

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 a court order is not required for dispensing
8 psychotropic medication to a child in the legal
9 custody of the Department of Children and
10 Family Services; providing requirements for a
11 petition to the court for authority to dispense
12 psychotropic medication to such a child;
13 providing for prior review of the child's
14 medical history and evidence demonstrating that
15 the treatment is appropriate for the child's
16 condition; providing for the burden of proof;
17 providing for further medical consultation,
18 including second opinions, under certain
19 circumstances; providing conditions for
20 discontinuation of prescribed psychotropic
21 medication or for the provision of other
22 services; providing for periodic court review
23 of the child's progress; providing an effective
24 date.

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26 Be It Enacted by the Legislature of the State of Florida:

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

1 (3) DEFINITIONS.--As used in this section:

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

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

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

15 (44) "Medical passport" means a written health history
16 of a child in shelter status or foster care, which is used to
17 document health care, and is to be kept with the child's
18 caregiver in the child's resource record and updated at each
19 health care provider visit. The department is responsible for
20 ensuring the medical passport is current, complete, and
21 accurate.

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

24 39.302 Protective investigations of institutional child
25 abuse, abandonment, or neglect.--

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

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

30 Section 4. Subsections (3) through (14) of section
31 39.407, Florida Statutes, are renumbered as subsections (4)

1 through (15), respectively, and a new subsection (3) is added
2 to said section, to read:

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

6 (3) The provision of psychotropic medication to a
7 child in the legal custody of the department, and in
8 compliance with this subsection, shall be deemed in compliance
9 with the restrictions in s. 743.0645(1)(b).

10 (a) A court order is not required to dispense
11 psychotropic medication to a child in the legal custody of the
12 department under any of the following conditions:

13 1. If a child was taking prescribed psychotropic
14 medications at the time the child was removed from the home,
15 the department may take possession of the remaining
16 medications when the department takes the child, and may
17 dispense those medications on a temporary basis until the next
18 regularly scheduled court hearing required under this chapter,
19 other than the shelter hearing, if such hearing occurs within
20 60 days of the time the child was removed.

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

29 3. In an acute care setting.

30 (b) A motion seeking court authority to dispense
31 psychotropic medication to a child in the legal custody of the

1 department must be supported by the prescribing physician's
2 signed medical report or, if not available, an affidavit from
3 the prescribing physician indicating:

4 1. The name of the child and the name and dosage of
5 the psychotropic medication, and indicating that there is a
6 need to prescribe psychotropic medication to the child based
7 upon a diagnosed condition for which such medication is
8 indicated and that there is a plan of treatment that addresses
9 treatment alternatives that are or are not available or
10 desirable.

11 2. That the psychotropic medication at its prescribed
12 dosage is appropriate for the treatment of the child's
13 diagnosed medical condition, as well as the behaviors and
14 symptoms the medication at its prescribed dosage level is
15 expected to address.

16 3. That the prescribing physician has provided to the
17 child, if age-appropriate, the department and any person
18 responsible for the child in his or her residential setting, a
19 clinically appropriate explanation of the nature and purpose
20 of the treatment; the recognized side effects, risks, and
21 contraindications of the medication; and drug interaction
22 precautions.

23 4. Whether the psychotropic medication will replace or
24 supplement any other currently prescribed medications or
25 treatments; the length of time the child is expected to be
26 taking the medication; and any additional medical, counseling,
27 or other services that the prescribing physician believes are
28 necessary or would be beneficial for the treatment of the
29 child's medical condition and that the physician expects or
30 advises to be provided to the child in concert with the
31 medication.

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2 The department shall have the burden of compliance with and
3 proof of the provisions of this paragraph.

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

30 (d) The court shall review the medical passport and
31 the status of the child's progress on psychotropic medication

1 at least every 6 months, which may be accomplished during
2 timely scheduled judicial review hearings pursuant to s.
3 39.701. On its own motion or on good cause shown by any party,
4 including any guardian ad litem, attorney, or attorney ad
5 litem who has been appointed to represent the child or his or
6 her interests, the court may review the status more frequently
7 than required in this paragraph.

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

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