

Children's Healthcare Is a Legal Duty, Inc.

Box 2604, Sioux City IA 51106
Phone 712-948-3500, FAX 712-948-3704
Web page: www.childrenshealthcare.org

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E-mail: childinc@netins.net
Written by Rita Swan

Equal rights for children under the law



Roger Williams Memorial Park in Providence
Credit: Rhode Island State Archives

Victory in Rhode Island

This year Rhode Island enacted significant improvements in its religious exemptions to child abuse, neglect, and cruelty to children, though not the outright repeal CHILD first sought.

CHILD began planning for a repeal effort in the fall of 2003. Dr. Seth Asser, medical consultant to Hasbro Children's Hospital in Providence and to CHILD, first asked for and received the endorsement of the Rhode Island Chapter of the American Academy of Pediatrics. He then wrote letters to key legislators asking them to sponsor a repeal bill.

He pointed out that Massachusetts had repealed its religious exemption after a Christian Science toddler died of an untreated bowel obstruction and that a sect in Attleboro, Massachusetts, near the

Rhode Island border had let two children die because of their religious beliefs against medical care.

Several legislators volunteered to sponsor the bill including Senator Leo Blais and Representatives Elizabeth Dennigan and Joanne Giannini.

Giannini knew about Christian Science lobbying; the church had opposed her bill on how schools should handle allergic emergencies of students.

Organizations endorsing the bill to repeal the religious exemptions included the Rhode Island Chapter of the American Academy of Pediatrics, Office of the Child Advocate, Rhode Island State Nurses Association, Rhode Island Certified School Nurses and Teachers, Prevent Child Abuse Rhode Island, and the Rhode Island Medical Society.

Identical House and Senate bills repealed two laws. One was R.I.G.L. § 40-11-15 of the civil code titled "Religious exemption" and stating: "A parent or guardian legitimately practicing his religious beliefs who does not provide specified medical treatment for a child shall not, for that reason alone, be considered a negligent parent or guardian."

Religious defense to homicide

The second offered a religious defense to felony crimes of cruelty to or neglect of a child, stating that the caretaker defined in 40-11-15 "shall not, for that reason alone, be considered an abusive or negligent parent or guardian." R.I.G.L. § 11-9-5(b).

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The second was especially onerous because it carried over to the crimes of manslaughter and negligent homicide, which depended on proving a lesser crime. If a prosecutor could not get a conviction for cruelty or neglect, he could not prove a manslaughter charge. Rhode Island's criminal justice scheme at least suggested that parents with religious objections to medical care had no duty to provide it even when the child was dying.



Representative Joanne Giannini on right

Remarkably, the religious defense had been added to the criminal code as a stand-alone bill in 1998. It had not been slipped into a larger bill. It passed the House by 54-1 with Giannini casting the only vote against it.

Because the religious defense posed severe endangerment of children, CHILD made many attempts to get support for repeal from the prosecutors. In Rhode Island, however, prosecution is handled by the Attorney General's office, which ignored our many letters and phone calls.

Is withholding medical care legitimate?

In February Giannini held a committee hearing on her and Dennigan's identical repeal bills. After showing poster-sized photos of children who had died because of Christian Science, CHILD president Rita Swan testified in part as follows:

Rhode Island's religious exemptions state that parents who withhold medical treatment from sick and injured children are "legitimately practicing their religious beliefs." The word "legitimate" means "sanctioned by law or custom; lawful." So the laws say that it is legal for these parents to withhold medical care from their children.

What would be child abuse, neglect, or cruelty for a Methodist, a Catholic, a Jew, or an atheist to let happen to a child is legal for Christian Science and other faith-healing parents to do under current Rhode Island law.

The laws also give courts authority to order medical care over the parents' religious objections, but many of these children do not come to the

attention of mandated reporters in time to save their lives.

Parents have custody of children, and parents should be given a legal duty to provide their children with the necessities of life, including medical care, regardless of their religious beliefs. Children are helpless. Neglect can be just as deadly as abuse.

I believe it would be a blessing for both parents and children for Rhode Island to make its standards and expectations clear with straightforward laws requiring all parents to get medical care for their children at the same threshold of seriousness of an illness or injury.

