

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to mental health care services for minors
7 and incapacitated persons; amending s. 39.402, F.S.;
8 requiring a child's parent or legal guardian to provide
9 certain information to the department; amending s. 39.407,
10 F.S.; specifying requirements for the Department of
11 Children and Family Services with respect to providing
12 psychotropic medication to a child in the custody of the
13 department; requiring that the prescribing physician
14 attempt to obtain express and informed parental consent
15 for providing such medication; authorizing the department
16 to provide psychotropic medication without such consent
17 under certain circumstances; requiring the department to
18 provide medical information to a physician under certain
19 circumstances; requiring that the child be evaluated by a
20 physician; requiring that the department obtain court
21 authorization for providing such medication within a
22 specified period; providing requirements for a motion by
23 the department seeking court authorization to provide

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24 | psychotropic medication; specifying circumstances under
25 | which medication may be provided in advance of a court
26 | order; requiring that notice be provided to all parties if
27 | the department proposes to provide psychotropic medication
28 | to the child; requiring that a hearing be held if any
29 | party objects; providing requirements for the hearing;
30 | authorizing the court to order additional medical
31 | consultation; specifying the required burden of proof with
32 | respect to evidence presented at the hearing; requiring
33 | that the department provide a child's medical records to
34 | the court; providing requirements for court review;
35 | authorizing the court to order the department to obtain a
36 | medical opinion; requiring that the department adopt rules
37 | to ensure that children receive appropriate psychotropic
38 | medications; specifying the provisions to be included in
39 | the rules; conforming a cross reference; amending s.
40 | 394.459, F.S., relating to the rights of patients under
41 | the Florida Mental Health Act; revising provisions
42 | requiring that a patient be asked to give express and
43 | informed consent before admission or treatment; requiring
44 | that additional information be provided with respect to
45 | the risks and benefits of treatment, the dosage range of
46 | medication, potential side effects, and the monitoring of
47 | treatment; clarifying provisions governing the manner in
48 | which consent may be revoked; requiring that facilities
49 | develop a system for investigating and responding to
50 | certain complaints; amending s. 743.0645, F.S.; redefining
51 | the term "medical care and treatment" for purposes of

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52 | obtaining consent for the medical treatment of a minor;
53 | providing an exception with respect to the consent
54 | provided under s. 39.407, F.S.; directing the department
55 | to conduct an assessment; requiring a report; providing an
56 | effective date.

57 |

58 | Be It Enacted by the Legislature of the State of Florida:

59 |

60 | Section 1. Subsection (11) of section 39.402, Florida
61 | Statutes, is amended to read:

62 | 39.402 Placement in a shelter.--

63 | (11)(a) If a child is placed in a shelter pursuant to a
64 | court order following a shelter hearing, the court shall require
65 | in the shelter hearing order that the parents of the child, or
66 | the guardian of the child's estate, if possessed of assets which
67 | under law may be disbursed for the care, support, and
68 | maintenance of the child, to pay, to the department or
69 | institution having custody of the child, fees as established by
70 | the department. When the order affects the guardianship estate,
71 | a certified copy of the order shall be delivered to the judge
72 | having jurisdiction of the guardianship estate. The shelter
73 | order shall also require the parents to provide to the
74 | department and any other state agency or party designated by the
75 | court, within 28 days after entry of the shelter order, the
76 | financial information necessary to accurately calculate child
77 | support pursuant to s. 61.30.

78 | (b) The parent or legal guardian shall provide all known
79 | medical information to the department.

