

By Senator Dawson

29-1550A-04

1                                   A bill to be entitled  
2           An act relating to proceedings relating to  
3           children; amending s. 39.407, F.S.; revising  
4           provisions relating to medical screenings  
5           performed on children who are removed from the  
6           home and maintained in an out-of-home  
7           placement; specifying certain conditions that  
8           the screening must cover; prohibiting the  
9           Department of Children and Family Services from  
10          administering or authorizing psychiatric or  
11          psychological tests or psychotropic medications  
12          for a child in departmental custody except with  
13          the written and informed consent of the child's  
14          parent or legal guardian or by court order;  
15          requiring the department to ensure that  
16          children who are in departmental custody  
17          receive appropriate psychotropic medications  
18          but have options for alternative treatments;  
19          providing for rulemaking; providing that the  
20          department may not provide consent for  
21          administering psychotropic medications to a  
22          child for whom the department is the legal  
23          custodian; amending s. 39.601, F.S., relating  
24          to case plan requirements; providing that case  
25          plans may not require parents to give their  
26          children psychotropic drugs; prohibiting the  
27          department from threatening to terminate  
28          parental rights based solely on the parents'  
29          refusal to give their child psychotropic drugs;  
30          amending s. 39.703, F.S.; prohibiting the  
31          department from initiating proceedings to

1 terminate parental rights based solely on the  
2 parents' refusal to give their child  
3 psychotropic drugs; amending s. 39.806, F.S.;  
4 providing that the refusal of parents to give  
5 their child psychotropic drugs may not be  
6 considered grounds for termination of parental  
7 rights; providing that the parents' refusal to  
8 give their child psychotropic drugs may not be  
9 considered abuse or neglect; providing an  
10 effective date.

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

13  
14 Section 1. Subsections (1), (2), (4), and (13) of  
15 section 39.407, Florida Statutes, are amended to read:

16 39.407 Medical, psychiatric, and psychological  
17 examination and treatment of child; physical or mental  
18 examination of parent or person requesting custody of child.--

19 (1) When any child is removed from the home and  
20 maintained in an out-of-home placement, the department is  
21 authorized to have a medical screening performed on the child  
22 without authorization from the court and without consent from  
23 a parent or legal custodian. Such medical screening shall be  
24 performed by a licensed health care professional who is not a  
25 licensed healthcare practitioner defined under s. 456.001 and  
26 who is authorized to diagnose or treat mental illness and  
27 shall be to examine the child for injury, illness, and  
28 communicable diseases and to determine the need for  
29 immunization. The screening must also include checking for  
30 nutritional deficiencies, heavy-metal toxicity, hypoglycemia,  
31 and illegal drug dependence.The department shall by rule

1 establish the invasiveness of the medical procedures  
2 authorized to be performed under this subsection. In no case  
3 does this subsection authorize the department to consent to  
4 medical treatment for such children.

5 (2) When the department has performed the medical  
6 screening authorized by subsection (1), or when it is  
7 otherwise determined by a licensed health care professional  
8 that a child who is in an out-of-home placement, but who has  
9 not been committed to the department, is in need of medical  
10 treatment, including the need for immunization, consent for  
11 medical treatment shall be obtained in the following manner:

12 (a)1. Consent to medical treatment shall be obtained  
13 from a parent or legal custodian of the child; or

14 2. A court order for such treatment shall be obtained.

15 (b) If a parent or legal custodian of the child is  
16 unavailable and his or her whereabouts cannot be reasonably  
17 ascertained, and it is after normal working hours so that a  
18 court order cannot reasonably be obtained, an authorized agent  
19 of the department shall have the authority to consent to  
20 necessary medical treatment, including immunization, for the  
21 child. The authority of the department to consent to medical  
22 treatment in this circumstance shall be limited to the time  
23 reasonably necessary to obtain court authorization.

