGS:**
 - **Revised Case Plan or Status Hearing:** Set if court did not approve the case plan or there are other issues that need to be addressed or resolved.

⁸¹ See La. Ch. C. arts. 672.1 and 702; 42 U.S.C. § 671(a)(15)(E); 42 U.S.C. § 675(5); and 45 C.F.R. § 1356.21(b)-(h); See also https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=142 and https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=59.

⁸² See also Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau. (<https://www.childwelfare.gov/pubPDFs/reunify.pdf>).

- **Case Review Hearing:** Shall be set within 3 months of the Disposition if the child was removed before the Disposition or within 6 months if the child was removed at Disposition, but no more than 6 months after removal; shall be held at least once every 6 months thereafter until the child is permanently placed⁸³ (or earlier upon motion per Article 692(B)).
- **Permanency Hearing:** Shall be set within 9 months after the Disposition Hearing if the child is removed before Disposition or within 12 months if the child is removed at Disposition, but no more than 12 months after removal; shall be held every 12 months thereafter until the child is permanently placed⁸⁴ (or earlier upon motion per Article 702(B)). However, if the court has made a judicial determination that reasonable efforts to reunify the family are not required per Article 672.1, a Permanency Hearing may be conducted immediately and shall be held within 30 days of the determination.

(6) SERVICE AND NOTICE OF HEARINGS:

- Clerk to notify all parties of the date, time, and location of the hearing and that all parties of interest appear;
- Sheriff's Office to serve the parents with a summons commanding him/her to appear at court for the hearing;
- DCFS to provide notice to the parents of the date, time, and location of the hearing as well as the nature of the allegations;
- Notice of the hearing shall be made on counsel of record and CASA (if appointed); AND
- DCFS to provide notice to any foster caregiver providing care for the child of the date, time, and location of the hearing and that the recipient has the right to attend and be heard.

(7) ARRANGEMENTS FOR ANY INCARCERATED PARENT: Be made to attend the hearing, either in person or remotely.

PRACTICE TIPS:

- **Notice and Schedule Hearings in Open Court:** The court may schedule future hearings and serve notice in open court.
- **Scheduling:** When calendaring the next hearing, all parties, including the parents, should be asked if the scheduling works for them, and if not, find options for a different day/time.
- **Schedule Earlier:** The timelines for the hearings are driven by ASFA. Courts retain the ability to schedule hearings to occur earlier than the maximum allowable timeframes and should do so whenever practicable and in the child's best interest. Best practice is to conduct review hearings a minimum of every 3 months or, in some cases, more frequently. Even though the case plan is generally updated every 6 months (unless otherwise ordered sooner), holding review hearings every 3 months allows the court and parties to resolve issues with the case plan and keeps the case moving forward towards achieving permanency more expeditiously. The information should guide the timing of hearings.

M. CASE MANAGEMENT

(1) ENGAGEMENT:

- Specifically, ask the parents and children if they understand what occurred at the hearing and engage them in a conversation about the next steps.
- Ask parents (and children, if appropriate) if there is anything the court and other stakeholders involved could do to support their efforts to reunify their family (if reunification is still viable)?
- Advise parents of the importance of their active participation in all proceedings.
- Advise parents of the rigorous timeframes for child abuse and neglect cases outlined in State and Federal laws.
- Advise parents of the consequences for failure to appear at any further court hearings.
- Ensure that parents and children have contact information for case workers and attorneys and understand the process to request court review if necessary.
- Ask if there are any questions for the court.
- It is helpful for children and parents to be able to meet briefly with their attorneys after the hearing so that the attorneys can address immediate issues.

⁸³ See La. Ch. C. art. 603(22).

⁸⁴ Id.

(2) PREPARATION FOR NEXT HEARING

- Identify tasks to be accomplished by the various parties for the next hearing.
- Make oral findings and orders that all participants can understand.
- An attorney or the court is responsible for the completion of the Order. See [Case Review Order Template](#) in the [Appendix](#).
- All of the attorneys and unrepresented parties should review the Order before the judge signs it to ensure it accurately reflects the proceeding.
- Time permitting, best practice is to sign the Order on the same day as the hearing.
- Ensure all orders are written, signed, copied, and distributed at the end of the hearing.
- Provide parents with a copy of the Order immediately following the hearing

N. POSSIBLE NEXT STEPS

ARTICLES 330-8, 700, 701-11, 710, 1004, 1004.1, 42 U.S.C. § 675(5)(E)(i)-(iii)

- (1) HEARING TO APPROVE REVISED CASE PLAN:** If the court does not approve of the case plan (and the issues in the case plan cannot be resolved at the Case Review Hearing), the court must include in its Order that it does not approve of the case plan in the Order and best practice is for the court to schedule another hearing for it to approve or disapprove of the amended case plan (sometimes referred to as a “Case Plan Review Hearing”). It is not advisable to wait until the next scheduled Case Review Hearing or Permanency Hearing to review the revised case plan. Otherwise, DCFS will not be able to implement the changes timely. Some courts return within 30 days or less of the Case Review Hearing to consider the revision.
- (2) STATUS HEARING:** The court may want to set a Status Hearing if there are issues that need to be addressed or resolved. For example, if the child has recently moved to a new placement, the court may want to see how the child is adjusting sooner rather than waiting for the next Case Review or Permanency Hearing.
- (3) CASE REVIEW HEARING:** The next Case Review Hearing shall be held at least every 6 months until the child is permanently placed (or earlier upon motion per Article 692(B)).⁸⁵
- (4) PERMANENCY HEARING:** The first Permanency Hearing shall be set within 9 months after the Disposition Hearing if the child was removed prior to Disposition or within 12 months if removed at Disposition, but in no case more than 12 months after removal. These shall be held at least every 12 months until the child is permanently placed (or earlier upon motion per Article 702(B)).⁸⁶ However, if a judicial determination is made per Article 672.1, a Permanency Hearing may be conducted immediately and shall be held within 30 days of the determination.
- (5) APPEAL:** Any person directly affected may appeal the findings or orders of the court. Appeal shall be taken within 15 days from the mailing of the notice of the judgment. See Article 332(A).

HELPFUL GUIDANCE:

- **Governing Law:** The appeal process in CINC proceedings is governed by Title III of Chapter 9 of the Children’s Code (Articles 330-338). In CINC proceedings, an appeal may be taken only after a Judgment of Disposition. Timelines for appeals in CINC proceedings differ from timelines for appeals in the Louisiana Code of Civil Procedure.
-

- (6) TERMINATION OF PARENTAL RIGHTS PETITION:** See Article 1004 and 1004.1 for the persons and agencies who have a legal right to file a petition to terminate parental rights (TPR), including the timing and grounds for which a TPR may or must be filed.

⁸⁵ Id.

⁸⁶ Id.

 **PRACTICE TIPS:**

- **Court on Own Motion:** At any time, including in any hearing in a CINC proceeding, the court on its own motion may order the filing of a TPR Petition to TPR on any ground authorized by Article 1015 (Article 1004(A)).
- **DCFS Shall File TPR Petition:** If a child has been in DCFS custody for 17 of the last 22 months, DCFS shall file and pursue to judgment a petition to terminate the parental rights (TPR) of the parent or parents. However, DCFS has discretion not to file a petition to terminate parental rights if DCFS has documented in the case plan a compelling reason why filing is not in the best interest of the child. The court's role is to hold DCFS accountable to showing such compelling reasons. See also 42 U.S.C. § 675(5)(E)(i)-(iii) and 675(5)(F)(i)-(ii).



APPENDIX

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?

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

CASE REVIEW ORDER

THIS CAUSE came for a Case Review Hearing on the _____ day of _____, 20____,
regarding the following named minor child(ren), _____

_____.

I. APPEARANCES

The child(ren), _____,
is/are present.

The child(ren), _____,
is not present and: *(Please check the applicable box for each child)*

the child, _____, is age 12 or older,
counsel moved to waive the child's appearance, and the court grants the waiver.

the child, _____, is age 12 or older and counsel
did not request the child's appearance.

_____.

Parent _____	Department of Children and Family Services
Parent's Attorney _____	Staff/Representative _____
Parent _____	Foster Parent(s), Pre-adoptive Parent(s), Relative(s)
Parent's Attorney _____	Providing Care for Child(ren) _____
Caretaker(s) _____	_____
Child(ren) Attorney(s) _____	Assistant District Attorney _____
_____	Bureau of General Counsel _____
Others _____	_____

II. NOTICE

THE COURT FINDS that: *(Please check the applicable boxes for each parent)*

the parent(s), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was properly served.

the parent(s), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was provided in open court at a prior hearing which was attended by the parent(s).

the parent(s), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was not provided in open court at a prior hearing and was not properly served.

THE COURT FINDS that: *(Please check the applicable boxes)*

the foster parent(s), pre-adoptive parent(s), or relative(s), _____, providing care for the child(ren), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was given by the Department; and, that diligent efforts were made by the Department to locate and notify the absent caregiver.

the foster parent(s), pre-adoptive parent(s), or relative(s), _____, providing care for the child(ren), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was not given by the Department; and, that diligent efforts were not made or were made by the Department to locate and notify the absent caregiver.

III. TESTIMONY AND EVIDENCE

THE COURT has considered the testimony of the following witness(es): _____

_____.

THE COURT considered the following evidence: *(Please check the applicable boxes)*

- the case plan (including the Youth Transition Plan, if applicable);
- information regarding care and treatment of the child from any foster parent, pre-adoptive parent, or relative providing care for the child who appeared at the hearing;
- all other evidence offered.

IV. CASE PLAN FINDING AND ORDER

THE COURT FINDS AND ORDERS: *(Please check one of following)*

That the case plan, submitted by the Department and dated _____, is approved as it is consistent with the health and safety of the child(ren) and in the best interest of the child(ren), and all parties are ordered to comply therewith.

That the case plan, submitted by the Department and dated _____, is not approved as it is not consistent with the health and safety of the child(ren) or is otherwise not in the best interest of the child(ren) for the following reason(s): _____

AND ORDERS THE DEPARTMENT TO REVISE THE PLAN ACCORDINGLY.

V. ADVISEMENTS

The Court informed the parent(s) of their obligation to cooperate with the Department, comply with the requirements of the case plan, including their duty to keep the Department apprised of their current address, and correct the conditions requiring the child to be in care.

The Court informed the parent(s) that a petition to terminate their parental rights may be filed based upon their failure to comply with the requirements of the case plan, failure to make significant measurable progress toward achieving case plan goals and to correct the conditions requiring the child to be in care, or on any other ground authorized by Article 1015.

The Court informed the parent(s) of their continuing responsibility to support the achievement of timely permanency for the minor child(ren) and to advise the Department and the court in writing of the 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 the minor child(ren).

VI. FURTHER ORDERS

THE COURT FURTHER ORDERS the following as necessary and appropriate *(Please check applicable boxes):*

IT IS FURTHER ORDERED that the current Disposition for children, _____, be maintained with: _____.

IT IS FURTHER ORDERED that the current Disposition for children, _____,
be modified accordingly: _____.

HAVING FOUND, pursuant to Article 684(A)(3) that _____
(agency, institution, or person) has legal responsibility to secure or provide the following services to the
child which the court has determined are needed and hereby orders the following: _____
_____.

IT IS FURTHER ORDERED that the following terms and conditions apply to the legal custodian
of the following child(ren): _____
_____.

IT IS FURTHER ORDERED that the Department immediately assess all possible permanent
placements with the results and/or updates to be presented at the _____ Hearing.

IT IS FURTHER ORDERED that the Department initiate child welfare background clearance,
criminal background check, and/or assessment of the home or home study on the following relative(s)
or individual(s), _____.

IT IS FURTHER ORDERED that the Department initiate an Interstate Compact for Placement of
Children (ICPC) process for the following out-of-state relative(s) and/or individual(s),
_____.

IT IS FURTHER ORDERED that prior to every family team meeting (FTM) hereafter conducted
in this case, the Department shall provide reasonable notice of said FTM to all parent(s)/caretaker(s),
foster caregivers, CASA workers, and attorneys for child(ren) and attorneys for parent(s)/caretaker(s).

A **Family Team Meeting** is tentatively set for _____ day of _____, 20____,
at _____ am/___pm.

IT IS FURTHER ORDERED that _____
_____.

VII. ORDER OF NOTICES AND FUTURE HEARINGS

IT IS FURTHER ORDERED that the parent(s) of the child(ren), attorneys of record, the DCFS
representative(s), and CASA (if appointed) be present at all future hearings.

IT IS FURTHER ORDERED that the case plan shall be filed with the Court at least 10 days prior to the _____ Hearing(s) and that, upon filing, copies shall be provided by mail or email to counsel and unrepresented parties by certified mail or electronic mail in accordance with Article 674.

IT IS FURTHER ORDERED that the Department file its court report with the Court at least 10 days prior to the _____ Hearing(s) and that copies be provided to CASA, counsel, and unrepresented parties.

IT IS FURTHER ORDERED that CASA shall file its court report with the Court at least 10 days prior to the _____ Hearing(s) and copies be distributed to counsel, unrepresented parties, and DCFS prior to at the same time submitted to the Court.

IT IS FURTHER ORDERED that:

Upon ordering the matter be set for _____ Hearing(s), the clerk shall notify all parties of the date, time, and location of the hearing(s) and that all parties of interest appear; the Sheriff's Office serve the parent(s) with a summons commanding him or her to appear at Court for the hearing(s); the Department shall provide notice to the parent(s) of the date, time, and location of the hearing(s); notice of the hearing(s) be made on the child and parent representation programs and CASA (if appointed); the Department provide notice to any foster parent, pre-adoptive parent, or relative providing care for the child(ren) of the date, time, and location of the hearing(s) and recipients right to attend and be heard; and for any parent(s) incarcerated, _____ arrange for the parent(s) to attend the hearing, either in person or remotely.

A Hearing to **REVIEW/APPROVE REVISED CASE PLAN** is set for _____ day of _____, 20____, at _____ am/____pm.

A **STATUS** Hearing is set for _____ day of _____, 20____, at _____ am/____pm.

A **CASE REVIEW** Hearing is set for _____ day of _____, 20____, at _____ am/____pm.

A **PERMANENCY** Hearing is set for _____ day of _____, 20____, at _____ am/____pm.

THUS DONE AND SIGNED ON THIS _____ day of _____, 20_____, in
_____, Louisiana.

JUDGE

DISTRIBUTION OF NOTICE

Please serve all parties and counsel of record as follows:

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Child(ren) Attorney(s): _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Assistant District Attorney/Bureau of General Counsel:

Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Please send notice and copy of order as follows:

Department of Children and Family Services Staff/Representative:

Street: _____

City, State, Zip: _____

Fax Number: (____) _____

Email Address: _____

CASA: _____

Street: _____

City, State, Zip: _____

Fax Number: (____) _____

Email Address: _____

Other: _____

Role: _____

Street: _____

City, State, Zip: _____

Fax Number: (____) _____

Email Address: _____

CASE REVIEW COURT REPORT

Department of Children and Family Services

. . .

****IMPORTANT:** Use of the DCFS Court Report templates provided in this Benchbook for Disposition Hearings, Case Review Hearings, and Permanency Hearings are being implemented in a phased-in approach across the State.

Date ____ / ____ / _____

Judge's Name _____

Court _____

Court Address _____

Docket Number	
Hearing Type and Date	CASE REVIEW / / Initial Case Review Hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No
Child(ren)'s Information	Name: _____ DOB: ____ / ____ / _____ Age: ____ Date Entered Care/DCFS Involvement: ____ / ____ / _____ Date Freed for Adoption: ____ / ____ / _____ Current Custody Status: <input type="checkbox"/> Custody of Parent/Legal Guardian <input type="checkbox"/> Custody of Relative/Suitable Individual <input type="checkbox"/> DCFS Custody <input type="checkbox"/> Other _____
Parent's Information	Name: _____ Legal/Biological/Alleged/Deceased: _____ Child(ren): _____ Address: _____
Parent's Information	Name: _____ Legal/Biological/Alleged/Deceased: _____ Child(ren): _____ Address: _____

SALUTATION

This letter is to provide the court with information for the Case Review Hearing.

PRELIMINARY INFORMATION

Date Adjudicated Child in Need of Care:

If known, grounds from Adjudication Order Article 606(A) (please check all applicable):

- (1) Abuse (2) Neglect (3) Absence of Parent (4) Criminal Prosecution
- (5) Crime Against Child (6) Trafficking (7) Commercial Trafficking (8) Genital Mutilation

Brief summary of reason child(ren) entered care/DCFS involved:

See attached Case Plan: Federal Compliance Section "Reason Child(ren) entered Foster Care."

Date of Current Case Plan: _____ / _____ / _____

Date Next Case Plan is Due: _____ / _____ / _____

Tentative Date of Next FTM: _____ / _____ / _____

Please summarize any significant changes since the last hearing: _____

NOTICE OF DATE, TIME, AND LOCATION OF CASE REVIEW HEARING

Notice to Parents: Documentation attached? Yes No N/A if rights terminated

If no, give explanation of notice provided/reason: _____

Notice to Foster Caregivers: Documentation attached? Yes No N/A

If no, give explanation of notice provided/reason: _____

ICWA

Do you know, or do you have reason to know, that any of the child(ren) are members of a federally recognized Indian Tribe or eligible for membership in a federally recognized Indian Tribe?

Yes No If yes, list child(ren) and tribal affiliation. _____

Since the last hearing, is there additional information that the agency has learned about any of the parents' or child(ren)'s Indian tribe membership/eligibility? Yes No

If yes, what additional information has the agency received? _____

If applicable, what steps has the agency taken since the last hearing to determine child(ren)'s eligibility for membership in a federally recognized Indian Tribe? _____

If applicable, has the tribal entity responded? Yes No If yes, please attach documentation.

LEGAL RELATIONSHIPS/TESTING RESULTS

(Please do not complete this section if parents' rights have been terminated.)

Since the last hearing, have any parents been identified or located? Yes No

If yes, please explain: _____

Since the last hearing, have DNA results been received by the agency for any of the parents?

Yes No If yes, please attach results and state parent name(s): _____

Please complete this section for any parent who has been newly located or identified or if the information for any of the parents has changed since the last hearing:

	Parent: Of:	Parent: Of:
Has the Birth Certificate been obtained? Is the parent's name on the Birth Certificate?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
Was an acknowledgment filed in the parish of the child's birth? Did you obtain the Certificate of Results from the Clerk of Court?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please attach.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please attach.</i>
If no acknowledgment has been filed, did you check the Putative Father Registry? Did you obtain the Certificate regarding the Putative Father Registry?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please attach.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please attach.</i>

If there is an absent parent who has not been located, what efforts have been made since the last hearing to locate this parent?

OTHER ORDERS

(Please do not complete this section if parents' rights have been terminated.)

Since the last hearing, has information regarding the family been sent to Child Support Enforcement?

Yes No

Since the last hearing, has a Child Support Order been established?

Yes No

If yes, please attach a copy of the order or list case number, parish, parties involved, amount, and date order signed.

Since the last hearing has there been a Temporary Restraining Order and/or Protective Order?

Yes No

If yes, please attach a copy of the order or list case number, parish, parties involved, and date order signed.

CURRENT STATUS OF THE PARENT

Describe the current situation with each parent (Exp. Housing, Substance Use Concerns, etc.): _____

SAFETY AND RISK ASSESSMENT

Threats of danger at the time of initial safety assessment: _____

Describe current threats of danger, if any, as it relates to all parents and each child's vulnerability to the identified threats: _____

Based on the most recent CWADM assessment and case plan progress, describe the caretaker protective capacities that still need to be enhanced, if any, to keep the child(ren) safe: _____

What is the current Structured Decision Making (SDM) level/recommendation for each household? _____

Date(s) of SDM: _____ / _____ / _____

Conditions for Return to Parents' Care/Custody, if applicable (i.e., Why can't child go home today?): _____

Conditions for Closure (DCFS no longer involved): _____

CASE PLAN UPDATE

For more detail, please see attached Case Plan.

Was the case plan developed with the parents and child(ren)? Yes No

If no, please explain why not: _____

Were the attorneys invited to the FTM? Yes No

Did they participate? Yes No

Please list any referrals made by the agency to date for parents and child(ren), describe the reason for referral, and progress thus far: _____

PLACEMENT

Are all children in this case placed together?

Yes, children are placed together. Not placed together. N/A (no siblings in care)

In Home Placement: Please complete if any of the child(ren) are in the custody of or placed with the parent(s).

	Child:	Child:
Parent Name(s)		
Date of Placement		
Child's Adjustment		
Parent's Adjustment		

Out of Home Placement: Please complete if any of the child(ren) are not in the custody of or placed with the parent(s).

	Child:	Child:
Caregiver Name(s)	_____	_____
Date of Placement	___ / ___ / _____	___ / ___ / _____
Type of Placement	<input type="checkbox"/> Relative <input type="checkbox"/> Other Individual <input type="checkbox"/> Certified Foster Home <input type="checkbox"/> Therapeutic Foster Home <input type="checkbox"/> Group Home <input type="checkbox"/> Psychiatric Residential Treatment Facility <input type="checkbox"/> Other: Reason(s) if not placed with relative:	<input type="checkbox"/> Relative <input type="checkbox"/> Other Individual <input type="checkbox"/> Certified Foster Home <input type="checkbox"/> Therapeutic Foster Home <input type="checkbox"/> Group Home <input type="checkbox"/> Psychiatric Residential Treatment Facility <input type="checkbox"/> Other: Reason(s) if not placed with relative:
History of Previous Placements: <i>Include name, type, and dates of each</i>		
Child's Adjustment to Current Placement		

QPI <i>(co-parenting between foster caregivers and parents)</i>		
Certification Update for Relatives/Individuals Not Yet Certified; Include Date Referral Made to Home Development and Current Status		
If reunification is not the primary goal, has the current caregiver committed to permanency for the child?		
Foster Caregiver Progress Form completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

If siblings in this case are not placed together, state

- Barriers to placement together:**
- Efforts to place siblings together:**
- Contrary to safety or well-being (please explain):** _____

If not placed together, what is the plan for sibling visitation (unless contrary to safety or well-being)? _____

Please give current status of sibling visitation, including siblings not in foster care (# of visits to date, quality of visits, barriers, etc.): _____

Describe any additional information pertinent to each child regarding placement changes or achievement of permanency: _____

CURRENT STATUS OF CHILD(REN)

Please provide updates since the last hearing:

	Child	Child
Current Medical and Dental Information and Significant Findings		
Current Developmental Information		
Current Trauma and Behavioral Health Assessment Date assessment completed: _____ Are referrals indicated?	____ / ____ / _____ <input type="checkbox"/> Yes <input type="checkbox"/> No	____ / ____ / _____ <input type="checkbox"/> Yes <input type="checkbox"/> No
Describe any behavioral or mental health needs/concerns and how being addressed		
Religion/Culture/Traditions important to child?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain
Any known needs about the child's sexual orientation and/or gender identity?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain
Changed schools since the last hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain
Name of School/Grade		
Current strengths and challenges re: education		
Participate in extracurricular activities or want to?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please list:	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please list:

Describe any educational needs/interventions and how they are being addressed: _____

As a precursor to classification of 504/IEP/IAP/"gifted," are any of the children involved with a Response to Intervention ("RTI")(also called "Targeted Teaching") since the last hearing? Yes No

If yes, state each child's name and what date the RTI began and the interventions being utilized: _____

For more information about the child(ren), please see attached Case Plan: Federal Compliance Section "Educational Stability," Child Functioning, Cumulative Medical Record, and Cumulative School/Educational Record.

YOUTH 14 AND OLDER

Identify the youth's permanent connections: _____

Since the last hearing, describe the relationship between the youth and each identified permanent connection, including visitation and other forms of consistent contact: _____

Is the youth receiving independent living classes? Yes No

What has the youth learned from these classes? _____

Describe progress with the youth preparing to live independently: _____

Is the youth currently living independently? Yes No If yes, please describe adjustment: _____

For more information, please see attached Youth Transition Plan (YTP).

VISITATION

Have there been any changes to the visitation plan since the last court hearing? Yes No

If yes, please explain: _____

Are there any relatives and/or other individuals who are visiting since the last court hearing? Yes No

If yes, please explain: _____

In addition to in-person visits, please state plan for amount and frequency of contact as follows

Name	Telephone	FaceTime, Duo, Zoom, Skype
Parent(s):		
Sibling(s):		
Grandparent(s):		
Other relatives:		
Other individuals:		

For more information, please see attached Case Plan "Visitation" Section (before Basic Obligations and after Federal Compliance) for visitation schedule.

SIGNIFICANT RELATIONSHIPS AND RELATIVES/OTHER SUITABLE INDIVIDUALS

Are there newly identified significant relationships with parents, siblings (those in care and those not in care), grandparents, other relatives, and other individuals? Yes No

If yes, describe and attach updated Family Connections Form and Circle of Influence Form. _____

Please list steps taken to contact the individuals who matter to each child since the last hearing and describe the outcome of the steps for each: _____

Please complete if any of the children are not currently placed with a parent/relative and one or more of the individuals listed above has been/is being assessed for placement:

Child	Prospective Placement	Has an Agency Background Clearance been completed?	Have criminal records checks been completed? If yes, indicate results.	Is home study complete? If yes, what is recommendation? If no, what is status?	If residing out of state, provide status of ICPC request.
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

DCFS RECOMMENDED CASE PLAN GOAL AND REASONS

Child:	Child:
<input type="checkbox"/> Reunification <input type="checkbox"/> Custody to Another Parent <input type="checkbox"/> Adoption <input type="checkbox"/> Guardianship <input type="checkbox"/> Custody to a Relative <input type="checkbox"/> APLA (if 16 or 17 years old) <input type="checkbox"/> Concurrent Plan:	<input type="checkbox"/> Reunification <input type="checkbox"/> Custody to Another Parent <input type="checkbox"/> Adoption <input type="checkbox"/> Guardianship <input type="checkbox"/> Custody to a Relative <input type="checkbox"/> APLA (if 16 or 17 years old) <input type="checkbox"/> Concurrent Plan:
Is this recommendation a change? <input type="checkbox"/> Yes <input type="checkbox"/> No	Is this recommendation a change? <input type="checkbox"/> Yes <input type="checkbox"/> No
Reasons underlying recommendation:	Reasons underlying recommendation:

OTHER RECOMMENDATIONS

- Approve the case plan as presented by DCFS
- Approve the case plan goal as presented by DCFS.
- Find that the child’s placement is approved as the most appropriate, least restrictive setting.
- That the following services are needed for the child(ren) and/or parents: _____.

Based on the extent of progress made toward mitigating the causes necessitating placement in foster care, a likely date by which

child(ren) _____ may be returned to the home is: ____ / ____ / _____

child(ren) _____ may be placed for adoption is: ____ / ____ / _____;

child(ren) _____ may be placed for guardianship is: ____ / ____ / _____.

That a _____ hearing be set for: _____.

Sincerely,

Case Worker

Supervisor

ATTACHMENTS

	Attached?
Case Plan and attachments	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Youth Transition Plan	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Documentation of Court Notices	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
ICWA Letter(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Certificate of Results (Paternity Acknowledgment)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Putative Father Registry Certificate of Results	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
DNA Testing Results	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Other Orders	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Updated Family Connections Form	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Updated Circle of Influence Form	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
ICPC Documents	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Foster Caregiver Progress Form(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Assessments/Evaluations for Child(ren)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Assessments/Evaluations for Parent(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Treatment Provider Progress Notes	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
School 1 Form	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Child(ren)'s Report Card	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Other:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

cc (with attachments): ADA/BGC, Parent Attorneys, Children's Attorney(s), Unrepresented Parties, CASA

PERMANENCY HEARINGS

La. Ch. C. arts. 701-711

LOUISIANA
CHILD IN NEED OF CARE BENCHBOOK
FOR JUVENILE JUDGES

SECTION

10

INTRODUCTION

A. BACKGROUND

The law requires periodic judicial review of the status of children placed in foster care to ensure a permanent placement is secured for each child as soon as possible. Foster care is, and should always be, the safety plan of last resort. It is designed to offer temporary care in times of family crisis and is not meant to be a substitute for family. There are two separate components of planning when a child remains in foster care after the Disposition: the case review hearing process and permanency planning process. The purpose of these hearings is to provide for judicial review and oversight of the Department of Children and Family Services (DCFS) planning and decision making on behalf of children who have been removed from their parent's¹ custody.

If the child remains in foster care for 12 months, then a Permanency Hearing² is mandated to determine and approve the child's permanent plan pursuant to Federal³ and State law (Articles 701-711).⁴ The court shall determine the permanent plan for the child that is most appropriate and in the best interest of the child in accordance with the following priorities of placement: (1) return the child to the legal custody of the parents; (2) adoption; (3) placement with a legal guardian; (4) placement in the legal custody of a relative; or (5) placement in the least restrictive, most family-like alternative permanent living arrangement (APLA). APLA can only be considered for youth who are 16 or 17 years old, and there must be compelling reasons for designating this as their permanent plan. DCFS is still required to identify and establish permanent connections for the youth if APLA is determined to be the permanent plan. Article 603(22) does not include custody to a relative or APLA in the definition for "permanent placement." The court can approve custody to a relative as the permanent plan, but it is less favored than adoption or guardianship, both of which carry more legal gravity.

B. PRIOR TO THE HEARING

Although not required by the Children's Code, DCFS submits a court report per policy at least 10 days prior to the Permanency Hearing. This court report should make a recommendation for the permanent plan and provide updates regarding the status of the child and results of assessments conducted on relatives or other individuals and the Interstate Compact on the Placement of Children (ICPC) home study, if received. Evaluations by service providers, the Foster Caregiver Progress Form, and other important documents may be attached to the report. If appointed, the Court Appointed Special Advocate (CASA) will also submit a report in advance of the hearing, although there is not a required timeframe for doing so (unless set forth in local court rules).

While the case plan is not generally reviewed (but it can be) at this hearing, the Children's Code requires DCFS to file a case plan 10 days prior to the Permanency Hearing. The Youth Transition Plan (YTP) must also be provided if the child is 14 years of age or older.

