

**MEDICAL RECOMMENDATIONS FOR  
CHILDREN**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Michael T. Morley**

---

---

**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:



28 **78-3a-301**, as last amended by Chapter 356, Laws of Utah 2004

29 **78-3a-305**, as last amended by Chapters 68 and 326, Laws of Utah 2003

30 ENACTS:

31 **53A-11-603**, Utah Code Annotated 1953



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

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

35 **53A-11-603. Definitions -- Prohibited recommendations -- Psychotropic drugs --**

36 **Exceptions -- Penalties.**

37 (1) As used in this section:

38 (a) "Federal education law" means:

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

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

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

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

43 (b) "School" means a public school.

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

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

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

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

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

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

52 (iii) a psychiatric evaluation of a child;

53 (d) conduct a psychiatric or behavioral health evaluation of a child without the consent  
54 of the child's parent or guardian;

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

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

- 59           (i) the administration of a psychotropic drug to a child;  
60           (ii) a psychiatric, psychological, or behavioral treatment for a child; or  
61           (iii) a psychiatric or behavioral health evaluation of a child.  
62           (3) Nothing in this section may be construed to restrict school personnel from:  
63           (a) communicating information between school personnel regarding a child;  
64           (b) informing a child's parent or guardian of a perceived behavioral problem of the  
65 child, provided that:  
66           (i) an assertion or recommendation is not made in violation of Subsection (2); and  
67           (ii) an attempt is not made to denigrate, criticize, or punish a parent, guardian, or child  
68 for a decision made by the parent or guardian for the child to take, not take, or discontinue to  
69 take a psychotropic drug; or  
70           (c) exercising their authority relating to the placement within the school or readmission  
71 of a child who may be or has been suspended or expelled for a violation of Section  
72 53A-11-904.  
73           (4) Notwithstanding Subsections (2)(c) and (d), a mental health professional acting in  
74 accordance with Title 58, Chapter 60, Mental Health Professional Practice Act, or licensed  
75 through the State Board of Education, working within the school system may, for the sole  
76 purpose of complying with federal education law:  
77           (a) recommend, but not require, a psychiatric or behavioral health evaluation of a child;  
78           (b) recommend, but not require, psychiatric, psychological, or behavioral treatment for  
79 a child; and  
80           (c) conduct a psychiatric or behavioral health evaluation of a child with the consent of  
81 the child's parent or guardian.  
82           (5) Notwithstanding Subsection (2)(e), a school district may make available to an  
83 interested parent or guardian a list of community resources, which may include mental health  
84 services, provided that the list conspicuously states the following: "This list is provided as a  
85 resource to you. The school neither recommends nor requires that you use this list or any of the  
86 services provided in it. It is for you to decide what services, if any, to access and from whom  
87 you wish to obtain them."  
88           (6) A local school board shall adopt a policy that indicates that a violation of this  
89 section is cause for disciplinary action under Section 53A-8-104.

90 Section 2. Section **78-3a-301** is amended to read:

91 **78-3a-301. Court-ordered protective custody of a minor following petition filing**

92 **-- Grounds.**

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

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

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

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

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

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

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

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

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

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

120 (ii) a parent's or guardian's action in leaving a minor unattended would reasonably pose

121 a threat to the minor's health or safety;

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

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

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

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

129 (2) (a) For purposes of Subsection (1)(a), if a minor has previously been adjudicated as  
130 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency  
131 has occurred involving the same substantiated abuser or under similar circumstance as the  
132 previous abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in  
133 the custody of the minor's parent.

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

135 (i) another minor residing in the same household may not be removed from the home  
136 unless that minor is considered to be at substantial risk of being physically or sexually abused  
137 as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

138 (ii) if a parent or guardian has received actual notice that physical or sexual abuse by a  
139 person known to the parent has occurred, and there is evidence that the parent or guardian  
140 failed to protect the minor, after having received the notice, by allowing the minor to be in the  
141 physical presence of the alleged abuser, that fact constitutes prima facie evidence that the  
142 minor is at substantial risk of being physically or sexually abused.

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

145 (a) educational neglect;

146 (b) mental illness or poverty of the parent or guardian; or

147 (c) disability of the parent or guardian, as defined in Subsection 57-21-3(9).

148 (4) A court or the Division of Child and Family Services may not remove a minor from  
149 the custody of his parent on the basis of the refusal of the parent solely to consent to:

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

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

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

153 [~~(4)~~] (5) A minor removed from the custody of the minor's parent or guardian under  
154 this section may not be placed or kept in a secure detention facility pending further court  
155 proceedings unless the minor is detainable based on guidelines promulgated by the Division of  
156 Juvenile Justice Services.

157 [~~(5)~~] (6) This section does not preclude removal of a minor from the minor's home  
158 without a warrant or court order under Section 62A-4a-202.1.

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

160 **78-3a-305. Petition filed -- Protective orders.**

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

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

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

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

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

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

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

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

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

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

183           (4) The refusal of a parent to consent to the following may not be the sole basis for a  
184 petition filed pursuant to this section:

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

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

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

---

---

**Legislative Review Note**  
**as of 12-2-04 2:42 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

---

---

**Fiscal Note**  
**Bill Number HB0042**

**Medical Recommendations for Children**

*17-Jan-05*

*10:17 AM*

---

---

**State Impact**

Any additional effort required by the provisions of this bill can be handled within existing budgets.

---

**Individual and Business Impact**

No significant fiscal impact.

---

**Office of the Legislative Fiscal Analyst**