

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS35245-LT-70 (3/5)

Short Title: Regulation of Juvenile Discovery Orders.

(Public)

Sponsors: Senator Kinnaird.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REGULATE CERTAIN JUVENILE DISCOVERY ORDERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"§ 7B-701. Discovery of information in the Department's or guardian ad litem's possession by a respondent parent, custodian, or guardian in a pending case.

(a) A parent, custodian, or guardian seeking discovery of any of the information listed in subsection (c) of this section shall, before filing any motion before the court, make a written request for discovery to the Department. Upon receiving a negative or unsatisfactory response from the Department, or upon the passage of three business days following the receipt of the discovery request without response, the parent, custodian, or guardian requesting discovery may file a motion for discovery pursuant to this Article.

(b) To the extent that discovery authorized in this Article is voluntarily made in response to the written request, the discovery is deemed to have been made under an order of the court.

(c) Within three business days of the receipt of a written request for discovery, the Department shall make available for review by the parent, custodian, or guardian's attorney or the parent, custodian, or guardian, if not represented by an attorney, the following material and information within the Department's possession:

(1) All written or oral statements of the parent, custodian, or guardian or the subject juvenile.

(2) All written or oral statements of any potential witnesses for the Department.

- 1 (3) All information, including reports, received from experts who have
2 personally examined the requesting parent, custodian, or guardian or
3 the subject juvenile or siblings of the subject juvenile.
- 4 (4) Any physical evidence together with the results of physical
5 examinations, scientific tests, experiments, or comparisons.
- 6 (5) All papers, documents, photographs, or tangible objects that the
7 Department may use at trial.
- 8 (6) All reports generated by Department officers or employees pertaining
9 to the parent, custodian, or guardian, or the subject juvenile, including
10 reports from prior investigations involving the parent, custodian, or
11 guardian, the subject juvenile, or siblings of the subject juvenile.
- 12 (7) All material or information that tends to mitigate or negate the
13 allegations against the parent, custodian, or guardian.
- 14 (d) The parent, custodian, or guardian's attorney or the parent, custodian, or
15 guardian, if not represented by an attorney, may request a copy of any reproducible
16 material or information after examination of the material and information provided by
17 the Department. The Department shall comply with the request within 10 business days.
- 18 (e) The following shall not be disclosed absent an order granted under subsection
19 (f) of this section:
- 20 (1) Health care information, including chemical dependency information,
21 and drug testing regarding anyone other than the requesting parent,
22 custodian, or guardian or the subject juvenile.
- 23 (2) Documents containing the names and addresses of foster parents, not
24 previously disclosed to the parent, custodian, or guardians by the
25 Department.
- 26 (3) The identity of the reporter, in conformance with G.S. 7B-302.
- 27 (f) A parent, custodian, or guardian whose request for discovery is not fully
28 complied with by the Department may file a motion for an order compelling discovery.
29 A motion for an order to compel discovery shall set forth how the Department was not
30 in compliance with the request for discovery or why information protected by
31 subsection (e) of this section should be disclosed.
- 32 (g) The Department may file a motion to deny discovery or permit a limited
33 response. The motion shall set forth the reasons why the discovery should be denied or
34 the response should be permitted to be limited or should be subject to conditions. The
35 Department shall submit, for in camera inspection, the information and materials it
36 seeks to protect. If, thereafter, the court enters an order granting relief under subdivision
37 (3) of subsection (h) of this section, copies of the information and material submitted in
38 camera shall be preserved for appellate review in the event of an appeal.
- 39 (h) The court shall hear and rule on a discovery motion within seven days after it
40 is filed. Among other relief, the court may do any or all of the following:
- 41 (1) Grant the requested discovery and specify the time within which it
42 shall be provided.
- 43 (2) Order appropriate sanctions for any clear misuse of discovery,
44 arbitrary delay, or refusal to comply with a discovery request.

1 (3) Deny, limit, or set conditions on the requested discovery.
2 A discovery motion shall stay the response time under subsection (c) and subsection
3 (d) of this section until the court rules on the motion.
4 (i) If the guardian ad litem for the juvenile takes a position aligned with the
5 Department or fully contrary to the position of the parent, guardian, or custodian, this
6 section shall apply to the guardian ad litem."

7 **SECTION 2.** This act becomes effective October 1, 2007.