

By Senator Crist

12-985A-05

See HB 909

1 A bill to be entitled
2 An act relating to medical screening of
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 medications; prohibiting
27 the department from threatening to terminate
28 parental rights based solely on the parents'
29 refusal to give their child psychotropic
30 medications; amending s. 39.703, F.S.;
31 prohibiting the department from initiating

1 proceedings to terminate parental rights based
2 solely on the parents' refusal to give their
3 child psychotropic medications; amending s.
4 39.806, F.S.; providing that the refusal of
5 parents to give their child psychotropic
6 medications may not be considered grounds for
7 termination of parental rights; providing that
8 the parents' refusal to give their child
9 psychotropic medications may not be considered
10 abuse or neglect; amending s. 984.19, F.S.;
11 revising provisions relating to medical
12 screenings performed on children who are placed
13 in shelter care; specifying certain conditions
14 that the screening must cover; prohibiting the
15 Department of Juvenile Justice from
16 administering or authorizing psychiatric or
17 psychological tests or psychotropic medications
18 for a child in departmental custody except with
19 the written and informed consent of the child's
20 parent or legal guardian or by court order;
21 requiring the department to ensure that
22 children who are in departmental custody
23 receive appropriate psychotropic medications
24 but have options for alternative treatments;
25 providing for rulemaking; providing that the
26 department may not provide consent for
27 administering psychotropic medications to a
28 child for whom the department is the legal
29 custodian; amending s. 985.224, F.S.; revising
30 provisions relating to medical screenings
31 performed on children who are taken into

1 detention; specifying certain conditions that
2 the screening must cover; prohibiting the
3 Department of Juvenile Justice from
4 administering or authorizing psychiatric or
5 psychological tests or psychotropic medications
6 for a child in departmental custody except with
7 the written and informed consent of the child's
8 parent or legal guardian or by court order;
9 requiring the Department of Juvenile Justice to
10 ensure that children who are in departmental
11 custody receive appropriate psychotropic
12 medications but have options for alternative
13 treatments; providing for rulemaking; providing
14 an effective date.

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

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18 Section 1. Subsections (1), (2), (4), and (13) of
19 section 39.407, Florida Statutes, are 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) When any child is removed from the home and
24 maintained in an out-of-home placement, the department is
25 authorized to have a medical screening performed on the child
26 without authorization from the court and without consent from
27 a parent or legal custodian. Such medical screening shall be
28 performed by a competent, nonpsychiatric medical specialist
29 ~~licensed health care professional~~ and shall be to examine the
30 child for injury, illness, and communicable diseases and to
31 determine the need for immunization. The screening must also

1 include checking for nutritional deficiencies, heavy-metal
2 toxicity, hypoglycemia, and illegal drug dependence. The
3 department shall by rule establish the invasiveness of the
4 medical procedures authorized to be performed under this
5 subsection. In no case does this subsection authorize the
6 department to consent to medical treatment for such children.

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

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

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

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

26 (c) The department may not administer or authorize
27 psychiatric or psychological tests or psychotropic medications
28 for a child in its custody without the written and informed
29 consent of the child's parent or legal guardian or, if the
30 parent or guardian cannot be located, authorization by the
31 court. The department shall ensure that children under its

1 care receive timely access to clinically appropriate
2 psychotropic medications that have no known contraindications
3 for use in children, shall provide information on all known
4 side effects of such medications, and shall provide options
5 for alternative treatments. The department shall adopt rules
6 to ensure that children under its care receive appropriate
7 psychotropic medications or alternative treatments. The rules
8 shall provide, at a minimum, a uniform process for obtaining
9 informed consent, procedures for obtaining court
10 authorization, and information that must be provided in
11 writing when requesting authorization for the use of
12 psychotropic medications.

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

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24 In no case shall the department consent to sterilization,
25 abortion, or termination of life support.

