



555306

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2010	.	
	.	
	.	
	.	

---

The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) of section 39.407, Florida Statutes, is amended to read:

(3) (a) All children placed in out-of-home care shall be provided with a comprehensive behavioral health assessment. The child protective investigator or dependency case manager shall submit a referral for such assessment no later than seven days after a child is placed in out-of-home care.

(b) Any child who has been in out-of-home care for more



555306

13 than one year, or who did not receive a comprehensive behavioral  
14 health assessment when placed into out-of-home care is eligible  
15 to receive a comprehensive behavioral health assessment. Such  
16 assessments evaluate behaviors that give rise to the concern  
17 that the child has un-met mental health needs. Any party to the  
18 dependency proceeding, or the court on its own motion, may  
19 request that an assessment be performed.

20 (c) The child protective investigator or dependency case  
21 manager shall be responsible for ensuring that all  
22 recommendations in the comprehensive behavioral health  
23 assessment are incorporated into the child's case plan and that  
24 the recommended services are provided in a timely manner. If, at  
25 a case planning conference, there is a determination made that a  
26 specific recommendation should not be included in a child's case  
27 plan, the court must be provided with a written explanation as  
28 to why the recommendation is not being followed.

29 (d) Nothing in this provision shall be construed to prevent  
30 a child from receiving any other form of psychological  
31 assessment when needed.

32 (e) If it is determined that a child is in need of mental  
33 health services, the comprehensive behavioral health assessment  
34 must be provided to the physician involved in developing the  
35 child's mental health treatment plan, pursuant to s. 39.4071(9).

36 ~~(3) (a) 1. Except as otherwise provided in subparagraph (b) 1.~~  
37 ~~or paragraph (c), before the department provides psychotropic~~  
38 ~~medications to a child in its custody, the prescribing physician~~  
39 ~~shall attempt to obtain express and informed consent, as defined~~  
40 ~~in s. 394.455(9) and as described in s. 394.459(3) (a), from the~~  
41 ~~child's parent or legal guardian. The department must take steps~~



555306

42 ~~necessary to facilitate the inclusion of the parent in the~~  
43 ~~child's consultation with the physician. However, if the~~  
44 ~~parental rights of the parent have been terminated, the parent's~~  
45 ~~location or identity is unknown or cannot reasonably be~~  
46 ~~ascertained, or the parent declines to give express and informed~~  
47 ~~consent, the department may, after consultation with the~~  
48 ~~prescribing physician, seek court authorization to provide the~~  
49 ~~psychotropic medications to the child. Unless parental rights~~  
50 ~~have been terminated and if it is possible to do so, the~~  
51 ~~department shall continue to involve the parent in the~~  
52 ~~decisionmaking process regarding the provision of psychotropic~~  
53 ~~medications. If, at any time, a parent whose parental rights~~  
54 ~~have not been terminated provides express and informed consent~~  
55 ~~to the provision of a psychotropic medication, the requirements~~  
56 ~~of this section that the department seek court authorization do~~  
57 ~~not apply to that medication until such time as the parent no~~  
58 ~~longer consents.~~

59 ~~2. Any time the department seeks a medical evaluation to~~  
60 ~~determine the need to initiate or continue a psychotropic~~  
61 ~~medication for a child, the department must provide to the~~  
62 ~~evaluating physician all pertinent medical information known to~~  
63 ~~the department concerning that child.~~

64 ~~(b)1. If a child who is removed from the home under s.~~  
65 ~~39.401 is receiving prescribed psychotropic medication at the~~  
66 ~~time of removal and parental authorization to continue providing~~  
67 ~~the medication cannot be obtained, the department may take~~  
68 ~~possession of the remaining medication and may continue to~~  
69 ~~provide the medication as prescribed until the shelter hearing,~~  
70 ~~if it is determined that the medication is a current~~



555306

71 ~~prescription for that child and the medication is in its~~  
72 ~~original container.~~

73 ~~2. If the department continues to provide the psychotropic~~  
74 ~~medication to a child when parental authorization cannot be~~  
75 ~~obtained, the department shall notify the parent or legal~~  
76 ~~guardian as soon as possible that the medication is being~~  
77 ~~provided to the child as provided in subparagraph 1. The child's~~  
78 ~~official departmental record must include the reason parental~~  
79 ~~authorization was not initially obtained and an explanation of~~  
80 ~~why the medication is necessary for the child's well-being.~~

81 ~~3. If the department is advised by a physician licensed~~  
82 ~~under chapter 458 or chapter 459 that the child should continue~~  
83 ~~the psychotropic medication and parental authorization has not~~  
84 ~~been obtained, the department shall request court authorization~~  
85 ~~at the shelter hearing to continue to provide the psychotropic~~  
86 ~~medication and shall provide to the court any information in its~~  
87 ~~possession in support of the request. Any authorization granted~~  
88 ~~at the shelter hearing may extend only until the arraignment~~  
89 ~~hearing on the petition for adjudication of dependency or 28~~  
90 ~~days following the date of removal, whichever occurs sooner.~~

91 ~~4. Before filing the dependency petition, the department~~  
92 ~~shall ensure that the child is evaluated by a physician licensed~~  
93 ~~under chapter 458 or chapter 459 to determine whether it is~~  
94 ~~appropriate to continue the psychotropic medication. If, as a~~  
95 ~~result of the evaluation, the department seeks court~~  
96 ~~authorization to continue the psychotropic medication, a motion~~  
97 ~~for such continued authorization shall be filed at the same time~~  
98 ~~as the dependency petition, within 21 days after the shelter~~  
99 ~~hearing.~~



