

By: Turner of Harris

H.B. No. 3127

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the provision of certain psychoactive and psychotropic
3 medications to children in substitute care or in the juvenile
4 justice system.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 54, Family Code, is amended by adding
7 Section 54.0402 to read as follows:

8 Sec. 54.0402. CERTAIN MEDICATIONS AS TERM OF PROBATION
9 PROHIBITED. If a court or jury places a child on probation under
10 Section 54.04(d), the court may not require as a term of probation
11 that the child be administered or take a psychoactive or
12 psychotropic medication, as those terms are defined by Section
13 531.0741, Government Code, that is not listed as approved for use by
14 a person of the child's age in the list developed under Section
15 531.0741, Government Code.

16 SECTION 2. Subchapter B, Chapter 531, Government Code, is
17 amended by adding Section 531.0741 to read as follows:

18 Sec. 531.0741. LIST OF PSYCHOACTIVE AND PSYCHOTROPIC
19 MEDICATIONS APPROVED FOR CHILDREN. (a) In this section:

20 (1) "Psychoactive medication" means a substance that
21 is prescribed for the treatment of symptoms of psychosis or other
22 severe mental or emotional disorders and that is used to exercise an
23 effect on the central nervous system to influence and modify
24 behavior, cognition, or affective state when treating the symptoms

1 of mental illness. The term includes the following categories when
2 used as described by this subdivision:

- 3 (A) antipsychotics or neuroleptics;
- 4 (B) antidepressants;
- 5 (C) agents for control of mania or depression;
- 6 (D) antianxiety agents;
- 7 (E) sedatives, hypnotics, or other
8 sleep-promoting drugs; and
- 9 (F) psychomotor stimulants.

10 (2) "Psychotropic medication" means a substance that
11 is:

- 12 (A) used in the diagnosis, treatment, or
13 prevention of a disease or as a component of a medication; and
- 14 (B) intended to have an altering effect on
15 perception, emotion, or behavior.

16 (b) The commission shall develop a list of psychoactive and
17 psychotropic medications approved by the United States Food and
18 Drug Administration for use by children and, for each medication,
19 specify the youngest age group for which the medication is
20 approved. The commission shall update the list at least quarterly.

21 (c) The commission shall make the list and the updates to
22 the list available to the health and human services agencies, the
23 Texas Youth Commission, and the public in an electronic, searchable
24 format.

25 SECTION 3. Section 32.024, Human Resources Code, is amended
26 by adding Subsection (hh) to read as follows:

27 (hh) Except as provided by this subsection and to the extent

1 allowed by federal law, the department may not provide medical
2 assistance through the vendor drug program for the provision of a
3 psychoactive or psychotropic medication, as defined by Section
4 531.0741, Government Code, to a child who is younger than 11 years
5 of age and who is in substitute care, as defined by Section 263.001,
6 Family Code, if the medication is not listed as approved for use by
7 a person of that child's age in the list developed under Section
8 531.0741, Government Code. The department may provide that medical
9 assistance to a child in substitute care who is at least 6, but
10 younger than 11, years of age if the department, in consultation
11 with the child's physician, authorizes the provision of that
12 medication in advance. In determining whether to authorize the
13 medication, the department shall consider:

- 14 (1) the child's diagnosis;
15 (2) any studies that have been performed regarding the
16 medication's effects on persons of the child's age;
17 (3) the severity of the medication's side effects;
18 (4) whether another medication exists that is approved
19 by the United States Food and Drug Administration for use by a
20 person of the child's age;
21 (5) the child's demonstrated need for the medication;
22 (6) whether it is likely that the child poses a threat
23 to the child or others if the child does not receive the medication;
24 (7) whether there are reasonable alternatives to
25 medicating the child;
26 (8) the interaction of the medication with any other
27 medication prescribed for the child;

1 (9) whether the child has successfully taken the
2 medication in the past; and

3 (10) any other factor the department considers
4 relevant.

5 SECTION 4. Chapter 80, Human Resources Code, is amended by
6 adding Section 80.004 to read as follows:

7 Sec. 80.004. PROHIBITION ON ADMINISTRATION OF CERTAIN
8 MEDICATIONS. (a) In this section, "psychoactive medication" and
9 "psychotropic medication" have the meanings assigned by Section
10 531.0741, Government Code.

11 (b) A person may not administer a psychoactive or
12 psychotropic medication to a child committed to the Texas Youth
13 Commission under Title 3, Family Code, or detained in another
14 juvenile detention facility under that title unless:

15 (1) the medication is listed as approved for a person
16 of the child's age in the list developed under Section 531.0741,
17 Government Code; or

18 (2) an emergency situation exists and the medication
19 is used as a temporary measure to prevent imminent harm to the child
20 or to others.

21 SECTION 5. If before implementing any provision of this Act
22 a state agency determines that a waiver or authorization from a
23 federal agency is necessary for implementation of that provision,
24 the agency affected by the provision shall request the waiver or
25 authorization and may delay implementing that provision until the
26 waiver or authorization is granted.

27 SECTION 6. Not later than January 1, 2010, the Health and

1 Human Services Commission shall develop the list required by
2 Section 531.0741, Government Code, as added by this Act.

3 SECTION 7. Section 54.0402, Family Code, as added by this
4 Act, applies only to a child placed on probation on or after March
5 1, 2010. A child placed on probation before that date is governed
6 by the law in effect when the child was placed on probation, and the
7 former law is continued in effect for that purpose.

8 SECTION 8. Not later than January 1, 2010, the Texas Youth
9 Commission, the Department of Family and Protective Services, and
10 the Health and Human Services Commission shall adopt protocols to
11 implement the changes in law made by this Act while ameliorating the
12 effects those changes in law may have on:

13 (1) children who are in substitute care on March 1,
14 2010, or committed to the Texas Youth Commission or detained in
15 another juvenile detention facility on that date, and are taking a
16 medication on that date that is not listed as approved for use by a
17 person of the child's age according to the list developed under
18 Section 531.0741, Government Code, as added by this Act; and

19 (2) children who are placed in substitute care after
20 March 1, 2010, or committed to the Texas Youth Commission or
21 detained in another juvenile detention facility after that date,
22 and at the time of placement, commitment, or detention, are taking a
23 medication that is not listed as approved for use by a person of the
24 child's age according to the list developed under Section 531.0741,
25 Government Code, as added by this Act.

26 SECTION 9. (a) Except as provided by Subsection (b) of this
27 section, this Act takes effect September 1, 2009.

1 (b) Section 54.0402, Family Code, as added by this Act, and
2 Sections 32.024(hh) and 80.004, Human Resources Code, as added by
3 this Act, take effect March 1, 2010.