



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Added To File: 06/10/2003 (Per: RPN)



☞ The 2003 drafting file for LRB 03-0042/11

has been copied/added to the 2003 drafting file for

LRB 03-2825

☞ The attached 2003 draft was incorporated into the new 2003 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied on yellow paper (darkened - auto centered - reduced to 90%), and added, as a appendix, to the new 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2003 drafting file. The drafting file was then returned, intact, to its folder and filed.

2003 DRAFTING REQUEST

Bill

Received: 09/16/2002

Received By: rnelson2

Wanted: As time permits

Identical to LRB:

For: Alberta Darling (608) 266-5830

By/Representing: Matt

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters: gmalaise
mlief

Subject: Courts - immunity liability
Children - abuse and neglect

Extra Copies:

Submit via email: YES

Requester's email: Sen.Darling@legis.state.wi.us ✓

Carbon copy (CC:) to: Rep.Gundrum@legis.state.wi.us ✓
Anne.Sappenfield@legis.state.wi.us ✓

Pre Topic:

No specific pre topic given

Topic:

Clergy abuse; reporting of child abuse

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>
/?							
/P1	rnelson2 09/17/2002	kgilfoy 10/15/2002		_____			S&L
	gmalaise 10/14/2002			_____			

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/1			jfrantze 10/15/2002	_____	lemery 10/15/2002		S&L
/2	rnelson2 10/24/2002 rnelson2 11/14/2002	kgilfoy 10/24/2002 kgilfoy 11/14/2002	jfrantze 10/25/2002	_____ _____ _____	lkunkel 10/25/2002		S&L
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/4	rnelson2 02/11/2003	kgilfoy 02/11/2003	pgreensl 02/11/2003	_____			S&L
/5	rnelson2 02/18/2003	kgilfoy 02/20/2003	pgreensl 02/20/2003	_____	sbasford 02/20/2003		S&L
/6	rnelson2 02/28/2003	kgilfoy 02/28/2003	chaskett 03/03/2003	_____	sbasford 03/03/2003		S&L
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/8	rnelson2 03/12/2003	kgilfoy 03/12/2003	jfrantze 03/12/2003	_____	lemery 03/12/2003		S&L
/9	rnelson2 05/01/2003	kgilfoy 05/01/2003	jfrantze 05/01/2003	_____	sbasford 05/01/2003		S&L
/10	rnelson2 05/27/2003 rnelson2 05/30/2003	kgilfoy 05/27/2003 csicilia 05/30/2003	pgreensl 05/27/2003	_____ _____ _____	sbasford 05/27/2003		S&L
/11			rschluet 05/30/2003	_____	mbarman 05/30/2003		

FE Sent For:

<END>

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mlief

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Children - abuse and neglect

Extra Copies:

Submit via email: YES

* e mail to:
Rep. Mark Gundrum
Anne Sappenfried, CC

Requester's email: Sen.Darling@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Clergy abuse; reporting of child abuse

Instructions:

Changes from Anne

See Attached

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/?							
/P1	rnelson2 09/17/2002 gmalaise 10/14/2002	kgilfoy 10/15/2002					S&L

Handwritten initials and date: 5-30-3

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11 cjs S/30
03

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May Contact:

Addl. Drafters: gmalaise
mlief

Subject: Courts - immunity liability
Children - abuse and neglect

Extra Copies: Anne Sappenfield
LC

Submit via email: YES

Requester's email: Sen.Darling@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Clergy abuse; reporting of child abuse

Instructions:

See Attached 5/27 Anne asked for chg on p 4-6, 13-15

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*5/1 Changes suggested by Ann S., LC,
on behalf of the requester*

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1?							
/P1	rnelson2 09/17/2002 gmalaise 10/14/2002	kgilfoy 10/15/2002 19- 5/1/03 Kmg	<i>to sl</i>	<i>to re</i> G/I _____ _____			S&L

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mlief

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Children - abuse and neglect

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See Attached

*3/0 changes requested by Anne S.
for a /7*

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		<i>kmj 3/11</i>		<i>HPg 3/11</i>			

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Children - abuse and neglect

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Pre Topic:

No specific pre topic given

Topic:

Clergy abuse; reporting of child abuse

3/28 Anne S. For Darling, etc -- remove from 15 p O, 6/14/15 because not needed - can obtain punitive damages without this language

Instructions:

See Attached

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/?							
/P1	rnelson2 09/17/2002	kgilfoy 10/15/2002	<i>16-2/28</i> <i>cpk</i>	<i>cpk/rs</i> <i>3/3</i>			S&L
	gmalaise 10/14/2002	<i>16-2/28</i> <i>Kmg</i>					

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Clergy abuse; reporting of child abuse

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			2/20 ps	2/20 ps			

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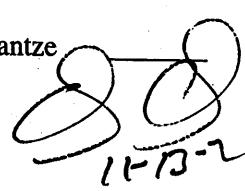
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Clergy abuse; reporting of child abuse

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	gmalaise 10/14/2002	13-11/14 <i>kmf</i>		_____			
/1			jfrantze		lemery		S&L

11-13-02

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/1			jfrantze			lemery	
			10/25	Belb 10/25			

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FE Sent For:

LC
conclusion
OK 9-17-02
JPS
10/15
<END>
J 10/15

Nelson, Robert P.

From: Sappenfield, Anne 9-4475
Sent: Tuesday, September 10, 2002 4:16 PM
To: Nelson, Robert P.
Subject: Clergy abuse draft
Hi Bob!

Here is my part of the clergy abuse draft. I'm sure you'll love it.

Please draft it for Rep. Krusick and Sen. Darling.

The legislators want to change s. 893.587 so that the statute of limitations is age 40 or 5 years after the discovery date, whichever is later. Also, you will quickly notice that I didn't put in any initial applicability provisions. You're so good at drafting those. I didn't want to interfere. Actually, I think I've reached my statute of limitations on thinking about statutes of limitations!!!

Please let me know if you have any questions. I'll talk to you later!!

Anne

09/10/2002

1 **AN ACT** to amend 48.981 (2) (a), 893.587 and 939.74 (2) (c); and to create 48.981 (1)
2 (cx), 48.981 (2) (a) 12m., 48.981 (2g) and 905.06 (4) of the statutes; relating to: the
3 reporting of child abuse or neglect.

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

LEGISLATIVE COUNCIL STAFF PREFATORY NOTE: Under current law, certain individuals (e.g., health care professionals and school teachers) having reasonable cause to suspect that a child seen in the course of their professional duties has been abused or neglected or having reason to believe that a child seen in the course of their professional duties has been threatened with abuse or neglect and that abuse or neglect will occur must make a child abuse or neglect report to the county child welfare agency or law enforcement. This bill draft requires a member of the clergy to report suspected child abuse or neglect as provided under current law. In addition, under the bill draft, persons required to report suspected child abuse or neglect, including members of the clergy, who receive information in the course of professional or official duties that gives the person reasonable cause to believe that a child has been abused or neglected or reason to believe that a child will be threatened with abuse or neglect and that abuse or neglect of the child will occur or who reasonably believe abuse or neglect of a child has occurred must make a report.

