



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0042/8

RPN/MJL/GMM:kmg:rs

SOON (7/11)

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), 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, ^{religious orders,} 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.

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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.~~

appropriate

into a law enforcement agency

No TR

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.

a religious order

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:

insert and:

BILL

*insert
3-1*

1 → ~~48.981 (1) (sx) 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 (13) 48.981 (2) (a) 12m. A member of ~~the clergy~~ *a religious order* ✓

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 (25) Notwithstanding sub. (2) (a) and (b), a member of ~~the clergy~~ *a religious order*

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OR PER*

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1 as suspected or threatened abuse or neglect information that the member of ~~the~~ ^(a)

2 ~~clergy~~ ^{religious order} obtains through abortion counseling under s. 48.375 (7) (bm) or through ^(c)

3 confidential communications made in private ~~with~~ ^{with another} member of ~~the clergy~~ ^{the religious order} 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

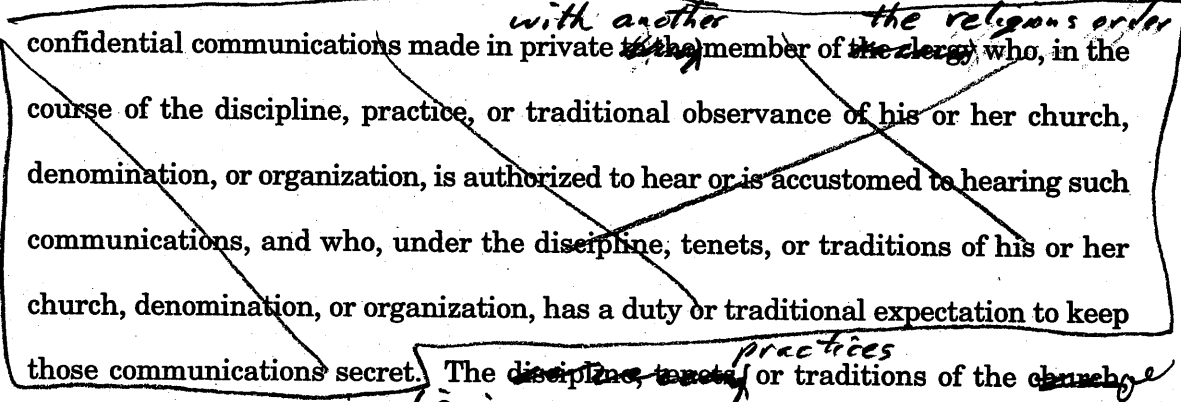
6 communications, and who, under the discipline, tenets, or traditions of his or her

7 church, denomination, or organization, has a duty or traditional expectation to keep

8 those communications secret. The ~~discipline, tenets,~~ ^{practices} or traditions of the ~~church~~ ^{religion}

9 ~~denomination, or organization~~ need not be in writing.

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4-3



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. 893.587 of the statutes is amended to read:

16 893.587 Sexual assault of a child; limitation. An action to recover damages
17 for injury caused by an act that would constitute a violation of s. 948.02, 948.025,
18 948.06, or 948.095 or that would create a cause of action under s. 895.71 shall be
19 commenced within 5 years after the plaintiff discovers the fact and the probable
20 cause, or with the exercise of reasonable diligence should have discovered the fact
21 and the probable cause, of the injury, whichever occurs first. ~~This section does not~~
22 ~~shorten the period to commence an action provided under s. 893.16 (1); or before the~~
23 injured party reaches the age of 26 years; whichever is later; or be barred.

24 SECTION 9. 895.71 of the statutes is created to read:

BILL

a religious order

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

2 In this section:

a religious order

48.981(1)(c)

3 (a) "Member of the clergy" has the meaning given in s. ~~760.002(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~~
11 *an* ~~as the result of~~ *physical, mental, or emotional* injury caused by sexual contact with a member of ~~the~~
12 *a religious order* that occurs while the person is under the age of 18 may bring an action against
13 the member of ~~the clergy~~ *a religious order or* 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~~ *religious order* belongs for all
16 damages caused by that sexual contact if ~~another employee or member of the clergy~~ *insert 5-16:*
17 ~~of that religious organization~~ *order or* knew or should have known that the member of ~~the~~ *a*
18 ~~clergy~~ *religious order* previously had sexual contact with a person under the age of 18 and failed to *report that sexual contact under s.*
19 take immediate *and appropriate* corrective action to prevent similar incidents from occurring *48.981*
(c) and to

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

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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 any of the
5 following:

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

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

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

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

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

16 (5) CALCULATION OF STATUTE OF LIMITATIONS. An action under this section is
17 subject to s. 893.587.

