

# PERMANENCY HEARINGS

La. Ch. C. arts. 701-711

BENCH  
CARD



## PURPOSE

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

## Prior to Hearing

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

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

## Timing and Continuances

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

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

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

## Intervention

ARTICLE 707

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

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

## Appearances

ARTICLES 607-8, 643, 704-8

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

### ESSENTIAL JUDICIAL FUNCTION | Assistance and Accommodations:

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

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

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

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

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

## Notice

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

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

## Evidence and Testimony

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

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

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

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

## Permanent Plan Considerations

ARTICLES 702

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

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

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

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

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

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

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

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

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

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

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

## Rulings and Findings

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

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

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

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

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

**ESSENTIAL JUDICIAL FINDING | Reasonable Efforts:** Court shall make written and individualized findings as to whether RE were/were not made by DCFS to: (1) reunify parents and child or (2) finalize child's placement in an alternative safe and permanent home according to child's permanent plan. Per State law, findings shall be made at each Permanency Hearing (Article 702); per Federal law, these findings shall be made within 12 months from date the child is considered to have entered foster care and at least once every 12 months while child remains in foster care. However, if court makes judicial determination that RE to reunify not required per Article 672. 1 (which is in line with Federal law), permanent plan shall be determined by court and a RE determination shall be made immediately or within 30 days of court's Article 672.1 ruling and at least once every 12 months thereafter until permanency. Determining child's permanent plan and making these findings within mandated timeframes are critical for State to maintain its ongoing Title IV-E foster care eligibility for child.

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

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

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

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

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

## Advisements

ARTICLE 702

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

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

## Further Findings and Orders

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

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

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

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

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

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

## Order of Notices and Future Hearings

ARTICLES 424.7, 674, 688-9

### Court may also make the following orders:

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

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

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

## Case Management

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

## Possible Next Steps

- 📄 ARTICLES 330-8, 700, 710, 1004, 1004.1, 42 U.S.C. § 675(5)(E)(i)-(iii)
- (1) **APPEAL:** Any person directly affected may appeal findings or orders of court; shall be taken within 15 days from mailing of notice of Judgment. See Article 332(A).
  - (2) **TPR Petition:** At any time, court on its own motion may order filing of TPR Petition on any ground authorized by Article 1015. If child in DCFS custody for 17 of last 22 months, DCFS shall file TPR Petition unless a compelling reason why filing is not in best interest of child is documented in case plan.

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

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