

By Senator Campbell

32-693F-05

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

1 department to adopt rules governing the
2 procedures for determining the services needed,
3 obtaining parental consent, and obtaining court
4 authorization for the use of psychotropic
5 medication; conforming a cross-reference;
6 amending s. 394.459, F.S., relating to the
7 rights of patients under the Florida Mental
8 Health Act; revising provisions requiring that
9 a patient be asked to give express and informed
10 consent before admission or treatment;
11 requiring that additional information be
12 provided with respect to the risks and benefits
13 of treatment, the dosage range of medication,
14 potential side effects, and the monitoring of
15 treatment; clarifying provisions governing the
16 manner in which consent may be revoked;
17 amending s. 743.0645, F.S.; redefining the term
18 "medical care and treatment" for purposes of
19 obtaining consent for the medical treatment of
20 a minor; providing an exception with respect to
21 the consent provided under s. 39.407, F.S.;
22 providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:
25

26 Section 1. Present subsections (3) through (14) of
27 section 39.407, Florida Statutes, are redesignated as
28 subsections (4) through (15), respectively, a new subsection
29 (3) is added to that section, and present subsection (4) of
30 that section is amended, to read:
31

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) 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. However, if the parental rights of the parent have
11 been terminated, the parent's location or identity is unknown
12 or cannot reasonably be ascertained, or the parent declines to
13 give express and informed consent, the department may, after
14 consultation with the prescribing physician, seek court
15 authorization to provide the psychotropic medications to the
16 child. Unless parental rights have been terminated and if it
17 is possible to do so, the department shall continue to involve
18 the parent in the decisionmaking process regarding the
19 provision of psychotropic medications. If, at any time, a
20 parent whose parental rights have not been terminated provides
21 express and informed consent to the provision of a
22 psychotropic medication, the requirements of this section that
23 the department seek court authorization do not apply to that
24 medication until such time as the parent no longer consents.

25 (b)1. If a child who is removed from the home under s.
26 39.401 is receiving prescribed psychotropic medication at the
27 time of removal and parental authorization to continue
28 providing the medication cannot be obtained, the department
29 may take possession of the remaining medication and may
30 authorize the continued provision of the medication as
31 prescribed until the shelter hearing, if it is determined that

1 the medication is a current prescription for that child and
2 the medication is in its original container.

3 2. If the department authorizes the continued
4 provision of the psychotropic medication to a child when
5 parental authorization cannot be obtained, the department
6 shall notify the parent or legal guardian as soon as possible
7 that the medication is being provided to the child as provided
8 in subparagraph 1. The child's official departmental record
9 must include the reason parental authorization was not
10 initially obtained and an explanation of why the medication is
11 necessary for the child's well-being.

12 3. If the department is advised by a physician
13 licensed under chapter 458 or chapter 459 that the child
14 should continue the psychotropic medication and express and
15 informed parental consent has not been obtained, the
16 department shall request court authorization at the shelter
17 hearing to continue to provide the psychotropic medication and
18 shall provide to the court any information in its possession
19 in support of the request. Any authorization granted at the
20 shelter hearing may extend only until the arraignment hearing
21 on the dependency motion or 28 days following the date of
22 removal, whichever occurs sooner.

23 4. Before filing the dependency petition, the
24 department shall ensure that the child is evaluated by a
25 physician licensed under chapter 458 or chapter 459 to
26 determine whether it is appropriate to continue the
27 psychotropic medication. If, as a result of the evaluation,
28 the department seeks court authorization to continue the
29 psychotropic medication, a motion for such continued
30 authorization shall be filed at the same time as the
31 dependency petition, within 21 days after the shelter hearing.

