CONTINUED CUSTODY HEARING (CCH)

La. Ch. C. arts. 624-627

LOUISIANA
CHILD IN NEED OF CARE BENCHBOOK
FOR JUVENILE JUDGES

SECTION

5

INTRODUCTION

A. General Considerations

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

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

There is well-documented scientific research on the psychological and physiological impact on a child removed from his/her home. The extent of the impact can depend upon a number of factors, such as age, stage of development, race, family structure, and type of abuse or neglect experienced. Additional factors such as the child's socio-economic background, culture, customs, and traditions may also be significant. The impact of removing a child from his/her home when these factors are present can far outweigh the harm allegedly inflicted on a child by his/her parents. Dr. Alan Shapiro, Assistant Clinical Professor of Pediatrics at Albert Einstein College of Medicine, has examined the acute and long-term harms caused by family separation.⁵ According to Dr. Shapiro, "separation can impact children in various ways, including developmental regression, depression, difficulty sleeping, and acute stress." Dr. Shapiro also notes that "[t]he younger you are when you're exposed to stress...the more likely you will have negative health outcomes caused by dysregulation of stress response." That dysregulated stress response, in turn, "leads to architectural changes in the brain—which means that in the future children might end up with serious learning, developmental and health problems." Dr. Shapiro further asserts that the separation of children from families may also lead to long-term chronic medical conditions like cardiovascular disease, hypertension, obesity, and decreased longevity.⁶

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

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

³ La. Ch. C. art. 101.

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

⁵ Goydarzi, Sara. (2018) Separating families may cause lifelong health damage, Scientific American, https://www.scientificamerican.com/article/separating-families-may-cause-lifelong-health-damage/

Judges are encouraged to obtain training in Trust-Based Relational Intervention (TBRI®) and to encourage other child welfare stakeholders involved in their CINC cases to obtain TBRI® training. See https://crossroadsnola.org/tbri/ for training opportunities in your area. Listed on the California Clearinghouse for Evidence Based practices, TBRI® is an attachment-based, trauma-informed intervention that is designed to meet the complex needs of vulnerable children. TBRI® educates and equips caregivers with knowledge and skills that empower them to provide healing care for a child who has experienced trauma. In addition to successful use by families, TBRI® has been used in multiple settings to effect change, including intensive home programs, residential treatment centers, schools, and courtrooms.

Exposure to trauma in childhood can both stunt cognitive development and alter a child's brain structure in profound ways.⁷ A groundbreaking 17,000-patient study called the Adverse Child Experiences (ACEs) Study, conducted by Kaiser Permanente and the Centers for Disease Control and Prevention, found that exposure to traumatic events in childhood is strongly correlated with increased risk of suicide attempts, drug addiction, depression, chronic obstructive pulmonary disease, heart disease, and liver disease.⁸

In addition to the physical and emotional ills that befall children placed in foster care, the long-ranging effects of removal decisions are staggering. A study⁹ that tracked at least 15,000 children between 1990 and 2002 found higher delinquency rates, higher teen birth rates, and lower earnings among children placed in foster care as compared to similarly situated children who remained at home. A recent investigative report that conducted a confidential survey of 6,000 prison inmates from 12 States determined that 1 in 4 inmates had been in foster care.

Judges charged with reviewing the decision to remove children are in a challenging and powerful position that can affect a child's entire future. When children are removed from their parents, they can end up separated from siblings, extended family, friends, community, and belongings. These children may be placed with adults and other children they do not know, who may not look like them, speak their language, or follow their family's customs. They may be disconnected from school, activities, and adults they trust. Removing a child is a colossal decision and one that should be made when necessary to keep the child safe, but with due respect for the rights of parents, children, and the institution of the family.

Given the constitutional rights of parents and the grave harms and long-term consequences children who are removed from their homes may face, the significance of the Continued Custody Hearing (CCH) cannot be underestimated. To have a fair, productive, and comprehensive hearing, judges need accurate, up-to-date information.¹³ Consequently, one of the court's primary goals should be to make the CCH as complete and meaningful as possible. A thorough CCH may require a substantial preliminary investment of resources and time. Still, this investment can lead to better outcomes for children and their families while decreasing the considerable court and Department of Children and Family Services' (DCFS) costs accumulated during an out-of-home placement. The court should conduct an in-depth inquiry concerning the circumstances of the case and hear from all parties and interested persons present. It is important to make sure the parents, children, and relatives present are engaged and understand what is happening at this critical hearing.¹⁴ Early engagement impacts whether or not families are eventually reunified, which is the goal of this process when possible. "When parties leave the hearing with the perception that they were treated fairly by a court that is concerned about their interests and is actively encouraging a working relationship among the parties, there is a stronger likelihood that court intervention can be ended quickly." ¹⁵

B. Timing, Presence, and Notice

The CCH shall take place within 3 days after the child has been removed—unless the child has been released to the care of his/her parents or caretakers in the interim or a continuance is granted for up to 3 days for good cause (in accordance with the best interest of the child).¹⁶

⁷ Carnes, Stephanie. (2018) The trauma of family separation will haunt children for decades, HUFFINGTON POST, https://www.huffingtonpost.com/entry/opinioncarnes-family-separation-trauma_us_5b2bf535e4b00295f15a96b2

More detailed information about the study can be found in "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults," published in the American Journal of Preventive Medicine in 1998, Volume 14, pages 245–258, https://www.aipmonline.org/article/S0749-3797(98)00017-8/abstract

⁹ In order to avoid results attributable to family background, extreme cases of abuse or neglect were screened out and instead, "on the margins" cases were used. The study defines "on the margins" decisions as instances where there was disagreement by child protection investigators as to whether removal was necessary. By using the removal tendencies of investigators as an instrumental-variable (i.e., a variable that induces change in the explanatory variable but has no effect on the dependent variable), the study identifies the effects of foster care placement on child outcomes for school-aged children. This study provided the first "viable, empirical evidence of the benefits of keeping kids with their families," and confirms that children who remain in their home have better long-term well-being outcomes than children who were removed and placed in foster care.

¹⁰ Joseph J. Doyle, Jr., Child Protection and Child Outcomes: Measuring the Effects of Foster Care, 97 Am. Econ. Rev. 1583 (2007).

¹¹ Bauer, L. & Thomas, J. (2007) Throwaway Kids. Kansas City, KS: The Kansas City Star, https://www.kansascity.com/news/special-reports/article238206754.html.

¹² Gatowski, supra note 4, at 107.

¹³ Id.

¹⁴ Gatowski, supra note 4, at 108. Parents may be angry and emotionally distraught during the CCH, and the adversarial nature of court proceedings can heighten tensions. The court should take active steps to neutralize hostilities, gain the cooperation of the parties, and assist parties in attacking the problem rather than each other.

¹⁵ Gatowski, supra note 4, at 108-109.

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

CINC proceedings are closed to the public, which means the court should only admit persons with a proper interest in or are necessary to the proceedings. These include parents, children, district attorney (DA)/assistant district attorney (ADA) or DCFS attorney (Bureau of General Counsel/BGC), DCFS representatives, Court Appointed Special Advocate (CASA) (if appointed), and foster caregivers (i.e., foster parents, pre-adoptive parents, and relatives) caring for the child. Foster caregivers are not parties but, per State and Federal law, have a right to notice and an opportunity to be heard at all CINC hearings (including the CCH) involving a child in their care.¹⁷

Parents and children have a right to counsel at all stages of the CINC proceedings. The child representation and public defender programs should have already been appointed in the Instanter Order, but if not, they should be appointed at the CCH. If necessary, the court can make indigency findings for parents at the CCH. However, most parents appearing before the court in a CINC case require appointed attorneys. If CASA was not appointed in the Instanter Order, the court may appoint them at the CCH as well.

Having all parties present and participating in the hearings is critical for moving the case forward. The court should ensure that DCFS efforts are diligent and thorough in locating and involving all legal and putative parents. The court must make a thorough inquiry regarding notice if any party or foster caregiver is absent from the court proceeding. If the parent cannot be found or has been served a summons or notified by DCFS to appear and fails to appear, the hearing may be held in the parent's absence. However, if the court determines additional search efforts are needed, it should specifically identify those efforts. If additional efforts are needed, this could be good cause for a continuance. Parents have the right to participate in the CCH. To ensure the attendance at the CCH of any parent who is incarcerated at the CCH, a writ or motion should have been filed and an order issued by the court and served on the warden or administrator of the facility prior to the CCH. Service should be made sufficiently in advance of the hearing to afford time for the facility to arrange for transportation of the parent to court (or video conferencing where the parent's physical attendance at the hearing is not possible).

The children's attorney has an obligation to inform the child of the right to be present at the hearing and facilitate such presence if appropriate. The Children's Code mandates that children 12 years of age and older be present at this hearing unless the child's attorney moves to waive his/her presence. Children younger than age 12 shall be present if required by the court or child's attorney. If the children are not present and should be, there may be good cause for a continuance. The presence of children at court is not up to DCFS; however, if the child is in DCFS custody, DCFS must facilitate the children's presence at court.

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

The child is a party to the hearing, and his/her voice is invaluable to decision-making. While some may argue that attending court hearings is traumatic to children, it is important to remember that they have already lived through the trauma that brought them into care. Engaging children in planning their future and protecting their safety can actually be empowering. The CASA volunteer and/or foster caregiver may also be a support to the child in court.

Having children present can also assist the court in making decisions about a case. Interacting with the child and observing potential medical issues, delays, etc. provides needed information to the court. Although challenging, courts should try to schedule hearings so that children can be present and participate as much as possible. This necessitates knowing about the child's schooling and other activities.

Nationally, there is a growing acceptance and understanding of the importance of involving children and youth in child welfare decision-making. ¹⁹ Child welfare experts recognize the benefits of child and youth participation and the importance of the rights of children and youth. Federal law asserts that the views of children and youth should be considered when decisions relating to them are made, and their views must be considered when determining what is in their best interest. ²⁰

¹⁷ See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

¹⁸ Gatowski, supra note 4, at 72.

¹⁹ Gatowski, supra note 4, at 108-109.

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The court should ask parties and persons before the court if they know of any relatives, fictive kin, or other individuals willing and able to offer a wholesome and stable home for the child. The court should ask that such individuals be identified on the record in order for DCFS to assess them for placement and permanency purposes. The court should further ask all parties and persons before the court if they know the identity and whereabouts of any alleged parents not present in court as well as siblings of the child and his/her parents.²¹

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

C. Initial Advisements and Inquiries

At the beginning of the CCH, the court should give initial advisements pursuant to Article 625 to the parents and may also do so for the child. It is also the judge's responsibility, pursuant to the Children's Code and Federal law, to make sufficient inquiries and findings regarding the Indian Child Welfare Act (ICWA) at this hearing. If the court knows or has reason to know that a child is an Indian child, it shall proceed according to Articles 624 and 624.1.

One of the judge's critical functions is to safeguard due process at every stage of a CINC case. For this reason, the judge should inquire whether counsel had sufficient opportunity to consult with the child and the parent prior to the presentation of evidence at the CCH.

D. Testimony and Evidence

The State has the burden of proving that the initial removal was necessary, there are reasonable grounds to believe the child is in need of care, and continued provisional custody of the child is necessary for his/her safety and protection pending the timely filing of the CINC Petition and Adjudication. Hearsay evidence is admissible at the CCH.

Testimony should be taken regarding whether the child will be unsafe if he/she remains in the home, and the efforts taken to prevent or eliminate the need for removal or make it possible to safely return the child home or emergency reason why reasonable efforts were not necessary.

Judges and all legal stakeholders should be familiar with the Child Welfare Assessment and Decision Making Model (CWADM). The CWADM is a framework DCFS uses to assess safety and risk and the needs and strengths of children and families throughout the life of a case so that courts and DCFS have the best possible information upon which to make decisions with and for families involved with DCFS. A formal safety assessment is required either when a threat of danger is identified, or at specific intervals during the life of a case. There are 3 core variables considered to determine whether a child is safe or unsafe: (1) threats of danger to the child; (2) the child's vulnerability to the identified threats of danger; and (3) the caretaker's protective capacities to manage the threats of danger and keep the child safe. The threat of danger considers whether the caretaker's behavior or family situation is likely to result in imminent harm to the child. The child's vulnerability looks at the extent to which a child can protect himself/herself from the identified threats of danger. The caretaker's protective capacities look at the way a caretaker thinks, feels, and/or acts and whether those capacities can prevent or control the identified threats of danger. See the Child Welfare Assessment and Decision Making Benchbook Section 11 for more information.

DCFS must articulate how the child is unsafe without a Continued Custody Order based on an assessment of threats of danger, child vulnerability, and parent/caretaker protective capacities. When the Safety Assessment is conducted during an emergent situation, it is possible that an assessment of parental protective capacities was not able to be completed. However, even in an emergency removal, DCFS should still be able to articulate the threats of danger identified that prompted the request for removal, and the current threats of danger.

²¹ La. Ch. C. art. 625.

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While judges may consider stipulations, they do not substitute for the court's required findings at the CCH. The court must make a diligent inquiry about the need for continuing custody. While an attorney may make a strategic decision to stipulate that the child is in need of care, the judge must still find that the standard has been met. The Affidavit alone is insufficient for the required findings.

The court's role at the CCH is to be a check and balance on the actions of the State. The actions of DCFS have profound consequences on children and families. Without sufficient inquiry into the circumstances underlying the information stated in the Affidavit and the efforts taken by the State prior to removal, the court does not ensure Federal and State law mandates are met and that the fundamental liberty interest of families is upheld. A record shall be made of the grounds for the decision, reasonable efforts, and whether the finding of continued custody is in the child's best interest.

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

If a suitable relative or individual is seeking provisional custody of the child, evidence must be presented showing this person is willing and able to provide a stable environment and protect the child's health and safety. Foster caregivers have a right to be heard at the CCH regarding a child in their care. If they attend, the court shall ask them if they would like to speak regarding the care and treatment of the child. Foster caregivers can complete a Foster Caregiver Progress Form and give it to DCFS, who will provide copies of the form to the the court at the CCH. The Foster Caregiver Progress Forms contain hearsay information and should be treated as information about the child in the same way DCFS provides other information to the court. As the child's day-to-day caregiver, foster caregivers likely have valuable information to share with the court (even within the first few days of the child's removal).

E. Reasonable Grounds and Reasonable Efforts Findings

There are two specific, written, and individualized findings that the court shall make for each child in the CCH Order: reasonable grounds and reasonable efforts findings.

a. Reasonable Grounds

The court shall determine whether there are reasonable grounds to believe that the child is in need of care according to Article 606(A) and continued provisional custody of the child is necessary for the child's safety and protection pending the timely filing of the CINC Petition and Adjudication. Sometimes there are reasonable grounds as to one child but not as to another child within the same family, thus findings must be individualized to each child.

b. Reasonable Efforts

DCFS is legally required to make reasonable efforts²² to: (1) prevent or eliminate the need for removal; (2) reunify the family; and (3) achieve timely permanency for the child. The court is obligated to determine whether DCFS efforts are reasonable by making diligent inquiry into the specific facts and circumstances of the case. In any reasonable efforts finding, the child's health and safety shall be the paramount concern. The court must then make written findings for each child.²³

²² La. Ch. C. art. 603(25) defines reasonable efforts as "the exercise of ordinary diligence and care by department case workers and supervisors and shall assume the availability of a reasonable program of services to children and their families."

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_isp?citlD=59 Edwards, Leonard. "Overcoming Barriers to Making Meaningful Reasonable Efforts Findings."