18 (6) SILENCE AGREEMENTS. Any contract or agreement concerning the settlement
19 of any claim under this section that limits or eliminates the right of the injured

20 person to disclose the sexual contact described under sub. (2) to ~~an employee or~~
21 another member ^{of the order or} of the religious organization to which the member of

22 ^{a religious order} ~~the clergy~~ under sub. (2) belongs, to a therapist, as defined in s. 895.70 (1) (e), to a
23 person listed under s. 48.981 (2) (a), or to a district attorney, is void.

24 SECTION 10. 905.06 (4) of the statutes is created to read:

BILL

1 905.06 (4) EXCEPTIONS. There is no privilege under this section concerning
 2 information that a member of ^{a religious order} ~~the clergy~~, as defined in s. ~~705.902(1)~~ ^{48.981(c)(1)(ck) ✓}, is required to
 3 report as suspected or threatened child abuse or neglect under s. 48.981 (2) (a) or (b).

4 **SECTION 11.** 939.74 (2) (c) of the statutes is amended to read:

5 939.74 (2) (c) A prosecution for violation of s. 948.02, 948.025, 948.03 (2) (a),
 6 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.08, or 948.095 shall be commenced
 7 before the victim reaches the age of ~~31~~ 35 years or be barred, except as provided in
 8 sub. (2d) (c).

✓
 insert
 7-8 →

9 **SECTION 12. Initial applicability.**

10 (1) The treatment of sections 48.981 (1) (cx), (2) (a) (intro.) and 12m. and (b),
 11 (2g), and (2m) (title) and 905.06 (4) of the statutes first applies to observations made
 12 or information received by a member of ^{a religious order} ~~the clergy~~ on the effective date of this
 13 subsection.

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

16 (END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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insert anl:

~~No P~~ in a confessional setting to another member of a religious order who is authorized by his or her religion to hear such confessions and who has a duty or traditional expectation as part of that religious order to keep communications made in a confessional setting confidential.

insert 3-1:

48.981 (1) (cx) "Member of a religious order" means ^{an} an individual who has taken ^{religious principals or} vows devoting himself or herself to an ultimate deity and who is authorized ^{or appointed} by his or her religious order or organization to provide spiritual advice or service, whether or not the person is named ^{lama,} minister, monk, nun, priest, rabbi, swami, or any other official ^{religious} designation.

insert 4-3:

~~No P~~ confidential communications made in a confessional setting to another member of a religious order who is authorized by the practices or traditions of his or her religion to hear such confessions and who has a duty or traditional expectation as part of that religious order to keep those communications confidential.

insert 5-16:

~~No P~~ another member of that religious order or organization whose duties include supervising or directing members of the religious order or organization

1 **SECTION 1. Nonstatutory provisions.**

2 (1) Notwithstanding section 893.587[✓] of the statutes, as affected by this act, a
3 person who was injured as the result of sexual contact by a member of a religious
4 order, as defined in section 48.981 (1) (cx)[✓] of the statutes, at any time in[✓] the past[✓] may
5 bring an action for all damages caused by that sexual contact within one year after
6 the effective date of this subsection.

4. Don't need to define "order" because it's subset of religious org.

2003 - 2004 LEGISLATURE

GMM's

LRB-0042/4

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5. Utah law is wacked exempting only confession of perpetrator. All confession is confidential, e.g. kid, mother

2003 BILL

Comments

1. 48.981 - limited to sexual abuse. Must create new P just for clergy. See Ann's draft.

2. I don't like definition of "member of religious order" but I don't have a better one. Problem - too broad, e.g. Knights of Columbus fit definition, - devoted to religious purpose

3. I don't like mashing together Clergy and Order - 2 different

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, religious orders, 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 an injury caused by sexual contact with a member of a religious order that occurs while the person is under the age of 18 to bring an action against the member of the religious order for all damages caused by that sexual contact including punitive damages. The bill also permits the person to bring an action against the religious order or organization to which the member of the religious order belongs for all damages caused by the sexual contact, including punitive damages, if the supervisor of that religious organization knew or should have known that the member of the religious order previously had sexual contact with a person under the age of 18 and failed to report that behavior and take immediate corrective action.

the clergy or a member of

the clergy or the member of the

or order

(a)

and exercise ordinary care to prevent similar incidents from occurring

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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 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 adds members of a religious order 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 by a member of a religious order in a confessional setting to another member of a religious order who is authorized by his or her religion to hear such confessions and who has a duty or traditional expectation as part of that religious order to keep communications made in a confessional setting confidential.

