

Children's Healthcare Is a Legal Duty, Inc.

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Equal rights for children under the law



President Obama signs CAPTA reauthorization

CAPTA reauthorized; almost no improvement on CHILD's issues

In December, 2010, Congress finally reauthorized the Child Abuse Prevention and Treatment Act (CAPTA) two years behind schedule. CAPTA was first enacted in 1974, but every four years or so it comes up for reauthorization and Congress can make changes in it. From 2007 on we worked hard within the National Child Abuse Coalition (NCAC) for several improvements in the upcoming reauthorization, but lawmakers rejected nearly all of them.

Through CAPTA the federal government sets standards for defining child abuse and neglect, reporting and investigating them, family reunification, moving children from foster care to permanency, and many other issues in protecting maltreated children. Historically, states had to meet those standards to obtain federal money for their child abuse and neglect prevention and treatment programs. Through the ancient doctrine of *parens patriae* governments have authority to protect children when their parents are not doing so.

Central to CHILD's core issues was to remove the onerous provision added in 1996: "Nothing in this Act shall be construed as establishing a

Federal requirement that a parent or legal guardian provide a child any medical service or treatment against the religious beliefs of the parent or legal guardian. . . ." 42 U.S. Code § 5106i

CAPTA requires states in the grant program to include failure to provide medical care in their definitions of neglect, but also allows them to exempt religious objectors from civil and criminal laws.

CHILD pointed out that West Virginia, Oregon, and Washington enacted religious defenses to felonies shortly after this provision was enacted and that similar legislation was introduced in Delaware, Michigan, and Maryland, but defeated by CHILD members and allies. The bill introduced in Maryland in 1997 was taken verbatim from the new federal law.

We and the NCAC called for its outright removal from CAPTA. CHILD also presented a fallback position of adding a reporting requirement so that state laws would at least require cases of religion-based medical neglect to be reported to child protection services.

We also advocated for tightening the federal definition of child abuse and neglect. CAPTA's original definition in 1974 was:

the physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of eighteen by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby

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As a backlash against child protection work developed, conservatives argued that this broad definition was overloading Child Protection Services systems with reports of trivial problems and preventing CPS from protecting seriously endangered and harmed children.

Recent, serious and imminent

After the Republicans gained control of Congress, CAPTA's definition was radically limited in 1996 to the following:

“child abuse and neglect” means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm. 42 U.S. Code §5106g(2)

CHILD and the NCAC told Congress that “recent,” “serious,” and “imminent” were too many qualifiers, particularly given that the definition is the standard for reporting suspected abuse and neglect. Many people could be aware of situations that needed intervention without knowing that harm was recent, serious, and imminent.

We particularly cited the example of child sexual abuse, which is often not disclosed until years after the fact. Also, through x-rays or other examination, doctors may discover old injuries caused by abuse.

In addition, CHILD called for the age of children to be protected by the child protection laws to be set at 18 for all forms of neglect and abuse. Current federal law states: “the term ‘child’ means a person who has not attained the lesser of the age of 18; or except in the case of sexual abuse, the age specified by the child protection law of the State in which the child resides.” 42 USC §5106g(1)

No one can explain to us what this law means.

CHILD also hoped that neglect and abuse in out-of-home care could be again addressed in CAPTA. From 1974 to 1996 CAPTA had specifically provided that states in the grant program must require reporting of neglect and abuse by “any employee of a residential facility” and “any staff person providing out-of-home care.”

In April, 2010, I came to Washington and met with staff of Senators Mike Enzi, R-WY; Tom Harkin, D-IA; and Chris Dodd, D-CT, who were

writing the CAPTA bill. Enzi's staffers worried that the CAPTA grant program was such a small amount of money that states would drop out of the program if new requirements were added. Enzi staffer Beth Buehlmann flatly warned that if one word of the religious exemption was changed, “there won't be a CAPTA.”

No concessions on bill; report language promised

Though the Democrats were the majority in both chambers, Senators Dodd and Harkin decided to develop a bill that all committee members supported. By September, 2010, it was clear that the Senate bill would have no improvements in any of the four areas we had called for.