24 (c) The department may not administer or authorize  
25 psychiatric or psychological tests or psychotropic medications  
26 for a child in its custody without the written and informed  
27 consent of the child's parent or legal guardian or, if the  
28 parent or guardian cannot be located, authorization by the  
29 court. The department shall ensure that children under its  
30 care receive timely access to clinically appropriate  
31 psychotropic medications that have no known contraindications

1 for use in children and shall also provide information on all  
2 known side-effects and provide options for alternative  
3 treatments. The department shall adopt rules to ensure that  
4 the children under its care receive such appropriate  
5 psychotropic medications or alternative treatments, which  
6 rules describe, at a minimum, a uniform process for obtaining  
7 informed consent, procedures for obtaining court  
8 authorization, and the written information that must be  
9 provided when requesting authorization for the use of  
10 psychotropic medications.

11 (d)~~(c)~~ If a parent or legal custodian of the child is  
12 available but refuses to consent to the necessary treatment,  
13 including immunization, a court order shall be required unless  
14 the situation meets the definition of an emergency in s.  
15 743.064 or the treatment needed is related to suspected abuse,  
16 abandonment, or neglect of the child by a parent, caregiver,  
17 or legal custodian. In such case, the department shall have  
18 the authority to consent to necessary medical treatment. This  
19 authority is limited to the time reasonably necessary to  
20 obtain court authorization.

21  
22 In no case shall the department consent to sterilization,  
23 abortion, or termination of life support.

24 (4) A judge may order a child in an out-of-home  
25 placement to be treated by a licensed health care professional  
26 based on evidence that the child should receive treatment.  
27 The judge may also order such child to receive mental health  
28 or developmental disabilities services from a psychiatrist,  
29 psychologist, or other appropriate service provider. Except  
30 as provided in subsection (5), if it is necessary to place the  
31 child in a residential facility for such services, the

1 procedures and criteria established in s. 394.467 or chapter  
2 393 shall be used, whichever is applicable. A child may be  
3 provided developmental disabilities or mental health services  
4 in emergency situations, pursuant to the procedures and  
5 criteria contained in s. 394.463(1) or chapter 393, whichever  
6 is applicable. Before a foster child may be given psychotropic  
7 medication, the child must first have had a comprehensive  
8 physical examination by a competent, nonpsychiatric medical  
9 specialist, and all possibilities of physical disease or  
10 disorder, such as nutritional deficiencies, heavy-metal  
11 toxicity, hypoglycemia, and illegal drug dependence, must have  
12 been ruled out as causes of the child's behavior or symptoms  
13 that are proposed to be addressed with psychotropic  
14 medication. Such medications may be prescribed only with the  
15 permission of the foster child's parent or, if the parent  
16 cannot be located, authorization by the court.

17 (13) ~~Nothing in~~ This section does not alter ~~alters~~ the  
18 authority of the department to consent to medical treatment  
19 for a dependent child when the child has been committed to the  
20 department and the department has become the legal custodian  
21 of the child. However, the department may not provide consent  
22 for administering psychotropic medications to the child.

23 Section 2. Paragraph (g) is added to subsection (1) of  
24 section 39.601, Florida Statutes, and subsection (4) of that  
25 section is amended, to read:

26 39.601 Case plan requirements.--

27 (1) The department or agent of the department shall  
28 develop a case plan for each child receiving services pursuant  
29 to this chapter. A parent of a child may not be required nor  
30 coerced through threat of loss of custody or parental rights  
31 to admit in the case plan to abusing, neglecting, or

1 abandoning a child. Where dependency mediation services are  
2 available and appropriate to the best interests of the child,  
3 the court may refer the case to mediation for development of a  
4 case plan. This section does not change the provisions of s.  
5 39.807.

6 (g) The case plan may not require a parent to force  
7 his or her child to take psychotropic drugs.

8 (4) ~~If in the event that~~ the parents are unwilling or  
9 unable to participate in the development of a case plan, the  
10 department shall document that unwillingness or inability to  
11 participate. Such documentation must be provided in writing to  
12 the parent when available for the court record, and then the  
13 department shall prepare a case plan conforming as nearly as  
14 possible with the requirements set forth in this section. The  
15 unwillingness or inability of the parents to participate in  
16 the development of a case plan shall not in itself bar the  
17 filing of a petition for dependency or for termination of  
18 parental rights. The parents, if available, must be provided a  
19 copy of the case plan and be advised that they may, at any  
20 time prior to the filing of a petition for termination of  
21 parental rights, enter into a case plan and that they may  
22 request judicial review of any provision of the case plan with  
23 which they disagree at any court review hearing set for the  
24 child. The department may not threaten to terminate parental  
25 rights based solely on a refusal by the parents to medicate  
26 the child with psychotropic drugs.

