

1 A bill to be entitled
2 An act relating to medical screening of children; amending
3 s. 39.407, F.S.; revising provisions relating to medical
4 screenings performed on children who are removed from the
5 home and maintained in an out-of-home placement;
6 specifying certain conditions that the screening must
7 cover; prohibiting the Department of Children and Family
8 Services from administering or authorizing psychiatric or
9 psychological tests or psychotropic medications for a
10 child in departmental custody except with the written and
11 informed consent of the child's parent or legal guardian
12 or by court order; requiring the department to ensure that
13 children who are in departmental custody receive
14 appropriate psychotropic medications but have options for
15 alternative treatments; providing for rulemaking;
16 providing that the department may not provide consent for
17 administering psychotropic medications to a child for whom
18 the department is the legal custodian; amending s. 39.601,
19 F.S., relating to case plan requirements; providing that
20 case plans may not require parents to give their children
21 psychotropic medications; prohibiting the department from
22 threatening to terminate parental rights based solely on
23 the parents' refusal to give their child psychotropic
24 medications; amending s. 39.703, F.S.; prohibiting the
25 department from initiating proceedings to terminate
26 parental rights based solely on the parents' refusal to
27 give their child psychotropic medications; amending s.
28 39.806, F.S.; providing that the refusal of parents to

29 | give their child psychotropic medications may not be
30 | considered grounds for termination of parental rights;
31 | providing that the parents' refusal to give their child
32 | psychotropic medications may not be considered abuse or
33 | neglect; amending s. 984.19, F.S.; revising provisions
34 | relating to medical screenings performed on children who
35 | are placed in shelter care; specifying certain conditions
36 | that the screening must cover; prohibiting the Department
37 | of Juvenile Justice from administering or authorizing
38 | psychiatric or psychological tests or psychotropic
39 | medications for a child in departmental custody except
40 | with the written and informed consent of the child's
41 | parent or legal guardian or by court order; requiring the
42 | department to ensure that children who are in departmental
43 | custody receive appropriate psychotropic medications but
44 | have options for alternative treatments; providing for
45 | rulemaking; providing that the department may not provide
46 | consent for administering psychotropic medications to a
47 | child for whom the department is the legal custodian;
48 | amending s. 985.224, F.S.; revising provisions relating to
49 | medical screenings performed on children who are taken
50 | into detention; specifying certain conditions that the
51 | screening must cover; prohibiting the Department of
52 | Juvenile Justice from administering or authorizing
53 | psychiatric or psychological tests or psychotropic
54 | medications for a child in departmental custody except
55 | with the written and informed consent of the child's
56 | parent or legal guardian or by court order; requiring the

57 Department of Juvenile Justice to ensure that children who
 58 are in departmental custody receive appropriate
 59 psychotropic medications but have options for alternative
 60 treatments; providing for rulemaking; providing an
 61 effective date.

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

64

65 Section 1. Subsections (1), (2), (4), and (13) of section
 66 39.407, Florida Statutes, are amended to read:

67 39.407 Medical, psychiatric, and psychological examination
 68 and treatment of child; physical or mental examination of parent
 69 or person requesting custody of child.--

70 (1) When any child is removed from the home and maintained
 71 in an out-of-home placement, the department is authorized to
 72 have a medical screening performed on the child without
 73 authorization from the court and without consent from a parent
 74 or legal custodian. Such medical screening shall be performed by
 75 a competent, nonpsychiatric medical specialist ~~licensed health~~
 76 ~~care professional~~ and shall be to examine the child for injury,
 77 illness, and communicable diseases and to determine the need for
 78 immunization. The screening must also include checking for
 79 nutritional deficiencies, heavy-metal toxicity, hypoglycemia,
 80 and illegal drug dependence. The department shall by rule
 81 establish the invasiveness of the medical procedures authorized
 82 to be performed under this subsection. In no case does this
 83 subsection authorize the department to consent to medical
 84 treatment for such children.

85 (2) When the department has performed the medical
 86 screening authorized by subsection (1), or when it is otherwise
 87 determined by a licensed health care professional that a child
 88 who is in an out-of-home placement, but who has not been
 89 committed to the department, is in need of medical treatment,
 90 including the need for immunization, consent for medical
 91 treatment shall be obtained in the following manner:

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

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

95 (b) If a parent or legal custodian of the child is
 96 unavailable and his or her whereabouts cannot be reasonably
 97 ascertained, and it is after normal working hours so that a
 98 court order cannot reasonably be obtained, an authorized agent
 99 of the department shall have the authority to consent to
 100 necessary medical treatment, including immunization, for the
 101 child. The authority of the department to consent to medical
 102 treatment in this circumstance shall be limited to the time
 103 reasonably necessary to obtain court authorization.

