

2009 DRAFTING REQUEST

Bill

Received: **02/19/2009**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Terese Berceau (608) 266-3784**

By/Representing: **Samantha**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - crimes agnst kids**
Criminal Law - miscellaneous
Criminal Law - victims

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Berceau@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Eliminate faith-healing exception for neglect of a child

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 02/19/2009	bkraft 02/27/2009		_____			S&L
	gmalaise 02/19/2009			_____			
	csundber 02/19/2009			_____			
/P1	csundber 03/24/2009	bkraft 03/26/2009	rschluet 03/02/2009	_____	lparisi 03/02/2009		S&L

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/1			rschluet _____ 03/26/2009 _____		cduerst _____ 03/26/2009 _____	sbasford _____ 03/31/2009 _____	S&L
/2	gmalaise 10/22/2009	bkraft 10/22/2009	rschluet _____ 10/23/2009 _____		cduerst _____ 10/23/2009 _____	mbarman _____ 10/23/2009 _____	S&L
/3	gmalaise 11/04/2009	csicilia 11/04/2009	rschluet _____ 11/04/2009 _____		lparisi _____ 11/04/2009 _____	lparisi _____ 11/04/2009 _____	

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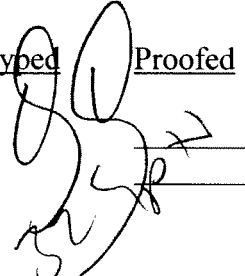
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FE Sent For:

<END>

Bill Request Form

Legislative Reference Bureau

One East Main Street, Suite 200

Legal Section 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date 2/12/09

Legislator, agency, or other person requesting this draft Rep. Berceau

Person submitting request (name and phone number) SAMANTHA (INTERIM through 5/09) or BRIAN

Persons to contact for questions about this draft (names and phone numbers) ↑ 6-3784

Describe the problem, including any helpful examples. How do you want to solve the problem?

~~An exemption in~~ state law allows for an exemption that protects ~~from~~ parents from penalties related to medical neglect of children if they choose to treat a sick child with faith healing.

Solution: Remove this exemption to protect all children

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

See Attached - S. 948.03, S. 98.981, S. 448.03

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2005 LRB-2345/1 or 2003 AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES NO

If yes: Anyone who asks? YES NO
Any legislator? YES NO

Only the following persons _____

Do you consider this request urgent? YES NO If yes, please indicate why _____

Should we give this request priority over any pending request of this legislator, agency, or person?

YES NO

Repeal of Healthcare Exemptions for Religious Purposes For Minors

2/10/09

Our intent with this bill is to change the following statute language:

[948.03] Physical Abuse of a Child (6) Treatment through Prayer: 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.

We would like to repeal this exemption. Our goal is to protect all children including those whose parent's have religious beliefs that may interfere with their reception of appropriate healthcare. {criminal}

[48.981] Abused or neglected children and abused unborn children (3) Reports; Investigation (c) Duties of county departments (4): "A determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian, or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child"

We would like to repeal this exemption. If a report is received that a child is being medically neglected based on faith, the child welfare agency or county should report it as they would any other medical neglect case. {Civil}

[448.03] License or certificate required to practice; use of titles; civil immunity; practice of Christian Science (6) Practice of Christian Science: No law of this state regulating the practice of medicine and surgery may be construed to interfere with the practice of Christian Science. A person who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment.

Recommended by Dick Sweet: "No law of this state regulating the practice of medicine and surgery may be construed to interfere with the practice of Christian Science with respect to an adult patient. An adult who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment {Civil}

Our goal, with these changes, is to protect *all* children from medical neglect and ensure that every child is protected from his or her parent's religious beliefs that could hinder the reception of proper medical treatment.

Other States without exemptions:

- Massachusetts
- Nebraska
- Hawaii
- Maryland
- North Carolina

WISCONSIN SHOULD PROTECT ALL CHILDREN FROM MEDICAL NEGLECT

1. Wisconsin's religious defense to criminal child abuse at 948.03(6) should be repealed. It applies to a parent who intentionally or recklessly causes great bodily harm to a child and then relies on prayer alone to heal the child. After defining the crime of felony abuse, the law states:

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.

While parents always have a right to pray, Wisconsin should not allow them to deprive a child of medical care when the child has suffered great bodily harm.

2. Wisconsin's religious exemption to child abuse and neglect in the civil code at 48.981(3)(c)(4) should also be repealed. This law states:

[A] determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child.

In 2008 Wisconsin parents Leilani and Dale Neumann let their daughter Kara die of diabetes without medical treatment, allegedly because of their religious beliefs. The Wisconsin Department of Children and Families then developed a safety plan for the surviving siblings that included visits by social workers and medical attention. Circuit Court Judge Patrick Brady, however, ruled against the Department because the exemption prevented him from finding the siblings neglected.

In the Neumann case, the criminal court was later able to require monitoring of the siblings as a condition of the Neumanns' bond, but that will not always be an option. It is chilling that the religious exemption at 48.981(3)(c)(4) prevented the DCF from checking on the welfare of the surviving children.

This religious exemption could discourage reports to DCF of sick children without medical care. Wisconsin's law declaring that withholding medical care from a child on religious grounds is not abuse or neglect signals to mandated reporters that they should not report such cases to DCF.

3. Another Wisconsin statute, 448.03(6), should be modified so that it applies only to adults. It states:

A person who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment.



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

To: Dick Sweet, Senior Staff Attorney
From: Kelly Crane, NCSL
Date: February 9, 2009
Subject: Religious refusal of health

Joe Hackney
Speaker
North Carolina House of Representatives
President, NCSL

Gary VanLandingham
Director, OPPAGA
Florida Legislature
Staff Chair, NCSL

William Pound
Executive Director

Below are some website resources and state statutes related to the issue of the religious refusal of health treatment. This link and report highlight various exemptions in state laws related to providing health care for sick children based on religious beliefs. As well, there are two state statutes listed related to the topic.

