

Utah – First Substitute H.B. 299

Representative Michael T. Morley proposes the following substitute bill:

MEDICAL RECOMMENDATIONS FOR CHILDREN

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill prohibits school personnel from making certain medical recommendations for a minor, including the use of psychotropic medications, and prohibits consideration of a petition for removal of a minor, and removal of a minor 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 minor, including the use of psychotropic medications;
- . prohibits the removal of a minor 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 minor 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:

AMENDS:

§78-3a-301, as last amended by Chapter 356, Laws of Utah 2004

§78-3a-305, as last amended by Chapters 68 and 326, Laws of Utah 2003
ENACTS:

§53A-11-603, Utah Code Annotated 1953

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

Section 1. Section §53A-11-603 is enacted to read:

§53A-11-603. Definitions -- School personnel -- Medical recommendations -- Exceptions -- Penalties.

(1) As used in this section:

(a) "Health care professional" means a physician, physician assistant, nurse, dentist, or mental health therapist.

(b) "School personnel" means any school district or charter school employee, including licensed, part-time, contract, and nonlicensed employees.

(2) School personnel may:

(a) provide information and observations to a student's parent or guardian about that student, including observations and concerns in the following areas:

(i) progress;

(ii) health and wellness;

(iii) social interactions;

(iv) behavior; or

(v) topics consistent with Subsection §53A-13-302 (6);

(b) communicate information and observations between school personnel regarding a child;

(c) refer students to other appropriate school personnel and agents, consistent with local school board or charter school policy, including referrals and communication with a

school counselor or other mental health professionals working within the school system;

(d) consult or use appropriate health care professionals in the event of an emergency while the student is at school, consistent with the student emergency information provided at

student enrollment; and

(e) exercise their authority relating to the placement within the school or readmission of a child who may be or has been suspended or expelled for a violation of Section §53A-11-904 .

(3) School personnel shall:

(a) report suspected child abuse consistent with Section §62A-4a-403 ;

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

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

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

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

(b) require that a student take or continue to take a psychotropic medication as a

condition for attending school;

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

(d) conduct a psychiatric or behavioral health evaluation or mental health screening, test, evaluation, or assessment of a child, except where this Subsection (4)(d) conflicts with the

Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent

amendments; or

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

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

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

(5) Notwithstanding Subsection (4)(e), school personnel may make a report that would otherwise be prohibited under Subsection (4)(e) if failure to take the action described under

Subsection (4)(e) would present a serious, imminent risk to the child's safety or the safety of others.

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

system may:

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

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

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

(d) provide to a parent or guardian, upon the specific request of the parent or guardian, a list of three or more health care professionals or providers, including licensed physicians,

psychologists, or other health specialists.

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

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

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

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

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

(1) After a petition has been filed under Subsection §78-3a-305 (1), if the minor who is the subject of the petition is not in the protective custody of the division, a court may

order that
the minor be removed from the minor's home or otherwise taken into protective custody
if the

court finds, by a preponderance of the evidence, that any one or more of the following
circumstances exist:

(a) there is an imminent danger to the physical health or safety of the minor and the
minor's physical health or safety may not be protected without removing the minor from
the

custody of the minor's parent or guardian;

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

by which the minor's emotional health may be protected without removing the minor
from the

custody of the minor's parent or guardian;

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

person known to the parent or guardian;

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

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

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

(g) a relative or other adult custodian with whom the minor has been left by the parent
or guardian is unwilling or unable to provide care or support for the minor, the
whereabouts of

the parent or guardian are unknown, and reasonable efforts to locate the parent or
guardian

have been unsuccessful;

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

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

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

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

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

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

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

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

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

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

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

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

(a) educational neglect;

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

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

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

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

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

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

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

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

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

Section 3. Section **§78-3a-305** is amended to read:

§78-3a-305. Petition filed -- Protective orders.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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