SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2262

SPONSOR: Education Committee, Children and Families Committee, and Senators Smith, Cowin, and Wise

SUBJECT: Prescription of Psychotropic Medications to Dependent Minors

DATE: April 15, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collins	Whiddon	CF	Fav/CS
2.	Dormady	O'Farrell	ED	Fav/CS
3.	Parham	Wilson	HC	Favorable
4.			AED	
5.			AP	
6.				

I. Summary:

CS/CS/SB 2262 creates the Center for Juvenile Psychotropic Studies within the Department of Psychiatry in the College of Medicine at the University of Florida. The purpose of this center is to collect, track, and assess information regarding dependent minors in state custody who have been or are currently being prescribed psychotropic medications. The bill provides for the appointment of a director for the center, creates an advisory board, and specifies the membership of the board.

The center is directed to work with the Department of Children and Family Services (DCF), the Department of Juvenile Justice (DJJ), and the Agency for Health Care Administration (AHCA) to collect specific information relating to children in the custody of the state who are receiving or have received psychotropic medications. The bill also directs DCF, DJJ, and AHCA to provide client information to the center, in accordance with state and federal privacy laws.

The center is required to provide a report to the Legislature regarding the treatment of dependent minors with psychotropic medications by January 1, 2005. The provisions of this section of the bill are repealed on July 1, 2005.

The bill also sets forth requirements regarding the provision of medication to children taken into protective custody, in child care settings, and public schools. The bill prohibits a child from being taken into custody due to a parent's refusal to administer psychotropic medications unless such refusal caused the child's neglect or abuse. The bill establishes requirements for obtaining parental authorization to administer medications to children in child care programs, with criminal penalties created for violations of these requirements. The bill also specifies that school personnel are prohibited from recommending the use of psychotropic medications for students.

The bill amends ss. 39.401, 743.0645, and 1006.062, Florida Statutes.

The bill creates s. 402.3127, Florida Statutes.

II. Present Situation:

Prevalence of Mental Health Disorders Among Youth

A substantial number of children in the U.S. have diagnosed mental disorders. A recent study reported that a review of Medicaid prescription records (from unidentified states) during 1995 indicated that 150,000 preschoolers under the age of six were prescribed psychotropic medications.[1] Additionally, the 1999 MECA Study (Methodology for Epidemiology of Mental Disorders in Children and Adolescents) estimated that almost 21 percent of children in the U.S. between the ages of nine and 17 had a diagnosable mental or addictive disorder that caused impairment, and 11 percent of these children (approximately 4 million) had a significant impairment that limited their ability to function. Primary care physicians identify approximately 19 percent of the children they see as having behavioral and emotional problems. A number of treatment options are available to address mental health problems in children including psychotropic medications.

Use of Psychotropic Medication on Children

Psychotropic medication is one of many treatment interventions that may be used to address mental health problems. Medication may be recommended and prescribed for children with mental, behavioral, or emotional symptoms when the potential benefits of treatment outweigh the risks. There has been growing public concern, however, over reports that very young children are being prescribed psychotropic medications with potentially adverse side effects.

The National Institute of Mental Health reports that psychotropic medications, while generally not the first option, may be prescribed when the possible benefits of the medications outweigh the risk and, in particular, when psychosocial interventions are not effective by themselves and there are potentially serious negative consequences for the child. There are several major categories of psychotropic medications: stimulants, antidepressants, anti-anxiety agents, anti-psychotics, and mood stabilizers. These medications may be used to treat a variety of symptoms, including:

- Stimulant medications are frequently used for Attention Deficit Hyperactivity Disorder (ADHD), which is the most common behavioral disorder of childhood;
- Anti-depressants and anti-anxiety medications are frequently used for depression, anxiety, and obsessive compulsive disorders;
- Anti-psychotic medications are used to treat children with schizophrenia, bipolar disorders, autism, and severe conduct disorders; and
- Mood stabilizing medications are used to treat bipolar disorders.

