

**MEDICAL RECOMMENDATIONS FOR  
CHILDREN**

2005 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael T. Morley**

Senate Sponsor: D. Chris Buttars

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**LONG TITLE**

**General Description:**

This bill prohibits school personnel from making certain medical recommendations for a minor, including the use of psychotropic drugs, and prohibits consideration of a petition for removal of a minor, and removal of a minor from parental custody based on a parent's refusal to consent to the administration of psychotropic drugs.

**Highlighted Provisions:**

This bill:

- ▶ prohibits school personnel from making certain medical recommendations for a minor, including the use of psychotropic drugs;
- ▶ prohibits the removal of a minor from parental custody based on a parent's refusal to consent to the administration of psychotropic drugs; and
- ▶ prohibits the consideration of a petition for removal of a minor from parental custody based on a parent's refusal to consent to the administration of psychotropic drugs.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78-3a-301**, as last amended by Chapter 356, Laws of Utah 2004

**78-3a-305**, as last amended by Chapters 68 and 326, Laws of Utah 2003

ENACTS:

**53A-11-603**, Utah Code Annotated 1953

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

Section 1. Section **53A-11-603** is enacted to read:

**53A-11-603. Definitions -- Prohibited recommendations -- Psychotropic drugs --**

**Exceptions -- Penalties.**

(1) As used in this section:

(a) "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.

(b) "School" means a public school.

(2) Except as provided in Subsection (4), (5), or (6), school personnel may not:

(a) recommend to a parent or guardian that a child take or continue to take a psychotropic drug;

(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 or mental health screening, test, evaluation, or assessment of a child;

(e) recommend a 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 or primarily on the basis that a parent or guardian refuses to consent to:

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

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

(iii) 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:

(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 or mental health screening, test,

evaluation, or assessment of a child if a child's parent or guardian signs a consent form that provides notice of the specific psychiatric or behavioral mental health evaluation or mental health screening, test, evaluation, or assessment and includes a copy of any mental health test that will be administered.

(5) Notwithstanding Subsection (2)(f), school personnel may make a report that would otherwise be prohibited under Subsection (2)(f) if failure to take the action described under Subsection (2)(f) would present a serious, imminent risk to the child's safety or the safety of others.

(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** is amended to read:

**78-3a-301. Court-ordered protective custody of a minor following petition filing --  
Grounds.**

(1) After a petition has been filed under Subsection 78-3a-305(1), if the minor who is the subject of the petition is not in the protective custody of the division, a court may order that the minor be removed from the minor's home or otherwise taken into protective custody if the court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:

(a) there is an imminent danger to the physical health or safety of the minor and the minor's physical health or safety may not be protected without removing the minor from the custody of the minor's parent or guardian;

(b) a parent or guardian engages in or threatens the minor 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 the minor's parent or guardian;

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

to the parent or guardian;

(d) the parent or guardian is unwilling to have physical custody of the minor;

(e) the minor has been abandoned or left without any provision for the minor's support;

(f) a parent or guardian who has been incarcerated or institutionalized has not arranged 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 or guardian is unwilling or unable to provide care or support for the minor, the whereabouts of the parent or guardian are unknown, and reasonable efforts to locate the parent or guardian have been unsuccessful;

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

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

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

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

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

(l) the parent or guardian, or an adult residing in the same household as the parent or guardian, 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 minor resided; or

(m) the minor's welfare is otherwise endangered.

(2) (a) For purposes of Subsection (1)(a), 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 substantiated abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the custody of the minor's parent.

(b) For purposes of Subsection (1)(c):

(i) another minor residing in the same household may not be removed from the home

unless that minor is considered to be at substantial risk of being physically or sexually abused as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

(ii) if a parent or guardian 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 or guardian failed to protect the minor, after having received the notice, by allowing the minor to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being physically or sexually abused.

(3) In the absence of one of the factors described in Subsection (1), a court may not remove a minor from the parent's or guardian's custody on the basis of:

- (a) educational neglect;
- (b) mental illness or poverty of the parent or guardian; or
- (c) disability of the parent or guardian, as defined in Subsection 57-21-3(9).

(4) (a) Except as provided in Subsection (4)(b), a court or the Division of Child and Family Services may not remove a minor from the custody of the minor's parent or guardian on the sole or primary basis that the parent or guardian refuses to consent to:

- (i) the administration of a psychotropic drug to a child;
- (ii) a psychiatric, psychological, or behavioral treatment for a child; or
- (iii) a psychiatric or behavioral health evaluation of a child.

(b) Notwithstanding Subsection (4)(a), a court or the Division of Child and Family Services may remove a minor under conditions that would otherwise be prohibited under Subsection (4)(a) if failure to take an action described under Subsection (4)(a) would present a serious, imminent risk to the child's safety or the safety of others.

~~[(4)]~~ (5) A minor removed from the custody of the minor's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court proceedings unless the minor is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

~~[(5)]~~ (6) This section does not preclude removal of a minor from the minor's home without a warrant or court order under Section 62A-4a-202.1.

Section 3. Section **78-3a-305** is amended to read:

**78-3a-305. Petition filed -- Protective orders.**

(1) Any interested person may file a petition to commence proceedings in the juvenile court alleging that a minor is abused, neglected, or dependent. The person shall first make a referral with the division.

(2) (a) If the child who is the subject of a petition was removed from his home by the Division of Child and Family Services that petition shall be filed on or before the date of the initial shelter hearing described in Section 78-3a-306.

(b) If a petition is requested by the division, the attorney general shall file the petition within 72 hours of the completion of the investigation and request, excluding weekends and holidays, if:

(i) the child who is the subject of the requested petition has not been removed from his home by the division; and

(ii) without an expedited hearing and services ordered under the protective supervision of the court, the child will likely be taken into protective custody.

(3) The petition shall be verified, and contain all of the following:

(a) the name, age, and address, if any, of the minor upon whose behalf the petition is brought;

(b) the names and addresses, if known to the petitioner, of both parents and any guardian of the minor;

(c) a concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is abused, neglected, or dependent; and

(d) a statement regarding whether the minor is in protective custody, and if so, the date and precise time the minor was taken into protective custody.

(4) (a) Except as provided in Subsection (4)(b), a court or the Division of Child and Family Services may not remove a minor from the custody of the minor's parent or guardian on the sole or primary basis that the parent or guardian refuses to consent to:

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

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

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

(b) Notwithstanding Subsection (4)(a), a court or the Division of Child and Family Services may remove a minor under conditions that would otherwise be prohibited under Subsection (4)(a) if failure to take an action described under Subsection (4)(a) would present a serious, imminent risk to the child's safety or the safety of others.