

PHYSICAL RESTRAINT IN SCHOOLS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill amends provisions related to the use of physical restraint in schools.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions related to the infliction of corporal punishment on a student;
- ▶ amends provisions related to the use of physical restraint in schools;
- ▶ amends provisions related to a student who willfully defaces or otherwise ~~H~~→ [injures]

15a **damages** ←~~H~~

school property; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 53A-11-801**, as enacted by Laws of Utah 1992, Chapter 251
- 53A-11-802**, as enacted by Laws of Utah 1992, Chapter 251
- 53A-11-806**, as last amended by Laws of Utah 2008, Chapter 3
- 53A-11-902**, as last amended by Laws of Utah 2015, Chapter 442

H.B. 92



28 **62A-4a-1002**, as last amended by Laws of Utah 2008, Chapters 45 and 299



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

31 Section 1. Section **53A-11-801** is amended to read:

32 **53A-11-801. Definitions.**

33 As used in this part:

34 [~~(1) "Child" or "minor child" means a person:~~]

35 [~~(a) under the age of 18; or~~]

36 [~~(b) under the age of 23 who is receiving educational services as an individual with a~~
37 ~~disability.]~~

38 [~~(2)~~] (1) "Corporal punishment" means the intentional infliction of physical pain upon
39 the body of a [~~minor child~~] student as a disciplinary measure.

40 [~~(3) "School" means any public or private elementary or secondary school, pre-school,~~
41 ~~care center, nursery school, or business which receives compensation for supervising or~~
42 ~~educating a child.]~~

43 (2) "Physical escort" means a temporary touching or holding of the hand, wrist, arm,
44 shoulder, or back for the purpose of guiding a student to another location.

45 (3) "Physical restraint" means a personal restriction that immobilizes or significantly
46 reduces the ability of a student to move the student's arms, legs, body, or head freely.

47 (4) "School" means a public or private elementary school, secondary school, or
48 preschool.

49 (5) "Student" means an individual who is:

50 (a) under the age of ~~18~~ 19 and receiving educational services ~~←~~ ; or

51 (b) under the age of ~~22~~ 23 ~~←~~ and receiving educational services as an individual

51a with a
52 disability.

53 Section 2. Section **53A-11-802** is amended to read:

54 **53A-11-802. Prohibition of corporal punishment -- Use of reasonable and**
55 **necessary physical restraint.**

56 (1) A school employee may not inflict or cause the infliction of corporal punishment
57 upon a [~~child who is receiving services from the school, unless written permission has been~~
58 ~~given by the student's parent or guardian to do so.] student.~~

59 (2) ~~[This section does not prohibit the use of]~~ A school employee may use reasonable
 60 and necessary physical restraint ~~[or force]~~ in self defense or when otherwise appropriate to the
 61 circumstances to:

62 (a) obtain possession of a weapon or other dangerous object in the possession or under
 63 the control of a ~~[child]~~ student;

64 (b) protect ~~[the child]~~ a student or another ~~[person]~~ individual from physical injury;

65 (c) remove from a situation a ~~[child]~~ student who is violent ~~[or disruptive]~~; or

66 (d) protect property from being damaged, when physical safety is at risk.

67 (3) Nothing in this section prohibits a school employee from using less intrusive
 68 means, including a physical escort, to address circumstances described in Subsection (2).

69 ~~[(3)]~~ (4) (a) Any rule, ordinance, policy, practice, or directive which purports to direct
 70 or permit the commission of an act prohibited by this part is void and unenforceable.

71 (b) An employee may not be subjected to any sanction for failure or refusal to commit
 72 an act prohibited under this part.

73 ~~[(4)]~~ (5) A parochial or private school that does not receive state funds to provide for
 74 the education of a student may exempt itself from the provisions of this section by adopting a
 75 policy to that effect and notifying the parents or guardians of ~~[children]~~ students in the school
 76 of the exemption.

76a **Ĥ→ (6) This section does not apply to a law enforcement officer as defined in**
 76b **Section 53-13-103. ←Ĥ**

77 Section 3. Section **53A-11-806** is amended to read:

78 **53A-11-806. Defacing or Ĥ→ [injuring] damaging ←Ĥ school property -- Student's**
 78a **liability -- Work**
 79 **program alternative.**

80 (1) ~~[Any]~~ A student who willfully defaces or otherwise ~~Ĥ→ [injures]~~ damages ←Ĥ any
 80a school property
 81 may be suspended or otherwise disciplined.

82 (2) (a) ~~[Any school district whose]~~ If a school's property has been lost or willfully cut,
 83 defaced, or otherwise Ĥ→ [injured] damaged ←Ĥ [may], the school may withhold the issuance of
 83a an official written

84 grade [reports] report, diploma, [and transcripts] or transcript of the student responsible for the
 85 damage or loss until the student or the student's parent or guardian has paid for the damages.

