


Appendix B



STATE OF WISCONSIN
LEGISLATIVE REFERENCE BUREAU
DRAFTING HISTORY RESEARCH APPENDIX


 The drafting file for 2017 LRB-5700/P3 (For: DOJ)
has been transferred to the drafting file for
2019 LRB-0402 (For: DOJ)



RESEARCH APPENDIX -

PLEASE KEEP WITH THE DRAFTING FILE

 Request Made By: MLJ

 Date: 10/01/2018

2017 DRAFTING REQUEST**Bill**

For: **Justice** Drafter: **mjohns**
 By: **Mike Austin** Secondary Drafters:
 Date: **3/15/2018** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **austinmp@doj.state.wi.us**
 Carbon copy (CC) to: **Melinda.Johns@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Duty to preserve the testimony of an elderly person

Instructions:

Create a provision that requires the court to hold a hearing to take and preserve testimony from a victim that is over the age of 62. Model this after Tennessee proposed stat. 39-15-504 from HB 810.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mjohns 3/28/2018	eweiss 3/28/2018			
/P1	mjohns 5/14/2018	eweiss 5/15/2018	dwalker 3/28/2018		
/P2	mjohns 7/24/2018	eweiss 7/25/2018	lparisi 5/15/2018		
/P3			dwalker 7/25/2018		

FE Sent For:

<END>

HB 810

(f) In addition to other remedies provided by law, an elderly or vulnerable adult in that person's own right, or by conservator or next friend, has a right of recovery in a civil action for financial exploitation or for theft of the person's money or property whether by fraud, deceit, coercion, or otherwise. The right of action against a wrongdoer shall not abate or be extinguished by the death of the elderly or vulnerable adult, but passes as provided in § 20-5-106, unless the alleged wrongdoer is a relative, in which case the cause of action passes to the victim's personal representative.

39-15-503.

For purposes of determining whether an offense was committed under § 39-15-502:

(1) Any transfer of property valued in excess of one thousand dollars (\$1,000) in a twelve-month period, whether in a single transaction or multiple transactions, by an elderly or vulnerable adult to a non-relative whom the transferor has known for fewer than two (2) years before the first transfer and for which the transferor did not receive reciprocal value in goods or services creates a permissive inference that the transfer was effectuated without the effective consent of the owner.

(2) Subdivision (1) applies regardless of whether the transfer or transfers are denoted by the parties as a gift or loan except that it shall not apply to a valid loan evidenced in writing and which includes definite repayment dates. In the event repayment of any such loan is in default, in whole or in part, for more than sixty (60) days, the inference described in subdivision (1) applies. Subdivision (1) does not apply to persons or entities that operate a legitimate financial institution.

(3) This section does not apply to valid charitable donations to nonprofit organizations qualifying for tax exempt status under the internal revenue code.

(4) A court shall instruct jurors that they may, but are not required to, infer that the transfer of money or property was effectuated without the effective consent of the owner, with the intent to deprive the owner of the money or property, upon proof beyond a reasonable doubt of the facts listed in subdivision (1). The court shall also instruct jurors that they may find a defendant guilty only if persuaded that each element of the offense has been proved beyond a reasonable doubt.

39-15-504.

In cases where an alleged offense under this part or under title 71, chapter 6, part 1 has been committed against an elderly or vulnerable adult, upon the state's motion, the court shall conduct a hearing to preserve the testimony of the victim within sixty (60) days of the defendant's initial court appearance whether the case originates in general sessions court or criminal court.

39-15-505.

(a) An elderly or vulnerable adult victim's inability to attend judicial proceedings due to illness, or other mental or physical disability, shall be considered exceptional circumstances upon the state's motion to preserve testimony pursuant to Rule 15 of the Tennessee Rules of Criminal Procedure.

(b) The court shall consider an affidavit executed by the elderly or vulnerable adult's treating physician stating that the elderly or vulnerable adult is unable to attend court due to illness or other mental or physical disability as prima facie evidence of the need to preserve witness testimony by the taking of the adult's out-of-court deposition.

(c) The court shall order the defendant's attendance to the out-of-court deposition. The defendant may waive the defendant's attendance in writing.

39-15-506.

