

1 **MEDICAL RECOMMENDATIONS FOR**
2 **CHILDREN**

3 2002 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: Katherine M. Bryson**

6 **This act modifies the State System of Public Education Code and the Judicial Code by**
7 **prohibiting school personnel from making certain medical recommendations for a child,**
8 **including the use of psychotropic drugs. This act provides criminal penalties. This act**
9 **provides that the Division of Child and Family Services may not initiate an investigation or**
10 **remove a minor from the custody of his parent on the basis of the refusal of the parent to**
11 **consent to the administration of a psychotropic drug to a child, or to consent to certain**
12 **treatments or evaluations of the child.**

13 This act affects sections of Utah Code Annotated 1953 as follows:

14 AMENDS:

15 **78-3a-301 (Subsection (1)(m) is repealed 07/01/02)**, as last amended by Chapters 153
16 and 250, Laws of Utah 2001

17 ENACTS:

18 **53A-11-602**, Utah Code Annotated 1953

19 *Be it enacted by the Legislature of the state of Utah:*

20 Section 1. Section **53A-11-602** is enacted to read:

21 **53A-11-602. Prohibited recommendations -- Psychotropic drugs -- Exception for**
22 **letters -- Penalties.**

23 (1) As used in this section, "school" means a public school.

24 (2) School personnel may not:

25 (a) imply that a child must take a psychotropic drug as a condition for attending school;

26 (b) require that a child take a psychotropic drug as a condition for attending school;

27 (c) recommend that a parent or guardian seek or use any of the following:



- 28 (i) the administration of any psychotropic medication to a child;
- 29 (ii) a psychiatric, psychological, or behavioral treatment for a child; or
- 30 (iii) a medical, psychiatric, or behavioral health evaluation of a child; or
- 31 (d) recommend a specific licensed physician, psychologist, or any other health specialist
- 32 to a parent or guardian for a child.

33 (3) School personnel may not make a child abuse or neglect report to authorities, including
 34 the Division of Child and Family Services, concerning a parent or guardian who refuses to consent
 35 to:

- 36 (a) the administration of a psychotropic drug to a child;
- 37 (b) a psychiatric, psychological, or behavioral treatment for a child; or
- 38 (c) a medical, psychiatric, or behavioral health evaluation of a child.

39 (4) Subsection (2)(c) does not apply if school personnel perceive that a child has a
 40 behavioral or psychological problem and send a letter to the child's parent or guardian
 41 recommending that an appropriate medical or behavioral health evaluation be conducted by a
 42 licensed physician.

43 (5) A person who violates Subsection (2) or (3) is guilty of a class B misdemeanor.

44 Section 2. Section **78-3a-301 (Subsection (1)(m) is repealed 07/01/02)** is amended to
 45 read:

46 **78-3a-301 (Subsection (1)(m) is repealed 07/01/02). Removing a child from his home**
 47 **-- Grounds for removal -- Exigent circumstances.**

48 (1) The Division of Child and Family Services may not remove a child from the custody
 49 of his natural parent unless the division complies with the provisions of Title 62A, Chapter 4a,
 50 Child and Family Services, including Subsections 62A-4a-103(2)(b) and 62A-4a-201(3), and
 51 unless there is substantial cause to believe that any one of the following exist:

52 (a) there is a substantial danger to the physical health or safety of the minor and the minor's
 53 physical health or safety may not be protected without removing him from his parent's custody.
 54 If a minor has previously been adjudicated as abused, neglected, or dependent, and a subsequent
 55 incident of abuse, neglect, or dependency has occurred involving the same alleged abuser or under
 56 similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the child
 57 cannot safely remain in the custody of his parent;

58 (b) a parent engages in or threatens the child with unreasonable conduct that causes the

59 minor to suffer emotional damage and there are no reasonable means available by which the
60 minor's emotional health may be protected without removing the minor from the custody of his
61 parent;

62 (c) (i) the minor or another minor residing in the same household has been physically or
63 sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by
64 a parent, a member of the parent's household, or other person known to the parent.

65 (ii) For purposes of this Subsection (1)(c), another minor residing in the same household
66 may not be removed from the home unless that minor is deemed to be at substantial risk of being
67 physically or sexually abused as described in Subsection (1)(c)(i) or (iii).

68 (iii) If a parent has received actual notice that physical or sexual abuse by a person known
69 to the parent has occurred, and there is evidence that the parent failed to protect the child by
70 allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima
71 facie evidence that the child is at substantial risk of being physically or sexually abused;

72 (d) the parent is unwilling to have physical custody of the child;

73 (e) the minor has been left without any provision for his support;

74 (f) a parent who has been incarcerated or institutionalized has not or cannot arrange for
75 safe and appropriate care for the minor;

76 (g) a relative or other adult custodian with whom the minor has been left by the parent is
77 unwilling or unable to provide care or support for the minor, the whereabouts of the parent are
78 unknown, and reasonable efforts to locate him have been unsuccessful;

79 (h) the minor is in immediate need of urgent medical care;

80 (i) (i) a parent's actions, omissions, or habitual action create an environment that poses
81 a threat to the child's health or safety; or

82 (ii) a parent's action in leaving a child unattended would reasonably pose a threat to the
83 child's health or safety;

84 (j) (i) the minor or another minor residing in the same household has been neglected; and

85 (ii) for purposes of Subsection (j)(i), another minor residing in the same household may
86 not be removed unless that minor is deemed to be at substantial risk of being neglected;

87 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;

88 (l) the parent, or an adult residing in the same household as the parent, has been charged
89 or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine

90 laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the
91 property where the child resided; or

92 (m) the child's welfare is otherwise endangered, as documented by the caseworker. This
93 Subsection (1)(m) is repealed on July 1, 2002 unless further authorized by the Legislature.

94 (2) The Division of Child and Family Services may not remove a minor from the custody
95 of his parent solely on the basis of educational neglect.

96 (3) The Division of Child and Family Services may not remove a minor from the custody
97 of his parent solely on the basis of mental illness of the parent in the absence of one of the factors
98 described in Subsection (1).

99 (4) The Division of Child and Family Services may not initiate an investigation or remove
100 a minor from the custody of his parent on the basis of the refusal of the parent to consent to:

101 (a) the administration of a psychotropic drug to a child;

102 (b) a psychiatric, psychological, or behavioral treatment for a child; or

103 (c) a medical, psychiatric, or behavioral health evaluation of a child.

104 [~~4~~] (5) The Division of Child and Family Services shall comply with the provisions of
105 Section 62A-4a-202.1 in effecting removal of a child pursuant to this section.

106 [~~5~~] (6) (a) A minor removed from the custody of his natural parent under this section may
107 not be placed or kept in a secure detention facility pending court proceedings unless the minor is
108 detainable based on guidelines promulgated by the Division of Youth Corrections.

109 (b) A minor removed from the custody of his natural parent but who does not require
110 physical restriction shall be given temporary care in:

111 (i) a shelter facility; or

112 (ii) an emergency kinship placement in accordance with Section 62A-4a-209.

Legislative Review Note
as of 1-15-02 2:03 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel