

2017 Regular Session

HOUSE BILL NO. 486

BY REPRESENTATIVE JOHNSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN/ABUSE: Provides relative to the state central registry for child abuse and neglect

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

AN ACT

To amend and reenact Children's Code Articles 611(A)(1)(b), 616(A) through (D), 616.1(A), R.S. 15:1110.2(A) through (C), R.S.46:51.2(A)(1)(b), (2), and (3), (E)(2), (F)(1), and (H), and 1414.1(A) through (C), and R.S. 49:992(D)(9), to enact Children's Code Articles 616(E), (H), and (I), 616.1(F), and 616.1.1, and to repeal R.S. 15:1110.2(D) and (E) and R.S. 46:51.2(A)(4) through (11) and (13) and (E)(1)(d) and 1414.1(D) and (E), relative to the state central registry maintained by the Department of Children and Family Services; to require a state repository; to provide for central registry information; to authorize a fee for registry searches; to provide the right to an appeal in certain situations; to provide for employment prohibitions; to provide for an exemption relative to the division of administrative law; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Articles 611(A)(1)(b), 616(A) through (D), 616.1(A), are hereby amended and reenacted and Children's Code Articles 616(E), (H), and (I), 616.1(F), and 616.1.1 are hereby enacted to read as follows:

Art. 611. Immunity from civil or criminal liability

A. (1) No cause of action shall exist against any:

* * *

1 (b) Caseworker who in good faith conducts an investigation, makes an
2 investigative judgment or disposition, or releases or uses information contained in
3 the state repository or central registry for the purpose of protecting a child.

4 * * *

5 Art. 616. ~~Central~~ State repository; central registry; screening court-appointed special
6 advocates volunteers; confidentiality

7 A. The department shall maintain a ~~central registry~~ state repository of all
8 reports of abuse and neglect. The purpose of this ~~central registry~~ state repository,
9 among other uses, is to provide information of past reports of child abuse or neglect
10 of children to assist in the proper evaluation of current reports of abuse or neglect
11 which may include a pattern of incidents.

12 B. Within the state repository, the department shall maintain a state central
13 registry of certain justified reports of abuse and neglect as set forth in rules
14 promulgated by the department. The name of an individual who was placed on the
15 state central registry as a perpetrator of abuse or neglect prior to the effective date
16 of Children's Code Article 616.1.1 shall not be released outside of the department
17 until that individual's administrative appeals are exhausted. After the effective date
18 of Children's Code Article 616.1.1, the name of an individual who is determined to
19 be a perpetrator of abuse or neglect shall not be placed on the state central registry
20 until that individual's administrative appeals are exhausted. All decisions rendered
21 by an administrative law judge are final, and the decisions shall exhaust the
22 individual's administrative remedy.

23 ~~B: C.~~ Except as provided in this Article or R.S. 46:56, all records of reports
24 of child abuse or neglect are confidential. The department shall promulgate rules
25 regarding the maintenance, deletion, and release of information in the state
26 repository and central registry, ~~determined by the types of dispositions made~~
27 ~~pursuant to Article 615.~~

28 ~~C: D.~~ Upon the written request of the court during its evaluation of an
29 individual applying to work as a court-appointed special advocate and with the

1 consent of the applicant, the department shall search the central registry and report
2 to the court any justified report of abuse or neglect alleging that the applicant is a
3 perpetrator.

4 Ð.E. When, after an investigation, the determination is made by the
5 department that the report does appear to be justified, any subsequent adjudication
6 by a court exercising juvenile jurisdiction which dismisses the child in need of care
7 petition involving this report shall be added to the central registry.

8 * * *

9 H. The department may charge a fee, that shall not exceed twenty-five
10 dollars, to conduct a search of the state central registry of justified abuse or neglect
11 reports to determine whether an individual's name is recorded therein. A search shall
12 be allowed only when specifically authorized.

13 I. The department shall promulgate, in accordance with the Administrative
14 Procedure Act, all rules and regulations necessary to carry out the provisions of this
15 Article.

16 Art. 616.1. Correction of central registry entries; procedure

17 A. When a report alleging abuse or neglect is recorded as justified by the
18 department in the state central registry but when no petition is or was subsequently
19 filed alleging that the child is in need of care, the individual who is the subject of the
20 finding may file a written motion seeking correction of that entry and all related
21 department records in the court exercising juvenile jurisdiction in the parish in which
22 the finding was made.

23 * * *

24 F. The provisions of this Article shall apply only to those reports determined
25 by the department to be justified prior to the effective date of Children's Code Article
26 616.1.1.

27 Art. 616.1.1. Appeal and review; correction of central registry entries; procedure

28 A. When a report alleging abuse or neglect is determined to be justified by
29 the department, the individual who is or was the subject of the determination may

1 make a formal written request to the division of administrative law for an
2 administrative appeal of the justified determination, in accordance with the
3 procedures set forth in Title 67 of the Louisiana Administrative Code.

