



2023 ASSEMBLY BILL 78

February 28, 2023 - Introduced by Representatives RETTINGER, GUNDRUM, ALLEN, ARMSTRONG, BEHNKE, BRANDTJEN, DONOVAN, KNODL, MURPHY and WICHGERS, cosponsored by Senators JACQUE and CARPENTER. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT** *to renumber* 940.198 (1) (a) and 971.109 (1) (a); *to renumber and*
2 *amend* 939.623 (1); *to amend* 343.12 (7) (c) 9j., 813.12 (5b), 813.123 (6g),
3 813.125 (5b), 911.01 (4) (c), 939.623 (title), 939.623 (2) (intro.), 939.623 (3),
4 940.198 (title), 940.198 (1) (b), 940.198 (2) (a), 940.198 (2) (b), 940.198 (2) (c),
5 940.198 (3) (a), 940.198 (3) (b), 940.198 (3) (c), 940.198 (4), 971.109 (title),
6 971.109 (2) (a) and 971.109 (2) (c); and *to create* 813.12 (1) (ab), 813.125 (1) (am)
7 2., 939.623 (1) (b), 940.198 (1) (ag), 940.225 (1) (e) and 971.109 (1) (ac) of the
8 statutes; **relating to:** increased penalties for crimes against adults at risk;
9 restraining orders for adults at risk; freezing assets of a defendant charged with
10 financial exploitation of an adult at risk; sexual assault of an adult at risk; and
11 providing a penalty.

Analysis by the Legislative Reference Bureau

SEXUAL ASSAULT OF AN ADULT AT RISK

Under this bill, any act of sexual misconduct that is currently a second degree sexual assault is a first degree sexual assault if the victim is an adult at risk. Under

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current law, if a person engages in any of the specified acts of sexual misconduct, he or she is guilty of a Class C felony. Under the bill, he or she is guilty of a Class B felony if the victim is an adult at risk, regardless of whether or not he or she knew the victim's status as an adult at risk.

FREEZING OF ASSETS

Under current law, there is a procedure for a court to freeze or seize assets from a defendant who has been charged with a financial exploitation crime when the victim is an elder person. The procedure allows a court to freeze the funds, assets, or property of the defendant in an amount up to 100 percent of the alleged value of the property involved in the defendant's pending criminal proceeding for purposes of preserving the property for future payment of restitution to the crime victim.

This bill allows the court to apply the same procedure to freeze or seize assets when the crime victim an adult at risk.

PHYSICAL ABUSE OF AN ADULT AT RISK

Under current law, there is a set of penalties that apply to physical abuse of an elder person, which range from a Class I felony to a Class C felony depending on the severity of the conduct. This bill applies those same penalties to physical abuse of an adult at risk.

INCREASED PENALTIES

This bill allows a term of imprisonment that is imposed for a criminal conviction to be increased in length if the crime victim was an adult at risk. Under the bill, a maximum term of imprisonment of one year or less may be increased to two years; a maximum term of imprisonment of one to 10 years may be increased by up to four years; and a maximum term of imprisonment of more than 10 years may be increased by up to six years. Under the bill, the term of imprisonment may be lengthened irrespective of whether the defendant knew that the crime victim was an adult at risk.

RESTRAINING ORDERS FOR AN ADULT AT RISK

Under current law, a person seeking a domestic violence, individual-at-risk, or harassment restraining order must appear in person in the courtroom at a hearing to obtain a restraining order.

This bill allows an adult at risk who is seeking a domestic violence, individual-at-risk, or harassment restraining order to appear in a court hearing by telephone or live audiovisual means.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

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

1 **SECTION 1.** 343.12 (7) (c) 9j. of the statutes is amended to read:

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1 343.12 (7) (c) 9j. Physical abuse of an elder person or an adult at risk under s.
2 940.198 (2).

3 **SECTION 2.** 813.12 (1) (ab) of the statutes is created to read:

4 813.12 (1) (ab) “Adult at risk” has the meaning given in s. 55.01 (1e).