The bill draft creates an exception to the child abuse and neglect reporting requirement for members of the clergy for information obtained through confidential abortion counseling (for purposes of seeking a judicial bypass to parental consent requirements) or through communications made in private to the member of the clergy for which there is a duty or traditional expectation of confidentiality.

The bill draft also creates an exception to the general rule that confidential communications with a member of the clergy are privileged (i.e., a person or a member of the clergy may refuse to disclose such communications in a legal proceeding). Under the bill draft, information that a member of the clergy is required to report as suspected or threatened child abuse or neglect is not privileged.

The bill draft modifies the statute of limitations for civil actions for injury caused by sexual assault of a child or incest so that such an action must be commenced before the injured party is 40 years of age instead of within 5 years of the date the plaintiff discovers or should have discovered the injury. The bill draft also modifies the statute of limitations for certain crimes against children so that a prosecution for a violation of sexual assault of a child, physical abuse of a child causing great bodily harm, sexual exploitation of a child, incest, child enticement, or soliciting a child for prostitution must be commenced before the victim reaches 40 years of age, instead of 31 years of age.

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

2 48.981 (1) (cx) "Member of the clergy" has the meaning given in s. 765.002 (1).

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

4 48.981 (2) (a) [, group home, as described in s. 48.625 (1m,] Any of the following
5 persons who has reasonable cause to suspect that a child seen by the person in the course of
6 professional duties has been abused or neglected ~~or~~; who has reason to believe that a child seen
7 by the person in the course of professional duties has been threatened with abuse or neglect
8 and that abuse or neglect of the child will occur; who receives information in the course of his
9 or her professional or official duties that gives the person reasonable cause to believe that a
10 child has been abused or neglected or reasonable cause to believe that a child has been
11 threatened with abuse or neglect and that abuse or neglect of the child will occur; or who
12 reasonably believes abuse or neglect of a child has occurred shall, except as provided under
13 ~~sub.~~ subs. (2g) and (2m), report as provided in sub. (3):

14 **SECTION 3.** 48.981 (2) (a) 12m. of the statutes is created to read:

15 48.981 (2) (a) 12m. A member of the clergy.

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

17 48.981 (2g) EXCEPTION TO REPORTING REQUIREMENT FOR MEMBERS OF THE CLERGY.

18 Notwithstanding sub. (2) (a) and (c), a member of the clergy is not required to report as

1 suspected or threatened abuse or neglect information that the member of the clergy obtains
2 through abortion counseling under s. 48.375 (7) (bm) or through confidential communications
3 made in private to the member of the clergy who, in the course of the discipline, practice, or
4 traditional observance of his or her church, denomination, or organization, is authorized or
5 accustomed to hearing such communications, and, under the discipline, tenets or traditions of
6 his or her church, denomination, or organization has a duty or traditional expectation to keep
7 those communications secret.

8 **SECTION 5.** 893.587 of the statutes is amended to read:

9 **893.587 Sexual assault of a child; limitation.** An action to recover damages for injury
10 caused by an act that would constitute a violation of s. 948.02, 948.025, 948.06, or 948.095
11 shall be commenced ~~within 5 years after the plaintiff discovers the fact and the probable cause,~~
12 ~~or with the exercise of reasonable diligence should have discovered the fact and the probable~~
13 ~~cause, of the injury, whichever occurs first. This section does not shorten the period to~~
14 ~~commence an action provided under s. 893.16 (1) before the injured party is 40 years of age~~
15 or be barred.

16 **SECTION 6.** 905.06 (4) of the statutes is created to read:

17 **905.06 (4) EXCEPTIONS.** There is no privilege under this section concerning information
18 that a member of the clergy is required to report as suspected or threatened child abuse or
19 neglect under s. 48.981 (2) (a) or (c).

20 **SECTION 7.** 939.74 (2) (c) of the statutes is amended to read:

21 **939.74 (2) (c)** A prosecution for violation of s. 948.02, 948.025, 948.03 (2) (a), 948.05,
22 948.06, 948.07 (1), (2), (3), or (4), 948.08, or 948.095 shall be commenced before the victim
23 reaches the age of ~~31~~ 40 years or be barred, except as provided in sub. (2d) (c).

Talk to GAMA

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT to create 893.585 (3), 893.586 and 895.71 of the statutes; relating to:
2 actions related to sexual exploitation brought against members of the clergy
3 and religious organizations.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

4 SECTION 1. 893.585 (3) of the statutes is created to read:
5 893.585 (3) This section does not apply to damages incurred under s. 895.71.

6 SECTION 2. 893.586 of the statutes is created to read:
7 893.586 Sexual exploitation by a member of the clergy. Notwithstanding
8 ss. 893.54 and 893.587, an injured party must commence an action under s. 895.71
9 for damages before he or she is 40 years of age or be barred.

10 SECTION 3. 895.71 of the statutes is created to read:

893.587 is incest
893.57 is intentional tort

(A) Sexual intercourse has the meaning given in 940.225 (5) (c).

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

2 In this section:

3 (a) "Member of the clergy" has the meaning given in s. 765.002 (1).

4 (b) "Religious organization" means an association, conference, congregation,
5 convention, committee, or other entity that is organized and operated for a religious
6 purpose and that is exempt from federal income tax under 26 USC 501 (c) (3) or (d)
7 and any subunit of such an association, conference, congregation, convention,
8 committee, or entity that is organized and operated for a religious purpose.

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

or sexual intercourse

10 (2) CAUSE OF ACTION. (a) Any person who suffers, directly or indirectly, a
11 physical, mental, or emotional injury caused by sexual contact that occurs while the
12 person is under the age of 18 and with a member of the clergy may bring an action
13 against the member of the clergy for all damages caused by that sexual contact.

14 (b) Any person who may bring an action under par. (a) may bring an action
15 against the religious organization to which the member of the clergy belongs for all
16 damages caused by that sexual contact if another employee or member of the clergy
17 of that religious organization knew or should have known that the member of the clergy had sexual contact
18 with another person under the age of 18 and failed to take immediate
and appropriate corrective action

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

Distinguish Clauder - Clauder was an adult

Everyone knows it is wrong to do it w/ minor is negligence perse if knew or should have known + did nothing

1 information to other parties to the action, in a manner that reasonably protects the
2 information from being disclosed to the public.

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

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

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

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

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

13 (4) PUNITIVE DAMAGES. A court or jury may award punitive damages to a person
14 bringing an action under this section.

15 (5) CALCULATION OF STATUTE OF LIMITATIONS. An action under this section is
16 subject to s. 893.586.

