INSTANTER SAFETY PLAN ORDER AND INSTANTER ORDER FOR REMOVAL

La. Ch. C. arts. 619-620



LOUISIANA CHILD IN NEED OF CARE BENCHBOOK 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

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."

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."

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 Instanter request. See the <u>Child Welfare Assessment and Decision Making Benchbook Section 11</u> 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 Instanter Order for Removal and Provisional Custody to a Suitable Relative or Individual and Instanter Order for Removal and Provisional Custody to DCFS (i.e., foster care). In any Affidavit in Support of an Instanter 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 Instanter Order. See <u>Temporary Restraining Order (TRO) and Protective Order (PO) Benchbook Section 2</u>.

(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.dcfs.louisiana.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 parents' 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 monitor ¹³ 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 &}quot;At the minimum, a CPS clearance in the Clearance module in ACESS, 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.dcfs.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 <u>first written court order</u> (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 <u>within first 60 days</u> 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 DFCS 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.jsp2citID=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/overcomingbarriers-to-making-meaningful-reasonable=efforts-find/; Edwards, Leonard. (2014). Reasonable Efforts. A Judicial Perspective, https://cbexpress.acf.hhs.gov/index.cfm2event=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 forts 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/pubPDEs/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.

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

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.

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
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 - (2) AFFIDAVIT IN SUPPORT OF INSTANTER SAFETY PLAN ORDER TEMPLATE
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 - (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.

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

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.").

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 <u>Child Welfare Assessment and Decision Making Model (CWADM) Section 11</u>.

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 <u>Temporary Restraining Order (TRO) and Protective Order (PO)</u> <u>Benchbook Section 2</u>.
- **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:

- **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:

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?citlD=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 DFCS 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, <a href="https://www.acf.https://www.acf.hts.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/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, <a href="https://chexpress.acf.hhs.gov/index.cfm2/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. Judicial Perspective, <a href="https://chexpress.acf.hhs.gov/index.cfm2/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. Judicial Perspective, <a href="https://chexpress.acf.hhs.gov/index.cfm2/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. Judicial Perspective, <a href="https://chexpress.acf.hhs.gov/index.cfm2/www.americanbar.org/groups/www

- **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 <u>Child Welfare Assessment and Decision Making Model (CWADM) Section 11</u>. 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.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 Instanter findings and orders.
- **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.).

HELFPUL 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
- o 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, <u>https://www.childwelfare.gov/pubPDFs/reunify.pdf;</u> Center on Children and the Law. (2016) Judicial Tip Sheet: Kin First. Washington, DC: American Bar Association, <u>https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/july-2016/judicialtip-sheet--kin-first/; Issue Brief, Strong Families (2019) Why Should child protection agencies adopt a kin-first approach? Casey Family Programs, <u>https://www.casey.org/kin-first-approach/;</u> National Conference of State Legislatures. (2019) The Child Welfare Placement Continuum: What's Best for Children?, <u>https://www.ncsl.org/research/human-services/the-child-welfare-placementcontinuum-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, <u>https://www.childwelfare.gov/pubPDFs/placement.pdf</u>.</u></u>

- Identifying Potential Caregivers: See <u>Appendices Benchbook Section 12</u> for <u>Family Connection Form</u> and <u>Circle of</u> <u>Influence Form</u> 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 between 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/grandparent-relative-caregivers 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, <u>https://cbexpress.acf.hhs.gov/index.cfm?event=website.</u> 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, <u>https://www.childwelfare.gov/pubPDFs/placement.pdf;</u> 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, <u>https://www.childwelfare.gov/ pubPDFs/planning.pdf</u>.

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 <u>Temporary Restraining Order (TRO) and Protective Order (PO) Benchbook Section 2.</u>

(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_Rules2p=Titlel.

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 <u>Instanter Safety Plan Order Template</u>, <u>Instanter Order</u> <u>for Removal and Provisional Custody to Suitable Relative or Individual Template</u>, and <u>Instanter Order for Removal and Provisional</u> <u>Custody to Department of Children and Family Services Template</u>.

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 <u>Informal</u> <u>Adjustment Agreement (IAA) Benchbook Section 1</u> for more information.
- (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 parte[®] 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.").



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

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 <u>Child Welfare Assessment</u> and Decision Making Model (CWADM) Benchbook Section 11.

