

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1379 w/CS Juvenile Psychotropic Studies

**SPONSOR(S):** Cretul

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2262

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Children's Services (Sub)	7 Y, 0 N	Walsh	Liem
2) Future of Florida's Families	14 Y, 0 N w/CS	Walsh	Liem
3) Education Appropriations (Sub)	17 Y, 0 N	Eggers	Mizereck
4) Appropriations			
5)			

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### SUMMARY ANALYSIS

The Committee Substitute for HB 1379 amends s. 743.0645, F.S., and creates new subsection (6) to establish the Center for Juvenile Psychotropic Studies within the Department of Psychiatry of the College of Medicine of the University of Florida for the purpose of collecting, tracking, and assessing information regarding dependent minors in state custody who have been or are currently being prescribed psychotropic medications.

CS/HB 1379 creates a nine-member advisory board and provides for the members' appointments. It also provides for the appointment of the director of the center. The center is required to report its findings and recommendations by January 1, 2005. The CS repeals the newly-created subsection on July 1, 2005.

The CS also addresses the administration of medication to children:

- It provides that the refusal of a parent or guardian to administer psychotropic medications to their child is not in and of itself grounds for that child to be taken into DCF custody.
- It makes it unlawful for a child care facility to administer medication to a child attending the facility without written authorization of the child's parent or legal guardian, and provides an exception for emergency situations. The CS provides that a violation resulting in serious bodily injury to a child is a third degree felony; a violation which does not result in serious injury to a child is a first degree misdemeanor.
- It requires each district school board to implement policies prohibiting their personnel from recommending the use of psychotropic medications for any student.

The University of Florida estimates that it will cost approximately \$250,000 for the development and implementation of the center. There will also be costs associated with the Advisory Board created by this bill, which have not been estimated.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1379c.ap.doc

**DATE:** April 6, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Emotional and mental disorders are disproportionately frequent among children who have been abused or neglected. Those same children frequently end up in the foster care system because of that abuse or neglect. Studies of mental health needs specific to the foster care system have firmly established that children in foster care are a high-risk population for socio-emotional, behavioral, and psychiatric problems warranting mental health treatments. In addition, an estimated 50 percent of Florida juvenile offenders in residential delinquency programs are diagnosed with mental health illnesses or emotional problems; many have been victims of physical and/or sexual abuse themselves.<sup>1</sup>

Children with emotional, behavioral, and mental disorders that could be treated with medications may not be treated, or may be treated improperly, because their physicians do not know which products might be most effective or what dosage to administer. New drug therapies are helping children combat even serious mental illnesses, such as schizophrenia and depression. Troubled children have been able to make dramatic turnarounds and do things they never could before—go to school, be with friends and get along with their family. However, three-fourths of all medications used by children are prescribed “off label,” in that they have not been approved by the FDA for use by children.<sup>2</sup> Clinicians, families, researchers and advocates are concerned about the unknown, long-term effects of medication on children’s development.

##### The Committee Substitute

#### CENTER FOR JUVENILE PSYCHOTROPIC STUDIES

CS/HB 1379 amends s. 743.0645, F.S., relating to persons who may consent to medical care or treatment of a minor, to create new subsection (6) and establish and set requirements for the Center for Juvenile Psychotropic Studies.

Establishes Center. The CS establishes the Center for Juvenile Psychotropic Studies within the Department of Psychiatry of the College of Medicine of the University of Florida (College of Medicine). Its purpose is to collect, track, and assess information regarding dependent minors in state custody who have been or are currently being prescribed psychotropic medications. The CS provides that the center shall have a director, appointed by the Dean of the College of Medicine.

<sup>1</sup> See *Florida Department of Juvenile Justice, 2002 Agency Report*.

<sup>2</sup> See U.S. Public Health Service, *Report of the Surgeon General’s Conference on Children’s Mental Health: A National Action Agenda*. Washington, DC: Department of Health and Human Services, 2000.

