

By the Committee on Children and Families; and Senator Cowin

300-1981-04

1 A bill to be entitled
2 An act relating to administering medication to
3 a child; amending s. 39.401, F.S.; providing
4 that the refusal of a parent, legal guardian,
5 or other person responsible for a child's
6 welfare to administer or consent to the
7 administration of any psychotropic medication
8 to the child does not, in and of itself,
9 constitute grounds for the department to take
10 the child into custody; providing an exception;
11 creating s. 402.3127, F.S.; prohibiting
12 specified persons working in child care
13 facilities, large family child care homes, and
14 family day care homes from administering
15 medications to a child without written
16 authorization of the child's parent or legal
17 guardian; providing for the contents of the
18 written authorization; directing procedures for
19 administering medication to a child during an
20 emergency medical condition; providing
21 definitions; providing criminal penalties;
22 amending s. 1006.062, F.S.; directing school
23 boards to adopt rules prohibiting school board
24 personnel from recommending psychotropic
25 medication for a student; providing exceptions;
26 providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Subsection (1) of section 39.401, Florida
31 Statutes, is amended to read:

1 39.401 Taking a child alleged to be dependent into
2 custody; law enforcement officers and authorized agents of the
3 department.--

4 (1) A child may only be taken into custody:

5 (a) Pursuant to the provisions of this part, based
6 upon sworn testimony, either before or after a petition is
7 filed; or

8 (b) By a law enforcement officer, or an authorized
9 agent of the department, if the officer or authorized agent
10 has probable cause to support a finding:

11 1. That the child has been abused, neglected, or
12 abandoned, or is suffering from or is in imminent danger of
13 illness or injury as a result of abuse, neglect, or
14 abandonment;

15 2. That the parent or legal custodian of the child has
16 materially violated a condition of placement imposed by the
17 court; or

18 3. That the child has no parent, legal custodian, or
19 responsible adult relative immediately known and available to
20 provide supervision and care.

21
22 The refusal of a parent, legal guardian, or other person
23 responsible for a child's welfare to administer or consent to
24 the administration of any psychotropic medication to the child
25 does not, in and of itself, constitute grounds for the
26 department to take the child into custody, or for any court to
27 order that the child be taken into custody by the department,
28 unless the refusal to administer or consent to the
29 administration of psychotropic medication causes the child to
30 be neglected or abused.

31

1 Section 2. Section 402.3127, Florida Statutes, is
2 created to read:

3 402.3127 Unauthorized administration of medication.--

4 (1) An employee, owner, household member, volunteer,
5 or operator of a child care facility, large family child care
6 home, or family day care home, as defined in s. 402.302,
7 including a child care program operated by a public or
8 nonpublic school deemed to be child care under s. 402.3025,
9 which are required to be licensed or registered, may not,
10 without written authorization from a child's parent or legal
11 guardian, administer any medication to a child attending the
12 child care facility. The written authorization to administer
13 medication must include the child's name, the date or dates
14 for which the authorization is applicable, dosage
15 instructions, and the signature of the child's parent or legal
16 guardian.

17 (2) In the event of an emergency medical condition
18 when a child's parent or legal guardian is unavailable, an
19 employee, owner, household member, volunteer, or operator of a
20 licensed or unlicensed child care facility may administer
21 medication to a child attending the child care facility
22 without the written authorization required in subsection (1)
23 if the medication is administered according to instructions
24 from a bona fide medical care provider. The child care
25 facility must immediately notify the child's parent or legal
26 guardian of the emergency medical condition and of the
27 corrective measures taken. If the parent or legal guardian
28 remains unavailable and the child's emergency medical
29 condition persists, the child care facility must immediately
30 notify the child's medical care provider.

31 (3) As used in this section, the term:

1 (a) "Bona fide medical care provider" means an
2 individual who is licensed, certified, or otherwise authorized
3 to prescribe the medication.

4 (b) "Emergency medical condition" means circumstances
5 when a prudent layperson acting reasonably would believe that
6 an emergency medical condition exists.

7 (4)(a) A person who violates this section commits a
8 felony of the third degree, punishable as provided in s.
9 775.082 or s. 775.083, if the violation results in serious
10 injury to the child.

11 (b) A person who violates this section commits a
12 misdemeanor of the first degree, punishable as provided in s.
13 775.082 or s. 775.083, if the violation does not result in
14 serious injury to the child.

15 Section 3. Subsection (8) is added to section
16 1006.062, Florida Statutes, to read:

17 1006.062 Administration of medication and provision of
18 medical services by district school board personnel.--

19 (8) Each district school board shall adopt rules that
20 prohibit all district school board personnel from recommending
21 the use of psychotropic medications for any student. This
22 subsection does not prohibit district school board medical
23 personnel from recommending that a student be evaluated by an
24 appropriate medical practitioner and does not prohibit
25 district school board medical personnel from consulting with
26 such a practitioner with the consent of the student's parent.

27 Section 4. This act shall take effect July 1, 2004.
28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1140

- * Changes one of the parties identified in the bill who may be refusing to administer the psychotropic medication from the "other person having control of the child" to the "other person responsible for the child's welfare."
- * Clarifies the child care settings required to comply with the new requirement for administration of medication.