

The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER 51

HOUSE BILL 53, as amended

Introduced by

REPRESENTATIVE NORA ESPINOZA

REPRESENTATIVE CONRAD D. JAMES
REPRESENTATIVE YVETTE HERRELL
REPRESENTATIVE JIMMIE C. HALL
REPRESENTATIVE DENNIS J. ROCH
REPRESENTATIVE DAVID M. GALLEGOS
REPRESENTATIVE JOHN L. ZIMMERMAN
REPRESENTATIVE JAMES R. J. STRICKLER



FOR THE LEGISLATIVE HEALTH AND
HUMAN SERVICES COMMITTEE

CHAPTER 51

AN ACT

1
2 RELATING TO CHILDREN; ENACTING A NEW SECTION OF THE PUBLIC
3 SCHOOL CODE TO PROHIBIT SCHOOL PERSONNEL FROM COMPELLING
4 STUDENTS TO USE PSYCHOTROPIC MEDICATIONS; AMENDING A SECTION
5 OF THE CHILDREN'S CODE TO PROVIDE THAT A PARENT'S, GUARDIAN'S
6 OR CUSTODIAN'S REFUSAL TO CONSENT TO ADMINISTRATION OF A
7 PSYCHOTROPIC MEDICATION TO A CHILD IS NOT GROUNDS PER SE FOR
8 PROTECTIVE CUSTODY.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

11 SECTION 1. A new section of the Public School Code is
12 enacted to read:

13 "PSYCHOTROPIC MEDICATION--PROHIBITION ON COMPULSION.--

14 A. Each local school board or governing body shall
15 develop and promulgate policies that prohibit school personnel
16 from denying any student access to programs or services
17 because the parent or guardian of the student has refused to
18 place the student on psychotropic medication.

19 B. School personnel may share school-based
20 observations of a student's academic, functional and
21 behavioral performance with the student's parent or guardian
22 and offer program options and other forms of assistance that
23 are available to the parent or guardian and the student based
24 on those observations. However, an employee or agent of a
25 school district or governing body shall not compel or attempt

1 to compel any specific actions by the parent or guardian or
2 require that a student take a psychotropic medication.

3 C. School personnel shall not require a student to
4 undergo psychological screening unless the parent or guardian
5 of that student gives prior written consent before each
6 instance of psychological screening.

7 D. Nothing in this act shall be construed to
8 create a prohibition against a teacher or other school
9 personnel from consulting or sharing a classroom-based
10 observation with a parent or guardian regarding:

11 (1) a student's academic and functional
12 performance;

13 (2) a student's behavior in the classroom or
14 school; or

15 (3) the need for evaluation for special
16 education or related services.

17 E. 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
24 the American hospital formulary service; and

25 (2) "school personnel" means school

1 personnel that the department has licensed."

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

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

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

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

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

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

24 (c) the child has been abandoned;

25 (d) the child is in need of emergency

1 medical care;

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

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

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

14 B. A child shall not be taken into protective
15 custody solely on the grounds that the child's parent,
16 guardian or custodian refuses to consent to the administration
17 of a psychotropic medication to the child.

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

22 D. When a child is taken into custody, the
23 department shall make reasonable efforts to determine whether
24 the child is an Indian child.

25 E. If a child taken into custody is an Indian

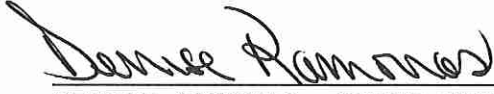
1 child and is alleged to be neglected or abused, the department
2 shall give notice to the agent of the Indian child's tribe in
3 accordance with the federal Indian Child Welfare Act of 1978.

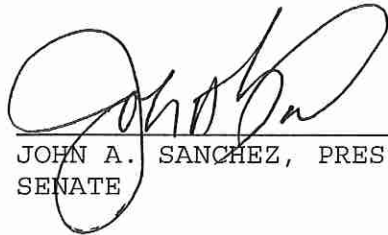
4 F. Any person who intentionally interferes with
5 protection of a child, as provided by Subsection A of this
6 section, is guilty of a petty misdemeanor."_____

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DON TRIPP, SPEAKER
HOUSE OF REPRESENTATIVES


DENISE RAMONAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES


JOHN A. SANCHEZ, PRESIDENT
SENATE


LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 5th day of April, 2015


SUSANA MARTINEZ, GOVERNOR
STATE OF NEW MEXICO