80 Section 2. Present subsections (3) through (14) of section
 81 39.407, Florida Statutes, are redesignated as subsections (4)
 82 through (15), respectively, a new subsection (3) is added to
 83 that section, and present subsection (4) of that section is
 84 amended, to read:

85 39.407 Medical, psychiatric, and psychological examination
 86 and treatment of child; physical or mental examination of parent
 87 or person requesting custody of child.--

88 (3)(a)1. Except as otherwise provided in subparagraph
 89 (b)1. or paragraph (e), before the department provides
 90 psychotropic medications to a child in its custody, the
 91 prescribing physician shall attempt to obtain express and
 92 informed consent, as defined in s. 394.455(9) and as described
 93 in s. 394.459(3)(a), from the child's parent or legal guardian.
 94 The department must take steps necessary to facilitate the
 95 inclusion of the parent in the child's consultation with the
 96 physician. However, if the parental rights of the parent have
 97 been terminated, the parent's location or identity is unknown or
 98 cannot reasonably be ascertained, or the parent declines to give
 99 express and informed consent, the department may, after
 100 consultation with the prescribing physician, seek court
 101 authorization to provide the psychotropic medications to the
 102 child. Unless parental rights have been terminated and if it is
 103 possible to do so, the department shall continue to involve the
 104 parent in the decisionmaking process regarding the provision of
 105 psychotropic medications. If, at any time, a parent whose
 106 parental rights have not been terminated provides express and
 107 informed consent to the provision of a psychotropic medication,

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108 the requirements of this section that the department seek court
109 authorization do not apply to that medication until such time as
110 the parent no longer consents.

111 2. Any time the department seeks a medical evaluation to
112 determine the need to initiate or continue a psychotropic
113 medication for a child, the department must provide to the
114 evaluating physician all pertinent medical information known to
115 the department concerning that child.

116 (b)1. If a child who is removed from the home under s.
117 39.401 is receiving prescribed psychotropic medication at the
118 time of removal and parental authorization to continue providing
119 the medication cannot be obtained, the department may take
120 possession of the remaining medication and may continue to
121 provide the medication as prescribed until the shelter hearing,
122 if it is determined that the medication is a current
123 prescription for that child and the medication is in its
124 original container.

125 2. If the department continues to provide the psychotropic
126 medication to a child when parental authorization cannot be
127 obtained, the department shall notify the parent or legal
128 guardian as soon as possible that the medication is being
129 provided to the child as provided in subparagraph 1. The child's
130 official departmental record must include the reason parental
131 authorization was not initially obtained and an explanation of
132 why the medication is necessary for the child's well-being.

133 3. If the department is advised by a physician licensed
134 under chapter 458 or chapter 459 that the child should continue
135 the psychotropic medication and parental authorization has not

136 been obtained, the department shall request court authorization
 137 at the shelter hearing to continue to provide the psychotropic
 138 medication and shall provide to the court any information in its
 139 possession in support of the request. Any authorization granted
 140 at the shelter hearing may extend only until the arraignment
 141 hearing on the petition for adjudication of dependency or 28
 142 days following the date of removal, whichever occurs sooner.

143 4. Before filing the dependency petition, the department
 144 shall ensure that the child is evaluated by a physician licensed
 145 under chapter 458 or chapter 459 to determine whether it is
 146 appropriate to continue the psychotropic medication. If, as a
 147 result of the evaluation, the department seeks court
 148 authorization to continue the psychotropic medication, a motion
 149 for such continued authorization shall be filed at the same time
 150 as the dependency petition, within 21 days after the shelter
 151 hearing.

152 (c) Except as provided in paragraphs (b) and (e), the
 153 department must file a motion seeking the court's authorization
 154 to initially provide or continue to provide psychotropic
 155 medication to a child in its legal custody. The motion must be
 156 supported by a written report prepared by the department which
 157 describes the efforts made to enable the prescribing physician
 158 to obtain express and informed consent for providing the
 159 medication to the child and other treatments considered or
 160 recommended for the child. In addition, the motion must be
 161 supported by the prescribing physician's signed medical report
 162 providing:

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163 1. The name of the child, the name and range of the dosage
164 of the psychotropic medication, and that there is a need to
165 prescribe psychotropic medication to the child based upon a
166 diagnosed condition for which such medication is being
167 prescribed.

