

**MEDICAL RECOMMENDATIONS FOR  
CHILDREN**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael T. Morley**

Senate Sponsor: \_\_\_\_\_

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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 medications, 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 medications.

**Highlighted Provisions:**

This bill:

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

**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 -- School personnel -- Medical recommendations --**

36 **Exceptions -- Penalties.**

37 (1) As used in this section:

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

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

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

43 (2) School personnel may:

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

46 (i) progress;

47 (ii) health and wellness;

48 (iii) social interactions;

49 (iv) behavior; or

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

51 (b) communicate information and observations between school personnel regarding a  
52 child;

53 (c) refer students to other appropriate school personnel and agents, consistent with  
54 local school board or charter school policy, including referrals and communication with a  
55 school counselor or other mental health professionals working within the school system;

56 (d) consult or use appropriate health care professionals in the event of an emergency  
57 while the student is at school, consistent with the student emergency information provided at  
58 student enrollment; and

59 (e) exercise their authority relating to the placement within the school or readmission  
60 of a child who may be or has been suspended or expelled for a violation of Section  
61 53A-11-904.

62 (3) School personnel shall:

63 (a) report suspected child abuse consistent with Section 62A-4a-403; and

64 (b) comply with applicable state and local health department laws, rules, and policies.

65 (4) Except as provided in Subsection (6), school personnel may not:

66 (a) recommend to a parent or guardian that a child take or continue to take a  
67 medication;

68 (b) require that a student take or continue to take a medication as a condition for  
69 attending school;

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

71 (i) the administration of a medication to a child;

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

73 (iii) a psychiatric evaluation of a child;

74 (d) conduct a psychiatric or behavioral health evaluation or mental health screening,  
75 test, evaluation, or assessment of a child; or

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

79 (i) a psychiatric, psychological, or behavioral treatment for a child, including the  
80 administration of a psychotropic medication to a child; or

81 (ii) a psychiatric or behavioral health evaluation of a child.

82 (5) Notwithstanding Subsection (4)(e), school personnel may make a report that would  
83 otherwise be prohibited under Subsection (4)(e) if failure to take the action described under  
84 Subsection (4)(e) would present a serious, imminent risk to the child's safety or the safety of  
85 others.

86 (6) Notwithstanding Subsection (4), a school counselor or other mental health  
87 professional acting in accordance with Title 58, Chapter 60, Mental Health Professional  
88 Practice Act, or licensed through the State Board of Education, working within the school  
89 system may:

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

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

93 (c) conduct a psychiatric or behavioral health evaluation or mental health screening,  
94 test, evaluation, or assessment of a child in accordance with Section 53A-13-302; and

95 (d) provide to a parent or guardian, upon the specific request of the parent or guardian,  
96 a list of three or more health care professionals or providers, including licensed physicians,  
97 psychologists, or other health specialists.

98 (7) Local school boards or charter schools shall adopt a policy:

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

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

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

104 **78-3a-301. Court-ordered protective custody of a minor following petition filing**  
105 **-- Grounds.**

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

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

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

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

121 person known to the parent or guardian;

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

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

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

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

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

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

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

129 have been unsuccessful;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

146 the custody of the minor's parent.

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

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

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

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

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

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

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

158 (a) educational neglect;

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

160 (c) disability of the parent or guardian, as defined in Subsection ~~[57-21-3]~~ 57-21-2(9).

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

164 (i) the administration of a medication to a child;

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

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

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

171 ~~[(4)]~~ (5) A minor removed from the custody of the minor's parent or guardian under  
172 this section may not be placed or kept in a secure detention facility pending further court  
173 proceedings unless the minor is detainable based on guidelines promulgated by the Division of  
174 Juvenile Justice Services.

175 ~~[(5)]~~ (6) This section does not preclude removal of a minor from the minor's home  
176 without a warrant or court order under Section 62A-4a-202.1.

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

178 **78-3a-305. Petition filed -- Protective orders.**

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

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

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

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

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

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

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

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

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

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

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

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

204 (i) the administration of a medication to a child;

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

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

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

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**Legislative Review Note**

**as of 12-21-05 2:01 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**



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**Fiscal Note**  
**Bill Number HB0299**

**Medical Recommendations for Children**

*25-Jan-06*

*10:43 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**