(a)



State of Wisconsin
2017 - 2018 LEGISLATURE

DUE 3/29/18

LRB-5700P/1/P
MLJ:...
emw

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV ✓
XOC ✓
PWF ✓

Gen ✓

1 AN ACT ^{Gen ✓}; relating to: preserving the testimony of a crime victim who is an elder
2 person.

Analysis by the Legislative Reference Bureau

This bill creates a requirement that a court preserve certain testimony in criminal matters involving a victim who is an elder person.

Under the bill, in criminal and delinquency cases and juvenile disposition hearings involving a victim who is an elder person, the prosecuting attorney may file a motion to preserve the testimony of the elder person. If the prosecuting attorney files such a motion, the court must then hold a hearing to record the testimony of the elder person as if the testimony was being given at a trial within 60 days. Under the bill, an elder person is any person who is 62 years of age or older. ✓

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

3 SECTION 1. 971.109 of the statutes is created to read:
4 **971.109 Elder person victims; duty to preserve testimony.** In all criminal
5 and delinquency cases and juvenile dispositional hearings involving a victim who is
6 an elder person, as defined in s. 973.017 (5) (a) 1., the court shall upon the motion

1 of a district attorney conduct a hearing to preserve the testimony of the victim at
2 which the court records the victim's testimony as if at trial within 60 days of the
3 defendant's initial court appearance under s. 970.01 (1).

****NOTE: The Tennessee statute only applies to elder person victims, not witnesses, so that is how I have drafted this provision. If you would like the statute to also apply to elder person victims please let me know and I can make the change.

*

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(END)

witnesses ↑



State of Wisconsin
2017 - 2018 LEGISLATURE

DUE 5/15/18

LRB-5700/P1
MLJ:emw

1/P2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERT

SA ✓
XV ✓
PLF ✓

Regen ✓

- 1 AN ACT to create 971.109 of the statutes; relating to: preserving the testimony
- 2 of a crime victim who is an elder person.

Analysis by the Legislative Reference Bureau

This bill creates a requirement that a court preserve certain testimony in criminal matters involving a victim who is an elder person.

Under the bill, in criminal and delinquency cases and juvenile disposition hearings involving a victim who is an elder person, the prosecuting attorney may file a motion to preserve the testimony of the elder person. If the prosecuting attorney files such a motion, the court must then hold a hearing to record the testimony of the elder person as if the testimony was being given at a trial within 60 days. Under the bill, an elder person is any person who is 62 years of age or older.

The bill requires the defendant to be present at the hearing and the witness to be subject to cross-examination at the hearing. The recorded testimony of the elder person from the hearing is admissible at later court proceedings in the case.

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

- 3 SECTION 1. 971.109 of the statutes is created to read:
- 4 971.109 Elder person victims; duty to preserve testimony. In all criminal
- 5 and delinquency cases and juvenile dispositional hearings involving a victim who is
- 6 an elder person, as defined in s. 973.017 (5) (a) 1., the court shall upon the motion

SECTION 1

within 60 days of the date the motion was filed

- 1 of a district attorney conduct a hearing to preserve the testimony of the victim, at
- 2 which the court records the victim's testimony as if at trial within 60 days of the
- 3 defendant's initial court appearance under s. 970.01 (1) *INSERT 2-3*

****NOTE: The Tennessee statute only applies to elder person victims, not witnesses, so that is how I have drafted this provision. If you would like the statute to also apply to elder person witnesses, please let me know, and I can make the change.

INSERT 2-4

(END)

2017-2018 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-5700/P2ins
MLJ:emw

1 INSERT 2-3

2 The hearing shall be before the court. The defendant shall be present at the
3 hearing. The witness shall be sworn ^{witness} and shall be subject to cross ^{as a witness} examination and
4 rebuttal if not unduly repetitious. The witness ^{witness} may testify in person or upon a
5 showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be
6 received into the record of the hearing by telephone or live audiovisual means. The
7 hearing shall be recorded, and the recorded testimony of the witness ^{witness} shall be
8 admissible in evidence against the defendant in any court proceeding in the case.

9 INSERT 2-4

*
****NOTE: The age of an "elder person" is designated by cross-reference in this
draft, and current law sets the age at 62 years of age or older. To change this, s. 973.015
(5) (a) 1. of the statutes must be amended either in this draft or another stand-alone draft.

↑ stats. ↑



State of Wisconsin
2017 - 2018 LEGISLATURE

DWE 7/25/18

LRB-5700/P2/P3
MLJ:emw

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1

AN ACT to create 971.109 of the statutes; **relating to:** preserving the testimony

2

of a crime victim ^{or witness} who is an elder person.

