



GUIDE TO LEGAL GUARDIANSHIP IN CHILD IN NEED OF CARE CASES



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INTRODUCTION

Foster care is meant to be the safety plan of last resort and temporary. The Adoption and Safe Families Act (ASFA) requires a permanent plan for each child that will be stable and lasting and occur as soon as possible. When determining the permanent plan for a child, the first priority, pursuant to the Louisiana Children’s Code, is reunification with the child’s parents. If reunification is not a viable option, the court shall look to the most appropriate plan given the following order of priorities: adoption, guardianship, custody to a relative, and Alternative Permanent Living Arrangement (APLA). In determining the permanent plan, the court shall consider the child’s need for continuing contact with any relative by blood, adoption, or affinity with whom the child has an established and significant relationship.

The attached Comparison Chart of Legal Custody, Legal Guardianship, and Adoption in Child in Need of Care (CINC) Cases is intended to: (1) clarify differences among the options of custody, guardianship, and adoption available to the court; (2) enable stakeholders to identify the most appropriate option given the facts and circumstances of each case; and (3) assist judges in making fully informed decisions regarding permanency for the child. The chart’s development grew out of an awareness that legal guardianship (hereinafter “guardianship”) appears to be underutilized in Louisiana. The chart provides a summary of key concepts for custody, guardianship, and adoption in CINC cases.

GUARDIANSHIP OVERVIEW

Guardianship is a status that can be authorized by a court exercising juvenile jurisdiction in a CINC case. A guardian of a child is empowered to make all major decisions concerning the child’s care and guidance except to consent to adoption. The rights and responsibilities of administering the property of a child are governed by the law of tutorship. A guardian, unlike a tutor, does not have strict liability for damage caused by a child pursuant to Civil Code Articles 2317 and 2318. La. Ch. C. art. 719.

Guardianships, although not as legally durable as adoption, can provide permanency for a child. Guardianships may provide more expedient permanency than adoption since they do not require termination of parental rights. They may be preferred by relative caregivers who do not want to jeopardize familial bonds by adopting the child.

The Fostering Connections to Success and Increasing Adoptions Act, 42 U.S.C. § 671 *et seq.*, promotes the use of guardianships to increase permanency for children in foster care. The purpose of guardianship is three-fold:

- To provide a permanent placement for children when neither reunification nor adoption are in their best interest;
- To encourage stability and permanence for children who have been adjudicated in need of care and removed from their parents’ custody; and
- To increase the prompt placement of children, especially with relatives, without ongoing supervision by the Department of Children and Family Services (DCFS).

La. Ch. C. art. 718(A).

The provisions for guardianship are found in the Louisiana Children’s Code as follows:

- Title I - Definitions;
- Title VI - Chapter 1 Definitions, Chapter 14 Disposition, and Chapter 16 Dispositional Reviews; and
- Title VI - Chapter 19 Guardianship.

The information contained herein is intended to provide useful information regarding the subjects covered but may not contain all relevant information or recent changes to the law or local court rules. The information contained herein is not intended to be construed as legal advice or considered a substitute for statutory, procedural, or other legal authority. This guide was last updated on 6/1/2022.

COMPARISON CHART: LEGAL CUSTODY, LEGAL GUARDIANSHIP, AND ADOPTION IN CHILD IN NEED OF CARE (CINC) CASES¹

LEGAL ARRANGEMENT	LEGAL CUSTODY TO A RELATIVE/ OTHER INDIVIDUAL	LEGAL GUARDIANSHIP	ADOPTION THROUGH DCFS
BRIEF EXPLANATION	<ul style="list-style-type: none"> The legal process in which a judge places a child in the legal custody of a relative or other individual who is granted rights and responsibilities with respect to the child. The biological/legal parents' rights to the child do not have to be terminated to grant someone else legal custody of the child. Generally, once legal custody is granted, the CINC case is closed. However, the court may order continued supervision by the Department of Children and Family Services (DCFS). <p><i>This comparison chart is focused on granting legal custody after a child is adjudicated in need of care.</i></p>	<ul style="list-style-type: none"> The legal process in which a judge grants guardianship to a relative or other individual after a child has been adjudicated in need of care. Guardians make all major decisions concerning the child's care and guidance except consent to the child's adoption. For guardianship, the biological/legal parents' rights to the child do not have to be terminated, and biological/legal parents do not have to consent to the guardianship. Generally, once guardianship is granted, the CINC case is closed. 	<ul style="list-style-type: none"> The legal process in which a judge grants an adoption where the adoptive parents become the child's legal parents. Adoption may only occur after the child's (1) biological/legal parents voluntarily surrender their rights; (2) biological/legal parents' rights are legally terminated by the court (even if the parent is unknown); and/or (3) biological/legal parents have died. If one (or more) of these have occurred, the child is "freed for adoption," and the adoption process may begin. Once the adoption is final, the CINC case is closed.
LEGAL DEFINITION	<ul style="list-style-type: none"> Legal custody means the right to have physical custody of the child and determine where and with whom the child shall reside; to exercise the rights and duty to protect, train, and discipline the child; the authority to consent to major medical, psychiatric, and surgical treatment; and to provide the child with food, shelter, education, and ordinary medical care, all subject to any residual rights possessed by the child's biological/legal parents. (Art. 116(12)). 	<ul style="list-style-type: none"> 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 as set forth in Article 719. (Art. 116(5.1)). 	<ul style="list-style-type: none"> There are three types of adoptions in Louisiana: agency adoption, private adoption, and intrafamily adoption. (Art. 1170). Upon adoption, the adoptive parents become the parents of the child for all purposes and the filiation between the child and his or her biological/legal parents is terminated, except as otherwise provided by law. (La. Civ. Code art. 199). <p><i>This comparison chart only refers to agency adoptions that occur through DCFS in CINC cases.</i></p>

¹ Unless identified otherwise, all cited articles throughout this chart refer to the Louisiana Children's Code. Some parts of this chart may not apply in Indian Child Welfare Act (ICWA) cases; consult relevant laws and DCFS Policy. Please note that the plural form of "parent" is used throughout the chart for simplicity, even though at times, only one parent has been identified in a case.

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<p align="center">CAREGIVER AUTHORITY AND RESPONSIBILITY</p>	<ul style="list-style-type: none"> • The rights and responsibilities of a legal custodian as stated in the Children’s Code are as follows: <ul style="list-style-type: none"> ○ Right to physical custody; ○ Right to determine where and with whom the child lives; ○ Duty to protect the child; ○ Right and duty to train and discipline the child; ○ Authority to consent to major medical, psychiatric, and surgical treatment; ○ Duty to provide food and shelter; and ○ Duty to provide the child with education and ordinary medical care. (Art. 116(12)). • If DCFS involvement continues, some of these rights and responsibilities may be impacted. • These rights and responsibilities are all subject to the parents’ residual rights, such as the right to: visitation, consent to adoption, and determining religious affiliation. (Art. 116(24)). 	<ul style="list-style-type: none"> • The guardian has the same rights and responsibilities as a legal custodian; right to consent to the child’s marriage; and right to consent to the child’s enlistment in the armed services. • The guardian does NOT have the right to consent to the adoption of the child. • The guardian is NOT responsible for damage “occasioned by the child” as they would be pursuant to Civil Code Article 2317 or 2318. • The rights and responsibilities of administering the property of the child are governed by the law of tutorship. (Art. 719). 	<ul style="list-style-type: none"> • The adoptive parents of the child become the child’s legal parents. • The adoptive parents have all rights and responsibilities of parents. • The biological/legal parents no longer have any rights to the child or responsibility to support the child once the adoption is final. However, the child may still inherit from their biological/legal parents and biological/legal family. (Art. 1218). • See Article 1038 regarding the effects of a termination judgment.
<p align="center">PROCEDURAL OVERVIEW</p>	<ul style="list-style-type: none"> • A judge may determine the child’s permanent plan to be legal custody to a relative at the Permanency Hearing. (Arts. 702, 710). • A judge may order legal custody of a child to a relative or other individual in a CINC case as provided in the Children’s Code: <ul style="list-style-type: none"> ○ Provisionally through an Instant Order placing custody with a relative or other individual (Art. 619);* ○ Provisionally pending the Continued Custody Hearing if asked for <i>ex parte</i> by a relative or other individual (Art. 622);* ○ Provisionally at the Continued Custody Hearing (Art. 627);* ○ Pursuant to Article 631(B);* ○ At the Disposition Hearing (Art. 684); and ○ On a Motion to Modify Judgment of Disposition (Art. 714). <p><i>*Please note that if the CINC Petition is not timely filed and/or the child is not adjudicated in need of care, then the custody status reverts to the status prior to DCFS involvement. (See Art. 632(C)).</i></p>	<ul style="list-style-type: none"> • A judge may determine the child’s permanent plan to be guardianship at the Permanency Hearing. (Arts. 702, 710). • The child shall first be adjudicated a child in need of care by the court before guardianship can be granted in a CINC case. • There are then two processes for initiating guardianship as outlined in Chapter 19 of the Children’s Code. First, DCFS may submit a case plan along with the case review report to the court and counsel recommending guardianship. Second, DCFS, the biological/legal parents, or the child’s attorney may file a motion for guardianship. The child shall have lived with the proposed guardian for at least 6 months (unless the judge waives this requirement for good cause). A judge will decide, after a hearing, whether to order guardianship or not based on Articles 718-724.1. • A judge may order guardianship to a nonparent at the Disposition Hearing (Art. 684). 	<ul style="list-style-type: none"> • A judge may determine the child’s permanent plan to be adoption at the Permanency Hearing. (Arts. 702, 710). • If the permanent plan is adoption, the child must be “freed for adoption” (see “Brief Explanation” row above) before an Adoption Petition may be filed with the court. The child shall have lived with the proposed adoptive parents for six months prior to the hearing for adoption. • If the judge grants the adoption, the child will become the legal child of the adoptive parents just as if he or she was born to the adoptive parents. (Arts. 1198-1220).

LEGAL ARRANGEMENT	LEGAL CUSTODY TO A RELATIVE/ OTHER INDIVIDUAL	LEGAL GUARDIANSHIP	ADOPTION THROUGH DCFS
JURISDICTION	<ul style="list-style-type: none"> Except as provided in Article 313, a court exercising juvenile jurisdiction shall have continuing jurisdiction over the following proceedings and the exclusive authority to modify any custody determination rendered, including the consideration of visitation rights: CINC proceedings, involuntary and voluntary termination of parental rights’ proceedings, adoption proceedings, Family in Need of Services (FINS) proceedings, and transfer of custody pursuant to Title XV Chapter 3. (Art. 309(A)). Jurisdiction ends upon declination of jurisdiction, transfer of the proceeding, expiration or satisfaction of an informal adjustment agreement, expiration or satisfaction of an informal family services plan agreement, or dismissal of the proceeding. (Art. 313). 	<ul style="list-style-type: none"> The court shall retain jurisdiction to enforce, modify, or terminate a guardianship order. (Art. 724). 	<ul style="list-style-type: none"> Jurisdiction ends once time delays for appeal and annulment due to fraud are exhausted unless a proceeding to enforce a continuing contact agreement is filed. (See Arts. 1218D, 1259 <i>et seq.</i>).
PERMANENCY & DURATION	<ul style="list-style-type: none"> In the Disposition articles, the Children’s Code states: “The court shall place the child in the custody of a relative unless the court has made a specific finding that such placement is not in the best interest of the child.” (Art. 683(B)). However, legal custody to a relative or other individual is not included as one of the permanent placements defined in Art. 603(22). (See also 42 U.S.C. § 675(5)(C)). If entered at Disposition or thereafter, the Custody Order remains in effect until the child’s 18th birthday unless the judge sets a different duration, or the order is modified or terminated. (See Art. 686). If entered at Disposition or thereafter, the Custody Order can only be changed by court order upon a motion to modify the Judgment of Disposition. (See “Modification/Termination” row below). 	<ul style="list-style-type: none"> Guardianship is a permanency option if adoption is not in the best interest of the child and the child cannot be safely reunified with the parent within a reasonable time. (See Art. 722(A)(2), Amended by Acts 2022, No. 272). The Guardianship Order remains in effect until the child’s 18th birthday unless the judge sets a different duration, or the order is modified or terminated. The Guardianship Order can only be changed by the court and only in limited circumstances. (See “Modification/Termination” row below). 	<ul style="list-style-type: none"> Adoption is a permanency option once the child is freed for adoption. The Adoption Order remains in effect permanently. The full name of the child may be changed. The child will be issued a new birth certificate with the adoptive parents’ names listed as if the child was born to them. (See Arts. 1218, 1219).
VISITATION/ FAMILY TIME	<ul style="list-style-type: none"> The Custody Order from the court may address visitation with the child’s biological/legal parents and other family members, including siblings. If so, the order must be followed. Unless the court orders otherwise, legal custodians may choose to allow visitation with family members, friends, etc. If the court orders continued DCFS supervision or involvement, options for assistance may be limited because DCFS is no longer the custodian. For children with positive connections and attachments to relatives, especially siblings, visitation decisions should be carefully considered before requesting and ordering legal custody to a relative or other individual. 	<ul style="list-style-type: none"> The Guardianship Order from the court shall address visitation with the child’s biological/legal parents. The order may also address visitation with siblings and other family members. The order must be followed. Unless the court orders otherwise, guardians may choose to allow visitation with family members, friends, etc. For children with positive connections and attachments to relatives, especially siblings, visitation decisions should be carefully considered before requesting and ordering guardianship. 	<ul style="list-style-type: none"> For children with positive connections and attachments to relatives, especially siblings, visitation decisions should be carefully considered before setting a permanent plan of adoption. Visitation or continuing contact after an adoption should be discussed with DCFS and/or an attorney prior to the filing of the Adoption Petition. Louisiana recognizes a limited form of post-adoption continuing contact between the child and his or her biological relatives. Chapter 14-A of Title XII authorizes only voluntary agreements. The adoptive parents and the biological relative must both be willing for the court to approve future contact. If a continuing contact agreement is approved and made the order of the court, the court retains continuing jurisdiction for the resolution of any problems that may develop about the agreement. If no continuing contact agreement has been accepted and ordered by the court, the adoptive parents determine whether to allow visitation with the child. Following adoption, DCFS is no longer involved, and visitation is at the adoptive parents’ discretion.

