

MINUTES
Approved by the Committee
Children at Risk-Faith Healing Working Group
Thursday, August 04, 2016
9:00 A.M.
State Capitol, EW 42
Boise, Idaho

Co-chair Senator Dan Johnson called the meeting to order at 9:00 a.m. Members present were: Co-chair Senator Dan Johnson, Co-chair Representative Joe Palmer, Senators Jeff Siddoway, Marv Hagedorn, Mark Harris, and Dan Schmidt; Representatives Steven Harris, Clark Kauffman, Janet Trujillo, and John Gannon. Legislative Services Offices (LSO) staff members present were: Ryan Bush, Jared Hoskins, and Lara Margelofsky.

Others in attendance: Tim Olson, Pacific Source; Julie Lynde, Cornerstone Family Council; Erwin Sonnenberg, Coroner; Betsy Russell, The Spokesman Review; Jan M. Peterson, C.H.I.L.D.; Jean Fisher, IPAA; April Hoy, Children's Right to Live; Kathy Griesmeyer, ACLU of Idaho; Representative Sue Chew, Idaho State Legislature; Judy Cross, TIA; Carley Foster, Lobby Idaho; Ken McClure, IMA; Paul Gardner, L. Darz Frasier, Brian Hoyt, Linda Martin, Tiffany Hix, Ann McClanahan, Jill Kuraitis, Daniel Sevy, Charles Kiester, Kristen Binda, Sara Brady, Rachel Ward, and Beth Cobb.

NOTE: Copies of presentations, handouts, and reference materials can be found at: www.legislature.idaho.gov and are also on file at the Legislative Services Office.

Co-chair Dan Johnson began the meeting by welcoming the attendees, and introducing himself as well as Co-chair Joe Palmer. He explained that this working group was created at the Governor's Office's request to convene a review of the Child Fatality Review Report and look at current statutes in Title 16 and Title 18 that deal with faith-healing and prayer exemptions, and also to look at possibly making changes. Co-chair Johnson explained that it was his understanding that the issue is about balancing interests - both those of the State and those of the parents.

Constitutional Questions Surrounding Faith Healing

Co-chair Johnson called upon Deputy Attorney General Mary Joe Beig and Nicole McKay, the Attorney General's Chief of Health and Human Services Division, to begin the first presentation. Ms. Mary Jo Beig, who represents and provides legal support to the Dept. of Health and Welfare, spoke to the religious exclusion provision, particularly with respect to the constitutional basis for this provision. Under both the United States Constitution and the Idaho Constitution, she said, individuals are given free exercise of their religion and there is a liberty interest to establish their rights to parent their children. However, she stated, the United States Supreme Court has consistently found that neither the rights of religion nor the rights of parenthood are limitless. While parents have a fundamental liberty interest in directing the upbringing of their children, protected by the due process clause as their exercise of religion, the State's interest in the protection of the welfare of children is allowed to infringe on this interest she explained. Ms. Beig explained that the right to practice religion freely does not include the right or liberty to expose the community to a child who is in ill health or to expose the community to deaths of children, and that there are other provisions that are set forth in federal law in the Supreme Court to limit those rights of those parents.

She elaborated that the Child Abuse Prevention and Treatment Act (CAPTA) was a federal provision that in 1974 included language stating that one could have a religious exemption, but that language was removed by the federal government in 1983. At this time there is no federal requirement that a religious exclusion be in place and federal funding is not tied to the inclusion or the leaving of this provision in this statute, she explained. She said that under Section 16-1601, Idaho Code, the legislative policy of the Child Protective Act is the protection of any child whose life, health, or welfare is endangered; at all times the health and safety of the child shall be the primary concern.

The policy provision provides that necessary acts should be taken to prevent abuse, and neglect, and abandonment, if possible. The definition of neglect includes a religious exemption provision, she stated, and proceeded to read the definition of "neglected" found in Section 16-1602, Idaho Code.

