

Representative Michael T. Morley proposes the following substitute bill:

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



26 **Utah Code Sections Affected:**

27 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), (5), or (6), 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 or mental health screening,

54 test, evaluation, or assessment of a child;

55 (e) recommend a licensed physician, psychologist, or any other health specialist to a

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

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

88 others.

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

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

92 **78-3a-301. Court-ordered protective custody of a minor following petition filing**
93 **-- Grounds.**

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

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

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

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

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

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

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

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

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

- 119 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
120 environment that poses a threat to the minor's health or safety; or
121 (ii) a parent's or guardian's action in leaving a minor unattended would reasonably pose
122 a threat to the minor's health or safety;
- 123 (j) the minor or another minor residing in the same household has been neglected;
124 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;
- 125 (l) the parent or guardian, or an adult residing in the same household as the parent or
126 guardian, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab
127 Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located in
128 the residence or on the property where the minor resided; or
- 129 (m) the minor's welfare is otherwise endangered.
- 130 (2) (a) For purposes of Subsection (1)(a), if a minor has previously been adjudicated as
131 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
132 has occurred involving the same substantiated abuser or under similar circumstance as the
133 previous abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in
134 the custody of the minor's parent.
- 135 (b) For purposes of Subsection (1)(c):
- 136 (i) another minor residing in the same household may not be removed from the home
137 unless that minor is considered to be at substantial risk of being physically or sexually abused
138 as described in Subsection (1)(c) or Subsection (2)(b)(ii); and
- 139 (ii) if a parent or guardian has received actual notice that physical or sexual abuse by a
140 person known to the parent has occurred, and there is evidence that the parent or guardian
141 failed to protect the minor, after having received the notice, by allowing the minor to be in the
142 physical presence of the alleged abuser, that fact constitutes prima facie evidence that the
143 minor is at substantial risk of being physically or sexually abused.
- 144 (3) In the absence of one of the factors described in Subsection (1), a court may not
145 remove a minor from the parent's or guardian's custody on the basis of:
- 146 (a) educational neglect;
147 (b) mental illness or poverty of the parent or guardian; or
148 (c) disability of the parent or guardian, as defined in Subsection 57-21-3(9).
- 149 (4) (a) Except as provided in Subsection (4)(b), a court or the Division of Child and

150 Family Services may not remove a minor from the custody of the minor's parent or guardian on
151 the sole basis that the parent or guardian refuses to consent to:

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

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

159 [~~4~~] (5) A minor removed from the custody of the minor's parent or guardian under
160 this section may not be placed or kept in a secure detention facility pending further court
161 proceedings unless the minor is detainable based on guidelines promulgated by the Division of
162 Juvenile Justice Services.

163 [~~5~~] (6) This section does not preclude removal of a minor from the minor's home
164 without a warrant or court order under Section 62A-4a-202.1.

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

166 **78-3a-305. Petition filed -- Protective orders.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Fiscal Note**Medical Recommendations for Children***05-Feb-05***Bill Number HB0042S01***9:34 AM*

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst