

CASE REVIEW HEARINGS

La. Ch. C. arts. 687-700

BENCH
CARD



PURPOSE

For the court to review the: continuing necessity for and appropriateness of child's placement; progress toward mitigating causes necessitating placement in foster care; safety of the child; extent of case plan compliance by parents and DCFS; and likely date by which child may achieve permanency.

Prior to Hearing

ARTICLES 424.7, 673-4, 676, 688-9, 691

- (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 shall file at least 10 days before hearing; distribute copies to CASA prior to/at same time filed; serve counsel by mail/email and unrepresented parties by certified mail/email per Article 689. Any party may file written response.
- (3) **CASA COURT REPORT:** If appointed, CASA shall file before hearing; distribute copies per Article 424.7.

Timing and Continuances

ARTICLES 603(22), 687, 692, 711, LA. SUP. CT. RULE XXXIII, PART II, SEC. 1-2

- (1) **TIMING:** 3 months after Disposition Hearing if child removed before Disposition (see Article 114); within 6 months after if child removed at Disposition, but not more than 6 months after removal; hold at least every 6 months thereafter until permanently placed or upon motion of party for good cause or court's own motion.
- (2) **CONTINUANCES:** Court shall report continuance exceeding maximum allowed within 10 days to Louisiana Supreme Court, with reasons and copy of Order.

PRACTICE TIP | Hold Simultaneously: Case Review and Permanency Hearings may be held simultaneously; however, findings and orders shall be separated for each type of hearing; DCFS Court Report should address information required for both types of hearings.

Appearances

ARTICLES 575, 607-8, 643, 694-8

- (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, witnesses under examination, and intervenors (if granted).
- (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 Order. Under age 12, shall be present upon request of child's attorney or court.
- (3) **PARENTS ARE PARTIES:** If parent absent but established on record parent was served or efforts to serve unsuccessful, hearing may proceed. 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 a parent per Article 608.

ESSENTIAL JUDICIAL FUNCTION | Assistance and Accommodations:

Court responsible for providing interpretation, translation, and language assistance services and 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 696; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o)).

PRACTICE TIP | Service and Treatment Providers:

Can provide valuable information to court concerning family's progress (i.e., therapists, teachers, domestic violence advocates, parenting instructors, etc.). Allows for coordination of services with court-approved treatment goals and recommendations for additional services. If not available to attend hearing, request that DCFS provide information on parent's participation and progress. Ideally, written reports from all service providers should be provided to court and counsel/unrepresented parties in advance of hearing.

PRACTICE TIP | Coordinating Services:

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

PRACTICE TIP | Reunification:

If reunification with absent parent is case plan goal, DCFS shall make continuing diligent efforts to locate absent parent and notify him/her of nature and outcome of hearing and promptly notify court of any new address that becomes known.

Intervention

ARTICLE 697

- Court has discretion to allow intervention upon showing of good cause that intervention facilitates permanent plan for child and ensures best interest; may limit nature and extent of participation upon motion and showing of good cause.

PRACTICE TIP | Case Law: There is significant case law on intervention, especially in certain jurisdictions.

Notice

ARTICLES 623, 640-1, 643, 693, 696, 42 U.S.C. § 675(5)(G), 45 C.F.R. § 1356.21(O)

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

Evidence and Testimony

ARTICLES 424.5, 424.7, 696, 699, LA. SUP. CT. RULE XXXIII, PART III, SUBPART II

- (1) **EVIDENCE:** Consider all relevant evidence offered but may limit admissibility or weight of any evidence deemed unreliable, cumulative, or unduly dilatory.
- (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 or court; may request opportunity to appear as witness.
- (4) **FOSTER CAREGIVERS:** Right to be heard regarding child in their care. If attend, court shall ask if they would like to speak regarding the care and treatment of child. Articles 623 and 696; 42 U.S.C. § 675(5)(G); 45 C.F.R. § 1356.21(o).

PRACTICE TIP | Engagement: Court should do all it can to support and encourage meaningful engagement of families in CINC proceedings. Court is intimidating for most individuals, and stakes could not be higher for parents and children. Keep in mind 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 and goal, services, visitation, etc.). If child wishes to be heard but is not able or does not want to be present in courtroom, consider other methods of communication, such as audio or visual conferencing, videotaped interview, or in-chambers conference.

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.

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 recommend amount parents are obligated to contribute for cost of care and treatment of child in accordance with Article 685.
- (8) **TERMINATION OF PARENTAL RIGHTS:** 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 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 the child's activities, child's caregiver should be supported in making those decisions through use of the 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 a 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 reasonable efforts 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.

Case Plan Finding and Order

ARTICLE 700, 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.

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 written Order.

PRACTICE TIP | Specific Grounds: Upon which the child was adjudicated should guide ongoing implementation and review of case plan.

PRACTICE TIP | Case Planning: Is an integral element of the reasonable efforts 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 Order 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.

PRACTICE TIP | Case Plan Goal: Should not be changed from reunification to adoption, custody, or guardianship until court has either made a reasonable efforts finding to reunify the family or made an Article 672.1 judicial determination that reasonable efforts to reunify are not required.

Advisements

ARTICLE 700

Court shall advise parents of:

- Their obligation to cooperate with DCFS, comply with requirements of case plan, including duty to keep DCFS apprised of current address, and correct conditions requiring child to be in care;
- Their continuing responsibility to support timely achievement of permanency for the child and advise DCFS and court of 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 child; AND
- That TPR Petition may be filed based on grounds in Article 1015, including failure to: (a) make significant progress toward achieving case plan goals; (b) comply with case plan; and (c) correct conditions requiring child to be in care.

