

Bill No. CS for SB 1578

Amendment No. \_\_\_\_ Barcode 122022

CHAMBER ACTION

Senate

House

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Senator Smith moved the following **amendment to amendment**  
(800466):

**Senate Amendment (with title amendment)**

On page 2, lines 2 and 3, delete those lines

and insert: related services.

(2) The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

Section 2. Section 743.0645, Florida Statutes, is amended to read:

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

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

(a) "Blood testing" includes Early Periodic Screening, Diagnosis, and Treatment (EPSDT) testing and other blood testing deemed necessary by documented history or symptomatology but excludes HIV testing and controlled substance testing or any other testing for which separate

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1 court order or informed consent as provided by law is  
2 required.

3 (b) "Medical care and treatment" includes ordinary and  
4 necessary medical and dental examination and treatment,  
5 including blood testing, preventive care including ordinary  
6 immunizations, tuberculin testing, and well-child care, but  
7 does not include surgery, general anesthesia, provision of  
8 psychotropic medications, or other extraordinary procedures  
9 for which a separate court order, power of attorney, or  
10 informed consent as provided by law is required.

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

14 (d) "Psychotropic medication" means a medicine that may  
15 not be dispensed or administered without a prescription which  
16 is used for the treatment of medical disorders, and includes  
17 hypnotics, antipsychotics, antidepressants, antianxiety  
18 agents, sedatives, and mood stabilizers such as lithium,  
19 Depakote, and other anticonvulsants used as mood stabilizers  
20 and psychomotor stimulants. This paragraph expires July 1,  
21 2005.

22 (2) Any of the following persons, in order of priority  
23 listed, may consent to the medical care or treatment of a  
24 minor who is not committed to the Department of Children and  
25 Family Services or the Department of Juvenile Justice or in  
26 their custody under chapter 39, chapter 984, or chapter 985  
27 when, after a reasonable attempt, a person who has the power  
28 to consent as otherwise provided by law cannot be contacted by  
29 the treatment provider and actual notice to the contrary has  
30 not been given to the provider by that person:

31 (a) A person who possesses a power of attorney to

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1 provide medical consent for the minor. A power of attorney  
2 executed after July 1, 2001, to provide medical consent for a  
3 minor includes the power to consent to medically necessary  
4 surgical and general anesthesia services for the minor unless  
5 such services are excluded by the individual executing the  
6 power of attorney.

- 7 (b) The stepparent.  
8 (c) The grandparent of the minor.  
9 (d) An adult brother or sister of the minor.  
10 (e) An adult aunt or uncle of the minor.

11

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

15 (3) The Department of Children and Family Services or  
16 the Department of Juvenile Justice caseworker, juvenile  
17 probation officer, or person primarily responsible for the  
18 case management of the child, the administrator of any  
19 facility licensed by the department under s. 393.067, s.  
20 394.875, or s. 409.175, or the administrator of any  
21 state-operated or state-contracted delinquency residential  
22 treatment facility may consent to the medical care or  
23 treatment of any minor committed to it or in its custody under  
24 chapter 39, chapter 984, or chapter 985, when the person who  
25 has the power to consent as otherwise provided by law cannot  
26 be contacted and such person has not expressly objected to  
27 such consent. There shall be maintained in the records of the  
28 minor documentation that a reasonable attempt was made to  
29 contact the person who has the power to consent as otherwise  
30 provided by law.

31 (4) The medical provider shall notify the parent or

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1 other person who has the power to consent as otherwise  
 2 provided by law as soon as possible after the medical care or  
 3 treatment is administered pursuant to consent given under this  
 4 section. The medical records shall reflect the reason consent  
 5 as otherwise provided by law was not initially obtained and  
 6 shall be open for inspection by the parent or other person who  
 7 has the power to consent as otherwise provided by law.

8 (5) The person who gives consent; a physician,  
 9 dentist, nurse, or other health care professional licensed to  
 10 practice in this state; or a hospital or medical facility,  
 11 including, but not limited to, county health departments,  
 12 shall not incur civil liability by reason of the giving of  
 13 consent, examination, or rendering of treatment, provided that  
 14 such consent, examination, or treatment was given or rendered  
 15 as a reasonable prudent person or similar health care  
 16 professional would give or render it under the same or similar  
 17 circumstances.

18 (6) The Center for Juvenile Psychotropic Studies is  
 19 created within the Department of Psychiatry of the College of  
 20 Medicine of the University of Florida. The purpose of the  
 21 center is to collect, track, and assess information regarding  
 22 minors in state custody held pursuant to chapter 39, chapter  
 23 984, or chapter 985 who have been or are currently being  
 24 prescribed psychotropic medications.

25 (a) In addition to determining the number of children  
 26 in state custody who are receiving psychotropic medications,  
 27 the types and dosages of medication being prescribed to those  
 28 children, and any other data relevant to scientifically  
 29 assessing the status of minors in state custody who are  
 30 receiving psychotropic medications, the center shall evaluate:

31 1. Whether the child received a full and complete

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1 medical evaluation and, to the extent that the medication was  
2 prescribed for a psychiatric condition and it is possible to  
3 determine from available records, whether or not all other  
4 possible physical causes had been ruled out prior to the  
5 prescribing of psychotropic medication.