17 (6) SILENCE AGREEMENTS. Any contract or agreement concerning the settlement
18 of any claim under this section that limits or eliminates the right of the injured
19 person to disclose the sexual contact described under sub. (2) to an employee or
20 another member of the clergy of the religious organization to which the member of
21 the clergy under sub. (2) belongs, ^{or} to a therapist, as defined in ~ ~
the clergy under sub. (2) belongs, or to a district attorney, is void.

22 (END)

-therapist

- disclosure under 48.981 (child abuse reporting law)

benefits to the husbands of employees which are not made for male employees. An example of such an unlawful employment practice is a situation in which male employees receive benefits while female employees receive no such benefits.

shall not be a defense under a charge of sex discrimination if the cost of benefits is greater with respect to one sex than the other.

shall be an unlawful employment practice for an employer to have a different optional or complementary benefit plan which differentiates in benefits on the basis of sex. A statement of the General Order of September 13, 1968, providing for a phasing out of different optional retirement benefits for certain incumbent employees is hereby withdrawn.

Employment policies relating to pregnancy and childbirth.

Written or unwritten employment practice which excludes applicants or employees because of pregnancy, childbirth, or related medical conditions is a violation of title VII.

Disabilities caused or contributed to by pregnancy, childbirth, or related conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other conditions, under any health, disability insurance or sick leave plan, formal or informal.

Written or unwritten employment policies and practices in matters such as the computation and duration of leave, the accrual of extensions, the accrual of other benefits and other benefits and payment of health or disability insurance leave plan, formal or informal, shall be applied to disability caused or contributed to by pregnancy, childbirth or related conditions on the same terms as they are applied to other conditions, except where the disability could be endan-

gered if the fetus were carried to term or where medical complications have arisen from an abortion, are not required to be paid by an employer; nothing herein, however, precludes an employer from providing abortion benefits or otherwise affects bargaining agreements in regard to abortion.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

(d)(1) Any fringe benefit program, or fund, or insurance program which is in effect on October 31, 1978, which does not treat women affected by pregnancy, childbirth, or related medical conditions the same as other persons not so affected but similar in their ability or inability to work, must be in compliance with the provisions of § 1604.10(b) by April 29, 1979. In order to come into compliance with the provisions of 1604.10(b), there can be no reduction of benefits or compensation which were in effect on October 31, 1978, before October 31, 1979 or the expiration of a collective bargaining agreement in effect on October 31, 1978, whichever is later.

(2) Any fringe benefit program implemented after October 31, 1978, must comply with the provisions of § 1604.10(b) upon implementation.

(44 FR 23805, Apr. 20, 1979)

§ 1604.11 Sexual harassment.

(a) Harassment on the basis of sex is a violation of section 703 of title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such

The principles involved here continue to apply to race, color, religion or national origin.

conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

(c) Applying general title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

Supervisor

Fellow employees

Non employees



→ Today By 2 p.m. ←

State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0042/P

RPN: :ch
KMG

~~DRAFT~~ ~~Final~~ ~~1/15~~

MPL, LGM/M

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

~~report that suspected abuse or neglect to the county department of human services or social services or, in Milwaukee County, to the department of health and family services for a licensed child welfare agency under contract with DHS, or to the sheriff or city, village, or town police department~~

Generate Catalog

(insert rel.)

① AN ACT relating to: the reporting of child abuse or neglect.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

~~PRELIMINARY NOTE: Under current law, certain individuals (e.g., health care professionals and school teachers) having reasonable cause to suspect that a child seen in the course of their professional duties has been abused or neglected or having reason to believe that a child seen in the course of their professional duties has been threatened with abuse or neglect and that abuse or neglect will occur must make a child abuse or neglect report to the county child welfare agency or law enforcement. This bill draft requires a member of the clergy to report suspected child abuse or neglect as provided under current law. In addition, under the bill draft, persons required to report suspected child abuse or neglect, including members of the clergy, who receive information in the course of professional or official duties that gives the person reasonable cause to believe that a child has been abused or neglected or reason to believe that a child will be threatened with abuse or neglect and that abuse or neglect of the child will occur or who reasonably believe abuse or neglect of a child has occurred must make a report.~~

The bill draft creates an exception to the child abuse and neglect reporting requirement for members of the clergy for information obtained through confidential abortion counseling (for purposes of seeking a judicial bypass to parental consent requirements) or through communications made in private to the member of the clergy for which there is a duty or traditional expectation of confidentiality.

The bill draft also creates an exception to the general rule that confidential communications with a member of the clergy are privileged (i.e., a person or a member

Insert
A

Insert
A

persons in certain professions, for example,

bill

LPS: Delete the brackets and strike the circled text.

of the clergy may refuse to disclose such communications in a legal proceeding). Under the bill draft, information that a member of the clergy is required to report as suspected or threatened child abuse or neglect is not privileged.

The bill draft modifies the statute of limitations for civil actions for injury caused by sexual assault of a child or incest so that such an action must be commenced before the injured party is 40 years of age instead of within 5 years of the date the plaintiff discovers or should have discovered the injury. The bill draft also modifies the statute of limitations for certain crimes against children so that a prosecution for a violation of sexual assault of a child, physical abuse of a child causing great bodily harm, sexual exploitation of a child, incest, child enticement, or soliciting a child for prostitution must be commenced before the victim reaches 40 years of age, instead of 31 years of age.

Insert A

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

2 48.981 (1) (cx) "Member of the clergy" has the meaning given in s. 765.002 (1).

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

(Intro.)

4 48.981 (2) (a) ~~is a group home, as described in s. 48.025 (1m).~~ Any of the following

5 persons who has reasonable cause to suspect that a child ~~seen by the person in the~~

6 ~~course of professional duties~~ has been abused or neglected ~~or~~ ^(plan) who has reason to

7 believe that a child ~~seen by the person in the course of professional duties~~ has been

8 threatened with abuse or neglect and that abuse or neglect of the child will occur; who

9 ~~receives information in the course of his or her professional or official duties that~~

10 ~~gives the person reasonable cause to believe that a child has been abused or neglected~~

11 ~~or reasonable cause to believe that a child has been threatened with abuse or neglect~~

12 ~~and that abuse or neglect of the child will occur; or who reasonably believes abuse~~

13 ~~or neglect of a child has occurred~~ shall, except as provided under sub. subs. (2g) and

14 (2m), report as provided in sub. (3):

15 SECTION 3. 48.981 (2) (a) 12m. of the statutes is created to read:

16 48.981 (2) (a) 12m. A member of the clergy.

17 SECTION 4. 48.981 (2g) of the statutes is created to read:

18 48.981 (2g) EXCEPTION TO REPORTING REQUIREMENT FOR MEMBERS OF THE CLERGY.

