

**Representative Michael T. Morley** proposes the following substitute bill:

1 **MEDICAL RECOMMENDATIONS FOR**

2 **CHILDREN**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Michael T. Morley**

6 **Senate Sponsor: Curtis S. Bramble**

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8 **LONG TITLE**

9 **General Description:**

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

14 **Highlighted Provisions:**

15 This bill:

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

23 **Monies Appropriated in this Bill:**

24 None

25 **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 **Exceptions -- 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) "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;

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

65 and

66 (c) conduct evaluations and assessments consistent with the Individuals with  
67 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent amendments.

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

69 (a) recommend to a parent or guardian that a child take or continue to take a  
70 psychotropic medication;

71 (b) require that a student take or continue to take a psychotropic medication as a  
72 condition for attending school;

73 (c) recommend that a parent or guardian seek or use a type of psychiatric or  
74 psychological treatment for a child;

75 (d) conduct a psychiatric or behavioral health evaluation or mental health screening,  
76 test, evaluation, or assessment of a child, except where this Subsection (4)(d) conflicts with the  
77 Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent  
78 amendments; or

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

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

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

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

88 others.

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

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

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

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

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

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

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

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

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

107 **78-3a-301. Court-ordered protective custody of a minor following petition filing**  
108 **-- Grounds.**

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

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

117 (b) a parent or guardian engages in or threatens the minor with unreasonable conduct  
118 that causes the minor to suffer emotional damage and there are no reasonable means available

119 by which the minor's emotional health may be protected without removing the minor from the  
120 custody of the minor's parent or guardian;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

161 (a) educational neglect;

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

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

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

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

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

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

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

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

178 ~~[(5)]~~ (6) This section does not preclude removal of a minor from the minor's home  
179 without a warrant or court order under Section 62A-4a-202.1.

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

181 **78-3a-305. Petition filed -- Protective orders.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

210 (b) Notwithstanding Subsection (4)(a), a court or the Division of Child and Family  
211 Services may remove a minor under conditions that would otherwise be prohibited under

212 Subsection (4)(a) if failure to take an action described under Subsection (4)(a) would present a  
213 serious, imminent risk to the child's physical safety or the physical safety of others.



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**Fiscal Note**  
**Bill Number HB0299S01**

**Medical Recommendations for Children**

*08-Feb-06*

*11:06 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**