# DISPOSITION HEARING

La. Ch. C. arts. 678-686

CHILD IN NEED OF CARE BENCHBOOK

FOR JUVENILE JUDGES

SECTION

8

# INTRODUCTION

# A. GENERAL CONSIDERATIONS

The Disposition Hearing is a critical hearing in the Child in Need of Care (CINC) process. At this hearing, the court will make its post-adjudication ruling regarding the child's Disposition (i.e., custody to a parent, custody or guardianship to a relative or suitable person, custody to the Department of Children and Family Services (DCFS), etc.). One of the most important decisions the court will make in a CINC proceeding is whether to remove or continue the removal of the child from his/her parents' custody.

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 his/her home.<sup>2</sup> The best plan is the one that is least restrictive and most family like. Judicial determinations to remove a child from his/her parents should only be made based on legally sufficient evidence that a child cannot remain safe in the parent's custody.

There is well-documented scientific research on the psychological and physiological impact removing a child 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 removal of a child from the 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.<sup>3</sup> 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. <sup>4</sup>

Exposure to trauma in childhood can both stunt cognitive development and alter a child's brain structure in profound ways.<sup>5</sup> 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.<sup>6</sup>

<sup>1</sup> 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.

<sup>2</sup> 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].

<sup>3</sup> Goydarzi, Sara. (2018) Separating families may cause lifelong health damage, Scientific American, <a href="https://www.scientificamerican.com/article/separating-families-may-cause-lifelong-health-damage/">https://www.scientificamerican.com/article/separating-families-may-cause-lifelong-health-damage/</a>

<sup>4</sup> 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 <a href="https://crossroadsnola.org/tbri/">https://crossroadsnola.org/tbri/</a> 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.

<sup>5</sup> 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\_5b2hf535e4b00295f15a96b2.

<sup>6</sup> 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, <a href="https://www.aipmonline.org/article/S0749-3797(98)00017-8/abstract">https://www.aipmonline.org/article/S0749-3797(98)00017-8/abstract</a>

In addition to the physical and emotional ills that befall children placed in foster care, the long- range effects of removal decisions are staggering. A study<sup>7</sup> that tracked at least 15,000 children between 1990 and 2002 found higher delinquency rates, higher teen birth rates, and lower wage earnings among children placed in foster care as compared to similarly situated children who remained in their homes.<sup>8</sup> 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.<sup>9</sup>

Judges tasked with the authority to decide whether or not to continue a child in an out of home placement are in a challenging and powerful position that can impact a child's entire future. When children are removed from their parents, they may 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 might 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 only 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 harm and long-term consequences children removed from their homes may face, the significance of the Disposition Hearing is profound.

If the child does not remain in DCFS custody, routine court review can end. The court may order the Judgment of Disposition remain in force until the child reaches his/her 18th birthday or order a different duration. The court retains continuing jurisdiction over all subsequent custody matters regarding a child adjudicated in need of care, including visitation. Any party to the action has the authority to seek a modification of Disposition when the facts and law deem it appropriate.

If legal custody is awarded to DCFS, the court must review and approve both the case plan and recommended goal for the family at the Disposition Hearing. Similarly, if the court orders DCFS supervision when DCFS does not have custody of the child, there may still be a case plan for the court to review (i.e., child in custody of parent, child in custody of a relative, etc.).

# **B. PRIOR TO THE HEARING**

The Children's Code requires DCFS to submit the initial case plan at least 10 days prior to the Disposition Hearing. While the Children's Code does not specifically require that DCFS also submit a court report (or court letter) in advance of the hearing, DCFS policy directs such submission at least 10 days prior to the hearing. If the court has appointed a Court Appointed Special Advocate (CASA), the CASA program will also submit a report to the court. While no specific timing is required (unless set forth in local court rules), it is best practice for CASA to submit its report 10 days prior to the hearing.

The court may have ordered that physical and/or mental health evaluations be conducted on a parent and/or the child in advance of the Disposition Hearing. The Children's Code also allows the court to order a Predisposition Investigation after Adjudication to help assist the court in making decisions at the Disposition Hearing. A Predisposition Investigation will provide the case worker with a thorough assessment of the circumstances, needs, and social history of the child and his/her family. It also requires an assessment of the child's established and significant relationship with a parent, grandparent, sibling, or other relatives which should be preserved. While the court report that is submitted by DCFS in advance of the hearing should include some of this information, a report from a Predisposition Investigation may be more comprehensive.

Any relatives and/or individuals willing and able to be considered for custody and/or guardianship of the child need to be assessed at the earliest juncture possible in CINC cases and ideally by the time of this hearing. For this reason, the court may have ordered DCFS to conduct a background check and/or a home study on a relative or other individual at the Continued Custody or Adjudication Hearing, for example.

<sup>1</sup> 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.

<sup>8</sup> Joseph J. Doyle, Jr., Child Protection and Child Outcomes: Measuring the Effects of Foster Care, 97 Am. Econ. Rev. 1583 (2007).

<sup>9</sup> Bauer, L. & Thomas, J. (2007) Throwaway Kids. Kansas City, KS: The Kansas City Star, https://www.kansascity.com/news/special-reports/article238206754.html

<sup>10</sup> Gatowski, supra note 2, at 107.

<sup>11</sup> DCFS Policy 6-808 "Disposition" (August 17, 2020).

# C. TIMING, NOTICE, AND PRESENCE

The Disposition Hearing may be conducted immediately after the Adjudication Hearing but shall occur within 30 days of the Adjudication Hearing. The articles regarding Disposition allow for continuances with notice and good cause if in the child's best interest, with no maximum timeframes specified. Sometimes a continuance is requested when relatives or other individuals have not been assessed, previously ordered evaluations have not been completed, or an individual seeking to be considered as a custodian is not available to testify at the hearing. The contempt articles are always available to the court if appropriate; for example, if investigations and/or evaluations previously ordered to be completed prior to the hearing have not been completed on time, or the case plan is unnecessarily delayed.

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 person who does not have a proper interest in or is not necessary to the proceedings. As in all CINC hearings, the parents and children have a right to be present, as do foster caregivers (i.e., foster parents, pre-adoptive parents, and relatives) caring for the child and CASA (if appointed).

The court shall confirm that proper notice was given to parties and counsel. Written notice of the date, time, and place of the hearing shall be served and return made in the same manner as a Petition on all parties and counsel of record at least 15 days prior to the hearing unless the parties have been notified in open court at a prior hearing. DCFS also has a duty to provide notice to the parents and foster caregivers, and the court shall confirm that notice was properly given. The court should determine whether notice has been proper if any party or appropriate person is absent at the hearing.

For all parties present, the court is responsible for providing and paying for interpretation, translation, and/or language assistance services and reasonable accommodations for those with disabilities.<sup>12</sup> There must be ample time for legal interpreters to review pertinent legal documents prior to the court proceeding.<sup>13</sup> Interpreters must be familiar with the case-related details to provide an accurate, meaningful, and effective interpretation.<sup>14</sup>

Both the parent's voice and that of the child—whether in person or through the child's attorney—should inform the significant decisions made at Disposition. Effective Disposition Hearings require adequate court time and properly trained and prepared lawyers. Lawyers must be expected to do their job and come to court with a clear position on the case after consulting with their client. Before the case is called, the judge should inquire whether counsel for the parent and counsel for the child had sufficient opportunity to consult with their clients, thereby ensuring due process for the family.

# D. EVIDENCE AND TESTIMONY

The Disposition Hearing requires the court to consider several items, including the Predisposition Report (if ordered), the case plan (which includes the Youth Transition Plan (YTP) for youth 14 years of age and older), any reports of mental evaluation, and all other evidence offered by the child or the State relating to the proper Disposition. Because the Dispositional alternatives include granting custody to a relative or guardianship to a relative or other suitable person, parties may want to call any person seeking to be considered as a witness. Foster caregivers also have a right to be heard at the Disposition Hearing and, as the day-to-day caregivers of the child, likely have valuable information for the court.<sup>16</sup>

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<sup>12</sup> For more information see: https://www.lasc.org/language\_access and https://www.lasc.org/District\_Court\_Rules?p=Titlel. See also: C.C.P. Art. 192.2, R.S. 46 § 2364, (42 U.S.C. §3711), 28 U.S.C. § 604(a)(14), (15), and (16), § 1827, and § 1828.

<sup>13</sup> National Consortium of Interpreter Education Centers (March 2009) Best Practices American Sign Language and English Interpretation within Legal Settings, p.30. (http://www.interpretereducation.org).

<sup>14</sup> Id.

<sup>15</sup> Gatowski, supra note 2, at 259.

<sup>16</sup> See La. Ch. C. arts. 623 and 679; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

# E. DISPOSITIONAL ALTERNATIVES

The court has multiple alternatives for custody or guardianship at its disposal. While there is discretion, the court must impose the least restrictive alternative authorized. The least restrictive Disposition is for custody of the child to remain with or be granted to the child's parents, with or without other terms and conditions (such as continuing supervision and/or a Protective Order (PO)). If the court decides to grant custody of a child to a parent who the child has not seen for some time or does not know, for example, the court could require a transition plan as one of the terms and conditions of the order transferring custody.<sup>17</sup>

If there are half-siblings, the court should consider granting custody of the child to the sibling's parent if the parent is willing and 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 inclined to take custody to keep the siblings together.

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 at specific intervals during the life of a case, including at Disposition. If a child has been previously removed from his/her parents, the court should determine if the child can be returned home or removal is still necessary. To make this determination, the court will have to inquire about the current status of: (1) any threats of danger to the child; (2) the child's vulnerability to the threat of danger; and (3) the parent's protective capacities to manage the threats of danger and keep the child safe. The essential inquires at every CINC hearing should include: 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?

If the court determines that custody of the child should not be granted or returned to a parent at the Disposition Hearing, the court shall advise the parents of their responsibilities and the procedures in CINC cases, as set forth in Article 682. The court must then look to granting custody or guardianship to a relative or other suitable person with a safety plan, PO, and/or other terms and conditions (i.e., court-ordered DCFS supervision) when it is necessary for the safety and protection of the child. The court should consider any potential caregivers proposed by the parents to assess whether they can protect the child's safety and ensure permanency in a timely fashion. The court should confirm that DCFS has investigated all available information on relatives and other persons who have a relationship with the child and/or family and may be a potential caregiver. Updates on this information (i.e., child welfare background clearance, criminal background check, assessment of a home or home study, and/or Interstate Compact on the Placement of Children<sup>18</sup> (ICPC)) should be available by the Disposition Hearing. There are certain circumstances where the court can order DCFS to request expedited placement of a child from Louisiana into another State. However, the receiving State does not have to honor that request. If a relative or individual is identified out-of-State and the child is not in DCFS custody, a courtesy assessment of the home can be requested to obtain information regarding the family outside the ICPC process. The out-of-State agency is not legally obligated to conduct a courtesy assessment, however cooperation amongst State agencies to complete the requested courtesy assessment is seldom denied.

If the court grants custody or guardianship to an out-of-State relative or individual, the court shall provide specific written findings in the order as to why the placement is safe, appropriate, and in the child's best interest. In order for DCFS to place a child with a relative or individual in another state, the ICPC home study must be approved. The ICPC process does not have to be completed for the court to grant custody or guardianship of the child to a relative or individual out-of-State but DCFS will not monitor the placement in that circumstance.

If the court does not grant custody to a relative at the Disposition Hearing, the court shall make specific findings as to why this is not in the child's best interest (unless the court grants custody to one or both parents). While the Children's Code states that these specific written findings shall become part of the record, best practice is to include them in the Judgment of Disposition.

<sup>17</sup> Gatowski, supra note 2, at 214.

<sup>18</sup> La. Ch. C. art. 1608 et seq.

If the court determines that custody or guardianship of the child cannot be granted to a relative or suitable person, then the court may grant or maintain custody of the child to or with the State through DCFS. DCFS is responsible for determining the child's placement, although a court can disapprove the placement in certain circumstances per Article 672(A)(2). If DCFS has not placed the child with his/her siblings, the court should ascertain whether DCFS has made reasonable efforts to place siblings in the same placement or otherwise arranged for visitation. However, DCFS does not have to make reasonable efforts if it documents that placement of siblings together or continued interaction would be contrary to the safety or well-being of any siblings. <sup>19</sup> The court's role is to hold DCFS accountable to showing evidence of such efforts.

The court shall give specific written reasons for its Disposition findings in the Judgment of Disposition. Unless a judicial determination has been made that they are not required under Article 672.1, reasonable efforts findings shall be made regarding efforts to reunify the family if the child was removed prior to the Disposition and the court maintains the custody of the child with DCFS at the Disposition Hearing. If the child is removed at Disposition for the first time, reasonable efforts findings shall be made regarding efforts to prevent or eliminate the need for removal unless an Article 672.1 judicial determination has been made that reasonable efforts are not required. The court shall also make the contrary to the welfare finding if the child is removed at Disposition for the first time.

At times it may be helpful to coordinate services with Louisiana Department of Health (LDH), Office of Juvenile Justice (OJJ), Louisiana Department of Education (LDOE), and other agencies to prevent removal, expediate reunification, and achieve permanency for child. The court may want to consider having one or more represented at the Disposition Hearing. This multi-disciplinary approach is especially critical for youth who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated services and supports.

# F. CASE PLAN

If the legal Disposition of the case is to grant custody to DCFS or to a parent or relative with court-ordered DCFS supervision, the judge must rule on the initial case plan submitted by DCFS. The reasonableness of the case plan is critical to an accurate determination of the parents' willingness and ability to make the adjustments necessary for the safety of their child. Both DCFS and the court bear joint responsibility for the development of the case plan. DCFS proposes the case plan but the court reviews the plan and either approves or disapproves it (in whole or part).

The specific grounds upon which the child was adjudicated should guide the formation, implementation, and approval of the case plan. The case plan should identify the safety and risk issues and conditions for return of the child, including the measures designed to enhance the parent's protective capacities to manage the identified threats of danger. The judge should carefully review the case plan and consider the arguments of the parties and evidence presented to determine whether the proposed services address these issues, are accessible, and are culturally and linguistically appropriate. Court review should ensure that the case plan requirements are important elements of parental rehabilitation and feasible within the stated time limitations.<sup>20</sup>

The case plan should include a recommended monetary contribution that the parent pays to the State. The court can make the determination for a monetary contribution pursuant to Article 685, rather than taking the recommendation of the State. However, no monetary contribution should be required if there is already a child support order against the parent, or if one is instituted in the future.

The case plan should also identify any needs of the child and the services to be provided to meet those needs. In addition, the case plan should set forth the terms and conditions of visitation/family time with parents and siblings as well as other relatives or individuals in the best interest of the child. It should be noted that visitation should not be used as a mechanism to reward or punish parents or children, but should be liberal, presumed unsupervised, and occur as frequent as possible unless there is a demonstrated safety risk to the child.

<sup>19</sup> For all placements, the State must make a "reasonable effort" to place siblings in the same foster care, kinship guardianship, or adoptive placement. If the siblings are removed from their home and not jointly placed, the State must make a "reasonable effort" for frequent visitation or other ongoing interaction between the siblings. The State does not have to make a "reasonable effort" if the State documents that such a joint placement or continued interaction would be contrary to the safety or well-being of any of the siblings. Retrieved from: <a href="http://www.ncsl.org/print/cyf/FosteringConnectionsSummary.pdf">http://www.ncsl.org/print/cyf/FosteringConnectionsSummary.pdf</a>.

<sup>20</sup> La. Ch. C. Article 684, Authors' Notes.

The court should take time reviewing the case plan to confirm that all parties understand it and what is expected of them. If the court is dissatisfied with the proposed case plan or any parts therein, it can disapprove it and require DCFS to revise the plan.<sup>21</sup>

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 Children's Code mandates that the case plan be filed at least 10 days before the Disposition Hearing. While this practice is not followed in some jurisdictions, it is an important step in achieving timely permanency and ensuring due process. Parties have the right to respond to the case plan and will not be able to do so if it is not filed timely. Courts should insist on timely filing.

It is of paramount importance that the judge ensures parental involvement in the case planning process. Parents should have an opportunity to object to the case plan and have their objections heard by the judge or documented in writing with the assistance of counsel. Children should also be involved in their own case planning when appropriate.<sup>22</sup> Federal law requires that children 14 and older be actively engaged in the development of their case plan.<sup>23</sup>

The case plan should include a case plan goal proposed by DCFS. Most case plans start with a concurrent goal of reunification and adoption. The court will either approve or not approve the initial case plan in whole or part, which includes the case plan goal. If the court does not approve any part of the case plan, best practice is to order DCFS to make revisions and schedule a hearing to review the revisions (for example, within 30 days). Sometimes all parties can come to an agreement at the hearing so that another hearing is not necessary. Still, the Judgment of Disposition should clearly reflect any specific amendments made and that all parties agree to the amended case plan.

An attorney or the court is responsible for completing the Judgment of Disposition. All of the attorneys and unrepresented parties should review the judgment before the judge signs it to ensure it accurately reflects the proceeding. An attorney or the court is responsible for completing the Judgment. Time permitting, best practice is to sign the Judgment on the same day as the hearing, or as soon thereafter as possible.

# **G. NEXT STEPS**

The Disposition Hearing is a complicated hearing. The court should ask the parents and children if they understand what occurred at the hearing and ask if they have any questions. In addition, it can be helpful for attorneys to have the opportunity to meet briefly with their clients right after the hearing to address immediate concerns.

If applicable, the court should ask questions about transition planning at the hearing. Depending on the age of the child, best practice may be to transition the child to the parent's home rather than having an instantaneous upheaval. In some jurisdictions, DCFS promulgates a transition calendar with the input of all involved. The court can order a transition period with a goal date for reunification.

When a transition of any kind occurs for the child (i.e., change in placement or custody, etc.), it is critical to the child's well-being for judges to collaboratively strategize with all involved to reduce the trauma experienced by the child in the transition. DCFS has developed tools to try to minimize this trauma, including a guide for planful transitions. Transition plans can include multiple, extended visits, such as overnight visits as well as other additional contacts including Zoom, FaceTime, etc. to ensure the most positive experience possible for the child.<sup>24</sup> These activities should occur both prior to the move and after the move to provide the child a less traumatic separation from previous caregivers and connect to the new caregivers.

<sup>21</sup> Gatowski, supra note 2, at 230.

<sup>22</sup> Gatowski, supra note 2, at 214.

<sup>23</sup> Gatowski, supra note 2, at 219.; For more information about Federal laws supporting youth in foster care transitioning to adulthood, please see: <a href="https://www.americanbar.org/content/dam/aba/administrative/child\_law/youthengagement/quick-reference-guide-laws.pdf">https://www.americanbar.org/content/dam/aba/administrative/child\_law/youthengagement/quick-reference-guide-laws.pdf</a>.

<sup>24</sup> DCFS Policy 6-305 "Guidelines for Care Setting Decision Making for Children Under Age Six" (March 15, 2019).

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If custody is granted to the State through DCFS, the order is subject to Federal statute and regulations known as "permanency planning" requirements. There are two separate components of permanency planning: (1) the initial case plan and its review hearing process and (2) the identification of a permanent plan for the child and its review process. While not a requirement, it is advisable for courts to follow the review hearing process in a court-ordered DCFS supervised case (i.e., DCFS Family Services case) as well.

The court will want to schedule the initial Case Review Hearing in the Judgment of Disposition. The initial Case Review Hearing shall be set within 3 months of the Disposition if the child was removed prior to Disposition or within 6 months if the child was removed at Disposition. However, the hearing can certainly be set sooner than these timeframes and should be driven by the facts and circumstances in each individual case. Additionally, the court could set a Status Hearing if there are issues that need to be addressed or resolved prior to the Case Review Hearing. For example, if parts of the case plan need to be revised, the court should set a hearing. Or, if the child has recently moved to a new placement, the court may want to see how the child is adjusting sooner rather than waiting for the Case Review Hearing.

While it may be difficult to do, the parents' and children's schedules should be taken into consideration when scheduling subsequent hearings. For example, if parents are working it is critical that they not be required to miss too many days since family stability is an important component of CINC cases. Similarly, a child's school schedule should be discussed before the date and time of any hearing is set.

Some courts schedule the initial Permanency Hearing in the Judgment of Disposition. A court may certainly set a subsequent Case Review Hearing at the same time as the Permanency Hearing.

Any person directly affected may appeal the Judgment of Disposition findings or orders of the court.

