

SECOND REGULAR SESSION

HOUSE BILL NO. 1987

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LEARA.

6242L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapters 161 and 660, RSMo, by adding thereto two new sections relating to mental health screenings for children and use of psychotropic medications.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapters 161 and 660, RSMo, are amended by adding thereto two new sections, to be known as sections 161.239 and 660.035, to read as follows:

161.239. 1. The general assembly finds that:

(1) The use of educational settings to screen children and adolescents for mental disorders has led to parents not being given sufficient information about the purpose of such screenings, the ramifications if they consent, such as mandatory psychological or psychiatric treatment for their child and family, thereby violating the recognized requirements and standards regarding full informed consent;

(2) Frequently a system of passive consent is used whereby consent is considered provided when the parent does not return the consent form. The onus is, therefore on the child or adolescent to transmit the consent form to the parent and on the parent ensuring that if consent is not given, the form is signed and returned. However, the onus should rest on both the school and the mental health professional or agency seeking to conduct the screening, with criminal penalties if consent is not obtained in writing and the child is subjected to nonconsensual screening;

(3) Passive consent or other consent forms often:

(a) Mislead parents into thinking that what is taking place at the school is just a health evaluation for their child, not a psychiatric evaluation;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **(b) Do not include information about the personal and invasive questions their**
18 **child will be asked;**

19 **(c) Do not contain information on the difference between emotional health**
20 **concerns, mental disorders, or physical diseases, the latter of which can be physically tested**
21 **for and the former cannot; and**

22 **(d) Leave the parent with so little information that he or she cannot make a proper**
23 **informed decision to give valid informed consent;**

24 **(4) Parents are also not informed that mental health screenings for mental**
25 **disorders are based on those defined in the Diagnostic and Statistical Manual of Mental**
26 **Disorders (DSM). However, in the introduction of the DSM-IV it states, "Moreover,**
27 **although this manual provides a classification of mental disorders, it must be admitted that**
28 **no definition adequately specifies precise boundaries for the concept of 'mental disorder'."**
29 **Further, "...the term 'mental' disorders...persists in the title of DSM-IV because we have**
30 **not found an appropriate substitute.";**

31 **(5) Unlike scientific methods to determine physical diseases like cancer, diabetes,**
32 **or tuberculosis, a diagnosis of mental disorder or syndrome is not based on any medical**
33 **test, such as a brain scan, a chemical imbalance test, X-ray, or blood test. The former**
34 **United States Surgeon General, in his 1999 Report on Mental Health, which became a**
35 **reference for many countries, stated, "The diagnosis of mental disorders is often believed**
36 **to be more difficult than diagnosis of medical disorders since there is no definitive lesion,**
37 **laboratory test or abnormality in brain tissue that can identify the illness.";**

38 **(6) Harvard Medical School's Dr. Joseph Glenmullen warns that the checklist**
39 **rating scales used to screen people for conditions such as depression are "designed to fit**
40 **hand-in-glove with the effects of drugs, emphasizing the physical symptoms of depression**
41 **that most respond to antidepressant medication...While assigning a number to a patient's**
42 **depression may look scientific, when one examines the questions asked and the scales used,**
43 **they are utterly subjective measures." He says, "[T]he symptoms are subjective emotional**
44 **states, making the diagnosis extremely vague.";**

45 **(7) Based on the subjective nature of the mental health diagnostic system and**
46 **mental health screenings, millions of children are prescribed antidepressants or stimulants**
47 **recognized by leading drug regulatory agencies as causing suicidal behavior, suicide,**
48 **violence, hostility and in the case of stimulants, the potential for strokes and heart attacks.**
49 **In October 2004, the United States Food and Drug Administration (FDA) required a black**
50 **box warning of suicide risks for all antidepressants prescribed to under eighteen year olds.**
51 **In August 2005, the Commission of the European Communities that represents twenty-five**
52 **countries issued the strongest warning yet against child antidepressant use warnings of the**

53 **drugs potential to cause suicide attempts and suicidal ideation, aggression, hostility**
 54 **(predominantly aggression, oppositional behavior and anger) and/or related behavior.**
 55 **According to the United States Drug Enforcement Administration, the stimulant drugs**
 56 **being prescribed to children are scheduled as abusive as opium, morphine and cocaine.**
 57 **In February 2006, an FDA Advisory Committee recommended a black box warning for**
 58 **stimulants stating that they can cause heart attacks, strokes, and even death; and**

59 **(8) As such, Missouri parents, without explicit protection, will be unable to give**
 60 **informed consent about whether they want their child to participate in such screening.**

61 **2. In accordance with the findings of the general assembly under subsection 1 of**
 62 **this section:**

63 **(1) The department of elementary and secondary education shall prohibit the use**
 64 **of schools for any mental health or psychological screening or testing of any student,**
 65 **whether a nonemancipated minor or emancipated minor without the express written**
 66 **consent of the parent or guardian;**

67 **(2) The consent form shall be in a clear and legible form and in compliance with**
 68 **any state or federal regulation, in the primary language of the parent, not less than forty-**
 69 **five days in advance of any such screening;**

70 **(3) The consent form shall be signed by the parent or legally appointed guardian**
 71 **of each minor; and**

72 **(4) The consent form shall include the following information:**

73 **TO: (parent or guardian).....**

74 **FROM: (school or organization).....**

75 **(Insert particulars regarding the name of the screening program, and where and when it**
 76 **will take place.)**

77 **FULL INFORMED CONSENT FOR MENTAL HEALTH**
 78 **OR PSYCHOLOGICAL SCREENING**

79 **Mental health or psychological screening methods for children and adolescents vary**
 80 **from state to state, but may involve a self-administered computer interview or survey to**
 81 **determine how a student feels emotionally (anxious or worried, sad or depressed) or to**
 82 **judge his or her behavior at the present time or in the past. These questions can cover**
 83 **thoughts or feelings your child has had or thoughts and feelings your child thinks you may**
 84 **have had or currently have about him or her.**

85 **An outcome could be you are asked to take your child for follow-up interview or**
 86 **evaluation to determine if he or she has a mental disorder or syndrome. Based on an**
 87 **evaluation of your child's answers, he or she may be diagnosed with a "mental" or**

88 "psychiatric disorder". These diagnoses have to be made by a psychologist, psychiatrist,
89 or medical doctor, but the subjectivity of this diagnostic process makes it a risk.

90 Questionnaires or tests are frequently based on symptoms outlined in the Diagnostic
91 and Statistical Manual of Mental Disorders (DSM) or the mental disorders section of the
92 International Classification of Diseases (ICD). The psychologist, psychiatrist, and medical
93 doctor often depend upon these diagnoses in order to bill private or government insurance.

94 The attitudes, beliefs, actions, inactions, or behaviors of a child or adolescent and
95 whether or not these constitute a mental disorder are based on the opinion only of the
96 person making the diagnosis. Unlike methods to determine physical diseases like cancer,
97 diabetes, or tuberculosis, a diagnosis of "mental disorder" or "syndrome" cannot be
98 determined by any physical medical test, such as a brain scan, a chemical imbalance test,
99 X-ray, or blood test.

100 Mental health screening could be presented to you as a means of preventing suicide.
101 However, there is no scientific evidence to substantiate this at this time. The United States
102 Preventive Services Task Force (USPSTF) studied this and recommended against screening
103 for suicide in 2004, saying that it "found no evidence that screening for suicide risk reduces
104 suicide attempts or mortality".

105 Commonly psychiatric drugs prescribed to treat mental disorders can have very
106 serious effects on some children. In 2005, the European Committee for Medicinal Products
107 for Human Use (CHMP), which includes members from twenty-five European member
108 states determined that antidepressants should not be prescribed to under eighteen year
109 olds because they can produce suicidal behavior, including suicide attempts and thinking
110 about suicide and/or related behavior like self-harm, hostility, or mood changes.

111 The United States Food and Drug Administration (FDA) ordered that a black box,
112 its highest level of drug warning, be placed on antidepressant packaging advising the drugs
113 can induce suicide in children and teens. The FDA also has issued concerns that stimulant
114 drugs prescribed for children may cause "psychiatric events", described as "visual
115 hallucinations, suicidal ideation, psychotic behavior, as well as aggression or violent
116 behavior".

117 Before consenting to any such screening or survey, the educational facility must
118 provide a manual and other published information which fully describes:

119 (1) The nature and purpose of the screening/test or questionnaire;

120 (2) The development of the screening/test or questionnaire, its scientific validity as
121 replicated in scientific studies, the rationale for the screening/test/questionnaire and
122 reliability;

123 (3) Scientific journal citations demonstrating that the proposed screening/test or
124 questionnaire has been proven to be reliable and valid by replicated scientific studies;

125 (4) A guarantee that no screening/test or questionnaire is based or related to any
126 "mental disorder" as covered in the Diagnostic and Statistical Manual of Mental
127 Disorders;

128 (5) The intended use of the results or outcomes of the child or adolescent
129 completing such screening/test or questionnaire;

130 (6) The right to rescind consent at any time before, during, or after the
131 screening/test or questionnaire being proposed.