Democratic staffers told us we could address our concerns in the committee report that would accompany the bill and invited us to submit report language, which we did. The majority writes the report, and it does not have to be voted on by the committee, they told us.

However, when push came to shove, we were told that the Republicans would not allow any changes to the report language on religious exemptions that was enacted when they controlled Congress in 1996.

“But you said the committee report does not have to be voted on,” I protested. Well, that's technically true, but the Republicans could maneuver to block the bill itself if they opposed something in the report, I was told.

No help in report, but letter promised

So after we lost on the bill and the committee report, Senator Dodd's staffer, Averi Pakulis, suggested that we draft a letter for Senator Dodd to send to the U.S. Dept. of Health and Human Services (HHS) that could guide them in developing regulations to implement CAPTA.

We promptly submitted a draft for Senator Dodd, but on December 20 Averi wrote that they didn't have time for Dodd to submit the letter. She recommended that we have Senator Harkin send the letter and said that his child abuse staffer assured her that Harkin would send the letter.

Six months later we are still waiting for Harkin to send the letter. Even if he did, we would not hold our breath for HHS to take account of it. HHS has not promulgated any regulations to implement CAPTA since 1990.

Did Republicans concede anything?

Retiring Senator Dodd was strongly determined to get CAPTA reauthorized as part of his legacy. Though the Democrats had an almost filibuster-proof majority with 59 Senators, they seemed to have no fire in the belly to fight for CAPTA. We heard a lot about what they conceded for bipartisan consensus, but we did not hear what Republicans conceded.

Some child advocates advised us to work in the House because voting there is by simple majority, but the House did not develop its own CAPTA bill, perhaps in deference to Senator Dodd.

CHILD's one success in CAPTA

The one provision we did get in CAPTA was in the "findings" at the beginning where Congress declares its general conclusions. They called upon CPS systems to be "sensitive to ethnic and cultural diversity. . . but not allow "those differences to enable abuse. . . ."

At CHILD's request, the National Child Abuse Coalition recommended that Congress amend the section to read,

The problem of child abuse and neglect requires a comprehensive approach that. . . recognizes the diversity of ethnic, cultural, and religious beliefs and traditions that may impact child rearing patterns, while not allowing the differences in those beliefs and traditions to enable abuse or neglect. S.3817 §2. Findings

The language appears verbatim as a finding of Congress in the newly reauthorized CAPTA. It does not set a requirement for the states, but it might inspire state agencies to oppose religious exemptions that do allow abuse or neglect of children.

The federal government has done more harm than good for children in faith-healing sects. From 1975 to 1983 the federal administration coerced states to enact religious exemptions to child neglect as a condition of grant money. In 1996 Congress passed a law allowing religious objectors to withhold all medical treatment from their children. These policies were both the result of Christian Science lobbying. We can only hope states have more courage than Congress does in standing up to this church's minuscule constituency.

Religious defense removed from Maryland neglect bill

In 2010 bills were introduced in the Maryland House and Senate to make child neglect a crime. To our astonishment, they included a religious exemption. Both stated that "neglect does not include, for that reason alone. . . the failure to provide specified medical treatment that conflicts with the parent's or guardian's bona fide religious beliefs and practices."

Maryland has never had a religious defense to child maltreatment in its criminal code and repealed its religious exemptions to civil abuse and neglect in 1994.

Ellen Mugmon of Elkridge, Maryland, who has lobbied on children's issues in the Maryland legislature for over twenty years, went to work educating legislators and organizations about the dangers to children posed by the religious defense. Ironically, the National Center for the Prosecution of Child Abuse, a program of the National District Attorneys Association, supported the religious defense even though the NDAA had adopted a position against such defenses in 1991.

Prosecutor describes fatal religious abuse

Julia Drake, a Baltimore City prosecutor, spoke out strongly against the exemptions. She had gotten second-degree murder convictions of three members of One Mind Ministries, who let a one-year-old boy starve to death for not saying "Amen" after table grace.

With these bills "every one of those cult members could have argued successfully, because I have no reason to believe their beliefs weren't sincere, that they withheld food and water based on a sincere religious belief," she said. "I think that's a very dangerous road to go down."

