

By Senator Campbell

32-570A-04

1                                   A bill to be entitled  
2           An act relating to the care and treatment of  
3           dependent children; amending s. 39.407, F.S.;  
4           providing that the Department of Children and  
5           Family Services may conduct a health screening  
6           on any child who is removed from his or her  
7           home; providing the elements of the health  
8           screening; providing for consent for medical  
9           care and treatment under certain circumstances;  
10          specifying limitations to consent by the  
11          department; providing that a court may order a  
12          child to receive a mental or physical  
13          examination; providing for the administration  
14          of psychotropic drugs to children; describing  
15          methods to obtain consent for the dispensing of  
16          psychotropic medication to a child in the legal  
17          custody of the department; requiring the court  
18          to conduct a psychotropic medications review of  
19          each child to determine the medical status of  
20          the child; directing the court to review the  
21          child's resource record and the prescribing  
22          physician's psychotropic prescription report;  
23          detailing the contents of the prescription  
24          report; listing other factors for the court to  
25          consider when evaluating the child; requiring  
26          the court to use the standard of clear and  
27          convincing evidence when determining whether to  
28          authorize the department to consent to  
29          psychotropic medications; providing that a  
30          licensed health care professional be called to  
31          treat a child in an out-of-home placement in an

1 emergency; providing that the act does not  
2 eliminate the right of a parent to give, or  
3 refuse to give, consent for medical treatment  
4 for his or her child; providing that unless the  
5 parent's rights have been terminated, the  
6 parent is financially responsible for the cost  
7 of medical care and treatment given to the  
8 child; creating s. 39.4071, F.S.; requiring the  
9 department to prepare and maintain a  
10 comprehensive, accurate, and updated health and  
11 education record, to be known as the "child  
12 resource record," for each child who is placed  
13 in a shelter home, foster care, or other  
14 residential placement, or who is otherwise in  
15 the custody or care of the department;  
16 specifying the contents of the child resource  
17 record; directing that the child resource  
18 record follow the child to each residential  
19 placement; requiring that the child resource  
20 record be open for inspection to certain  
21 specified persons; creating s. 39.4072, F.S.;  
22 providing that a court may order certain  
23 specified persons to submit to a physical or  
24 mental examination by a qualified professional;  
25 amending s. 409.145, F.S.; conforming  
26 provisions to changes made by the act; amending  
27 s. 743.0645, F.S.; defining terms relating to  
28 persons who can give consent to medical care  
29 for a minor; providing procedures to authorize  
30 consent for the prescription and administration  
31 of psychotropic medication to children in the

1 custody or care of the Department of Children  
2 and Family Services or committed to the  
3 Department of Juvenile Justice; requiring a  
4 physician prescribing psychotropic medications  
5 for a child to file a report with specified  
6 organizations; requiring the Department of  
7 Children and Family Services, the Department of  
8 Juvenile Justice, and the Department of Health  
9 to adopt rules to administer the prescription  
10 and administration of psychotropic medications  
11 to children; creating s. 743.0647, F.S.;  
12 requiring a prescribing physician to report to  
13 the physician's regulating board any adverse  
14 incident or condition involving psychotropic  
15 medication to a child within a specified time;  
16 requiring the Board of Medicine and the Board  
17 of Osteopathic Medicine to create a voluntary  
18 peer review board to review reports required  
19 and received relating to adverse incidents;  
20 providing procedures for the peer review  
21 boards; directing the boards to forward  
22 quarterly information to the Center for  
23 Juvenile Psychotropic Studies at the University  
24 of Florida College of Medicine; directing the  
25 Board of Medicine and the Board of Osteopathic  
26 Medicine to publish an annual summary and trend  
27 analysis of all adverse incident and effects  
28 reports on their websites; creating the Center  
29 for Juvenile Psychotropic Studies within the  
30 Department of Psychiatry of the College of  
31 Medicine of the University of Florida;

1 providing the purpose of the center; providing  
2 for the appointment of a director; creating an  
3 advisory board; providing for board membership;  
4 requiring the center to work with the  
5 Department of Children and Family Services, the  
6 Department of Juvenile Justice, and the Agency  
7 for Health Care Administration; requiring  
8 certain data relating to dependent minors for  
9 whom psychotropic medications have been  
10 prescribed to be made available to the center,  
11 as legally allowed; requiring the center to  
12 report to legislative leaders by a specified  
13 date; providing for future repeal; providing an  
14 effective date

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

17  
18 Section 1. Section 39.407, Florida Statutes, is  
19 amended to read:

20 39.407 Medical, psychiatric, and psychological  
21 examination and treatment of child; ~~physical or mental~~  
22 ~~examination of parent or person requesting custody of child.--~~

23 (1) HEALTH SCREENING.--

24 (a) When any child is removed from the home and  
25 maintained in an out-of-home placement, the department is  
26 authorized to have a health ~~medical~~ screening performed on the  
27 child without authorization from the court and without consent  
28 from a parent or legal custodian. The health screening shall  
29 include medical, vision, hearing, and dental assessments. Such  
30 ~~medical screening shall be performed by~~ A licensed health care  
31 professional shall perform the health screening ~~and shall be~~

1 to examine the child for injury, illness, ~~and~~ communicable  
2 diseases, nutritional status, and to determine the need for  
3 immunization, laboratory tests, and referrals for dental,  
4 optometric, and educational needs. A Medicaid-eligible child  
5 shall have the health screening performed in accordance with  
6 the Early and Periodic Screening, Diagnosis, and Treatment  
7 (EPSDT) Program.

8 (b) The department shall by rule establish the  
9 invasiveness of the ~~medical~~ procedures authorized to be  
10 performed under this subsection. ~~In no case does~~ This  
11 subsection does not authorize the department to consent to  
12 medical care or treatment for the ~~such~~ children.