ABA Child Practice Today. January 29, 2019, <a href="https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/overcoming-barriers-to-making-meaningful-reasonable-efforts-find/; Edwards, Leonard. (2014). Reasonable Efforts: A Judicial Perspective, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/overcoming-barriers-to-making-meaningful-reasonable-efforts: A Judicial Perspective, <a href="https://www.scitld.law.practiceonline/january---december-2019/overcoming-barriers-to-making-meaningful-reasonable-efforts-gov/publes.html.grouple-efforts-gov/publes.html.grouple-efforts-gov/publes-interest/child_law/resources/child-law/resources

Under State law, the judge shall make a finding <u>at the CCH</u> as to whether or not DCFS made reasonable efforts to prevent or eliminate the need for the child's removal and, after removal, to make it possible for the child to safely return home. Alternatively, the court can find that reasonable efforts were not required per Article 626 or 672.1. The mandatory reasonable efforts finding is required to be made in a written court order <u>within the 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 alternatively, were not required by law. Thus, if reasonable efforts to prevent the child's removal from his/her home were not made initially, it is critical for the court to hold DCFS accountable going forward to making them within the first 60 days of the child's removal.²⁴

DCFS must initially make reasonable efforts to provide the assistance and services needed to preserve the family and prevent removing the child from his/her home. After the child has been removed, the court shall determine whether reasonable efforts were made to make it possible for the child to safely return home. Reasonable efforts require that DCFS provide accessible, available, and culturally appropriate services that will help families remedy the conditions that brought the child and family to the attention of DCFS. Due to the physical and psychological harms and long-term impact of removing children from their families, reasonable efforts by DCFS to preserve the family are a critical prevention strategy.

As to the reasonable efforts finding in the written CCH Order, the court has a few options. The court must first consider whether DCFS could reasonably have provided services to the family or attempted to or did provide services (i.e., substance abuse and/or mental health treatment, trauma therapy, parenting classes, counseling, home visiting program, safety checks/home visits, etc.) and activities (i.e., home visits and safety checks) to make it possible for the child to safely return home. As part of its inquiry, the court should evaluate whether the need for immediate placement of the child could be eliminated by providing additional services and/or implementing court orders, such as an Instanter Safety Plan Order (ISPO), Temporary Restraining Order (TRO) per Article 617, or Protective Order (PO) per Article 618, concerning the conduct of the child's parents or caretakers.

However, if the court determines that DCFS's first contact with the family occurred during an emergency where the child could not safely remain at home or return home even with reasonable in-home services provided to the family, the judge may find that reasonable efforts were not required. The court may also find that reasonable efforts were not required if the court has made a judicial determination pursuant to Article 672.1. DCFS must articulate the nature and circumstances of the substantial and immediate danger and exigent circumstances at the CCH.

If DCFS has not made reasonable efforts, the court may impose sanctions pursuant to Article 712. However, the court may still find the child's safety and well-being warrant continued out of home placement even if DCFS's efforts to prevent removal were not reasonable.

F. Ruling Options Regarding Custody

Even if the court finds that there are reasonable grounds and that DCFS has made reasonable efforts (or such efforts were not required in the case), the court should still order the child be returned to one or both of the parents if it is safe to do so. The court has several options and may order the child be: (1) returned to his/her parents and dismiss the case; (2) returned to his/her parents pending the timely filing of the CINC Petition and Adjudication and issue a PO; (3) returned to his/her parents pending the timely filing of the CINC Petition and Order a safety plan; or (4) removed from the custody of one parent and not the other parent even though it is anticipated that a CINC Petition will still be filed and issue a PO and/or safety plan as needed.

In addition to a parent, a child can be removed from a caretaker, whether the caretaker has legal custody of the child or not. In such cases, the caretaker does not become a party to the CINC case and is not entitled to the appointment of an attorney. The law only provides the right to an appointed attorney for parents, not caretakers. While DCFS has the authority to investigate a caretaker, a TRO

²⁴ Id.

²⁵ Id

and/or PO may be a more appropriate court intervention to use with a caretaker to manage safety concerns with regard to the child. See <u>Temporary Restraining Order (TRO) and Protective Order (PO) Benchbook Section 2</u>.

If the court determines that the child cannot be returned to one or both parents, the court shall seek to place provisional custody of the child in the least restrictive and most appropriate setting with the health, safety, and best interest of the child being the paramount concern. The Children's Code prioritizes placing provisional custody with suitable relative²⁶ and other suitable individuals²⁷ over DCFS.²⁸

If the child cannot be placed with a parent, then provisional custody pending the timely filing of the CINC Petition and Adjudication should be granted to an adult relative with whom the child has been living if that relative agrees to the safety plan (which includes the conditions of contact with the parents and other third parties). If there is no adult relative with whom the child has been living, the court shall then look to give provisional custody to an appropriate adult relative who agrees to the safety plan. When relatives are not an option at the CCH, the court shall make written findings to that effect. The court shall then consider placing the child in the provisional custody of another adult. Another suitable person could be a coach, neighbor, family friend, parent of a classmate, or another appropriate individual who agrees to the safety plan. If there are no suitable relatives or other individuals available to place the child with, the court can then look to give provisional custody to DCFS. The court should inquire and place on the record if there are any relatives, fictive kin, or other individuals willing and able to offer a wholesome and stable home for the child that the parents want DFCS to consider for placement or permanency.

Pursuant to Article 631(B), an individual (relative or other person) can petition for provisional or permanent legal custody of the child after the CCH and before Adjudication.

If siblings have been removed from their home, Federal law requires that DCFS make reasonable efforts to place siblings together unless DCFS documents that such a joint placement would be contrary to the safety or well-being of any of the siblings. Although these reasonable efforts findings need not be reflected in the actual CCH Order, they are nevertheless critical to the well-being of the children in the case. Thus, courts should examine such efforts at the CCH and other relevant stages of the CINC proceeding to determine if siblings can be safely reunited.

"The relationships people share with siblings are often the longest-lasting they will ever have. Siblings are there from the beginning, and they are often still around after parents and even spouses and children are gone." ²⁹ Sibling relationships are particularly vital to children from disorganized or dysfunctional families. ³⁰ These relationships assume even greater importance when children from these families enter the foster care system. ³¹

The research shows that when siblings are separated from each other, many children feel "they have lost a part of themselves," adding to the pain and anxiety they experience over removal from their parents and home.³² Too often, children in foster care are not placed with their siblings and have infrequent contact with them. At least one Federal district court has found that placing siblings separately and denying them sibling visits violates their right to freedom of association pursuant to the 1st Amendment and substantive due process under the 14th Amendment.³³ Unless contrary to their safety and well-being, supporting and sustaining the sibling bonds of children who have been placed in foster care should be a priority for the child welfare system and the court. Thus, judges should inquire as to the placement of siblings together—whether half or full siblings. Placement considerations may include a child's significant relationship and bond with another child with whom they have been raised. Judges should also help ensure family time/ visitation between siblings when appropriate and safe to do so, as sibling visits can lessen the trauma of separation.

If the child is continued in or placed in DCFS custody, the court shall give further advisements to parties and persons before the court in conformity with Article 625.

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PUBLISHED 2021

²⁶ La. Ch. C. art. 603(20) defines relative "as an individual with whom the child has established a significant relationship by blood, adoption, or affinity. Affinity means relationship by marriage."

²⁷ La. Ch. C. art. 603(20) defines other suitable individual as "a person with whom the child enjoys a close established significant relationship, yet not a blood relative, including a neighbor, godparent, teacher and close friend of the parent."

²⁸ Indeed, the Children's Code does allow for relatives and other individuals to apply to the court for an ex parte order to take provisional custody of the child pending a CCH. See La. Ch. C. art. 622(A).

²⁹ Glover, Linda. (1997) Overcoming barriers to keeping siblings together. Connections, reprinted at https://affcny.org/overcoming-barriers-to-keeping-siblings-together/.

³⁰ Gatowski, supra note 4, at 85.

³¹ Id.

³² Kernan, Emily. Keeping siblings together: past, present, and future. National Center for Youth Law, https://youthlaw.org/publication/keeping-siblings-together-past-present-and-future/.

³³ Barbara Elias-Perciful, The Constitutional Rights of Children, Texas Bar Journal Vol. 73 No.9 750, 753 (2010).

G. Further Orders

The court may make additional orders at the CCH that are in the best interest of the child. These include orders regarding family time/ visitation with the parents, siblings, and/or other family members pending the timely filing of the CINC Petition and Adjudication. The Authors' Notes to Article 627 make it clear that the court has the authority to make orders regarding visitation relying on its inherent authority pursuant to Article 318 and on the child's need for stability and continuity pursuant to Article 102.

Frequent and meaningful contact between parents and children has shown to be a predictor of safe and lasting reunification in CINC cases. The terms "contact" and "family time" are used here based on the premise that the use of the term "visitation" does not adequately communicate the intimacy and importance of the parent/child relationship. When appropriate for children, frequent family time can help maintain healthy connections and lessen the negative impact of separation for both the child and the family. Instead of a one-size-fits-all family time plan, contact should be specifically tailored to meet the individual needs of the child and family before the court. Visits should be scheduled at a time that best allows the parent to participate and disrupts the child's schedule as minimally as possible.³⁴

Judges should inquire about the family time/visitation schedule, including the frequency and those to be included in the visits, and make sure the unique circumstances of the case and the age and development of the child have been carefully considered. Consistent with child safety, relationships between and among children, parents, and siblings are vital to child well-being. Judges must ensure that quality and appropriate family time is an integral part of every case plan. Family time should be liberal and presumed unsupervised unless there is a demonstrated safety risk to the child.³⁵ Family time should not be used as a case compliance reward or consequence. If siblings are not placed together, sibling family time apart from parental family time should be considered. Judges should also be cognizant that a child may have a sibling-type relationship and bond with another child who is not a biological sibling but just as significant to the child.

Judges should encourage the application of the Quality Parenting Initiative (QPI), which focuses on a team approach to parenting the child during the duration of the case. DCFS has adopted QPI, but judges are in a unique position to make sure QPI is being utilized in the case. When QPI is successful, parents, foster caregivers, kinship caregivers, DCFS staff members, and CASA work as a team to support the child.³⁶

In addition to family time/visitation orders, the court may make other orders at the CCH. If the identity and whereabouts of an alleged parent is known but filiation has not been legally established, the court can order that DCFS make arrangements to acquire the information needed to prove filiation (i.e., obtain DNA testing, copy of birth certificate, certificate regarding Putative Father Registry, certificate of results from Clerk of Court showing whether an acknowledgement was filed in the parish of the child's birth, etc.). If a parent has not been located, the judge should direct the parent who is present under oath to provide the name, address, and whereabouts for any absent parent as well as any relatives of the child. The court may issue a PO in addition to the CCH Order. For example, such an action might be useful when the court grants custody of the child to one parent pending the filing of the CINC Petition and Adjudication but contact with the other parent or a caretaker needs to be restricted.

The court can order DCFS to initiate a child welfare background clearance, criminal background check, and/or an assessment of the home or home study on suitable relatives and other individuals who may be potential placements for the child. The court can also order DCFS to initiate the Interstate Compact on the Placement of Children (ICPC) process for the child's potential placement with an out-of-State relative or other individual.

³⁴ Gatowski, supra note 4, at 85.

³⁵ Gatowski, supra note 4, at 139.

³⁶ See http://www.dcfs.louisiana.gov/page/471 and https://www.qpi4kids.org/what-is-qpi/ for more information on QPI.

The court may also enter orders related to the child's education. The Every Student Succeeds Act (ESSA), passed in 2015, specifically addresses the needs of children in the child welfare system. Of particular note:

- 1. DCFS must assure that students in foster care remain in their school of origin unless it is not in their best interest, and, if it is not in their best interest, that must be documented in the case record;
- 2. Children in foster care can enroll immediately in a new school when a school change is necessary, even if the child cannot produce normally required enrollment documents and school records;
- 3. Enrolling schools are responsible for contacting the school last attended by the child to obtain relevant education records;
- 4. It is the responsibility of the local school district to obtain cost-effective transportation, and if there are barriers, the school district should reach out to DCFS to discuss on a child-specific basis; AND
- 5. Every school district must designate a point of contact for child welfare agencies.

Louisiana law is in line with the first and fourth of these provisions.³⁷ Specifically, with regard to transportation, Louisiana law provides that if the foster care placement is outside the public school's jurisdiction, the school board is responsible for providing free transportation for the child to and from a designated location within that school district that is located nearest to the child's residence and determined to be appropriate by the school board and approved by DCFS. DCFS shall be responsible for providing the child's transportation between that location and the child's residence. The practice of implementation, however, may vary from the law. For example, in some parishes, the district may provide all the transportation for the child.

In addition to ESSA and State law, the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections) includes several requirements related to education and the child's case plan, namely:

- Assurances that the placement of the child in foster care takes into account the current educational setting and proximity to the school and that the State agency has coordinated with local educational agencies to ensure the child remains in same school where appropriate;
- 2. If remaining in that school is not in the best interest of the child, assurances by the State and local education agencies to provide immediate enrollment and transfer of records to a new school; AND
- 3. Consideration of reasonable travel for the child to remain in his/her current school.³⁸

Finally, the court can also order that DCFS give reasonable notice³⁹ of Family Team Meetings (FTMs) to parents, caretakers, foster caregivers, children, CASA workers, and attorneys for the children and parents. FTMs are important because this is where case planning for the family occurs. It is also when parents and children and other stakeholders and service providers give input and updates on the services and assistance the family needs and/or is receiving. Without enough notice of the FTM date and time, some team members may have difficulty participating. If the child is in DCFS custody or has an open DCFS Family Services case, DCFS should propose a tentative date for the next FTM. The court can provide notice of and encourage participation by all parents, caretakers, children, foster caregivers, CASA workers, and attorneys for children and parents as applicable.

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

³⁷ See La. R.S. § 17:238.

³⁸ Fostering Connections to Success and Increasing Adoptions Act, Public Law 110-351.

³⁹ DCFS policy requires at least 15 days' notice.

H. Next Steps

It is important to ascertain if the parents and child understood what occurred at the hearing. As role models, judges can exemplify the value of engaging parents and children in the case. Research shows that reunification is more likely when the family is engaged and actively participates in the process. Asking the parents and children questions and getting to know them can go a long way towards this engagement. The process is more successful for all involved when the approach is collaborative (rather than punitive). When the hearing has concluded, the court may want to give attorneys a short time to talk to their clients. In this way, children and parents can have the information and/or reassurances they need to be able to leave the courthouse with lessened anxiety and know what is expected of them and what will happen next.

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

The State has 30 days from the CCH to file a CINC Petition (unless an extension is granted). The CINC Petition shall be answered within 15 days after filing. If the CINC Petition is not timely filed, the CCH Order terminates, and the child shall be returned to the parents. However, if the order terminates, it does not preclude the filing of a CINC Petition or the filing of another Instanter Order regarding the parents and children involved in the case.

Prehearing Conferences can help identify and dispose of issues in the case. Such conferences promote efficiency and reduce decision-making delays. Prehearing Conferences are required for stipulations at the Answer Hearing.

A Prehearing Conference can be used to consider alternatives to formal CINC proceedings. For example, the court or DA may want to consider proceeding with an Informal Adjustment Agreement (IAA) if appropriate, in the child's best interest, and all parties agree. An IAA can be implemented before or after a CINC Petition is filed. The IAA requires fewer court appearances and, if successful, obviates the need for Adjudication and is a viable alternative to keeping the child out of foster care. See Informal Adjustment Agreement (IAA) Benchbook Section 1. Another example of an alternative to formal court proceedings that could be considered at a Prehearing Conference is a voluntary transfer of custody or a referral to a Family in Need of Services (FINS) intake officer.

