

Bill No. SB 1090

Barcode 092616

Proposed Committee Substitute by the Committee on Children and Families

1                                   A bill to be entitled

2           An act relating to mental health care services

3           for minors and incapacitated persons; amending

4           s. 39.407, F.S.; specifying requirements for

5           the Department of Children and Family Services

6           with respect to providing psychotropic

7           medication to a child in the custody of the

8           department; requiring that the prescribing

9           physician attempt to obtain express and

10          informed parental consent for providing such

11          medication; authorizing the department to

12          provide psychotropic medication without such

13          consent under certain circumstances; requiring

14          the department to provide medical information

15          to a physician under certain circumstances;

16          requiring that the child be evaluated by a

17          physician; requiring that the department obtain

18          court authorization for providing such

19          medication within a specified period; providing

20          requirements for a motion by the department

21          seeking court authorization to provide

22          psychotropic medication; specifying

23          circumstances under which medication may be

24          provided in advance of a court order; requiring

25          that a hearing be held on the motion to provide

26          psychotropic medication to a child under

27          certain circumstances; specifying the required

28          burden of proof with respect to evidence

29          presented at the hearing; requiring that the

30          department provide a child's medical records to

31          the court; providing requirements for court

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

26 providing an effective date.

27  
28 Be It Enacted by the Legislature of the State of Florida:  
29

30 Section 1. Present subsections (3) through (14) of  
31 section 39.407, Florida Statutes, are redesignated as

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1 subsections (4) through (15), respectively, a new subsection  
2 (3) is added to that section, and present subsection (4) of  
3 that section is amended, to read:

4           39.407 Medical, psychiatric, and psychological  
5 examination and treatment of child; physical or mental  
6 examination of parent or person requesting custody of child.--

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

31           2. Any time the department seeks a medical evaluation

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1 to determine the need to initiate or continue a psychotropic  
2 medication for a child, the department must provide to the  
3 evaluating physician all pertinent medical information known  
4 to the department concerning that child.

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

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

23 3. If the department is advised by a physician  
24 licensed under chapter 458 or chapter 459 that the child  
25 should continue the psychotropic medication and express and  
26 informed parental consent has not been obtained, the  
27 department shall request court authorization at the shelter  
28 hearing to continue to provide the psychotropic medication and  
29 shall provide to the court any information in its possession  
30 in support of the request. Any authorization granted at the  
31 shelter hearing may extend only until the arraignment hearing

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1 on the petition for adjudication of dependency or 28 days  
2 following the date of removal, whichever occurs sooner.

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

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

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

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

31 3. A statement indicating that the psychotropic

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1 medication, at its prescribed dosage, is appropriate for  
2 treating the child's diagnosed medical condition, as well as  
3 the behaviors and symptoms the medication, at its prescribed  
4 dosage, is expected to address.

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

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

18 (d)1. If any party objects to the department's motion  
19 under paragraph (c), the court shall hold a hearing before  
20 authorizing the department to initially provide or to continue  
21 providing psychotropic medication to a child in the legal  
22 custody of the department. At such hearing and notwithstanding  
23 s. 90.803, the medical report described in paragraph (c) is  
24 admissible in evidence. The prescribing physician need not  
25 attend the hearing or testify unless the court specifically  
26 orders such attendance or testimony. If the court finds that  
27 the department's motion and the physician's medical report  
28 meet the requirements of this subsection and that it is in the  
29 child's best interests, the court may order that the  
30 department provide or continue to provide the psychotropic  
31 medication to the child without additional testimony or

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1 evidence. The court shall further inquire of the department as  
2 to whether additional medical, mental health, behavioral,  
3 counseling, or other services are being provided to the child  
4 by the department which the prescribing physician considers to  
5 be necessary or beneficial in treating the child's medical  
6 condition and that the physician recommends or expects to  
7 provide to the child in concert with the medication. The court  
8 may order additional medical consultation, including obtaining  
9 a second opinion within 5 working days after such order, based  
10 upon consideration of the best interests of the child. The  
11 court may not order the discontinuation of prescribed  
12 psychotropic medication if such order is contrary to the  
13 decision of the prescribing physician unless the court first  
14 obtains a second opinion from a licensed psychiatrist, if  
15 available, or, if not available, a physician licensed under  
16 chapter 458 or chapter 459, stating that the psychotropic  
17 medication should be discontinued. If, however, the  
18 prescribing physician is a child or adolescent psychiatrist,  
19 the court may not order the discontinuation of prescribed  
20 psychotropic medication unless the second opinion is also from  
21 a child or adolescent psychiatrist.

