

H.B. No. 320

1 AN ACT

2 relating to the refusal to administer or consent to the
3 administration of certain psychiatric or psychological treatment
4 to a child.

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

6 SECTION 1. Chapter 26, Education Code, is amended by adding
7 Section 26.0091 to read as follows:

8 Sec. 26.0091. REFUSAL OF PSYCHIATRIC OR PSYCHOLOGICAL
9 TREATMENT OF CHILD AS BASIS OF REPORT OF NEGLECT. (a) In this
10 section, "psychotropic drug" has the meaning assigned by Section
11 261.111, Family Code.

12 (b) An employee of a school district may not use or threaten
13 to use the refusal of a parent, guardian, or managing or possessory
14 conservator of a child to administer or consent to the
15 administration of a psychotropic drug to the child, or to consent to
16 any other psychiatric or psychological testing or treatment of the
17 child, as the sole basis for making a report of neglect of the child
18 under Subchapter B, Chapter 261, Family Code, unless the employee
19 has cause to believe that the refusal:

20 (1) presents a substantial risk of death,
21 disfigurement, or bodily injury to the child; or

22 (2) has resulted in an observable and material
23 impairment to the growth, development, or functioning of the child.

24 SECTION 2. Subchapter A, Chapter 29, Education Code, is

1 amended by adding Section 29.0041 to read as follows:

2 Sec. 29.0041. INFORMATION AND CONSENT FOR CERTAIN
3 PSYCHOLOGICAL EXAMINATIONS OR TESTS. (a) On request of a child's
4 parent, before obtaining the parent's consent under 20 U.S.C.
5 Section 1414 for the administration of any psychological
6 examination or test to the child that is included as part of the
7 evaluation of the child's need for special education, a school
8 district shall provide to the child's parent:

- 9 (1) the name and type of the examination or test; and
10 (2) an explanation of how the examination or test will
11 be used to develop an appropriate individualized education program
12 for the child.

13 (b) If the district determines that an additional
14 examination or test is required for the evaluation of a child's need
15 for special education after obtaining consent from the child's
16 parent under Subsection (a), the district shall provide the
17 information described by Subsections (a)(1) and (2) to the child's
18 parent regarding the additional examination or test and shall
19 obtain additional consent for the examination or test.

20 (c) The time required for the district to provide
21 information and seek consent under Subsection (b) may not be
22 counted toward the 60 calendar days for completion of an evaluation
23 under Section 29.004. If a parent does not give consent under
24 Subsection (b) within 20 calendar days after the date the district
25 provided to the parent the information required by that subsection,
26 the parent's consent is considered denied.

27 SECTION 3. Subchapter B, Chapter 261, Family Code, is

1 amended by adding Section 261.111 to read as follows:

2 Sec. 261.111. REFUSAL OF PSYCHIATRIC OR PSYCHOLOGICAL
3 TREATMENT OF CHILD. (a) In this section, "psychotropic drug" means
4 a substance that is:

5 (1) used in the diagnosis, treatment, or prevention of
6 a disease or as a component of a medication; and

7 (2) intended to have an altering effect on perception,
8 emotion, or behavior.

9 (b) The refusal of a parent, guardian, or managing or
10 possessory conservator of a child to administer or consent to the
11 administration of a psychotropic drug to the child, or to consent to
12 any other psychiatric or psychological treatment of the child, does
13 not by itself constitute neglect of the child unless the refusal to
14 consent:

15 (1) presents a substantial risk of death,
16 disfigurement, or bodily injury to the child; or

17 (2) has resulted in an observable and material
18 impairment to the growth, development, or functioning of the child.

19 SECTION 4. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2003.

President of the Senate

Speaker of the House

I certify that H.B. No. 320 was passed by the House on April 2, 2003, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 320 on May 26, 2003, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 320 on June 1, 2003, by the following vote: Yeas 140, Nays 0, 2 present, not voting.

Chief Clerk of the House

H.B. No. 320

I certify that H.B. No. 320 was passed by the Senate, with amendments, on May 24, 2003, by the following vote: Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 320 on June 1, 2003, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor