

STATE OF TENNESSEE

PUBLIC CHAPTER NO. 127

SENATE BILL NO. 850

**By Black, Burks, Gresham, Beavers, Ketron, Crowe, McNally, Burchett,
Tracy,
Mr. Speaker Ramsey, Yager, Southerland, Stanley, Bunch, Norris, Johnson,
Faulk, Watson**

Substituted for: House Bill No. 1552

By Harwell, Campfield, Bell, Kevin Brooks, Shipley, Maggart, Lundberg,
Matheny, Eldridge, Montgomery, Lynn, Hawk, Swafford, Jim Cobb, Hensley,
Dennis, McCormick, Rowland, Harrison, Evans, Floyd, Tidwell, Dean, Hill, West,
John Deberry, Weaver, Dunn, Lollar, Curtis Johnson, Harry Brooks, Matlock,
Coley, Sargent, Kernell, Niceley, Rich, McManus, Ford, Phillip Johnson, McCord,
Carr, Faulkner, Todd

AN ACT to amend Tennessee Code Annotated, Title 9, Chapter 4 and Title 49, Chapter 2, Part 1, relative to mental health testing.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 2, Part 1, is amended by adding the following language as a new section:

Section 49-2-124.

(a) As used in this section:

(1) "Mental health screening" or "socioemotional screening" are defined, for the purposes of this chapter, as the use of one (1) or more brief, structured questionnaires designed to identify the possibility that an individual has a mental health problem;

(2) "Universal mental health or socioemotional screening" means, for the purposes of this chapter, any mental health screening program in which a group of individuals is automatically screened without regard to whether there was a prior indication of a mental health problem;

(3) "Psychotropic medication" means a drug which exercises a direct effect upon the central nervous system and which is capable of influencing and modifying behavior. Psychotropic medication includes, but is not limited to:

A) Anti-psychotics;

- B) Anti-depressants;
- C) Agents for control of mania and depression;
- D) Anti-anxiety agents;
- E) Psychomotor stimulants; and
- F) Hypnotics.

(b) Universal mental health or socioemotional screening is only permitted under the following circumstances:

(1) A parent, guardian, legal custodian, or caregiver under Title 34, Chapter 6, Part 3, of a child under the age of sixteen (16) has provided written, active, informed, and voluntarily signed consent which may be withdrawn at any time by the parent, guardian, legal custodian, or caregiver under Title 34, Chapter 6, Part 3;

(2) A court requires the mental health evaluation, examination, or testing;

(3) Emergency screening, evaluation, examination, or testing of an individual under Title 33, Chapter 6, Part 4, or screening done in connection with a disaster or epidemic; or

(4) Screening required pursuant to the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) Program with active, written, informed, voluntarily signed consent as outlined in § 49-2-124(b)(1) that may be withdrawn at any time by the parent, legal guardian, custodian or caregiver under Title 34, Chapter 6, Part 3, who gave such consent.

(c) Notwithstanding the provisions of any law to the contrary, a local education agency (LEA) may not use the parent's refusal to consent to administration of a psychotropic medication to a student or to a mental health screening, evaluation, testing or examination of a child or student as grounds for prohibiting the child from attending class or participating in a school-related activity or as the basis of reporting or charging child abuse, child neglect, educational neglect, or medical neglect. An LEA shall not use nor threaten use of school sanctions to a student to coerce parental consent to a mental health screening, evaluation, testing or examination. A person employed by an LEA may not require that a student be evaluated or treated with any psychotropic medication or for a particular mental health diagnosis. Only the following LEA personnel may perform an evaluation for psychiatric diagnosis and/or treatment with written informed, voluntarily signed consent as outlined in § 49-2-124(b)(1) that may be withdrawn at any time by the parent, legal guardian, custodian or caregiver under Title 34, Chapter 6, Part 3, who gave such consent:

(1) Psychiatrist;

(2) Physician with expertise in psychiatry as determined by training, education, or experience;

(3) Advanced practice nurse with special certification in mental health or psychiatric nursing;

(4) Advanced practice nurse with expertise in mental health or psychiatric nursing as determined by training, education, or experience;

(5) Psychologist with health service provider designation;

(6) Senior psychological examiner;

(7) Licensed professional counselor;

(8) Licensed clinical social worker; or

(9) School psychologist.

(d) Written, informed, active, voluntary consent as outlined in § 49-2-124(b)(1) that may be withdrawn at any time by the parent, legal guardian, custodian or caregiver under Title 34, Chapter 6, Part 3, must also be obtained before proceeding with any psychiatric treatment recommendations resulting from any mental health screening, evaluation, testing, or examination.

(e) The provisions of subsections (b) and (c) shall not be construed to:

(1) Prevent an appropriate referral under the child find system required under 20 U.S.C. § 1412, as amended with appropriate parental consent procedures as required under 20 U.S.C. § 1414(a)(1)(D)(i);

(2) Prohibit an LEA employee from discussing any aspect of a child's behavior or academic progress with the child's parent or guardian or another appropriate school district employee, consistent with federal and state law, including the requirement of prior parental consent for the disclosure of any education records. Nothing in this subdivision shall be construed to modify or affect parental notification requirements for programs authorized under the Elementary and Secondary Education Act of 1965 (as amended by the No Child Left Behind Act of 2001; Public Law 107-110);

(3) Prohibit an LEA employee from referring a child to LEA personnel specified in § 49-2-124(c);

(4) Prohibit referrals, counseling, or support in the event of an emergency or urgent situation to include, but not be limited to, the death, suicide, attempted suicide, murder, attempted murder, serious injury or serious illness of a student, teacher, staff, member of the administration, superintendent, or any other school personnel or significant individual; or

(5) Prohibit testing which is a part of a course of treatment, rehabilitation or service plan for children in the legal custody of a state agency, or required by federal law applicable to such children, or as otherwise authorized under Title 37 including, but not limited to, Child Protective Services assessments or evaluations.

(f) Each LEA shall inform each parent, legal guardian, custodian, or caregiver, of their rights pursuant to this section, and shall provide a copy of the LEA policy on the rights of parents and students as required in § 49-2-211 and a copy of the Protection of Pupil Rights, 20 U.S.C. 1232h, commonly referred to as the Tiahrt Amendment, as amended by the Parents Rights Restoration Amendment to Goals 2000, March 31, 1994, Public Law 103-227, § 1017, and included in the No Child Left Behind Law, 20 U.S.C. 6301, et seq.

(g) The local board of education of each LEA shall adopt such policies as may be reasonable and necessary to ensure implementation and enforcement of this section. The local board of education of each LEA shall report to the Department of Education by July 1, 2010, on the impact of this act.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect July 1, 2009, the public welfare requiring it.

PASSED: April 20, 2009



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 5th day of May 2009



PHIL BREDESEN, GOVERNOR