# **OUTLINE**

	Α.	PRIC	OR TO	THE	<b>HEAR</b>	ING
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- **B. TIMING AND CONTINUANCES**
- **C. APPEARANCES**
- D. NOTICE
- **E. APPLICABILITY OF FEDERAL LAWS AND REGULATIONS**
- **F. EVIDENCE AND TESTIMONY**
- **G. JUDGMENT OF DISPOSITION**
- H. REASONABLE EFFORTS FINDINGS
- **I. CASE PLAN CONTENT**
- J. CASE PLAN FINDING AND ORDER
- **K. ADVISEMENTS**
- **L. FURTHER ORDERS**
- M. ORDER OF NOTICES AND FUTURE HEARINGS
- N. MODIFICATION OF DISPOSITION
- O. CASE MANAGEMENT
- P. POSSIBLE NEXT STEPS
- **Q. APPENDIX** 
  - (1) DISPOSITION HEARING BENCH CARD
  - (2) JUDGMENT OF DISPOSITION TEMPLATE
  - (3) DEPARTMENT OF CHILDREN AND FAMILY SERVICES DISPOSITION COURT REPORT TEMPLATE

# **OVERVIEW**

# A. PRIOR TO THE HEARING

ARTICLES 424.7, 673-4, 668-70, 676, 688-9

# (1) CASE PLAN FILED BY DCFS:

- **FILING:** DCFS shall file a copy of the case plan with the court at least 10 days prior to the Disposition Hearing, which shall include the YTP if the child is 14 years of age or older. See the <u>Department of Children and Family Services Case Plan Template</u> and <u>Department of Children and Family Services Youth Transition Plan (YTP) Template</u> in the <u>Appendices Benchbook Section 12</u>.
- **PROVIDE COPIES:** Upon filing, DCFS shall provide a copy of the case plan to:
  - · Counsel of record either by mail or electronic mail; AND
  - Any unrepresented party either by certified mail at his/her last known address or by electronic mail at the address expressly
    designated by the party in a pleading, at the Continued Custody Hearing (CCH) or Continued Safety Plan Hearing (CSPH),
    or at any other hearing at which the party personally appeared before the court, unless otherwise ordered by the court for
    good cause.
- **RESPONSE:** Any party may file a written response to the case plan as submitted.

# **PRACTICE TIPS:**

- o **Timing for Development of Case Plan:** Federal and State law require that the case plan be developed no later than 60 days from a child entering DCFS custody. However, DCFS policy provides shorter timelines for developing the case plan.<sup>25</sup> When the child is in DCFS custody, DCFS initiates the case plan within 30 days of the child entering foster care and finalizes the plan within 45 days.<sup>26</sup> When the case involves a DCFS Family Services case (i.e., child is in the custody of his/her parents, inhome safety plan, etc.), DCFS initiates the case plan within 30 days of DCFS opening the Family Services case and finalizes the plan within 45 days. The case plan must be updated every 6 months after that until the case is closed.<sup>27</sup>
- o **CASA Can Request Copy:** CASA can request a copy of the case plan (Article 424.6).
- o **Transmission by Email:** Service by electronic mail is complete upon transmission but is not effective if the serving party learns the transmission did not reach the party to be served.
- o **Purpose of Response:** Filing a response puts the parties on notice of potential issues relevant to the case plan. However, the Children's Code does not require a written response.

### **HELPFUL GUIDANCE:**

 Signed by Family Members: Per DCFS policy, case plans should be signed by the family members who participated in developing it.

<sup>25</sup> See La. Ch. C. arts. 673-674; 45 § C.F.R. 1356.21; see also Child Welfare Information Gateway. (2018). Case planning for families involved with child welfare agencies. Washington, DC; U.S. Department of Health and Human Services, Children's Bureau, https://www.childwelfare.gov/pubPDFs/caseplanning.pdf.

<sup>26</sup> DCFS Policy 6-810 "Legally Mandated Case Plan" (August 17, 2020).

<sup>27</sup> Id.

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o **Family Team Meetings (FTM):** FTMs are facilitated by DCFS and are important because FTMs are where case planning occurs for the family. It is also where parents and children and other stakeholders and supports give valuable input on the case plan, including the services and assistance to be provided or needed. FTMs should include all parents, foster caregivers, CASA, children, and attorneys for the children and attorneys for the parents. Parents and children may permit others to participate in FTMs. Courts should ensure that an FTM was held prior to the Disposition Hearing and that the court has the most current case plan. It is recommended that the FTM be held as closely in time to the hearing as possible (but with enough time for filing the case plan 10 days in advance of the hearing) so that the court can approve the case plan before it is acted upon. Efforts to hold timely and meaningful FTMs support reasonable efforts findings to achieve reunification and/or permanency.

# (2) DISPOSITION COURT REPORT FILED BY DCFS:

### **PRACTICE TIPS:**

- o **DCFS Policy:** The Children's Code does not provide a specific article regarding the filing of a court report by DCFS for the Disposition Hearing. However, per DCFS policy, DCFS files a court report prior to the Disposition Hearing (similar to the requirements set forth in Articles 688 and 689 regarding Case Review Reports) to provide the court and parties with information needed at the Disposition Hearing for the court to make required findings. Some jurisdictions call these court reports "court letters," while others call them according to the hearing name (i.e., Disposition Report, Permanency Report, etc.). Filing the report 10 days in advance helps move the case forward and achieve timely permanency. Adequate representation is harder to achieve when reports or amendments are distributed the day of the hearing or even a few days before a hearing.
- o **Provide Copies:** In practice, DCFS provides a copy of the court report to counsel of record, CASA, and unrepresented parties, but there are no provisions in the Children's Code specifying this requirement. It is recommended that DCFS serve a copy of the court report along with the case plan (which is governed by Article 674 and specified above). If the information provided in the report is considered by the court, there are due process concerns if parties are not able to review it prior to the hearing.
- o **Content:** The content of the court report will generally include efforts to assess relatives or other individuals for potential placement, the current placement of the child, conditions for return of the child to his/her home, current information about how the child is doing, updates on visitation, proposed Dispositional alternatives with reasons, and the recommended case plan goal. The court report may also have multiple attachments, including the <u>Foster Caregiver Progress Form</u> if the foster caregivers providing care for the child chose to submit the form to DCFS prior to the Disposition Hearing. Other attachments may include the <u>Family Connections Form</u> and <u>Circle of Influence Form</u> (See the <u>Appendices Benchbook Section 12</u>). For more information see the Department of Children and Family Services Disposition Court Report Template in the Appendices of Disposition Hearing Benchbook Section 8. <u>IMPORTANT</u>: Use of the DCFS Court Report templates provided in this Benchbook for Disposition Hearings, Case Review Hearings, and Permanency Hearings are being implemented in a phased-in approach across the State.
- o **Response:** The Disposition Chapter in the Children's Code does not discuss submission of the court report and, thus, does not mention filing a response to this report. As allowed by Article 691 concerning the Case Review Report, parties should be given the opportunity to file a written response to the court report prior to the Disposition Hearing as long as the response is submitted to counsel of record and any unrepresented party at least 5 days prior to the Disposition Hearing.
- o **Timing of Response:** Court reports are not always timely filed. The court has discretion to allow a response later than 5 days prior to the hearing when the filing of the court report is delayed and/or when it is in the best interest of the child.

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# (3) COURT REPORT FILED BY CASA:

- **FILING:** If the court has appointed CASA, the CASA program shall submit reports to the court. See the <u>CASA Court Report Template</u> in the <u>Appendices Benchbook 12</u>.
- **DISTRIBUTE COPIES:** CASA shall distribute a copy of such reports prior to or at the time it is submitted to the court, to:
  - · All counsel of record;
  - · Any unrepresented party; AND
  - · DCFS.

### **PRACTICE TIPS:**

- o **Timing of Submission:** The Children's Code does not provide how many days before the Disposition Hearing that the court report should be filed with the court. However, it is recommended that it be submitted within the same timeframe as required for the DCFS Case Review Report (i.e., at least 10 days prior to the Disposition Hearing).
- o **Exception to Submission:** CASA reports may be subject to a Protective Order (PO) upon the request of the CASA volunteer, a party or party's attorney, or by the action of the judge. If a PO is contemplated, the request should be made at the time the report is filed.
- o **Mode of Distribution:** This article permits a more informal distribution of the court report. Each court by local rule may determine how counsel of record, DCFS, and unrepresented parties receive copies of CASA reports.

# (4) PREDISPOSITION INVESTIGATION AND REPORT:

- **FILING:** Following Adjudication, the court may have ordered a Predisposition Investigation and that a written report of the investigation and findings be submitted to the court prior to the Disposition Hearing.
- ADVISE OF THE FACTUAL CONTENTS AND CONCLUSIONS: The court shall advise the Petitioner, counsel for the child, and counsel for the parents of the factual contents and the conclusions of the Predisposition Report and any other reports considered by the court.

### **PRACTICE TIP:**

o **No Specific Timing for Filing:** Unlike the case plan, the Children's Code does not provide how many days before the Disposition Hearing that the Predisposition Report must be submitted to the court if DCFS conducted the Predisposition Investigation. However, it is recommended that it be submitted within the same timeframe as required for the case plan (at least 10 days prior to the Disposition Hearing).

### **HELPFUL GUIDANCE:**

- o **Purpose of Predisposition Investigation and Report:** One of the purposes of the Predisposition Investigation is to evaluate the various possibilities for the child's placement, custody, or guardianship, including the alternatives enumerated in Article 681. The investigation shall include the circumstances, needs, and social history of the child and his/her family and the circumstances surrounding the factual allegations of the Petition. It shall also assess whether the child has an established and significant relationship with a parent, grandparents, sibling, or other relative which should be preserved in the best interests of the child. If so, DCFS shall include in the case plan arrangements for the child's continuing contact with such individuals while the child is in foster care.
- o **Contact:** Contact includes in-person visitation as well as more limited arrangements such as phone calls, Zoom or FaceTime visits, texts, letters, emails, or simply the exchange of personal information.

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# (5) PHYSICAL AND MENTAL EVALUATIONS OR EXAMINATIONS:

- **FILING:** Following the Adjudication, the court can order that physical and/or mental health evaluations and examinations be conducted in accordance with Article 669 on parents and/or children if they may be helpful in determining a fair and just Disposition.
- **PROVIDE COPIES TO COUNSEL OF RECORD:** If the court has ordered a mental examination of the child or his/her parents pursuant to Article 669, the court shall provide the Petitioner and counsel for the child and parents with copies of reports submitted in connection with such mental examinations.

### **PRACTICE TIPS:**

- o **No Specific Timing for Filing:** Unlike the case plan, the Children's Code does not provide how many days before the Disposition Hearing that the physical and/or mental health evaluations and examinations should be submitted to the court. However, it is recommended that they be submitted within the same timeframe as required for the case plan (at least 10 days prior to the Disposition Hearing).
- o **Physical Examinations:** It may or may not be an oversight in the Children's Code, but Article 670(B) does not include "physical examinations" even through Article 669 allows the court to order them prior to the Disposition Hearing. It is likely that physical examinations should also be submitted in the same manner as mental examinations.

### OVERALL GUIDANCE:

- Importance of Timing: Timelines for submitting case plans and court reports are not followed in some jurisdictions, but they should be. Filing the case plan and court report at least 10 days in advance of the hearing is important for moving the case forward and achieving timely permanency. Parties have the right to review the case plan and report and respond to them (see above); however, they will not be able to respond if DCFS does not timely file these documents and provide copies to counsel of record, unrepresented parties, and CASA (if appointed). Adequate representation is harder to achieve when reports or amendments are delayed, since such delays can make it impossible for counsel to follow up on the information provided and consult with their clients.
- **Local Court Rules and Orders:** When the Children's Code does not provide a specific procedure on timing or mode of service, such as for court reports, CASA reports, or physical examinations, courts may want to consider setting those requirements by local court rule. Additionally, the court can include such in its written Orders.

# **B. TIMING AND CONTINUANCES**

ARTICLE 678, LA. SUP. CT. RULE XXXIII, SEC 1-2

(1) **TIMING:**<sup>28</sup> The Disposition Hearing may be conducted immediately after the Adjudication but shall be held within 30 days following the Adjudication. See Article 114 for more information about time computation.

### **HELPFUL GUIDANCE:**

o **Adoption and Safe Families Act (ASFA):** One of the major reform goals of ASFA is to expedite court proceedings so that earlier determinations affecting the child's health and welfare occur.

<sup>28</sup> 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) CONTINUANCES:

- · Requirements:
  - The court may grant or restrict a requested continuance of the Disposition Hearing:
    - After notice to the opposing party;
    - · Upon a showing of good cause; AND
    - If in the best interests of the child.
  - If a continuance is granted, the court shall:
    - Issue a written order:
    - · Identifying the mover; AND
    - · Reciting the particular facts justifying the continuance.
- 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 Judgment of Disposition. See <a href="https://www.lasc.org/children\_families/timelinessreport.pdf">https://www.lasc.org/children\_families/timelinessreport.pdf</a> 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.

**PRACTICE TIPS:** 

- o **Good Cause for Continuance:** For example, if a previously ordered evaluation is not completed, this may be good cause for a continuance.
- o **Contempt:** The contempt articles (Articles 1503 et seq.) are always available to the court, if appropriate, when investigations and/or evaluations previously ordered to be completed prior to this hearing have not been completed on time, or the case plan is unnecessarily delayed.

# C. APPEARANCES

ARTICLES 607-8, 623, 679, 684

(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. The court may want to consider having one or more of these agencies represented at the hearing. A multidisciplinary approach is especially critical for youth who may have mental health concerns, delinquency matters, and/or disabilities and may benefit from coordinated services and supports.

### **HELPFUL GUIDANCE:**

o **Privacy and Confidentiality:** 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.

### (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.<sup>29</sup> There must be ample time for legal interpreters to review pertinent legal documents with the party prior to the court proceeding.<sup>30</sup> Interpreters must be familiar with the case-related details to provide accurate, meaningful, and effective interpretation.<sup>31</sup>

- (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 Judgment 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.

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<sup>29</sup> 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 <a href="https://www.lasc.org/language\_access">https://www.lasc.org/language\_access</a> and <a href="https://www.lasc.org/District\_Court\_Rules2p=Title1">https://www.lasc.org/language\_access</a> and <a href="https://www.lasc.org/language\_access">https://www.lasc.org/language\_access</a> and <a href="https://www.lasc.org/language\_access">https://www.

<sup>30</sup> 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, <a href="https://www.interpretereducation.org">https://www.interpretereducation.org</a>

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.<sup>32</sup> 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.<sup>33</sup> Some courts provide a therapy dog to help emotionally support children in court.<sup>34</sup> The CASA volunteer (if appointed) or foster caregiver (if present) may also be a support to the child in court.

(4) PARENTS: Parents of the children are parties and shall be present at the hearing.

### **PRACTICE TIPS:**

- o **Effect of Nonappearance of Parent:** If a parent is absent, the hearing may only proceed if it is established on the record that the parent was served but is not in attendance or that efforts to serve the parent have been unsuccessful.
- o **Parent is Absent:** When a parent is absent,<sup>35</sup> the court shall enter findings regarding the diligent efforts made by the curator, DCFS, and others to locate that parent. In the absence of findings to the contrary, efforts to locate the parent shall be presumed sufficient. If the court determines that additional search efforts are needed, it shall specifically identify those efforts.
- o **Unidentified Father:** If a father is unidentified, it is not necessary to appoint a curator ad hoc for that parent. The father shall be considered unidentified if:
  - The biological father's name is not provided on the birth certificate;
  - · There is no presumed father; AND
  - No party to the proceedings or the mother, if not a party, is able to provide a first and last name of a putative father or alias sufficient to provide a reasonable possibility of identification and location.
- o **Incarcerated Parent:** To ensure the attendance of any parent who is incarcerated at the Disposition Hearing, 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 Disposition Hearing. 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.

<sup>32</sup> Gatowski, supra note 2, 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/ as does this video: https://www.youtube.com/watch?v=URA4WtXqu1M.

These articles provide more information about how therapy dogs have been used in courts: <a href="https://www.americanpress.com/news/local/juvenile-court-introduces-therapy-dog-program/article-%20f449e71c-3fc2-11e7-a03e-4b861db8938b.html">https://www.americanpress.com/news/local/juvenile-court-introduces-therapy-dog-program/article-%20f449e71c-3fc2-11e7-a03e-4b861db8938b.html</a> 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.

<sup>35</sup> La. Ch. C. art. 684(D). 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).

- 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.
- o **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:

- 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, 608, and 643).
- 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).<sup>36</sup>
- c. **State:** An assistant district attorney (ADA), an attorney the ADA designates, or a DCFS attorney (Bureau of General Counsel/BGC) representing the State should be present at the hearing.

# **PRACTICE TIPS:**

- o **Due Process:** Judges play an important role in helping to ensure due process for all parents and children in their courts.

  The child's attorney and the parent attorneys should zealously advocate for their clients whether they are present or not.
- o **Clients Consult with Attorneys:** Before the case is called, the judge should inquire whether counsel for the parents and counsel for the child had sufficient opportunity to consult with their clients, thus, ensuring due process for the family.
- (6) DCFS: DCFS staff member or representative should be present at the hearing.
- (7) CASA: May be present if the court appointed them.

<sup>36</sup> LA. SUP. CT. RULE XXXIII, PART III, SUBPART II.

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(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 Disposition Hearing. The court may permit the hearing to be held in the person's absence even if they were not properly notified. See Continued Custody Hearing (CCH) Benchbook Section 5 B(8) for more information.<sup>37</sup>

# (9) AUTHORIZED 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.

# D. NOTICE

ARTICLES 623, 679, 684, 42 U.S.C. § 675(5)(G), 45 C.F.R. § 1356.21(o)

The court shall determine if proper notices of the hearing were made to all parties, counsel of record, and foster caregivers, and enter required findings in the Order.

(1) PARTIES AND COUNSEL: Written notice of the date, time, and place of the Disposition Hearing shall be served and return made in the same manner as a Petition on all parties and also counsel of record at least 15 days prior to the hearing unless the parties have been notified in open court at a prior hearing. See <a href="Answer Hearing Benchbook Section 6">Answer Hearing Benchbook Section 6 D</a> and Articles 635.1-645 for more information.

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

- Notice and Right to Be Heard: The court shall determine whether DCFS:
  - Gave notice of the date, time, and place of the Disposition Hearing 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 at a 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.

# E. 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); (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 caregiver out of State 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

<sup>37</sup> See La. Ch. C. arts. 623 and 679; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

- Split Authority Regarding Parents: There is split authority amongst courts on the question of whether the ICPC is applicable when courts or DCFS seek to place a child in the custody of an out-of-State parent. The authors find no clear authority from Louisiana appellate courts on the issue, though courts that have refused to apply ICPC to out-of-State parents have persuasive reasoning. See In re R.S., 235 A.3d 914 (Ct. App. Md. 2020). In R.S., the court found that the plain language of the ICPC excludes parents from its scope. The language of the ICPC, as codified in Article 1610(B), states that the law applies to "placements in foster care or as a preliminary to possible adoption." Placing the child with a parent is not a foster care placement or a pre-adoptive placement. The plain language of ICPC would appear not to include placements with parents. Further, R.S. found that applying the provisions of ICPC to parents would be unconstitutional because parents have a fundamental liberty interest in the care, custody, and management of their children. The court in R.S. found that such a broad and unreviewable discretion would give the agency the power to effectively terminate a parent's relationship with a child with no judicial finding of unfitness and violate the parent's due process rights.
- **ICPC Regulations Regarding Parents:** The ICPC Regulations state that placements with parents are subject to the ICPC, except when:
  - a. A placement with a parent from whom the child was not removed: When the court places the child with a parent from whom the child was not removed, and the court has no evidence that the parent is unfit, does not seek any evidence from the receiving state that the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent, the receiving state shall have no responsibility for supervision or monitoring for the court having made the placement, OR
  - b. Sending court makes parent placement with courtesy check: When a sending court or agency seeks an independent (not ICPC-related) courtesy check for placement with a parent from whom the child was not removed, the responsibility for credentials and quality of the courtesy check rests directly with the sending court or agency and the person or party in the receiving state who agree to conduct the courtesy check without invoking the protection of the ICPC home study process.
  - Neither (a) or (b) would prohibit a sending state from requesting an ICPC. The ICPC language can be confusing because certain terms are defined by the ICPC Regulations and not by each individual State.
- Expedited Placement in Another State: Policy allows for DCFS in Louisiana (as the sending State) to request an expedited home study in the receiving State in certain circumstances. First, the potential placement must be a parent (although see discussion above regarding placement with out-of-State parents), stepparent, grandparent, adult uncle or aunt, adult brother or sister, or the child's guardian. Second, the child is not in the home of the parent from whom the child was removed. Third, at least one of the following is met: (a) unexpected dependency due to sudden or recent incarceration, incapacitation (unable to care for a child due to a medical, mental, or physical condition), or death of a parent or guardian; (b) the child sought to be placed is 4 years of age or younger, including older siblings sought to be placed with the same proposed placement resource; (c) the court finds that any child in the sibling group sought to be placed has a substantial relationship<sup>39</sup> with the proposed placement resource; or (d) the child is currently in an emergency placement.<sup>40</sup> For example, the court can request the expedited placement of a child from Louisiana into another State if the child's placement has been disrupted in-State and there is a possible placement resource out-of-State.
- Court's Role in Expediated Placement in Another State: The DCFS policy for an expedited request requires the court to sign an order with the finding that the expedited placement of a Louisiana child into another State is necessary; the court's contact information should be written in the order. The court should send the order to the local or regional office within 2 working days of the hearing. Under those circumstances, the court ordered request for DCFS to request expedited placement of a child from Louisiana into another State, can be submitted expediently, however there a number of reasons the receiving State may or may not be able to honor completion of the home study expeditiously. When the court orders an expedited request for the child's placement across State lines via the ICPC process, the ICPC home study requests are ordered and referred by the court on a proposed expedited placement basis. In addition, it is important to note that although a placement referral might appear to meet criteria, for an expedited home study, not all placements meet the expedited placement criteria.

<sup>38</sup> Troxel v. Granville, 530 U.S. 57, 65 (2000).

<sup>39</sup> DCFS Policy 11-260 "Special Case Situations in ICPC" (December 1, 2014) ("Substantial relationship" means the proposed placement has a familial or mentoring role with the child, has spent more than cursory time with the child, and has established more than a minimal bond with the child.).

• ICPC and Visits: For ICPC purposes, a visit is defined as a temporary stay to provide a child with a social or cultural experience of short duration. A visit shall not last longer than 30 days or, for a school-aged child, the period of a school vacation. ICPC approval is not required for visits. In advance of a visit, DCFS may request that the receiving State conduct a child welfare background clearance, criminal background check, and/or assessment of the caregiver's home. If appointed, CASA may also be able to conduct a courtesy walk-through of the home in the receiving State. The court, however, can approve an out-of-State visit without these requirements. If an ICPC request for a home study has been requested and it is incomplete at the time the child goes for a visit, the child is not allowed to visit beyond 30 days. After 30 days has elapsed and the child is still on the "visit," the visit will be deemed an illegal placement.

# F. EVIDENCE AND TESTIMONY

ARTICLES 424.5, 424.7, 622(D), 623, 631, 679-81, 683, LA. SUP. CT. RULE XXXIII, PART III, SUBPART II

- (1) **EVIDENCE:** The court may consider evidence at the Disposition Hearing which would not be admissible at the Adjudication Hearing, including hearsay. The court shall consider:
  - The report of the Predisposition Investigation (if ordered prior to the Disposition Hearing per Article 668);
  - The case plan;
  - Any reports of mental evaluation; AND
  - All other evidence offered by the child or the State relating to the proper Disposition.

### **PRACTICE TIPS:**

- o **Parents**: Children's Code Article 680 states that the court shall consider evidence offered by the child or the State but does not mention the parents. Presumably, this is an oversight, and the court must also consider evidence offered by parents because they are parties to the case.
- O Additional Evidence the Court Should Consider: The Children's Code articles regarding the Disposition Hearing do not require the court to consider the court reports submitted by DCFS and CASA or physical evaluations. However, the court should consider this information if it is timely submitted and properly before the court, and all parties were given the opportunity to review the reports or evaluations.
- (2) PARENTS: Parents may testify, confront and cross-examine adverse witnesses, and present evidence and witnesses.
- (3) **CHILDREN:** 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 his/her testimony in the matter.<sup>42</sup>
  - **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." <sup>43</sup>
  - **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.

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<sup>41</sup> See American Public Human Services Association, https://aphsa.org/AAICPC/AAICPC/icpc\_faq\_2.aspx.

<sup>42</sup> LA. SUP. CT. RULE XXXIII, PART III.

<sup>43</sup> Watermeier v. Watermeier, 462 So. 2d 1272, 1275 (La. App. 5th Cir.), cert. denied, 464 2d 301 (La. 1985).

# **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, placement, services, case plan, etc.).
- o **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, mental health and educational needs and identify any gaps in services needed by the child.

(4) FOSTER CAREGIVERS PROVIDING CARE FOR THE CHILD: The court shall solicit and consider information regarding the care and treatment <sup>44</sup> of the child from any foster caregiver providing care for the child who appears for the Disposition Hearing. <sup>45</sup>

### **PRACTICE TIPS:**

- o Valuable Information to Consider: The court should value the role of the child's daily caregivers and the insight they can provide to the court about how the child is doing and what he/she needs. Because of their day-to-day care of the child, foster caregivers have useful information that the court, DCFS, CASA, 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 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 and/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 hearing. 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 Hearing:** In accordance with State and Federal law, if the foster caregiver attends the hearing, the court shall 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 from parties and evidence is presented, if another party has not called on the caregiver to speak, 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.<sup>46</sup>

<sup>44</sup> 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."

<sup>45</sup> See La. Ch. C. arts. 623 and 679; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

<sup>46</sup> Id.

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**(5) CASA:** CASA (if appointed) may be called as a witness in the proceedings by any party or by the court and may request of the court the opportunity to appear as a witness.

### **PRACTICE TIP:**

- o **Recommendations for Permanency and Services:** Judges should consider CASA's recommendations for permanency and services necessary for the child. If that information is not included in the CASA report, the court should ask the CASA volunteer for those recommendations and reasons for them. All parties should have the opportunity to examine CASA's permanency recommendations.
- **(6) ANY PERSONS OR RELATIVES OF THE CHILD:** Parties may call any persons or relatives being considered and/or seeking to be considered for provisional (i.e., with supervision of DCFS) or permanent custody or guardianship as witnesses.

## **HELPFUL GUIDANCE:**

- o **Dispositional Alternatives:** One of the main purposes of the Disposition Hearing is for the court to consider the dispositional alternatives for the child. Thus, it is likely that parties will need to call persons to testify regarding the possible alternatives.
- o **Petition for Provisional Custody or Permanent Custody:** Prior to the Adjudication, Article 631 allows for any person, including a relative of the child, to Petition the court for the provisional or permanent legal custody of the child. 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.
- o **Timing:** The Children's Code is not clear as to when the court should review this matter. The request is likely meant to be decided at Disposition because custody of a child involved in a CINC case is generally not ruled upon unless and, until, the case goes to Disposition. Thus, if a relative or other individual has filed a Petition for the child's custody, the resolution of that claim is properly reserved for the Disposition Hearing. See also the Authors' Notes for Article 666.
- o **Provisional versus Permanent:** It is important for judges to consider the consequences of granting provisional versus permanent legal custody of a child. If provisional custody is granted, the court should continue holding review hearings until permanent custody is resolved. If permanent legal custody of a child is granted to a person, the CINC case and DCFS involvement would end, and, thus, the court case would be closed. This is important for courts to keep in mind when making these decisions, especially if supervision, services, and/or supports would still benefit the child and/or family.

## (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. DCFS staff members 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).

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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.<sup>47</sup>
- o **Exemption of Witnesses:** 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.<sup>48</sup> 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.<sup>49</sup> Judges must create an environment where parents and children are treated with respect, patience, dignity, courtesy, and as part of the problem-solving process.<sup>50</sup>

# G. JUDGMENT OF DISPOSITION

ARTICLES 681, 683-4, 686

- ESSENTIAL JUDICIAL FINDING REMOVAL OF CHILD FROM PARENTS' CUSTODY: If the court finds that the child's welfare cannot be adequately safeguarded without a removal from his/her parents, the court can order that the child be removed from his/her home (Article 682). The child's health and safety shall be the paramount concern in the court's consideration of removal. Federal law only authorizes removal of a child from his/her home upon a judicial finding that remaining in the home is contrary to the child's health, safety, and welfare and that a temporary removal is in best interest of child. This finding must be child specific and documented and signed and dated by the judge in the first written court order sanctioning removal. DCFS risks losing Title IV-E funding for the child's entire stay in foster care if the child is removed from the home and placed in DCFS custody without this judicial finding.<sup>51</sup>
  - **First Court Order Removing Child:** Federal law requires that the judge make written, individualized findings of fact as to each child, and explicitly document in the court order signed and dated by the judge, the necessity to remove each child to safeguard his/her welfare, which shall include:
    - The continuation of the child in the home of his/her parents is contrary to the child's health, safety, and welfare; AND
    - Temporary removal from the parents and placement in custody of a suitable individual, suitable relative, or DCFS would be in the best interest of the child

<sup>47</sup> Id.

<sup>48</sup> Gatowski, supra note 2, at 68.

<sup>49</sup> Id.

<sup>50</sup> Gatowski, supra note 2, at 16.

<sup>51</sup> See 45 C.F.R. § 1356.21(c); 42 U.S.C. § 472(a)(2)(A)(ii); 42 U.S.C. § 479(B); see also Child Welfare Policy Manual, Section 8.3A.6, https://www.acf.hhs.gov/cwpm/public\_html/programs/cb/laws\_policies/laws/cwpm/policy\_dsp\_pf.jsp?citID=37

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- **Separate Findings for Each Child:** If the contrary to welfare findings do not apply to all children in the case, then the judge must make separate findings for each child in the Judgment.
- ESSENTIAL JUDICIAL FINDING DISPOSITION OF CHILD: The court shall impose the least restrictive Dispositional alternative enumerated in Article 681 consistent with the circumstances of the case, health and safety of the child, and the best interest of society. The child's health and safety shall be the paramount concern. If custody of the child is granted to anyone other than a parent, the court shall, whenever practicable, select an individual, agency, or institution of the same religious affiliation as the child or parents (See Article 683(D)).
  - (1) **THE NATURE OF THE DISPOSITION:** The court shall make the following written rulings and findings with reasons in the Judgment of Disposition and include in the minutes:
    - a. REMAIN OR REUNIFY WITH PARENTS:
      - Remain with Parents: If the child can remain safely in the custody of the parents, the court should order the:
        - Child remain in the custody of the parents, with or without continued supervision (i.e., DCFS supervision, inhome safety plan), PO, and/or other terms and conditions.
      - Reunify with Parents: If the child can be safely returned to the custody of a parent, the court should order the:
        - Child be returned to the custody of the parent or parents, with or without continued supervision with or without continued supervision (i.e., DCFS supervision, in-home safety plan), PO, and/or other terms and conditions.

### **HELPFUL GUIDANCE:**

- o **Least Restrictive:** When the State is forced to intervene on behalf of abused and neglected children and decide whether to place children outside the home, it must consider the emotional impact of separation on the child. If it can be safely implemented, the best plan is the least restrictive environment for the child, which is generally the child's own home. Federal legislation and extensive research support the notion that placement or custody with a relative, close or distant, or fictive kin is considered the least restrictive placement option when the child's own home is not possible.<sup>52</sup>
- o Child Welfare Assessment and Decision Making Model (CWADM): If the child has been removed from his/her parents and reunification is the case plan goal, 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 includes 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. A child is considered unsafe when: (1) there are identified threats of danger; (2) the child is vulnerable to a threat of danger; and (3) the parent or caretaker does not 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. At each hearing, the court should make the following inquires to assess what barriers if any exist, that make it unsafe for the child to return home:
  - Are the threats of danger to the child still present?
  - Is the child still vulnerable to those threats?
  - Does the parent or caretaker still lack the necessary protective capacities?

<sup>42</sup> U.S.C 675(5); National Conference of State Legislatures. (2019) The Child Welfare Placement Continuum: What's Best for Children?; and Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

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If the child can be safely returned to (or placed in) the custody of a parent or parents, the court should order the child be returned and, if needed for the child's protection and safety, could consider ordering an in-home safety plan, PO, and/ or other terms and conditions. Other terms and conditions could include ongoing supervision by DCFS and/or another agency. Courts should consider carefully whether parents can provide a minimally adequate standard of care for their child. All issues in the case do not need to be resolved before a child can return home. A child should be returned home when he/she can be safe in the home, which may or may not also require supportive services and protective supervision. <sup>53</sup> See Child Welfare Assessment and Decision Making Model (CWADM) Benchbook Section 11.

- o **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.
- o **Granting Custody to Parent:** In some cases, the court may not be returning the child to a parent's custody but rather "granting" custody to another parent who did not have custodial rights to the child and/or was not previously legally filiated with the child.<sup>54</sup>

### b. CONTINUE OR GRANT CUSTODY TO RELATIVE OR SUITABLE PERSON:

- Relative: If the child cannot remain with or return to the custody of a parent, the court shall order the:
  - Child remain in the continued custody, or be placed in the custody, of a relative, with or without continued supervision (i.e., DCFS supervision, in-home safety plan), PO, and/or other terms and conditions unless the court has made a specific finding made part of the record that such placement is not in the best interest of the child. See Article 683(B).
- **Suitable Person:** : If the child cannot remain with or return to the custody of a parent or custody cannot be continued or granted to a relative, the court shall order the child:
  - Remain in the continued custody, or be placed in the custody, of a suitable person, with or without continued supervision (i.e., DCFS supervision, in-home safety plan), PO, and/or other terms and conditions.

### **PRACTICE TIPS:**

- o **Inform Parents of Right to Modify Judgment:** If the child is removed from his/her parents and placed in the legal custody of a relative or individual, the court should inform the parents of their legal right to seek a Motion to Modify the Disposition per Articles 713-717.
- 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 relationship by marriage.
- o **Suitable Individual vs. Suitable Person:** Article 603(20) defines an "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. The Children's Code does not, however, define "suitable person." This is probably an oversight in the Children's Code, and the definition for an "other suitable individual" is likely equivalent to a "suitable person" in Article 681.

<sup>53</sup> Gatowski, supra note 2, at 229.

<sup>54</sup> Gatowski, supra note 2, at 214.

### **HELPFUL GUIDANCE:**

- 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." 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 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. Second care for the child well-being factors when placed with a relative.
- 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 or guardianship of the child to the sibling's parent if willing and 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 inclined to take custody to keep the siblings together.<sup>57</sup>
- o **Financial Support for Relatives or Individuals:** Relatives and other persons who are granted custody and/or guardianship 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). 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 (They can choose the higher of the amounts).<sup>58</sup>

<sup>55 42</sup> U.S.C. § 671(a)(29).

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, 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.asps; 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.

<sup>57</sup> 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, <a href="https://www.childwelfare.gov/pubPDFs/siblingissues.pdf">https://www.childwelfare.gov/pubPDFs/siblingissues.pdf</a>.

<sup>58</sup> See <a href="http://dcfs.louisiana.gov/page/grandparent-relative-caregiver">http://dcfs.louisiana.gov/page/grandparent-relative-caregiver</a> information. DCFS has legal and custodial information available on their website for kinship caregivers: <a href="http://dcfs.louisiana.gov/page/kinship-caregivers-legal-and-custodial-information-fact-sheets">http://dcfs.louisiana.gov/page/kinship-caregivers-legal-and-custodial-information-fact-sheets</a>.

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c. **GUARDIANSHIP TO NONPARENT:** If custody to parents or a suitable relative or person is not appropriate or available, the court has authority to grant guardianship of the child to a nonparent. Guardianship is governed by Chapter 19 of Title VI of the Louisiana Children's Code.

### **PRACTICE TIPS:**

- o Jurisdiction: The court shall retain jurisdiction to enforce, modify, or terminate guardianship. See Article 724.
- o **Authority of Guardian (Articles 116 and 718-724.1):** Guardianship means the judicial placement of a child under the duty and authority of a guardian to make decisions in matters having a permanent effect on the life and development of the child. A guardian has greater authority than a legal custodian and only slightly less authority than that exercised by a natural or adoptive parent. Guardian(s) are given legal authority over the child until the child turns 18 years of age, which includes: physical custody of the child; protecting the child; training and providing reasonable discipline for the child; providing food and shelter; enrolling and making educational decisions for the child; and, making medical decisions for the child.
- o **Permanent Placement:** Placement of a child with a guardian is a "permanent placement," eliminating further periodic case or permanency reviews. The Judgment of Disposition granting guardianship remains in force until the child reaches his/her 18th birthday unless another duration is set by the court or modified by law.
- o **DCFS No Longer Involved in Case:** Since DCFS is no longer involved once guardianship is granted, DCFS-provided services and supports will generally not be available to the family unless a DCFS Family services case is opened with the family.
- o **Modification:** Any party has the right to seek a modification of the guardianship judgment, as may be needed. The modification process is governed by Articles 713-717.
- o **Parental Rights:** Guardianship does not require that the parents' rights to the child be surrendered or terminated. Thus, guardianship could be useful in cases where, for example, a grandparent can care for the child, and adoption is not an option.
- o **Parent Contact:** In the Judgment granting guardianship, the court can specify the conditions regarding the parent's contact with the child. The court's authority to limit the frequency of visitation includes the authority to forbid contact with the parents altogether. If there is proof by clear and convincing evidence that parental contact would cause substantial harm to the child, contact can be constitutionally limited.<sup>59</sup>

# HELPFUL GUIDANCE:

- o **Parents' Obligation:** The parents still have an obligation to financially support the child even when guardianship of the child has been granted to someone else.
- o **Financial Support and Guardianship Subsidy:** There are certain circumstances where the guardian may be eligible to receive a guardianship subsidy from the State. If the relative or individual is interested in becoming the child's legal guardian, foster care certification must be completed (along with other DCFS requirements) to receive a subsidy after transfer of guardianship. The court may want to request updates on the status of the certification to ensure timely completion. The guardian may also be eligible for some of the financial support listed under <u>Continue or Grant Custody</u> to Relative or Suitable Person section above.<sup>60</sup>

d. **CONTINUE OR GRANT CUSTODY WITH/TO PRIVATE OR PUBLIC INSTITUTION (DCFS):** If custody to parents or custody or guardianship to a suitable relative or person is not appropriate or available, the court can order the child remain in the continued custody, or be placed in the custody, of a private or public institution (generally this means DCFS).

<sup>59</sup> La. Ch. C. art. 723, 2011 Comments (citations omitted).

<sup>60</sup> DCFS now has information and resources available on their website for kinship caregivers: http://dcfs.louisiana.gov/page/kinship-navigator.

# **PRACTICE TIPS:**

- o **Commit the Child:** When no institution, social agency, or association so licensed for care or placement of the child is available to the court, the court may commit the child to some other institution, social agency, or association which in the court's judgment is suitable for such child.
- o **Licensed:** If the court commits a child to a private institution or agency, it shall select one that has been licensed under State law if licensure is required by law for such an institution or agency.

### **HELPFUL GUIDANCE:**

- 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 plan. It should be a last resort for State agencies and courts charged with protecting children from harm. The court should hold DCFS accountable to seek all other dispositional 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 the child to relative or suitable person, 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 his/her current caregivers. Example 12.
- 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 a relative or suitable person and, in fact, 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.<sup>63</sup>
- o **Child Specific Certification:** DCFS provides "child specific" foster care certification for a relative or other individual with whom the child is placed or being considered for placement. The 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. If the relative or individual is interested in becoming the child's legal guardian, the certification would have to be completed (along with other DCFS requirements) to receive a subsidy after a transfer of guardianship. The court may want to request updates on the status of the certification to ensure timely completion.
- o **Court's Authority Concerning Placement:** While the court has the authority to change custody of the child, 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 is not in the child's best interest if the child is not placed with his/her siblings.<sup>64</sup>
- o **Court's Role in Placement:** If the child is in DCFS custody, the court should address the child's current placement to ensure that the child is safe, and to determine whether the child's health, educational, cultural, religious, and emotional needs are being met. This may include but is not limited to the following:
  - Ensuring DCFS has made reasonable efforts to place siblings together;65
  - Reviewing information regarding the child's well-being and overall adjustment to his/her placement and to school;

<sup>61</sup> See Church, Christopher. "Unnecessary Removals: The Most Unjust Adverse Childhood Experience." Children's Bureau Express. October 2019, <a href="https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=210&sectionid=2&articleid=5428; Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, <a href="https://www.childwelfare.gov/pubPDFs/placement.pdf">https://www.childwelfare.gov/pubPDFs/placement.pdf</a>; Children's Bureau, <a href="https://www.childwelfare.gov/pubPDFs/placement.pdf">https://www.childwelfare.gov/pubPDFs/placement.pdf</a>; Children and Families, Children's Bureau, <a href="https://www.childwelfare.gov/pubPDFs/planning.pdf">https://www.childwelfare.gov/pubPDFs/planning.pdf</a>.

pubPDFs/planning.pdf.

<sup>62</sup> Id

<sup>63 42</sup> U.S.C. § 671(a)(29).

<sup>64</sup> The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351).

<sup>65</sup> Ic

- Evaluating the specific services being provided to see if they are meeting the child's physical, emotional, and educational needs;
- Examining the steps DCFS is taking to ensure foster caregivers are following the "reasonable and prudent parent standard" and that the child has regular opportunities to participate in age- or developmentally-appropriate events such as sports, field trips, and overnight activities;
- Ensuring that all health and education information is up-to-date and that the child is receiving health and education services;
- Ensuring that the caregivers of a child with a trauma history have the specialized training and support needed for the placement to succeed;<sup>66</sup>
- Ensuring that a child's connections to his/her cultural heritage, religion, ethnicity, and traditions are preserved and promoted; AND
- Asking DCFS to explain how the placement is appropriate to prepare the child for his/her transition into the permanent placement (i.e., reunification, adoption, guardianship, custody with a relative, etc.).<sup>67</sup>
- e. **COMMIT TO PUBLIC OR PRIVATE INSTITUTION FOR MENTAL ILLNESS OR INTELLECTUAL DISABILITIES:** The court can commit a child found to have a mental illness to a public or private institution for persons with mental illness or intellectual disabilities per Article 683.

### **PRACTICE TIPS:**

- o **Cannot Require State to Pay:** The court cannot commit custody of the child to a private institution for persons with mental illness or intellectual disabilities and require the State to pay. See State in Interest of Sapia, 387 So. 2d 41 (La. Ct. App. 1980).
- o **Licensed:** If the court commits a child to a private institution or agency, it shall select one that has been licensed under State law if licensure is required by law for such an institution or agency.
- o **Commit the Child:** When no institution, social agency, or association so licensed for care or placement of the child is available to the court, the court may commit the child to some other institution, social agency, or association which in the court's judgment is suitable for such child.

# **HELPFUL GUIDANCE:**

- o **Mental Illness:** A child shall not be committed to a public or private mental institution or institution for persons with mental illness unless the court finds, based on psychological or psychiatric evaluation:
  - · That the child has a mental disorder, other than an intellectual disability;
  - The mental disorder has a substantial adverse effect on his ability to function; AND
  - The mental disorder requires care and treatment in an institution.

<sup>66</sup> Courts are encouraged to attend TBRI Fridays, sponsored by Crossroads NOLA, and encourage others to attend as well: https://crossroadsnola.org/tbri/.

<sup>67</sup> Gatowski, supra note 2, at 268.

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- o **Representation of Child with Mental Illness:** When the child is in the custody of DCFS, this finding shall not be made without the representation of the child by an attorney appointed from the Mental Health Advocacy Service, unless such attorneys are unavailable as determined by the director or the child retains private counsel who shall represent only the interest of the child. The Mental Health Advocacy Service's attorney so appointed shall continue to represent the child in any proceeding relating to admission, change of status, or discharge from the mental hospital or psychiatric unit. Upon modification of the Disposition to a placement other than a mental hospital or psychiatric unit, the Mental Health Advocacy Service's attorney shall be relieved of representation of the child.
- o **Intellectual Disabilities:** A child shall not be committed to a public or private institution for persons with intellectual disabilities unless the court finds, based on psychological or psychiatric evaluation:
  - · That the child has an intellectual disability;
  - · The intellectual disability has a substantial adverse effect on his ability to function; AND
  - The intellectual disability requires the care and treatment in an institution.
- f. **COMBINATION:** The court may make such other Disposition or combination of the above Dispositions as it deems to be in the best interest of the child.
- g. BEST INTEREST FINDING REQUIRED IF CHILD NOT PLACED WITH RELATIVE:
  - If the court does not return the child to his/her home or grant custody to a parent or place the child with a relative, the court shall:
    - · Make a specific finding that placement with a suitable relative is not in the best interest of the child; AND
    - Give specific findings, which shall be made part of the record of the proceeding (Article 683(B)).
- (2) **OUT-OF-STATE PLACEMENT:** If the court makes an out-of-State placement, the court shall provide specific written findings in the order as to why the placement is safe, appropriate, and in the child's best interest (Article 684(C)). See information about ICPC above.
- (3) **SET MAXIMUM DURATION:** The court shall set the maximum duration of the Disposition in the Judgment. A Judgment of Disposition shall remain in force only until a child reaches his/her 18th birthday, or may expire earlier by its own terms or if it is modified or vacated.

### **PRACTICE TIP:**

o **Judgment of Disposition:** The <u>Judgment of Disposition Template</u> has 2 boxes for the duration of the Disposition: One is for the duration to be until the child's 18th birthday unless sooner modified or terminated, and the "other" box is where the court would order a transition plan or other alternative duration of Disposition.

# HELPFUL GUIDANCE:

- o **Specific Term:** Often, the court will want to order that the Disposition remain in force until a child reaches his/her 18th birthday unless sooner modified or terminated by the court. In certain situations, it may be advisable for the court to set a specific term for the Disposition instead, such as when the court grants custody or guardianship to a relative or other suitable individual. Here are a few examples:
  - The court grants custody to the youth's basketball coach for 2 years; the coach is willing to care for the child while the parent serves out his prison sentence.

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•	An aunt from Arkansas has come down for the hearing. The court determines she is suitable. Since she has never
	met the child, who is 3 years old, it is advisable for the child to have some visits with the aunt before custody
	transfers to the aunt. Thus, the court can order a "transition plan," which includes visits of increasing frequency,
	and set custody to be transferred on a specific date after the transitional period.

(4) **SERVICES TO THE CHILD:** The court shall specify the agency, institution, or person to whom the child is assigned, including the responsibilities of any other agency, institution, or person having legal responsibility to secure or provide services to the child which the court has determined are needed.

# **PRACTICE TIP:**

- o **Identify Services:** The court is required to identify any services that the child needs and allocate responsibilities of both the legal custodian and any agencies (i.e., DCFS, LDH, OJJ, LDOE, Office for Citizens with Developmental Disabilities, etc.) to ensure that such services are in fact provided to the child.
- **(5) TERMS AND CONDITIONS:** The court should specify any other applicable terms and conditions that apply to the legal custodian.

### **PRACTICE TIPS:**

o **Transition Plan:** If the Disposition includes a change in custody, transfer of guardianship, or a move of any kind, judges should be cognizant of the impact the transition may have on the child. Judges should consider including a transition plan that is in the best interest of the child in the Judgment. DCFS policy recognizes that it is traumatic for a child to be moved from one caregiving setting to another even when the change is made in the best interests of the child or to achieve permanency for the child. When a move will occur, it is critical to the child's well-being, regardless of the reason, for judges to collaboratively strategize with all involved to reduce the trauma experienced by the child. DCFS has developed tools to try to minimize this trauma, including a guide for planful transitions. Transition plans can include multiple, extended visits, such as overnight visits as well as other additional contacts via Zoom, FaceTime, etc., to ensure the most positive experience possible for the child. These activities should occur both prior to the move and after the move to provide the child a less traumatic separation from previous caregivers and to enhance the connection to the new caregivers.

<sup>68</sup> See Touchpoints. Preparing Children for Transitions. Milwaukee, WI: Coalition for Children, Youth, Families, <a href="https://wifostercareandadoption.org/cms/assets/uploads/2017/10/touchpoints3.pdf">https://wifostercareandadoption.org/cms/assets/uploads/2017/10/touchpoints3.pdf</a>; Child Welfare Information Gateway. (2016). Reunification: Bringing your children home from foster care. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, <a href="https://www.childwelfare.gov/pubPDEs/reunification.pdf">https://www.childwelfare.gov/pubPDEs/reunification.pdf</a>; Child Welfare Information Gateway. (2018). Helping your foster care child transition to your adopted child. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, <a href="https://www.childwelfare.gov/pubPDEs/f\_transition.pdf">https://www.childwelfare.gov/pubPDEs/f\_transition.pdf</a>.

<sup>69</sup> DCFS Policy 6-300 "Guidelines for Selecting a Care Setting/Replacement Resource" (April 1, 2019).

<sup>70</sup> DCFS Policy 6-305 "Guidelines for Care Setting Decision Making for Children Under Age Six" (March 15, 2019).

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o **Reunification or Trial Placement:** It is important for judges to know that DCFS policy allows for a trial placement of the child with his/her parents if the home is determined to be safe, but there are still some transition concerns and/or items left to resolve. DCFS policy states that: "If trial placement back with the parent with the Department maintaining custody is in the child's best interest, it should not exceed 90 days as long as the child is safe, and the parent is progressing in his/her case plan. Trial placement should only be initiated when the parent's home is deemed safe." <sup>72</sup> In this case, the court would order that the child remain in DCFS custody, and DCFS could choose a "trial placement" for the child with his/her parents. The court could also order a transition period with a goal date for reunification. If the child is moved to the parent's home with DCFS retaining custody, the court can gain information at the next hearing about how the child and parent are doing in the home together (in such cases, the court should consider setting a hearing sooner than the timeline for Case Review or Permanency Hearings).

### OVERALL GUIDANCE:

- **Federal Requirement to Place Siblings Together:** 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. Thus, courts should require DCFS to show evidence that such efforts were made. <sup>73</sup>
- **Sibling-Type Relationship:** 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.
- Importance of Placing Full and Half Siblings Together: The child's significant relationships and bonds with another child with whom he/she has been raised should also be considered for placement (when the child is in DCFS custody), custody, guardianship, and visitation. The research shows that when siblings, including those the child considers 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. Unless contrary to their safety and well-being, supporting and sustaining the sibling bonds of children who have been placed in foster care or otherwise removed from their homes should be a priority for the child welfare system and the court.
- **Changes in Placement/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 changes for a child.<sup>76</sup>

<sup>72</sup> DCFS Policy 6-2000 "Planning for Exit from Foster Care Custody" (April 1, 2020).

<sup>73</sup> See 42 USC  $\S$  671(a)(31)(A) and B)).

<sup>74</sup> 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.

<sup>75</sup> Kernan, Emily. Keeping siblings together: past, present, and future. National Center for Youth Law, <a href="https://youthlaw.org/publication/keeping-siblings-together-past-present-and-future/">https://youthlaw.org/publication/keeping-siblings-together-past-present-and-future/</a>.

See Touchpoints. Preparing Children for Transitions. Milwaukee, WI: Coalition for Children, Youth, Families, <a href="https://wifostercareandadoption.org/cms/assets/uploads/2017/10/touchpoints3.pdf">https://wifostercareandadoption.org/cms/assets/uploads/2017/10/touchpoints3.pdf</a>; Child Welfare Information Gateway. (2016). Reunification: Bringing your children home from foster care. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, <a href="https://www.childwelfare.gov/pubPDFs/reunification.pdf">https://www.childwelfare.gov/pubPDFs/reunification.pdf</a>; Child Welfare Information Gateway. (2018). Helping your foster care child transition to your adopted child. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, <a href="https://www.childwelfare.gov/pubPDFs/f">https://www.childwelfare.gov/pubPDFs/f</a> transition.pdf.

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# H. REASONABLE EFFORTS FINDINGS

ARTICLES 672.1, 682, 684(C), 45 C.F.R. § 1356.21, 42 U.S.C. § 671(A)(15)

• **ESSENTIAL JUDICIAL FINDING** - **REASONABLE EFFORTS:** If the child has been removed from the custody of his/ her parents, the courts and DCFS have an ongoing reasonable efforts obligation under State and Federal law until the child is reunified with his/her parents or achieves permanency. DCFS has the burden of demonstrating the reasonableness of efforts they made 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 reasonable efforts findings specific to each child in its Orders, thus holding DCFS accountable. In all reasonable efforts findings, each child's health and safety shall be the paramount concern and should be based on the facts and circumstances of each individual case and child. <sup>77</sup>

# The court shall make the following written, separate, and individualized findings for each child in the Judgment:

- (1) If Removed <u>Prior to</u> Disposition: If a removal was made prior to Disposition, the court shall enter a finding in the Judgment of Disposition as to whether DCFS has made reasonable efforts to:
  - Reunify the parents and child; AND
  - In support of its determination, the court shall enter a brief description of what reunification efforts were made and why further efforts could or would not have shortened separation of the family.
- (2) If Removed At Disposition: If the child is being removed from his/her parents at the Disposition, the court shall enter a finding in the Judgment of Disposition as to whether DCFS made reasonable efforts to:
  - Prevent or eliminate the need for removal of the child from his/her home; AND
  - In support of its determination, the court shall enter a brief description of what preventative efforts were made and why further efforts could or would not have prevented the separation of the family.
- (3) **REASONABLE EFFORTS NOT REQUIRED:** If the court has made a judicial determination that reasonable efforts were not required per Article 672.1, it shall make a written, separate, and individualized finding in the Judgment that reasonable efforts were not required.
  - a. **Per Judicial Determination:** Per Article 672.1, at any time in a CINC proceeding when a child is in the custody of DCFS, a motion may be filed for a judicial determination that efforts to reunify the parents and child are not required. DCFS shall have the burden of demonstrating by clear and convincing evidence that reunification efforts are not required, considering the health and safety of the child and the child's need for permanency. Reasonable efforts to reunify the parents and child are not required if the court determines one of the reasons outlined in Article 672.1 are met.

# **PRACTICE TIPS:**

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."

See 42 U.S.C. § 671(a)(15)(E) and 672(a)(1);, 45 C.F.R. § 1356.21(h)(2), 45 C.F.R. § 1356.21(b)(2) and 1356.71(d)(1)(i)); See also Child Welfare Policy Manual, Section 8.3C.4, <a href="https://www.acf.hhs.gov/cwpm/public\_html/programs/cb/laws\_policies/laws/cwpm/policy\_dsp.jsp?citlD=59">https://www.acf.hhs.gov/cwpm/public\_html/programs/cb/laws\_policies/laws/cwpm/policy\_dsp.jsp?citlD=59</a> 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, <a href="https://www.scithbs.gov/index.cfm?event=website.yiewArticles&issueid=210&sectionid=2&articleid=5428">https://www.scithbs.gov/index.cfm?event=website.yiewArticles&issueid=210&sectionid=2&articleid=5428</a> ("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, <a href="https://www.childwelfare.gov/pubPDEs/reunify.pdf">https://www.childwelfare.gov/pubPDEs/reunify.pdf</a>.

- o **Prevent or Eliminate the Need for Removal:** Under Federal law, within the first 60 days of a child's removal from his/ her home, the judge shall make a finding as to whether DCFS did or did not exercise reasonable efforts to prevent or eliminate the need for removal of the child or that reasonable efforts were not required per applicable State or Federal law. 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 these reasonable efforts were not made initially, it is critical for the court to hold DCFS accountable going forward to making them within first 60 days of the child's removal.<sup>78</sup> Per State law, if the child is removed at Disposition, the court shall make this reasonable efforts finding in the Judgment of Disposition. 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.
  - **4 Reasonable Efforts Questions to Consider:** The judge should consider the following 4 questions when determining whether reasonable efforts were made to prevent or eliminate the child's removal:
    - (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, 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 a court-ordered safety plan or PO help?
    - (4) Can and will the parents or caretakers and child go live with a relative or other individual to remove the danger to the child? Would a court-ordered safety plan or PO help?
  - Examples of Preventing or Eliminating the Need for Removal Include (but are not limited to): A DCFS initiated In-Home Safety Plan, safety checks, home visits, referrals/services (i.e., childcare services, counseling, health-care services, behavioral health evaluation and treatment, parenting education or support services and training, civil legal services), court interventions (i.e., Temporary Restraining Order (TRO), PO, and/or court-ordered safety plan), etc.
- o **Reunify the Family:** When the goal is family reunification, DCFS should be held accountable for meeting its obligation to provide appropriate services to assist the parents in their effort to reunify with their child unless the court finds that reasonable efforts were not required per Article 672.1. The court must make a thorough inquiry and provide specific factual findings about the efforts DCFS is making and/or made to reunify the child with his/her parents and whether such efforts were reasonable. The court should identify any areas where DCFS efforts are inadequate and enter orders to address the inadequacies. State's determine at which hearing this finding must be entered into the Order.<sup>79</sup> Louisiana the Children's Code requires the reasonable efforts to reunify the family finding in the Judgment of Disposition and all Permanency Orders.
  - Examples of Reunifying the Family Include (but are not limited to): Conducting a thorough Dispositional alternative investigation, developing and/or updating the case plan with the parents, ensuring the case plan is reasonably related to achieving reunification, providing quality visitation time (or at least opportunities for them to take place) between the parents and the child, making diligent efforts to establish paternity/maternity, maintaining (or attempting to maintain) ongoing contact with the parents, helping (or attempting to help) parents achieve case plan goals and involving parents in the case planning process, assisting (or attempting to assist) parents in timely accessing appropriate and effective services and supports needed to address the conditions for the removal/safety concerns, conducting appropriate assessments with the family to identify safety concerns and ways to address them, facilitating FTMs with the parents, seeking court interventions (i.e., TRO, PO, and/or court-ordered safety plan), etc.
- o **DCFS Did Not Make Reasonable Efforts:** If the court finds that DCFS did not make reasonable efforts, this finding does not preclude the court's other findings and/or orders.
- o **Case Plan Goal:** The case plan goal (or permanency goal) should not be changed from reunification to adoption or guardianship until the court has made a determination per Article 672.1 that reasonable efforts to reunify the parents and child are not required. If the court makes this determination, the Permanency Hearing may be held immediately or shall be held within 30 days (See Article 702).

<sup>78</sup> Id.

<sup>79</sup> Gatowski, supra note 2, at 267

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# I. CASE PLAN CONTENT

ARTICLES 673, 675, 677, 685, 42 U.S.C. § 671(16), 42 U.S.C. § 675(1)

The case plan shall be designed to achieve placement in the least restrictive, most family-like, and most appropriate setting available; and in close proximity to the parents' homes, consistent with the best interest and special needs of the child. See the <u>Department of Children and Family Services Case Plan Template</u> in the <u>Appendices Benchbook Section 12</u>. The health and safety of the child shall be the paramount concern in the development of the case plan. If this is a DCFS case, the case plan shall at least include:

# (1) PLACEMENT:

- A description of the type of home or institution in which the child is placed, including a discussion of the child's health and safety and the appropriateness of the placement; AND
- If the placement is a substantial distance from the home of the parents or in a different State, the reasons why it is in the best interests of the child.

### **PRACTICE TIPS:**

- o **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. However, the court may disapprove the case plan per Article 677 and/or disapprove the placement chosen by DCFS per Article 672(A)(2).
- o **Shortage of Placements:** The fact that there may be a shortage of placements in Louisiana does not justify an assertion that it is in the best interest of the child to be placed a substantial distance from his/her parents' home or placed out-of-State.
- o **Long-Term Permanency:** Per DCFS policy, placement with a family willing to provide long-term permanency to the child should the child be unable to return to the parents must be a priority. Additionally, except in unusual situations, all children ages 5 and under should be placed in care settings capable of providing long-term permanency due to the young age and critical developmental needs of the child. This can be achieved when children are placed with relatives or when unrelated families are selected based on their willingness and ability to provide safe and long-term permanency.

# (2) CARE, SERVICES, AND ACTIVITIES:

- A plan for assuring that the child receives safe and proper care;
- That services are provided to the parents, child, and foster parents to improve the conditions in the parents' home, facilitate the safe return of the child to his own home or other permanent placement of the child, or both;
- Discussion of the appropriateness of the services that have been provided to the child under the plan; AND
- A plan for assuring that the child is afforded the greatest opportunity for normalcy through engagement in age or developmentally appropriate activities on a regular basis.<sup>80</sup>

# **HELPFUL GUIDANCE:**

o **Safety and Risk Assessment:** If a child is placed outside a parent's home, the court should determine the continuing necessity of an out-of-home placement at the hearing. At each hearing, the court should insist on a clear articulation of the current safety concerns keeping the child in care. The child should be returned home immediately once it is safe to do so regardless of whether the case plan is complete. Foster care is the safety plan of last resort. See <a href="Child Welfare Assessment and Decision Making (CWADM)">CHILD WELFARE ASSESSMENT AND MEMORY BENCHOOK SECTION 11 for more information.</a>

<sup>80</sup> See Preventing Sex Trafficking and Strengthening Act (2014), which established a normalcy provision for foster youth under the "reasonable prudent parent standard." Act, H.R. 4980; see also https://www.ncsl.org/research/human-services/preventing-sex-trafficking-and-strengthening-families-act-of-2014.aspx and https://www.americanbar.org/groups/public\_interest/child\_law/resources/child\_law\_practiceonline/child\_law\_practice/vol-35/october-2016/the-reasonable-and-prudent-parent-standard/.

- o **Assessing Services for Parents:** The following are important questions to ask when assessing services for the parents:
  - **Safety:** Does the case plan include tasks addressing changes in behaviors, commitments, and attitudes related to safety?
    - ▶ The case plan should be precise when detailing the expected outcomes and what parental behaviors must change.
    - Listing services people must attend, directing them to "follow all treatment recommendations," does not allow the court to measure progress, only to measure attendance or participation. An example of how to measure progress would be: "Alan will demonstrate an ability and willingness to delay his own needs to provide food, supervision, and attention for his daughter Kayla."
  - Threats of Danger and Protective Capacities: Does the case plan follow logically from the identified threats of danger and deficits in protective capacities in the home?
    - ▶ The case plan should lay out an effective and expedient strategy to equip parents to ensure the child's safety.

      The case plan should reduce threats of danger over time and increase protective capacity. For example, a case plan calling for the parent to "learn about child development" may fail if it does not address the specific threats of danger the child is facing and/or the protective capacities the parent is lacking.
    - ▶ Some parents must deal with their own experiences of being victimized to develop protective capacities.
    - ▶ Specific mental health issues may make a parent so ill-prepared for being protective that those issues must be addressed first.
- o **Foster Parents and Services:** While services are not necessarily directly provided to foster parents in the case plan, support is provided to foster parents to facilitate the provision of some services.
- o **Age-Appropriate Activities:** The child shall be consulted in an age-appropriate manner about his/her interests and the opportunities available to him/her.
- o **Normalcy:** Recognizing the greatest opportunity for normalcy lies in the day-to-day decisions affecting the child's activities, the child's caretaker should be supported in making those decisions through the use of the reasonable and prudent parent standard as set forth in La. R.S.. § 46:283.<sup>81</sup>
- o **Cultural/Religious Connection:** An aspect of case planning that is often over looked includes the need for cultural and/or religious connection and/or activities for children. The presence or absence of such activities may depend on the practices of the placement rather than based on the needs of the child. The court can make inquiries into this important part of some children's lives and determine whether the case plan adequately addresses these needs. For example, consider a child who has been raised as a member of a particular church, but the foster care placement does not practice any religion. The child may suffer by not continuing to attend church in this placement. How will the case plan address the need for the child to continue in this activity? Or, if a child has been raised without any religious practice and is placed in a home where the foster parents expect the child to attend church frequently, this could be very uncomfortable for the child. Thus, the court should assess DCFS's proposed plan to address the child's cultural and/or religious background.
- o **Educational Stability:** Children and youth in foster care represent one of the most vulnerable student subgroups in the country. 82 Studies find that children in foster care are much more likely to struggle academically and fall behind in school than their peers. 83 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

<sup>81</sup> See also https://www.americanbar.org/groups/public\_interest/child\_law/resources/child\_law\_practiceonline/child\_law\_practice/vol-35/october-2016/the-reasonable-and-prudent-parent-standard/.