[1] Zito, J.A., Safer, D.J., dosReis, S., Gardner, J.F., Boles, M., and Lynch, F., 2000. "Trends in the Prescribing of Psychotropic Medications to Preschoolers." *The Journal of the American Medical Association.* 283 (8).

The use of psychotropic medication by children has been a source of recent public controversy with many concerned that prescription psychotropic medications are overused and misapplied to children with mental health problems. Little information exists to help clarify the debate concerning national patterns of psychotropic medication use by children and adolescents. In a study examining two nationally representative datasets to track changes in the use of prescription psychotropic medication by children and adolescents over a span of 10 years (1987 to 1996), researchers found that the overall rate of any psychotropic medication use increased from 1.4 to 3.9 per 100 children and adolescents, with increases evident across all geographic regions and all age, race/ethnicity, sex, and insurance groups examined After controlling for these demographic characteristics, the researchers found that the likelihood of using a psychotropic medication was nearly three times higher in 1996 than in 1987.[2]

Some of the concern regarding the use of psychotropic medications with children stems from the limited information that is available regarding the efficacy and the potential side effects of these drugs with children. Most clinical trials for these drugs were conducted on an adult population. The same results are not always obtained when these drugs are used with children, and the side effects for children are frequently different from those experienced by adults. The Food and Drug Administration (FDA) has publicly expressed concerns regarding the use of antidepressants in children and recently established an advisory committee to further study and evaluate the use of psychotropic medications with children.

Use of Psychotropic Medication on Children in State Custody

A trend that has begun in juvenile detention systems is the number of juveniles who require mental health services. Estimates of the prevalence of emotional, behavioral, and mental disorders among children in state custody (e.g. children in foster care or in juvenile justice facilities) are even higher than among youth in the general population.

Despite the growing concern, there is a dearth of adequate research on the prevalence and types of mental health disorders among youth in the juvenile justice system. A comprehensive review of the research literature[3] found the research to be scarce and methodologically flawed. Other reviews have reached similar conclusions.[4] While little data is presently available on children with emotional disorders in the justice system, it has been estimated that up to 60 percent of youth who are involved in the system suffer with such disorders.

Although mental health professionals posit that a significant percentage of youth involved in the juvenile justice system have unmet needs for mental health and substance abuse services, few empirical data exist to support this contention. The Northwestern Juvenile Project is addressing this issue. Beginning in 1995, researchers examined mental disorders among 1,830 delinquent youth (1,172 males and 658 females) held in the Cook County (Chicago, IL) Juvenile Temporary

[2] Olfson, M., Marcus, S. C., Weissman, M. M., & Jensen, P. S. 2002. "National trends in the use of psychotropic medications by children." *Journal of the American Academy of Child and Adolescent Psychiatry*. 41(5), 514-521.
[3] Otto, R.K., Greenstein, J.J., Johnson, M.K., and Friedman, R.M. 1992. "Prevalence of mental disorders among youth in the juvenile justice system." In Responding to the Mental Health Needs of Youth in the Juvenile Justice System, edited by J.J. Cocozza. Seattle, WA: The National Coalition for the Mentally Ill in the Criminal Justice System, pp. 7–48.
[4] Wierson, M., Forehand, R.L., and Frame, C.L. 1992. "Epidemiology and the treatment of mental health problems in juvenile delinquents." *Advances in Behavior Residential Theory.* 14:93–120.

Detention Center. A longitudinal component to this study of delinquent youth was added in November 1998, funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) at the U.S. Department of Justice, other Federal agencies, and private foundations. Preliminary data from the baseline study of juvenile detainees show that two-thirds of the youth have one or more mental disorders. Females have far greater mental health needs and greater risk factors than males. Preliminary data suggest that, nationwide, more than 670,000 youth processed in the juvenile justice system each year would meet diagnostic criteria for one or more mental disorders that require mental health and/or substance abuse treatment.[5]

In Florida, there has been controversy around the number of children in the custody of the state who are on psychotropic medications. The controversy has included concern over the types of medications prescribed, the circumstances under which the drugs were used, how consent was obtained, and the lack of oversight provided by state agencies in the prescription and use of these medications. No source of information currently exists, however, to accurately depict the prescribing patterns and frequency with which these medications are provided to children under state custody or the appropriate use of these drugs.

