

By Senator Storms

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1                                   A bill to be entitled  
2           An act relating to the provision of psychotropic  
3           medication to children in out-of-home placements;  
4           repealing s. 39.407(3), F.S., relating to the  
5           authority of the Department of Children and Family  
6           Services to prescribe psychotropic medication to a  
7           child in its custody; creating s. 39.4071, F.S.;  
8           providing legislative findings and intent; providing  
9           definitions; requiring that a guardian ad litem be  
10          appointed by the court to represent a child in the  
11          custody of the Department of Children and Family  
12          Services who is prescribed a psychotropic medication;  
13          prescribing the duties of the guardian ad litem;  
14          requiring that the department or lead agency notify  
15          the guardian ad litem of any change in the status of  
16          the child; requiring that express and informed consent  
17          and assent be obtained from a child or the child's  
18          parent or guardian; providing requirements for a  
19          prescribing physician in obtaining consent and assent;  
20          providing for the invalidation of a parent's informed  
21          consent; requiring the department to seek informed  
22          consent from the legal guardian in certain  
23          circumstances; requiring the department to file a  
24          motion for the administration of psychotropic  
25          medication with the final judgment of termination of  
26          parental rights under certain circumstances; requiring  
27          that a court authorize the administration of  
28          psychotropic medication to a child who is in shelter  
29          care or in foster care and for whom parental consent

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30 has not been obtained; providing requirements for the  
31 motion to the court; requiring that any party  
32 objecting to the administration of psychotropic  
33 medication file its objection within a specified  
34 period; authorizing the court to obtain a second  
35 opinion regarding the proposed administration;  
36 requiring that the court hold a hearing if any party  
37 objects to the proposed administration; specifying  
38 circumstances under which the department may provide  
39 psychotropic medication to a child before court  
40 authorization is obtained; requiring that the  
41 department seek court authorization for continued  
42 administration of the medication; providing for an  
43 expedited hearing on such motion under certain  
44 circumstances; requiring the department to provide  
45 notice to all parties and the court for each emergency  
46 use of psychotropic medication under certain  
47 conditions; requiring that a mental health treatment  
48 plan be developed for each child or youth who is  
49 placed into an out-of-home placement; requiring  
50 certain information to be included in a mental health  
51 treatment plan; requiring the department to develop  
52 and administer procedures to require the caregiver and  
53 prescribing physician to report any adverse side  
54 effects; requiring documentation of the adverse side  
55 effects; prohibiting the prescription of psychotropic  
56 medication to certain children who are in out-of-home  
57 care absent certain conditions; requiring review by a  
58 licensed child psychiatrist before psychotropic

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59 medication is administered to certain children who are  
60 in out-of-home care under certain conditions;  
61 prohibiting authorization for a child in the custody  
62 of the department to participate in any clinical trial  
63 designed to evaluate the use of psychotropic  
64 medication in children; amending s. 743.0645, F.S.;  
65 conforming a cross-reference; providing an effective  
66 date.

67  
68 Be It Enacted by the Legislature of the State of Florida:

69  
70 Section 1. Subsection (3) of section 39.407, Florida  
71 Statutes, is repealed.

72 Section 2. Section 39.4071, Florida Statutes, is created to  
73 read:

74 39.4071 Use of psychotropic medication for children in out-  
75 of-home placement.-

76 (1) LEGISLATIVE FINDINGS AND INTENT.-

77 (a) The Legislature finds that children in out-of-home  
78 placements often have multiple risk factors that predispose them  
79 to emotional and behavioral disorders and that they receive  
80 mental health services at higher rates and are more likely to be  
81 given psychotropic medications than children from comparable  
82 backgrounds.

83 (b) The Legislature also finds that the use of psychotropic  
84 medications for the treatment of children in out-of-home  
85 placements who have emotional and behavioral disturbances has  
86 increased over recent years. While this increased use of  
87 psychotropic medications is paralleled by an increase in the

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88 rate of the coadministration of two or more psychotropic  
89 medications or polypharmacy, data on the safety and efficacy of  
90 many of the psychotropic medications used in children and  
91 research supporting the practice of polypharmacy in this  
92 population is limited.

