

Regular Session, 2010

HOUSE BILL NO. 215

BY REPRESENTATIVE GREENE

CHILDREN/CARE: Provides procedures for child in need of care proceedings

1 AN ACT

2 To amend and reenact Children's Code Articles 631(A) and 652(C), (D), and (E) and to
3 enact Children's Code Article 652(F) and (G), relative to child in need of care
4 proceedings; to provide relative to filing petitions; to provide relative to discovery;
5 and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Children's Code Articles 631(A) and 652(C), (D), and (E) are hereby
8 amended and reenacted and Children's Code Article 652(F) and (G) are hereby enacted to
9 read as follows:

10 Art. 631. Authority to file petition; custody

11 A. A child in need of care proceeding shall be commenced by petition filed
12 by the district attorney. ~~Any other person~~ The Department of Social Services, when
13 authorized by the court, may file a petition if there are reasonable grounds to believe
14 that the child is a child in need of care.

15 * * *

16 Art. 652. Discovery

17 * * *

18 C. At any stage of the proceeding, upon written motion of counsel for the
19 child or his parent, the district attorney, or the department, and after a contradictory
20 hearing and a showing of good cause, unless all parties agree, the court shall order

1 the other party to permit counsel to obtain discovery not provided for in Paragraphs
2 A and B of this Article regarding any matter, not privileged, including but not limited
3 to attorney-client privilege or information not otherwise protected under R.S. 46:56
4 or by restrictive order pursuant to Article 653, which is relevant to the subject matter
5 involved in the adjudication hearing including the existence, description, nature,
6 custody, condition, and location of any books, documents, or other tangible things,
7 and the identity and location of a person having knowledge of any discoverable
8 matter. It is not grounds for objection that the information sought will be
9 inadmissible at the trial if the information sought appears reasonably calculated to
10 lead to the discovery of admissible evidence.

11 ~~C. D.~~ If counsel for the child or the parent is provided discovery, the court
12 may condition that order upon reciprocal discovery by the state.

13 ~~D. E.~~ The court shall not order the production or inspection of any part of a
14 writing that reflects the mental impressions, conclusions, or theories of an attorney,
15 nor any other type of discovery except that expressly authorized by this Article.

16 ~~E. F.~~ The duties imposed by a discovery order are continuing in nature as
17 long as the child is subject to the jurisdiction of the court, unless the order provides
18 to the contrary.

19 G. The party requesting discovery shall be responsible for reasonable copy
20 costs associated with such discovery. Fees for copying shall be charged according
21 to the uniform fee schedule adopted by the division of administration, as provided
22 by R.S. 39:241, unless the child or parent is indigent, in which case no charge shall
23 be made for such copies.

24 Section 2. This Act shall become effective upon signature by the governor or, if not
25 signed by the governor, upon expiration of the time for bills to become law without signature
26 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
27 vetoed by the governor and subsequently approved by the legislature, this Act shall become
28 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Greene

HB No. 215

Abstract: Provides petition and discovery procedures for a child in need of care proceeding.

Present law authorizes the district attorney or any other person authorized by the court to file a child in need of care petition if there are reasonable grounds to believe that the child is a child in need of care.

Proposed law eliminates the right of an authorized person to file a child in need of care petition. Authorizes the Dept. of Social Services (DSS) to seek leave of court to file a child in need of care proceeding if there are reasonable grounds to do so.

Proposed law provides that at any stage of the CINC proceeding, upon written motion of counsel for the child or his parent, the DA or DSS, after a contradictory hearing and good cause shown, except if all parties agree, the court shall permit counsel to obtain certain discovery which is relevant to the subject matter of the adjudication hearing.

Proposed law provides that all parties have reciprocal discovery rights and that discovery shall not include any matter that is privileged, including attorney-client privileges or information protected by R.S. 46:56 or by restrictive order by Art. 653.

Proposed law makes the party requesting discovery responsible for any copying costs according to the uniform fee schedule. Further specifies that an indigent child or parent is not responsible for any costs.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends Ch.C. Arts. 631(A) and 652(C), (D), and (E); Adds Ch.C. Art.652(F) and (G))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Retained present law which authorizes discovery to occur at any stage of the proceeding and authorizes, upon written motion of counsel for the child or his parent, the court to order the district attorney or DSS to permit counsel to inspect four specifically listed types of evidence, including reports of the investigation, reports of evaluations or tests, DSS case records, and any videotape of a protected person.
2. Retained present law which requires the court to order the district attorney or DSS to permit counsel to inspect and copy any physical evidence, documents, or photographs which the state intends to offer into evidence at the adjudication hearing.
3. Added a contradictory hearing and good cause shown requirement, unless the parties agree, before a court orders permits counsel to obtain certain discovery.

4. Retained present law allowing the court to condition the right of the child or parent to receive discovery upon the state receiving reciprocal discovery rights.
5. Retained present law prohibiting the court from ordering the production or inspection of any part of a writing that reflects the mental impressions, conclusions, or theories of an attorney, nor any other type of discovery except that expressly authorized by present law.