

CHAMBER ACTION

1 The Committee on Future of Florida's Families recommends the
2 following:

3
4 **Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to the medication of children; amending s.
8 743.0645, F.S.; creating the Center for Juvenile
9 Psychotropic Studies within the Department of Psychiatry
10 of the College of Medicine of the University of Florida;
11 providing the purpose of the center; providing for the
12 appointment of a director; creating an advisory board;
13 providing for board membership; requiring the center to
14 work with the Department of Children and Family Services,
15 the Department of Juvenile Justice, and the Agency for
16 Health Care Administration; requiring certain data
17 relating to dependent minors for whom psychotropic
18 medications have been prescribed to be made available to
19 the center; requiring the center to report to legislative
20 leaders by a specified date; providing for future repeal;
21 amending s. 39.401, F.S.; specifying that a parent's
22 refusal to administer psychotropic medication to a child
23 shall not constitute grounds for the Department of

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24 Children and Family Services to take the child into
 25 custody; providing exceptions; creating s. 402.3196, F.S.;
 26 providing that it is unlawful for certain child care
 27 facility personnel to administer medication to a child
 28 without written authorization; providing an exception in
 29 the case of an emergency medical condition; providing
 30 definitions; providing penalties; amending s. 1006.062,
 31 F.S.; requiring district school board policies to prohibit
 32 personnel from recommending the use of psychotropic
 33 medications for students; providing an effective date.

34
 35 Be It Enacted by the Legislature of the State of Florida"

36
 37 Section 1. Section 743.0645, Florida Statutes, is amended
 38 to read:

39 743.0645 Other persons who may consent to medical care or
 40 treatment of a minor; Center for Juvenile Psychotropic Studies;
 41 creation; purpose; advisory board; report.--

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

43 (a) "Blood testing" includes Early Periodic Screening,
 44 Diagnosis, and Treatment (EPSDT) testing and other blood testing
 45 deemed necessary by documented history or symptomatology but
 46 excludes HIV testing and controlled substance testing or any
 47 other testing for which separate court order or informed consent
 48 as provided by law is required.

49 (b) "Medical care and treatment" includes ordinary and
 50 necessary medical and dental examination and treatment,
 51 including blood testing, preventive care including ordinary

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52 immunizations, tuberculin testing, and well-child care, but does
53 not include surgery, general anesthesia, provision of
54 psychotropic medications, or other extraordinary procedures for
55 which a separate court order, power of attorney, or informed
56 consent as provided by law is required.

57 (c) "Person who has the power to consent as otherwise
58 provided by law" includes a natural or adoptive parent, legal
59 custodian, or legal guardian.

60 (d) "Psychotropic medication" means a medicine that may
61 not be dispensed or administered without a prescription that is
62 used for the treatment of mental disorders, and includes
63 hypnotics, antipsychotics, antidepressants, antianxiety agents,
64 sedatives, mood stabilizers such as lithium, depakote and other
65 anticonvulsants, and psychomotor stimulants.

66 (2) Any of the following persons, in order of priority
67 listed, may consent to the medical care or treatment of a minor
68 who is not committed to the Department of Children and Family
69 Services or the Department of Juvenile Justice or in their
70 custody under chapter 39, chapter 984, or chapter 985 when,
71 after a reasonable attempt, a person who has the power to
72 consent as otherwise provided by law cannot be contacted by the
73 treatment provider and actual notice to the contrary has not
74 been given to the provider by that person:

75 (a) A person who possesses a power of attorney to provide
76 medical consent for the minor. A power of attorney executed
77 after July 1, 2001, to provide medical consent for a minor
78 includes the power to consent to medically necessary surgical
79 and general anesthesia services for the minor unless such

80 services are excluded by the individual executing the power of
81 attorney.

82 (b) The stepparent.

83 (c) The grandparent of the minor.

84 (d) An adult brother or sister of the minor.

85 (e) An adult aunt or uncle of the minor.

86

87 There shall be maintained in the treatment provider's records of
88 the minor documentation that a reasonable attempt was made to
89 contact the person who has the power to consent.

90 (3) The Department of Children and Family Services or the
91 Department of Juvenile Justice caseworker, juvenile probation
92 officer, or person primarily responsible for the case management
93 of the child, the administrator of any facility licensed by the
94 department under s. 393.067, s. 394.875, or s. 409.175, or the
95 administrator of any state-operated or state-contracted
96 delinquency residential treatment facility may consent to the
97 medical care or treatment of any minor committed to it or in its
98 custody under chapter 39, chapter 984, or chapter 985, when the
99 person who has the power to consent as otherwise provided by law
100 cannot be contacted and such person has not expressly objected
101 to such consent. There shall be maintained in the records of
102 the minor documentation that a reasonable attempt was made to
103 contact the person who has the power to consent as otherwise
104 provided by law.

105 (4) The medical provider shall notify the parent or other
106 person who has the power to consent as otherwise provided by law
107 as soon as possible after the medical care or treatment is

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108 administered pursuant to consent given under this section. The
 109 medical records shall reflect the reason consent as otherwise
 110 provided by law was not initially obtained and shall be open for
 111 inspection by the parent or other person who has the power to
 112 consent as otherwise provided by law.

113 (5) The person who gives consent; a physician, dentist,
 114 nurse, or other health care professional licensed to practice in
 115 this state; or a hospital or medical facility, including, but
 116 not limited to, county health departments, shall not incur civil
 117 liability by reason of the giving of consent, examination, or
 118 rendering of treatment, provided that such consent, examination,
 119 or treatment was given or rendered as a reasonable prudent
 120 person or similar health care professional would give or render
 121 it under the same or similar circumstances.