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

24 (e)1. If the child's prescribing physician certifies  
25 in the signed medical report required in paragraph (c) that  
26 delay in providing a prescribed psychotropic medication would  
27 more likely than not cause significant harm to the child, the  
28 medication may be provided in advance of the issuance of a  
29 court order. In such event, the medical report must provide  
30 the specific reasons why the child may experience significant  
31 harm and the nature and the extent of the potential harm. The

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1 department must submit a motion seeking continuation of the  
2 medication and the physician's medical report to the court,  
3 the child's guardian ad litem, and all other parties within 3  
4 working days after the department commences providing the  
5 medication to the child. The department shall seek the order  
6 at the next regularly scheduled court hearing required under  
7 this chapter, or within 30 days after the date of the  
8 prescription, whichever occurs sooner. If any party objects to  
9 the department's motion, the court shall hold a hearing within  
10 7 days.

11 2. Psychotropic medications may be administered in  
12 advance of a court order in hospitals, crisis stabilization  
13 units, and in statewide inpatient psychiatric programs. Within  
14 3 working days after the medication is begun, the department  
15 must seek court authorization as described in paragraph (c).

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

29 2. The court may, in the best interests of the child,  
30 order the department to obtain a medical opinion addressing  
31 whether the continued use of the medication under the

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1 circumstances is safe and medically appropriate.

2       (q) The department shall adopt rules to ensure that  
3 children receive timely access to clinically appropriate  
4 psychotropic medications. These rules must include, but need  
5 not be limited to, the process for determining which  
6 adjunctive services are needed, the uniform process for  
7 facilitating the prescribing physician's ability to obtain the  
8 express and informed consent of a child's parent or guardian,  
9 the procedures for obtaining court authorization for the  
10 provision of a psychotropic medication, the frequency of  
11 medical monitoring and reporting on the status of the child to  
12 the court, how the child's parents will be involved in the  
13 treatment-planning process if their parental rights have not  
14 been terminated, and how caretakers are to be provided  
15 information contained in the physician's signed medical  
16 report. The rules must also include uniform forms to be used  
17 in requesting court authorization for the use of a  
18 psychotropic medication and provide for the integration of  
19 each child's treatment plan and case plan. The department must  
20 begin the formal rulemaking process within 90 days after the  
21 effective date of this act.

22       (5)(4) A judge may order a child in an out-of-home  
23 placement to be treated by a licensed health care professional  
24 based on evidence that the child should receive treatment.  
25 The judge may also order such child to receive mental health  
26 or developmental disabilities services from a psychiatrist,  
27 psychologist, or other appropriate service provider. Except  
28 as provided in subsection(6)(5), if it is necessary to place  
29 the child in a residential facility for such services, the  
30 procedures and criteria established in s. 394.467 or chapter  
31 393 shall be used, whichever is applicable. A child may be

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1 provided developmental disabilities or mental health services  
2 in emergency situations, pursuant to the procedures and  
3 criteria contained in s. 394.463(1) or chapter 393, whichever  
4 is applicable.

5 Section 2. Paragraph (a) of subsection (3) and  
6 paragraph (b) of subsection (4) of section 394.459, Florida  
7 Statutes, are amended to read:

8 394.459 Rights of patients.--

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

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

27 2. Before ~~Prior to~~ giving express and informed  
28 consent, the following information shall be provided and  
29 explained in plain language ~~disclosed~~ to the patient, or to  
30 the patient's guardian if the patient is 18 years of age or  
31 older and has been adjudicated incapacitated, or to the

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

## (4) QUALITY OF TREATMENT.--

16 (b) ~~Receiving and treatment~~ Facilities shall develop  
 17 and maintain, in a form accessible to and readily  
 18 understandable by patients and consistent with rules adopted  
 19 by the department, the following:

20 1. Criteria, procedures, and required staff training  
 21 for any use of close or elevated levels of supervision, of  
 22 restraint, seclusion, or isolation, or of emergency treatment  
 23 orders, and for the use of bodily control and physical  
 24 management techniques.

25 2. Procedures for documenting, monitoring, and  
 26 requiring clinical review of all uses of the procedures  
 27 described in subparagraph 1. and for documenting and requiring  
 28 review of any incidents resulting in injury to patients.

29 3. A system for investigating, tracking, managing, and  
 30 responding to the review of complaints by persons receiving  
 31 services or individuals acting on their behalf ~~patients or~~

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1 ~~their families or guardians.~~

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

4           743.0645 Other persons who may consent to medical care  
5 or treatment of a minor.--

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

7           (b) "Medical care and treatment" includes ordinary and  
8 necessary medical and dental examination and treatment,  
9 including blood testing, preventive care including ordinary  
10 immunizations, tuberculin testing, and well-child care, but  
11 does not include surgery, general anesthesia, provision of  
12 psychotropic medications, or other extraordinary procedures  
13 for which a separate court order, power of attorney, or  
14 informed consent as provided by law is required, except as  
15 provided in s. 39.407(3).

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

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