555306

100           ~~(c) Except as provided in paragraphs (b) and (c), the~~  
101 ~~department must file a motion seeking the court's authorization~~  
102 ~~to initially provide or continue to provide psychotropic~~  
103 ~~medication to a child in its legal custody. The motion must be~~  
104 ~~supported by a written report prepared by the department which~~  
105 ~~describes the efforts made to enable the prescribing physician~~  
106 ~~to obtain express and informed consent for providing the~~  
107 ~~medication to the child and other treatments considered or~~  
108 ~~recommended for the child. In addition, the motion must be~~  
109 ~~supported by the prescribing physician's signed medical report~~  
110 ~~providing:~~

111           ~~1. The name of the child, the name and range of the dosage~~  
112 ~~of the psychotropic medication, and that there is a need to~~  
113 ~~prescribe psychotropic medication to the child based upon a~~  
114 ~~diagnosed condition for which such medication is being~~  
115 ~~prescribed.~~

116           ~~2. A statement indicating that the physician has reviewed~~  
117 ~~all medical information concerning the child which has been~~  
118 ~~provided.~~

119           ~~3. A statement indicating that the psychotropic medication,~~  
120 ~~at its prescribed dosage, is appropriate for treating the~~  
121 ~~child's diagnosed medical condition, as well as the behaviors~~  
122 ~~and symptoms the medication, at its prescribed dosage, is~~  
123 ~~expected to address.~~

124           ~~4. An explanation of the nature and purpose of the~~  
125 ~~treatment; the recognized side effects, risks, and~~  
126 ~~contraindications of the medication; drug-interaction~~  
127 ~~precautions; the possible effects of stopping the medication;~~  
128 ~~and how the treatment will be monitored, followed by a statement~~



555306

129 ~~indicating that this explanation was provided to the child if~~  
130 ~~age appropriate and to the child's caregiver.~~

131 ~~5. Documentation addressing whether the psychotropic~~  
132 ~~medication will replace or supplement any other currently~~  
133 ~~prescribed medications or treatments; the length of time the~~  
134 ~~child is expected to be taking the medication; and any~~  
135 ~~additional medical, mental health, behavioral, counseling, or~~  
136 ~~other services that the prescribing physician recommends.~~

137 ~~(d)1. The department must notify all parties of the~~  
138 ~~proposed action taken under paragraph (c) in writing or by~~  
139 ~~whatever other method best ensures that all parties receive~~  
140 ~~notification of the proposed action within 48 hours after the~~  
141 ~~motion is filed. If any party objects to the department's~~  
142 ~~motion, that party shall file the objection within 2 working~~  
143 ~~days after being notified of the department's motion. If any~~  
144 ~~party files an objection to the authorization of the proposed~~  
145 ~~psychotropic medication, the court shall hold a hearing as soon~~  
146 ~~as possible before authorizing the department to initially~~  
147 ~~provide or to continue providing psychotropic medication to a~~  
148 ~~child in the legal custody of the department. At such hearing~~  
149 ~~and notwithstanding s. 90.803, the medical report described in~~  
150 ~~paragraph (c) is admissible in evidence. The prescribing~~  
151 ~~physician need not attend the hearing or testify unless the~~  
152 ~~court specifically orders such attendance or testimony, or a~~  
153 ~~party subpoenas the physician to attend the hearing or provide~~  
154 ~~testimony. If, after considering any testimony received, the~~  
155 ~~court finds that the department's motion and the physician's~~  
156 ~~medical report meet the requirements of this subsection and that~~  
157 ~~it is in the child's best interests, the court may order that~~



555306

158 ~~the department provide or continue to provide the psychotropic~~  
159 ~~medication to the child without additional testimony or~~  
160 ~~evidence. At any hearing held under this paragraph, the court~~  
161 ~~shall further inquire of the department as to whether additional~~  
162 ~~medical, mental health, behavioral, counseling, or other~~  
163 ~~services are being provided to the child by the department which~~  
164 ~~the prescribing physician considers to be necessary or~~  
165 ~~beneficial in treating the child's medical condition and which~~  
166 ~~the physician recommends or expects to provide to the child in~~  
167 ~~concert with the medication. The court may order additional~~  
168 ~~medical consultation, including consultation with the MedConsult~~  
169 ~~line at the University of Florida, if available, or require the~~  
170 ~~department to obtain a second opinion within a reasonable~~  
171 ~~timeframe as established by the court, not to exceed 21 calendar~~  
172 ~~days, after such order based upon consideration of the best~~  
173 ~~interests of the child. The department must make a referral for~~  
174 ~~an appointment for a second opinion with a physician within 1~~  
175 ~~working day. The court may not order the discontinuation of~~  
176 ~~prescribed psychotropic medication if such order is contrary to~~  
177 ~~the decision of the prescribing physician unless the court first~~  
178 ~~obtains an opinion from a licensed psychiatrist, if available,~~  
179 ~~or, if not available, a physician licensed under chapter 458 or~~  
180 ~~chapter 459, stating that more likely than not, discontinuing~~  
181 ~~the medication would not cause significant harm to the child.~~  
182 ~~If, however, the prescribing psychiatrist specializes in mental~~  
183 ~~health care for children and adolescents, the court may not~~  
184 ~~order the discontinuation of prescribed psychotropic medication~~  
185 ~~unless the required opinion is also from a psychiatrist who~~  
186 ~~specializes in mental health care for children and adolescents.~~



