



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-004218

RPN/MJL/GMM:kmg:cph

Wanted 3/12 noon

2003 BILL

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

*Analysis by the Legislative Reference Bureau*

Under current law, any person who suffers, directly or indirectly, a physical, mental, or emotional injury caused by, resulting from, or arising out of sexual contact with a therapist who is rendering or has rendered to that person psychotherapy, counseling, or other assessment or treatment of a mental or emotional illness, symptom, or condition has a civil cause of action against the therapist for all damages resulting from, arising out of, or caused by that sexual contact, including punitive damages. This bill permits any person who suffers an injury caused by sexual contact with a member of ~~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. 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 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.

clergy

**BILL**

*the clergy*

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. *his or her role as a spiritual adviser*

*ONA*

*[Handwritten signature]*

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

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

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

means

BILL

*or means a member of a religious order, and includes brothers, ministers, monks, nuns, priests, and rabbis*

SECTION 2

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 subd. 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 subd. 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 ~~the clergy~~ *the clergy* 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.

~~2. 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).~~

20 ~~3.~~ *3* 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 *privately* 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

*and his role as a spiritual advisor if that communication is not intended for further disclosure.*

**BILL**

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: *the clergy*

21 895.71 Sexual exploitation by a member of *the clergy* ~~a religious order~~ (1)

22 DEFINITIONS. In this section:

23 (a) "Member of ~~a religious order~~ *the clergy*" has the meaning given in s. 48.981 (1) ~~(a)~~. *CX*

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

*CX*

**BILL**

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 <sup>the</sup> result of sexual  
6 contact with a member of ~~a religious order~~ <sup>the clergy</sup> that occurs while the person is under the  
7 age of 18 may bring an action against the member of ~~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 ~~religious order~~ belongs  
11 for all damages caused by that sexual contact if, at the time <sup>the</sup> ~~that~~ sexual contact  
12 occurred, another member of that religious organization whose duties included  
13 supervising that member of the ~~religious organization~~ <sup>clergy</sup> ~~did all of the following:~~

14 <sup>no P.</sup> ~~He~~ knew or should have known that the member of ~~a religious order~~ <sup>the clergy previously</sup> had sexual  
15 contact with a person under the age of 18 <sup>and failed to do all of</sup>

- 16 <sup>1.</sup> ~~He~~ failed to report that sexual contact under s. 48.981 (3).  
17 <sup>2.</sup> ~~He~~ failed to exercise ordinary care to prevent similar incidents from occurring.

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

**BILL**

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

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

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

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

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

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

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

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

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

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

**BILL**

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

**SECTION 10. Nonstatutory provisions.**

6           (1) Notwithstanding section 893.05 of the statutes, and section 893.587 of the  
7           statutes, as affected by this act, a person who was injured as the result of sexual  
8           contact by a member of <sup>g</sup> ~~a religious order~~ <sup>✓ the clergy</sup> at any time in the past may bring an action  
9           under section 895.71 (2) of the statutes, as created by this act, for all damages caused  
10          by that sexual contact within one year after the effective date of this subsection. The  
11          person injured need not show a failure to report the sexual contact in order to recover

12          ~~under section 895.71 (2) (b) of the statutes, as created by this act~~ <sup>under this</sup>  
13          <sup>subsection</sup>

**SECTION 11. Initial applicability.**

14          (1) The treatment of sections 48.981 (1) (cv) and (cx) and (2) (bm) and 905.06  
15          (4) of the statutes first applies to observations made or information received by a  
16          member of the clergy <sup>✓</sup> on the effective date of this 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.

(END)



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0042  
RPN/MJL/GMM:kmg:jf

TODAY - 1 pm ish  
3/12

**2003 BILL**

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

***Analysis by the Legislative Reference Bureau***

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



**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 a member of the clergy 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 an exception for information obtained through a confidential communication made to a member of the clergy ~~in his or her role as a spiritual adviser~~ <sup>privately or in a confidential setting</sup>.

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

---

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

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

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

**BILL**

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

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

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

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

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

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

19           3. A member of the clergy is not required to report child abuse information  
20 under subd. 1. or 2. that he or she receives solely through communications privately  
21 made to him or her while acting in his or her professional role as a spiritual adviser  
22 if that communication is not intended for further disclosure.

insert  
3-72

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

24           48.981 (2) (c) Any person not otherwise specified in par. (a) or, (b), or (bm),  
25 including an attorney, who has reason to suspect that a child has been abused or

**BILL**

1 neglected or who has reason to believe that a child has been threatened with abuse  
2 or neglect and that abuse or neglect of the child will occur may report as provided in  
3 sub. (3).

