



2009 ASSEMBLY BILL 590

November 20, 2009 – Introduced by Representatives BERCEAU, SEIDEL, ROYS, PASCH, DANOU, VRUWINK, ZEPNICK and SINICKI. Referred to Committee on Children and Families.

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