INSTANTER SAFETY PLAN ORDER (ISPO)

B E N C H C A R D

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.
- 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 <u>each child</u>:
 - 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 DCFSs 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 <u>first written court order</u> 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 <u>in Instanter Order</u> 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 <u>within first 60 days</u> 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 DFCS 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;
- 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 <u>Temporary Restraining Order (TRO) and Protective Order (PO)</u> <u>Benchbook Section 2</u>);
- (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 INCARERATED 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 CPSH/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 <u>Informal Adjustment</u>. <u>Agreement (IAA) Benchbook Section 1</u> 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: |
| AFFIC | PAVIT IN SUPPORT OF INS | STANTER SAFETY PLAN ORDER |
| BEFORE ME, the un | dersigned authority, pers | ionally came and appeared,, |
| who being duly sworn, did o | depose and state: | |
| | Ι. | |
| That affiant is an er | nployee of the Departme | nt of Children and Family Services in the Parish of |
| | , State of Lou | uisiana; |
| | | |
| | | |
| | - | ating reports of possible child abuse and/or neglect |
| and/or of supervising famili | es; | |
| | | I. |
| That on the | _ day of | , 20, a report of alleged |
| | | |
| was received by said office | | child(ren): Date of Birth:// |
| | Gender: | |
| | | , Date of Birth:// |
| | Gender: | |
| | | Date of Birth:/// |
| Race: | Gender: | ; |

| That | That is a parent of said child(ren), whose date of bi | | |
|---------------------------|---|--|--|
| | , 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 tha | t the parent(s) was not caring for the child(ren), the caretaker(s) is | | |
| | , who 🛛 <u>does</u> 🗆 <u>does not</u> have | | |
| legal custody of said chi | ld(ren), and the caretaker's current address, email address, date of birth, and | | |
| telephone number are _ | | | |
| | | | |
| T I f | | | |
| | itor(s) are:, | | |
| their telephone number | is, | | |
| and their relationship to | the family is:; | | |
| | | | |

٧.

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)

signed or agreed to the conditions of the safety plan.

Χ.

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 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 | | DOCKET NUMBER: | | |
|---------------------------------|--------------------------------|---|------------------|--|
| IN THE INTEREST OF | | SECTION: | | |
| | DOB: | COURT: | | |
| | DOB: | PARISH OF | | |
| | | | | |
| Filed: | | DEPUTY CLERK: | | |
| | INSTANTER S | AFETY PLAN ORDER | | |
| THE COURT, consider | ing the Affidavit(s) attacl | hed hereto and executed by | on the | |
| | | d being of the opinion and confirming that | | |
| | | lan Order, and continuing to be present for | | |
| child(ren), | | | ; | |
| | | | | |
| | | | | |
| | | | | |
| | I. REASONA | BLE GROUNDS FINDINGS | | |
| THE COURT FINDS th | at there are: (Please check th | ne applicable box for each child) | | |
| □ reasonable grounds to belie | eve the child(ren), | , is in ne | ed of care in | |
| accordance with Article 606(A | 4) (1-8) and that ; | a safety plan is necessary to secure the pro | tection of the | |
| child(ren) while remaining in | their home; | | | |
| The persons subject t | to the safety plan include | :: | | |
| the parent(s), | | | , | |
| | | | | |
| and their relationship | to the family is | | | |
| | | ic in | | |
| | | , is in | | |
| and/or a safety plan is not ne | cessary to secure the pro | otection of the child(ren). | | |
| □ reasonable grounds to belie | eve the child(ren), | , is i | in need of care | |
| and that a safety plan is not s | ufficient to secure the pr | rotection of the child(ren), but that the con | tinuation 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, et | c.): |

III. FURTHER ORDERS

| IT IS FURTHER ORDERED BY THE COURT that the Oral Insta | nter 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 sa | aid program shall be given notice of |
| appointment and served with a signed copy of the pleadings filed here | ein; |
| IT IS FURTHER ORDERED BY THE COURT that the parents be r | eferred 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 THISd | ay of | , 20 | , in |
|---|----------|--------|------|
| , Louisiana. | | | |
| | | | |
| | | | |
| | | | |
| | JUDGE | | |
| | | | |
| | | | |
| TRIBUTION OF NOTICE | | | |
| se serve all parties and counsel of record as fol | lows: | | |
| Parent | | | |
| 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:

| itreet: | |
|----------------------------|---|
| City, State, Zip: | |
| Fax Number: () | |
| mail Address: | |
| | |
| CASA: | |
| itreet: | |
| City, State, Zip: | |
| Eax Number: () | |
| mail Address: | , |
| | |
| Other: | |
| Role: | |
| itreet: | |
| City, State, Zip: | |
| ⁻ ax Number: () | |
| mail Address: | |

| STATE OF LOUISIAI | TE OF LOUISIANA DOCKET NUMBER: | |
|------------------------------------|---|---|
| IN THE INTEREST O | F | SECTION: |
| | DOB: | COURT: |
| | DOB: | PARISH OF |
| | DOB: | STATE OF LOUISIANA |
| Filed: | | DEPUTY CLERK: |
| AFFIDAVIT IN | I SUPPORT OF INSTANTER ORDER TO A SUITABLE RELATIVE OR (| FOR REMOVAL AND PROVISIONAL CUSTODY |
| | | |
| | | ame and appeared,, |
| who being duly sworn, did | depose and state: | |
| | | |
| That affiant is an ei , State o | | Idren and Family Services in the Parish of |
| | н | |
| That affiant's respo | onsibilities include investigating rep | ports 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(rer | n): |
| | | Date of Birth:// |
| Race: | ; | |
| | | Date of Birth:// |
| Race: | ; | Data of Birth. |
| Paco: | Gender:; | Date of Birth:// |
| Nace | | |

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: ______

III.

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): _____;

Х.

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 | | DOCKET NUMBER: | NUMBER: | |
|---------------------------------|---------------------------------|--|------------------------------|--|
| IN THE INTEREST OF | | SECTION: | | |
| | DOB: | COURT: | | |
| | DOB: | PARISH OF | | |
| | DOB: | STATE OF LOUISIANA | | |
| Filed: | | DEPUTY CLERK: | | |
| - | | OVAL AND PROVISIONAL CUSTO DR OTHER SUITABLE INDIVIDUAL | | |
| THE COURT, consider | ing the Affidavit attached | hereto and executed by | on the | |
| day of | , 20, and being c | of the opinion and confirming that | it at present or at the time | |
| of the issuance of the Oral Ins | stanter Order, and continu | uing to be present for the followi | ng child(ren), | |
| and the following parent(s), _ | | , /caretaker(s), | | |
| ι. | REASONABLE GROUNDS | S AND CONTRARY TO WELFARE F | INDINGS | |
| THE COURT FINDS th | at there are: (Please check the | e applicable box for each child) | | |
| □ reasonable grounds to beli | eve the child(ren), | | , is in need of care in | |
| accordance with Article 606(A | 4) (1-8) and er | mergency removal is necessary to | secure the child(ren)'s | |
| protection and the continuat | ion of the child(ren) in the | e home of their parents/caretake | rs would be contrary to | |
| their health, safety, and welfa | are and temporary remov | al of the child(ren) from their par | rents/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 1 | the child(ren)'s protection. | | |
| | II. REASON | IABLE 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, 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 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.

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 i | n |
|---|---|
| e 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 | |
| djudication, according to the priorities outlined in Article 622 and for the purposes of placement in the least | |
| strictive 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 wit | h |
| the parent(s) and/or other third parties: | |
| | _ |
| | |
| | |
| child(ren),, not be removed | |
| om the custody of parents/caretakers and that the request for an Instanter Order of Provisional Custody is | |
| enied. 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, Sta | nte, Zip: | | | |
| Email Ac | ddress: | | | |
| | | | | |
| F | Parent's Attorney: | | | |
| | Street: | | | |
| C | City, State, Zip: | | | |
| F | ⁻ ax Number: () _ | | | |
| | Email Address: | | | |

| Parent: | |
|---|---|
| | |
| | |
| | |
| | |
| Parent's At | torney: |
| Street: | |
| City, State, Z | Zip: |
| Fax Number | ·: () |
| Email Addre | SS: |
| Child(ren)'s Attorn | ey: |
| Street: | |
| City, State, Zip: | |
| Fax Number: (|) |
| Email Address: | |
| Fax Number: (|) |
| | copy of order as follows: |
| | |
| • | Idren and Family Services Staff/Representative: |
| | |
| Fax Number: (|) |
| | |
| Email Address: | |
| Email Address: | |
| CASA: | |
| CASA: Street: | |
| CASA: Street: City, State, Zip: | |
| CASA: Street: City, State, Zip: Fax Number: () | |
| CASA: Street: City, State, Zip: Fax Number: (] Email Address: |) |
| CASA: Street: City, State, Zip: Fax Number: () Email Address: Other: |) |