A sister remembered



CHILD member Janis Price of Maine also had photos with her testimony. Her sister Nancy died at age 7 of untreated cancer. As Price recalled,

She got these big lumps on her neck and threw up all the time. She was too sick to go to school after first grade. She couldn't play with me anymore.

Not only was Nancy deprived of possibly life-saving medical care, she never even had an aspirin or any other medical care to soothe her or alleviate her discomfort. Instead, she was forced to eat until she vomited, which was often only a bite of food, forced to engage in rigorous physical activities in 100-plus degree heat, and beaten. This was because of the Christian Science belief that illness is a state of mind. To acknowledge the illness is to give it reality. Once the erroneous thinking is corrected, the disease will be healed.

Nancy died September 29, 1963. There was no obituary, no service. She was never spoken of again. Her death left a huge hole in my life and in my heart. Nancy was obviously gravely ill. Anyone could look at her and see it, yet no one—relatives, friends, school officials—intervened because we were Christian Scientists. My memories of Nancy’s suffering are vivid, as are my memories of her bravery, grace and courage.

Price closed with an impassioned plea for the legislators to give Christian Science children “the same protection under our laws that children from non-faith healing sects have.”

Seth Asser testified. Nearly all of the legislators’ questions were directed to him, perhaps in part because he was the Rhode Island resident among us.

The committee then turned to a bill allowing Rhode Island high school students to qualify as trained drivers by taking a drivers’ education course in Massachusetts. It was amusing to see the amount of emotion over this issue. We were trying to persuade the state to follow the good example of Massachusetts in repealing its religious exemption, but many Rhode Islanders resented their big neighbor to the north.

Then John Kiernan arrived from Boston to testify for repeal. He had prosecuted the Christian Science parents who let their son die of a bowel obstruction. Seth whispered to him to mention his office in Providence, and he did.

Church: prayer should be legal substitute for medical care of children

The Christian Science church complained that the bills “impose[d] one choice of health care for children—medical care” and ignored “clinical evidence that at least 60% to 90% of all the population’s visits to doctors’ offices cannot be treated effectively with current medications and medical procedures” according to Herbert Benson, *Timeless Healing*, 49-50.

“Caring for a child is a multifaceted, sacred responsibility,” church lobbyist Curt Edge wrote. “These bills do not reflect the pluralism of society’s health care practices, the current trends in health care or the clinical validation of the beneficial effects of prayer on health. They ignore the over

100 years of effective spiritual treatment proven in the lives of children and adults in Rhode Island.”

Senate insists on compromise

Soon the Senate leadership said that the repeal bills were “too controversial” to deal with this year. Blais arranged meetings between Asser and Edge to see if a compromise could be worked out. We offered to substitute language loosely based on a California statute. In the criminal code, for example, CHILD proposed the following:

Cultural and religious child-rearing practices and beliefs that differ from general community standards shall not in themselves constitute cruelty to or neglect of a child if none of the conditions described in 11-9-5(a) is present. Nothing in this section shall be a defense to cruelty or neglect of a child should a child suffer psychological or physical harm in the manner specified in 11-9-5(a).

We thought we had an oral agreement with the church on a compromise.

Staging a circus; agreement hinges on photos



Dr. Seth Asser

In May the Senate Judiciary Committee held a hearing on the substitute bill negotiated by Blais. As Seth Asser recounts, he arrived early with Swan’s posters and signed in as a bill supporter. Then the Christian Science lobbyists showed up and signed in as opponents. When they saw the posters, they angrily accused Seth of trying to “stage a circus.”

Seth asked why they had signed in as opponents. They said they really meant they were

opposed to the original bill, but also claimed they had agreed only to “consider” the compromise discussed with Blais.

When Blais met them in the hallway, they promised to support the substitute bill if the photos of the children were not shown. Seth readily agreed, and the bill passed through Senate Judiciary Committee and the Senate unanimously.

DCYF objects

A month later, after the bill had been passed both in the House and Senate, it came back to the Senate committee only for a pro-forma vote verifying that the merged bill was unchanged. At that late hour—many months after Seth had asked to discuss the bill with the Department of Children, Youth, and Families, DCYF spokesmen showed up and objected to the bill.

