

HB 0223

2004

A bill to be entitled

An act relating to administration of medication to children; amending s. 39.401, F.S.; specifying that a parent's refusal to administer psychotropic medication to a child shall not constitute grounds for the Department of Children and Family Services to take the child into custody; providing exceptions; creating s. 402.3196, F.S.; providing that it is unlawful for certain child care facility personnel to administer medication to a child without written authorization; providing an exception in the case of an emergency medical condition; providing definitions; providing penalties; amending s. 1006.062, F.S.; requiring district school board policies to prohibit personnel from recommending the use of psychotropic medications for students; providing an effective date.

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

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

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

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

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

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

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

33 2. That the parent or legal custodian of the child has  
 34 materially violated a condition of placement imposed by the  
 35 court; or

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

39  
 40 The refusal of a parent, legal guardian, or other person having  
 41 control of a child to administer or consent to the  
 42 administration of any psychotropic medication to such child  
 43 shall not, in and of itself, constitute grounds for the  
 44 department to take such child into custody, or for any court of  
 45 competent jurisdiction to order that such child be taken into  
 46 custody by the department, unless such refusal causes such child  
 47 to be a victim of neglect or abuse.

48 Section 2. Section 402.3196, Florida Statutes, is created  
 49 to read:

50 402.3196 Unauthorized administration of medication.--

51 (1) It is unlawful for an employee, owner, household  
 52 member, volunteer, or operator of a licensed or unlicensed child  
 53 care facility as defined in s. 402.302, including a child care  
 54 program operated by a public school or nonpublic school deemed  
 55 to be child care pursuant to s. 402.3025, to, without written  
 56 authorization, willfully administer prescription or over-the-  
 57 counter medication to a child attending the child care facility.  
 58 For purposes of this section, written authorization includes the

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59 child's name, the date or dates for which the authorization is  
 60 applicable, dosage instructions, and the signature of the  
 61 child's parent or legal guardian. For purposes of this section,  
 62 a child care program operated by a public school does not  
 63 include kindergarten through grade 12 classes.

64 (2) In the event of an emergency medical condition where  
 65 the child's parent or legal guardian is unavailable, it shall be  
 66 lawful to administer medication to a child attending a child  
 67 care facility without written authorization required pursuant to  
 68 this section if the medication is administered with the  
 69 authorization, and in accordance with instructions, of a bona  
 70 fide medical care provider. For purposes of this section:

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

74 (b) "Emergency medical condition" means circumstances  
 75 where a prudent layperson acting reasonably would believe that  
 76 an emergency medical condition exists.

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

81 (b) Any person who violates the provisions of this section  
 82 which violation does not result in serious injury to a child  
 83 commits a misdemeanor of the first degree, punishable as  
 84 provided in s. 775.082 or s. 775.083.

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

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87 1006.062 Administration of medication and provision of  
88 medical services by district school board personnel.--

89 (8) Each district school board shall adopt and implement  
90 policies that prohibit all district school board personnel from  
91 recommending the use of psychotropic medications for any  
92 student. The provisions of this subsection shall not prohibit  
93 district school board medical personnel from recommending that a  
94 student be evaluated by an appropriate medical practitioner or  
95 prohibit district school board medical personnel from consulting  
96 with such a practitioner with the consent of the student's  
97 parent.

98 Section 4. This act shall take effect July 1, 2004.