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HOUSE BILL 53

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Nora Espinoza

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO CHILDREN; ENACTING A NEW SECTION OF THE PUBLIC SCHOOL CODE TO PROHIBIT SCHOOL PERSONNEL FROM COMPELLING STUDENTS TO USE PSYCHOTROPIC MEDICATIONS; AMENDING A SECTION OF THE CHILDREN'S CODE TO PROVIDE THAT A PARENT'S, GUARDIAN'S OR CUSTODIAN'S REFUSAL TO CONSENT TO ADMINISTRATION OF A PSYCHOTROPIC MEDICATION TO A CHILD IS NOT GROUNDS PER SE FOR PROTECTIVE CUSTODY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Public School Code is enacted to read:

"[NEW MATERIAL] PSYCHOTROPIC MEDICATION--PROHIBITION ON COMPULSION.--

A. Each local school board or governing body shall develop and promulgate policies that prohibit school personnel

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1 from denying any student access to programs or services because
2 the parent or guardian of the student has refused to place the
3 student on psychotropic medication.

4 B. School personnel may share school-based
5 observations of a student's academic, functional and behavioral
6 performance with the student's parent or guardian and offer
7 program options and other forms of assistance that are
8 available to the parent or guardian and the student based on
9 those observations. However, an employee or agent of a school
10 district or governing body shall not compel or attempt to
11 compel any specific actions by the parent or guardian or
12 require that a student take a psychotropic medication.

13 C. School personnel shall not require a student to
14 undergo psychological screening unless the parent or guardian
15 of that student gives prior written consent before each
16 instance of psychological screening.

17 D. Nothing in this act shall be construed to create
18 a prohibition against a teacher or other school personnel from
19 consulting or sharing a classroom-based observation with a
20 parent or guardian regarding:

21 (1) a student's academic and functional
22 performance;

23 (2) a student's behavior in the classroom or
24 school; or

25 (3) the need for evaluation for special

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1 education or related services.

2 E. As used in this section:

3 (1) "psychotropic medication" means a drug
4 that shall not be dispensed or administered without a
5 prescription, whose primary indication for use has been
6 approved by the federal food and drug administration for the
7 treatment of mental disorders and that is listed as a
8 psychotherapeutic agent in drug facts and comparisons or in the
9 American hospital formulary service; and

10 (2) "school personnel" means a person that is
11 an employee, agent or volunteer of a school district or other
12 governing body of a public school."

13 SECTION 2. Section 32A-4-6 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 100, as amended) is amended to read:

15 "32A-4-6. TAKING INTO CUSTODY--PENALTY.--

16 A. A child may be held or taken into custody:

17 (1) by a law enforcement officer when the
18 officer has evidence giving rise to reasonable grounds to
19 believe that the child is abused or neglected and that there is
20 an immediate threat to the child's safety; provided that the
21 law enforcement officer contacts the department to enable the
22 department to conduct an on-site safety assessment to determine
23 whether it is appropriate to take the child into immediate
24 custody, except that a child may be taken into custody by a law
25 enforcement officer without a protective services assessment

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1 being conducted if:

2 (a) the child's parent, guardian or
3 custodian has attempted, conspired to cause or caused great
4 bodily harm to the child or great bodily harm or death to the
5 child's sibling;

6 (b) the child's parent, guardian or
7 custodian has attempted, conspired to cause or caused great
8 bodily harm or death to another parent, guardian or custodian
9 of the child;

10 (c) the child has been abandoned;

11 (d) the child is in need of emergency
12 medical care;

13 (e) the department is not available to
14 conduct a safety assessment in a timely manner; or

15 (f) the child is in imminent risk of
16 abuse; or

17 (2) by medical personnel when there are
18 reasonable grounds to believe that the child has been injured
19 as a result of abuse or neglect and that the child may be at
20 risk of further injury if returned to the child's parent,
21 guardian or custodian. The medical personnel shall hold the
22 child until a law enforcement officer is available to take
23 custody of the child pursuant to Paragraph (1) of this
24 subsection [~~A of this section~~].

25 B. When a child is taken into custody by law

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1 enforcement, the department is not compelled to place the child
2 in an out-of-home placement and may release the child to the
3 child's parent, guardian or custodian.

4 C. When a child is taken into custody, the
5 department shall make reasonable efforts to determine whether
6 the child is an Indian child.

7 D. If a child taken into custody is an Indian child
8 and is alleged to be neglected or abused, the department shall
9 give notice to the agent of the Indian child's tribe in
10 accordance with the federal Indian Child Welfare Act of 1978.

11 E. Any person who intentionally interferes with
12 protection of a child, as provided by Subsection A of this
13 section, is guilty of a petty misdemeanor.

14 F. A child shall not be taken into protective
15 custody solely on the grounds that the child's parent, guardian
16 or custodian refuses to consent to the administration of a
17 psychotropic medication to the child."