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Written by Rita Swan

## *Equal rights for children under the law*



*Seth Asser, Janis Guerney, and Doug Swan*

## **Model for health laws improves**

The Turning Point Public Health Statute Modernization Collaborative released its Model State Public Health Act in September. The model contains several improvements over the draft that we feel reflect CHILD's input.

After a period for public comment on the draft was opened, a group of CHILD members gathered in Washington, D.C., to develop our comments. They included Janis Guerney and Anne Schneiders, attorneys living in the District; James Dwyer, associate professor at the Marshall-Wythe School of Law, College of William and Mary; Ann Massie, professor at Washington and Lee School of Law; Seth Asser, a pediatrician in Providence, Rhode Island; and CHILD officers Rita and Doug Swan.

CHILD objected to Article V, Section 5-101 (b)(7), which stated: "An agency shall not use compulsory powers that require testing, screening, treatment, or vaccination where an individual (or legal representative) objects in a written, signed affidavit issued pursuant to judicial review on the

basis that the exercise of such power interferes with the free exercise of the individual's (or legal representative's) sincere religious, moral, or philosophical beliefs."

That section has been taken out of the final document.

CHILD raised concerns about Art. V, Sec. 5-106(b)(1) stating that "no test, exam, or screening shall be conducted without the prior informed consent of the individual (or legal representative) to whom the test or exam is being administered, except as otherwise provided in this Section."

The Turning Point Collaborative added the phrase "or other state law" to the end of 5-106 (b) (1), so at least they are not objecting to the good laws in some states.

## **Benefits conditioned on screening**

While informed consent is a basic principle in the practice of medicine, CHILD recommended requiring screening as a condition of benefits such as receiving a birth certificate or school enrollment. The state cannot require screening without informed consent, but parents must have the screening done if they want those benefits. Nebraska, for example,

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requires proof of metabolic screening of newborns before birth certificates are issued. The MSPHA allows for a policy of conditional screening.

### **Philosophical exemption dropped; religious exemption contingent on court ruling**

CHILD also objected to Art. V, Sec. 5-109(h) which stated in the draft: “No individual shall be required to be vaccinated pursuant to this Section for religious or philosophical reasons under the exceptions stated in Section 5-101(b)(7).”

Turning Point removed Sec. 5-101(b)(7) from the final document and greatly changed Sec. 5-109 (h) to state:

No individual shall be required to be vaccinated pursuant to this Section when:

. . . . 4. The individual (or legal representative) objects in a written, signed affidavit pursuant to a court order on the basis that the vaccination interferes with the free exercise of the individual’s (or legal representative’s) sincere religious beliefs.

Many courts have ruled that mandatory vaccination does not violate First Amendment free exercise rights, and none to our knowledge has ruled that it does. State laws requiring that a parent get a court order for exemption from vaccination on First Amendment grounds would be a big improvement over existing laws.

### **Many exemptions in federal model**

In 2002, the federal government distributed the Model State Emergency Health Powers Act (MSEHPA) and offered states money for having certain emergency authorizations in place. The MSEHPA had religious and philosophical exemptions to medical treatment, examination, testing, and vaccination for both adults and children.

Not surprisingly, legislation based on the MSEHPA has been introduced around the country. CHILD has spent hundreds of hours monitoring the bills and lodging protests against the exemptions. But when CHILD complained to the Centers for Disease Control and Prevention about the belief exemptions in their “model,” the CDC denied that the MSEHPA was a model. It is only “a checklist” of points states “might” want to consider, they

claimed. Letter of Gene Matthews to Rita Swan, May 8, 2002.



*Jim Dwyer, Ann Massie, & Anne Schneiders*

Fortunately, CHILD learned of the Turning Point’s MSPHA when it was still a draft and the public comment period had not closed.

### **Exemptions should not apply to children**

CHILD continues to challenge state bills on public health emergencies that allow religious and philosophical exemptions. We point out that while quarantine of objectors may be adequate to protect the general public, sick children should not be deprived of immunizations, medical treatment, testing, and examination because of their parents’ religious objections. It would be immoral to just quarantine them and let them go untreated.

While public health law is by nature focused on the welfare of the general public, we believe it should also be concerned about the welfare of an individual child. We called for change in Sec. 5-106(c) of the MSPHA, which stated that “the state or local public health agency may require testing or medical examination of any individual who has or may have been exposed to a contagious disease that poses a risk or danger to others or the public’s health.”

We said we would like to have children tested or examined by a physician when they may have been exposed to a contagious disease that poses a

risk or danger to the children themselves. The Turning Point Collaborative, however, left the section unchanged.