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

Sexual abuse only

Substitute Ann's language

(un)

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:

2 48.981 (1) (cx) "Member of a religious order" means an individual who has

3 taken vows devoting himself or herself to religious principals or an ultimate deity

4 and who is authorized or appointed by his or her religious order or organization to

5 provide spiritual or religious advice or service, whether or not the person is named

Too hard to define "religious order" Currently 9 hits in
Don't mash together clergy & order *Unsound*

BILL

Silly

1 lama, minister, monk, nun, priest, rabbi, swami, or any other official religious
2 designation.

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

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

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

14 48.981 (2) (a) 12m. A member of a religious order.

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

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

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

No - limited to sexual abuse - must create separate
par. See Ann's draft

12/13/2002

Insert 4-12

(just twice)

WLC: 0075/2

or member of religious order

by a member of the clergy or member of a religious order

1 48.981 (2) (bm) A member of the clergy who has reasonable cause to suspect that a child
 2 has been abused, as defined in s. 48.02 (1) (b) to (f), or has been threatened with abuse, as
 3 defined under s. 48.02 (1) (b) to (f), and that abuse will likely occur, based on observations
 4 made or information received by the member of the clergy, shall report as provided in sub. (3).
 5 A member of the clergy is not required to report as provided in sub. (3) or to report
 6 information that the member of the clergy obtains through confidential communications made
 7 in private to the member of the clergy who, in the course of the discipline, practice, or
 8 traditional observance of his or her church, denomination, or organization, is authorized to
 9 hear or is accustomed to hearing such communications, and who, under the discipline, tenets,
 10 or traditions of his or her church, denomination, or organization, has a duty or traditional
 11 expectation to keep those communications secret. The discipline, tenets, or traditions of the
 12 church, denomination, or organization need not be in writing.

abuse by
counselor?

NOTE: This SECTION requires a member of the clergy who has reasonable cause to suspect that a child has been the victim of any of the following types of abuse based upon observations made or information received by the member of the clergy to report that abuse:

1. Sexual intercourse or sexual contact under s. 940.225, 948.02, or 948.025, stats.
2. Sexual exploitation under s. 948.05, stats.
3. Permitting, allowing, or encouraging a child to engage in prostitution, under s. 944.30, stats.
4. Causing a child to view or listen to sexual activity under s. 948.055, stats.
5. Exposing genitals to a child under s. 948.10, stats.

Under the bill draft, this provision does not apply to information that the member of the clergy obtains through communications for which there is an expectation of confidentiality based upon the traditions of the religion.

13

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

BILL

(c) THE CLERGY OR OF

1 ~~48.981 (2g) EXCEPTION TO REPORTING REQUIREMENT FOR MEMBERS OF A RELIGIOUS~~
 2 ~~ORDER. Notwithstanding sub. (2) (a) and (b), a member of the clergy or a member of a religious order is not~~
 3 ~~required to report as suspected or threatened abuse or neglect information that the~~
 4 ~~member of the clergy or member of a religious order obtains through abortion counseling under s. 48.375 (7)~~
 5 ~~(bm) or through confidential communications made in a confessional setting to~~
 6 ~~another member of a religious order who is authorized by the practices or traditions~~
 7 ~~of his or her religion to hear such confessions and who has a duty or traditional~~
 8 ~~expectation as part of that religious order to keep those communications~~
 9 ~~confidential. The practices or traditions of the religion 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.

11
Entered
4-12-12

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. 893.587 of the statutes is amended to read:
 16 **893.587 Sexual assault of a child; limitation.** An action to recover damages
 17 for injury caused by an act that would constitute a violation of s. 948.02, 948.025,
 18 948.06, or 948.095 or that would create a cause of action under s. 895.71 shall be
 19 commenced within 5 years after the plaintiff discovers the fact and the probable
 20 cause, or with the exercise of reasonable diligence should have discovered the fact
 21 and the probable cause, of the injury, whichever occurs first. ~~This section does not~~
 22 ~~shorten the period to commence an action provided under s. 893.16 (1); or before the~~
 23 injured party reaches the age of 26 years; whichever is later; or be barred.