168 2. A statement indicating that the physician has reviewed
169 all medical information concerning the child which has been
170 provided.

171 3. A statement indicating that the psychotropic
172 medication, at its prescribed dosage, is appropriate for
173 treating the child's diagnosed medical condition, as well as the
174 behaviors and symptoms the medication, at its prescribed dosage,
175 is expected to address.

176 4. An explanation of the nature and purpose of the
177 treatment; the recognized side effects, risks, and
178 contraindications of the medication; drug-interaction
179 precautions; the possible effects of stopping the medication;
180 and how the treatment will be monitored, followed by a statement
181 indicating that this explanation was provided to the child if
182 age appropriate and to the child's caregiver.

183 5. Documentation addressing whether the psychotropic
184 medication will replace or supplement any other currently
185 prescribed medications or treatments; the length of time the
186 child is expected to be taking the medication; and any
187 additional medical, mental health, behavioral, counseling, or
188 other services that the prescribing physician recommends.

189 (d)1. The department must notify all parties of the
190 proposed action taken under paragraph (c) in writing or by

191 whatever other method best ensures that all parties receive
 192 notification of the proposed action within 48 hours after the
 193 motion is filed. If any party objects to the department's
 194 motion, that party shall file the objection within 2 working
 195 days after being notified of the department's motion. If any
 196 party files an objection to the authorization of the proposed
 197 psychotropic medication, the court shall hold a hearing as soon
 198 as possible before authorizing the department to initially
 199 provide or to continue providing psychotropic medication to a
 200 child in the legal custody of the department. At such hearing
 201 and notwithstanding s. 90.803, the medical report described in
 202 paragraph (c) is admissible in evidence. The prescribing
 203 physician need not attend the hearing or testify unless the
 204 court specifically orders such attendance or testimony or a
 205 party subpoenas the physician to attend the hearing or provide
 206 testimony. If, after considering any testimony received, the
 207 court finds that the department's motion and the physician's
 208 medical report meet the requirements of this subsection and that
 209 it is in the child's best interests, the court may order that
 210 the department provide or continue to provide the psychotropic
 211 medication to the child without additional testimony or
 212 evidence. At any hearing held under this paragraph, the court
 213 shall further inquire of the department as to whether additional
 214 medical, mental health, behavioral, counseling, or other
 215 services are being provided to the child by the department which
 216 the prescribing physician considers to be necessary or
 217 beneficial in treating the child's medical condition and which
 218 the physician recommends or expects to provide to the child in

219 concert with the medication. The court may order additional
 220 medical consultation, including consultation with the MedConsult
 221 line at the University of Florida, if available, or require the
 222 department to obtain a second opinion within a reasonable
 223 timeframe as established by the court, not to exceed 21 calendar
 224 days, after such order based upon consideration of the best
 225 interests of the child. The department must make a referral for
 226 an appointment for a second opinion with a physician within 1
 227 working day based on consideration of the best interests of the
 228 child. The court may not order the discontinuation of prescribed
 229 psychotropic medication if such order is contrary to the
 230 decision of the prescribing physician unless the court first
 231 obtains an opinion from a licensed psychiatrist, if available,
 232 or, if not available, a physician licensed under chapter 458 or
 233 chapter 459, stating that more likely than not, discontinuing
 234 the medication would not cause significant harm to the child.
 235 If, however, the prescribing psychiatrist specializes in mental
 236 health care for children and adolescents, the court may not
 237 order the discontinuation of prescribed psychotropic medication
 238 unless the required opinion is also from a psychiatrist who
 239 specializes in mental health care for children and adolescents.
 240 The court may also order the discontinuation of prescribed
 241 psychotropic medication if a child's treating physician,
 242 licensed under chapter 458 or chapter 459, states that
 243 continuing the prescribed psychotropic medication would cause
 244 significant harm to the child due to a diagnosed nonpsychiatric
 245 medical condition.