Ms. Beig explained that Section 16-1627, Idaho Code, provides for a court to issue an order for emergency medical treatment when a physician gives his opinion that the life of a child may be greatly endangered without certain treatment and the parent, guardian, or other custodian refuses or fails to consent. The statute, she said, states that "... the court shall take into consideration any treatment being given the child by prayer through spiritual means alone, if the child or his parent, guardian or legal custodian are adherents of a bona fide religious denomination that relies exclusively on this form of treatment in lieu of medical treatment." What is notable about this particular statute, she explained, is that it says the physician informs the court; the child does not have to come within the court's jurisdiction under a child protective act case, the Dept. of Health and Welfare does not have to be currently investigating the family, and they do not need to be called to investigate the family. She emphasized that the religious exemption is the only place in the Child Protective Act that places a parent's right before the well-being of the child; a faith healing parent is treated to a different standard than any other parent.

Since there is no Idaho case law that construes this provision, she said, they had to defer to a Colorado statute that was crafted closest to the same language that Idaho has utilized to interpret the language of "alone" and "in lieu of medical treatment" to mean that one had to find a separate ground of neglect; one could not rely on the ground of faith-healing to bring a child into care or to find that a parent had been neglectful. She further explained that an additional reason or a separate reason would have to be evaluated or found before the Department of Health and Welfare or the Prosecutor's Office could find a Child Protective Act matter. While the freedom to believe is absolute, she stated, the freedom to act upon those beliefs can be subject to regulation and that is why the Child Protective Act exists.

Senator Schmidt asked if Ms. Beig was aware how frequently the provision providing for a physician to contact the court is being used. Ms. Beig replied that she did not know how frequently the provision was being used or how, if at all, it was being tracked as the Department of Health and Welfare is not always contacted. Senator Schmidt citing Section 16-1605, Idaho Code, asked for clarification regarding whether a duly ordained minister of religion would be required to report neglect. Ms. Beig responded that if an individual meets the definition of a "duly ordained minister of religion" under Subsection 2, in Section 16-1605, Idaho Code, they could opt-out of being a mandatory reporter if they meet the criteria in a, b, and c in Subsection 3, Section 16-1605, Idaho Code. She also explained that general knowledge outside of a confessional, for example, is required to be reported by a duly ordained minister of religion.

Department's Role in Child Protection and Faith-Healing

Ms. Roxanne Printz, Child Welfare Program Manager for the Department of Health and Welfare, explained that as a department they do not keep track of these particular cases in terms of their data systems, but they do anecdotally as they are unique. She stated that she was able to research and review 5 cases, 3 of which she was the direct supervisor. Ms. Roxanne Printz began her explanation of the flowchart provided (see [handout](#)) regarding the child welfare process. She explained that the process begins with a referral from the community regarding a particular concern about a child. In 2015, 22,000 phone referrals were received, 8,500 calls were responded to and half of those were coded as neglect (although it is unknown what number had the religious exemption).

Ms. Printz stated that cases that are prioritized as priority 1 are responded to immediately (i.e. life-threatening physical or medical neglect), priority 2 are responded to within 24 hours and the child is seen within 48 hours (i.e. non-life threatening physical and medical neglect), and priority 3 requires responding within 72 hours and seeing the child within 5 days (i.e. moderate medical neglect). To clarify, she said, regardless of whether there is a religious factor to whether medical

attention is sought or not, those referrals are still prioritized and families are approached. Priority 1 and 2 home visits are accompanied by law enforcement as the Dept. of Health & Welfare are the civil action and law enforcement are the criminal component who conduct their own investigation. When the family is approached, they speak to the family about the concerns and interview the child separately, she said. In the instances where there is a faith exemption claim, as they are social workers and not medical personal she explained, they do look to the court to intervene in terms of treatment or assessment of a child's medical needs. If it is not an immediate need (but possibly urgent), a summons report is provided to a judge and the judge may review the concerns of the Dept. of Health and Welfare and listen to the concerns of the family, and can order a medical assessment or medical treatment as deemed necessary by a doctor. When a judge proceeds with action, she said, what they have found is that families have complied and then those findings from the doctor are reported to the court. It proceeds from there whether treatment is pursued or if the family is allowed to return to using their faith-means of treating their children. Ms. Printz further explained that the Dept. of Health and Welfare has 30 days to make a determination of neglect substantiation or unsubstantiation, and if the only concern they have is the family not treating their children because of religious beliefs then the case's disposition is unsubstantiated.

Senator Hagedorn asked where 'abuse,' 'neglect,' and 'abandonment' are defined for the Dept. of Health and Welfare social workers. Ms. Printz replied that what the Dept. of Health and Welfare has is the process of statute that is then converted to rules, and also the standard of practice. Senator Hagedorn asked if that standard of practice was a public document. She replied that it was and that it could be found on the Idaho Child Welfare website. Senator Schmidt asked if the quantities of priorities 1, 2, and 3 of those 8,500 referrals were available. While she did not have that information readily available, she responded, it could be gathered and provided to the committee easily. Co-chair Johnson requested that Ms. Printz provide the information to the committee and LSO (Legislative Services Office). Mr. Printz did provide percentage information of those 22,000 referrals according to their respective priority categories: 25% were priority 1, 15% were priority 2, and 60% were priority 3.

At the request of Representative Harris, Ms. Printz summarized 5 cases in which the families claimed faith-healing exemptions. In 3 of those 5 cases, only medical exams were ordered and the judge did allow for faith-healing methods to resume as the child's condition was terminal at that point; those cases were determined unsubstantiated. In another case the injuries the child had sustained were inflicted by the parent and the Dept. of Health and Welfare had to take that child into care. In this case, she said, there was a service plan that needed to be implemented with the family and the disciplinary actions of the parents addressed. The other case that she spoke of was about a child who had a broken bone and the family allowed for the child to be taken to see a doctor immediately. She explained that the doctor had said that while the bone would probably not grow appropriately and there would be pain - there was no infection, and with collaboration of a prosecutor, the family was allowed to resume their faith-healing practices and the case was closed as unsubstantiated.

Representative Harris asked if in the cases that the children were deemed terminally ill, were there any charges brought to their families. Ms. Printz responded that there were no charges brought against the families in those 3 cases. Representative Trujillo asked if as a practitioner she believed that the statutes as written provided enough coverage for the needs of the children. Ms. McKay responded that the Dept. of Health and Welfare and the Attorney General's Office believe that this is a policy decision that is best left to the Legislature to determine whether changes need to be made to the law; they can only answer as to how the current state of the law is being implemented. Representative Trujillo asked whether when it came to medical decisions, the State did its job to protect these children so that there was no imminent harm to them in these situations. Ms. McKay responded that she cannot conclude that the State was able to protect these children as the State can only do what is statutorily authorized. If it is brought to the attention of the State that there is a child with a potentially life-threatening situation, there are processes that the State can

implement; if it is not brought to the attention of the Dept. of Health and Welfare or the State, then they cannot intervene to protect the safety, health, or welfare of the child.

Representative Gannon asked how long it would take to go through the process if the Department was made aware of a serious medical condition that was endangering the child. Ms. Printz responded there are times when there is an absent parent and an immediate need and they are able to staff on the phone with a prosecutor to receive a verbal order from a judge. Representative Gannon asked how long it might be prolonged if there was opposition from a parent due to a religious exemption. She replied that it was her understanding that it had more to do with the immediacy of what a doctor is saying a child needs.

Idaho Prosecuting Attorney's Association's Perspective on the Faith Healing Exemption

Jean Fisher, Special Crimes Unit Chief for the Ada County Prosecutor's Office, stated that in the last year she has received 3 cases under the provision of [the] faith-based [exemption]; 2 of the 3 were legitimate. She explained that in one case there was a 13 year old girl who was having seizures repeatedly. The school worked with the family as they were aware of the their faith-based methods of healing, she stated. After some time, she explained, the school reported it to law enforcement, but by that time the child was having 13 seizures a day. In the end, she said, the judge ultimately ruled for treatment to be administered to the child and she ceased to have seizures with the help of treatment. Ms. Fisher emphasized that they have found that families will comply with court orders. In another case, she said, a child with a known heart defect who belonged to a family who subscribed to faith-healing methods was reported to law enforcement. By the time it was reported, investigated, and a medical assessment ordered by a judge, she explained, there was nothing medically that could be done at that point for the child. They were told, Ms. Fisher said, that the 8 year old child would die and struggle for breath to her last day.

