

AMENDED IN ASSEMBLY JULY 8, 2015

AMENDED IN ASSEMBLY JULY 1, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE MAY 5, 2015

AMENDED IN SENATE APRIL 22, 2015

AMENDED IN SENATE MARCH 23, 2015

**SENATE BILL**

**No. 253**

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**Introduced by Senator Monning**

(Principal coauthor: Assembly Member Chiu)

**(Coauthors: Senators Beall and Leno)**

(Coauthor: Assembly Member Gatto)

February 18, 2015

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An act to amend Section 4064.5 of the Business and Professions Code, and to amend, repeal, and add Section 369.5 of, and to add Section 369.4 to, the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 253, as amended, Monning. Dependent children: psychotropic medication.

Existing law establishes the jurisdiction of the juvenile court, which may adjudge children to be dependents of the court under certain circumstances, including when the child suffered or there is a substantial risk that the child will suffer serious physical harm, or a parent fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law authorizes only a juvenile court judicial officer to make orders regarding the administration of psychotropic medications

for a dependent child who has been removed from the physical custody of his or her parent. Existing law requires the court authorization for the administration of psychotropic medication to a child be based on a request from a physician, indicating the reasons for the request, a description of the child's diagnosis and behavior, the expected results of the medication, and a description of any side effects of the medication.

This bill, commencing July 1, 2016, would require that an order authorizing the administration of psychotropic medications to a dependent child be granted only upon the court's determination that there is clear and convincing evidence that administration of the medication is in the best interest of the child and that specified requirements have been met, including a requirement that the prescribing physician confirms that he or she has conducted a comprehensive evaluation of the child, as specified. The bill would prohibit the court from authorizing the administration of psychotropic medications to a child under other specified circumstances, unless a 2nd independent medical opinion is obtained from a child psychiatrist or a behavioral pediatrician. The bill would prohibit the court from authorizing the administration of a psychotropic medication unless the court is provided documentation that appropriate laboratory screenings and tests for the child have been completed no more than ~~30~~ 45 days prior to submission of the request to the court. The bill would impose additional requirements on the court to implement these provisions and to conduct review hearings, as specified. The bill would require the child's social worker to submit a report to the court prior to the review hearing, to include information from the child, the child's caregiver, the public health nurse, and the court appointed special advocate. By increasing the duties of county social workers, this bill would create a state-mandated local program. The bill would authorize psychotropic medication to be administered in an emergency without court authorization. The bill would require court authorization to be sought as soon as practical, but in no case more than 2 court days after emergency administration of the psychotropic medication. The bill would require the Judicial Council to adopt rules to implement these provisions.

This bill would require the State Department of Health Care Services, in collaboration with the Judicial Council, to identify resources to assist courts in securing 2nd review and 2nd opinions in order to avoid undue delays in the authorization of psychotropic medications.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 4064.5 of the Business and Professions  
2 Code is amended to read:

3 4064.5. (a) A pharmacist may dispense not more than a 90-day  
4 supply of a dangerous drug other than a controlled substance  
5 pursuant to a valid prescription that specifies an initial quantity of  
6 less than a 90-day supply followed by periodic refills of that  
7 amount if all of the following requirements are satisfied:

8 (1) The patient has completed an initial 30-day supply of the  
9 dangerous drug.

10 (2) The total quantity of dosage units dispensed does not exceed  
11 the total quantity of dosage units authorized by the prescriber on  
12 the prescription, including refills.

13 (3) The prescriber has not specified on the prescription that  
14 dispensing the prescription in an initial amount followed by  
15 periodic refills is medically necessary.

16 (4) The pharmacist is exercising his or her professional  
17 judgment.

18 (b) For purposes of this section, if the prescription continues  
19 the same medication as previously dispensed in a 90-day supply,  
20 the initial 30-day supply under paragraph (1) of subdivision (a) is  
21 not required.

22 (c) A pharmacist dispensing an increased supply of a dangerous  
23 drug pursuant to this section shall notify the prescriber of the  
24 increase in the quantity of dosage units dispensed.

25 (d) In no case shall a pharmacist dispense a greater supply of a  
26 dangerous drug pursuant to this section if the prescriber personally  
27 indicates, either orally or in his or her own handwriting, "No  
28 change to quantity," or words of similar meaning. Nothing in this

1 subdivision shall prohibit a prescriber from checking a box on a  
2 prescription marked “No change to quantity,” provided that the  
3 prescriber personally initials the box or checkmark. To indicate  
4 that an increased supply shall not be dispensed pursuant to this  
5 section for an electronic data transmission prescription as defined  
6 in subdivision (c) of Section 4040, a prescriber may indicate “No  
7 change to quantity,” or words of similar meaning, in the  
8 prescription as transmitted by electronic data, or may check a box  
9 marked on the prescription “No change to quantity.” In either  
10 instance, it shall not be required that the prohibition on an increased  
11 supply be manually initialed by the prescriber.

12 (e) This section does not apply to psychotropic medication or  
13 psychotropic drugs as described in Section 369.5 of the Welfare  
14 and Institutions Code.

15 (f) Nothing in this section shall be construed to require a health  
16 care service plan, health insurer, workers’ compensation insurance  
17 plan, pharmacy benefits manager, or any other person or entity,  
18 including, but not limited to, a state program or state employer, to  
19 provide coverage for a dangerous drug in a manner inconsistent  
20 with a beneficiary’s plan benefit.

21 SEC. 2. Section 369.4 is added to the Welfare and Institutions  
22 Code, to read:

23 369.4. The State Department of Health Care Services, in  
24 collaboration with the Judicial Council, shall identify resources,  
25 which may include, but need not be limited to, university-based  
26 consultation services, to assist the courts in securing second review  
27 and second opinions in order to avoid undue delays in the  
28 authorization of medications pursuant to Section 369.5.

29 SEC. 3. Section 369.5 of the Welfare and Institutions Code is  
30 amended to read:

31 369.5. (a) If a child is adjudged a dependent child of the court  
32 under Section 300 and the child has been removed from the  
33 physical custody of the parent under Section 361, only a juvenile  
34 court judicial officer shall have authority to make orders regarding  
35 the administration of psychotropic medications for that child. The  
36 juvenile court may issue a specific order delegating this authority  
37 to a parent upon making findings on the record that the parent  
38 poses no danger to the child and has the capacity to authorize  
39 psychotropic medications. Court authorization for the  
40 administration of psychotropic medication shall be based on a

1 request from a physician, indicating the reasons for the request, a  
2 description of the child’s diagnosis and behavior, the expected  
3 results of the medication, and a description of any side effects of  
4 the medication. On or before July 1, 2000, the Judicial Council  
5 shall adopt rules of court and develop appropriate forms for  
6 implementation of this section.

7 (b) (1) In counties in which the county child welfare agency  
8 completes the request for authorization for the administration of  
9 psychotropic medication, the agency is encouraged to complete  
10 the request within three business days of receipt from the physician  
11 of the information necessary to fully complete the request.

12 (2) Nothing in this subdivision is intended to change current  
13 local practice or local court rules with respect to the preparation  
14 and submission of requests for authorization for the administration  
15 of psychotropic medication.

16 (c) Within seven court days from receipt by the court of a  
17 completed request, the juvenile court judicial officer shall either  
18 approve or deny in writing a request for authorization for the  
19 administration of psychotropic medication to the child, or shall,  
20 upon a request by the parent, the legal guardian, or the child’s  
21 attorney, or upon its own motion, set the matter for hearing.

22 (d) Psychotropic medication or psychotropic drugs are those  
23 medications administered for the purpose of affecting the central  
24 nervous system to treat psychiatric disorders or illnesses. These  
25 medications include, but are not limited to, anxiolytic agents,  
26 antidepressants, mood stabilizers, antipsychotic medications,  
27 anti-Parkinson agents, hypnotics, medications for dementia, and  
28 psychostimulants.

29 (e) Nothing in this section is intended to supersede local court  
30 rules regarding a minor’s right to participate in mental health  
31 decisions.

32 (f) This section shall not apply to nonminor dependents, as  
33 defined in subdivision (v) of Section 11400.

34 (g) This section shall remain in effect only until July 1, 2016,  
35 and as of January 1, 2017, is repealed, unless a later enacted statute,  
36 that is enacted before January 1, 2017, deletes or extends that date.

37 SEC. 4. Section 369.5 is added to the Welfare and Institutions  
38 Code, to read:

39 369.5. (a) If a child is adjudged a dependent child of the court  
40 under Section 300 and the child has been removed from the

1 physical custody of the parent under Section 361, only a juvenile  
2 court judicial officer shall have authority to make orders regarding  
3 the administration of psychotropic medications for that child. The  
4 juvenile court may issue a specific order delegating this authority  
5 to a parent, upon making findings on the record that the parent  
6 poses no danger to the child and has the capacity to authorize  
7 psychotropic medications. Court authorization for the  
8 administration of psychotropic medication shall be based on a  
9 request from a physician, indicating the reasons for the request, a  
10 description of the child's diagnosis and behavior, the expected  
11 results of the medication, and a description of any side effects of  
12 the medication. On or before July 1, 2016, the Judicial Council  
13 shall adopt rules of court and develop appropriate forms for  
14 implementation of this section. Whenever the court authorizes the  
15 administration of a psychotropic medication, it shall ensure that  
16 the administration of the psychotropic medication is only one part  
17 of a comprehensive treatment plan for the child that shall include  
18 and specify the psychosocial, behavioral, and alternative services,  
19 if any, the child will receive in addition to any authorized  
20 medication.