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

248 (e)1. If the child's prescribing physician certifies in
 249 the signed medical report required in paragraph (c) that delay
 250 in providing a prescribed psychotropic medication would more
 251 likely than not cause significant harm to the child, the
 252 medication may be provided in advance of the issuance of a court
 253 order. In such event, the medical report must provide the
 254 specific reasons why the child may experience significant harm
 255 and the nature and the extent of the potential harm. The
 256 department must submit a motion seeking continuation of the
 257 medication and the physician's medical report to the court, the
 258 child's guardian ad litem, and all other parties within 3
 259 working days after the department commences providing the
 260 medication to the child. The department shall seek the order at
 261 the next regularly scheduled court hearing required under this
 262 chapter or within 30 days after the date of the prescription,
 263 whichever occurs sooner. If any party objects to the
 264 department's motion, the court shall hold a hearing within 7
 265 days after the objection.

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

271 (f)1. The department shall fully inform the court of the
 272 child's medical and behavioral status as part of the social
 273 services report prepared for each judicial review hearing held

274 for a child for whom psychotropic medication has been prescribed
 275 or provided under this subsection. As a part of the information
 276 provided to the court, the department shall furnish copies of
 277 all pertinent medical records concerning the child which have
 278 been generated since the previous hearing. On its own motion or
 279 on good cause shown by any party, including any guardian ad
 280 litem, attorney, or attorney ad litem who has been appointed to
 281 represent the child or the child's interests, the court may
 282 review the status more frequently than required in this
 283 subsection.

284 2. The court may, in the best interests of the child,
 285 order the department to obtain a medical opinion addressing
 286 whether the continued use of the medication under the
 287 circumstances is safe and medically appropriate.

288 (g) The department shall adopt rules to ensure that
 289 children receive timely access to clinically appropriate
 290 psychotropic medications. These rules must include, but need not
 291 be limited to, the process for determining which adjunctive
 292 services are needed, the uniform process for facilitating the
 293 prescribing physician's ability to obtain the express and
 294 informed consent of a child's parent or guardian, the procedures
 295 for obtaining court authorization for the provision of a
 296 psychotropic medication, the frequency of medical monitoring and
 297 reporting on the status of the child to the court, how the
 298 child's parents will be involved in the treatment planning
 299 process if their parental rights have not been terminated, and
 300 how caretakers are to be provided information contained in the
 301 physician's signed medical report. The rules must also include

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302 uniform forms to be used in requesting court authorization for
 303 the use of a psychotropic medication and provide for the
 304 integration of each child's treatment plan and case plan. The
 305 department must begin the formal rulemaking process within 90
 306 days after the effective date of this act.

307 (5)(4) A judge may order a child in an out-of-home
 308 placement to be treated by a licensed health care professional
 309 based on evidence that the child should receive treatment. The
 310 judge may also order such child to receive mental health or
 311 developmental disabilities services from a psychiatrist,
 312 psychologist, or other appropriate service provider. Except as
 313 provided in subsection (6)(5), if it is necessary to place the
 314 child in a residential facility for such services, the
 315 procedures and criteria established in s. 394.467 or chapter 393
 316 shall be used, whichever is applicable. A child may be provided
 317 developmental disabilities or mental health services in
 318 emergency situations, pursuant to the procedures and criteria
 319 contained in s. 394.463(1) or chapter 393, whichever is
 320 applicable.