24 SECTION 9. 895.71 of the statutes is created to read:

BILL

the clergy or a member of

1 **895.71 Sexual exploitation by a member of/a religious order. (1)**

2 DEFINITIONS. In this section:

3 (a) ~~“Member of a religious order” has the meaning given in s. 48.981 (1) (c).~~

4 (b) ~~“Religious order or organization”~~ means an association, conference,
5 congregation, convention, committee, or other entity that is organized and operated
6 for a religious purpose and that is exempt from federal income tax under 26 USC 501

7 (c) (3) or (d) and any ~~subunit~~ ^{includes order} of such an association, conference, congregation,
8 convention, committee, or entity that is organized and operated for a religious
9 purpose. *the clergy or a member of*

10 (c) “Sexual contact” has the meaning given in s. 940.225 (5) (b).

11 (2) CAUSE OF ACTION. (a) Any person who suffers an injury as the result of sexual
12 contact with a member of a religious order that occurs while the person is under the
13 age of 18 may bring an action against the member of ^{the} a religious order for all damages
14 caused by that sexual contact. *the clergy or member of a*

15 (b) Any person who may bring an action under par. (a) may bring an action
16 against the religious ~~order or~~ organization to which the member of a religious order
17 belongs for all damages caused by that sexual contact if another member of ^{of that religious} that
18 religious order ~~or organization~~ whose duties include supervising or directing
19 members of the religious ~~order or organization~~ ^{or order} knew or should have known that the
20 member of ^{the clergy or a member of the} a religious order previously had sexual contact with a person under the
21 age of 18 and failed to report that sexual contact under s. 48.981 (3) and to ~~take~~
22 ~~immediate and appropriate corrective action~~ ^{exercise ordinary care} to prevent similar incidents from
23 occurring.

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,

BILL

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. 893.587.

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 another member of
25 the religious order or organization to which the member of a religious order under

BILL

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

3 **SECTION 10.** 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 a religious order, as defined in s. 49.981 (1) (cx), is
6 required to report as suspected or threatened child abuse or neglect under s. 48.981
7 (2) (a) or (b).

8 **SECTION 11.** 939.74 (2) (c) of the statutes is amended to read:

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

13 **SECTION 12. Nonstatutory provisions.**

14 (1) Notwithstanding section 893.587 of the statutes, as affected by this act, a
15 person who was injured as the result of sexual contact by a member of a religious
16 order, ~~as defined in section 48.981 (1) (cx) of the statutes,~~ at any time in the past may
17 bring an action for all damages caused by that sexual contact within one year after
18 the effective date of this subsection.

the clergy or a member of

19 **SECTION 13. Initial applicability.**

20 (1) The treatment of sections 48.981 (1) (cx), (2) (a) (intro.) and 12m. and (b),
21 (2g), and (2m) (title) and 905.06 (4) of the statutes first applies to observations made
22 or information received by a member of a religious order on the effective date of this
23 subsection.

the clergy or a member of

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.

Amended by Chapter 21, 1999 General Session

This is wrong - Confession is confidential, no matter who confesses, priest, kid or mother not just priest.

Unnecessary if received from other source, confession exception does not apply in the first place

1005 NEGLIGENCE: DEFINED

A person is negligent when (he) (she) fails to exercise ordinary care. Ordinary care is the care which a reasonable person would use in similar circumstances. A person is not using ordinary care and is negligent, if the person, without intending to do harm, does something (or fails to do something) that a reasonable person would recognize as creating an unreasonable risk of injury or damage to a person or property.

(In addition to this general definition of negligence, there are other safety statutes enacted by the legislature, a violation of which is negligence as that term is used in the verdict and these instructions.)

COMMENT

This instruction and comment were approved in 1993 and revised in 1999. The Committee believes that the language of the instruction is easier to understand than its prior version. Furthermore, the Committee believes this instruction is true to the supreme court's concept of negligent behavior as expressed in the leading case, Osborne v. Montgomery, 203 Wis. 223, 234 N.W. 372 (1931).

Insert 4-12

2 ~~seen by the member of the clergy in the course of professional duties~~
 3 48.981 (2) (bm) A member of the clergy who has reasonable cause to suspect that a child
 4 has been abused, as defined in s. 48.02 (1) (b) to (f), or has been threatened with abuse, as
 5 defined under s. 48.02 (1) (b) to (f), and that abuse will likely occur based on observations
 6 made or information received by the member of the clergy, shall report as provided in sub. (3).
 7 A member of the clergy is not required to report as provided in sub. (2m) or to report
 8 information that the member of the clergy obtains through confidential communications made
 9 in private to the member of the clergy who, in the course of the discipline, practice, or
 10 traditional observance of his or her church, denomination, or organization, is authorized to
 11 hear or is accustomed to hearing such communications, and who, under the discipline, tenets,
 12 or traditions of his or her church, denomination, or organization, has a duty or traditional
 expectation to keep those communications secret. The discipline, tenets, or traditions of the
 church, denomination, or organization need not be in writing.

