 <p>Department of Children &amp; Family Services <i>Building a Stronger Louisiana</i></p>	<b>Division/Section</b>	Child Welfare
	<b>Chapter No./Name</b>	4 – Child Protective Services (CPS)
	<b>Part No./Name</b>	7 – Court Involvement
	<b>Section No./Name</b>	Court Involvement
	<b>Document No./Name</b>	4-710 Emergency Protective Action
	<b>Effective Date</b>	August 1, 2022

## I. STATEMENT OF POLICY

The Department of Children and Family Services (DCFS), in compliance with state, federal and/or internal regulations determines if a vulnerable child is safe or unsafe in the care of their custodial parent or legal guardian and appropriate actions to be taken to assure the child’s safety.

Louisiana law does not prohibit a parent from making a plan for their child(ren), which includes placing their child(ren) in the physical custody of another person, unless and until the Department files a verified complaint alleging facts showing that there are reasonable grounds to believe that the child is in need of care and that emergency removal or the implementation of a safety plan is necessary to secure the child’s protection. After the verified complaint is filed, the parent is without the authority to place the child with any individual or institution except the Department until legal custody is returned to the parent or safety plan is terminated. (Louisiana Children’s Code [Article 619](#)).

The department is responsible for assessing the safety of the child(ren) and whether the child(ren) are at imminent risk of harm warranting further protective intervention (e.g. safety plan, protective order, court ordered safety plan, custody to non-offending parent and/or relative, removal). For more information regarding parent’s rights to make plans for their children pending child protective service investigations.


DCFS is mandated by state and federal law to make reasonable efforts to prevent or eliminate the need for a child’s removal when a report of abuse/or neglect has been made. In making and determining reasonable efforts, the Louisiana Children’s Code authorizes the Department to request protective orders and instanter safety plan orders in lieu of removal of the child whenever consistent with assuring the child’s safety. The child’s health and safety shall always be the paramount concern. Removal of children becomes necessary to assure their safety when threats of danger are present that a child is vulnerable to and caretaker protective capacities cannot manage the threats and an in home or court ordered safety plan cannot be implemented or would not adequately protect the child.

## II. PROCEDURES

### A. Reasonable Efforts to Prevent Removal/Court Intervention

#### 1. Reasonable Efforts

As the worker assesses the safety and risk to the child and considers the decision as to whether an emergency removal is necessary, he shall be responsible for considering possible alternatives to the removal. The worker is responsible for making reasonable efforts to prevent or eliminate the need for removal and placement, including all viable alternatives to include an exploration of relatives, fictive kin, and other individuals that can assist the family with an in home or court ordered safety plan if the family makes

 <p>Department of Children &amp; Family Services <i>Building a Stronger Louisiana</i></p>	<b>Division/Section</b>	Child Welfare
	<b>Chapter No./Name</b>	4 – Child Protective Services (CPS)
	<b>Part No./Name</b>	7 – Court Involvement
	<b>Section No./Name</b>	Court Involvement
	<b>Document No./Name</b>	4-710 Emergency Protective Action
	<b>Effective Date</b>	August 1, 2022

this plan and it can manage any and all threats of danger. Reasonable efforts to provide services to prevent removal is required under the law. The efforts shall be documented in the case record, and communicated to the court, so that the judicial determination of reasonable efforts to prevent or eliminate the need for removal by the agency can be made.

Refer to Forms A-Z, Family Connections Form and Family Connections Instructions (add link), to assist with searching for supports for the family.

## 2. Protective Services Day Care


Protective services day care should be considered as an alternative to removal when there are young children in the family. It is appropriate for children when it may reduce the risk of harm to the child, address safety concerns and prevent the need for removal. In some cases it may be a part of the safety plan. The provision of day care services as an effort to prevent placement must be considered to be a part of a Family Services plan as the services will usually be needed to extend beyond the time when the case is active in the Child Protective Services Program.

Refer to [Policy 12-210](#), for instructions on obtaining Protective Day Care Services.

## 3. Removal of the Perpetrator

In some cases it may be possible to reduce the risk of harm to the children if removing the perpetrator from the home is the family's plan. These are cases in which there is a parent/caretaker who is willing and able to provide protection to the child, with the help of the agency and/or family or friends if the perpetrator is no longer living in the home, such as the case of a non parent perpetrator. Some perpetrators may be willing to leave the home voluntarily, but a DCFS In-Home Safety Plan cannot restrict a legal caretaker's access to the child. But for situations in which the perpetrator will not leave voluntarily, the worker may need to assist the parent who is willing to protect the child to obtain a protective court order. The Louisiana Children's Code in [Articles 617](#) and [618](#) provides the legal basis for a court order which either evicts the perpetrator or restores possession of the home to the child and the non-abusing parent. The worker is expected to consult with his supervisor when considering such an option, ensuring that the caretaker protective capacities exist to keep the child safe. If this option is possible, it should be pursued for cases in which it may prevent the removal of a child victim.