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/educational-stability/">https://www.childwelfare.gov/topics/systemwide/service-array/education-services/meeting-needs/educational-stability/</a>; U.S. Department of Education and U.S. Department of Health and Human Services. (2016) Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care, <a href="https://resources.finalsite.net/images/v1535746984/tulsaschoolsorg/h07q5pxet7fifpizhzlm/FosterCareGuidance.pdf">https://resources.finalsite.net/images/v1535746984/tulsaschoolsorg/h07q5pxet7fifpizhzlm/FosterCareGuidance.pdf</a>.

<sup>83</sup> 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, <a href="https://chronicleofsocialchange.org/education/case-v-doe-major-implications-education-foster-youth-nationwide/29467">https://chronicleofsocialchange.org/education/case-v-doe-major-implications-education-foster-youth-nationwide/29467</a> ("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.").

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. 4 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 have the authority to appoint a "surrogate parent" to make education decisions for the child. Pursuant to the IDEA, a 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 interventions to meet the students' needs. MTTS or RTI requires school systems to implement academic 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.
- o **Trauma and Behavioral Health Screen (TBH):** It is DCFS policy for children in foster care and DCFS Family Services from birth to age 18 to receive trauma and behavioral health screening initially and every 6 months. DCFS utilizes the Trauma and Behavioral Health Screen (TBH) and when indicated by the TBH score, the agency will refer the child for treatment. DCFS usually provides updates in its court reports. The court may want to consider the appropriateness of and/or need for services in light of the results of the screening.

# (3) VISITATION/FAMILY TIME:

• A plan for visitation (also called "family time").

### **PRACTICE TIPS:**

o **Court's Authority Over Visitation:** The Children's Code articles regarding the Disposition Hearing provide that the court can either approve or disapprove the case plan. It does not state the court has the authority to change anything in the case plan. Although the plan for visitation between the child and his/her parents, siblings, and others is included in the case plan, Article 309 does give the court continued jurisdiction over visitation in all CINC proceedings.

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.").

- o **DCFS Requirements for Visitation:** The case plan should set out the visitation plan for the child with his/her parents, siblings (if not placed together or not in care), and others with whom the child has significant relationships (see below). DCFS policy sets minimum requirements for visitation/family time, which states:<sup>85</sup>
  - "The minimum requirements for visits between foster children and biological family are as follows, as long as such visitation is in the best interest of the child: Visits between parents and children shall occur at least every 2 weeks unless case circumstances prevent visiting or indicate otherwise. In the first 6 months of placement and the two months preceding an anticipated reunification date, every effort shall be made to hold visits more often and increase the length of visits...Documentation in the case record should include frequency and quality of parent and child visitation.
  - Visits between siblings should be offered at least monthly, and preferably more often, if appropriate for case circumstances.
  - When parents are incarcerated, and the reason for incarceration is not related to the child's abuse or neglect, then DCFS shall make exhaustive efforts to facilitate visitation between parents and their children in foster care.
  - If the child has established significant relationships with other relatives, such as grandparents, and it is in the child's
    best interest, these relationships should be preserved to the extent possible through continued contacts during
    foster care placement. These contacts should include visitation as well as other arrangements, such as email,
    telephone calls, letters, and the exchange of personal information, cards, or pictures.
  - If the child has established significant relationships with other individuals such as friends, teachers, church members, godparents, or others, every effort should be made to allow the child to have ongoing contact with these individuals as well."
- o **Visitation and Rights of Parents:** : If a child has been removed from his/her parents' custody and reunification is still the case plan goal, 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 **Court's Role in Visitation and Ongoing Obligation:** At the Disposition Hearing, one of the court's roles is to ensure the adequacy of the case plan, which includes preserving valuable relationships and connections that are in the best interest of the child by considering the frequency and type of visitation and if other visitation or contact is needed. Visitation planning and scheduling should be an ongoing assessment of the child's established and significant relationships with parents, grandparents, siblings, relatives, and other important individuals in the child's life. The safety and well-being of children should always be paramount in considerations of family time. Judges should ensure the plan for family time is in the best interest of the child, individualized, and age and developmentally appropriate for the child.
  - **Reunification:** As long as the permanent plan remains reunification, preserving and enhancing the parent-child relationship while providing for the safety and well-being of the child is crucial for many reasons (i.e., maintaining attachment, reducing trauma, providing ability to put parenting skills into practice, etc.), including the child's future transition back into the custody of his/her parents. Initiating or continuing visitation and/or contact with relatives or individuals is critical for the child's well-being.
  - **Permanency:** It is also important if reunification becomes no longer viable (i.e., if a child is placed with foster parents by DCFS) that visitation with relatives or other individuals who are being considered as a permanent placement for the child are included in the visitation schedule. For example, there may be a relative living out-of-State that could be a permanent placement for the child. Establishing and/or maintaining contact with that relative early on would be critical in lessening the child's difficulties adjusting if later moved to live with that relative.
  - **Frequency:** Although DCFS policy provides a minimum requirement for visitation, the court should consider ordering more frequent visitation than the minimum based on the best interest of the child.

<sup>85</sup> DCFS Policy 6-915 "Visitation and Continuing Contact with Biological Family" (September 3, 2020).

- **Unsupervised Visits:** Family time should be frequent, liberal, and presumed unsupervised unless there is a demonstrated safety risk to the child.
- Change in Circumstances: Anytime there is a change in the child's circumstances, placement, custody, and/or permanent plan, the court should consider if changes need to be made to the visitation schedule to better serve the best interest of the child. This may include increasing or decreasing frequency or lengths of visits, moving to less or more supervision, and adding or removing visits and/or contact with siblings, other family members, or significant individuals.
- **Methods of Contact:** The court should consider increasing contact through virtual and other means. Contact may include in-person visitation as well as more limited arrangements such as phone calls, Zoom or FaceTime, texts, letters, emails, or simply the exchange of personal information. For a considered discussion of visitation/family time, please see <u>Continued Custody Hearing (CCH) Benchbook Section 5 M.</u>86
- Visitation 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.

# (4) EFFORTS TO RETURN CHILD OR FINALIZE PLACEMENT:

- Documentation of the efforts DCFS is making to safely return the child home; OR
- Documentation of the efforts DCFS it making to finalize the child's placement in an alternative safe and permanent home in accordance with the child's permanent plan.
  - Adoption or Placement in Another Permanent Home: For children whose permanent plan is adoption or placement in another permanent home, this documentation shall include child-specific recruitment efforts such as the use of State, regional, and national adoption exchanges, including electronic exchange systems, to facilitate orderly and timely in-State and interstate placements.
  - **Guardianship:** For children whose permanent plan is guardianship, the documentation shall include the facts and circumstances supporting guardianship, including the reasons that the plan is in the best interest of the child and that reunification with a parent and adoption are not appropriate permanent plans. The documentation shall also address the suitability and commitment of the proposed guardian to offer a wholesome, stable home for the child throughout minority.
  - Alternative Permanent Living Arrangement: For children whose permanent plan is placement in the least restrictive,
    most family-like alternative permanent living arrangement, the documentation shall include the intensive, ongoing, and as
    of the date of the hearing, efforts made by DCFS to return the child home or secure a placement for the child with a fit and
    willing relative, including adult siblings, a legal guardian, or an adoptive parent.

### (5) ASSESSMENT OF RELATIONSHIPS:

- Assessment of the child's relationships with his/her parents, grandparents, and siblings, including a plan for assuring that
  continuing contact with any relative by blood, adoption, or affinity with whom the child has an established and significant
  relationship is preserved while the child is in foster care.<sup>87</sup>
  - **Preservation:** The preservation of such relationships shall be considered when the child's permanent plan is determined.

### **HELPFUL GUIDANCE:**

o **Maintaining Relationships:** This part of the case plan should be different from the visitation schedule. DCFS should be assessing the child's relationships with his/her parents, grandparents, siblings, and other individuals with whom the child has a significant relationship. This assessment is important for DCFS to conduct to support its recommendation to the court regarding the child's permanent plan. It is also critical in showing the "reasonable efforts" taken to preserve the quality of

<sup>86</sup> For more resources on visitation/family time, see: https://www.childwelfare.gov/topics/systemwide/assessment/family-assess/progress/visitation/.

<sup>87</sup> La. Ch. C. art. 675, 2001 Comment ("Maintaining these relationships is an important case work goal, especially during a time of insecurity while the permanent plans have not yet been finalized.").

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these relationships for the child, which goes towards reasonable efforts findings to achieve permanency. Courts should utilize this assessment to modify the visitation schedule (as stated above) and in consideration of the Disposition.

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# (6) YOUTH 14 YEARS OF AGE AND OLDER:

• When appropriate, the case plan shall include a written description of the programs and services that will help the child prepare to transition from foster care to independent living, i.e., "Youth Transition Plan" (YTP). See the <u>Department of Children and Family Services Youth Transition Plan (YTP) Template</u> in the <u>Appendices Benchbook Section 12</u>.

### **PRACTICE TIPS:**

- o **Federal Law Regarding Youth Transition Plan (YTP):** Pursuant to Preventing Sex Trafficking and Strengthening Families Act of 2014, the YTP shall be updated every 6 months. The development of the YTP, including its implementation, should be considered in reasonable efforts to achieve permanency for youth. Every child in foster care, age 14 and older, should be actively involved in the case planning. In addition, the child may select up to 2 individuals (excluding those normally on his/her case planning team, his/her foster parent, and case worker) to be involved in developing the case plan. See 42 U.S.C. § 673(b) and 675.
- o DCFS Policy Regarding Youth Transition Plan (YTP): According to DCFS policy, this plan is to be written, individualized, thorough, and developed in collaboration with the youth and any individual, department, or agency assuming his/her custody, care, or responsibility.88 The plan must "identify the programs, services, and facilities to be used to assist the child in achieving a successful transition and address the needs of the child including, but not limited to, education, health, permanent connections, living arrangements, independent living skills, and employment; for LGBTQ youth, LGBTQ programs and services should be identified."89 DCFS shall ensure that all records in its files relevant to securing needed services in the community in which the youth will live shall be immediately transmitted to the appropriate service provider.

# **HELPFUL GUIDANCE:**

- o **Reasonable Efforts Implications:** The development of the YTP, including the efforts to involve the youth in its development, and its implementation should be considered in reasonable efforts to achieve a permanent placement for the youth.
- o **Youth Engagement:** DCFS must provide the youth with assistance and support in developing a YTP that is personalized at the direction of the youth, includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports and employment services, and is as detailed as the child may elect. Courts should engage youth in court proceedings and encourage their participation.
- DCFS Disposition Court Report: The court report should provide more information about youth who are 14 and older, such as the youth's permanent connections and relationships to siblings not in care, and what the youth has learned from independent living classes.

### (7) OBLIGATION TO CONTRIBUTE:

• If the child has been committed to the custody of a person other than the parents, the case plan shall <u>recommend</u> an amount the parents are obligated to contribute for the cost of care and treatment of their child in accordance with Article 685.90

<sup>88</sup> DCFS Policy 6-810 "Legally Mandated Case Plan" (August 17, 2020).

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<sup>90</sup> La. Admin Code. tit. 67, Pt V, § 3501.

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# (8) TERMINATION OF PARENTAL RIGHTS:

• DCFS must provide documentation of the compelling reasons for determining that filing a petition for termination of parental rights would not be in the best interest of the child, when appropriate.

### **HELPFUL GUIDANCE:**

o **Authority to File TPR Petition:** See Articles 1004 and 1004.1 for the persons and agencies who have a legal right to file a petition to terminate parental rights (TPR), including the timing and grounds for which a TPR may or must be filed.

# J. CASE PLAN FINDING AND ORDER

ARTICLE 677, 42 U.S.C. § 671(16), 42 U.S.C. § 675(1)

- ESSENTIAL JUDICIAL FINDING AND ORDER- APPROVE OR DISAPPROVE CASE PLAN: The court shall approve or disapprove the case plan per Article 677, based on the arguments of the parties and evidence presented and enter written findings into the Judgment of Disposition. Depending on the Disposition, there may not be a case plan to approve (i.e., if grant guardianship, etc.).
  - (1) **APPROVE:** The court shall enter a written order in the Judgment of Disposition approving of the case plan and order parties comply therewith, if it:
    - · Protects the health and safety of the child; AND
    - Is in the best interest of the child.
  - (2) **NOT APPROVE:** If the court does not approve the case plan it shall enter specific written reasons for its finding in the Judgment of Disposition that the plan:
    - Does not protect the health and safety of the child; OR
    - Is not in the best interest of the child.

# **PRACTICE TIPS:**

- o **Specific Grounds:** The specific grounds upon which the child was adjudicated should guide the formation, implementation, and approval of the case plan.
- o **Joint Responsibility of Case Plan:** DCFS proposes the case plan but the court's role is to review and either approve or disapprove the case plan and order DCFS to revise it if needed. Court review should ensure the case plan includes elements designed to support increased protective capacities that are feasible within stated time limitations.
- o Safety and Risk Issues and Conditions of Return: The case plan should identify the safety and risk issues and conditions of the child's return before the court's involvement ends, including helping to enhance the parent's protective capacities to the identified threats of danger. It is paramount for the court to ensure the parents and child's involvement in the case planning process. The judge should carefully review the case plan and consider the arguments of the parties and evidence presented to determine whether the proposed services and other case plan activities address specific issues, are accessible, and are culturally and linguistically appropriate.
- o **Permanent Plan:** All case plan goals should include the action steps necessary to achieve the most appropriate permanent plan for the child.
- o **Court Does Not Approve:** The court is not authorized to revise the case plan itself. If the court does not approve the case plan, it should so find in the Judgment and direct DCFS to make the necessary revisions. Another court hearing should be scheduled for the court to approve or disapprove the revised case plan (sometimes referred to as a "Case Plan Review Hearing"). Best practice is not to wait until the Case Review Hearing to review the revised case plan. Otherwise, DCFS will not be able to implement the changes timely. Some courts return within 30 days or less days of the hearing to consider

- the revision. Per DCFS policy, DCFS will revise the plan and submit it to the court until it is approved. See also Article 700(A)(2). The court should set a deadline for DCFS to submit the revision.
- o **Set Deadline for Revising:** It is helpful to set a deadline for revising the case plan in the Judgment of Disposition to ensure that the children and parents receive supports and services in a timely manner.
- o **Resolve During Hearing if Possible:** However, best practice is to resolve any parts of the case plan not approved while still at court. This can be accomplished if a party moves to have the case plan amended during the hearing. If, after reviewing it, all parties agree to the amendments proposed, the judge can approve the amended case plan. If the case plan is amended and approved at the Disposition Hearing, the Judgment should clearly delineate the specific changes made and that the court approved the "amended" case plan.
- o **Child Not in DCFS Custody:** Even if the child is not in DCFS custody, there still may be a case plan developed that the judge needs to review (i.e., child is in custody of a parent, child is in custody of a relative, DCFS is supervising the family, etc.).

### **HELPFUL GUIDANCE:**

- o **Reasonable Efforts and Case Planning:** Case planning is an integral element of DCFS's burden of showing reasonable efforts have been made to prevent removal, reunify the family, and/or achieve permanency. Each case plan must specifically include a description of the services and supports offered and provided and the progress that has been made since the previous hearing to prevent removal of the child from his/her parents' custody, reunify the family if the child has been removed, or achieve permanency (if reunification is no longer the appropriate plan for the child).<sup>91</sup>
- o **Reasonableness of Case Plan:** The reasonableness of the case plan is critical to an accurate determination of the parents' willingness and ability to make the adjustments found necessary for the safe return of their child. 92 The case plan should be geared towards enhancing parental protective capacities, including but not limited to: changes in parental behavior that must be achieved; services to be provided to help achieve these changes; and the deadlines and respective responsibilities of each party, including DCFS, in providing services and achieving the case plan goal. The case plan should also identify any needs of the child and the services to be provided to meet those needs. Finally, the case plan should set forth the terms and conditions of visitation/family time with parents and siblings. The visitation schedule should also include in-person visits and other contact with relatives and important individuals to the child. The case plan must help the child maintain all these significant connections. In addition, if there are potential relative or fictive kin placements, visits would be critical to establishing or re-establishing relationships prior to placement. The court should take time to review the case plan to ensure that all parties understand it and what is expected of them.
- o **Concurrent Planning-Case Plan Goals:** The case plan will include a case plan goal (also referred to as permanency goal in DCFS policy). At the Disposition Hearing, the court should inquire as to the case plan goal DCFS is recommending. If the court does not approve the case plan goal, it may disapprove the case plan and order DCFS to revise the case plan. DCFS case plan goals may include reunification (including custody to one parent), adoption, custody to a relative, guardianship, and APLA (only for a child who is 16 or 17 years old) and a concurrent goal that includes any two of these options. Most case plans start with a concurrent goal of reunification and adoption. All case plan goals should include the action steps necessary to achieve the most appropriate permanent plan for the child.<sup>93</sup>
- o **Distinguishing Case Plan Goal and Permanent Plan:** While DCFS will set a case plan goal for the child when he/she enters foster care, the court will determine the permanent plan at the Permanency Hearing.
- o **Concurrent Planning-Reasonable Efforts and Timely Permanency:** According to DCFS policy, concurrent planning is the process of making efforts with a family to achieve more than one case plan goal for a child simultaneously. The concurrent planning process can be an effective means of securing more timely permanency for a child and reducing the time spent in DCFS custody. When concurrent planning is appropriate, both goals should be given equal effort by DCFS. To achieve permanency through any goal for the child, the case worker will practice full disclosure with the parents,

<sup>91</sup> See 42 U.S.C. § 1356.1; 42 U.S.C. § 675; Edwards, Leonard. (2014). Reasonable Efforts: A Judicial Perspective, https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=210&sectionid=2&articleid=5428.

<sup>92</sup> La. Ch. C. Article 684 Authors' Notes.

<sup>93</sup> See CW Policy 6-840 Permanent Plan Goal: Reunify with Parents or Principal Caretakers; CW Policy 6-802 "Case Plan Goal Establishment and Concurrent Planning" (October 1, 2019).

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child, and foster caregivers concerning all options for permanency for the child. This should include clarification as to when a concurrent goal is developed and when reunification will cease to be an option for the parents and the child.

# **K. ADVISEMENTS**

ARTICLES 309, 623, 682, 684

- (1) **PARENTS:** In all cases in which the child is removed from his/her parents' custody and assigned to DCFS, the court shall advise the parents of the following: (best practice is to include advisements in the written Judgment of Disposition):
  - The procedures governing the case plan, case review, and permanency review;
  - Their obligation to:
    - Cooperate with DCFS and comply with the requirements of their case plan;
    - Keep DCFS and their counsel apprised in writing of their current whereabouts, including address, cellular number, telephone number, and any other contact information, of the identity and contact information for an absent parent; and contact information for any relative or other individual willing to offer a wholesome and stable home for the child;
    - · Correct the conditions requiring the child to be in care; AND
    - Support their child, including their obligation to contribute to the care and treatment of their child as provided in Article 685.
  - That a petition to terminate their parental rights may be filed:
    - If the parent fails to comply with the case plan;
    - If the parent fails to make significant measurable progress toward achieving case plan goals; AND
    - If the parent fails to correct conditions requiring the child to be in care or on any other ground authorized in Article 1015.
- (2) **ALL PERSONS:** In all cases in which the child is removed from his/her parents' custody and assigned to DCFS, the court shall advise the parties and all person before the court of the following: (best practice is to include advisements in the written Judgment of Disposition):
  - The procedures governing the case plan, case review, and permanency review;
  - Their continuing responsibility to:
    - Notify DCFS and the court in writing regarding the whereabouts, including address, cellular number, telephone number, and any other contact information, of an absent parent and the identity and whereabouts, including address, cellular number, telephone number, and any other contact information, of any relative or other individual willing and able to offer a wholesome and stable hand stable home for the child; AND
    - Support the achievement of timely permanency for the child and the requirement that those persons advise DCFS and the court in writing of the whereabouts, address, cellular number, telephone number, and any other contact information, of all grandparents, all parents of a sibling where such parent has legal custody of such sibling, and all other adult relatives of the child.

# L. FURTHER FINDINGS AND ORDERS

ARTICLES 102, 309, 318, 533, 601, 627, 672, 674, 685, 42 § U.S.C. 671

The court may make additional orders in the best interest of child, such as:

### (1) PARENTS' CONTRIBUTION: 94

- a. **Findings and Order:** As part of any Judgment of Disposition committing a child to the custody of a person other than the parents, the court may order a parent to contribute to the cost of care and treatment of the child if:
  - The parent has been given a reasonable opportunity to be heard; AND
  - The court has considered the following factors:
    - The best interest of the child;
    - · The recommendation of DCFS;
    - The ability of the parent to pay;

<sup>94</sup> La. Admin Code. tit. 67, Pt V, § 3501.

- The obligation of the parent to support the child;
- · The needs of the child; AND
- Any other relevant factor.

### b. Manner of Payment:

- **DCFS Custody:** When the child is in DCFS custody, the payments by the parents shall be made directly to DCFS. Upon receipt, the payments shall be deposited in the State treasury (except when otherwise provided by Federal law). The payments are not designated for the specific child. If there is a default by the parent, DCFS may exercise all administrative and legal alternatives provided by law or regulation for enforcement.
- **Custody/Guardianship of Nonparent:** When a caretaker other than DCFS is providing care for the child, the payments by the parent shall be made according to the court's order. If there is a default by the parent, the caretaker, if receiving the contributions, or DCFS may proceed against the parent as provided by law for failure to pay.

