



Ohio Legislative Service Commission

Bill Analysis

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H.B. 213

128th General Assembly
(As Introduced)

Reps. Hagan, Foley, Yuko

BILL SUMMARY

- Removes the exemption from criminal liability for child endangering that currently applies to a parent, guardian, or custodian of a child who treats the child's physical or mental illness or defect by spiritual means through prayer alone and in accordance with the tenets of a recognized religious body.
- Removes the exemption from criminal liability for failing to fulfill a duty imposed by the Juvenile Law that currently applies when a parent, guardian, or custodian fails to provide adequate medical or surgical care or treatment for a child due to the practice of religious beliefs.
- Removes the exemption from criminal liability for patient endangerment that currently applies to an MR/DD caretaker or care facility agent, owner, operator, or administrator who treats a mentally retarded or developmentally disabled child by spiritual means through prayer alone and in accordance with the tenets of a recognized religious body.
- Removes the exemption from the requirements for tuberculosis testing and treatment that currently apply when a child's parents rely exclusively on spiritual treatment through prayer in lieu of medical treatment.

CONTENT AND OPERATION

Exemption from criminal liability for endangering children

(R.C. 2919.22(A))

Current law exempts a parent, guardian, custodian, or person having custody or control of a child, from criminal liability in a court of common pleas for creating a

substantial risk to the health or safety of (1) a child under 18 years old, or (2) a mentally or physically handicapped child under 21 years old, by violating a duty of care, protection, or support,¹ if the parent, guardian, custodian, or person having custody and control of the child treats the physical or mental illness or defect of the child by spiritual means through prayer alone and in accordance with the tenets of a recognized religious body. The bill removes this exemption.

Exemption from criminal liability resulting from the Juvenile Law

(R.C. 2151.03(B))

Current law also exempts a parent, guardian, or custodian of a child from criminal liability for failing to meet a duty imposed by the Juvenile Law when the parent, guardian, or custodian fails to provide adequate medical or surgical care or treatment for the child solely in the practice of religious beliefs. The bill similarly removes this exemption.

Exemption from criminal liability for patient endangerment

(R.C. 2903.341)

Current law prohibits an MR/DD caretaker² from creating a substantial risk to the health or safety of a mentally retarded or developmentally disabled person. However, an MR/DD caretaker is exempt from this prohibition if the MR/DD caretaker treats a physical or mental illness or defect of the mentally retarded or developmentally disabled person by spiritual means through prayer alone and in accordance with the tenets of a recognized religious body.

¹ A person who violates this duty is guilty of endangering children (R.C. 2919.22(E)(1)).

² An "MR/DD caretaker" means any MR/DD employee or any person who assumes the duty to provide for the care and protection of a mentally retarded or developmentally disabled person on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction, and includes a person who is an employee of a care facility and a person who is an employee of an entity under contract with a provider. An "MR/DD caretaker" does not include a person who owns, operates, or administers a care facility or who is an agent of a care facility unless that person also personally provides care to persons with mental retardation or a developmental disability. (R.C. 2903.341(A)(1).)

An "MR/DD employee" includes all of the following: (1) an employee of the Department of Mental Retardation and Developmental Disabilities, (2) an employee of a county board of mental retardation and developmental disabilities, and (3) an employee in a position that includes providing specialized services to an individual with mental retardation or another developmental disability (R.C. 5123.50(C)).

Current law additionally prohibits a care facility³ agent, owner, operator, or administrator from condoning or knowingly permitting such conduct by an MR/DD caretaker. Likewise, a person who relies upon treatment by spiritual means through prayer alone and in accordance with the tenets of a recognized religious denomination, is not to be considered endangered for the purpose of this prohibition.

Generally, a violation of either of the prohibitions by the MR/DD caretaker or facility agent, owner, operator, or administrator is patient endangerment, a first degree misdemeanor, or under certain circumstances, a third or fourth degree felony.