C. TIMING, NOTICE, AND PRESENCE

The initial Permanency Hearing shall be held within 9 months after Disposition if the child was removed prior to Disposition or within 12 months if the child was removed at Disposition. Permanency Hearings shall occur at least every 12 months thereafter until the child achieves a "permanent placement"⁵ (or earlier upon motion per Article 702(B)). If a judicial determination has been made that reunification efforts are not required pursuant to Article 672.1, a Permanency Hearing may occur immediately and shall occur within 30

¹ The plural form of "parent" is used throughout the Benchbook for simplicity, even though at times only one parent has been identified in a case.

² The Children's Code title for this chapter is "Dispositional Reviews" instead of "Permanency Hearings," but the article provisions refer to the "Permanency Hearing" which is in line with ASFA terminology; thus, "Permanency Hearings" will be used in this Benchbook Section.

³ See 42 U.S.C. § 671(a)(15)(E), 45 C.F.R. § 1356.21(h)(2), and 45 C.F.R. § 1356.21(b)(2) and 1356.71(d)(1)(i).

⁴ Some courts call the initial permanency a "Permanency Hearing" and subsequent hearings "Permanency Review Hearings."

⁵ See La. Ch. C. art. 603(22).

days of that ruling. There are Title IV-E funding repercussions for the State if the court does not determine the child’s permanent plan, and DCFS does not make reasonable efforts to finalize the permanent plan within the mandated timeframes. In that instance, DCFS may not receive Federal reimbursement for the child while the determinations and findings are delayed.⁶

At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. The court shall not admit any person who does not have a proper interest in or is not necessary to the proceedings. As in all Child in Need of Care (CINC) hearings, the parents and children have a right to be present, as do “foster caregivers” (foster parents, pre-adoptive parents, and relatives) caring for the child and CASA (if appointed). An essential role of the court is to determine whether parties have been properly served for hearings. Because the initial Permanency Hearing is particularly critical, the court should take care to confirm that parents have been properly served. In addition, DCFS has a duty to provide notice to the parents and foster caregivers, and the court shall confirm that notice was properly given.

For all parties present, the court is responsible for providing and paying for interpretation, translation, and/or language assistance services and reasonable accommodations for those with disabilities. There must be ample time for legal interpreters to review pertinent legal documents prior to the court proceeding. Interpreters must be familiar with the case-related details to provide an accurate, meaningful, and effective interpretation.

Before the case is called, the judge should inquire as to whether counsel for the parents and counsel for the child had sufficient opportunity to consult with their clients. This ensures due process for the family.

D. INTERVENTION

As at the Case Review Hearing, a person, agency, or organization can move to intervene at the Permanency Hearing. There must be good cause for such an intervention, and it must facilitate the permanent placement of the child and ensure the child’s best interest is protected. The court has discretion in deciding whether to allow intervention. If the court grants intervention, the court may limit the nature and extent of the intervenor’s participation in the hearing for good cause upon motion by any party. For example, a court could allow an intervention for purposes of presence at the Permanency Hearing but not allow the intervenor access to the court file or DCFS file. There is significant case law on intervention, especially in certain jurisdictions.

E. EVIDENCE AND TESTIMONY

Parties have the right to call witnesses and present evidence at the Permanency Hearing. Witnesses may be sequestered. If a DCFS staff member, CASA volunteers, or foster caregiver are going to be called as witnesses they may, too, be sequestered because they are not parties. However, a DCFS representative would likely need to remain in court to assist the assistant district attorney (ADA). Of course, sequestration is different from closing a hearing upon motion of a party since a closed hearing is one in which only the parties are present.

Testifying in court is stressful for many parents and children. Court is intimidating for most individuals (including non-party witnesses), and the stakes could not be higher for parents and children in CINC cases. Many parents and children are coming to court with a history of trauma. Nevertheless, some parents and children may benefit from having their voice heard. It is critical for the judge to consider information provided by the parents and children, and to convey that their testimony is being taken into account in the court’s ruling. Judges must create an environment where parents and children are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.⁷

The child can testify if present or appearing by audiovisual conferencing. Whether the child is present or not, the child’s attorney should make sure that the court knows the child’s wishes regarding the permanent plan. Foster caregivers also have a right to be heard at the Permanency Hearing and, as the day-to-day caregivers of the child, likely have valuable information for the court.

⁶ See La. Ch. C. arts. 672.1 and 702; 42 U.S.C. § 671(a)(15)(E); 42 U.S.C. § 675(5); and 45 C.F.R. § 1356.21(b)-(h); See also https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=142 and https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=59.

⁷ Gatowski, S., Miller, N., Rubin, S., Escher, P., & Maze, C. (2016) Enhanced resource guidelines: Improving court practice in child abuse and neglect cases. Reno, NV: National Council of Juvenile and Family Court Judges, p. 16 [hereinafter Gatowski].

It can also be helpful to hear testimony of therapists, teachers, domestic violence advocates, parenting instructors, and other service providers at the Permanency Hearing. These witnesses can provide useful information to the court concerning the family's progress and their recommendations. If a provider is not available to attend the hearing, a written report from the provider should be attached to DCFS's court report. The court may also want to consider coordinating services with the Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies by having one or more of these representatives at the Permanency Hearing. 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.

F. PERMANENT PLAN

At the Permanency Hearing, the court shall determine the permanent plan for the child that is most appropriate and in the best interest of the child. The Children's Code sets out priorities of placement that the court shall follow in rendering its decision. The first priority is reunification with the child's parents. If reunification is not a viable option, the court shall look to the most appropriate plan given the following order of priorities: adoption, guardianship, custody to a relative, and APLA.

In determining the permanent plan, the court shall consider the child's need for continuing contact with any relative by blood, adoption, or affinity with whom the child has an established and significant relationship in accordance with Article 1269.2. Preserving a child's relationships and family connections is an important aspect of ensuring continuity and the child's sense of security.⁸ In an age-appropriate manner, the court shall consult with the child regarding the proposed permanency or transition plan for the child. In the case of a child who will not be returned to his/her parents, the court shall consider in-State and out-of-State permanent placement options for the child. The child's health and safety are the paramount concern in the court's determination of the permanent plan.

DCFS will recommend a permanency goal (sometimes referred to as the case plan goal) for the child. CASA will also make a recommendation to the court for the child's permanent plan. As stated above, the attorney for the child will present evidence, make arguments and express the child's wishes regarding the permanent plan. The attorney for the parent will also present evidence and make arguments regarding the permanent plan. The court will consider all testimony, evidence, positions, and recommendations in its determination of the child's permanent plan.

Some courts approve an "Adoption and Safe Families Act (ASFA) exception" or "ASFA extension" at the initial Permanency Hearing as requested by a party or DCFS when there has been substantial parental compliance with the case plan, there is a reasonable expectation of continued, significant improvement in the parent's protective capacities, and reunification is promising. However, there are no specific ASFA provisions for an extension or exception at the Permanency Hearing. Instead, the court can maintain reunification as the child's permanent plan in accordance with the findings required in Article 702(C)(1). If such a finding is made and reunification remains the permanent plan or concurrent permanent plan at this hearing, more frequent case reviews (or Status Hearings) should be scheduled to ensure progress is made, and permanency is timely achieved.

G. REASONABLE EFFORTS TO REUNIFY

DCFS shall make reasonable efforts to reunify the child with his/her parents. The court shall determine if reasonable efforts were made by DCFS and that finding shall be entered into the Permanency Hearing Order.⁹

⁸ La. Ch. C. art. 702, 2001 Comments.

⁹ See La. Ch. C. arts. 672.1 and 702; 42 U.S.C. § 671(a)(15)(E) and 672(a)(1); 45 C.F.R. § 1356.21(h)(2), 45 C.F.R. § 1356.21(b)(2) and 1356.71(d)(1)(i); See also Child Welfare Policy Manual, Section 8.3C.4, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=59 Edwards, Leonard. "Overcoming Barriers to Making Meaningful Reasonable Efforts Findings." ABA Child Practice Today. January 29, 2019, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/overcoming-barriers-to-making-meaningful-reasonable-efforts-find/; Edwards, Leonard. (2014). Reasonable Efforts: A Judicial Perspective, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=210§ionid=2&articleid=5428> ("Congress designed the law to ensure child welfare agencies provide families with services to prevent disruption of the family unit, and to respond to the problems of unnecessary removals and foster care drift. The reasonable efforts requirement is an enforcement mechanism to guarantee that each State provides adequate preventative and reunification services."); Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>.

DCFS should be held accountable for meeting its obligation to provide appropriate services to assist the parents in their effort to reunify with their child (unless the court finds that reasonable efforts were not required per applicable State and Federal laws). The court shall make a thorough inquiry and provide specific factual findings about the efforts DCFS is making or made towards reunification and whether such efforts are or were reasonable. The court should identify any areas where DCFS efforts are inadequate and enter orders to address the inadequacies.

Examples of reasonable efforts to reunify may include, but are not limited to, updating the case plan with the parents, ensuring the case plan is reasonably related to achieving reunification, providing quality visitation time (or such opportunities) between the parents and the child, helping (or attempting to help) the parents achieve case goals, assisting parents in timely accessing appropriate and effective services and supports needed to address the conditions for the removal, conducting assessments with the family to identify safety concerns and ways to address them, and seeking needed court interventions (i.e. Temporary Restraining Orders (TRO) and/or Protective Orders (PO)).

H. REASONABLE EFFORTS TO ACHIEVE PERMANENCY

DCFS shall make reasonable efforts to place the child in a timely manner in accordance with the permanent plan and complete the steps necessary to finalize the permanent placement of the child. The court should be aware of the steps necessary to effectuate any permanency plan. Judges should actively inquire about each step in the process of finalizing the current permanency plan and issue orders clearly articulating the subsequent steps DCFS must take to finalize the plan and the timeframes for the completion of those steps. Issuing general orders to “proceed to finalization of an adoption,” for example, does not outline the specific steps and timelines needed to complete the adoption process so the court can adequately assess progress at its next hearing. Courts will have difficulty holding DCFS accountable for making reasonable efforts if those efforts are not delineated in court orders at each hearing.¹⁰

Examples of reasonable efforts to achieve permanency include, but are not limited to, conducting a thorough Dispositional alternative investigation, ensuring the case plan is reasonably related to achieving permanency, providing quality visitation time (or such opportunities) between the child and potential placements, timely assessments of relatives and other possible placements, making diligent efforts to search for possible placement with relatives or other individuals with whom the child has a significant relationship, timely initiation of ICPCs and background checks, involving youth in the development of their YTP, implementing the YTP, planning for the youth’s successful transition to adulthood (which includes establishing permanent adult connections, independent living skills, career path, etc.), assessing whether the youth wants to participate in extended foster care, continuing to search for family-like placements for children placed in group homes, timely seeking termination of parental rights (TPR), making efforts to complete adoption if the parents’ rights have been terminated, proof that Adoption Petition filed, proof of surrender documents, etc.

I. SANCTIONS

The Children’s Code specifically allows the court to sanction DCFS for failure to comply with permanency planning requirements. See Article 712.

J. ADVISEMENTS

If the permanent plan is reunification, the court shall advise the parents of their obligation to achieve the case plan goals and correct the conditions requiring the child to be in care within the required timeframes. The court should further advise that, otherwise, another permanent plan for the child will be selected and a TPR Petition may be filed. If the permanent plan is adoption, then the court shall advise the parents of their authority to voluntarily surrender the child and consent to adoption prior to the filing of a TPR Petition.

¹⁰ Gatowski, *supra* note 7, at 267.

The Children’s Code is silent as to advisements for other permanent plans; however, the court should make clear to all persons before the court how critical it is to achieve the child’s permanent plan as soon as possible, which can be especially important in mitigating further trauma to the child.

K. CASE PLAN

The case plan is typically reviewed at the Case Review Hearing, not the Permanency Hearing, though these hearings may be held simultaneously. However, on its own motion or motion of any party and for good cause, the court may consider the content or implementation of the case plan or any response filed concerning it. If the permanent plan has changed, other circumstances in the case have changed, or new information has come to light, the case plan may need to be modified accordingly. Additional or different services may be needed than those identified in the most recent case plan. In addition, the visitation schedule may need to be modified. For example, if the goal has changed from reunification to guardianship or adoption, visit frequency should likely be increased with a potential relative or other permanent placement. Thus, if the case plan is not reasonably designed to achieve the child’s permanent plan determined by the court, the court should order DCFS to revise it.

L. JURISDICTION AND APPEAL

Although the court has continued jurisdiction over custody matters, under the law, the case will conclude upon the child’s permanent placement; there is no need for further hearings unless the court orders continued supervision, or some action is taken by the other parties. Any party may appeal the findings or orders of the court, which shall be taken within 15 days from the mailing of the notice of the judgment. See Article 332(A).

M. NEXT STEPS

An attorney or the court is responsible for completion of the Permanency Order. All attorneys and unrepresented parties should review the order before the judge signs it to ensure it accurately reflects the proceeding. Time permitting, best practice is to sign the Order on the same day as the hearing. The court should consider giving the attorneys time to meet with their clients at the conclusion of the hearing. Parents and children may have questions and concerns after the hearing. It is best for the family if immediate issues can be addressed while they are still at court.

If DCFS has placed the child in the home of a parent or if the court has transferred custody to a parent, it is advisable to set a Status Hearing to address any needs of the family and/or adjust issues that may arise. When reunification has not occurred but is expected, the court should ask questions about transition planning at the hearing. Depending on the age of the child, best practice may be to transition the child to the parent’s home rather than a sudden upheaval. In some jurisdictions, DCFS promulgates a transition calendar with the input of all involved. The court can order a transition period with a goal date for reunification.

When a transition of any kind occurs for the child (i.e., change in placement or custody), it is critical to the child’s well-being for judges to collaboratively strategize with all involved to reduce the trauma experienced by the child in the transition. DCFS has developed tools to try to minimize this trauma, including a guide for planful transitions. Transition plans can include multiple, extended visits, such as overnight visits as well as other additional contacts including using Zoom, FaceTime, etc., to ensure the most positive experience possible for the child.¹¹ These activities should occur both prior to the move and after the move to provide the child a less traumatic separation from previous caregivers and better connection to the new caregivers.

¹¹ DCFS Policy 6-305 “Guidelines for Care Setting Decision Making for Children Under Age Six” (March 15, 2019).
















The court should schedule the next Case Review Hearing and/or Permanency Hearing. The Permanency Hearing shall be held at least every 12 months. Best practice may be to schedule a Case Review Hearing at the same time as the Permanency Hearing. That way, the case plan is thoroughly reviewed when the permanent plan is considered and/or reviewed.

Regardless of the frequency of mandatory review, the court can conduct hearings more frequently than the minimum intervals. While Case Review Hearings are mandated at least every 6 months, it is advisable to hold reviews at 2- or 3-month intervals at particularly critical stages of a case. In certain circumstances, parties should also be able to bring matters back to court on short notice.¹² Even though the case plan is generally updated every 6 months (unless otherwise ordered sooner), holding these hearings every 3 months allows the court and parties to resolve issues with the case plan and keep the case moving forward towards achieving permanency more expeditiously.

Depending on the child's permanent plan, the court may need to inquire about the status of the filing of the TPR Petition. The Children's Code requires the TPR Petition filing when the child has been in DCFS custody for 17 of the last 22 months unless the court finds DCFS has documented in the case plan a compelling reason why filing a TPR Petition not in the child's best interest. The timely filing of the TPR Petition goes towards reasonable efforts on the part of DCFS to achieve permanency for the child.

¹² Gatowski, *supra* note 7, at 260.

OUTLINE

-  **A. PRIOR TO THE HEARING**
-  **B. TIMING AND CONTINUANCES**
-  **C. APPEARANCES**
-  **D. INTERVENTION**
-  **E. NOTICES**
-  **F. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS**
-  **G. EVIDENCE AND TESTIMONY**
-  **H. PERMANENT PLAN CONSIDERATIONS**
-  **I. RULINGS AND FINDINGS**
-  **J. ADVISEMENTS**
-  **K. FURTHER FINDINGS AND ORDERS**
-  **L. ORDER OF NOTICES AND FUTURE HEARINGS**
-  **M. CASE MANAGEMENT**
-  **N. POSSIBLE NEXT STEPS**
-  **O. APPENDIX**
 - (1) PERMANENCY HEARINGS BENCH CARD**
 - (2) PERMANENCY ORDER TEMPLATE**
 - (3) DEPARTMENT OF CHILDREN AND FAMILY SERVICES PERMANENCY COURT REPORT TEMPLATE**

OVERVIEW

A. PRIOR TO THE HEARING

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

(1) CASE PLAN FILED BY DCFS:

- **FILING:** DCFS shall file a copy of the case plan with the court at least 10 days prior to the Permanency Hearing, which shall include the YTP if the child is 14 years of age or older. See the [Department of Children and Families Case Plan Template](#) and [Department of Children and Family Services Youth Transition Plan \(YTP\) Template](#) in the [Appendices Benchbook Section 12](#).
- **PROVIDE COPIES:** Upon filing, DCFS shall provide a copy of the case plan to:
 - Counsel of record either by mail or electronic mail; AND
 - Any unrepresented party either by certified mail at his/her last known address or by electronic mail at the address expressly designated by the party in a pleading, at the Continued Custody Hearing (CCH) or Continued Safety Plan Hearing (CSPH), or at any other hearing at which the party personally appeared before the court, unless otherwise ordered by the court for good cause.
- **RESPONSE:** Any party may file a written response to the case plan as submitted.

PRACTICE TIPS:

- **Court Not Required to Approve at Permanency Hearing:** The case plan is typically reviewed at the Case Review Hearing, not the Permanency Hearing. However, on its own motion or motion of any party and for good cause, the court may consider the content or implementation of the case plan or any response filed concerning it.
- **Court Should Review Once Permanent Plan Established:** Once the court establishes the child's permanent plan, it should examine whether the case plan aligns with the permanent plan. If the case plan is not reasonably designed to achieve the permanent plan determined by the court, it should order DCFS to revise the case plan.
- **Timing for Development of Case Plan:** Federal and State law requires that the case plan be updated every 6 months after it is initially developed and until the case is closed.¹³ If the Permanency Hearing is held less than 6 months since the previous hearing, the case plan may not have changed.
- **Permanency Goal:** The case plan should include the permanency goal for the child that DCFS recommends to the court for consideration.
- **CASA Can Request Copy:** CASA can request a copy of the case plan (Article 424.6).
- **Transmission by Email:** Service by electronic mail is complete upon transmission but is not effective if the serving party learns the transmission did not reach the party to be served.
- **Purpose of Response:** Filing a response puts the parties on notice of potential issues relevant to the case plan. However, the Children's Code does not require a written response.

HELPFUL GUIDANCE:

- **Signed by Family Members:** Per DCFS policy, case plans should be signed by the family members who participated in developing it.
- **Family Team Meetings (FTM):** By the time of the initial Permanency Hearing, at least two FTMs should have occurred. FTMs are facilitated by DCFS and are important because they are where case planning occurs for the family. Efforts to hold timely and meaningful FTMs support reasonable efforts findings to achieve reunification and/or permanency.

¹³ DCFS Policy 6-810 "Legally Mandated Case Plan" (August 17, 2020).

(2) PERMANENCY COURT REPORT FILED BY DCFS:

- **DCFS POLICY:** The Children’s Code does not provide a specific article regarding the filing of a court report by DCFS for the Permanency Hearing. However, per DCFS policy, DCFS files a court report prior to the Permanency Hearing (similar to the requirements set forth in Articles 688 and 689 regarding Case Review Reports) to provide the court and parties with information needed at the Permanency Hearing for the court to make required findings. Some jurisdictions call these court reports “court letters,” while others call them according to the hearing name (i.e., Disposition Report, Permanency Report, etc.). Filing the report 10 days in advance helps move the case forward and achieve timely permanency. Courts should insist on timely filing of reports. Adequate representation is harder when reports or amendments are distributed the day of the hearing or even a few days before a hearing.
- **PROVIDE COPIES:** In practice, DCFS provides a copy of the court report to counsel of record, CASA, and unrepresented parties, but there are no provisions in DCFS policy or the Children’s Code specifying this requirement. It is recommended that DCFS serve a copy of the court report along with the case plan (which is governed by Article 674 and specified above). If the information provided in the report is considered by the court, there are due process concerns if parties are not able to review it prior to the hearing.
- **CONTENT:** The content of the court report will generally include the current placement of the child, updates on how the child is doing, the proposed permanent plan with supporting reasons, updates on visitation, efforts to find relatives and other individuals, and conditions for return of child to his/her home. The court report may also have multiple attachments, including the [Foster Caregiver Progress Form](#) if the foster caregivers providing care for the child chose to submit the form to DCFS prior to the Permanency Hearing. Other attachments may include the [Family Connections Form](#) and [Circle of Influence Form](#). See the [Appendices Benchbook Section 12](#) for these forms. For more information see the [Department of Children and Family Services Permanency Court Report Template](#) in the [Appendices of Permanency Hearing Benchbook Section 8](#). **IMPORTANT:** Use of the DCFS Court Report templates provided in this Benchbook for Disposition Hearings, Case Review Hearings, and Permanency Hearings are being implemented in a phased-in approach across the State.
- **RESPONSE:** The Children’s Code does not discuss submission of a Permanency Court Report and, thus, does not mention filing a response to this report. As allowed by Article 691 concerning the Case Review Report, parties should be given the opportunity to file a written response to the court report prior to the Permanency Hearing as long as the response is submitted to counsel of record and any unrepresented party at least 5 days prior to the Permanency Hearing.
- **TIMING OF RESPONSE:** Court reports are not always timely filed, but the court should insist that they are. The court has discretion to allow a response later than 5 days prior to the hearing when the filing of the court report is delayed and/or when it is in the best interest of the child.

(3) COURT REPORT FILED BY CASA:

- **FILING:** If the court has appointed CASA, the CASA program shall submit reports to the court. See [CASA Court Report Template](#) in the [Appendices Benchbook Section 12](#).
- **DISTRIBUTE COPIES:** CASA shall distribute a copy of such reports prior to or at the time it is submitted to the court, to:
 - All counsel of record;
 - Any unrepresented party; AND
 - DCFS.

☰ PRACTICE TIPS:

- **Timing of Submission:** The Children’s Code does not state how many days before the Permanency Hearing that the court report should be filed with the court. However, it is recommended that it be submitted within the same timeframe as required for the DCFS Case Review Report (i.e., at least 10 days prior to the hearing).
- **Exception to Submission:** CASA reports may be subject to a Protective Order (PO) upon the request of the CASA volunteer, a party or party’s attorney, or by the action of the judge. If a PO is contemplated, the request should be made at the time the report is filed.
- **Mode of Distribution:** This article permits a more informal distribution of the court report. Each court by local rule may determine how counsel of record, DCFS, and unrepresented parties receive copies of CASA reports.

• **OVERALL GUIDANCE:**

- **Importance of Timing:** Timelines for submitting case plans and court reports are not followed in some jurisdictions, but they should be. Filing the case plan and court report at least 10 days in advance of the hearing is important for moving the case forward and achieving timely permanency. Parties have the right to review the case plan and report and respond to them (see above); however, they will not be able to respond if DCFS does not timely file these documents and provide copies to counsel of record, unrepresented parties, and CASA (if appointed). Adequate representation is harder when reports or amendments are delayed, since such delays can make it impossible for counsel to meet with their clients and follow up on the information provided.
- **Local Court Rules and Orders:** While the Children’s Code does not provide a specific procedure on timing or mode of service, such as for court reports, CASA reports, or physical examinations, courts may want to consider setting those requirements by local court rule. Additionally, the court can include such in its written Orders.

B. TIMING AND CONTINUANCES

ARTICLES 672.1, 702, 711, LA. SUP. CT. RULE XXXIII, 42 U.S.C. § 671(a)(15)(E); 42 U.S.C. § 675(5); and 45 C.F.R. § 1356.21(b)-(h)

(1) TIMING:¹⁴

- **Within 30 Days of an Article 672.1 Judicial Determination:**
 - At any time in a CINC proceeding when a child is in the custody of DCFS, the State may file a motion for a judicial determination that reasonable efforts to reunify the parents and child are not required per Article 672.1. If the court make this judicial determination, a Permanency Hearing may be conducted immediately and shall be held within 30 days of the determination.
- **Initial Permanency Hearing:**
 - **If Removed Prior to Disposition Hearing:** A Permanency Hearing shall be conducted by the court¹⁵ 9 months after the Disposition Hearing if the child was removed prior to Disposition (i.e., removed on an Instanter Order or at CCH); OR
 - **If Removed at Disposition Hearing:** A Permanency Hearing shall be conducted by the court 12 months after the Disposition Hearing if the child was removed at Disposition but in no case more than 12 months after removal.
- **Ongoing Permanency Hearings:**
 - **Every 12 Months After Initial Permanency Hearing:** Permanency Hearing shall be conducted at least once every 12 months after the initial Permanency Hearing and until:
 - The child is permanently placed;¹⁶ OR
 - The motion of a party for good cause shown or upon the court’s own motion.

PRACTICE TIPS:

- **Adoption and Safe Families Act (ASFA):** One of the major reform goals of ASFA is to expedite court proceedings so that earlier determinations affecting the child’s health and welfare occur. Nothing is prohibiting the court from holding these hearings sooner than the required timeframes. For example, the court should hold a hearing if there is an issue with the family that needs to be addressed. The information should drive the timing of the hearing.
- **Simultaneous Hearings:** Article 711 expressly approves the use of simultaneous Case Review and Permanency Hearings. In fact, this may be advisable so that the case plan and permanent plan are reviewed in tandem with one another. In such instances, findings and orders must be separated for each type of hearing.

¹⁴ In computing a period of time prescribed by law, the date of the event after which the period begins to run is not included; the last day of the period is included but if a legal holiday—including Saturdays and Sundays—then the period runs until the end of the next day which is not a legal holiday. La. Ch. C. art. 114.

¹⁵ Whenever “court” is used in this Section, that includes a court-appointed or court-approved administrative body since the Children’s Code allows such entities to hold these hearings.

¹⁶ See La. Ch. C. art. 603(22).

- **Contempt:** The contempt articles (Articles 1503 et seq.) are always available to the court, if appropriate, when investigations and/or evaluations previously ordered to be completed prior to this hearing have not been completed on time, or the case plan or Permanency Hearing Report is unnecessarily delayed.

(2) CONTINUANCES:

- **Report to Louisiana Supreme Court (LASC):** If a continuance is granted, or a delay permitted, that exceeds the maximum allowable times established by the Children’s Code, the court is mandated by Supreme Court Rule XXXIII, Part II, Sections 1 and 2, to report such continuance within 10 days to LASC, along with the reasons for the delay and a copy of the Order. See https://www.lasc.org/children_families/timelinessreport.pdf for a copy of the report that must be submitted by the court to LASC. See also Louisiana District Court Rules, Title V, Chapter 42, Rule 42.1, for more information.

C. APPEARANCES

ARTICLES 607-8, 643, 704-8

- (1) PROPER INTEREST OR NECESSARY:** At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. The court shall not admit any other person unless it determines that the person has a proper interest in or is necessary to the proceedings.

📖 PRACTICE TIP:

- **Include Other Agencies:** Coordinating services with the Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies may be helpful. The court may want to consider having one or more of these agencies represented at the hearing. 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.

📖 HELPFUL GUIDANCE:

- **Privacy and Confidentiality:** Limiting the number of persons present in the courtroom protects the privacy of children in CINC cases. The judge is mandated to exclude all but the listed persons unless first determining the person has a proper interest or is necessary to the proceedings. Law students or social workers studying juvenile procedure might qualify as persons with proper interest. If the court allows other persons to be present, the court should stress the confidentiality of the case information.

(2) ESSENTIAL JUDICIAL FUNCTION - ASSISTANCE SERVICES AND SPECIAL ACCOMMODATIONS:

Under State and Federal law, the court is responsible for providing interpretation, translation, and/or language assistance services for parties to CINC hearings and/or reasonable accommodations for parties to CINC hearings with disabilities. When the court appoints counsel for indigent persons, it is also responsible for appointing and paying for a qualified interpreter or translator for indigent persons with these needs to assist in communication with counsel in all phases of the preparation and presentation of the case.¹⁷ There must be ample time for legal interpreters to review pertinent legal documents with the party prior to the court proceeding.¹⁸ Interpreters must be familiar with the case-related details to provide accurate, meaningful, and effective interpretation.¹⁹

(3) CHILDREN: Children are parties and shall be present at the hearing unless an exception below applies.

- **12 and Older:** If the child is 12 years of age or older, he/she shall be present in court unless his/her presence is waived by the court upon motion of the child’s attorney.
- **Below 12:** If the child is below the age of 12 years of age, he/she shall be present in court upon request of the child’s attorney or the court.
- **Waive:** The court shall state in the Order whether or not the court waived the presence of the child at the hearing. See Disposition Hearing Benchbook Section 8 C(3) for more on the importance of children’s presence at hearings.

(4) PARENTS: Parents of the children are parties and shall be present at the hearing.

☰ PRACTICE TIPS:

- **Effect of Nonappearance of Parent:** If a parent is absent, the hearing may only proceed if it is established on the record that the parent was served but is not in attendance or that efforts to serve the parent have been unsuccessful.
- **Reunification Case Plan Goal:** If reunification with the absent parent is the case plan goal, DCFS shall:
 - Make continuing diligent efforts to locate the absent parent;
 - Notify him/her of the nature and outcome of the hearing;
 - Promptly inform the court of known or discovered address; AND
 - Promptly inform the court of any new address that becomes known through the case planning process.
- **Unidentified Father:** If a father is unidentified, it is not necessary to appoint a curator ad hoc for that parent. The father shall be considered unidentified if:
 - The biological father’s name is not provided on the birth certificate;
 - There is no presumed father; AND
 - No party to the proceedings or the mother, if not a party, is able to provide a first and last name of a putative father or alias sufficient to provide a reasonable possibility of identification and location.
- **Incarcerated:** To ensure the attendance of any parent who is incarcerated at the Permanency Hearing, a writ or motion should have been filed and an order issued by the court and served on the warden or administrator of the facility prior to the Permanency Hearing. Service should be made sufficiently in advance of the hearing to afford time for the facility to arrange for transportation of the parent to court (or video conferencing where the parent’s physical attendance at the hearing is not possible).

¹⁷ See C.C.P. Art. 192.2; La. R.S. § 46:2364; 42 U.S.C. § 3711; 28 U.S.C. § 604(a)(14), (15), and (16), § 1827, and § 1828; see also https://www.lasc.org/language_access and https://www.lasc.org/District_Court_Rules?p=TitleI.

¹⁸ See National Consortium of Interpreter Education Centers. (2009). Best practices American Sign Language and English interpretation within legal settings. U.S. Department of Education, Rehabilitation Services CFDA #84.160A and B, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind, <http://www.interpretereducation.org>

¹⁹ Id.

- **Direct Parent Present to Identify Other Parents:** If a parent has still not been located, the judge should direct the parent who is present under oath to provide name, address, and whereabouts for any parent who has not been located and emphasize the importance of identifying and locating any absent parents.
- **Determining Paternity/Maternity:** The court must ensure that efforts by DCFS are thorough and diligent in locating and involving all legal and putative parents and that paternity or maternity of all children is legally determined. If the identity and whereabouts of an alleged parent is known but filiation has still not been legally determined, the 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.), including ordering that DCFS make arrangements for DNA tests to determine the paternity/maternity of any alleged parents and that the alleged parents comply.
- **Direct Parent Present to Identify Potential Relative Caregivers:** Establishing paternity or maternity is also critical for finding potential relative caregivers for the child; thus, the court may also want to direct the parents under oath to identify relatives of the child.

HELPFUL GUIDANCE:

- **Identification of Parents or Legal Custodians:** Courts should ensure all biological, legal, and putative parents are legally established as soon as possible. Decisions made in CINC hearings can affect a child’s entire life if this information remains unknown. When a child does not know who one of his/her parents is, that also means the child may not know his/her race, ethnicity, medical background, culture, relatives, religious ties, and more. Timely resolution of filiation and paternity or maternity issues is in the best interest of the child and essential to due process and avoiding permanency delays.
- **Maternity:** There may be cases where there is an issue with maternal filiation. However, Louisiana law has not been amended to contemplate situations when, for example, two women are married and one gives birth to a child during the marriage. Louisiana filiation laws for paternity would likely be instructive for similar maternity issues.

(5) ATTORNEYS:

- a. **Parents:** The Indigent Parents’ Representation Program shall provide qualified legal counsel, including curatorship appointments, to indigent or absent parents in CINC cases unless a parent waives his/her right to counsel (See Articles 575, 608, and 643).
- b. **Children:** An attorney for the child shall be present at every hearing, assert the child’s wishes, and protect the legal interests of the child even if the child is not present (Article 607).²⁰
- c. **State:** An assistant district attorney (ADA), an attorney the ADA designates, or a DCFS attorney (Bureau of General Counsel/ BGC) representing the State should be present at the hearing.

PRACTICE TIPS:

- **Due Process:** Judges play an important role in helping to ensure due process for all parents and children in their courts. The child’s attorney and the parent attorneys should zealously advocate for their clients whether they are present or not.
- **Clients Consult with Attorneys:** Before the case is called, the judge should inquire whether counsel for the parents and counsel for the child had sufficient opportunity to consult with their clients, thus ensuring due process for the family.

(4) DCFS: DCFS staff member or representative should be present at the hearing.

²⁰ LA. SUP. CT. RULE XXXIII, PART III.

(5) CASA: May be present if the court appointed them.

(6) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD: Foster caregivers (i.e., foster parents, relatives, or pre-adoptive parents) providing care for the child have a legal right to receive notice of and be present at the Permanency Hearing. The court may permit the hearing to be held in the person’s absence even if they were not properly notified. See [Continued Custody Hearing \(CCH\) Benchbook Section 5 B\(8\)](#) for more information.²¹

(7) AUTHORIZED OFFICERS OF THE COURT AND WITNESSES:

- **Authorized officers of the court:** As designated by the judge, may be present at the hearing.
- **Witnesses:** Under examination may be present at the hearing.

(8) INTERVENOR: If intervention granted (see [Intervention Section D](#) below).

D. INTERVENTION

ARTICLE 707

(1) REQUIREMENTS: The court has discretion to allow any interested person, agency, or organization to intervene in a Permanency Hearing if good cause is shown such that the intervention:

- Facilitates permanent placement of the child; AND
- Ensures the best interest of the child is protected.

(2) LIMITATIONS: The court may limit the nature and extent of the intervenor’s participation in the Permanency Hearing:

- Upon motion of a party; AND
- For good cause shown.

(3) HELPFUL GUIDANCE:

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

E. NOTICES

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

The court shall determine if proper notices of the hearing were made to all parties, counsel of record, and foster caregivers, and enter required findings in the Order.

(1) PARTIES AND COUNSEL: Written notice of the date, time, and place of the Permanency Hearing shall be served and return made in the same manner as a Petition on all parties and also counsel of record at least 15 days prior to the hearing unless the parties have been notified in open court at a prior hearing. Any party who has received notice of the Permanency Hearing and does not appear shall be deemed to have waived his/her right to be present. See [Answer Hearing Benchbook Section 6 D](#) and Articles 635.1-645 for more information.

(2) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD:

- **Notice and Right to Be Heard:** The court shall determine whether DCFS:
 - Gave notice of the date, time, and place of the Permanency Hearing to any foster caregiver providing care for the child; AND
 - Informed the recipient of his/her right to attend and be heard at the hearing.
- **Fails to Appear:** If a foster caregiver fails to appear at a hearing, DCFS shall report to the court whether notice was given or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person’s absence.

²¹ See La. Ch. C. arts. 623 and 705; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

F. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS

The court should consider whether any of the following Federal laws or regulations apply to this case:

- **Americans with Disabilities Act (ADA);**
- **Service Members Civil Relief Act (SMCRA);**
- **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA); AND/OR**
- **Interstate Compact on the Placement of Children (ICPC), as codified in La. Ch. C. art. 1608 et seq.**
 - **ICPC Generally:** ICPC is an agreement between all 50 States, Washington, D.C., and the U.S. Virgin Islands. It provides for the movement and safe placement of children between States when the children are sent out of State for placement in foster care or as a preliminary step to a possible adoption. The process involves several steps and goes from the local or field level in one State, through the central or State office of each State, to the local level in the other State for investigation. At the conclusion of the investigation, a report is sent from the local level to the State administration and back to Louisiana. The process usually takes several months to complete, so it is recommended that this process begins as soon as a potential caregiver out of State is identified and determined to be a suitable potential placement or resource. If the receiving State finds that the proposed placement is contrary to the interests of the child based on the receiving State's criteria, DCFS may not place the child with that caregiver. The judge still has authority to grant custody or guardianship to the out-of-State caregiver without ICPC approval. Still, there would be no supervision of the home and may be other severe repercussions. See [Disposition Hearing Benchbook Section 8 D](#) for more information on ICPC.

G. EVIDENCE AND TESTIMONY

ARTICLES 424.5, 424.7, 706, 708-9, LA. SUP. CT. RULE XXXIII, PART III, SUBPART II

- (1) EVIDENCE:** The court shall consider all relevant evidence offered by the parties. The court may consider evidence which would not be admissible at the Adjudication Hearing. The court may limit the admissibility or weight of any evidence which it deems unreliable, cumulative, or unduly dilatory. The court should consider the evidence presented and arguments of parties when determining the child's permanent plan and reasonable efforts, including permanency recommendations made by DCFS and CASA.
- (2) PARENTS:** Parents may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.
- (3) CHILDREN:** Children may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.
- **Wishes:** If the child is present in court the child may choose to testify as to his/her wishes, and the court shall consider the child's testimony in the matter.²²
 - **Methods of Testimony:** Any testimony given by a child may be taken by:
 - A videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of the Louisiana Children's Code;
 - An in-chambers conference attended only by the judge and court reporter and by counsel for the child, the petitioner, and the parents; OR
 - If no party objects and the parties agree as to the procedure, the child may be examined "in chambers, on or off the record, and with or without parents and/or counsel being present."²³
 - **Exclusion:** Prior to the commencement of the hearing, the court shall determine whether it is in the child's best interest for the child to remain in the courtroom during the testimony of the witnesses.

PRACTICE TIPS:

- **Child Present or Not:** Whether present or not, the child's attorney shall make sure the court hears the child's wishes (i.e., regarding permanent plan, custody, visitation, placement, services, etc.).²⁴
- **Methods of Communication:** If the child wishes to be heard but is not able to present or does not want to be present in the courtroom, the court should consider the use of other methods of communication, such as audio or visual conferencing.

²² LA. SUP. CT. RULE XXXIII, PART III, SUBPART II.

²³ *Watermeier v. Watermeier*, 462 So. 2d 1272, 1275 (La. App. 5th Cir.), cert. denied, 464 2d 301 (La. 1985).

²⁴ LA. SUP. CT. RULE XXXIII, PART III, PART III, SUBPART II.

- **Well-Being:** The court should inquire about the child’s physical, emotional, mental health and educational needs and identify any gaps in services needed by the child.

(4) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD: The court shall solicit and consider information regarding the care and treatment²⁵ of the child from any foster caregiver providing care for the child who appears for the Permanency Hearing.²⁶

☰ PRACTICE TIPS:

- **Valuable Information to Consider:** The court should value the role of the child’s daily caregivers and the insight they can provide to the court about how the child is doing and what he/she needs. Because of their day-to-day care of the child, foster caregivers have useful information that the court, DCFS, CASA, and parties to the CINC case need to make crucial decisions regarding the child’s well-being. Thus, their role in the court process is to provide current and accurate oral and/or written information about their observations of how the child is doing so that judges can make informed decisions in the best interest of the child.
- **Solicit Information:** While foster caregivers are not parties, they have a legal right to be heard at any CINC hearing regarding a child in their care. There are at least 2 ways the court can solicit and consider information from caregivers. The caregiver can: (1) submit a Foster Caregiver Progress Form to DCFS prior to the hearing and/or (2) attend and speak at the hearing, or both.
- **Submit a Foster Caregiver Progress Form:** The Foster Caregiver Progress Form is one of the ways foster caregivers can exercise their right to be heard but is not required. If the caregiver chooses to complete the form, they will submit it to DCFS, who will bring copies of the form to the hearing. The form can be submitted to DCFS even though the caregiver may not attend the hearing. These forms contain hearsay information and should be treated as information about the child in the same way DCFS provides other information to the court. Even if the caregiver submits the form, they still have the right to attend and be heard at any CINC hearing regarding the child in their care. See the [Foster Caregiver Progress Form Template](#) in the [Appendices Benchbook Section 12](#).
- **Speak at Hearing:** Speak at the Hearing: In accordance with State and Federal law, if the foster caregiver attends the hearing, the court shall solicit information from the caregiver about the care and treatment of the child (even if they submitted a Foster Caregiver Progress Form). At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. This includes foster caregivers. After the court hears from parties and evidence is presented, if another party has not called on the caregiver to speak, the judge should call on them to see if they would like to speak. Some caregivers may wish only to attend and not speak. Judges may allow the caregiver to use the form to guide them when they speak and/or may want to utilize the form to ask the caregiver questions.²⁷

(5) CASA: CASA (if appointed) may be called as a witness in the proceedings by any party or by the court and may request of the court the opportunity to appear as a witness.

²⁵ Neither State nor Federal law provides a definition for “care and treatment,” but DCFS policy states that it “includes information that the foster parent, relative, or pre-adoptive parent feels is critical to the safety and well-being of the child, such as how the child is doing physically, developmentally, emotionally, behaviorally, mentally, socially, and academically and what supports or services are needed for the child or caregiver to properly care for the child.”

²⁶ See La. Ch. C. arts. 623 and 705; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

²⁷ Id.

PRACTICE TIP:

- **Recommendations for Permanency and Services:** Judges should consider CASA’s recommendations for permanency and services necessary for the child. If that information is not included in the CASA report, the court should ask the CASA volunteer for those recommendations and reasons for them. All parties should have the opportunity to examine CASA’s permanency recommendations.

(6) OTHER WITNESSES: On its own motion or the motion of any party, the court may order that non-party witnesses be excluded from the courtroom. On request of a party, the court shall order the exclusion.

PRACTICE TIPS:

- **Cannot Exclude Parties:** Parties to a proceeding cannot be excluded from the courtroom. Only the child can be taken out of the courtroom during testimony that may not be in their best interest to hear. See Article 661(E).
- **DCFS and CASA are Not Parties:** Neither DCFS nor CASA are parties to CINC proceedings. DCFS staff or a CASA volunteer may be excluded if any party plans to call them as a witness. However, a DCFS representative would likely need to remain in court to assist the ADA. See La. Code Evid. Art. 615(B)(2).
- **Foster Caregivers Are Not Parties:** Foster caregivers are not parties. While they have a right to be heard at any CINC hearing regarding a child in their care, they may be excluded and asked to be present only when they speak. However, it is encouraged that they are allowed to remain during the duration of the hearing. Allowing them to be present at the hearing communicates that they are a valued partner in ensuring the child’s well-being. Because they provide day-to-day care to the child, it is also important for them to stay abreast of developments in the case and have the opportunity to meet and communicate with those involved in the case (i.e., the child’s attorney, parents and relatives of the child, the CASA volunteer, etc.). The caregiver’s presence at the hearing may better situate them to support the child during and after the hearing.²⁸
- **Exemption of Witnesses:** In the interest of justice, the court may exempt any witness from its order.
- **Closing a Hearing:** Sequestration is different from closing a hearing upon motion of a party. Closing a hearing means that no one is present except for the parties.

OVERALL GUIDANCE:

- **Engagement:** The court should do all that it can to support and encourage the meaningful engagement of families in CINC proceedings.²⁹ Testifying in court is stressful for many parents and children. Court is intimidating for most individuals (including non-party witnesses), and the stakes could not be higher for parents and children in CINC cases. Many parents and children are coming into court with a history of trauma. Regardless of the trajectory of the case, parents and children may benefit from having their voice heard. It is critical for the judge to consider information provided by the parents and children, and to convey to the parents and children that their testimony is being given due consideration in the court’s ruling. Positive engagement is critical to successful outcomes in the case.³⁰ Judges must create an environment where parents and children are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.³¹

²⁸ Id.

²⁹ Gatowski, *supra* note 7, at 68.

³⁰ Id.

³¹ Gatowski, *supra* note 7, at 16.

H. PERMANENT PLAN CONSIDERATIONS

ARTICLE 702

The court shall determine the child’s permanent plan according to the following priorities of placement:

(1) REUNIFICATION WITH PARENTS: The court may return the child to the legal custody of parents within a specified time period consistent with the child’s age and need for a safe and permanent home, and with or without continued supervision.

PRACTICE TIPS:

- **Requirements and Findings:** In order for reunification to continue to be the permanent plan for the child, parents must be complying with the case plan and making significant measurable progress toward achieving its goals and correcting the conditions requiring the child to be in care. Best practice is to hold more frequent case reviews (or Status Hearings) to ensure progress is continuing to be made and permanency is timely achieved.
- **No ASFA Exception:** At the initial Permanency Hearing, some courts approve an “ASFA exception” or “ASFA extension” as requested by a party or DCFS when a parent has made significant progress towards correcting the conditions requiring the child to be in care and where reunification is likely. However, there are no specific ASFA provisions that provide for such extensions or exceptions. Instead, the court can maintain reunification as the child’s permanent plan in accordance with the findings required in Article 702(C)(1). If such a finding is made and reunification remains the permanent plan or concurrent permanent plan at this hearing, more frequent case reviews (or Status Hearings) should be scheduled to ensure progress is continuing to be made and permanency is timely achieved.
- **Granting Custody to Parent:** In some cases, the permanent plan may not be returning the child to a parent’s custody but rather “granting” custody to another parent who did not have custodial rights to the child and/or was not previously legally filiated with the child.³²
- **Child Welfare Safety Assessment and Decision Making Model (CWADM):** If the child has been removed from his/her parents and reunification is still the case plan goal, the court should insist on a clear articulation of the current safety threat keeping the child in foster care or in an some other out-of-home placement. Children should be returned home immediately once all safety threats have been eliminated regardless of whether the case plan has been completed. The CWADM includes an assessment used by DCFS (and should be used by all child welfare stakeholders) to help determine whether a child is safe or unsafe at all junctures of the CINC proceeding. A child is considered safe when: (1) there are no threats of danger, (2) if there is a threat of danger, the child is not vulnerable to the threat of danger; or (3) if there is a threat of danger, the parents or caretakers possess sufficient protective capacities to manage the threat of danger and keep the child safe. At each hearing, the court should make the following inquires to assess what barriers if any exist, that make it unsafe for the child to return home:
 - Are the threats of danger to the child still present?
 - Is the child still vulnerable to those threats?
 - Does the parent still lack protective capacities?

If the child can be safely returned to (or placed in) the custody of one or both of his/her parents, the court should order the child be returned and, if needed for the child’s protection and safety, could consider ordering an in-home safety plan, PO, and/or other terms and conditions. Other terms and conditions could include ongoing supervision by DCFS and/or another agency. Courts should consider carefully whether parents can provide a minimally adequate standard of care for their child. All issues in the case do not need to be resolved before a child can return home. A child should be returned home when he/she can be safe in the home, which may or may not also require supportive services and protective supervision.³³ See [Child Welfare Safety Assessment and Decision Making Model \(CWADM\) Benchbook Section 11](#).

³² Gatowski, *supra* note 7, at 214.

³³ Gatowski, *supra* note 7, at p. 229.

- **Reunification Within Specific Time Period:** The court may also set a specific time period to return the child to his/her parents consistent with the child’s age and need for a safe and permanent home. In such instances, the court would maintain that the child’s permanent plan is reunification and set a specific time period for the child’s return home (or custody to be granted to a parent, if applicable).
- **Reunification or Trial Placement:** It is important for judges to know that DCFS policy allows for a trial placement of the child with his/her parents if the home is determined to be safe, but there are still some transition concerns and/or items left to resolve. DCFS policy states: “If trial placement back with the parent with the Department maintaining custody is in the child’s best interest, it should not exceed 90 days as long as the child is safe, and the parent is progressing in his/her case plan. Trial placement should only be initiated when the parent’s home is deemed safe.”³⁴ In this case, the court would order that the child remain in DCFS custody, and DCFS could choose a “trial placement” for the child with his/her parents. The court could also order a transition period with a goal date for reunification. If the child is moved to his/her parent’s home with DCFS retaining custody, the court can gain information at the next hearing about how the child and parent are doing in the home together (in such cases, the court should consider setting a hearing sooner than the timeline for Case Review or Permanency Hearings).

(2) ADOPTION: If reunification is no longer a viable option, the court may make adoption the permanent plan for the child.

PRACTICE TIPS:

- **Governing Articles:** Agency (i.e., DCFS) adoptions are governed by Chapter 9 of Title XII of the Children’s Code (Articles 1198-1220). The parents must either surrender their rights to the child or have their parental rights terminated per applicable law before the State may proceed with an adoption.
- **Adoption and Reasonable Efforts:** If the permanent plan for the child is adoption, the court must hold DCFS accountable to expeditiously completing adoption for the child. Finding relatives, individuals, and/or foster parents able to adopt the child, prompt certification of relatives or individuals, timely filing of the TPR Petition, proof that the Adoption Petition was filed, obtaining surrender documents, etc. are not only critical to show reasonable efforts to achieve permanency for the child but also essential for the child’s well-being and security.

(3) PLACEMENT WITH LEGAL GUARDIAN: If reunification is no longer a viable option, the court may make legal guardianship the permanent plan for the child.

PRACTICE TIPS:

- **Governing Articles:** Legal guardianship is governed by Chapter 19 of Title VI of the Louisiana Children’s Code.
- **Purpose of Guardianship:** Legal guardianship appears to be underutilized in Louisiana. Guardianships, although not as legally durable as adoption, can provide permanency for a child. Legal guardianships may provide more expedient permanency than adoption since they do not require a termination of parental rights. Guardianships are often preferred by relative caregivers who may not want to jeopardize familial bonds by adopting the child.
- **Financial Support and Subsidy:** If a relative or individual is interested in becoming the child’s legal guardian, foster care certification must be completed (along with other DCFS requirements) to receive a subsidy from the State after a transfer of guardianship. In such cases, the court may want to request updates on status of certification to ensure timely completion. The guardian may also be eligible for some of the financial support listed under “[Financial Support](#)” below.³⁵

³⁴ DCFS Policy 6-2000 “Planning for Exit from Foster Care Custody” (April 1, 2020).

³⁵ See <http://dcfs.louisiana.gov/page/grandparent-relative-caregiver> for more information. DCFS has legal and custodial information available on their website for kinship caregivers: <http://dcfs.louisiana.gov/page/kinship-caregivers-legal-and-custodial-information-fact-sheets>.

- **Authority of Guardian (Articles 116 and 718-724.1):** Guardianship means the judicial placement of a child under the duty and authority of a guardian to make decisions in matters having a permanent effect on the life and development of the child. A legal guardian has greater authority than a custodian and only slightly less authority than that exercised by a natural or adoptive parent. Guardians are given legal authority over the child until the child turns 18 years of age, which includes: physical custody of the child; protecting the child; training and providing reasonable discipline for the child; providing food and shelter; enrolling and making educational decisions for the child; and, making medical decisions for the child.
- **Permanent Placement:** Placement of a child with a legal guardian is a “permanent placement,” eliminating further periodic case or permanency reviews. The order granting legal guardianship remains in force until the child reaches his/her 18th birthday (unless modified by law or another duration is set by the court).
- **DCFS No Longer Involved in Case:** Since DCFS is no longer involved once guardianship is granted, DCFS-provided services and supports will generally not be available to the family unless a DCFS Family services case is opened.
- **Modification:** Any party has the right to seek a modification of the guardianship judgment, as may be needed. The modification process is governed by Articles 713 to 717.
- **Parental Rights:** Guardianship does not require that the legal parents’ rights to the child be surrendered or terminated, although some of the parent’s parental rights are transferred to the legal guardian. Thus, guardianship could be useful in cases where, for example, a grandparent can care for the child, but adoption is not an option.
- **Parent Contact:** The court can order conditions regarding parent contact in the judgment granting the guardianship. The court’s authority to limit the frequency of visitation includes the authority to forbid contact with the parents altogether. If there is proof by clear and convincing evidence that parental contact would cause substantial harm to the child, contact can be constitutionally limited.³⁶

 **HELPFUL GUIDANCE:**

- **Parents’ Obligation:** The parents still have an obligation to financially support the child even when guardianship of the child has been granted to someone else.

(4) LEGAL CUSTODY TO RELATIVE: If reunification is no longer a viable option, the court may make placement of the child in the legal custody of a relative who is willing to offer a safe, wholesome, and stable home for the child the permanent plan for the child.³⁷

 **PRACTICE TIPS:**

- **Definition of Relative:** Article 603(20) defines “relative” as an individual with whom the child has established a significant relationship by blood, adoption, or affinity. Affinity means relationship by marriage.
- **Purpose of Custody to Relative:** While custody can offer a more expedient resolution of the case than keeping a child in foster care, a permanent plan of adoption or guardianship to a relative shall be considered by the court before custody to the relative. Article 603(22) does not include permanent custody to a relative in the definition for “permanent placement.” The court can set custody to a relative as the permanent plan, but it is less favored as a permanent placement.
- **Financial Support and Subsidy:** Caregivers who have been certified to receive a board rate for the child placed in their care by DCFS will not continue to receive a subsidy if custody is transferred from DCFS to the caregiver. The custodian may be eligible for some of the financial support listed under “[Financial Support for Relatives and Other Individuals](#)” below.

³⁶ La. Ch. C. art. 723, 2011 Comments.

³⁷ The Children’s Code uses the word “placement” interchangeably with “custody.” For example, in some instances it uses “placement” and prohibits the court from specifying the placement of a child in DCFS custody (Article 672). However, in Article 702 it states that the court can place the child in the legal custody of a relative.

(5) ALTERNATIVE PERMANENT LIVING ARRANGEMENT (APLA): If the child is 16 years of age or older, the court may make placement in the least restrictive, most family-like APLA the permanent plan for the child. DCFS shall document the compelling reason for recommending this plan over the preceding higher priority alternatives in the child’s case plan.

PRACTICE TIPS:

- **APLA Is Not a Permanent Placement:** Per Article 603(22), APLA is not a permanent placement. APLA is a plan of last resort. If APLA is set as the youth’s permanent plan, DCFS is still required to identify and establish permanent connections for the youth.
- **Search for Family:** Per DCFS policy, if the youth is in a residential placement, DCFS is still required to continue to search for a family placement.³⁸ The search shall continue, unless a current assessment indicates the youth cannot be maintained in a less restrictive placement due to his/her behavior or lack of appropriate skills to function satisfactorily in a family and the need for treatment continues. Efforts to locate a family home placement should resume when ongoing assessment indicates a family can safely provide for the youth.³⁹
- **Example of Compelling Reasons:** The following is an example of when there may be compelling reasons for a plan of APLA:
 - A youth, age 16, lives in a stable therapeutic foster family placement. The foster parents are not interested in adoption or guardianship or it is not possible, but they have stated the youth can remain there after his 18th birthday if he elects to go into the extended foster care program. The youth feels comfortable and safe in the home and wishes to remain. The APLA would be for the youth to continue to reside with the foster parents into adulthood.

HELPFUL GUIDANCE:

- **For Ages 16 and 17 Only:** APLA is an option only for youth 16 and 17 years old.⁴⁰ APLA is the plan of last resort as a permanency goal for a youth. This option does not provide the youth as much legal gravity as reunification, adoption, guardianship, or a custody. It also lacks the stability of an ongoing support network for the youth during his/her transition into adulthood.

OVERALL GUIDANCE:

- **Permanency Goal:** At the Permanency Hearing, the court should consider the permanency goal recommended by DCFS for the child (which should be included in the case plan and/or court report) in addition to the recommendation of CASA regarding permanency. The court must also consider evidence presented and the arguments of the parties when making its permanent plan determination. All permanency goals should include the action steps necessary to achieve the most appropriate permanent plan for the child.⁴¹
- **Federal Requirement to Place Siblings Together:** Per Federal law, DCFS shall make reasonable efforts to place siblings removed from their home in the same foster care, guardianship, or adoptive placement, unless DCFS documents that such joint placement would be contrary to the safety or well-being of any siblings; and if siblings are not so jointly placed, to provide frequent visitation or other ongoing interaction between siblings, unless DCFS documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any siblings. Thus, courts should require DCFS to show evidence that such efforts were/are being made.⁴²
- **Sibling-Type Relationship:** Judges should also be cognizant that a child may have a sibling-type relationship and bond with another child who is not a biological sibling but just as significant to the child.

³⁸ DCFS Policy 6-860 “Permanent Plan Goal: Alternative Permanent Living Arrangement.” (August 15, 2020).

³⁹ In 2021, Louisiana will have to comply with the Family First Prevention Services Act (H.R. 5456 (P.L. 115-123)), signed into law as part of the Bipartisan Budget Act on February 9, 2018, which will make significant changes to the placement of children in congregate care (i.e., group homes, qualified residential treatment programs, etc.).

⁴⁰ DCFS Policy 6-860 “Permanent Plan Goal: Alternative Permanent Living Arrangement.” (August 15, 2020).

⁴¹ CW Policy 6-840 Permanent Plan Goal: Reunify with Parent(s) or Principal Caretaker(s); CW Policy 6-802 “Case Plan Goal Establishment and Concurrent Planning” (October 1, 2019).

⁴² See 42 U.S.C. § 671(a)(31)(A) and 42 U.S.C. § 671(a)(31)(B).

- **Importance of Placing Full and Half-Siblings Together:** The child’s significant relationships and bonds with another child with whom he/she has been raised should also be considered for placement (when the child is in DCFS custody), custody, guardianship, and visitation.⁴³ The research shows that when siblings, including those the child considers siblings, are separated from each other, many children feel “they have lost a part of themselves,” adding to the pain and anxiety they experience over removal from their parents and home.⁴⁴ Unless contrary to their safety and well-being, supporting and sustaining the sibling bonds of children who have been placed in foster care or otherwise removed from their homes should be a priority for the child welfare system and the court.
- **Continued Obligation to Find Potential Caregivers:** All persons and parties before the court have a continuing obligation to achieve timely permanency for the child. It is critical for relatives and other individuals to be found as soon as possible, so that permanency can be achieved expeditiously if reunification becomes no longer viable. Finding potential placements early on in the case is also crucial to reducing further trauma to a child who may form secure attachments with caregivers as a case continues. The court’s role is to persist in holding persons before the court, parties, and DCFS accountable to these obligations.
- **Information on Potential Caregivers:** If reunification is not a feasible permanent plan, courts should confirm that DCFS has investigated all available information on relatives and other individuals who are potential caregivers (i.e., child welfare background checks, criminal background checks, ICPC, home studies, etc.). This information should be available for the judge at Permanency Hearings and subsequent hearings until the child is permanently placed. DCFS should provide updates about these processes in its Permanency Court Report. See also [Appendices Benchbook Section 12](#) for the [Family Connection Form](#) and [Circle of Influence Form](#) DCFS uses with children and parents to help identify potential caregivers and supports.
- **Preference to Relatives Per Federal Law:** For States to receive funding for foster care and adoption assistance, Federal law under Title IV-E of the Social Security Act requires that States “consider giving preference to an adult relative over a nonrelated caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards.”⁴⁵ Per the Fostering Connections to Success and Increasing Adoptions Act, anytime a relative is identified DCFS is required to contact all known adult relatives of the child and to inform them about placement and permanency possibilities for the child. Title IV-E of the Social Security Act also requires all States to exercise due diligence to identify and provide notice to all grandparents, all parents of a sibling of the child, where such parent has legal custody of the sibling, and other adult relatives of the child (including any other adult relatives suggested by the parents) that (1) the child has been or is being removed from the custody of his/her parents; (2) the options the relative has to participate in the care and placement of the child; and (3) the requirements to become a foster parent to the child. These Federal laws are based on evidence that placement with relatives maintains the child’s connections with his/her family, and children generally fare better in many child well-being indicators when placed with a relative.⁴⁶
- **Suitable Individuals and Cultural Considerations:** The court should press parties and persons before the court to consider not only biological relatives but also individuals with whom the child has a significant relationship (also referred to as “fictive kin,” “suitable persons,” or “suitable individuals”). These persons are not related by blood, marriage, or adoption to the child but could be close family friends or someone the child considers family. It is important to consider the child’s culture, heritage, customs, traditions, religion, etc., in determining placement and custody options. For example, some children may call a close friend their “auntie” even though they are not related by blood. However, the auntie may be the best placement for the child but overlooked if no thorough inquiry is made.
- **Parents of Half-Siblings:** If there are half-siblings, the court should consider granting custody of the child to the sibling’s parent if appropriate and safe to do so. The sibling’s parent may already have a relationship with the half-sibling, but even if not, that parent may be willing to take custody to keep the siblings together.⁴⁷
- **Child Specific Certification for the Relative or Suitable Person:** DCFS provides “child specific” foster care certification for relatives and others who the child knows and may be a good placement (and potential permanent plan placement). This certification requires fewer classes than general foster care certification and allows the relative or individual to receive a board

43 Id.; See also <https://www.ncsl.org/print/cyf/FosteringConnectionsSummary.pdf>.

44 Kernan, Emily. Keeping siblings together: past, present, and future. National Center for Youth Law, <https://youthlaw.org/publication/keeping-siblings-together-past-present-and-future/>.

45 42 U.S.C. § 671(a)(29).

46 See Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>; Center on Children and the Law. (2016) Judicial Tip Sheet: Kin First. Washington, DC: American Bar Association, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/july-2016/judicial-tip-sheet-kin-first/; Issue Brief, Strong Families (2019) Why Should child protection agencies adopt a kin-first approach? Casey Family Programs, <https://www.casey.org/kin-first-approach/>; National Conference of State Legislatures. (2019) The Child Welfare Placement Continuum: What’s Best for Children?, <https://www.ncsl.org/research/human-services/the-child-welfare-placement-continuum-what-s-best-for-children.aspx>; Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/placement.pdf>.

47 See Child Welfare Information Gateway. (2019). Sibling issues in foster care and adoption. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/siblingissues.pdf>.

rate (monthly financial support) like a certified foster parent. The child can be placed with the caregiver prior to completing the certification but will not receive retroactive financial assistance. Thus, DCFS should provide the caregiver with information set forth above about the other forms of potential financial support. However, if the child receives disability or survivor benefits, this would be in place of the monthly board rate (they can choose the higher of the amount). If applicable, the court may want to request updates on status of certification at future hearings to ensure timely completion.

- **Financial Support for Relatives or Individuals:** Relatives and other persons who are granted custody and/or guardianship of the child may be eligible for financial support, for example, through the Kinship Care Support Program (KCSP), Supplemental Nutrition Assistance Program (SNAP), Family Independence Temporary Assistance Program (FITAP), and/or Child Support Program (CSP). If one or both parents of the child are deceased, the caregiver may also be eligible for survivor benefits owed to the child. The caregiver may also be eligible to receive the child’s disability benefits (if the child is entitled to them). However, if the relative or individual is foster care certified and the child receives disability or survivor benefits, the caregiver would have to choose between those benefits and the monthly foster care board rate (They can choose the higher of the amounts).⁴⁸
- **Transition Plan:** If the permanent plan includes a change in custody, transfer of guardianship, or a move of any kind, judges should be cognizant of the impact the transition may have on the child.⁴⁹ Judges should consider including a transition plan that is in the best interest of the child in the Order. DCFS policy recognizes that it is traumatic for a child to be moved from one caregiving setting to another even when the change is made in the best interests of the child or to achieve permanency for the child. When a move will occur, it is critical to the child’s well-being, regardless of the reason, for judges to collaboratively strategize with all involved to reduce the trauma experienced by the child.⁵⁰ DCFS has developed tools to try to minimize this trauma, including a guide for planful transitions. Transition plans can include multiple, extended visits, such as overnight visits as well as other additional contacts via Zoom, FaceTime, etc., to ensure the most positive experience possible for the child.⁵¹ These activities should occur both prior to the move and after the move to provide the child a less traumatic separation from previous caregivers and to enhance the connection to the new caregivers.⁵²

I. 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); and 45 C.F.R. § 1356.21(b)-(h)

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

(1) ESSENTIAL JUDICIAL FINDING – PERMANENT PLAN FOR THE CHILD: While parties, DCFS, and CASA may propose a permanent goal for the child, per Federal and State law, the court shall determine the most appropriate permanent plan that is in the child’s best interest in accordance with the priorities outlined in Article 702(D) (also outlined in the Permanent Plan Considerations Section H above) and set within the timeframes required by law.

The court shall base the child’s permanent plan rulings and findings on the following factors:

- **Health and Safety:** The child’s health and safety is the paramount concern in the court’s determination of the permanent plan.
- **Significant Relationships:** A child’s need for continuing contact with any relative by blood, adoption, or affinity with whom the child has an established and significant relationship in accordance with Article 1269.2.
- **Consult with the Child:** The court shall consult, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

⁴⁸ See <http://dcfs.louisiana.gov/page/grandparent-relative-caregiver> for more information. DCFS has legal and custodial information available on their website for kinship caregivers: <http://dcfs.louisiana.gov/page/kinship-caregivers-legal-and-custodial-information-fact-sheets>.

⁴⁹ See Touchpoints. Preparing Children for Transitions. Milwaukee, WI: Coalition for Children, Youth, Families, <https://wifostercareandadoption.org/cms/assets/uploads/2017/10/touchpoints3.pdf>; Child Welfare Information Gateway. (2016). Reunification: Bringing your children home from foster care. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/reunification.pdf>; Child Welfare Information Gateway. (2018). Helping your foster care child transition to your adopted child. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau, https://www.childwelfare.gov/pubPDFs/f_transition.pdf.

⁵⁰ DCFS Policy 6-300 “Guidelines for Selecting a Care Setting/Replacement Resource” (April 1, 2019).

⁵¹ DCFS Policy 6-305 “Guidelines for Care Setting Decision Making for Children Under Age Six” (March 15, 2019).

⁵² Id.

- **Both In-State and Out-of-State Placements:** In the case of a child who will not be returned to his/her parents, the court shall consider in-State and out-of-State permanent placement options for the child.

PRACTICE TIPS:

- **Purpose:** The purpose of the Permanency Hearing is for the court to make a determination as to the permanent plan for the child. Foster care is meant to be temporary. ASFA requires a permanent plan for the child that will be stable and lasting and will occur as soon as possible.
- **Concurrent Permanent Plan:** One of the priorities listed in Article 702(D) (also outlined in the [Permanent Plan Considerations Section H](#) above) should be clearly articulated in the Permanency Order, or two if a concurrent permanent plan has been approved by the court.

HELPFUL GUIDANCE:

- **Preserving Child’s Significant Relationships:** Preserving a child’s significant relationships is an important aspect of ensuring continuity and the child’s sense of security.⁵³

(2) ESSENTIAL JUDICIAL FINDING - REASONABLE EFFORTS: At the Permanency Hearing, the child’s permanent plan shall be determined by the court, which shall make written and individualized findings within the mandated timeframes as to whether reasonable efforts were or were not made by DCFS to: (1) reunify the parents and the child or (2) finalize the child’s placement in an alternative safe and permanent home according to child’s permanent plan. Per State law, these findings shall be made at each required Permanency Hearing;⁵⁴ per Federal law, these findings shall be made within 12 months from the date the child is considered to have entered foster care and at least once every 12 months thereafter while the child remains in foster care. However, if the court makes a judicial determination that reasonable efforts to reunify the parents and child were not required per Article 672. 1, the child’s permanent plan shall be determined by the court and a reasonable efforts finding shall be made by the court immediately or within 30 days of the court’s Article 672.1 ruling and at least once every 12 months thereafter while the child remains in foster care. Determining and approving the child’s permanent plan and making requisite findings within the mandated timeframes are critical for the State to maintain ongoing Title IV-E foster care eligibility for the child.⁵⁵

- a. **Reasonable Efforts Required:** The court shall make one of the following judicial determinations for each child as to the reasonable efforts made by DCFS based on the facts and circumstances of the case and the efforts articulated by DCFS:
 - **DCFS Made Reasonable Efforts To:**
 - Reunify the parents and child; OR
 - Finalize the child’s placement in an alternative safe and permanent home in accordance with the child’s permanent plan including, if appropriate, through an interstate placement.
 - **DCFS Did Not Make Reasonable Efforts To:**
 - Reunify the parents and child; OR
 - Finalize the child’s placement in an alternative safe and permanent home in accordance with the child’s permanent plan including, if appropriate, through an interstate placement.

⁵³ La. Ch. C. art. 702, 2001 Comments.

⁵⁴ See La. Ch. C. arts. 672.1 and 702.

⁵⁵ See 42 U.S.C. § 671(a)(15)(E) and 672(a)(1);, 45 C.F.R. § 1356.21(h)(2), 45 C.F.R. § 1356.21(b)(2) and 1356.71(d)(1)(i); See also Child Welfare Policy Manual, Section 8.3C.4, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=59 Edwards, Leonard. “Overcoming Barriers to Making Meaningful Reasonable Efforts Findings.” ABA Child Practice Today. January 29, 2019, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/overcoming-barriers-to-making-meaningful-reasonable-efforts-find/; Edwards, Leonard. (2014). Reasonable Efforts: A Judicial Perspective, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=210§ionid=2&articleid=5428> (“Congress designed the law to ensure child welfare agencies provide families with services to prevent disruption of the family unit, and to respond to the problems of unnecessary removals and foster care drift. The reasonable efforts requirement is an enforcement mechanism to guarantee that each State provides adequate preventative and reunification services.”); Child Welfare Information Gateway. (2020) Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/reunify.pdf>.

- b. **Reasonable Efforts To Reunify Not Required:** If the court has made a judicial determination that reasonable efforts were not required per Article 672.1, it shall make a written, separate, and individualized finding that reasonable efforts were not required in the Order.
- **Per Judicial Determination:** Per Article 672.1, at any time in a CINC proceeding when a child is in the custody of DCFS, a motion may be filed for a judicial determination that efforts to reunify the parents and child are not required. DCFS shall have the burden of demonstrating by clear and convincing evidence that reunification efforts are not required, considering the health and safety of the child and the child's need for permanency. Reasonable efforts to reunify the parents and child are not required if the court determines one of the reasons outlined in Article 672.1 are met.

 **PRACTICE TIPS:**

- **Reasonable Efforts:** If the child has been removed from the custody of his/her parents, the courts and DCFS have an ongoing reasonable efforts obligation under State and Federal law until the child is reunified with his/her parents or achieves permanency. DCFS has the burden of demonstrating the reasonableness of the efforts they made to: (1) prevent or eliminate the need for removal, (2) reunify the family, and/or (3) achieve timely permanency for the child. The court shall make these reasonable effort findings for each child accordingly in its Orders, thus, holding DCFS accountable. In all reasonable efforts findings, each child's health and safety shall be the paramount concern and should be based on the facts and circumstances of each individual case and child.⁵⁶
- **Reunify the Family:** When the permanent plan is family reunification, DCFS should be held accountable for meeting its obligation to provide appropriate services to assist the parents in their effort to reunify with their child unless the court finds that reasonable efforts were not required per Article 672.1. The court must make a thorough inquiry and provide specific factual findings about the efforts DCFS is making and/or made to reunify the child with his/her parents and whether such efforts were reasonable. The court should identify any areas where DCFS efforts are inadequate and enter orders to address the inadequacies. State's determine at which hearing this finding must be entered into the Order.⁵⁷ Louisiana the Children's Code requires the reasonable efforts to reunify the family finding in the Judgment of Disposition and all Permanency Orders.
- **Examples of Reunifying the Family Include (but are not limited to):** Conducting a thorough Dispositional alternative investigation, developing and/or updating the case plan with the parents, ensuring the case plan is reasonably related to achieving reunification, providing quality visitation time (or at least opportunities for them to take place) between the parents and the child, making diligent efforts to establish paternity or maternity, maintaining (or attempting to maintain) ongoing contact with the parents, helping (or attempting to help) the parents achieve case plan goals and involving parents in the case planning process, assisting (or attempting to assist) parents in timely accessing appropriate and effective services and supports needed to address the conditions for the removal and safety concerns, conducting appropriate assessments with the family to identify safety concerns and ways to address them, facilitating FTMs with the parents, seeking court interventions (i.e., TRO, PO, and/or court-ordered safety plan), etc.
- **Achieve Permanency:** When the safe return of the child to his/her parents is no longer viable, DCFS shall make reasonable efforts to place the child in a timely manner in accordance with the permanent plan (i.e., adoption, legal guardianship, custody to a relative, etc.) and complete the steps necessary to finalize the permanent placement of the child. The court should be aware of the steps necessary to effectuate any permanency plan. Judges should actively inquire about each step in the process of finalizing the current permanency plan and issue orders clearly articulating the subsequent steps DCFS must take to finalize the plan and the timeframes for the completion of those steps. Issuing general orders to "proceed to finalization of an adoption," for example, does not outline the specific steps and timelines needed to actually complete the adoption process so the court can adequately assess progress at its next hearing. Courts will have difficulty holding DCFS accountable for making reasonable efforts if those efforts are not spelled out in

⁵⁶ Id.

⁵⁷ Gatowski, *supra* note 7, at 267.

court Orders at each review hearing.⁵⁸ Judges will generally make this third reasonable efforts finding at the Permanency Hearing or TPR Hearing. In Louisiana, the Children’s Code requires this finding in all Permanency Orders. Still, it may also be applicable at a Disposition and/or Case Review Hearing.

- **Examples of Achieving Permanency Include (but are not limited to):** Conducting a thorough Dispositional alternative investigation, ensuring the case plan is reasonably related to achieving permanency, providing quality visitation time (or at least opportunities for them to take place) between the child and potential placements, making diligent efforts to establish paternity or maternity to determine other possible relative placements, making diligent efforts to search for and assess possible placement with relatives or other individuals with whom the child has a significant relationship, timely initiation of ICPCs and background checks, involving youth in the development of their Youth Transition Plan (YTP), helping the youth implement the YTP, planning for the youth’s successful transition to adulthood (which includes establishing permanent adult connections, independent living skills, career path, etc.), assessing whether the youth wants to participate in extended foster care, continuing to search for family-like placements for children placed in group homes, timely seeking TPR, making efforts to complete adoption if the parents’ rights have been terminated, proof that Adoption Petition filed, proof of surrender documents, etc.
- **Sanctions and Permanency Planning:** Sanctions may be ordered if DCFS has failed to comply with permanency planning requirements. See Article 712.
- **DCFS Did Not Make Reasonable Efforts:** If the court finds that DCFS did not make reasonable efforts, this finding does not preclude the court’s other findings and/or orders.
- **Case Plan Goal:** The case plan goal (or permanency goal) should not be changed from reunification to adoption or guardianship unless the court has made a determination per Article 672.1 that reasonable efforts to reunify the parent and child are not required.

(3) OUT OF STATE PLACEMENT: If a child is in an out-of-state placement, the court shall make findings as to whether the placement is safe, appropriate, and otherwise in the best interest of the child.

PRACTICE TIP:

- **Interstate Compact on the Placement of Children (ICPC):** See information on ICPC above under the [Applicability of Federal Laws and Regulations](#) section and in [Disposition Hearing Benchbook Section 8 D](#) for more information on ICPC.

(4) ALTERNATIVE PERMANENT LIVING ARRANGEMENT (APLA): For a child whose permanent plan is placement in the least restrictive, more family-like APLA, the court must:

- Make findings as to why, as of the date of the hearing, APLA is the best permanency plan for the child; AND
- Provide compelling reasons why it continues to not be in the best interests of the child to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative.
- **ESSENTIAL JUDICIAL INQUIRY - YOUTH INPUT ON APLA:** If the permanent plan is placement in the least restrictive, most family like APLA, the court must consult with the child on the appropriateness of this plan.

⁵⁸ Gatowski, supra note 7, at 267; Edwards, Leonard. (2014). Reasonable Efforts: A Judicial Perspective, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=210§ionid=2&articleid=5428>(“The law requires judges to make these findings, and good reasons exist to do so. By making the reasonable efforts/no reasonable efforts findings the court informs the parties, the agency, and the Federal government that the agency is or is not meeting its legal responsibilities. By monitoring the agency’s actions, the court ensures that the agency has complied with its legal obligation to provide services to prevent the child’s removal from parental care, assist the family safely to reunify with its child, and make certain to finalize a permanent plan for the child. The reasonable efforts/no reasonable efforts finding are the most powerful tools juvenile court judges have at their disposal in dependency cases, and attorneys and judges should pay special attention to them to ensure that the agency is doing its job, to make positive changes in the child protection system, and, most importantly to improve outcomes for children and families.”).

J. ADVISEMENTS

ARTICLE 702

(1) PERMANENT PLAN OF REUNIFICATION: If the court determines that the permanent plan is reunification, it shall advise the parents that:

- It is their obligation to achieve the case plan goals and correct the conditions that require the child to be in care within the time period specified by the court; AND
- Otherwise, an alternative permanent plan for the child will be selected and a TPR Petition will be filed.

(2) PERMANENT PLAN OF ADOPTION: If the court determines that the permanent plan is adoption, it shall advise the parents of:

- Their authority to voluntarily surrender the child and consent to the adoption prior to the filing of a TPR Petition.

HELPFUL GUIDANCE:

- **Advisements for Other Permanent Plans:** The Children’s Code is silent as to advisements for other permanent plans; however, the court should make clear to all persons before the court how critical it is to achieve the child’s permanent plan as soon as possible, which is especially important in mitigating further trauma to the child.
-

K. FURTHER FINDINGS AND ORDERS

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

The court may make additional orders in the best interest of child, such as:

(1) CUSTODY/GUARDIANSHIP: The court retains jurisdiction over custody and guardianship and may maintain or modify the current Disposition, which may include the following dispositional alternatives provided in Articles 681-683:⁵⁹

- Return the child to the custody of (or grant custody to) parents, with or without continuing supervision of DCFS (i.e., in-home safety plan) and/or issuing a PO;
- Place the child in the custody of a relative or suitable person;
- Place the child in the custody of a private or public institution or agency (i.e., DCFS);
- Grant guardianship of the child to a nonparent;
- Remove the child from parental custody and place the child in the custody of a private or public institution or agency (i.e., DCFS) (If the court orders that a child be removed, it must also make contrary to welfare and reasonable efforts findings per State and Federal law).⁶⁰
- Commit a child found to have a mental or intellectual illness to a public or private institution for persons with mental or intellectual illness; OR
- Grant other such Disposition or combination of the above Dispositions as the court deems to be in the best interest of the child. See [Disposition Hearing Benchbook Section 8 J](#) for more information on dispositional alternatives.

(2) CASE PLAN: On its own motion or upon motion of any party for good cause shown, the court may consider the content or implementation of the case plan or of any response filed concerning it. See [Case Review Hearings Benchbook Section 9](#) for more information on the content and implementation of the case plan.

⁵⁹ La. Ch. C. art. 309 (“A court exercising juvenile jurisdiction shall have exclusive authority to modify any custody determination rendered, including the consideration of visitation rights in CINC proceedings.”).

⁶⁰ See 45 C.F.R. § 1356.21(c); 42 U.S.C. § 472(a)(2)(A)(ii); 42 U.S.C. § 479(B); See also Child Welfare Policy Manual, Section 8.3A.6, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp?citID=37

PRACTICE TIP:

- **Modify Case Plan:** If the permanent plan ordered by the court is different from the permanency goal recommended by DCFS in the case plan, other circumstances in the case have changed, or new information has come to light, the case plan should be modified accordingly. Additional or different services may be needed than those identified in the most recent case plan. The visitation schedule may need to be modified if, for example, the goal is no longer reunification (i.e., may want to increase frequency of visits with a potential relative or other adoptive placement).⁶¹

(3) PLACEMENT IN DCFS CUSTODY: While the court has the authority to change custody, if the child is in DCFS custody, the court has no authority to order a specific placement for the child (i.e., foster parents the child will be placed with by DCFS). However, pursuant to Article 672(A)(2), the court does have the authority to disapprove the placement chosen by DCFS and order DCFS to choose a more suitable placement. Per Article 672(A)(2), there must be a contradictory hearing and the judge may disapprove the placement upon finding that the placement is not in the child’s best interest. For example, after a contradictory hearing, the court could determine that the placement chosen by DCFS is not in the child’s best interest if the child is not placed with his/her siblings.⁶²

PRACTICE TIPS:

- **Disapprove Case Plan:** Alternatively, the judge is given the authority and responsibility to review the case plan at Permanency Hearings upon motion of the court or party. Thus, because the placement of the child is central to the case plan (referred to as the “Child’s Care Setting” in the case plan), the court (alternatively to disapproving the placement pursuant to Article 672(A)(2)) could reject the case plan in part due to not approving the placement chosen by DCFS.
- **Revise Case Plan:** The elements of the case plan related to the child are often contingent on the placement. Thus, if the court disapproves the placement, the court should carefully review the case plan to see if other parts of the plan need to be revised accordingly.
- **Court’s Role in Placement:** If the child is in DCFS custody, the court should address the child’s current placement to ensure that the child is safe, and to determine whether the child’s health, educational, cultural, religious, and emotional needs are being met. This may include but is not limited to the following:
 - Ensuring DCFS has made reasonable efforts to place siblings together;⁶³
 - Reviewing information regarding the child’s well-being and overall adjustment to his/her placement and to school;
 - Evaluating the specific services being provided to see if they are meeting the child’s physical, emotional, and educational needs;
 - Examining the steps DCFS is taking to ensure foster caregivers are following the “reasonable and prudent parent standard” and that the child has regular opportunities to participate in age- or developmentally-appropriate events such as sports, field trips, and overnight activities;
 - Ensuring that all health and education information is up to date and that the child is receiving health and education services;
 - Ensuring that the caregivers of a child with a trauma history have the specialized training and support needed for the placement to succeed;⁶⁴
 - Ensuring that a child’s connections to his/her cultural heritage, religion, ethnicity, and traditions are preserved and promoted; AND

⁶¹ Gatowski, *supra* note 7, at 268.

⁶² The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351).

⁶³ *Id.*

⁶⁴ Courts are encouraged to attend TBRI Fridays, sponsored by Crossroads NOLA, and to encourage others to attend as well: <https://crossroadsnola.org/tbri/>.

- Asking DCFS to explain how the placement is appropriate to prepare the child for his/her transition into the permanent placement (i.e., reunification, adoption, guardianship, custody with a relative, etc.).⁶⁵

(4) VISITATION/FAMILY TIME: The court has the authority to modify the visitation schedule per Article 309.⁶⁶

☰ PRACTICE TIP:

- **Court's Authority Over Visitation:** Although the plan for visitation between the child and his/her parents, siblings, and others is included in the case plan, Article 309 gives the court continued jurisdiction over visitation in all CINC proceedings.

☰ HELPFUL GUIDANCE:

- **Court's Role in Visitation at Permanency and its Ongoing Obligation:** At the Permanency Hearing, the court's role is to determine the child's permanent plan. It is important for courts to determine whether the visitation/family time schedule needs to change to align with achieving the permanent plan. Anytime there is a change in the child's circumstances, placement, custody, and/or permanent plan, the court should consider if changes need to be made to the visitation schedule to better serve the best interest of the child. This may include increasing or decreasing frequency or lengths of visits, moving to less or more supervision, and adding or removing visits and/or contact with siblings, other family members, or significant individuals. The safety and well-being of children should always be paramount in considerations of family time. Judges should ensure the plan for family time is in the best interest of the child, individualized, and age and developmentally appropriate for the child.
- **Reunification:** As long as the permanent plan remains reunification, preserving and enhancing the parent-child relationship while providing for the safety and well-being of the child is crucial for many reasons (i.e., maintaining attachment, reducing trauma, providing ability to put parenting skills into practice, etc.), including the child's future transition back into the custody of his/her parents. Initiating or continuing visitation and/or contact with relatives or individuals is critical for the child's well-being.
- **Parents' Rights with Regard to Involvement:** If the child has been removed from the parents' custody and reunification remains the permanent plan, the parents should still be invited to attend all medical appointments, school conferences and activities (including eating lunch with the child at school), sports and extracurriculars, and other important events involving the child (unless there is an order otherwise preventing this, such as a criminal no contact order).
- **Permanency:** It is also important if reunification becomes no longer viable (i.e., if a child is placed with foster parents by DCFS) that visitation with relatives or other individuals who are being considered as a permanent placement for the child are included in the visitation schedule. For example, there may be a relative living out-of-State that could be a permanent placement for the child. Establishing and/or maintaining contact with that relative early on would be critical in lessening the child's difficulties adjusting if later moved to live with that relative.
- **Frequency:** Although DCFS policy provides a minimum requirement for visitation, the court should consider ordering more frequent visitation than the minimum based on the best interest of the child.
- **Unsupervised Visits:** Family time should be frequent, liberal, and presumed unsupervised unless there is a demonstrated safety risk to the child.

⁶⁵ Gatowski, *supra* note 7, at 268.

⁶⁶ La. Ch. C. art. 309 ("A court exercising juvenile jurisdiction shall have exclusive authority to modify any custody determination rendered, including the consideration of visitation rights in CINC proceedings.")

- **Methods of Contact:** The court should consider increasing contact through virtual and other means. Contact may include in-person visitation as well as more limited arrangements such as phone calls, Zoom or FaceTime, texts, letters, emails, or simply the exchange of personal information. For a considered discussion of visitation/family time, please see [Continued Custody Hearing \(CCH\) Benchbook Section 5 M](#).⁶⁷
- **Visitation Not to be Used as Incentive or Disincentive:** Visitation is a right of both parents and children in CINC cases. The fashioning of visitation should be based on promoting the important connection between the parents and child. Visitation between parents and children should not be used as an incentive or disincentive for parents with regard to mitigating the reasons for State intervention.

SECURE OR PROVIDE SERVICES TO CHILD: The court has authority to order an agency, institution, or person to whom the child is assigned, including the responsibilities of any other agency, institution, or person having legal responsibility to secure or provide services to the child which the court has determined are needed.

 **PRACTICE TIPS:**

- **Located in Disposition Hearing Articles:** This provision (Article 684(A)(3)) is located in the Disposition Hearing articles; however, it is not prohibited by the articles governing Permanency Hearings.
- **Identify Services:** The court is required to identify any services that the child needs and to allocate responsibilities of both the legal custodian and any agencies (i.e., DCFS, LDH, OJJ, LDOE, Office for Citizens with Developmental Disabilities, etc.) to ensure that such services are in fact provided to the child.
- **Trauma and Behavioral Health Screen (TBH):** It is DCFS policy for children in foster care and DCFS Family Services from birth to age 18 to receive trauma and behavioral health screening initially and every 6 months. DCFS utilizes the Trauma and Behavioral Health Screen (TBH) and when indicated by the TBH score, the agency will refer the child for treatment. DCFS should provide updates in its court reports. The court may want to consider the appropriateness of and/or need for services in light of the results of the screening.

(5) TERMS AND CONDITIONS: The court can specify any other applicable terms and conditions that apply to the legal custodian.

 **PRACTICE TIP:**

- **Located in Disposition Hearing Articles:** This provision (Article 684(A)(3)) is also located in the Disposition Hearing articles; however, it is not prohibited by the articles governing Permanency Hearings.

(6) FAMILY TEAM MEETING (FTM): If the child is in DCFS custody or has an open DCFS Family Services case, DCFS should propose a tentative date for the next FTM. The court can provide notice of and encourage participation by all parents, caretakers, children, foster caregivers, attorneys for children and parents, and CASA workers, and as applicable.

⁶⁷ For more resources on visitation/family time, see: <https://www.childwelfare.gov/topics/systemwide/assessment/family-assess/progress/visitation/>.

PRACTICE TIP:

- **Set Tentative Date for Next FTM:** Facilitating a tentative or confirmed date and time for the next FTM while everyone is at the hearing and including it in the Order helps ensure FTMs are timely held. Also, without enough notice of the FTM date and time, some team members may have difficulty participating. FTMs should be conducted at least every 6 months.

HELPFUL GUIDANCE:

- **Purpose:** FTMs are facilitated by DCFS, and they are important because FTMs are where case planning occurs for the family. FTMs are where parents, children, and other stakeholders and supports give valuable input on the services and assistance needed by and to be provided to the family.

(7) POTENTIAL PLACEMENTS: The court can order DCFS to:

- Explore all possible suitable relative or individual placements with results and/or updates on results to be presented prior to or at the next Case Review/Permanency Hearing;
- Initiate child welfare background clearance, criminal background check, assessment of home or home study so that they can be considered for placement by DCFS and/or custody or guardianship at the Permanency Hearing(s);
Take steps necessary to complete timely foster care certification (i.e., to receive guardianship subsidy if applicable); AND/OR
- Initiate ICPC process for potential placement with any out-of-State relatives or individuals.

(8) SANCTIONS PER ARTICLE 712: Upon determination by the court that DCFS has failed to comply with permanency planning requirements, including those in the Permanency Hearing Articles, the court may:

- Subpoena agency witnesses to testify regarding the failure to comply.
- Order the agency or appropriate representatives to show cause why a contempt order should not issue.
- Order that the agency not seek Federal reimbursement for the cost of the child's care where the court finds that reasonable efforts were not made.
- Submit a report of noncompliance to appropriate State and Federal agencies.
- Refer the agency representative found responsible for the failure to comply to the appropriate department personnel for administrative reprimand or other administrative sanctions.

HELPFUL GUIDANCE:

- **Discretion:** The court has discretion to issue subpoenas and contempt orders.

(9) OTHER ORDERS: Court may make orders related to facilitating timely achievement of each child's permanent plan including, for example, if adoption is the child's permanent plan, the filing of TPR Petition, proof that Adoption Petition filed, surrender documents. The court may also make orders related to paternity/maternity, PO, child's education, services, mental or physical health examinations on the child and/or parents, etc.

