

By the Council for Healthy Communities and Representatives
Ryan and Lynn

1 A bill to be entitled
2 An act relating to dependent children; amending
3 s. 39.01, F.S.; providing a definition;
4 amending ss. 39.0015 and 39.302, F.S.;
5 correcting cross references; amending s.
6 39.407, F.S.; specifying conditions under which
7 no court order is required for dispensing
8 psychotropic medication to a child in shelter
9 status or foster care; providing requirements
10 for a petition to the court for authority to
11 dispense psychotropic medication to such a
12 child; providing for prior review of the
13 child's medical history and evidence
14 demonstrating that the treatment is appropriate
15 for the child's condition; providing for
16 further medical consultation, including second
17 opinions, under certain circumstances;
18 providing conditions for discontinuation of
19 prescribed psychotropic medication or for the
20 provision of other services; providing for
21 periodic court review of the child's progress;
22 providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

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26 Section 1. Paragraph (b) of subsection (3) of section
27 39.0015, Florida Statutes, is amended to read:
28 39.0015 Child abuse prevention training in the district
29 school system.--
30 (3) DEFINITIONS.--As used in this section:

31

1 (b) "Child abuse" means those acts as defined in ss.
2 39.01(1), (2), (30), ~~(43)~~, (45), (47), (54), and (65)~~(52)~~,
3 ~~and (63)~~, 827.04, and 984.03(1), (2), and (37).

4 Section 2. Present subsections (40) and (42) of
5 section 39.01, Florida Statutes, are renumbered as subsections
6 (42) and (43), respectively, present subsection (41) is
7 renumbered as subsection (40), present subsection (72) is
8 renumbered as subsection (41), present subsections (43)
9 through (71) are renumbered as subsections (45) through (73),
10 respectively, and a new subsection (44) is added to said
11 section, to read:

12 39.01 Definitions.--When used in this chapter, unless
13 the context otherwise requires:

14 (44) "Medical passport" means a written health history
15 of a child in shelter status or foster care, which is prepared
16 and maintained by the department, is used to document health
17 care, and is to be kept with the child's caregiver in the
18 child's resource record and updated at each health care
19 provider visit.

20 Section 3. Subsection (1) of section 39.302, Florida
21 Statutes, is amended to read:

22 39.302 Protective investigations of institutional child
23 abuse, abandonment, or neglect.--

24 (1) The department shall conduct a child protective
25 investigation of each report of institutional child abuse,
26 abandonment, or neglect. Upon receipt of a report which
27 alleges that an employee or agent of the department, or any
28 other entity or person covered by s. 39.01(31) or ~~(49)~~~~(47)~~,
29 acting in an official capacity, has committed an act of child
30 abuse, abandonment, or neglect, the department shall
31 immediately initiate a child protective investigation and

1 orally notify the appropriate state attorney, law enforcement
2 agency, and licensing agency. These agencies shall immediately
3 conduct a joint investigation, unless independent
4 investigations are more feasible. When conducting
5 investigations onsite or having face-to-face interviews with
6 the child, such investigation visits shall be unannounced
7 unless it is determined by the department or its agent that
8 such unannounced visits would threaten the safety of the
9 child. When a facility is exempt from licensing, the
10 department shall inform the owner or operator of the facility
11 of the report. Each agency conducting a joint investigation
12 shall be entitled to full access to the information gathered
13 by the department in the course of the investigation. A
14 protective investigation must include an onsite visit of the
15 child's place of residence. In all cases, the department shall
16 make a full written report to the state attorney within
17 working days after making the oral report. A criminal
18 investigation shall be coordinated, whenever possible, with
19 the child protective investigation of the department. Any
20 interested person who has information regarding the offenses
21 described in this subsection may forward a statement to the
22 state attorney as to whether prosecution is warranted and
23 appropriate. Within 15 days after the completion of the
24 investigation, the state attorney shall report the findings to
25 the department and shall include in such report a
26 determination of whether or not prosecution is justified and
27 appropriate in view of the circumstances of the specific case.

28 Section 4. Subsections (3) through (14) of section
29 39.407, Florida Statutes, are renumbered as subsections (4)
30 through (15), respectively, and a new subsection (3) is added
31 to said section, to read:

1 39.407 Medical, psychiatric, and psychological
2 examination and treatment of child; physical or mental
3 examination of parent or person requesting custody of child.--

4 (3) The provision of psychotropic medication to a
5 child in the legal custody of the department in compliance
6 with this subsection shall be deemed to be in compliance with
7 the requirements in s. 743.0645(1)(b).

8 (a) No court order shall be required to dispense
9 psychotropic medication to a child in the legal custody of the
10 department under any of the following conditions:

11 1. If a child was taking prescribed psychotropic
12 medications at the time the child was removed from the home,
13 the department is authorized to take possession of the
14 remaining medications when the department takes the child and
15 may dispense those medications on a temporary basis until the
16 next regularly scheduled court hearing required under this
17 chapter other than the shelter hearing, provided such hearing
18 occurs within 60 days after the child was removed;

19 2. Psychotropic medications may be dispensed in
20 advance of issuance of a court order if the prescribing
21 physician indicates that delay in dispensing the medication
22 could be detrimental to the child. The order required under
23 this subsection shall be sought at the next regularly
24 scheduled court hearing required under this chapter or within
25 60 days after the prescription, whichever is sooner; or

26 3. In an acute care setting.

27 (b) A petition to the court for authority to dispense
28 psychotropic medication to a child in the legal custody of the
29 department shall be supported by the following:

30 1. An affidavit or signed medical report from the
31 prescribing physician stating the child's name and the name

1 and dosage of the psychotropic medication and indicating that
2 there is a need to prescribe psychotropic medication to the
3 child based upon a diagnosed condition for which such
4 medication is indicated.

5 2. Medical records or other competent evidence
6 demonstrating that the psychotropic medication at its
7 prescribed dosage is appropriate for the treatment of the
8 child's diagnosed medical condition, as well as the behaviors
9 and symptoms the medication at its prescribed dosage level is
10 expected to address.

11 3. Medical records or other competent evidence
12 demonstrating that the prescribing physician has provided to
13 the child, if age-appropriate, and to the child's legal
14 custodian, foster parent, relative caregiver, or, where
15 appropriate, other person responsible for the child's welfare
16 in his or her residential setting, a clinically appropriate
17 explanation of the nature and purpose of the treatment; the
18 recognized side effects, risks, and contraindications of the
19 medication; and drug interaction precautions.

20 4. Medical records or other competent evidence
21 reflecting that alternative methods of treatment for the
22 child's condition have been duly considered by medical
23 providers and an alternative course of treatment that would
24 offer comparable benefits to the child is unavailable or
25 undesirable.

26 5. Medical records or other competent evidence showing
27 whether the psychotropic medication will replace or supplement
28 any other currently prescribed medications or treatments, the
29 length of time the child is expected to be taking the
30 medication, and any additional medical, counseling, or other
31 services that the prescribing physician believes are necessary

1 or would be beneficial for the treatment of the child's
2 medical condition and that the physician expects or advises to
3 be provided to the child in concert with the medication.
4 (c) At a hearing to determine whether to initially
5 allow dispensing of psychotropic medication to a child in the
6 legal custody of the department, or at a hearing for
7 continuation of such medication, the affidavit or signed
8 medical report, the medical passport, and the medical records
9 or other competent evidence described in paragraph (b), shall
10 be admissible in evidence. The prescribing physician shall
11 not be required to attend the hearing or testify unless the
12 court specifically orders such attendance or testimony. If
13 the affidavit or signed medical report, the medical passport,
14 and other evidence, are in accord with the requirements of
15 this subsection, the court shall order the dispensing or
16 continuation of psychotropic medication without the need for
17 further testimony or evidence. The court shall further
18 inquire of the department as to whether the additional
19 medical, counseling, or other services that the prescribing
20 physician believes are necessary or would be beneficial for
21 the treatment of the child's medical condition and that the
22 physician expects or advises to be provided to the child in
23 concert with the medication are being provided to the child by
24 the department. The court may require further medical
25 consultation, including obtaining a second opinion, based on
26 considerations of the best interests of the child; and shall
27 not order the discontinuation of prescribed psychotropic
28 medication contrary to the decision of the prescribing
29 physician without first obtaining a second opinion from a
30 licensed physician that the psychotropic medication should be
31 discontinued.

1 (d) The court shall review the status of the child's
2 progress on psychotropic medication at least every 6 months,
3 and may do so during timely scheduled judicial review hearings
4 pursuant to s. 39.701. On its own motion or on good cause
5 shown by any party, including any guardian ad litem, attorney,
6 or attorney ad litem who has been appointed to represent the
7 child or his or her interests, the court may review the status
8 more frequently than required in this paragraph.

9 (e) If at any time the court determines that the
10 requirements for continued use of the psychotropic medication
11 are not being met, the court may, in the best interests of the
12 child, order the department to either produce evidence of
13 compliance with the requirements of this section or obtain a
14 medical opinion that continued use of the medication under the
15 circumstances is safe and medically appropriate. If at any
16 time the court determines that the additional medical,
17 counseling, or other services that the prescribing physician
18 believes are necessary or would be beneficial for the
19 treatment of the child's medical condition and that the
20 physician expects or advises to be provided to the child in
21 concert with the medication are not being provided, the court
22 may, in the best interests of the child, order the department
23 to either produce evidence of compliance with the requirement
24 of providing those services or obtain a medical opinion that
25 such services are not medically appropriate.

26 Section 5. This act shall take effect July 1, 2002.