Child Protection

Chapter 39, F.S., provides the statutory framework for addressing child abuse, neglect, and abandonment. Child abuse under chapter 39, F.S., is defined as a willful or threatened act that results in physical, mental, or sexual injury to a child or results in harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired [s. 39.01(2), F.S.]. Child neglect is the deprivation of basic necessities such as food, shelter, clothing, or medical treatment that can cause, or places, the child in danger of significant impairment to his or her physical, mental, or emotional health [s. 39.01(45), F.S.]. Procedures for DCF which guide the identification of child abuse, neglect, and abandonment identify an allegation of deprivation of medical treatment as medical neglect (CF Operating Procedures No. 175-28). This type of allegation can include that the parent has not sought medical attention for an illness or injury or is not following through with the medical treatment prescribed for an illness or injury. Pursuant to statute and the operating procedures, the lack of provision of the medical treatment is not in and of itself medical neglect but instead the neglect occurs when not providing the medical treatment results, or could result, in serious or long-term harm to the child.

Section 39.401, F.S., stipulates those conditions under which a child may be removed from the home and taken into the custody of DCF. Specifically, the child may be taken into the custody of DCF only under the following conditions:

- The child has been abused, neglected, or abandoned;
- The child is experiencing an illness or injury, or is in imminent danger of such illness or injury, that resulted from abuse, neglect, or abandonment;
- The parent or legal guardian has violated a court imposed condition of placement; or
- A parent, legal custodian, or responsible adult relative is not immediately known and available to care for the child.

[5] Office of Juvenile Justice and Delinquency Prevention. 2001. Fact Sheet. Assessing Alcohol, Drug, and Mental Disorders in Juvenile Detainees.

Child Care

The intent of child care regulation in most states is to protect the health, safety, and well-being of the children. Basic health and safety regulations usually include the administration of medication. The National Health and Safety Performance Standards published by the American Public Health Association and the American Academy of Pediatrics include standards that recommend the limitation of administration of medications at child care facilities to prescription medications ordered by a health care provider for a specific child, with written permission of the parent or legal guardian, and to nonprescription medications recommended by a health care provider for a specific child or for a specific circumstance for any child in the facility, again with written permission of the parent or legal guardian. It is also recommended that facilities have standards for labeling and storing medications, training caregivers to administer medication, and maintaining written records on the administration of medications.

In Florida, licensing requirements for child care facilities, family day care homes, large family child care homes, and specialized child care facilities for the care of mildly ill children include standards for dispensing, storing, and maintaining records relative to medications (Chapters 65C-20, 65C-22, and 65C-25, F.A.C.). Basically, the standards require the prescription and non-prescription medications provided by the parents be in the original containers. Written authorization is required to dispense any non-prescription medication. Prescription medication is to be dispensed according to the label directions.

Public school and nonpublic school child care programs that are deemed to be child care pursuant to s. 402.3025, F.S., must comply with these child care licensing standards. These deemed public school and nonpublic school child care programs include those not operated or staffed directly by the public schools, those serving children under 3 years of age who are not eligible for the special education programs (P.L. No 94-142 or P.L. No. 99-457), and programs in private schools serving children between the ages of 3 and 5 years when a majority of children in the school are under 5 years of age. The administration of medication in child care programs operated and staffed by the school system is governed by s. 1006.062, F.S., and local school board policy. Section 1006.062, F.S., requires written authorization from the parents for the dispensing of prescription medications. Each school board is required to adopt policies and procedures for the administration of prescription medications and to provide training to school personnel in the administration of prescription medication.

