

STUDENT DRUG POSSESSION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas R. Welton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses public education discipline policies related to the possession or use of tobacco, electronic cigarette, or nicotine products.

Highlighted Provisions:

This bill:

- ▶ requires a local education agency (LEA) to amend the LEA's conduct and discipline policies to address the possession or use of certain tobacco or nicotine products;
- ▶ allows a school to issue a citation to a student who possesses a tobacco product, an electronic cigarette product, or a nicotine product on school property; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53G-8-203, as last amended by Laws of Utah 2020, Chapter 161

53G-8-211, as last amended by Laws of Utah 2021, Chapters 262, 359 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 359

76-10-105, as last amended by Laws of Utah 2021, Chapter 262



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

Section 1. Section **53G-8-203** is amended to read:

53G-8-203. Conduct and discipline policies and procedures.

(1) The conduct and discipline policies required under Section **53G-8-202** shall include:

(a) provisions governing student conduct, safety, and welfare;

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

(c) procedures for the development of remedial discipline plans for students who cause a disruption at any of the places referred to in Subsection (1)(b);

(d) procedures for the use of reasonable and necessary physical restraint in dealing with students posing a danger to themselves or others, consistent with Section **53G-8-302**;

(e) standards and procedures for dealing with student conduct in locations other than those referred to in Subsection (1)(b), if the conduct threatens harm or does harm to:

(i) the school;

(ii) school property;

(iii) a person associated with the school; or

(iv) property associated with a person described in Subsection (1)(e)(iii);

(f) procedures for the imposition of disciplinary sanctions, including suspension and expulsion;

(g) specific provisions, consistent with Section **53E-3-509**, for preventing and responding to gang-related activities in the school, on school grounds, on school vehicles, or in connection with school-related activities or events;

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

(i) procedures for responding to reports received through the SafeUT Crisis Line under Subsection **53B-17-1202(3)**.

(2) (a) Each local school board shall establish a policy on detaining students after regular school hours as a part of the district-wide discipline plan required under Section

59 [53G-8-202.](#)

60 (b) (i) The policy described in Subsection (2)(a) shall apply to elementary school
61 students, grades kindergarten through 6.

62 (ii) The local school board shall receive input from teachers, school administrators, and
63 parents of the affected students before adopting the policy.

64 (c) The policy described in Subsection (2)(a) shall provide for:

65 (i) notice to the parent of a student prior to holding the student after school on a
66 particular day; and

67 (ii) exceptions to the notice provision if detention is necessary for the student's health
68 or safety.

69 (3) (a) Each LEA shall adopt a policy for responding to possession or use of [~~electronic~~
70 ~~cigarette products~~] a tobacco product, an electronic cigarette product, or a nicotine product by a
71 student on school property.

72 (b) The policy described in Subsection (3)(a) shall:

73 (i) prohibit students from possessing or using [~~electronic cigarette products~~] a tobacco
74 product, an electronic cigarette product, or a nicotine product on school property;

75 (ii) include policies or procedures for the confiscation or surrender of [~~electronic~~
76 ~~cigarette products; and~~] a tobacco product, an electronic cigarette product, or a nicotine
77 product;

78 (iii) require a school administrator or school administrator's designee to dispose of or
79 destroy a confiscated [~~electronic cigarette product.~~] tobacco product, an electronic cigarette
80 product, or a nicotine product; and

81 (iv) include policies and procedures for issuing a citation in accordance with Section
82 [53G-8-211.](#)

83 (c) Notwithstanding Subsection (3)(b)(iii), an LEA may release a confiscated electronic
84 cigarette product to local law enforcement if:

85 (i) a school official has a reasonable suspicion that a confiscated electronic cigarette
86 product contains an illegal substance; and

87 (ii) local law enforcement requests that the LEA release the confiscated electronic
88 cigarette product to local law enforcement as part of an investigation or action.

89 Section 2. Section **53G-8-211** is amended to read:

90 **53G-8-211. Responses to school-based behavior.**

91 (1) As used in this section:

92 (a) "Evidence-based" means a program or practice that has:

93 (i) had multiple randomized control studies or a meta-analysis demonstrating that the
94 program or practice is effective for a specific population;

95 (ii) been rated as effective by a standardized program evaluation tool; or

96 (iii) been approved by the state board.

97 (b) "Habitual truant" means a school-age child who:

98 (i) is in grade 7 or above, unless the school-age child is less than 12 years old;

99 (ii) is subject to the requirements of Section 53G-6-202; and

100 (iii) (A) is truant at least 10 times during one school year; or

101 (B) fails to cooperate with efforts on the part of school authorities to resolve the
102 school-age child's attendance problem as required under Section 53G-6-206.

103 (c) "Minor" means the same as that term is defined in Section 80-1-102.