Website Resources

- A link to the advocacy organization, Health Care is a Legal Duty (CHILD, Inc.), website is <http://www.childrenshealthcare.org>. You may find the policy and legal section (found on the lower left hand side of the site) helpful:
- The link to a report on the Child Welfare Information Gateway's website (http://www.childwelfare.gov/systemwide/laws_policies/statutes/defineall.pdf) is a great resource that provides a summary of state laws on the definitions of child abuse and neglect. Highlighted below is some further information included in the report:

➤ According the report (which is current through April),
"A number of States provide exceptions in their reporting laws that exempt certain acts or omissions from their statutory definitions of child abuse and neglect. The Child Abuse Prevention and Treatment Act (CAPTA) amendments of 1996 added new provisions specifying that nothing in the Act be construed as establishing a Federal requirement that a parent or legal guardian provide any medical service or treatment that is against the religious beliefs of the parent or legal guardian (42 U.S.C. § 5106i). At the State level, civil child abuse reporting laws may provide an exception to the definition of child abuse and neglect for parents who choose not to seek medical care for their children due to religious beliefs. Approximately 30 States, the District of Columbia, Puerto Rico, and Guam provide for such an exception. Three States specifically provide an exception for Christian Science treatment. However, 16 of the 30 States and Puerto Rico authorize the court to order medical treatment for the child when the child's condition warrants intervention. Five States require mandated reporters to

report instances when a child is not receiving medical care so that an investigation can be made."

- Wisconsin is not listed in the report as one of those states providing an exception. This means that parents who refused to seek medical care for sick children could possibly be liable or culpable if their children died or were severely injured due to their not seeking medical care on religious grounds.
- Examples from the Child Welfare Information Gateway report of state law exceptions to the definition of abuse and neglect:

1. Colorado:

Exceptions: Citation: Rev. Stat. §§ 19-1-103; 19-3-103

Those investigating cases of child abuse shall take into account child-rearing practices of the culture in which the child participates, including the work-related practices of agricultural communities.

The reasonable exercise of parental discipline is not considered abuse.

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 only, be considered neglected. The religious rights of the parent shall not limit the access of a child to medical care in a life-threatening situation.

2. Michigan

Exceptions: Citation: Comp. Laws § 722.634

A parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent or guardian. This section shall not preclude a court from ordering the provision of medical services or nonmedical remedial services recognized by State law to a child where the child's health requires it, nor does it abrogate the responsibility of a person required to report child abuse or neglect.

3. California

Exceptions: Citation: Penal Code §§ 11165.2; 11165.6

A child not receiving specific medical treatment for religious reasons is not considered neglected. Informed and appropriate medical decisions made by a parent, after consultation with a physician, do not constitute neglect.

State Statutes

Below are two state statutes addressing the issue of the religious refusal of health care for a child.

- Alabama Code 1975 § 26-14-7.2

Title 26. Infants and Incompetents.

Chapter 14. Reporting of Child Abuse or Neglect.

§26-14-7.2. Child denied medical treatment due to parents' religious beliefs.

(a) When an investigation of child abuse or neglect by the Department of Human Resources determines that a parent or legal guardian legitimately practicing his or her religious beliefs has not provided specific medical treatment for a child, the parent or legal guardian shall not be considered a negligent parent or guardian for that reason alone. This exception shall not preclude a court from ordering that medical services be provided to the child when the child's health requires it.

(b) The department may, in any case, pursue any legal remedies, including the initiation of legal proceedings in a court of competent jurisdiction, as may be necessary to provide medical care or treatment for a child when the care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatments from disabled infants with life-threatening conditions. Upon application by the department, the court may issue prelitigation or pretrial discovery orders for persons, medical records, and other documents or materials.

- Indiana Code: IC 31-34-1-14

Title 31. Family Law and Juvenile Law

Article 34. Juvenile Law: Children in Need of Services

Chapter 1. Circumstances Under Which a Child is a Child in Need of Services

31-34-1-14 Exception for failure of parent, guardian or custodian to provide medical treatment because of religious beliefs; rebuttable presumption; effect of presumption

Sec. 14. If a parent, guardian, or custodian fails to provide specific medical treatment for a child because of the legitimate and genuine practice of the religious beliefs of the parent, guardian, or custodian, a rebuttable presumption arises that the child is not a child in need of services because of the failure. However, this presumption does not do any of the following:

- (1) Prevent a juvenile court from ordering, when the health of a child requires, medical services from a physician licensed to practice medicine in Indiana.
- (2) Apply to situations in which the life or health of a child is in serious danger.



(GMM)
PI
LRB-2190
CMH:.....
RMR
bjk
(CTS)

NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Inserts

↑ the construction of laws regulating
the practice of medicine and surgery
and the election of Christian Science
treatment in lieu of medical or surgical
treatment

gen.

1 AN ACT ...; relating to: elimination of an exception for spiritual treatment of a
2 child in the law criminalizing physical abuse of a child and in the laws
3 governing the practice of medicine or surgery, the investigation of child abuse
4 or neglect, and the administration of psychotropic medication to juveniles in
5 correctional custody and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, physical abuse of a child, including intentional causation of bodily harm, reckless causation of bodily harm, and failure to act to prevent bodily harm by persons responsible for a child's welfare, is a felony. However, a person is not guilty of physical abuse of a child solely because he or she provides certain forms of spiritual treatment versus medical or surgical treatment. This bill eliminates the exception.

Under current law, a county department of human services or social services (county department) that receives a report of suspected or threatened child abuse or neglect by a caregiver of the child must investigate to determine whether abuse or neglect has occurred or is likely to occur and whether the child is in need of protection or services. Current law, however, provides that a determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian, or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. This bill eliminates that exception.