LEGAL ARRANGEMENT	LEGAL CUSTODY TO A RELATIVE/ OTHER INDIVIDUAL	LEGAL GUARDIANSHIP	ADOPTION THROUGH DCFS
MODIFICATION/ TERMINATION	<ul style="list-style-type: none"> The district attorney, DCFS, the child, the parents, or the court on its own motion may seek to modify a Judgment of Disposition. (Art. 714). A Judgment of Disposition may be modified if the court finds that the conditions and circumstances justify the modification. (Art. 716). 	<ul style="list-style-type: none"> DCFS, the child's counsel, the guardian, a parent allowed to intervene, or the court on its own motion may seek to modify or terminate the Guardianship Order. (Art. 724). The Guardianship Order can only be modified or terminated by the court if there is clear and convincing evidence of a substantial and material change in the circumstances of the guardian or child because: <ul style="list-style-type: none"> A guardian is no longer able or willing to serve as guardian; Continuing the guardianship is so deleterious to the child it warrants a modification or termination; or The harm likely to be caused by the modification or termination is substantially outweighed by the advantages to the child of the modification. (Art. 724). 	<ul style="list-style-type: none"> There is no legal provision for modification or termination of an Adoption Order. There is a legal provision for an annulment of a final decree of adoption. (See Arts. 1262, 1263).
SUBSIDY	<ul style="list-style-type: none"> There is no subsidy (financial and medical assistance and other support) for a transfer of legal custody to a relative or other individual. However, other benefits may be available (see "Other Benefits" row below). 	<ul style="list-style-type: none"> If the potential guardians have been the child's certified foster caregivers for at least six months, they may be eligible for Guardianship Subsidy (financial and medical assistance and other support). The Guardianship Subsidy requirements must be met and finalized by DCFS prior to the Guardianship Order. DCFS will discuss eligibility for the Guardianship Subsidy as soon as the potential guardians are identified. If the Guardianship Order is granted after the youth is 16, the guardians may qualify for an Extended Guardianship Subsidy after the youth turns 18 (and until the age of 21) if requirements are met. Per DCFS Policy, if the guardians are eligible for Guardianship Subsidy, they can have attorney's fees reimbursed up to \$1,000 or \$2,000 (depending on the child's IV-E eligibility) if needed to have their own attorney in court for the hearing. (DCFS Policy No. 6-854 (March 1, 2018)). 	<ul style="list-style-type: none"> The adoptive parents may be eligible for Adoption Subsidy (financial and medical assistance and other support) if the child meets certain criteria. The Adoption Subsidy requirements must be met and finalized by DCFS prior to the adoption hearing. DCFS will discuss eligibility for the Adoption Subsidy as soon as potential adoptive parents are identified. If the youth is adopted after 16 years old, the adoptive parents may qualify for an Extended Adoption Subsidy after the youth turns 18 (and until the age of 21) if requirements are met.
OTHER BENEFITS	<ul style="list-style-type: none"> Legal custodians may apply for any benefits for which the family may be eligible. Legal custodians may qualify for the Kinship Care Subsidy Program through DCFS depending on income and other factors. More information may be found here: http://dcfs.la.gov/page/kcsp. SNAP benefits are a possible resource depending on income and other factors. More information may be found here: http://dcfs.la.gov/page/get-snap. Some children may qualify for Social Security benefits based on the child's circumstances and the family's income. See: http://dcfs.la.gov/page/696. When youth exit foster care after the age of 14, they continue to be eligible to receive independent living services (i.e., independent living skill classes, youth engagement activities, and crisis case management) from a contract provider until they are 23 years old. For independent living providers, see: http://www.dss.state.la.us/page/youthlink. 	<ul style="list-style-type: none"> Guardians may apply for any benefits for which the family may be eligible. Prior to the Guardianship Subsidy (see "Subsidy" row above), guardians may qualify for the Kinship Care Subsidy Program through DCFS depending on income and other factors. More information may be found here: http://dcfs.la.gov/page/kcsp. SNAP benefits are a possible resource depending on income and other factors. More information may be found here: http://dcfs.la.gov/page/get-snap. Some children may qualify for Social Security benefits based on the child's circumstances and the family's income. The Social Security benefit amount may exceed the Guardianship Subsidy amount, which is based on the child's age. The guardians must choose between these two options. See http://dcfs.la.gov/page/696. When youth exit foster care after the age of 14, they continue to be eligible to receive independent living services (i.e., independent living skill classes, youth engagement activities, and crisis case management) from a contract provider until they are 23 years old. For independent living providers, see: http://www.dss.state.la.us/page/youthlink. 	<ul style="list-style-type: none"> Adoptive parents may apply for any benefits for which the family may be eligible. SNAP benefits are a possible resource depending on income and other factors. More information may be found here: http://dcfs.la.gov/page/get-snap. Some children may qualify for Social Security benefits based on the child's circumstances and the family's income. The Social Security benefit amount may exceed the Adoption Subsidy amount, which is based on the child's age. The adoptive parents must choose between these two options. See: http://dcfs.la.gov/page/696. There are state and federal adoption tax credits available for adoptive parents. A tax advisor may be able to provide more information; see also: https://www.irs.gov/newsroom/understanding-the-adoption-tax-credit. When youth exit foster care after the age of 14, they continue to be eligible to receive independent living services (i.e., independent living skill classes, youth engagement activities, and crisis case management) from a contract provider until they are 23 years old. For independent living providers, see: http://www.dss.state.la.us/page/youthlink.