Another problem some had with the bill was that it dealt only with "a pattern of neglect," and some neglect can be very harmful without being habitual.

The religious defenses were stripped from the bills, but they still died in 2010.

In 2011 child advocates were able to get a criminal neglect bill passed by reducing the charge to a misdemeanor. It does not have a religious defense nor require that neglect be in a pattern.

Three misdemeanors on neglect

Supporters described seeing cases of medical neglect that they felt should be prosecuted even though Child Protection Services (CPS) was able to get medical care for the children. They said Maryland had a law making it a crime to neglect animals but was the only state without a criminal neglect law for protection of children.

Opponents felt a neglect law was not needed because Maryland already had laws against “reckless endangerment” (also a misdemeanor; see Md. Code 3-204) and against causing a child, by action or omission, to become a child in need of assistance (also a misdemeanor; see Md. Code 3-828).

Maryland Advocates for Children and Youth opposed the bill on grounds that prosecuting parents for neglect would make it impossible for CPS to work with families on parenting skills, cause unnecessary removals of children from their parents, and delay reunification and permanency.

Supporters said only the most egregious cases of neglect would be prosecuted.

CHILD feels that statutes should have a felony count of either neglect or endangerment because some non-fatal neglect is truly horrific. What if neglect causes the child to be left in a permanent vegetative state, for example?

CHILD is happy the bill passed, but is disappointed that any Maryland legislators or prosecutors would want a religious exemption in the code. It seems no progress is necessarily permanent.

Sources include the *Frederick News-Post*, April 14, 2011.

Wisconsin’s competing bills on religious exemptions fail

Two Wisconsin Democratic legislators introduced sharply different bills on religious exemptions in 2009. Both bills died in 2010.

On Easter Sunday, 2008, 11-year-old Kara Neumann died of untreated diabetes in Weston, Wisconsin. Her parents headed a fellowship that believed in divine healing. They rejected relatives’ pleas to get medical care for their daughter, reportedly claiming that God would heal her and that any human remedy would take away glory from God.



Kara Neumann

Photo credit: Wausau Daily Herald

The Neumanns were charged with reckless homicide. They argued that Wisconsin’s religious exemptions to civil child neglect and felony child abuse allowed them to withhold medical care from Kara and rely exclusively on prayer and ritual.

CHILD pointed out to the prosecutors that the Christian Science church had tried to get a religious exemption to reckless homicide into Wisconsin statutes in 1994, but its bill was defeated by the state Senate. The outcome was evidence that the legislature did not intend to allow a religious exemption to homicide; the point was included in the prosecution brief.

In December, 2008, the Marathon County Circuit Court ruled that Wisconsin’s religious exemptions were not a defense to a homicide charge and that the Neumanns must stand trial.

Church says its murky law must be clarified

In January, 2009, Wisconsin media reported that the Christian Science church was aghast at the Neumanns’ behavior and the “murky law” they were trying to use in their defense. The church drafted and lobbied for the law, but Christian Science lobbyist Joe Farkas said they never intended the law to be used to justify letting a child die.

Farkas was meeting with Senator Lena Taylor, D-Milwaukee, who chaired the Judiciary Committee, to develop a bill with “guidelines” for when “reasonable” believers in spiritual healing must seek medical care for sick children. The church wanted “to protect children” and was therefore working to eliminate the “confusion” in current law, he said.

We did not for a moment believe the church’s claim about their motivation. And when their bill

was finally unveiled months later, it was clear that they had given children less protection, not more. It required the jury to determine whether parents acted “in good faith” and made “reasonable use” of “religious treatment in lieu of medical treatment.”

The bill laid out nine factors that the jury had to use to make their determination. A few sounded valid, but others raised red flags such as “the likelihood that medical treatment would have eliminated the condition” and “any risk of harm or negative side effects of medical treatment for the condition.” Critics pointed out that all drugs have side effects and that some diseases, such as diabetes, cannot be “eliminated,” but are nevertheless managed with lifesaving drugs.