NOTE: This SECTION requires a member of the clergy who has reasonable cause to suspect that a child has been the victim of any of the following types of abuse based upon observations made or information received by the member of the clergy to report that abuse:

1. Sexual intercourse or sexual contact under s. 940.225, 948.02, or 948.025, stats.
2. Sexual exploitation under s. 948.05, stats.
3. Permitting, allowing, or encouraging a child to engage in prostitution, under s. 944.30, stats.
4. Causing a child to view or listen to sexual activity under s. 948.055, stats.
5. Exposing genitals to a child under s. 948.10, stats.

Under the bill draft, this provision does not apply to information that the member of the clergy obtains through communications for which there is an expectation of confidentiality based upon the traditions of the religion.

SECTION 3-893.585 (2) of the statutes is created to read:

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Nelson, Robert P.

To: Sappenfield, Anne
Cc: Malaise, Gordon
Subject: Part of the redraft.

PDF

03-0042/5ins

Here is a copy of the proposed language that I drafted based on our discussions this morning. As you can see, it is complicated. Is it necessary to amend ss. 48.981 (2) (c) or (e)?

The draft we send out will be a /5, not a /6, which I said in error this morning.

Robert P Nelson
Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
608-267-7511

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0042/5insrn
RPN:kmg:pg

AM (2)(c) xref (bm)

(e) don't change, but possibly not applicable to Church

insert 3-2:

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

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

insert 4-12:

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

48.981 (2) (bm) 1. Except as provided in sub. (2m) and subds. 3. or 4., a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause to suspect that a child seen by the member of the clergy in the course of his or her professional duties

don't
create
subv. A's

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

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

2. Except as provided in sub. (2m) and subds. 3. or 4., a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause, based on observations made or information he or she receives, to suspect that a member of a religious order has ~~done any of the following:~~

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

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

3. A member of the clergy is not required to report ~~child abuse information~~ under subd. 1. or 2. that he or she receives when providing counseling under s. 48.375 (7) (bm).

information

Information

4. A member of the clergy is not required to report ~~child abuse information~~ ^{Solely through} under subd. 1. or 2. that he or she receives through confidential communications made to him or her in a confessional setting if he or she is authorized to hear or is accustomed to hearing such confessions, and, under the disciplines, tenets, or traditions of his or her religion, has a duty or is expected to keep those communications secret. Those disciplines, tenets, or traditions need not be in writing.

5. A member of the clergy who receives ~~child abuse~~ information under subd. 1. or 2. from a source other than through counseling under s. 48.375 (7) (bm) or communications made in a confessional setting ^{shall} ~~is required to~~ report that information under sub. (3) even though he or she may have also received that information through counseling under s. 48.375 (7) (bm) or through communications made in a confessional setting.

Nelson, Robert P.

To: Sappenfield, Anne
Subject: RE: Part of the redraft.

OK. I am sending this "puppy" to the editors. Thanks Anne

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

From: Sappenfield, Anne
Sent: Tuesday, February 18, 2003 10:27 AM
To: Nelson, Robert P.
Subject: RE: Part of the redraft.

I just talked to Gordon, and I agree with you about (2) (c).

I'm a little concerned about removing the language about the tenets not being in writing just because it was in that provision that was agreed upon by the religious groups when the 1993 bill was worked on. Regarding adding "solely", I think that would work.

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

From: Nelson, Robert P.
Sent: Tuesday, February 18, 2003 10:20 AM
To: Sappenfield, Anne
Subject: RE: Part of the redraft.

Both Gordon and I think that (2) (c) should be amended to add (bm) to the "..person not otherwise specified in par. (a) or (b)". I will do that unless you call me and convince me that doing so is a bad idea.

Lonnie L. has made a couple of suggestions that I want you to consider:

1. She does not think the last sentence in the new subd. 4. (about the tenets, etc not being written) is unnecessary.
2. She thinks we could get rid of the new subd. 5. if we add the word "solely" in subd. 4. after "he or she receives".

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

From: Sappenfield, Anne
Sent: Tuesday, February 18, 2003 9:38 AM
To: Nelson, Robert P.
Subject: RE: Part of the redraft.

Hi Bob--

The draft is a little complicated, but I think it's very clear. It seems to work well.

