

2009 DRAFTING REQUEST

Bill

Received: **11/03/2008**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**

By/Representing: **Christian**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Krusick@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Abuse reporting by churches

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2 11/04/2008	nmatzke 11/13/2008		_____			
/1			rschluet 11/14/2008	_____	cduerst 11/14/2008		
/2	phurley 08/12/2009	wjackson 08/21/2009	rschluet 08/27/2009	_____	cduerst 08/27/2009		
/3	rnelson2	nmatzke	mduchek	_____	sbasford	cduerst	

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	11/18/2009	12/07/2009	12/07/2009 _____		12/07/2009	02/11/2010	

FE Sent For: **NONE**

<END>

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/1			rschluet 11/14/2008	_____	cduerst 11/14/2008		
/2	phurley 08/12/2009	wjackson 08/21/2009 13 nun 12/7	rschluet 08/27/2009	_____	cduerst 08/27/2009		

NO
12/7
4/5/9
12/7

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/1		1/2 Wlj 8/21	rschluet 11/14/2008		cduerst 11/14/2008		

FE Sent For:

Handwritten signatures and initials:
A large signature, possibly "Wlj", is written over the "Typed" column for the second entry.
The initials "BTK" are written in the "Submitted" column for the second entry.
The text "<END>" is written at the bottom of the page.

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/?	rnelson2	1 nwn 11/5					
		1 WLj 11/13					

FE Sent For:

<END>

Nelson, Robert P.

From: Moran, Christian
Sent: Friday, October 31, 2008 3:12 PM
To: Nelson, Robert P.
Subject: bill drafting request (2007 AB 949)

Hi Bob,

Could you please redraft 2007 AB 949 (abuse reporting by churches) for next session?

Thanks,

Christian

Christian Moran
Office of Representative Peggy Krusick
State Capitol, 128 North
Madison, WI 53708
608-266-1733

OFFICIAL WISCONSIN REPORTS

Pritzlaff v. Archdiocese of Milwaukee, 194 Wis. 2d 302

Judith M. PRITZLAFF, Plaintiff-Appellant,†

v.

ARCHDIOCESE OF MILWAUKEE, Defendant-Respondent-
Petitioner,

Reverend John T. DONOVAN, Defendant-Respondent,
ARIZONA HEALTH CARE COSTS CONTAINMENT SYSTEM and
Health Care Financing Administration, Defendants.

Supreme Court

No. 93-1846. Oral argument April 26, 1995.—Decided June
27, 1995.

(Reversing 188 Wis. 2d 79 (table), 524 N.W.2d 647 (Ct. App.
1994).)

(Also reported in 533 N.W.2d 780.)

RESEARCH REFERENCES

Am Jur 2d, Constitutional Law § 464 et seq.; Limitation of
Actions § 146 et seq.
See ALR Index under Freedom of Religion; Limitation of
Actions.

1. **Pleadings § 39*—construction—liberal construc-
tion—determining if claim is stated.**

When reviewing pleadings to determine if they state claim
upon which relief can be granted, supreme court liberally
construes pleadings and accepts allegations in pleadings as
true.

†Motion for Reconsideration denied September 19, 1995.

*See Callaghan's Wisconsin Digest, same topic and section number.

OFFICIAL WISCONSIN REPORTS

Supreme Court

10. Limitation of Actions § 49*—accrual of cause of action—discovery rule—extent of delay.

Statement in Wisconsin Supreme Court opinion that claimant has leeway to not start action until claimant knows more about injury and its probable cause does not mean that plaintiff can delay action until extent of injury is known, but only, consistent with discovery rule, that statute of limitations does not begin to run until plaintiff has sufficient evidence that wrong has indeed been committed by identified person.

11. Limitation of Actions § 49*—accrual of cause of action—discovery rule—meritorious claims.

Discovery rule will apply only when allowing meritorious claims outweighs threat of stale or fraudulent actions.

12. Limitation of Actions § 79*—accrual of cause of action—discovery rule—sexual exploitation by therapist.

While statutes relating to sexual exploitation by therapist which provide that, if person entitled to bring action is unable to bring action due to effects of sexual contact or due to any threats from therapist, period of inability is not part of time limited for commencement of action may be somewhat in conflict with discovery rule, there is rational basis for subjecting therapists to special statutory provisions in attempt to reduce or eliminate exploitation of patients thus limited scope of statute supports supreme court's explanation of discovery rule and fact that legislature enacted statute well after discovery rule had been announced by Wisconsin Supreme Court demonstrates that legislature concluded that discovery rule would not apply to sexual exploitation by therapists absent legislative action (Stats §§ 893.585, 895.70).

13. Constitutional Law § 116*—religious freedom—tort action—concerns of excessive entanglement.

Where plaintiff brought action against Roman Catholic priest and archdiocese for injuries arising out of alleged

*See Callaghan's Wisconsin Digest, same topic and section number.

