

Children's Healthcare Is a Legal Duty, Inc.

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We thank the Tennessee legislature for passage of HB2043/SB1761 repealing the religious exception to felony crimes against children.

In 1994 a floor amendment was presented in the last days of the session that enacted a religious exception to child abuse, neglect, and endangerment and aggravated child abuse, neglect, and endangerment. The latter are acts that result "in serious bodily injury to the child" and acts that are "especially heinous, atrocious or cruel" or involve torture of the child. Tenn. Code 39-15-402(c)

There was no debate or discussion. Senator Holcomb just told his colleagues, "The amendment was offered by the Christian Scientists saying that it ensures that they're protected. I don't have the amendment in front of me, but it was offered by that group, and that is the reason that I put it in." It passed by voice vote.

Later the same day Representative Napier told the House that the amendment "is relative to the Christian Science religion, uh, which I have no objection to." It passed by 94-0.

In 2002 15-year-old Jessica Crank died of bone cancer in Loudon County. Her mother Jacqueline Crank of an evangelical faith relied on prayer and ritual to heal her for four months until authorities located Jessica and the girl was given medical care under court order.

Mrs. Crank and her common-law husband were charged with child neglect. An Assistant Attorney General sent the prosecutor Frank Harvey a memo explaining that 39-15-402(c) was unconstitutional on grounds of vagueness and as violating the Establishment and Free Exercise clauses because it created a privilege just for Christian Scientists. Memo from Braden Boucek to Frank Harvey, Sept. 30, 2002

The Crank case was in the court system for thirteen years and mostly because of wrangling over the meaning of 39-15-402(c) and whether it shielded Crank from criminal liability. A law that the legislature passed unanimously in a single day with no consideration for the welfare of children caused years of work and expense for the state and the defendants.

In 2015 the Tennessee Supreme Court ruled that the religious shield law was only for members of the Christian Science church or a church "closely resembling" it. Mrs. Crank's evangelical faith did not qualify.



Children's Healthcare Is a Legal Duty (CHILD), a national membership organization with Tennessee members, filed amicus briefs in the Tennessee Court of Criminal Appeals and Tennessee Supreme Court asking the courts to rule 39-15-402(c) unconstitutional, not only as a blatant violation of the Establishment Clause but also as violating constitutional rights of children. The law has the state discriminating against a class of children, depriving them of protections the state extends to others. When the courts declined to rule the statute unconstitutional, we were left with only a legislative remedy.

CHILD believes all parents, regardless of their religious belief, should have a legal duty to obtain medical care for their child when necessary to prevent serious harm. Courts have never ruled that parents have a constitutional right to abuse or neglect children in the name of religion, and Tennessee should not give them a statutory right to do so.

The passage of HB2043/SB1761 is a significant advancement toward giving Tennessee children equal protection of the law. We are grateful to Senator Richard Briggs and Representative Andy Farmer, the prime sponsors, and to the Tennessee Chapter of the American Academy of Pediatrics, Tennessee Medical Association, and Prevent Child Abuse Tennessee, who joined CHILD in working for the bills.

Prevent Child Abuse Tennessee said of the passage of HB2043/ SB1761:

"We are very proud that all children in our state have one more level of protection against abuse and neglect. When the children in Tennessee are nurtured and protected from harm, it leads to stronger futures, stronger communities, and stronger societies. We believe the children in our great state all deserve the chance to grow free from the harm of neglectful parenting practices, and this bill provides them with the chance to do so."

The Tennessee Chapter of the American Academy of Pediatrics said,

"Every child in Tennessee deserves every opportunity to become an adult. While prayer can be an important part of healing, it should never replace medical care that has been proven to be life-saving. The TN Chapter of the American Academy of Pediatrics applauds this life-saving legislation as well as the legislators who voted for its passage."

The Tennessee Medical Association said,

"Tennessee's physicians are pleased to see the legislature repeal a law that carried dire ramifications for children. This action protects minors and clears unnecessary barriers to medical intervention that can save lives. We applaud the bill sponsors and legislators who voted for this legislation."

CHILD's statement will be posted as breaking news at its webpage, www.childrenshealthcare.org, along with a picture of Jessica Crank. CHILD President Rita Swan can be reached at Ph. 859-255-2200 for comment and background on religion-based medical neglect of children.