

By the Committees on Judiciary; Children and Families; and  
Senators Campbell, Dawson and Lynn

590-1866-05

1                                   A bill to be entitled  
2           An act relating to mental health care services  
3           for minors and incapacitated persons; amending  
4           s. 39.402, F.S.; requiring a child's parent or  
5           legal guardian to provide certain information  
6           to the Department of Children and Family  
7           Services; amending s. 39.407, F.S.; specifying  
8           requirements for the department with respect to  
9           providing psychotropic medication to a child in  
10          the custody of the department; requiring that  
11          the prescribing physician attempt to obtain  
12          express and informed parental consent for  
13          providing such medication; authorizing the  
14          department to provide psychotropic medication  
15          without such consent under certain  
16          circumstances; requiring the department to  
17          provide medical information to a physician  
18          under certain circumstances; requiring that the  
19          child be evaluated by a physician; requiring  
20          that the department obtain court authorization  
21          for providing such medication within a  
22          specified period; providing requirements for a  
23          motion by the department seeking court  
24          authorization to provide psychotropic  
25          medication; specifying circumstances under  
26          which medication may be provided in advance of  
27          a court order; requiring that notice be  
28          provided to all parties if the department  
29          proposes to provide psychotropic medication to  
30          the child; requiring that a hearing be held if  
31          any party objects; providing requirements for

1 the hearing; authorizing the court to order  
2 additional medical consultation; specifying the  
3 required burden of proof with respect to  
4 evidence presented at the hearing; requiring  
5 that the department provide a child's medical  
6 records to the court; providing requirements  
7 for court review; authorizing the court to  
8 order the department to obtain a medical  
9 opinion; requiring that the department adopt  
10 rules to ensure that children receive  
11 appropriate psychotropic medications;  
12 specifying the provisions to be included in the  
13 rules; conforming a cross-reference; amending  
14 s. 394.459, F.S., relating to the rights of  
15 patients under the Florida Mental Health Act;  
16 revising provisions requiring that a patient be  
17 asked to give express and informed consent  
18 before admission or treatment; requiring that  
19 additional information be provided with respect  
20 to the risks and benefits of treatment, the  
21 dosage range of medication, potential side  
22 effects, and the monitoring of treatment;  
23 clarifying provisions governing the manner in  
24 which consent may be revoked; requiring that  
25 facilities develop a system for investigating  
26 and responding to certain complaints; amending  
27 s. 743.0645, F.S.; redefining the term "medical  
28 care and treatment" for purposes of obtaining  
29 consent for the medical treatment of a minor;  
30 providing an exception with respect to the  
31 consent provided under s. 39.407, F.S.;

1 directing the department to conduct an  
2 assessment; requiring a report; providing an  
3 effective date.  
4

5 Be It Enacted by the Legislature of the State of Florida:  
6

7 Section 1. Subsection (11) of section 39.402, Florida  
8 Statutes, is amended to read:

9 39.402 Placement in a shelter.--

10 (11)(a) If a child is placed in a shelter pursuant to  
11 a court order following a shelter hearing, the court shall  
12 require in the shelter hearing order that the parents of the  
13 child, or the guardian of the child's estate, if possessed of  
14 assets which under law may be disbursed for the care, support,  
15 and maintenance of the child, to pay, to the department or  
16 institution having custody of the child, fees as established  
17 by the department. When the order affects the guardianship  
18 estate, a certified copy of the order shall be delivered to  
19 the judge having jurisdiction of the guardianship estate. The  
20 shelter order shall also require the parents to provide to the  
21 department and any other state agency or party designated by  
22 the court, within 28 days after entry of the shelter order,  
23 the financial information necessary to accurately calculate  
24 child support pursuant to s. 61.30.

25 (b) The parent or legal guardian shall provide all  
26 known medical information to the department.

