December 27, 2017 - Introduced by Representatives BERCEAU, POPE, SINICKI, SARGENT, C. TAYLOR and SUBECK, cosponsored by Senator JOHNSON. Referred to Committee on Criminal Justice and Public Safety.

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 a provision that excepts 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, and the election of Christian Science treatment in lieu of medical or surgical treatment.

Analysis by the Legislative Reference Bureau

This bill eliminates certain protections for the election of spiritual prayer or faith-based healing on behalf of a child.

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

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 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 law provides that a
determination of child abuse or neglect 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 provision and instead provides that a county department
may not base a determination that a child, a member of a child’s family, or a 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 or a county department to administer psychotropic medication to a
juvenile 14 years 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. This bill eliminates the current
law provision 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.

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:

1. 48.981 (3) (c) 3. If the county department or, in a county having a population
of 750,000 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 a child’s family, a 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.

**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 750,000 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
occurred, the county department or, in a county having a population of 750,000 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 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)