

CONTINUED CUSTODY HEARING (CCH)

BENCH
CARD

La. Ch. C. arts. 624-627



PURPOSE

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

Timing and Continuances

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

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

Appearances and Appointments

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

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

ESSENTIAL JUDICIAL FUNCTION | Assistance and Accommodations:

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

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

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

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

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

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

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

Notice

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

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

Initial Advisements

ARTICLES 575, 625

Court shall advise parents and may advise child of:

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

Indian Child Welfare Act (ICWA)

ARTICLES 624-624.1, 25 U.S.C. § 1902

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

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

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

Evidence and Testimony

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

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

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

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

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

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

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

Findings

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

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

(1) **REASONABLE GROUNDS AND CONTINUED CUSTODY:**

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

(2) **REASONABLE EFFORTS (RE):**

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

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

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

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

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

ESSENTIAL JUDICIAL FINDING | Reasonable Efforts (RE): Court shall make finding as to whether or not DCFS made RE to prevent or eliminate need for child's removal and, after removal, to make possible for child to safely return home; or court can find RE were not required per Article 626 or 672.1. This RE finding is required in a written court order within first 60 days of child's removal. DCFS risks losing Title IV-E funding for child's entire stay in foster care if child is removed and placed in 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.

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

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

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

Ruling Options

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

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

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

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

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

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

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

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

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

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

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

Further Advisements

ARTICLE 625

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

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

CINC Petition Filed

ARTICLES 646, 649

- If CINC Petition filed by CCH, court may call upon parents to answer allegations; utilize [Answer Hearing Bench Card](#).

Further Orders

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

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

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

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

Order of Notices and Future Hearings

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

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

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

Case Management

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

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

Possible Next Steps

ARTICLES 628-30, 631-2, 646

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

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

CRITICAL CONSIDERATIONS FOR ALL AT EACH CINC HEARING:

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