132 **Informed Consent for Mental Health Screening**

133 I acknowledge that I have read and understood the above information to the best of my
134 ability and read NAME OF MANUAL, and based on my understanding, I am choosing one
135 of the following:

136 a) I give my consent for my child to undergo an evaluation for emotional, behavior,
137 mental, specific learning disabilities, or other health impairments (mental health
138 screening), and require that I be provided in writing any findings determined.

139 b) Consent means that I do/do not (strike which is inappropriate) give permission
140 for the information obtained from such survey or testing to become part of my child's
141 school or other record or to be transmitted to any other agency outside of the (insert the
142 name of the school).

143

144
145 (Signature of Parent) Date

146 c) I do not give my consent for my child to undergo an evaluation for emotional
147 behavior, mental, specific learning disabilities, or other health impairments (mental health
148 screening).

149

150
151 (Signature of Parent) Date

152

153 **THIS FORM MUST BE RECEIVED BY THE PARENT AT LEAST 45 DAYS BEFORE**
154 **THE PLANNED SCREENING. PLEASE ENSURE THIS FORM IS RETURNED**
155 **BEFORE THE SCREENING DATE. YOU HAVE THE RIGHT TO REVOKE YOUR**
156 **CONSENT AT ANY TIME.**

2 **660.035. 1. This section shall be known and may be cited as the "Administration of Psychotropic Medications to Children Act".**

3 **2. The general assembly recognizes that:**

4 **(1) Mental illnesses among children and adolescents can be severely debilitating**
5 **and, if untreated, can have a negative effect on their education, their families and**
6 **communities, and their future lives as productive citizens of Missouri;**

7 **(2) Psychotropic medications, when used carefully and appropriately, can be safe**
8 **and effective treatments for children with serious mental illnesses;**

9 **(3) Psychotropic medications, like most other medications, may pose serious risks**
10 **and side effects, particularly if their use is not carefully monitored;**

11 **(4) Under Missouri law, minors cannot give consent to medical treatment, including**
12 **psychotropic medications;**

13 **(5) Under Missouri law, in the absence of an emergency, medical treatment,**
14 **including the administration of psychotropic medications, may only be provided to a minor**
15 **with the consent of a parent, a guardian, or some other person authorized by law to give**
16 **consent;**

17 **(6) The department of social services has responsibility for providing informed**
18 **consent for medical treatment, including the administration of psychotropic medications,**
19 **for thousands of children and adolescents;**

20 **(7) The health, safety, and well-being of children and adolescents who are the legal**
21 **responsibility of the department depend on the existence and enforcement of appropriate**
22 **standards and procedures through which the department may determine when the use of**
23 **psychotropic medications is appropriate for these children and adolescents.**

24 **3. On or before January 1, 2013, the department of social services shall promulgate**
25 **rules or amend any current rules to establish and maintain standards and procedures to**
26 **govern the administration of psychotropic medications. Such rules or amendments to its**
27 **rules shall include, but are not limited to, the following:**

28 **(1) The role of the department in the administration of psychotropic medications**
29 **to youth for whom it is legally responsible and who are in facilities operated by the**
30 **Missouri department of corrections or other state agencies;**

31 **(2) Provisions regarding the administration of psychotropic medications for youth**
32 **for whom the department is legally responsible and who are in residential facilities, group**
33 **homes, transitional living programs, or foster homes where the youth is under the age of**
34 **eighteen or where the youth is eighteen or older and has provided the department with**
35 **appropriate consent;**

36 **(3) Provisions regarding the administration of psychotropic medications for youth**
37 **for whom the department is legally responsible and who are in psychiatric hospitals;**

38 **(4) Provisions concerning the emergency use of psychotropic medications, including**
39 **appropriate and timely reporting;**

40 **(5) Provisions prohibiting the administration of psychotropic medications to**
41 **persons for whom the department is legally responsible as punishment for bad behavior,**
42 **for the convenience of staff or caregivers, or as a substitute for adequate mental health care**
43 **or other services;**

44 **(6) The creation of a committee to develop, post on a website, and periodically**
45 **review materials listing which psychotropic medications are approved for use with youth**
46 **for whom the department has legal responsibility. The materials shall include guidelines**
47 **for the use of psychotropic medications and may include the acceptable range of dosages,**
48 **contraindications, and time limits, if any, and such other topics necessary to ensure the safe**
49 **and appropriate use of psychotropic medications;**

