

2001 ASSEMBLY BILL 739

January 22, 2002 – Introduced by Representatives NASS, PETTIS, GROTHMAN, J. FITZGERALD, McCORMICK, KRAWCZYK, OWENS, HINES, KREIBICH, BIES, GUNDERSON and ALBERS, cosponsored by Senator ROESSLER. Referred to Committee on Education Reform.

1 **AN ACT** *to renumber and amend* 48.31 (4); *to amend* 48.19 (1) (c), 48.19 (1) (d)
2 5., 48.981 (3) (c) 4., 938.19 (1) (c) and 938.19 (1) (d) 5.; and *to create* 118.292 of
3 the statutes; **relating to:** prohibiting school personnel from recommending the
4 use of psychotropic medications to pupils and prohibiting a county department
5 of human services or social services from determining that child abuse or
6 neglect has occurred, a juvenile court from ordering a child to be taken into
7 custody or finding that a child is in need of protection or services, and a law
8 enforcement officer from taking a child into custody based solely on the fact that
9 the child's parent, guardian, or legal custodian refuses to administer or consent
10 to the administration of psychotropic medication for the child.

Analysis by the Legislative Reference Bureau

This bill prohibits a school district employee from recommending to a pupil or the pupil's parent or guardian that the pupil obtain a prescription for a psychotropic medication or from coercing a pupil or the pupil's parent or guardian into seeking such a prescription. A school district employee may, however, recommend to the parent or guardian of a pupil that a physician examine the pupil and may consult a physician about the pupil if the pupil's parent or guardian provides written consent.

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Under current law, certain persons, such as medical professionals, social workers, and school teachers, administrators, and counselors, having reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected must report the facts and circumstances contributing to that suspicion to the county department of human services or social services (county department) or, in a county having a population of 500,000 or more, the department of health and family services (DHFS). Current law defines “abuse” to include emotional damage for which the child’s parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms. After receiving a report of suspected abuse or neglect, the county department or DHFS must investigate the report and determine whether abuse or neglect has occurred. If the county department or DHFS determines that the child is in need of services, the county department or DHFS must offer to provide appropriate services. If the child’s parent, guardian, or legal custodian refuses to accept the services, the county department or DHFS may request that a petition be filed with the court assigned to exercise jurisdiction under the children’s code (juvenile court) alleging that the child is in need of protection or services that may be ordered by the juvenile court. If the welfare of the child demands that the child be immediately removed from his or her present custody, the juvenile court may order the child to be taken into custody. If the child is suffering from illness or injury or is immediately in danger from his or her surroundings and removal from those surroundings is necessary, a law enforcement officer may take the child into custody.

This bill prohibits a county department or DHFS from determining that abuse or neglect has occurred based solely on the fact that the child’s parent, guardian, or legal custodian refuses to administer or consent to the administration of psychotropic medication for the child. The bill also prohibits a juvenile court from finding that a child is in need of protection or services based solely on the refusal of the child’s parent, guardian, or legal custodian to administer or consent to the administration of a psychotropic medication for the child. Finally, the bill prohibits a juvenile court from ordering a child to be taken into custody and a law enforcement officer from taking a child into custody based solely of the refusal of the child’s parent, guardian, or legal custodian to administer or consent to the administration of a psychotropic medication for the child.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 48.19 (1) (c) of the statutes is amended to read:
- 2 48.19 **(1)** (c) An order of the judge if made upon a showing satisfactory to the
- 3 judge that the welfare of the child demands that the child be immediately removed
- 4 from his or her present custody. A judge may not order a child to be taken into custody

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1 under this paragraph based solely on the refusal of the child's parent, guardian, or
2 legal custodian to administer or consent to the administration of a psychotropic
3 medication, as defined in s. 48.599 (2), for the child. The order shall specify that the
4 child be held in custody under s. 48.207 (1).

5 **SECTION 2.** 48.19 (1) (d) 5. of the statutes is amended to read:

6 48.19 (1) (d) 5. The child is suffering from illness or injury or is in immediate
7 danger from his or her surroundings and removal from those surroundings is
8 necessary. A law enforcement officer may not take a child into custody under this
9 subdivision based solely on the refusal of the child's parent, guardian, or legal
10 custodian to administer or consent to the administration of a psychotropic
11 medication, as defined in s. 48.599 (2), for the child.

12 **SECTION 3.** 48.31 (4) of the statutes is renumbered 48.31 (4) (a) and amended
13 to read:

14 48.31 (4) (a) The court or jury shall make findings of fact and the court shall
15 make conclusions of law relating to the allegations of a petition filed under s. 48.13,
16 48.133, or 48.42, except that the court shall make findings of fact relating to whether
17 the child or unborn child is in need of protection or services ~~which~~ that can be ordered
18 by the court.

19 (b) In cases alleging a child to be in need of protection or services under s. 48.13
20 (11), the court may not find that the child is suffering emotional damage unless a
21 licensed physician specializing in psychiatry or a licensed psychologist appointed by
22 the court to examine the child has testified at the hearing that in his or her opinion
23 the condition exists, and adequate opportunity for the cross-examination of the
24 physician or psychologist has been afforded. The judge may use the written reports
25 if the right to have testimony presented is voluntarily, knowingly, and intelligently

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1 waived by the guardian ad litem or legal counsel for the child and the parent or
2 guardian. The court may not find that a child is in need of protection or services
3 under s. 48.13 (11) based solely on the refusal of the child's parent, guardian, or legal
4 custodian to administer or consent to the administration of a psychotropic
5 medication, as defined in s. 48.599 (2), for the child.

6 (c) In cases alleging a child to be in need of protection or services under s. 48.13
7 (11m) or an unborn child to be in need of protection or services under s. 48.133, the
8 court may not find that the child or the expectant mother of the unborn child is in
9 need of treatment and education for needs and problems related to the use or abuse
10 of alcohol beverages, controlled substances, or controlled substance analogs and its
11 medical, personal, family, or social effects unless an assessment for alcohol and other
12 drug abuse that conforms to the criteria specified under s. 48.547 (4) has been
13 conducted by an approved treatment facility.

14 **SECTION 4.** 48.981 (3) (c) 4. of the statutes is amended to read:

15 48.981 (3) (c) 4. The county department or, in a county having a population of
16 500,000 or more, the department or a licensed child welfare agency under contract
17 with the department shall determine, within 60 days after receipt of a report,
18 whether abuse or neglect has occurred or is likely to occur. The determination shall
19 be based on a preponderance of the evidence produced by the investigation. A
20 determination that abuse or neglect has occurred may not be based solely on the fact
21 that the child's parent, guardian, or legal custodian in good faith selects and relies
22 on prayer or other religious means for treatment of disease or for remedial care of the
23 child or solely on the fact that the child's parent, guardian, or legal custodian refuses
24 to administer or consent to the administration of a psychotropic medication, as
25 defined in s. 48.599 (2), for the child. In making a determination that emotional

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1 damage has occurred, the county department or, in a county having a population of
2 500,000 or more, the department or a licensed child welfare agency under contract
3 with the department shall give due regard to the culture of the subjects. This
4 subdivision does not prohibit a court from ordering medical services for the child if
5 the child's health requires it.

6 **SECTION 5.** 118.292 of the statutes is created to read:

7 **118.292 Psychotropic medication; recommendations prohibited. (1)**

8 No school district employee may:

9 (a) Recommend to a pupil or the pupil's parent or guardian that the pupil obtain
10 a prescription for a psychotropic medication, as defined in s. 48.599 (2).

11 (b) Coerce the pupil or the pupil's parent or guardian into seeking a prescription
12 for a psychotropic medication for the pupil.

13 **(2)** A school district employee is not prohibited from recommending to the
14 parent or guardian of a pupil that a physician examine the pupil or from consulting
15 a physician about the pupil if the parent or guardian of a pupil provides written
16 consent.

17 **(3)** Each school board shall adopt written policies concerning the prohibitions
18 in sub. (1).

19 **SECTION 6.** 938.19 (1) (c) of the statutes is amended to read:

20 938.19 **(1)** (c) An order of the judge if made upon a showing satisfactory to the
21 judge that the welfare of the juvenile demands that the juvenile be immediately
22 removed from his or her present custody. A judge may not order a juvenile to be taken
23 into custody under this paragraph based solely on the refusal of the juvenile's parent,
24 guardian, or legal custodian to administer or consent to the administration of a

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1 psychotropic medication, as defined in s. 48.599 (2), for the juvenile. The order shall
2 specify that the juvenile be held in custody under s. 938.207.

3 **SECTION 7.** 938.19 (1) (d) 5. of the statutes is amended to read:

4 938.19 (1) (d) 5. The juvenile is suffering from illness or injury or is in
5 immediate danger from his or her surroundings and removal from those
6 surroundings is necessary. A law enforcement officer may not take a juvenile into
7 custody under this subdivision based solely on the refusal of the juvenile's parent,
8 guardian, or legal custodian to administer or consent to the administration of a
9 psychotropic medication, as defined in s. 48.599 (2), for the juvenile.

10 **SECTION 8. Initial applicability.**

11 (1) CHILDREN OR JUVENILES TAKEN INTO CUSTODY BY JUVENILE COURT ORDER. The
12 treatment of sections 48.19 (1) (c) and 938.19 (1) (c) of the statutes first applies to
13 orders under those sections entered on the effective date of this subsection.

14 (2) CHILDREN OR JUVENILES TAKEN INTO CUSTODY BY LAW ENFORCEMENT OFFICER.
15 The treatment of sections 48.19 (1) (d) 5. and 938.19 (1) (d) 5. of the statutes first
16 applies to children or juveniles taken into custody under those sections on the
17 effective date of this subsection.

18 (3) CHILDREN IN NEED OF PROTECTION OR SERVICES. The treatment of section 48.31
19 (4) of the statutes first applies to petitions under section 48.13 (11) of the statutes
20 filed on the effective date of this subsection.

21 (4) CHILD ABUSE OR NEGLECT DETERMINATIONS. The treatment of section 48.981
22 (3) (c) 4. of the statutes first applies to determinations that child abuse or neglect has
23 occurred made on the effective date of this subsection.

24 (END)