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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**2019 Assembly Bill 480**

**Assembly Amendments 1 and 2**

### **2019 ASSEMBLY BILL 480**

The bill creates various provisions regarding crimes and other proceedings involving individuals who are 60 years of age or older, defined generally as an “elder person.”

#### **Physical Abuse of an Elder Person**

The bill creates a new crime prohibiting physical abuse of an elder person, similar to the crime of physical abuse of a child under current law. The penalty for the new crime ranges from a Class C felony to a Class I felony, depending on whether the defendant’s conduct was intentional or reckless, and the level of bodily harm imposed on the elder person. The new crime applies regardless of whether the defendant had actual knowledge of the victim’s age, and mistake of the victim’s age is not a defense.

#### **Sexual Assault of an Elder Person**

The bill creates a new ground for committing first-degree sexual assault, a crime punishable as a Class B felony. Specifically, under the bill, a person is guilty of first-degree sexual assault if the person commits the acts constituting a second-degree sexual assault against an individual who is 60 years of age or older.

#### **Increased Penalties for Crimes Against Elder Persons**

If a person is convicted of a crime for which imprisonment may be imposed, and the crime victim is an elder person, the bill allows a sentencing court to increase the maximum term of imprisonment prescribed by law for that crime, as follows:

- A maximum term of imprisonment of one year or less may be increased to not more than two years.
- A maximum term of imprisonment of more than one year but less than 10 years may be increased by not more than four years.
- A maximum term of more than 10 years may be increased by not more than six years.

These increases may apply regardless of whether the defendant had actual knowledge of the crime victim’s age. In addition, mistake of the victim’s age is not a defense to an increased penalty.

#### **Participation by an Elder Person in Restraining Order Proceedings**

Various types of restraining orders exist under current law. Under the bill, if an elder person petitions for a domestic abuse or harassment restraining order, the court must permit the elder person to participate in hearings by telephone or live audiovisual means. Also, if an elder adult at risk petitions for an individual-at-risk restraining order, the court must allow the elder adult at risk to participate in hearings by telephone or live audiovisual means.

## **Assets of a Defendant Charged With Certain Crimes Involving Elder Persons**

The bill creates a procedure to freeze the assets of a defendant charged with certain crimes of financial exploitation, if the crime involved the taking or loss of property valued at more than \$2,500, and the crime victim was 60 years of age or older. Specifically, under the bill, a prosecutor may petition the court in which the defendant was charged to freeze the defendant's funds, assets, or property (assets) in an amount up to 100% of the alleged value of the assets in the defendant's pending criminal case, for purposes of restitution to the crime victim.

A hearing on the prosecutor's petition may be held ex parte, if necessary to prevent additional exploitation of the victim. If there is a showing of probable cause at the hearing, the court must issue an order freezing or seizing the defendant's assets. The court's order must also prohibit the sale, gifting, transfer, or wasting of the elder person's assets that are owned by or vested in the defendant, unless otherwise permitted by the court. If the underlying criminal charge of financial exploitation is dismissed, or if the defendant is acquitted of that crime, the court must vacate the order.

The bill allows a defendant or any person claiming an interest in the frozen assets to petition for the assets' release any time within 30 days after service of the court's order freezing the assets. Within 10 days of the petition's filing, the court must hold a hearing on the petition, at which the state has the burden of proving that the assets are or will be used in a way that constitutes financial exploitation. If the court makes that finding, it must order that the assets remain frozen or held until further court order.

### **ASSEMBLY AMENDMENT 1**

Under Wisconsin's current battery law, it is a Class H felony to intentionally cause bodily harm to another by conduct that creates a substantial risk of great bodily harm. If a victim is 62 years of age or older, there is a rebuttable presumption that the defendant's conduct created a substantial risk of great bodily harm. Assembly Amendment 1 repeals this presumption.

### **ASSEMBLY AMENDMENT 2**

Assembly Amendment 2 makes the following changes to the bill's procedure for freezing assets:

- Clarifies the probable cause standard that applies at the hearing on the prosecutor's petition to freeze assets.
- Allows for an ex parte hearing on a prosecutor's petition to freeze assets, without any conditions.
- Clarifies that the rules of evidence do not apply in hearings for the freezing of assets.
- Requires that the court's order freezing assets be binding on financial institutions and any third party that is in possession of the assets.
- Removes the bill's procedure governing a petition for release of frozen assets and instead subjects such petitions to a procedure governing requests for the return of seized property under current law.
- Clarifies that if the defendant is convicted of the underlying criminal charge, the court may order that the frozen assets be released only for the purpose of paying restitution.

### **BILL HISTORY**

Representative McGuire offered Assembly Amendments 1 and 2 on January 9, 2020. That same day, the Assembly Committee on Criminal Justice and Public Safety recommended the following: adoption of Assembly Amendment 1 on a vote of Ayes, 14; Noes, 0; adoption of Assembly Amendment 2 on a vote of Ayes, 13; Noes, 1; and passage of the bill, as amended, on a vote of Ayes, 13; Noes, 1.

AO:kms