OUTLINE

- **A. TIMING AND CONTINUANCES**
- **B. APPEARANCES AND APPOINTMENTS**
- C. NOTICE
- D. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS
- **E. INITIAL ADVISEMENTS**
- **F. INDIAN CHILD WELFARE ACT (ICWA)**
- **G. EVIDENCE AND TESTIMONY**
- H. FINDINGS
- **I. RULING OPTIONS**
- J. FURTHER ADVISEMENTS OF RESPONSIBILITIES TO THE PARENTS
- **K. FURTHER ADVISEMENTS OF RESPONSIBILITIES TO ALL PERSONS**
- L. FURTHER ORDERS
- M. CINC PETITION FILED
- **N. ORDER OF NOTICES AND FUTURE HEARINGS**
- O. CASE MANAGEMENT
- P. POSSIBLE NEXT STEPS
- **Q. APPENDIX**
 - (1) CONTINUED CUSTODY HEARING BENCH CARD
 - (2) CONTINUED CUSTODY ORDER TEMPLATE
 - (3) ORDER PLACING MINOR CHILDREN IN THE PROVISIONAL CUSTODY OF A SUITABLE RELATIVE OR INDIVIDUAL TEMPLATE
 - (4) ORDER PLACING MINOR CHILDREN IN THE PROVISIONAL CUSTODY OF THE STATE OF LOUISIANA THROUGH THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES (DCFS) TEMPLATE



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OVERVIEW

A. TIMING AND CONTINUANCES

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

(1) **TIMING:**⁴⁰ The CCH (sometimes referred to as the 72-hour or shelter hearing) shall be held within 3 days after the child has been removed. See Article 114.

(2) CONTINUANCES:

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

B. APPEARANCES AND APPOINTMENTS

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

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

PRACTICE TIP:

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

HELPFUL GUIDANCE:

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

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

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(2) ESSENTIAL JUDICIAL FUNCTION - ASSISTANCE SERVICES AND SPECIAL ACCOMMODATIONS: Under

State and Federal law, the court is responsible for providing interpretation, translation, and/or language assistance services for parties to CINC hearings and/or reasonable accommodations for parties to CINC hearings with disabilities. When the court appoints counsel for indigent persons, it is also responsible for appointing and paying for a qualified interpreter/translator for indigent persons with these needs to assist in communication with counsel in all phases of the preparation and presentation of the case. There must be ample time for legal interpreters to review pertinent legal documents with the party prior to the court proceeding. Interpreters must be familiar with the case-related details to provide accurate, meaningful, and effective interpretation.

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

HELPFUL GUIDANCE:

- o **Waiving Presence at the Hearing:** The child's attorney has an obligation to inform the child of the right to be present at the hearing and facilitate such presence, if appropriate. The judge should engage in an inquiry related to the child's presence at court. If the child's attorney moves to waive the child's presence, for example, the court should ascertain the reason underlying the request. If the child is present, does the child wish to be heard? The court has an oversight role in CINC cases and, as such, should make every effort to ensure that the child has been given enough information about the court process and an opportunity to be engaged in the process.
- o Importance of Presence at the Hearing: Having all parties present and participating in the hearing is critical for moving the case forward and having a more meaningful hearing. Children are parties to the CINC Proceedings, and their voice is invaluable to decision-making. Having children present can also assist the court in making decisions about a case. Interacting with the child and observing potential medical issues, delays, etc., provides needed information to the court. Although challenging, courts should try to schedule hearings so that children can be present and participate as much as possible. Scheduling to allow the child to attend hearings necessitates knowing about the child's school schedule and other activities. There are different ways to hold hearings given some of the issues that arise with having children in court. For example, some judges hold their hearings in conference rooms instead of courtrooms to be less intimidating to children and parents. Other judges develop creative solutions, such as holding the hearing at a group home or scheduling the hearing after school.
- o Remaining in the Courtroom: Prior to the commencement of the hearing, the court shall determine whether it is in the child's best interest for the child to remain in the courtroom during the testimony of the witnesses. If the court has concerns about the child's presence in the courtroom, an option could be that the child be brought outside of the courtroom with someone he/she trusts. While some may argue that attending court hearings is traumatic to children, it is important to remember that they have already lived through the trauma that brought them into the courtroom. Engaging them in planning their future and protecting their safety can actually be empowering. Some courts in Louisiana have created sensory rooms for children at the courthouse to address the potential trauma of attending court, such as the Calming Studio located in Caddo Parish Juvenile Court. Some courts provide a therapy dog to help emotionally support children in court. The CASA volunteer (if appointed) or foster caregiver (if present) may also be a support to the child in court.

⁴¹ See C.C.P. Art. 192.2; La. R.S. § 46:2364; 42 U.S.C. § 3711; 28 U.S.C. § 604(a)(14), (15), and (16), § 1827, and § 1828; see also https://www.lasc.org/language_access and https://www.lasc.org/langu

⁴² See National Consortium of Interpreter Education Centers. (2009). Best practices American Sign Language and English interpretation within legal settings. U.S. Department of Education, Rehabilitation Services CFDA #84.160A and B, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf Blind, https://www.interpretereducation.org

⁴³ Id.

⁴⁴ Gatowski, supra note 4, at 72.

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

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

Continued Custody Hearing Benchbook Sec	ction ———
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(4) PARENTS: Parents of the child are parties and should be present at the hearing.

PRACTICE TIPS:

- o **Effect of Nonappearance of Parent:** If the parent is absent, the hearing may proceed if he/she cannot be found, was served a summons, or was notified by DCFS.
- o **Absentee:** The court shall order the appointment of a curator for any parent who is an absentee.⁴⁷
- o **Incarcerated:** To ensure the attendance of any parent who is incarcerated at the CCH, a writ or motion should have been filed and an order issued by the court and served on the warden or administrator of the facility prior to the CCH. Service should be made sufficiently in advance of the hearing to afford time for the facility to arrange for transportation of the parent to court (or video conferencing where the parent's physical attendance at the hearing is not possible).
- o **Direct Parent Present to Identify Other Parents:** If a parent has still not been located, the judge should direct the parent who is present under oath to provide name, address, and whereabouts for any parent who has not been located and emphasize the importance of identifying and locating any absent parents.
- o **Determining Paternity/Maternity:** The court must ensure that efforts by DCFS are thorough and diligent in locating and involving all legal and putative parents and that paternity or maternity of all children is legally determined. If the identity and whereabouts of an alleged parent is known but filiation has still not been legally determined, the court can order that DCFS acquire information needed to determine filiation (i.e., obtain DNA testing, copy of birth certificate, certificate regarding Putative Father Registry, certificate of results from Clerk of Court showing whether an acknowledgement was filed in the parish of the child's birth, etc.), including ordering that DCFS make arrangements for DNA tests to determine the paternity/maternity of any alleged parents and that the alleged parents comply.
- Direct Parent Present to Identify Potential Relative Caregivers: Establishing paternity or maternity is also critical
 for finding potential relative caregivers for the child; thus, the court may also want to direct the parents under oath to
 identify relatives of the child.

HELPFUL GUIDANCE:

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

(5) ATTORNEYS, APPOINTMENTS, AND WAIVERS:

a. Parents: The Indigent Parents' Representation Program shall provide qualified legal counsel, including curatorship appointments, to indigent or absent parents in CINC cases unless a parent waives his/her right to counsel (See Articles 575 and 608).

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

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

PRACTICE TIP:

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

HELPFUL GUIDANCE:

- o **Due Process:** Protecting the interest of the parent is an important role of the parent's attorney and ensures due process for the parent. The parent's attorney should zealously advocate for the parent whether the parent is present or not.
- o **Conflicts of Interest:** Judges must be cognizant of possible conflicts of interest that may arise in representation of parents at all junctures in the case. For example, parents who are married or living together may have or may develop divergent legal positions in the CINC case. It may also be a conflict for one attorney to represent multiple fathers or mothers in a case. When there is a curator ad hoc for an absent parent, the curator may not be able to represent a parent who is located due to a conflict.
- b. **Children:** An attorney for the child shall be present at every hearing, assert the child's wishes, and protect the legal interests of the child even if the child is not present (Article 607). 48
 - **Appointment:** The program for child representation should have been appointed in the Instanter Order. If not, the court shall order that the program approved to represent children in that jurisdiction be appointed to represent the child in all CINC proceedings and be given notice of appointment and served with notice and a copy of the pleadings.

PRACTICE TIP:

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

⁴⁸ LA. SUP. CT. RULE XXXIII, PART III.

Continued Custody Hearing Benchbook Section

HELPFUL GUIDANCE:

- o **Due Process:** Protecting the interest of the child is an important role of the child's attorney and ensures due process for the child. The child's attorney should zealously advocate for the child whether the child is present or not.
- o **Conflicts of Interest:** Judges must be cognizant of possible conflicts of interest that may arise in the representation of children at all junctures in the case. With regard to current clients, for example, there could be a conflict representing two siblings if one has sexually perpetrated on the other. It would also be a conflict for a child's attorney to represent both a teenage mother and her baby if the baby is in care. Further, a conflict may be present if siblings' wishes are divergent, and the attorney cannot make a colorable argument for the differing positions.
- c. **State:** An ADA, an attorney the ADA designates, or a DCFS attorney (Bureau of General Counsel/BGC) should be present at the hearing.
- (6) **DCFS:** A DCFS staff member or representative(s) should be present at the hearing.
- (7) CASA: For confidentiality reasons, CASA should only be present at the hearing if the court has appointed them.
 - **Appointments:** If CASA was not previously appointed, the court can order that the local CASA program be appointed, subject to the assignment of a qualified CASA volunteer, to advocate for the best interest of the child in these proceedings and that the program be notified of appointment and served with a copy of the pleadings (Article 424.1).

HELPFUL GUIDANCE:

- o Role: CASA volunteers are sworn officers of the court appointed by judges to advocate for the best interests of children in CINC cases. CASA volunteers visit with children to get to know them and find out important information, such as how they are doing in the placement, what kind of services are needed, and how school is going. The CASA volunteer may also talk to professionals working on the case, the child's family, the foster caregivers, teachers, and others. They can review important documents relating to the case, such as summaries on the parent and/or child's progress. The CASA volunteer prepares reports for the court about what they have learned about the child. In the report, they make independent recommendations to the court about what should happen in the case to have the best outcome for the child—to keep the child safe, promote the child's well-being, and help find a permanent placement for the child. Unlike the children's attorney, the CASA volunteer does not advocate for the wishes of the child unless those wishes are in the child's best interest. The CASA volunteer can also monitor the case plan and advocate to make sure the plan is followed and serves the best interests of the child. The court appoints the local CASA program, subject to the assignment of a qualified volunteer. If available, then a CASA volunteer will be assigned to the case. The Children's Code requires the CASA program to be established in compliance with the National CASA Association standards and the volunteer to be trained in accordance with those standards.⁴⁹
- (8) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD: Foster caregivers (i.e., foster parents, relatives, or preadoptive parents) providing care for the child have a legal right to receive notice of and be present at the hearing. The court may permit the hearing to be held in the person's absence even if they were not properly notified. 50

⁴⁹ La. Ch.C. art. 116(2.1) and (2.2).

⁵⁰ See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

HELPFUL GUIDANCE:

- o **Federal Law:** The Adoption and Safe Families Act (ASFA) of 1997⁵¹ gave foster caregivers the right to notice and to be heard in "certain" court hearings regarding the care and treatment of the child.⁵² The Safe and Timely Interstate Placement of Foster Children Act of 2006 amended ASFA to clarify that the right to notice and be heard extends to "any" court proceeding held with respect to the child.⁵³ This Federal legislation was enacted to emphasize the crucial role of the child's daily caregiver and the valuable information that the caregiver can provide to the court to make informed decisions that are in the best interest of the child. Notably, the Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases, by the National Council of Juvenile and Family Court Judges, discusses the importance of giving these caregivers notice and the opportunity to be heard at all hearings regarding a child in their care.
- o **State Law:** In Louisiana, the rights of foster caregivers are included in the Louisiana Children's Code, the Louisiana Revised Statutes, and DCFS policy. Article 623 of the Children's Code aligns with the rights outlined in the Safe and Timely Interstate Placement of Foster Children Act of 2006.⁵⁴ It clarifies that DCFS has an obligation to give notice to "foster parents, pre-adoptive parents,⁵⁵ and relatives caring for a child at any court hearing regarding the child" and that the notice shall "state the date, time, and place of the hearing and inform the recipient of his right to attend and be heard." ⁵⁶ Article 623 also clarifies that the court has an obligation to solicit information regarding the care and treatment of the child from the foster caregiver who appears at a hearing regarding the child. Further, DCFS and the courts have an obligation to uphold the Foster Parent Bill of Rights provided in Louisiana Revised Statute § 46:286.13. Under the Foster Parent Bill of Rights, foster parents have a right to be informed of court hearings and legal and administrative actions as authorized by law in a timely manner in recognition of the importance of their role as foster parents.⁵⁷
- o **Value of Attending Hearings:** Foster caregivers are encouraged to attend CINC hearings regarding the child in their care. CINC hearings offer opportunities to solve scheduling conflicts, such as visits and appointments, and challenges the child may be facing. Early and ongoing communication, respect, and support between caregivers, the court, the parents, and DCFS are important for the child's well-being and getting him/her the supports and services needed as soon as possible (which is also critical for the Quality Parenting Initiative (QPI)⁵⁸ to be successful). Foster caregivers can also provide assistance and support to the child if they attend the hearing. Some hearings may include difficult information for the child to hear or long wait times. The caregiver's presence at the hearing may better situate them to support the child during and after the hearing. Also, while on court premises, before or after the hearing, there may be an opportunity for wholesome and productive interaction and communication between the caregiver and the child, the parents, DCFS, CASA, the attorneys, and/or others involved in the case.
- o **Zoom or Other Virtual Platform:** If the hearing is held via Zoom or by another virtual platform, the court should allow the foster caregivers to attend and give them the opportunity to be heard. DCFS will provide the link to the foster caregivers.

(9) AUTHORIZIED OFFICERS OF THE COURT AND WITNESSES:

- Authorized officers of the court: as designated by the judge may be present at the hearing.
- Witnesses: under examination may be present at the hearing.

^{51 42} U.S.C. § 601 (1997).

⁵² The Adoption and Safe Families Act of 1997, 42 U.S.C. § 601 (2006), extends the rights of notice and to be heard to foster parents as well as to anyone else who is providing care for the child.

^{53 42} U.S.C. § 601 (2006); 42 U.S.C. § 675(5)(G

See La. Ch. C. art. 623(C), comment (a) ("Since the adoption of the Children's Code in 1991, as implied by Article 624, the department has had the responsibility for notifying parents and other parties, such as any legal custodian of the child, of the scheduling of any continued custody hearing. By common understanding and custom, the department also notified those persons of any subsequent proceeding, including the adjudication and disposition hearings. This new Article makes that obligation explicit. In addition, it reflects the new duty imposed by Federal statute for the department to give such notice to any foster parent, pre-adoptive parent, and relative providing care as a condition for the continued receipt of Federal funds per the Safe and Timely Interstate Placement of Foster Children Act of 2006."); La. Ch. C. art 623(E), comment (b) ("Paragraph E complies with the Safe and Timely Interstate Placement of Foster Children Act of 2006, that requires that 'the foster parents (if any) of a child and any pre-adoptive parent or relative providing care for the child are provided with notice of, and a right to be heard in, any proceeding to be held with respect to the child.' 42 U.S.C. § 675(5)(G) (emphasis added). In particular, it clarifies the foster parent or caretaker's right to be heard. It also emphasizes the role of the child's daily caretaker and the insight that the caretaker can provide.").

There is no definition provided for "pre-adoptive parent" in the Louisiana Children's Code. DCFS policy defines "pre-adoptive parent" as "certified caregiver who has signed an agreement with the Department of Children and Family Services indicating that they intend to adopt a child who has been freed for adoption."

⁵⁶ La. Ch. C. art. 623.

⁵⁷ La. R.S. § 46:286.13.

⁵⁸ See https://www.qpi4kids.org/what-is-qpi, for more information on QPI.