Statutory Sanctions for Misuse of Medications with Children

Sanctions are available through Florida law to respond to the harm that can be caused by misuse of medications including licensing sanctions, the child protection laws, and criminal penalties. First, s. 402.310, F.S., provides for sanctions for violating child care licensing standards, specifically imposing administrative fines and denial, suspension, or revocation of the license. Given the current statutory construction of these provisions, administrative fines are the primary sanction applied for violation of the requirements for administering medications. These child care licensing standards and, in turn, the sanctions, currently do not apply to family day care homes that are not required or choose not to be licensed, to certain programs in public and nonpublic schools deemed not to be child care pursuant to s. 402.3025, F.S., to religious exempt

child care programs pursuant to s. 402.316, F.S., and to summer camps and child care services in transient establishments pursuant to s. 402.302(2), F.S.

Second, inappropriate administration of medication could also be considered child abuse if harm is caused by the misuse of the medications. All child care programs with the exception of those programs in the public schools and nonpublic schools deemed not to be child care pursuant to s. 402.3025, F.S., would fall under the jurisdiction of Florida's child abuse laws in chapter 39, F.S. The state attorney, law enforcement agency, and licensing agency are to be automatically notified of all reports of child abuse in a child care program (s. 39.302, F.S.).

Third, in addition to the civil actions that could be taken in response to the misuse of medications in child care programs, s. 827.03(1), F.S., establishes the crime of child abuse which is the intentional infliction of, or intentional act that could result in, mental or physical injury to a child. Committing the crime of child abuse is a felony of the third degree if there is no great bodily harm, permanent disability, or permanent disfigurement to the child. If the abuse results in great bodily harm, permanent disability, or permanent disfigurement to the child, the crime becomes aggravated child abuse and is felony of the first degree [s. 827.03(2), F.S.]. A felony of the third degree is punishable by a term of imprisonment not to exceed 5 years, a $5,000 fine, or, in the case of a violent career criminal, a longer term of imprisonment (ss. 775.082, 775.083, and 775.084, F.S.). A felony of the first degree is punishable by a term of imprisonment not to exceed 30 years or, under certain circumstances, life, a fine of $10,000, or a longer term of imprisonment for the violent career criminal (ss. 775.082, 775.083, and 775.084. F.S.).

Attention Deficit Hyperactivity Disorder and School Policy

It is estimated that 1.46 to 2.46 million children, or 3 to 5 percent of the student population, have ADHD. The diagnostic methods, treatment options, and medications have become a very controversial subject, particularly in education. One of the concerns raised has been that school officials are reported to be offering their diagnosis of ADHD and urging parents to obtain drug treatment for the child. These concerns have resulted in the consideration of federal legislation to require states to develop and implement policies and procedures prohibiting school personnel from requiring that a child obtain a prescription for a controlled substance in order to attend school.

The National Conference of State Legislatures reports that a number of states are currently considering legislation related to psychotropic medications and psychiatric treatment. States that passed laws particular to this issue prior to 2003 included Connecticut that prohibited school personnel from recommending the use of psychotropic drugs for any child, but did not prohibit recommending a child be evaluated by a medical practitioner or school personnel from consulting one. Similarly, Virginia directed the Board of Education to develop and implement policies prohibiting school personnel from recommending the use of psychotropic medications for any students.

Concerns raised as the federal legislation has been debated have been that the legislation may deter educators from talking to parents about concerns with a student's emotional well-being and mental health. Educators were identified as a critical source of information about a child's behavior but they may potentially refrain from identifying mental health problems in a child due

to fear of violating the law. Students with ADHD may need the services provided under the federal Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 to assist them with their education needs. Schools are required by IDEA and Section 504 to provide special education or make modifications or adaptations for students whose ADHD adversely affects their educational performance. Adaptations available to assist ADHD students include "curriculum adjustments, alternative classroom organization and management, specialized teaching techniques and study skills, use of behavior management, and increased parent/teacher collaboration." The position identified by the U.S. Department of Education relative to the role of the educators as it pertains to prescribing medications is that it is the responsibility of the medical professionals, not the educational professionals, to prescribe any medication. However, it was recognized that the input the educators can provide about the student's behavior can often aid in a diagnosis.