555306

187 ~~The court may also order the discontinuation of prescribed~~  
188 ~~psychotropic medication if a child's treating physician,~~  
189 ~~licensed under chapter 458 or chapter 459, states that~~  
190 ~~continuing the prescribed psychotropic medication would cause~~  
191 ~~significant harm to the child due to a diagnosed nonpsychiatric~~  
192 ~~medical condition.~~

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

195 ~~(c)1. If the child's prescribing physician certifies in the~~  
196 ~~signed medical report required in paragraph (c) that delay in~~  
197 ~~providing a prescribed psychotropic medication would more likely~~  
198 ~~than not cause significant harm to the child, the medication may~~  
199 ~~be provided in advance of the issuance of a court order. In such~~  
200 ~~event, the medical report must provide the specific reasons why~~  
201 ~~the child may experience significant harm and the nature and the~~  
202 ~~extent of the potential harm. The department must submit a~~  
203 ~~motion seeking continuation of the medication and the~~  
204 ~~physician's medical report to the court, the child's guardian ad~~  
205 ~~litem, and all other parties within 3 working days after the~~  
206 ~~department commences providing the medication to the child. The~~  
207 ~~department shall seek the order at the next regularly scheduled~~  
208 ~~court hearing required under this chapter, or within 30 days~~  
209 ~~after the date of the prescription, whichever occurs sooner. If~~  
210 ~~any party objects to the department's motion, the court shall~~  
211 ~~hold a hearing within 7 days.~~

212 ~~2. Psychotropic medications may be administered in advance~~  
213 ~~of a court order in hospitals, crisis stabilization units, and~~  
214 ~~in statewide inpatient psychiatric programs. Within 3 working~~  
215 ~~days after the medication is begun, the department must seek~~



555306

216 ~~court authorization as described in paragraph (c).~~

217 ~~(f)1. The department shall fully inform the court of the~~  
218 ~~child's medical and behavioral status as part of the social~~  
219 ~~services report prepared for each judicial review hearing held~~  
220 ~~for a child for whom psychotropic medication has been prescribed~~  
221 ~~or provided under this subsection. As a part of the information~~  
222 ~~provided to the court, the department shall furnish copies of~~  
223 ~~all pertinent medical records concerning the child which have~~  
224 ~~been generated since the previous hearing. On its own motion or~~  
225 ~~on good cause shown by any party, including any guardian ad~~  
226 ~~litem, attorney, or attorney ad litem who has been appointed to~~  
227 ~~represent the child or the child's interests, the court may~~  
228 ~~review the status more frequently than required in this~~  
229 ~~subsection.~~

230 ~~2. The court may, in the best interests of the child, order~~  
231 ~~the department to obtain a medical opinion addressing whether~~  
232 ~~the continued use of the medication under the circumstances is~~  
233 ~~safe and medically appropriate.~~

234 ~~(g) The department shall adopt rules to ensure that~~  
235 ~~children receive timely access to clinically appropriate~~  
236 ~~psychotropic medications. These rules must include, but need not~~  
237 ~~be limited to, the process for determining which adjunctive~~  
238 ~~services are needed, the uniform process for facilitating the~~  
239 ~~prescribing physician's ability to obtain the express and~~  
240 ~~informed consent of a child's parent or guardian, the procedures~~  
241 ~~for obtaining court authorization for the provision of a~~  
242 ~~psychotropic medication, the frequency of medical monitoring and~~  
243 ~~reporting on the status of the child to the court, how the~~  
244 ~~child's parents will be involved in the treatment-planning~~



555306

245 ~~process if their parental rights have not been terminated, and~~  
246 ~~how caretakers are to be provided information contained in the~~  
247 ~~physician's signed medical report. The rules must also include~~  
248 ~~uniform forms to be used in requesting court authorization for~~  
249 ~~the use of a psychotropic medication and provide for the~~  
250 ~~integration of each child's treatment plan and case plan. The~~  
251 ~~department must begin the formal rulemaking process within 90~~  
252 ~~days after the effective date of this act.~~

253 Section 2. Section 39.4071, Florida Statutes, is created to  
254 read:

255 39.4071 Use of psychotropic medication for children in out  
256 of-home placement.-

257 (1) LEGISLATIVE FINDINGS AND INTENT.-

258 (a) The Legislature finds that children in out-of-home  
259 placements often have multiple risk factors that predispose them  
260 to emotional and behavioral disorders and that they receive  
261 mental health services at higher rates and are more likely to be  
262 given psychotropic medications than children from comparable  
263 backgrounds.

264 (b) The Legislature also finds that the use of psychotropic  
265 medications for the treatment of children in out-of-home  
266 placements who have emotional and behavioral disturbances has  
267 increased over recent years. While this increased use of  
268 psychotropic medications is paralleled by an increase in the  
269 rate of the coadministration of two or more psychotropic  
270 medications, data on the safety and efficacy of many of the  
271 psychotropic medications used in children and research  
272 supporting the coadministration of two or more psychotropic  
273 medications in this population is limited.



555306

274       (c) The Legislature further finds that significant  
275 challenges are encountered in providing quality mental health  
276 care to children in out-of-home placements. Not uncommonly,  
277 children in out-of-home placements are subjected to multiple  
278 placements and many service providers, with communication  
279 between providers often poor, resulting in fragmented medical  
280 and mental health care. The dependable, ongoing therapeutic and  
281 caregiving relationships these children need are hampered by the  
282 high turnover among child welfare caseworkers and care  
283 providers. Furthermore, children in out-of-home placements,  
284 unlike children from intact families, often have no consistent  
285 interested party who is available to coordinate treatment and  
286 monitoring plans or to provide longitudinal oversight of care.

