

Children's Healthcare Is a Legal Duty, Inc.

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RELIGIOUS DEFENSES IN STATE PENAL CODES

[*See important note below on interpreting these statutes](#)

ALABAMA defense to child endangerment

A person does not commit an offense under section 13A-13-14 or this section for the sole reason he provides a child under the age of 19 years or a dependent spouse with remedial treatment by spiritual means alone in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof in lieu of medical treatment.

Alabama Code 13A-13-6(b)

ALASKA defense to nonsupport

There is no failure to provide medical attention to a child if the child is provided treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination.

Alaska Statutes 11.51.120

ARKANSAS defense to capital murder

It shall be an affirmative defense to any prosecution for capital murder arising from the failure of the parent, guardian, or person standing in loco parentis to provide specified medical or surgical treatment, that the parent, guardian, or person standing in loco parentis relied solely on spiritual treatment through prayer in accordance with the tenets and practices of an established church or religious denomination of which he is a member.

Arkansas Code 5-10-101(a)(9)(B)

CALIFORNIA defense to nonsupport and failure to report suspected child neglect

If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter, medical attendance, or other remedial care for his/her child, he/she is guilty of a misdemeanor. . . If a parent provides a minor with treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, such treatment shall constitute "other remedial care," as used in this section.

California Penal Code Section 270

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child.

California Penal Code Section 11165.2(b)

The California Supreme Court upheld a manslaughter conviction of a Christian Science mother, Laurie Walker, who let her daughter die of untreated meningitis. The Court ruled that the legislature did not intend for the religious defense to non-support to apply to felony charges. *Walker v. Superior Court*, 763 P.2d 852 (Cal. 1988), *cert. denied*, 491 U.S. 905 (1989) Justice Mosk wrote a concurring opinion that the Section 270 defense had “fatal constitutional defects” as violating the Establishment Clause.

Walker applied for a writ of habeas corpus challenging her conviction. A federal court overturned her conviction on grounds that it violated her right to due process under the Fourteenth Amendment because of Section 270. The court did not reach several other claims raised by Walker. *Walker v. Keldgord*, U.S. Dist. Ct., Eastern Dist. Calif., #CIV S-93-0616-LKK/JFM (1996). *Walker v. Superior Court*, 763 P.2d 852 (Cal. 1988), holding that there is no due process violation, remains the law for defendants who withhold necessary medical care from children after 1988.

COLORADO defense to nonsupport

No child shall be deemed to lack proper care for the sole reason that he is being provided remedial treatment in accordance with section 19-3-103, CRS.

Colorado Revised Statutes 14-6-101 [Sec. 19-3-103 is a civil statute.]

DELAWARE defense to child endangerment

In any prosecution for endangering the welfare of a child, except where it is alleged to be punishable under § 1102(b)(1) or (b)(2) of this title, which is based upon an alleged failure or refusal to provide proper medical care or treatment to an ill child, it is an affirmative defense that the accused is a member or adherent of an organized church or religious group, the tenets of which prescribe prayer as the principal treatment for illness, and treated or caused the ill child to be treated in accordance with those tenets; provided the accused may not assert this defense when the person has violated any laws relating to communicable or reportable diseases and to sanitary matters.

Delaware Code title 11 § 1104

§ 1102(b)(1) deals with child endangerment resulting in death; (b)(2) deals with child endangerment resulting in serious physical injury; the religious defense applies only to misdemeanors that do not cause serious physical injury

GEORGIA defense to contributing to deprivation

A person commits the offense of contributing to the . . . deprivation of a minor when such person: (3) Willfully commits an act or acts or willfully fails to act when such act or omission would cause a minor to be found to be a deprived child as such is defined in Code Section 15-11-2, relating to juvenile proceedings. [15-11-2 includes a religious exemption.]

Georgia Code Annotated 16-12-1(b)(3)

IDAHO defenses to criminal injury to children, nonsupport and manslaughter

The practice of a parent or guardian who chooses for his/her child treatment by prayer or spiritual means alone shall not for that reason alone be construed to have violated the duty of care to such child.

Idaho Code 18-1501(4)

The practice of a parent or guardian who chooses for his child treatment by prayer or spiritual means alone shall not for that reason alone be construed to be a violation of the duty of care to such child.

Idaho Code 18-401(2)

Idaho has in effect a religious defense to manslaughter as well because manslaughter at Idaho Code § 18-4006(2) requires that “an unlawful act” has been committed.

INDIANA defense to criminal neglect and nonsupport

It is a defense to the criminal offense of neglect of a dependent that the accused person, in the legitimate practice of his/her religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to his/her dependent.