1 (c) Except as provided in paragraph (b), the
2 department must file a motion seeking the court's
3 authorization to initially provide or continue to provide
4 psychotropic medication to a child in its legal custody. The
5 motion must be supported by a written report prepared by the
6 department which describes the efforts made to enable the
7 prescribing physician to obtain express and informed consent
8 for providing the medication to the child and other treatments
9 considered or recommended for the child. In addition, the
10 motion must be supported by the prescribing physician's signed
11 medical report providing:

12 1. The name of the child, the name and range of the
13 dosage of the psychotropic medication, and that there is a
14 need to prescribe psychotropic medication to the child based
15 upon a diagnosed condition for which such medication is being
16 prescribed.

17 2. A statement indicating that the psychotropic
18 medication, at its prescribed dosage, is appropriate for
19 treating the child's diagnosed medical condition, as well as
20 the behaviors and symptoms the medication, at its prescribed
21 dosage, is expected to address.

22 3. An explanation of the nature and purpose of the
23 treatment; the recognized side effects, risks, and
24 contraindications of the medication; drug-interaction
25 precautions; the possible effects of stopping the medication;
26 and how the treatment will be monitored, followed by a
27 statement indicating that this explanation was provided to the
28 child if age appropriate and to the child's caregiver.

29 4. Documentation addressing whether the psychotropic
30 medication will replace or supplement any other currently
31 prescribed medications or treatments; the length of time the

1 child is expected to be taking the medication; and any
2 additional medical, mental health, behavioral, counseling, or
3 other services that the prescribing physician recommends.

4 (d)1. If any party objects to the department's motion
5 under paragraph (c), the court shall hold a hearing before
6 authorizing the department to initially provide or to continue
7 providing psychotropic medication to a child in the legal
8 custody of the department. At such hearing and notwithstanding
9 s. 90.803, the medical report described in paragraph (c) is
10 admissible in evidence. The prescribing physician need not
11 attend the hearing or testify unless the court specifically
12 orders such attendance or testimony. If the court finds that
13 the department's motion and the physician's medical report
14 meet the requirements of this subsection and that it is in the
15 child's best interests, the court may order that the
16 department provide or continue to provide the psychotropic
17 medication to the child without additional testimony or
18 evidence. The court shall further inquire of the department as
19 to whether additional medical, mental health, behavioral,
20 counseling, or other services are being provided to the child
21 by the department which the prescribing physician considers to
22 be necessary or beneficial in treating the child's medical
23 condition and that the physician recommends or expects to
24 provide to the child in concert with the medication. The court
25 may order additional medical consultation, including obtaining
26 a second opinion within 5 working days after such order, based
27 upon considerations of the best interests of the child. The
28 court may not order the discontinuation of prescribed
29 psychotropic medication if such order is contrary to the
30 decision of the prescribing physician unless the court first
31 obtains a second opinion from a licensed psychiatrist, if

1 available, or, if not available, a physician licensed under
2 chapter 458 or chapter 459, stating that the psychotropic
3 medication should be discontinued.

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

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

24 (f)1. The department shall fully inform the court of
25 the child's medical and behavioral status as part of the
26 social services report prepared for each judicial review
27 hearing held for a child for whom psychotropic medication has
28 been prescribed or provided under this subsection. As a part
29 of the information provided to the court, the department shall
30 furnish copies of all pertinent medical records concerning the
31 child which have been generated since the previous hearing. On

1 its own motion or on good cause shown by any party, including
2 any guardian ad litem, attorney, or attorney ad litem who has
3 been appointed to represent the child or the child's
4 interests, the court may review the status more frequently
5 than required in this subsection.

6 2. The court may, in the best interests of the child,
7 order the department to obtain a medical opinion that the
8 continued use of the medication under the circumstances is
9 safe and medically appropriate.

10 (g) The department shall adopt rules to ensure that
11 children receive timely access to clinically appropriate
12 psychotropic medications. These rules must describe the
13 process for determining which adjunctive services are needed,
14 the uniform process for facilitating the prescribing
15 physician's ability to obtain the express and informed consent
16 of a child's parent or guardian, the procedures for obtaining
17 court authorization for the provision of a psychotropic
18 medication, and the frequency of medical monitoring and
19 reporting on the status of the child to the court. The rules
20 must also include uniform forms to be used in requesting court
21 authorization for the use of a psychotropic medication and
22 provide for the integration of each child's treatment plan and
23 case plan. The department must begin the formal rulemaking
24 process within 90 days after the effective date of this act.