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C. NOTICE

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

(1) PARTIES AND COUNSEL OF RECORD: The court shall determine if proper notices of the hearing were made to all parties and counsel of record, and enter required findings in the Order.

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

(2) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD: 59

- Notice and Right to Be Heard: The court shall determine whether DCFS:
 - · Gave notice of the date, time, and place of the CCH to any foster caregiver providing care for the child; AND
 - Informed the recipient of his/her right to attend and be heard at the hearing.
- **Fails to Appear:** If a foster caregiver fails to appear the hearing, DCFS shall report to the court whether notice was given or, if not, what diligent efforts were made to locate and notify the absent person. The court may permit the hearing to be held in the person's absence.

D. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS

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

- · Americans with Disabilities Act (ADA);
- · Service Members Civil Relief Act (SMCRA);
- Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA); AND/OR
- Interstate Compact on the Placement of Children (ICPC), as codified in La. Ch. C. art. 1608 et seq.
 - ICPC Generally: ICPC is an agreement between all 50 States, Washington, D.C., and the U.S. Virgin Islands. It provides for the movement and safe placement of children between States when the children are sent out of State for placement in foster care or as a preliminary step to a possible adoption. The process involves several steps and goes from the local or field level in one State, through the central or State office of each State, to the local level in the other State for investigation. At the conclusion of the investigation, a report is sent from the local level to the State administration and back to Louisiana. The process usually takes several months to complete, so it is recommended that this process begins as soon as a potential out-of-State caregiver is identified and determined to be a suitable potential placement or resource. If the receiving State finds that the proposed placement is contrary to the interests of the child based on the receiving State's criteria, DCFS may not place the child with that caregiver. The judge still has authority to grant custody or guardianship to the out-of-State caregiver without ICPC approval. Still, there would be no supervision of the home and may be other severe repercussions. See <u>Disposition Hearing Benchbook Section 8 E</u> for more information on ICPC.

E. INITIAL ADVISEMENTS

ARTICLES 575, 625

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

• Nature of the proceedings and allegations in terms understandable to the parent and child;

⁵⁹ See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

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

HELPFUL GUIDANCE:

- o **Acknowledgment from Parents:** It is recommended that the judge have the parents acknowledge on the record and/or execute a written acknowledgment of advisement and understanding of these rights.
- Understand: It is important to make sure the parents, children, and others present understand what is happening.
 Judges are encouraged to ask:
 - Do you understand what this hearing is about? (Explain the purpose of the hearing).
 - Do you understand the Instanter Order? (Review the Instanter Order with parties).
 - · Were you involved in any mediation process used before this hearing? If yes, what was the outcome?
 - · What family members and/or other important people should be involved in this process?

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

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

- (1) INQUIRY: The court shall ask each person before the court and make a record of the answer in the CCH Order for each child:
 - As to whether they know or have reason to know that the child is a member of a Federally recognized Indian Tribe or eligible
 for membership in a Federally recognized Indian Tribe and is the biological child of a member of a Federally recognized Indian
 Tribe; AND
 - To inform the court if they subsequently discover information indicating that the child is a member of a Federally recognized Indian Tribe or eligible for membership in a Federally recognized Indian Tribe and is the biological child of a member of a Federally recognized Indian Tribe.
- (2) **REASON TO KNOW:** : If the court has reason to know that a child in the CINC case is an Indian child or is eligible for membership in a Federally recognized Indian Tribe, the court:
 - May enter any order for placement in accordance with Article 627, but the court shall thereafter proceed as if the child is an Indian child; AND
 - Shall follow Article 624 and 624.1. See also the Indian Child Welfare Act (ICWA) Bench Card in Appendices Benchbook Section 12.
- **(3) INVALIDATION OF PROCEEDINGS:** Noncompliance with the provisions of ICWA may result in invalidation of the proceedings, including any subsequent adoption.

HELPFUL GUIDANCE:

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

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o **Active Efforts:** Efforts involved in ICWA are very different from the reasonable efforts required by ASFA. Active efforts are required, and they are affirmative, active, thorough, and timely efforts intended to maintain or reunite an Indian child with his/her family. It is also critical for courts to proceed pursuant to the Federal ICWA and the regulations promulgated thereunder if the court finds that there is reason to know that the child is an Indian child.⁶⁰

G. EVIDENCE AND TESTIMONY

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

(1) GENERAL:

- **Burden of Proof:** The State has the burden of proving that the initial removal was necessary and that there are reasonable grounds to believe the child is in need of care and that continued provisional custody of the child pending the timely filing of the CINC Petition and Adjudication is necessary for his/her safety and protection.
- Order: The court sets the order of presenting evidence at the hearing.
- Relevant Evidence: The court shall consider all relevant evidence offered by the parties.
- Hearsay: Hearsay evidence is admissible at the CCH.

PRACTICE TIP:

o **Stipulations:** While judges may consider stipulations, they do not substitute for the court's required findings at the CCH. Diligent inquiry about the need for continuing custody must be made. While an attorney may make a strategic decision to stipulate that the child is in need of care, the court must still find that the standard has been met. The Affidavit alone is not sufficient for the required findings.

(2) PARENTS:

- Rights: Parents may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.
- **If CINC Petition Filed:** If a CINC Petition has been filed at the time of the CCH, the court may also call upon the parent to answer its allegations. See <u>Answer Hearing Benchbook Section 6</u>.

(3) CHILDREN:

- · Rights: Children may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.
- **Wishes:** If the child is present in court the child may choose to testify as to his/her wishes, and the court shall consider the child's testimony in the matter.
- **Methods of Testimony:** Any testimony given by a child may be taken by:
 - A videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of the Louisiana Children's Code;
 - An in-chambers conference attended only by the judge and court reporter and by counsel for the child, the petitioner, and the parents; OR
 - If no party objects and the parties agree as to the procedure, the child may be examined "in chambers, on or off the record, and with or without parents and/or counsel being present." 61
- **Exclusion:** Prior to the commencement of the hearing, the court shall determine whether it is in the child's best interest for the child to remain in the courtroom during the testimony of the witnesses.

For more information on ICWA, please see https://clarola.org/index.php?option=com_k2&view=item&id=1284:la-icwa-quick-reference-guide&Itemid=116; see also Murphy, Bob.

(2020) McGirt Injects Steroids into the Indian Child Welfare Act. American Bar Association, Children's Rights Litigation, <a href="https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/winter2021-mcgirt-injects-steroids-into-the-indian-child-welfare-act/?utm_medium=email&utm_source=salesforce_353772&sc_sid=00265681&utm_campaign=MK20CNTT&promo=MKCONTENT1&utm_content=&additional4=&additional5=&sfmc_j=353772&sfmc_s=52961351&sfmc_l=2198&sfmc_jb=4007&sfmc_mid=100027443&sfmc_u=10232975.

⁶¹ Watermeier v. Watermeier, 462 So. 2d 1272, 1275 (La. App. 5th Cir.), cert. denied, 464 2d 301 (La. 1985)

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PRACTICE TIPS:

- o **Child Present or Not:** Whether present or not, the child's attorney shall make sure the court hears the child's wishes (i.e., regarding custody, services, visitation, etc.).⁶²
- Methods of Communication: If the child wishes to be heard but is not able to present or does not want to be present
 in the courtroom, the court should consider the use of other methods of communication, such as audio or visual
 conferencing.
- o **Well-Being:** The court should inquire about the child's physical, emotional, and mental health and educational needs and identify any gaps in services needed by the child.

(4) DCFS:

- Instanter: Testimony of the DCFS representative should be provided as to the circumstances underlying the request for the Instanter
- Safe or Unsafe: Testimony should be taken regarding the individualized reasons that each child in the case will be unsafe if he/she remains in the care of the parents or caretakers. The Child Welfare Assessment and Decision Making Model (CWADM) includes an assessment used by DCFS and child welfare stakeholders to determine whether the child is safe or unsafe at all junctures of CINC proceedings. The court should insist on a clear articulation from DCFS as to how the child is unsafe as it relates to threats of danger, child vulnerability, and caregiver protective capacities and why an in-home safety plan and/or PO cannot be initiated to eliminate the need for removal. The threat of danger considers whether the caretaker's behavior or family situation is likely to result in imminent harm to the child. The child's vulnerability considers the extent to which a child can protect himself/herself from the identified threats of danger. The caretaker's protective capacities consider the way a caretaker thinks, feels, and/or acts and whether those capacities can prevent or control the threats of danger. See Child Welfare Assessment and Decision Making Model (CWADM) Section 11.
- **Reasonable Efforts:** Testimony must be taken regarding the reasonable efforts to prevent or eliminate the need for removal and, after removal, to make it possible for the child to safely return home, or the emergency reason why such efforts were not necessary.

PRACTICE TIP:

o **DCFS Testimony:** The DCFS worker very well may have witnessed events that prompted the request for the Instanter Order, observed the family dynamics, and/or interacted with the child. Hence, DCFS testimony should be considered in the court's ruling.

(5) **FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD:** The court shall solicit and consider information regarding the care and treatment⁶³ of the child from any foster caregiver providing care for the child who appears for the CCH.

⁶² LA. SUP. CT. RULE XXXIII, PART III, SUBPART II.

⁶³ Neither State nor Federal law provides a definition for "care and treatment of the child," but DCFS policy states that it "includes information that the foster parent, relative, or pre-adoptive parent feels is critical to the safety and well-being of the child, such as how the child is doing physically, developmentally, emotionally, behaviorally, mentally, socially, and academically and what supports or services are needed for the child or caregiver to properly care for the child."

PRACTICE TIPS:

- o Valuable Information that Must be Considered: The court should value the role of the child's daily caregiver and the insight they can provide about how the child is doing and what he/she needs. This is especially important at the CCH. Because of their day-to-day care of the child, foster caregivers have useful information that the court, DCFS, CASA (if appointed), and parties to the CINC case need to make crucial decisions regarding the child's well-being. Thus, their role in the court process is to provide current and accurate oral and/or written information about their observations of how the child is doing so that judges can make informed decisions in the best interest of the child.
- o **Solicit Information:** While foster caregivers are not parties, they have a legal right to be present and heard at any CINC hearing regarding a child in their care. There are at least 2 ways the court can solicit and consider information from caregivers. The caregiver can: (1) submit a Foster Caregiver Progress Form to DCFS prior to the hearing, or (2) attend and speak at the hearing, or both.
- o **Submit a Foster Caregiver Progress Form:** The Foster Caregiver Progress Form is one of the ways foster caregivers can exercise their right to be heard but is not required. If the caregiver chooses to complete the form, they will submit it to DCFS, who will bring copies of the form to the CCH. The form can be submitted to DCFS even though the caregiver may not attend the hearing. These forms contain hearsay information and should be treated as information about the child in the same way DCFS provides other information to the court. Even if the caregiver submits the form, they still have the right to attend and be heard at any CINC hearing regarding the child in their care. See the <u>Foster Caregiver Progress Form Template</u> in the <u>Appendices Benchbook Section 12</u>.
- o **Speak at the Hearing:** In accordance with State and Federal law, if the foster caregiver attends the hearing, the court must solicit information from the caregiver about the care and treatment of the child (even if they submitted a Foster Caregiver Progress Form). At the beginning of the hearing, the court should identify the people in the courtroom and their connections to the case. This includes foster caregivers. After the court hears arguments from parties and receives evidence, if another party has not called on the caregiver to testify, the judge should call on them to see if they would like to speak. Some caregivers may wish only to attend and not speak. Judges may allow the caregiver to use the form to guide them when they speak and/or may want to utilize the form to ask the caregiver questions.⁶⁴

(6) SUITABLE RELATIVE OR OTHER SUITABLE INDIVIDUAL: If there is a relative or individual seeking provisional custody of the child, there must be evidence presented showing that the person is willing and able to provide a stable environment and protect the child's health and safety.

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

PRACTICE TIPS:

- o **Cannot Exclude Parties:** Parties to a proceeding cannot be excluded from the courtroom. Only the child can be taken out of the courtroom during testimony that may not be in their best interest to hear. See Article 661(E).
- o **DCFS and CASA** are **Not Parties:** Neither DCFS nor CASA are parties to CINC proceedings. A DCFS staff member or a CASA volunteer may be excluded if any party plans to call them as a witness. However, a DCFS representative would likely need to remain in court to assist the ADA. See La. Code Evid. Art. 615(B)(2).

⁶⁴ See La. Ch. C. art. 623; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

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- o **Foster Caregivers Are Not Parties:** Foster caregivers are not parties. While they have a right to be heard at any CINC hearing regarding a child in their care, they may be excluded and asked to be present only when they speak. However, it is encouraged that they are allowed to remain during the duration of the hearing. Allowing them to be present at the hearing communicates that they are a valued partner in ensuring the child's well-being. Because they provide day-to-day care to the child, it is also important for them to stay abreast of developments in the case and have the opportunity to meet and communicate with those involved in the case (i.e., the child's attorney, parents and relatives of the child, the CASA volunteer, etc.). The caregiver's presence at the hearing may better situate them to support the child during and after the hearing.⁶⁵
- o **Exemption:** In the interest of justice, the court may exempt any witness from its order.
- o **Closing a Hearing:** Sequestration is different from closing a hearing upon motion of a party. Closing a hearing means that no one is present except for the parties.

OVERALL GUIDANCE:

Engagement: The court should do all that it can to support and encourage the meaningful engagement of families in CINC proceedings. ⁶⁶ Testifying in court is stressful for many parents and children. Court is intimidating for most individuals (including non-party witnesses), and the stakes could not be higher for parents and children in CINC cases. Many parents and children are coming into court with a history of trauma. Regardless of the trajectory of the case, parents and children may benefit from having their voice heard. It is critical for the judge to consider information provided by the parents and children, and to convey to the parents and children that their testimony is being given due consideration in the court's ruling. Positive engagement is critical to successful outcomes in the case. ⁶⁷ Judges must create an environment where parents and children are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process. ⁶⁸

H. FINDINGS

ARTICLES 626-7, 672.1, 45 CFR §1356.21

The court shall make the following written, separate, and individualized findings of fact for each child and explicitly document them in the CCH Order signed and dated by the judge:

(1) ESSENTIAL JUDICIAL FINDING - REASONABLE GROUNDS AND CONTINUED CUSTODY: The court shall determine whether:

- There are OR are not reasonable grounds, pursuant to Article 606(A), to believe that the child is in need of care;
- Continued custody is OR is not necessary for the child's safety and protection pending the timely filing of CINC Petition and Adjudication.

PRACTICE TIP:

o **Specific Ground(s):** Best practice is to include the specific ground(s) codified in Article 606(A) in the Continued Custody Order. Reference to specific grounds gives parents notice of the basis of the court's finding, consistent with due process, and guides the formation and implementation of the case plan (if required).

⁶⁵ Id

⁶⁶ Gatowski, supra note 4, at 68.

⁶⁷ Id

⁶⁸ Gatowski, supra note 4, at 16.

(2) ESSENTIAL JUDICIAL FINDING - REASONABLE EFFORTS:

- a. **DCFS MADE OR DID NOT MAKE REASONABLE EFFORTS:** The court shall determine whether DCFS made reasonable efforts to prevent or eliminate the need for removal of the child from his/her home and, after removal, to make it possible for the child to safely return home. The court should consider whether:
 - DCFS sought court interventions such as TRO (Article 617), PO (Article 618), and/or ISPO (Article 619) as required by Article 626;
 - DCFS provided referrals, services, and/or services (i.e., safety checks, counseling, child care services, etc.) to the family; AND
 - A removal request was not made based on improper assumptions or cultural biases.

PRACTICE TIPS:

- o **Federal and State Law Requirements:** Both courts and DCFS have "reasonable efforts" obligations under State and Federal law. "Reasonable efforts" findings are judicial rulings as to whether DCFS has or has not provided appropriate services at different times during a child welfare case. If the child has been removed from the custody of his/her parents, the courts and DCFS have ongoing reasonable efforts obligations under State and Federal law until the child is reunified with his/her parents or achieves permanency. DCFS has the burden of demonstrating the reasonableness of its efforts to: (1) prevent or eliminate the need for removal; (2) reunify the family; and/or (3) achieve timely permanency for the child. The court shall make findings as to the reasonableness of DCFS efforts for each child in its Orders. In all reasonable efforts findings, each child's health and safety shall be the paramount concern, based on the facts and circumstances of the individual case and child.⁶⁹
- o **Federal and State Law Implications:** Under State law, the judge shall make a finding <u>at the CCH</u> as to whether or not DCFS made reasonable efforts to prevent or eliminate the need for the child's removal and, after removal, to make it possible for the child to safely return home. Alternatively, the court can find that reasonable efforts were not required per Article 626 or 672.1. This reasonable efforts finding is required in a written court order <u>within the 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 to prevent or eliminate the child's removal from his/her home are not made initially, it is critical for the court to hold DCFS accountable going forward to making them within the first 60 days of the child's removal.⁷⁰
- o **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:

o **4 Reasonable Efforts Questions to Consider:** The judge should consider the following 4 questions when determining whether reasonable efforts were made:

⁶⁹ See 42 U.S.C. § 671(a)(15)(E) and 672(a)(1);, 45 C.F.R. § 1356.21(h)(2), 45 C.F.R. § 1356.21(b)(2) and 1356.71(d)(1)(i)); See also Child Welfare Policy Manual, Section 8.3C.4, https://www.acf. hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citlD=59 Edwards, Leonard. "Overcoming Barriers to Making Meaningful Reasonable Efforts Findings." ABA Child Practice Today. January 29, 2019, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january—december-2019/overcoming-barriers-to-making-meaningful-reasonable-efforts-find/; Edwards, Leonard. (2014). Reasonable Efforts: A Judicial Perspective, https://cbexpress.acf.hhs.gov/index.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 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.

- 1. What were the specific threats of danger that led to the request for removal of the child?
- 2. What can be done to remove the danger instead of the child? (Examples: preventative services, in-home safety plan, PO, etc.)
- 3. Can and will someone the child or family knows move into the home with the child and parents or caretakers to remove the danger to the child? Would an in- home safety plan or PO help?
- 4. Can and will the parents or caretakers and the child go live with a relative or other individual to remove the danger to the child? Would an in-home safety plan or PO help?
- o **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.
- o **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.
- o **Cultural and Religious Background, Customs, and Traditions:** It is important for the court to question whether the family's cultural and religious background, customs, and traditions have been taken into account in evaluating the events and circumstances that led to the removal; and, whether the parents' or caretakers' Tribal liaison have been asked if there is a culturally-based explanation for the allegations in the Affidavit. Consider the following questions:
 - 1. What is the family's cultural or religious background?
 - 2. What are the customs and/or traditions the family practices?
 - 3. Did DCFS allow its assumptions to form an opinion about the situation?
 - 4. Am I allowing my assumptions to form an opinion about the situation?

Judges should be cognizant that implicit biases can arise in CINC cases. For example, bias might arise when a particular family is known in the community due to prior criminal or DCFS involvement (i.e., "Here comes another Jones child"). However, it is incumbent on the system to ensure that each case is examined for the specific issues arising at this time with this child regarding these parents. The issue is not the child's affiliation but whether the child is currently safe or unsafe, and what type of safety plan is needed if the child is unsafe. Assumptions are sometimes made when a parent is receiving medical-assisted drug-treatment, such as suboxone or methadone. For example, some may not approve if a parent has a dependence on such treatment. But the assessment should stay focused on whether these facts affect the safety of the child. See Child Welfare Assessment and Decision Making Model (CWADM) Section 11. There are biases that we all have related to race and class. Indeed, a notable amount of research has documented the overrepresentation of certain ethnic and racial populations, including African Americans and Native Americans, in the child welfare system compared to their representation in the general population. The judge's role is to question the removal decision when there is an appearance of bias or assumption in the decision. Otherwise, the family is not being accorded due process, and the system fails the family.⁷¹

- o **Sanctions Regarding Reasonable Efforts:** If DCFS did not make reasonable efforts to prevent or eliminate the need for the child's removal or make it possible for the child to safely return home, the court may impose sanctions pursuant to Article 712 as it deems appropriate.
- o **Court Can Still Make Other CCH Findings and Orders:** Even if DCFS efforts have not been reasonable, the court may still find that the child should remain in an out of home placement and make other CCH findings and orders.

⁷¹ See Child Welfare Information Gateway. (2016). Racial disproportionality and disparity in child welfare, Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf; Ellis, Krista. "Race and Poverty Bias in the Child Welfare System: Strategies for Child Welfare Practitioners." ABA Child Practice Today. December 17, 2019, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/race-and-poverty-bias-in-the-child-welfare-system---strategies-f/.

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- b. **REASONABLE EFFORTS WERE NOT REQUIRED:** The court may find that reasonable efforts to prevent or eliminate the child's removal from his/her home were not required for the following reasons to be clearly articulated in the CCH Order:
 - If the court has made a judicial determination per Article 672.1 that they were not required; OR
 - If DCFS's first contact with the family occurred during an emergency in which the child could not safely remain at home even
 with reasonable in-home services provided to the family. In such instances, DCFS shall be deemed to have made reasonable
 efforts (Article 626).

PRACTICE TIPS:

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

I. RULING OPTIONS

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

The court shall make one of the following rulings for each child pending the timely filing of the CINC Petition and Adjudication in the CCH Order:

- (1) **RETURN CHILD TO PARENTS:** With or without a Safety Plan and/or PO.
 - a. **Return Child to Parents:** If the child's safety can be secured by returning the child to his/her parents, the court shall issue an order:
 - To return the child to his/her parents and dismiss the case.
 - b. **Return Child to Parents and Order Safety Plan:** If the child's safety can be secured by returning the child to his/her parents with the implementation of a safety plan, the court shall issue an order:
 - To return the child to his/her parents subject to a safety plan developed and agreed upon by DCFS and pending the timely filing of the CINC Petition and Adjudication; AND
 - Compliance with the conditions of the safety plan.
 - c. **Return Child to Parents and Order Protective Order(s):** If the child's safety can be secured by returning the child to his/her parents with the implementation of a PO, the court shall issue an order:
 - To return the child to his/her parents; AND
 - Of such PO pending the timely filing of the CINC Petition and Adjudication as deemed necessary for the protection and welfare of the child.

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PRACTICE TIP:

o **Protective Order (PO) Procedure:** If a PO is issued or modified, the judge shall follow the provisions in Article 627(E).

HELPFUL GUIDANCE:

- o **Granting Custody to a Parent:** In some cases, the court may not be "returning" the child to a parent's custody but "granting" custody to a parent who did not have custodial rights to the child and/or was not previously legally filiated with the child.
- o Custody to One Parent: The child can be returned to the custody of one parent even though it is anticipated that a CINC Petition will still be filed. See State ex rel. P.D.J., 200 So.3d 916 (La. App. 2016) where the court says: "La. Ch. C. art. 627 states that, following a hearing, the court may return the child to the parents or, in accordance with La. Ch. C. art. 622 dealing with the placement of children pending a CCH, may place the child in the custody of a suitable relative or individual or the DCFS. In this case, the juvenile court determined that the children should not be returned to the mother at that point, but that placement with the father was suitable. Contrary to the arguments made by the mother, the placement of custody with the father did not end the CINC proceedings. It was merely a step in the process." In these cases, the judge can order the child be returned to the custody of one parent and either issue a Safety Plan Order that restricts the other parent's access to the child and later (if safe for the child to do so) grant custody to that one parent at Disposition or through a PO giving temporary custody to one parent. (However, this is time limited unless the CINC Petition is filed.).
- o Child Welfare Assessment and Decision Making Model (CWADM): At each hearing, the court should insist on a clear articulation of the current safety threat keeping the child in foster care/in an out-of-home placement. Children should be returned home immediately once all safety threats have been eliminated. The CWADM is an assessment used by DCFS (and should be used by all child welfare stakeholders) to determine whether a child is safe or unsafe at all junctures of the CINC proceeding. A child is considered safe when: (1) there are no threats of danger; (2) if there is a threat of danger, the child is not vulnerable to the threat of danger; or (3) if there is a threat of danger, the parents or caretakers possess sufficient protective capacities to manage the threat of danger and keep the child safe. The threat of danger considers whether the caretaker's behavior or family situation is likely to result in imminent harm to the child. The child's vulnerability considers the extent to which a child can protect himself/herself from the identified threats of danger. The caretaker's protective capacities consider the way a caretaker thinks, feels, and/or acts and whether those capacities can prevent or control the threats of danger. The court should insist on a clear articulation from DCFS as to how the child is unsafe as it relates to threats of danger, child vulnerability, and parent/caregiver protective capacities and why TRO/PO, ISPO, IAA, or other alternatives cannot be initiated to eliminate the need for the child's removal. At each hearing, the court should make the following inquires to see if the child is now safe to return home:
 - Are the threats of danger to the child still present?
 - Is the child still vulnerable to those threats?
 - Does the parent/caretaker still lack protective capacities?

See also the Child Welfare Assessment and Decision Making Model (CWADM) Section 11.

- **(2) GRANT OR CONTINUE PROVISIONAL CUSTODY:** The court shall place custody of the child in the least restrictive and most appropriate setting with the health, safety, and best interest of child being the paramount concern.
 - **Continued Provisional Custody:** If the court determines that there are reasonable grounds to believe the child is in need of care and continued provisional custody is necessary for the child's protection, the court shall:
 - Order provisional custody of the child be placed with a suitable relative, suitable individual, or DCFS in accordance with the priorities of placement outlined in Article 622 pending the timely filing of the CINC Petition and Adjudication;
 - · Include specific oral and written reasons for its findings, which shall be made a part of the record of the proceeding; AND

- Include a safety plan in the order if provisional custody is granted to a suitable relative or individual that sets forth conditions of contact with the parents, caretakers, and/or other third parties and order that the provisional custodians adhere to the conditions of the safety plan.
- **Priorities of Placement Outlined in Article 622:** Unless the best interest of the child requires a different placement, a child who appears to be a child in need of care and whose removal is necessary for his/her protection from further abuse or neglect shall be placed in accordance with the following priorities:

a. Suitable Relative with Whom Child Has Been Living:

• In the home of a suitable relative who is of the age of majority and with whom the child has been living in a wholesome and stable environment if the relative is willing and able to continue to offer such environment for the child pending the timely filing of the CINC Petition and Adjudication. The relative shall also agree to the conditions of the safety plan, which includes the conditions of contact with the parents, caretakers, and/or other third parties.

b. Suitable Relative Willing to Offer Stable Home:

• In the home of a suitable relative who is of the age of majority if the relative is willing and able to offer a wholesome and stable environment for the child pending the timely filing of the CINC Petition and Adjudication. The relative shall also agree to the conditions of the safety plan, which includes the conditions of contact with the parents, caretakers, and/or other third parties.

c. Suitable Individual Willing to Offer Stable Home:

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

HELFPUL GUIDANCE:

- o **Safety Plan Order if Child Placed with Suitable Relative or Individual:** If the court grants provisional custody to a suitable relative or individual, the court shall include a safety plan in the order that sets forth conditions of contact with the parents, caretakers, and/or other third parties and order that the provisional custodian adhere to the conditions of the safety plan.
- o **Definition of Relatives:** Article 603(20) defines "relative" as an individual with whom the child has established a significant relationship by blood, adoption, or affinity. Affinity means a relationship by marriage.
- o **Obligation to Find Potential Caregivers:** All persons and parties before the court have a continuing obligation to achieve timely permanency for the child. It is critical for relatives and other individuals to be found as soon as possible so that permanency can be achieved expeditiously if reunification becomes no longer viable. Identifying other potential placements early on in the case is crucial to reducing further trauma to a child who may form secure attachments with caregivers. The court's role is to continue to hold persons before the court, parties, and DCFS accountable to these obligations. See the <u>Appendices Benchbook Section 12</u> for the <u>Family Connection Form</u> and <u>Circle of Influence Form</u> DCFS uses with children and parents to help identify potential caregivers. Some attorneys create "Family Trees" to help identify potential caregivers.
- o **Preference to Relatives Per Federal Law:** For States to receive funding for foster care and adoption assistance, Federal law under Title IV-E of the Social Security Act requires that the State "consider giving preference to an adult relative over a nonrelated caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards." To Per the Fostering Connections to Success and Increasing Adoptions Act, within 30 days following the removal of the child and any time after that a relative is identified, DCFS is required to contact all known adult relatives of the child and to inform them about placement and permanency possibilities for the child. Title IV-E of the Social Security Act also requires all States to exercise due diligence to identify and provide notice to all grandparents, all parents of a sibling of the child, where such parent has legal custody of the sibling, and other adult

^{72 42} U.S.C. § 671(a)(29).

relatives of the child (including any other adult relatives suggested by the parents) that (1) the child has been or is being removed from the custody of his/her parents; (2) the options the relative has to participate in the care and placement of the child; and (3) the requirements to become a foster parent to the child. These Federal laws are based on evidence that placement with relatives maintains the child's connections with his/her family, and children generally fare better in many child well-being factors when placed with a relative.⁷³

- 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/family violence by the relative, which would jeopardize the safety of the child in DCFS custody.
- o **Suitable Individuals and Cultural Considerations:** The court should press parties and persons before the court to consider not only biological relatives but also individuals with whom the child has a significant relationship (also referred to as "fictive kin," "suitable persons," or "suitable individuals"). These are individuals who are not related by blood, marriage, or adoption to the child but could be close family friends or someone the child considers family. It is important to consider the child's culture, heritage/customs, traditions, religion, etc., in determining placement and custody options. For example, some children may call a close friend their "auntie" even though they are not related by blood. However, the auntie may be the best placement for the child but overlooked if no thorough inquiry is made.
- o **Parents of Half-Siblings:** If there are half-siblings, the court should consider granting custody of the child to the sibling's parent if appropriate and safe to do so. The sibling's parent may already have a relationship with the half-sibling, but even if not, that parent may be willing to take custody to keep the siblings together.⁷⁴
- o Home Studies and Background Checks and Clearances: DCFS policy does not support requesting custody to a relative or individual unless a home study has been conducted, including a child welfare background clearance and criminal background check. In most circumstances, DCFS will not have sufficient time to conduct a comprehensive home study to recommend a custody transfer at the CCH. However, if the judge orders a custody transfer at the CCH to a suitable relative or individual, the judge may order the completion of the home study, child welfare background check clearance, and criminal background check if they had not been previously completed. These are also a required part of the process for relatives or individuals to become a certified foster care placement for the child.
- o **Financial Support Relatives or Individuals:** Relatives and other persons who are granted custody and/or guardianship (i.e., at Disposition Hearing) of the child may be eligible for financial support, for example, through the Kinship Care Support Program (KCSP), Supplemental Nutrition Assistance Program (SNAP), Family Independence Temporary Assistance Program (FITAP), and/or Child Support Program (CSP). If one or both parents of the child are deceased, the caregiver may also be eligible for survivor benefits owed to the child. The caregiver may also be eligible to receive the child's disability benefits (if the child is entitled to them).⁷⁵ However, if the relative or individual is foster care certified and the child receives disability or survivor benefits, the caregiver would have to choose between those benefits and the monthly foster care board rate (which they can choose the higher of the amounts).⁷⁶

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

⁷⁴ See Child Welfare Information Gateway. (2019). Sibling issues in foster care and adoption. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, https://www.childwelfare.gov/pubPDFs/siblingissues.pdf.

⁷⁵ See http://dcfs.louisiana.gov/page/grandparent-relative-caregiver for more information available through DCFS's Kinship Navigator Program. There is information available regarding custody and guardianship.