Court orders protect Jehovah’s Witness kids

Blais called another meeting in his office. There DCYF lawyer Kevin Aucoin and administrator Mike Burk insisted that existing Rhode Island law was good enough because they had always been able to get court orders for blood transfusions when children of Jehovah’s Witnesses needed them. Seth tried to explain that the Witnesses take their children to doctors regularly, so the children generally come to the DCYF’s attention promptly and court orders can be obtained, while children of spiritual healers are far less likely to be reported to the system. Aucoin and Burk refused to listen, he said.

Burk also dismissed the deaths in Attleboro, according to Seth. First, Burk said “the baby” had died of starvation, not medical neglect. After Seth pointed out that two babies had died and that the Attleboro prosecutions would be impossible in Rhode Island, Burk said that criminal law was not the Department’s concern.

The DCYF’s main concern about the bill was that the reference to cultural practices might stop them from taking custody of some abused and neglected children. Seth tried to explain that the bill protected a parent’s right to the practices of minority cultures only when they did not cause objective harm to the child.



Senator Leo Blais

State should not determine legitimacy of religious beliefs

The DCYF also wanted the word “legitimately” restored to the bill so that it referred to parents “legitimately practicing [their] religious beliefs.”

It is not appropriate, Seth countered, for the state to determine whose religious beliefs are legitimate. Furthermore, the word indicates that it is legal for a parent with religious objections to withhold medical care from a child.

Finally, the DCYF agreed that if “cultural” was removed, “legitimately” could stay out, and they would not oppose the bill.

The bill was passed and sent to Governor Donald Carcieri, who did not sign it, but it became law without his signature on August 5.

New law in civil code

The new law in the civil code is:

R.I.G.L. § 40-11-15 Religious practices.

A parent or guardian practicing his or her religious beliefs which differ from general community standards who does not provide specified medical treatment for a child shall not, for that reason alone, be considered a negligent parent or guardian. However, nothing in this section shall: (1) prevent the child from being considered abused or neglected if the child is harmed or threatened with harm as described in section 40-11-2; or (2) preclude the court from ordering medical services or nonmedical services recognized by the laws of this state to be provided to the child where his or her health requires it.

Section 40-11-2 clearly states that depriving a child of medical care when it is necessary to prevent serious harm is child abuse.

New criminal law

The new criminal law states:

R.I.G.L. § 11-9-5(b) Cruelty to or neglect of child. For purposes of this section and in accordance with section 40-11-15, a parent or guardian practicing his or her religious beliefs which differ from general community standards who does not provide specified medical treatment for a child shall not for that reason alone, be considered an abusive or negligent parent or guardian; provided the provisions of this section shall not (1) exempt a parent or guardian from having committed the offense of cruelty or neglect if the child is harmed under the provisions of (a) above; (2) exempt the department from the provisions of section 40-11-5; or (3) prohibit the department from filing a petition, pursuant to the provisions of section 40-11-15 for medical services for a child, where his or her health requires it.

Section 11-9-5(a) requires parents to take “proper care” of children, including proper care of their health.

While the new laws do not have the smoothest syntax, CHILD believes they give Christian Science and other faith-healing parents a legal duty to get needed medical care for their children.

Church puts program on air in Providence

In July, a few months after Asser, Price, and Swan were interviewed on WHJJ radio in Providence, the station began airing “The Christian Science Sentinel” program on Sunday mornings. We have seen this church strategy many times before. The church buys exhibit booths at child abuse conferences, and its lobbyists join organizations who invite CHILD members to speak. In states where Christian Science children die or religious exemptions are repealed, the church flatters, and in our view distracts, its members with special attention or promotions to high office in the Mother Church in Boston.

Utah “parents’ rights” bills defeated

More than forty bills were introduced in the Utah legislature this year to limit the state’s authority to intervene to protect children. Only one passed and it was vetoed by the governor.

State tries to get chemotherapy for child

The catalyst for the bills was the case of Parker Jenson, a 12-year-old Salt Lake County boy who was diagnosed with Ewing’s sarcoma. The parents refused chemotherapy on the grounds that it might make him sterile and stunt his growth. The state tried to force them to get chemotherapy. The parents agreed to accept the recommendations of another physician, but when that physician also recommended chemotherapy, the parents searched for non-medical remedies, and eventually fled the state.

The state charged them with kidnapping and neglect, but the family generated so much media interest and public sympathy that the state eventually gave up trying to force chemotherapy, claiming that the family’s opposition would make it ineffective.

The case provided a rationale for legislators to introduce many bills allowing parents to withhold medical care from their children.