Refer to Section [4-710](#), Emergency Protective Action, when considering assisting a parent with a court order to remove the perpetrator from the home.

 <p>Department of Children &amp; Family Services <i>Building a Stronger Louisiana</i></p>	<b>Division/Section</b>	Child Welfare
	<b>Chapter No./Name</b>	4 – Child Protective Services (CPS)
	<b>Part No./Name</b>	7 – Court Involvement
	<b>Section No./Name</b>	Court Involvement
	<b>Document No./Name</b>	4-710 Emergency Protective Action
	<b>Effective Date</b>	August 1, 2022

#### 4. Safety Management

Safety Management is associated with formal or informal services or activities and may be provided by professionals, nonprofessionals, and the family network. Safety Actions are taken to achieve a purpose. See Policy [4-516](#).

#### B. Available Legal Options

If the department determines that a child is unsafe and that emergency action is necessary to protect the child, the following actions are to be considered:

- Temporary Restraining Orders/Protective Order
- Court Ordered Instanter Safety Plan Order
- Request an Instanter Custody Order

Detailed procedures for each of these actions are provided below.


#### 1. TEMPORARY RESTRAINING ORDER/PROTECTIVE ORDER

For investigations in which the safety assessment indicates that a child is unsafe due to one parent/caretaker, but may have another parent/caretaker who is willing to provide protection, the worker and supervisor may suggest the willing parent/caretaker obtain private legal counsel or contact the court for guidance in seeking a protective order. If the non-perpetrating parent is unwilling or unable to request a protective order, the department may request a protective order. When the department is recommending a protective order as an alternative to removal and part of a safety plan of the child from the home, the worker and supervisor should request consultation and assistance from the BGC regional attorney.

The Louisiana Children's Code in Articles [617](#) and [618](#) provides the legal basis for the department to request from a court with juvenile jurisdiction to issue a temporary restraining order which among other things either evicts the perpetrator from the child's home or restores possession of the home to the child and the non-abusing parent.

A protective order may be considered prior to removing a child from the home, but such an order is only advisable when there has been a thorough assessment of the ability of the non-abusing parent to protect the child. If there is substantial doubt that the non-abusing parent can or will protect the child, if domestic violence is a concern that may prevent the non-abusing parent from being able to protect the child, or there is concern that the parent had complicity in the abuse/neglect, removal of the child may be a more appropriate protective action if an in home or court ordered safety plan cannot be implemented.

It is important to note that a Protective Order is time limited and cannot be considered as a permanent solution to addressing threats of danger. If there is a need for a Protective Order,

 Department of <b>Children &amp;          Family Services</b> <i>Building a Stronger Louisiana</i>	<b>Division/Section</b>	Child Welfare
	<b>Chapter No./Name</b>	4 – Child Protective Services (CPS)
	<b>Part No./Name</b>	7 – Court Involvement
	<b>Section No./Name</b>	Court Involvement
	<b>Document No./Name</b>	4-710 Emergency Protective Action
	<b>Effective Date</b>	August 1, 2022

the protective parent to secure legal custody either through Family Court or CINC proceedings prior to ending agency involvement.

## 2. COURT ORDERED INSTANTER SAFETY PLAN ORDERS


### a. Basis for Decision to request an Instanter Safety Plan Order

An Instanter Safety Plan order may be another option utilized to help ensure the safety of children. When case factors and assessments indicate a “voluntary” safety plan may not provide sufficient assurance or degree of compliance or protection, court intervention may be utilized to promote compliance with the plan and safety for the child by the child’s parent/caregiver. This court mandated Instanter safety plan would serve as additional reasonable efforts to prevent removal or to return children when it is deemed an appropriate and safe course of action. Through an Instanter Safety Plan Order, a child remains in the legal custody of their parent /legal caretaker.

The appropriateness of pursuing a court ordered Instanter safety plan order in lieu of removal will depend on individual case and family circumstances and the availability of suitable and committed safety providers able to take necessary safety actions to control danger. If the safety plan cannot control the danger, removal will be necessary to protect the safety of the child.

The case situations listed below may require a court-ordered safety plan. The worker, supervisor and manager must concur that the child is safe, and the record must be documented to reflect the reason an instanter safety plan is not requested in these situations. For example, if child(ren) return home at the continued custody hearing, an instanter safety plan may not be necessary if, after a thorough assessment of the child’s home and the caretaker protective capacity, the child is deemed safe.

- Child(ren) is determined to be unsafe and the instanter custody order is denied by the Judge. Prior to requesting the instanter safety plan order, the Child Welfare Manager, with the assistance of the CPS Worker and Supervisor, shall consult with the Regional BGC Attorney concerning appealing the court’s decision. If the appeal is not pursued or granted, the CPS worker shall request an instanter safety plan order.
- Child(ren) is determined to be unsafe, the department requests custody, custody is granted by the Judge, however, child(ren) go home at continued custody hearing to either parent and/or caretaker.
- Drug exposed newborn cases when safety threats are endorsed for danger and/or the parent/caretaker has a previous valid drug exposed newborn case.
- High risk cases which involve children under the age of 5 with a serious injury and there is no clearly identified perpetrator. Safety threats are endorsed which make the child(ren) unsafe.

 <p>Department of Children &amp; Family Services <i>Building a Stronger Louisiana</i></p>	<b>Division/Section</b>	Child Welfare
	<b>Chapter No./Name</b>	4 – Child Protective Services (CPS)
	<b>Part No./Name</b>	7 – Court Involvement
	<b>Section No./Name</b>	Court Involvement
	<b>Document No./Name</b>	4-710 Emergency Protective Action
	<b>Effective Date</b>	August 1, 2022


- Sexual abuse cases in which the perpetrator has been arrested and there is a possibility of release of the perpetrator and/or the perpetrator continues to have access to the child.
- Perpetrator volunteers to leave the home during the course of the investigation.
- Cases of medically fragile children such as failure to thrive, children with chronic illness or developmental issues where medical neglect is suspected and/or appears justified.
- Other cases where the children are at imminent risk of removal and court involvement strengthens the safety plan actions.

A pre-removal/high risk staffing should be held to determine the need for court intervention. Staff is expected to follow policy regarding cases requiring high risk staffings. The discussion should include the endorsed safety threats, child vulnerability, caretaker protective capacities, and safety planning for the family. The Child Welfare Manager will be responsible for convening the staffing. Participants shall include a Family Services Worker and Supervisor, the Regional Bureau of General Counsel Attorney if available. If it is necessary to request an instanter safety plan order after hours, the Child Welfare Manager shall be contacted by the Supervisor and Worker prior to contacting the court of jurisdiction to discuss options for the instanter safety plan.

#### **b. Request for a Court Ordered Instanter Safety Plan Order**

The request for issuance of an instanter safety plan order shall be formalized by the filing of an affidavit/verified complaint with the court. The safety plan shall be attached to the Instanter Safety Plan Order and the Affidavit in Support of Instanter Safety Plan Order. See [\\* CW Form 5-SP. \\*\\*](#) The Instanter Safety Plan Order submitted to the court shall contain with the description of the threats of danger, child vulnerability and caretaker protective capacities, the safety actions and tasks to control the safety threats, when the actions and tasks will occur, who will complete the tasks and where it will occur. The safety provider and the method for monitoring the safety action or task shall be identified in the safety plan presented to the court.

If it is not possible to file the Instanter Safety Plan Order affidavit/verified complaint and obtain a written order from the judge due to the immediate need of a safety plan, the CPS worker shall request the issuance of an oral instanter safety plan order from the judge as provided in [Article 620](#) of the Children's Code. In such a case, the worker shall be prepared to state the threats of danger to the child(ren) and the need for the instanter order safety plan. This may be done orally, in person or telephonically. If the oral instanter safety plan order is issued, a written affidavit/verified complaint shall be filed within twenty-four (24) hours of the instanter safety plan order. The instanter safety plan order shall remain in effect until the safety plan is terminated. The safety plan

 <p>Department of Children &amp; Family Services <i>Building a Stronger Louisiana</i></p>	<b>Division/Section</b>	Child Welfare
	<b>Chapter No./Name</b>	4 – Child Protective Services (CPS)
	<b>Part No./Name</b>	7 – Court Involvement
	<b>Section No./Name</b>	Court Involvement
	<b>Document No./Name</b>	4-710 Emergency Protective Action
	<b>Effective Date</b>	August 1, 2022

cannot be changed or terminated without approval from the court or pursuant to LA Children’s Code [Article 632](#).