Indiana Code 35-46-1-4

It is a defense to criminal nonsupport that the accused person, in the legitimate practice of his religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to his dependent child.

Indiana Code 35-46-1-5

Several Faith Assembly parents who withheld medical care on religious grounds were charged in Indiana for deaths of children. In *Hall v. State*, 493 N.E.2d 433 (Ind. 1986), the Indiana Supreme Court upheld Faith Assembly parents’ convictions for reckless homicide and rejected their argument that the defense to neglect insulated them from the charge. The Court ruled that parents had a religious defense to neglect that created “a substantial risk of death” and resulted in “serious bodily injury,” but not to reckless homicide resulting in the actual death of a dependent.

In *Bergmann v. State*, 486 N.E.2d 653 (Ind. 1985) an Indiana Court of Appeals upheld Faith Assembly parents’ convictions for reckless homicide and neglect. The Court ruled that the parents had the burden of proving to the jury that they provided prayer treatment in the legitimate practice of their religious belief, that the jury was evidently not convinced, and the Court “cannot disturb the jury’s conclusion.” The Court also pointed out that the Bergmanns had not raised objections at trial to the jury instructions or the prosecutor’s characterization of the defense.

[Both the Halls and the Bergmanns refused to have attorneys at trial.]

Several other convictions of Indiana Faith Assembly parents were not appealed.

IOWA defense to felony child endangerment and manslaughter

The failure of a parent, guardian or person having custody or control over a child to provide specific medical treatment shall not for that reason alone be considered willful deprivation of health care if the person can show that such treatment would conflict with the tenets and practice of a recognized religious denomination of which the person is an adherent or member.

Iowa Code Section 726.6(d)

The above becomes a defense to first-degree manslaughter as well because the latter at Iowa Code 707.5 requires the prosecutor to prove that “a public offense” has been committed.

KANSAS defense to misdemeanor child endangerment

Nothing under the definition of “child endangerment” in this section shall be construed to mean a child is endangered for the sole reason his/her parent or guardian, in good faith, selects and depends upon spiritual means through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

Kansas Statutes 21-3608(1)(c)

LOUISIANA defense to criminal neglect, cruelty to children and manslaughter; also privilege

The providing of treatment by a parent or tutor in accordance with the tenets of a well-recognized religious method of healing, in lieu of medical treatment, shall not for that reason alone be considered to be criminally negligent mistreatment or neglect of a child. The provisions of this section shall be an affirmative defense to prosecution for the offense of cruelty to juveniles.

Louisiana Revised Statutes 14:93(b)

In any proceeding concerning the abuse or neglect or sexual abuse of a child or the cause of such condition, evidence may not be excluded on any ground of privilege, except in the case of communications between an attorney and his client or between a priest, rabbi, duly ordained minister or Christian Science practitioner and his communicant.

Louisiana Revised Statutes 14:403(b)(5)

The manslaughter statute at La. Rev. Statutes 14:31 requires the prosecutor to prove that the defendant was engaged in perpetration of a separate felony. With the religious defenses to neglect and cruelty appearing to insulate parents from those charges, the prosecutor would not be able to prove manslaughter either.

MAINE defense to child endangerment

A person who in good faith provides treatment for a child or dependent person by spiritual means through prayer may not for that reason alone be deemed to have knowingly endangered the welfare of that child or dependent person.

Maine Revised Statutes Annotated title 17A, section 557

MINNESOTA defense to criminal neglect

If a parent, guardian, or caretaker responsible for a child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment or care is "health care" for purposes of defining criminal neglect or endangerment if the parent, guardian, or caretaker follows the reporting requirements contained in section 626.556 [which requires parents or others responsible for a child's care to report if a lack of medical care may cause serious danger to the child's health].

Minnesota Statutes 609.378 [enacted in 1994]

MISSISSIPPI defense to contributing to the neglect or delinquency of a child and manslaughter
Mississippi's definition of contributing to the neglect or delinquency of a child at Miss. Code 97-5-39 uses the civil definition of neglect at 43-21-105(l)(i), which includes a religious exemption.

Mississippi Code 97-5-39

Mississippi's definition of manslaughter at Miss. Code 97-3-27 requires the prosecutor to prove the defendant was engaged in the perpetration of another felony. When parents deprive a child of lifesaving medical care, the prosecutor would have to charge neglect to prove manslaughter.

MISSOURI defenses to child endangerment and nonsupport

Nothing in this section shall be construed to mean the welfare of a child is endangered for the sole reason that he is being provided nonmedical remedial treatment recognized and permitted under the laws of this state.