### c. Relationship to Child Support:

- **Not Considered Child Support:** An order for parental contribution in accordance with Article 685 shall not be considered child support pursuant to Louisiana Revised Statutes § 9:315 et seq.
- **Do Not Order if Obligated to Pay Child Support:** The court shall not order a contribution in accordance with Article 685 if the parent is obligated to pay child support pursuant to Louisiana Revised Statutes § 9:315 et seq.
- d. **Termination of Order:** If a valid child support order has been signed in accordance with Louisiana Revised Statutes § 9:315 et seq., a previous order for parental contribution to the cost of care and treatment shall terminate by operation of law.

### **HELPFUL GUIDANCE:**

- o **Due Process:** : Article 675(B)(4) requires DCFS to recommend an amount for "parental contribution." Parental contribution in accordance with this Article shall not be considered child support pursuant to La. R.S. § 9:315 et seq. Article 685 allows the judge to determine and order the parental contribution. Article 685 ensures due process for the parents prior to the order, specifies the enforcement mechanisms available once the order is rendered, and distinguishes the parental contribution from child support. The court should ask DCFS whether there is a child support order. If a child support order has been established, an order for parental contribution shall not be made. Further, if a valid child support order is subsequently signed, a previous order for parental contribution shall terminate by operation of law (Article 675(D)). Failure of a parent to significantly contribute towards the child's care and support is one ground listed as a basis for TPR (Article 1015). Thus, it is critical that parents understand the consequences of failing to contribute per Articles 675(B)(4) and 685.
- o **Not Child Support:** Parental contribution is not the same as child support. Parental contribution is not sent to or processed by Child Support Enforcement (CSE) and should not result in legal collection proceedings by CSE.
- o **Referral to Child Support:** DCFS only refers parents to child support if the child is Title IV-E eligible. The child has to meet poverty guidelines to be Title IV-E eligible. If a child support order is established during the pendency of the CINC case, then DCFS will need to delete the required monthly contribution set forth in the case plan.
- o **Child Support Preferred:** Under Article 685, child support is to be preferred to parental contribution.
- Child Support Order: If during the pendency of the CINC case, a child support order is established, then DCFS should delete the required monthly contribution that is set forth in the case plan and the court should modify the Judgment accordingly.
- o No Obligation to Pay: Per DCFS policy, all parents shall be assessed for parental contributions unless:
  - There is an active Office of Juvenile Justice custody case;
  - There is an existing child support order;
  - Parental rights have been terminated;
  - · An adoption is pending;
  - A child is in a non-paid placement (i.e., relative placement);

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- · The parent has no income; AND/OR
- The parent receives social security benefits.
- o **Ability to Pay:** The DCFS procedure for calculating parental contributions is based on a percentage of the parents adjusted gross income. DCFS Title IV-E analysts utilize a formula to determine what the parent will pay if there is no child support order already in place. In its discretion, the court may modify the DCFS recommendation based upon the parent's ability to pay or other factors. DCFS may recommend that parental contributions not be ordered if good cause exists in a particular case. Examples of good cause include but are not limited to short-term foster care placements, pending adoption proceedings, cases of rape or incest, potential noncustodial parent placement, or imminent termination of parental rights.
- Poverty Implications: The court should be aware that many child welfare cases are inextricably linked to poverty. The
  court should be mindful that contributions to the cost and care of treatment may be a significant barrier to reunification
  when the family lives in poverty.<sup>95</sup>
- (2) FAMILY TEAM MEETING (FTM): 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.

# **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 it in the Judgment helps ensure FTMs are timely held. Without enough notice of the FTM date and time, some team members may have difficulty participating. FTMs should be conducted at least every 6 months.

# **HELPFUL GUIDANCE:**

- o **Purpose:** FTMs are facilitated by DCFS, and they are important because FTMs are where case planning occurs for the family. FTMs are where parents and children and other stakeholders and supports give valuable input on the services and assistance needed and to be provided.
- (3) **EDUCATION PLAN:** If the child is continued/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.

# (4) POTENTIAL PERMANENT PLACEMENTS: The court can order DCFS to:

- Explore all possible relative or individual caregivers (i.e., fictive kin, people who matter to the child, etc.) with results and/or updates on results to be presented at a future hearing;
- Initiate a child welfare background clearance, criminal background check, 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 a future hearing;
- Take steps necessary 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 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, <a href="https://www.childwelfare.gov/pubPDFs/racial\_disproportionality.pdf">https://www.childwelfare.gov/pubPDFs/racial\_disproportionality.pdf</a>; Ellis, Krista. "Race and Poverty Bias in the Child Welfare System: Strategies for Child Welfare Practitioners." ABA Child Practice Today. December 17, 2019, <a href="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/.">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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**(5) NOTIFICATION TO CHILD'S ATTORNEY:** If the child is in the custody of DCFS, the court can order that DCFS notify the child's attorney electronically or otherwise, immediately after a change of placement of the child occurs. Because of the due process implications, it is advisable that DCFS do so no later than 24 hours after the change of placement. Children must have access to their attorneys, and attorneys must have access to their clients. The notification shall include the address and contact number of the placement.

# **PRACTICE TIP:**

- o **Due Process:** The child's attorney must know how to contact their client, and the child must know how to contact his/her attorney. Otherwise, there will be due process implications. See Article 553: "A child shall have the right to communicate...with counsel at all times."
- (6) OTHER ORDERS: The court may make other orders related to maternity or paternity, PO, child's education, services, mental or physical health examinations, placement of the child when they are in DCFS custody (See Article 672(A)(2)), etc.

# (7) OTHER FINDINGS

• ESSENTIAL JUDICIAL FINDING - INDIAN CHILD WELFARE ACT (ICWA): Per ICWA, at every CINC hearing, the court shall ask each person whether they know or have reason to know that the child is a member of or eligible for membership in a Federally recognized Indian Tribe and a biological child of a member of a Federally recognized Indian Tribe. Further, the court shall advise all to inform the court if any of the above information is subsequently discovered. If the court knows or has reason to know, the court shall follow Articles 624, 624.1, 661.1. The court should also inquire as to DCFS's due diligence in locating and contacting the Tribe. Noncompliance with ICWA may result in an invalidation of the proceedings, including a subsequent adoption. See also the Indian Child Welfare Act (ICWA) Bench Card and 25 U.S.C. § 1901 et seq.

# M. ORDER OF NOTICES AND FUTURE HEARINGS

ARTICLES 424.7, 623, 674, 688-9

The court should also include the following in the Judgment of Disposition:

- (1) **FUTURE HEARINGS:** The parents of the child, all attorneys of record, a DCFS representative, and CASA be present at all future hearings.
- (2) CASE PLAN: DCFS shall file case plan with the court at least 10 days prior to the Case Review/Permanency Hearing(s) and upon filing shall provide copies to counsel by mail or email and unrepresented parties by certified mail or email if requirements of Article 674 are met.
- (3) **COURT REPORT FILED BY DCFS:** DCFS file its court report at least 10 days prior to the Case Review/Permanency Hearing(s) and provide copies to CASA, counsel, and unrepresented parties (Although Children's Code is silent on submission of the court report for the Permanency Hearing, DCFS policy requires court reports to be filed for hearings starting at Disposition).
- (4) **COURT REPORT FILED BY CASA:** CASA should file its court report prior to the Case Review/Permanency Hearing(s) and shall distribute a copy of such reports prior to or at the time it is submitted to the court, to all counsel of record, any unrepresented party, and DCFS.

# (5) SET MATTER FOR APPROPRIATE HEARINGS:

- Revised Case Plan or Status Hearing: Set if court did not approve the case plan or there are other issues that need to be
  addressed or resolved.
- **Initial Case Review Hearing:** Shall be set within 3 months of the Disposition if the child was removed before the Disposition or within 6 months if child removed at Disposition, but no more than 6 months after removal (or earlier upon motion per Article 692(B)).

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• Initial Permanency Hearing: Shall be held within 9 months after the Disposition Hearing if the child is removed before Disposition or within 12 months if the child is removed at Disposition, but no more than 12 months after removal (or earlier upon motion per Article 702(B)). However, if the court has made a judicial determination that reasonable efforts to reunify the family are not required per Article 672.1, a Permanency Hearing may be conducted immediately and shall be held within 30 days of the determination.

# (6) SERVICE OR NOTICE OF HEARINGS:

- Clerk to notify all parties of the date, time, and location of the hearing and that all parties of interest appear;
- Sheriff's Office to serve the parents with a summons commanding him/her to appear at court for the hearing;
- DCFS to provide notice to the parents of the date, time, and location of the hearing as well as the nature of the allegations;
- Notice of the hearing shall be made on counsel of record and CASA (if appointed); AND
- DCFS to provide notice to any foster caregiver providing care for the child of the date, time, and location of the hearing and that the recipient has the right to attend and be heard.
- (7) ARRANGEMENTS FOR ANY INCARCERATED PARENT: Be made to attend the hearing, either in person or remotely.

# **PRACTICE TIPS:**

- o Notice or Schedule Hearings in Open Court: The court may schedule future hearings and serve notice in open court.
- o **Scheduling:** When calendaring the next hearing, all parties, including the parents, should be asked if the scheduling works for them and, if not, find options for a different day/time.
- o **Schedule Earlier:** The timelines for the hearings are driven by ASFA. Courts retain the ability to schedule hearings to occur earlier than the maximum allowable timeframes and should do so whenever practicable and in the child's best interest. Best practice is to conduct review hearings a minimum of every 3 months. Even though the case plan is generally updated every 6 months (unless otherwise ordered sooner), holding these hearings every 3 months allows the court and parties to resolve issues with the case plan and keeps the case moving forward towards achieving permanency more expeditiously. The information should drive the timing of hearings.

# N. MODIFICATION OF DISPOSITION

ARTICLES 713-7

• The court may modify a Judgment of Disposition on its own motion or motion of the district attorney (DA), DCFS, the child, or his parents.

### **PRACTICE TIP:**

o **Same Docket Number:** If there is a motion to modify the Disposition, that should be filed with the same docket number as the original case. A motion to modify should not create a new case.

<sup>97</sup> See La. Ch. C. art. 603(22).

# O. CASE MANAGEMENT

# (1) ENGAGEMENT:

- Specifically, ask the 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 case workers 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 briefly with their attorneys after the hearing so that the attorneys can address immediate issues.

# (2) PREPARATION FOR 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.
- An attorney or the court is responsible for the completion of the Judgment of Disposition. See the <u>Judgment of Disposition</u>
  <u>Template</u> in the <u>Appendix</u>.
- All of the attorneys and unrepresented parties should review the Judgment of Disposition before the judge signs it to ensure it accurately reflects the proceeding.
- Time permitting, best practice is to sign the Judgment 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 Judgment of Disposition immediately following the hearing.

# P. POSSIBLE NEXT STEPS

ARTICLES 330-8, 700, 701-11, 710, 1004, 1004.1, 42 U.S.C. § 675(5)(E)(i)-(iii)

- (1) **HEARING TO APPROVE REVISED CASE PLAN:** If the court does not approve of the case plan (and the issues in the case plan cannot be resolved at the Disposition Hearing), the court must find that it does not approve of the case plan in the Judgment of Disposition and best practice is for the court to schedule another hearing for it to approve or disapprove the amended case plan (sometimes referred to as a "Case Plan Review Hearing"). It is not advisable to wait until the first scheduled Case Review Hearing to review the revised case plan. Otherwise, DCFS will not be able to implement the changes timely. Some courts return within 30 days or earlier of the Disposition Hearing to consider the revision.
- (2) **STATUS HEARING:** The court may want to set a Status Hearing if there are issues that need to be addressed or resolved. For example, if the child has recently moved to a new placement, the court may want to see how the child is adjusting sooner rather than waiting for the Case Review Hearing.
- (3) **CASE REVIEW HEARING:** The court should notify all parties in open court of the date and time of the first Case Review Hearing, which shall be set within 3 months of the Disposition if the child was removed prior to Disposition or within 6 months if the child was removed at Disposition, but in no case more than 6 months after removal. Case Review Hearings shall be held at least every 6 months until the child is permanently placed<sup>98</sup> (or earlier upon motion per Article 692(B)).

<sup>98</sup> La. Ch. C. art. 603(22).

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- (4) **PERMANENCY HEARING:** The first Permanency Hearing shall be set within 9 months after the Disposition Hearing if the child was removed prior to Disposition or within 12 months if removed at Disposition, but in no case more than 12 months after removal. These shall be held at least every 12 months until the child is permanently placed<sup>99</sup> (or earlier upon motion per Article 702(B)). However, if a judicial determination is made per Article 672.1, a Permanency Hearing may be conducted immediately and shall be held within 30 days of the determination.
- (5) **APPEAL:** Any person directly affected may appeal the findings or orders of the court. Appeal shall be taken within 15 days from the mailing of the notice of the judgment. See Article 332(A).

# HELPFUL GUIDANCE:

- o **Governing Law:** The appeal process in CINC proceedings is governed by Title III of Chapter 9 of the Children's Code (Articles 330-338). In CINC proceedings, an appeal may be taken only after a Judgment of Disposition. Timelines for appeals in CINC proceedings differ from timelines for appeals in the Louisiana Code of Civil Procedure.
- **(6) TERMINATION OF PARENTAL RIGHTS PETITION:** See Article 1004 and 1004.1 for the persons and agencies who have a legal right to file the petition to terminate parental rights (TPR), including the timing and grounds for which a TPR may or must be filed.

# **PRACTICE TIPS:**

- o **Court on Own Motion:** At any time, including in any hearing in a CINC proceeding, the court on its own motion may order the filing of a TPR Petition on any ground authorized by Article 1015 (Article 1004(A)).
- o **DCFS Shall File TPR Petition:** If a child has been in DCFS custody for 17 of the last 22 months, DCFS shall file and pursue to judgment a petition to terminate the parental rights (TPR) of the parent or parents. However, DCFS has discretion not to file a petition to terminate parental rights if DCFS has documented in the case plan a compelling reason why filing is not in the best interest of the child. The court's role is to hold DCFS accountable to showing such compelling reasons.
- o See also 42 U.S.C. § 675(5)(E)(i)-(iii) and 675(5)(F)(i)-(ii).



# APPENDIX

# **DISPOSITION HEARING**

La. Ch. C. arts. 678-686

B E N C H C A R D



**PURPOSE** 

Court shall make its post-Adjudication ruling regarding the Disposition (i.e., custody to parent, custody to relative/suitable person, guardianship to nonparent, custody to DCFS, etc.), address case plan and goal if required, and make reasonable efforts findings.

# **Prior to Hearing**

- ARTICLES 424.7, 668-70, 673-4, 676, 688-9
- (1) CASE PLAN: DCFS shall file at least 10 days before hearing; upon filing provide copies to counsel by mail/email and unrepresented parties by certified mail/email per Article 674. Any party may file written response.
- (2) DCFS COURT REPORT: DCFS policy requires reports beginning at Disposition, even though Children's Code is silent on submission; DCFS file at least 10 days before hearing with copies to counsel, unrepresented parties, and CASA.
- (3) **CASA COURT REPORT:** If appointed, CASA shall file before hearing; distribute copies per Article 424.7.
- (4) **PREDISPOSITION REPORT:** If previously ordered, shall be submitted to court prior to hearing.
- (5) PHYSICAL/MENTAL EVALUATIONS: If previously ordered, shall be submitted to court, Petitioner, and counsel.

# **Timing and Continuances**

- ARTICLE 678, LA. SUP. CT. RULE XXXIII, PART II, SEC. 1-2
- (1) **TIMING:** May hold immediately after Adjudication and shall hold within 30 days of Adjudication. See Article 114.
- (2) **CONTINUANCES:** Allowed with notice and good cause if in child's best interest and Order cites facts and mover. Court shall report continuance exceeding maximum allowed within 10 days to Louisiana Supreme Court, with reasons and copy of Judgment.

# **Appearances**

- ARTICLES 575, 607-8, 623, 679, 684
- (1) **ONLY ADMIT PERSONS WITH PROPER INTEREST/NECESSARY:** Including parents, child, attorneys for child and parents, DA/ADA/DCFS attorney (BGC), DCFS representatives, CASA, foster caregivers, and relatives/persons seeking or being considered for custody.
- (2) CHILDREN ARE PARTIES: 12 years or older, shall be present unless waived upon motion of child's attorney; include if waived or not in Judgment. Under age 12, shall be present upon request of child's attorney or court.
- (3) **PARENTS ARE PARTIES:** If absent, hearing may only proceed if established on record that parent served but not in attendance/efforts to serve have been unsuccessful; enter findings regarding diligent efforts by curator/DCFS/others to locate that parent. In absence of findings to contrary, efforts to locate parent shall be presumed sufficient; if determine additional search efforts needed, specifically identify those efforts. If incarcerated, verify writ/motion to guarantee parent's attendance filed and Order issued/served timely on facility.

(4) ATTORNEYS: Child shall have attorney appointed and present (Article 607); indigent and absent parents shall be provided representation (Articles 575 and 608) unless right waived by parent per Article 608.

### **ESSENTIAL JUDICIAL FUNCTION** | Assistance and Accommodations:

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

**PRACTICE TIP** | Foster Caregivers (Foster Parents, Pre-Adoptive Parents, and Relatives): Are not parties but have legal right to notice and opportunity to be heard at any hearing involving a child in their care. If they do not appear, DCFS shall report whether notice given/diligent efforts made to locate and notify caregiver; hearing may be held in their absence even if notice not given by DCFS. (Articles 623 and 679; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o)).

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

# **Notice**

- ARTICLES 623, 679, 684
- Court shall determine if proper notices of hearing were made to all parties, counsel, and foster caregivers; enter required findings in Judgment.

# **Evidence and Testimony**

- ARTICLES 424.5, 424.7, 622(D), 623, 631, 679-81, 683, LA. SUP. CT. RULE XXXIII, PART III, SUBPART II
- (1) EVIDENCE: Shall consider report of Predisposition Investigation, case plan (including Youth Transition Plan "YTP," if applicable), mental evaluations, other evidence offered.
- (2) **PARENTS/CHILDREN:** Right to testify, confront and cross-examine adverse witnesses, present evidence and witnesses.
- (3) **CASA:** May be called as witness by any party/court; may request opportunity to appear as witness.
- (4) RELATIVES/OTHER PERSONS: Parties may call as witnesses relatives/persons being considered/seeking to be considered for custody/guardianship.
- (5) FOSTER CAREGIVERS: Right to be heard regarding child in their care. If attend, court shall ask if they would like to speak regarding care and treatment of child (Articles 623 and 679; 42 U.S.C. § 675(5) (G); 45 C.F.R. § 1356.21(o)).

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

# **Judgment of Disposition**

ARTICLES 681, 683-4, 686

Court shall make the following written rulings and findings with reasons in the Judgment and minutes:

- (1) **NATURE OF DISPOSITION:** Court shall impose least restrictive Dispositional alternative enumerated in Article 681:
  - a. Remain/Reunify with Parent: If safe for child to be in custody of a parent, court should so order, with/without continued supervision (i.e., DCFS supervision, in-home safety plan), Protective Order (PO), and/or other terms and conditions.
  - b. Continue/Grant Custody to Relative/Suitable Person:
    If custody not returned/granted to a parent, court shall
    grant custody to relative unless make specific finding not
    in best interest of child. If not granted to relative, court
    shall consider a suitable person (i.e., family friend, teacher,
    coach, etc.). May order either with/without continued
    supervision, PO, and/or other terms and conditions.
  - c. Guardianship to Nonparent: Court has authority to grant guardianship of child to nonparent if custody to parents or relative/suitable person not appropriate; governed by Title VI of Chapter 19 of Children's Code.
  - d. Continue/Grant Custody to DCFS (Foster Care): If above dispositions are not appropriate/available, court can order custody of child to private/public institution (generally DCFS).
  - e. Commit to Institution for Mental Illness/Intellectual Disabilities: Court can commit child found to have mental illness to public/private institution for persons with mental illness/intellectual disabilities.
  - f. Combination: Court may make such other Disposition/ combination of above in child's best interest.
- (2) **OUT-OF-STATE PLACEMENT:** Make finding as to why placement safe, appropriate, and in child's best interest.
- (3) SET MAXIMUM DURATION: Disposition shall remain in force until child's 18th birthday, or may expire earlier by own terms or if modified/vacated.
- (4) SERVICES TO CHILD: Specify agency, institution, or person to whom child is assigned to secure/provide needed services to child, including, if appropriate, coordination with LDH, OJJ, LDOE, and/or other agencies.
- (5) **TERMS AND CONDITIONS:** Specify other terms and conditions applicable to legal custodian.

**ESSENTIAL JUDICIAL FINDING** | Disposition: Court shall impose least restrictive Dispositional alternative enumerated in Article 681 consistent with the circumstances of case, health and safety of child, and best interest of society; child's health and safety shall be paramount concern.

**ESSENTIAL JUDICIAL FINDING** | Contrary to Welfare: Per Federal law, if removing child from his/her home for first time at Disposition, court shall make a contrary to welfare finding in <u>first written court order</u> removing child. See <u>Disposition Hearing Benchbook Section G</u> and 45 C.F.R. § 1356.21(c).

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

**HELPFUL GUIDANCE** | Granting Custody to Parent: Court may "return" child to a parent's custody or "grant" custody to another parent who did not have custodial rights to the child and/or was not previously legally filiated with the child.

**HELPFUL GUIDANCE** | DCFS Involvement: When court returns child to his/her parents or grants custody to relative/individual, DCFS is generally no longer involved in the case. However, court can order DCFS continue to monitor/supervise family and/or provide services (i.e., DCFS Family Services).

