

By the Committees on Education; Children and Families; and  
Senators Smith, Cowin and Wise

304-2568-04

1                                   A bill to be entitled  
2           An act relating to the prescription of  
3           psychotropic medications to dependent minors;  
4           amending s. 743.0645, F.S.; defining the term  
5           "psychotropic medication"; creating the Center  
6           for Juvenile Psychotropic Studies within the  
7           Department of Psychiatry of the College of  
8           Medicine of the University of Florida;  
9           providing the purpose of the center; providing  
10          for the appointment of a director; creating an  
11          advisory board; providing for board membership;  
12          requiring the center to work with the  
13          Department of Children and Family Services, the  
14          Department of Juvenile Justice, the Agency for  
15          Health Care Administration, and the Department  
16          of Health; requiring certain data relating to  
17          dependent minors for whom psychotropic  
18          medications have been prescribed to be made  
19          available to the center, as legally allowed;  
20          requiring the center to report to legislative  
21          leaders by a specified date; providing for  
22          future repeal; amending s. 39.401, F.S.;  
23          providing that the refusal of a parent, legal  
24          guardian, or other person responsible for a  
25          child's welfare to administer or consent to the  
26          administration of a psychotropic medication  
27          does not by itself constitute grounds for  
28          taking the child into custody; providing an  
29          exception; creating s. 402.3127, F.S.;  
30          prohibiting the unauthorized administration of  
31          medication by personnel associated with child

1 care entities; providing an exception for  
2 emergency medical conditions when the child's  
3 parent or legal guardian is unavailable;  
4 defining the term "emergency medical  
5 condition"; providing penalties for violations;  
6 amending s. 1006.062, F.S.; requiring district  
7 school boards to adopt rules prohibiting  
8 district school board personnel from  
9 recommending the use of psychotropic  
10 medications for any student; allowing such  
11 personnel to recommend that a medical  
12 practitioner evaluate a student and to consult  
13 with such practitioners; providing an effective  
14 date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. Section 743.0645, Florida Statutes, is  
19 amended to read:

20 743.0645 Other persons who may consent to medical care  
21 or treatment of a minor; Center for Juvenile Psychotropic  
22 Studies; creation; purpose; advisory board; report.--

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

24 (a) "Blood testing" includes Early Periodic Screening,  
25 Diagnosis, and Treatment (EPSDT) testing and other blood  
26 testing deemed necessary by documented history or  
27 symptomatology but excludes HIV testing and controlled  
28 substance testing or any other testing for which separate  
29 court order or informed consent as provided by law is  
30 required.

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

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

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

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

29 (a) A person who possesses a power of attorney to  
30 provide medical consent for the minor. A power of attorney  
31 executed after July 1, 2001, to provide medical consent for a

1 | minor includes the power to consent to medically necessary  
2 | surgical and general anesthesia services for the minor unless  
3 | such services are excluded by the individual executing the  
4 | power of attorney.

5 |       (b) The stepparent.

6 |       (c) The grandparent of the minor.

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

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

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

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

29 |       (4) The medical provider shall notify the parent or  
30 | other person who has the power to consent as otherwise  
31 | provided by law as soon as possible after the medical care or

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

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

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

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

29 1. Whether the child received a full and complete  
30 medical evaluation and, to the extent that the medication was  
31 prescribed for a psychiatric condition and it is possible to

1 determine from available records, whether or not all other  
2 possible physical causes had been ruled out prior to the  
3 prescribing of psychotropic medication.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18           (f) A privilege against civil liability is granted to  
19 any person furnishing medical records in furtherance of the  
20 charge of the center, unless such person furnishing medical  
21 records acted in bad faith or with malice in providing such  
22 information. A person who participates in the center's  
23 research activities or provides information to the center with  
24 regard to the incompetence, impairment, or unprofessional  
25 conduct of any health care provider licensed under chapter  
26 458, chapter 459, chapter 460, chapter 461, chapter 462,  
27 chapter 463, chapter 464, chapter 465, or chapter 466 may not  
28 be held liable in any civil action for furnishing such medical  
29 records if such person acts without intentional fraud or  
30 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 2. 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;

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

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

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

17           Section 3. Section 402.3127, Florida Statutes, is  
18 created to read:

19           402.3127 Unauthorized administration of medication.--

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

1 instructions, and the signature of the child's parent or legal  
2 guardian.

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

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

23 (4)(a) A person who violates this section commits a  
24 felony of the third degree, punishable as provided in s.  
25 775.082 or s. 775.083, if the violation results in serious  
26 injury to the child.

27 (b) A person who violates this section commits a  
28 misdemeanor of the first degree, punishable as provided in s.  
29 775.082 or s. 775.083, if the violation does not result in  
30 serious injury to the child.

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1           Section 4. Subsection (8) is added to section  
2 1006.062, Florida Statutes, to read:

3           1006.062 Administration of medication and provision of  
4 medical services by district school board personnel.--

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

13           Section 5. This act shall take effect July 1, 2004.  
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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   CS/SB 2262  
4 Provides a definition of "psychotropic medication."  
5 Adds new issues for the Center for Juvenile Psychotropic  
6 Studies to evaluate in its study.  
7 Revises the composition of the advisory board that will advise  
8 the Center for Juvenile Psychotropic Studies.  
9 Requires agencies to provide social service and court records  
10 of affected minors to the Center for Juvenile Psychotropic  
11 Studies.  
12 Provides limited immunity from civil liability for persons  
13 furnishing medical records under the bill.  
14 Provides limited immunity from civil liability for certain  
15 persons who give information regarding the incompetence,  
16 impairment or unprofessional conduct of any health care  
17 provider.  
18 Provides that the Center should report its findings but not  
19 make recommendations.  
20 Provides that the refusal of a parent to administer or consent  
21 to administration of psychotropic medication does not  
22 constitute grounds for the state to take a child into custody,  
23 unless the refusal causes the child to be neglected or abused.  
24 Requires written parental authorization for certain child care  
25 providers to administer medication to a child, with  
26 exceptions, and provides penalties for the unauthorized  
27 administration of medication.  
28 Requires district school boards to adopt rules prohibiting  
29 personnel from recommending psychotropic medications for a  
30 student.  
31