

**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. 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 provides a coordination clause.**

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**78-3a-301 (Subsection (1)(m) is repealed 07/01/02)**, as last amended by Chapters 153 and 250, Laws of Utah 2001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

(a) "school" means a public school;

(b) "federal education law" means:

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

(ii) 20 U.S.C. Sec. 7101 et seq.;

(iii) 29 U.S.C. Sec. 794; and

(iv) 42 U.S.C. Sec. 12101 et seq.

(2) Except as provided in Subsection (4) or (5), school personnel may not:

(a) recommend to a parent or guardian that a child take or continue to take a psychotropic drug as a condition for attending school;

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

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

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

(ii) a psychiatric or psychological treatment for a child; or

(iii) a psychiatric evaluation of a child;

(d) conduct a psychiatric or behavioral health evaluation of a child;

(e) recommend a specific licensed physician, psychologist, or any other health specialist to a parent or guardian for a child; or

(f) make a child abuse or neglect report to authorities, including the Division of Child and Family Services, solely on the basis that a parent or guardian refuses to consent to:

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

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

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

(3) Nothing in this section may be construed to restrict school personnel from:

(a) communicating information between school personnel regarding a child;

(b) informing a child's parent or guardian of a perceived behavioral problem of the child, provided that:

(i) an assertion or recommendation is not made in violation of Subsection (2); and

(ii) an attempt is not made to denigrate, criticize, or punish a parent, guardian, or child for a decision made by the parent or guardian for the child to take, not take, or discontinue to take a psychotropic drug; or

(c) exercising their authority relating to the placement within the school or readmission of a child who may be or has been suspended or expelled for a violation of Section 53A-11-904.

(4) Notwithstanding Subsections (2)(c) and (d), a mental health professional acting in

accordance with Title 58, Chapter 60, Mental Health Professional Practice Act or licensed through the State Board of Education, working within the school system may, for the sole purpose of complying with federal education law:

(a) recommend, but not require, a psychiatric or behavioral health evaluation of a child;

(b) recommend, but not require, psychiatric, psychological, or behavioral treatment for a child; and

(c) conduct a psychiatric or behavioral health evaluation of a child with the consent of the child's parent or guardian.

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

"This list is provided as a resource to you. The school neither recommends nor requires that you use this list or any of the services provided in it. It is for you to decide what services, if any, to access and from whom you wish to obtain them."

(6) A local school board shall adopt a policy that indicates that a violation of this section is cause for disciplinary action under Section 53A-8-104.

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

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

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

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

cannot safely remain in the custody of his parent;

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

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

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

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

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

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

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

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

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

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

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

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

(ii) for purposes of Subsection (j)(i), another minor residing in the same household may not

be removed unless that minor is deemed to be at substantial risk of being neglected;

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

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

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

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

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

(4) 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 solely to consent to:

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

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

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

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

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

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

(i) a shelter facility; or

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

Section 3. **Coordination clause.**

If this bill and H.B. 295 both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall make the following changes in preparing the database for publication:

(1) Subsection 78-3a-301(4) shall be amended to read as follows:

"(4) A court may not remove a minor from the custody of the minor's parent or guardian solely on the basis of the refusal of the parent or guardian to consent to:

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

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

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

(2) Subsection 78-3a-301(4) in H.B. 295 shall be renumbered as Subsection 78-3a-301(5).

(3) Subsection 78-3a-301(5) in H.B. 295 shall be renumbered as Subsection 78-3a-301(6).