Under current law, the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) may grant permission for the Department of Corrections (DOC) or a county department to administer psychotropic medication to a juvenile 14 year of age or over who is under the supervision of DOC or the county department and who wishes to be administered such medication if the consent of the juvenile's parent or guardian is unreasonably withheld, a physician has determined that the juvenile is in need of such medication, and the juvenile is competent to consent to the administration of such medication. Current law, however, provides that the juvenile court may not determine that a parent's or guardian's consent is unreasonably withheld solely because the parent or guardian relies on treatment by spiritual means through prayer for healing in accordance with his or her religious tradition. This bill eliminates that exception.

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→ For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

X

1 **SECTION 1.** 48.981 (3) (c) 4. of the statutes is amended to read:
 2 48.981 (3) (c) 4. The county department or, in a county having a population of
 3 500,000 or more, the department or a licensed child welfare agency under contract
 4 with the department shall determine, within 60 days after receipt of a report that the
 5 county department, department, or licensed child welfare agency investigates under
 6 subd. 1., whether abuse or neglect has occurred or is likely to occur. The
 7 determination shall be based on a preponderance of the evidence produced by the
 8 investigation. ~~A determination that abuse or neglect has occurred may not be based~~
 9 ~~solely on the fact that the child's parent, guardian, or legal custodian in good faith~~
 10 ~~selects and relies on prayer or other religious means for treatment of disease or for~~
 11 ~~remedial care of the child.~~ In making a determination that emotional damage has
 12 occurred, the county department or, in a county having a population of 500,000 or
 13 more, the department or a licensed child welfare agency under contract with the
 14 department shall give due regard to the culture of the subjects. ~~This subdivision does~~

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not prohibit a court from ordering medical services for the child if the child's health requires it.

History: Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 1370 to 1373, 9121 (6) (a); 2007 a. 97.

SECTION 2. 938.505 (2) (a) 1. of the statutes is amended to read:

938.505 (2) (a) 1. The parent's or guardian's consent is unreasonably withheld, the parent or guardian cannot be found, or there is no parent with legal custody, except that the court may not determine that a parent's or guardian's consent is unreasonably withheld solely because the parent or guardian relies on treatment by spiritual means through prayer for healing in accordance with his or her religious tradition.

History: 1995 a. 77; 2005 a. 344.

SECTION 3. 948.03 (6) of the statutes is repealed.

SECTION 4. Initial applicability.

(1) CHILD ABUSE OR NEGLECT INVESTIGATIONS. The treatment of section 48.981 (3) (c) 4. of the statutes first applies to abuse or neglect that occurs on the effedctive date of this subsection.

(END)

D-note

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2190/P1insCS
CTS:.....

1 **Insert A:**

Current law provides that no law of this state regulating the practice of medicine and surgery may be construed to interfere with the practice of Christian Science. Also, a person who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment. The bill limits these provisions to apply only to the practice of Christian Science with respect to an adult patient and to the election of Christian Science treatment by an adult patient.

2 **Insert 3-2:**

3 [✓]
SECTION 1. 448.03 (6) of the statutes is amended to read:

4 448.03 (6) PRACTICE OF CHRISTIAN SCIENCE. No law of this state regulating the
5 practice of medicine and surgery may be construed to interfere with the practice of
6 Christian Science with respect to an adult patient. ~~A person~~ [★] An adult who elects
7 Christian Science treatment in lieu of medical or surgical treatment for the cure of
8 disease may not be compelled to submit to medical or surgical treatment.

History: 1975 c. 383, 421; 1977 c. 164; 1979 c. 317; 1985 a. 29; 1987 a. 40, 399; 1989 a. 31, 229; 1991 a. 23; 1993 a. 105, 107, 490; 1995 a. 27, 201; 1997 a. 67, 175, 311; 1999 a. 32, 180; 2001 a. 89; 2005 a. 96, 292; 2007 a. 97.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

Date

LRB-2190/tdn

GMM.....

(PI) e
g Ljk

Representative Berceau:

As you will see on reviewing this draft, the draft in addition eliminates an exception to s. 938.505 (2), which governs the administration of psychotropic medication to a juvenile in correctional custody. The exception provides that the juvenile court may not determine that a parent's consent is unreasonably withheld solely because the parent relies on spiritual treatment through prayer for healing. If you do not want this exception eliminated, please advise and I will remove that provision from the draft.

Also, s. 48.82 (4) provides that no person may be denied adoption of a child because of his or her religious belief in spiritual treatment through prayer for healing. This draft does not eliminate that provision. Do you want that provision eliminated?

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2190/1dn
GMM:bjk:rs

March 2, 2009

Representative Berceau:

As you will see on reviewing this draft, the draft in addition eliminates an exception to s. 938.505 (2), which governs the administration of psychotropic medication to a juvenile in correctional custody. The exception provides that the juvenile court may not determine that a parent's consent is unreasonably withheld solely because the parent relies on spiritual treatment through prayer for healing. If you do not want this exception eliminated, please advise and I will remove that provision from the draft.

Also, s. 48.82 (4) provides that no person may be denied adoption of a child because of his or her religious belief in spiritual treatment through prayer for healing. This draft does not eliminate that provision. Do you want that provision eliminated?

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

Sundberg, Christopher

From: Streater, Samantha
Sent: Tuesday, March 24, 2009 1:26 PM
To: Sundberg, Christopher
Subject: RE: Berceau_Religious Healthcare Exemption Changes

That is correct. Sorry for any confusion, we didn't think there would any changes this late. Thank you for your help.