The Turning Point Collaborative, funded by the Robert Wood Johnson Foundation, will distribute its model bill to all states. We are grateful for the improvements in the final document and hope it will be a catalyst for better state laws.

The MSPHA may be seen at [www.turningpointprogram.org](http://www.turningpointprogram.org). CHILD's comment letter to the collaborative may be read on its webpage at [www.childrenshealthcare.org](http://www.childrenshealthcare.org).

CHILD especially wishes to thank Professor Jim Dwyer for his work on the letter.

## Texas and Arkansas expand exemptions from immunizations

In 2003, Texas and Arkansas enacted laws allowing unvaccinated children to attend schools if their parents have "conscientious" objections to immunizations. Previously, the only exemptions were for medical contraindications and religious objections on the basis of the "tenets and practice of a recognized church."

### Vaccine opponents nationally organized

Vaccine opponents have gotten legislation introduced throughout the country to expand exemptions from religious belief to personal belief, conscience, or "philosophy." Their measures were introduced in past Texas legislative sessions. This year their conscience exemption made it through at the last minute and without media attention as an amendment tacked to a complicated health and human services reorganization bill.

Governor Rick Perry signed the bill into law saying that parents should have a right to refuse immunizations.

Physicians and public health experts called the exemption a giant step backward in the fight to prevent dangerous childhood diseases. Texas Medical Association President Dr. Charles Bailey said it is "unconscionable" not to immunize children.

## Diseases reduced by 99% with vaccines

The Centers for Disease Control and Prevention in Atlanta estimate that only 71% of Texas children aged 19-35 months are appropriately immunized, making Texas 46<sup>th</sup> among states on vaccine coverage for that age group. Of 28 urban areas selected by the CDC, Houston had the third-worst vaccination coverage at 61.4% in 2002.

CDC statistics indicate the powerful benefits of vaccination. Cases of diphtheria, measles, mumps, rubella, and *Hemophilus influenzae* meningitis have decreased by more than 99 percent with widespread vaccination. Polio, which once struck 16,000 Americans each year, is now eliminated in the United States.

In Arkansas, the religious exemption from immunizations was struck down by the federal courts in 2002. The courts ruled it violated the Establishment Clause because it limited the exemption to parents affiliated with a "recognized church." *McCarthy v. Boozman*, 212 F.Supp.2d 945 (W.D. Ark. 2002).

### Arkansas' new exemption law

Counsel for the Arkansas Health Department advised the legislators that a new exemption would have to include all personal beliefs against immunization to be constitutional.

A Senate committee hearing included many witnesses asking for exemptions. A boy in a wheelchair was presented as an example of harm caused by vaccines. The House committee passed the Senate's exemption bill, SB434, by voice vote without witness testimony.

Governor Mike Huckabee, formerly a Southern Baptist minister, signed it into law.

The new exemption law grants exemptions from vaccination of children in daycare and K-12 schools when parents' "religious or philosophical beliefs" conflict with immunization.

It requires that parents file a notarized application for the exemption each year and read a Health Department statement on the benefits and risks of each required immunization.

It also requires the department to keep data on the children claiming the exemption, including where they are enrolled. Furthermore, the

department must make reports to the legislature through 2004 on vaccination rates and incidence of vaccine-preventable disease in Arkansas and other states with “a risk evaluation of specific populations in Arkansas” included.

Unvaccinated children can be excluded from school during disease outbreaks.

CHILD lobbied against SB434, arguing that Arkansas should allow exemptions only for medical contraindications.

### **Benefits of pertussis vaccine challenged**

Arkansas had more than 1,000 cases of pertussis (whooping cough) during the 2002-2003 winter as the belief exemption was being planned. To vaccine opponents, however, the outbreak was just evidence that vaccines don't work.

The facts are more complex. The immunity provided by the pertussis vaccine does diminish over time, and the vaccine is not recommended for older children. But as more parents refuse the vaccine, the incidence of pertussis rises. If no babies were vaccinated against pertussis, we would have tens of thousands of cases of whooping cough and many deaths.

Today the acellular form of pertussis vaccine is available and has fewer side effects than the older form.

Taken in part from *The Houston Chronicle*, Aug. 1.

### **One bright spot in Iowa policy-making**

CHILD had one satisfactory outcome in its work on four bills passed by the Iowa legislature in 2003. A bill on bioterrorism and public health emergencies was passed with provision for quarantining those who refuse medical treatment, examination, and immunization. CHILD asked for an amendment providing that all minors be given medical treatment, examination, and immunization recommended by public officials during a declared public health emergency, instead of just quarantining them. The legislature did not amend, but Public Health officials advised legislators that they

would put that concept in regulation, and they did. The administrative regulations give the state authority to order diagnostic tests both for adults and children in quarantine. With a diagnosis, Child Protection Services can be alerted to get the medical treatment a child needs, and Iowa law already provides that the state can require immunizations over religious objections in an emergency.

### **Parental waiver for newborn screening**

The Department of Public Health sponsored a bill setting up a so-called “universal” newborn hearing screening program and stating that “all infants born in this state shall be screened for hearing loss.” The department also put a religious exemption in the bill and saw nothing incongruous about it.

With trips to Des Moines and many letters, CHILD was able to get the religious exemption deleted from the bill, but the department said they would give parental waivers anyway, and soon Reps. Dan Boddicker and Ro Foege, had gotten an amendment in the bill allowing all parents to refuse the hearing screening for any reason. The amendment first required health care providers to give the refusing parents “educational information” about the screening and “possible consequences” of not treating hearing loss. But some health care providers did not want that burden, so the education component was later dropped.

Society has a strong interest in requiring newborn hearing screening. If hearing loss is detected at birth, it is often possible to provide therapy that allows a baby to develop normal or near-normal language skills. But without the hearing test at birth, hearing loss is on average not detected until the child is about two years old when therapies may be far less effective or not possible.

By first grade, hearing-impaired children whose handicaps were identified before they were 6 months old are 1-2 years ahead of their later-identified peers in language, cognitive, and social skills.

### **Christian Science lobbyist opposes screening**

Nevertheless, Christian Science church lobbyist Lucille Gregory wrote to all Iowa House members promoting the parental waiver amendment as an accommodation for “alternative health care options

for parents including Christian Science or spiritual healing.”

Mandating hearing screening, she continued, “incorrectly assumes that this test is the only way to prevent hearing problems in children. But more options for all parents, not less, increase the likelihood of better care of the child.”

Some legislators asked why a parent would not want to know that his child had a hearing problem, but “declining the test is not the same as declining the knowledge,” Gregory declared.

### **Christian Science can’t prevent hearing loss**

Within hours, CHILD circulated a response to the legislators saying that “parents who refuse a hearing test *are* declining the knowledge of their child’s ability to hear and they are preventing timely, effective help from reaching a child with hearing loss. The Christian Science church believes that knowledge of disease causes disease. It seeks to have children exempted from studying about disease in school.”

“The legislature should not recognize Christian Science as a legal alternative to medical care of children because there is no credible evidence that Christian Science prevents, treats, or detects hearing loss,” CHILD argued.

Nevertheless, the parental waiver amendment sailed through.

### **Clergy reporting added; age of child-victims to be reported raised from 11 to 15**

Bills were also introduced to require more reporting of suspected child abuse and neglect. The legislature passed HF206 to make clergy mandated reporters with an exemption when their information about the abuse or neglect was obtained only during a confidential communication.

The bill also changed the age limit of children who had to be reported as abused. Current Iowa law requires abuse of children under the age of 18 to be reported if the alleged abuser is responsible for the child’s care. However, when the abuser is not responsible for the child’s care, reporting is required only if the child victim is under 12 years old.

In part because many victims of clergy sex abuse nationwide have been adolescents, the bill

raised the age of children who must be reported in cases of non-caretaker abuse to 15 years old.

Current Iowa law defines the crime of third-degree sexual abuse to include sex acts with 14- or 15-year-olds if the perpetrator is four or more years older than they are, and all sex acts with 12- or 13-year-olds. HF206 created a requirement that such crimes be reported to Child Protection Services.

Planned Parenthood and the Iowa Civil Liberties Union strenuously opposed the bill on grounds that fear of CPS involvement would drive sexually active teenagers away from services.

The bill was supported by Prevent Child Abuse Iowa, the Youth Law Center, CHILD, the Woodbury County District Attorney, and others, who urged Governor Tom Vilsack to sign it.

### **Governor vetoes abuse reporting bill**

Vilsack, however, vetoed it, claiming that the bill “would have made criminals out of the children who need our help, love, and attention.”

“Today, under permissive reporting,” he continued, “no child is made a criminal” and therapists can decide whether to report based on “the specific facts and circumstances” of the abused child.

Vilsack’s rhetoric notwithstanding, the fact is that Iowa law already defines certain kinds of sexual activity with 12- to 15-year-olds as a crime. HF206 did not make children criminals; it required the reporting of crimes against children to Child Protection Services.