93 (c) The Legislature further finds that significant  
94 challenges are encountered in providing quality mental health  
95 care to children in out-of-home placements. Not uncommonly,  
96 children in out-of-home placements are subjected to multiple  
97 placements and many service providers, with communication  
98 between providers often poor, resulting in fragmented medical  
99 and mental health care. The dependable, ongoing therapeutic and  
100 caregiving relationships these children need are hampered by the  
101 high turnover among child welfare caseworkers and care  
102 providers. Furthermore, children in out-of-home placements,  
103 unlike children from intact families, often have no consistent  
104 interested party who is available to coordinate treatment and  
105 monitoring plans or to provide longitudinal oversight of care.

106 (d) It is therefore the intent of the Legislature that  
107 children in out-of-home placements who may benefit from  
108 psychotropic medications receive those medications safely as  
109 part of a comprehensive mental health treatment plan overseen by  
110 a court-appointed guardian ad litem.

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

112 (a) "Assent" means a process by which a provider of medical  
113 services helps a child achieve a developmentally appropriate  
114 awareness of the nature of his or her condition, informs the  
115 child of what can be expected through tests and treatment, makes  
116 a clinical assessment of the child's understanding of the

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117 situation and the factors influencing how he or she is  
118 responding, and solicits an expression of the child's  
119 willingness to accept the proposed care. The mere absence of an  
120 objection by the child may not be construed as assent.

121 (b) "Comprehensive behavioral health assessment" means an  
122 in-depth and detailed assessment of the child's emotional,  
123 social, behavioral, and developmental functioning within the  
124 family home, school, and community. A comprehensive behavioral  
125 health assessment must include direct observation of the child  
126 in the home, school, and community, as well as in the clinical  
127 setting, and must adhere to the requirements contained in the  
128 Florida Medicaid Community Behavioral Health Services Coverage  
129 and Limitations Handbook.

130 (c) "Express and informed consent" means voluntary consent  
131 from a parent whose rights have not been terminated or a legal  
132 guardian of the child who has received full, accurate, and  
133 sufficient information and an explanation about the child's  
134 medical condition, medication, and treatment in order to enable  
135 the parent or guardian to make a knowledgeable decision without  
136 being subjected to any deceit or coercion.

137 (d) "Mental health treatment plan" means a report that is  
138 prepared by a physician prescribing psychotropic medication to a  
139 child in out-of-home placement and that includes the information  
140 required by this section.

141 (e) "Psychotropic medication" means any chemical substance  
142 prescribed with the intent to treat psychiatric disorders, and  
143 those substances that, though prescribed with the intent to  
144 treat other medical conditions, have the effect of altering  
145 brain chemistry or involve any of the medications in the

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146 following categories:

147 1. Antipsychotics;

148 2. Antidepressants;

149 3. Sedative hypnotics;

150 4. Lithium;

151 5. Stimulants;

152 6. Nonstimulant medications for treating attention deficit  
153 hyperactivity disorder;

154 7. Anti-dementia medications and cognitive enhancers;

155 8. Anticonvulsants and alpha-2 agonists; and

156 9. Any other medication used to stabilize or improve mood,  
157 mental status, behavior, or mental illness.

158 (3) APPOINTMENT OF GUARDIAN AD LITEM.—

159 (a) A guardian ad litem shall be appointed by the court at  
160 the earliest possible time to represent the best interests of a  
161 child in the custody of the department who is prescribed a  
162 psychotropic medication. Pursuant to s. 39.820, the appointed  
163 guardian ad litem is a party to any judicial proceeding as a  
164 representative of the child and serves until discharged by the  
165 court.

166 (b) It is the duty of the guardian ad litem to oversee the  
167 care, health, and medical treatment of the child; to advise the  
168 court regarding any change in the status of the child; and to  
169 respond to any medical emergency of the child.

170 (c) The department and the community-based care lead agency  
171 shall notify the guardian ad litem within 24 hours after any  
172 change in the status of the child, including, but not limited  
173 to, a change in placement, a change in school, or a change in  
174 medical condition or medication.

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175 (4) EXPRESS AND INFORMED CONSENT AND ASSENT.—If, at the  
176 time of removal from his or her home, a child is being provided  
177 or is being evaluated for the initiation of prescribed  
178 psychotropic medication under this section, express and informed  
179 consent and assent shall be sought by the prescribing physician.

180 (a) The prescribing physician shall obtain assent from the  
181 child, unless the prescribing physician determines that it is  
182 not appropriate to obtain assent from the child. In making this  
183 assessment, the prescribing physician shall consider the  
184 capacity of the child to make an independent decision based on  
185 his or her age, maturity, and psychological and emotional state.  
186 If the physician determines that it is not appropriate to obtain  
187 assent from the child, the physician must document the decision  
188 in the mental health treatment plan.

189 1. Assent from a child shall be sought in a manner that is  
190 understandable to the child using an age-appropriate assent  
191 form. The child shall be provided with sufficient information,  
192 such as the nature and purpose of the medication, the probable  
193 risks and benefits, alternative treatments and the risks and  
194 benefits thereof, and the risks and benefits of refusing or  
195 discontinuing the medication. Assent may be oral or written and  
196 must be documented by the prescribing physician.

197 2. Oral assent is appropriate for a child who is younger  
198 than 7 years of age. Assent from a child who is 7 to 13 years of  
199 age may be sought orally or in a simple form that is written at  
200 the second-grade or third-grade reading level. A child who is 14  
201 years of age or older may understand the language presented in  
202 the consent form for parents or guardians. If so, the child may  
203 sign the consent form along with the parent or guardian. Forms

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204 for parents and older children shall be written at the sixth-  
205 grade to eighth-grade reading level.

206 3. In each case where assent is obtained, a copy of the  
207 assent documents must be provided to the parent or legal  
208 guardian and the original assent documents shall become part of  
209 the child's mental health treatment plan.

210 (b) Express and informed consent for the administration of  
211 psychotropic medication may be given only by a parent whose  
212 rights have not been terminated or a legal guardian of the child  
213 who has received full, accurate, and sufficient information and  
214 an explanation about the child's medical condition, medication,  
215 and treatment in order to enable the parent or guardian to make  
216 a knowledgeable decision. A sufficient explanation includes, but  
217 need not be limited to, the following information, which is  
218 provided and explained in plain language by the prescribing  
219 physician to the parent or guardian: the medication, the reason  
220 for prescribing it, and its purpose or intended results; side  
221 effects, risks, and contraindications, including effects of  
222 stopping the medication; method for administering the medication  
223 and dosage range when applicable; potential drug interactions;  
224 alternative treatments; and the behavioral health or other  
225 services used to complement the use of medication, when  
226 applicable.

227 1. Express and informed consent may be oral or written and  
228 must be documented by the prescribing physician. If the  
229 department or the physician is unable to obtain consent from the  
230 parent or guardian, the reasons must be documented.

231 2. When express and informed consent is obtained, a copy of  
232 the consent documents must be provided to the parent or legal



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233 guardian and the original consent documents shall become part of  
234 the child's mental health treatment plan.

235 (c) The informed consent of any parent whose whereabouts  
236 are unknown for 60 days, who is adjudicated incompetent, who  
237 does not have regular and frequent contact with the child, or  
238 whose parental rights are terminated after giving consent, is  
239 invalid. If the informed consent of a parent becomes invalid,  
240 the department shall seek informed consent from the legal  
241 guardian. If the informed consent was provided by a parent whose  
242 parental rights have been terminated, the department shall file  
243 a motion for the administration of psychotropic medication along  
244 with the motion for final judgment of termination of parental  
245 rights.

246 (5) ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD IN  
247 SHELTER CARE OR IN FOSTER CARE WHEN PARENTAL CONSENT HAS NOT  
248 BEEN OBTAINED.—

249 (a) Motion for court authorization for administration of  
250 psychotropic medications.—

251 1. If the department believes that a child in its physical  
252 or legal custody requires the administration of a psychotropic  
253 medication and the child's parents or legal guardians have not  
254 provided express and informed consent as provided by law, the  
255 department or its agent shall file a motion with the court to  
256 authorize the administration of the psychotropic medication  
257 before the administration of the medication, except as provided  
258 in subsection (6). In each case in which a motion is required,  
259 the motion must include:

260 a. A written report by the department describing the  
261 efforts made to enable the prescribing physician to obtain

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262 express and informed consent for providing the medication to the  
263 child and describing other treatments considered or recommended  
264 for the child; and

265 b. The prescribing physician's completed and signed mental  
266 health treatment plan.