27 Section 2. Present subsections (3) through (14) of  
28 section 39.407, Florida Statutes, are redesignated as  
29 subsections (4) through (15), respectively, a new subsection  
30 (3) is added to that section, and present subsection (4) of  
31 that section is amended, to read:

1           39.407 Medical, psychiatric, and psychological  
2 examination and treatment of child; physical or mental  
3 examination of parent or person requesting custody of child.--

4           (3)(a)1. Except as otherwise provided in subparagraph  
5 (b)1. or paragraph (e), before the department provides  
6 psychotropic medications to a child in its custody, the  
7 prescribing physician shall attempt to obtain express and  
8 informed consent, as defined in s. 394.455(9) and as described  
9 in s. 394.459(3)(a), from the child's parent or legal  
10 guardian. The department must take steps necessary to  
11 facilitate the inclusion of the parent in the child's  
12 consultation with the physician. However, if the parental  
13 rights of the parent have been terminated, the parent's  
14 location or identity is unknown or cannot reasonably be  
15 ascertained, or the parent declines to give express and  
16 informed consent, the department may, after consultation with  
17 the prescribing physician, seek court authorization to provide  
18 the psychotropic medications to the child. Unless parental  
19 rights have been terminated and if it is possible to do so,  
20 the department shall continue to involve the parent in the  
21 decisionmaking process regarding the provision of psychotropic  
22 medications. If, at any time, a parent whose parental rights  
23 have not been terminated provides express and informed consent  
24 to the provision of a psychotropic medication, the  
25 requirements of this section that the department seek court  
26 authorization do not apply to that medication until such time  
27 as the parent no longer consents.

28           2. Any time the department seeks a medical evaluation  
29 to determine the need to initiate or continue a psychotropic  
30 medication for a child, the department must provide to the  
31

1 evaluating physician all pertinent medical information known  
2 to the department concerning that child.

3 (b)1. If a child who is removed from the home under s.  
4 39.401 is receiving prescribed psychotropic medication at the  
5 time of removal and parental authorization to continue  
6 providing the medication cannot be obtained, the department  
7 may take possession of the remaining medication and may  
8 continue to provide the medication as prescribed until the  
9 shelter hearing, if it is determined that the medication is a  
10 current prescription for that child and the medication is in  
11 its original container.

12 2. If the department continues to provide the  
13 psychotropic medication to a child when parental authorization  
14 cannot be obtained, the department shall notify the parent or  
15 legal guardian as soon as possible that the medication is  
16 being provided to the child as provided in subparagraph 1. The  
17 child's official departmental record must include the reason  
18 parental authorization was not initially obtained and an  
19 explanation of why the medication is necessary for the child's  
20 well-being.

21 3. If the department is advised by a physician  
22 licensed under chapter 458 or chapter 459 that the child  
23 should continue the psychotropic medication and parental  
24 authorization has not been obtained, the department shall  
25 request court authorization at the shelter hearing to continue  
26 to provide the psychotropic medication and shall provide to  
27 the court any information in its possession in support of the  
28 request. Any authorization granted at the shelter hearing may  
29 extend only until the arraignment hearing on the petition for  
30 adjudication of dependency or 28 days following the date of  
31 removal, whichever occurs sooner.

1           4. Before filing the dependency petition, the  
2 department shall ensure that the child is evaluated by a  
3 physician licensed under chapter 458 or chapter 459 to  
4 determine whether it is appropriate to continue the  
5 psychotropic medication. If, as a result of the evaluation,  
6 the department seeks court authorization to continue the  
7 psychotropic medication, a motion for such continued  
8 authorization shall be filed at the same time as the  
9 dependency petition, within 21 days after the shelter hearing.

10           (c) Except as provided in paragraphs (b) and (e), the  
11 department must file a motion seeking the court's  
12 authorization to initially provide or continue to provide  
13 psychotropic medication to a child in its legal custody. The  
14 motion must be supported by a written report prepared by the  
15 department which describes the efforts made to enable the  
16 prescribing physician to obtain express and informed consent  
17 for providing the medication to the child and other treatments  
18 considered or recommended for the child. In addition, the  
19 motion must be supported by the prescribing physician's signed  
20 medical report providing:

21           1. The name of the child, the name and range of the  
22 dosage of the psychotropic medication, and that there is a  
23 need to prescribe psychotropic medication to the child based  
24 upon a diagnosed condition for which such medication is being  
25 prescribed.

26           2. A statement indicating that the physician has  
27 reviewed all medical information concerning the child which  
28 has been provided.

