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/SB 112

SPONSOR: Senator Campbell and Children and Families Committee

SUBJECT: Dependent Children/Psychotropic Medication

DATE: February 5, 2003 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collins	Whiddon	CF	Favorable/CS
2.			JU	
3.			HC	
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 112 amends s. 39.01, F.S., to create a definition of "child resource record" which is a standardized folder containing copies of legal, demographic and known medical information pertaining to a child in shelter or foster care status.

This bill specifies the condition under which the Department of Children and Family Services may consent to the dispensing of psychotropic medications to a child in its custody in advance of the court order. The bill provides that a motion seeking court authorization to dispense psychotropic medication to a child in the legal custody of the department must be supported by the prescribing physician's signed medical report and addresses the required content of this report.

This bill specifies the information that must be provided to the court at a hearing to determine whether to initially allow dispensing or to provide for continuation of psychotropic medication. It also authorizes the court to require further medical consultation including second opinions. Second opinions must be obtained from a licensed psychiatrist whenever available or, if unavailable, a licensed physician. It provides for court review of the status of the child's progress on psychotropic medication.

The bill also directs the department to adopt rules addressing uniform procedures for obtaining informed consent, requesting authorization from the courts, and the identification of a standardized format for the contents of medical reports submitted to the court.

This bill amends sections 39.01, 39.407, and 743.0645, of the Florida Statutes.

II. Present Situation:

Currently section s. 39.407, F.S., provides authorization for the Department of Children and Family Services (DCF or department) to seek medical screenings without court authorization or parental consent. When a licensed professional determines through such screening that a child in out-of-home placement is in further need of treatment, consent to medical treatment is obtained from a parent or legal guardian of the child. A court order for treatment is obtained if the parent or legal custodian of the child is unavailable or refuses to sign a consent at which point a court order is required unless the situation meets the definition of an emergency as provided in s. 743.064, F.S., or is related to abuse. In such cases, the department has the authority to consent to *necessary* medical treatment, limited to the time reasonably necessary to obtain court authorization.

Under the department's current interpretation of the law, the department lacks clear authority to consent to *extraordinary* medical treatment, including not only the administration of psychotropic medications, but also general anesthesia, surgery, or cessation of life. This interpretation is based upon legal cases such as the State, Dept. of HRS v. Hollis, 439 So.2nd 947 (FLA 1st DCA 1983) that support the position that the court is the legal guardian of the child.

Section 743.0645, F.S., specifies other persons who may consent to the medical care or treatment of a minor and defines the term "medical care and treatment." Medical care and treatment includes ordinary and necessary medical and dental examination and treatment, blood testing, and preventive care including immunizations, tuberculin testing, and well child care; it 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 under medical care and treatment.

The department currently obtains a court order prior to a child in its custody receiving psychotropic drugs. There have been reported delays in treatment while awaiting a court order. This practice has been known to result in the discontinuation of currently prescribed psychotropic medications when a child is removed from the home, often to the detriment of the child's health. Other occasions have been identified when the child would clearly benefit from treatment using psychotropic medications, and a physician has indicated that delaying the provision of medications will be detrimental to the well being of the child. However, based upon current practice, treatment is not initiated until a court order is obtained.

Conversely, there have been a number of reports where children who have been prescribed psychotropic medications are not provided the appropriate evaluation and follow-up to determine the effectiveness of treatment. Drug therapy may also have been provided in the absence of any other therapies which are known to be effective when combined with psychotropic medication. This practice has resulted in poor treatment outcomes and adverse side effects for children receiving psychotropic medications.

There are issues associated with the court not receiving enough information to authorize the use of psychotropic medications. Judges have indicated that they frequently do not have adequate information regarding the child's medical history and presenting problems to make an informed decision to issue a court order for psychotropic medications.

Mental Health: A Report of the Surgeon General, released in 1999, states that dramatic increases have occurred over the past decade in the use of pharmacological therapies for children and adolescents with mental disorders, but 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. There has been an increase in pediatric drug research since the passage of the Food and Drug Administration Modernization Act of 1997. The absence of clear protocols for the use of psychotropic medications and appropriate monitoring is an ongoing issue of concern for healthcare professionals. The proper prescription and dosage levels for psychotropics prescribed to children are often unclear, and protocols for use are frequently not available, making this a difficult area to monitor.

For the purposes of ch 39, F.S., there is no definition for "psychotropic medication." Section 916.12 (5), F.S., specifies that "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." The term "psychotropic medication" is largely dependent on its rationale for use. For example, Depakote is an anticonvulsant that is used widely to treat seizure disorders. However, it has also been found effective in addressing psychiatric or behavioral disorders which may occur in the absence of a medical condition. In the second case but not the first, Depakote is a "psychotropic medication."

III. Effect of Proposed Changes

CS/SB 112 introduces a definition for "child resource record." This record is defined as "a standardized folder which contains copies of the basic legal, demographic and known medical information pertaining to a specific child, as well as any documents necessary for the child to receive medical treatment."

This proposed committee substitute also specifies the condition under which the department may provide informed consent for psychotropic medication in advance of a court order. The department is given this authority when a child coming into its custody was taking prescribed psychotropic medications at the time the child was removed from the home. In this case, the department may take possession of the remaining medications and provide consent for the dispensing of those medications on a temporary basis until the next regularly scheduled court hearing, if the hearing occurs within 60 days after the time the child was removed. As a cross reference, s. 743.0645 (1) (b), F.S., is amended to specify that this authority granted to the department in s. 39.407 (3) (a), F.S., provides an exception to the limitations on administering psychotropic medications to children.

This legislation requires that a motion seeking court authority to dispense psychotropic medication to a child in the legal custody of the department must be supported by the prescribing physician's signed medical report. The medical report is to indicate the name of the child and range of dosage of the psychotropic medication that is being prescribed, based upon a diagnosed condition and a plan of treatment that addresses treatment alternatives. The dosage range of pychotropic medication that is being prescribed for the child must be identified, and the prescribing physician is required to provide to the child if age-appropriate, the department, and any person responsible for the child a

clinically appropriate explanation of the nature and purpose of the treatment, including side effects, risks and contraindications of the medication, and drug interaction precautions. The report should also indicate the length of time the child can be expected to take the medications and whether the psychotropic medications will replace or supplement any other medications and identify any additional services that may be necessary or beneficial to the child.

CS/SB 112 should ensure that judges are provided adequate information regarding the child's medical history and presenting problems to assist them in making an informed decision regarding the authorization of psychotropic medications.

In addition to providing direction regarding the type of medical information to be provided to the court in the medical report, the bill also states that the court may order medication dispensing or continuation if the medical report, child resource record, and other information is in accordance with specifications in other sections of this bill. The bill further indicates that the court may require further medical consultation, including a second opinion, and provides for court review of the child resource record and status of the child's progress on taking psychotropic medication. When second opinions are obtained regarding the discontinuation of psychotropic medications, the opinion must be obtained from a licensed psychiatrist whenever available or, when not available, by a licensed physician.

This bill also directs the department to adopt rules to assure children receive timely access to clinically appropriate psychotropic medications. These rules are to address at a minimum, a uniform process for obtaining court authorization, including the adoption of uniform forms to be used in requesting court authorization for the use of psychotropic medications.

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.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill authorizes but does not mandate the court to obtain second opinions or additional consultations. It is not clear who (courts or the department) would be responsible for these costs should they be incurred.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.