Samantha

From: Sundberg, Christopher
Sent: Tuesday, March 24, 2009 1:25 PM
To: Streater, Samantha
Subject: RE: Berceau_Religious Healthcare Exemption Changes

I'm one of the drafters and received your message below from Gordon Malaise. Just to clarify, the redraft will delete the change made to the first sentence of s. 448.03 (6) but keep the change made to the second sentence, correct? Anything else?
CS

From: Streater, Samantha
Sent: Tuesday, March 24, 2009 1:18 PM
To: Sundberg, Christopher
Subject: RE: Berceau_Religious Healthcare Exemption Changes

Yes please, based on emails sent directly to the drafters. Thank you.

Samantha Streater

From: Sundberg, Christopher
Sent: Tuesday, March 24, 2009 1:16 PM
To: Streater, Samantha
Subject: FW: Berceau_Religious Healthcare Exemption Changes

Would you like a redraft of LRB-2190/P1 incorporating Rita Swan's suggestion?

CS

From: Malaise, Gordon
Sent: Tuesday, March 24, 2009 1:12 PM
To: Sundberg, Christopher
Subject: FW: Berceau_Religious Healthcare Exemption Changes

Chris:

Here is further clarification on the Christian Science draft.

Gordon

From: Streater, Samantha
Sent: Tuesday, March 24, 2009 1:09 PM
To: Malaise, Gordon; Hanaman, Cathlene
Subject: FW: Berceau_Religious Healthcare Exemption Changes

Here is some further clarification on LRB 2190. Thank you.

Samantha Streater
Intern for Rep. Terese Berceau

From: Rita Swan [mailto:childinc@netins.net]
Sent: Tuesday, March 24, 2009 1:01 PM
To: Streater, Samantha
Subject: Re: Berceau_Religious Healthcare Exemption Changes

I recommend that the second sentence of 448.03(6) be changed to read "An adult who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment." This is what LRB2190 already does.

What I do not think is wise is the change to the first sentence of 448.03(6) that LRB2190 has made. I believe the first sentence of 448.03(6) should not be changed.

Thank you for your work on the bill.
Rita

----- Original Message -----

From: Streater, Samantha
To: childinc@netins.net
Sent: Tuesday, March 24, 2009 12:50 PM
Subject: Berceau_Religious Healthcare Exemption Changes

Ms. Swan,

I'm the intern in Terese Berceau's office and I have been doing some work on the religious healthcare exemption bill that we are drafting. I just have a couple of questions about your latest concerns with 448.03(6). In your original document outlining your suggestions for legislation changes you stated that 448.03(6) should be rewritten to say:

3. Another Wisconsin statute, 448.03(6), should be modified so that it applies only to adults. It states:

A person who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment.

In your email sent March 16th, you expressed concern with our line, "with respect to an adult patient" and stated that

"The second sentence of 448.03(6) is, however, very unusual and should be limited to adults. I've never seen a provision like it in another state code"

I understand your concern, and we are discussing the matter with the LRB person who suggested the line. Just to clarify, however, do you still suggest re-writing 448.03(6) to say "A person who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment"? Does this sentence effectively limit the decision of medical treatment to adults? Should your suggestion contain "for themselves"? Could this be interpreted to mean that if a parent chooses for

their child? I guess I just feel it is a little vague. But...I'm not a lawyer so let me know what you think.

Samantha Streater

Intern for Rep. Terese Berceau



lu: 3/24/09

State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-2190/03 RMNR
CMH/GMM/CTS:bjk:rs
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L stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2009 BILL

SA

-regen.

1 AN ACT to repeal 948.03 (6); and to amend 48.981 (3) (c) 4., 448.03 (6) and
 2 938.505 (2) (a) 1. of the statutes; relating to: elimination of an exception for
 3 spiritual treatment of a child in the law criminalizing physical abuse of a child
 4 and in the laws governing the practice of medicine or surgery, the investigation
 5 of child abuse or neglect, the administration of psychotropic medication to
 6 juveniles in correctional custody, the construction of laws regulating the
 7 practice of medicine and surgery and the election of Christian Science
 8 treatment in lieu of medical or surgical treatment, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, physical abuse of a child, including intentional causation of bodily harm, reckless causation of bodily harm, and failure to act to prevent bodily harm by persons responsible for a child's welfare, is a felony. However, a person is not guilty of physical abuse of a child solely because he or she provides certain forms of spiritual treatment versus medical or surgical treatment. This bill eliminates the exception.

Under current law, a county department of human services or social services (county department) that receives a report of suspected or threatened child abuse or neglect by a caregiver of the child must investigate to determine whether abuse or

neglect has occurred or is likely to occur and whether the child is in need of protection or services. Current law, however, provides that a determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian, or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. This bill eliminates that exception.

Under current law, the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) may grant permission for the Department of Corrections (DOC) or a county department to administer psychotropic medication to a juvenile 14 year of age or over who is under the supervision of DOC or the county department and who wishes to be administered such medication if the consent of the juvenile's parent or guardian is unreasonably withheld, a physician has determined that the juvenile is in need of such medication, and the juvenile is competent to consent to the administration of such medication. Current law, however, provides that the juvenile court may not determine that a parent's or guardian's consent is unreasonably withheld solely because the parent or guardian relies on treatment by spiritual means through prayer for healing in accordance with his or her religious tradition. This bill eliminates that exception.