(10) ESSENTIAL JUDICIAL FINDING - INDIAN CHILD WELFARE ACT (ICWA): Per the Indian Child Welfare Act (ICWA), at every CINC hearing, the court shall ask each person whether they know or have reason to know that the child is a member of or eligible for membership in a Federally recognized Indian Tribe and a biological child of a member of a Federally recognized Indian Tribe. Further, the court shall advise all to inform the court if any of the above information is subsequently discovered. If the court knows or has reason to know, the court shall follow Articles 624, 624.1, 661.1, and 25 U.S.C. § 1901 et seq. The court should also inquire as to DCFS's due diligence in locating and contacting the Tribe. Noncompliance with ICWA may result in an invalidation of the proceedings, including a subsequent adoption. See also [Indian Child Welfare Act \(ICWA\) Bench Card](#).

L. ORDER OF NOTICES AND FUTURE HEARINGS

ARTICLES 424.7, 674, 688-9

The court should also include the following orders:

- (1) FUTURE HEARINGS:** The parents of the child, all attorneys of record, a DCFS representative, and CASA be present at all future hearings.
- (2) CASE PLAN:** DCFS shall file case plan with the court at least 10 days prior to the Case Review/Permanency Hearing(s) and upon filing shall provide copies to counsel by mail or email and unrepresented parties by certified mail or email if requirements of Article 674 are met.
- (3) COURT REPORT FILED BY DCFS:** DCFS file its court report at least 10 days prior to the Case Review/Permanency Hearing(s) and provide copies to CASA, counsel, and unrepresented parties. (Although Children’s Code is silent on submission of the court report for the Permanency Hearing, DCFS policy requires court reports to be filed beginning at Disposition).
- (4) COURT REPORT FILED BY CASA:** CASA should file its court report prior to the Case Review/Permanency Hearing(s) and shall distribute a copy of such reports prior to or at the time it is submitted to the court, to all counsel of record, any unrepresented party, and DCFS.
- (5) SET MATTER FOR APPROPRIATE HEARINGS:**
 - **Status or Revised Case Plan Hearing:** Set if there are other issues that need to be addressed or resolved (i.e., if the case plan was reviewed and court did not approve the case plan).
 - **Case Review Hearing:** Shall be held at least once every 6 months until the child is permanently placed⁶⁸ (or earlier upon motion per Article 692(B)).
 - **Permanency Hearing:** Shall be held every 12 months until the child is permanently placed⁶⁹ (or earlier upon motion per Article 702(B)). However, if the court has made a judicial determination that reasonable efforts to reunify the family are not required per Article 672.1, a Permanency Hearing may be conducted immediately and shall be held within 30 days of the determination.
- (6) SERVICE AND NOTICE OF HEARINGS:**
 - Clerk to notify all parties of the date, time, and location of the hearing and that all parties of interest appear;
 - Sheriff’s Office to serve the parents with a summons commanding him/her to appear at court for the hearing;
 - DCFS to provide notice to the parents of the date, time, and location of the hearing as well as the nature of the allegations;
 - Notice of the hearing shall be made on counsel of record and CASA (if appointed); AND
 - DCFS to provide notice to any foster caregiver providing care for the child of the date, time, and location of the hearing and that the recipient has the right to attend and be heard.
- (7) ARRANGEMENTS FOR ANY INCARCERATED PARENT:** Be made to attend the hearing, either in person or remotely.

PRACTICE TIPS:

- **Notice and Schedule Hearings in Open Court:** The court may schedule future hearings and serve notice in open court.
- **Scheduling:** When calendaring the next hearing, all parties, including the parents, should be asked if the scheduling works for them, and if not, find options for a different day/time.
- **Schedule Earlier:** The timelines for the hearings are driven by ASFA. Courts retain the ability to schedule hearings to occur earlier than the maximum allowable timeframes and should do so whenever practicable and in the child’s best interest. Best practice is to conduct review hearings a minimum of every 3 months or, in some cases, more frequently. Even though the case plan is generally updated every 6 months (unless otherwise ordered sooner), holding review hearings every 3 months allows the court and parties to resolve issues with the case plan and keeps the case moving forward towards achieving permanency more expeditiously. The information should guide the timing of hearings.

⁶⁸ See La. Ch. C. art. 603(22).

⁶⁹ Id.

M. CASE MANAGEMENT

(1) ENGAGEMENT:

- Specifically, ask the parents and children if they understand what occurred at the hearing and engage them in a conversation about the next steps.
- Ask parents (and children, if appropriate) if there is anything the court and other stakeholders involved could do to support their efforts to reunify their family (if reunification is still viable)?
- Advise parents of the importance of their active participation in all proceedings.
- Advise parents of the rigorous timeframes for child abuse and neglect cases outlined in State and Federal laws.
- Advise parents of the consequences for failure to appear at any further court hearings.
- Ensure that parents and children have contact information for case workers and attorneys and understand the process to request court review if necessary.
- Ask if there are any questions for the court.
- It is helpful for children and parents to be able to meet briefly with their attorneys after the hearing so that the attorneys can address immediate issues.

(2) PREPARATION FOR NEXT HEARING

- Identify tasks to be accomplished by the various parties for the next hearing.
- Make oral findings and orders that all participants can understand.
- An attorney or the court is responsible for the completion of the Order. See [Permanency Order Template](#) in the [Appendix](#).
- All of the attorneys and unrepresented parties should review the Order before the judge signs it to ensure it accurately reflects the proceeding.
- Time permitting, best practice is to sign the Order on the same day as the hearing.
- Ensure all orders are written, signed, copied, and distributed at the end of the hearing.
- Provide parents with a copy of the Order immediately following the hearing.

N. POSSIBLE NEXT STEPS

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

(1) STATUS HEARING: The court may want to set a Status Hearing if there are issues that need to be addressed or resolved. For example, if the child has recently moved to a new placement, the court may want to see how the child is adjusting sooner rather than waiting for the next Case Review or Permanency Hearing.

(2) HEARING TO APPROVE REVISED CASE PLAN: If the court does not approve the case plan (and the issues in the case plan cannot be resolved at the Case Review Hearing), the court must include in its Order that it does not approve of the case plan, and best practice is for the court to schedule another hearing for it to consider the amended case plan (sometimes referred to as a “Case Plan Review Hearing”). It is not advisable to wait until the next scheduled Case Review Hearing or Permanency Hearing to review the revised case plan. Otherwise, DCFS will not be able to implement the changes timely. Some courts return within 30 days or less of the Case Review Hearing to consider the revision.

(3) CASE REVIEW HEARING: Case Review Hearings shall be held at least every 6 months from when it was initially held and until the child is permanently placed (or earlier upon motion per Article 692(B)).⁷⁰

(4) PERMANENCY HEARING: Permanency Review Hearings shall be held at least every 12 months until the child is permanently placed⁷¹ (or earlier upon motion per Article 702(B)). However, if a judicial determination is made per Article 672.1, a Permanency Hearing may be conducted immediately and shall be held within 30 days of the determination.

(5) APPEAL: Any person directly affected may appeal the findings or orders of the court. Appeal shall be taken within 15 days from the mailing of the notice of the judgment. See Article 332(A).

⁷⁰ Id.

⁷¹ Id.

HELPFUL GUIDANCE:

- **Governing Law:** The appeal process in CINC proceedings is governed by Title III of Chapter 9 of the Children’s Code (Articles 330-338). In CINC proceedings, an appeal may be taken only after a Judgment of Disposition. Timelines for appeals in CINC proceedings differ from timelines for appeals in the Louisiana Code of Civil Procedure.

(6) TERMINATION OF PARENTAL RIGHTS PETITION: See Article 1004 and 1004.1 for the persons and agencies who have a legal right to file a petition to terminate parental rights (TPR), including the timing and grounds for which a TPR may or must be filed.

PRACTICE TIPS:

- **Court on Own Motion:** At any time, including in any hearing in a CINC proceeding, the court on its own motion may order the filing of a TPR Petition on any ground authorized by Article 1015 (Article 1004(A)).
- **DCFS Shall File TPR Petition:** If a child has been in DCFS custody for 17 of the last 22 months, DCFS shall file and pursue to judgment a petition to terminate the parental rights (TPR) of the parent or parents. However, DCFS has discretion not to file a petition to terminate parental rights if DCFS has documented in the case plan a compelling reason why filing is not in the best interest of the child. The court’s role is to hold DCFS accountable to showing such compelling reasons. See also 42 U.S.C. § 675(5)(E)(i)-(iii) and 675(5)(F)(i)-(ii).

(7) ADOPTION: Agency adoptions are governed by Chapter 9 of Title XII of the Children’s Code. See Articles 1198-1220.



APPENDIX

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.

. . .

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?

STATE OF LOUISIANA

DOCKET NUMBER: _____

IN THE INTEREST OF

SECTION: _____

_____ DOB: _____

COURT: _____

_____ DOB: _____

PARISH OF _____

_____ DOB: _____

STATE OF LOUISIANA

Filed: _____

DEPUTY CLERK: _____

PERMANENCY HEARING ORDER

THIS CAUSE came for an initial Permanency Hearing or a Permanency Review Hearing on the _____ day of _____, 20_____, concerning the following minor child(ren), _____.

I. APPEARANCES

The child(ren), _____, is/are present.

The child(ren), _____, is not present and:

(Please check the applicable box for each child)

the child, _____, is age 12 or older, counsel moved to waive the child's appearance, and the court grants the waiver.

the child, _____, is younger than 12 years and counsel did not request the child's appearance.

_____.

Parent _____ Department of Children and Family Services

Parent's Attorney _____ Staff/Representative _____

Parent _____ Foster Parent(s), Pre-adoptive Parent(s), Relative(s)

Parent's Attorney _____ Providing Care for Child(ren) _____

Caretaker(s) _____

Child(ren) Attorney(s) _____ Assistant District Attorney _____

_____ Bureau of General Counsel _____

Others _____

II. NOTICE

THE COURT FINDS that: *(Please check the applicable boxes for each parent)*

the parent(s), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was properly served.

the parent(s), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was provided in open court at a prior hearing which was attended by the parent(s).

the parent(s), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was not provided in open court at a prior hearing and was not properly served.

THE COURT FINDS that: *(Please check the applicable boxes)*

the foster parent(s), pre-adoptive parent(s), or relative(s), _____, providing care for the child(ren), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was given by the Department; and, that diligent efforts were made by the Department to locate and notify the absent caregiver.

the foster parent(s), pre-adoptive parent(s), or relative(s), _____, providing care for the child(ren), _____, is absent and that notice of the date, time, and place of the hearing and right to attend and be heard was not given by the Department; and, that diligent efforts were not made or were made by the Department to locate and notify the absent caregiver.

III. PERMAMENT PLAN RULINGS AND FINDINGS

(Please provide the permanent plan, including the time period and/or terms or conditions, for each child)

THE COURT FINDS AND ORDERS that the permanent plan for the child(ren), _____, that is the most appropriate and in the best interest of the child(ren) in accordance with the priorities of placement in Article 702(C) is the following: _____;

The time period and/or terms or conditions for the achievement of the permanent plan are as follows:

_____.

THE COURT HEREBY FINDS: *(Please check the applicable boxes for each child)*

If the permanent plan for child(ren), _____, is placement in the least restrictive, most family-like alternative permanent living arrangement, the compelling reasons as to why it continues to not be in the best interest of the child(ren) to return home, be placed for adoption, be placed with a legal guardian, or be placed in the custody of a fit and willing relative are as follows: _____

If the placement is out-of-state, the placement is safe, appropriate, and in the best interest of the child(ren), _____, for the following reasons: _____

IV. REASONABLE EFFORTS FINDINGS

THE COURT FINDS that the Department: *(Please check one of the following for each child removed from their home)*

made the following reasonable efforts to reunify the parent and child(ren), _____, or to finalize the child's placement in an alternative safe and permanent home in accordance with the child's permanent plan: _____

was not required to make reasonable efforts to prevent or eliminate the need for removal of the child(ren) and/or reunify the child(ren), _____, with his or her parent(s) based on the following reasons (i.e., judicial determination according to Article 672.1): _____

failed to make reasonable efforts to reunify the parent and child(ren), _____, or to finalize the child(ren)'s, _____, placement in an alternative safe and permanent home in accordance with the child's permanent plan.

V. ADVISEMENTS

If Court determined that the permanent plan is: *(Please check the applicable boxes)*

reunification, the Court advised the parent(s) that it is their obligation to achieve the case plan goals and correct the conditions that require the child to be in care within the time period specified by the court. Otherwise, an alternative permanent plan for the child will be selected and a petition to terminate parental rights will be filed.

adoption, the Court advised the parent(s) of their authority to voluntarily surrender the child and consent to the adoption prior to the filing of a petition to terminate parental rights.

VI. (IF APPLICABLE) CUSTODY RULINGS AND FINDINGS

IT IS ORDERED BY THE COURT *(Please check the applicable boxes)*

current disposition for children, _____, be maintained with:
_____;

child(ren), _____, be returned to custody of parent(s),
_____, with the following terms and conditions (i.e. Protective
Order, continuing supervision): _____
_____;

child(ren), _____, be placed in custody of parent(s),
_____, with the following terms and conditions (i.e. Protective
Order, continuing supervision): _____
_____;

custody of child(ren), _____, be granted to:
_____;

guardianship of child(ren), _____, be granted to:
_____.

VII. (IF APPLICABLE) CASE PLAN RULINGS AND FINDINGS

THE COURT FINDS AND ORDERS: *(Please check one of following only upon motion of court or court granting motion of any party to consider content or implementation of the case plan)*

That the case plan submitted by the Department and dated _____, is approved as it is consistent with the health and safety of the child(ren) and in the best interest of the child(ren), and all parties are ordered to comply therewith.

That the case plan submitted by the Department and dated _____, is not approved as it is not consistent with the health and safety of the child(ren) or is otherwise not in the best interest of the child(ren) for the following reason(s): _____

AND ORDERS THE DEPARTMENT TO REVISE THE PLAN ACCORDINGLY.

IX. FURTHER ORDERS AND FINDINGS

THE COURT FURTHER ORDERS the following as necessary and appropriate: *(Please check applicable boxes)*

HAVING FOUND, pursuant to Article 684(A)(3) that _____ (agency, institution, or person) has legal responsibility to secure or provide the following services to the child which the court has determined are needed and hereby orders the following: _____

IT IS FURTHER ORDERED that the following terms and conditions apply to the legal custodian of the following child(ren): _____

IT IS FURTHER ORDERED that the Department immediately assess all possible permanent placements with the results and/or updates to be presented at the _____ Hearing.

IT IS FURTHER ORDERED that the Department initiate child welfare background clearance, criminal background check, and/or assessment of the home or home study on the following relative(s) or individual(s), _____

IT IS FURTHER ORDERED that the Department initiate an or provide an update on Interstate Compact for Placement of Children (ICPC) process for the following out-of-state relative(s) and/or individual(s),

IT IS FURTHER ORDERED that prior to every family team meeting (FTM) hereafter conducted in this case, the Department shall provide reasonable notice of said FTM to all parent(s), attorneys for child(ren) and attorneys for parent(s), foster caregivers, and CASA (if appointed).

A **Family Team Meeting** is tentatively set for _____ day of _____, 20____, at _____
__am/__pm.

IT IS FURTHER ORDERED that _____.

X. ORDER OF NOTICES AND FUTURE HEARINGS

IT IS FURTHER ORDERED that the parent(s) of the child(ren), all attorneys of record, DCFS representative(s), and CASA (if appointed) be present at all future hearings.

IT IS FURTHER ORDERED that the case plan shall be filed with the Court at least 10 days prior to the _____ Hearing(s) and that, upon filing, copies shall be provided by mail or email to counsel and unrepresented parties by certified mail or electronic mail in accordance with Article 674.

IT IS FURTHER ORDERED that the Department file its court report with the Court at least 10 days prior to the _____ Hearing(s) and that copies be provided to CASA, counsel, and unrepresented parties.

IT IS FURTHER ORDERED that CASA shall file its court report with the Court at least 10 days prior to the _____ Hearing(s) and copies be distributed to counsel, unrepresented parties, and DCFS prior to at the same time submitted to the Court.

IT IS FURTHER ORDERED that:

Upon ordering the matter be set for _____ Hearing(s), the clerk shall notify all parties of the date, time, and location of the hearing(s) and that all parties of interest appear; the Sheriff's Office serve the parent(s) with a summons commanding him or her to appear at Court for the hearing(s); the Department shall provide notice to the parent(s) of the date, time, and location of the hearing(s); notice of the hearing(s) be made on the child and parent representation programs and CASA (if appointed); the Department provide notice to any foster parent, pre-adoptive

parent, or relative providing care for the child(ren) of the date, time, and location of the hearing(s) and recipients right to attend and be heard; and for any parent(s) incarcerated, _____ arrange for the parent(s) to attend the hearing, either in person or remotely.

A Hearing to **REVIEW/APPROVE REVISED CASE PLAN** is set for _____ day of _____, 20____ at _____ am/____pm.

A **STATUS** Hearing is set for _____ day of _____, 20____, at _____ am/____pm.

A **CASE REVIEW** Hearing is set for _____ day of _____, 20____, at _____ am/____pm.

A **Permanency Hearing** is set for _____ day of _____, 20____, at _____ am/____pm.

THUS DONE AND SIGNED ON THIS _____ day of _____, 20____, in _____, Louisiana.

JUDGE

DISTRIBUTION OF NOTICE

Please serve all parties and counsel of record as follows:

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Parent: _____
Street: _____
City, State, Zip: _____
Email Address: _____

Parent's Attorney: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Child(ren) Attorney(s): _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Assistant District Attorney/Bureau of General Counsel:

Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Please send notice and copy of order as follows:

Department of Children and Family Services Staff/Representative:
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

CASA: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

Other: _____
Role: _____
Street: _____
City, State, Zip: _____
Fax Number: (____) _____
Email Address: _____

PERMANENCY COURT REPORT

Department of Children and Family Services

. . .

****IMPORTANT:** Use of the DCFS Court Report templates provided in this Benchbook for Disposition Hearings, Case Review Hearings, and Permanency Hearings are being implemented in a phased-in approach across the State.

Date ____ / ____ / ____

Judge's Name _____

Court _____

Court Address _____

Docket Number	
Hearing Type and Date	PERMANENCY / / Initial? <input type="checkbox"/> Yes <input type="checkbox"/> No
Child(ren)'s Information	Name: _____ DOB: ____ / ____ / ____ Age: ____ Date Entered Care/DCFS Involvement: ____ / ____ / ____ Date Freed for Adoption: ____ / ____ / ____ Current Custody Status: <input type="checkbox"/> Custody of Parent/Legal Guardian <input type="checkbox"/> Custody of Relative/Suitable Individual <input type="checkbox"/> DCFS Custody <input type="checkbox"/> Other _____
Parent's Information	Name: _____ Legal/Biological/Alleged/Deceased: _____ Child(ren): _____ Address: _____
Parent's Information	Name: _____ Legal/Biological/Alleged/Deceased: _____ Child(ren): _____ Address: _____

SALUTATION

This letter is to provide the court with information for the Permanency Hearing.

PRELIMINARY INFORMATION

Date Adjudicated Child in Need of Care:

If known, grounds from Adjudication Order Article 606(A) (please check all applicable):

- (1) Abuse (2) Neglect (3) Absence of Parent (4) Criminal Prosecution
- (5) Crime Against Child (6) Trafficking (7) Commercial Trafficking (8) Genital Mutilation

Brief summary of reason child(ren) entered care/DCFS involved: See attached Case Plan: Federal Compliance Section "Reason Child(ren) entered Foster Care."

Date of Current Case Plan: _____ / _____ / _____

Date Next Case Plan is Due: _____ / _____ / _____

Tentative Date of Next FTM: _____ / _____ / _____

Please summarize any significant changes since the last hearing: _____

NOTICE OF DATE, TIME, AND LOCATION OF PERMANENCY HEARING

Notice to Parents: Documentation attached? Yes No N/A if rights terminated

If no, give explanation of notice provided/reason: _____

Notice to Foster Caregivers: Documentation attached? Yes No N/A

If no, give explanation of notice provided/reason: _____

ICWA

Do you know, or do you have reason to know, that any of the child(ren) are members of a federally recognized Indian Tribe or eligible for membership in a federally recognized Indian Tribe?

Yes No If yes, list child(ren) and tribal affiliation. _____

Since the last hearing, is there additional information that the agency has learned about any of the parents' or child(ren)'s Indian tribe membership/eligibility? Yes No

If yes, what additional information has the agency received? _____

If applicable, what steps has the agency taken since the last hearing to determine child(ren)'s eligibility for membership in a federally recognized Indian Tribe? _____

If applicable, has the tribal entity responded? Yes No If yes, please attach documentation.

LEGAL RELATIONSHIPS/TESTING RESULTS

(Please do not complete this section if parents' rights have been terminated.)

Since the last hearing, have any parents been identified or located? Yes No

If yes, please explain: _____

Since the last hearing, have DNA results been received by the agency for any of the parents?

Yes No If yes, please attach results and state parent name(s): _____

Please complete this section for any parent who has been newly located or identified or if the information for any of the parents has changed since the last hearing:

	Parent: Of:	Parent: Of:
Has the Birth Certificate been obtained? Is the parent's name on the Birth Certificate?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
Was an acknowledgment filed in the parish of the child's birth? Did you obtain the Certificate of Results from the Clerk of Court?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please attach.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please attach.</i>
If no acknowledgment has been filed, did you check the Putative Father Registry? Did you obtain the Certificate regarding the Putative Father Registry?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please attach.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please attach.</i>

If there is an absent parent who has not been located, what efforts have been made since the last hearing to locate this parent? _____

OTHER ORDERS

(Please do not complete this section if parents' rights have been terminated.)

Since the last hearing, has information regarding the family been sent to Child Support Enforcement?

Yes No

Since the last hearing, has a Child Support Order been established?

Yes No

If yes, please attach a copy of the order or list case number, parish, parties involved, amount, and date order signed.

Since the last hearing has there been a Temporary Restraining Order and/or Protective Order?

Yes No

If yes, please attach a copy of the order or list case number, parish, parties involved, and date order signed.

CURRENT STATUS OF THE PARENTS

Describe the current situation with each parent (Exp. Housing, Substance Use Concerns, etc.): _____

SAFETY AND RISK ASSESSMENT

Threats of danger at the time of initial safety assessment:

Describe current threats of danger, if any, as it relates to all parents and each child’s vulnerability to the identified threats: _____

Based on the most recent CWADM assessment and case plan progress, describe the caretaker protective capacities that still need to be enhanced, if any, to keep the child(ren) safe: _____

What is the current Structured Decision Making (SDM) level/recommendation for each household? _____

Date(s) of SDM: _____ / _____ / _____

Conditions for Return to Parents’ Care/Custody, if applicable (i.e., Why can’t child go home today?): _____

Conditions for Closure (DCFS no longer involved): _____

DCFS PROGRESS TOWARDS CONCURRENT GOAL

	Child:	Child:
Goal		
Progress Taken by the Agency		
Progress Remaining by Agency		
Barriers to Achieving		

Please state overall progress towards permanency for the child(ren): _____

DCFS EFFORTS

Please check applicable boxes and explain efforts by DCFS:

- Services Provided: _____
- Other Assistance: _____
- Court Interventions Requested: _____
- Assessment of Relatives/Individuals: _____
- Visitation: _____
- TPR: _____
- Implementation of Youth Transition Plan (YTP): _____
- Barriers: _____

CASE PLAN UPDATE

****This section is to be completed only if a Case Review Hearing is held in conjunction with a Permanency Hearing.**
 For more detail, please see attached Case Plan.

Was the case plan developed with the parents and child(ren)? Yes No

If no, please explain why not: _____

Were the attorneys invited to the FTM? Yes No

Did they participate? Yes No

Please list any referrals made by the agency to date for parents and child(ren), describe the reason for referral, and progress thus far: _____

PLACEMENT

Are all children in this case placed together?

- Yes, children are placed together
- Not placed together
- N/A (no siblings in care)

In Home Placement: Please complete if any of the child(ren) are in the custody of or placed with the parent(s).

	Child:	Child:
Parent Name(s)		
Date of Placement	/ /	/ /
Child's Adjustment		
Parent's Adjustment		

Out of Home Placement: Please complete if any of the child(ren) are not in the custody of or placed with the parent(s).

	Child:	Child:
Caregiver Name(s) Date of Placement		
Type of Placement	<input type="checkbox"/> Relative <input type="checkbox"/> Other Individual <input type="checkbox"/> Certified Foster Home <input type="checkbox"/> Therapeutic Foster Home <input type="checkbox"/> Group Home <input type="checkbox"/> Psychiatric Residential Treatment Facility <input type="checkbox"/> Other: Reason(s) if not placed with relative:	<input type="checkbox"/> Relative <input type="checkbox"/> Other Individual <input type="checkbox"/> Certified Foster Home <input type="checkbox"/> Therapeutic Foster Home <input type="checkbox"/> Group Home <input type="checkbox"/> Psychiatric Residential Treatment Facility <input type="checkbox"/> Other: Reason(s) if not placed with relative:
History of Previous Placements: <i>Include name, type, and dates of each</i>		
Child's Adjustment to Current Placement		
QPI <i>(co-parenting between foster caregivers and parents)</i>		
Certification Update for Relatives/Individuals Not Yet Certified; <i>Include Date Referral Made to Home Development and Current Status</i>		
If reunification is not the primary goal, has the current caregiver committed to permanency for the child?		
Foster Caregiver Progress Form completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

If siblings in this case are not placed together, state

- Barriers to placement together:**
- Efforts to place siblings together:**
- Contrary to safety or well-being (please explain):**

If not placed together, what is the plan for sibling visitation (unless contrary to safety or well-being)? _____

Please give current status of sibling visitation, including siblings not in foster care (# of visits to date, quality of visits, barriers, etc.): _____

Describe any additional information pertinent to each child regarding placement changes or achievement of permanency: _____

CURRENT STATUS OF CHILD(REN)

Please provide updates since the last hearing:

	Child:	Child:
Current Medical and Dental Information and Significant Findings		
Current Developmental Information		
Current Trauma and Behavioral Health Assessment Date assessment completed: _____ Are referrals indicated?	____ / ____ / _____ <input type="checkbox"/> Yes <input type="checkbox"/> No	____ / ____ / _____ <input type="checkbox"/> Yes <input type="checkbox"/> No
Describe any behavioral or mental health needs/concerns and how being addressed		
Religion/Culture/Traditions important to child?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:
Any known needs about the child’s sexual orientation and/or gender identity?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:
Changed schools since the last hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:
Name of School/Grade		
Current strengths and challenges re: education		
Participate in extracurricular activities or want to?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please list:	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please list:

Describe any educational needs/interventions and how they are being addressed: _____

As a precursor to classification of 504/IEP/IAP/"gifted," are any of the children involved with a Response to Intervention ("RTI")(also called "Targeted Teaching") since the last hearing? Yes No

If yes, state each child's name and what date the RTI began and the interventions being utilized:

For more information about the child(ren), please see attached Case Plan: Federal Compliance Section "Educational Stability," Child Functioning, Cumulative Medical Record, and Cumulative School/Educational Record.

YOUTH 14 AND OLDER

Identify the youth's permanent connections. _____

Since the last hearing, describe the relationship between the youth and each identified permanent connection, including visitation and other forms of consistent contact: _____

Is the youth receiving independent living classes? Yes No

What has the youth learned from these classes? _____

Describe progress with the youth preparing to live independently: _____

Is the youth currently living independently? Yes No If yes, please describe adjustment: _____

For more information, please see attached Youth Transition Plan (YTP).

VISITATION

Have there been any changes to the visitation plan since the last court hearing?

Yes No If yes, please explain: _____

Are there any relatives and/or other individuals who are visiting since the last court hearing?

Yes No If yes, please explain: _____

In addition to in-person visits, please state plan for amount and frequency of contact as follows:

Name	Telephone	FaceTime, Duo, Zoom, Skype
Parent(s):		
Sibling(s):		
Grandparent(s):		
Other relatives:		
Other individuals:		

For more information, please see attached Case Plan "Visitation" Section (before Basic Obligations and after Federal Compliance) for visitation schedule.

SIGNIFICANT RELATIONSHIPS AND RELATIVES/OTHER SUITABLE INDIVIDUALS

Are there newly identified significant relationships with parents, grandparents and other relatives, siblings (those in care and those not in care), and other individuals? Yes No

If yes, please describe and attach updated Family Connections Form and Circle of Influence Form. _____

Please list steps taken to contact the individuals who matter to each child since the last hearing and describe the outcome of the steps for each: _____

Please complete if any of the children are not currently placed with a relative/parent and one or more of the individuals listed above has been/is being assessed for placement:

Child	Prospective Placement	Has an Agency Background Clearance been completed?	Have criminal records checks been completed? If yes, indicate results.	Is home study complete? If yes, what is recommendation? If no, what is status?	If residing out of state, describe status of ICPC request.
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

DCFS RECOMMENDED PERMANENT PLAN AND REASONS

Child: <input type="checkbox"/> Reunification <input type="checkbox"/> Custody to Another Parent <input type="checkbox"/> Adoption <input type="checkbox"/> Custody to a Relative <input type="checkbox"/> Legal Guardianship <input type="checkbox"/> APLA (if 16 or 17 years old) <input type="checkbox"/> Concurrent Plan:	Child: <input type="checkbox"/> Reunification <input type="checkbox"/> Custody to Another Parent <input type="checkbox"/> Adoption <input type="checkbox"/> Custody to a Relative <input type="checkbox"/> Legal Guardianship <input type="checkbox"/> APLA (if 16 or 17 years old) <input type="checkbox"/> Concurrent Plan:
Is this recommendation a change? <input type="checkbox"/> Yes <input type="checkbox"/> No	Is this recommendation a change? <input type="checkbox"/> Yes <input type="checkbox"/> No
Reasons underlying recommendation:	Reasons underlying recommendation:
If APLA, please explain the compelling reasons why not in child's best interest to return home, be placed for adoption, be placed with a legal guardian, or be placed in the custody of a fit and willing relative:	If APLA, please explain the compelling reasons why not in child's best interest to return home, be placed for adoption, be placed with a legal guardian, or be placed in the custody of a fit and willing relative:

OTHER RECOMMENDATIONS

- Approve the permanent plan as presented by DCFS.
- Approve the Youth Transition Plan as presented by DCFS.
- Find that the child's placement is approved as the most appropriate, least restrictive setting.
- Find that the agency has made reasonable efforts to reunify the parent and child(ren) and/or finalize the child(ren)'s placement in an alternative safe and permanent home in accordance with the child(ren)'s permanent plan.

That a _____ hearing be set for: _____.

ADDITIONAL RECOMMENDATIONS IF CASE REVIEW HEARING HELD IN CONJUNCTION WITH PERMANENCY HEARING

***This section is to be completed only if a Case Review Hearing is held in conjunction with a Permanency Hearing.*

- Approve the case plan as presented by DCFS.
- Find that the child's placement is approved as the most appropriate, least restrictive setting.
- That the following services are needed for the child(ren) and/or parents: _____.

Based on the extent of progress made toward mitigating the causes necessitating placement in foster care, a likely date by which

child(ren) _____ may be returned to the home is: ____ / ____ / _____

child(ren) _____ may be placed for adoption is: ____ / ____ / _____;

child(ren) _____ may be placed for guardianship is: ____ / ____ / _____.

Sincerely,

Case Worker

Supervisor

ATTACHMENTS

	Attached?
Case Plan and attachments	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Youth Transition Plan	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Documentation of Court Notices	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
ICWA Letter(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Certificate of Results (Paternity Acknowledgment)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Putative Father Registry Certificate of Results	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
DNA Testing Results	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Other Orders	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Updated Family Connections Form	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Updated Circle of Influence Form	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
ICPC Documents	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Foster Caregiver Progress Form(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Assessments/Evaluations for Child(ren)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Assessments/Evaluations for Parent(s)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Treatment Provider Progress Notes	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
School 1 Form	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Child(ren)'s Report Card	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Other:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

cc (with attachments): ADA/BGC, Parent Attorneys, Children's Attorney(s), Unrepresented Parties, CASA

CHILD WELFARE ASSESSMENT AND DECISION MAKING MODEL (CWADM)

LOUISIANA
CHILD IN NEED OF CARE BENCHBOOK
FOR JUVENILE JUDGES

SECTION

11

SUMMARY

Judges and all legal stakeholders should be familiar with the Child Welfare Assessment and Decision Making Model (CWADM). The CWADM is a framework that the Department of Children and Family Services (DCFS) uses to assess safety and risk and the needs and strengths of children and families throughout the life of a case. The CWADM ensures that DCFS and courts have the best possible information upon which to make decisions with and for families involved with DCFS. See the [Child Welfare Assessment and Decision Making Model \(CWADM\)](#) in the [Appendix](#), which provides a visual overview of how the model works in the various stages of a DCFS case. In the [Appendix](#), see the [Department of Children and Families \(DCFS\) Safety Assessment Tool](#) that is used by DCFS with the family to assess safety.

WHAT IS SAFETY

Assessing safety is a DCFS practice culture, with an informal assessment of safety occurring for every child at every point of contact through the life of a DCFS case (Child Protective Services, Family Services, Foster Care and Adoptions). The assessment helps DCFS determine whether a child is safe or unsafe. A formal safety assessment is required either when a threat of danger is identified, or at specific intervals during the life of a case.

Three variables are considered to determine whether a child is safe or unsafe: (1) threats of danger to the child; (2) the child's vulnerability to the identified threats of danger; and (3) the caretaker's protective capacities. The threat of danger considers whether the caretaker's behavior or family situation is likely to result in imminent harm to the child. The child's vulnerability looks at the extent to which a child can protect himself/herself from the identified threats of danger. The caretaker's protective capacities consider the way a caretaker thinks, feels, and/or acts, and whether those capacities can prevent or control the identified threats of danger. When the Safety Assessment is conducted during an emergent situation, it is possible that an assessment of parental protective capacities was not able to be completed.

Based on these three factors, DCFS makes the following considerations when assessing whether the child is safe or unsafe and the type of safety plan necessary if the child is determined to be unsafe.

(1) A CHILD IS CONSIDERED SAFE WHEN:

- There are no threats of danger; OR
- The child is not vulnerable to the identified threats of danger; OR
- The caretakers possess sufficient protective capacities to manage the identified threats of danger and keep the vulnerable child safe.

(2) A CHILD IS CONSIDERED UNSAFE WHEN:

- There are identified threats of danger; AND
- The child is vulnerable to the identified threats of danger; AND
- Caretakers do not possess sufficient protective capacities to manage the identified threats of danger to keep the vulnerable child safe.

OVERVIEW

A. 3 CORE SAFETY FACTORS

(1) THREATS OF DANGER TO THE CHILD:

- There is a threat of danger to the child if the caretaker’s behavior (action or inaction) or family situation indicates imminent serious harm to a child.
 - **Violent Behavior:**
 - Caretaker’s behavior is violent, dangerous and/or impulsive, which indicates that child safety is of serious concern.
 - Caretaker’s perception or behavior towards the child is extremely negative and unrealistic, resulting in serious emotional and/or physical harm to a child.
 - Caretaker has caused significant harm to a child or made a threat, which indicates child safety is of serious concern.
 - **Parental Responsibilities and Decision Making:**
 - Caretaker is unable, unwilling, or does not meet a child’s basic needs for necessary food, clothing, shelter, medical or mental health, and child safety is of serious concern.
 - Caretaker is unable, unwilling, or does not provide the necessary supervision, protection, or care, and child safety is of serious concern. This may be due to physical or mental health issues, substance abuse, domestic violence, cognitive or developmental deficits, or poor judgment.
 - Caretaker refuses access to a child, whereabouts cannot be determined, and/or there is reason to believe the family may flee, and circumstances indicate child safety is of serious concern.
 - **Other Significant Safety Concerns:**
 - Sexual abuse or exploitation is suspected, and circumstances indicate that child safety is of serious concern.
 - Current circumstances, combined with a history of abuse/neglect (DCFS and/or law enforcement involvement), indicate that child safety is of serious concern.

(2) CHILD VULNERABILITY:

- The extent to which a child can protect himself/herself from identified threats of danger or risk of repeat maltreatment.
 - Considers factors such as dependence on others to meet basic needs; physical, medical, behavioral, or mental conditions; ability or inability to communicate their needs; and previous exposure to trauma.

(3) CARETAKER PROTECTIVE CAPACITIES:

- Strengths in the way a caretaker thinks, feels, and/or acts that prevent or control threats of danger and guides case planning activities.
- If there is a child vulnerable to a specific threat of danger, DCFS must assess whether the caretaker has sufficient protective capacities to manage the identified threat(s), which includes:
 - History of protecting from harm and unsafe conditions.
 - Recognizes threats and has the ability to implement a plan to protect the child.
 - Demonstrates impulse control in order to protect and provide for the child’s overall care.
 - Understands how, has the skills needed, and takes action to meet parenting responsibilities.
 - Sets aside own needs where the safety and well-being of the child are the caretaker’s priority.
 - Demonstrates love, empathy, and tolerance of the child and is positively attached.
 - Understands child development and has realistic expectations of the child’s capabilities, needs, and limitations.
 - Is able to meet own needs, including basic daily and emotional needs.
 - Has the ability to handle the everyday, unexpected stressors/crises, and has an accurate perception of reality.
 - Demonstrates the ability to obtain concrete supports, such as food, clothing, housing, social services, and transportation.
 - Caretaker can and will access family and/or friends who are ready, willing, and able to help the family.

B. SAFETY PLANS

If the child is unsafe, DCFS will determine which type of safety plan will most effectively mitigate the threat of danger to the child. Safety plans substitute for the parents'/caretakers' inadequate or absent protective capacities. A safety plan is a plan to assure a child's health and safety by imposing conditions for the child to safely remain in the home, or, after a child has been removed from the home, for the placement of the child with a suitable relative or other individual or, if necessary DCFS, and terms for contact between the child and his/her parents or other persons.¹

There are two main types of safety plans sought in the Child in Need of Care (CINC) process: In-Home and Out-of-Home. In-home safety planning includes DCFS In-Home Safety Plans (without a court order) and Instantter Safety Plan Orders (ISPO). Out-of-home safety plans include the Instantter Order for Removal and Provisional Custody to a Suitable Relative or Individual and Instantter Order for Removal and Provisional Custody to DCFS (i.e., foster care).

(1) IN-HOME SAFETY PLAN: DCFS IN-HOME SAFETY PLAN (DCFS POLICY)

- **Overview:**
 - A DCFS In-Home Safety plan is the least restrictive safety plan. It is a DCFS-initiated mechanism used to help parents manage safety without a court order. The DCFS Family Services unit handles these cases. A DCFS In-Home Safety Plan cannot restrict contact between the child and his/her parents or otherwise infringe upon parental rights. Unlike the ISPO, this type of safety plan can also be used with a legal or non-legal caretaker or guardian to manage the child's safety. A CINC Petition may or may not be filed when there is a DCFS In-Home Safety Plan; but only the child's parents would be parties to such an action, not a legal or non-legal caretaker or guardian.
- **Considerations:**
 - Do the caretakers/parents have a living situation that is calm, consistent, and stable enough where an in-home safety plan could be implemented (i.e., feasible)?
 - Are the caretakers willing to accept, cooperate and comply with an in-home safety plan?
 - Is there a suitable alternative caretaker or safety monitor who believes that a safety plan is needed and is able to place the child's safety and needs above their relationship with the parents? (The safety monitor requires a DCFS clearance per DCFS policy.)

(2) IN-HOME SAFETY PLAN: INSTANTTER SAFETY PLAN ORDER (ISPO)² (ARTICLES 619 AND 620)

- **Overview:**
 - The ISPO is an important option for keeping children in the home. This court-ordered safety plan is requested by DCFS to manage the safety of a child while custody remains with his/her parents. It is used when a threat of danger to a child is identified to which he/she is vulnerable, and his/her parents do not have sufficient protective capacities to manage the threat. This type of safety plan can restrict the parent's contact with the child or include the child living with the parent in an alternative location or other interventions as ordered by the court. For example, the child and the parent may reside with a relative or other individual (i.e., fictive kin). However, the law does not allow this type of safety plan to be used with anyone other than the parents of the child; it cannot be used with other legal or non-legal caretakers/guardians. A DCFS In-Home Safety Plan and/or a Protective Order (PO) may be a more appropriate remedy in some cases to manage safety and risk issues regarding the child and the caretaker.
- **Agreement and Safety Monitor:**
 - The ISPO orders the parents and safety monitor to comply with the terms and conditions of the safety plan as determined by or agreed upon by DCFS to protect the child's health and safety while remaining in the parent's custody. Safety monitors are individuals identified by DCFS to provide oversight of the safety plan to ensure the plan's provisions are followed and the safety threats to the child are controlled. A safety monitor may be a professional, paraprofessional, volunteer, or individual who is part of the family's network, such as extended family, church members, friends, etc. Per DCFS policy, the safety monitor must be approved by DCFS, and DCFS should have weekly contact with the safety monitor to ensure compliance with the safety plan. DCFS asks the parents and safety monitor to sign a safety plan form to indicate their agreement to its conditions.

¹ La. Ch. C. art. 603(27).

² La. Ch. C. art. 612(A)(2) requires that DCFS request a Temporary Restraining Order, Protective Order, or Instantter Safety Plan Order if: (1) There is an existing visitation or custody order involving the alleged perpetrator and the child; and, (2) DCFS determines that any such order would put the child's health and safety at risk.

- **Considerations:**

- Is there is a suitable alternative parent or safety monitor (as described above), and at least one parent not willing or able to cooperate with the DCFS initiated In-Home Safety Plan?
- Can an ISPO be implemented to keep the child in the custody of the parents (even though the child may reside with suitable alternative caretaker or safety monitor)?
- Could restricting the parents access to the child manage the child’s safety without the need to remove the child from the custody of the parents (i.e., restricting access of the perpetrator to the child)?

(3) OUT OF HOME SAFETY PLAN: INSTANTER ORDER FOR REMOVAL AND PROVISIONAL CUSTODY TO SUITABLE RELATIVE OR INDIVIDUAL (ARTICLES 619-20)

- **Overview:**

- The court can issue an Instanter Order of Removal and Provisional Custody to a Suitable Relative or Individual if it determines that the child’s welfare cannot be safeguarded without removing the child from the parents’ custody. If custody is given to a suitable relative or individual, a safety plan setting forth conditions of contact with the parents or other third parties shall be made an order of the court. The court should also order that the provisional custodian adheres to the conditions of the safety plan.

- **Considerations:**

- If the DCFS initiated In-Home Safety Plan or ISPO is not possible, is a transfer of provisional custody of the child to a suitable relative or individual the most appropriate safety plan to safeguard the child?
- Can a home study and/or background check be conducted on the relative or individual?
- Is there a suitable relative or individual placement out of state? Does placement require an Interstate Compact on the Placement of Children (ICPC) approval?

(4) OUT OF HOME SAFETY PLAN: INSTANTER ORDER FOR REMOVAL AND PROVISIONAL CUSTODY TO DCFS (ARTICLES 619-20)

- **Overview:**

- The court can issue an Instanter Order of Emergency Removal and Provisional Custody to DCFS if it determines that the child’s welfare cannot be safeguarded without removing the child from the parents’ custody, and there are no suitable relatives or individuals to place the child with.

- **Considerations:**

- If a DCFS initiated In-Home Safety Plan, ISPO, or removal and transfer of provisional custody to a suitable relative or individual is not possible, is removal and placement in foster care the most appropriate and least restrictive safety plan for the child?

C. OTHER ALTERNATIVES

(1) TEMPORARY RESTRAINING ORDER (TRO) AND PROTECTIVE ORDER (PO) (ARTICLES 617-8)

- **Overview:**

- A TRO (Article 617) and PO (Article 618) are alternative legal options that can be used with or without a DCFS In-Home Safety Plan and/or an Instanter Order. See [Temporary Restraining Order \(TRO\) and Protective Order \(PO\) Bench Book Section 2](#).

(2) INFORMAL ADJUSTMENT AGREEMENT (IAA) (ARTICLES 628-30)

- **Overview:**

- An IAA may be used whether the child is in DCFS custody or not. IAAs are routinely used in some parishes as an alternative to removal. See [Informal Adjustment Agreement \(IAA\) Benchbook Section 1](#) for more information.

(3) FAMILY IN NEED OF SERVICES (FINS) (ARTICLES 743 ET SEQ)

- **Overview:**

- Before filing a CINC Petition, the court or district attorney (DA) may refer the matter to an intake officer as a FINS Case (FINS). If appropriate, FINS may also be a viable alternative to keeping the youth out of foster care and providing services to the family.



APPENDIX

Louisiana Department of Children and Family Services
Child Welfare Assessment and Decision Making Model

A model to identify abuse and neglect, along with the needs and strengths of children and families, so that the best decisions are made with and for families.
The Child Welfare Assessment and Decision Making Model is a hybrid approach to assessing risk and safety that informs decision-making.

Safety - Safety is defined in terms of Safe or Unsafe:

A Child is SAFE when:

- There are no threats of danger, OR
- They are not vulnerable to threats of danger, OR
- The caretaker(s) possess sufficient protective capacity to manage any threat of danger.

A Child is UNSAFE when:

- There are identified threats of danger, AND
- They are vulnerable to a threat of danger, AND
- Caretakers do not possess sufficient protective capacities to manage any threat of danger.

Risk - Refers to the likelihood of child maltreatment in the future.

Three core principles considered when assessing risk and safety while informing decision-making

1. Threat of Danger - Caretaker's behavior or family situation indicates imminent serious harm to a child
2. Child Vulnerability – The extent that a child can protect themselves from identified threats of danger or risk of repeat maltreatment
3. Caretaker Protective Capacities – Strengths in the way a caretaker thinks, feels, and/or acts that prevents or controls threats of danger and guides case planning activities.

The Model

Assessment/ Decision Making	Why	Tool	How	Which Cases	Who	When	Next Steps
Centralized Intake - Screening	To determine if report of alleged abuse/neglect meets legal criteria for investigation.	CI Screening	CI assesses information gathered from online reports or hotline calls, and determines the acceptance of a report for investigation.	All reports received by Centralized Intake	CI Staff	Upon receipt of a hotline call or online report.	<ul style="list-style-type: none"> • If accepted, investigation case opened by local office. • If not accepted, local office makes required referrals (Refer to Law Enforcement, etc.)
CPS - Gather Information	To gather sufficient information to inform validity decisions, as well as the safety and risk of maltreatment.	CPS – Assessment of Family Functioning (AFF)	Consider DCFS history, worker observations, interviews/collaterals, and supporting documentation to inform 3 assessment areas: Extent and Circumstances of Maltreatment, Adult Functioning/Capacities, and Child Functioning/Vulnerabilities.	All CPS Cases	CPS Worker	Prior to completing the CPS Safety Assessment, and Initial Risk Assessment.	Continue gathering and adding information to the CPS – AFF that will inform decisions about child vulnerability, threats of danger, and caretaker protective capacities in the Safety and Risk Assessments.
CPS - Safety Assessment	To assess safety for all children in the case and document safety decisions.	Safety Assessment	Consider DCFS history, CPS - AFF, interviews, observations, collaterals, and supporting documentation to complete thorough Safety Assessment	All CPS cases	CPS Worker, approved by Supervisor	Approved by Supervisor within 15 calendar days from date of report: <u>AND/OR</u> any time a threat of danger is identified (approved in ACCESS within 5 days of assessment).	<ul style="list-style-type: none"> • For an Unsafe child, determine type of safety plan needed: In-Home, Court Ordered Safety Plan, or Foster Care. • If child is Safe, continue to gather information for validity and CPS -AFF. Assess risk of maltreatment.
For an Unsafe child, develop a safety plan	To manage threats of danger.	In-Home Safety Plan; Court Ordered Safety Plan; or Instant Order for Foster Care	Develop formal plan to manage threats of danger, while making reasonable efforts to prevent entry into foster care. Safety Plans substitute for Caretaker Protective Capacities. Use Safety Assessment guide to determine type of Safety Plan needed.	Any time child determined to be Unsafe	Assigned CPS, FS, or FC Worker/ Supervisor	Immediately when a Safety Assessment identifies an Unsafe child.	<ul style="list-style-type: none"> • Provide copy of Safety Plan to caretaker and Safety Monitor/Provider. • Staff for case transfer with FS/FC within 5 calendar days of implementing Safety Plan unless unsafe conditions have been resolved, or Manager approves delay in transfer to FS. • Assigned worker to monitor Safety Plan until case has been accepted and transferred to FS/FC.
Initial Risk Assessment (SDM)	To determine likelihood of the family coming to the attention of DCFS again if DCFS does not intervene/provide services.	SDM Initial Risk Assessment	Use information gathered from CPS AFF, Safety Assessment, DCFS history, worker observations, interviews, collaterals, and supporting documentation. Use Risk Level to guide types/frequency of contact in on-going cases.	All CPS cases	Assigned CPS Worker/ Supervisor	Approved by Sup. prior to Validity approval <u>OR</u> Prior to FS/FC case transfer staffing if transfer occurs prior to Validity Determination.	<ul style="list-style-type: none"> Use risk tool recommendations to determine if referral to FS needed. If Risk is High/Very High: 1. CPS Supervisor and Manager discuss and document rationale for closing CPS case without referral to FS; <u>OR</u> 2. Staff with FS within 5 calendar days of determination of high or very high risk

Complete Transfer to FS or FC	To share case information for the case transfer process to result in a smooth transition for case planning and service provision.	Form 6 – Transfer Staffing Form	Use information gathered from DCFS history, Safety and Risk Assessments, and the CPS AFF, to have a conversation about and document the family's strengths and needs.	All Referrals to FS and FC	CPS/FS/FC Worker/ Supervisor	Staffing to occur within 5 days of determination that transfer needed due to policy requirements, unsafe child or risk level.	FS or FC Worker reviews prior case records/information and begins work with the family. FS/FC considers information from the staffing and additional information gathered to conduct the FS and/or FC Assessment of Family Functioning and case plan.
FS – Conduct Safety Assessment	To assess safety of all children, and determine if case can be closed.	Safety Assessment	Use information from DCFS history, visitations, case plan updates, interviews, collaterals, worker observations and any supporting documentation	All FS cases	FS Worker/ Supervisor	Every 90 days and prior to closure staffing; AND/OR any time a threat of danger is identified	* For an Unsafe child, review and revise Safety Plan if needed. * Use the assessment of Caretaker Protective Capacities as guide for case planning and need for services. * If the Safety Assessment completed with the Risk Assessment to determine closure, close case if children safe.
FS - Convene FTM to develop case plan	To identify action/services needed to enhance protective capacities, ultimately achieving conditions for return and/or case closure	Assessment of Family Functioning (AFF) and FS Case Plan	Use DCFS History, Risk and Safety Assessments, the CPS AFF, Transfer Staffing info. , and FS involvement to further assess the family's needs. Develop case plan, if needed, that enhances protective capacities to manage safety and reduce risk of repeat maltreatment	All FS cases	FS Workers/ Supervisor	Hold FTM meeting within 30 days of FS case acceptance and finalize the case plan within 45 days, if case plan needed. FTM to occur every 6 months thereafter.	Provide services to enhance caretaker protective capacities that will reduce safety and risk concerns. If a safety plan is in place, continue to monitor.
FS - Conduct In-Home Risk Reassessment	To determine if risk for repeat maltreatment has reduced.	SDM In-Home Risk-Reassessment for children in homes of origin; OR Consult SDM for use of OOH Reunification Reass. for children	Use, DCFS history, worker observations, interviews, collaterals, visitations, and any supporting documentation to answer questions .	All FS Cases	FS Worker, Supervisor	In-Home Risk Reassessment is completed at least every 90 days from FS case acceptance;	* If risk is low or moderate, conduct safety assessment, and staff for potential case closure. * If case remains open, update case plan to address protective capacities. (every 6 months)* * If child is not in home of origin, consider legal options to ensure child's safety, such as custody to a relative. * Staffing with supervisor using reassessment tool as a guide for discussion and decision making
FS- Conduct In-Home Risk Reassessment	To determine what behaviors, conditions, or circumstances are needed that would allow returning a child to their parent's physical care as soon as it is safe to do so, which may not result in DCFS closing case...	Documented within the FC – AFF Case Plan	Use on-going contacts/assessment, Safety and Risk Assessments, Discuss during Transfer Staffing. Use Threats of Danger and Diminished Protective Capacities to develop a clear statement of the Conditions for Return and include in case plan.	All FC cases with goal of Reunification	FC Worker/ Supervisor	Documented within initial and on-going FC case plans. Discussed during supervisory conferences to consider trial placements while continuing to provide services to address safety and risk concerns.	* During Supervision, discuss if there are sufficient protective capacities to manage threats of danger while the child is at home. If so, consider trial placement and/or requesting an earlier court date to achieve permanency. * Continue to provide services, assess safety and risk, and implement safety plan if needed.
FC: Establish Conditions for Return	To assess safety of all children in case, and/or if the FC conditions for return have been met. . .	Safety Assessment	Use information from DCFS history, AFF case documentation, visitations, service providers, worker observations, Risk Assessment, Interviews, and collaterals.	All FC Cases	FC Worker/ Supervisor	Anytime a threat of danger is identified (non-custody children with the caretaker, trial placements, and foster care placements; AND/OR As part of the safety review completed within the OOH Reunification Reassessment, when prompted to review Safety.	* Determine if child is safe or unsafe. If unsafe, consult with Supervisor immediately to determine if Safety Plan is feasible or if a change in FC placement needed for a child in DCFS custody. * If Safety Assessment completed as part of the SDM Safety Review, proceed with recommendations of the Risk Reunification Tool and continue case planning to enhance protective capacities if recommended.
FC - Conduct OOH Reunification Reassessment	To determine likelihood of the family coming to the attention of DCFS again if the child returns home.	SDM OOH Reunification Reassessment	* Risk Assessment contains 3 key indicators that determine recommendation for reunification: Reunification Risk Reassessment: Visitation Plan Evaluation; and Reunification Safety Review; * Use information gathered during involvement with the family to inform the assessment. * A formal Safety Assessment is required if the SDM Assessment prompts the need to review safety.	FC cases with a goal of reunification	FC Worker/ Supervisor	An OOH Reunification Reassessment completed at least every 90 days from FC open date when goal is Reunification. OR Any time significant family circumstances change that affect risk- AND/OR Within 30 days prior to court hearing or when a child is being considered for a trial placement or immediate reunification. . .	If Assessment recommends reunification or an alternate goal, staff with Supervisor to determine next steps. Continue to provide services to eliminate threats of danger and/or enhance caretaker protective capacities.
FC - Convene FTM to develop case plan	To identify action/services needed to enhance protective capacities, and achieving conditions for return and/or case closure	Assessment of Family Functioning (AFF) and FC Case Plan	Use DCFS History, Risk and Safety Assessments, CPS AFF, Transfer Staffing info. , and FC/SP involvement to assess the family's needs. Develop case plan that enhances protective capacities to manage safety and reduce risk of maltreatment	All FC cases	FC Workers, Supervisor	Hold FTM meeting within 30 days of FC open date and finalize the case plan within 45 days. FTM to occur every 6 months.	Provide services to enhance caretaker protective capacities that will reduce safety and risk concerns.

**Department of Children and Family Services
SAFETY ASSESSMENT**

PRIMARY CLIENT/CASE NAME:		DATE ASSESSMENT INITIATED:	CASE ID (ACESS/TIPS):		
CARETAKERS ASSESSED:		OTHER CARETAKERS ASSESSED:			
PROGRAM: <input type="checkbox"/> CPS INVESTIGATION <input type="checkbox"/> FAMILY SERVICES <input type="checkbox"/> FOSTER CARE		REASON FOR ASSESSMENT: <input type="checkbox"/> THREAT OF DANGER IDENTIFIED (CRISIS) <input type="checkbox"/> PROGRAMMATIC REQUIREMENT			
CHILD(REN)'S NAME / Age /Sex					
CHILD VULNERABILITY – This refers to the extent that a child can protect himself/herself from identified threats of danger or risk of repeat maltreatment. (Consider factors such as dependence on others to meet basic needs; physical, medical, behavioral or mental condition; ability or inability to communicate their needs, and previous exposure to trauma)					
THREATS OF DANGER – Caretaker's behavior or family situation indicates imminent serious harm to a child			Is there a threat to child safety?	If threat exists, is <u>any</u> child vulnerable to this threat?	
Violent Behavior	1. Caretaker's behavior is violent, dangerous and/or impulsive which indicates that child safety is of serious concern. <i>Describe the threat and how each child is or is not vulnerable to the threat.</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	2. Caretaker's perception or behavior towards child is extremely negative and unrealistic resulting in serious emotional and/or physical harm to a child. <i>Describe the threat and how each child is or is not vulnerable to the threat.</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	3. Caretaker has caused significant harm to a child or made a threat, which indicates child safety is of serious concern. <i>Describe the threat and how each child is or is not vulnerable to the threat.</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Parental Responsibilities & Decision Making	4. Caretaker is unable, unwilling, or does not meet a child's basic needs for necessary food, clothing, shelter, medical, or mental health and child safety is of serious concern. <i>Describe the threat and how each child is or is not vulnerable to the threat.</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	5. Caretaker is unable, unwilling, or does not provide necessary supervision, protection, or care and child safety is of serious concern. This may be due to physical or mental health issues, substance abuse, domestic violence, cognitive or developmental deficits, or poor judgment. <i>Describe the threat and how each child is or is not vulnerable to the threat.</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	6. Caretaker refuses access to a child, whereabouts cannot be determined, and/or there is reason to believe family may flee and circumstances indicate child safety is of serious concern. <i>Describe the threat and how each child is or is not vulnerable to the threat.</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Other Significant Safety Concerns	7. Sexual abuse or exploitation is suspected, and circumstances indicate that child safety is of serious concern. <i>Describe the threat and how each child is or is not vulnerable to the threat.</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	8. Current circumstances combined with history of abuse/neglect (child welfare agency and/or law enforcement involvement) indicate that child safety is of serious concern. <i>Describe the threat and how each child is or is not vulnerable to the threat.</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No

PRIMARY CLIENT/CASE NAME:

FAMILY/FACILITY ID:

CARETAKER PROTECTIVE CAPACITIES. Strengths in the way a caretaker thinks, feels, and/or acts that prevents or controls threats of danger. COMPLETE ONLY IF THERE IS A VULNERABLE CHILD TO A SPECIFIC THREAT OF DANGER.	Do <u>all</u> caretakers possess the protective capacity?		
1. History of protecting from harm and unsafe conditions	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unable to Determine
2. Recognizes threats and has ability to implement plan to protect child(ren)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unable to Determine
3. Demonstrates impulse control in order to protect and provide for child's overall care	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unable to Determine
4. Understands, has the skills needed, and takes action to meet parenting responsibilities	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unable to Determine
5. Sets aside own needs where the safety and well-being of child(ren) are the caretaker's priority	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unable to Determine
6. Demonstrates love, empathy, and tolerance of child(ren), and is positively attached.	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unable to Determine
7. Understands child development and has realistic expectations of child's capabilities, needs, and limitations	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unable to Determine
8. Is able to meet their own needs, including basic daily and emotional needs	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unable to Determine
9. Has ability to handle every day, unexpected stressors/crises and has an accurate perception of reality	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unable to Determine
10. Demonstrates ability to obtain concrete supports needed such as food, clothing, housing, social services, transportation	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unable to Determine
11. Caretaker can and will access family and/or friends who are ready, willing and able to help the family	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unable to Determine

SAFETY DETERMINATION

Are there sufficient caretaker protective capacities to manage identified threats? Yes No Unable to Determine N/A

Describe:

Is any child Unsafe? Yes No (Check yes if there are any threats a child is vulnerable to, AND if caretaker protective capacities cannot manage the threats, or are unable to be determined due to an emergency safety situation.

SAFETY ANALYSIS IS COMPLETED IF ANY CHILD IS UNSAFE TO DETERMINE THE TYPE OF SAFETY PLAN NEEDED

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<p>Is an In Home Safety Plan feasible?</p> <p><input type="checkbox"/> Do the caretakers have a living situation that is calm/consistent/stable enough where an in-home safety plan and services can be implemented?</p> <p><input type="checkbox"/> Are the caretakers willing to accept, be cooperative with, and comply with an in-home safety plan and services?</p> <p><input type="checkbox"/> Is there a suitable safety monitor who believes that a safety plan is needed, and is able to place the child's safety and needs above their relationship with the caretaker(s)?</p> <p><small>**Safety Monitors require a DCFS CW clearance per DCFS policy</small></p>	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<p>Is a Court Ordered Safety Plan feasible?</p> <p>If there is a suitable alternative caretaker or safety monitor(as described above), BUT at least one of the caretakers is not willing or able to cooperate with an in-home safety plan, can a court ordered in-home safety plan be implemented?</p>	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<p>If an in-home safety plan or court ordered safety plan is not possible, is transfer of provisional custody or Foster Care the safety plan?</p>	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A	<p>If Safety Assessment is conducted on a foster care placement, did the Child Welfare Manager approve use of a safety plan as compared to changing the foster care placement?</p>

Safety Plan/Additional Comments:

Worker's Name	Supervisor's Name
Reviewing Worker's Signature Date	Reviewing Supervisor's Signature Date

APPENDICES

LOUISIANA
CHILD IN NEED OF CARE BENCHBOOK
FOR JUVENILE JUDGES

SECTION

12

ACRONYMS



ALSC	Acadiana Legal Services	ISPO	Instanter Safety Plan Order
ACEs	Adverse Child Experiences	KCSP	Kinship Care Subsidy Program
ADA	Americans with Disabilities Act	KNP	Kinship Navigator Program
ADA	Assistant District Attorney	LASC	Louisiana Supreme Court
APLA	Alternative Permanent Living Arrangement	LDH	Louisiana Department of Health
ASFA	Adoption and Safe Families Act	LDOE	Louisiana Department of Education
BGC	Bureau of General Counsel	LEA	Local Educational Agency
CASA	Court Appointed Special Advocate	LEAF	Louisiana Elite Advocacy Force
CCH	Continued Custody Hearing	LPOR	Louisiana Protective Order Registry
CFSR	Children and Family Services Review	MHAS (CAP)	Mental Health Advocacy Services, Child Advocacy Program
CINC	Child in Need of Care	MTTS	Multi-tiered Systems of Support
CLARO	Children’s Law Advocacy Resource Online	NCJFCJ	National Council of Juvenile and Family Court Judges
CSE	Child Support Enforcement (CSE)	OJJ	Office of Juvenile Justice
CSPH	Continued Safety Plan Hearing	PO	Protective Order
CSPO	Continued Safety Plan Order	PRTF	Psychiatric Residential Treatment Facility
CWADM	Child Welfare Assessment and Decision Making Model	QPI	Quality Parenting Initiative
DA	District Attorney	RE	Reasonable Efforts
DCFS	Department of Children and Family Services (also referred to as “the Department”)	RTI	Response to Intervention
ESSA	Every Student Succeeds Act	SDM	Structured Decision Making
FFPSA	Family First Prevention Services Act	SLLS	Southeast Louisiana Legal Services
FINS	Family in Need of Services	SMCRA	Service Members Civil Relief Act
FITAP	Family Independence Temporary Assistance Program	SNAP	Supplemental Nutrition Assistance Program
FTM	Family Team Meeting	TBH	Trauma and Behavioral Health Assessment
IAA	Informal Adjustment Agreement	TBRI	Trauma Based Relational Intervention
ICPC	Interstate Compact on the Placement of Children	TPR	Termination of Parental Rights
ICWA	Indian Child Welfare Act	TRO	Temporary Restraining Order
IDEA	Individuals with Disabilities Education Act	UCCJEA	Uniform Child Custody Jurisdiction and Enforcement Act
IEP	Individualized Education Program	YTP	Youth Transition Plan

CONFIDENTIAL CASA REPORT

This report is confidential in nature for the benefit of the court
And may be distributed only to parties to the proceeding.

CASA Volunteer Name:

Case Number:

Regarding:

DOB:

Type of Hearing:

Date & Time:

Number of months and years in care:

Person Interviewed/Visited

Relationship to Case

Date and Reason Child/Children Entered Care:

A permanency plan of: _____

was approved and ordered by the court on: _____

Documents Reviewed:

Placement:

Visitation:

Educational:

Mental Health/Behavioral:

Medical/ Dental:

Progress Toward Achieving Permanent Plan:

Assessment/Summary:

Recommendations:

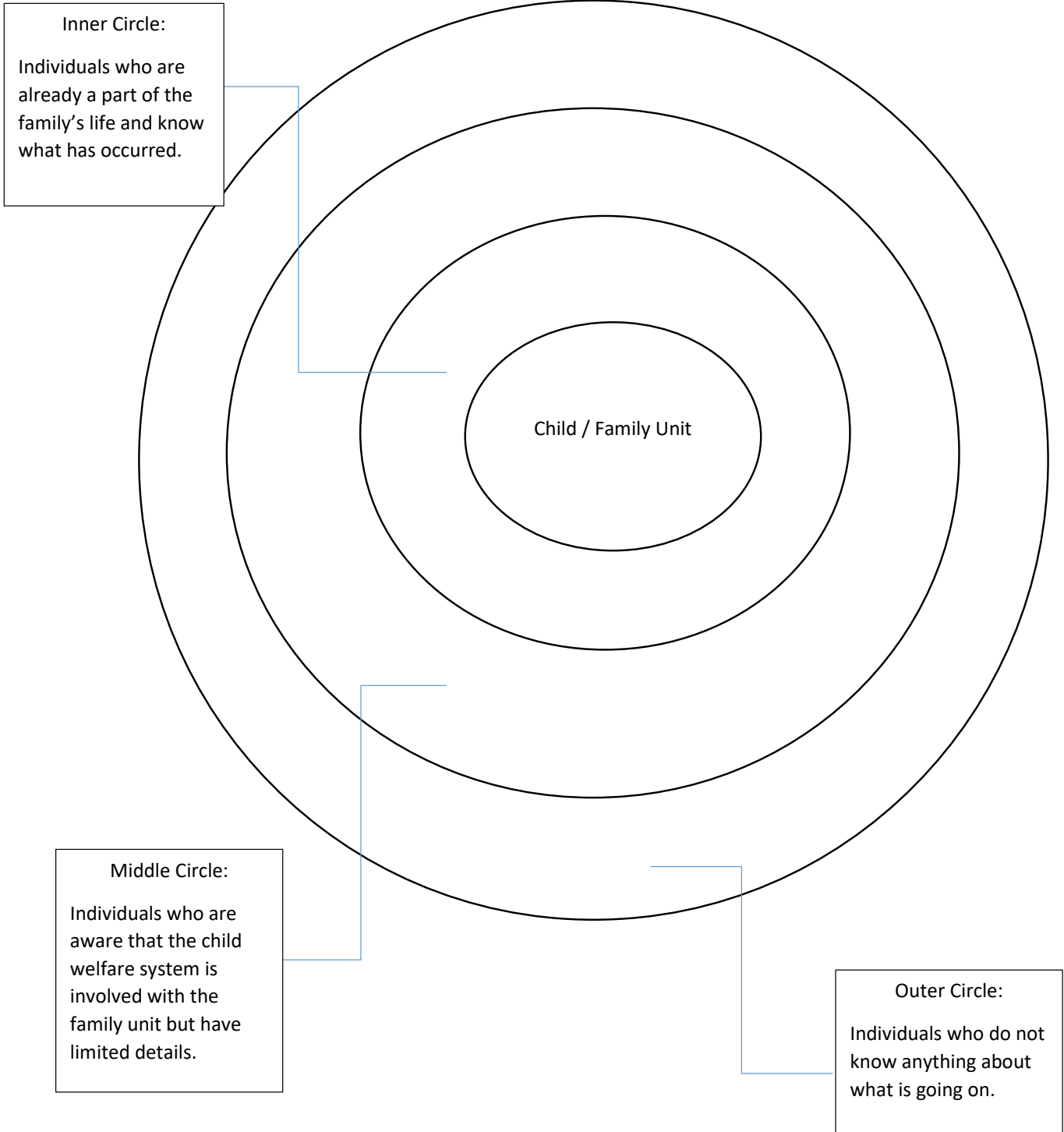
1.

This report and the accompanying recommendations are respectfully submitted by:

CASA Volunteer

Advocate Supervisor

Circle of Influence



State of Louisiana Case Plan Cover Sheet/FC

Case Name/TIPS: Blank FC Blank / 886688669 (FAMILY)

Date Case Plan Finalized: 8/18/2020

Type of Planning Meeting: Initial

Parish: Acadia

Case Plan Review as needed but no later than: 2/17/2021

Name	Relationship to child/family	Signature	Date Signed	Participated in Meeting
Blank FC Blank	Natural Parent			

State Child's Permanent Plan:

SDM RISK LEVEL/Likelihood of repeat maltreatment without Agency involvement:

SDM RISK LEVEL (second household, if applicable):

DCFS and Family Visits: Describe the expected frequency and location of DCFS worker visits with the family.

Threats of Danger/Safety Concerns:

hello

Risk Factors to address in case plan (SDM):

here

Conditions for Return:

is

Conditions for Closure:

an example.

Problem Resolution:

You are encouraged to talk at this meeting about services that you think are the best for this child and family. Please write any comments in above space or on another page if you disagree with any part of this plan. DCFS follows a problem solving approach that family members are encouraged to try. Please talk with your worker about how DCFS staff can best help. If you and your worker disagree on what should be done, please talk to your worker's supervisor, if you are still not satisfied with services offered, please ask the supervisor to help you contact the District Manager or Regional Administrator. If after talking to the regional DCFS staff you still believe that changes are needed, then you may ask the regional staff to help you contact DCFS State Office staff to discuss changes that you want. Foster parents may refer to the Foster Parent Handbook for problem and/or grievance procedures.

Comments From Family:

Quality Assurance Specialist _____

Date _____

FEDERAL COMPLIANCE

Reason Child(ren) entered Foster Care:

(Describe why the child(ren) entered foster care and include any identified safety and risk factors)

ksdjfhakjh

Preventive Services:

Identify what preventive services were offered prior to the child(ren)'s entry into foster care or identify the circumstances which indicated that there was substantial, immediate danger to the child(ren) which precluded the provision of preventive services as an alternative to removal. *Explain how the preventive services were appropriate to the situation to reduce the risk and prevent removal of the child(ren).*

kjshdlkfkjhh

Child's Care Setting

(A) Describe how this placement is the least restrictive, most family-like, safe, and most appropriate setting available consistent with the best interests and special needs of the child. Describe the type of placement as well as proximity to child's family and community of origin (if not in close proximity, explain why).

kjhsdfkajsh

(B) Has the child's current caretaker committed to adopt the child, if the child becomes available for adoption?

jkdsahlkjshd

(C) If the child has no identified permanent placement, describe the resources that have been explored, including relatives and significant others, in order to facilitate an orderly and timely placement to achieve a permanent living arrangement that has been assessed for safety and risk for the child, if the child is not able to return home.

kjsdhfkah

(D) Does the child have any permanent connections that have been established? If yes, list name and type of commitment. If no, describe efforts to develop permanent connections.

kjhasdlkjfah

(E) Date written notification was provided to all foster caretakers informing them of the date, time, and place of court hearings and their right to attend and be heard.

jhdsalkfkkkhh

(F) Has the Department provided the foster caretakers with information on the Reasonable and Prudent Parent Standard?

jhsdlkjffha

(G) Document what the Department has done to ensure each foster caretaker is following the Reasonable and Prudent Parent Standard.

kljhsdlkfkjh

Permanency Goals

(A) For each child, please mark the current case goal (Reunification, Adoption, Guardianship, APLA, or Other) next to their name. If concurrent planning is occurring for any child, please mark both case goals.

hklshaf

(B) If child(ren) length of stay in foster care meets the timeline for termination of parental rights according to P.L. 105-89 or meets the legal standards for immediate termination of parental rights and the child(ren)'s plan is not adoption, document the reason termination of parental rights is not being pursued. Are there any other factors impacting the progress of termination?

kljhdsa

(C) Please note history of previous case goals explored and reason each was ruled out.

jkhsdlfhh

(D) If the goal for any child is APLA, document the following:

- The child is age 16 or older;
- Intensive, ongoing, unsuccessful efforts to achieve a more permanent case goal, to specifically include efforts utilizing search technology (social media, Federal Parent Locator System, etc.) used to find biological family for the child;
- Outcomes of discussions with the child regarding their permanency goal;
- Why APLA is the best permanency goal for the child; and
- Why it is not in the child's best interest to return home, be placed for adoption, or be placed with a legal guardian or relative.

jhdsikhfh

Case Plan Services Review

(A) Are the services being provided in the case plan adequately addressing the needs and assisting in progression of the goals?

kjhdkfh

(B) Are the service providers suitable for the family and have they assisted the family in progression of their goals?

kjahdsfh

(C) Was each child consulted about activities in which he or she wants to participate?

kjhkldshhfahhh

(D) Has each child had regular ongoing opportunities to engage in age or developmentally appropriate activities? Describe.

khlkjdhf

Educational Stability

Pursuant to 475(1)(G) of the Fostering Connections Act, the plan for ensuring the educational stability of each child in foster care of compulsory school age (5 years of age by September 30 in the year in which the child turns 5 through age 17):

(A) Assurance each placement of each child in foster care was determined with consideration given to the appropriateness of the current educational setting and the proximity of the placement to the school in which the child was enrolled at the time of placement;

hjlkdjfh

(B) Assurance efforts were coordinated by Child Welfare with the Local Education Authority when necessary to ensure each child could remain in the same school in which each child was enrolled at the time of each placement; and,

jkhlkahf

(C) Assurance, if remaining in the same school was not in each child's best interests, Child Welfare and the Local Education Authority coordinated enrollment of each child requiring a school change immediately in a new school, with all of each applicable child's educational records provided to the new school.

kjhklfh

BASIC OBLIGATIONS OF PARENTS

Parents are the responsible party for the following basic obligations:

- To maintain safe housing adequate to meet their child's basic needs.
- To pay all or part of the cost of the child's care while in foster care as indicated below:

sdfasd

- To maintain regular contact with the child while in foster care in accordance with the visitation plan.
- To provide the name, address, and other requested information about the non-custodial parent of the child, any Native American tribal membership or eligibility for membership, and other relatives and persons who may be interested in caring for the child or having some type of contact with the child.
- To participate in determining the permanent plan for the child and to work towards achieving permanency before or within 12 months of the child's placement in foster care.
- To receive notice of and attend all hearings regarding custody and placement of the child.
- To engage in case planning with the Department to know what conditions must be met in order to have the child returned.
- To keep the Department advised of their whereabouts and significant changes occurring in their lives.

Responsibilities of parents/guardians are ongoing throughout the life of the case and fulfillment of such will be reviewed on a regular basis.

Formal Case Plan Review	Date Review Conducted
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ADDITIONAL CONSIDERATIONS FOR PARENTS/GUARDIANS

- Parents/Guardians should provide medical/social history and family income and resource information on the child and the family.
- Parents/Guardians should explain to the child the reasons for placement and assist the child in understanding what placement means and the future living arrangement plan.
- The following are permanent plan options for a child:
 - The return of the child to the home of the parent from whom he was removed;
 - Transfer of custody of the child to the non-custodial parent;
 - Adoption by a relative, foster or adoptive parent;
 - Guardianship to a relative or other person; and,
 - Alternative Permanent Living Arrangement (Transition of Youth to Adulthood from Foster Care).
- Parents/Guardians may maintain their role as parents by participating in some activities concerning the child; to determine the religious affiliation of the child; to consent for major non-emergency surgery and anesthesia for the child, if needed; and to be informed of a serious injury, emergency surgery, or hospitalization of the child, changes in the child's living arrangement and any runaway incidents.
- Parents/Guardians may indicate in writing any disagreement with any part of the family's or child's case plan.

Louisiana law provides that rights as a parent can be permanently terminated against the parents' wishes under certain circumstances. Some of these circumstances are:

- Severe or repeated abuse or neglect of a child in the parent's household;
- Abandonment of the child;
- The parent's killing of the child's other parent;
- Extended incarceration of a parent who does not provide another plan for the child; and
- Parental lack of compliance with the case plan and no reasonable expectation of significant improvement in the parent's condition or conduct.

When parental rights are terminated by a court or a parent surrenders a child for adoption, parents lose all rights to visits, have custody of, or make any decision for their child(ren). The child is then available for adoption. If the parent chooses to surrender parental rights to the child for the purpose of adoption and the child is not adopted, the surrender may be dissolved by the court.

Louisiana law provides that custody or guardianship of children may be placed with a relative or other person. Louisiana law also allows for consideration of restoration of parental rights after a child achieves age 15 in foster care, in certain circumstances, as per LA Ch. C. Chapter 11, Title X, Articles 1050-1053.

BASIC OBLIGATIONS OF PARENTS

Parents are the responsible party for the following basic obligations:

- To maintain safe housing adequate to meet their child's basic needs.
- To pay all or part of the cost of the child's care while in foster care as indicated below:

--

- To maintain regular contact with the child while in foster care in accordance with the visitation plan.
- To provide the name, address, and other requested information about the non-custodial parent of the child, any Native American tribal membership or eligibility for membership, and other relatives and persons who may be interested in caring for the child or having some type of contact with the child.
- To participate in determining the permanent plan for the child and to work towards achieving permanency before or within 12 months of the child's placement in foster care.
- To receive notice of and attend all hearings regarding custody and placement of the child.
- To engage in case planning with the Department to know what conditions must be met in order to have the child returned.
- To keep the Department advised of their whereabouts and significant changes occurring in their lives.

Responsibilities of parents/guardians are ongoing throughout the life of the case and fulfillment of such will be reviewed on a regular basis.

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CASE PLAN: Adult Functioning, Parenting Practices, and Building Protective Capacities

Behavioral Goals:

m dsaf

Action Steps

Action	Responsible Party	Progress Review Date	Completed
dsfkajh	kjhdsfkfkjkh	2/2/2021	Ongoing

Formal Case Plan Review

Behavior Change Progress	Date Review Conducted
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CASE PLAN: Child Functioning

Behavioral Goals:

fdsaf

Action Steps

Action	Responsible Party	Progress Review Date	Completed
Next annual physical exam due by _____			Ongoing
Next dental exam due by _____			Ongoing
Lifebook will be maintained and updated at a minimum every 6 months			Ongoing

Formal Case Plan Review

Behavior Change Progress	Date Review Conducted
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CUMULATIVE MEDICAL RECORD

Child's Name: Blank FC Blank (FAMILY) DOB: TIPS: 886688669

Physical, Vision, and Dental Examinations and Treatment for Illnesses

Date	Doctor's Name & Address	Treatment/Service	Recommendations

PRESCRIPTION AND OTHER ROUTINE MEDICATION INCLUDING PSYCHOTROPIC MEDICATION

Medication	Reason	Dosage	Prescribing Physician	Date Prescribed	Currently Taking?

Immunization Record

Immunization	Date	Immunization	Date	Immunization/Test	Date
Birth HBV		12-15 mos. DTaP, Hib, MMR, Var, PCV7, HAV		AIDS/HIV Test	
2 mos. DPT aP, Hib, IPV, HBV, PCV7, Rota		18-23 mos. HAV			
4 mos. DPTaP, Hib, IPV, PCV7, Rota		4 years or Prior to School Entry DTaP, IPV, MMR, Var			
6 mos. DTaP, Hib, IPV, HBV, PCV7, Flu, Rota		11-12 years Tdap, MCv4, HPV or (Var, MMR, HBV if needed)			

Allergies:

COMMUNICABLE DISEASES

Indicate date if the child has had any of the following:

Chicken Pox	Genital Herpes	Intestinal Parasites	Malaria	Pneumonia	Tetanus
Chlamydia	Genital Warts	Hepatitis B	Measles	Poliomyelitis	Tuberculosis
Diphtheria	German Measles	HIV	Meningitis	Scarlet Fever	Typhoid Fever
Dysentery	Gonorrhea	Influenza	Mumps	Syphilis	Whooping Cough

DIAGNOSED CONDITIONS

Category	Assessed?	Starte Date of Diagnosis	End Date of Diagnosis	Physician	Comments
Intellectual Disability	Not Yet Assessed				
Visual/Hearing Impairment	Not Yet Assessed				
Physical/Motor Disability	Not Yet Assessed				

Category	Assessed?	Starte Date of Diagnosis	End Date of Diagnosis	Physician	Comments
Emotional Disability	Not Yet Assessed				
Other Medical	Yes		8/18/2020	mn	mn

Other:

DIAGNOSIS

Medical Diagnosis	Date of Diagnosis	Physician
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Mental Health Diagnosis	Date of Diagnosis	Physician/Clinician
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Comments related to above diagnosis (indicate specific diagnosis):

HISTORY OF INPATIENT MENTAL HEALTH/PSYCHIATRIC TREATMENT

Date	Reason Hospitalized	Hospital
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HISTORY OF SURGERY OR OTHER INPATIENT MEDICAL TREATMENT

Date	Reason	Hospital
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Laboratory Tests, including dates, since placement:

Has child been tested for lead poisoning?
 (If no, testing should be arranged at the Public Health Unit or with a Kid-Med provider.)

Other significant information:

CUMULATIVE SCHOOL/EDUCATIONAL RECORD - FOSTER CHILD

Child's Name: Blank FC Blank (FAMILY) DOB: TIPS: 886688669

Year	Grade	Reg Attendance	Pass	Child In Special Ed	Current IEP In Record	Name of School	Address
2020-2021	K	Y					

Did the child pass the 4th grade LEAP test? _____
If no, what were the problems? _____

Did the child pass the 8th grade LEAP test? _____
If no, what were the problems? _____

Did the child pass the 10th grade GEE 21 English & Math? _____
If no, what were the problems? _____

Did the child pass the 11th grade GEE 21 Science & Social Studies? _____
If no, what were the problems? _____

Did the child pass the 12th grade GEE 21 only if previous tests not passed? _____
If no, what were the problems? _____

Was the child receiving special education services at the time the child entered foster care?
If yes, was the IEP current? _____

Has the child received their high school diploma or any certificate of high school equivalency? _____
Date Received _____

CLOSING SUMMARY - CONDITION FOR RETURN

Family Name/TIPS: Blank FC Blank / 886688669 (FAMILY)

1. Briefly provide the reason for the FC referral:

safsd

2. Safety

What were the initial threats of danger (if any)?any additional threats of danger identified during the case and how were they addressed?

sjda;kkhfhkhh;

3. Risk

What is the current SDM level and does it support closure of the FC case? If not, is there an approved override by the Supervisor/Manager?

kjhdsfkjh

4. Progress

Describe the overall progress or lack of progress made in the achievement of the case plan behavioral goals. (Include a description how the caretaker's protective capacities have been enhanced).

hkjldsifnlk

5. Family Supports/Maintenance

Describe any identified community resources/agencies or family supports that are involved at case closure that will help to sustain positive family functioning.

kjhdsfkfkakjhh

6. Date of Termination Visit With Family: 1/1/1900

Reminders:

SDM risk re-assessment required prior to case closure (up to 30 days prior to closure). Each domain is to be updated with the most current information. Safety Assessment/Form 5 required prior to case closure.

Other Comments:

Worker, Credentials, Signature/Date

Supervisor, Credentials, Signature/Date

Family Connections

Child:
TIPS #:

Siblings:
Name:
Name:
Name:

Mother:
Contact Info:
Symbol: ____

Father:
Contact Info:
Symbol: ____

Maternal Grandmother
Contact Info:
Symbol: ____

Maternal Grandfather
Contact Info:
Symbol: ____

Paternal Grandmother
Contact Info:
Symbol: ____

Paternal Grandfather
Contact Info:
Symbol: ____

Maternal Aunts / Uncles:
Contact Info:
Symbol: ____

Maternal Aunts / Uncles:
Contact Info:
Symbol: ____

Maternal Aunts / Uncles:
Contact Info:
Symbol: ____

Paternal Aunts / Uncles:
Contact Info:
Symbol: ____

Paternal Aunts / Uncles:
Contact Info:
Symbol: ____

Paternal Aunts / Uncles:
Contact Info:
Symbol: ____

Godparents:
Contact Info:
Symbol: ____

Close Family / Friends:
Contact Info:
Symbol: ____
Contact Info:
Symbol: ____
Contact Info:
Symbol: ____

Legend: 1 Strong Bond 2 Some Bond 3 No Bond

Foster Caregiver Progress Form

Your First & Last Name(s):

First & Last Name of the Child:

Instructions: This form gives you the opportunity to provide valuable information about how the child in your care is doing and exercise your legal right to be heard in court. You are encouraged to complete and submit this form to your DCFS case worker before the child's next court hearing. Please type or write clearly in ink and complete a separate form for each child. Provide any current information you consider relevant since the child was placed in your care. You may write on the back of this form if needed. DCFS will submit the form to the court and make sure all parties involved in this case get a copy of the form.

(1) How is the child doing in your home (strengths and weaknesses)? _____

(2) What strengths, interests, hobbies, or talents does the child have, and activities or sports does he/she participate in or want to participate in? What help is needed to support these? _____

(3) Please list any medical, dental, mental health, or developmental progress or challenges: _____

(4) Please list any childcare or educational successes or challenges: _____

(5) Do you have any feedback about the child's visits with parents (i.e., transportation, schedule, behaviors of the child that you observed)? _____

(6) Is information about the child being shared between you and the child's parent(s) (i.e., medical appointments, school functions, and/or other activities the child is involved in)? ___ No ___ Yes.

If no, why? _____

(7) Do you have any of the child's siblings in your home? If not, briefly describe how sibling visitation is going.

(8) Is there any information or resources that you need to better care for the child? _____

SIGNATURE(S) OF FOSTER CAREGIVER(S) WHO COMPLETED FORM

DATE SIGNED

FOR OFFICIAL USE ONLY

First and Last Name and Title of Recipient of Form:	Date Form Received:
Name of Court:	Docket Number:
Name of Judge:	Court Date:

Louisiana ICWA Quick Reference Guide

Adapted from Utah Court Improvement Program & ABA Center on Children and the Law

ICWA applies to an Indian child in a State Court 'child custody' proceeding, as defined in ICWA who is not a ward of a tribal court and is not domiciled on a reservation.

Indian Child:

Unmarried under 18 years old &:
 1. Member/citizen of Tribe, OR
 2. Eligible for membership AND biological child of member

Child custody proceeding:

1. Foster-care, custody, & guardianship placement
2. Termination of parental rights
3. Preadoptive & Adoptive Placements
4. Status offenses/out-of-home placement

Indian Child's Domicile:

- That of parent, custodial parent (if the parents unmarried), Indian custodian, or guardian

Exclusive Tribal Jurisdiction if:

- Resides/domiciled on reservation, OR
- Ward of tribal court

EMERGENCY REMOVAL STANDARD: Necessary to prevent imminent physical damage or harm to the child.

Court must:

1. Make a finding on the record.
2. Promptly hold a hearing when information shows emergency ended.
3. Immediately terminate proceeding when there's sufficient evidence showing emergency removal/placement is no longer necessary.

Time Limits -No longer than 30 days unless the Court determines that:

1. Restoring the child to parent or Indian custodian would subject child to imminent physical damage or harm.
2. Court has been unable to transfer jurisdiction.
3. It has not been possible to initiate a child-custody proceeding.

A petition for emergency removal or continued emergency placement must comply with 25 CFR § 23.113(d).

QEW is NOT required.

Actions that terminate an Emergency Proceeding:

1. Initiate a child-custody proceeding.
2. Transfer to Tribe.
3. Restore child to parent or Indian custodian.

INQUIRY

At commencement of each hearing, Court must:

1. Ask if anyone knows/has reason to know if child is an Indian child.
 2. Instruct all parties to inform the court of subsequent information.
- If there is a reason to know, but insufficient evidence:*
3. Confirm DCFS used due diligence to identify & work with all tribes
 4. Treat as Indian child unless & until the court can determine otherwise

Reasons to know include:

- Anyone informs the court
- Child informs court
- Child is ward of tribal court
- Anyone discovers information
- Child resides/domiciled on a reservation
- Either parent possesses tribal identification card

ACTIVE EFFORTS

Active efforts are meant to:

- Begin at INQUIRY if there is a reason to know a child is an Indian child.
- Be tailored to the facts and circumstances of individual cases.
- Be affirmative, active, thorough, timely.
- Reunite an Indian child with his or her family.

Courts must conclude that DCFS made active efforts, documented in the record.

PROPER REMOVAL & RETENTION

- The Court must expeditiously determine whether removal or retention was proper: *returning an Indian child to parents or Indian custodian would subject the child to substantial and immediate danger or threat of such danger*
- If improper, the court must terminate proceedings and immediately return child to parents or Indian custodian.
- **Improper removal may be asserted at any time by any party.**

TIME LIMITS AND EXTENSIONS

- No foster-care placement or TPR proceedings may be held **until at least 10 days after receipt of notice.**
- Parents, Indian custodians, Tribes or Secretary have a right to **an additional 20 days for preparation.**
- Additional time may be available under State law or pursuant to extensions granted by court.

DETERMINATION OF TRIBAL MEMBERSHIP

Tribes have sole jurisdiction and authority to determine membership or eligibility.

The State Court:

- **May not** substitute its own determination.
- **May rely** on facts or documents indicating membership.

To make a judicial designation of Indian child's tribe:

- If only one tribe: the court must designate as Indian child's tribe
- If 2+ tribes:
 - the court should give deference to the tribe in which child is already a member unless otherwise agreed to by tribes
 - the court must provide the opportunity for the Tribes to determine which should be designated as the Indian child's Tribe

NOTICE

Courts must ensure:

1. Party seeking placement:
 - a. Promptly sends notice of each hearing by registered or certified mail with return receipt requested to each potential Tribe, parent, and Indian custodian.
 - b. Files with the court originals or copies with any return receipts or proof of service.
2. Notice is in clear and understandable language and conforms to requirements at 25 U.S.C. § 1903; 25 CFR 23.2.
3. Notice sent to BIA Regional Director if identity or location of parents, Indian custodian or Tribe(s) unknown.
4. Language access provided for Limited English Proficient (LEP) individuals.
5. Parent or Indian custodian is informed of rights if appearing without attorney.

