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 1576

SPONSOR: Committees on Judiciary and Children and Families and Senator Campbell

SUBJECT: Dependent Children/Psychotropic Meds

DATE: March 6, 2002 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barnes	Whiddon	CF	Favorable/CS
2.	Matthews	Johnson	JU	Favorable/CS
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

CS/CS/SB 1576 revises the law governing the authority of the department to dispense prescribed psychotropic medication to children in the department's legal custody, as follows:

- Specifies the circumstances under which a prior court order is not required to dispense psychotropic medication to a child in the custody of the Department of Children and Families to include when a child was already taking such medication prior to such custody, when a prescribing physician determines that a delay in the dispensation would be detrimental to the child's condition or when the child is being treated by a medical provider in an acute care setting;
- Codifies an administrative rule definition for "medical passport" to refer to a child's medical history record prepared and maintained by the department;
- Provides the process by which the department must seek a court order to dispense prescribed psychotropic medication to a child, including the submission of extensive medical and psychiatric information and treatment history about the child;
- Authorizes the court to obtain further medical consultation, including second opinions, in considering the child's best interests;
- Requires the court to conduct 6-month periodic reviews of the child's progress on the medication or more frequently upon its own motion or for good cause shown by other specified persons; and
- Authorizes the court to issue an order to show cause to the department for failure to comply with the requirements for the continued use of psychotropic medication or for the additional medical or counseling services recommended for the child.

This bill amends sections 39.01, 39.407, 39.0015, and 39.302, of the Florida Statutes.

II. Present Situation:

Agency Authority to Consent to Medical Treatment
Under current law, the Department of Children and Families may consent to the medical care or treatment of any minor who is in its custody under ch. 39, F.S., when the person who has the power to consent, as otherwise provided by law, cannot be contacted and has not expressly objected to that consent. *See* s. 743.0645(3), F.S. The term "medical care and treatment" is defined to include **ordinary** and necessary medical and dental examination and treatment, including blood testing, preventive care including ordinary immunizations, tuberculin testing, and well-child care, *but does not* include surgery, general anesthesia, *provision of psychotropic medications*, or other extraordinary procedures for which a separate court order, power of attorney, or informed consent as provided by law is required. *See* s. 743.0645(1)(b), F.S.

A disproportionate number of the children in the department's care represent a high-risk population of children with problems ranging from behavioral to socio-emotional to psychological who are in need of medical treatment including medications and mental health services. It has been reported that until recently the Department of Children and Families regularly provided consent to medication including anti-psychotic drugs to children within its legal custody. However, according to the department, even some dependency court judges have taken the position that the department as the custodian of the child has the authority to consent to these medications for these children. Most recently, the Fifth District Court of Appeals denied a Department's Emergency Petition for Writ of Mandamus Certiorari stating that "there is no issue to present to the court because the department does not need the court's order or permission authorizing the administration of a psychotropic drug to a child post-Termination of Parental Rights." *See Department of Children and Families v. Bernard Martin*, 5th DCA, Feb. 4, 2002. The issues of misdiagnosis and under-or over-medication and lack of oversight in the dispensation of psychotropic medications to treat children in foster care has prompted concern.

Pharmacological Treatment for Children with Mental Disorders
The use of pharmacological therapies for children and adolescents with mental disorders has increased dramatically over the past decade according to a 1999 report entitled *Mental Health: A Report of the Surgeon General*. However, it also reported that psychopharmacological research has lagged behind. For most prescribed medications, there are no studies of safety and efficacy for children and adolescents. The problem is even more pronounced with newer medications, most of which have been introduced into the market for adults. According to testimony on May 8, 2001, before a U.S. Senate Committee by Janet Heinrich, Director of Health Care—Public Health Issues, there has been an increase in pediatric drug research since the passage of the Food and Drug Administration Modernization Act of 1997. Prior to that time, only about 25 percent of drugs in use had been studied and labeled for pediatric patients. Only in the case of psychostimulants for children with attention deficit hyperactive disorder is there an adequate body of research on their safety and efficacy in children and adolescents.

According to the American Academy of Child and Adolescent Psychiatry, psychiatric medication is an important part of treating certain psychiatric disorders in children and adolescents but should be used only as one part of a comprehensive treatment plan with ongoing medical assessments and in conjunction with other services such as individual and family therapy. Medication may be prescribed for psychiatric symptoms and disorders, including, but

not limited to: anxiety, attention deficit hyperactivity disorder, obsessive-compulsive disorder, depressive disorder, eating disorder, bipolar (manic-depressive) disorder, psychosis, bedwetting, sleep problems, autism, and severe aggression. The Academy emphasizes that children and adolescents and their parents or caregivers should be informed about the use of these medications as well as their side effects and the importance of medical monitoring and supervision. The Academy prepared the following list of psychiatric medication categories and the psychiatric disorders for which they are prescribed:

- **Stimulant Medications**: Useful for attention deficit hyperactive disorder. Examples include: Dextroamphet- amine (*Dexedrine, Adderal*), Methylphenidate (*Ritalin*), and Pemoline (*Cylert*).