State must prove parents incompetent

The bill getting the most attention was SB90, on which the Senate Health and Human Services Committee held three hearings. The lead sponsor was Sen. David Thomas, a county prosecutor. The bill allowed parents to make any decision they wish about health care for their children unless the state could prove that the parents were not competent. “The medical decision of a competent parent or guardian does not constitute neglect,” the bill stated, and “all parents are presumed to be competent.” The burden was on the state to prove they were incompetent.

Many groups demanded a definition of competence. Thomas’s first version required that, in order to prove incompetence and thus get medical care for the child, the state must offer clear and convincing evidence that the parents were mentally ill. Later he

defined a competent parent as a “conscientious” parent and in another version as “a reasonable, prudent, and fit caregiver,” but raised the state’s burden of proof for intervention to “beyond a reasonable doubt.”

Beyond a reasonable doubt standard

Prosecutors warned that it was an extremely demanding standard for the state to meet, but Midway attorney Wayne Searle claimed it was the standard for state intervention in Native American families. He argued that white parents should have as much protection from state intrusion as Native American parents do.

Searle was incorrect. A beyond reasonable doubt standard applies only to cases of termination of Native American parental rights.

Child advocates complained that proving anything to that high standard would take too much time when a child was seriously ill or injured. Thomas then added an amendment allowing the state to get medical treatment when a physician found that without it “a minor child will suffer death or serious permanent disability within 120 hours of diagnosis.”

Thomas argued that parents have a greater interest in their children’s welfare than the state does and therefore parents “are in the best position to make medical decisions for their children.”

Parents’ decisions final

He candidly admitted that some children would die under his bill. “Suppose a baby is born premature,” he said. “Competent parents would consult with medical professionals about the baby’s quality of life, but then the parents would make the decision about lifesaving measures, and their decision would be final.”

Senator Paula Julander asked, “Suppose a child comes into the ER and needs an appendectomy, but parents refuse and the child dies of peritonitis that night.”

“Obviously, there may be some bad results sometimes,” Thomas replied. “The question is whose responsibility does that fall upon? It falls upon parents.”

“Obviously, there may be some bad results sometimes.”

Eagle Forum: parents should be allowed to rely on “whatever”

Gayle Ruzicka of Eagle Forum testified that “parents have other places [besides doctors] that they go for help in making decisions. Some of us call it inspiration, some intuition, but whatever it is, parents should have” the right to accept or refuse medical care for a child.

Only a few children would be affected

Throughout the hearings Thomas argued both that the bill was urgently needed to address a big problem and that people shouldn’t worry about the “bad results” because the bill would affect only a few children. He cited data that the Division of Child and Family Services dealt with about 60 cases of medical neglect a year and went to court on about five a year.

How to determine the parents’ competence was never resolved. Thomas said evidence of all the parents’ care for their children should be considered, not just their medical decisions. Critics pointed out that parents can be competent in many areas of caregiving without being competent to make a critical decision on a child’s medical care. Drug addicts can be competent parents, one said.

State intervention thwarted in religious cases

The few Democratic senators on the committee were concerned that the Thomas bill prevented the state from taking action in cases of religion-motivated neglect. Utah’s civil code provides that a parent “legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect” nor an “unfit parent.” Utah Code 62A-4A-101(18)(c) and 78-3A-408(2)d.

Utah’s criminal code provides a religious defense to charges of felony abuse and neglect of both normal and disabled children. Utah Code 76-5-109(4) and 110(d)(3)(a).

Under current law the state still has the authority to investigate and seek court orders for medical treatment when parents refuse medical care on religious grounds. But the Thomas bill said “all parents are presumed competent” to refuse or accept

medical care for their children. In order to get help for the child, the state would have to prove that parents are not conscientious in holding strong religious beliefs.

Conscientious parents may abuse children

People “may not only be conscientious, but downright fastidious, in their sadism, pedophilia, or Munchausen syndrome by proxy,” said a prosecutor. “They may harm their child and do it at the same time every day and do it religiously. . . . They may be keeping [their children] in the basement and feeding them a diet that will leave them disabled or dead and be very conscientious about it.”

In 1998 the state took custody of a toddler whose parents, Christopher and Kyndra Fink, believed he should eat only fruits and starchless vegetables because he was the Christ child. They then kidnapped the boy from a Salt Lake City hospital and fled the state. They were later apprehended and charged with assault, neglect, and kidnapping.