4 B. The department shall promulgate, in accordance with the Administrative
5 Procedure Act, all rules and regulations necessary to implement the provisions of this
6 Article.

7 Section 2. R.S. 15:1110.2(A) through (C) are hereby amended and reenacted to read
8 as follows:

9 §1110.2. ~~Disclosure requirements; penalties~~ Employment prohibition; previous
10 finding of abuse or neglect

11 A. Any owner, operator, current or prospective employee, or volunteer of a
12 juvenile detention facility that is requesting licensure or is licensed by the
13 Department of Children and Family Services ~~shall report annually and at any time~~
14 ~~upon the request of the department, on the state central registry disclosure form~~
15 ~~promulgated by the department, whether or not his name is currently recorded on the~~
16 ~~state central registry for a justified finding of abuse or neglect and that he is the~~
17 ~~named perpetrator.~~ is prohibited from being employed by the facility if that
18 individual's name is recorded on the state central registry as a perpetrator for a
19 justified finding of abuse or neglect of a child, unless a risk evaluation panel has
20 previously determined in writing that the individual does not pose a risk to children.

21 B. ~~All such completed state central registry disclosure forms shall be~~
22 ~~maintained in accordance with the department licensing regulations. Any state~~
23 ~~central registry disclosure form that is maintained in a juvenile detention facility~~
24 ~~licensing file shall be confidential and subject to the confidentiality provision of R.S.~~
25 ~~46:56(F) pertaining to the investigations of abuse and neglect.~~ If the individual's
26 name is or was entered on the state central registry, that individual may make a
27 formal written request to the division of administrative law for an administrative
28 appeal of the justified determination, in accordance with Children's Code Article
29 616.1.1 and the procedures promulgated by the department.

1 C. ~~Any owner, operator, current or prospective employee, or volunteer of a~~
2 ~~juvenile detention facility licensed by the department who knowingly falsifies the~~
3 ~~information on the state central registry disclosure form shall be fined not more than~~
4 ~~five hundred dollars, imprisoned for not more than six months, or both.~~ The
5 department shall promulgate, in accordance with the Administrative Procedure Act,
6 all rules and regulations necessary to implement the provisions of this Section.

7 Section 3. R.S.46:51.2(A)(1)(b), (2), and (3), (E)(2), (F)(1), and (H) and 1414.1(A)
8 through (C) are hereby amended and reenacted to read as follows:

9 §51.2. Criminal history and central registry information

10 A. (1) No person shall be hired by the department whose duties include the
11 investigation of child abuse or neglect, supervisory or disciplinary authority over
12 children, direct care of a child, or performance of licensing surveys, until both the
13 following conditions are met:

14 * * *

15 (b) The department has conducted a search of the state central registry of
16 justified abuse or neglect, hereafter referred to as "central registry", reports and has
17 determined that the individual's name is not recorded therein, or if an individual's
18 name is recorded on the state central registry, a risk evaluation panel has previously
19 determined in writing that the individual does not pose a risk to children. The search
20 shall be limited to those names recorded on the state central registry subsequent to
21 ~~the effective date of the rules and regulations promulgated pursuant to Paragraph (3)~~
22 ~~of this Subsection.~~ January 1, 2010. If the individual's name is or was entered on the
23 state central registry that individual may make a formal written request to the
24 division of administrative law for an administrative appeal of the justified
25 determination, in accordance with Children's Code Article 616.1.1 and the
26 procedures promulgated by the department.

27 (2) Any employee of the department whose duties include the investigation
28 of child abuse or neglect, supervisory or disciplinary authority over children, direct
29 care of a child, or performance of licensing surveys and whose name is recorded on on

1 the state central registry subsequent to ~~the effective date of the rules and regulations~~
 2 ~~promulgated on the central registry reports pursuant to Paragraph (3) of this~~
 3 ~~Subsection January 1, 2010,~~ shall be terminated by the department unless a risk
 4 evaluation panel has previously determined in writing that the individual does not
 5 pose a risk to children. A permanent classified employee shall not be terminated
 6 until he has exhausted his administrative appeal rights pursuant to Children's Code
 7 Article 616.1.1.