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<p align="center">DUTY TO SUPPORT</p>	<ul style="list-style-type: none"> Biological/legal parents are still required to support the child. As part of any Judgment of Disposition granting custody of the child to a person other than the parents, the court may, after giving the parent a reasonable opportunity to be heard, order that the parent contribute to the cost of care and treatment after considering several factors. (Art. 685C). There can be an informal agreement with the parents to provide support. The local Child Support Enforcement office may also be contacted to request child support benefits or have existing benefits transferred to the legal custodian. 	<ul style="list-style-type: none"> Biological/legal parents are still required to support the child. A judge may order parental support as part of the Guardianship Order. If support is not part of the Guardianship Order, there can be an informal agreement with the parents to provide support. The local Child Support Enforcement office may also be contacted to request child support benefits or have existing benefits transferred to the guardian. 	<ul style="list-style-type: none"> Adoptive parents have a duty to support the child. Biological/legal parents whose rights have been surrendered or terminated have no duty to support the child.
<p align="center">COLLEGE, CAREER SCHOOL, AND/OR VOCATIONAL TRAINING BENEFITS</p>	<ul style="list-style-type: none"> Children who spend at least 24 hours in foster care at any age may be eligible for Federal Pell Grants by completing the Free Application for Federal Student Aid (FAFSA) and depending on income and other factors. A Federal Pell Grant, unlike a loan, does not have to be repaid except under certain circumstances. Amounts can change yearly. For more information: https://studentaid.gov/understand-aid/types/grants/pell. If the youth is in foster care at the age of 14 or older and exits foster care for reasons other than guardianship, adoption or aging out, the youth will be eligible for Education Training Vouchers (ETVs). These funds are available for college, career school, or vocational training. A student may be eligible for up to \$5,000 per academic year based on the student's financial need. For more information: http://www.dcf.louisiana.gov/assets/docs/searchable/Child%20Welfare/YouthLink/ETV_Flyer.pdf. Other scholarships may also be available depending on the circumstances. For more information: https://www.fc2success.org/our-programs/information-for-students/. For Foster Care to College: Online Resources: https://www.publicservicedegrees.org/resources/foster-youth-online-college-support-resources/. 	<ul style="list-style-type: none"> Children who spend at least 24 hours in foster care at any age may be eligible for Federal Pell Grants by completing the FAFSA and depending on income and other factors. A Federal Pell Grant, unlike a loan, does not have to be repaid except under certain circumstances. Amounts can change yearly. For more information: https://studentaid.gov/understand-aid/types/grants/pell. If the Guardianship Order is granted after the youth turns 16, the youth will be eligible for Education Training Vouchers (ETVs). These funds are available for college, career school, or vocational training. A student may be eligible for up to \$5,000 per academic year based on the student's financial need. For more information: http://www.dcf.louisiana.gov/assets/docs/searchable/Child%20Welfare/YouthLink/ETV_Flyer.pdf. Other scholarships may also be available depending on the circumstances. For more information: https://www.fc2success.org/our-programs/information-for-students/. For Foster Care to College: Online Resources: https://www.publicservicedegrees.org/resources/foster-youth-online-college-support-resources/. 	<ul style="list-style-type: none"> Children who spend at least 24 hours in foster care at any age may be eligible for Federal Pell Grants by completing the FAFSA and depending on income and other factors. A Federal Pell Grant, unlike a loan, does not have to be repaid except under certain circumstances. Amounts can change yearly. For more information: https://studentaid.gov/understand-aid/types/grants/pell. If the adoption is finalized after the youth turns 16, the youth will be eligible for Education Training Vouchers (ETVs). These funds are available for college, career school, or vocational training. A student may be eligible for up to \$5,000 per academic year based on the student's financial need. For more information: http://www.dcf.louisiana.gov/assets/docs/searchable/Child%20Welfare/YouthLink/ETV_Flyer.pdf. Other scholarships may also be available depending on the circumstances. For more information: https://www.fc2success.org/our-programs/information-for-students/. For Foster Care to College: Online Resources: https://www.publicservicedegrees.org/resources/foster-youth-online-college-support-resources/.