Current law provides that no law of this state regulating the practice of medicine and surgery may be construed to interfere with the practice of Christian Science. Also, a person who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment. The bill limits these provisions to apply only to the practice of Christian Science with respect to an adult patient and to the election of Christian Science treatment by an adult patient.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 48.981 (3) (c) 4. of the statutes is amended to read:
- 2 48.981 (3) (c) 4. The county department or, in a county having a population of
- 3 500,000 or more, the department or a licensed child welfare agency under contract
- 4 with the department shall determine, within 60 days after receipt of a report that the
- 5 county department, department, or licensed child welfare agency investigates under
- 6 subd. 1., whether abuse or neglect has occurred or is likely to occur. The
- 7 determination shall be based on a preponderance of the evidence produced by the

1 investigation. ~~A determination that abuse or neglect has occurred may not be based~~
2 ~~solely on the fact that the child's parent, guardian, or legal custodian in good faith~~
3 ~~selects and relies on prayer or other religious means for treatment of disease or for~~
4 ~~remedial care of the child.~~ In making a determination that emotional damage has
5 occurred, the county department or, in a county having a population of 500,000 or
6 more, the department or a licensed child welfare agency under contract with the
7 department shall give due regard to the culture of the subjects. ~~This subdivision does~~
8 ~~not prohibit a court from ordering medical services for the child if the child's health~~
9 ~~requires it.~~

10 **SECTION 2.** 448.03 (6) of the statutes is amended to read:

11 448.03 (6) PRACTICE OF CHRISTIAN SCIENCE. No law of this state regulating the
12 practice of medicine and surgery may be construed to interfere with the practice of
13 Christian Science with respect to an adult patient. ~~A person~~ An adult who elects
14 Christian Science treatment in lieu of medical or surgical treatment for the cure of
15 disease may not be compelled to submit to medical or surgical treatment.

16 **SECTION 3.** 938.505 (2) (a) 1. of the statutes is amended to read:

17 938.505 (2) (a) 1. The parent's or guardian's consent is unreasonably withheld,
18 the parent or guardian cannot be found, or there is no parent with legal custody,
19 ~~except that the court may not determine that a parent's or guardian's consent is~~
20 ~~unreasonably withheld solely because the parent or guardian relies on treatment by~~
21 ~~spiritual means through prayer for healing in accordance with his or her religious~~
22 ~~tradition.~~

23 **SECTION 4.** 948.03 (6) of the statutes is repealed.

24 **SECTION 5. Initial applicability.**

Basford, Sarah

From: Hanaman, Cathlene
Sent: Tuesday, March 31, 2009 1:52 PM
To: Christina Duerst; Lori Northrop; Mike Barman; Sarah Basford

Brian in Berceau's office called to request that -2190 be jacketed.

Malaise, Gordon

From: Hanaman, Cathlene
Sent: Thursday, October 22, 2009 9:33 AM
To: Malaise, Gordon
Subject: FW: reqwuest for redraft of LRB 2190
Attachments: march.09. LRB 2190 . 1 pdf.pdf

Gordon:

I cannot help but think that this part could be your part. I don't think it goes into the criminal provisions.

From: Rieselman, Brian
Sent: Thursday, October 22, 2009 9:27 AM
To: Hanaman, Cathlene
Subject: reqwuest for redraft of LRB 2190

Hi Cathleen, Can we have this bill re-drafted to include the following (below, in bold type)?

Thanks,
Brian
Staff
Rep. Berceau
6-3784

48.981 (3)(c)3.

Cultural and religious child-rearing practices and beliefs which differ from general community standards shall not in themselves create a need for child welfare services unless the practices present a specific danger to the physical or emotional safety of the child.

[FYI: this is from the California Welfare and Institutions Code, Sec. 16509]



State of Wisconsin
2009 - 2010 LEGISLATURE

IN 10/22
SOM

LRB-2190/A
CMH/GMM/CTS:bjk:rs
RMR
STAYS

2009 BILL

SA
x-ref

Inserts
are out of order

regen.

Regulate

1 AN ACT to repeal 948.03 (6); and to amend 48.981 (3) (c) 4., 448.03 (6) and
2 938.505 (2) (a) 1. of the statutes; relating to: elimination of an exception for
3 spiritual treatment of a child in the law criminalizing physical abuse of a child
4 and in the laws governing the practice of medicine or surgery, the investigation
5 of child abuse or neglect, the administration of psychotropic medication to
6 juveniles in correctional custody, the election of Christian Science treatment in
7 lieu of medical or surgical treatment, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, physical abuse of a child, including intentional causation of bodily harm, reckless causation of bodily harm, and failure to act to prevent bodily harm by persons responsible for a child's welfare, is a felony. However, a person is not guilty of physical abuse of a child solely because he or she provides certain forms of spiritual treatment versus medical or surgical treatment. This bill eliminates the exception.

Under current law, a county department of human services or social services (county department) that receives a report of suspected or threatened child abuse or neglect by a caregiver of the child must investigate to determine whether abuse or neglect has occurred or is likely to occur and whether the ~~child is in need of protection~~

~~or services~~ Current law, however, provides that a determination that abuse or ~~child is a member of the child's family, or the child's~~
~~child is a member of the child's family, or the child's~~
guardian or legal custodian is in need of services
Guardian or legal custodian is in need of services

BILL

INSTR A

neglect has occurred may not be based solely on the fact that the child's parent, guardian, or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. This bill eliminates that exception.

Under current law, the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) may grant permission for the Department of Corrections (DOC) or a county department to administer psychotropic medication to a juvenile 14 year of age or over who is under the supervision of DOC or the county department and who wishes to be administered such medication if the consent of the juvenile's parent or guardian is unreasonably withheld, a physician has determined that the juvenile is in need of such medication, and the juvenile is competent to consent to the administration of such medication. Current law, however, provides that the juvenile court may not determine that a parent's or guardian's consent is unreasonably withheld solely because the parent or guardian relies on treatment by spiritual means through prayer for healing in accordance with his or her religious tradition. This bill eliminates that exception.