The bill removes both of the exemptions from criminal liability for patient endangerment with regard to a child who is treated by spiritual means through prayer alone. The exemptions would still apply in the case of an adult.⁴

Exemption from tuberculosis testing and treatment

(R.C. 339.82 (not in the bill) and 339.89)

Current law requires any individual who has been diagnosed as having active tuberculosis to complete the entire tuberculosis treatment regimen prescribed for the individual by a physician.⁵ However, a person is not required to undergo testing, medical treatment, or detention in a hospital or other place for treatment of tuberculosis if the person, or, in the case of a child, the child's parents, rely exclusively on spiritual

³ Under current law, a "care facility" includes a nursing home; residential care facility; home for the aging; county or district home; veterans' home; a hospital unit that provides the same services as a nursing home; an adult care facility; an adult foster home certified by the Department of Aging; an institution or facility operated or provided by the Department of Mental Retardation and Developmental Disabilities or the Department of Mental Health; a residential facility licensed by the Department of Mental Health; and any institution, residence, or facility that provides, for a period of more than 24 hours, whether for a consideration or not, accommodations to one individual or two unrelated individuals who are dependent upon the services of others (R.C. 2903.33, not in the bill).

⁴ The bill does not specify at what age a mentally retarded or developmentally disabled person is to be considered an adult for the purposes of the bill's provisions. An amendment may be necessary to clarify this provision.

⁵ If a person fails to complete the treatment regimen, the county tuberculosis unit may issue an order compelling the person to comply; if the person still fails to comply, the unit may seek an injunction prohibiting the individual from continuing to violate the unit's order. If the person fails to comply with the injunction, the unit may issue an emergency detention order directing law enforcement to remove the individual to a hospital or other place to be examined and treated for tuberculosis. (R.C. 339.84, 339.85, and 339.87 not in the bill).

treatment through prayer, in lieu of medical treatment, in accordance with a recognized, religious method of healing.⁶

The bill removes the exemption from the tuberculosis testing and treatment requirements for a child whose parents rely exclusively on spiritual treatment through prayer in lieu of medical treatment. The exemption would still apply in the case of an adult.

COMMENT

Constitutional considerations

Because the bill proposes to amend laws that address religion, the religion provisions of the First Amendment to the United States Constitution may determine whether the bill is constitutionally valid. The First Amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." The provision is applicable to the state through the Fourteenth Amendment (*Employment Div., Dept. Hum. Serv. of Oregon v. Smith*, 494 U.S. 872, 877-878 (1990)).

The Ohio Supreme Court has held that an individual may refuse life-saving treatment because of religious beliefs and a preference for faith healing (*In re Milton* (1987), 29 Ohio St.3d 20, 26). The Ohio Supreme Court has also found that, based on the Ohio Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution, an individual has a fundamental right to determine what is done with the individual's own body and a liberty interest in refusing medical treatment. But in some cases the state may have a right to infringe on these rights or the freedom of religion where the state has a compelling interest, such as the interest in preventing the spread of a communicable disease. (*Steele v. Hamilton County Community Mental Health Bd.* (2000), 90 Ohio St.3d 176, 180-81 and *In re J.J.* (1990), 64 Ohio App.3d 806, 810 (Ohio Ct. App. 12th Dist.))

Other Ohio laws regarding parental objection to medical treatment

The bill does not alter other provisions of current law relating to parental objection to medical care or treatment based on religious beliefs. For example, the bill does not eliminate a provision of current law that permits a pupil's parent or guardian

⁶ According to the United States Centers for Disease Control and Prevention, tuberculosis (often abbreviated "TB") is a disease caused by germs that are spread from person to person through the air and usually affects the lungs, but can spread to other areas of the body. Tuberculosis can be fatal if a person does not receive treatment. (Information obtained at <http://www.cdc.gov/tb/topic/basics/default.htm>, web site visited June 11, 2009.)

to object, on the basis of religious beliefs, to a tuberculosis test required by a school board of education (R.C. 3313.71). Thus, if the current version of the bill were enacted, a parent or guardian could object to the tuberculosis test, but the parent or guardian could be held criminally liable for failing to allow the child to receive a tuberculosis test and subsequent medical treatment if a court determined that doing so constitutes child endangerment (see footnote 1).

HISTORY

ACTION	DATE
Introduced	06-09-09

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