I don't see a need to amend 48.981 (2) (c) or (e). I think they are consistent with the new language. What are your thoughts?

Anne

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

From: Nelson, Robert P.
Sent: Monday, February 17, 2003 1:23 PM
To: Sappenfield, Anne
Cc: Malaise, Gordon
Subject: Part of the redraft.

<< File: 03-0042/5ins >>

Here is a copy of the proposed language that I drafted based on our discussions this morning. As you can see, it is complicated. Is it necessary to amend ss. 48.981 (2) (c) or (e)?

The draft we send out will be a /5, not a /6, which I said in error this morning.

Robert P Nelson
Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
608-267-7511



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0042/4

RPN/MJL/GMM:kmg:pg

SOON
(2/18)

2003 BILL

1 AN ACT ^{repeal} to amend 48.981 (2) (a) (intro.), 48.981 (2) (b), 48.981 (2m) (title), 893.587
 2 and 893.74 (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~~, religious orders, 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 an injury caused by sexual contact with a member of a religious order that occurs while the person is under the age of 18 to bring an action against the member of the religious order for all damages caused by that sexual contact, including punitive damages. The bill also permits the person to bring an action against the religious ~~order or~~ organization to which the member of the religious order belongs for all damages caused by the sexual contact, including punitive damages, if the supervisor of that religious organization knew or should have known that the member of the religious order previously had sexual contact with a person under the age of 18 and failed to report that behavior and take immediate corrective action.

exercise ordinary care to prevent similar incidents from occurring

BILL

a member of a religious order

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 ~~child or student~~ 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~~ 30 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 ~~26~~ 40 or be barred.

*

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solicitation of

requires

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 adds members of ~~a religious order 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 ~~by~~ a member of a religious order in a confessional setting to another member of a religious order who is authorized by his or her religion to hear such confessions and who has a duty or traditional expectation as part of that religious order to keep communications made in a confessional setting confidential.

the clergy

(2)

the clergy

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

to report sexual abuse or threatened sexual abuse of a child

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

- ①
- ②
- ③
- ④
- ⑤

SECTION 1. 48.981 (1) ^(AV) ~~(a)~~ of the statutes is created to read:

48.981 (1) ^(AV) ~~(a)~~ "Member of a religious order" means an individual who has taken vows devoting himself or herself to religious ^{or spiritual} principals ~~or an ultimate deity~~ and who is authorized or appointed by his or her religious order or organization to provide spiritual or religious advice or service, whether or not the person ~~is~~

2019 5 Dec. 2002 (1)

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has any

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~~lama, minister, monk, nun, priest, rabbi, swami, or any other~~ official religious designation.

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

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

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

48.981 (2) (a) 12m. A member of a religious order.

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

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

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

BILL

1 ~~48.981 (2g) EXCEPTION TO REPORTING REQUIREMENT FOR MEMBERS OF A RELIGIOUS~~
 2 ~~ORDER. Notwithstanding sub. (2) (a) and (b), a member of a religious order is not~~
 3 ~~required to report as suspected or threatened abuse or neglect information that the~~
 4 ~~member of a religious order obtains through/abortion counseling under s. 48.375 (7)~~
 5 ~~(bm) or through confidential communications made in a confessional setting to~~
 6 ~~another member of a religious order who is authorized by the practices or traditions~~
 7 ~~of his or her religion to hear such confessions and who has a duty or traditional~~
 8 ~~expectation as part of that religious order to keep those communications~~
 9 ~~confidential. The practices or traditions of the religion 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. 893.587 of the statutes is amended to read:

16 **893.587 Sexual assault of a child; limitation.** An action to recover damages
 17 for injury caused by an act that would constitute a violation of s. 948.02, 948.025,
 18 948.06, or 948.095 or that would create a cause of action under s. 895.71 shall be
 19 commenced within 5 years after the plaintiff discovers the fact and the probable
 20 cause, or with the exercise of reasonable diligence should have discovered the fact
 21 and the probable cause, of the injury, whichever occurs first. ~~This section does not~~
 22 ~~shorten the period to commence an action provided under s. 893.16 (1); or before the~~
 23 injured party reaches the age of ³⁰ years; whichever is later; or be barred.

24 SECTION 9. 895.71 of the statutes is created to read:

14-17
4-12
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BILL

1 **895.71 Sexual exploitation by a member of a religious order. (1)**

2 DEFINITIONS. In this section:

3 (a) "Member of a religious order" has the meaning given in s. 48.981 (1) (C).

