I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2012 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Substitute Bill No. 202-31 (COR), "AN ACT TO *ADD* A NEW ARTICLE 7 TO CHAPTER 6 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO PROTECTION OF MINORS' AND STUDENTS' RIGHTS",** was on the 27th day of April, 2012, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 27th day of Apr., 2012, at 2:50 o'clock P .M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 202-31 (COR)
As substituted by the Committee on Education
and Public Libraries.

Introduced by: V. Anthony Ada
T. C. Ada
F. F. Blas, Jr.
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AN ACT TO *ADD* A NEW ARTICLE 7 TO CHAPTER 6 OF TITLE 17, GUAM CODE ANNOTATED, RELATIVE TO PROTECTION OF MINORS' AND STUDENTS' RIGHTS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Article 7 is *added* to Chapter 6 of Title 17, Guam Code Annotated, to read as follows:

"**Article 7**

Mental Health Screening, Child Protection and Informed Consent Act

§ 6700. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that:

(a) The use of educational settings to screen children and adolescents for "mental disorders" has led to parents not being given sufficient information about the purpose of such screenings and the ramifications if they consent, such as psychological or psychiatric treatment for their child and family, thereby violating the recognized requirements and standards regarding "full informed consent".

(b) Frequently, a system of "passive consent" is used whereby "consent" is considered provided when the parent *does not* return the consent form. The onus is, therefore, on the child/adolescent to transmit the consent form to the parent, and on the parent ensuring that if consent is not given, the form is signed and returned. However, the onus should rest on both the school and the mental health professional or agency seeking to conduct the screening, with criminal penalties if consent is not obtained in writing and the child is subjected to non-consensual screening.

(c) "Passive consent" or other consent forms often:

(1) mislead parents into thinking that what is taking place at the school is just a health evaluation for their child, not a psychiatric evaluation;

(2) *do not* include information about the personal and invasive questions their child will be asked;

(3) *do not* contain information on the difference between "emotional health concerns", mental disorders, or physical diseases, the latter of which can be physically tested for and the former cannot; and

(4) leave the parent with so little information that he or she cannot make a proper informed decision to give valid informed consent.

(d) Parents also are *not* informed that mental health screenings for "mental disorders" are based on those defined in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM). However, in the introduction of the DSM-IV it states, "Moreover, although this manual provides a classification of mental disorders, it must be admitted that no definition adequately specifies precise boundaries for the concept of 'mental disorder' ". Further, "...the term 'mental' disorders...persists in the title of DSM-IV because we have not found an appropriate substitute".

(e) Unlike scientific methods to determine physical diseases like cancer, diabetes or tuberculosis, a diagnosis of "mental disorder" or "syndrome" is *not* based on any medical test, such as a brain scan, a 'chemical imbalance' test, x-ray or blood test. The former U.S. Surgeon General, in his 1999 Report on Mental Health, which became a reference for many countries, stated, "The diagnosis of mental disorders is often believed to be more difficult than diagnosis of medical disorders since there is no definitive lesion, laboratory test or abnormality in brain tissue that can identify the illness.

(f) Harvard Medical School's Dr. Joseph Glenmullen warns that the checklist rating scales used to screen people for conditions, such as "depression", are "designed to fit hand-in-glove with the effects of drugs, emphasizing the physical symptoms of depression that most respond to antidepressant medication...While assigning a number to a patient's depression may look scientific, when one examines the questions asked and

the scales used, they are utterly subjective measures". He says, "The symptoms are subjective emotional states, making the diagnosis extremely vague".

(g) Based on the subjective nature of the mental health diagnostic system and mental health screenings, millions of children are prescribed antidepressants or stimulants recognized by leading drug regulatory agencies as causing suicidal behavior, suicide, violence, hostility and, in the case of stimulants, the potential for strokes and heart attacks. In October 2004, the U.S. Food and Drug Administration (FDA) required a "black box" warning of suicide risks for all antidepressants prescribed to those under eighteen (18) years old. In August 2005, The Commission of the European Communities that represents twenty-five (25) countries issued the strongest warning yet against child antidepressant use, warning of the drug's potential to cause suicide attempts and suicidal ideation, aggression, hostility (predominantly aggression, oppositional behavior and anger), and/or related behavior. According to the U.S. Drug Enforcement Administration, the stimulant drugs being prescribed to children are scheduled as abusive as opium, morphine and cocaine. In February 2006, an FDA Advisory Committee recommended a "black box" warning for stimulants, stating that they can cause heart attacks, strokes, and even death.

(h) As such, Guam's parents, without explicit protection, will be unable to give informed consent about whether they want their child to participate in such screening.

It is the intent of *I Liheslatura* to prohibit the Guam Department of Education from conducting any mental health screening on school children without the informed consent of parents.

§ 6701. Informed Consent Required for Mental Health Screening of Students. The Guam Department of Education *shall*:

(a) prohibit the use of schools for any mental health or psychological screening or testing of any student, whether a non-emancipated minor or emancipated minor, without the express written consent of the parent or guardian;

(b) the consent form must be in a clear and legible form and in compliance with any local or federal regulation, in the primary language of the parent, *not less than* forty-five (45) days in advance of any such screening; and

(c) the consent form must be signed by the parent or legally appointed guardian of each minor.