The Finks tried to use Utah’s religious defense to criminal charges, but a district judge ruled that the defense was available only to members or adherents of “established” denominations.

Senator Thomas insisted that “conscientious” parents “wouldn’t starve their child,” and that his bill had no effect on religious exemptions because they were in different code sections than his provisions.

Bill threatened settlement agreement

Perhaps child advocates’ strongest argument against SB90 was a suit by the National Center for Youth Law over Utah’s failure to protect children in its custody from further harm and to provide them with proper care. *David C. v. Leavitt*, 13 F. Supp. 2d 1206 (D. Utah 1998). In 1994 Utah had reached a settlement agreement with NCYL and promised sweeping reform of its child protection system.

The Attorney General’s office testified that the bill would jeopardize the agreement in a suit that had already cost the state \$5 million.

Senator Thomas remained unconcerned, arguing that a federal judge has no right to tell Utah “that we can never change our state laws.”

Child’s needs not relevant

His bill was a radical shift in child welfare policy, and he could not name another state with laws like it. Fundamentally, it turned the focus from whether the child needed medical care to whether the parent was competent to decide what the child would get.

Nevertheless, SB90 passed the Senate and House committees. In the last five minutes of the legislative session, House floor debate was opened on the bill. The floor was yielded to an opponent, Representative David Litvack, who ran out the clock so that no vote was taken.

Only “life-threatening” starvation to be reported

Another bill, HB266, sponsored by Rep. Wayne Harper, imposed broader changes on child protection work. While existing law declared the child’s health, safety, and welfare to be the “paramount” concern of state child protection services, HB266 eliminated the word “welfare” and substituted “primary” for “paramount.” It excluded failure to thrive, starvation, and malnutrition as reportable unless they were life-threatening.

Medical neglect removed from law

The most radical changes, though, dealt with medical neglect and virtually eliminated it as grounds for state intervention. Existing law includes in its definition of neglect the “failure or refusal” of a parent or guardian “to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for the child’s health, safety, morals, or well-being.”

Harper struck that definition and substituted: “‘Neglect’ means repeated or substantial failure by a parent or guardian to provide adequate food, shelter, clothing, training, or physical safety to a child” in his care.

Health care was not even mentioned in the definition. Later in the bill was a vague statement that parents must provide “adequate care.”

The bill also added a provision that “potential medical neglect” was not required to be reported when parents “obtain nontraditional treatment from

a medical or mental health practitioner” nor could criminal charges be filed against such parents.

The bill passed the House but was defeated by two votes in the Senate.

“Mature” minors allowed to refuse medical care

HB140 was the only “parents’ rights” bill passed by both chambers. It provided that a parent “may not be found guilty of neglect for the medical decisions made by a mature minor” and defined a mature minor as a person under 18 who “reasonably demonstrates the capacity to make reasonable health care decisions” on his own behalf.

Governor vetoes bill

On March 23, Governor Olene Walker vetoed the bill, charging that it risked “opening the door for minors, contrary to their parents’ wishes, to seek judicial approval for health care decisions such as access to abortion, contraceptives, or other treatments.” She said “such a major policy change” needed full discussion in open public hearings.

The battle is far from over. The bills are being redrafted, and Walker was defeated in the primary.

CHILD’s work on Utah bills

CHILD wrote many letters against these bills to the Utah Attorney General’s office, the DCFS, Utah Voices for Children, medical organizations, and state legislators. We argued that they could place the state out of compliance with eligibility requirements for federal grants. The federal Child Abuse Prevention and Treatment Act (CAPTA) requires states in the grant program to define failure to provide medical care as child neglect, to require reporting and investigation of medical neglect, regardless of the parents’ beliefs in non-medical remedies, and to give courts full authority to order needed medical care for children, again regardless of the parents’ beliefs in non-medical remedies.

It is sobering that even after being made aware that their bills might jeopardize CAPTA grants and almost certainly would derail the settlement agreement in litigation that had cost the state \$5 million, politicians still moved these bills through the legislative process.



Governor Olene Walker

Current law gives parents who withhold medical care on religious grounds exemptions from civil and criminal abuse and neglect charges. Current law also provides that the state can nevertheless order medical care over the parents’ religious objections (if it learns of the child’s needs). Many Utah legislators want to tear down the duty of parents in general to provide needed medical care for their children and, even more chilling, to hamstring the state from ordering medical care over the parents’ objections.