Further Findings and Orders

ARTICLES 309, 618, 672(A)(2), 677, 669, 681-4, 710, 712, 42 U.S.C. § 671(A)(31)(A)

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

- (1) **CUSTODY/GUARDIANSHIP:** Court retains jurisdiction over custody and may maintain or modify current Disposition to return or grant custody to a parent, with or without continuing supervision and/or issuing Protective Order (PO); grant custody to relative/suitable person, guardianship to nonparent; etc.
- (2) **PLACEMENT AND DCFS CUSTODY:** Court cannot choose placement when child in DCFS custody. However, court has authority to disapprove placement chosen by DCFS if Article 672(A)(2) requirements are met.
- (3) **VISITATION/FAMILY TIME:** Court has continued jurisdiction to modify in all CINC proceedings under Article 309.
- (4) **SECURE/PROVIDE SERVICES:** Court has authority to order an agency, institution, person to whom child is assigned to secure or provide services to child, including coordination with LDH, OJJ, LDOE, etc.
- (5) **TERMS AND CONDITIONS:** Court can specify other terms and conditions applicable to legal custodian.
- (6) **POTENTIAL PERMANENT PLACEMENTS:** Court can order DCFS to (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.
- (7) **FAMILY TEAM MEETINGS (FTM):** DCFS should propose tentative date for next FTM and court can provide notice and encourage participation.
- (8) **SANCTIONS PER ARTICLE 712:** Court can order for DCFS failure to comply with permanency planning requirements.
- (9) **OTHER ORDERS:** Related to maternity/paternity, PO, child's education, services, mental or physical health examinations, 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 | Reasonable Efforts (RE) Finding: Not required in Case Review Order. However, courts have an ongoing obligation to hold DCFS accountable to making RE to prevent removal, reunify family, and/or achieve permanency. Only exception to RE to reunify the family occurs when court finds RE not required per Article 672.1.

PRACTICE TIP | Child Welfare Assessment and Decision Making Model (CWADM): The Adoption and Safe Families Act (ASFA) requires courts to address the ongoing safety of child at Case Review Hearing. 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 [Child Welfare Assessment and Decision Making Model \(CWADM\) Benchbook Section 11](#).

HELPFUL GUIDANCE | Visitation: To preserve valuable relationships and connections in best interest of child, court should consider frequency and type of visitation and if other visitation or contact is needed. Visitation planning and scheduling includes an ongoing assessment of child's established and significant relationships with parents, grandparents, siblings, relatives, or other important individuals in child's life. As long as case plan goal remains reunification, preserving and enhancing parent-child relationship while providing for safety and well-being of child is crucial for many reasons (i.e., maintaining attachment, reducing trauma, providing ability to put parenting skills into practice, etc.), including child's future transition back into the custody of parents. Initiating or continuing visitation and/or contact with relatives/individuals is not only critical for child's well-being but is also important if reunification becomes no longer viable.

Case Management

- An attorney or the court is responsible for completion of Order. See [Case Review Order Template](#).
- All attorneys and unrepresented parties should review Order before judge signs to ensure it accurately reflects proceeding.
- Time permitting, best practice is to sign the Order on the 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 Order immediately following the hearing.

Possible Next Steps

ARTICLES 330-8, 700, 710, 1004, 1004.1, 42 U.S.C. § 675(5)(E)(I)-(III)

- (1) **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 TPR Petition on any ground authorized by Article 1015. If child in DCFS custody for 17 of last 22 months, DCFS shall file TPR Petition unless a compelling reason why filing is not in best interest of child is documented in case plan.

Order of Notices and Future Hearings

ARTICLES 424.7, 674, 688-9, 702

Court may also make the following orders:

- **PARTIES, COUNSEL, DCFS, AND CASA:** Be present at all future hearings;
- **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;
- **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 unrepresented parties by certified mail/email per Article 689 (DCFS policy requires reports beginning at Disposition, although Children's Code is silent on submission for the Permanency Hearing);
- **CASA COURT REPORT:** Be filed before next hearing; copies distributed per Article 424.7;
- **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;
 - **Permanency Hearing:** Initial shall be held within 9 months after Disposition Hearing if removed before or within 12 months if removed after and then at least every 12 months thereafter until permanently placed (or earlier upon motion per Article 702(B)); may be held immediately or shall be held within 30 days of an Article 672.1 judicial determination;
 - **Next Case Review Hearing:** Shall be held at least once every 6 months until child is permanently placed (or earlier upon motion per Article 692(B));
- **SERVICE/NOTICE OF HEARINGS:** Be made on parties, counsel, CASA, and foster caregivers; AND
- **ARRANGEMENTS FOR ANY INCARCERATED PARENT:** Be made to attend hearing, either in person or remotely.

PRACTICE TIP | Schedule Earlier: Courts retain ability to schedule hearings to occur earlier than maximum allowable timeframes and should do so whenever practicable and in child's best interest. Even though case plan is generally updated every 6 months (unless otherwise ordered sooner), best practice is to conduct review hearings a minimum of every 3 months or, in some cases, more frequently. Holding review hearings every 3 months allows court and parties to resolve issues with case plan and keep case moving forward towards achieving permanency more expeditiously.

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?