Ms. Fisher proceeded to speak to Section 18-1501, Idaho Code, modeled after California law, and opined that it is a difficult statute to prosecute under as a practitioner. She explained that if they wanted to prosecute a parent under medical neglect, they would refer to Section 18-1501, Idaho Code, where it speaks to a parent or a care-giver that permits their child to suffer that could cause bodily harm. With the faith-based exemption, she explained, it allows a parent to speak to the faith and the law does provide for the faith-based exemption; those faith-based healing parents are not being charged. The Idaho Prosecuting Attorney's Association would like to see the exemption lifted, she stated, and opined that the rights of parents should not supersede the medical rights of their children. Ms. Fisher explained that the process for a child that is not receiving medical attention would stay the same, but it would allow for the State to consider if a case should be filed criminally or not.

Senator Hagedorn asked if Ms. Fisher had an idea of how often people are prosecuted for not reporting - specifically in faith-based. She responded that she does not believe that there have been any prosecutions due to failing to report because of the faith-healing exemption. Senator Siddoway asked how common it was for a parent to claim a faith-healing exemption when it did not really apply. Ms. Fisher responded that it was much more common for a parent that is actually causing physical abuse to use their faith belief as a reason for using corporal punishment to correct inappropriate behavior and to excuse abuse. In the instances of faith-healing exemptions, she stated, a parent is the one who usually claims it and it becomes quickly apparent that this is the case.

Representative Kauffman asked if Ms. Fisher had implied that if the exemption was lifted it would be easier to prosecute. Ms. Fisher explained that the process to attain medical care for a child who is not from a faith-based family or who does not believe in medicine or does not like doctors would be the same as it would be for a child from a faith-based family. In the criminal aspect, she said, the former scenario may be difficult to prosecute if, for example, a parent is holistic and believes in natural vitamin care versus chemotherapy for his child; intent is an important factor in a criminal case and it may be the case that the parent legitimately believes that holistic, natural care would

cure the cancer. She stated that while it would be difficult case to prosecute, it may be a great case for the child protection court to become involved to make ensure that a child is receiving medical treatment and that Health and Welfare follow up to be certain that parents are following a child protection court order to get medical treatment for their child.

Representative Gannon asked if one of the purposes of our criminal statutes is to influence conduct, to deter certain conduct, and to set what social/public policy should be, and suggested that if there was a change that it would be directed not so much at prosecution but a change in influencing decision making. She responded that in some of the cases that she receives where there is a child protection case ongoing, she declines to file criminal charges as the case is being handled in the child protection court and there is no other case of abuse other than the medical issue. There was an instance when a family received a formal, civil ruling ordering medical treatment, and they followed the court order since they felt a moral obligation to follow the law.

Co-chair Johnson acknowledged Ms. Fisher's comment that it would be difficult to prosecute under Title 18, Idaho Code, and asked if it would be impossible. Co-chair Johnson added that by Ms. Fisher stating that it would be "difficult," he was inclined to imply that it was not impossible. He asked if it would not be best to present any question raised by this title to a jury to decide if there has been any felony or criminal behavior he asked. Ms. Fisher answered that she did not believe it was impossible, but as a prosecutor with a higher ethical standard than a defense attorney for example, she cannot prosecute a case where she does not believe that the law is in her favor or that she cannot prove it beyond a reasonable doubt. If she was to take a case knowing that there is a faith-based healing exemption, she would not be able to prosecute because there is a conflict of law due to the exemption built in the law.