Many therapists doubtless act wisely under Iowa’s permissive reporting scheme. They also, however, have a vested financial interest in keeping clients coming for their services, which might cloud their judgment. As Planned Parenthood said to us, “Those clinics are our bread and butter.”

### **Reasons for mandated reporting**

While getting services for sexually active teenagers is a serious problem, the fact is that current Iowa law requires reporting of caretaker abuse of children up to the age of 18. A teenaged girl molested by her father could have the same concerns about her experience being reported as a teenaged girl molested by her uncle or a priest, yet Iowa requires abuse of the first girl to be reported, but not the second.

A skillful therapist could even make reporting part of the therapy by helping a girl to understand that what happened to her was a crime.

The greatest advantage of reporting is that state agencies have the authority to investigate what is happening to the entire family and other victims.

CHILD believes non-caretaker abuse of children more than 11 years old should be subject to a reporting requirement.

Lastly, the Iowa Department of Public Health proposed changes in the regulations for the immunization program. During the public comment period, CHILD submitted suggestions for tightening the religious exemption, but the department ignored them.

## New Mexico's bioterrorism bill passes without religious exemptions

With good groundwork before the legislative session began and vigilance during it, CHILD members and other advocates were able to keep religious and philosophical exemptions out of New Mexico's bill on public health emergencies.

The New Mexico Emergency Preparedness Final Report and Recommendations issued in August, 2002, allowed children to be deprived of medical examination, testing, treatment, and immunization on religious grounds in the midst of a declared public health emergency.

CHILD wrote to Jessica Sutin, a deputy attorney-general and contact person for the report. We pointed out that depriving children of medical care is not a First Amendment right and quoted from the recent federal court ruling in *McCarthy v. Boozman*, 212 F.Supp.2d 945 (W.D. Ark. 2002):

It has long been settled that individual rights must be subordinated to the compelling state interest of protecting society against the spread of disease. The Supreme Court long ago held that a state may adopt a program of compulsory immunization for school-age children. See *Zucht v. King*, 260 U.S. 174, 176 (1922); *Jacobson v. Massachusetts*, 197 U.S. 11, 27-29 (1905). It is also well settled that a state is not required to provide a religious exemption from its immunization program. The

constitutional right to freely practice one's religion does not provide an exemption for parents seeking to avoid compulsory immunization for their school-aged children. See *Prince v. Massachusetts*,



*In Memoriam: William S. Dixon*  
Credit: Albuquerque Journal

Long-time CHILD member Bill Dixon died at age 59 in March, 2003. An Albuquerque lawyer, he received many awards for his defense of First Amendment freedoms, and the New Mexico Foundation for Open Government established the First Amendment Freedom Award in his name. Bill also believed profoundly that those freedoms did not include the right to harm or allow harm to a child. He led CHILD's fight for child protection in New Mexico's bioterrorism bill and was told that we had succeeded a month before he died.

Bill was also a wonderfully affirming friend.

321 U.S. 158, 166-67 (1944); *Wright v. DeWitt School Dist. No. 1 of Ark. County*, 238 Ark. 906, 911-13 (1965); *Cude v. State*, 237 Ark. 927, 933-34 (1964).

CHILD also pointed out that the Mississippi Supreme Court overturned a religious exemption from vaccinations, holding that the child has "rights in his own person" to the benefits of vaccination. *Brown v. Stone*, 378 So.2d 218 (Miss. 1979).

CHILD member and Albuquerque lawyer Bill Dixon offered to help. He had worked with Ms. Sutin and her father. He talked with Sutin several times. She eventually decided to put the bill in "the right way" though she expected fierce legislative opposition.

CHILD honorary member Caroline Fraser of Santa Fe attended legislative committee meetings

on the bill and testified against the exemptions. The bill passed with only one legislator calling for religious exemptions to be included.

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## Court rules against peyote for Native American minors

The fractious history of Native American use of peyote was the focus of a child custody dispute in Michigan. In 1994 Congress passed the American Indian Religious Freedom Act making it legal in all states for Indians to use, possess, and transport peyote “for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion.” 42 U.S.C. Ch. 21, Sec. 1996a.

Congress was silent about the risks to Indian children, but when Native American Jonathan Fowler and European-American Kristin Fowler divorced, the Newaygo County Circuit Court in White Cloud, Michigan, prohibited their 4-year-old son Teddy from taking peyote.