And why? For all the impassioned rhetoric in support of Parker Jenson and his parents, the politicians know very little about the boy’s condition, his treatment, or his future. While the Jensons were making inflammatory statements to the media, a hospital asked them for permission to make Parker’s medical records public. The parents refused.

Taken in part from the *Deseret News*, Jan. 16 and 21, 2004; *Salt Lake City Tribune*, Feb. 7 and 18 and Sept. 24; tapes of legislative hearings; and conversations with public officials.

Georgia passes endangerment bill

Dedicated work for a Georgia child endangerment law finally paid off in 2004 after four years of

struggle by child advocates, especially Prevent Child Abuse Georgia. The state had been the only one without a law against child endangerment.

Among the significant obstacles were the Christian Science church's demand for a religious exemption and domestic violence groups' insistence on an exemption for battered women.

The church's lobbyist, Don Griffith, Ph.D., had been a respected school superintendent. He wrote to legislators that Christian Science has healed disease with prayer for over a hundred years.

“Hundreds of well conducted experiments”

Reliance on prayer is growing rapidly, he claimed, with over half of U.S. medical schools offering courses on spiritual healing, over 50% of Americans using “alternative methods of healing in lieu of medicine,” and “hundreds of well conducted experiments” just in “the last couple of years” showing that prayer is “effective. . . when dealing with adults and children—many with terminal diseases.”

“Prayer is the ultimate weapon against child abuse and neglect. . . . It must not be reduced or penalized. . . . It is in this state's best interest to protect those caring, loving parents who have shown over the years that their method of healing deserves respect and appreciation rather than suspicion and persecution,” he wrote.

No scientific proof that prayer heals disease

Georgia CHILD members attended committee hearings, testified against the religious exemption, and wrote several letters to legislators explaining the fallacies in his line of argument. Most Americans who use “alternative” remedies do not substitute them for medical care of serious diseases. Very few studies on prayer for healing disease have been published in peer-reviewed scientific journals; many challenges have been raised to their validity; and the word “effective” is ambiguous. Prayer can be effective at providing psychic comfort without healing a terminal illness.

Church fails to mention many deaths

An especially poignant and cogent letter was sent by Carla Quintero, a Roswell school music teacher, who wrote:

The Christian Science lobbyist Don Griffith says that Georgia legislators should look at Christian Science “records of healing” before concluding that prayer is “an ineffective method for treating children.” But the Christian Science church has no credible data indicating that it can heal serious diseases of children. No analysis of its claimed healings has been published in a peer-reviewed scientific journal. This is because the church refuses to tell how many children are being “treated” by Christian Science prayers, what diseases they have had, or what the outcomes have been.

Mr. Griffith claims that only six children died under Christian Science treatment during the 80s and early 90s. One child, of many, whom he neglected to include, was my nephew, Johnny Burgett, who died at age 13 of Burkitt's lymphoma on August 21, 1990. The county medical examiner, Dr. Mary Case, found a tumor the size of a grapefruit, cancer cells throughout his abdomen, and a bowel obstruction. He was 5'6" tall and weighed about 100 pounds. My sister did not have her children vaccinated nor did she take them for regular medical checkups. . . . She followed the instructions of a Christian Science Practitioner to just pray and do nothing else.

Griffith charges that SB407 “eliminates prayer as a reputable means of treating the problems associated with child endangerment.” This is nonsense. The right of all parents to pray for healing of their children is already guaranteed by the First Amendment.

What Mr. Griffith asks is for Georgia to recognize prayer as a legal **substitute** for the medical care needed by sick and injured children. He asks for Christian Science parents (and parents of other faiths that rely solely on spiritual means of healing), to be exempt from child endangerment charges even when their withholding of medical care causes the child's death or permanent bodily injury.

Exemptions for battered women proposed

Domestic violence groups were strongly determined to have an exemption from child endangerment charges for women who let harms happen to a child and who themselves have been assaulted by their partners.

Several exemptions for battered women were attached to the child endangerment bills over the years. One exempted a person from charges for conduct that placed “the child in imminent danger of death, bodily injury, or mental injury” when the person had “a reasonable belief” that the perpetrator would cause serious bodily injury to somebody if the person tried to protect the child.