Missouri Revised Statutes 568.050(4)(2)

It shall not constitute a failure to provide medical and surgical attention, if non-medical remedial treatment recognized and permitted under the laws of this state is provided.

Missouri Revised Statutes 568.040(2)(4)

NEVADA defense to abuse, neglect, or endangerment and maybe manslaughter

A child is not abused or neglected, nor is his health or welfare harmed or threatened for the sole reason that his parent or guardian, in good faith, selects and depends upon nonmedical remedial treatment for such child, if such treatment is recognized and permitted under the laws of this state in lieu of medical treatment.

Nevada Revised Statutes 200.5085

Nevada defines involuntary manslaughter at Nev. Rev. Stat. 200.070 as "the killing of a human being, without any intent to do so, in the commission of an unlawful act, or a lawful act which probably might produce such a consequence in an unlawful manner." If a court interpreted Nev. Rev. Stat. 200.5085 as an absolute defense to neglect or endangerment, then the prosecutor would not be able to prove that an unlawful act or a lawful act in an unlawful manner had been committed and therefore would not be able to prove manslaughter.

NEW HAMPSHIRE defense to child endangerment

A person who pursuant to the tenets of a recognized religion fails to conform to an otherwise existing duty of care or protection is not guilty of an offense under this section.

New Hampshire Revised Statutes Annotated 639:3

NEW JERSEY defense to child endangerment

Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child. . . who causes the child harm that would make the child an abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3 and P.L. 1974, c. 119, s. 1 (C.9:6-8.21) is guilty of a crime of the second degree. [C.9:6-8.21 is a religious exemption to child abuse and neglect in the civil code.]

New Jersey Statutes Annotated 2C:24-4

NEW YORK defense to child endangerment

In any prosecution for endangering the welfare of a child based upon an alleged failure or refusal to provide proper medical care or treatment to an ill child, it is an affirmative defense that the defendant is a parent, guardian or other person legally charged with the care or custody of such child; is a member or adherent of an organized church or religious group the tenets of which prescribe prayer as the principal treatment for illness; and treated or caused such ill child to be treated in accordance with such tenets.

New York Penal Law 260.15

OHIO defense to felony child endangerment and manslaughter

It is not a violation of a duty of care, protection or support of a child under 18 years of age or a mentally or physically handicapped child under 21 years of age when the parent, guardian, custodian, person having custody or control or person in loco parentis treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

Ohio Revised Code 2919.22a

The above becomes a defense to manslaughter as well because manslaughter requires proof that a separate felony has been committed. See Ohio Rev. Code 2903.04.

Two county courts have ruled the religious defense prospectively unconstitutional on the grounds that it violates the Establishment Clause and the Fourteenth Amendment's guarantee of equal protection under the laws. *State v. Miskimens*, 490 N.E.2d 931 (Ohio Ct. Com. Pl. 1984) and *State v. Miller*, Mercer Cty. Common Pleas Ct., Ohio #86-CRM30 and 31 (1987). In *Miller*, the judge wrote, "It is the hope of this Court that these types of cases will not have to be pursued by the prosecution in the remaining eighty-six counties."

The rulings were not appealed and the legislature has not modified the statute so to this day Ohio has two counties where parents must get medical care for sick children regardless of their religious beliefs and 86 counties where parents have a legal right to withhold lifesaving medical care from children on religious grounds.

OKLAHOMA defenses to felony neglect, omission to provide, and child endangerment

As used in this subsection, “child neglect” means the willful or malicious neglect, as defined by paragraph 46 of Section 1-1-105 of Title 10A of the Oklahoma Statutes, of a child under eighteen (18) years of age by another. [Title 10A § 1-1-105 includes a religious exemption.]

Oklahoma Statutes title 21 § 843.5 (C)

[The definition of the offense of omission to provide for a child shall not] be construed to mean a child is endangered for the sole reason the parent, guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child, provided that medical care shall be provided where permanent physical damage could result to such child, and that the laws, rules, and regulations relating to communicable disease and sanitary matters are not violated.

Oklahoma Statutes Annotated title 21 § 852

[A person having custody or control over a child] commits child endangerment when the person knowingly permits physical or sexual abuse or a child or . . . knowingly permits a child to be present at a location where a controlled dangerous substance is being manufactured or attempted to be manufactured. . . .

The provisions of this section 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. This subsection shall in no way limit or modify the protections afforded said child in Section 852 of this title.

Oklahoma Statutes Annotated title 21 § 852.1

RHODE ISLAND defense to cruelty to or neglect of child

For purposes of this section, and in accordance with § 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.

Rhode Island General Laws 11-9-5(b) [enacted in 2004]

SOUTH CAROLINA defenses to criminal neglect and ill treating of children

Any person having the legal custody of any child or helpless person, who shall, without lawful excuse, refuse or neglect to provide, as defined in 20-7-490, the proper care and attention for such child, or helpless person, so that the life, health or comfort of such child or helpless person is endangered or is

likely to be endangered, shall be guilty of a misdemeanor. [In 20-7-490 “adequate health care” includes any “nonmedical remedial health care permitted or authorized under state law.]

South Carolina Code Annotated 20-7-50

Whoever, being legally liable, either as parent, guardian, or other person having temporary or permanent custody, to provide for any child, mentally incompetent or helpless person, necessary food, clothing, lodging, or medical or other treatment as recognized by 40-47-40, shall willfully and without lawful excuse refuse or neglect to provide, as defined in 20-7-490, therefore, or shall unlawfully and maliciously do, or cause to be done, any bodily harm to that person so that his life shall be endangered, or his health or comfort shall have been, or is likely to be, permanently injured, shall be deemed guilty of a misdemeanor. . . . [In 20-7-490 “adequate health care” includes any “nonmedical remedial health care permitted or authorized under state law.]

South Carolina Code Annotated 20-7-60

SOUTH DAKOTA defense to nonsupport

Any parent who chooses nonmedical remedial health services recognized or permitted under state law in the legitimate practice of religious beliefs in lieu of medical attendance is not for that reason alone in violation of 25-7-17 and 25-7-20.

South Dakota Statutes 25-7-17.1

TENNESSEE defense to contributing to dependency and defense to aggravated child abuse, neglect and endangerment

Reliance by a parent, guardian or custodian upon remedial treatment, other than medical or surgical treatment for a child, when such treatment is legally recognized or legally permitted under the laws of this state, shall not subject such parent, guardian or custodian to any of the penalties hereunder [relating to neglect].

Tennessee Code Annotated 37-1-157(c) [enacted in 1986 or earlier]

Nothing in this part shall be construed to mean a child is abused, neglected, or endangered or abused, neglected or endangered in an aggravated manner for the sole reason the child is being provided treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof in lieu of medical or surgical treatment.

Tennessee Code Annotated 39-15-402(c) [enacted in 1994]

In 2014 the Tennessee Supreme Court agreed to review *State v. Crank*, docket E2012-01189-SC-R11-CD. A mother refused to provide cancer treatment for her fifteen-year-old daughter and relied on prayer and ritual instead. The girl died in 2001. The case has been in the court system for many years, largely because of argument on whether the mother had a right to raise the religious defense provided in 39-15-402(c).

TEXAS defense to criminal injury to a child

It is an affirmative defense to prosecution under this section that the act or omission was based on treatment in accordance with the tenets and practices of a recognized religious method of healing with a generally accepted record of efficacy.

Texas Penal Code 22.04(1)(1)

UTAH defense to criminal child abuse and neglect

A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the caretaker is a member or adherent shall not, for that reason alone, be deemed to have committed an offense under this section. Utah Code Annotated 76-5-109(4)

A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the caretaker is a member or adherent shall not for that reason alone be in violation of this section.

Utah Code Annotated 76-5-110(d)(3)(a) (on abuse and neglect of disabled children)

VIRGINIA defense to criminal child abuse and neglect

Any parent, guardian or other person having care, custody, or control of a minor child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall not, for that reason alone, be considered to have criminally abused or neglected the child.

Virginia Code Annotated 18.2-371.1(B)

WASHINGTON defense to criminal mistreatment

It is the intent of the legislature that a person who, in good faith, is furnished Christian Science treatment by a duly accredited Christian Science practitioner in lieu of medical care is not considered deprived of medically necessary health care or abandoned.

Revised Code of Washington 9A.42.005 [enacted in 1997]

Washington Church of the Firstborn parents tried to raise the statute as a defense when they were charged with homicide for withholding medical care from their son. They argued it was unconstitutional for the state to exempt Christian Scientists from criminal liability and to prosecute them for the same behavior as the Christian Scientists.

The court refused to dismiss the charges, ruling that the legislature could have had “a rational basis” for exempting Christian Scientists and members of no other religion from liability in that Christian Science spiritual healers are licensed (untrue) and those healers are required to report child abuse and neglect to state child protection services. The latter is technically true, but it is unlikely the healers report medical neglect since both the civil and criminal codes say that children getting Christian Science spiritual

treatment of illnesses in lieu of medical care are not neglected. *State v. Swezey*, Okanogan County Superior Court Memorandum Order denying Motion to Dismiss case #12-100045-8 (2012)

WEST VIRGINIA defenses to murder, criminal child neglect, and child neglect resulting in death
The provisions of this statute [which define the offense of murder of a child by refusal or failure to supply necessities] shall not apply to any parent, guardian or custodian who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody or control of such parent, guardian or custodian with necessary medical care, when such medical care conflicts with the tenets and practices of a recognized religious denomination or order of which such parent, guardian or custodian is an adherent or member.

West Virginia Code 61-8D-2(d) [enacted in 1988]

This section [on criminal child neglect] shall not apply to any parent, guardian or custodian who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody or control of such parent, guardian or custodian with necessary medical care, when such medical care conflicts with the tenets and practices of a recognized religious denomination or order of which such parent, guardian or custodian is an adherent or member.

West Virginia Code 61-8D-4(d) [enacted in 1988]

No child who in lieu of medical treatment was under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing with a reasonable proven record of success shall, for that reason alone, be considered to have been neglected within the provisions of this section [on child abuse resulting in death]. A method of religious healing shall be presumed to be a recognized method of religious healing if fees and expenses incurred in connection with such treatment are permitted to be deducted from taxable income as "medical expenses" pursuant to regulations or rules promulgated by the United States Internal Revenue Service.

West Virginia Code 61-8D-4a(b) [enacted in 1997]

WISCONSIN defense to criminal child abuse

A person is not guilty of an offense under this section solely because he or she provides a child with treatment by spiritual means through prayer alone for healing in accordance with the religious method of healing permitted under s.48.981(3)(c)(4) or 448.03(6) in lieu of medical or surgical treatment.

Wisconsin Statutes Annotated 948.03(6) [enacted in 1987]

In 2013 the Wisconsin Supreme Court upheld convictions of parents who had let their daughter die of untreated diabetes on religious grounds and ruled that the religious defense did not apply to children with life-threatening illnesses. One justice dissented concluding, "I cannot say that the result of the Newman trials is unjust. Nonetheless, there were and are serious deficiencies in the law and they ought to be addressed by the legislature and the courts." *State v. Neumann*, 832 NW2d 560 (Wisc. 2013)

***IMPORTANT NOTE**

The scope of these religious defenses varies widely. Some definitely shield parents from criminal liability when children are harmed by religion-based medical neglect, but some do not. In 2004, for example, CHILD and other advocates lobbied for repeal of Rhode Island's religious defense to criminal neglect and child cruelty. The legislature did not repeal it outright but added a provision that the defense did not "exempt a parent or guardian from having committed the offense of cruelty or neglect if the child is harmed under the provisions of [the general definition of criminal neglect and cruelty]." Thus, the religious defense now means only that the parent can rely on prayer but the parent can be convicted of cruelty or neglect if the child is harmed by failure to get medical care.

Perhaps the most onerous religious defenses are those to manslaughter or negligent homicide. West Virginia and Arkansas have religious defenses to homicide. No state has a religious defense within the manslaughter statute, but laws of five states, Idaho, Iowa, Ohio, Louisiana, and Mississippi, in effect have a religious defense to manslaughter because their prosecutors must prove that a lesser crime has been committed in order to prove a manslaughter charge and those states have religious defenses to the only other crimes that could be charged for medical neglect.

Idaho has got to be the worst state in the country for its betrayal of the children in faith-healing sects. More than 200 of the 592 graves in one cemetery used by an Idaho faith-healing sect are of minor children. The state has a religious defense to manslaughter, prosecutors never file charges in the deaths, and one coroner does not even do autopsies on children in faith-healing sects because the law requires autopsies only when a crime is suspected.

Appellate court rulings in Indiana and Wisconsin described above indicate that the religious defense applies in non-fatal neglect. This is very unprotective. A child might be left in a permanent vegetative state because of religion-based medical neglect.

The religious defenses have contributed to many deaths of children. They encourage parents to believe that it is not only legal but safe to rely exclusively on prayer when children are sick. They cause confusion among law enforcement, prosecutors, social workers, and other public officials.

Some criminal cases have been in the court system for many years with argument over the meaning and scope of religious defenses. The compilation above has annotations on cases complicated by current laws, but there were also several cases made very difficult by religious defenses in states where CHILD and other organizations later got the defenses repealed or at least limited. Such cases include *State v. McKown*, 475 N.W.2d 63 (Minn. 1991), *cert. denied*, 328 U.S. 833 (1992), *Commonwealth v. Twitchell*, 617 N.E.2d 609 (Mass. 1993), *Lybarger v. People*, 807 P.2d 570 (Colo. 1991), and *People v. Lybarger*, #82-CR-205 (Colo. 1982).

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