287       (d) The Legislature recognizes the important role the  
288 Guardian ad Litem Program has played in Florida's dependency  
289 system for the past thirty years serving the state's most  
290 vulnerable children through the use of trained volunteers, case  
291 coordinators, child advocates and attorneys. The program's  
292 singular focus is on the child and its mission is to advocate  
293 for the best interest of the child. It is often the guardian ad  
294 litem who is the constant in a child's life, maintaining  
295 consistent contact with the child, the child's caseworkers, and  
296 others involved with the child, including family, doctors,  
297 teachers, and service providers. Studies have shown that a child  
298 assigned a guardian ad litem will, on average, experience fewer  
299 placement changes than a child without a guardian ad litem. It  
300 is therefore the intent of the Legislature that children in out-  
301 of-home placements who may benefit from psychotropic medications  
302 receive those medications safely as part of a comprehensive



555306

303 mental health treatment plan requiring the appointment of a  
304 guardian ad litem whose responsibility is to monitor the plan  
305 for compliance and suitability as to the child's best interest.

306 (2) DEFINITIONS.—As used in this section, the term:

307 (a) "Obtaining assent" means a process by which a provider  
308 of medical services helps a child achieve a developmentally  
309 appropriate awareness of the nature of his or her condition,  
310 informs the child of what can be expected through tests and  
311 treatment, makes a clinical assessment of the child's  
312 understanding of the situation and the factors influencing how  
313 he or she is responding, and solicits an expression of the  
314 child's willingness to adhere to the proposed care. The mere  
315 absence of an  
316 objection by the child may not be construed as assent.

317 (b) "Comprehensive behavioral health assessment" means an  
318 in-depth and detailed assessment of the child's emotional,  
319 social, behavioral, and developmental functioning within the  
320 family home, school, and community. A comprehensive behavioral  
321 health assessment must include direct observation of the child  
322 in the home, school, and community, as well as in the clinical  
323 setting, and must adhere to the requirements contained in the  
324 Florida Medicaid Community Behavioral Health Services Coverage  
325 and Limitations Handbook.

326 (c) "Express and informed consent" means a process by which  
327 a provider of medical services obtains voluntary consent from a  
328 parent whose rights have not been terminated or a legal guardian  
329 of the child who has received full, accurate, and sufficient  
330 information and an explanation about the child's medical  
331 condition, medication, and treatment in order to enable the



555306

332 parent or guardian to make a knowledgeable decision without any  
333 element of fraud, deceit, duress, or other form of coercion.

334 (d) "Mental health treatment plan" means a plan which lists  
335 the particular mental health needs of the child and the services  
336 that will be provided to address those needs. If the plan  
337 includes prescribing psychotropic medication to a child in out-  
338 of-home placement, the plan must also include the information  
339 required by subsection (9).

340 (f) "Psychotropic medication" means a prescription  
341 medication that is used for the treatment of mental disorders  
342 and includes, without limitation, antihypnotics, antipsychotics,  
343 antidepressants, anxiety agents, sedatives, psychomotor  
344 stimulants, and mood stabilizers.

345 (3) APPOINTMENT OF GUARDIAN AD LITEM.—

346 (a) If not already appointed, a guardian ad litem shall be  
347 appointed by the court at the earliest possible time to  
348 represent the best interests of a child in out-of-home placement  
349 who is prescribed a psychotropic medication or is being  
350 evaluated for the initiation of psychotropic medication.  
351 Pursuant to s. 39.820, the appointed guardian ad litem is a  
352 party to any judicial proceeding as a representative of the  
353 child and serves until discharged by the court.

354 (b) Under the provisions of this section, the guardian ad  
355 litem shall participate in the development of the mental health  
356 treatment plan, monitor whether all requirements of the mental  
357 health treatment plan are being provided to the child, including  
358 counseling, behavior analysis, or other services, medications,  
359 and treatment modalities; and notice the court of the child's  
360 objections, if any, to the mental health treatment plan. The



555306

361 guardian shall prepare and submit to the court a written report  
362 every 45 days or as directed by the court, advising the court  
363 and the parties as to the status of the care, health, and  
364 medical treatment of the child pursuant to the mental health  
365 treatment plan and any change in the status of the child. The  
366 guardian ad litem will immediately notify parties as soon as any  
367 medical emergency of the child becomes known. The guardian ad  
368 litem shall ensure that the prescribing physician has been  
369 provided with all pertinent medical information concerning the  
370 child.

371 (c) The department and the community-based care lead agency  
372 shall notify the court and the guardian ad litem, and, if  
373 applicable, the child's attorney, in writing within 24 hours  
374 after any change in the status of the child, including, but not  
375 limited to, a change in placement, a change in school, a change  
376 in medical condition or medication, or a change in prescribing  
377 physician, other service providers, counseling, or treatment  
378 scheduling.

379 (4) PSYCHIATRIC EVALUATION OF CHILD. Whenever the  
380 department believes that a child in its legal custody may need  
381 psychiatric treatment, an evaluation must be conducted by a  
382 physician licensed under chapter 458 or chapter 459.

383 (5) EXPRESS AND INFORMED CONSENT AND ASSENT.—If, at the  
384 time of removal from his or her home a child is being provided  
385 or at any time is being evaluated for the initiation of  
386 prescribed psychotropic medication under this section, express  
387 and informed consent and assent shall be sought by the  
388 prescribing physician.