104 (c) The department may not administer or authorize
 105 psychiatric or psychological tests or psychotropic medications
 106 for a child in its custody without the written and informed
 107 consent of the child's parent or legal guardian or, if the
 108 parent or guardian cannot be located, authorization by the
 109 court. The department shall ensure that children under its care
 110 receive timely access to clinically appropriate psychotropic
 111 medications that have no known contraindications for use in
 112 children, shall provide information on all known side effects of

113 such medications, and shall provide options for alternative
 114 treatments. The department shall adopt rules to ensure that
 115 children under its care receive appropriate psychotropic
 116 medications or alternative treatments. The rules shall provide,
 117 at a minimum, a uniform process for obtaining informed consent,
 118 procedures for obtaining court authorization, and information
 119 that must be provided in writing when requesting authorization
 120 for the use of psychotropic medications.

121 (d)(e) If a parent or legal custodian of the child is
 122 available but refuses to consent to the necessary treatment,
 123 including immunization, a court order shall be required unless
 124 the situation meets the definition of an emergency in s. 743.064
 125 or the treatment needed is related to suspected abuse,
 126 abandonment, or neglect of the child by a parent, caregiver, or
 127 legal custodian. In such case, the department shall have the
 128 authority to consent to necessary medical treatment. This
 129 authority is limited to the time reasonably necessary to obtain
 130 court authorization.

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

134 (4) A judge may order a child in an out-of-home placement
 135 to be treated by a licensed health care professional based on
 136 evidence that the child should receive treatment. The judge may
 137 also order such child to receive mental health or developmental
 138 disabilities services from a psychiatrist, psychologist, or
 139 other appropriate service provider. Except as provided in
 140 subsection (5), if it is necessary to place the child in a

141 residential facility for such services, the procedures and
 142 criteria established in s. 394.467 or chapter 393 shall be used,
 143 whichever is applicable. A child may be provided developmental
 144 disabilities or mental health services in emergency situations,
 145 pursuant to the procedures and criteria contained in s.
 146 394.463(1) or chapter 393, whichever is applicable. Before a
 147 foster child may be given psychotropic medication, the child
 148 must first have had a comprehensive physical examination by a
 149 competent, nonpsychiatric medical specialist, and all
 150 possibilities of physical disease or disorder, such as
 151 nutritional deficiencies, heavy-metal toxicity, hypoglycemia,
 152 and illegal drug dependence, must have been ruled out as causes
 153 of the child's behavior or symptoms that are proposed to be
 154 addressed with psychotropic medication. Such medications may be
 155 prescribed only with the permission of the foster child's parent
 156 or, if the parent cannot be located, authorization by the court.

157 (13) ~~Nothing in~~ This section does not alter ~~alters~~ the
 158 authority of the department to consent to medical treatment for
 159 a dependent child when the child has been committed to the
 160 department and the department has become the legal custodian of
 161 the child. However, the department may not provide consent for
 162 administering psychotropic medications to the child.

163 Section 2. Paragraph (g) is added to subsection (1) of
 164 section 39.601, Florida Statutes, and subsection (4) of said
 165 section is amended, to read:

166 39.601 Case plan requirements.--

167 (1) The department or agent of the department shall
 168 develop a case plan for each child receiving services pursuant

169 to this chapter. A parent of a child may not be required nor
170 coerced through threat of loss of custody or parental rights to
171 admit in the case plan to abusing, neglecting, or abandoning a
172 child. Where dependency mediation services are available and
173 appropriate to the best interests of the child, the court may
174 refer the case to mediation for development of a case plan. This
175 section does not change the provisions of s. 39.807.

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

178 (4) If ~~In the event that~~ the parents are unwilling or
179 unable to participate in the development of a case plan, the
180 department shall document that unwillingness or inability to
181 participate. Such documentation must be provided in writing to
182 the parent when available for the court record, and then the
183 department shall prepare a case plan conforming as nearly as
184 possible with the requirements set forth in this section. The
185 unwillingness or inability of the parents to participate in the
186 development of a case plan shall not in itself bar the filing of
187 a petition for dependency or for termination of parental rights.
188 The parents, if available, must be provided a copy of the case
189 plan and be advised that they may, at any time prior to the
190 filing of a petition for termination of parental rights, enter
191 into a case plan and that they may request judicial review of
192 any provision of the case plan with which they disagree at any
193 court review hearing set for the child. The department may not
194 threaten to terminate parental rights based solely on a refusal
195 by the parents to medicate the child with psychotropic
196 medications.

