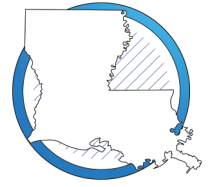


INSTANTER SAFETY PLAN ORDER (ISPO) AND INSTANTER ORDER FOR REMOVAL

BENCH
CARD

■ La. Ch. C. arts. 619-620



PURPOSE

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

ORAL INSTANTER ORDER

■ ARTICLES 619-20

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

SAFETY AND RISK ASSESSMENT

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

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

INSTANTER SAFETY PLAN ORDER (ISPO)

■ ARTICLES 603, 606, 619-20, 623

- 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.
- 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.
- FINDINGS AND RULING OPTIONS:**

Court shall make one of the following for each child:

 - 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 each child:
 - a. **REASONABLE GROUNDS:** Reasonable grounds to believe child is in need of care AND emergency removal is necessary to secure child's protection.
 - b. **CONTRARY TO WELFARE:** Continuation of child in his/her home is contrary to child's health, safety, and welfare, and temporary removal is in best interest of child; AND
 - c. **REASONABLE EFFORTS (RE):** Make one of the following:
 - (1) **DCFS made RE:** To prevent or eliminate need for child's removal. Court should consider whether:
 - DCFS sought court interventions such as TRO/PO and/or ISPO as required by Article 619(B);
 - DCFS provided referrals, activities, and/or services (i.e., safety checks, counseling, etc.); AND
 - Removal request made/not made based on improper assumptions or cultural biases.
 - (2) **DCFS did not make RE:** » If necessary, court may order removal even if efforts have not been reasonable.
 - (3) **RE Not Required:** Due to emergency circumstances; articulate reason why court found not required in Order.
 - If DCFS's first contact with family occurred during emergency in which child could not safely remain at home even with reasonable in-home services provided to family, DCFS shall be deemed to have made RE to prevent or eliminate need for removal (Article 619).
- (4) **RULING OPTIONS:**

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

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

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

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

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

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

HELPFUL GUIDANCE | 4 Reasonable Efforts Considerations:

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

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

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

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

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

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

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

FURTHER ORDERS

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

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

(1) **ORDER APPOINTMENTS:**

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

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

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

(2) **ORDER DCFS TO FURNISH REPORT OF INVESTIGATION:** To DA within 15 days of issuance of ISPO or CCH;

(3) **CINC PETITION NOT TIMELY FILED:** Within 45 days of issuance of ISPO, ISPO shall automatically terminate unless extension granted by court based upon showing of good cause and notice to all parties; within 30 days of CCH, child shall be returned to parents unless extension granted by court based upon showing of good cause and notice to all parties;

(4) **ISSUE PROTECTIVE ORDER:** In addition to or instead of an Instanter Order to protect child and/or adult and help keep child safely in home and/or manage safety and risk concerns/threats (See [Temporary Restraining Order \(TRO\) and Protective Order \(PO\) Benchbook Section 2](#));

(5) **SET MATTER FOR CSPH/CCH:** CSPH within 3 days of issuance of ISPO or CCH within 3 days of child's removal or entry into custody; order all parties to appear (See Article 114 for time computation);

(6) **SERVICE/NOTICE OF HEARINGS:** Be made on parties, counsel, CASA, and, for CCH only, foster caregivers (Article 623, 42 U.S.C. § 675(5)(G), 45 C.F.R. § 1356.21(o)); AND

(7) **ARRANGEMENTS FOR ANY INCARCERATED PARENT:** Be made to attend hearing, either in person or remotely.

ESSENTIAL JUDICIAL FUNCTION | Assistance and Accommodations:

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

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

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

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

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

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

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

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