4 **SECTION 5.** 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 6.** 893.587 of the statutes is amended to read:

7 **893.587 Sexual assault of a child; limitation.** An action to recover damages  
8 for injury caused by an act that would constitute a violation of s. 948.02, 948.025,  
9 948.06, or 948.095 or would create a cause of action under s. 895.71 shall be  
10 commenced within 5 years after the plaintiff discovers the fact and the probable  
11 cause, or with the exercise of reasonable diligence should have discovered the fact  
12 and the probable cause, of the injury, whichever occurs first. ~~This section does not~~  
13 ~~shorten the period to commence an action provided under s. 893.16 (1); or before the~~  
14 injured party reaches the age of 30 years; whichever is later; or be barred.

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

16 **895.71 Sexual exploitation by a member of the clergy. (1) DEFINITIONS.**

17 In this section:

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

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

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

**BILL**

1           (2) CAUSE OF ACTION. (a) Any person who suffers an injury as a result of sexual  
2 contact with a member of the clergy that occurs while the person is under the age of  
3 18 may bring an action against the member of the clergy for all damages caused by  
4 that sexual contact.

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

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

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

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

**BILL**

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

4           2. A plaintiff in an action under this section from unreasonably long, repetitive,  
5 or 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  
10 subject to s. 893.587.

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

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

18           905.06 (4) EXCEPTIONS. There is no privilege under this section concerning  
19 observations or information that a member of the clergy, as defined in s. 49.981 (1)  
20 (cx), is required to report as suspected or threatened child abuse under s. 48.981 (2)  
21 (bm).

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

23           939.74 (2) (c) A prosecution for violation of s. 948.02, 948.025, 948.03 (2) (a),  
24 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.08, or 948.095 shall be commenced

**BILL**

1 before the victim reaches the age of ~~31~~ 40 years or be barred, except as provided in  
2 sub. (2d) (c).

**SECTION 10. Nonstatutory provisions.**

3  
4 (1) Notwithstanding section 893.05 of the statutes, and section 893.587 of the  
5 statutes, as affected by this act, a person who was injured as the result of sexual  
6 contact by a member of the clergy at any time in the past may bring an action under  
7 section 895.71 (2) of the statutes, as created by this act, for all damages caused by  
8 that sexual contact within one year after the effective date of this subsection. The  
9 person injured need not show a failure to report the sexual contact under section  
10 895.71 (2) (b) 1. of the statutes, as created by this act, in order to recover under this  
11 subsection.

**SECTION 11. Initial applicability.**

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

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

18 (END)

**BILL**

*Insert*  
*3-22* ✓

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 *privately or* in a confessional setting if he or she is authorized  
23 to hear or is accustomed to hearing such *communications* ~~confessions~~ and, under the disciplines,  
24 tenets, or traditions of his or her religion, has a duty or is expected to keep those

-4-  
insert  
3-22 cont.

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





State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0042/8  
RPN/MJL/GMM:kmgjf

2003 BILL

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

*Sen. Col.*  
**Analysis by the Legislative Reference Bureau**

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

*is employed*

*that employed or failed to*

**BILL**

5 35

Under current law, a civil action to recover damages for an injury caused by sexual assault of a child, repeated sexual assault of a child, incest with a child, or sexual assault of a student by an instructional staff person must be commenced within five years after the plaintiff discovers or should have discovered the injury. This bill expands the limit to cover the cause of action for sexual exploitation by a member of the clergy and provides that the injured party may commence the action within the current limit or until the injured party reaches the age of ~~20~~ 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 ~~31~~ or be barred. 45

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

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

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

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

**BILL**

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

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

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

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

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

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

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

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

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

**BILL**

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

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

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

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

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

10           **893.587 Sexual assault of a child; limitation.** An action to recover damages  
11 for injury caused by an act that would constitute a violation of s. 948.02, 948.025,  
12 948.06, or 948.095 or would create a cause of action under s. 895.71 shall be  
13 commenced within 5 years after the plaintiff discovers the fact and the probable  
14 cause, or with the exercise of reasonable diligence should have discovered the fact  
15 and the probable cause, of the injury, whichever occurs first. ~~This section does not~~  
16 ~~shorten the period to commence an action provided under s. 893.16 (1); or before the~~  
17 injured party reaches the age of <sup>35</sup>~~30~~ years; whichever is later; or be barred.