13 (2) CONSENT TO MEDICAL CARE AND TREATMENT.--

14 (a) When the health ~~department has performed the~~  
15 ~~medical~~ screening authorized by subsection (1) is performed,  
16 or when it is otherwise determined by a licensed health care  
17 professional that a child who is in an out-of-home placement  
18 or who has been an adjudicated dependent, but who has not been  
19 ~~committed to the department,~~ is in need of medical care and  
20 treatment, including the need for immunization, authorization  
21 ~~consent~~ for medical care and treatment shall be obtained in  
22 the following manner:

23 ~~(a)~~1. Express and informed consent must to medical  
24 ~~treatment shall~~ be obtained from a parent or legal custodian  
25 of the child. ~~or~~

26 2. If consent under subparagraph 1. cannot be obtained  
27 because the parent or legal custodian is unknown or  
28 unavailable or the parent or legal custodian is unwilling or  
29 refuses to consent, the department or authorized agent must  
30 obtain court authorization for medical care and treatment.

31

1           3. If the needed medical care and treatment  
2 constitutes an emergency situation as set forth in s. 743.064  
3 or the need for medical care and treatment is related to  
4 suspected abuse, abandonment, or neglect of the child by a  
5 parent, caregiver, or legal custodian, the department or its  
6 authorized agent may authorize the medical care or treatment  
7 without a court order and without the consent of the parent,  
8 legal custodian, or guardian. The department's or the  
9 authorized agent's authorization for medical care and  
10 treatment under this subparagraph is limited to the time  
11 reasonably necessary to obtain subsequent court authorization.

12           4. If the parental rights of the child's parents have  
13 been terminated and the department has become the child's  
14 legal custodian, the department may consent to the child's  
15 medical care and treatment as set forth in s. 743.0645. A  
16 court order for such treatment shall be obtained.

17           (b) The department or its authorized agent may not  
18 consent to sterilization, abortion, psychotropic medications,  
19 termination of life support, or other extraordinary procedures  
20 for which a separate court order, power of attorney, or  
21 informed consent as provided by law is required.

22           (c) The department or its authorized agent shall  
23 notify the parent or legal custodian as soon as possible after  
24 medical care and treatment has been provided to the child by  
25 authority granted in subparagraphs (a)2., 3., or 4.~~if a~~  
26 ~~parent or legal custodian of the child is unavailable and his~~  
27 ~~or her whereabouts cannot be reasonably ascertained, and it is~~  
28 ~~after normal working hours so that a court order cannot~~  
29 ~~reasonably be obtained, an authorized agent of the department~~  
30 ~~shall have the authority to consent to necessary medical~~  
31 ~~treatment, including immunization, for the child. The~~

1 ~~authority of the department to consent to medical treatment in~~  
2 ~~this circumstance shall be limited to the time reasonably~~  
3 ~~necessary to obtain court authorization.~~

4 ~~(c) If a parent or legal custodian of the child is~~  
5 ~~available but refuses to consent to the necessary treatment,~~  
6 ~~including immunization, a court order shall be required unless~~  
7 ~~the situation meets the definition of an emergency in s.~~  
8 ~~743.064 or the treatment needed is related to suspected abuse,~~  
9 ~~abandonment, or neglect of the child by a parent, caregiver,~~  
10 ~~or legal custodian. In such case, the department shall have~~  
11 ~~the authority to consent to necessary medical treatment. This~~  
12 ~~authority is limited to the time reasonably necessary to~~  
13 ~~obtain court authorization.~~

14  
15 ~~In no case shall the department consent to sterilization,~~  
16 ~~abortion, or termination of life support.~~

17 ~~(3)(a)~~ MENTAL AND PHYSICAL EXAMINATION, EDUCATIONAL  
18 NEEDS ASSESSMENT, AND ADDITIONAL SERVICES.--A judge may order  
19 a child in an out-of-home placement or otherwise in the  
20 custody of the department:

21 (a) To be examined by a licensed health care  
22 professional.

23 (b) To be treated by a licensed health care  
24 professional based on evidence that the child should receive  
25 treatment.

26 ~~(c)(b) The judge may also order such child~~ To be  
27 evaluated by a psychiatrist or a psychologist or, if a  
28 developmental disability is suspected or alleged, by the  
29 developmental disability diagnostic and evaluation team of the  
30 department. If it is necessary to place a child in a  
31 residential facility for such evaluation, the criteria and

1 procedure established in s. 394.463(2) or chapter 393 shall be  
2 used, whichever is applicable.

3 ~~(d)(c)~~ The judge may also order such child To be  
4 evaluated by a district school board educational needs  
5 assessment team. The educational needs assessment provided by  
6 the district school board educational needs assessment team  
7 shall include, but not be limited to, reports of intelligence  
8 and achievement tests, screening for learning disabilities and  
9 other handicaps, and screening for the need for alternative  
10 education as defined in s. 1001.42.

11 (e) To receive mental health or developmental  
12 disabilities services from a psychiatrist, psychologist, or  
13 other appropriate service provider. Except as provided in  
14 subsection (4), if it is necessary to place the child in a  
15 residential facility for these services, the procedures and  
16 criteria set forth in s. 394.467 or chapter 393 shall be used,  
17 whichever is applicable. A child may be provided developmental  
18 disability services or mental health services in emergency  
19 situations, using the procedures and criteria set forth in s.  
20 394.463(1) or chapter 393, whichever is applicable.

21 (f) To be provided services or treatment by a duly  
22 accredited practitioner who relies solely on spiritual means  
23 for healing in accordance with the tenets and practices of a  
24 church or religious organization, when required by the child's  
25 health and when requested by the child.

26 ~~(4) A judge may order a child in an out-of-home~~  
27 ~~placement to be treated by a licensed health care professional~~  
28 ~~based on evidence that the child should receive treatment.~~  
29 ~~The judge may also order such child to receive mental health~~  
30 ~~or developmental disabilities services from a psychiatrist,~~  
31 ~~psychologist, or other appropriate service provider. Except~~



1 ~~as provided in subsection (5), if it is necessary to place the~~  
2 ~~child in a residential facility for such services, the~~  
3 ~~procedures and criteria established in s. 394.467 or chapter~~  
4 ~~393 shall be used, whichever is applicable. A child may be~~  
5 ~~provided developmental disabilities or mental health services~~  
6 ~~in emergency situations, pursuant to the procedures and~~  
7 ~~criteria contained in s. 394.463(1) or chapter 393, whichever~~  
8 ~~is applicable.~~

9 (4)(5) PLACEMENT IN A RESIDENTIAL TREATMENT

10 CENTER.--Children who are in the legal custody of the  
11 department may be placed by the department, without prior  
12 approval of the court, in a residential treatment center  
13 licensed under s. 394.875 or a hospital licensed under chapter  
14 395 for residential mental health treatment only under  
15 ~~pursuant to~~ this section or may be placed by the court in  
16 accordance with an order of involuntary examination or  
17 involuntary placement entered under ~~pursuant to~~ s. 394.463 or  
18 s. 394.467. All children placed in a residential treatment  
19 program under this subsection must have a guardian ad litem  
20 appointed.

21 (a) As used in this subsection, the term:

22 1. "Residential treatment" means placement for  
23 observation, diagnosis, or treatment of an emotional  
24 disturbance in a residential treatment center licensed under  
25 s. 394.875 or a hospital licensed under chapter 395.

26 2. "Least restrictive alternative" means the treatment  
27 and conditions of treatment that, separately and in  
28 combination, are no more intrusive or restrictive of freedom  
29 than reasonably necessary to achieve a substantial therapeutic  
30 benefit or to protect the child or adolescent or others from  
31 physical injury.

1           3. "Suitable for residential treatment" or  
2 "suitability" means a determination concerning a child or  
3 adolescent with an emotional disturbance as defined in s.  
4 394.492(5) or a serious emotional disturbance as defined in s.  
5 394.492(6) that each of the following criteria is met:

6           a. The child requires residential treatment.

7           b. The child is in need of a residential treatment  
8 program and is expected to benefit from mental health  
9 treatment.

10          c. An appropriate, less restrictive alternative to  
11 residential treatment is unavailable.

12          (b) Whenever the department believes that a child in  
13 its legal custody is emotionally disturbed and may need  
14 residential treatment, an examination and suitability  
15 assessment must be conducted by a qualified evaluator who is  
16 appointed by the Agency for Health Care Administration. This  
17 suitability assessment must be completed before the placement  
18 of the child in a residential treatment center for emotionally  
19 disturbed children and adolescents or a hospital. The  
20 qualified evaluator must be a psychiatrist or a psychologist  
21 licensed in Florida who has at least 3 years of experience in  
22 the diagnosis and treatment of serious emotional disturbances  
23 in children and adolescents and who has no actual or perceived  
24 conflict of interest with any inpatient facility or  
25 residential treatment center or program.

26          (c) Before a child is admitted under this subsection,  
27 the child shall be assessed for suitability for residential  
28 treatment by a qualified evaluator who has conducted a  
29 personal examination and assessment of the child and has made  
30 written findings that:

31

1           1. The child appears to have an emotional disturbance  
2 serious enough to require residential treatment and is  
3 reasonably likely to benefit from the treatment.

4           2. The child has been provided with a clinically  
5 appropriate explanation of the nature and purpose of the  
6 treatment.

7           3. All available modalities of treatment less  
8 restrictive than residential treatment have been considered,  
9 and a less restrictive alternative that would offer comparable  
10 benefits to the child is unavailable.

11  
12 A copy of the written findings of the evaluation and  
13 suitability assessment must be provided to the department and  
14 to the guardian ad litem, who shall have the opportunity to  
15 discuss the findings with the evaluator.

16           (d) Immediately upon placing a child in a residential  
17 treatment program under this section, the department must  
18 notify the guardian ad litem and the court having jurisdiction  
19 over the child and must provide the guardian ad litem and the  
20 court with a copy of the assessment by the qualified  
21 evaluator.

22           (e) Within 10 days after the admission of a child to a  
23 residential treatment program, the director of the residential  
24 treatment program or the director's designee must ensure that  
25 an individualized plan of treatment has been prepared by the  
26 program and has been explained to the child, to the  
27 department, and to the guardian ad litem, and submitted to the  
28 department. The child must be involved in the preparation of  
29 the plan to the maximum feasible extent consistent with his or  
30 her ability to understand and participate, and the guardian ad  
31 litem and the child's foster parents must be involved to the

1 maximum extent consistent with the child's treatment needs.  
2 The plan must include a preliminary plan for residential  
3 treatment and aftercare upon completion of residential  
4 treatment. The plan must include specific behavioral and  
5 emotional goals against which the success of the residential  
6 treatment may be measured. A copy of the plan must be provided  
7 to the child, to the guardian ad litem, and to the department.

8 (f) Within 30 days after admission, the residential  
9 treatment program must review the appropriateness and  
10 suitability of the child's placement in the program. The  
11 residential treatment program must determine whether the child  
12 is receiving benefit toward the treatment goals and whether  
13 the child could be treated in a less restrictive treatment  
14 program. The residential treatment program shall prepare a  
15 written report of its findings and submit the report to the  
16 guardian ad litem and to the department. The department must  
17 submit the report to the court. The report must include a  
18 discharge plan for the child. The residential treatment  
19 program must continue to evaluate the child's treatment  
20 progress every 30 days thereafter and must include its  
21 findings in a written report submitted to the department. The  
22 department may not reimburse a facility until the facility has  
23 submitted every written report that is due.

24 (g)1. The department must submit, at the beginning of  
25 each month, to the court having jurisdiction over the child, a  
26 written report regarding the child's progress toward achieving  
27 the goals specified in the individualized plan of treatment.

28 2. The court must conduct a hearing to review the  
29 status of the child's residential treatment plan no later than  
30 3 months after the child's admission to the residential  
31 treatment program. An independent review of the child's

1 progress toward achieving the goals and objectives of the  
2 treatment plan must be completed by a qualified evaluator and  
3 submitted to the court before its 3-month review.

4 3. For any child in residential treatment at the time  
5 a judicial review is held under ~~pursuant to~~ s. 39.701, the  
6 child's continued placement in residential treatment must be a  
7 subject of the judicial review.