Co-chair Johnson asked if indeed the Idaho statutes were modeled after the California statutes, did Ms. Fisher know if the California Legislature has created an unqualified defense to felony manslaughter, child endangerment charges, etc. to parents who furnish prayer alone in instances where they have a gravely ill child that lays dying due to lack of medical attention. Ms. Fisher responded that she did not know, but that she could research it easily and submit the information to the committee. Co-chair Johnson thanked Ms. Fisher and asked that she submit the information to either Mr. Bush or Mr. Hoskins in LSO. Co-chair Johnson called for a 5 minute break for the committee and to reconvene at 11 a.m.

Input from Interested Citizens

The committee reconvened at 11:05 a.m. and Co-chair Johnson proceeded to the final portion of the agenda - input from the 3 individuals that were specifically invited to speak to the committee today. Co-chair Johnson clarified that while only these 3 individuals (who were involved early in the process) would speak today, the committee would hold public testimony for all other individuals at another date.

Ms. Linda Martin began by stating her purpose which was to ask the State Legislature to make a change in the religious exemption to provide children with added protection. She described her childhood as a member of Followers of Christ Church in Meridian until her departure from the church at the age of 16. Ms. Martin stated that while the members of the church shun modern medicine, most go to eye doctors and dentists because, as it was explained to her, eye doctors and dentists cannot save the life of an individual. Also, due to the belief that animals lacked souls and could not go to heaven, their animals were regularly vaccinated and received veterinary care if they were sick/injured.

Ms. Martin described a couple of deaths that had affected her most in life; one included her cousin Jerry. She stated that her cousin Jerry died at the age of 11 from untreated diabetes and had been ill for some time with symptoms that included lethargy and weight loss. A few weeks later, he slipped into a coma and died. Ms. Martin explained that her uncle, father of her cousin Jerry, was provided the religious exemption when he was not a member of their church and he did not ascribe

to their beliefs. She posed the question of whether a father who is a spouse to someone with faith-healing beliefs has more of a moral obligation to their child or to their spouse's religious belief.

Ms. Martin also described her nephew Steven's death, before his third birthday, due to bronchial pneumonia. She stated that her nephew Steven was born with spina bifida and Arnold Chiari malformation and was not allowed a wheelchair or any pain medicine; he had to pull himself around on the floor with his fingertips. A few weeks before his third birthday, she said, he died from untreated bronchial pneumonia and drowned in his own fluid. His parents claimed that there was no time to call for medical help, she said, yet there had been time to call members of the family and various members of their church to come and pray. Years later, she explained, both parents sought medical help when they were faced with their own illnesses; her brother sought medical attention for his heart condition and her sister-in-law sought medical care for a stroke. When Ms. Martin asked both parents why they had sought medical care when they had denied it for their own son, she stated that their response was that it was up to the individual's choice. She emphasized that the decision to allow their child to die was not a decision that the parents had made for themselves.

According to the Governor's Task Force's Report for 2016, 10 children who died between the years 2011 - 2013 would still be alive if they had received medical care she said. In July of 2014, she made a list of the 600 burials in Peaceful Valley and found that 210 of those burials were for children under the age of 18. She stated that out of those 210 deaths, 144 of those children died after Idaho implemented the faith-healing exemption.

Ms. Martin explained that if the law is changed, most of the church members would follow the law since they are taught to obey the law of the land. She also stated that a change in the law would help eliminate the fear of being shunned by other members. Senator Schmidt asked Ms. Martin if she believed that families would continue making the same choices for their children even if the law was changed. Ms. Martin replied that Oregon repealed their religious statutes in 2011, and since 2009 there have only been 3 deaths - the last trial having been held in 2014. She mentioned conversations she has had with younger parents who ascribe to churches with faith-healing methods and stated that they would also like to see these laws changed.