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

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

20           In this section:

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

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

**BILL**

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

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

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

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

15 1. Report that sexual contact under s. 48.981 (3).

16 2. Exercise ordinary care to prevent similar incidents from occurring.

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

**BILL**

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

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

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

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

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

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

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

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

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

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

**BILL**

1 939.74 (2) (c) A prosecution for violation of s. 948.02, 948.025, 948.03 (2) (a),  
2 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.08, or 948.095 shall be commenced  
3 before the victim reaches the age of 31 <sup>45</sup> years or be barred, except as provided in  
4 sub. (2d) (c).

**SECTION 10. Nonstatutory provisions.**

5  
6 (1) Notwithstanding section 893.05 of the statutes, and section 893.587 of the  
7 statutes, as affected by this act, a person who was injured as the result of sexual  
8 contact by a member of the clergy at any time in the past may bring an action under  
9 section 895.71 (2) of the statutes, as created by this act, for all damages caused by  
10 that sexual contact within one year after the effective date of this subsection. The  
11 person injured need not show a failure to report the sexual contact under section  
12 895.71 (2) (b) 1. of the statutes, as created by this act, in order to recover under this  
13 subsection.

**SECTION ~~10~~ <sup>11</sup> Initial applicability.**

14  
15 (1) The treatment of sections 48.981 (1) (cv) and (cx) and (2) (bm) and 905.06  
16 (4) of the statutes first applies to observations made or information received by a  
17 member of the clergy on the effective date of this subsection.

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

20 (END)



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-004208  
RPN/MJL/GMM:kmg:jf

10

2003 BILL

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

Sen. Cat.

---

***Analysis by the Legislative Reference Bureau***

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



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

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

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

---

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

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

**BILL**

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

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

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

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

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

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

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

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

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

## BILL

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

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

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

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

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

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

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

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

20           In this section:

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

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

**BILL**

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

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

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

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

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

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

**BILL**

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

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

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

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

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

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

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

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

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

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

**BILL**

1           939.74 (2) (c) A prosecution for violation of s. 948.02, 948.025, 948.03 (2) (a),  
2           948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.08, or 948.095 shall be commenced  
3           before the victim reaches the age of ~~31~~ 45 years or be barred, except as provided in  
4           sub. (2d) (c).

5           **SECTION 10. Initial applicability.**

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

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

11

(END)

Today 5/30 1pm

(I'm not run!)

2003 - 2004 LEGISLATURE

LRB-0042/10

RPN/MJL/GMM:kmgjg

21

& CS

# 2003 BILL

S.A.

Refer cut

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

### *Analysis by the Legislative Reference Bureau*

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

**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 a member of the clergy and provides that the injured party must commence the action before the injured party reaches the age of 35 years. Under current law, a criminal prosecution for sexual assault of a child, repeated sexual assault of a child, physical abuse of a child, sexual exploitation of a child, incest with a child, child enticement, solicitation of a child for prostitution, or sexual assault of a student by an instructional staff person must be commenced before the victim reaches the age of 31 years or be barred. This bill requires such a prosecution to be commenced before the victim reaches the age of 45.

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

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

---

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

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

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



**BILL**

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

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

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

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

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

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

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

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

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

**BILL**

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

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

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

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

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

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

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

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

20          In this section:

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

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

**BILL**

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

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

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

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

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

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

**BILL**

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

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

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

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

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

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

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

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

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

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





State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0042/11  
RPN/MJL/GMM:kmg&cs:rs

**2003 BILL**

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

---

***Analysis by the Legislative Reference Bureau***

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

**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 a member of the clergy and provides that the injured party must commence the action before the injured party reaches the age of 35 years. Under current law, a criminal prosecution for sexual assault of a child, repeated sexual assault of a child, physical abuse of a child, sexual exploitation of a child, incest with a child, child enticement, solicitation of a child for prostitution, or sexual assault of a student by an instructional staff person must be commenced before the victim reaches the age of 31 years or be barred. This bill requires such a prosecution to be commenced before the victim reaches the age of 45.

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

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

---

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

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

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

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

**BILL**

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

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

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

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

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

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

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

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

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



**BILL**

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

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

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

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

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

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

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

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

20           In this section:

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

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

**BILL**

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

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

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

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

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

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

**BILL**

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

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

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

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

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

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

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

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

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

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





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 an 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.