| STATE OF LOUISIAN | TATE OF LOUISIANA DOCKET NUMBER: | |
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| IN THE INTEREST O | F | SECTION: |
| | DOB: | COURT: |
| | DOB: | PARISH OF |
| | DOB: | STATE OF LOUISIANA |
| Filed: | | DEPUTY CLERK: |
| AFFIDAVIT IN | SUPPORT OF INSTANTER ORDER TO THE DEPARTMENT OF CHIL | FOR REMOVAL AND PROVISIONAL CUSTODY DREN AND FAMILY SERVICES |
| BEFORE ME, the un | dersigned authority, personally ca | ame and appeared,, who being duly |
| sworn, did depose and state | 2: | |
| | Ι. | |
| That affiant is an er | nployee of the Department of Chi | dren and Family Services in the Parish of, |
| State of Louisiana; | ······································ | |
| | | |
| | II. | |
| That affiant's respo | nsibilities include investigating reg | ports 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(rer | ı): |
| | | Date of Birth:// |
| Race: | Gender:; | = = = = = = = = = = |
| | | Date of Birth:// |
| Race: | Gender:; | |
| | , | Date of Birth:// |
| Race: | ; | |

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; ٧. 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: ______

III.

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.**

Х.

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 | | DOCKET NUMBER: | | |
|-------------------------------------|---|---|------------------------------|--|
| IN THE INTEREST OF | | SECTION: | | |
| | DOB: | COURT: | | |
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| | DOB: | STATE OF LOUISIANA | | |
| Filed: | | DEPUTY CLERK: | | |
| - | | AL AND PROVISIONAL CUSTO LDREN AND FAMILY SERVICES | | |
| - | | ereto and executed by | | |
| day of, 20 | , and being of t | he opinion and confirming tha | at at present or at the time | |
| of the issuance of the Oral Instan | ter Order, and continuin | g to be present for the follow | ing child(ren), | |
| and the following parent(s), | nd the following parent(s),, /caretaker(s), | | | |
| I. RE | ASONABLE GROUNDS AI | ND CONTRARY TO WELFARE F | INDINGS | |
| THE COURT FINDS that the | nere are: (Please check the ap | plicable 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 emer | rgency removal is necessary to | o secure the child(ren)'s | |
| protection and the continuation of | of the child(ren) in the ho | ome of their parents/caretake | rs would be contrary to | |
| their health, safety, and welfare a | and temporary removal o | of the child(ren) from their pa | rents/caretakers is in their | |
| best interest. | | | | |
| □ not reasonable grounds to beli | eve 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, 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 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.

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.

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 ______, 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 | , ir |
|------------------------------|--------|------|------|
| , Louisiana | 1. | | |

JUDGE

DISTRIBUTION OF NOTICE

Please serve all parties and counsel of record as follows:

| Parent: | |
|-------------------|----|
| | |
| City, State, Zip: | |
| Email Address: | |
| | /: |
| Street: | |
| City, State, Zip: | |
| |) |
| | |
| | |
| Parent: | |
| | |
| City, State, Zip: | |
| Email Address: | |

| Parent's Attorney: | |
|--------------------------------------|------------------------------------|
| | |
| City, State, Zip: | |
| Fax Number: () | |
| Email Address: | |
| Child(ren)'s Attorney: | |
| | |
| City, State, Zip: | |
| Fax Number: () | |
| Email Address: | |
| Street: | au of General Counsel: |
| Eax Number: () | |
| Email Address: | |
| Please send notice and copy of order | as follows: |
| Department of Children and Fam | ily Services Staff/Representative: |
| Street: | |
| City, State, Zip: | |
| Fax Number: () | |

| CASA: | | | |
|-------------------|------|------|--|
| - | | | |
| City, State, Zip: | | | |
| Fax Number: () | | | |
| Email Address: | | | |
| | | | |
| Other: | | | |
| Role: | | | |
| Street: | | | |
| City, State, Zip: | | | |
| Fax Number: () | | | |
| Email Address: | | | |

Email Address:

| STATE OF LOUISIANA | DOCKET NUMBER: | | |
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| DOB: | STATE OF LOUISIANA | | |
| Filed: | DEPUTY CLERK: | | |
| ADDENDUM TO AFFIDAVIT IN S | SUPPORT OF INSTANTER ORDER | | |
| That, during the course of said investigation, affiar 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 | | | |