OFFICIAL WISCONSIN REPORTS

Pritzlaff v. Archdiocese of Milwaukee, 194 Wis. 2d 302

relationship plaintiff had with priest, claims against archdiocese based on tort of negligent hiring and retention could not be maintained as, even if such cause of action exists in Wisconsin, plaintiff would have had to establish that archdiocese was negligent in hiring or retaining priest because priest was incompetent or otherwise unfit but First Amendment to United States Constitution prevented court from determining what makes one competent to serve as Catholic priest because such determination would require interpretation of church canons and internal church policies and practices thus tort of negligent hiring and retention could not be maintained against religious governing body due to concerns of excessive entanglement and tort of negligent training or supervision could not be successfully asserted because it would require inquiry into church laws, practices and policies.

HEFFERNAN, C.J., dissents.

ABRAHAMSON, J., dissents.

GESKE, J., took no part.

REVIEW of a decision of the court of appeals.
Reversed.

For the defendant-respondent-petitioner there were briefs by *Matthew J. Flynn, Kevin P. Crooks, Katherine H. Grebe* and *Quarles & Brady*, Milwaukee and oral argument by *Matthew J. Flynn*.

For the plaintiff-appellant there was a brief and oral argument by *Robert S. Sosnay*, Milwaukee.

Amicus curiae brief was filed by *M. Christine Cowles, Mary Beth Castino* and *Mohr & Anderson*, S.C., Hartford for the Wisconsin Insurance Alliance.

DAY, J. This is a review of a decision of the court of appeals reversing an order of the circuit court for Milwaukee County, Honorable John G. Bartholomew, presiding, that dismissed all claims against the Archdiocese of Milwaukee (Archdiocese) and the Reverend

9
2007 ~~ASSEMBLY~~ BILL 949

SA ✓
X-ref ✓

March 11, 2008 - Introduced by Representatives KRUSICK, A. WILLIAMS, WOOD and BERCEAU, cosponsored by Senator CARPENTER. Referred to Committee on Children and Family Law.

Regen.

1 AN ACT ~~to create~~ 895.440 of the statutes; **relating to:** reporting the results of
2 a religious organization's investigation of sexual contact with a child and
3 providing a penalty.

Children and Families
(DCF)

Analysis by the Legislative Reference Bureau

Under current law, members of professions who have contact with children, including those who work for nonprofit organizations, generally are required to report suspected child abuse or neglect to certain social services or law enforcement agencies. The social services or law enforcement agency is required to investigate the suspected child abuse or neglect within a specified time.

must 7

must

Under this bill, if after an investigation within a religious organization there is reasonable cause to believe that, before May 1, 2004, and after December 31, 1949, an official, agent, or employee of the organization had sexual contact with a person under the age of 18, the organization must submit a summary of that investigation to the Department of Health and Family Services (DHFS). The bill does not require the submission of the summary if the organization has reported the results of its investigation to a child protective services or law enforcement agency. The bill requires DHFS to make any summary of the religious organization's investigation available to the public, after deleting any information that could be used to identify any the victim of the sexual contact.

DEF

any

STEP

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

ASSEMBLY BILL 949

SECTION 1

1 SECTION 1. 895.440 of the statutes is created to read:

2 895.440 Reports of sexual exploitation. (1) POLICY. The legislature finds
3 that, prior to May 1, 2004, members of the clergy and religious organizations were

4 not required to report sexual abuse of children under s. 48.981. The legislature finds
5 that, based upon credible information, including the 2004 study of sexual abuse of

6 minors by Catholic priests and deacons between 1950 and 2002 prepared by the John
7 Jay College of Criminal Justice, minors were sexually abused by members of the

8 clergy and ^{sexually abused minors} ~~chap~~ in some cases this abuse was not reported to a law enforcement ^{agency} or
9 a child protective services agency. Because sexual abuse of a minor is a criminal

10 offense and is harmful to children, the legislature finds and determines that it is in
11 the public interest to disclose the names of any person within a religious organization

12 ~~who~~ the religious organization, after an investigation, had reasonable cause to
13 believe committed the offense of sexual contact with a child and whose offense was

14 not reported to a law enforcement ^{agency} or to a child protective services agency.

15 (2) DEFINITIONS. In this section:

16 (a) "Department" means the department of ^{children} ~~health~~ and ^{families} ~~family services~~

17 (b) "Religious organization" has the meaning given in s. 895.442 (1) (b).