**PRACTICE TIP** | Modification: If child is removed from parents and placed in legal custody of an individual, inform parents of their legal right to motion for Modification of Judgment per Articles 713-717.

**HELPFUL GUIDANCE** | Granting Guardianship: Is a "permanent placement," eliminating further periodic case or permanency reviews. Judgment remains in force until child reaches 18th birthday unless another duration is set by court/modified by law. Court shall retain jurisdiction to enforce, modify, or terminate guardianship. See Article 724.

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

**HELPFUL GUIDANCE** | Foster Care Certification/Subsidy: DCFS provides "child specific" foster care certification for relatives/individuals with whom child is placed or being considered for placement by DCFS and/or guardianship. Requires fewer classes than general foster care certification and allows relative/individual to receive board rate (monthly financial support) like a certified foster parent. If relative/individual is interested in becoming child's legal guardian, foster care certification must be completed (along with other DCFS requirements) to receive a subsidy after granted guardianship. Court may want to request updates on status of certification to ensure timely completion.

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

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

**PRACTICE TIP** | Religious Affiliation/Culture: If custody granted to anyone other than a parent, court shall, whenever practicable, select individual, agency, or institution of same religious affiliation as child or parents (Article 683(D)). Consider child's culture, heritage/customs, traditions, etc. as well in determining placement/custody options.

**HELPFUL GUIDANCE** | Specific Term: In certain situations, it is helpful for court to set a specific term for Disposition, such as when court grants custody/guardianship to a relative/suitable person.

# Reasonable Efforts (RE) Finding

ARTICLES 672.1, 682, 684(C), 45 C.F.R. § 1356.21, 42 U.S.C. § 671(A)(15)

If child removed, court shall make the following written, separate, and individualized findings for each child:

- (1) IF REMOVED BEFORE DISPOSITION:
  - a. DCFS Made RE to Reunify: Parents and child; provide brief description of what reunification efforts were made.
  - DCFS Failed to Make RE to Reunify: Provide brief description of further efforts that could/would have shortened separation of family and why. » This finding does not preclude court's other findings and/or orders.
- (2) IF REMOVED AT DISPOSITION:
  - a. DCFS Made RE to Prevent Removal: Of child from his/ her parents; provide brief description of what preventative efforts were made.
  - DCFS Failed to Make RE to Prevent Removal: Provide brief description of further efforts that could/would have prevented separation of family and why. » This finding does not preclude court's other findings and/or orders.
- (3) **RE NOT REQUIRED TO PREVENT REMOVAL OR REUNIFY FAMILY:** If a judicial determination was made prior to or at Disposition Hearing per Article 672.1 that DCFS was not required to make RE to reunify parents and child, include reason why RE not required in Judgment.

ESSENTIAL JUDICIAL FINDING | Reasonable Efforts: If a child is removed from their home, courts and DCFS have ongoing RE obligations under State and Federal law until child is reunified or achieves permanency. DCFS has burden of demonstrating the RE they made to: (1) prevent or eliminate the need for removal; (2) reunify the family; and/or (3) achieve timely permanency for the child. Court shall make these RE findings for each child accordingly in its Orders; thus, holding DCFS accountable. In all RE findings, each child's health and safety shall be paramount concern and should be based on facts and circumstances of each individual case and child. 45 C.F.R. § 1356.21 and 42 U.S.C. § 671(A)(15)).

**PRACTICE TIP** | Reasonable Efforts Not Required: DCFS should not change case plan goal (or permanency goal) from reunification to adoption, guardianship, or custody to relative in the case plan until the court has either made a RE to reunify finding or determination that RE to reunify were not required per Article 672.1.

# **Case Plan Content**

ARTICLES 673, 675, 677, 685, 42 U.S.C. § 671(16), 42 U.S.C. § 675(1)

# Court shall approve or not approve case plan, which if it is a DCFS case, shall at least include the following:

- (1) **PLACEMENT:** Appropriateness of placement; if substantial distance from parents, reasons why in best interest of child; placement shall be in least restrictive, most family-like setting available in close proximity to parents' home, consistent with best interests and special needs of child.
- (2) CARE, SERVICES, AND ACTIVITIES: Plan for providing services to parents, child, and foster parents to improve conditions in parents' home, facilitate safe return of child to own home or other permanent placement, or both; plan for child to receive safe and proper care and be afforded greatest opportunity for normalcy through age or developmentally appropriate activities.
- (3) VISITATION/FAMILY TIME: Ensure plan for visitation with parents, siblings (half-siblings and those the child considers siblings), relatives, and other important individuals, which shall include preserving child's valuable relationships and connections by considering frequency and type of visitation.
- (4) **EFFORTS TO RETURN CHILD/FINALIZE PLACEMENT:** Ensure documentation of efforts DCFS is making to safely return child home or finalize child's placement in accordance with permanent plan.
- (5) **ASSESSMENT OF RELATIONSHIPS:** Assess child's relationships with parents, grandparents, and siblings, and develop plan for assuring continuing contact with those whom child has significant relationships; ensure preserved while in foster care.
- (6) YOUTH 14 AND OLDER: Shall include written description of programs and services that will help youth prepare to transition from foster care to independent living, i.e., Youth Transition Plan (YTP).
- (7) **OBLIGATION TO CONTRIBUTE:** Shall <u>recommend</u> amount parents are obligated to contribute for cost of care and treatment of child in accordance with Article 685.
- (8) **TERMINATION OF PARENTAL RIGHTS (TPR):** If not filing for TPR, DCFS shall provide documentation of compelling reasons.

**PRACTICE TIP** | Paramount Concern: Health and safety of child shall be the paramount concern in development of the case plan.

**PRACTICE TIP** | Shortage of Placements: Does not justify an assertion that it is in the best interest of child to be placed a substantial distance from his/her parents' home or out-of-State.

**PRACTICE TIP** | Disapprove Placement: Judge cannot choose child's specific placement when he/she is in DCFS custody. However, court has authority to disapprove case plan, in whole or part, which includes child's placement. Judge has separate authority to disapprove placement chosen by DCFS when requirements of Article 672(A)(2) are met.

**PRACTICE TIP** | Reasonable and Prudent Parent: Recognizing greatest opportunity for normalcy lies in the day-to-day decisions affecting child's activities, child's caregiver should be supported in making those decisions through use of reasonable and prudent parent standard as set forth in La. R.S. § 46:283.

**HELPFUL GUIDANCE** | Child's Relationships: Maintaining child's relationships to minimize trauma is an important aspect of case work, especially during time of insecurity while permanent plans have not yet been finalized.

PRACTICE TIP | Youth Transition Plan (YTP): Per Federal law, YTP shall be updated every 6 months. Development and implementation of YTP should be considered in RE to achieve permanency for youth. Every child in foster care, age 14 and older, should be actively involved in case planning. 42 U.S.C. § 673(b) and 675.

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# **Case Plan Finding and Order**

ARTICLE 677, 42 U.S.C. § 671(16), 42 U.S.C. § 675(1)

After court considers content and implementation of case plan and any response filed, court shall:

- (1) **APPROVE:** If protects child's health and safety and in child's best interest; order parties comply therewith; OR
- (2) NOT APPROVE: In whole or part, including reasons why case plan does not protect child's health and safety or not in child's best interest; order DCFS to revise accordingly.
- » Depending on Disposition, there may not be a case plan to approve (i.e., if grant guardianship, etc.).

**ESSENTIAL JUDICIAL ORDER** | Approval of Case Plan: Court shall approve or disapprove case plan per Article 677, based on arguments of parties and evidence presented, and enter it into Judgment.

**PRACTICE TIP** | Specific Grounds: Upon which child was adjudicated should guide formation, implementation, and approval of case plan.

**PRACTICE TIP** | Case Plan: Case planning is an integral element of the RE requirement. Make sure case plan: (a) includes elements designed to support increased protective capacities feasible within stated time limitations; and (b) identifies safety and risk issues and conditions for return before court's involvement ends. Proposed services and other case plan activities should address specific issues and be accessible and culturally and linguistically appropriate. Paramount for court to make sure parents and child are involved in case planning process. 42 U.S.C. § 671(16), 42 U.S.C. § 675(1).

**PRACTICE TIP** | Disapprove Case Plan: Court not authorized to revise case plan. If court disapproves case plan, it should enter disapproval in the Judgment and direct DCFS to make necessary revisions. DCFS will revise plan and submit to court until approved. Set deadline for submitting revision. Ideally, issues can be resolved while still at court; party may move to have plan amended during hearing and if DCFS and parties agree, court can approve updated plan.

# **Advisements**

- ARTICLES 309, 623, 682, 684
- (1) **CONTINUED/PLACED IN CUSTODY OF DCFS:** Court shall advise parents:
- Of procedures governing case plan, case review, and permanency review;
- Of their obligation to: (a) cooperate with DCFS and comply with requirements of case plan; (b) keep DCFS and their counsel apprised in writing of their current whereabouts, including address, phone number, and any other contact information, of identity and contact information for an absent parent, and contact information for any relative/other individual willing to offer a wholesome and stable home for child; (c) correct conditions requiring child to be in care; and (d) support their child, including their obligation to contribute to his/her care and treatment per Article 685; AND
- That a TPR Petition may be filed if parent fails to: (a) comply
  with case plan; (b) make significant measurable progress toward
  achieving case plan goals; and (c) correct conditions requiring the
  child to be in care or on any other ground authorized in Article 1015.
- (2) CONTINUED IN CUSTODY: Court shall advise all parties and persons before court:
- Of procedures governing case plan, case review, and permanency review;

- 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/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 siblings, and all other adult relatives; AND
- Of their responsibility in achieving timely permanency for child.

# **Further Findings and Orders**

ARTICLES 102, 309, 318, 533, 601, 627, 672, 674, 685, 42 § U.S.C. 671

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

- (1) **PARENTS' CONTRIBUTION:** Parents contribute to cost of care and treatment of child per Article 685.
- (2) FAMILY TEAM MEETINGS (FTM): DCFS should propose tentative date for next FTM and court can provide notice and encourage participation.
- (3) **NOTIFICATION TO CHILD'S ATTORNEY:** DCFS must immediately notify child's attorney of change in placement (Article 553).
- (4) **POTENTIAL PERMANENT PLACEMENTS:** DCFS (a) explore all possible permanent placements with results/updates to be presented prior to or at next hearing; (b) initiate child welfare background clearance, criminal background check, and/ or assessment of home/home study on potential permanent placements; (c) take necessary steps for potential caregiver to timely complete foster care certification (i.e., to receive guardianship subsidy if applicable); and (d) initiate Interstate Compact on the Placement of Children (ICPC) process with any potential out-of-State placements.
- (5) OTHER ORDERS: Orders related to maternity/paternity, PO, child's education, services, mental or physical health examinations, placement when child is in DCFS custody (See Article 672(A)(2)), etc.

# ESSENTIAL JUDICIAL FINDING | Indian Child Welfare Act (ICWA): At

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

PRACTICE TIP | Parents' Contribution: Article 675(B)(4) requires DCFS to recommend amount for "parental contribution" (which is not child support per La. R.S. § 9:315 et seq.). Article 685 allows judge to determine and order parental contribution and ensures due process for parents prior to the order, specifies enforcement mechanisms available once order rendered, and distinguishes parental contribution from child support. Court should ask DCFS whether there is a child support order; if so, an order for contribution for cost and care shall not be made. If valid child support order is subsequently signed, previous order for parental contribution shall terminate by operation of law. Failure to significantly contribute towards child's care and support is one ground listed as basis for TPR (Article 1015). Thus, it is critical that parents understand consequences of failure to contribute per Articles 675(B)(4) and 685.

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# **Order of Notices and Future Hearings**

ARTICLES 424.7, 623, 674, 688-9

### Court shall also make the following orders:

- PARTIES, COUNSEL, DCFS, AND CASA: Be present at all future hearings;
- (2) **DCFS CASE PLAN:** Be filed at least 10 days before hearing; copies provided to counsel by mail/email and unrepresented parties by certified mail/email per Article 674;
- (3) DCFS COURT REPORT: Be filed at least 10 days before hearing; copies distributed to CASA prior to or at same time filed; served upon counsel by mail/email and certified unrepresented parties by certified mail/email per Article 689;
- (4) CASA COURT REPORT: Be filed before next hearing; copies distributed per Article 424.7;
- (5) SET DATES/TIMES FOR NEXT HEARING(S):
  - Revised Case Plan/Status Hearing: Set if court did not approve case plan or other issues to address or resolve;
  - Case Review Hearing: Shall be held within 3 months of Disposition if child removed before Disposition or within 6 months if child removed at Disposition; no more than 6 months after removal;
  - Initial Permanency Hearing: Shall be held within 9 months
    after Disposition Hearing if child removed before Disposition or
    within 12 months if removed at Disposition; but no more than 12
    months after removal; if judicial determination made per Article
    672.1, may be held immediately or shall be held within 30 days;
- (6) **SERVICE/NOTICE OF HEARINGS:** Service and notice be made on parties, counsel, CASA, and foster caregivers; AND
- (7) ARRANGEMENTS FOR ANY INCARCERATED PARENT: Be made to attend hearing, either in person or remotely.

# **Case Management**

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

# **Possible Next Steps**

- ARTICLES 330-8, 700, 710, 1004, 1004.1, 42 U.S.C. § 675(5)(E)(i)-(iii)
- APPEAL: Any person directly affected may appeal findings or orders of court; shall be taken within 15 days from mailing of notice of Judgment.
- (2) TPR Petition: At any time, court on its own motion may order filing of the TPR Petition on any ground authorized by Article 1015. If the child is in DCFS custody for 17 of last 22 months, DCFS shall file a TPR Petition unless there is a compelling reason that is documented as to why it is not in the child's best interest. Court's role is to hold DCFS accountable to showing such compelling reasons.

### . . .

### **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 STATE OF LOUISIANA		DOCKET NUMBER:	T NUMBER:	
IN THE INTEREST OF		SECTION:		
·	DOB:	COURT:		
	DOB:	PARISH OF		
	DOB:	STATE OF LOUISIANA		
Filed:			EPUTY CLERK:	
	JUDGMENT OF DIS	POSITION		
THIS CAUSE came for a Disposition H	earing on the	_day of, 20	, the court having	
previously adjudicated the following named	minor child(ren),		, in need of care.	
	I. APPEA	ARANCES		
The child(ren),			,	
is/are present.				
The child(ren),			<i>•</i>	
is not present and: (Please check the applicable	box for each child)			
☐ the child,		, is age 12 or old	er, counsel moved to	
waive the child's appearance, and th	e court grants the wa	aiver.		
☐ the child,		, is younger than 12 years	of age, and counsel dic	
not request the child's appearance.				
Π			·	
Damant	Danastas	and of Children and Family Comi		
Parent Department of Children and Family Services				
Parent's Attorney		oresentative		
Parent's Attamen		arent(s), Pre-adoptive Parent(s), I	• •	
Parent's Attorney		g Care for Child(ren)		
Caretaker(s)				
Child(ren) Attorney(s)		t District Attorney of General Counsel		
Othors		or General Counsel	<del></del>	
Others				

# II. NOTICE

THE COOK! FINDS that. (Please theth the applicable boxes for a	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 hear	rd was properly served.
☐ the parent(s),	, is absent and that notice of the date,
time, and place of the hearing and right to attend and be hear	rd was provided in open court at a prior hearing which was
attended by the parent(s).	
☐ the parent(s),	, is absent and that notice of the date, time, and
place of the hearing and right to attend and be heard $\underline{\text{was not}}$	provided in open court at a prior hearing and was not
properly served.	
THE COURT FINDS that: (Please check the applicable boxes)	
$\hfill\Box$ 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 $\underline{\text{was given}}$ by the De	partment; 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 abse	ent 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	e Department; and, that diligent efforts
$\square$ were not made or $\square$ were made by the Department to local	ate and notify the absent caregiver.
III. TESTIMO	DNY AND EVIDENCE
THE COURT has considered the testimony of the follo	wing witness(es):
THE COURT considered the following evidence: (Please	check the applicable boxes)
☐ report of the Predisposition Investigation;	
☐ the case plan (including the Youth Transition Plan, if applica	ible):

$\square$ any reports of mental evaluation;	
☐ information regarding care and treatment of	the child from any foster parent, pre-adoptive parent, or relative
providing care for the child who appeared at the	e hearing;
$\hfill \square$ all other evidence offered.	
IV.	CUSTODY FINDINGS AND ORDERS
Based upon the evidence presented:	
IT IS ORDERED BY THE COURT that: (Plea	ise check the applicable box for each child)
□ child(ren),	, <u>remain in the custody of parent(</u> s),
	, with the following terms and conditions (i.e. Protective
Order, continuing supervision):	
□ child(ren),	, be <u>returned to custody of parent(</u> s),
	, with the following terms and conditions (i.e. Protective
□ child(ren),	, be placed in the custody of parent(s),
	, with the following terms and conditions (i.e. Protective
□ child(ren),	, be <u>removed from the custody of parent(</u> s),
	, with the following terms and conditions (i.e. Protective Order,
continuing supervision):	
	ition, THE COURT FINDS that the continuation of the child(ren),, in the home of their parent(s) would be contrary to their health,

safety, and welfare and removal of the child(ren) from their parent(s) is in their best interest.

□ child(ren),	, be placed in the custody of relative(s)
	, with the following terms and conditions (i.e. Protective Order,
continuing supervision):	
☐ If custody is not granted to a re	elative, THE COURT FINDS that placing child(ren) in the custody of a suitable
relative is not in the child(ren)'s b	est interest for the following reasons:;
□ child(ren),	, be placed in the custody of suitable person
	, with the following terms and conditions (i.e. Protective Order
	, be <u>granted guardianship</u> of child(ren),
	, subject to the following terms and conditions (i.e. Protective
Order, continuing supervision):	<del>-</del>
□ child(ren),	, be placed/remain in the custody of the State
	hildren and Family Services subject to the following conditions:
□ commit child(ren),	, <u>found to have mental illness</u> per Article 683
to:	<del>.</del>
THE COURT FURTHER ORDERS th	at: (Please check the applicable boxes for each child)
☐ If the placement is out-of-State, the cou	rt makes the following findings as to why the placement is safe, appropriate,
	, best interest:
The maximum duration of the Disposition	shall be:
☐ Until majority, unless modified	or vacated, for the child(ren)

□ Other:
☐ <b>HAVING FOUND,</b> pursuant to Article 684(A)(3) that
(agency, institution, or person) has legal responsibility to secure or provide the following services to the
child which the court has determined are needed
and hereby orders the following:
☐ <b>IT IS FURTHER ORDERED</b> that the following terms and conditions apply to the legal custodian of the following child(ren):
The Court's Disposition is the least restrictive, consistent with the circumstances of the case, the health and
safety of the child(ren), and the best interest of society.
V. REASONABLE EFFORTS FINDING
For child(ren) removed prior to Disposition: (Please check the following boxes that apply for each child removed from their home before Disposition)
☐ <b>THE COURT FINDS</b> that the Department <u>made</u> the following <u>reasonable efforts to reunify</u> the child(ren),
, with his or her parents, with the health and safety as the paramount concern,
including the following findings of what reunification efforts were made:
□ <b>THE COURT FINDS</b> that the Department <u>failed to make reasonable efforts to reunify</u> the child(ren) with his or her parent(s);
THE COURT FINDS the following <u>further efforts</u> could have shortened the separation of the family:
·

$\Box$ <b>THE COURT FINDS</b> that the Department <u>was not required</u> to make <u>reasonable efforts to reunify</u> the child(ren) with h	is
or her parent(s) based on the following reasons (i.e., judicial determination according to Article 672.1 or per applicable	j
federal law, such as aggravated circumstances):	
For child(ren) removed at Disposition: (Please check the following boxes that apply for each child removed from their home at Disposition	n)
$\Box$ <b>THE COURT FINDS</b> that the Department <u>made</u> the following <u>reasonable efforts to prevent or eliminate</u> the need for	
removal of the child(ren),, and to make it possible for the child(ren) to remain	1
with the parent(s), with the child(ren)'s, health and safety as the paramount concern, including the following findings	of
what preventive efforts were made:	
□ <b>THE COURT FINDS</b> that the Department <u>failed to make</u> reasonable efforts to prevent or eliminate the need for	
removal of the child(ren) from the home;	
<b>THE COURT FINDS</b> the following <u>further efforts</u> could have prevented the separation of the family:	
$\Box$ <b>THE COURT FINDS</b> that the Department <u>was not required</u> to make reasonable efforts to prevent or eliminate the ne	ed
for removal of the child(ren) based on the following reasons (i.e., judicial determination according to Article 672.1 or p	er
applicable federal law, such as aggravated circumstances):	
	_
VI. CASE PLAN FINDING AND ORDER	
THE COURT FINDS AND ORDERS: (Please check one of the following if the Disposition requires approval of case plan)	
☐ That the case plan submitted by the Department and dated, is <u>approved</u> as it is consistent	
with the health and safety of the child(ren) and in the best interest of the child(ren), and all parties are ordered to	
comply therewith.	

following reason(s):	
consistent with the health and safety of the child(ren) or is otherwise not in the	best interest of the child(ren) for the
☐ That the case plan submitted by the Department and dated	, is <u>not approved</u> as it is not

### AND ORDERS THE DEPARTMENT TO REVISE THE PLAN ACCORDINGLY.

### VII. ADVISEMENTS

The Court informed the parent(s) about the case plan, case review and permanency review procedure, as provided for in Title VI, Chapters 15 and 16 of the Children's Code.