8 (3) The department shall promulgate rules and regulations, in accordance
 9 with the Administrative Procedure Act, necessary to implement Paragraphs (1) and
 10 ~~(2) of the provisions~~ of this Subsection. ~~The rules and regulations shall include but~~
 11 ~~not be limited to establishing eligibility and other criteria for risk evaluation requests~~
 12 ~~and establishing criteria for risk evaluation determinations. Any such determination~~
 13 ~~by the risk evaluation panel shall be kept on file at all times by the department.~~

14 * * *

15 E.

16 * * *

17 (2) This information may be requested only about a person who has, or has
 18 applied or volunteered for, a position in the organization which includes supervisory
 19 or disciplinary authority over children, ~~or who lives in a registered family child day~~
 20 ~~care home.~~

21 F. Any responsible officer or official, as the department may determine, of
 22 the following organizations or the department may request the specified criminal
 23 history information:

24 (1)(a) A ~~child-caring institution,~~ child-placing agency, maternity home,
 25 ~~group home, or day care center~~ all or residential home as defined in R.S. 46:1403;
 26 ~~and~~ or a juvenile detention facility.

27 (b) ~~A family child day care home registered under the Child Care~~
 28 ~~Registration Law, R.S. 46:1441 et seq.~~

29 * * *

1 H.(1) The department shall execute a survey to assess the impact and cost
2 of conducting national criminal history records checks and all arrest records checks
3 on potential owners, operators, employees, and volunteers of a ~~child care or child~~
4 ~~residential facility~~ a child-placing agency, maternity home, residential home, or
5 juvenile detention facility licensed by the department and develop a statewide
6 implementation plan prior to requesting that funds be appropriated for conducting
7 the searches. The department shall submit a report of the survey results, anticipated
8 costs, and implementation plan to the legislature for their consideration in
9 appropriation decisions. The department shall implement the plan to conduct national
10 criminal history records checks on potential owners, operators, employees, or
11 volunteers of ~~child care or child residential facility~~ a child-placing agency, maternity
12 home, residential home, or juvenile detention facility licensed by the department
13 only upon the appropriation of funds by the legislature for such purpose.

14 (2) Upon appropriation of funds by the legislature and implementation of the
15 plan in accordance with Paragraph (1) of this Subsection, the Bureau of Criminal
16 Identification and Information shall make available to the department, all criminal
17 history record information as defined in R.S. 15:576 related to potential owners,
18 operators, employees, or volunteers of ~~child care or child residential facility~~ a
19 child-placing agency, maternity home, residential home, or juvenile detention facility
20 licensed by the department.

21 (3) Upon appropriation of funds by the legislature and implementation of the
22 plan in accordance with Paragraph (1) of this Subsection, the Bureau of Criminal
23 Identification and Information shall facilitate national criminal history record checks
24 of potential owners, operators, or employees, or volunteers of ~~child care or child~~
25 ~~residential facility~~ a child-placing agency, maternity home, residential home, or
26 juvenile detention facility licensed by the department by receiving and forwarding
27 fingerprint cards to the Federal Bureau of Investigation. The department is
28 authorized to receive and screen the results of the state and national criminal history
29 record checks in order to assess the criminal history of a potential owner, operator,

1 employee, or volunteer of ~~child care or child residential facility~~ child-placing agency,
 2 maternity home, residential home, or juvenile detention facility licensed by the
 3 department. The department shall maintain the confidentiality of criminal history
 4 information received in accordance with applicable federal or state law.

5 * * *

6 §1414.1. ~~Disclosure requirements; penalties~~ State central registry

7 A. Any owner, operator, current or prospective employee, or volunteer of a
 8 specialized provider requesting licensure or licensed by the Department of Children
 9 and Family Services ~~shall report annually and at any time upon the request of the~~
 10 ~~department on the state central registry disclosure form promulgated by the~~
 11 ~~department whether or not his name is currently recorded on the state central registry~~
 12 ~~for a justified finding of abuse or neglect and he is the named perpetrator~~ is
 13 prohibited from being employed by the specialized provider if that individual's name
 14 is recorded on the state central registry as a perpetrator for a justified finding of
 15 abuse or neglect of a child, unless a risk evaluation panel has previously determined
 16 in writing that the individual does not pose a risk to children.

17 B. ~~Any such current or prospective employee or volunteer of a specialized~~
 18 ~~provider licensed by the department shall submit the state central registry disclosure~~
 19 ~~form to the owner or operator of the specialized provider, who shall maintain the~~
 20 ~~documents in accordance with current department licensing requirements. Any state~~
 21 ~~central registry disclosure form that is maintained by a specialized provider licensing~~
 22 ~~file shall be confidential and subject to the confidentiality provisions of R.S.~~
 23 ~~46:56(F) pertaining to the investigations of abuse and neglect. If the individual's~~
 24 name is or was entered on the state central registry, that individual may make a
 25 formal written request to the division of administrative law for an administrative
 26 appeal of the justified determination, in accordance with Children's Code Article
 27 616.1.1 and the procedures promulgated by the department.

28 C. ~~Any owner, operator, current or prospective employee, or volunteer of a~~
 29 ~~specialized provider licensed by the department who knowingly falsifies the~~

1 ~~information on the state central registry disclosure form shall be guilty of a~~
 2 ~~misdemeanor offense and shall be fined not more than five hundred dollars, or~~
 3 ~~imprisoned for not more than six months, or both.~~ The department shall promulgate,
 4 in accordance with the Administrative Procedure Act, all rules and regulations
 5 necessary to implement the provisions of this Section.

