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HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

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. As used in this section:

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

25 (2) "school personnel" means a person that is

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1 an employee, agent or volunteer of a school district or other  
2 governing body of a public school."

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

5 "32A-4-6. TAKING INTO CUSTODY--PENALTY.--

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

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

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

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

25 (c) the child has been abandoned;

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underscoring material = new  
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1 (d) the child is in need of emergency  
2 medical care;

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

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

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

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

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

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

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

F. 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."