The Court informed the parent(s) of their obligation to cooperate with the Department, comply with the requirements of the case plan, including their duty to keep the Department apprised of their current whereabouts, including address, cellular number, telephone number, and any other contact information, and correct the conditions requiring the child to be in care.

The Court informed the parent(s) that a petition to terminate their parental rights may be filed based upon their failure to comply with the requirements of the case plan, failure to make significant measurable progress toward achieving case plan goals and to correct the conditions requiring the child to be in care, or on any other ground authorized by Article 1015.

The Court informed all persons before the court that it is their continuing responsibility to notify the Department and the court in writing regarding the whereabouts, including address, cellular number, telephone number, and any other contact information, of an absent parent and the identity and whereabouts, including address, cellular number, telephone number, and any other contact information, of any relative or other individual willing and able to offer a wholesome and stable home for the child.

The Court informed the parties and all persons before the Court of their continuing responsibility to support the achievement of timely permanency for the child(ren) and further direct such individuals to advise the Department and court in writing of the whereabouts, including the address, cellular number, telephone number, and any other contact information, of all grandparents, all parents of a sibling where such parent has legal custody of such sibling, and all other adult relatives of the child(ren).

The Court informed the parent(s) of their obligation to support their child(ren), including their obligation to contribute to the care and treatment of their child as provided in Article 685.

# VIII. FURTHER ORDERS

THE COURT FURTHER ORDERS the following as necessar	sary and appropriate (Please check applicable boxes):
☐ IT IS FURTHER ORDERED that the parent(s),	, contribute to the cost of car
and treatment of the child in the following amount: \$	based on the factors listed in Article 685(A) and as
follows:	
☐ IT IS FURTHER ORDERED that prior to every family team meet	eting (FTM) hereafter conducted in this case, the
Department shall provide reasonable notice of said FTM to all p	parent(s)/caretaker(s), foster caregivers, CASA workers,
and attorneys for child(ren) and parent(s)/caretaker(s).	
☐ A <b>Family Team Meeting</b> is tentatively set for	or day of, 20, at
am/pm.	
☐ IT IS FURTHER ORDERED that the Department notify the child	ild's attorney immediately, electronically or otherwise,
when there is an emergency change in the child's specific place	ement when child is in custody of the State, and within
hours after a change of placement of the child occurs. The	ne notification shall include the address and contact
number of the placement.	
☐ IT IS FURTHER ORDERED that the Department immediately as	assess all possible permanent placements with the result
and/or updates to be presented at the He	earing.
☐ <b>IT IS FURTHER ORDERED</b> that the Department initiate child w	welfare background clearance, criminal background chec
and/or assessment of the home or home study on the following	ng relative(s) or individual(s),
$\hfill \square$ IT IS FURTHER ORDERED that the Department initiate an Inte	terstate Compact for Placement of Children (ICPC) proces
for the following out-of-State relative(s) and/or individual(s),	
☐ <b>IT IS FURTHER ORDERED</b> that it is in the best interest of the cl	child for the Department to coordinate with the
appropriate local education agencies to □ ensure that the child	ld(ren) remain enrolled in the school in which the
child(ren) was enrolled at the time of placement □ change the s	e school the child(ren) is enrolled in.

□ IT IS FURTHER ORDERED that
IX. ORDER OF NOTICES AND FUTURE HEARINGS
IT IS FURTHER ORDERED that the parent(s) of the child(ren), the DCFS representative(s), all attorneys of record,
CASA be present at all future hearings.
IT IS FURTHER ORDERED that the case plan shall be filed with the Court at least 10 days prior to the Case Review
and Permanency Hearing and that, upon filing, copies shall be provided by mail or email to counsel and unrepresented
parties by certified mail or electronic mail in accordance with Article 674.
IT IS FURTHER ORDERED that the Department file its court report with the Court at least 10 days prior to the
Case Review and Permanency Hearing and that copies be provided to CASA, counsel, and unrepresented parties.
IT IS FURTHER ORDERED that CASA shall file its court report with the Court at least 10 days prior to the Case
Review and Permanency Hearing and copies be distributed to counsel, unrepresented parties, and DCFS prior to at the
same time submitted to the Court.
IT IS FURTHER ORDERED that:
Upon ordering the matter be set for Hearing(s), the clerk shall notify all parties of the date,
time, and location of the hearing(s) and that all parties of interest appear; the Sheriff's Office serve the parent(s) with a
summons commanding him or her to appear at Court for the hearing(s); the Department shall provide notice to the
parent(s) of the date, time, and location of the hearing(s); notice of the hearing(s) be made on the child and parent
representation programs and CASA (if appointed); the Department provide notice to any foster parent, pre-adoptive
parent, or relative providing care for the child(ren) of the date, time, and location of the hearing(s) and recipients right
to attend and be heard; and for any parent(s) incarcerated, arrange for the parent(s) to attend the
hearing, either in person or remotely.
☐ A Hearing to <b>REVIEW/APPROVE REVISED CASE PLAN</b> is set for day of, 20, at

☐ A **STATUS** Hearing is set for \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_ \_\_am/\_pm.

 $\Box$  The **CASE REVIEW** Hearing is set for \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_ \_am/\_\_pm.

☐ The <b>PERMANENCY</b> Hearing is set for	day of	, 20, at _	am/	_pm
THUS DONE AND SIGNED ON THIS	day of	, 20	, in	
, Louisiana.				
		JUDGE		
ISTRIBUTION OF NOTICE				
ease serve all parties and counsel of record as	follows:			
Parent:				
Street:			_	
City, State, Zip:			<del>-</del>	
Email Address:			_ _	
Parent's Attorney:				
Street:				
City, State, Zip:				
Fax Number: ()				
Email Address:				
Parent:				
Street:			_	
City, State, Zip:			<del>_</del>	
Email Address:			<del>-</del> -	
Parent's Attorney:				
Street:				
City, State, Zip:			_	
Fax Number: <b>()</b>			_	
Email Address:			_	
Child(ren) Attorney(s):			-	
Street:			_	
City, State, Zip:			_	
Fax Number: ()			_	
Email Address:			_	
Assistant District Attorney/Bureau of Gener	al Counsel:			
Street:			_	
City, State, Zip:			_	
Fax Number: ()			_	
Email Address:				

# Please send notice and copy of order as follows:

# 

# DISPOSITION COURT REPORT

**Department of Children and Family Services** 

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\*\*IMPORTANT: Use of the DCFS Court Report templates provided in this Benchbook for Disposition Hearings, Case Review Hearings, and Permanency Hearings are being implemented in a phased-in approach across the State. Date \_\_\_\_\_/ \_\_\_\_\_\_/ Judge's Name Court Court Address **Docket Number Hearing Type and Date** DISPOSITION / / Child(ren)'s Information DOB: \_\_\_\_/ \_\_\_\_ Age: \_\_\_\_\_ Date Entered Care/DCFS Involvement: \_\_\_\_\_/ \_\_\_\_/ \_\_\_\_\_\_ Date Freed for Adoption: \_\_\_\_\_ / \_\_\_\_ / \_\_\_\_\_ Current Custody Status: 

Custody of Parent/Legal Guardian ☐ Custody of Relative/Suitable Individual ☐ DCFS Custody ☐ Other **Parent's Information** Legal/Biological/Alleged/Deceased: Child(ren): Address: Parent's Information Legal/Biological/Alleged/Deceased: Child(ren): Address: \_\_\_\_

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# **SALUTATION**

This letter is to provide the court with information for the Disposition Hearing.

PRELIMINARY INFORMATION  Date Adjudicated Child in Need of Care:  If known, grounds from Adjudication Order Article 606(A) (please check all applicable):
<ul> <li>□ (1) Abuse □ (2) Neglect □ (3) Absence of Parent □ (4) Criminal Prosecution</li> <li>□ (5) Crime Against Child □ (6) Trafficking □ (7) Commercial Trafficking □ (8) Genital Mutilation</li> </ul>
Brief summary of reason child(ren) entered care/DCFS involved:  See attached Case Plan: Federal Compliance Section "Reason Child(ren) entered Foster Care or Agency Involvement."
Date of Current Case Plan://
Date Next Case Plan is Due:      /
NOTICE OF DATE, TIME, AND LOCATION OF DISPOSITION HEARING  Notice to Parents: Documentation attached?
If parent has been absent, list all steps taken to locate parent:
Notice to Foster Caregivers: Documentation attached?   Yes  No  If no, give explanation of notice provided/reason:
Do you know, or do you have reason to know, that any of the child(ren) are members of a federally recognized Indian Tribe or eligible for membership in a federally recognized Indian Tribe?  Yes No If yes, list child(ren) and tribal affiliation.  Since the last hearing, is there additional information that the agency has learned about any of the parents' or child(ren)'s Indian tribe membership/eligibility? Yes No  If yes, what additional information has the agency received?
If applicable, what steps has the agency taken since the last hearing to determine child(ren)'s eligibility for membership in a federally recognized Indian Tribe?
If applicable, has the tribal entity responded? □ Yes □ No □ If yes please attach documentation

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# **LEGAL RELATIONSHIPS/TESTING RESULTS**

Please complete this section if any of the child(ren) have parents who are not married and/or there is an alleged parent:

Parent:

Parent:

		Of:		Of:
Has the Birth Certificate been obtained? Is the parent's name on the Birth Certificate?			No No	☐ Yes ☐ No ☐ Yes ☐ No
Was an acknowledgment filed in the parish of the child's birth?  Did you obtain the Certificate of Results from the Clerk of Court?			No No attach.	☐ Yes ☐ No ☐ Yes ☐ No If yes, please attach.
If no acknowledgment has been filed, did y Father Registry? Did you obtain the Certificate regarding the Registry?			No No attach.	☐ Yes ☐ No ☐ Yes ☐ No If yes, please attach.
Describe efforts to locate absent pare	ents and any additio	nal informat	ion about alleged	l and/or absent parents:
Type of Order	Is there an Order?		If copy of Order not attached, list case number, parish, parties involved, and date order signed. If child support, list amount of Order.	
Family Law Orders regarding any of the children in this case	☐ Yes.  If yes, attach copy or fill out next box. ☐ No			
Temporary Restraining Orders and/or Protective Orders involving the parties	☐ Yes.  If yes, attach copy or fill out next box. ☐ No			
Child Support Order involving any parent and one or more of the children	☐ Yes.  If yes, attach copy or fill out next bo ☐ No			

# SIGNIFICANT RELATIONSHIPS AND RELATIVES/OTHER SUITABLE INDIVIDUALS

Was a Pre-Disposition Investigation completed by DCFS? ☐ Yes ☐ No

Please identify and describe significant relationships the child has with parents, siblings (those in care and those not in care), grandparents, other relatives, and other individuals:

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List all relatives or other suitable individuals that have been provided as possible placement/custody/permanent options for child:

Please complete the following if any of the children are not currently placed with a parent/relative and one or more of the individuals listed above has been/is being assessed for placement:

Child	Prospective Placement	Has an Agency Background Clearance been completed? If yes, indicate results	Have criminal records checks been completed? If yes, indicate results	Is home study complete? If yes, what is recommendation? If no, what is status?	If residing out of state, has an ICPC request been submitted? If yes, date submitted.
		☐ Yes ☐ No	□ Yes □ No	☐ Yes ☐ No	☐ Yes ☐ No //
		☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No //
		☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No //

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	☐ Yes ☐ No			
				//

# **CURRENT STATUS OF CHILD(REN)**

	Child:	Child:
Initial Medical and Dental Information. Include significant findings/recommendations.		
Initial Developmental Information		
Trauma and Behavioral Health Assessment Date assessment completed: Are referrals indicated?	/ / □ Yes □ No	/ / □ Yes □ No
Describe any behavioral or mental health needs/concerns and how being addressed		
Identify with specific religion?	☐ Yes ☐ No If yes, please state religion:	☐ Yes ☐ No If yes, please state religion:
Have culture and/or traditions important to them?	☐ Yes ☐ No If yes, please explain:	☐ Yes ☐ No If yes, please explain:
Any known needs about the child's sexual orientation and/or gender identity?	☐ Yes ☐ No If yes, please explain:	☐ Yes ☐ No If yes, please explain:
Attending school of origin?	☐ Yes ☐ No If no, please explain:	☐ Yes ☐ No If no, please explain:
Name of School/Grade		
Describe Strengths and Challenges Re: Education		
Participate in extracurricular activities or want to?	☐ Yes ☐ No If yes, please list:	☐ Yes ☐ No If yes, please list:

Describe any educational needs/interventions and how they are being addressed:

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As a precursor to classification of 504/IEP/IAP/"gifted," are any of the children involved with a Response to Intervention ("RTI")(also called "Targeted Teaching")?   Yes  No If yes, state each child's name and what date the RTI began and the interventions being utilized:				
For more information about the child Stability," Child Functioning, Cumula		Plan: Federal Compliance Section "Educational ative School/Educational Record.		
PLACEMENT  omplete for all children not in the	e custody of his/her parents	and any child(ren) in foster care.		
Are all children in this case placed to ☐ Yes, children are placed together	_	□ N/A (no siblings in care)		
	Child:	Child:		
Caregiver Name(s) Date of Placement				
Type of Placement	□ Relative □ Other Individual □ Certified Foster Home □ Therapeutic Foster Home □ Group Home □ Psychiatric Residential Treatment Facility □ Other:	☐ Relative ☐ Other Individual ☐ Certified Foster Home ☐ Therapeutic Foster Home ☐ Group Home ☐ Psychiatric Residential ☐ Treatment Facility ☐ Other:		
History of Previous Placements: Include name, type, and dates of each				
Describe Child's Adjustment to Current Placement				
<b>QPI</b> (co-parenting between foster caregivers and parents)				
Certification Update for Relatives/Individuals Not Yet Certified. Include Date Referral Made to Home Development and Current Status				
Foster Caregiver Progress Form completed?	☐ Yes ☐ No If yes, attach form	☐ Yes ☐ No If yes, attach form		
If siblings in this case are not placed  ☐ Barriers to placement together  ☐ Efforts to place siblings togethe  ☐ Contrary to safety or well-being	: er:	·		
If not placed together, what is the p	lan for sibling visitation (unless	s contrary to safety or well-being)?		

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Please give current status of sibling visitation (# of visits to date, quality of visits, barriers, etc.):
Describe any additional information pertinent to each child:
OUTH 14 AND OLDER Identify the youth's permanent connections:
Since the last hearing, describe the relationship between the youth and each identified permanent connection, including visitation and other forms of consistent contact:
Please describe the youth's connections with siblings not in care:
Is the youth receiving independent living classes?   Ves   No  What has the youth learned from these classes?
Describe progress with the youth preparing to live independently:
Is the youth currently living independently? □ Yes □ No If yes, please describe adjustment:
For more information, please see attached Youth Transition Plan (YTP).
URRENT STATUS OF THE PARENTS
Describe the current situation with each parent (Exp. Housing, Substance Use Concerns, etc.):
SAFETY AND RISK ASSESSMENT Threats of danger at the time of initial safety assessment:

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Describe current threats of danger, if any, as it relates to all parents and each child's vulnerability to the identified threats:
List what protective capacities need to be enhanced for each parent, if any:
What is the current Structured Decision Making (SDM) level/recommendation for each household?
Date(s) of SDM: /
Conditions for Return to Parents' Care/Custody, if applicable (i.e., Why can't child go home today?):
Conditions for Closure (DCFS no longer involved):
ASE PLAN  See attached Case Plan.  Was the case plan developed with the parents and child(ren)?   Yes   No
If no, please explain why not:
Were the attorneys invited to the FTM? □ Yes □ No Did they participate? □ Yes □ No
Please list any referrals made by the agency to date for parents and child(ren), describe the reason for referral, ar progress thus far:
ISITATION See attached Case Plan "Visitation" Section (before Basic Obligations and after Federal Compliance) for visitation
schedule.
Current status of visits between parents and each child (include how many to date and observations regarding the interactions):
Are there any barriers to in-person visits with parents?   Yes  No If yes, please explain (e.g., distance, transportation, rules at jail/prison):
If parent visitation is supervised, please list persons who may supervise in addition to DCFS and locations other the DCFS office where visitation may occur.

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Please explain what will be needed to increate to unsupervised visitation, if applicable:		and/or length of visits	and to move parent from supervised			
If there are others who matter to the child, prisitation with parents and/or recommenda						
In addition to in-person visits, please state plan for amount and frequency of contact as follows:						
Name	Telephone		FaceTime, Duo, Zoom, Skype			
Parent(s):						
Sibling(s):						
Grandparent(s):						
Other relatives:						
Other individuals:						
OCFS RECOMMENDED DISPOSITION	I AND REA	SONS				
Child:		Child:				
□ Custody to remain with the following parent(s):  □ without supervision of DCFS □ with supervision of DCFS □ with protective order □ with the following terms/conditions:		☐ Custody to remain with the following parent(s):  ☐ without supervision of DCFS ☐ with supervision of DCFS ☐ with protective order ☐ with the following terms/conditions:				
□ Return of legal custody to parent from whom child(ren) removed □ without supervision of DCFS □ with supervision of DCFS □ with protective order □ with the following terms/conditions:		☐ Return of legal custody to parent from whom child(ren) removed ☐ without supervision of DCFS ☐ with supervision of DCFS ☐ with protective order ☐ with the following terms/conditions:				

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☐ Custody to the following parent:	☐ Custody to the following parent:		
<ul> <li>□ without supervision of DCFS</li> <li>□ with supervision of DCFS</li> <li>□ with protective order</li> <li>□ with the following terms/conditions:</li> </ul>	<ul> <li>without supervision of DCFS</li> <li>with supervision of DCFS</li> <li>with protective order</li> <li>with the following terms/conditions:</li> </ul>		
☐ Custody to the following relative/individual:	☐ Custody to the following relative/individual:		
<ul> <li>□ with protective order</li> <li>□ with the following terms/conditions:</li> </ul>	☐ with protective order ☐ with the following terms/conditions:		
☐ Guardianship to the following relative/individual:	☐ Guardianship to the following relative/individual:		
<ul> <li>□ with protective order</li> <li>□ with the following terms/conditions:</li> </ul>	□ with protective order □ with the following terms/conditions:		
☐ Continue custody with the State of Louisiana through DCFS ☐ with the following terms/conditions:	☐ Continue custody with the State of Louisiana through DCFS ☐ with the following terms/conditions:		
OR	OR		
☐ Place custody with the State of Louisiana through DCFS☐ with the following terms/conditions:	☐ Place custody with the State of Louisiana through DCFS☐ with the following terms/conditions:		
☐ Commit the child to a public or private institution; transfer to LDH custody as follows: ☐ with the following terms/conditions:	☐ Commit the child to a public or private institution; transfer to LDH custody as follows: ☐ with the following terms/conditions:		
Please provide the reasons for the recommendation Disposition above:	Please provide the reasons for the recommendation Disposition above:		

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this recommendation? Please explain.	Has the child's religious preference been taken into account in this recommendation? Please explain.		
DCFS EFFORTS TO PREVENT REMOVAL AND, If removal is recommended at Disposition for the first			
□ Services Provided:			
□ Court Interventions Requested:			
family:	osition, please state the recent efforts by DCFS to reunify the		
□ Services Provided:			
□ Other Assistance:			
□ Court Interventions Requested:	D REASONS FOR CHILDREN IN FOSTER CARE		
□ Court Interventions Requested:			
□ Court Interventions Requested:  DCFS RECOMMENDED CASE PLAN GOAL AN	D REASONS FOR CHILDREN IN FOSTER CARE		
Court Interventions Requested:  CFS RECOMMENDED CASE PLAN GOAL AN  Child:  Reunification Custody to Another Parent Adoption Guardianship Custody to a Relative APLA (if 16 or 17 years old)	Child:  Reunification Custody to Another Parent Adoption Guardianship Custody to a Relative APLA (if 16 or 17 years old)		

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Sincerely,	
Case Worker	Supervisor
Case Worker	Supervisor

# **ATTACHMENTS**

	Attached?		
Case Plan and attachments	□ Yes	□ No	□ N/A
Youth Transition Plan	□ Yes	□ No	□ N/A
Documentation of Court Notices	□ Yes	□ No	□ N/A
ICWA Letter(s)	□ Yes	□ No	□ N/A
Certificate of Results (Paternity Acknowledgment)	□ Yes	□ No	□ N/A
Putative Father Registry Certificate of Results	□ Yes	□ No	□ N/A
DNA Testing Results	□ Yes	□ No	□ N/A
Family Law/Other Orders	□ Yes	□ No	□ N/A
Family Connections Form	□ Yes	□ No	□ N/A
Circle of Influence Form	☐ Yes	□ No	□ N/A
Foster Caregiver Progress Form(s)	☐ Yes	□ No	□ N/A
Evaluations/Assessments for Child(ren)	☐ Yes	□ No	□ N/A
Evaluations/Assessments for Parent(s)	☐ Yes	□ No	□ N/A
School 1 Form	☐ Yes	□ No	□ N/A
Child(ren)'s Report Card	☐ Yes	□ No	□ N/A
Other:	□ Yes	□ No	□ N/A

cc (with attachments): ADA/BGC, Parent Attorneys, Children's Attorney(s), Unrepresented Parties, CASA

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