389 (a) The prescribing physician shall obtain assent from the



555306

390 child, unless the prescribing physician determines that it is  
391 not appropriate to obtain assent from the child. In making this  
392 assessment, the prescribing physician shall consider the  
393 capacity of the child to make an independent decision based on  
394 his or her age, maturity, and psychological and emotional state.  
395 If the physician determines that it is not appropriate to obtain  
396 assent from the child, the physician must document the decision  
397 in the mental health treatment plan. In the event the physician  
398 determines it is appropriate to obtain assent from the child and  
399 the child refuses to give assent, the physician must document  
400 the child's refusal in the mental health treatment plan.

401 1. Assent from a child shall be sought in a manner that is  
402 understandable to the child using a developmentally appropriate  
403 assent form. The child shall be provided with sufficient  
404 information, such as the nature and purpose of the medication,  
405 how it will be administered, the probable risks and benefits,  
406 alternative treatments and the risks and benefits thereof, and  
407 the risks and benefits of refusing or discontinuing the  
408 medication, and when it may be appropriately discontinued.  
409 Assent may be oral or written and must be documented by the  
410 prescribing physician.

411 2. Oral assent is appropriate for a child who is younger  
412 than 7 years of age. Assent from a child who is 7 to 13 years of  
413 age may be sought orally or in a simple form that is written at  
414 the second-grade or third-grade reading level. A child who is 14  
415 years of age or older may understand the language presented in  
416 the consent form for parents or legal guardians. If so, the  
417 child may sign the consent form along with the parent or legal  
418 guardian. Forms for parents and older children shall be written



555306

419 at the sixth grade to eighth-grade reading level.

420 3. In each case where assent is obtained, a copy of the  
421 assent documents must be provided to the parent or legal  
422 guardian and the guardian ad litem, with the original assent  
423 documents becoming a part of the child's mental health treatment  
424 plan and filed with the court.

425 (b) Express and informed consent for the administration of  
426 psychotropic medication may be given only by a parent whose  
427 rights have not been terminated or a legal guardian of the child  
428 who has received full, accurate, and sufficient information and  
429 an explanation about the child's medical condition, medication,  
430 and treatment in order to enable the parent or guardian to make  
431 a knowledgeable decision. A sufficient explanation includes, but  
432 need not be limited to, the following information, which must be  
433 provided and explained in plain language by the prescribing  
434 physician to the parent or legal guardian: the child's  
435 diagnosis, the symptoms to be addressed by the medication, the  
436 name of the medication and its dosage ranges, the reason for  
437 prescribing it, and its purpose or intended results; benefits,  
438 side effects, risks, and contraindications, including effects of  
439 not starting or stopping the medication; method for  
440 administering the medication and how it will monitored;  
441 potential drug interactions; alternative treatments to  
442 psychotropic medication; a plan to reduce or eliminate ongoing  
443 medication when medically appropriate; the counseling,  
444 behavioral analysis, or other services used to complement the  
445 use of medication, when applicable; and that the parent or legal  
446 guardian may revoke the consent at any time.

447 1. Express and informed consent may be oral or written and



555306

448 must be documented by the prescribing physician. If the  
449 department or the physician is unable to obtain consent from the  
450 parent or legal guardian, the reasons must be documented.

451 2. When express and informed consent is obtained, a copy of  
452 the consent documents must be provided to the parent or legal  
453 guardian and the guardian ad litem, with the original consent  
454 documents becoming a part of the child's mental health treatment  
455 plan and filed with the court.

456 (c) The informed consent of any parent whose whereabouts  
457 are unknown for 60 days, who is adjudicated incapacitated, who  
458 does not have regular and frequent contact with the child, who  
459 later revokes assent, or whose parental rights are terminated  
460 after giving consent, is invalid. If the informed consent of a  
461 parent becomes invalid, the department may seek informed consent  
462 from any other parent or legal guardian. If the informed consent  
463 provided by a parent whose parental rights have been terminated  
464 is invalid and no other parent or legal guardian gives informed  
465 consent, the department shall file a motion for the  
466 administration of psychotropic medication along with the motion  
467 for final judgment of termination of parental rights.

468 (d) If consent is revoked or becomes invalid the department  
469 shall immediately notify all parties and, if applicable, the  
470 child's attorney. Medication shall be continued until such time  
471 as the court rules on the motion.

472 (e) Under no circumstance may a medication be discontinued  
473 without explicit directions instruction from a physician as to  
474 how to safely discontinue the medication.

475 (6) ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD IN  
476 SHELTER CARE OR IN FOSTER CARE WHEN PARENTAL CONSENT HAS NOT



555306

477 BEEN OBTAINED.—

478 (a) Motion for court authorization for administration of  
479 psychotropic medications.—

480 1. Any time a physician who has evaluated the child  
481 prescribes psychotropic medication as part of the mental health  
482 treatment plan and the child's parents or legal guardians have  
483 not provided express and informed consent as provided by law or  
484 such consent is invalid as set forth in (5)c. above, the  
485 department or its agent shall file a motion with the court  
486 within three working days to authorize the administration of the  
487 psychotropic medication before the administration of the  
488 medication, except as provided in subsection (7). In each case  
489 in which a motion is required, the motion must include:

490 a. A written report by the department describing the  
491 efforts made to enable the prescribing physician to obtain  
492 express and informed consent for providing the medication to the  
493 child and describing other treatments attempted, considered and  
494 recommended for the child; and

495 b. The prescribing physician's completed and signed mental  
496 health treatment plan.