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. The
29 judge may also order such child to receive mental health or
30 developmental disabilities services from a psychiatrist,
31 psychologist, or other appropriate service provider. Except as

1 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. Before a foster child may be given psychotropic
9 medication, the child must first have had a comprehensive
10 physical examination by a competent, nonpsychiatric medical
11 specialist, and all possibilities of physical disease or
12 disorder, such as nutritional deficiencies, heavy-metal
13 toxicity, hypoglycemia, and illegal drug dependence, must have
14 been ruled out as causes of the child's behavior or symptoms
15 that are proposed to be addressed with psychotropic
16 medication. Such medications may be prescribed only with the
17 permission of the foster child's parent or, if the parent
18 cannot be located, authorization by the court.

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

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

28 39.601 Case plan requirements.--

29 (1) The department or agent of the department shall
30 develop a case plan for each child receiving services pursuant
31 to this chapter. A parent of a child may not be required nor

1 coerced through threat of loss of custody or parental rights
2 to admit in the case plan to abusing, neglecting, or
3 abandoning a child. Where dependency mediation services are
4 available and appropriate to the best interests of the child,
5 the court may refer the case to mediation for development of a
6 case plan. This section does not change the provisions of s.
7 39.807.

8 (g) The case plan may not require a parent to force
9 his or her child to take psychotropic medications.

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

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

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1 39.703 Initiation of termination of parental rights
2 proceedings; judicial review.--

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

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

8 39.806 Grounds for termination of parental rights.--

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

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

25 (e) A petition for termination of parental rights may
26 also be filed when a child has been adjudicated dependent, a
27 case plan has been filed with the court, and the child
28 continues to be abused, neglected, or abandoned by the
29 parents. In this case, the failure of the parents to
30 substantially comply for a period of 12 months after an
31 adjudication of the child as a dependent child or the child's

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

14 Section 5. Subsections (1), (2), (4), and (12) of
15 section 984.19, Florida Statutes, are amended to read:

16 984.19 Medical screening and treatment of child;
17 examination of parent, guardian, or person requesting
18 custody.--

19 (1) When any child is to be placed in shelter care,
20 the department is authorized to have a medical screening
21 performed on the child without authorization from the court
22 and without consent from a parent or guardian. Such medical
23 screening shall be performed by a competent, nonpsychiatric
24 medical specialist ~~licensed health care professional~~ and shall
25 be to examine the child for injury, illness, and communicable
26 diseases. The screening must also include checking for
27 nutritional deficiencies, heavy-metal toxicity, hypoglycemia,
28 and illegal drug dependence. In no case does this subsection
29 authorize the department to consent to medical treatment for
30 such children.

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1 (2) When the department has performed the medical
2 screening authorized by subsection (1) or when it is otherwise
3 determined by a licensed health care professional that a child
4 is in need of medical treatment, consent for medical treatment
5 shall be obtained in the following manner:

6 (a)1. Consent to medical treatment shall be obtained
7 from a parent or guardian of the child; or

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

9 (b) If a parent or guardian of the child is
10 unavailable and his or her whereabouts cannot be reasonably
11 ascertained and it is after normal working hours so that a
12 court order cannot reasonably be obtained, an authorized agent
13 of the department or its provider has the authority to consent
14 to necessary medical treatment for the child. The authority of
15 the department to consent to medical treatment in this
16 circumstance is limited to the time reasonably necessary to
17 obtain court authorization.

18 (c) If a parent or guardian of the child is available
19 but refuses to consent to the necessary treatment, a court
20 order is required, unless the situation meets the definition
21 of an emergency in s. 743.064 or the treatment needed is
22 related to suspected abuse or neglect of the child by the
23 parent or guardian. In such case, the department has the
24 authority to consent to necessary medical treatment. This
25 authority is limited to the time reasonably necessary to
26 obtain court authorization.

27 (d) The department may not administer or authorize
28 psychiatric or psychological tests or psychotropic medications
29 for a child in its custody without the written and informed
30 consent of the child's parent or legal guardian or, if the
31 parent or guardian cannot be located, authorization by the

1 court. The department shall ensure that children under its
2 care receive timely access to clinically appropriate
3 psychotropic medications that have no known contraindications
4 for use in children, shall provide information on all known
5 side effects of such medications, and shall provide options
6 for alternative treatments. The department shall adopt rules
7 to ensure that the children under its care receive appropriate
8 psychotropic medications or alternative treatments. The rules
9 shall provide, at a minimum, a uniform process for obtaining
10 informed consent, procedures for obtaining court
11 authorization, and information that must be provided in
12 writing when requesting authorization for the use of
13 psychotropic medications.