According to the Louisiana Children’s Code, [Article 619](#), the court shall issue a written order denying the request for the oral instanter order. If the court denies the request for an oral safety plan instanter order, the worker shall submit the written Instanter Safety Plan Order, the Affidavit in support of the Instanter Safety Plan Order and the DCFS Safety Plan Form to the court within 24 hours of the denial of the oral safety plan instanter order.

**c. Court Ordered Instanter Safety Plan Hearing**


If the instanter safety plan has been ordered, a hearing shall be held by the court within 3 days of the issuance of the instanter safety plan order. \*\*\* A CINC Petition is to be filed within 15 days for continuation of the CINC Adjudication.

The department has the burden to prove the existence of a ground for the continuation of the instanter safety plan pursuant to [Article 626](#) of the Louisiana’s Children’s Code.

The court, with the consent of the state, may authorize continued implementation of the instanter safety plan prior to the adjudication if there are reasonable grounds to believe the child is in need or care and the continued implementation of the instanter safety plan order is necessary for his safety and protection.

**d. Notification to the Parent/Caretaker**

The Children's Code in [Article 620 \(D\)](#) requires that the department notify the parent of the nature of the allegations and the time and place of the continued instanter safety plan hearing. In addition, [Article 619 \(E\)](#) requires that the department provide written notification to the parent or caretaker of the date, time and location of the continued instanter safety plan hearing. These required notifications are done using the [CW Form 48-ISP](#), Notice to Parent(s)/Legal Custodian of Children Instanter Safety Plan Order. This is a department notification which occurs at the time of the instanter safety plan order. The form provides the parent(s) a written notification of the instanter safety plan order; the allegations and safety threats on which the instanter safety plan order was given; notice of the continued instanter safety plan hearing; and, the date, time and place of the hearing, if that has been scheduled. This formal notification does not replace the need for the worker to discuss with the parent the reasons for the instanter safety plan order, all the facts included in the instanter safety plan order in terms that the parent can understand and the importance of their attendance at the hearing. In addition, the worker is expected to discuss with the parents that they have the right to have an attorney represent them at the court hearing. If they cannot afford an attorney, they should be advised of the local procedure for obtaining an attorney.

 <p>Department of Children &amp; Family Services <i>Building a Stronger Louisiana</i></p>	<b>Division/Section</b>	Child Welfare
	<b>Chapter No./Name</b>	4 – Child Protective Services (CPS)
	<b>Part No./Name</b>	7 – Court Involvement
	<b>Section No./Name</b>	Court Involvement
	<b>Document No./Name</b>	4-710 Emergency Protective Action
	<b>Effective Date</b>	August 1, 2022


The CPS worker shall complete the [CW Form 48-ISP](#) and review the completed form with the parent(s) at the time the parent(s) is notified of the instanter safety plan order. This will occur at the time the order is obtained. If the worker has filed a written instanter safety plan order and obtained a signed written instanter safety plan order at the time of the discussion with the parent, the parent shall be given a copy of the order along with the CW Form 48-ISP.

If a parent was unavailable at the time of the instanter safety plan order, the worker shall be responsible to make a diligent effort to locate the parent. When the parent is located, he shall be given a copy of the affidavit, the court order and the CW Form 48-ISP. A diligent effort includes at least two (2) attempts to contact the parent at the last known address, if there is no indication he has moved from that address. Additionally, the worker is expected to attempt to contact the parent by telephone; through an employer, neighbors, or relatives; and, at any other places known to be frequented by the parent. These efforts to locate the absent parent are documented on the affidavit in support of the instanter safety plan order, in the ACESS case record on the Case Activity Log, and discussed with the Family Services worker during a case transfer staffing.

If the continued instanter safety plan hearing is scheduled after the parent has been notified of the instanter safety plan order, the worker is responsible for notifying the parent of the date, time and location of the hearing. This notification may be by telephone, in-person, or by mail (registered mail, return receipt requested). The notification must also be in writing as required by the Children's Code. The CW Form 48-ISP is used for this written notification. The notification is documented in the case record on the Case Activity Log or as an interview.

If the parent refuses to sign the form, this shall be noted at the bottom of the Form 48-ISP. In addition, the worker is expected to make an ACESS Case Activity Log entry or interview entry, which also documents either of the following which are applicable to the situation: the parent refuses to listen to the worker; or, the parent has the information about the instanter safety plan order and hearing but will not sign the form.

