

152792

**LEGISLATION PROVIDING A RELIGIOUS  
EXEMPTION TO CRIMINAL CHILD ABUSE  
AND NEGLECT**

**Current through December 31, 1993**

152792

U.S. Department of Justice  
National Institute of Justice

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The National Center for Prosecution of Child Abuse maintains a collection of state statutes and relevant case law covering more than 40 areas of criminal child abuse and neglect. This compilation and others listed below represent a unique, comprehensive and up-to-date summary of state legislation significant to child abuse prosecution. The collection is updated annually and expands with the passage of new state legislation and major appellate decisions. The following summaries can be ordered from Publications, American Prosecutors Research Institute, 99 Canal Center, Suite 510, Alexandria VA 22314 (FAX: 703/549-6259):

- Child Abuse Crimes: Criminal Neglect and Abandonment. \$4
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**Legislation Providing a Religious  
Exemption to Criminal Child Abuse and Neglect\***  
(Current through December 31, 1993)

**STATE STATUTES**

Alabama	Ala. Code § 13A-13-6 (1977)
Alaska	Alaska Stat. § 11.51.120 (1978)
Arkansas	Ark. Code Ann. § 5-10-101(a)(9) (1993)
California	Cal. Penal Code § 270 (1984)
Colorado	Colo. Rev. Stat. § 18-6-401(6) (1991) Colo. Rev. Stat. § 19-3-103 (1993)
Delaware	Del. Code Ann. tit. 11, § 1104 (1953)
District of Columbia	D.C. Code Ann. § 2-1356 (1973)
Idaho	Idaho Code § 18-1501(3) (1977)
Indiana	Ind. Code § 35-46-1-4 (1981) Ind. Code § 35-46-1-5 (1978)
Iowa	Iowa Code § 726.6 (1985)
Kansas	Kan. Stat. Ann. § 21-3608 (1993)
Louisiana	La. Rev. Stat. Ann. § 14:93(B) (1985)
Minnesota	Minn. Stat. § 609.378 (1993)
New Hampshire	N.H. Rev. Stat. Ann. § 639:3(IV) (1983)
New York	N.Y. Penal Law § 260.15 (1967)
Ohio	Ohio Rev. Code Ann. § 2919.22 (1989)
Oklahoma	Okla. Stat. Ann. tit. 21, § 852 (1993) Okla. Stat. Ann. tit. 21, § 852.1 (1990)

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\* This compilation includes all criminal statutes (except military and tribal statutes) that specifically state an offense is not committed by the failure to provide medical care due to religious beliefs. The citation date refers to the date of passage or latest amendment.

Oregon	Or. Rev. Stat. § 163.555 (1993)
Texas	Tex. Penal Code § 22.04(k) (1991)
Utah	Utah Code Ann. § 76-5-110 (1993)
Virginia	Va. Code Ann. § 18.2-371.1 (1993)
West Virginia	W. Va. Code § 61-8D-2 (1988) W. Va. Code § 61-8D-4 (1992)
Wisconsin	Wis. Stat. Ann. § 948.03(6) (1987)

**Summary of Legislation Providing a Religious Exemption  
To Criminal Child Abuse and Neglect  
(Current through December 31, 1993)**

**ALABAMA**

**Ala. Code § 13A-13-6 (1977)**

A person does not commit the offenses of nonsupport or endangering the welfare of a child for the sole reason he provides a child under the age of 19 years 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.

**ALASKA**

**Alaska Stat. § 11.51.120 (1978)**

There is no failure to provide medical attention to a child (as an element of the offense of criminal nonsupport) 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.

**ARKANSAS**

**Ark. Code Ann. § 5-10-101(a)(9) (1993)**

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.

**CALIFORNIA**

**Cal. Penal Code § 270 (1984)**

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 or her child, he or 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.

**COLORADO**

**Colo. Rev. Stat. § 18-6-401(6) (1991)**

A parent, guardian, or legal custodian who chooses and legitimately practices treatment by spiritual means through prayer in accordance with § 19-3-103 (below) shall not be considered to have injured or endangered the child and to be criminally liable under the laws of this state solely because he fails to provide medical treatment for the child, unless such person inhibits or interferes

with the provision of medical treatment for the child in accordance with a court order, or unless there is an additional reason, other than health care, to consider the child to be injured or endangered.

**Colo. Rev. Stat. § 19-3-103 (1993)**

No child who in lieu of medical treatment is under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing shall, for that reason alone, be considered to have been neglected or dependent within the purview of this article. However, the religious rights of a parent, guardian, or legal custodian shall not limit the access of a child to medical care in a life-threatening situation or when the condition will result in serious disability. In order to make a determination as to whether the child is in a life-threatening situation or that the child's condition will result in serious disability, the court may, as provided under section 19-1-104(3), order a medical evaluation of the child. If the court determines, on the basis of any relevant evidence before the court, including the medical evaluation ordered pursuant to this section, that the child is in a life-threatening situation or that the child's condition will result in serious disability, the court may, as provided under section 19-1-104(3), order that medical treatment be provided for the child. A child whose parent, guardian, or legal custodian inhibits or interferes with the provision of medical treatment in accordance with a court order shall be considered to have been neglected or dependent for the purposes of this article and injured or endangered for the purposes of section 18-6-401, C.R.S.

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; and fees and expenses incurred in connection with such treatment are generally recognized as reimbursable health care expenses under medical policies of insurance issued by insurers licensed by this state; or
- such treatment provides a rate of success in maintaining health and treating disease or injury that is equivalent to that of medical treatment.

**DELAWARE**

**Del. Code Ann. tit. 11, § 1104 (1953)**

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 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 avail himself of this defense when he has violated any laws relating to communicable or reportable diseases and to sanitary matters.