27 Section 3. Subsection (3) is added to section 39.703,  
28 Florida Statutes, to read:

29 39.703 Initiation of termination of parental rights  
30 proceedings; judicial review.--

31

1           (3) The department may not initiate proceedings to  
2 terminate parental rights based solely on a refusal by the  
3 parents to medicate the child with psychotropic drugs.

4           Section 4. Paragraphs (c) and (e) of subsection (1) of  
5 section 39.806, Florida Statutes, are amended to read:

6           39.806 Grounds for termination of parental rights.--

7           (1) The department, the guardian ad litem, or any  
8 person who has knowledge of the facts alleged or who is  
9 informed of those facts and believes that they are true may  
10 petition for the termination of parental rights under any of  
11 the following circumstances:

12           (c) When the parent or parents have engaged in conduct  
13 toward the child or toward other children that demonstrates  
14 that the continuing involvement of the parent or parents in  
15 the parent-child relationship threatens the life, safety,  
16 well-being, or physical, mental, or emotional health of the  
17 child irrespective of the provision of services. Provision of  
18 services may be evidenced by proof that services were provided  
19 through a previous plan or offered as a case plan from a child  
20 welfare agency. The refusal of the parents to medicate the  
21 child with psychotropic drugs may not be considered grounds  
22 for termination of parental rights.

23           (e) A petition for termination of parental rights may  
24 also be filed when a child has been adjudicated dependent, a  
25 case plan has been filed with the court, and the child  
26 continues to be abused, neglected, or abandoned by the  
27 parents. In this case, the failure of the parents to  
28 substantially comply for a period of 12 months after an  
29 adjudication of the child as a dependent child or the child's  
30 placement into shelter care, whichever came first, constitutes  
31 evidence of continuing abuse, neglect, or abandonment unless

1 the failure to substantially comply with the case plan was due  
2 either to the lack of financial resources of the parents or to  
3 the failure of the department to make reasonable efforts to  
4 reunify the parent and child. Such 12-month period may begin  
5 to run only after the child's placement into shelter care or  
6 the entry of a disposition order placing the custody of the  
7 child with the department or a person other than the parent  
8 and the approval by the court of a case plan with a goal of  
9 reunification with the parent, whichever came first. The  
10 refusal of the parents to medicate the child with psychotropic  
11 drugs may not be considered abuse or neglect.

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

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15 SENATE SUMMARY

16 Amends provisions relating to medical screenings  
17 performed on children who are removed from the home and  
18 maintained in an out-of-home placement. Lists specific  
19 conditions that the screening must cover. Prohibits the  
20 Department of Children and Family Services from  
21 administering or authorizing psychiatric or psychological  
22 tests or psychotropic medications for a child who is in  
23 departmental custody except with the written and informed  
24 consent of the child's parent or legal guardian or by  
25 court order. Requires the department to ensure that  
26 children who are in departmental custody receive  
27 appropriate psychotropic medications but have options for  
28 alternative treatments. Provides for rulemaking. Provides  
29 that the department may not consent to administering  
30 psychotropic medications to a child for whom the  
31 department is the legal custodian. Provides that case  
plans may not require parents to give their children  
psychotropic drugs. Prohibits the department from  
threatening to terminate parental rights based solely on  
the parents' refusal to give their child psychotropic  
drugs. Prohibits the department from initiating  
proceedings to terminate parental rights based solely on  
the parents' refusal to give their child psychotropic  
drugs. Provides that the refusal by parents to give their  
child psychotropic drugs may not be considered grounds  
for termination of parental rights. Provides that the  
parents' refusal to give their child psychotropic drugs  
may not be considered abuse or neglect.