III. Effect of Proposed Changes:

Section 1. Amends s. 743.0645, F.S., creating the Center for Juvenile Psychotropic Studies.

This section creates the Center for Juvenile Psychotropic Studies within the Department of Psychiatry in the College of Medicine at the University of Florida. The purpose of the center is to collect, track, and assess information regarding dependent minors in the custody of the state pursuant to chapter 39, 984, or 985, F.S., who have been or currently are being prescribed psychotropic medications.

The term "psychotropic medications" is defined in this section to include medications that require a prescription and are used for the treatment of medical disorders. The definition expires July 1, 2005.

This section specifies that the center must determine the number of children in state custody who are receiving psychotropic medications and any other data relevant to assess scientifically the status of minors, as well as evaluate:

- Information regarding the medical evaluations given to children prescribed medications;
- What other treatments were recommended in addition to the medication and whether those treatments were delivered;
- Whether informed consent was received from legal guardians before treatment;
- Whether follow-up monitoring and treatment was given to the child;
- Whether full records were provided to courts for decisionmaking purposes; and
- Whether the prescription was appropriate for the age and diagnosis of the child.

This section specifies that the director of the center is to be appointed by the dean of the College of Medicine at the University of Florida.

This section creates an advisory board that is required to periodically review and advise the center regarding its actions taken pursuant to the bill's requirements. The board must consist of nine members who are experts in the field of psychiatric health including:

- The Secretary of DCF or his or her designee;
- The Secretary of DJJ or his or her designee;

- The Secretary of AHCA or his or her designee;
- The Secretary of Health or his or her designee;
- One member appointed by the Senate President from the Florida Psychiatric Society;
- One member appointed by the Speaker of the House of Representatives who is a pediatrician;
- One member appointed by the President of the University of Florida who is an epidemiologist; and
- Two members appointed by the Governor, one of whom has been a guardian ad litem and one of whom is employed by the Florida Mental Health Institute at the University of South Florida.

The center is directed to work in conjunction with DCF, DJJ, and AHCA (to the extent permitted by the privacy requirements of state and federal law) to gather information regarding dependent minors that must include but is not limited to:

- Demographic information to include age, geographic location, and economic status;
- Family history that includes any involvement with the child welfare or juvenile justice system, including social service and court records;
- Medical history of the minor that includes the minor's medical condition;
- All information regarding the medications prescribed or administered to the minor, including information contained in the medication administration record; and
- The practice patterns, licensure and board certification of prescribing physicians.

This section provides immunity from civil liability for persons furnishing medical records in furtherance of the charge of the center, absent bad faith or malice. The section also provides immunity for persons participating in the center's research activities or who provide information to the center regarding the incompetence, impairment, or unprofessional conduct of any health care provider licensed under chapters 458-466, F.S., absent intentional fraud or malice.

This section requires the center to report its findings regarding psychotropic medications prescribed to dependent minors in state custody to the Legislature and the appropriate committee chairs of the Legislature by January 1, 2005.

This section provides that this newly created subsection (6) will expire July 1, 2005.

Section 2. Amends s. 39.401, F.S., relating to taking a child alleged to be dependent into custody, to provide that the refusal of a parent, legal guardian, or other person responsible for a child's welfare to administer or consent to the administration of psychotropic medications to the child is not grounds to take the child into custody. The bill prohibits the court from entering an order for the department to take the child into custody based solely on this condition. The bill provides that the child may be taken into custody by the department or by order of the court if the refusal to administer the psychotropic medication or refusal to consent to such administration is found to cause the neglect or abuse of the child.

This provision does not alter the definition of abuse and neglect as it relates to the administration of psychotropic medication, only the conditions under which the child may be taken into custody.