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

199 39.703 Initiation of termination of parental rights
 200 proceedings; judicial review.--

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

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

206 39.806 Grounds for termination of parental rights.--

207 (1) The department, the guardian ad litem, or any person
 208 who has knowledge of the facts alleged or who is informed of
 209 those facts and believes that they are true may petition for the
 210 termination of parental rights under any of the following
 211 circumstances:

212 (c) When the parent or parents engaged in conduct toward
 213 the child or toward other children that demonstrates that the
 214 continuing involvement of the parent or parents in the parent-
 215 child relationship threatens the life, safety, well-being, or
 216 physical, mental, or emotional health of the child irrespective
 217 of the provision of services. Provision of services may be
 218 evidenced by proof that services were provided through a
 219 previous plan or offered as a case plan from a child welfare
 220 agency. The refusal of the parents to medicate the child with
 221 psychotropic medications may not be considered grounds for
 222 termination of parental rights.

223 (e) A petition for termination of parental rights may also
 224 be filed when a child has been adjudicated dependent, a case

225 | plan has been filed with the court, and the child continues to
 226 | be abused, neglected, or abandoned by the parents. In this case,
 227 | the failure of the parents to substantially comply for a period
 228 | of 12 months after an adjudication of the child as a dependent
 229 | child or the child's placement into shelter care, whichever came
 230 | first, constitutes evidence of continuing abuse, neglect, or
 231 | abandonment unless the failure to substantially comply with the
 232 | case plan was due either to the lack of financial resources of
 233 | the parents or to the failure of the department to make
 234 | reasonable efforts to reunify the parent and child. Such 12-
 235 | month period may begin to run only after the child's placement
 236 | into shelter care or the entry of a disposition order placing
 237 | the custody of the child with the department or a person other
 238 | than the parent and the approval by the court of a case plan
 239 | with a goal of reunification with the parent, whichever came
 240 | first. The refusal of the parents to medicate the child with
 241 | psychotropic medications may not be considered abuse or neglect.

242 | Section 5. Subsections (1), (2), (4), and (12) of section
 243 | 984.19, Florida Statutes, are amended to read:

244 | 984.19 Medical screening and treatment of child;
 245 | examination of parent, guardian, or person requesting custody.--

246 | (1) When any child is to be placed in shelter care, the
 247 | department is authorized to have a medical screening performed
 248 | on the child without authorization from the court and without
 249 | consent from a parent or guardian. Such medical screening shall
 250 | be performed by a competent, nonpsychiatric medical specialist
 251 | ~~licensed health care professional~~ and shall be to examine the
 252 | child for injury, illness, and communicable diseases. The

253 screening must also include checking for nutritional
 254 deficiencies, heavy-metal toxicity, hypoglycemia, and illegal
 255 drug dependence. In no case does this subsection authorize the
 256 department to consent to medical treatment for such children.

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

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

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

265 (b) If a parent or guardian of the child is unavailable
 266 and his or her whereabouts cannot be reasonably ascertained and
 267 it is after normal working hours so that a court order cannot
 268 reasonably be obtained, an authorized agent of the department or
 269 its provider has the authority to consent to necessary medical
 270 treatment for the child. The authority of the department to
 271 consent to medical treatment in this circumstance is limited to
 272 the time reasonably necessary to obtain court authorization.

273 (c) If a parent or guardian of the child is available but
 274 refuses to consent to the necessary treatment, a court order is
 275 required, unless the situation meets the definition of an
 276 emergency in s. 743.064 or the treatment needed is related to
 277 suspected abuse or neglect of the child by the parent or
 278 guardian. In such case, the department has the authority to
 279 consent to necessary medical treatment. This authority is

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280 limited to the time reasonably necessary to obtain court
281 authorization.

282 (d) The department may not administer or authorize
283 psychiatric or psychological tests or psychotropic medications
284 for a child in its custody without the written and informed
285 consent of the child's parent or legal guardian or, if the
286 parent or guardian cannot be located, authorization by the
287 court. The department shall ensure that children under its care
288 receive timely access to clinically appropriate psychotropic
289 medications that have no known contraindications for use in
290 children, shall provide information on all known side effects of
291 such medications, and shall provide options for alternative
292 treatments. The department shall adopt rules to ensure that the
293 children under its care receive appropriate psychotropic
294 medications or alternative treatments. The rules shall provide,
295 at a minimum, a uniform process for obtaining informed consent,
296 procedures for obtaining court authorization, and information
297 that must be provided in writing when requesting authorization
298 for the use of psychotropic medications.

299
300 In no case may the department consent to sterilization,
301 abortion, or termination of life support.

302 (4) A judge may order that a child alleged to be or
303 adjudicated a child in need of services be treated by a licensed
304 health care professional. The judge may also order such child to
305 receive mental health or retardation services from a
306 psychiatrist, psychologist, or other appropriate service
307 provider. If it is necessary to place the child in a residential

308 facility for such services, then the procedures and criteria
 309 established in s. 394.467 or chapter 393 shall be used,
 310 whichever is applicable. A child may be provided mental health
 311 or retardation services in emergency situations, pursuant to the
 312 procedures and criteria contained in s. 394.463(1) or chapter
 313 393, whichever is applicable. Before a child alleged to be or
 314 adjudicated a child in need of services may be given
 315 psychotropic medication, the child must first have had a
 316 comprehensive physical examination by a competent,
 317 nonpsychiatric medical specialist and all possibilities of
 318 physical disease or disorder, such as nutritional deficiencies,
 319 heavy-metal toxicity, hypoglycemia, and illegal drug dependence,
 320 must have been ruled out as causes of the child's behavior or
 321 symptoms that are proposed to be addressed with psychotropic
 322 medication. Such medications may be prescribed only with the
 323 permission of the child's parent or, if the parent cannot be
 324 located, authorization by the court.

325 (12) ~~Nothing in~~ This section does not alter ~~alters~~ the
 326 authority of the department to consent to medical treatment for
 327 a child who has been committed to the department pursuant to s.
 328 984.22(3) and (4) and of whom the department has become the
 329 legal custodian. However, the department may not provide consent
 330 for administering psychotropic medications to the child.

331 Section 6. Subsections (5) through (8) of section 985.224,
 332 Florida Statutes, are renumbered as subsections (6) through (9),
 333 respectively, subsection (2) is amended, and a new subsection
 334 (5) is added to said section, to read:

335 985.224 Medical, psychiatric, psychological, substance
336 abuse, and educational examination and treatment.--

337 (2) Whenever a child has been found to have committed a
338 delinquent act, or before such finding with the consent of any
339 parent or legal custodian of the child, the court may order the
340 child to be treated by a physician. The court may also order the
341 child to receive mental health, substance abuse, or retardation
342 services from a psychiatrist, psychologist, or other appropriate
343 service provider. If it is necessary to place the child in a
344 residential facility for such services, the procedures and
345 criteria established in chapter 393, chapter 394, or chapter
346 397, whichever is applicable, shall be used. Before a child may
347 be given psychotropic medication, the child must first have had
348 a comprehensive physical examination by a competent,
349 nonpsychiatric medical specialist and all possibilities of
350 physical disease or disorder, such as nutritional deficiencies,
351 heavy-metal toxicity, hypoglycemia, and illegal drug dependence,
352 must have been ruled out as causes of the child's behavior or
353 symptoms that are proposed to be addressed with psychotropic
354 medication. Such medications may be prescribed only with the
355 permission of the child's parent or, if the parent cannot be
356 located, authorization by the court. After a child has been
357 adjudicated delinquent, if an educational needs assessment by
358 the district school board or the Department of Children and
359 Family Services has been previously conducted, the court shall
360 order the report of such needs assessment included in the
361 child's court record in lieu of a new assessment. For purposes
362 of this section, an educational needs assessment includes, but

363 is not limited to, reports of intelligence and achievement
364 tests, screening for learning disabilities and other handicaps,
365 and screening for the need for alternative education.

366 (5) The Department of Juvenile Justice may not administer
367 or authorize psychiatric or psychological tests or psychotropic
368 medications for a child in its custody without the written and
369 informed consent of the child's parent or legal guardian or, if
370 the parent or guardian cannot be located, authorization by the
371 court. The department shall ensure that children under its care
372 receive timely access to clinically appropriate psychotropic
373 medications that have no known contraindications for use in
374 children, shall provide information on all known side effects of
375 such medications, and shall provide options for alternative
376 treatments. The department shall adopt rules to ensure that the
377 children under its care receive appropriate psychotropic
378 medications or alternative treatments. The rules shall provide,
379 at a minimum, a uniform process for obtaining informed consent,
380 procedures for obtaining court authorization, and information
381 that must be provided in writing when requesting authorization
382 for the use of psychotropic medications.

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