**DISTRICT OF COLUMBIA**

**D.C. Code Ann. § 2-1356 (1973)**

Notwithstanding any other provision of this subchapter, no 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 by a duly accredited practitioner thereof shall, for that reason alone, be considered to have been neglected within the purview of this subchapter.

## **IDAHO**

### **Idaho Code § 18-1501(3) (1977)**

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 have violated the duty of care to such child.

## **INDIANA**

### **Ind. Code § 35-46-1-4 (1981)**

It is a defense to criminal neglect of a dependent 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.

### **Ind. Code § 35-46-1-5 (1978)**

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.

## **IOWA**

### **Iowa Code § 726.6 (1985)**

The failure of a parent, guardian or person having custody or control over a child or a mentally or physically handicapped minor under the age of 18 to provide specific medical treatment shall not for that reason alone be considered willful deprivation of health care (child endangerment) 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. This does not in any manner restrict the right of an interested party to petition the court on behalf of the best interest of the child or minor.

## **KANSAS**

### **Kan. Stat. Ann. § 21-3608 (1993)**

Nothing under the definition of "child endangerment" in this section shall be construed to mean a child is endangered for the sole reason the child's parent or guardian, in good faith, selects and depends upon spiritual means alone 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.

## **LOUISIANA**

### **La. Rev. Stat. Ann. § 14:93(B) (1985)**

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.

## MINNESOTA

### **Minn. Stat. § 609.378 (1993)**

If a parent, guardian, or caretaker responsible for the 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.

## NEW HAMPSHIRE

### **N.H. Rev. Stat. Ann. 639:3(IV) (1983)**

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 the offense endangering the welfare of a child.

## NEW YORK

### **N.Y. Penal Law § 260.15 (1967)**

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.

## OHIO

### **Ohio Rev. Code Ann. § 2919.22 (1989)**

It is not a violation of a duty of care, protection or support (as an element of child endangerment) 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, or person having custody or control of a child 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.

## OKLAHOMA

### **Okla. Stat. Ann. tit. 21, § 852 (1993)**

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 practice 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 diseases and sanitary matters are not violated.

Nothing contained herein shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect his health or welfare.



**Okla. Stat. Ann. tit. 21, § 852.1 (1990)**

The provisions of this statute which define child endangerment (knowingly permitting physical or sexual abuse) 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 Okla. Stat. Ann. tit. 21, § 852 or Okla. Stat. tit. 10, § 1130.

**OREGON**

**Or. Rev. Stat. § 163.555 (1993)**

In a prosecution for failure to provide necessary and proper medical attention, it is a defense that the medical attention was provided by treatment by prayer through spiritual means alone by adherents of a bona fide religious denomination that relies exclusively on this form of treatment in lieu of medical attention. Nothing in this subsection shall affect the jurisdiction of the juvenile court in proceedings instituted under ORS chapter 419B or 419C.

**SOUTH DAKOTA**

**S.D. Code Ann. § 25-7-17.1 (1982)**

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.

**TEXAS**

**Tex. Penal Code § 22.04(k) (1991)**

It is an affirmative defense to criminal injury to a child 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.

**UTAH**

**Utah Code Ann. § 76-5-110 (1993)**

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 considered to have criminally abused or neglected a disabled child. However, this exception shall not preclude a court from ordering medical services from a physician licensed to engage in the practice of medicine to be provided to the child where there is substantial risk of harm to the child's health or welfare.

## **VIRGINIA**

### **Va. Code Ann. § 18.2-371.1 (1993)**

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.

## **WEST VIRGINIA**

### **W. Va. Code § 61-8D-2 (1988)**

The provisions of this statute which define the offense of murder of a child 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.

### **W. Va. Code § 61-8D-4 (1992)**

This section (defining the offense of 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.

## **WISCONSIN**

### **Wis. Stat. Ann. § 948.03(6) (1987)**

A person is not guilty of physical abuse of a child 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 by law in lieu of medical or surgical treatment.

## **National Center for Prosecution of Child Abuse**

The National Center for Prosecution of Child Abuse was founded by the American Prosecutors Research Institute in 1985 in response to dramatic increases in child abuse cases reported to law enforcement. Its mission is to improve the investigation and prosecution of child abuse through professional specialization, court reform and interagency coordination.

By demanding full accountability for the crime of child abuse along with comprehensive support services for the child, the Center reflects the commitment of prosecutors to a particularly vulnerable group of victims. The Center is serving prosecutors' needs by providing:

**Expert training and technical assistance** through national and regional training conferences, on-site visits and phone consultations. Experienced trial and staff attorneys review cases, offer strategic guidance and forward up-to-date litigation and background documents in response to over 3,000 callers each year. In-depth training is provided to interdisciplinary audiences at some 70 conferences per year.

**Clearinghouse on child abuse case law, statutory initiatives, court reforms and trial strategies.** The Center maintains the only comprehensive collection of criminal child abuse case law and statutes--a continually updated and expanded resource. Written materials are supplemented by computer access to legal, medical and social service data bases.

**Authoritative publications** including the highly acclaimed guide, *Investigation and Prosecution of Child Abuse*, the informative monthly newsletter, *Update*, and a monograph series examining special issues.

**Research** on reducing trauma in court for child sexual abuse victims, child abuse fatalities, drug-affected children and parental abduction. The Center works closely with researchers, local prosecutors and specialists in exploring new avenues to protect children from abuse.

For information, write or call the National Center for Prosecution of Child Abuse, American Prosecutors Research Institute, 99 Canal Center, Suite 510, Alexandria, VA 22314, 703/739-0321. FAX: 703/549-6259.