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

17 (4) A judge may order that a child alleged to be or
18 adjudicated a child in need of services be treated by a
19 licensed health care professional. The judge may also order
20 such child to receive mental health or retardation services
21 from a psychiatrist, psychologist, or other appropriate
22 service provider. If it is necessary to place the child in a
23 residential facility for such services, then the procedures
24 and criteria established in s. 394.467 or chapter 393 shall be
25 used, whichever is applicable. A child may be provided mental
26 health or retardation services in emergency situations,
27 pursuant to the procedures and criteria contained in s.
28 394.463(1) or chapter 393, whichever is applicable. Before a
29 child alleged to be or adjudicated a child in need of services
30 may be given psychotropic medication, the child must first
31 have had a comprehensive physical examination by a competent,

1 nonpsychiatric medical specialist and all possibilities of
2 physical disease or disorder, such as nutritional
3 deficiencies, heavy-metal toxicity, hypoglycemia, and illegal
4 drug dependence, must have been ruled out as causes of the
5 child's behavior or symptoms that are proposed to be addressed
6 with psychotropic medication. Such medications may be
7 prescribed only with the permission of the child's parent or,
8 if the parent cannot be located, authorization by the court.

9 (12) ~~Nothing in~~ This section does not alter ~~alters~~ the
10 authority of the department to consent to medical treatment
11 for a child who has been committed to the department pursuant
12 to s. 984.22(3) and (4) and of whom the department has become
13 the legal custodian. However, the department may not provide
14 consent for administering psychotropic medications to the
15 child.

16 Section 6. Subsections (5) through (8) of section
17 985.224, Florida Statutes, are renumbered as subsections (6)
18 through (9), respectively, subsection (2) is amended, and a
19 new subsection (5) is added to that section, to read:

20 985.224 Medical, psychiatric, psychological, substance
21 abuse, and educational examination and treatment.--

22 (2) Whenever a child has been found to have committed
23 a delinquent act, or before such finding with the consent of
24 any parent or legal custodian of the child, the court may
25 order the child to be treated by a physician. The court may
26 also order the child to receive mental health, substance
27 abuse, or retardation services from a psychiatrist,
28 psychologist, or other appropriate service provider. If it is
29 necessary to place the child in a residential facility for
30 such services, the procedures and criteria established in
31 chapter 393, chapter 394, or chapter 397, whichever is

1 applicable, shall be used. Before a child may be given
2 psychotropic medication, the child must first have had a
3 comprehensive physical examination by a competent,
4 nonpsychiatric medical specialist and all possibilities of
5 physical disease or disorder, such as nutritional
6 deficiencies, heavy-metal toxicity, hypoglycemia, and illegal
7 drug dependence, must have been ruled out as causes of the
8 child's behavior or symptoms that are proposed to be addressed
9 with psychotropic medication. Such medications may be
10 prescribed only with the permission of the child's parent or,
11 if the parent cannot be located, authorization by the court.

12 After a child has been adjudicated delinquent, if an
13 educational needs assessment by the district school board or
14 the Department of Children and Family Services has been
15 previously conducted, the court shall order the report of such
16 needs assessment included in the child's court record in lieu
17 of a new assessment. For purposes of this section, an
18 educational needs assessment includes, but is not limited to,
19 reports of intelligence and achievement tests, screening for
20 learning disabilities and other handicaps, and screening for
21 the need for alternative education.

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

1 shall provide options for alternative treatments. The
2 department shall adopt rules to ensure that the children under
3 its care receive appropriate psychotropic medications or
4 alternative treatments. The rules shall provide, at a minimum,
5 a uniform process for obtaining informed consent, procedures
6 for obtaining court authorization, and information that must
7 be provided in writing when requesting authorization for the
8 use of psychotropic medications.

9 Section 7. This act shall take effect July 1, 2005.

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