50 **(7) Provisions regarding the appointment, qualifications, and training of employees**
51 **of the department who are authorized to consent to the administration of psychotropic**
52 **medications to youth for whom the department has legal responsibility, including the scope**
53 **of the authority of such persons;**

54 **(8) Provisions regarding training and materials for parents, foster parents, and**
55 **relative caretakers concerning the rules governing the use of psychotropic medications with**
56 **youth for whom the department has legal responsibility;**

57 **(9) With respect to any youth under the age of eighteen for whom the department**
58 **has legal responsibility and who does not assent to the administration of recommended**
59 **psychotropic medication, provisions providing standards and procedures for reviewing the**
60 **youth's concerns. With respect to any youth over the age of eighteen for whom the**
61 **department has legal responsibility and who does not consent to the administration of**
62 **recommended psychotropic medication, provisions providing standards and procedures**
63 **for reviewing the youth's concerns upon the youth's request and with the youth's consent.**
64 **Standards and procedures developed under this subdivision shall not be inconsistent with**
65 **the Mental Health and Developmental Disabilities Code; and**

66 **(10) Provisions ensuring that, subject to all relevant confidentiality laws, service**
67 **plans for youth for whom the department has legal responsibility include the following**
68 **information:**

69 **(a) Identification by name and dosage of the psychotropic medication known by the**
70 **department to have been administered to the youth since the last service plan;**

71 **(b) The benefits of the psychotropic medication;**

72 **(c) The negative side effects of the psychotropic medication.**

73 **4. The department shall establish and maintain rules designed to ensure compliance**
74 **with any rules promulgated under subsection 3 of this section. Such rules shall include,**
75 **but are not limited to, the following:**

76 **(1) Standards and procedures for notifying physicians, residential treatment**
77 **facilities, and psychiatric hospitals when they have violated any rule enacted or maintained**
78 **under subsection 3 of this section;**

79 **(2) Standards and procedures for issuing written warnings to physicians,**
80 **residential treatment facilities, and psychiatric hospitals when they have violated any rule**
81 **enacted or maintained under subsection 3 of this section;**

82 **(3) Standards and procedures for notifying the department of health and senior**
83 **services when a physician has repeatedly violated any rule enacted or maintained under**
84 **subsection 3 of this section after having received a written warning on one or more**
85 **occasions. This subdivision is not intended to limit the department's authority to make a**
86 **report to the department of health and senior services when a physician has violated a rule**
87 **and has not received a written warning when the department determines it is in the minor's**
88 **and society's interest to make the report;**

89 **(4) Standards and procedures for notifying the department of health and senior**
90 **services when any facility licensed by the department has repeatedly violated any rule**
91 **enacted or maintained under subsection 3 of this section after having received a written**
92 **warning on one or more occasions. This subdivision is not intended to limit the**
93 **department's authority to make a report to the department of health and senior services**
94 **when a facility has violated a rule and has not received a written warning when the**
95 **department determines it is in the minor's and society's interest to make the report;**

96 **(5) Standards and procedures for notifying the guardian ad**
97 **litem of a ward who has been administered psychotropic medication in violation of any rule**
98 **enacted or maintained under subsection 3 of this section where the guardian ad litem has**
99 **requested notification and provides the department with documentation verifying that the**
100 **court has entered an order granting the guardian ad litem authority to receive and review**
101 **this information;**

102 **(6) Standards and procedures for notifying the appropriate licensing division when**
103 **a licensed residential facility or group home has repeatedly violated any rule enacted or**
104 **maintained under subsection 3 of this section.**

105 **5. No later than July thirty-first of each year, the department shall prepare and**
106 **submit an annual report, covering the previous fiscal year, to the general assembly**
107 **concerning the administration of psychotropic medication to persons for whom it is legally**
108 **responsible. Such report shall include, but is not limited to, the following:**

- 109 **(1) The number of violations of any rule enacted in subsection 3 of this section;**
110 **(2) The number of warnings issued under this section;**
111 **(3) The number of physicians who have been issued warnings under this section;**
112 **(4) The number of physicians who have been reported to the department of health**
113 **and senior services and, if available, the results of such reports;**
114 **(5) The number of facilities that have been reported to department of health and**
115 **senior services and, if available, the results of such reports;**
116 **(6) The number of licensed facilities that have been the subject of licensing**
117 **complaints under this section, and if available, the results of the complaint investigations;**
118 **and**
119 **(7) Any recommendations for legislative changes or amendments to any of its rules**
120 **or procedures established or maintained in compliance with this section.**
121 **6. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
122 **created under the authority delegated in this section shall become effective only if it**
123 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
124 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
125 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
126 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
127 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2012,**
128 **shall be invalid and void.**

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