- **Antidepressant Medications**: Used for depression, school phobias, panic attacks, and other anxiety disorders, bedwetting, eating disorders, obsessive-compulsive disorder, personality disorders, posttraumatic stress disorder, and attention deficit hyperactive disorder. Examples of antidepressant medications include:

  - tricyclics [Amitriptyline (*Elavil*), Clomipramine (*Anafranil*), Imipramine (*Tofranil*), and Nortriptyline (*Pamelor*)],
  - serotonin reuptake inhibitors [Fluoxetine (*Prozac*), Sertraline (*Zoloft*), Paroxetine (*Paxil*), Fluvoxamine (*Luvox*), Venlafaxine (*Effexor*), and Citalopram (*Celexa*)],
  - monoamine oxidase inhibitors [Phenelzine (*Nardil*), and Tranylcypromine (Parnate)]and
  - atypical [Bupropion (*Wellbutrin*), Nefazodone (*Serzone*), Trazodone (*Desyrel*), and Mirtazapine (*Remeron*)].

- **Antipsychotic Medications**: Helpful in controlling psychotic symptoms (delusions, hallucinations) or disorganized thinking and may also help muscle twitches ("tics") or verbal outbursts as seen in Tourette's Syndrome. Occasionally used to treat severe anxiety and may help in reducing very aggressive behavior. Examples of traditional antipsychotic medications include: Chlorpromazine (*Thorazine*), Thioridazine (*Mellaril*), Fluphenazine (*Prolixin*), Trifluoperazine (*Stelazine*), Thiothixene (*Navane*), and Haloperidol (*Haldol*). Newer antipsychotic medications (also known as atypical or novel) include: Clozapine (*Clozaril*), Risperidone (*Risperdal*), Quetiapine (*Seroquel*), Olanzapine (*Zyprexa*), and Ziprasidone (*Zeldox*).

- **Mood Stabilizers and Anticonvulsant Medications**: Used in treating manic-depressive episodes, excessive mood swings, aggressive behavior, impulse control disorders and severe mood symptoms in schizoaffective disorder and schizophrenia. Lithium (lithium carbonate, *Eskalith*) is an example of a mood stabilizer. Some anticonvulsant medications can also help control severe mood changes. Examples include: Valproic Acid (*Depakote, Depakene*), Carbamazepine (*Tegretol*), Gabapentin (*Neurontin*), and Lamotrigine (*Lamictil*).

- **Anti-anxiety Medications**: Used in treating severe anxiety. There are several types of anti-anxiety medications:

  - o Benzodiazepines [Alprazolam (*Xanax*), lorazepam (*Ativan*), Diazepam (*Valium*),and Clonazepam (*Klonopin*)];
  - o Antihistamines [Diphenhydramine (*Benadryl*), and Hydroxizine (*Vistaril*)]; and
  - o atypicals [Buspirone (*BuSpar*), and Zolpidem (*Ambien*)].

- **Sleep Medications**: A variety of medications may be used for a short period to help with sleep problems. Examples include: SRI anti-*depressants*, Trazodone (*Desyrel*), Zolpidem (*Ambien*), and Diphenhydramine (*Benadryl*).

III. Effect of Proposed Changes:

CS/CS/SB 1576 revises governing the Department of Children and Families' authority to consent to medical treatment as pertains to psychotropic medication. The bill provides the conditions under which the department may dispense psychotropic medication to children in the department's legal custody. A prior court approval is not required for the dispensation of such medication as follows:

- If the child was already taking the medication at the time of the child's removal from the home, the dispensation may continue temporarily until the next regularly scheduled court hearing (other than the shelter) if the hearing occurs within 60 days after the time child was removed.
- If the prescribing doctor indicates that it would be detrimental to the child to delay the dispensation of the medication, the dispensation may be dispensed temporarily in advance of an order until an order is obtained at the next regularly scheduled court hearing or within 60 days at the prescription, whichever is later.
- If the child is in an acute care setting, then the dispensation of the medication may continue.

In all other circumstances, the department can not otherwise dispense psychotropic medication to children in its legal custody without first filing a petition in court seeking authorization. The petition must be supported by extensive medical information including an affidavit or signed medical report from the prescribing physician indicating the need for the medication based on the diagnosed condition and all medical records or other competent evidence that demonstrate: a) that the treatment is appropriate and the behaviors and symptoms are to be addressed by the medication, c) that an explanation was provided of the nature and purpose of the treatment, including its side effects, risks, precautions, and contraindications, d) that prior consideration was made of alternative methods of treatment and their unavailability or undesirability, and e) that medical treatment replaces or supplements other medications or treatment.

