

Utah H.B. 202 Enrolled

MEDICAL RECOMMENDATIONS FOR

CHILDREN

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: D. Chris Buttars

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 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:

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prohibits school personnel from making certain medical recommendations for a student, including the use of psychotropic medications; and

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prohibits the 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:

AMENDS:

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

ENACTS:

§53A-11-605, Utah Code Annotated 1953

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

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

§53A-11-605. 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 (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;

(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 ; and

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

(3) School personnel shall:

(a) report suspected child abuse consistent with Section ;

(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 (2) and 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 .

(8) Nothing in this section shall be interpreted as discouraging general communication not prohibited by this section between school personnel and a student's parent or guardian.

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

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

(1) After a petition has been filed under Section , if the child who is the subject of the petition is not in the protective custody of the division, a court may order that the child be removed from the child'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) (i) there is an imminent danger to the physical health or safety of the child; and
(ii) the child's physical health or safety may not be protected without removing the child from the custody of the child's parent or guardian;
- (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct that causes the child to suffer emotional damage; and
(ii) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;
- (c) the child or another child 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 child;
- (e) the child is abandoned or left without any provision for the child'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 child;
- (g) (i) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;
(ii) the whereabouts of the parent or guardian are unknown; and
(iii) reasonable efforts to locate the parent or guardian are unsuccessful;
- (h) the child 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 child's health or safety; or
(ii) a parent's or guardian's action in leaving a child unattended would reasonably pose a threat to the child's health or safety;
- (j) the child or another child residing in the same household has been neglected;
- (k) an infant has been abandoned, as defined in Section ;
- (l) (i) the parent or guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act;

and

(ii) any clandestine laboratory operation was located in the residence or on the property where the child resided; or

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

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

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

(i) another child residing in the same household may not be removed from the home unless that child 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 child, after having received the notice, by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child 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 child 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 Section .

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

(5) This section does not preclude removal of a child from the child's home without a

warrant or court order under Section §62A-4a-202.1 .

(6) (a) Except as provided in Subsection (6)(b), a court or the Division of Child and Family Services may not remove a child from the custody of the child'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 (6)(a), a court or the Division of Child and Family Services may remove a child under conditions that would otherwise be prohibited under Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a serious, imminent risk to the child's physical safety or the physical safety of others.