19 Notwithstanding sub. (2) (a) ~~and (c)~~ a member of the clergy is not required to report

Insert 2-16

The discipline, tenets, or traditions of the church, denomination, or organization need not be in writing.

who

1 as suspected or threatened abuse or neglect information that the member of the
2 clergy obtains through abortion counseling under s. 48.375 (7) (bm) or through
3 confidential communications made in private to the member of the clergy who, in the
4 course of the discipline, practice, or traditional observance of his or her church,
5 denomination, or organization, is authorized, or accustomed to hearing such
6 communications, and, under the discipline, tenets, or traditions of his or her church,
7 denomination, or organization, has a duty or traditional expectation to keep those
8 communications secret.

to hear
is

Insert
3-8A
+ 10
3-8B

SECTION 5. 893.587 of the statutes is amended to read:

893.587 Sexual assault of a child; limitation. An action to recover damages for injury caused by an act that would constitute a violation of s. 948.02, 948.025, 948.06, or 948.095 shall be commenced within 5 years after the plaintiff discovers the fact and the probable cause, or with the exercise of reasonable diligence should have discovered the fact and the probable cause, of the injury, whichever occurs first. This section does not shorten the period to commence an action provided under s. 893.16 (1) before the injured party reaches the age of 40 years or be barred.

reaches the age of

Insert
3-16

SECTION 6. 905.06 (4) of the statutes is created to read:

905.06 (4) EXCEPTIONS. There is no privilege under this section concerning information that a member of the clergy is required to report as suspected or threatened child abuse or neglect under s. 48.981 (2) (a) or (b).

as defined in s. 76.002(7)

5

SECTION 7. 939.74 (2) (c) of the statutes is amended to read:

939.74 (2) (c) A prosecution for violation of s. 948.02, 948.025, 948.03 (2) (a), 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.08, or 948.095 shall be commenced before the victim reaches the age of 31 40 years or be barred, except as provided in sub. (2d) (c).

, and (2m) (title)

(1)

- 1
- 2
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- 4

SECTION 8. Initial applicability. The treatment of sections 48.981 (1) (cx), (2) and (2g) and 905.06 (4) of the statutes first applies to information received by a member of the clergy on the effective date of this subsection.

(END)

(a) (intro.) and
 12m., and 17m.,
 and (b) and (c)

letter

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0042/1ins
GMM.....

(INSERT A) ✓

Under current law, any person who suffers, directly^e 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, directly or indirectly, a physical, mental, or emotional 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, including punitive damages. The bill also permits the person to bring an action against the religious organization to which the member of the clergy belongs for all damages caused by the sexual contact, including punitive damages, if another employee or member of the clergy of that religious organization knew or should have known that the member of the clergy had sexual contact with another person under the age of 18 and failed to take immediate corrective action. Under the bill, an injured party must commence the action before he or she reaches 40 years of age or be barred.

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 requires such an action to be commenced before the injured party reaches the age of 40 years or be barred. 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, ~~and~~ enticement, soliciting 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 40 or be barred. ^{child}

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 a child seen in the course of their professional duties 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 county department of human services or social services or, in Milwaukee County, to the department of health and family services (DHFS) or a licensed child welfare agency under contract with DHFS or to the sheriff or city, village, or town police department (mandatory reporters). This bill eliminates the requirement that the child must have been seen in the course of professional duties, thereby requiring a mandatory reporter who has reasonable cause to suspect that any child has been abused or neglected or who has reason to believe that any child has been threatened with abuse or neglect and that abuse or neglect of the child will occur to report that suspected or threatened abuse or neglect. ✓

Finally, the bill adds members of the clergy to the list of mandatory reporters, but provides an exception for information obtained through abortion counseling provided for purposes of obtaining a judicial waiver of parental consent for an abortion or for information obtained through a confidential communication made in private to the member of the clergy for which, under the discipline, tenets, or traditions of the church, denomination, or organization, there is a duty or traditional expectation of confidentiality.

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

(END OF INSERT)

~~Insert 2-16~~

SEC CR; 48.981 (2)(a) 17m.

48.981 (2)(a) 17m. A court-appointed special
advocate designated under s. 48.236 (1).

SEC RP; 48.981 (2)(b)

~~End of insert~~



Insert 2-16 cont

Section #. 48.981 (2) (c) of the statutes is amended to read:

+

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

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.

End of Insert

~~Insert~~

Insert 3-8A



Section #. 48.981 (2m) (title) of the statutes is amended to read:

(2) FOR HEALTH CARE PROVIDERS

48.981 (2m) (title) EXCEPTION TO REPORTING REQUIREMENT

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.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

and

1 AN ACT to create 893.585 (3), 893.586 and 895.71 of the statutes; relating to:
actions related to sexual exploitation brought against members of the clergy
and religious organizations.

insert 2
rel. ✓
3

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

insert
3-8B

SECTION 1. 893.585 (3) of the statutes is created to read:

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

SECTION 2. 893.586 of the statutes is created to read:

893.586 Sexual exploitation by a member of the clergy. Notwithstanding

ss. 893.54 and 893.57, an injured party must commence an action under s. 895.71

for damages before he or she is 40 years of age or be barred.

insert
3-16

SECTION 3. 895.71 of the statutes is created to read:

reaches the age of

Ins. 3-16 cont

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

2 In this section:

3 (a) "Member of the clergy" has the meaning given in s. 765.002 (1).

4 (b) "Religious organization" means an association, conference, congregation,
5 convention, committee, or other entity that is organized and operated for a religious
6 purpose and that is exempt from federal income tax under 26 USC 501 (c) (3) or (d)
7 and any subunit of such an association, conference, congregation, convention,
8 committee, or entity that is organized and operated for a religious purpose.

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

10 (2) CAUSE OF ACTION. (a) Any person who suffers, directly or indirectly, a
11 physical, mental, or emotional injury caused by sexual contact that occurs while the
12 person is under the age of 18 ~~and~~ with a member of the clergy may bring an action
13 against the member of the clergy for all damages caused by that sexual contact.

14 (b) Any person who may bring an action under par. (a) may bring an action
15 against the religious organization to which the member of the clergy belongs for all
16 damages caused by that sexual contact if another employee or member of the clergy
17 of that religious organization *or should have known* knew that the member of the clergy had sexual contact
18 with another person under the age of 18 *and failed to take immediate corrective action*.

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

any of the following

1 information to other parties to the action, in a manner that reasonably protects the
2 information from being disclosed to the public.

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

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

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

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

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

13 (4) PUNITIVE DAMAGES. A court or jury may award punitive damages to a person
14 bringing an action under this section.

15 (5) CALCULATION OF STATUTE OF LIMITATIONS. An action under this section is
16 subject to s. 893.586. ✓

17 (6) SILENCE AGREEMENTS. Any contract or agreement concerning the settlement
18 of any claim under this section that limits or eliminates the right of the injured
19 person to disclose the sexual contact described under sub. (2) to an employee or
20 another member of the clergy of the religious organization to which the member of
21 the clergy under sub. (2) belongs, or to a district attorney, is void.

