



PATRICK TESTIN

STATE SENATOR

DATE: November 14, 2019

RE: **Testimony on 2019 Assembly Bills 480, 481, and 482**

TO: The Assembly Committee on Criminal Justice and Public Safety

FROM: Senator Patrick Testin

Thank you members of the Assembly Committee on Criminal Justice and Public Safety for accepting my testimony on Assembly Bills 480, 481, and 482.

Unfortunately, elder abuse is becoming all too common in our society, and reports of elder abuse continue to grow. This abuse can take multiple forms including physical, emotional, and financial. Additionally, this abuse can hit close to home; my great uncle was the target of a scam. He received a call from a scammer claiming that I needed bail money to get out of jail. Now let's be clear – I was not in jail – but the scammer behind that call should be.

According to the Bureau of Aging & Disability Resources, there has been a 160% increase in reported elder abuse in Wisconsin since 2001. Research shows that for every reported case of elder abuse, 24 cases go unreported. These numbers are likely to grow as Wisconsin's senior population is set to increase by 72% in the coming decade.

Last session, I had the opportunity to be a member of the Attorney General's Task Force on Elder Abuse, where we recommended the legislative proposals listed below. That task force was made up of representatives from state agencies, law enforcement, the Court System, long-term care agencies, financial service groups, victim services, and citizen advocacy organizations.

Assembly Bill 480

Assembly Bill 480 makes a number of criminal law changes to signify crimes against elder populations. This bill does all of the following:

- Modifies the law to require a sexual assault of a person over the age of 60 to be Class B Felony. Currently, there is no enhanced penalty for a forcible sexual assault of an elderly person.
- Brings the physical abuse of an elder person in line with the age definition of other statutes.
- Creates a mechanism in criminal law for freezing assets in elder financial abuse cases for the purpose of preserving the assets for restitution for the victim.
- Creates a system that allows a term of imprisonment that is imposed for a criminal conviction to be increased in length if the crime victim was elderly.

- Removes barriers for an individual to seek a restraining order by allowing them to appear in court by telephone or audiovisual means.

Assembly Bill 481

- Assembly Bill 481 allows financial institutions, mortgage bankers and brokers, check cashing services, and other types of lenders to delay financial transactions when exploitation of an adult ages 60 and older is suspected.
- A financial service provider may also refuse or delay a financial transaction if an elder-adult-at-risk agency, such as a county social services agency or law enforcement, provides information to the financial service provider that financial exploitation of a vulnerable adult may have occurred or has been attempted.
- The bill requires certain notice if a financial service provider refuses or delays a financial transaction under these circumstances and establishes certain time limits related to the refusal or delay of a financial transaction.
- There is also the opportunity for financial service providers to create a list of individuals that a vulnerable adult authorizes to be contacted if financial exploitation is suspected.

Assembly Bill 482

- Whereas Assembly Bill 481 deals with banks and other financial institutions, AB 482 focuses on securities industry professionals such as brokers or investment advisers. The bill will allow broker-dealers and investment advisers to temporarily delay transactions when financial exploitation is suspected.
- Again, this legislation requires certain notification if a transaction is delayed and establishes time limits on a delay.
- Assembly Bill 482 also allows securities professionals to provide to the Department of Financial Institutions, adult protective service agencies, and other individuals notice of suspected financial exploitation of individuals ages 60 and older.
- Lastly, current law includes a penalty enhancer for securities law violations committed against a person who is at least 65 years of age and older. Under this bill, these enhanced penalties also apply to vulnerable adults (age 60+).

Thank you again for listening to my testimony and I hope that you will join me in supporting this bill.



JOHN J. MACCO

STATE REPRESENTATIVE • 88TH ASSEMBLY DISTRICT

Chairman Spiros and Criminal Justice Committee Members –

Thank you for hearing testimony on this elder abuse package. It is my hope that, by passing these bills, we will provide more certainty and security for our vulnerable adults and their families.

As you may know, older Americans hold 70% of the nation's wealth when compared to the general population. As these Americans reach retirement age, it often becomes more difficult for them to manage their financial and physical well-being. It is not uncommon for seniors to rely on friends, family, or hired help to assist them with their day-to-day life. However, with their reliance on others, comes the risk of financial exploitation and other forms of abuse and neglect.