At a hearing held either to determine the issue of initial dispensation or the continuation of dispensation of psychotropic medication, the required evidence or supporting documentation for the petition is admissible in evidence. The prescribing physician is not required to attend or testify unless the court so orders. If the evidence or supporting documentation including a medical passport satisfy the requirements of this subsection, then the court is required to order the dispensing or continuing dispensation of the psychotropic medication without further testimony or evidence. The term "medical passport" is defined to mean a child's medical history

as prepared and maintained by the department.[1] The court shall ask the department whether additional medication, counseling or other services recommended by the prescribing physician are necessary. The court may also request additional medical consultation including a second opinion, based on the best interest of the child. The court can not order the discontinuation of prescribed psychotropic medication contrary to the decision of a prescribing physician unless a second medical opinion states otherwise.

A child's progress on psychotropic medication is subject to judicial status review at least every 6 months. Such review may also occur during other scheduled judicial review hearings. Either the court on its own motion or any party, including a guardian ad litem, an attorney, or attorney ad litem for good cause can motion for more frequent reviews.

If the court determines at any time the requirements for continued use of the medication are not being met, the court can order the department to prove compliance or to obtain a medical opinion why continued use is safe and medically appropriate. If the court determines at any time the counseling or other services that the prescribing physician recommended as beneficial are not being provided as ordered, the court can order the department to prove compliance or to obtain a medical opinion why such services are not medically appropriate.

The bill provides that the act takes effect on July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

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[1] Chapter 65-12.001(18), Florida Administrative Code, defines "medical passport" as a written health history of a child who is in shelter care or foster care which is used to document health care. This health record is kept in the child's resource record, with the caregiver, and updated at each health care provider visit.

B. Private Sector Impact:

This bill could affect families with private health insurance when a child is removed from the home and medical services are required to substantiate or support the need for psychotropic medication for the treatment of the child's mental disorder.

The bill may increase the workload and costs for physicians who treat these children for medical and psychiatric purposes because of the extensive medical documentation requirements. These requirements may result in physicians no longer being able to provide services to many of the children who are in the department's custody.

C. Government Sector Impact:

The department reports that there could be additional litigation costs and additional service costs associated with the provision for additional medical consultation (second opinions).

It is indeterminate to what extent this may constrain the Department's ability to consent or authorize the dispensation of to a child's medical care and treatment while a child is in its legal custody.

It is indeterminate to what extent the bill may increase the court's workload arising from petitions to obtain authority to dispense medication and court time spent on hearings and the collection of other evidentiary matters.

VI. Technical Deficiencies:

Subparagraph 2. of subsection (3) of s. 39.407, F.S., provides that a court order "*under this subsection*" must be sought at the next regularly scheduled court hearing or within 60 days after the date of the prescription, whichever is sooner. This provision should be amended to read "*under this subparagraph*" unless the intent for the requirement to apply to all three scenarios in which the department is able to dispense temporarily psychotropic medication without a prior court order.

VII. Related Issues:

The wording of subsection (3)(a)1. of s. 39.407, F.S., may need to be clarified as it relates to a hearing for a determination of whether to continue the dispensation of previously prescribed psychotropic medication. It currently states that the department can continue to dispense the medications temporarily until the next scheduled court hearing "if such hearing occurs within 60 days" after the child was removed. It appears that the intent is to state that the "hearing must be held within 60 days after the child was removed," not if the hearing is held within that time period. In addition, it may need to be clarified what happens in the event the remaining medication in the department's possession runs out before the court hearing.

The bill provides that no prior court order is required to authorize the department to dispense psychotropic medication if the child is in an acute care setting. The bill also does not address

when the department must file a petition for authority to dispense after the child is released from the acute care setting for continuation of such dispensation.

The new subsection does not address whether a guardian ad litem, attorney ad litem or other person representing the best interest of the child should be provided a copy of the medical documentation supporting a department's petition prior to the scheduled court hearing.

The bill authorizes the court to determine whether "statutory requirements for continued use of the psychotropic medication are being met." Presumably those statutory requirements are the evidence supportive of the department's initial petition for authorization to dispense the psychotropic medication.. [See page 28, lines 22-29]

The terms "acute care setting" and "psychotropic medication" are not defined in the bill. A statutory definition exists in s. 916.12(5), F.S., relating to mentally ill and mentally ill criminal defendants as follows:

> *As used in this subsection, "psychotropic medication" means any drug or compound used to treat mental or emotional disorders affecting the mind, behavior, intellectual functions, perception, moods, or emotions and includes antipsychotic, antidepressant, antimanic, and antianxiety drugs.*

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.