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EXTENDED FOSTER CARE (EFC)	<ul style="list-style-type: none"> Extended Foster Care (EFC) is not available if legal custody of the child is granted to a relative or individual, if legal guardianship is granted, or if there is an adoption. EFC is a voluntary program available to youth who are in DCFS custody on their 18th birthday (whether parental rights have been terminated or not) with no permanency options. Those youth must have been adjudicated a child in need of care and meet eligibility criteria. For more information: http://www.dcf.louisiana.gov/page/647. If youth are in DCFS custody when they turn 18, they are eligible for Medicaid services until the age of 26. For more information: http://www.dcf.louisiana.gov/page/574. If youth are in DCFS custody when they turn 18, they are also eligible for Education Training Vouchers. For more information: http://www.dcf.louisiana.gov/assets/docs/searchable/Child%20Welfare/YouthLink/ETV_Flyer.pdf. 		
INHERITANCE	<ul style="list-style-type: none"> The child has no legal right to inherit from the legal custodians. Legal custodians may include the child in their inheritance decisions. The child still has a legal right to inherit from their biological/legal parents. An attorney should be consulted if there are inheritance questions as state laws govern mandatory inheritance of minors. 	<ul style="list-style-type: none"> The child has no legal right to inherit from the guardians. Guardians may include the child in their inheritance decisions. The child still has a legal right to inherit from their biological/legal parents. An attorney should be consulted if there are inheritance questions as state laws govern mandatory inheritance of minors. 	<ul style="list-style-type: none"> The adopted child has the legal right to inherit from their adopted parents. In addition, a child born in Louisiana who is adopted continues to have the right to inherit from their biological/legal parents and blood relatives. (Art. 1218(B)). See Article 1038 regarding effects of termination judgment. An attorney should be consulted if there are inheritance questions as state laws govern mandatory inheritance of minors.
RESOURCES	<ul style="list-style-type: none"> DCFS offers a Kinship Navigator Program, which provides resources and information. For more information: http://www.dcf.louisiana.gov/page/kinship-navigator. Additional resources, such as support groups and classes, may be available through the local Family Resource Center or other community supports. 		

