

**SUBJECT:** Parental refusal of psychiatric drugs or treatment for school children

**COMMITTEE:** Public Education — committee substitute recommended

**VOTE:** 5 ayes — Grusendorf, Dawson, Eissler, Griggs, Madden

0 nays

2 present not voting — Branch, Hochberg

2 absent — Oliveira, Dutton

**WITNESSES:** For — John Breeding, Texans for Safe Education; Andrew Prough, Citizens Commission on Human Rights; David Beinke; Edmund Davis

Against — Tim Bacon, Texas State Teachers Association; Marty DeLeon, Texas Association of School Boards; Lonnie Hollingsworth, Texas Classroom Teachers Association; Ted Melina Raab, Texas Federation of Teachers; JoHannah Whitsett, Association of Texas Professional Educators

On — Mary Jackson, Texas School Nurses Organization

**BACKGROUND:** Family Code, ch. 261 lists five acts or omissions that constitute neglect of a child. Among these is the failure to seek, obtain, or follow through with medical care, if such failure results in or presents a substantial risk of death, disfigurement, or bodily injury or an observable and material impairment to the child's growth, development, or functioning. Professionals must report incidents of neglect within 48 hours, and the Department of Protective and Regulatory Services (DPRS) must investigate these reports promptly. The investigation may include an interview with the child, a visit to the child's home, and a medical, psychological, or psychiatric exam.

Under Education Code, sec. 26.009, a school district employee must obtain the written consent of a child's parent before the employee may conduct a psychological examination, test, or treatment, unless treatment is required as part of a child-abuse investigation or under state or federal law regarding treatments for special education.

**DIGEST:** CSHB 1070 would specify that a parent's refusal to provide consent for a school district employee to conduct a psychological examination, test, or treatment or to administer or consent to the administration of a psychotropic medicine to the child outside of the school does not constitute neglect or abuse as defined by the Family Code. The bill would prohibit a school district employee from using or threatening to use a parent's refusal to submit to a psychological examination or to administer psychotropic drugs as a basis for making a report concerning abuse or neglect.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003. It would apply beginning with the 2003-04 school year.

**SUPPORTERS SAY:** CSHB 1070 would prevent teachers and other school employees from using coercion and threats to force parents to agree to a psychological test for a child or to put a child on psychotropic drugs, such as Ritalin. Parents are under increasing pressure from schools to administer psychotropic drugs to children, even though such medication may be unnecessary and even harmful to the child. Some school staff members have threatened to report parents to DPRS if the parents refuse to put a child on Ritalin or other drugs. Because much remains unknown about the effects of these drugs, parents may be justified in their concerns about administering them to their children. CSHB 1070 would make clear in statute that this refusal alone would not constitute neglect or abuse and therefore would not be sufficient grounds for DPRS to open an investigation.

**OPPONENTS SAY:** CSHB 1070 is an overreaction to isolated incidents in which school personnel may have pressured parents to agree to a psychological evaluation for their children. Few teachers or other school staff would threaten to file a report of neglect or abuse solely because a parent had refused to agree to a psychological evaluation or because the parent was not administering Ritalin outside of school, and even fewer actually would file such a report. The bill could put school nurses in a difficult position if a physician had ordered that a student take certain medications in particular situations but the parent refused to allow that medication to be administered.

**NOTES:** As filed, HB 1070 would have made it a Class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4,000) for a school employee

to use or threaten to use a parent's refusal to agree to psychological testing or to administer psychotropic drugs as a basis for a report of neglect or abuse to DPRS. A parent could have brought an action against a school district for statutory damages of \$5,000 to \$50,000 for each violation and would have been entitled to court costs and attorney's fees if the case prevailed. School employees would not have had immunity from liability for their actions.

Two related bills have passed the House and are pending in Senate committees. HB 320 by Grusendorf would specify that refusal to administer or consent to administer a psychotropic drug or to consent to any other psychiatric or psychological treatment of a child would not constitute abuse or neglect under the Family Code. HB 320 passed the House on April 2 and is pending in the Senate Jurisprudence Committee.

HB 1406 by B. Brown, et al., which would prohibit school district employees from recommending that a student use a psychotropic drug or receive a psychiatric evaluation, passed the House on April 30 and has been referred to the Senate Education Committee.