Center to Work with Agencies and Agencies to Provide Information. The CS directs the center to work with DCF, DJJ, and AHCA, and requires that these agencies make data available to the center consistent with the privacy requirements of state and federal law. The data includes without limitation the following information:

- Demographic information
- Family histories, including, but not limited to, their involvement with the child welfare or juvenile justice systems
- Medical histories
- All information regarding the medications prescribed or administered
- Practice patterns, licensure, and board certification of prescribing physicians.

Center to Report Findings and Make Recommendations. The CS requires the center to reports its findings and make recommendation to the President of the Senate, the Speaker of the House of Representatives, and the appropriate Senate and House committee chairs regarding psychotropic medications prescribed to dependent minors in state custody.

Creates Advisory Board. The CS creates an advisory board to review and advise the center on all actions taken pursuant to the act. The membership is to composed of nine experts in psychiatric health to include

- The DCF Secretary or his designee
- The DJJ Secretary or his designee
- The AHCA Secretary or her designee
- One member appointed by the Governor
- One member appointed by the Speaker of the House of Representatives
- One member appointed by the President of the Senate
- One member appointed by the President of the University of Florida
- Two members appointed by the Florida Psychiatric Society

Repeal. The CS provides that newly-created subsection (6) is repealed July 1, 2005.

#### **ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO CHILDREN**

The CS addresses three sections of existing law to include provisions relating to the administration of medications to children.

##### Dependency

The CS amends s. 39.401, F.S., to provide that the refusal of a parent or guardian to administer psychotropic medications to their child is not in and of itself grounds for that child to be taken into DCF custody.

##### Child Care

The CS creates s. 402.3196, F.S., to make it unlawful for personnel of a licensed or unlicensed child care facility to administer medication to a child attending the facility without written authorization of the child's parent or legal guardian. The CS also provides that in the event of a medical emergency, medications may be given to a child attending the facility if administered with the authorization and in accordance with the instructions of a bona fide medical care provider.

The CS provides that a violation resulting in serious bodily injury to a child is a third degree felony; a violation which does not result in serious injury to a child is a first degree misdemeanor.

##### School Personnel

The CS amends s. 1006.062, F.S., to require each district school board to implement policies prohibiting their personnel from recommending the use of psychotropic medications for any student. It expressly does not prohibit school board medical personnel from recommending that a student be evaluated or from consulting with a practitioner with the consent of the student's parent.

C. SECTION DIRECTORY:

Section 1: Amends s. 743.0645, F.S., relating to persons who may consent to medical care or treatment of a minor; adds definition of "psychotropic medication;" establishes the Center for Juvenile Psychotropic Studies within the Department of Psychiatry of the College of Medicine of the University of Florida and provides purpose; ; provides for the appointment of the center director; creates a nine-member advisory board and provides for the members' appointments; requires that the center work with DCF, DJJ, and AHCA and that the agencies provide certain information to the center; requires the center to report its findings and recommendations by January 1, 2005; repeals this subsection on July 1, 2005.

Section 2: Amends s. 39.401, F.S.; provides that the refusal of a parent or guardian to administer psychotropic medications to their child is not in and of itself grounds for that child to be taken into DCF custody.

Section 3: Creates s. 402.3196, F.S., relating to unauthorized administration of medication; makes it unlawful for personnel of a licensed or unlicensed child care facility to administer medication to a child attending the facility without written authorization of the child's parent or legal guardian; provides for emergency exception; defines "bona fide medical care provider" and "emergency medical condition"; provides that a violation resulting in serious bodily injury to a child is a third degree felony; provides that a violation which does not result in serious injury to a child is a first degree misdemeanor.

Section 4: Amends s. 1006.062, F.S.; requires each district school board to implement policies prohibiting their personnel from recommending the use of psychotropic medications for any student; excepts district medical personnel under certain circumstances.

Section 5: Provides an effective date of July 1, 2004.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The University of Florida estimates that it will cost approximately \$250,000 for the development and implementation of the Center for Juvenile Psychotropic Studies. There will be costs associated with the Advisory Board created by this bill --- administrative support, travel, etc. Those costs have not been estimated. See Drafting Issues or Other Comments below.