29           3. A statement indicating that the psychotropic  
30 medication, at its prescribed dosage, is appropriate for  
31 treating the child's diagnosed medical condition, as well as

1 the behaviors and symptoms the medication, at its prescribed  
2 dosage, is expected to address.

3 4. An explanation of the nature and purpose of the  
4 treatment; the recognized side effects, risks, and  
5 contraindications of the medication; drug-interaction  
6 precautions; the possible effects of stopping the medication;  
7 and how the treatment will be monitored, followed by a  
8 statement indicating that this explanation was provided to the  
9 child if age appropriate and to the child's caregiver.

10 5. Documentation addressing whether the psychotropic  
11 medication will replace or supplement any other currently  
12 prescribed medications or treatments; the length of time the  
13 child is expected to be taking the medication; and any  
14 additional medical, mental health, behavioral, counseling, or  
15 other services that the prescribing physician recommends.

16 (d)1. The department must notify all parties of the  
17 proposed action taken under paragraph (c) in writing or by  
18 whatever other method best ensures that all parties receive  
19 notification of the proposed action within 48 hours after the  
20 motion is filed. If any party objects to the department's  
21 motion, that party shall file the objection within 2 working  
22 days after being notified of the department's motion. If any  
23 party files an objection to the authorization of the proposed  
24 psychotropic medication, the court shall hold a hearing as  
25 soon as possible before authorizing the department to  
26 initially provide or to continue providing psychotropic  
27 medication to a child in the legal custody of the department.  
28 At such hearing and notwithstanding s. 90.803, the medical  
29 report described in paragraph (c) is admissible in evidence.  
30 The prescribing physician need not attend the hearing or  
31 testify unless the court specifically orders such attendance

1 or testimony, or a party subpoenas the physician to attend the  
2 hearing or provide testimony. If, after considering any  
3 testimony received, the court finds that the department's  
4 motion and the physician's medical report meet the  
5 requirements of this subsection and that it is in the child's  
6 best interests, the court may order that the department  
7 provide or continue to provide the psychotropic medication to  
8 the child without additional testimony or evidence. At any  
9 hearing held under this paragraph, the court shall further  
10 inquire of the department as to whether additional medical,  
11 mental health, behavioral, counseling, or other services are  
12 being provided to the child by the department which the  
13 prescribing physician considers to be necessary or beneficial  
14 in treating the child's medical condition and which the  
15 physician recommends or expects to provide to the child in  
16 concert with the medication. The court may order additional  
17 medical consultation, including consultation with the  
18 MedConsult line at the University of Florida, if available, or  
19 require the department to obtain a second opinion within a  
20 reasonable timeframe as established by the court, not to  
21 exceed 21 calendar days, after such order based upon  
22 consideration of the best interests of the child. The  
23 department must make a referral for an appointment for a  
24 second opinion with a physician within 1 working day. The  
25 court may not order the discontinuation of prescribed  
26 psychotropic medication if such order is contrary to the  
27 decision of the prescribing physician unless the court first  
28 obtains an opinion from a licensed psychiatrist, if available,  
29 or, if not available, a physician licensed under chapter 458  
30 or chapter 459, stating that more likely than not,  
31 discontinuing the medication would not cause significant harm



1 to the child. If, however, the prescribing psychiatrist  
2 specializes in mental health care for children and  
3 adolescents, the court may not order the discontinuation of  
4 prescribed psychotropic medication unless the required opinion  
5 is also from a psychiatrist who specializes in mental health  
6 care for children and adolescents. The court may also order  
7 the discontinuation of prescribed psychotropic medication if a  
8 child's treating physician, licensed under chapter 458 or  
9 chapter 459, states that continuing the prescribed  
10 psychotropic medication would cause significant harm to the  
11 child due to a diagnosed nonpsychiatric medical condition.

12 2. The burden of proof at any hearing held under this  
13 paragraph shall be by a preponderance of the evidence.