Jury must weigh faith healing claims

Most ominous were the last two factors: the family’s experience “in relying upon medical treatment” and “in relying upon spiritual, prayer, or religious treatment.”

The bill gave the jury no guidance as to which factors were most important or what to do if some were contradictory. It implied that if the family had had a bad experience with medical treatment or no experience at all, then it was reasonable for them to deprive the child of medical care. And it was certainly going to lead to lots of testimonials about healings the families believed they had had from prayer.

Privilege for all criminal conduct

Furthermore, the provisions were placed in the “privilege” chapter of the criminal code and thus created a right to do any act that would be “otherwise criminal.” Most privileges in the chapter were sensible, such as “when the actor’s conduct is a reasonable accomplishment of a lawful arrest.” The church’s bill, however, created a religious defense to homicide and manslaughter that they had failed to get in 1994. It allowed “reasonable” faith healers to deprive children of medical care even if the child died.

We believe the real trigger for the church’s bill was not the death of Kara Neumann but the court’s ruling that existing law did not include a religious defense to a reckless homicide charge.

Senator Taylor held a hearing on her bill. Immediately after Taylor opened the hearing, Senator Grothman, R-West Bend, proclaimed, “It’s a

necessary bill. I can see from the witness list that we have intolerant people here, but I’m glad to see we have a bill upholding tolerance and faith.”

Proponents speaking included Farkas, a Madison attorney representing the church, an attorney from the church’s headquarters in Boston, and a dozen Christian Science parents who all talked about their spiritual healings, but also said they had gotten medical care on occasion.

Taylor interspersed their testimonials with her own, saying she wanted to “give glory to God” for improvements in her relatives’ health.

Testifying against the bill were Shawn Peters, a University of Wisconsin professor and author of *When Prayer Fails*; pediatrician Barbara Knox, the medical director of the University’s Child Protection Program; Raylene Freitag of the National Association of Social Workers, Wisconsin Chapter; Bob Kaiser representing the Wisconsin District Attorneys Association, and Rebecca Kratz representing the Freedom from Religion Foundation.

Scholar: church makes law worse

Shawn Peters began, “SB384 does not even vaguely serve the best interests of Wisconsin children. Rather it reflects little more than a narrow desire of the Christian Science church to insulate its members from legal liability for their role in the preventable deaths and injuries of children.

“It does not bolster safeguards for children’s health. Indeed, it does precisely the opposite within a welter of confusing and ill-defined provisions. The measure makes it much more difficult for adults to be held legally accountable for behavior that leads to injury or even death of a child. In short it further muddies waters that were already considerably murky because of the Christian Scientists’ earlier foray into policymaking.”

Opponents told to call church attorney

Taylor told opponents that they needed “to express tolerance for the Christian Scientists” and told the attorney from church headquarters in Boston to leave her card so that opponents could call her and “get their concerns answered.”

Taylor’s committee voted for the bill 4-1 though the Christian Science church was the only group supporting it and many opposed it.

CHILD calls for exemption repeal

Before that hearing and vote CHILD decided that the best way to combat the Christian Science bill was to get a bill introduced to repeal Wisconsin's religious exemptions to civil neglect and felony child abuse.

Two CHILD members, Drs. Norm Fost and Brian Williams, met with Representative Therese Berceau, D-Madison, (below) whom another CHILD member had recommended. She readily



agreed to sponsor the bill.

I made two trips to Wisconsin to build support for the bill. In my first trip Brian and his wife took lavish care of me. They hosted me in their home; Brian provided all the ground transportation and attended all the meetings with me. In my second trip I drove to Milwaukee and

met with the *Milwaukee Journal-Sentinel* editorial board.