8 4. If at any time the court determines that the child  
9 is not suitable for continued residential treatment, the court  
10 shall order the department to place the child in the least  
11 restrictive setting that is best suited to meet his or her  
12 needs.

13 (h) After the initial 3-month review, the court must  
14 conduct a review of the child's residential treatment plan  
15 every 90 days.

16 (i) The department must adopt rules for implementing  
17 timeframes for the completion of suitability assessments by  
18 qualified evaluators and a procedure that includes timeframes  
19 for completing the 3-month independent review by the qualified  
20 evaluators of the child's progress toward achieving the goals  
21 and objectives of the treatment plan which review must be  
22 submitted to the court. The Agency for Health Care  
23 Administration must adopt rules for the registration of  
24 qualified evaluators, the procedure for selecting the  
25 evaluators to conduct the reviews required under this section,  
26 and a reasonable, cost-efficient fee schedule for qualified  
27 evaluators.

28 (5) ADMINISTRATION OF PSYCHOTROPIC MEDICATION.--

29 (a) The department or its authorized agent may not  
30 authorize the prescription, administration, or use of  
31 psychotropic medication to a child who is in the custody or

1 care of the department or its authorized agent, including  
2 shelter care, foster care, or other residential placement,  
3 unless the psychotropic medication has been federally  
4 approved. The department or its authorized agent may not  
5 authorize psychotropic medication to be given to a child  
6 younger than the age of 6 unless the psychotropic medication  
7 has been federally approved for pediatric use. The prescribing  
8 physician for the administration of the psychotropic  
9 medication must be a physician licensed under chapter 458 or  
10 chapter 459.

11 (b) The department or its authorized agent may consent  
12 to or approve the initiation, continuation, or change in the  
13 prescription and administration of psychotropic medications  
14 under this chapter if:

15 1. The department or its authorized agent first  
16 obtains express and written consent from the parent or legal  
17 custodian and from the child, if the child is 12 years of age  
18 or older.

19 2. The department or its authorized agent obtains  
20 court approval to authorize consent when a child's parent or  
21 legal custodian is unknown or unavailable or is unwilling or  
22 refuses to give express written and informed consent.

23 3. The department or its authorized agent obtains  
24 court approval to authorize consent when the parental rights  
25 of the child's parents have been terminated and the department  
26 has become the legal custodian of the child.

27 (c) No later than 30 days after the child has been  
28 removed from the home, the department or its authorized agent  
29 must once again obtain express written and informed consent  
30 from the parent or legal custodian or, when applicable, obtain  
31

1 authority to consent from the court relating to the  
2 administration of psychotropic medications.

3 (d)1. If a child is in the custody or care of the  
4 department or its authorized agent, the court shall conduct a  
5 psychotropic medications review to determine the status of the  
6 child's prescribed or administered psychotropic medications.  
7 The psychotropic medications review must be conducted at least  
8 once every 6 months. The court may review the child's progress  
9 status more frequently upon the court's own motion or, for  
10 good cause shown, upon the motion of any party, including the  
11 child, if age-appropriate, or the child's attorney, attorney  
12 ad litem, or guardian ad litem. A psychotropic medications  
13 review may be conducted during any other timely scheduled  
14 hearing or judicial review hearing under s. 39.701.

15 2. The court may order the department to produce  
16 supplemental evidence or to obtain a medical opinion to  
17 determine if the continued use of the psychotropic medications  
18 is safe and medically appropriate.

19 3. A psychotropic medications review requires no  
20 hearing if the parent or legal custodian and the child, if 12  
21 years of age or older, consents to the prescription and  
22 administration of the psychotropic medication.

23 (e)1. During a psychotropic medications review, the  
24 court shall consider the child's resource record as provided  
25 in s. 39.4075, and the prescribing physician's signed  
26 psychotropic prescription report. The department or its  
27 authorized agent is responsible for providing the child's  
28 resource record and the prescribing physician's signed  
29 psychotropic prescription report to the court. The child's  
30 resource record and prescribing physician's report are  
31 admissible in evidence.

1           2. The prescribing physician's signed psychotropic  
2 prescription report must include:

3           a. The name and range of the dosage of the  
4 psychotropic medication and any other medication the child is  
5 taking or expected to take.

6           b. The diagnosed mental condition or the intended  
7 monitoring or treatment purpose underlying the need to  
8 initiate or change the prescription and administration of the  
9 psychotropic medication.

10           c. How the proposed medication is expected to help the  
11 child, the timeframe in which improvement of the child's  
12 symptoms can be expected, and who will be monitoring the child  
13 for improvement or side effects.

14           d. The treatment plan, including the length of time  
15 the child has taken or is expected to take the psychotropic  
16 medication and any other medication, and the need for any  
17 supporting and integrated medical, counseling, or other  
18 services.

19           e. A description of the side effects, benefits, risks,  
20 contraindications, drug interaction precautions, and  
21 alternatives to the medication, including, but not limited to,  
22 precautions recommended for activities, foods and medications  
23 to be avoided, and activities that are prohibited while the  
24 child is on medication.

25           f. Whether any laboratory tests, including  
26 neurological, cardiac, and blood testing, need to be done  
27 before or while the child is being administered the prescribed  
28 medication and at what time periods.

29           g. How the psychotropic medication will replace or  
30 supplement any other currently prescribed medication or  
31 treatment.



1           h. Whether the prescribing physician consulted with  
2 each person whose consent is required as provided by law,  
3 including the child, if age-appropriate, and provided an  
4 explanation of the nature and purpose of the treatment, the  
5 side effects, benefits, risks, contraindications, drug  
6 interaction precautions, and alternatives to the medication.

7           i. The reasons or explanation for why the child, if  
8 age-appropriate, and the parent or legal custodian consented  
9 or refused to consent to the administration of the  
10 psychotropic medication, and any written informed consents  
11 that are obtained, unattainable, or refused.

12           j. The dosage recommended by the drug's manufacturer  
13 or the United States Food and Drug Administration.

14           3. The court shall also consider at least the  
15 following:

16           a. The child's expressed treatment preference, if the  
17 child is age-appropriate.