⁷⁶ See http://dcfs.louisiana.gov/page/grandparent-relative-caregiver for more information. DCFS has legal and custodial information available on their website for kinship caregivers: http://dcfs.louisiana.gov/page/kinship-caregivers-legal-and-custodial-information-fact-sheets.

- d. State Custody: Through DCFS (foster care).
 - In foster care under the supervision of DCFS until further orders of the court.

PRACTICE TIPS:

- o **Foster Care is the Safety Plan of Last Resort:** Placing a child in State custody (i.e., foster care) is child welfare's most drastic and most protective safety intervention. It should be a last resort for State agencies and courts charged with protecting children from harm.⁷⁷ The court should hold DCFS accountable to seek all other alternatives for the child before placing or continuing the child in DCFS custody, including an in-home safety plan, PO, IAA, coordinating services with other agenices or community based supports, referring family to Family in Need of Services (FINS) if appropriate, granting custody of child to suitable relative or individual, etc. Also, finding potential relative caregivers as early as possible is crucial to reducing further trauma to a child who may form a secure attachment with their current caregivers.⁷⁸
- o **Placement with Relative or Suitable Person:** If the court decides not to grant custody or guardianship to a relative or suitable person, DCFS can still *place* a child with relatives and fictive kin. In fact, DCFS has a duty to assess such individuals for placement to meet Federal and State legislation with regard to prioritizing relative or fictive kin permanency goals when reunification is no longer viable.⁷⁹
- o Child Specific Certification for the Relative or Suitable Person: DCFS provides "child specific" foster care certification for relatives and others who the child knows and may be a good placement (and potential permanent plan placement). This certification requires fewer classes than general foster care certification and allows the relative or individual to receive a board rate (monthly financial support) like a certified foster parent. The child can be placed with the caregiver prior to completing the certification but the caregiver will not receive retroactive financial assistance. Thus, DCFS should provide the caregiver with the information set forth above about the other forms of potential financial support. However, if the child receives disability or survivor benefits, this would be in place of the monthly board rate (they can choose the higher of the amount). If applicable, the court may want to request updates on status of certification at future hearings to ensure timely completion.
- o **Federal Requirement to Place Siblings Together:** Placing siblings together should be a priority. Per Federal law, DCFS shall make reasonable efforts to place siblings removed from their home in the same foster care, guardianship, or adoptive placement, unless DCFS documents that such joint placement would be contrary to the safety or well-being of any siblings; and if siblings are not so jointly placed, to provide frequent visitation or other ongoing interaction between siblings, unless DCFS documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any siblings.⁸⁰ Thus, courts should require DCFS to show evidence at the CCH that such efforts were/are being made.⁸¹
 - "The relationships people share with siblings are often the longest-lasting they will ever have. Siblings are there from the beginning, and they are often still around after parents and even spouses and children are gone." 82 Sibling relationships are particularly vital to children from disorganized or dysfunctional families. 83 These relationships assume even greater importance when children from these families enter the foster care system. 84
 - The research shows that when siblings are separated from each other, many children feel "they have lost a part of themselves," adding to the pain and anxiety they experience over removal from their parents and home. 85

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

⁷⁸ Id.

^{79 42} U.S.C. § 671(a)(29)

⁸⁰ See 42 USC § 671(a)(31)(A) and B)).

⁸¹ Id.

⁸² See Glover, Linda. (1997) Overcoming barriers to keeping siblings together. Connections, reprinted at https://affcny.org/overcoming-barriers-to-keeping-siblings-together/.

⁸³ Gatowski, supra note 4, at 85.

⁸⁴ Id.

⁸⁵ Kernan, Emily. Keeping siblings together: past, present, and future. National Center for Youth Law, https://youthlaw.org/publication/keeping-siblings-together-past-present-and-future/.

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At least one Federal district court has found that placing siblings separately and denying them sibling visits violates their right to freedom of association pursuant to the First Amendment and substantive due process under the 14th Amendment. ⁸⁶ Unless contrary to their safety and well-being, supporting and sustaining the sibling bonds of children who have been placed in foster care should be a priority for the child welfare system and the court. Thus, judges should inquire as to the placement of siblings together—whether half or full siblings. Judges should also help ensure family time (visitation) between siblings when appropriate and safe to do so.

- Sibling-Type Relationship: Judges should also be cognizant that a child may have a sibling-type relationship and bond with another child that is not a biological sibling but just as significant to the child (i.e., another child to whom they were raised with).⁸⁷
- Court's Authority Concerning Placement: While the court has the authority to change custody, if the child is in DCFS custody, the court has no authority to order a specific placement for the child (i.e., foster parents the child will be placed with by DCFS). However, pursuant to Article 672(A)(2), the court does have the authority to disapprove the placement chosen by DCFS and order DCFS to choose a more suitable placement. Per Article 672(A)(2), there must be a contradictory hearing and the judge may disapprove the placement upon finding that the placement is not in the child's best interest. For example, after a contradictory hearing, the court could determine that the placement chosen by DCFS was not in the child's best interest because the child was not placed with his/her siblings.⁸⁸

e. Best Interest Finding Required If Child Not Placed with Relative:

- If the court does not return the child home (or grant custody to a parent) or place the child with a suitable relative, the court shall:
 - Make a specific finding that placement with a suitable relative is not in the best interest of the child and/or a suitable relative cannot be found; AND
 - Give specific oral and written reasons for its findings, which shall be made part of the record of the proceeding.

OVERALL GUIDANCE:

- **DCFS Recommendation:** Sometimes, DCFS is not able to recommend custody to a relative or individual at the CCH for policy reasons, which may not be safety related. Courts should nevertheless grant custody in the best interest of the child in accordance with the priorities set forth in Article 622, and based on the evidence presented.
- **Petition for Provisional or Permanent Custody:** At any time prior to Adjudication, any person, including a relative of the child, may petition the court for the provisional or permanent legal custody of the child (Article 631(B)).
- DCFS Family Services: When the court returns the child to his/her parents or grants provisional custody to a suitable relative or individual, DCFS will generally no longer be involved in the case (because DCFS does not have custody of the child). However, the court can order that DCFS continue to monitor the family and/or provide services. In such cases, DCFS will usually open a DCFS Family Services case to provide supervision and support to the family. In these instances, it is advised that the court also continue to oversee the case.
- Appropriateness of Custody: The court should consider whether the custodian will be able to meet the needs of the child based on the child's age, development, history of trauma, heritage/customs, culture, language, and medical, emotional, and behavioral needs.

⁸⁶ Barbara Elias-Perciful, The Constitutional Rights of Children, Texas Bar Journal Vol. 73 No.9 750, 753 (2010).

⁸⁷ See 42 USC § 671(a)(31)(A) and B)).

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.

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- Changes in Placement or Custody: Research shows that multiple placements (and changes in custody) break the bonds of trust and attachment formed by the child and consequently harm the child. Multiple placements (and changes in custody) compound the original trauma of abuse and neglect, often leading to long-term adjustment and attachment difficulties. It is critical to minimize the number of times placement (and/or custody) changes for a child.⁸⁹
- Short Custody Order Templates: In addition to the Continued Custody Order Template, there are 2 short Order templates for children's attorneys, DCFS, CASA, and relatives and other caregivers to utilize. These template orders state whose custody the child is in without providing the confidential information that is contained in the CCH Order. These one-page Orders may be used at schools, doctor's offices, etc. It is advisable for the court to sign the applicable Order and make it available to those listed above at the conclusion of the CCH. See Order Placing Minor Children in the Provisional Custody of a Suitable Relative or Individual Template and Order Placing Minor Children in the Provisional Custody of the State of Louisiana Through the Department Of Children and Family Services (DCFS) Template in the Appendix of this section.

J. FURTHER ADVISEMENTS OF RESPONSIBILITIES TO THE PARENTS

ARTICLE 625

If the child is placed in or continued in the provisional custody of DCFS, the court shall advise the parents of:

- The child's need to have a safe and stable relationship with caretakers, either his/her parents or, if necessary, others who are willing and able to assume parental responsibility, provide a permanent home, and have these caretaker decisions made as quickly as possible;
- · Their responsibility to cooperate in preparing a case plan and otherwise in meeting the needs of their child;
- Their responsibility to assist the child's adjustment to other caretakers;
- Their responsibility to notify DCFS and their counsel in writing of their current whereabouts, including their address, cellular number, telephone number, and any other contact information, and that if they fail to do so, the law authorizes hearings to be held in their absence;
- Their responsibility to provide an electronic mail address at which the parent is willing to receive service and notice of future
 proceedings and that once an electronic mail address is provided all service and notice of future proceedings may be sent
 electronically until such time he/she provides notice to the court and all parties in writing or in open court that he is no longer
 able to receive service or notice at such address; AND
- Their obligation to contribute to the cost of care and treatment of their child as provided in Article 685.

HELPFUL GUIDANCE:

o Case Plan: When the family is involved in a DCFS Family Services or Foster Care Case, DCFS creates a case plan for the parents and child. The case plan is reviewed by the court at the Disposition Hearing. Per Federal law, the initial case plan must be prepared within 60 days after the child enters DCFS custody. However, DCFS policy requires the case plan to be initiated within 30 days of when the child enters DCFS custody or a Family Services case is opened and finalized within 45 days. The case plan should be confined to the grounds upon which the court adjudicates the child in need of care and identify the safety issues to be resolved before the court's involvement ends including helping to enhance the parent's protective capacities in relation to the identified threats of danger.

⁸⁹ Casey Family Programs. (2018) What impacts placement stability?, https://www.casey.org/placement-stability-impacts/.

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K. FURTHER ADVISEMENTS OF RESPONSIBILITIES TO ALL PERSONS

ARTICLE 625

If the child is continued in the provisional custody of a suitable relative or individual or DCFS, the court shall advise all persons before the court:

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

PRACTICE TIP:

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

L. CINC PETITION FILED

ARTICLES 646, 649

If at the time of the CCH, a CINC Petition has been filed, the court may:

• Call upon the parents to answer the allegations in accordance with Articles 646 and 649. See <u>Answer Hearing Benchbook</u> <u>Section 6</u>.

M. FURTHER ORDERS

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

The court may make additional orders at the CCH that are in the best interest of the child (See Article 627, Authors' Notes) and pending the timely filing of the CINC Petition and Adjudication, such as:

(1) **VISITATION/FAMILY TIME:** The court has authority to specify visitation/family time between the child and his/her parents, caretakers, siblings, or other family members. If siblings are not placed together, the court should order (when appropriate for the children and safe to do so) that the visitation/family time between the siblings take place in addition to the family visits.⁹⁰

 $^{90 \}quad \text{For more resources on visitation/family time, see:} \\ \underline{\text{https://www.childwelfare.gov/topics/systemwide/assessment/family-assess/progress/visitation/family-assess/progress/visitation/family-asses/visitation/family-ass$

HELPFUL GUIDANCE:

- o **Visitation and Rights of Parents:** If a child has been removed from his/her parents' custody, the parents should still be invited to attend all medical appointments, school conferences and activities (including eating lunch with the child at school), sports and extracurriculars, and other important events involving the child (unless there is an order otherwise preventing this, such as a criminal no contact order).
- o **Unsupervised:** Family time should be liberal and presumed unsupervised unless there is a demonstrated safety risk to the child.
- o **Benefits of Visitation/Family Time:** The safety and well-being of children should always be paramount in considerations of family time. Visitation planning and scheduling should be an ongoing assessment of the child's established and significant relationships with his/her parents, grandparents, siblings, relatives, and other important individuals in the child's life. Judges should ensure the plan for family time is in the best interest of the child, individualized, and promotes permanency. While the individual needs of the child, the child's development and age, and the circumstances of the family must be assessed to determine the frequency, visitation/family time can:
 - · Promote healthy attachment and reduce the negative effects of separation for the child and parents;
 - Establish and strengthen the parent-child relationship;
 - Ease the pain of separation and loss for the child and parents;
 - Keep hope alive for the parents and enhance their motivation to change;
 - · Involve parents in the child's everyday activities and keep them abreast of the child's development;
 - · Help parents gain confidence in their ability to care for their child and allow parents to learn and practice new skills;
 - · Provide a setting for the caseworker or parenting coach to suggest how to improve parent-child interactions;
 - Allow foster caregivers to support birth parents and model positive parenting skills;
 - Provide information to the court on the family's progress (or lack of progress) toward their goals;
 - Facilitate family assessments and can help the court determine whether reunification is the best permanency option for the child; AND
 - Help with the transition to reunification.
- Considerations for Frequency: Judges should make sure that everyone knows that children and parents can visit more
 frequently than the visitation plan established by DCFS (unless they are expressly prohibited for a specific safety reason
 from doing so). The following are critical considerations when determining the frequency and quality of visitation/family
 time:
 - Judges should ensure that the child's age, attachments, connections, and development have been considered when determining the frequency, length, and timing of the visits;
 - Efforts should be made to ensure that transportation and logistics are not barriers to visitation or visitation frequency;
 - Efforts should be made to ensure that visits take place in the most natural setting or least restrictive setting that can assure the child's safety and well-being;
 - Efforts should be made to respect the child's routines (i.e., eating, sleeping, and other consistent daily patterns) in scheduling visits; AND
 - Visits should be as proactive as possible and offer opportunities for mutual enjoyment for the parents and child (i.e., play), opportunities to develop predictable and nurturing care (i.e., engaging in family or child-care routines such as meal time), and opportunities for developmental stimulation (i.e., reading) to help parents understand the child's skills and needs and how to promote their learning.

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Continued	Custody	' Hearing	Benchbook Section	

- o **Locations:** It is ideal to have family visits in a natural setting rather than at the office. There are family visitation centers that can be utilized for family time. Parks and library conference rooms may be an option. The family home or a relative's home can also be considered unless there are safety issues. If families are having issues making family time happen for a particular scheduled visit, creativity should be encouraged. For example, the use of videoconferencing may be an option from time to time for those children old enough to benefit from videoconferencing. Videoconferencing can also be used between vital in-person visits to increase the amount of much-needed contact. Some parents read a bedtime story to their children multiple nights per week, for instance, through FaceTime, Zoom, Duo, etc.
- Not to be Used as Incentive or Disincentive: Visitation is a right of both parents and children in CINC cases. The
 fashioning of visitation should be based on promoting the important connection between the parents and child.
 Visitation between parents and children should not be used as an incentive or disincentive for parents with regard to
 mitigating the reasons for State intervention.
- o **Documentation:** Ensure family time is well documented so the court will have sufficient evidence moving forward to order reduced or increased restrictions, reunification, or termination of parental rights.
- o **Family Violence:** The court should inquire as to whether DCFS assessed the family members for family violence during initial contact with the family and at other periodic intervals. The court should ask if DCFS gathered and reviewed information needed, such as current and previous PO's, police reports, and stalking behavior to enhance decision-making when determining supervised, unsupervised, and therapeutic visitation. Judges should assess the risk posed by perpetrators to lessen perpetrator-generated safety threats to children. Judges should ensure that guidelines and appropriate interventions are established for the perpetrator in cases where supervised visitation is granted. The court may want to refer to the definition of supervised visitation in Louisiana Revised Statutes § 9:362(7) when considering such an order.
- (2) PATERNITY OR MATERNITY: If the identity and whereabouts of an alleged parent is known but filiation has still not been legally determined, the court can order that DCFS acquire information needed to determine filiation (i.e., obtain DNA testing, copy of birth certificate, certificate regarding Putative Father Registry, certificate of results from Clerk of Court showing whether an acknowledgement was filed in the parish of the child's birth, etc.), including ordering that DCFS make arrangements for DNA tests to determine the paternity/maternity of any alleged parents and that the alleged parents comply.