Louisiana ICWA Quick Reference Guide

Adapted from Utah Court Improvement Program & ABA Center on Children and the Law

STANDARDS OF EVIDENCE Foster-care placement = Clear and convincing; Termination of parental rights = Beyond a reasonable doubt

The court must not order a foster-care placement or termination of parental rights unless the evidence shows a **causal relationship** that conditions in the home **likely will result in serious emotional or physical damage to child**.

Without causal relationship, evidence that shows only the following **does not** meet standards of evidence: community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior.

QUALIFIED EXPERT WITNESS (QEW)

QEW must be qualified to testify to the following:

1. Continued custody of parent or Indian custodian is likely to result in serious emotional or physical damage to child
2. Prevailing social and cultural standards of the Indian child's Tribe

Who can be a QEW? *Please note that the final regulations do not include the preference list of QEWs that appear in the 2015 Guidelines.

1. May be a person designated by Tribe
2. Court or any party may request assistance of Tribe or BIA office to locate QEW
3. The regularly assigned DCFS caseworker **may not** serve as QEW.

When is QEW Required?

Foster care placements and termination of parental rights. A QEW is NOT required for emergency proceedings

PLACEMENT PREFERENCES *The court must consider, where appropriate, child or parents' preferences.*

Adoptive - In descending order:

- 1) Member of child's extended family
- 2) Other members of child's Tribe
- 3) Other Indian families

Foster-care or Pre-adoptive - In descending order:

- 1) Member of child's extended family
- 2) Foster home licensed, approved or specified by child's Tribe
- 3) Indian foster home licensed or approved by an authorized non-Indian licensing authority
- 4) Institution for children approved by an Indian Tribe or operated by an Indian organization whose program is suitable to meet child's needs.
- 5) And the least restrictive setting that:
 - Most approximates a family, considering sibling attachment
 - In reasonable proximity to child's home, extended family or sibling
 - Allows child's special needs to be met

To Depart from the Placement Preferences:

- 1) Apply Tribe's order of placement preferences if established by resolution
- 2) Court determines good cause on the record or in writing.

Good cause to Depart from Placement Preferences

- Any party asserting good cause must state orally on the record or in writing
- Party seeking departure has burden to prove by clear and convincing evidence
- A court's determination must be made on the record or in writing and should be based on one or more of the following:
 - a) Parents' request if they viewed placement options
 - b) Child's request, if of sufficient age and capacity
 - c) Sibling attachment
 - d) Extraordinary physical, mental or emotional needs of the Indian child
 - e) Unavailability of suitable placement after diligent search. Analysis must conform to prevailing social and cultural standards of the child or family's Indian community

A placement preference may not depart based on:

1. Socioeconomic status relative to another placement
2. Ordinary bonding or attachment that flowed from time spent in non-preferred placement in violation of ICWA.

TRANSFER TO CHILD'S TRIBE Available at any stage of the proceeding.

Who may request:

- 1) Parent, Indian custodian or Tribe orally on the record or in writing

Notice to Tribal Court

- State court must ensure child's Tribe receives prompt notice of the transfer petition.
- State court may request a timely response from the Tribal court's wishes to decline transfer.

Ruling on Transfer Petitions

- State court must transfer the proceeding unless one or more criteria met:
 1. Either parent objects
 2. Tribal court declines
 3. Good cause exists

Good cause not to transfer

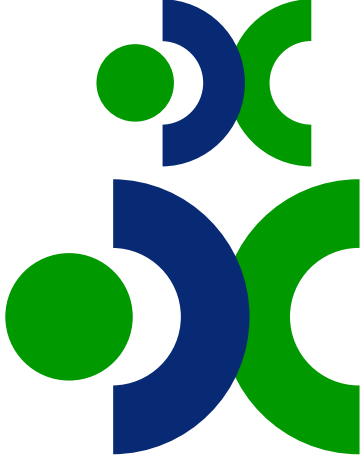
- State court or any party must assert orally on record or in writing reasons that good cause exists
- Any party must have right to provide the court with views regarding good cause
- The court **must not consider**:
 1. Advanced stage of proceeding, if parent, Indian custodian or Tribe did not receive notice until an advanced stage
 2. Prior proceedings involving child in which no petition to transfer was filed
 3. Change in placement
 4. Child's cultural connections with Tribe or reservation
 5. Socioeconomic conditions or negative perception of Tribe or BIA social services or judicial systems

Resources & Support Services

- Grandparents Raising Grandchildren Information Center of Louisiana – information, resources, and support group services for kinship caregivers. www.lagrg.org or 225-810-3555
- Medicaid and LaChip – Health insurance programs that provide health coverage to eligible low-income, uninsured children or families and families with disabled children. <http://www.Louisiana.gov/LDH/Medicaid>
- Women, Infants, and Children (WIC) provides income eligible families with children under age 5 food benefits and nutrition education. www.louisianawic.org or 1-800-251-BABY
- Child Care Assistance Program (CCAP) helps low-income families pay for child care while working or attending school or training. www.louisianabelieves.com/early-childhood/child-care-assistance-program or 1-877-453-2721
- Social Security Survivor Benefits, Supplemental Security Income (SSI), benefits for disabled children and children of disabled parents, and social security cards. www.ssa.gov or 1-800-772-1213
- Information on legal topics and locating low cost legal aid in your community. www.LouisianaLawHelp.org
- Obtaining a birth certificate www.lah.gov/publichealth/vitalrecords

For information on the following programs, visit www.dcf.la.gov and select IAM/RelativeCaregiver or FamilySupport, or call 1-888-LA-HELP-U (1-888-524-3578).

- Kinship Care Subsidy Program (KCSP) provides cash assistance for each eligible child who resides with a qualified relative other than a parent.
- Family Independence Temporary Assistance Program (FITAP) provides cash assistance to families with children when the family's financial resources are insufficient to meet subsistence needs.
- Supplemental Nutrition Assistance Program (SNAP) provides eligible low-income families monthly benefits to help buy food.
- Child Support Enforcement Services - Child Support is an obligation of a parent to provide emotional, financial and medical support for a child or children. DCFS offers parent locator and paternity establishment services, as well as assistance to establish and enforce child support orders and collection and distribution of child support payments.



Kinship Care

Maintaining to Family, Community and Culture

This public document is published at a total cost of \$1978.20. Forty thousand (40,000) copies of this public document were published in this first printing at a cost of \$1978.20. This document was published by OTS-Production Support Services, 627 North 4th St., Baton Rouge, LA 70802, for the Louisiana Department of Children and Family Services, to inform the public about Kinship Care. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.
Kinship Care brochure, Form KC, issued Sept 2019

What is Kinship Care?

Kinship Care is the full-time care of children by relatives, tribal members, godparents, stepparents, or others who have a kinship bond with a child and whose parent is not living in the home. Children receiving appropriate care from relatives benefit by receiving care and affection from someone known to them and by having important attachments, family ties, and relationships preserved. Additionally, when parents are unable to do so, kinship caregivers are often able to provide the safe care needed, eliminating the need for formal child welfare intervention. However, should children have to enter foster care, relatives may be best able to provide care as certified kinship caregivers within the Department of Children and Family Services.

What are the types of Kinship Care?

Kinship Care can be provided on a formal or informal basis. Parents and relative caregivers are sometimes able to voluntarily agree on care and informal custody arrangements that enable the relatives to meet the child's needs. When this is not possible, relatives must sometimes secure formal or legal custody in order to provide the level of care needed or enroll the child in school, secure medical care, etc.... While relatives may be able to obtain certain temporary custodial documents without the aid of an attorney, it may be in the best interest of all to secure legal advice through a private attorney or public legal aid office.

Why do children need relative placements?

It is well accepted that children whose parents cannot provide care for them, do better when they are able to receive safe and nurturing care from people who know and care about them. Caregivers who have a connection to the child through trusting and caring relationships and shared family ties, cultural experiences and beliefs are often better able to help the child adjust to being away from his or her parents, reducing trauma to the child.

How to best serve as a Kinship Caregiver

Providing care to a relative child can often occur under very stressful circumstances, either following an isolated event or a chronic series of events including parental mental health issues, drug and substance abuse issues, etc. The impact to you and your family may also be very stressful, so it is critical to locate support services that can assist you with your specific situation. Community counseling agencies, churches and faith-based organizations, local and governmental agencies providing financial resources, food banks, and legal aid programs are all there to assist families such as yours. It is widely accepted that children do better when living with relatives who safely care for them, so reach out to resources to assist you in providing for these children.

What are the responsibilities of a Kinship Caregiver

If you accept a relative child into your home, it is the expectation that you will provide safe and adequate care to meet the physical, emotional and overall needs of the child. Relatives often find themselves in a difficult position- trying to provide for the child's needs while addressing the parents' involvement or lack thereof.

Fulfilling the many responsibilities in rearing a child can be a very difficult and long-term process, yet also very rewarding for relatives and especially the children in their care. Generally, as a relative or kinship caregiver, you agree to serve in all aspects of the parental role to meet the needs of the child including:

- Providing for daily needs of food, clothing, and shelter as well as emotional care and support
- Monitoring the child's medical, dental, psychological and emotional needs and securing appropriate treatment as needed
- Assuring the child, as age appropriate, is enrolled and attending school
- Providing guidance, supervision, nurturance, and affection.

As a kinship caregiver, you are also able to apply for certain benefits for the child or for assistance to help you in providing care to the child. Some of these benefits and resources are included on the back of this brochure. Contact these resources to determine your eligibility for assistance or for information that can assist you in better meeting the needs of the child and reducing the stress on your family.

Why do children need relative placements?

It is our belief that children have a better experience in foster care when they are placed with or can remain connected to significant people who know and care about them. Caregivers who have a connection to the child through trusting and caring relationships, shared family ties, cultural experiences, and beliefs are often better able to help the child adjust to being away from his or her parents. This reduces trauma to the child.

Available Support Services

- Eligibility determination referral for financial assistance programs such as Kinship Care Assistance payments, FITAP, SNAP, and WIC
- Relative Foster Home certification through DCFS, with monthly financial support
- Reimbursement for certain expenses
- Medicaid eligibility for the child
- In-service training
- Relative caregiver support groups
- Grandparents Raising Grandchildren Support Organization
- Referral to service providers
- Regional Family Resource Centers



For more information, contact your local Department of Children and Family Services Office or visit our website at www.dcfsls.la.gov, click on /AM and select *Relative Caregiver*.

You may also reach us by phone at 225-342-9141.



Relative Foster Care

**Affirming
Connections to
Family, Community
and Culture**

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What is Relative Foster Care?

Relative foster care is the full-time care of children in DCFS custody by relatives, members of tribes, godparents, stepparents, or other adults who have a kinship bond with a child. Relatives who care for these children help preserve family ties and relationships.

What are the types of relative foster care?

Certified - Your home is certified as an agency foster home for this child after receiving training and completion of a home study, including reference and criminal record checks. You will receive a monthly board payment for the child in your home and a Medicaid card for the child. The agency will pay for or reimburse for most expenses related to the child's education, recreation, and transportation needs.

Non-Certified – Upon satisfactory clearances, a relative child may be placed with you prior to completion of the foster home certification process. You will not receive a monthly board payment for the child in your home, but the agency will provide the child with a Medicaid card. The agency will pay for or reimburse the caregiver for most expenses related to the child's education, recreation, and transportation needs. It is expected that all relatives will proceed with the certification process immediately after a child joins your family.

What are the Responsibilities of a Relative Care Provider?

Each Child Deserves Quality Parenting Regardless of their Care Setting

If you accept a relative child into your home it is the expectation that you will provide quality care and parenting for that child and participate as a team member to support the child and his or her family to achieve the goals established by the family.

As a relative caregiver, you agree to:

- Participate in the child's medical, dental, psychological and educational needs
- Support the child's ties to the biological family, including supporting visits with the family, DCFS workers and CASA
- Maintain regular communication and share information about the child
- Participate in and/or request meetings to support the child's needs and goals, including Family Team Meetings, court hearings, and school meetings
- Support the child's right to confidentiality about their life and circumstances.
- Provide an opportunity for the child to have normal childhood experiences
- Refrain from using corporal punishment
- Cooperate with the agency in obtaining and maintaining certification as a foster caregiver
- Provide a permanent home for the child should reunification not occur

What are the Responsibilities of DCFS?

Each Child Deserves Quality Parenting Regardless of their Care Setting

DCFS is committed to supporting quality parenting and care for children while they are unable to reside with their parents. We will strive to provide all possible supports, training, information, and assistance needed to enable caregivers to meet each child's unique needs and provide quality care.

Once a child has been placed in your home through DCFS, you can expect:

- Support to ensure the child maintains a bond with biological parents and others with whom the child has a strong relationship
- A Case Worker to complete a thorough home study to include criminal records check, reference checks and child abuse/neglect clearances
- At least monthly visits in the home to continue assessing the child's status, monitor safety, and to provide supportive services to the child and caregiver
- Support and encouragement of a team approach when making decisions for the child
- Notification of court hearings and team meetings and an expectation of participation
- Assistance in ensuring the child's physical, emotional, developmental and educational needs are met
- Assessment and/or referral to determine if the child is eligible for other financial benefits
- Support to provide quality parenting, including the child's participation in activities normally associated with the child's age and development

LOUISIANA DCFS YOUTH TRANSITION PLAN

A

Plan Date _____

B

Initial Interim 90 Day

C

Name: _____ Date of Birth: _____ TIPS #: _____

Address: _____ Telephone(s): _____ E-mail: _____

Region: _____ Parish: _____

D

1. DCFS Worker: _____ E-mail Address: _____

Phone #: _____

Address: _____ City: _____ State/Zip: _____

2. CASA Worker: _____ Phone: _____

3. Attorney: _____ Phone: _____

4. Foster Caregiver(s): _____ Phone: _____

5. Chafee Independent Living Provider: _____ Phone: _____

E

The following signatures indicate a commitment to help _____ Name _____ reach his/her transition plan goals.

F

Youth/Date

Foster Parent/Placement Provider/Date

Department of Children & Family Services Staff

Chafee Independent Living Provider/Date

Other Participants:

Name/Relationship/Date

Name/Relationship/Date

Name/Relationship/Date

Name/Relationship/Date

****After filling out the questions in each section, make sure identified needs are addressed on the appropriate case plan. ****

The following pages list topic areas identified to gather youth's thoughts and ideas on specific matters regarding their lives. The case worker, youth, and others will engage in a discussion to detail youth's identified strengths, issues, concerns, immediate needs, goals and action plans.

I. STRENGTHS, ISSUES, CONCERNS, IMMEDIATE NEEDS ASSESSMENT

1. What are your strengths?
2. What are you worried about, if anything? (List any issues and concerns of which the agency may or may not be aware):
3. What services do you have or use now? (Please list services youth currently uses and/or identifies as immediate services) How are these services helping you or not helping you?
4. Is there anything you need now?
5. What do you need to take care of yourself when you leave foster care?

II. EDUCATION ASSESSMENT

1. Current Educational Status: (In school? Grade level? How are your grades? GPA? IEP? Graduation Date? GED Date? Other Programs?)
2. What are your plans for Education/Vocational Training? (Attend Job Training? Attend College? Type of program? Vocational training? Military? Other?)
3. What are your areas of Interest?
4. Do you know about Education and Training Vouchers (ETV)? Yes No
5. Do you know how to apply for an ETV? Yes No
6. Are you exploring other financial resources (e.g., scholarships & grants) to support your future education and/or vocation programs? Yes No If yes, explain what resources.

Go to www.dcfsls.gov/youthlink for ETV, Youth In Transition or other youth-related resources and www.osfa.la.gov for ETV and other scholarships and grants.

CASE PLAN EDUCATION:

Educational Goals

Action Steps	Responsible Parties	Projected Completion Date

??DO YOU KNOW...??

- About your 5 year Educational Assessment (completed by teacher, counselor, etc.)?
- Your educational requirements to graduate? Is your worker aware of what you need to graduate?
- Whether transportation is in place to remain in your same school if you change placements?
- When you need to take the ACT/SAT? Have you already registered?
- If your worker is aware of funding and resources for higher education (college and vocational)?
- Where to find assistance in applying for college and working through the admissions process?
- About Louisiana Rehabilitation Services, (LRS)
- If applicable, do you know your Tests of Adult Basic Education (TABE) scores?
- Alternatives to attending traditional school based programs (e.g., virtual school and correspondence courses)?
- The educational requirements to continue to be eligible for financial services while in the Youth In Transition?
- The names of all schools attended and a copy of your educational records?
- How to indicate on your Free Application for Federal Student Aid (FAFSA) Application that you are a "ward of the state"?
- Your case worker and the Independent Living staff can assist you with applying for services? IEP/Special Services?
- You can continue to receive IEP/Special educational services while attending vocational schools or college?

You can receive Education and Training Vouchers even if you do not opt into the Youth In Transition program?

*Note: 5 year assessments are required for every 7th grader.

III. INDEPENDENT LIVING SKILLS/TRANSITIONING PREPAREDNESS ASSESSMENT

1. Do you have access to the internet? Yes No
 If yes, check all that apply: at home at school at local library other
2. Do you have an internet account? Yes No
 Email Address _____
3. Have you started classes with the Independent Living Program? If so, have you completed or when will you complete?
4. If you have completed the program, do you still have or want contact with your provider? Please specify.
5. Are you aware the IL Provider is available to continue to help you up to age 21 at no cost to you?
 Yes No Unknown
6. Tell us about any areas where you have learned skills but still feel unprepared to be independent.
7. Are you getting to practice the IL skills you have learned in your daily life? Explain.

CASE PLAN INDEPENDENT LIVING SKILLS/TRANSITIONING PREPAREDNESS:

IL Skills/Transitioning Preparedness Goals

Action Steps	Responsible Parties	Projected Completion Date

<p>??DO YOU KNOW...??</p> <ul style="list-style-type: none"> Chafee Independent Living Service providers provide voluntary socialization sessions for youth aged 14-15? Service, Independent Living Skills must be provided by the state for all youth beginning at age 16, per federal law? The Chafee Independent Living providers and their services are available to the youth in some cases until they are 23 years of age? Did you know that you can access independent living services in every region of the state?
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IV. EMPLOYMENT ASSESSMENT

1. Current Employment Status:
 If employed, please give detail.
 If unemployed, do you want a job or do you want to do volunteer work? What are you doing to get a job?

2. Is something holding you back from getting a job? Please explain.

3. What are your plans for employment/career: (What career field do you want to pursue? How will you gain the skills necessary for your career goals? Who or what can help you obtain experience in this career area? Any plans for job shadowing or internship?)

CASE PLAN EMPLOYMENT:

Employment Goals

Action Steps	Responsible Parties	Projected Completion Date

?? DO YOU KNOW...??

- How to find assistance with applying for after school employment or summer youth employment?
- Have you taken a survey/assessment about your job/career interest?
- A survey/assessment of your job/career interests can be given by your school, independent living provider or your local One Stop for job placement?
- Where to find help with interviewing skills, resume building, appropriate dressing, and proper behavior in the workplace?
- How to complete an online job application or conduct an online job search?
- Volunteer experience counts as job experience when applying for jobs?

V. HOW TO MANAGE YOUR MONEY (FINANCIAL STABILITY) ASSESSMENT

1. List all of your current source(s) of income.

2. Monthly Amount of income?

3. If DCFS is providing your only source of income, then what are your plans to develop other sources of income?
4. Are you eligible for Social Security, SSI benefits, or any other types of benefits? Yes No
If so, provide your reason(s) for eligibility. Will benefits continue upon reaching age 18? Is there a process to ensure continued benefits?
5. Do you currently keep a monthly budget of your expenses? Yes No Unknown
6. Do you know how to open a checking or savings bank account? Yes No Unknown
7. Do you currently have a bank account? Yes No Unknown
8. Can you pay for your monthly expenses with your current income? Yes No Unknown
9. Are you saving money to support yourself after you leave foster care? Yes No Unknown
10. Current amount saved? _____ Goal: _____
11. Is there anything holding you back from saving money?

CASE PLAN FINANCIAL STABILITY

Financial Stability Goals

Action Steps	Responsible Parties	Projected Completion Date

??DO YOU KNOW...??

- If you are under 18, you are not supposed to have a credit score?
- Your credit score? Why credit history is so important?
- You can request that items incorrectly reported on your credit history be removed?
- The importance of having a bank account (i.e. savings/checking) and budgeting?
- The eligibility requirements and application process for public assistance? (i.e. SNAP (food stamps), DSNAP (disaster food stamps), FITAP, Child Care Assistance, etc?)
- You have to apply as an adult to maintain your SSI benefits after you reach 18, because the eligibility criteria are different for children and adults?

VI. HOUSING ASSESSMENT

1. Where do you live now and who do you live with?
2. What are your plans/goals for where you want to live while in foster care?
3. What are your plans/goals for where you will live when you leave foster care?
4. Where will you live after foster care if you cannot live where you want or are planning?
5. Where can you live/stay in an emergency? (In the event you lose your housing, what is your emergency housing plan? Where? With whom? Who will you ask for help? For example, hurricane, disaster, chemical spill, fire, tornado and earthquake)
6. What do you know about rental vouchers, utility allowances and housing opportunities specifically for youth that age out of foster care provided through the Louisiana Housing Corporation?
7. Is there anything stopping you from living where you want to live now or in the future?

CASE PLAN HOUSING/LIVING PLANS:

Housing Goals

Action Steps	Responsible Parties	Projected Completion Date

?? DO YOU KNOW...??

- All your housing options/choices?
- How to secure funding for housing? How to apply for Section 8 housing? Or, how to find information for low income housing in your area, if needed?
- How to get on the HUD list?
- What's needed to get housing (i.e. criminal background, leasing agreement)?
- About the Family Unification Program (FUP)?
- Whom to contact to put together a disaster kit?
- Whom to contact in a disaster at the state level ? Your local area?
- You need to contact your local emergency preparedness office if you need evacuation assistance?
- You can pre-apply for disaster supplemental nutrition assistance (DSNAP) by telephone 1-888-LAHELPU (1-888-524-3578) or online?

VII. SUPPORTIVE, PERMANENT RELATIONSHIPS AND COMMUNITY CONNECTIONS ASSESSMENT

1. Who do you call when you need help and how do they help you? Who do you feel close to? How are they a support? (Name, Contact Information & Relationship)
2. Is there anyone that you do have contact with that you want to have a better relationship with or be closer to?
3. What type of support do you need from the people who are important to you?
4. Is there anyone that you don't have contact with that you want to contact? What type of contact do you want?
5. What is being done to find others who can help you or teach you things you want to learn? (Please identify clubs, organizations, interest areas, social networks, you can develop)
6. Is there anything you want to learn or are worrying about regarding contact with your biological family or others now or in the future (after foster care)?

Permanent Connection(s)

1. Do you have at least one person you can always call, visit or ask for help? Yes No Unknown
If yes, list name and contact information. Describe plans for on-going contact to ensure a strong relationship.

Community/Extra Curricular Connection

1. Are you currently involved in your community or in extra-curricular activities/groups?
 Yes No
2. If you are involved, please describe your involvement.

If no, do you want to be and what are your interests?

Spiritual Connection

1. Do you have a spiritual support/church/religious organization or interest? (Name and contact information)
2. Is there anything stopping you from being involved in your spiritual support/church/religious organization?

Ethnic/Cultural Connections

1. Are you involved or would you like to be involved in your cultural interests? (For example ethnicity, tribal, lesbian, gay, bisexual, transgender, and questioning (LGBTQ), etc.)
2. Is there anything stopping you from being involved in your ethnic/cultural interest?

CASE PLAN SUPPORTIVE, PERMANENT RELATIONSHIPS AND COMMUNITY CONNECTIONS:

Connection Goals

Action Steps	Responsible Parties	Projected Completion Date

?? DO YOU KNOW...??
<ul style="list-style-type: none">• You can register with the <u>Louisiana Adoption Voluntary Registry</u> at age 18?

VIII. HEALTH (MIND AND BODY) ASSESSMENT

1. How is your health right now (physical and mental)? Are you involved in making appointments and taking medicine on your own? If yes, explain what you do.

2. What are your plans to stay physically and mentally healthy? (Also consider, how you will access healthcare-doctor visits and medicines?)

3. Do you have any diagnoses that require ongoing treatment and how will you access the appropriate care?

4. What do you know about family planning, pregnancy prevention and parenting? What do you feel you need more information about?

5. Do you know how to continue to access your physical and mental health services and how to pay for them? Give detail.

Specific Health Issues:

	Current Diagnosis (medication, equipment)	Concerns/Needs	Date of Last Exam	Doctor Contact Information: (name, office address, phone #) therapist, dentist, optometrist
Health of Your Body				
Teeth				
Eyes				
Sexual Health				
Health of Your Mind				

CASE PLAN HEALTH (MIND AND BODY):

Health Goals

Action Steps	Responsible Parties	Projected Completion Date

??DO YOU KNOW...??

- **Regular exams and physicals are important to maintain good health?**
- **The importance of designating another individual to make health care decisions for you?**
- **If you have copies of your medical records, including physical, dental, vision, emotional health?**
- **How you will pay for your medical bills and prescriptions when you leave foster care? (Insurance? Bayou Health Changes at 18?)**
- **How to contact Bayou Health? www.bayouhealth.com or 1-855-BAYOU-4U (1-855-229-6848)**
- **If you have a Medicaid Card? Bayou Health Plan Card?**
- **What information is needed for medical coverage after foster care?**
- **Which clinics/doctors offices you can access with your insurance?**
- **You must inform your case worker or your local Bayou Health Provider of any address changes to continue to receive health coverage?**
- **You can appeal decisions made by your medical plan?**

IX. IDENTIFICATION/DOCUMENTATION ASSESSMENT

Check all of the following items you have received.

- Original Birth Certificate
- Court information
- DCFS contact
- Death certificates, if parents are deceased
- Diplomas/certificates
- Document of immigration, citizenship or naturalization
- Driver's license
- Emergency contacts
- Letter on DCFS letterhead, addressed to you stating dates in foster care and case identification number
- Life Book
- List of all schools attended & educational records
- List of Chafee Independent Living Skills Program Providers (with phone numbers)
- List of relative's addresses & phone numbers, except in cases where TPR has occurred
- Louisiana Picture I.D.
- Medicaid card
- Bayou Health Card
- Medical records and documentation (including dental, vision, etc.)
- OCS Foster Care Handbook - "Know the Facts"
- Photos/mementos of important people/places
- Previous placement information
- Public School I.D.
- Religious documents & related information, i.e. baptismal certificate
- Resume'
- Selective Service Card
- Original Social Security Card
- Transportation Worker Identification Credential (TWIC) card

What additional documents do you need/want?

CASE PLAN IDENTIFICATION/DOCUMENTATION

Identification/Documentation Goals

Action Steps	Responsible Parties	Projected Completion Date

X. RESOURCES I NEED

1. You can find a list of resources at www.dcfslouisiana.gov/youthlink
2. Make a list of permanent connections, contacts and resources that you can go to for support or information when you need it.

People that might be important

Parents	Independent Living Provider
Siblings	Relatives
Biological family	Attorney (List the court you were involved with)
Case worker	Friends
Foster parents	Doctors/Pharmacies (current and specialist)
CASA	Medical Plan Provider
Counselor/Therapist	School

Resource: Phone/Address: Email/Website: Agency/Court/School Name:	Resource: Phone/Address: Email/Website: Agency/Court/School Name:
Resource: Phone/Address: Email/Website: Agency/Court/School Name:	Resource: Phone/Address: Email/Website: Agency/Court/School Name:
Resource: Phone/Address: Email/Website: Agency/Court/School Name: :	Resource: Phone/Address: Email/Website: Agency/Court/School Name:
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Resource: Phone/Address: Email/Website: Agency/Court/School Name:	Resource: Phone/Address: Email/Website: Agency/Court/School Name:
Resource: Phone/Address: Email/Website: Agency/Court/School Name:	Resource: Phone/Address: Email/Website: Agency/Court/School Name:
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Resource: Phone/Address: Email/Website: Agency/Court/School Name:	Resource: Phone/Address: Email/Website: Agency/Court/School Name:
Resource: Phone/Address: Email/Website: Agency/Court/School Name:	Resource: Phone/Address: Email/Website: Agency/Court/School Name:

IMPORTANT INFORMATION FOR ALL YOUTH

Health Care Power of Attorney, also known as Health Care Proxy or Health Care Mandate

- A Health Care Power of Attorney is an advance directive to appoint another person to make health care decisions in the event you are unable to make these decisions for yourself.
- A Health Care Power of Attorney is a contract and legal document and only adults (persons age 18 or older or persons who have been emancipated) can enter into a contract in Louisiana.
- You are encouraged to discuss establishing a Health Care Power of Attorney with your court appointed attorney prior to reaching age 18.
- If you need assistance in discussing Health Care Power of Attorney or have questions regarding it notify your DCFS caseworker so that they may assist you.
- If you do not have a Health Care Power of Attorney, Louisiana law, LRS 40:1299.53, establishes a legal sequence of persons who may consent to medical treatment for an individual. The legal sequence established by law is:
 - Any adult for himself;
 - The judicially appointed tutor or curator of the patient, if one has been appointed;
 - The agency acting pursuant to a valid mandate, specifically authorizing the agency to make health care decisions;
 - The patient's spouse, not judicially separated;
 - Any adult child of the patient;
 - Any parent, whether adult or minor, for his or her child;
 - The patient's sibling.

National Youth in Transition Database (NYTD)

- NYTD is a federal requirement for states to collect information on how youth leaving foster care are doing and how resources are used to assist youth in their transition to adulthood.
- NYTD information is gathered using multiple methods. These methods include documentation of services provided and surveys completed by youth and young adults.
- Youth and young adults that are selected to complete NYTD surveys are contacted and requested to do so.
- Completing a NYTD survey puts your input into decisions being made regarding your life. The survey allows you to use your experience to make things better for future foster youth.
- Data will be used to evaluate and improve programs that help foster youth become independent adults.
- If you complete a NYTD survey, your name and personal information will not be released outside of the department or those acting on the department's behalf. Information regarding services and experiences will be compiled into a data report based on all the youth responses to the surveys.