The Department of Juvenile Justice states in their March 10, 2004 bill analysis that "the data collection requirements of the bill would be considerable." They estimate the resulting fiscal impact to be \$254,898 in nonrecurring costs, since the provisions of the bill are repealed July 1, 2005. The \$254,898 includes \$180,000 for 6 research and data professional staff (five regional staff and one headquarters staff person), \$18,750 for equipment, and \$56,148 for travel expenses. Justification for

these expenditures was stated as “considerable time demands associated with data entry, collection and reporting for DJJ staff and providers.”

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Advisory Board. The CS does not specify where the Advisory Board it creates will be housed or receive its administrative support. The requirement that the board “periodically and objectively review and advise the center on all actions taken pursuant to this act” is unclear in that it does not specify whose actions the board is to review or to whom is the Board to provide advice. The bill does not specify whether or how often the Board is to meet, nor does the bill address whether the members will receive compensation, travel reimbursement, or the like.

Agencies to Provide Data. The CS requires that DJJ, DCF and AHCA provide certain information to the center. Some of these requirements are unclear:

- “family histories, including, but not limited to, their involvement with the child welfare or juvenile justice systems” --- In this context, the term “their involvement” does not specify whether this is the minor’s involvement or the minor’s family’s involvement.
- “practice patterns, licensure, and board certification of prescribing physicians” --- It is unlikely that DCF, DJJ, or AHCA would be able to provide data about practice patterns of physicians since these agencies do not collect this data. The bill should be clarified if the intent is that information about practice patterns would be derived from the data itself.

Psychotropic medications. Practitioners differ on which specific drugs should be included on a list entitled "psychotropic medications." It is recommended that the bill address this issue by inclusion of a list of medications to be examined.

Center to Report Findings and Make Recommendations. The CS specifies that the center is to receive data from agencies and provide its findings and recommendations to the House and Senate, but the CS does not direct what the center is to report about. It is recommended that the bill provide direction to the center on this issue.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

At its March 15, 2004, meeting, the Subcommittee on Children's Services adopted a strike all amendment which inserted the text of HB 1379 in s. 743.0465, F.S., Other persons who may consent to medical care or treatment of a minor, and included a definition of psychotropic medications.

At its March 17, 2004, meeting, the Committee on the Future of Florida's Families adopted an amendment to the strike all amendment, which provides that the refusal of a parent or guardian to administer psychotropic medications to their child is not in and of itself grounds for that child to be taken into DCF custody; makes it unlawful for a child care facility to administer medication to a child attending the facility without written authorization of the child's parent or legal guardian.; and requires each district school board to implement policies prohibiting their personnel from recommending the use of psychotropic medications for any student. The Committee then adopted the strike all amendment as amended as its Committee Substitute.

This analysis is drafted to the Committee Substitute.

On April 2, 2004, the Subcommittee on Education Appropriations favorably recommended HB1379 with a strike-all amendment containing the following provisions:

- Defines "psychotropic medication;"
- Creates the Center for Juvenile Psychotropic Studies and its advisory board within the Department of Psychiatry of the College of Medicine at the University of Florida;
- Provides the Center's purpose and areas of evaluation regarding the prescription of psychotropic medication and other treatments for minors in state custody; requires cooperation among the Center and specified state agencies to collect and analyze information; provides for privacy protections; provides a privilege against civil liability for any person furnishing medical records in furtherance of the charge of the Center; provides exception; provides that a person providing information regarding incompetence, impairment, or unprofessional conduct of any licensed health care provider may not be held liable in any civil action; requires a report by January 1, 2005; repeals the Center effective July 1, 2005;
- Provides that refusal to administer or consent to administer psychotropic medication does not constitute grounds for taking a child into custody;
- Establishes specific requirements for the administration of medication to a child; provides that violation of these requirements constitute a third degree felony or a first degree misdemeanor, depending upon the effect on the child; and
- Requires school districts to adopt rules prohibiting school board personnel from recommending the use of psychotropic medication for any student.