6 Section 5. R.S. 49:992(D)(9) is hereby amended and reenacted to read as follows:

7 §992. Applicability; exemptions; attorney fees; court costs

8 * * *

9 D.

10 * * *

11 (9) Adjudications filed pursuant to R.S. 46:51.2, involving a risk evaluation
 12 panel decision, with the Department of Children and Family Services shall be
 13 exempt from the provisions of this Chapter.

14 * * *

15 Section 6. R.S. 15:1110.2(D) and (E) and R.S. 46:51.2(A)(4) through (11) and (13)
 16 and (E)(1)(d) and 1414.1(D) and (E) are hereby repealed in their entirety.

17 Section 7. This Act shall become effective upon promulgation and publication by the
 18 Department of Children and Family Services of the final rules to implement the provisions
 19 of this Act.

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)]

HB 486 Re-Reengrossed

2017 Regular Session

Johnson

Abstract: Establishes an administrative process for the appeal of a justified determination of child abuse or neglect for an individual whose name is placed on the state central registry for child abuse or neglect.

Present law requires the Dept. of Children and Family Services (DCFS) to maintain a central registry of all reports of abuse and neglect to provide information of past reports of child abuse or neglect of children to assist in the proper evaluation of current reports of abuse or neglect which may include a pattern of incidents.

Proposed law requires DCFS to maintain all reports of abuse and neglect in a state repository in which there is a state central registry containing only certain justified reports of abuse and neglect.

Proposed law authorizes DCFS to charge a fee, not to exceed \$25, to conduct a search of the central registry of justified abuse or neglect reports to determine whether an individual's name is recorded.

Present law authorizes an individual, who is the subject of a justified determination in a case where no petition is subsequently filed alleging that the child is in need of care, to file a written motion seeking correction of that entry and all related department records in the court exercising juvenile jurisdiction in the parish in which the finding was made.

Proposed law limits the applicability to those reports determined to be justified prior to the effective date of proposed law.

Proposed law authorizes an individual who is the subject of justified report alleging abuse or neglect to make a formal written request to the division of administrative law for an administrative appeal of the justified determination.

Present law requires any owner, operator, current or prospective employee, or volunteer of a juvenile detention facility or specialized provider licensed by DCFS to report annually, and at any time upon the request of the department, whether or not his name is currently recorded on the state central registry for a justified finding of abuse or neglect and that he is the named perpetrator.

Proposed law repeals present law and prohibits any owner, operator, current or prospective employee, or volunteer of a juvenile detention facility or specialized provider applying for licensure or licensed by DCFS from being employed by the facility or provider if that individual's name is recorded on the state central registry as a perpetrator for a justified finding of abuse or neglect of a child, unless a risk evaluation panel has previously determined in writing that the individual does not pose a risk to children. Further provides the applicant or licensee a right to appeal the justified determination.

Present law prohibits DCFS from hiring a person whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys until DCFS has conducted a search of the central registry of justified abuse or neglect reports and determined that the individual's name is not recorded therein, or if an individual's name is recorded on the central registry, a risk evaluation panel has determined in writing that the individual does not pose a risk to children.

Proposed law limits the applicability to those names recorded on the central registry subsequent to Jan. 1, 2010, and provides the applicant a right to appeal the justified determination. Further provides that a permanent classified employee shall not be terminated until he has exhausted his administrative appeal rights.

Present law requires all administrative adjudications to be resolved exclusively through the division of administrative law except for adjudications involving DCFS and criminal history and central registry information.

Proposed law limits the exception to adjudications involving a risk evaluation panel decision.

Effective upon promulgation and publication by DCFS of the final rules to implement the provisions of proposed law.

(Amends Ch. C. Arts. 611(A)(1)(b), 616(A)-(D), 616.1(A), R.S. 15:1110.2(A)-(C), R.S.46:51.2(A)(1)(b), (2), and (3), (E)(2), (F)(1), and (H) and 1414.1(A)-(C), and R.S. 49:992(D)(9); Adds Ch. C. Arts. 616(E), (H), and (I), 616.1(F), and 616.1.1; Repeals R.S. 15:1110.2(D) and (E) and R.S. 46:51.2(A)(4)-(11) and (13) and (E)(1)(d) and 1414.1(D) and (E))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Make technical changes.
2. Require an appeal request be sent to the division of administration in lieu of DCFS.

The Committee Amendments Proposed by House Committee on Appropriations to the engrossed bill:

1. Make technical changes.
2. Clarify the effective date.

The House Floor Amendments to the reengrossed bill:

1. Update a section heading.
2. Make technical changes.