267 2. The department must file a copy of the motion with the  
268 court and, within 48 hours after filing the motion with the  
269 court, notify all parties in writing, or by whatever other  
270 method best ensures that all parties receive notification, of  
271 its proposed administration of psychotropic medication to the  
272 child.

273 3. If any party objects to the proposed administration of  
274 the psychotropic medication to the child, that party must file  
275 its objection within 2 working days after being notified of the  
276 department's motion.

277 (b) Court action on motion for administration of  
278 psychotropic medication.—

279 1. If no party timely files an objection to the  
280 department's motion, the court may enter its order authorizing  
281 the proposed administration of the psychotropic medication  
282 without a hearing. Based on its determination of the best  
283 interests of the child, the court may order additional medical  
284 consultation or require the department to obtain a second  
285 opinion within a reasonable time, but not more than 21 calendar  
286 days. If the court orders an additional medical consultation or  
287 second medical opinion, the department shall file a written  
288 report including the results of this additional consultation or  
289 a copy of the second medical opinion with the court within the  
290 time required by the court, and shall serve a copy of the report

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291 as required by this section.

292 2. If any party timely files its objection to the proposed  
293 administration of the psychotropic medication to the child, the  
294 court shall hold a hearing as soon as possible on the  
295 department's motion.

296 a. The medical report of the prescribing physician is  
297 admissible in evidence at the hearing.

298 b. The court shall ask the department whether additional  
299 medical, mental health, behavioral, counseling, or other  
300 services are being provided to the child which the prescribing  
301 physician considers to be necessary or beneficial in treating  
302 the child's medical condition and which the physician recommends  
303 or expects to be provided to the child along with the  
304 medication.

305 3. The court may order additional medical consultation or a  
306 second medical opinion, as provided in subsection 1.

307 4. After considering the department's motion and any  
308 testimony received, the court may order that the department  
309 provide or continue to provide the proposed psychotropic  
310 medication to the child upon a determination that it is in the  
311 child's best interest to do so.

312 (6) ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD IN  
313 OUT-OF-HOME CARE BEFORE COURT AUTHORIZATION HAS BEEN OBTAINED.-  
314 The department may provide continued administration of  
315 psychotropic medication to a child before authorization by the  
316 court has been obtained only as provided in this subsection.

317 (a) If a child is removed from the home and taken into  
318 custody under s. 39.401, the department may continue to  
319 administer a current prescription of psychotropic medication to

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320 the child; however, the department shall request court  
321 authorization for the continued administration of the medication  
322 at the shelter hearing. This request shall be included in the  
323 shelter petition.

324 1. The department shall provide all information in its  
325 possession to the court in support of its request at the shelter  
326 hearing. The court may authorize the continued administration of  
327 the psychotropic medication only until the arraignment hearing  
328 on the petition for adjudication, or for 28 days following the  
329 date of the child's removal, whichever occurs first.

330 2. If the department believes, based on the required  
331 physician's evaluation, that it is appropriate to continue the  
332 psychotropic medication beyond the time authorized by the court  
333 at the shelter hearing, the department shall file a motion  
334 seeking continued court authorization at the same time that it  
335 files the dependency petition, but within 21 days after the  
336 shelter hearing.

337 (b) If the department believes, based on the certification  
338 of the prescribing physician, that delay in providing the  
339 prescribed psychotropic medication to the child would, more  
340 likely than not, cause significant harm to the child, the  
341 department must submit a motion to the court seeking  
342 continuation of the medication within 3 working days after the  
343 department begins providing the medication to the child.

344 1. The motion seeking authorization for the continued  
345 administration of the psychotropic medication to the child must  
346 include all information required in this section. The required  
347 medical report must also include the specific reasons why the  
348 child may experience significant harm, and the nature and the

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349 extent of the potential harm, resulting from a delay in  
350 authorizing the prescribed medication.

351 2. The department shall serve the motion on all parties  
352 within 3 working days after the department begins providing the  
353 medication to the child.

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

359 (c) The department may authorize, in advance of a court  
360 order, the administration of psychotropic medications to a child  
361 in its custody in a hospital, crisis stabilization unit, or in  
362 statewide inpatient psychiatric program. If the department does  
363 so, it must seek court authorization for the continued  
364 administration of the medication as required in this section.

365 (d) If a child receives a one-time dose of a psychotropic  
366 medication during a crisis, the department shall provide  
367 immediate notice to all parties and to the court of each such  
368 emergency use.

369 (7) DEVELOPMENT OF MENTAL HEALTH TREATMENT PLAN.—

370 (a) Within 7 days after a child or youth is placed into an  
371 approved out-of-home placement, the child protective  
372 investigator or dependency case manager shall submit a referral  
373 for a comprehensive behavioral health assessment, which shall be  
374 used to develop a mental health treatment plan for the child.  
375 The mental health treatment plan must include:

376 1. The name of the child, a statement indicating that there  
377 is a need to prescribe psychotropic medication to the child

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378 based upon a diagnosed, organically caused condition for which  
379 such medication is being prescribed, a statement indicating the  
380 compelling governmental interest in prescribing the psychotropic  
381 medication, and the name and range of the dosage of the  
382 psychotropic medication.

383 2. A statement indicating that the physician has reviewed  
384 all medical information concerning the child which has been  
385 provided.

386 3. A statement indicating that the psychotropic medication,  
387 at its prescribed dosage, is appropriate for treating the  
388 child's diagnosed medical condition, as well as the behaviors  
389 and symptoms that the medication, at its prescribed dosage, is  
390 expected to address.

391 4. An explanation of the nature and purpose of the  
392 treatment; the recognized side effects, risks, and  
393 contraindications of the medication, including procedures for  
394 reporting adverse effects; drug-interaction precautions; the  
395 possible effects of stopping the medication; and how the  
396 treatment will be monitored, followed by a statement indicating  
397 that this explanation was provided to the child if age  
398 appropriate and to the child's caregiver.

399 5. Documentation addressing whether the psychotropic  
400 medication will replace or supplement any other currently  
401 prescribed medications or treatments; the length of time the  
402 child is expected to be taking the medication; a plan for the  
403 discontinuation of any medication when medically appropriate;  
404 and any additional medical, mental health, behavioral,  
405 counseling, or other services that the prescribing physician  
406 recommends as part of a comprehensive treatment plan.

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407       (b) The department shall develop and administer procedures  
408 to require the caregiver and prescribing physician to report any  
409 adverse side effects of the medication to the department or its  
410 designee. Any adverse side effects must be documented in the  
411 treatment plan for the child.

412       (8) REVIEW FOR ADMINISTRATION OF PSYCHOTROPIC MEDICATION  
413 FOR CHILDREN FROM BIRTH THROUGH 10 YEARS OF AGE IN OUT-OF-HOME  
414 CARE.-Absent a finding of a compelling governmental interest, a  
415 psychotropic medication may not be prescribed for any child from  
416 birth to 10 years of age who is in out-of-home placement. Based  
417 on a finding of a compelling governmental interest but before a  
418 psychotropic medication is prescribed for any child from birth  
419 through 10 years of age who is in an out-of-home placement, a  
420 review of the administration must be obtained from a child  
421 psychiatrist who is licensed under chapter 458 or chapter 459.  
422 This review must occur before express and informed consent or  
423 assent is sought from the child or his or her parent or  
424 guardian.

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

429       Section 3. Paragraph (b) of subsection (1) of section  
430 743.0645, Florida Statutes, is amended to read:

431       743.0645 Other persons who may consent to medical care or  
432 treatment of a minor.-

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

434       (b) "Medical care and treatment" includes ordinary and  
435 necessary medical and dental examination and treatment,

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436 including blood testing, preventive care including ordinary  
437 immunizations, tuberculin testing, and well-child care, but does  
438 not include surgery, general anesthesia, provision of  
439 psychotropic medications, or other extraordinary procedures for  
440 which a separate court order, power of attorney, or informed  
441 consent as provided by law is required, except as provided in s.  
442 39.4071 ~~s. 39.407(3)~~.

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