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## CHAMBER ACTION

The Committee on Judiciary recommends the following:

**Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to dependent children; amending s. 39.01, F.S.; defining the term "child resource record"; amending ss. 39.0015, 39.205, 39.302, 39.828, and 419.001, F.S.; conforming cross references; amending s. 39.407, F.S.; specifying conditions under which the Department of Children and Family Services may consent to the dispensing of psychotropic medication to a child in its legal custody prior to a court order; providing requirements for a petition to the court for authority to dispense psychotropic medication to such a child; providing for prior review of the child's medical history and evidence demonstrating that the treatment is appropriate for the child's condition; providing for the burden of proof; providing for further medical consultation, including second opinions, under certain circumstances; providing conditions for discontinuation of prescribed psychotropic medication or for the provision of other services; providing for periodic court review of the child's



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29 progress; directing the department to adopt rules;  
30 amending s. 743.0645, F.S.; providing an exception to the  
31 limitations on the dispensing of psychotropic medications;  
32 providing an effective date.

33

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

35

36 Section 1. Paragraph (b) of subsection (3) of section  
37 39.0015, Florida Statutes, is amended to read:

38 39.0015 Child abuse prevention training in the district  
39 school system.--

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

41 (b) "Child abuse" means those acts as defined in ss.  
42 39.01(1), (2), (31), (44), (46), (53), and (64) ~~(30), (43),~~  
43 ~~(45), (52), and (63)~~, 827.04, and 984.03(1), (2), and (37).

44 Section 2. Subsection (10) of section 39.01, Florida  
45 Statutes, is amended, subsections (14) through (72) are  
46 renumbered as subsections (15) through (73), respectively, and a  
47 new subsection (14) is added to said section, to read:

48 39.01 Definitions.--When used in this chapter, unless the  
49 context otherwise requires:

50 (10) "Caregiver" means the parent, legal custodian, adult  
51 household member, or other person responsible for a child's  
52 welfare as defined in subsection (48) ~~(47)~~.

53 (14) "Child resource record" means a standardized folder  
54 that contains copies of the basic legal, demographic, and known  
55 medical information pertaining to a specific child, as well as



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56 any documents necessary for the child to be provided medical  
57 treatment.

58 Section 3. Subsection (5) of section 39.205, Florida  
59 Statutes, is amended to read:

60 39.205 Penalties relating to reporting of child abuse,  
61 abandonment, or neglect.--

62 (5) If the department or its authorized agent has  
63 determined after its investigation that a report is false, the  
64 department shall, with the consent of the alleged perpetrator,  
65 refer the report to the local law enforcement agency having  
66 jurisdiction for an investigation to determine whether  
67 sufficient evidence exists to refer the case for prosecution for  
68 filing a false report as defined in s. 39.01~~(28)~~(27). During the  
69 pendency of the investigation by the local law enforcement  
70 agency, the department must notify the local law enforcement  
71 agency of, and the local law enforcement agency must respond to,  
72 all subsequent reports concerning children in that same family  
73 in accordance with s. 39.301. If the law enforcement agency  
74 believes that there are indicators of abuse, abandonment, or  
75 neglect, it must immediately notify the department, which must  
76 assure the safety of the children. If the law enforcement agency  
77 finds sufficient evidence for prosecution for filing a false  
78 report, it must refer the case to the appropriate state attorney  
79 for prosecution.

80 Section 4. Subsection (1) of section 39.302, Florida  
81 Statutes, is amended to read:

82 39.302 Protective investigations of institutional child  
83 abuse, abandonment, or neglect.--



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84 (1) The department shall conduct a child protective  
85 investigation of each report of institutional child abuse,  
86 abandonment, or neglect. Upon receipt of a report which alleges  
87 that an employee or agent of the department, or any other entity  
88 or person covered by s. 39.01(32)(~~31~~) or (48) (~~47~~), acting in an  
89 official capacity, has committed an act of child abuse,  
90 abandonment, or neglect, the department shall immediately  
91 initiate a child protective investigation and orally notify the  
92 appropriate state attorney, law enforcement agency, and  
93 licensing agency. These agencies shall immediately conduct a  
94 joint investigation, unless independent investigations are more  
95 feasible. When conducting investigations onsite or having face-  
96 to-face interviews with the child, such investigation visits  
97 shall be unannounced unless it is determined by the department  
98 or its agent that such unannounced visits would threaten the  
99 safety of the child. When a facility is exempt from licensing,  
100 the department shall inform the owner or operator of the  
101 facility of the report. Each agency conducting a joint  
102 investigation shall be entitled to full access to the  
103 information gathered by the department in the course of the  
104 investigation. A protective investigation must include an onsite  
105 visit of the child's place of residence. In all cases, the  
106 department shall make a full written report to the state  
107 attorney within 3 working days after making the oral report. A  
108 criminal investigation shall be coordinated, whenever possible,  
109 with the child protective investigation of the department. Any  
110 interested person who has information regarding the offenses  
111 described in this subsection may forward a statement to the



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112 state attorney as to whether prosecution is warranted and  
113 appropriate. Within 15 days after the completion of the  
114 investigation, the state attorney shall report the findings to  
115 the department and shall include in such report a determination  
116 of whether or not prosecution is justified and appropriate in  
117 view of the circumstances of the specific case.