497 2. The department must file a copy of the motion with the  
498 court and, within 48 hours after filing the motion with the  
499 court, notify all parties in writing, or by whatever other  
500 method best ensures that all parties receive notification, of  
501 its proposed administration of psychotropic medication to the  
502 child.

503 3. If any party objects to the proposed administration of  
504 the psychotropic medication to the child, that party must file  
505 its objection within 2 working days after being notified of the



555306

506 department's motion. A party may request an extension of time to  
507 object for good cause shown, provided that such extension would  
508 be in the best interests of the child. Any extension shall be  
509 for a specific number of days not to exceed the time absolutely  
510 necessary.

511 4. Lack of assent from the child shall be deemed a timely  
512 objection from the child.

513 (b) Court action on motion for administration of  
514 psychotropic medication.—

515 1. If no party timely files an objection to the  
516 department's motion and the motion is legally sufficient, the  
517 court may enter its order authorizing the proposed  
518 administration of the psychotropic medication without a hearing.  
519 Based on its determination of the best interests of the child,  
520 the court may order additional medical consultation, including  
521 consultation with the MedConsult line at the University of  
522 Florida, if available, or require the department to obtain a  
523 second opinion within a reasonable time established by the  
524 court, not to exceed 21 calendar days. If the court orders an  
525 additional medical consultation or second medical opinion, the  
526 department shall file a written report including the results of  
527 this additional consultation or a copy of the second medical  
528 opinion with the court within the time required by the court,  
529 and shall serve a copy of the report on all parties.

530 2. If any party timely files its objection to the proposed  
531 administration of the psychotropic medication to the child, the  
532 court shall hold a hearing as soon as possible on the  
533 department's motion.

534 a. The signed mental health treatment plan of the



555306

535 prescribing physician is admissible in evidence at the hearing.

536 b. The court shall ask the department whether additional  
537 medical, mental health, behavior analysis, counseling, or other  
538 services are being provided to the child which the prescribing  
539 physician considers to be necessary or beneficial in treating  
540 the child's medical condition and which the physician recommends  
541 or expects to be provided to the child along with the  
542 medication.

543 3. The court may order additional medical consultation or a  
544 second medical opinion, as provided in this paragraph.

545 4. After considering the department's motion and any  
546 testimony received, the court may enter its order authorizing  
547 the department to provide or continue to provide the proposed  
548 psychotropic medication to the child. The court must find a  
549 compelling governmental interest that the proposed psychotropic  
550 medication is in the child's best interest. In so determining  
551 the court shall consider, at a minimum, the following factors:

552 a. The severity and likelihood of risks associated with the  
553 treatment.

554 b. The magnitude and likelihood of benefits expected from  
555 the treatment.

556 c. The child's prognosis without the proposed psychotropic  
557 medication

558 d. The availability and effectiveness of alternative  
559 treatments.

560 e. The wishes of the child concerning treatment  
561 alternatives.

562 f. The recommendation of the current custodian.

563 g. The recommendation of the guardian ad litem.



555306

564           (7) ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD IN  
565 OUT-OF-HOME CARE BEFORE COURT AUTHORIZATION HAS BEEN OBTAINED.

566 The department may provide continued administration of  
567 psychotropic medication to a child before authorization by the  
568 court has been obtained only as provided in this subsection.

569           (a) If a child is removed from the home and taken into  
570 custody under s. 39.401, the department may continue to  
571 administer a current prescription of psychotropic medication to  
572 the child; however, the department shall request court  
573 authorization for the continued administration of the medication  
574 at the shelter hearing. This request shall be included in the  
575 shelter petition.

576           1. The department shall provide all information in its  
577 possession to the court in support of its request at the shelter  
578 hearing. The court may authorize the continued administration of  
579 the psychotropic medication only until the arraignment hearing  
580 on the petition for adjudication, or for 28 days following the  
581 date of the child's removal, whichever occurs first.

582           2. If the department believes, based on the required  
583 physician's evaluation, that it is appropriate to continue the  
584 psychotropic medication beyond the time authorized by the court  
585 at the shelter hearing, the department shall file a motion  
586 seeking continued court authorization at the same time that it  
587 files the dependency petition, but within 21 days after the  
588 shelter hearing.

589           (b) If the department believes, based on the certification  
590 of the prescribing physician, that delay in providing the  
591 prescribed psychotropic medication to the child would, more  
592 likely than not, cause significant harm to the child, the



555306

593 department shall administer the medication to the child  
594 immediately. The department must submit a motion to the court  
595 seeking continuation of the medication within 3 working days  
596 after the department begins providing the medication to the  
597 child.

598 1. The motion seeking authorization for the continued  
599 administration of the psychotropic medication to the child must  
600 include all information required in this section. The required  
601 medical report must also include the specific reasons why the  
602 child may experience significant harm, and the nature and the  
603 extent of the potential harm, resulting from a delay in  
604 authorizing the prescribed medication.

605 2. The department shall serve the motion on all parties  
606 within 3 working days after the department begins providing the  
607 medication to the child.

608 3. The court shall hear the department's motion at the next  
609 regularly scheduled court hearing required by law, or within 30  
610 days after the date of the prescription, whichever occurs first.  
611 However, if any party files an objection to the motion, the  
612 court shall hold a hearing within 7 days.

