

**Representative Ronda Rudd Menlove** proposes the following substitute bill:

**MEDICAL RECOMMENDATIONS FOR**

**CHILDREN**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Michael T. Morley**

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**LONG TITLE**

**General Description:**

This bill regulates medical recommendations by school personnel to parents, 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:

- ▶ provides definitions;
- ▶ regulates medical recommendations by school personnel to parents;
- ▶ requires local school boards and charter schools to adopt certain policies;
- ▶ 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:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **78-3a-301**, as last amended by Chapter 356, Laws of Utah 2004

30 **78-3a-305**, as last amended by Chapters 68 and 326, Laws of Utah 2003

31 ENACTS:

32 **53A-11-603**, Utah Code Annotated 1953



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

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

36 **53A-11-603. Definitions -- School personnel -- Medical recommendations --**

37 **Penalties.**

38 (1) As used in this section:

39 (a) "Health care professional" means a physician, physician assistant, nurse, dentist, or  
40 mental health therapist.

41 (b) "Medication" means any medicine, whether over-the-counter or prescription.

42 (c) "School personnel" means any school district or charter school employee, including  
43 licensed, part-time, contract, and non-licensed employees.

44 (2) School personnel may:

45 (a) provide information and observations to a student's parent or guardian about that  
46 student, including observations and concerns in the following areas:

47 (i) progress;

48 (ii) health and wellness;

49 (iii) social interactions;

50 (iv) behavior; or

51 (v) topics consistent with Subsection 53A-13-302(6);

52 (b) refer students to other appropriate school personnel and agents, consistent with  
53 local school board or charter school policy; and

54 (c) consult or use appropriate health care professionals in the event of an emergency  
55 while the student is at school, consistent with the student emergency information provided at  
56 student enrollment.

57           (3) School personnel shall:  
58           (a) report suspected child abuse consistent with Section 62A-4a-403; and  
59           (b) comply with applicable state and local health department laws, rules, and policies.

60           (4) School personnel may not:  
61           (a) require that a student take or continue to take a specific medication as a condition  
62 for attending school; or

63           (b) recommend a single specific health care professional or provider, but may provide  
64 to a parent or guardian a list of two or more health care professionals or providers.

65           (5) Local school boards or charter schools shall adopt a policy:

66           (a) providing for training of appropriate school personnel on the provisions of this  
67 section; and

68           (b) indicating that an intentional violation of this section is cause for disciplinary action  
69 consistent with local school board or charter school policy and under Section 53A-8-104.

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

71           **78-3a-301. Court-ordered protective custody of a minor following petition filing**  
72 **-- Grounds.**

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

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

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

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

88 person known to the parent or guardian;

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

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

91 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged

92 or cannot arrange for safe and appropriate care for the minor;

93 (g) a relative or other adult custodian with whom the minor has been left by the parent

94 or guardian is unwilling or unable to provide care or support for the minor, the whereabouts of

95 the parent or guardian are unknown, and reasonable efforts to locate the parent or guardian

96 have been unsuccessful;

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

98 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an

99 environment that poses a threat to the minor's health or safety; or

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

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

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

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

104 (l) the parent or guardian, or an adult residing in the same household as the parent or

105 guardian, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab

106 Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located in

107 the residence or on the property where the minor resided; or

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

109 (2) (a) For purposes of Subsection (1)(a), if a minor has previously been adjudicated as

110 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency

111 has occurred involving the same substantiated abuser or under similar circumstance as the

112 previous abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in

113 the custody of the minor's parent.

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

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

116 unless that minor is considered to be at substantial risk of being physically or sexually abused

117 as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

118 (ii) if a parent or guardian has received actual notice that physical or sexual abuse by a

119 person known to the parent has occurred, and there is evidence that the parent or guardian  
 120 failed to protect the minor, after having received the notice, by allowing the minor to be in the  
 121 physical presence of the alleged abuser, that fact constitutes prima facie evidence that the  
 122 minor is at substantial risk of being physically or sexually abused.

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

125 (a) educational neglect;

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

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

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

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

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

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

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

138 [~~4~~] (5) A minor removed from the custody of the minor's parent or guardian under  
 139 this section may not be placed or kept in a secure detention facility pending further court  
 140 proceedings unless the minor is detainable based on guidelines promulgated by the Division of  
 141 Juvenile Justice Services.

142 [~~5~~] (6) This section does not preclude removal of a minor from the minor's home  
 143 without a warrant or court order under Section 62A-4a-202.1.

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

145 **78-3a-305. Petition filed -- Protective orders.**

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

149 (2) (a) If the child who is the subject of a petition was removed from his home by the

150 Division of Child and Family Services that petition shall be filed on or before the date of the  
151 initial shelter hearing described in Section 78-3a-306.

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

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

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

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

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

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

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

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

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

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

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

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

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