321 Section 3. Paragraph (a) of subsection (3) and paragraph
 322 (b) of subsection (4) of section 394.459, Florida Statutes, are
 323 amended to read:

324 394.459 Rights of patients.--

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

326 (a)1. Each patient entering treatment shall be asked to
 327 give express and informed consent for admission or ~~and~~
 328 treatment. If the patient has been adjudicated incapacitated or
 329 found to be incompetent to consent to treatment, express and

330 informed consent to treatment shall be sought instead from the
 331 patient's guardian or guardian advocate. If the patient is a
 332 minor, express and informed consent for admission or ~~and~~
 333 treatment shall also be requested from the patient's guardian.
 334 Express and informed consent for admission or ~~and~~ treatment of a
 335 patient under 18 years of age shall be required from the
 336 patient's guardian, unless the minor is seeking outpatient
 337 crisis intervention services under s. 394.4784. Express and
 338 informed consent for admission or ~~and~~ treatment given by a
 339 patient who is under 18 years of age shall not be a condition of
 340 admission when the patient's guardian gives express and informed
 341 consent for the patient's admission pursuant to s. 394.463 or s.
 342 394.467.

343 2. Before ~~Prior to~~ giving express and informed consent,
 344 the following information shall be provided and explained in
 345 plain language ~~disclosed~~ to the patient, or to the patient's
 346 guardian if the patient is 18 years of age or older and has been
 347 adjudicated incapacitated, or to the patient's guardian advocate
 348 if the patient has been found to be incompetent to consent to
 349 treatment, or to both the patient and the guardian if the
 350 patient is a minor: the reason for admission or treatment; ~~the~~
 351 proposed treatment; ~~the~~ purpose of the treatment to be
 352 provided; ~~the~~ common risks, benefits, and side effects thereof;
 353 the specific dosage range for the medication, when applicable; ~~the~~
 354 alternative treatment modalities; ~~the~~ approximate length of
 355 care; ~~the~~ potential effects of stopping treatment; ~~how~~ treatment
 356 will be monitored; ~~and~~ that any consent given for treatment ~~by~~
 357 ~~a patient~~ may be revoked orally or in writing before ~~prior to~~ or

358 | during the treatment period by the patient or by a person who is
 359 | legally authorized to make health care decisions on behalf of
 360 | the patient, ~~the guardian advocate, or the guardian.~~

361 | (4) QUALITY OF TREATMENT.--

362 | (b) ~~Receiving and treatment~~ Facilities shall develop and
 363 | maintain, in a form accessible to and readily understandable by
 364 | patients and consistent with rules adopted by the department,
 365 | the following:

366 | 1. Criteria, procedures, and required staff training for
 367 | any use of close or elevated levels of supervision, of
 368 | restraint, seclusion, or isolation, or of emergency treatment
 369 | orders, and for the use of bodily control and physical
 370 | management techniques.

371 | 2. Procedures for documenting, monitoring, and requiring
 372 | clinical review of all uses of the procedures described in
 373 | subparagraph 1. and for documenting and requiring review of any
 374 | incidents resulting in injury to patients.

375 | 3. A system for investigating, tracking, managing, and
 376 | responding to the review of complaints by persons receiving
 377 | services or individuals acting on their behalf ~~patients or their~~
 378 | ~~families or guardians.~~

379 | Section 4. Paragraph (b) of subsection (1) of section
 380 | 743.0645, Florida Statutes, is amended to read:

381 | 743.0645 Other persons who may consent to medical care or
 382 | treatment of a minor.--

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

384 | (b) "Medical care and treatment" includes ordinary and
 385 | necessary medical and dental examination and treatment,

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386 including blood testing, preventive care including ordinary
387 immunizations, tuberculin testing, and well-child care, but does
388 not include surgery, general anesthesia, provision of
389 psychotropic medications, or other extraordinary procedures for
390 which a separate court order, power of attorney, or informed
391 consent as provided by law is required, except as provided in s.
392 39.407(3).

393 Section 5. The Department of Children and Family Services
394 shall assess and document the positive and negative fiscal
395 impact of the provisions of this act on the department, taking
396 into consideration costs incurred prior to July 1, 2005. The
397 department shall submit a report with its findings to the
398 President of the Senate and the Speaker of the House of
399 Representatives by February 1, 2006.

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