Section 3. Creates s. 402.3127, F.S., to prohibit any employee, owner, household member, volunteer, or operator of a child care facility, family day care home, or large family child care home, which is required to be licensed or registered, from administering any medication to a child attending the facility without the written authorization of the child's parent or legal guardian. This prohibition also applies to a child care program operated by a public or nonpublic school that is deemed to be child care pursuant to s. 402.3025, F.S. The written authorization from the parent is required to include certain information, such as the name of the child, dates the authorization is applicable, dosage instruction, and signature of the parent or legal guardian.

The bill allows for the identified individuals in the child care facility, family day care home, or large family child care home to administer medication without written permission if an emergency medical condition exists, the parents are not available, and the medication is administered pursuant to the instructions of a prescribing health care practitioner. An "emergency medical condition" is also defined by the bill as those "circumstances when prudent layperson acting reasonably would believe that an emergency medical condition exists." The parents or legal guardians of the child must be immediately notified by the child care facility, family day care home, or large family child care home of the emergency medical condition and the corrective measures taken. The child care facility, family day care home, or large family child care home is required to immediately notify the child's medical care provider if the parents or legal guardians cannot be located and the emergency medical condition persists.

The bill provides for criminal penalties for failure to comply with the requirements of s. 402.3127, F.S., that is, administering medication to a child attending a child care facility, family day care home, or large family child care home, without written authorization unless the stipulated emergency circumstances are met. It is a third degree felony if the requirements of this section are violated and the violation results in serious injury to the child. If the violation of these requirements does not result in serious injury to the child, it is a misdemeanor of the first degree.

Section 4. Amends s. 1006.062, F.S., to direct each school board to adopt rules to prohibit all school board employees from recommending the use of psychotropic medications for any student. All district school board personnel are specifically not prohibited from recommending that a student be evaluated by a medical practitioner. The bill also specifically provides that school board personnel are not prohibited from consulting with a medical practitioner with the consent of the student's parent.

Section 5. Provides that the bill will take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Department of Children and Families

The Department of Children and Family Services reports there will be unknown costs associated with the implementation of this committee substitute related to travel for board members as well as costs to exchange data with the Center for Juvenile Psychotropic Studies. However, it is estimated that these costs will be minimal and can be absorbed within existing resources.

Department of Juvenile Justice

The Department of Juvenile Justice reports that in order to meet the data requirements specified by the bill, it will likely need to develop a website or adapt the Juvenile Justice Information System. Six additional staff will be necessary to assist in data collection and entry for this project. The combined costs projected by DJJ for staff, equipment, and travel exceed $250,000.

Agency for Health Care Administration

The bill creates an advisory board that requires the participation of the Secretary of AHCA or his or her designee. Travel costs will be incurred by AHCA. In addition, AHCA will be required to provide claims data to the center. According to AHCA these costs can be absorbed within the existing budget.

University of Florida

Staff from the University of Florida estimate that funding in the amount of $250,000 will be needed to implement the bill. The funding will be used to support staffing needs,

travel, equipment, and supplies. However, a portion of the costs can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Children and Family Services currently has a contract with the Department of Psychiatry in the College of Medicine at the University of Florida to provide a medication consultation line. The MedConsult line is available to prescribing physicians for consultation, as well as to judges, child welfare workers, guardians ad litem and foster parents for up-to-date information on psychotropic medications, including the side effects and uses of the medications.

Given the extensive issues relating to the treatment of children with psychotropic medications, it may be beneficial for the advisory board to have broader membership. Additional membership could include representatives from other universities, consumers, and advocates.

The requirements for administering medication in child care facilities allows for "medication" to be administered without written authorization of the parent in an emergency and in accordance with the instructions of a medical care provider. The bill does not stipulate whether this applies to prescription or nonprescription medications which could allow for a medication prescribed for another child that is not authorized by a parent to be administered to a child.

VIII. Amendments:

None.