18           b. Whether the treatment is essential to the care of  
19 the child.

20           c. Whether the treatment is experimental.

21           d. The probability of adverse side effects, including  
22 whether the treatment presents an unreasonable risk of  
23 serious, hazardous, or irreversible side effects.

24           e. The prognosis and probable risks with and without  
25 treatment.

26           f. Whether comparable or alternative therapies are  
27 available to diagnose, monitor, or treat the condition of the  
28 child.

29           4. The prescribing physician is not required to  
30 testify at or attend the hearing unless the court specifically  
31 orders the testimony or attendance.

1           5. The court shall inquire about additional medical,  
2 counseling, or other services that the prescribing physician  
3 believes are necessary or would be beneficial for the child's  
4 medical condition.

5           6. The court may require further medical consultation,  
6 including a second opinion, based on considerations of the  
7 best interests of the child.

8           7. At the conclusion of a psychotropic medications  
9 review hearing, in arriving at a substitute judgment decision,  
10 the court shall determine by clear and convincing evidence  
11 whether authorization to consent to the prescription and  
12 administration of psychotropic medication should be granted.  
13 If at any time the court determines that the child's best  
14 interests require discontinuation of a prescribed psychotropic  
15 medication, the court shall order the medication to be  
16 discontinued in compliance with acceptable medical practice as  
17 it relates to the termination of the ordered medication.

18           (6) EMERGENCY CARE AND TREATMENT.--Except as otherwise  
19 provided in this section, this section does not alter s.  
20 743.064 or s. 394.463(2)(f). If a child is in out-of-home  
21 placement or otherwise in the custody or care of the  
22 department and there are indications of physical injury,  
23 illness, or other adverse incidents or conditions, a licensed  
24 health care professional shall be called immediately or the  
25 child shall be taken to the nearest health care facility for  
26 emergency care and treatment.~~When a child is in an~~  
27 ~~out-of-home placement, a licensed health care professional~~  
28 ~~shall be immediately called if there are indications of~~  
29 ~~physical injury or illness, or the child shall be taken to the~~  
30 ~~nearest available hospital for emergency care.~~

31

1           (7) PARENTAL RIGHT TO CONSENT OR REFUSE TO CONSENT AND  
2 FINANCIAL RESPONSIBILITY.--

3           (a) Unless a parent's rights have been terminated and  
4 except as otherwise provided herein, this section does not  
5 eliminate the right of a parent, legal custodian, or the child  
6 to consent or refuse to consent to examination or any medical  
7 care or treatment, including extraordinary medical care or  
8 treatment for the child. A parent or legal custodian of a  
9 child may not be required or coerced through threat of loss of  
10 custody or parental rights to consent to any medical care or  
11 treatment.

12           (b) The parent or legal custodian of a child who is in  
13 an out-of-home placement or who is otherwise in the custody or  
14 care of the department or its authorized agent is financially  
15 responsible for the cost of medical care and treatment  
16 provided to the child, unless a parent's rights have been  
17 terminated. The parent or legal custodian is financially  
18 responsible regardless of whether the parent or legal  
19 custodian consented or refused to consent to the care and  
20 treatment. After any hearing, the court may order the parent  
21 or legal custodian, if found able to do so, to reimburse the  
22 department or the provider of health services for the medical  
23 care and treatment given to the child.~~nothing in this section~~  
24 ~~shall be deemed to eliminate the right of a parent, legal~~  
25 ~~custodian, or the child to consent to examination or treatment~~  
26 ~~for the child.~~

27           (8) EVALUATIONS AND EXAMINATIONS.--For the purpose of  
28 obtaining an evaluation or examination or receiving treatment  
29 as authorized under this section, no child alleged to be or  
30 found to be dependent shall be placed in a detention home or  
31 other program used primarily for the care and custody of

1 children alleged or found to have committed delinquent acts.

2 ~~Except as otherwise provided herein, nothing in this section~~  
3 ~~shall be deemed to alter the provisions of s. 743.064.~~

4 ~~(9) A court shall not be precluded from ordering~~  
5 ~~services or treatment to be provided to the child by a duly~~  
6 ~~accredited practitioner who relies solely on spiritual means~~  
7 ~~for healing in accordance with the tenets and practices of a~~  
8 ~~church or religious organization, when required by the child's~~  
9 ~~health and when requested by the child.~~

10 ~~(10) Nothing in this section shall be construed to~~  
11 ~~authorize the permanent sterilization of the child unless such~~  
12 ~~sterilization is the result of or incidental to medically~~  
13 ~~necessary treatment to protect or preserve the life of the~~  
14 ~~child.~~

15 ~~(11) For the purpose of obtaining an evaluation or~~  
16 ~~examination, or receiving treatment as authorized pursuant to~~  
17 ~~this section, no child alleged to be or found to be dependent~~  
18 ~~shall be placed in a detention home or other program used~~  
19 ~~primarily for the care and custody of children alleged or~~  
20 ~~found to have committed delinquent acts.~~

21 ~~(12) The parents or legal custodian of a child in an~~  
22 ~~out-of-home placement remain financially responsible for the~~  
23 ~~cost of medical treatment provided to the child even if either~~  
24 ~~one or both of the parents or if the legal custodian did not~~  
25 ~~consent to the medical treatment. After a hearing, the court~~  
26 ~~may order the parents or legal custodian, if found able to do~~  
27 ~~so, to reimburse the department or other provider of medical~~  
28 ~~services for treatment provided.~~

29 ~~(13) Nothing in this section alters the authority of~~  
30 ~~the department to consent to medical treatment for a dependent~~

31

1 ~~child when the child has been committed to the department and~~  
2 ~~the department has become the legal custodian of the child.~~

3 ~~(14) At any time after the filing of a shelter~~  
4 ~~petition or petition for dependency, when the mental or~~  
5 ~~physical condition, including the blood group, of a parent,~~  
6 ~~caregiver, legal custodian, or other person requesting custody~~  
7 ~~of a child is in controversy, the court may order the person~~  
8 ~~to submit to a physical or mental examination by a qualified~~  
9 ~~professional. The order may be made only upon good cause~~  
10 ~~shown and pursuant to notice and procedures as set forth by~~  
11 ~~the Florida Rules of Juvenile Procedure.~~

12 Section 2. Section 39.4071, Florida Statutes, is  
13 created to read:

14 39.4071 Child resource record.--

15 (1) In accordance with 42 U.S.C. s. 675, the  
16 department shall prepare and maintain a comprehensive,  
17 accurate, and updated health and education record on each  
18 child who is placed in a shelter home, foster care, or other  
19 residential placement, or who is otherwise in the custody or  
20 care of the department.

21 (2) The health and education record shall be referred  
22 to as the child resource record and shall include: the child's  
23 name; family and social history; medical history with the  
24 respective dates and purposes of medical care and treatment;  
25 the results of all medical, psychiatric, and psychological  
26 information, evaluations, exams, and screenings; educational  
27 records and needs assessments; medical visits,  
28 hospitalizations, and operations and procedures with reasons  
29 thereof; dates, locations, and names of treating or  
30 administering professionals; names and telephone numbers of  
31 all physicians and other health care professionals who have

1 treated the child; the child's known allergies and negative  
2 reactions to medication; all medications previously and  
3 currently prescribed, including dates of administration,  
4 renewals of prescription and discontinuation, the dosage and  
5 frequency, and subsequent renewals of prescription; any  
6 written informed consents as required by law and reasons for  
7 not obtaining the consents or for the refusals to consent; the  
8 name and telephone numbers of the agent of the department who  
9 is currently responsible for the child; the name and telephone  
10 number of the parent, legal custodian, relative caregiver, or  
11 foster care parent, if applicable; and the local after-hour  
12 call number of the department for emergencies.

13 (3) The department shall provide written documentation  
14 describing why any information required by subsection (2) is  
15 not available and accessible in the child resource record and  
16 the steps that the department is taking to obtain the  
17 information.

18 (4) The child resource record shall follow the child  
19 to each residential placement. While the child resides there,  
20 the child resource record shall remain in the custody of the  
21 parent or legal custodian, shelter, or foster care parent or  
22 provider, or other caretaker. The record must accompany the  
23 child to every health care appointment in order that the  
24 information contained therein may be shared with the provider  
25 and updated as appropriate.

26 (5) The child resource record shall be open for  
27 inspection by the parent or legal custodian or other person  
28 who has the power, as authorized by law, to consent to medical  
29 care or treatment.

30 (6) The department shall adopt rules to administer  
31 this section.

1           Section 3. Section 39.4072, Florida Statutes, is  
2 created to read:

3           39.4072 Physical or mental examination of parent or  
4 person requesting custody of child.--At any time after the  
5 filing of a shelter petition or petition for dependency, when  
6 the mental or physical condition, including the blood group,  
7 of a parent, caregiver, legal custodian, or other person  
8 requesting custody of a child is in controversy, the court may  
9 order the person to submit to a physical or mental examination  
10 by a qualified professional. The order may be made only upon  
11 good cause shown and under the notice and procedures set forth  
12 in the Florida Rules of Juvenile Procedure.

13           Section 4. Subsections (6) and (7) of section 409.145,  
14 Florida Statutes, are amended to read:

15           409.145 Care of children.--

16           (6) Whenever any child is placed under the protection,  
17 care, and guidance of the department or a duly licensed public  
18 or private agency, or as soon thereafter as is practicable,  
19 the department or agency, as the case may be, shall complete a  
20 full medical evaluation of the child and shall endeavor to  
21 obtain such information concerning the family medical history  
22 of the child and the natural parents as is available or  
23 readily obtainable. This information shall be kept on file by  
24 the department or agency for possible future use as provided  
25 in ss. 63.082 and 63.162 or as may be otherwise provided by  
26 law.

27           (7) Whenever any child is placed by the department in  
28 a shelter home, foster home, or other residential placement,  
29 the department shall make available to the operator of the  
30 shelter home, foster home, other residential placement, or  
31 other caretaker as soon thereafter as is practicable, the

1 child's child resource record as required by s. 39.4071, to  
2 include all relevant information concerning the child's  
3 demographic, social, and medical history.

4 Section 5. Section 743.0645, Florida Statutes, is  
5 amended to read:

6 743.0645 Other persons who may consent to medical care  
7 or treatment of a minor; psychotropic medications.--

8 (1) DEFINITIONS.--As used in this section, the term:

9 (a) "Blood testing" includes Early Periodic Screening,  
10 Diagnosis, and Treatment (EPSDT) testing and other blood  
11 testing deemed necessary by documented history or  
12 symptomatology but excludes HIV testing and controlled  
13 substance testing or any other testing for which separate  
14 court order or informed consent as provided by law is  
15 required.

16 (b) "Child resource record" has the same meaning as in  
17 s. 39.4071.

18 (c)~~(b)~~ "Medical care and treatment" includes ordinary  
19 and necessary medical and dental examination and treatment,  
20 including blood testing, preventive care including ordinary  
21 immunizations, tuberculin testing, and well-child care, but  
22 does not include surgery, general anesthesia, provision of  
23 psychotropic medications, or other extraordinary procedures  
24 for which a separate court order, power of attorney, or  
25 informed consent as provided by law is required.

26 (d) "Peer review" means an evaluation by two or more  
27 physicians licensed under the same authority and with the same  
28 or similar specialty as the physician under review, to assess  
29 the medical necessity, appropriateness, quality, and cost of  
30 health care and health services provided to a patient, based  
31



1 on recognized health care standards, and to determine whether  
2 the documentation in the physician's records is adequate.

3 (e)(c) "Person who has the power to consent as  
4 otherwise provided by law" includes a natural or adoptive  
5 parent, legal custodian, or legal guardian.

6 (f) "Psychotropic medication" is medication, the  
7 prescribed intent of which is to affect or alter thought  
8 processes, mood, or behavior, including, but not limited to,  
9 antipsychotic, antidepressant, and antianxiolytic medication,  
10 behavior medications, mood stabilizers, and medications to  
11 treat attentional problems. The classification of a medication  
12 depends upon its stated, intended effect when prescribed,  
13 because it may have many different effects.