118 Section 5. Subsections (3) through (14) of section 39.407,  
119 Florida Statutes, are renumbered as subsections (4) through  
120 (15), respectively, a new subsection (3) is added to said  
121 section, and present subsection (4) of said section is amended,  
122 to read:

123 39.407 Medical, psychiatric, and psychological examination  
124 and treatment of child; physical or mental examination of parent  
125 or person requesting custody of child.--

126 (3)(a) If a child in the legal custody of the department  
127 was taking prescribed psychotropic medication at the time the  
128 child was removed from the home, the department may take  
129 possession of the remaining medication when the department takes  
130 the child and may provide consent for the dispensing of that  
131 medication on a temporary basis until the next regularly  
132 scheduled court hearing required under this chapter, other than  
133 the shelter hearing, if such hearing occurs within 60 days after  
134 the time the child was removed.

135 (b) If the prescribing physician certifies in the signed  
136 medical report required in paragraph (d) that delay in  
137 dispensing the prescribed psychotropic medication would more  
138 likely than not cause significant harm to the child, the  
139 medication may be dispensed in advance of issuance of a court



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140 order. In such event, the physician's medical report shall be  
141 submitted to the court, the child's guardian ad litem, and all  
142 other parties within 3 business days after the commencement of  
143 dispensing the medication to the child. The order required under  
144 this subsection shall be sought by the department at the next  
145 regularly scheduled court hearing required under this chapter,  
146 or within 30 days after the date of the prescription, whichever  
147 is sooner.

148 (c) Psychotropic medications may be dispensed in an acute  
149 care setting.

150 (d) A motion seeking court authority to dispense  
151 psychotropic medication to a child in the legal custody of the  
152 department must be supported by the prescribing physician's  
153 signed medical report indicating:

154 1. The name of the child and the name and range of the  
155 dosage of the psychotropic medication and indicating that there  
156 is a need to prescribe psychotropic medication to the child  
157 based upon a diagnosed condition for which such medication is  
158 indicated and that there is a plan of treatment that addresses  
159 treatment alternatives that are or are not available or  
160 desirable.

161 2. That the psychotropic medication at its prescribed  
162 dosage is appropriate for the treatment of the child's diagnosed  
163 medical condition, as well as the behaviors and symptoms the  
164 medication at its prescribed dosage level is expected to  
165 address.

166 3. That the prescribing physician has provided to the  
167 child, if age-appropriate, the department, and any person



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168 responsible for the child in his or her residential setting a  
169 clinically appropriate explanation of the nature and purpose of  
170 the treatment; the recognized side effects, risks, and  
171 contraindications of the medication; and drug interaction  
172 precautions.

173 4. Whether the psychotropic medication will replace or  
174 supplement any other currently prescribed medications or  
175 treatments; the length of time the child is expected to be  
176 taking the medication; and any additional medical, counseling,  
177 or other services that the prescribing physician believes are  
178 necessary or would be beneficial for the treatment of the  
179 child's medical condition and that the physician expects or  
180 advises to be provided to the child in concert with the  
181 medication.

182  
183 The department has the burden of compliance with and proof of  
184 compliance with the provisions of this paragraph.

185 (e) At a hearing to determine whether to initially allow  
186 dispensing of psychotropic medication to a child in the legal  
187 custody of the department, or at a hearing for continuation of  
188 such medication, the medical report described in paragraph (d)  
189 is admissible in evidence. The prescribing physician is not  
190 required to attend the hearing or testify unless the court  
191 specifically orders such attendance or testimony. If the medical  
192 report, the child resource record, and other evidence are in  
193 accord with the requirements of this subsection, the court may  
194 order the dispensing or continuation of psychotropic medication  
195 without further testimony or evidence. The court shall further



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196 inquire of the department as to whether additional medical,  
197 counseling, or other services that the prescribing physician  
198 believes are necessary or would be beneficial for the treatment  
199 of the child's medical condition, and that the physician expects  
200 or advises to be provided to the child in concert with the  
201 medication, are being provided to the child by the department.  
202 The court may require further medical consultation, including  
203 obtaining a second opinion, based upon considerations of the  
204 best interests of the child, and the court may not order the  
205 discontinuation of prescribed psychotropic medication contrary  
206 to the decision of the prescribing physician without first  
207 obtaining a second opinion from a licensed psychiatrist, if  
208 available, or, if not available, a physician licensed under  
209 chapter 458 or chapter 459 that the psychotropic medication  
210 should be discontinued.