If the parents are not living together or the caretaker is not the parent, the worker shall be responsible for making a diligent effort to contact the absent parent or parents and to notify him/them of the instanter safety plan order, the allegations, and the continued instanter safety plan hearing using the CW Form 48-ISP. If the absent parent is not accessible to the worker due to distance, the worker may contact the parent by telephone to advise him of the instanter safety plan order and of the hearing. The CW Form 48-ISP and a copy of the instanter safety plan order shall be mailed by certified mail, with a return receipt requested, as soon as possible.

 <p>Department of Children &amp; Family Services <i>Building a Stronger Louisiana</i></p>	<b>Division/Section</b>	Child Welfare
	<b>Chapter No./Name</b>	4 – Child Protective Services (CPS)
	<b>Part No./Name</b>	7 – Court Involvement
	<b>Section No./Name</b>	Court Involvement
	<b>Document No./Name</b>	4-710 Emergency Protective Action
	<b>Effective Date</b>	August 1, 2022

In some cases, (i.e. abandonment) the worker will not be able to locate either parent. In those cases, the worker shall document efforts to locate the parents on the affidavit in support of the instant safety plan order and in the ACCESS case record his efforts to locate the parents.

If the continued instant safety plan hearing is re-scheduled, the worker is responsible for notifying the parent/caretaker in writing of the date, time and place of the hearing. A written notice is required each time the continued instant safety plan hearing is re-scheduled.

**e. Notification to District Attorney and the Bureau of General Counsel**

The District Attorney and the BGC regional attorney shall be notified as soon as possible of all granted instant safety plan orders by the Court. A copy of the instant safety plan shall be provided to District Attorney and Regional Attorney along with the Form 10 and with a request to file a CINC Petition within 15 days. The DA and the BGC regional attorney shall also be notified if the court denies the order for an instant safety plan.

**\* f. Notification to District Defender or other entity designated for the jurisdiction by the Indigent Parent’s Representation Program representing parents and the entity designated for the jurisdiction by the Louisiana Supreme Court to provide counsel to the child**


Children’s Code Article 623 requires that the department give notice of the instant safety plan order along with a copy of the affidavit and order to the district defender or other entity designated for the jurisdiction by the Indigent Parent’s Representation Program for *representing parents* (ex. Public Defender’s Office) and the entity designated for the jurisdiction by the Louisiana Supreme Court to provide counsel for *the child* (ex. Mental Health Advocacy Services). This shall be provided as soon as possible but prior to the 3 day hearing. \*\*

**g. Requests from a Child and/or Parent’s Attorney**

The court may appoint an attorney to represent the sole interest of the child. In these situations, it is permissible for information regarding the investigation to be shared verbally with the child's attorney upon a request from the attorney. In addition, the case record may be reviewed by the attorney as per the confidentiality policy in Section [1-525 B. 1](#) of the Program Policy Manual. The name and all identifying information regarding the reporter of the abuse/neglect shall be removed and shall not be shared under any circumstances.

If an attorney for the child's parent/caretaker requests information regarding the investigation and/or the department position, the worker will advise his supervisor of the



 Department of <b>Children &amp;          Family Services</b> <i>Building a Stronger Louisiana</i>	<b>Division/Section</b>	Child Welfare
	<b>Chapter No./Name</b>	4 – Child Protective Services (CPS)
	<b>Part No./Name</b>	7 – Court Involvement
	<b>Section No./Name</b>	Court Involvement
	<b>Document No./Name</b>	4-710 Emergency Protective Action
	<b>Effective Date</b>	August 1, 2022

request. Refer to Section [1-525](#) for the policy regarding confidentiality and the parent's attorney.

Requests for information should be discussed with the BGC Regional Attorney and cleared as needed prior to the sharing of information.

### 3. INSTANTER ORDERS REQUESTING CUSTODY

See Policy 4-805, Emergency Removal of Children, when an in home safety plan or an instanter court order safety plan cannot be implemented.

### III. FORMS AND INSTRUCTIONS

CW Form 10

CW Form [48-ISP/Instructions](#) Notice to Parent-Legal Custodian of Instanter Safety Plan Order

\*\*\*

### IV. REFERENCES

[Louisiana Children's Code Article 606](#)

[Louisiana Children's Code Article 617](#)

[Louisiana Children's Code Article 618](#)

[Louisiana Children's Code Article 619](#)

[Louisiana Children's Code Article 619 \(E\)](#)

[Louisiana Children's Code Article 620](#)

[Louisiana Children's Code Article 620 \(D\)](#)

[Louisiana Children's Code Article 624](#)

[Louisiana Children's Code Article 626](#)

[Louisiana Children's Code Article 672.1](#)

[PUBLIC LAW 96-272](#)

[PUBLIC LAW 105-89](#)