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

19 (3) REPORT OF INVESTIGATION. If, as the result of an investigation within a
20 religious organization, there is reasonable cause to believe that, before May 1, 2004,

21 and after December 31, 1949, an official, agent, or employee of the religious
22 organization had sexual contact with a person who was under the age of 18, the

23 religious organization shall submit a summary of the investigation, including the
24 name of, and other identifying information regarding, ^{any} ~~the~~ person who had the sexual

25 contact ^{with a person under the age of 18} to the department within 30 days after the investigation is completed or

ASSEMBLY BILL 949

1 within 30 days after the effective date of this subsection ... [revisor inserts date],
2 whichever is later.

3 (4) RELEASE OF REPORT. The department shall make any summary it receives
4 under sub. (3) available to the public after deleting any information that could be
5 used to identify ~~the~~^{any} victim of the sexual contact.

6 (5) EXCEPTION. The requirement to submit a summary under sub. (3) does not
7 apply if the religious organization has reported the results of its investigation to one
8 of the agencies or departments listed under s. 48.981 (3) (a) 1.

9 (6) PENALTY. Any religious organization that violates sub. (3) shall be subject
10 to a forfeiture of not more than \$10,000 for each violation.

11 (END)

Hurley, Peggy

From: Moran, Christian
Sent: Tuesday, August 11, 2009 2:59 PM
To: Hurley, Peggy
Subject: redraft request
Attachments: 09-06331.pdf

Hi Peggy,

Sorry to ask, but is there any chance you could make a simple change to the attached bill draft Bob Nelson prepared for us? We'd like to eliminate the exception provided in s. 895.44(5) on pg. 3 lines 6-8.

Thanks,

Christian

stays

MY

2009 BILL

8.12.09

SOON

Regen

1 AN ACT to create 895.44 of the statutes; relating to: reporting the results of a
2 religious organization's investigation of sexual contact with a child and
3 providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, members of professions who have contact with children, including those who work for nonprofit organizations, generally must report suspected child abuse or neglect to certain social services or law enforcement agencies. The social services or law enforcement agency must investigate the suspected child abuse or neglect within a specified time.

Under this bill, if after an investigation within a religious organization there is reasonable cause to believe that, before May 1, 2004, and after December 31, 1949, an official, agent, or employee of the organization had sexual contact with a person under the age of 18, the organization must submit a summary of that investigation to the Department of Children and Families (DCF). The bill does not require the submission of the summary if the organization has reported the results of its investigation to a child protective services or law enforcement agency. The bill requires DCF to make any summary of the religious organization's investigation available to the public, after deleting any information that could be used to identify any victim of the sexual contact.

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

A religious organization that fails to do so is subject to a fine of \$10,000

BILL

1 **SECTION 1.** 895.44 of the statutes is created to read:

2 **895.44 Reports of sexual exploitation. (1) POLICY.** The legislature finds
3 that, prior to May 1, 2004, members of the clergy and religious organizations were
4 not required to report sexual abuse of children under s. 48.981. The legislature finds
5 that, based upon credible information, including the 2004 study of sexual abuse of
6 minors by Catholic priests and deacons between 1950 and 2002 prepared by the John
7 Jay College of Criminal Justice, members of the clergy sexually abused minors and,
8 in some cases, this abuse was not reported to a law enforcement agency or a child
9 protective services agency. Because sexual abuse of a minor is a criminal offense and
10 is harmful to children, the legislature finds and determines that it is in the public
11 interest to disclose the name of any person within a religious organization who the
12 religious organization, after an investigation, had reasonable cause to believe
13 committed the offense of sexual contact with a child and whose offense was not
14 reported to a law enforcement agency or to a child protective services agency.

15 **(2) DEFINITIONS.** In this section:

16 (a) “Department” means the department of children and families.

17 (b) “Religious organization” has the meaning given in s. 895.442 (1) (b).

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

19 **(3) REPORT OF INVESTIGATION.** If, as the result of an investigation within a
20 religious organization, there is reasonable cause to believe that, before May 1, 2004,
21 and after December 31, 1949, an official, agent, or employee of the religious
22 organization had sexual contact with a person who was under the age of 18, the
23 religious organization shall submit a summary of the investigation, including the
24 name of, and other identifying information regarding, any person who had the sexual
25 contact, to the department within 30 days after the investigation is completed or

BILL

1 within 30 days after the effective date of this subsection [LRB inserts date],
2 whichever is later.

3 (4) RELEASE OF REPORT. The department shall make any summary it receives
4 under sub. (3) available to the public after deleting any information that could be
5 used to identify any victim of the sexual contact.

6 (5) EXCEPTION. The requirement to submit a summary under sub. (3) does not
7 apply if the religious organization has reported the results of its investigation to one
8 of the agencies or departments listed under s. 48.981 (3) (a) 1.

9 (6) PENALTY. Any religious organization that violates sub. (3) shall be subject
10 to a forfeiture of not more than \$10,000 for each violation.

11 (END)

(5)
(B)

Nelson, Robert P.