122 (6) The Center for Juvenile Psychotropic Studies is
 123 created within the Department of Psychiatry of the College of
 124 Medicine of the University of Florida. The purpose of the center
 125 is to collect, track, and assess information regarding dependent
 126 minors in state custody who have been or are currently being
 127 prescribed psychotropic medications.

128 (a) The Director of the Center for Juvenile Psychotropic
 129 Studies shall be appointed by the dean of the College of
 130 Medicine of the University of Florida.

131 (b) There is created an advisory board that shall
 132 periodically and objectively review and advise the center on all
 133 actions taken pursuant to this act. The board shall include nine
 134 members who are experts in psychiatric health, including:

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135 1. The Secretary of Children and Family Services or his or
136 her designee.

137 2. The Secretary of Juvenile Justice or his or her
138 designee.

139 3. The Secretary of Health Care Administration or his or
140 her designee.

141 4. One member appointed by the Governor.

142 5. One member appointed by the President of the Senate.

143 6. One member appointed by the Speaker of the House of
144 Representatives.

145 7. One member appointed by the President of the University
146 of Florida.

147 8. Two members appointed by the Florida Psychiatric
148 Society.

149 (c) The center shall work in conjunction with the
150 Department of Children and Family Services, the Department of
151 Juvenile Justice, and the Agency for Health Care Administration;
152 and, to the extent allowed by the privacy requirements of
153 federal and state laws, those agencies shall work with the
154 center and make available to the center data regarding such
155 dependent minors, including, but not limited to:

156 1. Demographic information, including, but not limited to,
157 age, geographic location, and economic status.

158 2. A family history of each dependent minor, including,
159 but not limited to, the minor's involvement with the child
160 welfare system or the juvenile justice system.

161 3. A medical history of each dependent minor, including,
162 but not limited to, the minor's medical condition.

163 4. All information regarding the medications prescribed or
 164 administered to each minor, including, but not limited to,
 165 information contained in each minor's medication administration
 166 record.

167 5. Practice patterns, licensure, and board certification
 168 of prescribing physicians.

169 (d) By January 1, 2005, the center shall report its
 170 findings and make recommendations regarding psychotropic
 171 medications prescribed to dependent minors in state custody to
 172 the President of the Senate, the Speaker of the House of
 173 Representatives, and the appropriate committee chairs of the
 174 Senate and the House of Representatives.

175 (e) This subsection expires July 1, 2005.

176 ~~(7)(6)~~ The Department of Children and Family Services and
 177 the Department of Juvenile Justice may adopt rules to implement
 178 this section.

179 ~~(8)(7)~~ This section does not affect other statutory
 180 provisions of this state that relate to medical consent for
 181 minors.

182 Section 2. Subsection (1) of section 39.401, Florida
 183 Statutes, is amended to read:

184 39.401 Taking a child alleged to be dependent into
 185 custody; law enforcement officers and authorized agents of the
 186 department.--

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

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

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

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

196 2. That the parent or legal custodian of the child has
197 materially violated a condition of placement imposed by the
198 court; or

199 3. That the child has no parent, legal custodian, or
200 responsible adult relative immediately known and available to
201 provide supervision and care.

202
203 The refusal of a parent, legal guardian, or other person having
204 control of a child to administer or consent to the
205 administration of any psychotropic medication to such child
206 shall not, in and of itself, constitute grounds for the
207 department to take such child into custody, or for any court of
208 competent jurisdiction to order that such child be taken into
209 custody by the department, unless such refusal causes such child
210 to be a victim of neglect or abuse.

211 Section 3. Section 402.3196, Florida Statutes, is created
212 to read:

213 402.3196 Unauthorized administration of medication.--

214 (1) It is unlawful for an employee, owner, household
215 member, volunteer, or operator of a licensed or unlicensed child
216 care facility as defined in s. 402.302, including a child care
217 program operated by a public school or nonpublic school deemed

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218 to be child care pursuant to s. 402.3025, to, without written
219 authorization, willfully administer prescription or over-the-
220 counter medication to a child attending the child care facility.
221 For purposes of this section, written authorization includes the
222 child's name, the date or dates for which the authorization is
223 applicable, dosage instructions, and the signature of the
224 child's parent or legal guardian. For purposes of this section,
225 a child care program operated by a public school does not
226 include kindergarten through grade 12 classes.

227 (2) In the event of an emergency medical condition where
228 the child's parent or legal guardian is unavailable, it shall be
229 lawful to administer medication to a child attending a child
230 care facility without written authorization required pursuant to
231 this section if the medication is administered with the
232 authorization, and in accordance with instructions, of a bona
233 fide medical care provider. For purposes of this section:

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

237 (b) "Emergency medical condition" means circumstances
238 where a prudent layperson acting reasonably would believe that
239 an emergency medical condition exists.

240 (3)(a) Any person who violates the provisions of this
241 section which violation results in serious injury to a child
242 commits a felony of the third degree, punishable as provided in
243 s. 775.082 or s. 775.083.

244 (b) Any person who violates the provisions of this section
245 which violation does not result in serious injury to a child

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246 | commits a misdemeanor of the first degree, punishable as
247 | provided in s. 775.082 or s. 775.083.

248 | Section 4. Subsection (8) is added to section 1006.062,
249 | Florida Statutes, to read:

250 | 1006.062 Administration of medication and provision of
251 | medical services by district school board personnel.--

252 | (8) Each district school board shall adopt and implement
253 | policies that prohibit all district school board personnel from
254 | recommending the use of psychotropic medications for any
255 | student. The provisions of this subsection shall not prohibit
256 | district school board medical personnel from recommending that a
257 | student be evaluated by an appropriate medical practitioner or
258 | prohibit district school board medical personnel from consulting
259 | with such a practitioner with the consent of the student's
260 | parent.

261 | Section 5. This act shall take effect July 1, 2004.