



2003 ASSEMBLY BILL 428

July 7, 2003 - Introduced by Representatives KRUSICK, GUNDRUM, GARD, BALOW, BERCEAU, BOYLE, COGGS, COLON, GROTHMAN, GUNDERSON, HINES, HUBLER, JESKEWITZ, KESTELL, KREIBICH, MCCORMICK, MORRIS, OWENS, POCAN, POWERS, RICHARDS, SHERMAN, SINICKI, STONE, SUDER, TAYLOR, TRAVIS, TURNER, J. WOOD, YOUNG and ZEPNICK, cosponsored by Senators DARLING, A. LASEE, ROESSLER and STEPP. Referred to Committee on Judiciary.

1 **AN ACT to amend** 48.981 (2) (c), 893.587 and 939.74 (2) (c); and **to create** 48.981
2 (1) (cv), 48.981 (1) (cx), 48.981 (2) (bm), 893.585 (3), 895.71 and 905.06 (4) of the
3 statutes; **relating to:** the reporting of child abuse or neglect, and actions
4 related to sexual exploitation brought against members of the clergy and
5 religious organizations.

Analysis by the Legislative Reference Bureau

Under current law, any person who suffers, directly or indirectly, a physical, mental, or emotional injury caused by, resulting from, or arising out of sexual contact with a therapist who is rendering or has rendered to that person psychotherapy, counseling, or other assessment or treatment of a mental or emotional illness, symptom, or condition has a civil cause of action against the therapist for all damages resulting from, arising out of, or caused by that sexual contact, including punitive damages. This bill permits any person who suffers an injury caused by sexual contact with a member of the clergy that occurs while the person is under the age of 18 to bring an action against the member of the clergy for all damages caused by that sexual contact. The bill also permits the person to bring an action against the religious organization that employed the member of the clergy for all damages caused by the sexual contact if the supervisor of that religious organization knew or should have known that the member of the clergy previously had sexual contact with a person under the age of 18 and failed to report that behavior and exercise ordinary care to prevent similar incidents from occurring.

ASSEMBLY BILL 428

Under current law, a civil action to recover damages for an injury caused by sexual assault of a child, repeated sexual assault of a child, incest with a child, or sexual assault of a student by an instructional staff person must be commenced within five years after the plaintiff discovers or should have discovered the injury. This bill expands the limit to cover the cause of action for sexual exploitation by a member of the clergy and provides that the injured party must commence the action before the injured party reaches the age of 35 years. Under current law, a criminal prosecution for sexual assault of a child, repeated sexual assault of a child, physical abuse of a child, sexual exploitation of a child, incest with a child, child enticement, solicitation of a child for prostitution, or sexual assault of a student by an instructional staff person must be commenced before the victim reaches the age of 31 years or be barred. This bill requires such a prosecution to be commenced before the victim reaches the age of 45.

Under current law, persons in certain professions, for example, school teachers and health care professionals, who have reasonable cause to suspect that a child seen in the course of their professional duties has been abused or neglected or who have reason to believe that the child has been threatened with abuse or neglect and that abuse or neglect of the child will occur must report that suspected or threatened abuse to the appropriate county department of human services or social services or to a law enforcement agency (mandatory reporters). The bill requires members of the clergy to report sexual abuse or threatened sexual abuse of a child, but provides an exception for information obtained through a confidential communication made to a member of the clergy privately or in a confessional setting.

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 (1) (cv) of the statutes is created to read:
2 48.981 (1) (cv) “Member of a religious order” means an individual who has
3 taken vows devoting himself or herself to religious or spiritual principles and who
4 is authorized or appointed by his or her religious order or organization to provide
5 spiritual or religious advice or service.

6 **SECTION 2.** 48.981 (1) (cx) of the statutes is created to read:

ASSEMBLY BILL 428

1 48.981 (1) (cx) "Member of the clergy" has the meaning given in s. 765.002 (1)
2 or means a member of a religious order, and includes brothers, ministers, monks,
3 nuns, priests, rabbis, and sisters.

4 **SECTION 3.** 48.981 (2) (bm) of the statutes is created to read:

5 48.981 (2) (bm) 1. Except as provided in subd. 3. and sub. (2m), a member of
6 the clergy shall report as provided in sub. (3) if the member of the clergy has
7 reasonable cause to suspect that a child seen by the member of the clergy in the
8 course of his or her professional duties:

9 a. Has been abused, as defined in s. 48.02 (1) (b) to (f); or

10 b. Has been threatened with abuse, as defined in s. 48.02 (1) (b) to (f), and abuse
11 of the child will likely occur.

12 2. Except as provided in subd. 3. and sub. (2m), a member of the clergy shall
13 report as provided in sub. (3) if the member of the clergy has reasonable cause, based
14 on observations made or information that he or she receives, to suspect that a
15 member of the clergy has done any of the following:

16 a. Abused a child, as defined in s. 48.02 (1) (b) to (f).

17 b. Threatened a child with abuse, as defined in s. 48.02 (1) (b) to (f), and abuse
18 of the child will likely occur.

19 3. A member of the clergy is not required to report child abuse information
20 under subd. 1. or 2. that he or she receives solely through confidential
21 communications made to him or her privately or in a confessional setting if he or she
22 is authorized to hear or is accustomed to hearing such communications and, under
23 the disciplines, tenets, or traditions of his or her religion, has a duty or is expected
24 to keep those communications secret. Those disciplines, tenets, or traditions need
25 not be in writing.

ASSEMBLY BILL 428**SECTION 4**

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

2 48.981 **(2)** (c) Any person not otherwise specified in par. (a) ~~or~~, (b), or (bm),
3 including an attorney, who has reason to suspect that a child has been abused or
4 neglected or who has reason to believe that a child has been threatened with abuse
5 or neglect and that abuse or neglect of the child will occur may report as provided in
6 sub. (3).

7 **SECTION 5.** 893.585 (3) of the statutes is created to read:

8 893.585 **(3)** This section does not apply to damages incurred under s. 895.71.

9 **SECTION 6.** 893.587 of the statutes is amended to read:

10 **893.587 Sexual assault of a child; limitation.** An action to recover damages
11 for injury caused by an act that would constitute a violation of s. 948.02, 948.025,
12 948.06, or 948.095 or would create a cause of action under s. 895.71 shall be
13 commenced ~~within 5 years after the plaintiff discovers the fact and the probable~~
14 ~~cause, or with the exercise of reasonable diligence should have discovered the fact~~
15 ~~and the probable cause, of the injury, whichever occurs first. This section does not~~
16 ~~shorten the period to commence an action provided under s. 893.16 (1) before the~~
17 injured party reaches the age of 35 years or be barred.

18 **SECTION 7.** 895.71 of the statutes is created to read:

19 **895.71 Sexual exploitation by a member of the clergy. (1) DEFINITIONS.**

20 In this section:

21 (a) “Member of the clergy” has the meaning given in s. 48.981 (1) (cx).

22 (b) “Religious organization” means an association, conference, congregation,
23 convention, committee, or other entity that is organized and operated for a religious
24 purpose and that is exempt from federal income tax under 26 USC 501 (c) (3) or (d)

ASSEMBLY BILL 428

1 and any subunit of such an association, conference, congregation, convention,
2 committee, or entity that is organized and operated for a religious purpose.

3 (c) "Sexual contact" has the meaning given in s. 940.225 (5) (b).

4 **(2) CAUSE OF ACTION.** (a) Any person who suffers an injury as a result of sexual
5 contact with a member of the clergy that occurs while the person is under the age of
6 18 may bring an action against the member of the clergy for all damages caused by
7 that sexual contact.

8 (b) Any person who may bring an action under par. (a) may bring an action
9 against the religious organization that employed the member of the clergy for all
10 damages caused by that sexual contact if, at the time that the sexual contact
11 occurred, another employee of that religious organization whose duties included
12 supervising that member of the clergy knew or should have known that the member
13 of the clergy previously had sexual contact with a person under the age of 18 and
14 failed to do all of the following:

- 15 1. Report that sexual contact under s. 48.981 (3).
- 16 2. Exercise ordinary care to prevent similar incidents from occurring.

17 (c) Notwithstanding ss. 801.09 (1), 801.095, 802.04 (1), and 815.05 (1g) (a), in
18 an action brought under this section, the plaintiff may substitute his or her initials,
19 or fictitious initials, and his or her age and county of residence for his or her name
20 and address on the summons and complaint. The plaintiff's attorney shall supply
21 the court the name and other necessary identifying information of the plaintiff. The
22 court shall maintain the name and other identifying information, and supply the
23 information to other parties to the action, in a manner that reasonably protects the
24 information from being disclosed to the public.

ASSEMBLY BILL 428**SECTION 7**

1 (d) Upon motion by the plaintiff, and for good cause shown, or upon its own
2 motion, the court may make any order that justice requires to protect any of the
3 following:

4 1. A plaintiff who is using initials in an action under this section from
5 annoyance, embarrassment, oppression, or undue burden that would arise if any
6 information identifying the plaintiff were made public.

7 2. A plaintiff in an action under this section from unreasonably long, repetitive,
8 or burdensome physical or mental examinations.

9 3. The confidentiality of information which under law is confidential, until the
10 information is provided in open court in an action under this section.

11 **(3) CONSENT.** Consent is not an issue in an action under this section.

12 **(4) CALCULATION OF STATUTE OF LIMITATIONS.** An action under this section is
13 subject to s. 893.587.

14 **(5) SILENCE AGREEMENTS.** Any contract or agreement concerning the settlement
15 of any claim under this section that limits or eliminates the right of the injured
16 person to disclose the sexual contact described under sub. (2) to another member of
17 the religious organization to which the member of the clergy under sub. (2) belongs,
18 to a therapist, as defined in s. 895.70 (1) (e), to a person listed under s. 48.981 (2) (a),
19 or to a district attorney, is void.

20 **SECTION 8.** 905.06 (4) of the statutes is created to read:

21 905.06 **(4) EXCEPTIONS.** There is no privilege under this section concerning
22 observations or information that a member of the clergy, as defined in s. 49.981 (1)
23 (cx), is required to report as suspected or threatened child abuse under s. 48.981 (2)
24 (bm).

25 **SECTION 9.** 939.74 (2) (c) of the statutes is amended to read:

