

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:

"PSYCHOTROPIC MEDICATION--PROHIBITION ON COMPULSION.--

A. Each local school board or governing body shall develop and promulgate policies that prohibit school personnel from denying any student access to programs or services because the parent or guardian of the student has refused to place the student on psychotropic medication.

B. School personnel may share school-based observations of a student's academic, functional and behavioral performance with the student's parent or guardian and offer program options and other forms of assistance that are available to the parent or guardian and the student based on those observations. However, an employee or agent of a school district or governing body shall not compel or attempt

to compel any specific actions by the parent or guardian or require that a student take a psychotropic medication.

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

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

- (1) a student's academic and functional performance;
- (2) a student's behavior in the classroom or school; or
- (3) the need for evaluation for special education or related services.

E. As used in this section:

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

- (2) "school personnel" means school

personnel that the department has licensed."

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

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

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

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

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

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

(c) the child has been abandoned;

(d) the child is in need of emergency

medical care;

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

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

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

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

C. When a child is taken into custody by law enforcement, the department is not compelled to place the child in an out-of-home placement and may release the child to the child's parent, guardian or custodian.

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

E. If a child taken into custody is an Indian

child and is alleged to be neglected or abused, the department shall give notice to the agent of the Indian child's tribe in accordance with the federal Indian Child Welfare Act of 1978.

F. Any person who intentionally interferes with protection of a child, as provided by Subsection A of this section, is guilty of a petty misdemeanor."