



## WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

### Legislation Relating to Sexual Abuse of Children by Members of the Clergy (2003 SB 207 and AB 428)

Senate Bill 207 and Assembly Bill 428 are companion bills relating to reporting of child abuse and neglect and actions related to sexual exploitation of a child by a member of the clergy.

Briefly, the bill does the following:

- Requires members of the clergy to report sexual abuse of a child if they have reasonable cause to suspect sexual abuse of a child seen in the course of their professional duties and to report if they have reasonable cause to suspect, based on observations made or information received, that a member of the clergy has sexually abused a child or threatened a child with sexual abuse that will likely occur. Members of the clergy are not required to report confidential information received solely through a communication made privately or in a confessional setting, however.
- Expands the statute of limitation for prosecuting certain crimes against children so that a prosecution may be brought at any time before the victim reaches age 45, instead of age 31.
- Allows victims of certain crimes against children to bring a civil action at any time before reaching age 35.

- Sets forth a civil cause of action against clergy for sexually exploiting a child and also against religious organizations in which an employee supervising a member of the clergy knew or should have known that the member of the clergy previously had sexual contact with a child, failed to report the contact as sexual abuse, and failed to exercise ordinary care to prevent similar incidents from occurring.

#### **MANDATORY CHILD ABUSE REPORTING**

##### **CURRENT LAW**

Current law provides that certain persons are mandatory reporters of child abuse and neglect; they must report if they have reasonable cause to suspect that a child seen in the course of their professional duties has been abused or neglected or if they have reason to believe that a child seen in the course of their professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur. Mandatory reporters include most health care providers, social workers, teachers, and child care workers.

Any other person, including an attorney, having reason to suspect that a child has been abused or neglected or reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur *may*

make a report of that suspected abuse or neglect. [s. 48.981 (2), Stats.]

### **THE BILL**

The bill provides that members of the clergy are required to report if they have reasonable cause to suspect that a child seen by the member of the clergy in the course of his or her professional duties has been sexually abused, or threatened with sexual abuse and sexual abuse of the child will likely occur. "Sexual abuse" is defined as follows:

- Sexual assault (intercourse or contact) of a child in violation of s. 940.225, 948.02, or 948.025, Stats.
- Sexual exploitation of a child in violation of s. 948.05, Stats.
- Permitting, allowing, or encouraging a child to engage in prostitution in violation of s. 944.30, Stats.
- Causing a child to view or listen to sexual activity in violation of s. 948.055, Stats.
- Exposing genitals to a child in violation of s. 948.10, Stats.

In addition, a member of the clergy must report if he or she has reasonable cause, based on observations made or information that he or she receives, to suspect that another member of the clergy has sexually abused a child or has threatened a child with sexual abuse and sexual abuse of the child will likely occur.

"Member of the clergy" means a spiritual adviser of any religion or a member of a religious order and includes brothers, ministers, monks, nuns, priests, rabbis, and sisters. "Member of a religious order" is an individual who has taken vows devoting himself or herself to religions or spiritual principles and who is authorized or appointed by his or her religious

order or organization to provide spiritual or religious advice or service.

Under the bill, a clergy member is *not* required to report information regarding suspected sexual abuse that is obtained solely through confidential communications made to the clergy member privately or in a confessional setting if he or she is authorized to hear or accustomed to hearing such communications and, under the disciplines, tenets, or traditions of his or her religion, has a duty or is expected to keep those communications secret. The disciplines, tenets, or traditions relating to confidential communications need not be in writing.

### **STATUTES OF LIMITATION**

#### **CRIMINAL PROSECUTION**

##### **Current Law**

Under current law, a prosecution for sexual assault of a child, repeated acts of sexual assault of the same child, intentionally causing great bodily harm to a child, sexual exploitation of a child, incest with a child, child enticement involving sexual contact or sexually explicit behavior, soliciting a child for prostitution, or sexual assault of a student by a school instructional staff person must be commenced before the victim reaches 31 years of age. [s. 939.74 (2) (c), Stats.]

##### **The Bill**

The bill provides that a prosecution for the above offenses must be commenced before the victim reaches 45 years of age. This provision will expand the statute of limitation only for actions for which the current statute of limitation has not expired.