25 (5)(4) A judge may order a child in an out-of-home
26 placement to be treated by a licensed health care professional
27 based on evidence that the child should receive treatment.
28 The judge may also order such child to receive mental health
29 or developmental disabilities services from a psychiatrist,
30 psychologist, or other appropriate service provider. Except
31 as provided in subsection (6)(5), if it is necessary to place

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

8 Section 2. Paragraph (a) of subsection (3) of section
9 394.459, Florida Statutes, is amended to read:

10 394.459 Rights of patients.--

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

12 (a)1. Each patient entering treatment shall be asked
13 to give express and informed consent for admission or ~~and~~
14 treatment. If the patient has been adjudicated incapacitated
15 or found to be incompetent to consent to treatment, express
16 and informed consent to treatment shall be sought instead from
17 the patient's guardian or guardian advocate. If the patient
18 is a minor, express and informed consent for admission or ~~and~~
19 treatment shall also be requested from the patient's guardian.
20 Express and informed consent for admission or ~~and~~ treatment of
21 a patient under 18 years of age shall be required from the
22 patient's guardian, unless the minor is seeking outpatient
23 crisis intervention services under s. 394.4784. Express and
24 informed consent for admission or ~~and~~ treatment given by a
25 patient who is under 18 years of age shall not be a condition
26 of admission when the patient's guardian gives express and
27 informed consent for the patient's admission pursuant to s.
28 394.463 or s. 394.467.

29 2. Before ~~Prior to~~ giving express and informed
30 consent, the following information shall be ~~provided and~~
31 ~~explained in plain language disclosed~~ to the patient, or to

1 the patient's guardian if the patient is 18 years of age or
2 older and has been adjudicated incapacitated, or to the
3 patient's guardian advocate if the patient has been found to
4 be incompetent to consent to treatment, or to both the patient
5 and the guardian if the patient is a minor: the reason for
6 admission or treatment; the proposed treatment; the purpose
7 of the treatment to be provided; the common risks, benefits,
8 and side effects thereof; the specific dosage range for the
9 medication, when applicable; alternative treatment
10 modalities; the approximate length of care; the potential
11 effects of stopping treatment; how treatment will be
12 monitored; and that any consent given for treatment ~~by a~~
13 ~~patient~~ may be revoked orally or in writing before ~~prior to~~ or
14 during the treatment period by the patient or by a person who
15 is legally authorized to make health care decisions on behalf
16 of the patient, ~~the guardian advocate, or the guardian.~~

17 Section 3. Paragraph (b) of subsection (1) of section
18 743.0645, Florida Statutes, is amended to read:

19 743.0645 Other persons who may consent to medical care
20 or treatment of a minor.--

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

22 (b) "Medical care and treatment" includes ordinary and
23 necessary medical and dental examination and treatment,
24 including blood testing, preventive care including ordinary
25 immunizations, tuberculin testing, and well-child care, but
26 does not include surgery, general anesthesia, provision of
27 psychotropic medications, or other extraordinary procedures
28 for which a separate court order, power of attorney, or
29 informed consent as provided by law is required, except as
30 provided in s. 39.407(3).

31 Section 4. This act shall take effect July 1, 2005.

SENATE SUMMARY

Provides procedures under which the Department of Children and Family Services may provide psychotropic medication to a child in the custody of the department upon the express and informed consent of the child's parent or legal guardian or upon order of the court if consent cannot be obtained. Requires that a hearing be held on a motion to provide psychotropic medication to a child if any party objects. Provides that the required burden of proof is by a preponderance of the evidence presented at a hearing. Provides requirements for notice and for the provision of records to the court. Requires that the department adopt rules. Revises provisions requiring that a patient be asked to give express and informed consent under the Florida Mental Health Act. (See bill for details.)