Ms. Sara Brady was asked to present next and began her presentation by stating her intent which was to explain why the story of her sister Mariah, which she stated had been highly sensationalized and fictionalized, should not be used as an example to change the faith-healing law. She mentioned that her mother had given a statement stating that she had used natural medicine to address Mariah's symptoms. Even if Ms. Brady's mother had wanted to use the faith-healing exemption law, she explained, her mother would be ineligible as she had used natural, holistic, or alternative medicine. She also clarified that her parents were members of The Church of Jesus Christ of Latter Day Saints (LDS) and that the idea of using faith or prayer alone to treat health concerns is neither a tenant nor a doctrine of the LDS faith. Ms. Brady explained that her parents were unaware of Mariah's congenital heart defect until August of 2013, and had they known they wouldn't have believed that it would be healed with natural medicine.

She explained that during Mariah's childhood and teenage years, she had witnessed Mariah have mild health symptoms that their family had attributed to asthma and had not witnessed her struggle for every breath as the media had falsely reported. Ms. Brady stated that at no point had she witnessed Mariah needing immediate medical care or that her life was endangered due to her symptoms. After turning 18 years old Mariah's health declined in spite of receiving medical support, she said, and her current health it significantly worse than at 18 when she was diagnosed. Ms. Brady stated her belief that her parents had the fundamental right and responsibility to determine how Mariah was raised and cared for, and does not believe her parents were neglectful. Regardless of what others may think of the course her parents took to address Mariah's health, she said, Mariah is not a victim of faith-healing. Ms. Brady mentioned that she has reached out to various organizations to stop using Mariah's story to change the law as it did not apply, but many have refused.

Senator Schmidt stated his disbelief that prosecuting parents makes them better parents but he does believe that stating goals can. He asked Ms. Brady if there could have be a goal for children's health that could have helped her sister in her situation. Ms. Brady replied that she took issue with potentially having more laws put in place to force parents to take their babies to the doctor at birth or mandating well-baby checks. She stated that she would need to inform herself more regarding what Ms. Martin discussed before she could answer that question.

Mr. Dan Sevy was called to present next and began by thanking the committee members for being allowed to present today. He stated his belief in freedom of choice of health care and belief that there is no greater intrusion than one to an individual's body or religion. While there may have been some deaths documented as being contributed to faith-healing which may be included in the 1,500 children deaths due to neglect and abuse reported each year in the United States, he said, there are also 440,000 deaths each year attributed to medical error alone. He estimated that about 15,000 children die each year from medical error in the United States. Mr. Sevy acknowledged that the medical field's intentions are good, but his faith community's intentions are good too.

He reminded the committee that Idaho statutes allow for faith-healing methods and opined that the option to use various healing methods and/or treatments is progressive. Mr. Sevy emphasized his belief that each person should be able to make their own personal choice for themselves and their families. Mr. Sevy explained that at times of serious health concerns, his faith community members look to the Lord to care for them and they recognize that the outcome may not be what they would like it to be. They have a constitutional right of freedom of religion, he said. Others who consider themselves more intelligent or who make different choices may think that his community's methods are ignorant, he said. However, he stated, if the statutes are changed, his community will not change their practice.

Senator Schmidt asked how Mr. Sevy's faith-based community makes decisions for children. He answered that his community make choices that are to the best interest of their children. Mr. Sevy opined that children have no rights and are subservient to parents, guardians, caregivers, or the State. His community does not harm their children since prayer inflicts no harm, he said, and opined that licensed medicine often does do harm.

Co-chair Johnson read Section 16-1601, Idaho Code, to illustrate the State's interest in this matter. He stated that the Legislature has to balance the State's interest against Mr. Sevy's interest as a parent with a goal of finding a balance. Co-chair Johnson asked how Mr. Sevy would balance his interest against the State's interest. Mr. Sevy replied that both the State and his faith-based community have the same interest - to protect children. The conflict is that the State and his community differ on the definition of neglect. His recommendation, he said, would be for the State to recognize all treatment as treatment, although there might differences in choices.

Senator Hagedorn asked Mr. Sevy at what age a child should be able to make his own decisions. Mr. Sevy responded that each child determines that for himself in the eyes of the person who gives them that choice.

Co-chair Johnson thanked all those who attended. He explained that he and Co-chair Palmer would get together with LSO staff to schedule another meeting.

Co-chair Johnson adjourned the meeting at 12:30 p.m.