21 (b) (1) An order authorizing the administration of psychotropic  
22 medications pursuant to this section shall be granted only upon  
23 the court's determination that there is clear and convincing  
24 evidence that administration of the medication is in the best interest  
25 of the child based on a determination that the anticipated benefits  
26 of the psychotropic medication outweigh the short- and long-term  
27 risks associated with the medications. An order authorizing the  
28 administration of psychotropic medication pursuant to this section  
29 shall not be granted if the court determines that the medication is  
30 being used as punishment, for the convenience of staff, as a  
31 substitute for other less invasive treatments, or in quantities or  
32 dosages that interfere with the child's treatment program.

33 (2) An order authorizing the administration of psychotropic  
34 medications pursuant to this section shall be granted only if the  
35 court determines all of the following:

36 (A) The court is provided documentation confirming the child's  
37 caregiver has been informed, and the child has been informed in  
38 an age and developmentally appropriate manner in the primary  
39 language of the child, about the recommended medications, the  
40 anticipated benefits, the nature, degree, duration, and probability

1 of side effects and significant risks commonly known by the  
2 medical profession, and of psychosocial treatments and  
3 interventions specific to the identified disorder and symptoms to  
4 be considered concurrently with or as an alternative to the  
5 medication.

6 (i) The documentation shall state that the child and the child's  
7 caregiver have been asked whether either have concerns regarding  
8 the medication, and if so, shall describe the nature of those  
9 concerns.

10 (ii) The documentation shall confirm that the child has been  
11 informed of the right to object to the authorization of psychotropic  
12 medication and to request a hearing pursuant to subdivision (g).

13 (iii) The documentation shall include the written assent or refusal  
14 to assent of a child who is 12 years of age or older.

15 (B) The prescribing physician submitting the request for  
16 psychotropic medication has conducted a comprehensive  
17 examination of the child in compliance with Section 2242 of the  
18 Business and Professions Code and consistent with the Psychiatric  
19 Evaluation and Diagnosis provisions included in the Guidelines  
20 for the Use of Psychotropic Medication with Children and Youth  
21 in Foster Care issued by the state, which takes into account all of  
22 the following:

23 (i) The child's trauma history.

24 (ii) The child's health care history, including medication history.

25 (iii) Multiple sources of information, that should include, but  
26 are not limited to, the child, the child's parents, relatives, teacher,  
27 caregiver or caregivers, past prescribers of psychotropic  
28 medication, or other health care providers.

29 (C) The prescribing physician also confirms all of the following:

30 (i) There are no less invasive treatment options available to meet  
31 the needs of the child.

32 (ii) The dosage or dosage range requested is appropriate for the  
33 child.

34 (iii) The short- and long-term risks associated with the use of  
35 psychotropic medications by the child does not outweigh the  
36 reported benefits to the child.

37 (iv) All appropriate laboratory screenings, measurements, or  
38 tests for the child have been completed in accordance with accepted  
39 medical guidelines.

1 (D) A plan is in place for regular monitoring of the child's  
2 medication and psychosocial treatment plan, the effectiveness of  
3 the medication and psychosocial treatment, and any potential side  
4 effects of the medication, by the physician in consultation with  
5 the caregiver, mental health care provider, and others who have  
6 contact with the child, as appropriate.

7 (3) The person or entity submitting the request for authorization  
8 of the administration of psychotropic medication is responsible  
9 for providing the necessary documentation of the clinical  
10 appropriateness of the proposed psychotropic medication and shall  
11 bear the burden of proof established in this section.

12 (c) A court shall not issue an order authorizing the administration  
13 of psychotropic medications for a child unless a second  
14 independent medical opinion is obtained from a child psychiatrist  
15 or a behavioral pediatrician if one or more of the following  
16 circumstances exist:

17 (1) The request is for any class of psychotropic medication for  
18 a child who is five years of age or younger.

19 (2) The request would result in the child being administered  
20 three or more psychotropic medications concurrently.

21 (3) The request is for the concurrent administration of any two  
22 drugs from the same class unless the request is for medication  
23 tapering and replacement that is limited to no more than ~~30~~ 45  
24 days.

25 (4) The request is for a dosage that exceeds the amount  
26 recommended for children.

27 (d) The court shall not authorize the administration of the  
28 psychotropic medication unless the court is provided with  
29 documentation that all of the appropriate laboratory screenings,  
30 measurements, or tests for the child have been completed no more  
31 than ~~30~~ 45 days prior to submission of the request to the court in  
32 accordance with accepted medical guidelines.