4 (b) "Religious ~~order~~ organization" means an association, conference,
5 congregation, convention, committee, or other entity that is organized and operated
6 for a religious purpose and that is exempt from federal income tax under 26 USC 501

7 (c) (3) or (d) and any subunit of such an association, conference, congregation,
8 convention, committee, or entity that is organized and operated for a religious
9 purpose.

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

11 (2) CAUSE OF ACTION. (a) Any person who suffers an injury as the result of sexual
12 contact with a member of a religious order that occurs while the person is under the
13 age of 18 may bring an action against the member of a religious order for all damages
14 caused by that sexual contact.

15 (b) Any person who may bring an action under par. (a) may bring an action
16 against the religious ~~order~~ organization to which the member ^{the} of a religious order
17 belongs for all damages caused ^{if at the time that sexual contact occurred} by that sexual contact if another member of that

18 religious ~~order~~ organization whose duties include supervising or directing
19 members of the religious ~~order~~ organization ^{did all of the following: P. 1. knew} or should have known that the

20 member of a religious order ~~previously~~ had sexual contact with a person under the
21 age of 18 ^{P. 2. Failed} and failed to report that sexual contact under s. 48.981 (3) ^{and to take}
22 ~~immediate and appropriate corrective action~~ ^{P. 3. Failed to exercise ordinary care} to prevent similar incidents from

23 occurring.
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,

BILL

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. 893.587.

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 another member of
25 the religious ~~body~~ organization to which the member of a religious order under

BILL

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

3 **SECTION 10.** 905.06 (4) of the statutes is created to read:

4 905.06 (4) EXCEPTIONS. There is no privilege under this section concerning
5 observations or information that a member of a religious order, as defined in s. 49.981 (1) (cx), is
6 required to report as suspected or threatened child abuse ~~or neglect~~ under s. 48.981
7 (2) ~~or neglect~~ (bm)

8 **SECTION 11.** 939.74 (2) (c) of the statutes is amended to read:

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

13 **SECTION 12. Nonstatutory provisions.**

14 (1) Notwithstanding section 893.587 of the statutes, as affected by this act, a
15 person who was injured as the result of sexual contact by a member of a religious
16 order as defined in section 48.981 (1) ~~of the statutes~~, at any time in the past may
17 bring an action for all damages caused by that sexual contact within one year after
18 the effective date of this subsection. (CV)

19 **SECTION 13. Initial applicability.** (CV) and and

20 (1) The treatment of sections 48.981 (1) (cx) (2) ~~(a) (intro.) and 12m. and (b)~~
21 ~~(2) and (2b) (1) and~~ and 905.06 (4) of the statutes first applies to observations made
22 or information received by a member of a religious order on the effective date of this
23 subsection. (bm)

2003-2004 DRAFTING INSERT
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insert 3-2:

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

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

insert 4-12:

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

48.981 (2) (bm) 1. Except as provided in ~~sub. (2) and~~ subds. 3. ~~or~~ 4, a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause to suspect that a child seen by the member of the clergy in the course of his or her professional duties:

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

b. Has been threatened with abuse, as defined in s. 48.02 (1) (b) to (f), and abuse of the child will likely occur. *subds. 3. and 4. and*

2. Except as provided in sub. (2m) ~~and subds. 3. or 4.~~ a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause, based on observations made or information *that* he or she receives, to suspect that a member of a religious order has done any of the following:

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

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

3. A member of the clergy is not required to report child abuse information under subd. 1. or 2. that he or she receives when providing counseling under s. 48.375 (7) (bm).

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

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

9 48.981 (2) (c) Any person not otherwise specified in par. (a) or, (b), or (bm),
10 including an attorney, who has reason to suspect that a child has been abused or
11 neglected or who has reason to believe that a child has been threatened with abuse
12 or neglect and that abuse or neglect of the child will occur may report as provided
13 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, 165, 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.



State of Wisconsin
2003 - 2004 LEGISLATURE

5002 (2/28)

LRB-0042/5

RPN/MJL/GMM:kmg:pg

2003 BILL

1 AN ACT *Men Cont.* 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 religious orders and
5 religious organizations.

Analysis by the Legislative Reference Bureau

X
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 a religious order that occurs while the person is under the age of 18 to bring an action against the member of the religious order 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 religious order belongs for all damages caused by the sexual contact, ~~including punitive damages~~, if the supervisor of that religious organization knew or should have known that the member of the religious order 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.

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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 a religious order and provides that the injured party may commence the action within the current limit or until the injured party reaches the age of 30 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, 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 40 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 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 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 to a member of the clergy 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} ~~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, whether or not the person has any official
6 religious designation.

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

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

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

3 48.981 (2) (bm) 1. Except as provided in subds. 3. and 4. and sub. (2m), a
4 member of the clergy shall report as provided in sub. (3) if the member of the clergy
5 has reasonable cause to suspect that a child seen by the member of the clergy in the
6 course of his or her professional duties:

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

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

10 2. Except as provided in subds. 3. and 4. and sub. (2m), a member of the clergy
11 shall report as provided in sub. (3) if the member of the clergy has reasonable cause,
12 based on observations made or information that he or she receives, to suspect that
13 a member of a religious order has done any of the following:

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

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

17 3. A member of the clergy is not required to report child abuse information
18 under subd. 1. or 2. that he or she receives when providing counseling under s. 48.375
19 (7) (bm).

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

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1 communications secret. Those disciplines, tenets, or traditions need not be in
2 writing.

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

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

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

10 893.585 (3) This section does not apply to damages incurred under s. 895.71.

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

12 **893.587 Sexual assault of a child; limitation.** An action to recover damages
13 for injury caused by an act that would constitute a violation of s. 948.02, 948.025,
14 948.06, or 948.095 or that would create a cause of action under s. 895.71 shall be
15 commenced within 5 years after the plaintiff discovers the fact and the probable
16 cause, or with the exercise of reasonable diligence should have discovered the fact
17 and the probable cause, of the injury, whichever occurs first. ~~This section does not~~
18 ~~shorten the period to commence an action provided under s. 893.16 (1); or before the~~
19 injured party reaches the age of 30 years; whichever is later; or be barred.

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

21 **895.71 Sexual exploitation by a member of a religious order. (1)**

22 **DEFINITIONS.** In this section:

23 (a) "Member of a religious order" has the meaning given in s. 48.981 (1) (cv).

24 (b) "Religious organization" means an association, conference, congregation,
25 convention, committee, or other entity that is organized and operated for a religious

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1 purpose and that is exempt from federal income tax under 26 USC 501 (c) (3) or (d)
2 and any subunit of such an association, conference, congregation, convention,
3 committee, or entity that is organized and operated for a religious purpose.

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

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

9 (b) Any person who may bring an action under par. (a) may bring an action
10 against the religious organization to which the member of a religious order belongs
11 for all damages caused by that sexual contact if, [✓] at the time that the sexual contact
12 occurred, another member of that religious organization whose duties include ^{included}
13 supervising ~~or directing members~~ ^{that member} of the religious organization did all of the ^{Eds? is this correct yes}
14 following:

- 15 1. Knew or should have known that the member of a religious order had sexual
- 16 contact with a person under the age of 18.
- 17 2. Failed to report that sexual contact under s. 48.981 (3).
- 18 3. Failed to exercise ordinary care to prevent similar incidents from occurring.

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

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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 any of the
5 following:

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

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

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

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

14 (4) PUNITIVE DAMAGES. A court or jury may award punitive damages to a person
15 bringing an action under this section. *hit needed - can recover pun. dam. if meet criteria*

16 (5) CALCULATION OF STATUTE OF LIMITATIONS. An action under this section is
17 subject to s. 893.587.

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

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

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

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

6 939.74 (2) (c) A prosecution for violation of s. 948.02, 948.025, 948.03 (2) (a),
7 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.08, or 948.095 shall be commenced
8 before the victim reaches the age of ~~31~~ 40 years or be barred, except as provided in
9 sub. (2d) (c).

10 **SECTION 10. Nonstatutory provisions.**

11 (1) Notwithstanding ^{section 893.05 of the statutes, and} section 893.587 of the statutes, as affected by this act, a
12 person who was injured as the result of sexual contact by a member of a religious
13 order at any time in the past may bring an action under section 895.71 (2) [✓] of the
14 ^{as created by this act,} statutes for all damages caused by that sexual contact within one year after the
15 effective date of this subsection. ^{The person injured need not show that}
^{the person's failure to report the sexual}
^{contact to recover under section 895.71(2)(b)2}

16 **SECTION 11. Initial applicability.** ^{in order} of the statutes ^{as created by this act.}

17 (1) The treatment of sections 48.981 (1) (cv) and (cx) and (2) (bm) and 905.06
18 (4) of the statutes first applies to observations made or information received by a
19 member of the clergy on the effective date of this subsection.

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

22

(END)