(3) POTENTIAL PLACEMENTS: The court can order DCFS to:

- Explore all possible relative or individual placements (i.e., fictive kin, people who matter to the child, etc.) with results and/or updates on results to be presented prior to or at Disposition;
- Initiate a child welfare background clearance, criminal background check, and/or assessment of home or home study on potential caregivers so that they can be considered for placement by DCFS and/or for custody or guardianship at Disposition;
- Take necessary steps for potential caregivers to complete timely foster care certification, if needed (i.e., to receive guardianship subsidy if applicable, etc.); AND/OR
- Initiate ICPC process for potential placement with any out-of-State relatives or individuals. See <u>Disposition Hearing Benchbook</u> <u>Section 8 E</u> for more information on ICPC.

HELPFUL GUIDANCE:

o **Importance of Relative Search:** Federal law requires early identification and notification of relatives in child abuse and neglect cases. When courts and DCFS have not conducted thorough relative searches and reunification is ruled out, they can be faced with the difficult choice of deciding between the adoption by a foster parent with whom the child has bonded and a relative who is appropriate but did not previously know of the child's need for a permanent home.

— Continued Custo	dy Hearing Benchbook Section
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(4) **EDUCATION PLAN:** If the child is continued or placed in DCFS custody, the court can order DCFS coordinate with the appropriate local education agencies to ensure that the child remains enrolled in the school in which the child was enrolled at the time of placement. If changing schools is in the child's best interest, then DCFS must document the reasons.

HELPFUL GUIDANCE:

- o **Educational Stability:** Children and youth in foster care represent one of the most vulnerable student subgroups in the country. Studies find that children in foster care are much more likely to struggle academically and fall behind in school than their peers. The ESSA sets forth provisions protecting children in foster care as it relates to their education and schooling. Specifically, it allows a child placed in foster care to remain in their school of origin or be enrolled in a school without delay. Some reasons that a child should stay in the school of origin include close peer connections, established teacher and/or staff relationships, comfort with and/or success at the school, provision of tutoring (many schools no longer provide tutoring) and other accommodations, better opportunities to join sports teams and other desired activities, and previous school changes and disruptions. The ESSA also requires transportation to be provided for the child to the school of origin, even if the child moves out of that school district. The child welfare agency and the local educational agency (LEA) must ensure this transportation is provided and appropriate. Some of these provisions of the ESSA are codified in the Louisiana Revised Statutes. Although the child has the right to educational stability, the judge may want to make specific orders to help move the process along more expeditiously. The judge can also disapprove the case plan if the plan for the child's education is not sufficient.
- o **Special Education:** Many of the children who come through the child welfare system either need or are already receiving special education services. The Federal Individuals with Disabilities Education Act (IDEA), along with its State counterparts, ensure that children with disabilities receive a free appropriate public education designed to meet their unique learning needs. The Act addresses which children will receive full and individualized evaluations for eligibility, what special education and other related services are deemed necessary and where and when these services will be provided. IDEA also covers who is allowed to make these decisions for each child, a responsibility made more complicated when a child is involved in the foster care system. The birth or legal parent usually possesses the right to act as their child's IDEA parent unless limited by the court or when parental rights are terminated. A foster caregiver may also act as the IDEA parent. However, if a foster child is in a congregate care setting—a group home, Psychiatric Residential Treatment Facility (PRTF), hospital, etc.—or the IDEA parent available is not deemed appropriate or eligible, either the Local Educational Agency (LEA) or the CINC judge has the authority to appoint a "surrogate parent" to make education decisions for the child. Pursuant to the IDEA, DCFS staff member cannot act as the surrogate parent.
- o **Response to Intervention (RTI) and Multi-tiered Systems (MTTS):** Under ESSA, the MTTS and RTI were created to avoid the overidentification of learning disabilities before implementing academic interventions to meet the students' needs. MTTS or RTI requires school systems to implement interventions over 16-18 weeks driven by students and their individual performance. Interventions can be difficult for children in foster care because of their mobility. Judges can help by directing DCFS to sign a release so that schools will include intervention data, MTTS or RTI status with all educational records of foster youth as they transfer schools.

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⁹¹ For more information on Educational Stability for Children and Youth in Foster Care see: <a href="https://www.childwelfare.gov/topics/systemwide/service-array/education-services/meeting-needs/education-services/meeting-needs/education-less-in-

⁹² Id.; Heimpal, Daniel. "The Chronicle of Social Change, "The Case of 'V. Doe' Could Have Major Implications for the Education of Foster Youth Nationwide." Youth & Family News, The Imprint. January 18, 2018, https://chronicleofsocialchange.org/education/case-v-doe-major-implications-education-foster-youth-nationwide/29467 ("Greater than 1/3 of all youth in foster care will have 5 or more school changes by the time they turn 18, and each change can cost 4 to 6 months of academic progress.").

La. R.S. § 17:238C ("The governing authority of each public and secondary school shall establish a policy to ensure that a child who is in foster care pursuant to placement through the Department of Children and Family Services shall be allowed to remain enrolled in the public school in which the child was enrolled at the time he entered foster care for the duration of the child's stay in the custody of the State or until he completes the highest grade offered at the school if the Department of Children and Family Services determines that remaining in that school is in the best interest of the child. If the foster care placement is outside the jurisdictional boundaries of the public school in which the child is enrolled, the governing authority of such school shall be responsible for providing free transportation for the child to and from a designated location which is within that school district and is located nearest to the child's residence and is determined to be appropriate by such governing authority and the Department of Children and Family Services shall be responsible for providing the child's transportation between that location and the child's residence.").

propo	MILY TEAM MEETING (FTM): If the child is in DCFS custody or has an open DCFS Family Services case, DCFS should use a tentative date for the next FTM. The court can provide notice of and encourage participation by all parents, caretakers, en, foster caregivers, CASA workers, and attorneys for children and parents as applicable.
	PRACTICE TIP:
	o Set Tentative Date for Next FTM: Facilitating a tentative or confirmed date and time for the next FTM while everyone is at the hearing and including the tentative date in the Order helps ensure FTMs are timely held. Without enough notice the FTM date and time, some team members may have difficulty participating. FTMs should be conducted at least ever 6 months.
	HELPFUL GUIDANCE:
	o Purpose: FTMs are facilitated by DCFS, and they are important because FTM's are where case planning occurs for the family. FTMs are where parents and children and other stakeholders and supports give input on the services and assistance needed and to be provided.
attorn implic their a	FIFICATION TO CHILD'S ATTORNEY: If the child is in custody of DCFS, the court can order that DCFS notify the child be electronically or otherwise, immediately after a change of placement of the child occurs. Because of the due process cations, it is advisable that DCFS do so no later than 24 hours after the change of placement. Children must have access to attorneys, and attorneys must have access to their clients. The notification shall include the address and contact number of accement.
	PRACTICE TIP:
	o Due Process: The child's attorney must know how to contact their client, and the child must know how to contact

PRACTICE TIP:

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

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HELPFUL GUIDANCE:

o **Quality Parenting Initiative (QPI):** Judges should also encourage the application of QPI, which focuses on a team approach to parenting the child during the duration of the case. QPI has been adopted by DCFS, but judges are in a unique position to make sure QPI is being utilized in the case. When QPI is successful, birth parents, foster caregivers, kinship caregivers, DCFS staff members, and CASA work together to support the child. QPI can be implemented at the start of the case with the first placement of the child.⁹⁵

N. ORDER OF NOTICES AND FUTURE HEARINGS

ARTICLES 623, 625, 628-32, 646, 648

Unless dismissing the case, the court shall also include the following in the order:

- (1) **CINC PETITION NOT FILED:** If the CINC Petition is not filed within 30 days of the CCH, the child shall be returned to the parents unless an extension is granted by the court based upon showing of good cause and notice to all parties;
- (2) **FUTURE HEARINGS:** The parents of the child, all attorneys of record, a DCFS representative, and CASA (if appointed) be present at all future hearings;

(3) SET MATTER FOR ANSWER HEARING IF CINC PETITION HAS BEEN OR WILL BE FILED

If the CINC Petition has been or will be filed, the court shall order:

- Clerk to notify all parties of the date, time, and location of the Answer Hearing and that all parties of interest appear, which shall be set within 15 days of the date of filing of the CINC Petition;
- Sheriff's Office to serve parents with a summons commanding him/her to appear at court for Answer Hearing;
- DCFS shall provide notice to the parents of the date, time, and location of the Answer Hearing as well as the nature of the allegations;
- Notice of the Answer Hearing shall be made on counsel of record and CASA (if appointed);
- DCFS shall provide notice to any foster caregiver providing care for the child of the date, time, and location of the Answer Hearing and that the recipient has the right to attend and be heard; AND
- · Arrangements for any parent, who is incarcerated, be made to attend the Answer Hearing, either in person or remotely.

O. CASE MANAGEMENT

(1) ENGAGEMENT

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

⁹⁵ See http://www.dcfs.louisiana.gov/page/471 and https://www.qpi4kids.org/what-is-qpi/ for more information on QPI.

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(2) PREPARATION FOR THE NEXT HEARING

- Identify tasks to be accomplished by the various parties for the next hearing.
- Make oral findings and orders that all participants can understand.
- Consider the appropriateness of mediation, and order if applicable (Article 435 et seq.).
- An attorney or the court is responsible for the completion of the Order. See <u>Continued Custody Order Template</u>, <u>Order Placing Minor Children in the Provisional Custody of a Suitable Relative or Individual Template</u> and <u>Order Placing Minor Children in the Provisional Custody of the State of Louisiana Through the Department Of Children and Family Services (DCFS) Template in the <u>Appendix</u>.
 </u>
- All attorneys and unrepresented parties should review the Order before the judge signs it to ensure it accurately reflects the
 proceeding.
- Time permitting, best practice is to sign the Order on the same day as the hearing.
- Ensure all Orders are written, signed, copied, and distributed at the end of the hearing.
- · Provide parents with a copy of the Order immediately following the hearing.

P. POSSIBLE NEXT STEPS

ARTICLES 628-32, 646

(1) FILING OF CINC PETITION: The CINC Petition shall be filed within 30 days of the CCH and answered at the Answer Hearing within 15 days after the Petition is filed.

(2) TERMINATION OF CONTINUED CUSTODY ORDER:

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

(3) INFORMAL ADJUSTMENT AGREEMENT (IAA):

- Before CINC Petition: Before a CINC Petition is filed, the court or DA may authorize an IAA.
- After CINC Petition: After a CINC Petition is filed (and with the consent of DCFS if the child is in the provisional custody of DCFS), the court may authorize the DA to effect an IAA. The court may dismiss the Petition or allow the Petition to remain pending during the period of informal adjustment.

PRACTICE TIP:

o **Alternative to Removal and/or Adjudication:** An IAA may be used whether the child is in DCFS custody or not. It is a viable alternative to keeping the child out of foster care. For example, the child could be returned to his/her parents and an IAA could be used similarly to a safety plan. Or an IAA could be entered into while the child is in DCFS custody to prevent the need for filing of the CINC Petition and/or Adjudication. See <u>Informal Adjustment Agreement (IAA)</u>
Benchbook Section 1 for more information.

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

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■ PI	RACTICE TIP:
0	Alternative to Removal: If appropriate, FINS may also be a viable alternative to keeping a youth out of foster care and providing services to the family.
•	ION FOR PROVISIONAL OR PERMANENT CUSTODY: At any time prior to Adjudication, any person, including of the child, may petition the court for the provisional or permanent legal custody of the child.

HELPFUL GUIDANCE:

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

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APPENDIX

APPENDIX

CONTINUED CUSTODY HEARING (CCH)

La. Ch. C. arts. 624-627

PURPOSE

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



Timing and Continuances

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

Appearances and Appointments

- ARTICLES 575, 607-8, 623-4, 627
- ONLY ADMIT PERSONS WITH PROPER INTEREST/NECESSARY: Including parents, child, attorneys for child and parents, DA/ADA/DCFS attorney (BGC), DCFS representatives, CASA (if appointed), and foster caregivers.
- (2) CHILDREN ARE PARTIES: 12 years or older, shall be present unless waived upon motion of child's attorney; include in Order if waived or not. Under age 12, shall be present upon request of child's attorney/court.
- (3) **PARENTS ARE PARTIES:** If absent, hearing may only proceed if cannot be found, served summons, or notified by DCFS. If absentee, court shall order appointment of curator ad hoc (Articles 575 and 627(G)). If incarcerated, verify writ/motion to guarantee parent's attendance filed and Order issued/served timely on facility.
- (4) ATTORNEYS: Child shall have attorney appointed and present (Article 607); indigent and absent parents shall be provided representation (Articles 575, 608, and 627(G)) unless right waived by parent per Article 608; should have received copies of Instanter Order and Affidavit before CCH; critical to protect due process rights of child and parents.

ESSENTIAL JUDICIAL FUNCTION | Assistance and Accommodations:

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

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

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

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

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

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

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

Notice

- ARTICLES 607-8, 623-4, 42 U.S.C. § 675(5)(G), 45 C.F.R. § 1356.21(o)
- Court shall determine if proper notices were made to all parties, counsel, and foster caregivers; enter required findings in the Order.

Initial Advisements

ARTICLES 575, 625

Court shall advise parents and may advise child of:

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

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Indian Child Welfare Act (ICWA)

ARTICLES 624-624.1, 25 U.S.C. § 1902

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

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

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

Evidence and Testimony

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

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

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

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

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

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

Findings

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

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

(1) REASONABLE GROUNDS AND CONTINUED CUSTODY:

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

(2) REASONABLE EFFORTS (RE):

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

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

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

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

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

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

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

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

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

Ruling Options

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

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

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

If order 2c or 2d above, court shall:

- Make specific finding placement with suitable relative not in best interest of child and/or cannot be found; AND
- Give oral and written reasons for findings, which shall be made part of the record.

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

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

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

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

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

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

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

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

Further Advisements

ARTICLE 625

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

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

CINC Petition Filed

- **ARTICLES 646, 649**
- If CINC Petition filed by CCH, court may call upon parents to answer allegations; utilize <u>Answer Hearing Bench Card</u>.

Further Orders

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

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

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

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

Order of Notices and Future Hearings

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

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

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

Case Management

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

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

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Possible Next Steps

- ARTICLES 628-30, 631-2, 646
- (1) **FILING OF CINC PETITION:** Shall be filed within 30 days of CCH and answered at Answer Hearing within 15 days after filed. If not timely filed, child shall be returned to parents.
- (2) INFORMAL ADJUSTMENT AGREEMENT (IAA): Before filing CINC Petition (with consent of DCFS if child in DCFS custody), court or DA may authorize IAA. After filing (with consent of DCFS if child in DCFS custody), court may authorize DA effect IAA and either dismiss Petition or allow to remain pending.
- (3) **FAMILY IN NEED OF SERVICES (FINS) OFFICER:** Before filing CINC Petition (with consent of DCFS if child in DCFS custody), court or DA may refer matter to FINS intake officer. See Articles 743 et seq.
- (4) **PETITION FOR PROVISIONAL/PERMANENT CUSTODY:** Before Adjudication, any person, including relative of child, may petition court for provisional or permanent legal custody of child.

