

Representative Katherine M. Bryson proposes the following substitute bill:

**MEDICAL RECOMMENDATIONS FOR
CHILDREN**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Katherine M. Bryson

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

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

AMENDS:

78-3a-301 (Subsection (1)(m) is repealed 07/01/02), as last amended by Chapters 153 and 250, Laws of Utah 2001

ENACTS:

53A-11-602, Utah Code Annotated 1953

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

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

53A-11-602. Prohibited recommendations -- Psychotropic drugs -- Exceptions -- Penalties.

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

(2) School personnel may not:

(a) recommend to a parent or guardian that a child must take or must continue to take a



26 psychotropic drug as a condition for attending school;

27 (b) require that a child take or continue to take a psychotropic drug as a condition for
28 attending school;

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

30 (i) the administration of any psychotropic medication to a child;

31 (ii) a psychiatric, psychological, or behavioral treatment for a child; or

32 (iii) a psychiatric or behavioral health evaluation of a child unless the sole purpose of the
33 recommendation is to comply with:

34 (A) 20 U.S.C. Sec. 1401 et seq.;

35 (B) 29 U.S.C. Sec. 794; or

36 (C) 42 U.S.C. Sec. 12010 et seq.; or

37 (d) recommend a ~~h~~ [specific] PRIVATE ~~h~~ licensed physician, psychologist, or any other
37a health specialist
38 to a parent or guardian for a child.

39 (3) School personnel may not make a child abuse or neglect report to authorities, including
40 the Division of Child and Family Services, ~~h~~ [concerning] SOLELY ON THE BASIS THAT ~~h~~ a parent
40a or guardian who refuses to consent
41 to:

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

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

44 (c) a psychiatric or behavioral health evaluation of a child.

45 (4) School personnel may inform a child's parent or guardian of a perceived behavioral
46 problem of the child, provided that:

47 (a) an assertion or recommendation is not made in violation of Subsection (2) or (3);

47a ~~h~~ AND ~~h~~

48 (b) an attempt is not made to denigrate, criticize, or punish a parent, guardian, or child for
49 a decision made by the parent or guardian for the child to take, not take, or discontinue to take a
50 psychotropic drug ~~h~~ [~~and~~

51 — (c) a brief follow-up letter is sent to the parent or guardian if the parent or guardian was
52 informed verbally of the perceived behavioral problem] ~~h~~ .

53 (5) Notwithstanding Subsection (2)(d), a school district may make available to an
54 interested parent or guardian a list of community resources, which may include mental health
55 services, provided that the list conspicuously states the following:

56 "This list is provided as a resource to you. The school neither recommends nor requires

57 that you use this list or any of the services provided in it. It is for you to decide what services, if
 58 any, to access and from whom you wish to obtain them."

59 ~~h [(6) A person convicted the first time of a violation of Subsection (2) or (3) is guilty of an~~
 60 ~~infraction and shall be fined not less than \$250.~~

61 ~~—— (7) A person who is convicted the second or subsequent time of a violation of Subsection~~
 62 ~~(2) or (3) is guilty of a class B misdemeanor.]~~

62a (6) A LOCAL SCHOOL BOARD SHALL ADOPT A POLICY THAT INDICATES THAT A
 62b VIOLATION OF THIS SECTION IS CAUSE FOR DISCIPLINARY ACTION UNDER SECTION 53A-8-104. h

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

65 **78-3a-301 (Subsection (1)(m) is repealed 07/01/02). Removing a child from his home**
 66 **-- Grounds for removal -- Exigent circumstances.**

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

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

77 (b) a parent engages in or threatens the child with unreasonable conduct that causes the
 78 minor to suffer emotional damage and there are no reasonable means available by which the
 79 minor's emotional health may be protected without removing the minor from the custody of his
 80 parent;

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

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

87 (iii) If a parent has received actual notice that physical or sexual abuse by a person known

88 to the parent has occurred, and there is evidence that the parent failed to protect the child by
89 allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima
90 facie evidence that the child is at substantial risk of being physically or sexually abused;

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

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

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

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

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

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

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

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

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

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

107 (l) the parent, or an adult residing in the same household as the parent, has been charged
108 or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine
109 laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the
110 property where the child resided; or

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

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

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

118 (4) The Division of Child and Family Services may not initiate an investigation or remove

119 a minor from the custody of his parent on the basis of the refusal of the parent to consent to:

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

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

122 (c) a psychiatric or behavioral health evaluation of a child.

123 [~~4~~] (5) The Division of Child and Family Services shall comply with the provisions of
124 Section 62A-4a-202.1 in effecting removal of a child pursuant to this section.

125 [~~5~~] (6) (a) A minor removed from the custody of his natural parent under this section may
126 not be placed or kept in a secure detention facility pending court proceedings unless the minor is
127 detainable based on guidelines promulgated by the Division of Youth Corrections.

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

130 (i) a shelter facility; or

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