613 (c) The department may authorize, in advance of a court  
614 order, the administration of psychotropic medications to a child  
615 in its custody in a hospital, crisis stabilization unit, or in  
616 statewide inpatient psychiatric program. If the department does  
617 so, it must file a motion to seek court authorization for the  
618 continued administration of the medication within 3 working days  
619 as required in this section.

620 (d) If a child receives a one-time dose of a psychotropic  
621 medication during a crisis, the department shall provide



555306

622 immediate notice to all parties and to the court of each such  
623 emergency use.

624 (8) DISCONTINUATION, ALTERATION OF MEDICATION; DESTRUCTION  
625 OF MEDICATION.— No party may alter the provision of prescribed  
626 psychotropic medication to a child in any way except upon order  
627 of the court or advice of a physician.

628 (a) On the motion of any party or its own motion the court  
629 may order the discontinuation of a medication already  
630 prescribed. Such discontinuation must be performed in  
631 consultation with a physician in such a manner as to minimize  
632 risk to the child.

633 (b) The child's repeated refusal to take or continue to  
634 take a medication shall be treated as a motion to discontinue  
635 the medication and shall be set for hearing as soon as possible  
636 but no later than within 7 days from knowledge of such repeated  
637 refusal.

638 (c) Upon any discontinuation of a medication, the  
639 department shall document the date and reason for the  
640 discontinuation and shall notify all parties. The guardian ad  
641 litem must be notified within 24 hours as previously provided  
642 herein.

643 (d) The department shall ensure the destruction of any  
644 medication no longer being taken by the prescribed child.

645 (9) DEVELOPMENT OF MENTAL HEALTH TREATMENT PLAN.— Upon the  
646 determination that a child needs mental health services, a  
647 mental health treatment plan must be developed, which lists the  
648 particular mental health needs of the child and the services  
649 that will be provided to address those needs. When possible, the  
650 plan shall be developed in a face-to-face conference with the



555306

651 child, the child's parents, case manager, physician, therapist,  
652 custodian, guardian ad litem, and any other interested party.  
653 The mental health treatment plan shall be incorporated into the  
654 case plan as tasks for the department and may be amended under  
655 s.39.6013.

656 (a) If the mental health treatment plan involves the  
657 provision of psychotropic medication, the plan must include:

658 1. The name of the child, a statement indicating that there  
659 is a need to prescribe psychotropic medication to the child  
660 based upon a diagnosed, organically caused condition for which  
661 such medication is being prescribed, a statement indicating the  
662 compelling governmental interest in prescribing the psychotropic  
663 medication, and the name and range of the dosage of the  
664 psychotropic medication.

665 2. A statement indicating that the physician has reviewed  
666 all medical information concerning the child which has been  
667 provided by the department or community based care lead agency  
668 and briefly listing all such information received.

669 3. A medication profile including all medications the child  
670 is prescribed or will be prescribed, any previously prescribed  
671 medications where known, and whether those medications are being  
672 added, continued, or discontinued upon implementation of the  
673 mental health treatment plan.

674 4. A statement indicating that the psychotropic medication,  
675 at its prescribed dosage, is appropriate for treating the  
676 child's diagnosed medical condition, as well as the behaviors  
677 and symptoms that the medication, at its prescribed dosage, is  
678 expected to address.

679 5. An explanation of the nature and purpose of the



555306

680 treatment; the recognized side effects, risks, and  
681 contraindications of the medication, including procedures for  
682 reporting adverse effects; drug-interaction precautions; the  
683 possible effects of stopping or not initiating the medication;  
684 and how the treatment will be monitored, followed by a statement  
685 indicating that this explanation was provided to the child if  
686 developmentally appropriate and to the child's caregiver.

687 6. Documentation addressing whether the psychotropic  
688 medication will replace or supplement any other currently  
689 prescribed medications or treatments; the length of time the  
690 child is expected to be taking the medication; a plan for the  
691 discontinuation of any medication when medically appropriate;  
692 and any additional medical, mental health, behavioral,  
693 counseling, or other services that the prescribing physician  
694 recommends as part of a comprehensive treatment plan.

695 (b) The department shall develop and administer procedures  
696 to require the caregiver and prescribing physician to report any  
697 adverse side effects of the medication to the department or its  
698 designee and the guardian ad litem. Any adverse side effects  
699 must be documented in the mental health treatment plan and  
700 medical records for the child.

701 (8) REVIEW FOR ADMINISTRATION OF PSYCHOTROPIC MEDICATION  
702 FOR CHILDREN FROM BIRTH THROUGH 10 YEARS OF AGE IN OUT-OF-HOME  
703 CARE.-Absent a finding of a compelling governmental interest, a  
704 psychotropic medication may not be authorized by the court for  
705 any child from birth to 10 years of age who is in out-of-home  
706 placement. Based on a finding of a compelling governmental  
707 interest but before a psychotropic medication is authorized by  
708 the court for any child from birth through 10 years of age who



555306

709 is in an out-of-home placement, a review of the administration  
710 must be obtained from a child psychiatrist who is licensed under  
711 chapter 458 or chapter 459. The results of this review must be  
712 provided to the child and the parent or legal guardian before  
713 final express and informed consent is given.

714 (9) CLINICAL TRIALS.-At no time shall a child in the  
715 custody of the department be allowed to participate in a  
716 clinical trial that is designed to develop new psychotropic  
717 medications or evaluate their application to children.

