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**MEDICAL RECOMMENDATIONS FOR  
CHILDREN**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael T. Morley**

Senate Sponsor: D. Chris Buttars

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

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

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 AMENDS:

29 **78-3a-301**, as last amended by Chapters 13, 97 and 281, Laws of Utah 2006

30 **78-3a-305**, as last amended by Chapters 13 and 281, Laws of Utah 2006

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; 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 (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 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.

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

**Office of Legislative Research and General Counsel**



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**H.B. 202 - Medical Recommendations for Children**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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.

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

**Office of the Legislative Fiscal Analyst**