### Parent’s constitutional right claimed

Mr. Fowler appealed, arguing that he had a constitutional right to direct his son’s religious practices. The Court of Appeals remanded the case to the county court for evaluating to what extent the prohibition burdened Fowler’s religious expression and to what extent Teddy would be harmed by ingesting peyote, so that these competing interests could be weighed against each other.

Obtained from a cactus, peyote is a controlled substance containing the hallucinogenic mescaline and 42 other chemicals unique to the plant. The percentage of mescaline present varies from plant to plant. The Natural Products National Database lists peyote as a poison and “unsafe to take.”

Fowler belongs to the Native American Church of the Morning Star. The church considers use of peyote a sacrament, but ingesting it is not necessary to receive the blessing of the ritual. Some members only touch the teapot containing peyote in tea form. Others put peyote in paste form on their foreheads. Some parents dip a finger into a cup of peyote tea and then touch the child’s body. Most children do not attend the all-night ceremonies.

## Benefits and harms of peyote

Fowler testified that ingesting peyote “helps you hear God’s voice inside you, in your soul,” and believes that it cured him of alcoholism. He also acknowledged that peyote had sometimes caused him to vomit and become nauseated.

Dr. John Halpern, a psychiatry instructor at Harvard Medical School, testified that peyote has been useful in the Native American Church for the treatment of adult alcoholism and continuation of sobriety. He also challenged the court’s authority to restrict peyote use, given the federal law. “We have to protect these people’s traditions,” he said.

Halpern also testified that consumption of peyote as practiced by the Native American Church is safe for children.

Judge Graydon Dimkoff disagreed with Halpern’s testimony on children because his research did not involve children, relied on self-reporting, had no cognitive or personality testing of his subjects before they ingested peyote, and did not consider the quantity of peyote that his adult test subjects consumed.

Dimkoff concluded that Halpern’s “zealousness” on behalf of Native American peyote use had clouded his scientific judgment.

### Health threats outweigh parental liberty

He further concluded that peyote poses an “unacceptable and substantial threat” to a child’s physical and mental health.

The judge also ruled that having his son ingest peyote was not essential to Fowler’s religious beliefs because families can participate in the ritual without each member ingesting the drug.

“Mr. Fowler would have the court rule that ingestion of peyote by children is a matter of personal decision by a tribal member over his own children, based upon his personal liberty argument, and would preclude any intervention whatsoever by the state,” the judge wrote.

A church should not be able to give a controlled substance to unknowing or even unwilling children without any state oversight, Dimkoff held.

## Children have due process rights in relationship to parents

Of particular interest to CHILD was the judge's conclusion on constitutional rights:

It appears to the court that just as a parent has a substantive due process right under the Fourteenth Amendment to the United States Constitution in the nurture, upbringing, companionship, care, and custody of children, so a child has the right to be reared by his parents free of substantial harm or the potential of substantial harm to that child. While the court concludes that the child herein does have a constitutionally protected right to be raised free of substantial harm and from the threat of substantial harm, the court acknowledges that the whole field of substantive due process rights has been characterized as a "treacherous field," *Moore v. East Cleveland*, 431 U.S. 494 (1977). However, logic dictates that if parents have substantive due process rights to their children, then children have substantive due process rights with regard to their relationship with their parents. . . .

The child's constitutional rights herein, which appear to be substantive rights under the due process clause of the Fourteenth Amendment to the U.S. Constitution, when balanced with [the Court's findings on church practices and the dangers of peyote], require that the minor child of the parties not be allowed to ingest peyote until he is mature.

The judge further held that both parents must agree that the child is knowledgeable enough to understand the religious, physiological, and psychological implications of ingesting peyote before he is allowed to do so.

Dimkoff rejected the mother's request that the child be prohibited from attending the ceremonies.

The ruling was not appealed.

Taken from Michigan's 27<sup>th</sup> Circuit Court-Family Division ruling in *Fowler v. Fowler*, file 98-744-DM-D, April 18, 2003, and AP articles of Nov. 23, 2002, and April 23, 2003.

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## Mom sentenced for traffic violations ordered by husband

A Michigan woman found nursing her baby while traveling 65 miles per hour on the Ohio turnpike was sentenced December 5<sup>th</sup> for violating child-restraint laws, driving without a license, and failing to comply with police officers.

### Nursing baby, talking on cell phone, and taking notes while driving 65 m.p.h. (without a license)

In May, Catherine Donkers, 29, drove three miles with a state trooper signaling her to stop while she nursed her baby daughter, talked to her husband on a cell phone, and took notes on the steering wheel as to what she should do. She later testified that her husband, Brad Barnhill, 47, had ordered her to "multi-task" to save time.