END

to a therapist, as defined in s. 895.20(1)(e),
to a person listed under s. 48.981(2)(a),

insert 3-16 conf

D-N

2003 BILL

1 AN ACT *to amend* 48.981 (2) (a) (intro.), 48.981 (2) (b), 48.981 (2m) (title), 893.587
2 and 939.74 (2) (c); and *to create* 48.981 (1) (cx), 48.981 (2) (a) 12m., 48.981 (2g),
3 893.585 (3), 893.586, 895.71 and 905.06 (4) of the statutes; **relating to:** the
4 reporting of child abuse or neglect, and actions related to sexual exploitation
5 brought against members of the clergy and religious organizations.

Gen. Cont.

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, directly or indirectly, a physical, mental, or emotional 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, including punitive damages. The bill also permits the person to bring an action against the religious organization to which the member of the clergy belongs for all damages caused by the sexual contact, including punitive damages, if another employee or member of the clergy of that religious organization knew or should have known that the member of the clergy had sexual contact with another person under the age of

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18 and failed to take immediate corrective action. Under the bill, an injured party must commence the action before he or she reaches 40 years of age or be barred.

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 continues that limit, but adds that the injured party may commence the action within that time limit or until the injured party reaches the age of 26 years, whichever is later. 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, soliciting 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 35 or be barred.

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 a child seen in the course of their professional duties 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 county department of human services or social services or, in Milwaukee County, to the Department of Health and Family Services (DHFS) or a licensed child welfare agency under contract with DHFS or to the sheriff or city, village, or town police department (mandatory reporters). This bill requires a mandatory reporter who, based on observations made or information received in the course of professional duties, has reasonable cause to suspect that a child has been abused or neglected or who, based on observations made or information received in the course of professional duties, has reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur to report that suspected or threatened abuse or neglect.

Finally, the bill adds members of the clergy to the list of mandatory reporters, but provides exceptions for information obtained through abortion counseling provided for purposes of obtaining a judicial waiver of parental consent for an abortion and for information obtained through a confidential communication made in private to the member of the clergy for which, under the discipline, tenets, or traditions of the church, denomination, or organization, there is a duty or traditional expectation of confidentiality.

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) (cx) of the statutes is created to read:

BILL

1 48.981 (1) (cx) "Member of the clergy" has the meaning given in s. 765.002 (1).

2 **SECTION 2.** 48.981 (2) (a) (intro.) of the statutes is amended to read:

3 48.981 (2) (a) (intro.) ~~, group home, as described in s. 48.625 (1m),~~ Any of the
4 following persons who, based on observations made or information received in the
5 course of professional duties, has reasonable cause to suspect that a child ~~seen by the~~
6 ~~person in the course of professional duties~~ has been abused or neglected or who,
7 based on observations made or information received in the course of professional
8 duties, has reason to believe that a child ~~seen by the person in the course of~~
9 ~~professional duties~~ has been threatened with abuse or neglect and that abuse or
10 neglect of the child will occur shall, except as provided under ~~sub. subs. (2g) and~~ (2m),
11 report as provided in sub. (3):

12 **SECTION 3.** 48.981 (2) (a) 12m. of the statutes is created to read:

13 48.981 (2) (a) 12m. A member of the clergy.

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

15 48.981 (2) (b) A court-appointed special advocate who, based on observations
16 made or information received in the course of activities under s. 48.236 (3), has
17 reasonable cause to suspect that a child ~~seen in the course of activities under s.~~
18 ~~48.236 (3)~~ has been abused or neglected or who, based on observations made or
19 information received in the course of activities under s. 48.236 (3), has reason to
20 believe that a child ~~seen in the course of those activities~~ has been threatened with
21 abuse and neglect and that abuse or neglect of the child will occur shall, except as
22 provided in sub. (2m), report as provided in ~~sub. subs. (2g) and~~ (3).

23 **SECTION 5.** 48.981 (2g) of the statutes is created to read:

24 48.981 (2g) EXCEPTION TO REPORTING REQUIREMENT FOR MEMBERS OF THE CLERGY.

25 Notwithstanding sub. (2) (a) and (b), a member of the clergy is not required to report

BILL

1 as suspected or threatened abuse or neglect information that the member of the
2 clergy obtains through abortion counseling under s. 48.375 (7) (bm) or through
3 confidential communications made in private to the member of the clergy who, in the
4 course of the discipline, practice, or traditional observance of his or her church,
5 denomination, or organization, is authorized to hear or is accustomed to hearing such
6 communications, and who, under the discipline, tenets, or traditions of his or her
7 church, denomination, or organization, has a duty or traditional expectation to keep
8 those communications secret. The discipline, tenets, or traditions of the church,
9 denomination, or organization need not be in writing.

10 **SECTION 6.** 48.981 (2m) (title) of the statutes is amended to read:

11 48.981 (2m) (title) EXCEPTION TO REPORTING REQUIREMENT FOR HEALTH CARE
12 PROVIDERS.

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

14 893.585 (3) This section does not apply to damages incurred under s. 895.71.

15 **SECTION 8.** 893.586 of the statutes is created to read:

16 **893.586 Sexual exploitation by a member of the clergy.** Notwithstanding
17 ss. 893.54 and 893.57, an injured party must commence an action under s. 895.71 for
18 damages before he or she reaches the age of 40 years or be barred.

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

20 **893.587 Sexual assault of a child; limitation.** An action to recover damages
21 for injury caused by an act that would constitute a violation of s. 948.02, 948.025,
22 948.06, or 948.095 shall be commenced within 5 years after the plaintiff discovers the
23 fact and the probable cause, or with the exercise of reasonable diligence should have
24 discovered the fact and the probable cause, of the injury, whichever occurs first. ~~This~~
25 ~~section does not shorten the period to commence an action provided under s. 893.16~~

BILL

1 (1); or before the injured party reaches the age of 26 years; whichever is later; or be
2 barred.

3 **SECTION 10.** 895.71 of the statutes is created to read:

4 **895.71 Sexual exploitation by a member of the clergy. (1) DEFINITIONS.**

5 In this section:

6 (a) "Member of the clergy" has the meaning given in s. 765.002 (1).

7 (b) "Religious organization" means an association, conference, congregation,
8 convention, committee, or other entity that is organized and operated for a religious
9 purpose and that is exempt from federal income tax under 26 USC 501 (c) (3) or (d)
10 and any subunit of such an association, conference, congregation, convention,
11 committee, or entity that is organized and operated for a religious purpose.

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

13 (2) **CAUSE OF ACTION.** (a) Any person who suffers, directly or indirectly, a
14 physical, mental, or emotional injury caused by sexual contact with a member of the
15 clergy that occurs while the person is under the age of 18 may bring an action against
16 the member of the clergy for all damages caused by that sexual contact.

17 (b) Any person who may bring an action under par. (a) may bring an action
18 against the religious organization to which the member of the clergy belongs for all
19 damages caused by that sexual contact if another employee or member of the clergy
20 of that religious organization knew or should have known that the member of the
21 clergy had sexual contact with another person under the age of 18 and failed to take
22 immediate corrective action to prevent similar incidents from occurring in the
23 future.

24 (c) Notwithstanding ss. 801.09 (1), 801.095, 802.04 (1), and 815.05 (1g) (a), in
25 an action brought under this section, the plaintiff may substitute his or her initials,

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1 or fictitious initials, and his or her age and county of residence for his or her name
2 and address on the summons and complaint. The plaintiff's attorney shall supply
3 the court the name and other necessary identifying information of the plaintiff. The
4 court shall maintain the name and other identifying information, and supply the
5 information to other parties to the action, in a manner that reasonably protects the
6 information from being disclosed to the public.

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

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

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

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

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

18 (4) PUNITIVE DAMAGES. A court or jury may award punitive damages to a person
19 bringing an action under this section.

20 (5) CALCULATION OF STATUTE OF LIMITATIONS. An action under this section is
21 subject to s. 893.586.

22 (6) SILENCE AGREEMENTS. Any contract or agreement concerning the settlement
23 of any claim under this section that limits or eliminates the right of the injured
24 person to disclose the sexual contact described under sub. (2) to an employee or
25 another member of the clergy of the religious organization to which the member of

BILL

1 the clergy under sub. (2) belongs, to a therapist, as defined in s. 895.70 (1) (e), to a
2 person listed under s. 48.981 (2) (a), or to a district attorney, is void.

3 **SECTION 11.** 905.06 (4) of the statutes is created to read:

4 905.06 (4) EXCEPTIONS. There is no privilege under this section concerning
5 information that a member of the clergy, as defined in s. 765.002 (1), is required to
6 report as suspected or threatened child abuse or neglect under s. 48.981 (2) (a) or (b).

7 **SECTION 12.** 939.74 (2) (c) of the statutes is amended to read:

8 939.74 (2) (c) A prosecution for violation of s. 948.02, 948.025, 948.03 (2) (a),
9 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.08, or 948.095 shall be commenced
10 before the victim reaches the age of ~~31~~ 35 years or be barred, except as provided in
11 sub. (2d) (c).

12 **SECTION 13. Initial applicability.**

13 (1) The treatment of sections 48.981 (1) (cx), (2) (a) (intro.) and 12m. and (b),
14 (2g), and (2m) (title) and 905.06 (4) of the statutes first applies to observations made
15 or information received by a member of the clergy on the effective date of this
16 subsection.

17 (2) The treatment of sections 893.587 and 939.74 (2) (c) of the statutes first
18 applies to actions not barred on the effective date of this subsection.

19 (END)

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

LRB-004²/2dn
RPN:kmg:rs

October 23, 2002

This draft reflects changes suggested by Anne Sappenfield of the Legislative Council.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

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

LRB-0042/2dn
RPN:kmg:jf

October 25, 2002

This draft reflects changes suggested by Anne Sappenfield of the Legislative Council.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
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2003 BILL

Today

1 AN ACT *to amend* 48.981 (2) (a) (intro.), 48.981 (2) (b), 48.981 (2m) (title), 893.587
2 and 939.74 (2) (c); and *to create* 48.981 (1) (cx), 48.981 (2) (a) 12m., 48.981 (2g),
3 893.585 (3), 895.71 and 905.06 (4) of the statutes; **relating to:** the reporting of
4 child abuse or neglect, and actions related to sexual exploitation brought
5 against members of the clergy and 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, directly or indirectly, a physical, mental, or emotional 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, including punitive damages. The bill also permits the person to bring an action against the religious organization to which the member of the clergy belongs for all damages caused by the sexual contact, including punitive damages, if another employee or member of the clergy 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 take immediate corrective action.

BILL

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 clergy created by this bill and provides that the injured party may commence the action within the current limit or until the injured party reaches the age of 26 years, whichever is later. 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, soliciting 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 35 or be barred.

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 a child seen in the course of their professional duties 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 county department of human services or social services or, in Milwaukee County, to the Department of Health and Family Services (DHFS) or a licensed child welfare agency under contract with DHFS or to the sheriff or city, village, or town police department (mandatory reporters). This bill requires a mandatory reporter who, based on observations made or information received in the course of professional duties, has reasonable cause to suspect that a child has been abused or neglected or who, based on observations made or information received in the course of professional duties, has reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur to report that suspected or threatened abuse or neglect.

Finally, the bill adds members of the clergy to the list of mandatory reporters, but provides exceptions for information obtained through abortion counseling provided for purposes of obtaining a judicial waiver of parental consent for an abortion and for information obtained through a confidential communication made in private to the member of the clergy for which, under the discipline, tenets, or traditions of the church, denomination, or organization, there is a duty or traditional expectation of confidentiality.

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) (cx) of the statutes is created to read:

BILL

1 48.981 (1) (cx) "Member of the clergy" has the meaning given in s. 765.002 (1).

2 **SECTION 2.** 48.981 (2) (a) (intro.) of the statutes is amended to read:

3 48.981 (2) (a) (intro.) ~~, group home, as described in s. 48.625 (1m),~~ Any of the
4 following persons who, based on observations made or information received in the
5 course of professional duties, has reasonable cause to suspect that a child ~~seen by the~~
6 ~~person in the course of professional duties~~ has been abused or neglected or who,
7 based on observations made or information received in the course of professional
8 duties, has reason to believe that a child ~~seen by the person in the course of~~
9 ~~professional duties~~ has been threatened with abuse or neglect and that abuse or
10 neglect of the child will occur shall, except as provided under ~~sub. subs. (2g) and (2m),~~
11 report as provided in sub. (3):

12 **SECTION 3.** 48.981 (2) (a) 12m. of the statutes is created to read:

13 48.981 (2) (a) 12m. A member of the clergy.

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

15 48.981 (2) (b) A court-appointed special advocate who, based on observations
16 made or information received in the course of activities under s. 48.236 (3), has
17 reasonable cause to suspect that a child ~~seen in the course of activities under s.~~
18 ~~48.236 (3)~~ has been abused or neglected or who, based on observations made or
19 information received in the course of activities under s. 48.236 (3), has reason to
20 believe that a child ~~seen in the course of these activities~~ has been threatened with
21 abuse and neglect and that abuse or neglect of the child will occur shall, except as
22 provided in sub. (2m), report as provided in ~~sub. subs. (2g) and (3).~~

23 **SECTION 5.** 48.981 (2g) of the statutes is created to read:

24 48.981 (2g) **EXCEPTION TO REPORTING REQUIREMENT FOR MEMBERS OF THE CLERGY.**

25 Notwithstanding sub. (2) (a) and (b), a member of the clergy is not required to report

"Member of a religious order"
& member of clergy?

Who is or what is exempt
from mandatory reporting

Clergy or clergy confidential
but if receive info
from other sources.

From other include religious
order

Pick up language on p. 4,
lines 9-11 for supd.

In 895.91 - all member of
religious order

Suggests for Revisions to LRB 0042/3

1. Mandatory Reporting

- Require members of the clergy to report suspected child *sexual* abuse (as defined by criminal statute) by *another member of the clergy*, based on observations made or information received in the course of his/her professional duties.
- Make exception for confidential communications but not for supervisory employment communications.
- Broaden definition of member of clergy.
 - List one of these on own so context is unique to reporting section
 - 765.002 - *Unless the context clearly indicates otherwise "member of the clergy" in this chapter means spiritual adviser of any religion, whether the adviser is termed priest, rabbi, minister of the gospel, pastor, reverend or any other official designation.*
 - 905.06(1)(a)
(a) A "member of the clergy" is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting the individual.

Not
now.

2. Statute of Limitations

- Change criminal to 45 and civil to 35

3. Cause of Action

- Verify with Leg. Council/LRB attorneys that the language mirrors employment law.
- Reference duty of mandatory reporting and concept of negligent supervision rather than "immediate corrective action"
- Perhaps use idea of "prior or actual knowledge"

4. Retroactivity for Victims

- One year window ala California

— but not failure
to report

Shaman**Lama**

Both of these have officiating capacities in terms of performing ceremonies, etc, but do not necessarily pastor to a community in the way a Christian priest or Jewish Rabbi does.

Brahmans are the priestly class in Indian culture, and often function as such; however, Brahman is also a caste name and would thus take in a large number of people with no sacerdotal duties.

Monks are common throughout Buddhism, less so throughout Hinduism, and in the former, depending on the culture, may or may not be celibate (the degree of adherence to this rule varying widely as well) and may or may not have leadership roles outside their monastic community. Abuse is known to occur in monastic communities. You could at that point mention **abbots** as having an official role as well. **Nuns** are really only found in Buddhist communities.

A **guru** is a teacher, and there is no real official designation in the way a priest might be ordained. Similarly, a **pandit** is merely a learned man; additionally, there is an ethnic subgroup within the Kashmiri populations known as the **Pandits** (Jawaharlal Nehru, 2nd PM of India, was one.) **Swami**, much like **guru**, may or may not have official or sacerdotal capacity.

Yogis are meditators, usually not officiants or leaders. **Sanyasis** are renunciate wanderers, and we don't seem to have many of them in the US as they are supposed to wander naked in the forest.

Nelson, Robert P.

From: Sappenfield, Anne
Sent: Tuesday, February 11, 2003 8:55 AM
To: Nelson, Robert P.
Subject: Statutes



Utah law.doc



California
law.doc

Let me know if you need anything else.

Anne Sappenfield
Senior Staff Attorney
WI Legislative Council Staff

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

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

LEGISLATIVE COUNCIL STAFF PREFATORY NOTE: This bill draft requires a member of the clergy who has reasonable cause to suspect, based on observations made or information received that a child has been sexually abused or has been threatened with sexual abuse and such abuse will likely occur to report that suspected abuse. Information received during a confidential communication is exempt from this reporting requirement.

The bill draft also modifies the current statute of limitation for civil actions relating to certain crimes against children so that an action may be brought before the injured party reaches age 25 years instead of within 5 years after the date the injured party discovers the injury and its probable cause.

Finally, the bill draft defines a civil cause of action against clergy for sexually exploiting a child and also against religious organizations that knew or should have known that a member of the clergy in its organization had previously had sexual contact with a child and did not exercise due care in order to prevent similar incidents.

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

6 48.981 (1) (cx) "Member of the clergy" has the meaning given in s. 765.002 (1).

NOTE: This SECTION defines "member of the clergy" for purposes of mandatory child abuse reporting as a spiritual adviser of any religion, whether the adviser has the title of priest, rabbi, minister of the gospel, pastor, reverend, or any other official designation.

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

1 893.585 (3) This section does not apply to damages incurred under s. 895.71.

 NOTE: This SECTION provides that the statute of limitation for an action alleging sexual exploitation by a therapist does not apply to actions alleging sexual exploitation by a member of the clergy, described below.

2 SECTION 4. 893.587 of the statutes is amended to read:

3 **893.587 Sexual assault of a child; limitation.** An action to recover damages for injury
4 caused by an act that would constitute a violation of s. 948.02, 948.025, 948.06, or 948.095
5 or that would create a cause of action under s. 895.71 shall be commenced ~~within 5 years after~~
6 ~~the plaintiff discovers the fact and the probable cause, or with the exercise of reasonable~~
7 ~~diligence should have discovered the fact and the probable cause, of the injury, whichever~~
8 ~~occurs first. This section does not shorten the period to commence an action provided under~~
9 s. 893.16 (1) before the injured party reaches the age of 25 years or be barred.

 NOTE: This SECTION modifies the statute of limitation for injury caused by sexual assault of a child or incest with a child so that such an action must be brought before the injured party reaches age 25 years. Under current law, as affected by 2001 Wisconsin Act 16, such an action must be commenced within 5 years after the plaintiff discovers the injury and its probable cause or should have discovered the injury and its probable cause, whichever occurs first. This SECTION also provides that this statute of limitation applies to actions alleging sexual exploitation by a member of the clergy, described below.

10 SECTION 5. 895.71 of the statutes is created to read:

11 **895.71 Sexual exploitation by a member of the clergy. (1) DEFINITIONS.** In this
12 section:

13 (a) "Member of the clergy" has the meaning given in s. 765.002 (1).

14 (b) "Religious organization" means an association, conference, congregation,
15 convention, committee, or other entity that is organized and operated for a religious purpose
16 and that is exempt from federal income tax under 26 USC 501 (c) (3) or (d) and any subunit

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

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

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

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

9 (4) CALCULATION OF STATUTE OF LIMITATIONS. An action under this section is subject to
10 s. 893.587.

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

NOTE: This SECTION sets forth a civil cause of action for sexual exploitation by a member of the clergy. Under the bill draft, any person who suffers an injury caused by sexual contact with a member of the clergy while under age 18 may bring an action against the member of the clergy. In addition, the person may bring an action against the religious organization to which the member of the clergy belongs if another employee or member of the clergy of that religious organization who, at the time of the alleged sexual contact, was responsible for whose duties included supervising or directing the member of the clergy: (1) knew or should have known that the member of the clergy previously had sexual contact with a person under the age of 18; and (2) failed to exercise due care in order to prevent similar subsequent incidents from occurring. The bill draft specifies that consent is not an issue in an action brought under this provision.

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UTAH CODE ANNOTATED
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*** STATUTES CURRENT THROUGH THE 2002 6TH SPECIAL SESSION ***
*** ANNOTATIONS CURRENT THROUGH 2002 UT 111, 2002 UT APP 384 ***
*** AND NOVEMBER 15, 2002 (FEDERAL CASES) ***

TITLE 62A. UTAH HUMAN SERVICES CODE

CHAPTER 4a. CHILD AND FAMILY SERVICES

PART 4. CHILD ABUSE OR NEGLECT REPORTING REQUIREMENTS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Utah Code Ann. § 62A-4a-403 (2003)

§ 62A-4a-403. Reporting requirements

(1) Except as provided in Subsection (2), when any person including persons licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 31b, Nurse Practice Act, has reason to believe that a child has been subjected to incest, molestation, sexual exploitation, sexual abuse, physical abuse, or neglect, or who observes a child being subjected to conditions or circumstances which would reasonably result in sexual abuse, physical abuse, or neglect, he shall immediately notify the nearest peace officer, law enforcement agency, or office of the division. On receipt of this notice, the peace officer or law enforcement agency shall immediately notify the nearest office of the division. If an initial report of child abuse or neglect is made to the division, the division shall immediately

notify the appropriate local law enforcement agency. The division shall, in addition to its own investigation, comply with and lend support to investigations by law enforcement undertaken pursuant to a report made under this section.