718 (10) JUDICIAL REVIEW HEARINGS. -The department shall fully  
719 inform the court of the child's medical and behavioral status as  
720 part of the social services report prepared for each judicial  
721 review hearing held for a child for whom psychotropic medication  
722 has been prescribed or provided under this subsection. As a part  
723 of the information provided to the court, the department shall  
724 furnish copies of all pertinent medical records concerning the  
725 child which have been generated since the previous hearing. On  
726 its own motion or on good cause shown by any party, including  
727 any guardian ad litem, attorney, or attorney ad litem who has  
728 been appointed to represent the child or the child's interests,  
729 the court may review the status more frequently than required in  
730 this subsection.

731 (11) ADOPTION OF RULES. -The department may adopt rules to  
732 ensure that children receive timely access to clinically  
733 appropriate psychotropic medications. These rules must include,  
734 but need not be limited to, the process for determining which  
735 adjunctive services are needed, the uniform process for  
736 facilitating the prescribing physician's ability to obtain the  
737 express and informed consent of a child's parent or guardian,



555306

738 the procedures for obtaining court authorization for the  
739 provision of a psychotropic medication, the frequency of medical  
740 monitoring and reporting on the status of the child to the  
741 court, how the child's parents will be involved in the  
742 treatment-planning process if their parental rights have not  
743 been terminated, and how caretakers are to be provided  
744 information contained in the physician's signed mental health  
745 treatment plan. The rules must also include uniform forms or  
746 standardized information to be used on a statewide basis in  
747 requesting court authorization for the use of a psychotropic  
748 medication and provide for the integration of each child's  
749 mental health treatment plan and case plan. The department must  
750 begin the formal rulemaking process within 90 days after the  
751 effective date of this act.

752 Section 3. Paragraph (b) of subsection (1) of section  
753 743.0645, Florida Statutes, is amended to read:

754 743.0645 Other persons who may consent to medical care or  
755 treatment of a minor.-

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

757 (b) "Medical care and treatment" includes ordinary and  
758 necessary medical and dental examination and treatment,  
759 including blood testing, preventive care including ordinary  
760 immunizations, tuberculin testing, and well-child care, but does  
761 not include surgery, general anesthesia, provision of  
762 psychotropic medications, or other extraordinary procedures for  
763 which a separate court order, power of attorney, or informed  
764 consent as provided by law is required, except as provided in s.  
765 39.4071 s. 39.407(3).

766 Section 4. This act shall take effect July 1, 2010.



555306

767  
768 ===== T I T L E A M E N D M E N T =====

769 And the title is amended as follows:

770 Delete everything before the enacting clause  
771 and insert:

772 A bill to be entitled  
773 An act relating to the provision of psychotropic  
774 medication to children in out-of-home placements;  
775 amending s. 39.407(3), F.S., requiring the provision  
776 of a comprehensive mental health treatment plan;  
777 specifying eligibility; prescribing duties for the  
778 Department of Children and Family Services; deleting  
779 provisions relating to the provision of psychotropic  
780 medications to children in out-of-home care; creating  
781 s. 39.4071, F.S.; providing legislative findings and  
782 intent; providing definitions; requiring that a  
783 guardian ad litem be appointed by the court to  
784 represent a child in the custody of the Department of  
785 Children and Family Services who is prescribed a  
786 psychotropic medication; prescribing the duties of the  
787 guardian ad litem; requiring that the department or  
788 lead agency notify the guardian ad litem of any change  
789 in the status of the child; requiring that express and  
790 informed consent and assent be obtained from a child  
791 or the child's parent or guardian; providing  
792 requirements for a prescribing physician in obtaining  
793 consent and assent; providing for the invalidation of  
794 a parent's informed consent; requiring the department  
795 to seek informed consent from the legal guardian in



555306

796 certain circumstances; requiring the department to  
797 file a motion for the administration of psychotropic  
798 medication with the final judgment of termination of  
799 parental rights under certain circumstances; requiring  
800 that a court authorize the administration of  
801 psychotropic medication to a child who is in shelter  
802 care or in foster care and for whom parental consent  
803 has not been obtained; providing requirements for the  
804 motion to the court; requiring that any party  
805 objecting to the administration of psychotropic  
806 medication file its objection within a specified  
807 period; authorizing the court to obtain a second  
808 opinion regarding the proposed administration;  
809 requiring that the court hold a hearing if any party  
810 objects to the proposed administration; specifying  
811 circumstances under which the department may provide  
812 psychotropic medication to a child before court  
813 authorization is obtained; requiring that the  
814 department seek court authorization for continued  
815 administration of the medication; providing for an  
816 expedited hearing on such motion under certain  
817 circumstances; requiring the department to provide  
818 notice to all parties and the court for each emergency  
819 use of psychotropic medication under certain  
820 conditions; requiring that a mental health treatment  
821 plan be developed for each child or youth who is  
822 placed into an out-of-home placement; requiring  
823 certain information to be included in a mental health  
824 treatment plan; requiring the department to develop



555306

825 and administer procedures to require the caregiver and  
826 prescribing physician to report any adverse side  
827 effects; requiring documentation of the adverse side  
828 effects; prohibiting the prescription of psychotropic  
829 medication to certain children who are in out-of-home  
830 care absent certain conditions; requiring review by a  
831 licensed child psychiatrist before psychotropic  
832 medication is administered to certain children who are  
833 in out-of-home care under certain conditions;  
834 prohibiting authorization for a child in the custody  
835 of the department to participate in any clinical trial  
836 designed to evaluate the use of psychotropic  
837 medication in children; amending s. 743.0645, F.S.;  
838 conforming a cross-reference; providing an effective  
839 date.