86 (b) The student's parent or guardian is liable for damages as otherwise provided in
 87 Section **78A-6-1113**.

88 (3) (a) If the student and the student's parent or guardian are unable to pay for the
 89 damages or if it is determined by the school in consultation with the student's ~~[parents]~~ parent

90 or guardian that the student's interests would not be served if the [~~parents~~] parent or guardian
91 were to pay for the damages, [~~then,~~] the school [~~district~~] shall provide for a program of
92 [~~voluntary~~] work [~~for~~] the student may complete in lieu of the payment.

93 (b) The [~~district~~] school shall release the official grades, diploma, and transcripts of the
94 student upon completion of the [~~voluntary~~] work.

95 (4) Before any penalties are assessed under this section, the [~~local school board~~] school
96 shall adopt procedures to [~~insure~~] ensure that the student's right to due process is protected.

97 (5) No penalty may be assessed for damages which may be reasonably attributed to
98 normal wear and tear.

99 (6) If the Department of Human Services or a licensed child-placing agency has been
100 granted custody of the student, [~~that~~] the student's records, if requested by the department or
101 agency, may not be withheld from the department or agency for nonpayment of damages under
102 this section.

103 Section 4. Section **53A-11-902** is amended to read:

104 **53A-11-902. Conduct and discipline policies and procedures.**

105 The conduct and discipline policies required under Section **53A-11-901** shall include:

106 (1) provisions governing student conduct, safety, and welfare;

107 (2) standards and procedures for dealing with students who cause disruption in the
108 classroom, on school grounds, on school vehicles, or in connection with school-related
109 activities or events;

110 (3) procedures for the development of remedial discipline plans for students who cause
111 a disruption at any of the places referred to in Subsection (2);

112 (4) procedures for the use of reasonable and necessary physical restraint [~~or force~~] in
113 dealing with [~~disruptive~~] students posing a danger to themselves or others, consistent with
114 Section **53A-11-802**;

115 (5) standards and procedures for dealing with student conduct in locations other than
116 those referred to in Subsection (2), if the conduct threatens harm or does harm to:

117 (a) the school;

118 (b) school property;

119 (c) a person associated with the school; or

120 (d) property associated with a person described in Subsection (5)(c);

121 (6) procedures for the imposition of disciplinary sanctions, including suspension and
122 expulsion;

123 (7) specific provisions, consistent with Section 53A-15-603, for preventing and
124 responding to gang-related activities in the school, on school grounds, on school vehicles, or in
125 connection with school-related activities or events;

126 (8) standards and procedures for dealing with habitual disruptive or unsafe student
127 behavior in accordance with the provisions of this part; and

128 (9) procedures for responding to reports received through the School Safety and Crisis

129 Line under Subsection 53A-11-1503(3).

130 Section 5. Section 62A-4a-1002 is amended to read:

131 **62A-4a-1002. Definitions.**

132 As used in this part:

133 (1) (a) Except as provided in Subsection (1)(b), "severe type of child abuse or neglect"
134 means:

135 (i) if committed by a person 18 years of age or older:

136 (A) chronic abuse;

137 (B) severe abuse;

138 (C) sexual abuse;

139 (D) sexual exploitation;

140 (E) abandonment;

141 (F) chronic neglect; or

142 (G) severe neglect; or

143 (ii) if committed by a person under the age of 18:

144 (A) serious physical injury, as defined in Subsection 76-5-109(1), to another child

145 which indicates a significant risk to other children; or

146 (B) sexual behavior with or upon another child which indicates a significant risk to
147 other children.

148 (b) "Severe type of child abuse or neglect" does not include:

149 (i) the use of reasonable and necessary physical restraint [~~or force~~] by an educator in
150 accordance with Subsection 53A-11-802(2) or Section 76-2-401;

151 (ii) a person's conduct that:

- 152 (A) is justified under Section 76-2-401; or
- 153 (B) constitutes the use of reasonable and necessary physical restraint or force in
- 154 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
- 155 other dangerous object in the possession or under the control of a child or to protect the child or
- 156 another person from physical injury; or
- 157 (iii) a health care decision made for a child by the child's parent or guardian, unless,
- 158 subject to Subsection 62A-4a-1004(2), the state or other party to the proceeding shows, by
- 159 clear and convincing evidence, that the health care decision is not reasonable and informed.
- 160 (2) "Significant risk" means a risk of harm that is determined to be significant in
- 161 accordance with risk assessment tools and rules established by the division that focus on:
- 162 (a) age;
- 163 (b) social factors;
- 164 (c) emotional factors;
- 165 (d) sexual factors;
- 166 (e) intellectual factors;
- 167 (f) family risk factors; and
- 168 (g) other related considerations.

Legislative Review Note
Office of Legislative Research and General Counsel