She has no driver's license because she will not give her social security number to the government.

### Only husbands can punish wives

The couple belongs to the First Christian Fellowship for Eternal Sovereignty, a sect founded in the 1990s by Christopher Hansen. The church teaches that the husband is "the sole head of the family" and the only one who can punish his wife for a public act.

Its webpage at [www.sovereignfellowship.com](http://www.sovereignfellowship.com) says the group's "main objective" is to empower Americans "to demand and defend their God-given rights and fulfill their duties as freedom-loving Christians against the encroachment of the Beast and his agents." The "Beast" is the federal government.

Donkers acted as her own attorney at trial in August and again at the sentencing hearing while her husband whispered instructions to her from his seat in the gallery. She argued that any sentence was unjust because she did not cause harm to anyone. She also contested the court's authority to sentence anyone.

After a four-hour hearing in Ravenna, Ohio, Portage County Municipal Court Judge Donald Martell sentenced her to 90 days of electronically-monitored house arrest, fined her \$500, ordered her



to undergo a mental health evaluation, and ordered her not to drive until she gets a license.

Charges of child endangerment were dismissed because Ohio law states that failure to restrain a child in a safety seat is not endangerment.

The couple says they will appeal.

Taken from the *Akron Beacon-Journal*, Dec. 5, and WorldNetDaily.com, Dec. 5.

## **Church cleared in Florida toddler's death; legislators block oversight of unlicensed day cares**

In April, 2003, a Florida judge acquitted a church day-care corporation of aggravated manslaughter charges in the death of a girl left in a scorching-hot van.

### **Corporation not criminally negligent**

Zaniyah Hinson, age 2, died in August, 2001, at the Abundant Life Academy of Learning in Daytona Beach. More than forty children were taken on a field trip in two vans and two cars. No rosters of the children were drawn up and no head counts taken. The 7-passenger van Zaniyah rode in had fourteen children and only one adult, and no child safety seats were used in it.

Seventh Circuit Judge James Foxman ruled that the staff's negligence was "not something the corporation acquiesced to or condoned." The staff did not follow the written policies of their director with regard to taking children on field trips in vehicles.

One worker, Gail Besemer, was convicted of felony neglect and sentenced to five years of supervised probation in which she will not be allowed to work with children.

### **Licensing exemption for church-run day care**

Florida allows child-care facilities run by religious institutions to operate without state licensure. Zaniyah's day care advertised itself as "accredited," but it was accredited by the Florida League of Christian Schools rather than a state agency.

Although the League claims that its standards "meet or exceed" the state's, the League manual in place at the time of Zaniyah's death did not require

counting children or logging them in when they are transported.

Zaniyah's mother, Tekela Harris of Port Orange, filed a civil negligence suit against the Abundant Life day care and the League of Christian Schools. She charged that the day care's certificate to operate given by the League had expired a month before Zaniyah's death, yet the League did not revoke its accreditation until October, 2001, when the state filed criminal charges. Harris received a \$1.5 million settlement from the day care's insurance carrier and \$200,000 from the League.

### **Legislature rebuffs mom's plea**

Harris and her supporters made heroic efforts to get legislation requiring more regulation of the church-run day cares, but the Florida legislature has quashed them in 2002 and 2003. A House committee would not even approve a proposal to require the unlicensed day cares to inform parents that they were not state-licensed.

### **Babies drugged to keep them quiet**

Another church-run day care in Florida had an employee who gave infants prescription medicine containing codeine to keep them quiet. The medicine had not been prescribed for the infants, and they were not sick. Their parents said the babies slept all night as if they were drugged.

The state initially decided against filing charges, but the parents complained to the press that one of the investigators belonged to First Baptist Church of Apopka, which runs the day care. Charges were then filed, and in November, 2003, the worker was sentenced to four years of supervised probation and prohibited from working with children.

The day care says it has tightened policies on dispensing medication. The Florida League of Christian Schools has placed the day care on probation for one year.

### **Many deaths in hot cars**

In June, 2003, a day care in Pine Hills, Florida, caused the death of 2-year-old Dominique Royals by leaving him in a hot van for hours. The day care was registered with the state as a "family-operated day care," but as such, it did not have to be licensed or monitored regularly.

At least 36 U.S. children died from being left in hot vehicles during the first eight months of 2003, according to Jan Null, a meteorology professor at San Francisco State University, who gathers data on such deaths.

Taken in part from *The Orlando Sentinel*, April 23 & 25, June 12, Aug. 26, and Nov. 14, 2003; *Daytona Beach News-Sentinel*, April 20-23; and WFLA News Radio Reports, Dec. 11, 2003.

## **Iowa family sues church-run day care for corporal punishment**

In October, an Iowa family filed a civil suit against a church, its pastor, and its day-care staff for hitting their two-year-old son.

Alex Wright suffered bruises on his back, buttocks, and legs and required medical care after being hit by Pastor Ronald Vanderhart of Adelphi Calvary Baptist Church in Runnells, Iowa.

Vanderhart and his son Shawn, who was a day-care employee, pleaded guilty to misdemeanor child endangerment charges for the beating.

### **Child's "willful spirit" must be broken**

Authorities say Shawn took the child to Vanderhart for punishment because Alex refused to say "please" when he asked to have his shoe tied.

Tom Whitney, the Wright's lawyer, said church officials later told the parents that the spanking was done "to break the spirit of the child, that it was a willful spirit and needed to be broken." Whitney also stated his belief that other parents had previously complained to church officials about the corporal punishment of their children.

The boy's parents, Jeffrey and Connie Wright, complain that assault and battery was inflicted on Alex. They charge that the acts were done "with the intent to cause physical pain or injury and/or insulting or offensive body contact" and to cause "fear of physical pain or injury."

They also charge the defendants with intentional and negligent infliction of emotional distress, negligent supervision and selection of staff, and failure to report child abuse.

## **No religious exemption for Iowa day care**

They allege that the church and Pastor Vanderhart committed "clergy malpractice" in that they attended the church "for spiritual guidance and comfort" and chose the day care because they relied upon Vanderhart to be "nurturing [and] caring" and to provide "spiritual guidance for their son Alex."

Iowa law prohibits all corporal punishment in state-licensed day cares and requires any day care with more than seven children to be licensed. The Adelphi Calvary Baptist Church day care was not licensed, Whitney said.

Taken from *The Des Moines Register*, Oct. 27, and the complaint, *Wright v. Vanderhart*, CL93949, filed in the Polk County District Court.

## **Texas pastor and brother sentenced for beating "the devil" out of child**

In December, an Austin, Texas, pastor and his brother were sentenced to long prison terms for aggravated assault and injury to a Bible school student.

In July, Louie Guerrero, age 11, "goofed off" when the summer Bible school class at the Capitol City Baptist Church was preparing for a Bible competition. Pastor Joshua Thompson accused him of lying about memorizing a Bible verse and punished him by hitting him with two tree branches while Thompson's brother Caleb held him down.

### **Intensive care for five days**

Louie and a treating physician testified that the boy was hit at least 100 times. He was in intensive care for five days and needed a blood transfusion. He was also in danger of kidney failure, but is now fully recovered.

Louie said the pastor told him he was trying to "beat the devil" out of him.

The Thompson brothers took Louie home and, according to testimony, told his stepfather, Genevvo Arellano, to "finish the job" with another beating.

The Arellanos told police that physical punishments, including push-ups and spankings, were

common in the church school and that Thompson preached in support of harsh discipline by “the rod.”

### **Militaristic evangelism**

The church is aggressively evangelical with street preachers, a SWAT Team for Christ, and “beating on doors, trying to convince you that they have The Way,” said a neighbor. After making music in the streets, the church newsletter said, “We sang the Lord’s songs in contrast to the world’s music. The enemies of the Lord knew they were whipped, and a few were captured by our Captain.”

Three days before the beating, Louie’s mother had had an argument with Joshua Thompson’s wife. Thompson had told Mrs. Arellano she could no longer be a church member unless she begged for forgiveness and her husband apologized to the church for her actions. In Capitol City Baptist Church, husbands are expected to be in control of their family and take responsibility for their wives’ wrongdoing.

At trial, the defense tried to shift some blame to the Arellanos, suggesting that they might have caused some of the injuries. Louie testified that his parents did sometimes hit him on the buttocks with a stick or belt, but they denied doing so around the time of his hospitalization.

### **Brothers remorseful, but say parents told them to hit child**

The defense stated that Louie had been expelled from the church’s school twice and that the parents “had pleaded with Joshua Thompson to discipline their son.”

Thompson testified that he didn’t want to do it, but felt he had to do it “for Louie to keep him in school.” Both brothers expressed remorse for hurting the boy.

The Arellanos deny giving the pastor permission to hit Louie and have filed a multi-million dollar civil suit against the Thompsons.