Another allowed a caretaker to “intentionally or with criminal negligence [place] the child in imminent danger” of death or cruel or excessive pain if the caretaker had a reasonable belief that his or her behavior was justified because he or she had “been the victim” of “family violence.”

No time frame was given. A caretaker could have been beaten as a child and justify failure to protect children ever after.

No protection for 16- and 17-year-olds

Another disappointing feature was that the bill did not protect 16- and 17-year-olds.

The endangerment bill almost passed the Georgia legislature in 2003, but on the last day of the session, four House members attached killer amendments dealing with abortion.

Governor pushes bill without exemptions

Patiently, Wendi Clifton, legislative advocate for Prevent Child Abuse Georgia, organized a fourth effort, which succeeded. This year Governor Sonny Perdue, a Republican, sent a child endangerment bill to the legislature as his own priority. It passed the Senate unanimously and was engrossed in the House before going through committees. Engrossment prevented legislators from amending the bill.

The bill became law with no exemptions for victims of domestic violence or devotees of faith healing and with protection for children up to the age of 18.

The bill includes an excellent definition of criminal negligence as “an act or failure to act which demonstrates a willful, wanton, or reckless disregard for the safety of others who might reasonably be expected to be injured thereby.”

Georgia still has exemption to criminal neglect

The new law does not obviate Georgia’s existing religious exemptions. The state’s criminal neglect law provides that no child who “is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be a ‘deprived child.’” Georgia Code § 16-12-1(b)(3) and 15-11-2(8).

Depending on how courts interpret the statute, the parent relying on faith healing cannot be charged with neglect for many of the injuries resulting from lack of medical care. If, however, the parent’s failure to provide medical care causes “cruel or excessive” pain, s/he can now be charged with child endangerment.

CHILD members oppose exemptions in Pennsylvania

CHILD members in Pennsylvania wrote many letters against religious exemptions in two Pennsylvania bills. Both died in committee.

Faith healers must be allowed to adopt kids

One was a large adoption reform bill, HB1093, which included a provision in current law stating that no one can be denied the right to adopt a child because of his religious beliefs against medical care.

While Americans indisputably have the right to believe what they wish, CHILD feels strongly that adoption agencies should have the right to refuse to give a child to parents who intend to withhold medical care from the child. Indeed, we would go further and say that adoption agencies ought to have an obligation to place children only with parents who are willing and able to provide them with all the necessities of life. Some of our members were adopted into Christian Science families and suffered permanent handicaps because of medical neglect.

CS treatment for TB approved by Health Dept.

The other bill, SB452, dealt with managing tuberculosis cases and would have added the following new provision into state law:

[I]t is understood that treatment approved by the department or by a local board shall include treatment by an accredited practitioner of a well recognized church or religious denomination which relies on prayer or spiritual means alone for healing if requirements relating to sanitation, isolation or quarantine are satisfied.

The bill would have actually forced the state Health Department to approve of Christian Science prayers as appropriate treatment for adults and children with tuberculosis.

In addition to being a chilling betrayal of children, such a policy had humorous ramifications. The very next paragraph of the bill stated

If, upon inspection, an officer of the department finds that an infected person is not fulfilling the infected person's treatment provision, the officer may by written order isolate the infected person in an appropriate facility for a period not to exceed ninety-six hours.

How a Health Department officer would determine whether the patient was complying with the Christian Science practitioner's prayers was curious.

Also, the bill required the state to pay for treatment if the patient was unable to do so. We wonder if legislators know that some Christian Science practitioners charge \$100 a day or more for prayers.

CHILD thanks all of its Pennsylvania members who wrote and called legislators about the religious exemptions in these bills. The bills will likely be back next year, so continued vigilance is necessary.

Clergy reporting bills fail

Many bills to require the clergy to report suspected child abuse and neglect have been introduced around the country in recent years propelled by the scandal of child sex abuse by Catholic clergy. Few have passed and even fewer have imposed a strong reporting requirement.

This year clergy reporting bills were introduced in Alaska, Iowa, Kansas, Maryland, New York, Ohio, and Washington. None passed. CHILD

members lobbied on the Maryland, New York, and Ohio bills.

Vermont has the best law CHILD has seen on this issue. Vermont requires clergy to report unless the report would be based upon information received in a communication which is:

- (1) made to a member of the clergy acting in his or her capacity as spiritual advisor;
- (2) intended by the parties to be confidential at the time the communication is made;
- (3) intended by the communicant to be an act of contrition or a matter of conscience; and
- (4) required to be confidential by religious law, doctrine, or tenet.

If the clergy person receives information from any other source, he or she must report "even though he or she may have also received a report of abuse or neglect about the same person or incident" through a communication meeting the four conditions above.

Pertinent legislation in other states

Bills were introduced in **Alaska** this year to require scoliosis exams of sixth and tenth graders and hearing screening of newborns. Both bills had religious exemptions. An Alaska CHILD member wrote to legislators protesting the religious exemption to the hearing screening. The bill sponsor agreed to remove the religious exemption. Both bills died, however.

In **Arizona** HB2200 dealt with procedures for reporting deaths. It allowed the county medical examiner to waive an autopsy "if the deceased was under treatment for accident or illness by prayer or spiritual means alone, in accordance with the tenets and practices of a well-recognized church or religious denomination" with no physician or nurse practitioner in attendance and if the medical examiner "is satisfied that the death of such person resulted from natural causes."

Arizona CHILD members wrote to legislators asking that no waiver be allowed for deaths of children, but the bill passed and was signed into law with no change to the religious exemption.

Vaccine opponents made another attempt this year to get philosophical exemptions from immunizations in **Missouri**. Their bill died in the House Health Care Policy Committee, which has five physician members. Missouri CHILD members have testified and written legislators against these bills.

In **Texas** vaccine supporters tried to repeal the conscience exemptions from immunizations that the state enacted in 2002. Their bill failed.

In **Oklahoma** a bill was introduced that illustrates a pushbutton mentality behind religious exemptions. SB1172 provided that a parent or other caretaker “commits child endangerment when the person knowingly permits physical or sexual abuse of a child” or “knowingly permits a child to be present at a location where a controlled dangerous substance is being manufactured. . . .”

“The provisions of this section,” the bill continued “shall not apply to any parent, guardian or other person having custody or control of a child for the sole reason that the parent, guardian or other person in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care for such child.”

Exemption for sex offenders and drug dealers

Surely this religious exemption makes no sense. When parents are beating or sexually abusing a child or letting the child be present at a methamphetamine lab, why would a prosecutor file charges against the parent “for the sole reason” that the parent is also praying for the child to get well? Why do sexual predators and drug dealers need protection for their right to pray?

Oklahoma CHILD members wrote many letters against the bill, and the version of SB1172 that was finally enacted did not include those two paragraphs. However, the paragraphs were already in § 21-852.1 of the Oklahoma Statutes, so they are still law.

Finally, it is important to point out that after an Oklahoma jury was forced to acquit Church of the Firstborn parents who had let their son die from an untreated ruptured appendix in 1982 [see *State v. Lockhart*, 664 P.2d 1059 (1983)], Oklahoma added a caveat to its religious exemptions in the criminal code: “provided that medical care shall be provided

where permanent physical damage could result to such child.” Okla. Stat. tit. 21 § 852 Thus, faith-healing parents are required to get medical care when death or permanent injury could result, but not for pain.

Rhode Island: Final thoughts

The founder of Rhode Island, Roger Williams, was America’s first great spokesman for religious liberty and separation of church and state.

He left England to have freedom to express his religious beliefs. He was first greeted by the American colonists as “a godly minister,” but soon discovered that the Massachusetts Bay Colony was also a rigid theocracy. He advocated “soul liberty” instead of a state church, charged that the state had no right to punish violations of Moses’ first four commandments, and declared illegal the taking of American Indian lands without compensation. Williams was put on trial, convicted of “new and dangerous opinions,” and banished from the colony.

Williams fled in winter, settled at what is now Providence, and then went to England and secured a charter for Rhode Island and Providence Plantations with “liberty of conscience.” His colony became a sanctuary for persecuted Quakers.

Many historians assert that Williams’ fight for separation of church and state was a building block for England’s Bill of Rights in 1689 and later the U.S. Bill of Rights.

CHILD believes that religion-neutral child protection laws honor Roger Williams’ vision. Rhode Island should not give special rights to parents with “legitimate” religious beliefs—especially not special rights to neglect children.