Current law provides that a person who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment. The bill limits the provision to apply only to the election of Christian Science treatment by an adult patient.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

INSTR
2-1

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 48.981 (3) (c) 4. of the statutes is amended to read:

48.981 (3) (c) 4. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall determine, within 60 days after receipt of a report that the county department, department, or licensed child welfare agency investigates under subd. 1., whether abuse or neglect has occurred or is likely to occur. The determination shall be based on a preponderance of the evidence produced by the investigation. ~~A determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian, or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for~~

BILL

1 ~~remedial care of the child.~~ In making a determination that emotional damage has
2 occurred, the county department or, in a county having a population of 500,000 or
3 more, the department or a licensed child welfare agency under contract with the
4 department shall give due regard to the culture of the subjects. ~~This subdivision does~~
5 ~~not prohibit a court from ordering medical services for the child if the child's health~~
6 ~~requires it.~~

7 **SECTION 2.** 448.03 (6) of the statutes is amended to read:

8 448.03 (6) PRACTICE OF CHRISTIAN SCIENCE. No law of this state regulating the
9 practice of medicine and surgery may be construed to interfere with the practice of
10 Christian Science. ~~A person~~ An adult who elects Christian Science treatment in lieu
11 of medical or surgical treatment for the cure of disease may not be compelled to
12 submit to medical or surgical treatment.

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14 938.505 (2) (a) 1. The parent's or guardian's consent is unreasonably withheld,
15 the parent or guardian cannot be found, or there is no parent with legal custody,
16 ~~except that the court may not determine that a parent's or guardian's consent is~~
17 ~~unreasonably withheld solely because the parent or guardian relies on treatment by~~
18 ~~spiritual means through prayer for healing in accordance with his or her religious~~
19 ~~tradition.~~

20 **SECTION 4.** 948.03 (6) of the statutes is repealed.

21 **SECTION 5. Initial applicability.**

22 (1) CHILD ABUSE OR NEGLECT INVESTIGATIONS. The treatment of section 48.981 (3)
23 (c) 4. of the statutes first applies to abuse or neglect that occurs on the effective date
24 of this subsection.

25 (END)

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2190/2ins
GMM.....

(INSERT 2-1)

1 **SECTION 1.** 48.981 (3) (c) 3. of the statutes is amended to read:

2 48.981 (3) (c) 3. If the county department or, in a county having a population
3 of 500,000 or more, the department or a licensed child welfare agency under contract
4 with the department determines that a child, any member of the child's family, or the
5 child's guardian or legal custodian is in need of services or that the expectant mother
6 of an unborn child is in need of services, the county department, department, or
7 licensed child welfare agency shall offer to provide appropriate services or to make
8 arrangements for the provision of services. A determination that a child, a member
9 of the child's family, the child's guardian or legal custodian, or an expectant mother
10 of an unborn child is in need of services may not be based solely on the fact that the
11 child's parent, guardian, or legal custodian or the expectant mother has cultural or
12 religious child-rearing beliefs and employs cultural or religious child-rearing
13 practices that differ from general community standards, unless those beliefs and
14 practices present a specific danger to the physical or emotional safety of the child.

15 If the child's parent, guardian¹ or legal custodian or the expectant mother refuses to
16 accept the services, the county department, department, or licensed child welfare
17 agency may request that a petition be filed under s. 48.13 alleging that the child who
18 is the subject of the report or any other child in the home is in need of protection or
19 services or that a petition be filed under s. 48.133 alleging that the unborn child who
20 is the subject of the report is in need of protection or services.

History: Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 1370 to 1373, 9121 (6) (a); 2007 a. 97; 2009 a. 28.

(END OF INSERT)

(INSERT A)

^{NO}~~Q~~ and instead provides an exception to the requirement that the county department determine whether the child, a member of the child's family, or the child's guardian or legal custodian is in need of services. Under that exception, the county department may not base a determination that those services are needed solely on the fact that the child's parent, guardian, or legal custodian has cultural or religious child-rearing beliefs and employs cultural or religious child-rearing practices that differ from general community standards, unless those beliefs and practices present a specific danger to the physical or emotional safety of the child

(END OF INSERT)

Malaise, Gordon

From: Hanaman, Cathlene
Sent: Wednesday, November 04, 2009 9:00 AM
To: Malaise, Gordon
Subject: FW: FW: re-drafted bill / religious exemption LRB 2190
Importance: High

Is this your piece?

From: Duerst, Christina
Sent: Wednesday, November 04, 2009 8:56 AM
To: Hanaman, Cathlene
Subject: FW: FW: re-drafted bill / religious exemption LRB 2190
Importance: High

From: Rieselman, Brian
Sent: Wednesday, November 04, 2009 8:54 AM
To: Duerst, Christina
Subject: FW: FW: re-drafted bill / religious exemption LRB 2190

Hi Christina -- Can we have another re-draft of 2190 (a minor tweak, in red, below?)

"health or safety"

Thanks,

Brian

I inserted the proposed language in RED to show you what it would look like:

SECTION 1. 48.981 (3) (c) 3. of the statutes is amended to read:
48.981 (3) (c) 3. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines that a child, any member of the child's family, or the child's guardian or legal custodian is in need of services or that the expectant mother of an unborn child is in need of services, the county department, department, or licensed child welfare agency shall offer to provide appropriate services or to make arrangements for the provision of services. **A determination that a child, a member of the child's family, the child's guardian or legal custodian, or an expectant mother of an unborn child is in need of services may not be based solely on the fact that the child's parent, guardian, or legal custodian or the expectant mother has cultural or religious child-rearing beliefs and employs cultural or religious child-rearing practices that differ from general community standards, unless those beliefs and practices present a specific danger to the physical or emotional health or safety of the child.** If the child's parent, guardian, or legal custodian or the expectant mother refuses to

accept the services, the county department, department, or licensed child welfare agency may request that a petition be filed under s. 48.13 alleging that the child who is the subject of the report or any other child in the home is in need of protection or services or that a petition be filed under s. 48.133 alleging that the unborn child who is the subject of the report is in need of protection or services.

Full bill draft:

LRB-2190/2

CMH/GMM/CTS:bjk:rs

2009 – 2010 LEGISLATURE

2009 BILL

AN ACT to repeal 948.03 (6); and **to amend** 48.981 (3) (c) 3., 48.981 (3) (c) 4., 448.03 (6) and 938.505 (2) (a) 1. of the statutes; **relating to:** elimination of an exception for spiritual treatment of a child in the law criminalizing physical abuse of a child and in the laws governing the practice of medicine or surgery, the investigation of child abuse or neglect, the administration of psychotropic medication to juveniles in correctional custody, the election of Christian Science treatment in lieu of medical or surgical treatment, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, physical abuse of a child, including intentional causation of bodily harm, reckless causation of bodily harm, and failure to act to prevent bodily harm by persons responsible for a child's welfare, is a felony. However, a person is not guilty of physical abuse of a child solely because he or she provides certain forms of spiritual treatment versus medical or surgical treatment. This bill eliminates the exception.

Under current law, a county department of human services or social services (county department) that receives a report of suspected or threatened child abuse or neglect by a caregiver of the child must investigate to determine whether abuse or neglect has occurred or is likely to occur and whether the child, a member of the child's family, or the child's guardian or legal custodian is in need of services. Current

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2009 – 2010 Legislature – 2 – LRB-2190/2

CMH/GMM/CTS:bjk:rs

BILL

law, however, provides that a determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian, or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. This bill eliminates that exception and instead provides an exception to the requirement that the county department determine whether the child, a member of the child's family, or the child's guardian or legal custodian is in need of services. Under that exception, the county department may not base a determination that those services are needed solely on the fact that the child's parent, guardian, or legal custodian has cultural or religious

child-rearing beliefs and employs cultural or religious child-rearing practices that differ from general community standards, unless those beliefs and practices present a specific danger to the physical or emotional safety of the child.

Under current law, the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) may grant permission for the Department of Corrections (DOC) or a county department to administer psychotropic medication to a juvenile 14 year of age or over who is under the supervision of DOC or the county department and who wishes to be administered such medication if the consent of the juvenile's parent or guardian is unreasonably withheld, a physician has determined that the juvenile is in need of such medication, and the juvenile is competent to consent to the administration of such medication. Current law, however, provides that the juvenile court may not determine that a parent's or guardian's consent is unreasonably withheld solely because the parent or guardian relies on treatment by spiritual means through prayer for healing in accordance with his or her religious tradition. This bill eliminates that exception.

Current law provides that a person who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment. The bill limits the provision to apply only to the election of Christian Science treatment by an adult patient.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 48.981 (3) (c) 3. of the statutes is amended to read:

48.981 (3) (c) 3. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines that a child, any member of the child's family, or the child's guardian or legal custodian is in need of services or that the expectant mother of an unborn child is in need of services, the county department, department, or

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2009 – 2010 Legislature – 3 – LRB-2190/2

CMH/GMM/CTS:bjk:rs

BILL SECTION 1

licensed child welfare agency shall offer to provide appropriate services or to make arrangements for the provision of services. A determination that a child, a member of the child's family, the child's guardian or legal custodian, or an expectant mother of an unborn child is in need of services may not be based solely on the fact that the child's parent, guardian, or legal custodian or the expectant mother has cultural or religious child-rearing beliefs and employs cultural or religious child-rearing practices that differ from general community standards, unless those beliefs and practices present a specific danger to the physical or emotional safety of the child. If the child's parent, guardian, or legal custodian or the expectant mother refuses to accept the services, the county department, department, or licensed child welfare agency may request that a petition be filed under s. 48.13 alleging that the child who is the subject of the report or any other child in the home is in need of protection or services or that a petition be filed under s. 48.133 alleging that the unborn child who

is the subject of the report is in need of protection or services.

SECTION 2. 48.981 (3) (c) 4. of the statutes is amended to read:

48.981 (3) (c) 4. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall determine, within 60 days after receipt of a report that the county department, department, or licensed child welfare agency investigates under subd. 1., whether abuse or neglect has occurred or is likely to occur. The determination shall be based on a preponderance of the evidence produced by the investigation. A determination that abuse or neglect has occurred may not be based solely on the fact that the child’s parent, guardian, or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. In making a determination that emotional damage has

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BILL SECTION 2

occurred, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall give due regard to the culture of the subjects. This subdivision does not prohibit a court from ordering medical services for the child if the child’s health requires it.

SECTION 3. 448.03 (6) of the statutes is amended to read:

448.03 (6) PRACTICE OF CHRISTIAN SCIENCE. No law of this state regulating the practice of medicine and surgery may be construed to interfere with the practice of Christian Science. A person An adult who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment.

SECTION 4. 938.505 (2) (a) 1. of the statutes is amended to read:

938.505 (2) (a) 1. The parent's or guardian's consent is unreasonably withheld, the parent or guardian cannot be found, or there is no parent with legal custody, except that the court may not determine that a parent's or guardian's consent is unreasonably withheld solely because the parent or guardian relies on treatment by spiritual means through prayer for healing in accordance with his or her religious tradition.

SECTION 5. 948.03 (6) of the statutes is repealed.

SECTION 6. Initial applicability.

(1) CHILD ABUSE OR NEGLECT INVESTIGATIONS. The treatment of section 48.981 (3) (c) 3. and 4. of the statutes first applies to abuse or neglect that occurs on the effective date of this subsection.

