

By Senator Campbell

32-138-03

1 A bill to be entitled
2 An act relating to dependent children; amending
3 s. 39.01, F.S.; defining the term "medical
4 passport"; amending ss. 39.0015, 39.302, F.S.;
5 conforming 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
31 district 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) of that
8 section is renumbered as subsection (40), present subsection
9 (72) of that section is renumbered as subsection (41), present
10 subsections (43) through (71) of that section are renumbered
11 as subsections (45) through (73), respectively, and a new
12 subsection (44) is added to that 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 must be kept with the child's
18 caregiver in the child's resource record and updated at each
19 visit to a health care provider. The department shall ensure
20 that the medical passport is current, complete, and accurate.

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

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

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

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

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

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1 through (15), respectively, and a new subsection (3) is added
2 to that 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 after 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 after the date
28 of the prescription, whichever is sooner.

29 3. Psychotropic medications may be dispensed in an
30 acute care setting.

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1 (b) A motion seeking court authority to dispense
2 psychotropic medication to a child in the legal custody of the
3 department must be supported by the prescribing physician's
4 signed medical report or, if not available, an affidavit from
5 the prescribing physician indicating:

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

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

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

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

1 advises to be provided to the child in concert with the
2 medication.

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4 The department has the burden of compliance with and proof of
5 the provisions of this paragraph.

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

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

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

28 Section 5. This act shall take effect July 1, 2003.
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SENATE SUMMARY

Provides requirements for issuance of a court order authorizing dispensing of psychotropic medication to a child in shelter status or foster care. Requires the prescribing physician to review the child's medical history, in the form of a "medical passport" prepared by the Department of Children and Family Services, prior to issuance of such order and requires medical records or other evidence demonstrating that the medication is appropriate for the child. Defines, and prescribes minimum contents of, the medical passport. Authorizes the court to require further medical consultation, including second opinions, prior to issuance of such order. Provides for periodic court review of the child's progress under the treatment and provides conditions for suspension of the treatment. Provides conditions for dispensing prescribed psychotropic medication to a child without such a court order.