From: Moran, Christian
Sent: Tuesday, November 17, 2009 4:48 PM
To: Nelson, Robert P.
Subject: RE: clergy abuse reporting (LRB-0633/3)

Bob,

Could you please revise the draft to include the language suggested in #1. Thanks--

Christian Moran
Office of Representative Peggy Krusick
State Capitol, 128 North
Madison, WI 53708
(608) 266-1733

From: Nelson, Robert P.
Sent: Wednesday, October 07, 2009 9:06 AM
To: Moran, Christian
Subject: RE: clergy abuse reporting (LRB-0633/3)

Christian,

As to suggestion #1, perhaps that would be a good idea because the language of the proposal requiring the submission of a summary of the investigation, is so broad that it could be misconstrued to allow the inclusion of the victim's name. However, maybe it should read like sub. (4), prohibiting the inclusion of information that could be used to identify any victim of the sexual contact. Or is that taking too much out of the report?

I don't see the need for the suggestion regarding #2. because the language of the proposal requiring "deleting any information that could be used to identify any victim of the sexual contact" includes indirect or direct information (any information) that would identify the victim. If we change sub. (3) as suggested above, we would not need to worry about this issue in sub. (4).

What do you think?

From: Moran, Christian
Sent: Tuesday, October 06, 2009 4:34 PM
To: Nelson, Robert P.
Subject: clergy abuse reporting (LRB-0633/3)

Bob,

The Wisconsin Coalition Against Sexual Assault (WCASA) suggested amending LRB-0633/3 as follows in order to:

1. Prevent churches from reporting the names of alleged victims to DCF (for fear that this information may somehow get out if it passes through too many hands); and
2. Provide more specific instructions to DCF on what might be identifying information for the purposes of redaction. WCASA's concern is that even though DCF will not publish the name of the child, other aspects of the victim's situation may potentially identify the victim, particularly in small communities. They indicated that even the perceived possibility of contextual information indirectly identifying the victim could be very traumatic for the victim.

Do you believe these proposed amendments are necessary to address the aforementioned concerns?

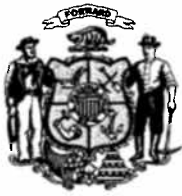
Thanks,

Christian

(3) REPORT OF INVESTIGATION. If, as the result of an investigation within a religious organization, there is reasonable cause to believe that, before May 1, 2004, and after December 31, 1949, an official, agent, or employee of the religious organization had sexual contact with a person who was under the age of 18, the religious organization shall submit a summary of the investigation, including the name of, and other identifying information regarding, any person who had the sexual contact, but not the name of the person who was under the age of 18, to the department within 30 days after the investigation is completed or within 30 days after the effective date of this subsection [LRB inserts date], whichever is later.

(4) RELEASE OF REPORT. The department shall make any summary it receives under sub. (3) available to the public after deleting any information that could be used to identify any victim of the sexual contact, including information that could indirectly identify the victim to individuals who would not otherwise know the identity of the victim and who are familiar with the community or religious organization in which the abuse allegedly took place or the member of the clergy who committed the abuse.

Christian Moran
Office of Representative Peggy Krusick
State Capitol, 128 North
Madison, WI 53708
(608) 266-1733



2009 BILL

sA ✓

1 *Regen.*
AN ACT *to create* 895.44 of the statutes; **relating to:** reporting the results of a
2 religious organization's investigation of sexual contact with a child and
3 providing a penalty.

Analysis by the Legislative Reference Bureau

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Under this bill, if after an investigation within a religious organization there is reasonable cause to believe that, before May 1, 2004, and after December 31, 1949, an official, agent, or employee of the organization had sexual contact with a person under the age of 18, the organization must submit a summary of that investigation to the Department of Children and Families (DCF). A religious organization that fails to do so is subject to a forfeiture of up to \$10,000. The bill requires DCF to make any summary of the religious organization's investigation available to the public, after deleting any information that could be used to identify any victim of the sexual contact.

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23 religious organization shall submit a summary of the investigation, including the
24 name of, and other identifying information regarding, any person who had the sexual
25 contact, *but not the name of the person who was under the age of 18,* to the department within 30 days after the investigation is completed or

BILL

1 within 30 days after the effective date of this subsection [LRB inserts date],
2 whichever is later.

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5 used to identify any victim of the sexual contact.

6 (5) PENALTY. Any religious organization that violates sub. (3) shall be subject
7 to a forfeiture of not more than \$10,000 for each violation.

8 (END)

Duerst, Christina

From: Moran, Christian
Sent: Thursday, February 11, 2010 3:55 PM
To: LRB.Legal
Subject: Please jacket LRB-0633/3 for introduction in the Assembly. Thanks.

Christian Moran
Office of Representative Peggy Krusick
State Capitol, 128 North
Madison, WI 53708
(608) 266-1733