211 (f) The court shall review the child resource record and  
212 the status of the child's progress on psychotropic medication at  
213 least every 6 months, which may be accomplished during timely  
214 scheduled judicial review hearings pursuant to s. 39.701. On its  
215 own motion or on good cause shown by any party, including any  
216 guardian ad litem, attorney, or attorney ad litem who has been  
217 appointed to represent the child or his or her interests, the  
218 court may review the status more frequently than required in  
219 this paragraph.

220 (g) If at any time the court determines that the statutory  
221 requirements for continued use of the psychotropic medication  
222 are not being met, the court may, in the best interests of the  
223 child, order the department to either produce evidence of





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224 compliance with the requirements of this section or obtain a  
225 medical opinion that continued use of the medication under the  
226 circumstances is safe and medically appropriate. If at any time  
227 the court determines that the additional medical, counseling, or  
228 other services that the prescribing physician believes are  
229 necessary or would be beneficial for the treatment of the  
230 child's medical condition and that the physician expects or  
231 advises to be provided to the child in concert with the  
232 medication are not being provided, the court may, in the best  
233 interests of the child, order the department to either produce  
234 evidence of compliance with the requirement of providing those  
235 services or obtain a medical opinion that such services are not  
236 medically appropriate.

237 (h) The department shall adopt rules to ensure that  
238 children receive timely access to clinically appropriate  
239 psychotropic medications. These rules must, at a minimum,  
240 describe a uniform process for obtaining informed consent and  
241 procedures for obtaining court authorization, including adoption  
242 of uniform forms to be used in requesting court authorization  
243 for use of psychotropic medication.

244 (5)(4) A judge may order a child in an out-of-home  
245 placement to be treated by a licensed health care professional  
246 based on evidence that the child should receive treatment. The  
247 judge may also order such child to receive mental health or  
248 developmental disabilities services from a psychiatrist,  
249 psychologist, or other appropriate service provider. Except as  
250 provided in subsection (6) (5), if it is necessary to place the  
251 child in a residential facility for such services, the



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252 | procedures and criteria established in s. 394.467 or chapter 393  
 253 | shall be used, whichever is applicable. A child may be provided  
 254 | developmental disabilities or mental health services in  
 255 | emergency situations, pursuant to the procedures and criteria  
 256 | contained in s. 394.463(1) or chapter 393, whichever is  
 257 | applicable.

258 |       Section 6. Paragraph (a) of subsection (1) of section  
 259 | 39.828, Florida Statutes, is amended to read:

260 |       39.828 Grounds for appointment of a guardian advocate.--

261 |       (1) The court shall appoint the person named in the  
 262 | petition as a guardian advocate with all the powers and duties  
 263 | specified in s. 39.829 for an initial term of 1 year upon a  
 264 | finding that:

265 |       (a) The child named in the petition is or was a drug  
 266 | dependent newborn as described in s. 39.01(31)~~(30)~~(g);

267 |       Section 7. Paragraph (d) of subsection (1) of section  
 268 | 419.001, Florida Statutes, is amended to read:

269 |       419.001 Site selection of community residential homes.--

270 |       (1) For the purposes of this section, the following  
 271 | definitions shall apply:

272 |       (d) "Resident" means any of the following: a frail elder  
 273 | as defined in s. 400.618; a physically disabled or handicapped  
 274 | person as defined in s. 760.22(7)(a); a developmentally disabled  
 275 | person as defined in s. 393.063(12); a nondangerous mentally ill  
 276 | person as defined in s. 394.455(18); or a child as defined in s.  
 277 | 39.01(15)~~(14)~~, s. 984.03(9) or (12), or s. 985.03(8).

278 |       Section 8. Paragraph (b) of subsection (1) of section  
 279 | 743.0645, Florida Statutes, is amended to read:



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280 743.0645 Other persons who may consent to medical care or  
281 treatment of a minor.--

282 (1) As used in this section, the term:

283 (b) "Medical care and treatment" includes ordinary and  
284 necessary medical and dental examination and treatment,  
285 including blood testing, preventive care including ordinary  
286 immunizations, tuberculin testing, and well-child care, but does  
287 not include surgery, general anesthesia, provision of  
288 psychotropic medications, or other extraordinary procedures for  
289 which a separate court order, power of attorney, or informed  
290 consent as provided by law is required, except as provided in s.  
291 39.407(3)(a).

292 Section 9. This act shall take effect July 1, 2003.

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