Analysis by the Legislative Reference Bureau

*

This bill creates a requirement that a court preserve certain testimony in criminal matters involving a victim ^{or witness} who is an elder person.

Under the bill, in criminal and delinquency cases and juvenile disposition hearings involving a victim ^{or witness} who is an elder person, the prosecuting attorney may file a motion to preserve the testimony of the elder person. If the prosecuting attorney files such a motion, the court must then hold a hearing to record the testimony of the elder person within 60 days. The bill requires the defendant to be present at the hearing and the witness to be subject to cross-examination at the hearing. The recorded testimony of the elder person from the hearing is admissible at later court proceedings in the case. Under the bill, an elder person is any person who is 62 years of age or older.

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

3

SECTION 1. 971.109 of the statutes is created to read:

4

971.109 Elder person victims; duty to preserve testimony. In all criminal

5

and delinquency cases and juvenile dispositional hearings involving a ^{crime} victim ^{or witness} who is

1 an elder person, as defined in s. 973.017 (5) (a) 1., the court shall, upon the motion
 2 of a district attorney, conduct a hearing within 60 days of the date the motion was
 3 filed to preserve the testimony of the ^{crime} victim ^{or witness}. The hearing shall be before the court.
 4 The defendant shall be present at the hearing. The ^{crime} victim ^{or witness} shall be sworn as a witness
 5 and shall be subject to cross-examination and rebuttal if not unduly repetitious. The
 6 ^{witness} victim may testify in person, or, upon a showing by the proponent of good cause under
 7 s. 807.13 (2) (c), testimony may be received into the record of the hearing by telephone
 8 or live audiovisual means. The hearing shall be recorded, and the recorded
 9 testimony of the ^{witness} victim shall be admissible in evidence against the defendant in any
 10 court proceeding in the case.

****NOTE: The Tennessee statute only applies to elder person victims, not witnesses, so that is how I have drafted this provision. If you would like the statute to also apply to elder person witnesses, please let me know, and I can make the change.

****NOTE: The age of an "elder person" is designated by cross-reference in this draft, and current law sets the age at 62 years of age or older. To change this, s. 973.017 (5) (a) 1., stats., must be amended either in this draft or another stand-alone draft.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to create* 971.109 of the statutes; **relating to:** preserving the testimony
2 of a crime victim or witness who is an elder person.

Analysis by the Legislative Reference Bureau

This bill creates a requirement that a court preserve certain testimony in criminal matters involving a victim or witness who is an elder person.

Under the bill, in criminal and delinquency cases and juvenile disposition hearings involving a victim or witness who is an elder person, the prosecuting attorney may file a motion to preserve the testimony of the elder person. If the prosecuting attorney files such a motion, the court must then hold a hearing to record the testimony of the elder person within 60 days. The bill requires the defendant to be present at the hearing and the witness to be subject to cross-examination at the hearing. The recorded testimony of the elder person from the hearing is admissible at later court proceedings in the case. Under the bill, an elder person is any person who is 62 years of age or older.

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

3 **SECTION 1.** 971.109 of the statutes is created to read:
4 **971.109 Elder person victims and witnesses; duty to preserve**
5 **testimony.** In all criminal and delinquency cases and juvenile dispositional

1 hearings involving a crime victim or witness who is an elder person, as defined in s.
2 973.017 (5) (a) 1., the court shall, upon the motion of a district attorney, conduct a
3 hearing within 60 days of the date the motion was filed to preserve the testimony of
4 the crime victim or witness. The hearing shall be before the court. The defendant
5 shall be present at the hearing. The crime victim or witness shall be sworn as a
6 witness and shall be subject to cross-examination and rebuttal if not unduly
7 repetitious. The witness may testify in person, or, upon a showing by the proponent
8 of good cause under s. 807.13 (2) (c), testimony may be received into the record of the
9 hearing by telephone or live audiovisual means. The hearing shall be recorded, and
10 the recorded testimony of the witness shall be admissible in evidence against the
11 defendant in any court proceeding in the case.

***NOTE: The age of an "elder person" is designated by cross-reference in this
draft, and current law sets the age at 62 years of age or older. To change this, s. 973.017
(5) (a) 1., stats., must be amended either in this draft or another stand-alone draft.

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(END)