

1 **MEDICAL RECOMMENDATIONS FOR**
2 **CHILDREN**

3 2007 GENERAL SESSION

4 STATE OF UTAH

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

6 **Senate Sponsor: D. Chris Buttars**

7
8 **LONG TITLE**

9 **General Description:**

10 This bill prohibits school personnel from making certain medical recommendations for
11 a student, including the use of psychotropic medications, and prohibits consideration of
12 a petition for removal of a child, and removal of a child 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 student, including the use of psychotropic medications;
18 ▶ prohibits the removal of a child 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 child from parental custody
21 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 Chapters 13, 97 and 281, Laws of Utah 2006

30 ~~Ĥ→ [78-3a-305, as last amended by Chapters 13 and 281, Laws of Utah 2006] ←Ĥ~~

31 ENACTS:

32 **53A-11-605**, Utah Code Annotated 1953



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

35 Section 1. Section **53A-11-605** is enacted to read:

36 **53A-11-605. 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; ~~Ĥ→ [and] ←Ĥ~~

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 ~~H~~→ [] ; and

61a (f) complete a behavioral health evaluation form if requested by a student's parent or
 61b guardian to provide information to a licensed physician. ~~H~~

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) ~~H~~→ and Subsection (2) ~~S~~→ [(f)] ~~S~~ ~~H~~ , school
 68a personnel may not:

69 (a) recommend to a parent or guardian that a child take or continue to take a

70 ~~S~~→ [~~H~~→ medication, including a ~~H~~ ~~S~~ 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 (8) Nothing in this section shall be interpreted as discouraging general communication
107 not prohibited by this section between school personnel and a student's parent or guardian.

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

109 **78-3a-301. Court-ordered protective custody of a child following petition filing --**
110 **Grounds.**

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

116 (a) (i) there is an imminent danger to the physical health or safety of the child; and

117 (ii) the child's physical health or safety may not be protected without removing the
118 child from the custody of the child's parent or guardian;

119 (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct
120 that causes the child to suffer emotional damage; and

- 121 (ii) there are no reasonable means available by which the child's emotional health may
122 be protected without removing the child from the custody of the child's parent or guardian;
- 123 (c) the child or another child residing in the same household has been physically or
124 sexually abused, or is considered to be at substantial risk of being physically or sexually
125 abused, by a parent or guardian, a member of the parent's or guardian's household, or other
126 person known to the parent or guardian;
- 127 (d) the parent or guardian is unwilling to have physical custody of the child;
- 128 (e) the child is abandoned or left without any provision for the child's support;
- 129 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
130 or cannot arrange for safe and appropriate care for the child;
- 131 (g) (i) a relative or other adult custodian with whom the child is left by the parent or
132 guardian is unwilling or unable to provide care or support for the child;
- 133 (ii) the whereabouts of the parent or guardian are unknown; and
- 134 (iii) reasonable efforts to locate the parent or guardian are unsuccessful;
- 135 (h) the child is in immediate need of medical care;
- 136 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
137 environment that poses a threat to the child's health or safety; or
- 138 (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose
139 a threat to the child's health or safety;
- 140 (j) the child or another child residing in the same household has been neglected;
- 141 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;
- 142 (l) (i) the parent or guardian, or an adult residing in the same household as the parent or
143 guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act;
144 and
- 145 (ii) any clandestine laboratory operation was located in the residence or on the property
146 where the child resided; or
- 147 (m) the child's welfare is otherwise endangered.
- 148 (2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as
149 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
150 occurs involving the same substantiated abuser or under similar circumstance as the previous
151 abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the

152 custody of the child's parent.

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

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

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

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

164 (a) educational neglect;

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

166 (c) disability of the parent or guardian, as defined in Section 57-21-2.

167 (4) A child removed from the custody of the child's parent or guardian under this
168 section may not be placed or kept in a secure detention facility pending further court
169 proceedings unless the child is detainable based on guidelines promulgated by the Division of
170 Juvenile Justice Services.

171 (5) This section does not preclude removal of a child from the child's home without a
172 warrant or court order under Section 62A-4a-202.1.

173 (6) (a) Except as provided in Subsection (6)(b), a court or the Division of Child and
174 Family Services may not remove a child from the custody of the child's parent or guardian on
175 the sole or primary basis that the parent or guardian refuses to consent to:

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

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

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

179 (b) Notwithstanding Subsection (6)(a), a court or the Division of Child and Family
180 Services may remove a child under conditions that would otherwise be prohibited under
181 Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a
182 serious, imminent risk to the child's physical safety or the physical safety of others.

183 ~~H→ [Section 3. Section 78-3a-305 is amended to read:~~

184 ~~78-3a-305. Petition filed.~~

185 ~~(1) For purposes of this section, "petition" means a petition to commence proceedings~~

186 ~~in a juvenile court alleging that a child is:~~

187 ~~(a) abused;~~

188 ~~(b) neglected; or~~

189 ~~(c) dependent.~~

190 ~~(2) (a) Subject to Subsection (2)(b), any interested person may file a petition.~~

191 ~~(b) A person described in Subsection (2)(a) shall make a referral with the division~~

192 ~~before the person files a petition:~~

193 ~~(3) If the child who is the subject of a petition is removed from the child's home by the~~

194 ~~division, the petition shall be filed on or before the date of the initial shelter hearing described~~

195 ~~in Section 78-3a-306.~~

196 ~~(4) The petition shall be verified, and contain all of the following:~~

197 ~~(a) the name, age, and address, if any, of the child upon whose behalf the petition is~~

198 ~~brought;~~

199 ~~(b) the names and addresses, if known to the petitioner, of both parents and any~~

200 ~~guardian of the child;~~

201 ~~(c) a concise statement of facts, separately stated, to support the conclusion that the~~

202 ~~child upon whose behalf the petition is being brought is abused, neglected, or dependent; and~~

203 ~~(d) a statement regarding whether the child is in protective custody, and if so, the date~~

204 ~~and precise time the child was taken into protective custody.~~

205 ~~(5) (a) Except as provided in Subsection (5)(b), a court or the Division of Child and~~

206 ~~Family Services may not remove a child from the custody of the child's parent or guardian on~~

207 ~~the sole or primary basis that the parent or guardian refuses to consent to:~~

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

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

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

211 ~~(b) Notwithstanding Subsection (5)(a), a court or the Division of Child and Family~~

212 ~~Services may remove a child under conditions that would otherwise be prohibited under~~

213 ~~Subsection (5)(a) if failure to take an action described under Subsection (5)(a) would present a~~

214 ~~serious, imminent risk to the child's physical safety or the physical safety of others:] ←H~~

Legislative Review Note
as of 11-16-06 8:37 AM

Office of Legislative Research and General Counsel

H.B. 202 - Medical Recommendations for Children

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/10/2007, 3:04:14 PM, Lead Analyst: Schoenfeld, J.D.

Office of the Legislative Fiscal Analyst