14 (2) CONSENT.--

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

24 1.(a) A person who possesses a power of attorney to  
25 provide medical consent for the minor. A power of attorney  
26 executed after July 1, 2001, to provide medical consent for a  
27 minor includes the power to consent to medically necessary  
28 surgical and general anesthesia services for the minor unless  
29 the ~~such~~ services are excluded by the individual executing the  
30 power of attorney.

31 2.(b) The stepparent.

1           ~~3.(c)~~ The grandparent of the minor.

2           ~~4.(d)~~ An adult brother or sister of the minor.

3           ~~5.(e)~~ An adult aunt or uncle of the minor.

4           (b) Each treatment provider shall document in the  
5 minor's records

6

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

10           (3) AUTHORIZATION FOR CONSENT.--

11           (a) Consent or authorization for medical care and  
12 treatment for any child in the custody or care of the  
13 Department of Children and Family Services or its authorized  
14 agent under chapter 39 must be obtained as provided in s.  
15 39.407.

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

1           (4) AUTHORIZATION FOR CONSENT TO THE ADMINISTRATION OF  
2 PSYCHOTROPIC MEDICATION.--

3           (a) Consent for the prescription and administration of  
4 psychotropic medication for any child who is in the custody or  
5 care of the Department of Children and Family Services or its  
6 authorized agent under chapter 39 must be obtained as provided  
7 in s. 39.4075.

8           (b) Consent for the prescription and administration of  
9 psychotropic medication for any child who is committed or  
10 otherwise in the custody of the Department of Juvenile Justice  
11 under chapter 984 or chapter 985 shall be obtained as follows:

12           1. Written informed consent shall be obtained from the  
13 parent or legal custodian of a child.

14           2. If the child is 12 years of age or older, written  
15 informed consent shall also be obtained from the child.

16           3. If the parent or legal custodian is unwilling or  
17 unavailable or refuses to consent, the Department of Juvenile  
18 Justice must obtain an order from the court authorizing  
19 consent before the prescribing and administering of  
20 psychotropic medication.

21           4. If the parental rights of a parent have been  
22 terminated, the Department of Juvenile Justice must obtain an  
23 order from the court authorizing consent before the  
24 prescribing and administering of psychotropic medication.

25           (c) If authority to consent for the prescription and  
26 administration of psychotropic medication is obtained under  
27 this subsection, the prescribing physician, who must be a  
28 physician licensed under chapter 458 or chapter 459, shall  
29 submit a copy of the child's resource record and a  
30 psychotropic prescription report to the board which has  
31

1 regulatory responsibility over the license of the prescribing  
2 physician. The psychotropic prescription report shall contain:

- 3 1. The name of the prescribed psychotropic medication.  
4 2. The prescribed dosage.  
5 3. The dosage recommended by the drug's manufacturer  
6 or the United States Food and Drug Administration.  
7 4. The reason the medication is prescribed.  
8 5. The expected benefit of the medication.  
9 6. The side effects of the medication.

10  
11 A copy of the psychotropic prescription report shall be  
12 provided to the department, which the foster parents, and the  
13 parents if the parents can be located and their parental  
14 rights have not been terminated.

15 (5)(4) NOTICE.--The medical provider shall notify the  
16 parent or other person who has the power to consent as  
17 otherwise provided by law as soon as possible after the  
18 medical care and ~~or~~ treatment is administered by ~~pursuant to~~  
19 consent or approval to authorize care and treatment given  
20 under this section. The medical records shall reflect the  
21 reason consent as otherwise provided by law was not initially  
22 obtained and shall be open for inspection by the parent or  
23 other person who has the power to consent as otherwise  
24 provided by law.

25 (6)(5) IMMUNITY.--The person who gives consent; a  
26 physician, dentist, nurse, or other health care professional  
27 licensed to practice in this state; or a hospital or medical  
28 facility, including, but not limited to, county health  
29 departments, shall not incur civil liability by reason of the  
30 giving of consent, examination, or rendering of treatment,  
31 provided that the ~~such~~ consent, examination, or treatment was

1 given or rendered as a reasonable prudent person or similar  
2 health care professional would give or render it under the  
3 same or similar circumstances.

4 (7)(6) RULES.--The Department of Children and Family  
5 Services, the Department of Health,and the Department of  
6 Juvenile Justice shall ~~may~~ adopt rules to administer ~~implement~~  
7 this section.

8 (8)(7) STATUTES.--This section does not affect other  
9 statutory provisions of this state that relate to medical  
10 consent for minors.

11 Section 6. Section 743.0647, Florida Statutes, is  
12 created to read:

13 743.0647 REPORTS OF ADVERSE INCIDENT OR CONDITION.--

14 (1) Within 10 days after the occurrence of an adverse  
15 incident or condition, as defined in this section, resulting  
16 from the dispensation, administration, or use of psychotropic  
17 medication to a child under s. 743.0645 or s. 39.407, the  
18 parent, legal custodian, or the respective department or its  
19 agent with whom the child is committed must immediately notify  
20 the prescribing physician. The prescribing physician must  
21 promptly report the adverse incident or condition to the  
22 respective board under which the prescribing physician is  
23 licensed and to the manufacturer of the psychotropic  
24 medication. The prescribing physician shall also forward a  
25 copy of his or her psychotropic prescription report to the  
26 respective board.

27 (2) The Board of Medicine and the Board of Osteopathic  
28 Medicine shall each create a voluntary peer review board. Each  
29 respective peer review board shall review the reports required  
30 and received under this section. Each respective peer review  
31 board shall determine whether the psychotropic medication was

1 prescribed appropriately and whether the conduct of the  
2 prescribing physician is potentially subject to disciplinary  
3 action. The peer review boards shall also notify the  
4 department to which the child is committed or which maintains  
5 custody of the child within 24 hours after the determination.  
6 Upon notice, the department to which the child is committed  
7 and which is responsible for the custody or care of the child  
8 shall ensure that the child receives appropriate medical  
9 followup and that the medication is discontinued immediately  
10 or as soon as practicable under the circumstances.

11 (3) Each respective board shall provide staff support  
12 for all meetings of the peer review boards created under this  
13 section and shall reimburse the participants for all  
14 meeting-related expenses.

15 (4) Each respective board shall forward quarterly  
16 information to the Center for Juvenile Psychotropic Studies  
17 regarding the number of psychotropic prescription reports  
18 received, the number of psychotropic prescription reports  
19 determined to be clinically inappropriate, and the number of  
20 adverse incidents reported to the respective peer review  
21 boards.

22 (5) Each respective board shall publish on its website  
23 an annual summary and trend analysis of all adverse incident  
24 and effects reports. The published information shall not  
25 identify the patient, the reporting person, or the  
26 practitioner involved. The purpose of the publication of the  
27 summary and trend analysis is to promote the rapid  
28 dissemination of information relating to adverse incidents and  
29 effects of psychotropic medications on children to assist in  
30 avoidance of similar incidents and effects and reduce  
31 morbidity and mortality.

1           (6) The Board of Medicine and the Board of Osteopathic  
2 Medicine shall adopt rules to administer the policies and  
3 procedures for reporting adverse incidents or conditions  
4 resulting from the dispensation, administration, or use of  
5 psychotropic medications to children. The policies and  
6 procedures must include a verification of corrective action to  
7 remediate or minimize incidents or adverse effects and a  
8 timeline for reporting the incidents or effects to the  
9 respective boards.

10           Section 7. (1) The Center for Juvenile Psychotropic  
11 Studies is established within the Department of Psychiatry of  
12 the College of Medicine of the University of Florida. The  
13 mission of the center is to collect, track, and assess  
14 information regarding children who are committed to or  
15 otherwise in the custody or care of the Department of Children  
16 and Family Services or the Department of Juvenile Justice and  
17 who have been or are currently being prescribed psychotropic  
18 medications.

19           (2)(a) An advisory board shall be created to  
20 periodically and objectively review and advise the center on  
21 all actions taken under this section.

22           (b) The membership of the board shall consist of eight  
23 experts or practitioners in psychiatric health, a clinical  
24 pharmacologist, the executive director of the Statewide  
25 Guardian Ad Litem Office, and the secretaries, or their  
26 designees, of the Department of Children and Family Services,  
27 the Department of Juvenile Justice, and the Agency for  
28 Healthcare Administration. The Governor, the President of the  
29 Senate, the Speaker of the House of Representatives, and the  
30 President of the University of Florida shall each appoint one  
31 member. The Florida Psychiatric Society shall appoint the

1 remaining members of the board. None of the members may be a  
2 person who is currently conducting clinical studies involving  
3 psychotropic medication.

4 (3) The Dean of the College of Medicine of the  
5 University of Florida shall appoint the Director of the  
6 Center.

7 (4) The center shall work in conjunction with the  
8 Department of Children and Family Services, the Department of  
9 Juvenile Justice, and the Department of Health, and to the  
10 extent allowed by the privacy requirements of existing federal  
11 and state law, those agencies shall work with, and make  
12 available to the center, data regarding each child, including,  
13 but not limited to:

14 (a) Demographic information such as age, geographic  
15 location, and economic status.

16 (b) Family history, including involvement with child  
17 welfare or the juvenile justice systems.

18 (c) All information regarding the medications  
19 prescribed or administered, including, but not limited to,  
20 information contained in the medication administration record.

21 (d) Practice patterns, licensure, and board  
22 certification of prescribing physicians.

23 (5) The center shall report its findings to the  
24 Governor and the Legislature and make recommendations  
25 regarding psychotropic medications as prescribed and  
26 administered to children who are committed or otherwise in  
27 state custody or care. The report is due annually on January 1  
28 beginning in 2005.

29 (6) This section expires July 1, 2009.

30 Section 8. This act shall take effect July 1, 2004.

31



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SENATE SUMMARY

Provides that the Department of Children and Family Services may conduct a health screening on any child who is removed from his or her home. Provides for consent for medical care and treatment under certain circumstances. Specifies limitations to consent by the department. Provides for the administration of psychotropic drugs to children. Describes the methods to obtain consent for the dispensing of psychotropic medication to a child in the legal custody of the department. Requires the court to conduct a psychotropic medications review of each child to determine the medical status of the child. Directs the court to review the child's resource record and the prescribing physician's psychotropic prescription report. Details the contents of the prescription report. Lists other factors for the court to consider when evaluating the child. Provides that the act does not eliminate the right of a parent to give, or refuse to give, consent for medical treatment for his or her child. Provides that unless the parent's rights have been terminated, the parent is financially responsible for the cost of medical care and treatment given to the child. Requires the department to prepare and maintain a comprehensive, accurate, and updated health and education record, to be known as the "child resource record," for each child who is placed in a shelter home, foster care, or other residential placement, or who is otherwise in the custody or care of the department. Specifies the contents of the child resource record. Directs that the child resource record follow the child to each residential placement. Requires the child resource record to be open for inspection to certain specified persons. Provides procedures to authorize consent for the prescription and administration of psychotropic medication to children in the custody or care of the Department of Children and Family Services or committed to the Department of Juvenile Justice. Requires a physician prescribing psychotropic medications for a child to file a report with specified organizations. Requires a prescribing physician to report to the physician's regulating board any adverse incident or condition involving psychotropic medication to a child within a specified time period. Directs the Board of Medicine and the Board of Osteopathic Medicine to create a voluntary peer review board to review reports required and received relating to adverse incidents. Directs the Board of Medicine and the Board of Osteopathic Medicine to publish an annual summary and trend analysis of all adverse incident and effects reports on their websites. Creates the Center for Juvenile Psychotropic Studies within the Department of Psychiatry of the College of Medicine of the University of Florida. Creates an advisory board and provides for board membership. Requires the center to work with the Department of Children and Family Services, the Department of Juvenile Justice, and the Agency for Health Care Administration. Requires the center to report to legislative leaders by a specified date.