33 (e) (1) No later than 60 days after the authorization of a new  
34 psychotropic medication is granted or at the next review hearing  
35 scheduled for the child, if scheduled no earlier than 45 days after  
36 the authorization of a new psychotropic medication, the court shall  
37 conduct a review hearing to determine all of the following:

38 (A) Whether the child is taking the medication or medications.

39 (B) Whether psychosocial services and other aspects of the  
40 child's treatment plan have been provided to the child.

1 (C) To what extent the symptoms for which the medication or  
2 medications were authorized have been alleviated.

3 (D) Whether more time is needed to evaluate the effectiveness  
4 of the medication or medications.

5 (E) What, if any, adverse effects the child has suffered.

6 (F) Any steps taken to address those effects.

7 (G) The date or dates of followup visits with the prescribing  
8 physician since the medication or medications were authorized.

9 (H) Whether the appropriate followup laboratory screenings  
10 have been performed and their findings.

11 (2) Prior to the review, the child's social worker shall submit a  
12 report to the court and to counsel for the parties, which shall  
13 include information from the child, the child's caregiver, the public  
14 health nurse, and the court appointed special advocate, if any.

15 (3) If based upon this review, the court determines that the  
16 proffered benefits of the medication have not been demonstrated  
17 or that the risks of the medication outweigh the benefits, the court  
18 shall reconsider, modify, or revoke its authorization for the  
19 administration of medication.

20 (f) (1) In counties in which the county child welfare agency  
21 completes the request for authorization for the administration of  
22 psychotropic medication, the agency is encouraged to complete  
23 the request within three business days of receipt from the physician  
24 of the information necessary to fully complete the request.

25 (2) This subdivision is not intended to change current local  
26 practice or local court rules with respect to the preparation and  
27 submission of requests for authorization for the administration of  
28 psychotropic medication.

29 (g) Within seven court days from receipt by the court of a  
30 completed request, the juvenile court judicial officer shall either  
31 approve or deny in writing a request for authorization for the  
32 administration of psychotropic medication to the child, refer the  
33 request for a second opinion as required by subdivision (c), or  
34 shall, upon a request by the parent, the legal guardian, or the child's  
35 attorney, or upon its own motion, set the matter for hearing.

36 (h) If the court grants the request, or modifies and then grants  
37 the request, the order for authorization is effective until terminated  
38 or modified by court order or until 180 days following the date of  
39 the order, whichever is earlier.

1 (i) Psychotropic medication or psychotropic drugs are those  
2 medications administered for the purpose of affecting the central  
3 nervous system to treat psychiatric disorders or illnesses. These  
4 medications include, but are not limited to, anxiolytic agents,  
5 antidepressants, mood stabilizers, antipsychotic medications,  
6 anti-Parkinson agents, hypnotics, medications for dementia, and  
7 psychostimulants.

8 (j) (1) Psychotropic medications may be administered without  
9 court authorization in an emergency. An emergency exists if all  
10 of the following conditions are met:

11 (A) A physician finds that the child requires psychotropic  
12 medication to treat a psychiatric disorder or illness.

13 (B) The medication is immediately necessary for the  
14 preservation of life or the prevention of serious bodily harm to the  
15 child or others. It is not necessary for the harm to take place or  
16 become unavoidable prior to treatment.

17 (C) It is impractical to obtain authorization from the court before  
18 administering the psychotropic medication to the child.

19 (2) Court authorization shall be sought as soon as practical, but  
20 in no case more than two court days after the emergency  
21 administration of psychotropic medication.

22 (k) This section is not intended to supersede local court rules  
23 regarding a minor's right to participate in mental health decisions.

24 (l) Nothing in this section grants any person the authority to  
25 administer psychotropic medication to a child who orally refused  
26 or otherwise indicates a refusal of treatment with the authorized  
27 medication. A child's objection to or noncompliance with, the  
28 authorized psychotropic medication is a treatment issue to be  
29 resolved by the physician prescribing the medication. No person  
30 shall threaten, coerce, withhold privileges, or otherwise penalize  
31 a child for refusing to take a psychotropic medication. A child  
32 cannot be forced to take psychotropic medication unless otherwise  
33 specifically permitted by statute.

34 (m) This section shall not apply to nonminor dependents, as  
35 defined in subdivision (v) of Section 11400.

36 (n) This section shall become operative on July 1, 2016.

37 SEC. 5. If the Commission on State Mandates determines that  
38 this act contains costs mandated by the state, reimbursement to  
39 local agencies and school districts for those costs shall be made

1 pursuant to Part 7 (commencing with Section 17500) of Division  
2 4 of Title 2 of the Government Code.

O