Anyone can be a victim of fraud, identity theft, and embezzlement, but our elderly are especially vulnerable. To compound the issue, elder abuse is severely under-reported, with only one in 44 cases being reported each year. This paints a bleak picture for our seniors who are starting to consider retirement.

Understandably, those who are reaching retirement age are worried about their personal and financial security as they exit the workforce. Between 2001 and 2007, reported allegations of elder abuse, neglect, and exploitation nearly doubled in our state. As did requests for more information. That is why this bill package to combat elder abuse is so essential. The number of retirees will only increase as more "baby boomers" exit the workforce at a rate of 10,000 individuals per day. Our seniors deserve physical and financial security, and this bill package is an essential first step in achieving that.

First, this package will empower financial institutions to act as an additional line of defense for our seniors. This includes banks, financial planners, credit unions, and other qualified entities that help the elderly plan for their "golden years". These financial professionals know their clients, interact with them on a regular basis, and have a deep working knowledge of their financial history.

These frontline workers are more than capable of recognizing signs of financial exploitation and this package will allow them to delay suspicious activity in order to protect our seniors and even deny power of attorney if they suspect a vulnerable adult is being exploited. Additionally, these financial institutions will rest easy knowing that financial service providers are immune from criminal, civil and administrative liability for taking (or not taking) any actions under this bill.

This package will also improve upon our reporting practices by allowing securities agents or other persons in a supervisory, compliance or legal capacity, who suspects financial exploitation of a vulnerable adult to notify DFI, a county adult protective services agency, law enforcement, a legal guardian, a family member or a person identified on a contact list provided by the vulnerable adult. Again, this package will protect these agents and other qualified individuals from legal liability related to the actions taken pursuant to this bill, further encouraging them to look for tell-tale signs of abuse.

Finally, this package will strengthen our existing criminal statutes for those that seek to abuse and exploit our elderly and disabled. This includes increased fines, sentences, and the freezing of funds, assets, or properties at the request of a prosecutor.

Colleagues, as many of you know, these issues hit close to home for me and my family. My mother-in-law was exploited by a relative and my wife and her siblings had little recourse once the damage had been done. It is my hope that this package of legislation will help prevent families across Wisconsin from going through what my family, and so many others, have gone through. While it will not prevent every case of abuse, fraud, and exploitation, this package will be an important step in the right direction.

I want to thank you once again, Mr. Chairman, for holding this hearing, and I urge you and the rest of the committee to vote for recommendation of passage.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John J. Macco', with a long horizontal flourish extending to the right.

John J. Macco

Representative 88th District

Assembly Committee on Criminal Justice and Public Safety

November 14, 2019

Madison WI

Helen Marks Dicks

Good Morning. I am Helen Marks Dicks, State Issues Advocacy Director for AARP Wisconsin, which has over 840,000 members here in Wisconsin. We advocate on behalf of Wisconsin's 50 and older population. The issue of elder abuse and neglect is of grave concern to us and we greatly appreciate the attention being paid to this critical issue. I am going to address all three bills together.

AARP supports all three bills, AB 480, AB 481 and AB 482 as needed steps to help curb abuse, neglect, and financial exploitation of Wisconsin's elders. There has been a 160% increase in reported elder abuse from 2001 to 2017. Even with this startling statistic we know most elder abuse goes unreported. It is estimated that 47% of adults with dementia suffer from some form of abuse. Elder abuse and neglect triple the likelihood of a victim being hospitalized or dying prematurely.

Financial exploitation is one of the most common forms of elder abuse and has a life-altering effect on Wisconsin residents' livelihoods with untold millions of dollars exploited, extorted, or stolen from older adults each year in Wisconsin. While nearly \$3 billion was reported lost to financial elder abuse in the USA, a study in New York State found that only 2% of elder financial exploitation cases were reported to law enforcement, suggesting that the actual number impact on older adult's financial wellbeing is far higher than official counts.