(END)

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State of Wisconsin
2009 - 2010 LEGISLATURE

IN 1114
TODAY

LRB-2190/2
CMH/GMM/CTS:bjk: [3] RMD
Stays

2009 BILL

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1 AN ACT *to repeal* 948.03 (6); and *to amend* 48.981 (3) (c) 3., 48.981 (3) (c) 4.,
2 448.03 (6) and 938.505 (2) (a) 1. of the statutes; **relating to:** elimination of an
3 exception for spiritual treatment of a child in the law criminalizing physical
4 abuse of a child and in the laws governing the practice of medicine or surgery,
5 the investigation of child abuse or neglect, the administration of psychotropic
6 medication to juveniles in correctional custody, the election of Christian Science
7 treatment in lieu of medical or surgical treatment, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, physical abuse of a child, including intentional causation of bodily harm, reckless causation of bodily harm, and failure to act to prevent bodily harm by persons responsible for a child's welfare, is a felony. However, a person is not guilty of physical abuse of a child solely because he or she provides certain forms of spiritual treatment versus medical or surgical treatment. This bill eliminates the exception.

Under current law, a county department of human services or social services (county department) that receives a report of suspected or threatened child abuse or neglect by a caregiver of the child must investigate to determine whether abuse or neglect has occurred or is likely to occur and whether the child, a member of the child's family, or the child's guardian or legal custodian is in need of services. Current

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health or

law, however, provides that a determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian, or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. This bill eliminates that exception and instead provides an exception to the requirement that the county department determine whether the child, a member of the child's family, or the child's guardian or legal custodian is in need of services. Under that exception, the county department may not base a determination that those services are needed solely on the fact that the child's parent, guardian, or legal custodian has cultural or religious child-rearing beliefs and employs cultural or religious child-rearing practices that differ from general community standards, unless those beliefs and practices present a specific danger to the physical or emotional safety of the child.

Under current law, the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court) may grant permission for the Department of Corrections (DOC) or a county department to administer psychotropic medication to a juvenile 14 year of age or over who is under the supervision of DOC or the county department and who wishes to be administered such medication if the consent of the juvenile's parent or guardian is unreasonably withheld, a physician has determined that the juvenile is in need of such medication, and the juvenile is competent to consent to the administration of such medication. Current law, however, provides that the juvenile court may not determine that a parent's or guardian's consent is unreasonably withheld solely because the parent or guardian relies on treatment by spiritual means through prayer for healing in accordance with his or her religious tradition. This bill eliminates that exception.

Current law provides that a person who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment. The bill limits the provision to apply only to the election of Christian Science treatment by an adult patient.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 48.981 (3) (c) 3. of the statutes is amended to read:
- 2 48.981 (3) (c) 3. If the county department or, in a county having a population
- 3 of 500,000 or more, the department or a licensed child welfare agency under contract
- 4 with the department determines that a child, any member of the child's family, or the
- 5 child's guardian or legal custodian is in need of services or that the expectant mother
- 6 of an unborn child is in need of services, the county department, department, or

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health or

1 licensed child welfare agency shall offer to provide appropriate services or to make
2 arrangements for the provision of services. A determination that a child, a member
3 of the child's family, the child's guardian or legal custodian, or an expectant mother
4 of an unborn child is in need of services may not be based solely on the fact that the
5 child's parent, guardian, or legal custodian or the expectant mother has cultural or
6 religious child-rearing beliefs and employs cultural or religious child-rearing
7 practices that differ from general community standards, unless those beliefs and
8 practices present a specific danger to the physical or emotional safety of the child.

9 If the child's parent, guardian, or legal custodian or the expectant mother refuses to
10 accept the services, the county department, department, or licensed child welfare
11 agency may request that a petition be filed under s. 48.13 alleging that the child who
12 is the subject of the report or any other child in the home is in need of protection or
13 services or that a petition be filed under s. 48.133 alleging that the unborn child who
14 is the subject of the report is in need of protection or services.

15 **SECTION 2.** 48.981 (3) (c) 4. of the statutes is amended to read:

16 48.981 (3) (c) 4. The county department or, in a county having a population of
17 500,000 or more, the department or a licensed child welfare agency under contract
18 with the department shall determine, within 60 days after receipt of a report that the
19 county department, department, or licensed child welfare agency investigates under
20 subd. 1., whether abuse or neglect has occurred or is likely to occur. The
21 determination shall be based on a preponderance of the evidence produced by the
22 investigation. ~~A determination that abuse or neglect has occurred may not be based~~
23 ~~solely on the fact that the child's parent, guardian, or legal custodian in good faith~~
24 ~~selects and relies on prayer or other religious means for treatment of disease or for~~
25 ~~remedial care of the child.~~ In making a determination that emotional damage has

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1 occurred, the county department or, in a county having a population of 500,000 or
2 more, the department or a licensed child welfare agency under contract with the
3 department shall give due regard to the culture of the subjects. ~~This subdivision does
4 not prohibit a court from ordering medical services for the child if the child's health
5 requires it.~~

6 **SECTION 3.** 448.03 (6) of the statutes is amended to read:

7 448.03 (6) PRACTICE OF CHRISTIAN SCIENCE. No law of this state regulating the
8 practice of medicine and surgery may be construed to interfere with the practice of
9 Christian Science. ~~A person~~ An adult who elects Christian Science treatment in lieu
10 of medical or surgical treatment for the cure of disease may not be compelled to
11 submit to medical or surgical treatment.

12 **SECTION 4.** 938.505 (2) (a) 1. of the statutes is amended to read:

13 938.505 (2) (a) 1. The parent's or guardian's consent is unreasonably withheld,
14 the parent or guardian cannot be found, or there is no parent with legal custody,
15 ~~except that the court may not determine that a parent's or guardian's consent is~~
16 ~~unreasonably withheld solely because the parent or guardian relies on treatment by~~
17 ~~spiritual means through prayer for healing in accordance with his or her religious~~
18 ~~tradition.~~

19 **SECTION 5.** 948.03 (6) of the statutes is repealed.

20 **SECTION 6. Initial applicability.**

21 (1) CHILD ABUSE OR NEGLECT INVESTIGATIONS. The treatment of section 48.981 (3)
22 (c) 3. and 4. of the statutes first applies to abuse or neglect that occurs on the effective
23 date of this subsection.

24

(END)