SCENARIOS TO CONSIDER WHEN IDENTIFYING THE APPROPRIATE DISPOSITION OR PERMANENT PLAN FOR EACH CHILD

CINC cases are complicated and there are pros and cons to each legal arrangement. There is also overlap between legal custody and guardianship. The following scenarios are meant to provide some context for courts when determining Disposition or the permanent plan that may be in each child’s best interest based on the circumstances of the case.

<p style="text-align: center;">Brief Scenario: Child(ren) in State’s Custody through DCFS</p>	<p style="text-align: center;">Legal Arrangement Possibilities: Legal Custody, Guardianship, or Adoption</p> <p style="text-align: center;"><i>This comparison chart is focused on granting legal custody after a child is adjudicated in need of care. The chart only refers to agency adoptions that occur through DCFS in CINC cases.</i></p>	<p style="text-align: center;">Considerations</p>
<ul style="list-style-type: none"> An older youth, who is not freed for adoption, wants to live with the caregiver. The caregiver agrees to provide a home, food, and clothing long-term and support the youth in her goals, including her vocational plan. The youth would like continued assistance in becoming independent, and achieving permanency is in her best interest. 	<ul style="list-style-type: none"> Because the adult is willing and able to provide the necessary support to the youth, and the youth wants to live with the proposed caregiver, legal custody or guardianship may be in the child’s best interest. Careful consideration should be given to the need for continued assistance to achieve independence. 	<ul style="list-style-type: none"> There is a specific legal procedure required for guardianship. Subsidy is not available for legal custody cases, unlike guardianship or adoption cases. Extended Foster Care (EFC) is not available when the child has achieved permanence through legal custody, guardianship, or adoption. If youth are in DCFS custody when they turn 18, they are eligible for Medicaid benefits until the age of 26. If youth are in DCFS custody when they turn 18, they are eligible for Education Training Vouchers.
<ul style="list-style-type: none"> This is a Disposition Hearing. The children have been placed with a grandmother since removal. There are no safety concerns regarding the grandmother. The biological mother has decided to enter long-term treatment where children are not allowed. The father is unknown. 	<ul style="list-style-type: none"> Legal custody is a viable option in this case. The biological mother appears to be working towards reunification with the children. The grandmother can provide safe and reliable care for the children during the mother’s time in treatment. 	<ul style="list-style-type: none"> The judge may order legal custody to a relative after the child is adjudicated in need of care. If the judge so orders, the court will retain jurisdiction until the child is 18 unless any of the Article 313 provisions apply. Custody to a relative or other individual may be ordered with or without ongoing supervision by DCFS.
<ul style="list-style-type: none"> The child has a long-term relationship with a neighbor who has played a major role in the child’s life prior to DCFS involvement. The parents will be in prison for at least five years and feel the neighbor is the best person to parent the child. 	<ul style="list-style-type: none"> In this case, there is an established, significant relationship between the child and a neighbor. The parents have not surrendered their rights nor have their parental rights been terminated. Guardianship appears to be in the child’s best interest. 	<ul style="list-style-type: none"> Parental rights do not have to be surrendered or terminated for guardianship, though they can be. Guardianship is a permanency option if adoption is not in the best interest of the child and the child cannot be safely reunified with the parent within a reasonable time. (See Art. 722(A)(2), Amended by Acts 2022, No. 272). Parents are not required to consent to a guardianship although parental involvement and engagement with planning for children is an important part of CINC cases. Guardianship Subsidy should be considered as a form of long-term financial support for the family. The child’s wishes should be considered, and the input of the child’s attorney is an important part of the planning process.