14 (e)1. If the child's prescribing physician certifies  
15 in the signed medical report required in paragraph (c) that  
16 delay in providing a prescribed psychotropic medication would  
17 more likely than not cause significant harm to the child, the  
18 medication may be provided in advance of the issuance of a  
19 court order. In such event, the medical report must provide  
20 the specific reasons why the child may experience significant  
21 harm and the nature and the extent of the potential harm. The  
22 department must submit a motion seeking continuation of the  
23 medication and the physician's medical report to the court,  
24 the child's guardian ad litem, and all other parties within 3  
25 working days after the department commences providing the  
26 medication to the child. The department shall seek the order  
27 at the next regularly scheduled court hearing required under  
28 this chapter, or within 30 days after the date of the  
29 prescription, whichever occurs sooner. If any party objects to  
30 the department's motion, the court shall hold a hearing within  
31 7 days.

1           2. Psychotropic medications may be administered in  
2 advance of a court order in hospitals, crisis stabilization  
3 units, and in statewide inpatient psychiatric programs. Within  
4 3 working days after the medication is begun, the department  
5 must seek court authorization as described in paragraph (c).

6           (f)1. The department shall fully inform the court of  
7 the child's medical and behavioral status as part of the  
8 social services report prepared for each judicial review  
9 hearing held for a child for whom psychotropic medication has  
10 been prescribed or provided under this subsection. As a part  
11 of the information provided to the court, the department shall  
12 furnish copies of all pertinent medical records concerning the  
13 child which have been generated since the previous hearing. On  
14 its own motion or on good cause shown by any party, including  
15 any guardian ad litem, attorney, or attorney ad litem who has  
16 been appointed to represent the child or the child's  
17 interests, the court may review the status more frequently  
18 than required in this subsection.

19           2. The court may, in the best interests of the child,  
20 order the department to obtain a medical opinion addressing  
21 whether the continued use of the medication under the  
22 circumstances is safe and medically appropriate.

23           (g) The department shall adopt rules to ensure that  
24 children receive timely access to clinically appropriate  
25 psychotropic medications. These rules must include, but need  
26 not be limited to, the process for determining which  
27 adjunctive services are needed, the uniform process for  
28 facilitating the prescribing physician's ability to obtain the  
29 express and informed consent of a child's parent or guardian,  
30 the procedures for obtaining court authorization for the  
31 provision of a psychotropic medication, the frequency of

1 medical monitoring and reporting on the status of the child to  
2 the court, how the child's parents will be involved in the  
3 treatment-planning process if their parental rights have not  
4 been terminated, and how caretakers are to be provided  
5 information contained in the physician's signed medical  
6 report. The rules must also include uniform forms to be used  
7 in requesting court authorization for the use of a  
8 psychotropic medication and provide for the integration of  
9 each child's treatment plan and case plan. The department must  
10 begin the formal rulemaking process within 90 days after the  
11 effective date of this act.

12       ~~(5)(4)~~ A judge may order a child in an out-of-home  
13 placement to be treated by a licensed health care professional  
14 based on evidence that the child should receive treatment.  
15 The judge may also order such child to receive mental health  
16 or developmental disabilities services from a psychiatrist,  
17 psychologist, or other appropriate service provider. Except  
18 as provided in subsection ~~(6)(5)~~, if it is necessary to place  
19 the child in a residential facility for such services, the  
20 procedures and criteria established in s. 394.467 or chapter  
21 393 shall be used, whichever is applicable. A child may be  
22 provided developmental disabilities or mental health services  
23 in emergency situations, pursuant to the procedures and  
24 criteria contained in s. 394.463(1) or chapter 393, whichever  
25 is applicable.

26       Section 3. Paragraph (a) of subsection (3) and  
27 paragraph (b) of subsection (4) of section 394.459, Florida  
28 Statutes, are amended to read:

29       394.459 Rights of patients.--

30       (3) RIGHT TO EXPRESS AND INFORMED PATIENT CONSENT.--

31

1           (a)1. Each patient entering treatment shall be asked  
2 to give express and informed consent for admission or ~~and~~  
3 treatment. If the patient has been adjudicated incapacitated  
4 or found to be incompetent to consent to treatment, express  
5 and informed consent to treatment shall be sought instead from  
6 the patient's guardian or guardian advocate. If the patient  
7 is a minor, express and informed consent for admission or ~~and~~  
8 treatment shall also be requested from the patient's guardian.  
9 Express and informed consent for admission or ~~and~~ treatment of  
10 a patient under 18 years of age shall be required from the  
11 patient's guardian, unless the minor is seeking outpatient  
12 crisis intervention services under s. 394.4784. Express and  
13 informed consent for admission or ~~and~~ treatment given by a  
14 patient who is under 18 years of age shall not be a condition  
15 of admission when the patient's guardian gives express and  
16 informed consent for the patient's admission pursuant to s.  
17 394.463 or s. 394.467.

18           2. ~~Before~~ ~~Prior to~~ giving express and informed  
19 consent, the following information shall be provided and  
20 explained in plain language ~~disclosed~~ to the patient, or to  
21 the patient's guardian if the patient is 18 years of age or  
22 older and has been adjudicated incapacitated, or to the  
23 patient's guardian advocate if the patient has been found to  
24 be incompetent to consent to treatment, or to both the patient  
25 and the guardian if the patient is a minor: the reason for  
26 admission or treatment; the proposed treatment;; the purpose  
27 of the treatment to be provided;; the common risks, benefits,  
28 and side effects thereof; the specific dosage range for the  
29 medication, when applicable; alternative treatment  
30 modalities;; the approximate length of care; the potential  
31 effects of stopping treatment; how treatment will be

1 ~~monitored;~~ and that any consent given for treatment ~~by a~~  
2 ~~patient~~ may be revoked orally or in writing before ~~prior to~~ or  
3 during the treatment period by the patient or by a person who  
4 is legally authorized to make health care decisions on behalf  
5 of the patient, ~~the guardian advocate, or the guardian.~~

6 (4) QUALITY OF TREATMENT.--

7 (b) ~~Receiving and treatment~~ Facilities shall develop  
8 and maintain, in a form accessible to and readily  
9 understandable by patients and consistent with rules adopted  
10 by the department, the following:

11 1. Criteria, procedures, and required staff training  
12 for any use of close or elevated levels of supervision, of  
13 restraint, seclusion, or isolation, or of emergency treatment  
14 orders, and for the use of bodily control and physical  
15 management techniques.

16 2. Procedures for documenting, monitoring, and  
17 requiring clinical review of all uses of the procedures  
18 described in subparagraph 1. and for documenting and requiring  
19 review of any incidents resulting in injury to patients.

20 3. A system for investigating, tracking, managing, and  
21 responding to the review of complaints by persons receiving  
22 services or individuals acting on their behalf ~~patients or~~  
23 ~~their families or guardians.~~

24 Section 4. Paragraph (b) of subsection (1) of section  
25 743.0645, Florida Statutes, is amended to read:

26 743.0645 Other persons who may consent to medical care  
27 or treatment of a minor.--

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

29 (b) "Medical care and treatment" includes ordinary and  
30 necessary medical and dental examination and treatment,  
31 including blood testing, preventive care including ordinary

1 immunizations, tuberculin testing, and well-child care, but  
2 does not include surgery, general anesthesia, provision of  
3 psychotropic medications, or other extraordinary procedures  
4 for which a separate court order, power of attorney, or  
5 informed consent as provided by law is required, except as  
6 provided in s. 39.407(3).

7           Section 5. The Department of Children and Family  
8 Services shall assess and document the positive and negative  
9 fiscal impact of the provisions of this act on the department,  
10 taking into consideration costs incurred prior to July 1,  
11 2005. The department shall submit a report with its findings  
12 to the President of the Senate and the Speaker of the House of  
13 Representatives by February 1, 2006.

14           Section 6. This act shall take effect July 1, 2005.

15  
16                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
17                   COMMITTEE SUBSTITUTE FOR  
18                   CS/Senate Bill 1090

19 This committee substitute:

- 20 -- Requires the parents or legal guardian to provide all  
21 known medical information to the Department of Children  
22 and Family Services;  
23 -- Requires the department to give written or other notice  
24 to parties within 48 hours of the filing of the motion to  
25 provide or continue to provide psychotropic medication to  
26 a child;  
27 -- Provides that where a party properly files an objection,  
28 the court must hold a hearing as soon as possible;  
29 -- Authorizes the court to order the department to provide,  
30 continue, or discontinue psychotropic medication upon  
31 certain findings;  
-- Directs the department to assess and document the fiscal  
impact of the act's provisions and submit a report to the  
Legislature by February 1, 2006.