

2021 Regular Session

HOUSE BILL NO. 70

BY REPRESENTATIVE THOMAS

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

CHILDRENS CODE: Provides relative to amendment of petitions in delinquency proceedings

1 AN ACT

2 To amend and reenact Children's Code Articles 635(A) and (B), 658, 750(B),(C), and (D),
3 764, and 846(A) and (B) and to enact Children's Code Articles 635(C), 750(E), and
4 846(D), relative to certain juvenile proceedings; to provide relative to petitions and
5 summons of certain juvenile proceedings; to provide relative to the amendment or
6 dismissal of certain juvenile proceeding petitions; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Children's Code Articles 635(A) and (B), 658, 750(B), (C), and (D), 764,
9 and 846(A) and (B) are hereby amended and reenacted and Children's Code Articles 635(C),
10 750(E), and 846(D) are hereby enacted to read as follows:

11 Art. 635. Amendment of petition

12 A. ~~With leave of court, the~~ The petitioner may amend the petition at any time
13 to cure defects of form, imperfection, omission, or uncertainty.

14 B. ~~With leave of court, prior~~ Prior to the adjudication hearing, the petitioner
15 may amend the petition to include new allegations of fact or requests for
16 adjudication. ~~However, if such leave is granted, the child or parent may request a~~

1 ~~continuance of the adjudication hearing. A continuance may be granted for such~~
2 ~~period as is required in the interest of justice.~~

3 C. On motion of the child or parent that he has been prejudiced in his
4 defense on the merits by defect of form, imperfection, omission, or uncertainty, the
5 court may grant a continuance for a reasonable time. In determining whether the
6 child or parent has been prejudiced in his defense upon the merits, the court shall
7 consider all circumstances of the case and the entire course of the proceedings.

8 * * *

9 Art. 658. Dismissal of petition

10 ~~A. For good cause, the court may dismiss a petition on its own motion, or on~~
11 ~~the motion of the child or the parent.~~

12 B. The court shall dismiss a petition on the motion of the petitioner.

13 * * *

14 Art. 750. Amendment of petition

15 * * *

16 B. ~~With leave of court, the~~ The petitioner may amend the petition at any time
17 to cure defects of form, imperfection, omission, or uncertainty.

18 C. ~~With leave of court, prior~~ Prior to the adjudication hearing, the petitioner
19 may amend the petition to include new allegations of fact or requests for
20 adjudication. ~~However, if such leave is granted, the child or parent may request a~~
21 ~~continuance of the adjudication hearing. A continuance may be granted for such~~
22 ~~period as is required in the interest of justice.~~

23 D. ~~With leave of court, prior~~ Prior to the adjudication hearing, the petitioner
24 may dismiss the family in need of services petition and instead file a petition which
25 alleges delinquency pursuant to Title VIII or that a child is in need of care pursuant
26 to Title VI.

27 E. On motion of the child or parent that he has been prejudiced in his defense
28 on the merits by defect of form, imperfection, omission, or uncertainty, the court
29 may grant a continuance for a reasonable time. In determining whether the child or

1 parent has been prejudiced in his defense upon the merits, the court shall consider
2 all circumstances of the case and the entire course of the proceedings.

3 * * *

4 Art. 764. Dismissal of petition

5 ~~A. For good cause, the court may dismiss a petition on its own motion, or on~~
6 ~~the motion of the child, the caretaker, or the person filing the petition.~~

7 B. The court shall dismiss a petition on the motion of the district attorney.

8 * * *

9 Art. 846. Amendment of petition

10 A. ~~With leave of court, the~~ The petitioner may amend the petition at any time
11 to cure defects of form, imperfection, omission, or uncertainty.

12 B. ~~With leave of court, prior~~ Prior to the adjudication hearing, the petitioner
13 may amend the petition to include new allegations of fact or requests for
14 adjudication. ~~However, if such leave is granted, the child may request a continuance~~
15 ~~of the adjudication hearing. A continuance may be granted for such period as is~~
16 ~~required in the interest of justice.~~

17 * * *

18 D. On motion of the child that he has been prejudiced in his defense on the
19 merits by defect of form, imperfection, omission, or uncertainty, the court may grant
20 a continuance for a reasonable time. In determining whether the child has been
21 prejudiced in his defense upon the merits, the court shall consider all circumstances
22 of the case and the entire course of the prosecution.

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 70 Engrossed

2021 Regular Session

Thomas

Abstract: Adds grounds for amending a petition in delinquency proceedings and requires the court to consider certain factors in determining whether a child has been prejudiced in his defense.

Present law provides that with leave of court the petitioner may amend the petition at anytime to cure defects of form.

Present law further provides that with leave of court and prior to the adjudication hearing, the petitioner may amend the petition to include new allegations of fact or requests for adjudication.

Present law also provides that if such leave is granted, the child may request a continuance of the adjudication hearing and that continuance may be granted for such a period as is required in the interest of justice.

Proposed law removes the requirement to obtain leave of court to amend the petition or to include new allegations of fact or requests for adjudication.

Proposed law adds imperfection, omission, and uncertainty as grounds for amending a petition in delinquency proceedings.

Proposed law specifies that on the motion of the child that he has been prejudiced in his defense on the merits by defect of form, imperfection, omission, or uncertainty, the court may grant a continuance for a reasonable time.

Proposed law requires the court to consider all circumstances of the case and the entire course of the prosecution in determining whether the child has been prejudiced in his defense on the merits.

Present law provides that for good cause the court may dismiss a petition on its own motion or on the motion of the child, parent, caretaker, or person filing the petition.

Proposed law amends present law to only allow the court to dismiss a petition on the motion of the petitioner or district attorney.

(Amends Ch.C. Arts. 635(A) and (B), 658, 750(B),(C), and (D), 764, and 846 (A) and (B); Adds Ch.C. Arts. 635(C), 750(E), and 846(D))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Make technical changes to the citations.
2. Change terminology from "delinquency proceedings" to "certain juvenile proceedings".
3. Amend present law provisions to align with proposed law by adding grounds for amending a petition and requiring the courts to consider certain factors in determining whether a child has been prejudiced in his defense.
4. Remove from present law the court's ability to dismiss a petition on its own motion.