104 (d) "Mobile crisis outreach team" means the same as that term is defined in Section
105 62A-15-102.

106 (e) "Prosecuting attorney" means the same as that term is defined in Subsections
107 80-1-102(58)(b) and (c).

108 (f) "Restorative justice program" means a school-based program or a program used or
109 adopted by a local education agency that is designed:

110 (i) to enhance school safety, reduce school suspensions, and limit referrals to law
111 enforcement agencies and courts; and

112 (ii) to help minors take responsibility for and repair harmful behavior that occurs in
113 school.

114 (g) "School administrator" means a principal of a school.

115 (h) "School is in session" means a day during which the school conducts instruction for
116 which student attendance is counted toward calculating average daily membership.

117 (i) "School resource officer" means a law enforcement officer, as defined in Section
118 53-13-103, who contracts with, is employed by, or whose law enforcement agency contracts
119 with a local education agency to provide law enforcement services for the local education
120 agency.

121 (j) "School-age child" means the same as that term is defined in Section 53G-6-201.

122 (k) (i) "School-sponsored activity" means an activity, fundraising event, club, camp,
123 clinic, or other event or activity that is authorized by a specific local education agency or public
124 school, according to LEA governing board policy, and satisfies at least one of the following
125 conditions:

126 (A) the activity is managed or supervised by a local education agency or public school,
127 or local education agency or public school employee;

128 (B) the activity uses the local education agency's or public school's facilities,
129 equipment, or other school resources; or

130 (C) the activity is supported or subsidized, more than inconsequentially, by public
131 funds, including the public school's activity funds or Minimum School Program dollars.

132 (ii) "School-sponsored activity" includes preparation for and involvement in a public
133 performance, contest, athletic competition, demonstration, display, or club activity.

134 (l) (i) "Status offense" means an offense that would not be an offense but for the age of
135 the offender.

136 (ii) "Status offense" does not mean an offense that by statute is a misdemeanor or
137 felony.

138 (2) This section applies to a minor enrolled in school who is alleged to have committed
139 an offense at the school where the student is enrolled:

140 (a) on school property where the student is enrolled:

141 (i) when school is in session; or

142 (ii) during a school-sponsored activity; or

143 (b) [~~except during the period between March 17, 2021 and June 1, 2022,~~] that is
144 truancy.

145 (3) (a) Except as provided in Subsections (3)(e) and (5), if a minor is alleged to have
146 committed an offense that is a class C misdemeanor, an infraction, a status offense on school
147 property, or an offense that is truancy:

148 (i) [~~a school district~~] an LEA or school may not refer the minor to a law enforcement
149 officer or agency or a court; and

150 (ii) a law enforcement officer or agency may not refer the minor to a prosecuting
151 attorney or a court.

152 (b) Except as provided in Subsection (3)(e), if a minor is alleged to have committed an
153 offense that is a class C misdemeanor, an infraction, a status offense on school property, or an
154 offense that is truancy, [~~a school district~~] an LEA, school, or law enforcement officer or agency
155 may refer the minor to evidence-based alternative interventions, including:

- 156 (i) a mobile crisis outreach team;
- 157 (ii) a youth services center as defined in Section 80-5-102;
- 158 (iii) a youth court or comparable restorative justice program;
- 159 (iv) evidence-based interventions created and developed by the school or [~~school~~
160 ~~district~~] an LEA; and
- 161 (v) other evidence-based interventions that may be jointly created and developed by a
162 local education agency, the state board, the juvenile court, local counties and municipalities,
163 the Department of Health, or the Department of Human Services.

164 (c) Notwithstanding Subsection (3)(a), a school resource officer may:

- 165 (i) investigate possible criminal offenses and conduct, including conducting probable
166 cause searches;
- 167 (ii) consult with school administration about the conduct of a minor enrolled in a
168 school;
- 169 (iii) transport a minor enrolled in a school to a location if the location is permitted by
170 law;
- 171 (iv) take temporary custody of a minor in accordance with Section 80-6-201; or
- 172 (v) protect the safety of students and the school community, including the use of
173 reasonable and necessary physical force when appropriate based on the totality of the
174 circumstances.

175 (d) Notwithstanding other provisions of this section, if a law enforcement officer has
176 cause to believe a minor has committed an offense on school property when school is not in
177 session and not during a school-sponsored activity, the law enforcement officer may refer the
178 minor to:

- 179 (i) a prosecuting attorney or a court; or
- 180 (ii) evidence-based alternative interventions at the discretion of the law enforcement
181 officer.

182 (e) If a minor is alleged to have committed a traffic offense that is an infraction, [a

183 ~~school district]~~ an LEA, a school, or a law enforcement officer or agency may refer the minor
184 to a prosecuting attorney or a court for the traffic offense.

185 (4) [~~A school district]~~ An LEA or school shall refer a minor for prevention and early
186 intervention youth services, as described in Section 80-5-201, by the Division of Juvenile
187 Justice Services for a class C misdemeanor committed on school property or for being a
188 habitual truant if the minor refuses to participate in an evidence-based alternative intervention
189 described in Subsection (3)(b).

190 (5) [~~A school district]~~ An LEA or school may refer a minor to a court or a law
191 enforcement officer or agency for an alleged class C misdemeanor committed on school
192 property or for allegedly being a habitual truant if the minor:

193 (a) refuses to participate in an evidence-based alternative intervention under Subsection
194 (3)(b); and

195 (b) fails to participate in prevention and early intervention youth services provided by
196 the Division of Juvenile Justice Services under Subsection (4).

197 (6) (a) If a minor is referred to a court or a law enforcement officer or agency under
198 Subsection (5), the school shall appoint a school representative to continue to engage with the
199 minor and the minor's family through the court process.

200 (b) A school representative appointed under Subsection (6)(a) may not be a school
201 resource officer.

202 (c) [~~A school district]~~ An LEA or school shall include the following in the school
203 district's or school's referral to the court or the law enforcement officer or agency:

204 (i) attendance records for the minor;

205 (ii) a report of evidence-based alternative interventions used by the school before the
206 referral, including outcomes;

207 (iii) the name and contact information of the school representative assigned to actively
208 participate in the court process with the minor and the minor's family;

209 (iv) a report from the Division of Juvenile Justice Services that demonstrates the
210 minor's failure to complete or participate in prevention and early intervention youth services
211 under Subsection (4); and

212 (v) any other information that the [~~school district]~~ LEA or school considers relevant.

213 (d) A minor referred to a court under Subsection (5) may not be ordered to or placed in

214 secure detention, including for a contempt charge or violation of a valid court order under
215 Section [78A-6-353](#), when the underlying offense is a class C misdemeanor occurring on school
216 property or habitual truancy.

217 (e) If a minor is referred to a court under Subsection (5), the court may use, when
218 available, the resources of the Division of Juvenile Justice Services or the Division of
219 Substance Abuse and Mental Health to address the minor.

220 (7) If the alleged offense is a class B misdemeanor or a class A misdemeanor, the
221 school administrator, the school administrator's designee, or a school resource officer may refer
222 the minor directly to a juvenile court or to the evidence-based alternative interventions in
223 Subsection (3)(b).

224 (8) (a) If a minor violates Subsection [76-10-105\(2\)](#) while on school property, an LEA
225 or school may issue a warning to the minor that provides:

226 (i) notice of the potential consequences for subsequent violations; and

227 (ii) information about available resources for quitting the use of tobacco, nicotine, or
228 electronic cigarette products.

229 (b) For each warning an LEA or school issues under this subsection, an LEA or school
230 shall provide notice to the minor's parent and a copy of the warning.

231 (c) After a minor receives three warnings under this subsection, if the minor is alleged
232 to have violated Subsection [76-10-105\(2\)](#), an LEA or school shall:

233 (i) issue a citation to the minor in accordance with Section [80-6-302](#);

234 (ii) refer the minor to a prosecuting attorney or a court; or

235 (iii) refer the minor to an evidence-based alternative intervention described in
236 Subsection (3)(b).

237 Section 3. Section **76-10-105** is amended to read:

238 **76-10-105. Buying or possessing a tobacco product or an electronic cigarette**
239 **product by a minor -- Penalty -- Compliance officer authority -- Juvenile court**
240 **jurisdiction.**

241 (1) An individual who is 18 years old or older, but younger than 21 years old, and who
242 buys or attempts to buy, accepts, or has in the individual's possession a tobacco product, an
243 electronic cigarette product, or a nicotine product is:

244 (a) guilty of an infraction; and

245 (b) subject to:

246 (i) a minimum fine or penalty of \$60; and

247 (ii) participation in a court-approved tobacco education or cessation program, which
248 may include a participation fee.

249 (2) (a) An individual who is under 18 years old and who buys or attempts to buy,
250 accepts, or has in the individual's possession a tobacco product, an electronic cigarette product,
251 or a nicotine product is subject to a citation under Section 80-6-302, unless the violation is
252 committed on school property under Section 53G-8-211.

253 (b) If a violation under this section is adjudicated under Section 80-6-701, the minor
254 may be subject to the following:

255 (i) a fine or penalty, in accordance with Section 80-6-709; and

256 (ii) participation in a court-approved tobacco education program, which may include a
257 participation fee.

258 (3) ~~[(a) A]~~ Except as provided in Section 53G-8-211, a compliance officer appointed
259 by a board of education under Section 53G-4-402 may not issue a citation for a violation of this
260 section committed on school property.

261 ~~[(b) A cited violation committed on school property shall be addressed in accordance~~
262 ~~with Section 53G-8-211.]~~