§ 6702. Contents of Informed Consent Form. The consent form must include the following information:

TO: (parent or guardian)

FROM: (school or organization)

[Particulars regarding name of screening program, where and when it will take place]

FULL INFORMED CONSENT FOR MENTAL HEALTH OR PSYCHOLOGICAL SCREENING

Mental health or psychological screening methods for children and adolescents vary from state to state, but may involve a self-administered computer interview or survey to determine how a student feels emotionally (anxious or worried, sad or depressed) or to judge his or her behavior at the present time or in the past. These

questions can cover thoughts or feelings your child has had or thoughts and feelings your child thinks you may have had or currently have about him or her.

An outcome could be you are asked to take your child for a follow-up interview or evaluation to determine if he or she has a mental disorder or syndrome. Based on an evaluation of your child's answers, he or she may be diagnosed with a "mental" or "psychiatric disorder". These diagnoses have to be made by a psychologist, psychiatrist or medical doctor, but the subjectivity of this diagnostic process makes it a risk.

Questionnaires or tests are frequently based on symptoms outlined in the *Diagnostic and Statistical Manual of Mental Disorders (*DSM*)* or the mental disorders section of the *International Classification of Diseases (*ICD*)*. The psychologist, psychiatrist and medical doctor often depend upon these diagnoses in order to bill private or government insurance.

The attitudes, beliefs, actions, inactions, or behaviors of a child or adolescent and whether or not these constitute a mental disorder are based on the opinion only of the person making the diagnosis. Unlike methods to determine physical diseases like cancer, diabetes or tuberculosis, a diagnosis of "mental disorder" or "syndrome" cannot be determined by any physical, medical test, such as a brain scan, a "chemical imbalance" test, X-ray or blood test.

Mental health screening could be presented to you as a means of preventing suicide. However, there is no scientific evidence to substantiate this at this time. The U.S. Preventive Services Task Force (USPSTF) studied this and

recommended against screening for suicide in 2004, saying that it "found no evidence that screening for suicide risk reduces suicide attempts or mortality".

Commonly psychiatric drugs prescribed to treat mental disorders can have very serious effects on some children. In 2005, the European Committee for Medicinal Products for Human Use (CHMP), which includes members from 25 European Member States determined that antidepressants should not be prescribed to those under 18 years old because they can produce suicidal behavior, including suicide attempts and thinking about suicide and/or related behavior like self-harm, hostility or mood changes.

The U.S. Food and Drug Administration ordered that a "black box", its highest level of drug warning, be placed on antidepressant packaging advising that the drugs can induce suicide in children and teens. The FDA also has issued concerns that stimulant drugs prescribed to children may cause "psychiatric events," described as "visual hallucinations, suicidal ideation, psychotic behavior, as well as aggression or violent behavior".

Before consenting to any such screening or survey, the educational facility must provide a manual and other published information which fully describes:

(a) The nature and purpose of the screening/test or questionnaire.

(b) The development of the screening/test or questionnaire, its scientific validity as replicated in scientific studies, the rationale for the screening/test/questionnaire and reliability.

(c) Scientific journal citations demonstrating that the proposed screening/test or questionnaire has been proven to be reliable and valid by replicated scientific studies.

(d) A guarantee that no screening/test or questionnaire is based or related to any "mental disorder" as covered in the *Diagnostic and Statistical Manual of Mental Disorders*.

(e) The intended use of the results or outcomes of the child or adolescent completing such screening/test or questionnaire.

(f) The right to rescind consent at any time before, during or after the screening/test or questionnaire being proposed.

Informed Consent for Mental Health Screening

I acknowledge that I have read and understood the above information to the best of my ability and have read (NAME OF MANUAL), and based on my understanding, I am choosing **one** (1) of the following:

(a) **I give my consent** for my child to undergo an evaluation for emotional, behavior, mental, specific learning disabilities, or other health impairments (mental health screening), and require that I be provided, in writing, any findings determined.

(b) Consent means that I do/do not (strike which is inappropriate) give permission for the information obtained from such survey or testing to become part of my child's school or other record or to be transmitted to any other agency outside of the [name of school].

_____ _____

(Signature of Parent) Date

(c) **I <u>do not</u> give my consent** for my child to undergo an evaluation for emotional, behavior, mental, specific learning disabilities, or other health impairments (mental health screening).

_____ _____

(Signature of Parent) Date

THIS FORM MUST BE RECEIVED BY THE PARENT AT LEAST 45 DAYS BEFORE THE PLANNED SCREENING. PLEASE ENSURE THIS FORM IS RETURNED BEFORE THE SCREENING DATE. YOU HAVE THE RIGHT TO REVOKE YOUR CONSENT AT ANY TIME."

Section 2. Authorization for the Compiler of Laws to Renumber Sections as Necessary. The Compiler of Laws *shall*, if necessary renumber any provisions of this act in the event that the numbers of such sections conflict with the existing numbers of sections of public law.