## **CIVIL ACTIONS**

### **Current Law**

Current law contains a statute of limitation that is specific to certain crimes against children. Under s. 893.587, Stats., an action to recover damages for injury caused by an act that would constitute a violation of sexual assault of a child, repeated acts of sexual assault of the same child, incest with a child, or sexual assault of a student by a public or private school instructional staff person must be commenced within five years after the plaintiff discovers the fact and the probable cause of the injury, or with the exercise of reasonable diligence should have discovered the fact and the probable cause of the injury, whichever occurs first. This provision originally applied only to injuries caused by incest and was expanded by 2001 Wisconsin Act 16. The statute of limitation, as expanded, first applies to actions commenced on September 1, 2001.<sup>1</sup>

### **The Bill**

The bill modifies the statute of limitation for civil actions relating to crimes against children, described above, so that an action must be brought before the victim reaches age 35. This provision will apply only to actions for which the current statute of limitation has not expired.

## **CIVIL CAUSE OF ACTION**

The bill sets forth a cause of action for victims of sexual exploitation by a member of the clergy. The bill provides that any person who suffers an injury as the result of sexual contact with a member of the clergy that occurs while the person is under age 18 may bring an action against the member of the clergy for all damages caused by that sexual contact.<sup>2</sup> Under the bill, such a person may also bring an action against the religious organization that employed the member of the clergy for all damages caused by that sexual contact if, at the time that the

sexual contact occurred, an employee of the religious organization whose duties included supervising the clergy member knew or should have known that the clergy member previously had sexual contact with a person under the age of 18 and:

- Failed to report that sexual contact as sexual abuse, as described above; and
- Failed to exercise ordinary care to prevent similar incidents from occurring.

Consent of the victim is not an issue in such an action.

The bill provides that a person bringing an action for sexual exploitation by a clergy member, or plaintiff, may substitute his or her initials, or fictitious initials, and his or her age and county of residence for his or her name and address on the summons and complaint. The plaintiff's attorney must provide the court with the plaintiff's name and other necessary identifying information. The court must maintain this information and supply the information to other parties to the action in a manner that reasonably protects the information from being disclosed to the public. In addition, the court may make any order that justice requires to protect any of the following:

- A plaintiff who is using initials, as described above, from annoyance, embarrassment, oppression, or undue burden that would arise if any information identifying the plaintiff were made public.
- A plaintiff from unreasonably long, repetitive, or burdensome physical or mental examinations.
- The confidentiality of certain information until the information is provided in open court.

Under the bill, any contract or agreement concerning the settlement of any claim that

limits or eliminates the right of the injured person to disclose the sexual contact alleged to another member of the religious organization to which the clergy member belongs, to a therapist, to a person who is required to report child abuse or neglect, or to a district attorney (i.e., a silence agreement), is void.

The statute of limitation for commencing the statutory action for sexual exploitation by a

member of the clergy is the same as the statute of limitation for civil actions relating to crimes against children, described above.

The memorandum was prepared by *Anne Sappenfield, Senior Staff Attorney*, on July 31, 2003.

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<sup>1</sup> In *Doe v. Archdiocese of Milwaukee*, the Wisconsin Supreme Court held that in cases involving sexual abuse of a minor by a member of the clergy, a plaintiff discovers or, in the exercise of reasonable diligence, should discover the cause of injury at least by the time of the last incident of assault. In that case, the court applied the general statute of limitation for injuries to a minor under which the statute of limitation is tolled or suspended until the child reaches age 18. A person who was injured as a minor may bring an action within two years of attaining age 18. [s. 893.16, Stats.] As a consequence, the court held that the plaintiffs in that case were required to bring an action before reaching age 20. The reasoning of the court was that the acts complained of were intentional acts committed without the consent of the minors. [211 Wis. 2d 312, 342, 565 N.W.2d 94 (1997).] In addition, for such cases in which the plaintiff claims repressed memory, the court held that it would be contrary to public policy, and would defeat the purposes of the statute of limitation, to allow claims of repressed memory to indefinitely toll the statute of limitation. Therefore, the date of accrual for those cases is the same for those in which repressed memory is not claimed. [*Id.* at 364.] It is not clear how this case is affected by s. 893.57 as expanded.

<sup>2</sup> It appears that a plaintiff in such a case could be awarded punitive damages if there is a showing of conduct that is malicious or in willful disregard of the plaintiff's rights. [*Gianoli v. Pfeiderer*, 209 Wis. 2d 509, 563 N.W.2d 562, 569 (Wis. App. 1997).]

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