<p align="center">Brief Scenario: Child(ren) in State’s Custody through DCFS</p>	<p align="center">Legal Arrangement Possibilities: Legal Custody, Guardianship, or Adoption</p> <p align="center"><i>This comparison chart is focused on granting legal custody after a child is adjudicated in need of care. The chart only refers to agency adoptions that occur through DCFS in CINC cases.</i></p>	<p align="center">Considerations</p>
<ul style="list-style-type: none"> The children are close to their paternal grandfather who agrees to become the legal guardian for all 3 siblings. The children want visitation with their biological mother and father, and the paternal grandfather is willing to support the visitation. The judge will order visitation as agreed to by the children’s parents and their grandfather. 	<ul style="list-style-type: none"> Guardianship with a Guardianship Subsidy may be the best permanent plan since the grandfather will encourage a relationship with the children's parents and will keep all the siblings together. 	<ul style="list-style-type: none"> Guardianship is included in the Children’s Code definition of “permanent placement” along with reunification and adoption. When the children have a relationship with one or more parents and the relative does not want to adopt, guardianship may be a preferable option as opposed to terminating parents’ rights and freeing the children for adoption. Guardianship Subsidy should be considered as a form of long-term financial support for the family.
<ul style="list-style-type: none"> The youth has come into foster care, after already having been adopted, and does not want to be adopted again. The youth would like the caregiver to be permanent, and the caregiver agrees. 	<ul style="list-style-type: none"> Guardianship with a Guardianship Subsidy may be the best option since the caregiver agrees to be a permanent and reliable caregiver for the youth. 	<ul style="list-style-type: none"> It is important that the youth and the caregiver understand all legal arrangement options available related to permanency. Legal custody is less preferred as a permanent plan than guardianship and adoption.
<ul style="list-style-type: none"> The case involves a young child. The father has never been found despite DCFS efforts. The mother has surrendered her rights. The child does not have any connection to his other biological relatives. 	<ul style="list-style-type: none"> Adoption may be in the child’s best interest based on the child’s age and lack of family connections. The court may only set a permanent plan of adoption if the State pursues a termination of parental rights for the parent who cannot be found. 	<ul style="list-style-type: none"> Both guardianship and adoption are considered permanency goals. Guardianship is a permanency option if adoption is not in the best interest of the child and the child cannot be safely reunified with the parent within a reasonable time. (See Art. 722(A)(2), Amended by Acts 2022, No. 272).
<ul style="list-style-type: none"> After a hearing pursuant to Article 672.1, the court made written findings of fact that reunification efforts were not required. There are two children involved who are 6 and 17 years old. 	<ul style="list-style-type: none"> Since reunification is not in the children’s best interest, the court must determine another permanent plan that is in the best interest for each individual child. Ideally, the plan for each child should be adoption or guardianship. 	<ul style="list-style-type: none"> The court will need to hold a Permanency Hearing either immediately or within 30 days of the 672.1 hearing. When a 672.1 determination is made, the permanent plan is generally adoption. However, the permanent plan must be based on the child’s best interest. The court may decide to set a different permanent plan for each child in the family depending on the facts and circumstances of the case. If the adoption or guardianship occurs after a youth turns 16, the family may qualify for an Extended Adoption Subsidy or Extended Guardianship Subsidy after the youth turns 18 if certain requirements are met.
<ul style="list-style-type: none"> The parents have not corrected the conditions requiring the child to come into care and their rights have been terminated. The 12-year-old child has been placed with a paternal aunt for the entire stay in foster care; the child wants to be adopted by the aunt. 	<ul style="list-style-type: none"> Because the parents have not met the conditions for reunification, and the child and the aunt have an established and significant relationship, adoption of the child by the aunt appears to be in the child’s best interest. However, DCFS should first make sure the child and the aunt understand the differences between guardianship and adoption before DCFS makes its recommendation to the court in advance of the Permanency Hearing. 	<ul style="list-style-type: none"> If the child to be adopted is 12 years of age or older, the court shall solicit and consider the child’s wishes. (Art. 1208(C)). Whether the permanent plan is guardianship or adoption, the caregiver may be eligible for Guardianship or Adoption Subsidy.