(2) The notification requirements of Subsection (1) do not apply to a clergyman or priest, without the consent of the person making the confession, with regard to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs, if:

(a) the confession was made directly to the clergyman or priest by the perpetrator; and

(b) the clergyman or priest is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession.

(3) (a) When a clergyman or priest receives information about abuse or neglect from any source other than confession of the perpetrator, he is required to give notification on the basis of that information even though he may have also received a report of abuse or neglect from the confession of the perpetrator.

(b) Exemption of notification requirements for a clergyman or priest does not exempt a clergyman or priest from any other efforts required by law to prevent further abuse or neglect by the perpetrator.

HISTORY: C. 1953, 62A-4-503, enacted by L. 1988, ch. 1, § 109; 1993, ch. 147, § 1; 1994, ch. 214, § 1; renumbered by L. 1994, ch. 260, § 48; 1999, ch. 21, § 69.

NOTES:

AMENDMENT NOTES. --The 1999 amendment, effective May 3, 1999, in Subsection (1) substituted "Chapter 67" for "Chapter 12, Part 5" and "Chapter 31b" for "Chapter 31" near the beginning of the first sentence.

NOTES TO DECISIONS

ANALYSIS

Common law immunity.
Compliance with requirement.

COMMON LAW IMMUNITY.

One does not qualify as a witness simply because one has sufficient expertise or knowledge of the underlying facts to be of

some potential benefit to a party or the court if called as a witness. Thus, because a social worker was not a witness at the time she sent letters containing her conclusions that a child had been abused by his mother and stepfather to the father's attorney and to the domestic commissioner, neither she nor any of the other defendants whose liability is dependent upon hers is entitled to claim the common law privilege of a witness. *Allen v. Ortez*, 802 P.2d 1307 (Utah 1990).

COMPLIANCE WITH REQUIREMENT.

A letter alleging child sexual abuse against the mother and stepfather of a child, sent by medical center social workers to the mayor, did not qualify as a "report" under this section because it was sent to persons other than those mentioned. Therefore, defendants were not entitled to immunity under § 62A-4a-410. *Allen v. Ortez*, 802 P.2d 1307 (Utah 1990).

COLLATERAL REFERENCES

BRIGHAM YOUNG LAW REVIEW. --How Secrets Are Kept: Viewing the Current Clergy-Penitent Privilege Through a Comparison with the Attorney-Client Privilege, 2002 *B.Y.U.L. Rev.* 489.

A.L.R. --Validity, construction, and application of state statute requiring doctor or other person to report child abuse, 73 *A.L.R.4th* 782.

USER NOTE: For more generally applicable notes, see notes under the first section of this article, part, chapter, subtitle, or title.

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DEERING'S CALIFORNIA CODES ANNOTATED
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*** THIS SECTION IS CURRENT THROUGH THE 2003 SUPPLEMENT ***
(2001-2002 SESSION)

CODE OF CIVIL PROCEDURE

PART 2. Civil Actions

TITLE 2. Time of Commencing Civil Actions

CHAPTER 3. Time of Commencing Actions Other Than for the Recovery of Real Property

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Cal Code Civ Proc § 340.1 (2003)

§ 340.1. Damages suffered as result of childhood sexual abuse; Certificates of merit

(a) In an action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later, for any of the following actions:

(1) An action against any person for committing an act of childhood sexual abuse.

(2) An action for liability against any person or entity who owed a duty of care to the plaintiff, where a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff.

(3) An action for liability against any person or entity where an intentional act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff.

(b)(1) No action described in paragraph (2) or (3) of subdivision (a) may be commenced on or after the plaintiff's 26th birthday.

(2) This subdivision does not apply if the person or entity knew or had reason to know, or

was otherwise on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by that person, including, but not limited to, preventing or avoiding placement of that person in a function or environment in which contact with children is an inherent part of that function or environment. For purposes of this subdivision, providing or requiring counseling is not sufficient, in and of itself, to constitute a reasonable step or reasonable safeguard.

(c) Notwithstanding any other provision of law, any claim for damages described in paragraph (2) or (3) of subdivision (a) that is permitted to be filed pursuant to paragraph (2) of subdivision (b) that would otherwise be barred as of January 1, 2003, solely because the applicable statute of limitations has or had expired, is revived, and, in that case, a cause of action may be commenced within one year of January 1, 2003. Nothing in this subdivision shall be construed to alter the applicable statute of limitations period of an action that is not time barred as of January 1, 2003.

(d) Subdivision (c) does not apply to either of the following:

(1) Any claim that has been litigated to finality on the merits in any court of competent jurisdiction prior to January 1, 2003. Termination of a prior action on the basis of the statute of limitations does not constitute a claim that has been litigated to finality on the merits.

(2) Any written, compromised settlement agreement which has been entered into between a plaintiff and a defendant where the plaintiff was represented by an attorney who was admitted to practice law in this state at the time of the settlement, and the plaintiff signed the agreement.

(e) "Childhood sexual abuse" as used in this section includes any act committed against the plaintiff that occurred when the plaintiff was under the age of 18 years and that would have been proscribed by *Section 266j of the Penal Code*; *Section 285 of the Penal Code*; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of *Section 286 of the Penal Code*; subdivision (a) or (b) of *Section 288 of the Penal Code*; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of *Section 288a of the Penal Code*; subdivision (h), (i), or (j) of *Section 289 of the Penal Code*; *Section 647.6 of the Penal Code*; or any prior laws of this state of similar effect at the time the act was committed. Nothing in this subdivision limits the availability of causes of action permitted under subdivision (a), including causes of action against persons or entities other than the alleged perpetrator of the abuse.

(f) Nothing in this section shall be construed to alter the otherwise applicable burden of proof, as defined in *Section 115 of the Evidence Code*, that a plaintiff has in a civil action subject to this section.

(g) Every plaintiff 26 years of age or older at the time the action is filed shall file certificates of merit as specified in subdivision (h).

(h) Certificates of merit shall be executed by the attorney for the plaintiff and by a licensed mental health practitioner selected by the plaintiff declaring, respectively, as follows, setting forth the facts which support the declaration:

(1) That the attorney has reviewed the facts of the case, that the attorney has consulted with at least one mental health practitioner who is licensed to practice and practices in this state and who the attorney reasonably believes is knowledgeable of the relevant facts and issues involved in the particular action, and that the