6 2. What other treatments and services were recommended  
7 for the child in addition to psychotropic medication and  
8 whether or not those services were offered or delivered.

9 3. Whether or not informed consent was received from a  
10 parent, legal guardian, or the court prior to initiating  
11 treatment.

12 4. Whether or not followup monitoring and treatment  
13 appropriate to the child's diagnosis and prescribed medication  
14 were provided to the child.

15 5. In cases where court authorization was sought,  
16 whether a full and complete child resource record was provided  
17 to the court for decisionmaking purposes.

18 6. Whether or not the prescription for and type of  
19 psychotropic medications prescribed for the child were  
20 appropriate for the age and diagnosis of the child and  
21 consistent with the medical standard of care for the treatment  
22 of the child's condition.

23 (b) The director of the Center for Juvenile  
24 Psychotropic Studies shall be appointed by the Dean of the  
25 College of Medicine of the University of Florida.

26 (c) There is created an advisory board that shall  
27 periodically and objectively review and advise the center on  
28 the academic rigor and research parameters of all actions  
29 taken pursuant to this subsection. The board shall consist of  
30 the following nine members who have backgrounds in psychiatric  
31 health:

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1           1. The Secretary of Children and Family Services or  
2 his or her designee;

3           2. The Secretary of Juvenile Justice or his or her  
4 designee;

5           3. The Secretary of Health Care Administration or his  
6 or her designee;

7           4. The Secretary of Health or his or her designee;

8           5. One member appointed by the President of the Senate  
9 from the Florida Psychiatric Society who specializes in  
10 treating children and adolescents;

11           6. One member appointed by the Speaker of the House of  
12 Representatives who is a pediatrician experienced in treating  
13 children and adolescents with psychiatric diseases;

14           7. One member appointed by the President of the  
15 University of Florida who is an epidemiologist; and

16           8. Two members appointed by the Governor, one of whom  
17 has experience serving as a guardian ad litem to children and  
18 adolescents in the custody of the state who have psychiatric  
19 diseases, and one of whom is employed by the Louis de la Parte  
20 Florida Mental Health Institute and has experience in the  
21 academic study of children and adolescents with psychiatric  
22 diseases.

23           (d) The center shall work in conjunction with the  
24 Department of Children and Family Services, the Department of  
25 Juvenile Justice, the Agency for Health Care Administration,  
26 and the Department of Health, and, to the extent allowed by  
27 the privacy requirements of federal and state laws, those  
28 agencies shall work with the center and make available to the  
29 center data regarding such dependent minors, including, but  
30 not limited to:

31           1. Demographic information, including, but not limited

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1 to, age, geographic location, and economic status.

2 2. A family history of each dependent minor,  
3 including, but not limited to, the minor's involvement with  
4 the child welfare system or the juvenile justice system, all  
5 applicable social service records, and all applicable court  
6 records.

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

9 4. All information regarding the medications  
10 prescribed or administered to each minor, including, but not  
11 limited to, information contained in each minor's medication  
12 administration record.

13 5. Practice patterns, licensure, and board  
14 certification of prescribing physicians.

15 (e) All oral and written records, information,  
16 letters, and reports received, made, or maintained by the  
17 center shall be maintained in a manner consistent with all  
18 applicable state and federal law.

19 (f) A privilege against civil liability is granted to  
20 any person furnishing medical records in furtherance of the  
21 charge of the center, unless such person furnishing medical  
22 records acted in bad faith or with malice in providing such  
23 information. A person who participates in the center's  
24 research activities or provides information to the center with  
25 regard to the incompetence, impairment, or unprofessional  
26 conduct of any health care provider licensed under chapter  
27 458, chapter 459, chapter 460, chapter 461, chapter 462,  
28 chapter 463, chapter 464, chapter 465, or chapter 466 may not  
29 be held liable in any civil action for furnishing such medical  
30 records if such person acts without intentional fraud or  
31 malice.

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1           (g) By January 1, 2005, the center shall report its  
2 findings regarding psychotropic medications prescribed to  
3 dependent minors in state custody to the President of the  
4 Senate, the Speaker of the House of Representatives, and the  
5 appropriate committee chairs of the Senate and the House of  
6 Representatives.

7           (h) This subsection expires July 1, 2005.

8           ~~(7)(6)~~ The Department of Children and Family Services  
9 and the Department of Juvenile Justice may adopt rules to  
10 implement this section.

11           ~~(8)(7)~~ This section does not affect other statutory  
12 provisions of this state that relate to medical consent for  
13 minors.

14           Section 3. Subsection (1) of section 39.401, Florida  
15 Statutes, is amended to read:

16           39.401 Taking a child alleged to be dependent into  
17 custody; law enforcement officers and authorized agents of the  
18 department.--

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

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

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

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

30           2. That the parent or legal custodian of the child has  
31 materially violated a condition of placement imposed by the



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1 court; or

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

5  
6 The refusal of a parent, legal guardian, or other person  
7 responsible for a child's welfare to administer or consent to  
8 the administration of any psychotropic medication to the child  
9 does not, in and of itself, constitute grounds for the  
10 department to take the child into custody, or for any court to  
11 order that the child be taken into custody by the department,  
12 unless the refusal to administer or consent to the  
13 administration of psychotropic medication causes the child to  
14 be neglected or abused.

15 Section 4. Section 402.3127, Florida Statutes, is  
16 created to read:

17 402.3127 Unauthorized administration of medication.--

18 (1) An employee, owner, household member, volunteer,  
19 or operator of a child care facility, large family child care  
20 home, or family day care home, as defined in s. 402.302,  
21 including a child care program operated by a public or  
22 nonpublic school deemed to be child care under s. 402.3025,  
23 which is required to be licensed or registered, may not,  
24 without written authorization from a child's parent or legal  
25 guardian, administer any medication to a child attending the  
26 child care facility, large family child care home, or family  
27 day care home. The written authorization to administer  
28 medication must include the child's name, the date or dates  
29 for which the authorization is applicable, dosage  
30 instructions, and the signature of the child's parent or legal  
31 guardian.

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1           (2) In the event of an emergency medical condition  
2 when a child's parent or legal guardian is unavailable, an  
3 employee, owner, household member, volunteer, or operator of a  
4 licensed or unlicensed child care facility, large family child  
5 care home, or family day care home may administer medication  
6 to a child attending the facility or home without the written  
7 authorization required in subsection (1) if the medication is  
8 administered according to instructions from a prescribing  
9 health care practitioner. The child care facility, large  
10 family child care home, or family day care home must  
11 immediately notify the child's parent or legal guardian of the  
12 emergency medical condition and of the corrective measures  
13 taken. If the parent or legal guardian remains unavailable and  
14 the child's emergency medical condition persists, the child  
15 care facility must immediately notify the child's medical care  
16 provider.

17           (3) As used in this section, the term "emergency  
18 medical condition" means circumstances in which a prudent  
19 layperson acting reasonably would believe that an emergency  
20 medical condition exists.

21           (4)(a) A person who violates this section commits a  
22 felony of the third degree, punishable as provided in s.  
23 775.082 or s. 775.083, if the violation results in serious  
24 injury to the child.

25           (b) A person who violates this section commits a  
26 misdemeanor of the first degree, punishable as provided in s.  
27 775.082 or s. 775.083, if the violation does not result in  
28 serious injury to the child.

29           Section 5. Subsection (8) is added to section  
30 1006.062, Florida Statutes, to read:

31           1006.062 Administration of medication and provision of

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1 medical services by district school board personnel.--  
 2       (8) Each district school board shall adopt rules that  
 3 prohibit all district school board personnel from recommending  
 4 the use of psychotropic medications for any student. This  
 5 subsection does not prohibit district school board personnel  
 6 from recommending that a student be evaluated by an  
 7 appropriate medical practitioner and does not prohibit  
 8 district school board personnel from consulting with such a  
 9 practitioner with the consent of the student's parent.

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11 (Redesignate subsequent sections.)

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14 ===== T I T L E    A M E N D M E N T =====

15 And the title is amended as follows:

16       On page 2, line 23, after the semicolon,

17

18 insert:

19       amending s. 743.0645, F.S.; defining the term  
 20       "psychotropic medication"; creating the Center  
 21       for Juvenile Psychotropic Studies within the  
 22       Department of Psychiatry of the College of  
 23       Medicine of the University of Florida;  
 24       providing the purpose of the center; providing  
 25       for the appointment of a director; creating an  
 26       advisory board; providing for board membership;  
 27       requiring the center to work with the  
 28       Department of Children and Family Services, the  
 29       Department of Juvenile Justice, the Agency for  
 30       Health Care Administration, and the Department  
 31       of Health; requiring certain data relating to

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1 dependent minors for whom psychotropic  
2 medications have been prescribed to be made  
3 available to the center, as legally allowed;  
4 requiring the center to report to legislative  
5 leaders by a specified date; providing for  
6 future repeal; amending s. 39.401, F.S.;  
7 providing that the refusal of a parent, legal  
8 guardian, or other person responsible for a  
9 child's welfare to administer or consent to the  
10 administration of a psychotropic medication  
11 does not by itself constitute grounds for  
12 taking the child into custody; providing an  
13 exception; creating s. 402.3127, F.S.;  
14 prohibiting the unauthorized administration of  
15 medication by personnel associated with child  
16 care entities; providing an exception for  
17 emergency medical conditions when the child's  
18 parent or legal guardian is unavailable;  
19 defining the term "emergency medical  
20 condition"; providing penalties for violations;  
21 amending s. 1006.062, F.S.; requiring district  
22 school boards to adopt rules prohibiting  
23 district school board personnel from  
24 recommending the use of psychotropic  
25 medications for any student; allowing such  
26 personnel to recommend that a medical  
27 practitioner evaluate a student and to consult  
28 with such practitioners;

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