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

CRITICAL CONSIDERATIONS FOR ALL AT EACH CINC HEARING:

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

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STATE OF LOUISIANA		DOCKET NUMBER:
IN THE INTEREST OF		SECTION:
	DOB:	COURT
	DOB:	PARISH OF
Filed:		DEPUTY CLERK:
	COI	NTINUED CUSTODY ORDER
THIS CAUSE came f	or hearing on the	_ day of, 20, pursuant to an Instanter Order
dated the day of		20, concerning the removal of the following child(ren),
	, a	nd parent(s),
/caretaker(s),		
		I. APPEARANCES
The child(ren),		, is/are present.
The child(ren),		, is not present and:
(Please check the applicable bo	k for each child)	
☐ the child,		, is age 12 or older, counsel moved to
waive the child's ap	pearance, and the co	urt grants the waiver.
☐ the child,		, is younger than 12 years of age, and
counsel did not reg	uest the child's appea	arance.
·		·
Parent		Department of Children and Family Services
Parent's Attorney		
Parent		
Parent's Attorney		
		Assistant District Attorney
Others		
		

II. NOTICE

THE COURT FINDS that: (Please check the applicable boxes fo	r each parent)
☐ the parent(s),	, is absent and that notice of the date, time,
and place of the hearing and right to attend and be heard $\underline{\mathbf{w}}$	as given by the Department.
☐ the parent(s),	, is absent and that notice of the date, time,
and place of the hearing and right to attend and be heard $\underline{\mathbf{w}}$	as not given by the Department for the following reason:
THE COURT FINDS that: (Please check the applicable boxes)	
\Box the foster parent(s), pre-adoptive parent(s), or relative(s),	, providing care for
the child(ren),,	is absent and that notice of the date, time, and place of the
hearing and right to attend and be heard $\underline{was\; given}$ by the D	epartment; and, that diligent efforts were made by the
Department to locate and notify the absent caregiver.	
☐ the foster parent(s), pre-adoptive parent(s), or relative(s),	, providing care for
the child(ren),, is ab:	sent and that notice of the date, time, and place of the
hearing and right to attend and be heard $\underline{\text{was not given}}$ by the	he Department; and, that diligent efforts were not made
or \square were made by the Department to locate and notify the	absent caregiver.

III. INITIAL ADVISEMENTS

The Court advised the parent(s) of the nature of the proceedings; the allegations; the right to an Adjudication Hearing; the right to be represented by counsel; and, the right to representation by the Indigent Parents' Representation Program if indigent.

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

IV. INDIAN CHILD WELFARE ACT (ICWA)

The Court asked each person whether he or she knows or has reason to know that the child(ren) is a member of a federally recognized Indian Tribe or is eligible for membership in a federally recognized Indian Tribe and is the biological child of a member of a federally recognized Indian Tribe, pursuant to 25 U.S.C. § 1903. The Court has instructed each person before the Court to inform the Court if he or she subsequently discovers information indicating

that the child(ren) is a member of a federally recogn	ized Indian Tribe or eligible for membership in a federally recognized
Indian tribe and is the biological child of a member of	of a federally recognized Indian Tribe, pursuant to 25 U.S.C. § 1903.
THEREFORE , the Court finds there is ☐ reason	on to know child(ren),,
\square no reason to know that child(ren),	, is a member of a federally recognized
Indian Tribe or eligible for membership in a federally	recognized Indian Tribe and is the biological child of a member of a
federally recognized Indian Tribe, pursuant to 25 U.S	S.C. § 1903, at this time.
V. REA	ASONABLE GROUNDS FINDINGS
THE COURT FINDS that there are: (Please check	the applicable box for each child)
☐ reasonable grounds to believe the child(ren),	, is in need of care in accordance
with Article 606(A) (1-8) and that continu	ued provisional custody is necessary for their safety and protection.
\Box not reasonable grounds to believe the child(ren), \Box	, is in need of care and that
continued provisional custody is not necessary for the	neir safety and protection.
VI. RE	ASONABLE EFFORTS FINDINGS
THE COURT FINDS that the Department: (Ple	ase check the applicable box for each child continuing custody outside home)
☐ made the following reasonable efforts with the ch	ild(ren)'s,, health and
safety as the paramount concern to prevent or elimi	inate the need for the child(ren)'s removal and make it possible for
the child to safely return home, including the follow	ing services (mental health, substance abuse, parenting, etc.) and/or
court interventions (Temporary Restraining Order, P	Protective Order, Instanter Safety Plan Order, etc.) have been offered
to no avail:	
	·
	revent or eliminate the need for the child(ren)'s,
	al and make it possible for the child(ren) to return home based on
	partment that the child(ren) were in substantial, immediate danger
remain at home even with reasonable in-home servi	urred during an emergency in which the child(ren) could not safely
THITIAID AT DOME BURD WITH TOSCONSNIG IN-NOME CONV	res provided to the family

☐ failed to make reasonable efforts to prevent or eliminate the need	
, from the home.	
VII. FINDINGS AN	ND RULINGS
Based upon the findings above and the evidence presented	d:
IT IS ORDERED BY THE COURT that: (Please check the applicable bo	ox for each child)
□ child(ren),	, be <u>returned to their parents</u> and that (the case
be dismissed, safety plan implemented and compliance with it orde	
□ child(ren),	
provisional custody of the following suitable relative(s),	
according to the priorities outlined in Article 622 and for the purpo	
appropriate setting pending the timely filing of the Child in Need of	·
THE COURT FINDS that said relative(s) is capable of protect	
to comply with the following <u>safety plan</u> setting forth the c	
third parties:	
	;
□ child(ren),	, be hereby placed or continued in the
provisional custody of the following suitable individual(s),	
according to the priorities outlined in Article 622 and for the purpo	ses of placement in the least restrictive and most
appropriate setting pending the timely filing of the Child in Need of	f Care Petition and Adjudication;
THE COURT FINDS that said individual(s) is capable of prote	ecting the health and safety of the child(ren) and
agrees to comply with the following safety plan setting fort	th the conditions of contact with the parent(s) and/or
other third parties:	
THE COURT FINDS that placing child(ren) in the custody of	a suitable relative is not in the child(ren)'s best
interest for the following reasons:	
	<i>;</i>
□ child(ren),	, be hereby placed or continued in the

 $\underline{provisional\ custody\ of\ the\ \textbf{STATE\ OF\ LOUISIANA}}\ through\ the\ \textbf{DEPARTMENT\ OF\ CHILDREN\ AND\ FAMILY\ SERVICES},$

according to the priorities outlined in Article 622 and for the purposes of placement in the least restrictive and most
appropriate setting pending the timely filing of the Child in Need of Care Petition and Adjudication, said child(ren) to be
placed together, if possible, and, if not, to be afforded reasonable contact and visitation with each other;
THE COURT FINDS that placing child(ren) in the custody of a suitable relative is not in the child(ren)'s best
interest for the following reasons:
VIII. APPOINTMENTS
☐ IT IS ORDERED BY THE COURT that be and is hereby appointed
if not previously appointed, to represent the child(ren) in these proceedings and that said program be given notice of
appointment and served with a signed copy of the pleadings filed herein.
☐ IT IS ORDERED BY THE COURT that the parent(s),, is/are found
to be indigent and is/are referred to the District Public Defender Office t
provide for representation and that said program be given notice of appointment and served with a signed copy of the
pleadings filed herein.
☐ IT IS ORDERED BY THE COURT that the District Public
Defender Office shall provide for a curator ad hoc to locate absent parent(s),
, and that said program be given notice of appointment and served with a signed copy of
the pleadings filed herein.
☐ IT IS ORDERED that the local CASA program be and is hereby appointed, unless previously appointed, subject
to the assignment of a qualified volunteer to advocate for the best interest of the child(ren) in these proceedings. CASA
must be given notice of appointment and served with a copy of the pleadings filed herein.

IX. FURTHER ADVISEMENTS

The Court advised the parent(s) of the child(ren)'s need to have a safe and stable relationship with caretakers, either their parents or, if necessary, others who are willing and able to assume parental responsibility and provide a permanent home, and to have these caretaker decisions made as quickly as possible.

The Court advised the parent(s) of their responsibility to cooperate in preparing a case plan and otherwise in meeting the needs of their child(ren), and if their child(ren) cannot return home safely, to assist the child(ren)'s

adjustment to other caretakers, and to contribute to the cost of care and treatment of their child(ren) as provided in Children's Code Article 685.

The Court advised the parent(s) to notify the Department and their counsel in writing of their current whereabouts including their mailing address, cellular number, telephone number, electronic mail address, and any other contact information, and that if they fail to do so, the law authorizes hearings to be held in their absence.

The Court advised the parent(s) that once an electronic mail address is provided all service and notice of future proceedings may be sent electronically until such time they provide notice to the Court and all parties in writing or in open Court that they are no longer able to receive service or notice at such address.

The Court advised the Department and the parent's counsel of their responsibility to promptly inform the Court of a new mailing address or electronic mail address, upon receipt of information regarding a parent's change of address.

The Court advised all persons before the Court of their responsibility in achieving timely permanence for the child(ren).

The Court advised all persons before the Court of their responsibility to identify the name, address, and whereabouts of all grandparents, all parents of a sibling where such parent has legal custody of such sibling, all other adult relatives of the child(ren) and any other individual willing and able to offer a wholesome and stable home for the child(ren).

The Court directed all persons before the Court to identify the name, address, and whereabouts of each parent and any relative or other individual willing and able to offer a wholesome and stable home for the child(ren).

X. FURTHER ORDERS UPON CONTINUED CUSTODY

THE COURT FURTHER ORDERS the following as necessary and appropriate: (Please check box if applicable)	
☐ IT IS FURTHER ORDERED that pending the filing of a Child in Need of Care Petition and Adjudication and/or establishment of a case plan, visitation/family time between the parents and children shall occur as follows:	

and at all other times agreed by: ______

\Box IT IS FURTHER ORDERED that pending the filing of a Child in Need of Care Petition and Adjudication and/or
establishment of a case plan, visits between separated siblings and/or with significant family members or other
individuals shall occur as follows:
and at all other times agreed by:
☐ IT IS FURTHER ORDERED that the Department make arrangements to motion for DNA tests to determine the
paternity/maternity of any alleged parents and that alleged parents comply.
☐ IT IS FURTHER ORDERED that the Department immediately assess all possible suitable relative and individual
caregivers with the results and/or updates to be presented at the Hearing.
☐ IT IS FURTHER ORDERED that the Department initiate child welfare background clearance, criminal
background check, and/or assessment of the home or home study on the following relative(s) or individual(s),
☐ IT IS FURTHER ORDERED that the Department initiate an Interstate Compact for Placement of Children (ICPC)
process for the following out-of-state relative(s) and/or individual(s),
☐ IT IS FURTHER ORDERED that it is in the best interest of the child for the Department to coordinate with the
appropriate local education agencies to $\ \square$ ensure that the child(ren) remain enrolled in the school in which the
child(ren) was enrolled at the time of placement \Box change the school the child(ren) is enrolled in.
\Box IT IS FURTHER ORDERED that prior to every Family Team Meeting (FTM) hereafter conducted in this case, the
Department shall provide reasonable notice of said FTM to all parent(s), caretaker(s), foster caregivers, CASA workers,
and attorneys for child(ren) and parent(s)/caretaker(s).
A Family Team Meeting is tentatively on the day of, 20, at
☐ IT IS FURTHER ORDERED that the Department notify the child's attorney immediately, electronically or
otherwise, when there is an emergency change in the child's specific placement when child is in custody of the State,
and within hours after a change of placement of the child occurs. The notification shall include the address
and contact number of the placement.

☐ IT IS FURTHER ORDERED that	
XI. ORDER OF FUTURE HEARINGS AND RETURN OF CHILD UPON FINDING OF CONTINUED CUSTODY	
IT IS FURTHER ORDERED that if the Child in Need of Care Petition is not filed within 30 days of the	nis hearing,
unless an extension is granted by the Court based upon a showing of good cause and notice to all parties	s, child(ren) be
returned to their parent(s).	
IT IS FURTHER ORDERED that the parent(s) of the child(ren), all attorneys of record, the DCFS re	presentative(s),
and CASA be present at all future hearings.	
☐ IT IS FURTHER ORDERED that: (check if CINC Petition has been or will be filed)	
This matter be set for Answer Hearing, the clerk shall notify all parties of the date, time, and location of	the hearing and
that all parties of interest appear; the Sheriff's Office serve the parent(s) with a summons commanding h	nim or her to
appear at Court for the hearing; the Department provide notice to the parent(s) of the date, time, and lo	ocation of the
hearing as well as the nature of the allegations; notice of the Answer Hearing be made on the child and I	parent
representation programs and CASA (if appointed); the Department provide notice to foster parents, pre-	-adoptive
parents, or relatives providing care for the child of the date, time, and location of the hearing and right t	o attend and be
heard; and for any parent(s) incarcerated, arrange for the parent(s) to attend the h	earing, either in
person or remotely.	
☐ This matter has been set for ANSWER on theday of, 2	20, at
THUS DONE AND SIGNED ON THIS day of, Louisiana.	, 20, in
JUDGE	-
DISTRIBUTION OF NOTICE	
Please serve all parties and counsel of record as follows:	
Parent:Street:	
City, State, Zip:Email Address:	

	Parent's Attorney:
	Street:
	City, State, Zip:
	Fax Number: ()
	Email Address:
Parent	:
Street:	
	ate, Zip:
	Address:
	Parent's Attorney:
	Street:
	City, State, Zip:
	Fax Number: ()
	Email Address:
Child(re	en)'s Attorney:
Street:	
City, St	ate, Zip:
Fax Nu	mber: ()
Email A	Address:
City, St Fax Nu	ate, Zip:
Email A	Address:
	notice and copy of order as follows:
-	ment of Children and Family Services Staff/Representative:
	ate, Zip:
Fmail A	mber: ()
Liliali	Address:
CASA:	
Street:	•
City. St	ate, Zip:
Fax Nu	mber: ()
Fmail A	Address:
Lindii	<u> </u>
Other:	
Role:	
Street:	
City. St	ate, Zip:
Fax Nu	mber: ()
Email A	Address:

STATE OF LOUISIANA			DOCKET NUMBER:		
IN THE INTEREST OF			SECTION:		
	DOB:		COURT:		
	DOB:		PARISH OF		
			STATE OF LOUISIANA		
Filed:			DEPUTY CLERK:		
	OF A SU	JITABLE RELAT	I IN THE PROVISIONAL CUSTO IVE OR INDIVIDUAL ving minor child(ren) be placed		custody
of				ini the provisional	custouy
			 Birth:		
			Birth:		
			Birth:		
IT IS FURTHER ORDERED					
			am is representing the child(re		
The local CASA program rethe best interest of the child(ren)	• •		to the assignment of a qualifie	d volunteer, to adv	vocate for
the best interest of the child(ren)	in these proce	cedings.			
THUS DONE AND SIGNED	ON THIS	day of		20	, in
	, Louisian	a.			
			JUDGE		
DISTRIBUTION OF ORDER			JODGE		
Department of Children and Fami	ily Services Re	presentative			
Assistant District Attorney or Bure					
Child(ren)'s Attorney					
CASA					
Foster Parent, Pre-Adoptive Paren					

STATE OF LOUISIANA		DOCKET NUMBER:		
IN THE INTEREST OF		SECTION:		
	DOB:	COURT:		
	DOB:	PARISH OF		
	DOB:	STATE OF LOUISIANA		
Filed:		DEPUTY CLERK:		
DE	OF THE STATE OF PARTMENT OF CHILDE	LDREN IN THE PROVISIONAL CUSTODY LOUISIANA THROUGH THE REN AND FAMILY SERVICES (DCFS) the following minor child(ren) be placed in the provisional		
custody of the STATE OF LOUIS	IANA through the DEF	PARTMENT OF CHILDREN AND FAMILY SERVICES:		
		_Date of Birth:		
		_Date of Birth:		
		_Date of Birth:		
IT IS FURTHER ORDERE	D BY THE COURT:			
That		program is representing the child(ren) in these		
proceedings; and				
The local CASA progran	n has been appointed,	subject to the assignment of a qualified volunteer, to		
advocate for the best interest of	of the child(ren) in the	se proceedings.		
THUS DONE AND SIGN	ED ON TIME	. of in		
		y of, 20, in		
	, Louisiana.			
		JUDGE		
DISTRIBUTION OF ORDER				
	mily Services Represer	ntative		
		nsel		
		ng Care for Child		