Taken from *The Austin American-Statesman*, July 10, July 11, and Dec. 4, 10, 12, and 13.

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## **Minister charged in exorcism death**

In August a Milwaukee pastor of a storefront church was charged with felony child abuse in the death of 8-year-old Terrance Cottrell, Jr.



*Terrance Cottrell, Sr. with Son’s Photo*  
Photo by Rick Wood in *The Milwaukee Journal-Sentinel*  
August 26, 2003 ©2004 Journal Sentinel Inc.  
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Terrance’s mother, Patricia Cooper, met a woman at a doctor’s office who urged her to attend a church for a “spiritual healing” of her son’s autism.

Neighbors noticed radical changes in Cooper’s behavior after she began attending the Faith Temple Church of the Apostolic Faith. Once gregarious and energetic, the single mother began living in near-seclusion, cutting herself off from her relatives, and appearing dazed and exhausted.

### **Boy held down and yelled at in healing rituals**

Healing rituals were performed for Terrance several times a week at the church and in his home. They usually lasted about two hours. His hands were often restrained with sheets to prevent him from scratching himself. Adults also held him while members shouted for demons to come out of him. Neighbors heard him screech, wail, and cry

during home sessions. They also noticed he had a swollen lip and black eye.

Denise Allison, who lives above Cooper's apartment, said Cooper told her about an early exorcism attempt in which Terrance could hardly breathe and "the devil" spoke through the boy's mouth saying, "Kill me. Take me."

### **Mom claims Bible orders corporal punishment**

Allison also saw through the window the church members taking turns striking Terrance with a belt. She confronted Cooper several times about her concerns, but did not report to state child protection services. Cooper told her the Bible orders corporal punishment of children.

On August 22, the 157-pound minister, Ray Hemphill, lay on the boy while his mother and other church members restrained his hands and feet. They prayed for his "violent tendencies" to cease and shouted, "You unclean spirit come out of him."

After the prayers, they saw he was not breathing and called 911, but he could not be revived.

The medical examiner ruled that the boy suffocated to death by "mechanical asphyxia due to external chest compression."

### **Other charges required intent to harm**

Hemphill was charged with recklessly causing the boy's death. The prosecutor's office said that child abuse, which carries a maximum of five years in prison, was the most serious crime that could be charged because no one intended to harm the child. The lack of intent to harm also precluded charging the others who held the boy or were involved in the exorcism ritual, according to prosecutors.

Autism is a frustrating neurological disorder. According to the Autism Society of America in Bethesda, Maryland, the senses of an autistic person are not integrated. They do not work together to contribute to cognition. The slightest touch of an autistic person may trigger a violent outburst. Autism may cause over-sensitivity to pain.

### **Exorcism defended as cure for autism**

These facts about autism do not impress the church leaders. Bishop David Hemphill, brother of the minister charged in the crime, said they were only following Jesus' instructions to cast out

demons in Matthew, Chapter 12. "The boy just had a problem in his mind, and what we were doing was asking God to fix it. God is a mysterious person. . . . He chose to fix it by taking [Terrance] back home to him."

He also said the child's death would not change the way the church operates. "How you going to change the Bible?" he asked.

In 1998 the state investigated allegations of child abuse at his church after a 12-year-old girl was beaten with a stick by her mother during a service. No charges were filed.

Ray Hemphill has been released on bond, but has been ordered not to "engage in or even attempt any sort of exorcism or spiritual healing" before his trial.

Milwaukee County District Attorney Michael McCann was asked about Wisconsin's law barring child abuse prosecutions brought solely because someone "provides a child with treatment by spiritual means through prayer alone for healing." Wisc. Stat. 984.03(6)

### **Prosecutors oppose religious defenses**

McCann said in the Cottrell case, he can overcome the religious defense by showing the minister's actions went beyond prayer, but he said the law invites religious defenses in child abuse cases and should be repealed.

"I've been aware of that provision and concerned about it for a number of years. I think it has the potential for mischief," he said.

The "vast majority" of child abuse prosecutors would agree with McCann, said Victor Vieth, director of the National Center for the Prosecution of Child Abuse in Virginia. The National District Attorneys Association, with which the Center is affiliated, has opposed the exemptions for more than ten years.

While Americans have high regard for freedom of religion, Vieth said, "we also have a deep belief that children should not be physically abused. . . . Is society going to value the religious practice more than the child, or vice versa?"

Taken from *The Milwaukee Journal-Sentinel*, August 24-28, and *The Chicago Tribune*, Sept. 5.