AB 480 increases penalties on those who abuse elders and would make it easier for older adults to file a restraining order, thus removing a major barrier to access for victims. The bill would also increase the likelihood of victims receiving financial restitution in cases of financial exploitation as alleged perpetrators could have their

assets frozen. Often victims of elder abuse have little or no chance of financial recovery and the rest of their lives might be spent in a compromised financial position or even in poverty.

AB 481 and AB 482 would allow and encourage banks, credit unions, and other financial service providers to proactively protect the finances of elderly clients by refusing or *delaying suspicious transactions for a limited time and increasing communication and cooperation with law enforcement, social service providers, and trusted advisors.*

I personally have one concern about all three of these bills. That is the assumption of vulnerability and decreased judgement at age 60. No one should be the victim of financial exploitation regardless of age and I object to the ageist assumption of cognitive decline and judgement at the age of 60. Mere age should never be used as a measure of capacity.

However I am attributing good intentions and an attempt to conform to other statutes which deal with elder abuse to the authors and drafters of these bills so my concerns will in no way diminish AARP's support of these bills. I believe this ageist assumption can be dealt with a case-to-case review.

AARP Wisconsin strongly encourages the committee to vote in favor of AB 480, AB 481 and AB 482 to protect Wisconsin's victims of financial exploitation. Thank you for your time and attention. As always I would be glad to answer any questions.

District Attorney
Susan L. Opper

Deputy District Attorneys
Lesli S. Boese
Ted S. Szczupakiewicz

Office Services Coordinator
Julie A. Moelter

Victim/Witness Program
Jennifer S. Dunn, Coord.

Support Staff Supervisor
Rebecca L. Gifford



Waukesha County

Office of the District Attorney

Assistant District Attorneys
Kevin M. Osborne
Michele W. Hulgaard
Mary C. Brejcha
Jayne Davis Dewire
Andrea M. Will
Lindsey H. Hirt
Abbey L. Nickolie
Melissa J. Zilavy
Shawn N. Woller
Kristina J. Gordon
Michael D. Thurston
Jack A. Pitzo
Molly M. Schmidt
Zachary A. Wittchow

November 14, 2019

Wisconsin State Legislature
Wisconsin State Capitol
2 East Main Street
Madison, Wisconsin 53702

Re: Assembly Bill 480 / Senate Bill 427
Assembly Bill 481 / Senate Bill 429
Assembly Bill 482 / Senate Bill 428



Good morning everyone. My name is April DeValkenaere. I am a White Collar Crime Paralegal with the Waukesha County District Attorney's Office and I am the Wisconsin chapter President of the International Association of Financial Crimes Investigators (IAFCI). The IAFCI is a global non-profit organization comprised of nearly 6000 members. We provide services and an environment where information regarding financial fraud, financial investigations and fraud prevention methods can be collected, exchanged, and taught for the common good of the financial payment industry and our global society. Our membership brings together law enforcement, financial institutions, and the retail industry in an effort to safeguard the world's economy through collaborative teamwork. IAFCI has been fighting financial transaction crimes for more than 50 years.

I also had the privilege of serving on the Elder Abuse Task Force that developed the bills we are discussing today. I believe that these bills, if enacted, will provide an effective tool to halt and/or prevent financial exploitation in our State.

I constantly teach people what type of scams are being perpetrated by unknown suspects and then I have to educate them that studies have shown that approximately 90% of the elder financial exploitation is being perpetrated, is by someone that they know and trust.

I work with several organizations that investigate and collaborate to combat financial crimes and I have firsthand knowledge that these bills will assist in the collaboration between financial institutions, law enforcement and Adult Protective Services (Aging and Disability Resource Centers, Department of Aging, etc.).

We need Assembly Bills 480/481/482 and Senate Bills 427/429/428 here in Wisconsin. As they provide a number of benefits in the fight against criminals who engage in scams making victims of our Wisconsin residents. This includes; allowing for a consistent age throughout the statutes, whether it is a regular account or a security account and provides

the financial institutions to delay a transaction if they reasonably believe that the owner of the account is being financially exploited.

In my role with the District Attorney's Office I work on many cases involving elder financial exploitation. I have assisted in the prosecution of cases where Power of Attorney (POA) documents were utilized by a trusted individual, whether that be a family member, friend or caregiver, who took advantage of their fiduciary duty. I have also assisted in the prosecution of cases where caregivers who were hired to assist older adults with personal hygiene and/or daily routine duties have gained access to financial accounts and stolen identities as well as finances. I have also had cases where family and/or caregivers have taken advantage of the frail nature of older adults and used it against them. Some cases we have handled have multiple POA documents as they were changed several times and/or by different individuals. POA documents can vary greatly from someone who prints off the state form and fills it out themselves to someone who hires an attorney to draft such a document either of their own free will or because of a crisis. The provisions to allow a financial institution to accept or not accept a POA document are necessary to these bills. Especially because the financial institutions can see the patterns of financial behavior before any investigative agency. They can see when an elderly couple typically spends \$150 a month on groceries and after the POA is enacted they grocery bills have now gone up to between \$600-\$1,000 per month. They can also see the demeanor of the older adult and the POA dropping off the document, most times it is a normal transaction, other times, they see fear, concern and/or hesitation on behalf of their account holder, it is imperative to allow the financial institutions to make a decision based on their reasonable belief.

Financial institutions train their frontline tellers at least annually to recognize financial scams and to talk with their customers about them as required by federal regulations. They also have policies in place regarding how to respond to a possible financial exploitation. Typically at least two or more people are reviewing these transactions before a decision to delay a transaction would occur. The ability to collaborate and allow our financial institutions to delay a transaction that they reasonably believe is fraudulent and get law enforcement and/or Adult Protective Services involved is imperative if we want to have a significant impact on protecting our Wisconsin's most vulnerable citizens, our seniors.

Some of these older adult victims have multiple medical and/or physical issues that make it extremely difficult to appear in court and to allow them to appear via phone and/or video is essential to moving the case forward without having it dismissed because of non-appearances of our victim.

I am here to wholeheartedly support these Bills as a representative of the IAFCI along with the Waukesha County District Attorney's Office.

Respectfully Submitted,

April DeValkenaere, SBWCP, CFCI



Greater Wisconsin
Agency on Aging Resources, Inc.

Date: November 14, 2019

To: Chair Spiros, Vice-Chair Sortwell, and Members of the Assembly Committee on Criminal Justice and Public Safety

From: Janet L. Zander, Advocacy & Public Policy Coordinator

Re: **Support for AB 480** – increased penalties for crimes against elder person; restraining orders for elder persons; freezing assets of a defendant charged with financial exploitation of an elder person; sexual assault of an elder person; physical abuse of an elder person; and providing a penalty

AB 481 – financial exploitation of vulnerable adults – **For Information Only**

AB 482 – financial exploitation of vulnerable adults with securities accounts, violations of the Wisconsin Uniform Securities Law, granting rule-making authority and providing a penalty – **For Information Only**

The Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR) is a nonprofit agency committed to supporting the successful delivery of aging programs and services in our service area consisting of 70 counties (all but Dane and Milwaukee) and 11 tribes in Wisconsin. We are one of three Area Agencies on Aging in Wisconsin. We provide lead aging agencies in our service area with training, technical assistance, and advocacy to ensure the availability and quality of programs and services to meet the changing needs of older people in Wisconsin. Our mission is to deliver innovative support to lead aging agencies as we work together to promote, protect, and enhance the well-being of older people in Wisconsin. There are over one million adults age 60 and older residing in our service area.

Thank you for this opportunity to share testimony on this package of bills aimed at combatting elder abuse. Though the number of reported elder abuse cases in the state continues to rise, increasing by 52 percent from 2010 to 2018 when there were 8,803 reported cases, elder abuse remains dramatically underreported. Fear and embarrassment are common reasons for underreporting, especially since family members are the most common perpetrators. It has been estimated that roughly two-thirds of all elder abuse perpetrators are family members. According to the American Bar Association approximately 10% of older adults experience some form of elder abuse (2017).

AB 480: The consequences of elder abuse can be devastating; placing abused elders at increased risk of hospitalization, nursing home admission, and even death. Given the significant negative impacts of elder abuse, we support AB 480 which increases the penalties for crimes against older people and freezes or seizes assets from a defendant who has been charged with a financial exploitation crime against an older adult. Additionally, we support changes made in this bill to allow an older adult seeking a domestic violence, individual-at-risk, or harassment restraining order to

appear in court by phone or live-video, thereby minimizing any further negative impacts on the victim's health, independence, and dignity.

Financial exploitation can occur at any stage of the lifespan; however, older adults are targeted disproportionately. Health related effects of aging, higher income levels, lower levels of connectedness to the community and a reduced probability of reporting financial exploitation can all make older adults more susceptible to financial exploitation. Prevalence of elder financial exploitation ranges from 2.7 percent to 6.6 percent. The true numbers are likely much higher, as like other types of abuse, most incidents of elder financial exploitation go unreported. Despite the high number of suspected incidents of elder financial exploitation, the majority of adults age 60 and older are in relatively good health, function independently, and are not in need of additional oversight from their financial institutions. While we wholeheartedly support financial institutions efforts to provide information and services to consumers (of all ages) to enhance protections against financial exploitation, we feel it is imperative for these efforts to strike the right balance between autonomy and protection.

AB 481 & AB 482:

Both AB 481 and AB 482 pertain to the role of financial service providers in protecting vulnerable adults against financial exploitation. GWAAR believes that financial institutions can provide enhanced protection against the risk of elder financial exploitation while still maintaining the balance between autonomy and protection. GWAAR has several concerns related to AB 481 and AB 482 and we recommend the following changes be made to the bills to ensure this balance is maintained:

Regarding authority for financial institutions (AB 481) and securities agents/ investment advisors (AB 482) to delay transactions and refuse to honor Durable Powers of Attorney (DPOA) -

- **The term “reasonably suspects” is ambiguous and needs clearly defined standards:** We recommend the bill language be changed to include specific standards defining the circumstances that constitute reasonable cause. These circumstances should be documented in the client's account record. Staff training should be provided related to identification of these “red flags” that may prompt a provider to refuse or delay a financial transaction.
- **Individual who is 60 years of age or older:** Age alone is not an indicator of incapacity. We recommend the sentence “*or an individual who is at least 60 years of age*” be deleted from the definition of “vulnerable adult” in the bill and the “adult at risk” definition in § 55.01(1e) be used in its place.
- **Preventive measures:** Financial institutions can provide enhanced protection against the risk of elder financial exploitation (or the financial exploitation of someone at any age) by offering consumers the *option* to select account protections such as restrictions, third party alerts, and other features. We recommend consumers be offered the ability to “opt-in” to these additional protections, if desired.
- **Refusal of power of attorney:** Taking the necessary steps to plan for one's future is encouraged. DPOAs are often part of that planning process. Allowing financial institutions to refuse to honor a power of attorney is a disservice to all who have taken the necessary steps to be prepared for

their future needs. Wis. Stat. § 244.20 was intended to offer protections against the practice of refusing to accept a power of attorney for inappropriate reasons and should not be changed.

- **Protect consumers from significant financial harm resulting from a delayed transaction:**
We recommend the following additional protections be added -
 - All late fees or service charges should be waived.
 - A person attempting to spend down for Medicaid could be found ineligible if funds are still in their account due to the delay. Funds frozen or delayed should be considered unavailable for Medicaid as long as the freeze is in place.
 - Customer shall be able to recover all costs and damages resulting from an inappropriate delay, including attorney fees.

We appreciate the interest in and efforts of policy makers to protect older adults against elder abuse, neglect and exploitation and to address this growing problem. We look forward to continuing to work with you on policies that improve the quality of life of older people in Wisconsin.

Thank you for your consideration of these comments supporting AB 480 and recommended changes to improve AB 481 and AB 482.

Contact: Janet Zander, Advocacy & Public Policy Coordinator
Greater Wisconsin Agency on Aging Resources
janet.zander@gwaar.org
(715) 677-6723 or (608) 228-7253 (cell)