Many supporters for Berceau bill

The newspaper ran an editorial strongly supporting Berceau's bill, AB590. We also had a long list of respected organizations endorsing it:

- Wisconsin Chapter, American Academy of Pediatrics
- Wisconsin Academy of Family Physicians
- Wisconsin Chapter, National Association of Social Workers
- Children's Hospital and Health Systems
- Children's Service Society
- Children's Health Alliance
- Prevent Child Abuse Wisconsin
- Wisconsin Nurses Association
- Wisconsin Association of School Nurses
- Wisconsin Association of School Psychologists
- Wisconsin District Attorneys Association
- Wisconsin Association of State Prosecutors
- Freedom from Religion Foundation
- Children and the Law Section, Wisconsin Bar
- Children's Healthcare Is a Legal Duty
- Legal Aid Services, Wisconsin

However, the Criminal Law Section of the Wisconsin Bar, dominated by defense attorneys, opposed Berceau's bill. Its chair, Gregory O'Meara, a Marquette University law professor and Jesuit priest, claimed that it "conflict[ed] with the constitutional rights of Christian Scientists and others" and could therefore "tie up prosecutors in court" well beyond their "ordinary competence."

Church slanders legislator's motives

Usually the Christian Science church lobbies politely, but in Wisconsin they circulated strident memos against Berceau's bill and even slandered her motives. "The bill blatantly discriminates against Christian Scientists" and "blatantly targets religious conduct," Farkas charged.

Though the church itself wanted the religious exemption in the criminal code changed (for the worse), it certainly did not want the religious exemption in the civil code removed and claimed Berceau's motive for doing so was her "desire to attack a minority religious practice."

Leadership blocks bill

Early in 2010 the House Democratic leadership told Berceau that they would not allow the bill to advance. They were worried about their prospects in November with voters being angry at incumbents and did not want to be perceived as offending religion. The idea that voters might instead respect them for standing up for children did not resonate with them.

A month later Berceau told us confidentially that the House Children and Families Committee, would hold a hearing on the bill with a small number of invited witnesses, but not schedule a committee vote on it.

Farkas was the only opponent invited to testify. He charged that Berceau's bill "could uproot a child's life based on someone's intolerance" and "discriminated against whole classes of children just because they belong to a particular church."

He said there was nothing in church theology or rules that discouraged getting medical care and that the church in fact encourages its parents to seek medical care when a child is in danger. He and his church were only trying to preserve the rights of Christian Scientists to rely on prayer in "non-serious cases," he said.

What diseases has lobbyist healed?

Since he is a church-accredited healer, he was asked some tough questions about what diseases of children he had healed and his charges for prayers. This created a dilemma for him as he needed to show that Christian Science practice posed no danger to children (while promoting a Senate bill with a religious defense to reckless homicide). So he said he had healed children of “minor illnesses.”

“You mean like colds and flu?” a legislator asked.

Sometimes he healed children “quite dramatically and quickly,” Farkas replied.

What training on disease do healers have?

He was asked by two legislators if the church gave practitioners or parents any guidance or training to know when a child was in danger. He did not name any. The church gives parents total freedom to go to doctors, he replied.

I followed Farkas. “If Christian Science has no objection to medical care, then why is our son dead? Does Mr. Farkas claim that my husband and I did not know the rules of the church? Or does he claim that we wanted our son to die and we just deliberately withheld medical care when we were perfectly free to [get it],” I asked.

As we had been forewarned, the House committee did not vote on Berceau’s bill; the church’s bill in the Senate did not go to the Senate floor.

It all seems like ancient history now in the wake of the November election when Wisconsin shifted from Democratic control of both chambers and the governorship to total Republican control. In 2010 the House had 52 Democrats and 46 Republicans. Today the House has 60 Republicans and 38 Democrats. The Democratic leadership’s cowardice on AB590 did not help them in November.

Massachusetts legislature again rejects Christian Science bill

In 2010 the perennial Christian Science bill to provide a religious defense to crimes against children died again in the Massachusetts legislature.

Right to cause serious bodily injury sought

Since 1993 when Massachusetts CHILD members and other advocates got a religious exemption to misdemeanor non-support repealed, the Christian Science church has been trying to get a religious defense to felonies into Massachusetts law.

State Representative Byron Rushing, who has the Christian Science headquarters in his district, introduces bills for them each session. Usually he is the sole sponsor, but in the 2007-08 session his bill had 32 co-sponsors and last session it had 24 co-sponsors.

The bills enacted affirmative defenses to the crimes of “assault and battery on a child” and “wanton or reckless behavior creating serious bodily injury or sexual abuse to a child” for parents who “reasonably provided to the child spiritual treatment through prayer in lieu of medical treatment.”

Unlike the Wisconsin bill, the Massachusetts bill did not explain when it was reasonable to use only prayer to heal a child’s illness.

The church had a phalanx of attorneys and public relations managers testifying for their bill and ran a full-color two-page spread in a church periodical urging members to contact legislators.



We cannot thank enough CHILD member Ken Casanova of Jamaica Plain (left) for his work to protect children in faith-healing sects. His public testimony and position papers are superbly researched and written. He also makes sure that pediatricians, prosecutors, child protection organizations *et al.* are kept informed and get their opposition to the Christian Science bills communicated to legislators.

Ken was the first winner of CHILD’s Imogene Temple Johnson Friend of Children award and preeminently deserved to be so.

The bill died in committee with no vote, recommendation, or even a face-saving shuffling off for “study” in another committee where hundreds of bills go to die each year.

Has church quit trying ?

What is most interesting in this saga is that Rep. Rushing has not introduced his “Act to Further Religious Freedom” in 2011.

Massachusetts, the home state of the Christian Science church, remains a state with no religious exemptions in either the civil or criminal codes pertaining to care of sick children. Perhaps the church has at last given up trying to reinstate them.

Another Firstborn child dies in Colorado

On December 21 Colorado had another child fatality in the infamous Church of the Firstborn. Three-year-old Rhett Ferguson died in Cortez, Colorado, of acute tonsillitis, acute pneumonia, and sepsis due to *Staphylococcus aureus*.

Someone did call 911 at the last minute but too late to save his life.

His obituary states, “Rhett loved to attend church and loved to sing. He was a blessed child who always brought a smile to your face and a kiss to your cheek.”

The Church of the Firstborn has let scores of children die over the years in Indiana, Oklahoma, Colorado, Washington, Oregon, California, and elsewhere, with its beliefs against medical care.

Montezuma County District Attorney Russell Wasley has not announced a decision on filing criminal charges.

In 2001 Colorado repealed its religious defenses to reckless endangerment, negligent homicide, manslaughter, and felony child abuse. It still has a religious exemption to criminal nonsupport and to neglect in the civil code.

Sources include the *Cortez Journal*, Dec. 23, and the autopsy report. The newspaper’s obituary includes a beautiful picture of Rhett.

New e-book explores “mind control” in Christian Science

Is Christian Science a cult? Does it practice “mind control”? These questions are forthrightly and methodically addressed in a new e-book entitled

Perfect Peril: Christian Science and Mind Control by Linda Kramer (below). The book can be purchased at Amazon.com and read on a Kindle. Kindle software can be downloaded free.

Kramer’s first book was entitled *The Religion that Kills: Christian Science: Abuse, Neglect, and Mind Control* and published in 1999. *Perfect Peril* is a rewrite and reorganization of her first book, but very much worth the reader’s second look at her material.



Kramer’s discussion of Christian Science doctrine and its impact on devotees is first-rate. Her scientific training (Kramer holds a Ph.D. in chemistry) serves her well. Her prose is lucid, cogent, and efficient. Her insights on the psychic damage done by this religion are simple, for

they look obvious in her concise expression, yet are also profound and certainly need to be more widely known.

Kramer organizes the main thrust of her book around Robert Lifton’s criteria in *Thought Reform and the Psychology of Totalism*. Lifton set forth eight criteria used by the Chinese Communist government to “brainwash” prisoners and students. These criteria were later adopted by counter-cult organizations to explain the new “pseudo-identity” that some persons assume in cults. Kramer argues that Christian Science has seven of the criteria.

Perfect Peril is especially interesting for its quotes from Eddy’s early followers, who expose Eddy’s megalomania and exploitation of others while simultaneously expressing their slavish loyalty to her.

A final section about Kramer’s arduous struggle for mental and emotional wholeness after leaving Christian Science is more than interesting; it is an inspiration. Kramer is a hard worker in her personal life and her writing.