5 **SECTION 3.** 813.12 (5b) of the statutes is amended to read:

6 813.12 (5b) ~~ELDER PERSON~~ OR ADULT-AT-RISK PETITIONER. If the petitioner is an
7 elder person or an adult at risk, the court shall permit the petitioner to participate
8 in hearings under this section by telephone or live audiovisual means.

9 **SECTION 4.** 813.123 (6g) of the statutes is amended to read:

10 813.123 (6g) ~~ELDER ADULT-AT-RISK~~ INDIVIDUAL-AT-RISK PETITIONER. If the
11 petitioner is an ~~elder adult~~ individual at risk, the court shall permit the petitioner
12 to participate in hearings under this section by telephone or live audiovisual means.

13 **SECTION 5.** 813.125 (1) (am) 2. of the statutes is created to read:

14 813.125 (1) (am) 2. “Adult at risk” has the meaning given in s. 55.01 (1e).

15 **SECTION 6.** 813.125 (5b) of the statutes is amended to read:

16 813.125 (5b) ~~ELDER PERSON~~ OR ADULT-AT-RISK PETITIONER. If the petitioner is an
17 elder person or an adult at risk, the court shall permit the petitioner to participate
18 in hearings under this section by telephone or live audiovisual means.

19 **SECTION 7.** 911.01 (4) (c) of the statutes is amended to read:

20 911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or
21 rendition; sentencing, granting or revoking probation, modification of a bifurcated
22 sentence under s. 302.113 (9g), or adjustment of a bifurcated sentence under s.
23 973.195 (1r) or 973.198; hearings for the freezing of assets of a person charged with
24 financial exploitation of an elder person or adult at risk under s. 971.109; issuance
25 of subpoenas or warrants under s. 968.375, arrest warrants, criminal summonses,

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1 and search warrants; hearings under s. 980.09 (2); proceedings under s. 971.14 (1r)
2 (c); proceedings with respect to pretrial release under ch. 969 except where habeas
3 corpus is utilized with respect to release on bail or as otherwise provided in ch. 969;
4 or proceedings under s. 165.76 (6) to compel provision of a biological specimen for
5 deoxyribonucleic acid analysis.

6 **SECTION 8.** 939.623 (title) of the statutes is amended to read:

7 **939.623** (title) **Increased penalty for elder person or adult-at-risk**
8 **victims.**

9 **SECTION 9.** 939.623 (1) of the statutes is renumbered 939.623 (1) (intro.) and
10 amended to read:

11 939.623 (1) (intro.) In this section, ~~“elder:~~

12 (c) “Elder person” means any individual who is 60 years of age or older.

13 **SECTION 10.** 939.623 (1) (b) of the statutes is created to read:

14 939.623 (1) (b) “Adult at risk” has the meaning given in s. 55.01 (1e).

15 **SECTION 11.** 939.623 (2) (intro.) of the statutes is amended to read:

16 939.623 (2) (intro.) If the crime victim is an elder person or an adult at risk, and
17 the present conviction is for any crime for which imprisonment may be imposed, the
18 maximum term of imprisonment prescribed by law for that crime may be increased
19 as follows:

20 **SECTION 12.** 939.623 (3) of the statutes is amended to read:

21 939.623 (3) This section applies irrespective of whether the defendant had
22 actual knowledge of the crime victim’s age or that the crime victim was an adult at
23 risk at the time of the crime. A mistake regarding the crime victim’s age or status
24 as an adult at risk is not a defense to an increased penalty under this section.

25 **SECTION 13.** 940.198 (title) of the statutes is amended to read:

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1 **940.198** (title) **Physical abuse of an elder person or an adult at risk.**

2 **SECTION 14.** 940.198 (1) (a) of the statutes is renumbered 940.198 (1) (ar).

3 **SECTION 15.** 940.198 (1) (ag) of the statutes is created to read:

4 940.198 (1) (ag) “Adult at risk” has the meaning given in s. 55.01 (1e).

5 **SECTION 16.** 940.198 (1) (b) of the statutes is amended to read:

6 940.198 (1) (b) “Recklessly” means conduct that creates a situation of
7 unreasonable risk of harm to and demonstrates a conscious disregard for the safety
8 of the elder person.

9 **SECTION 17.** 940.198 (2) (a) of the statutes is amended to read:

10 940.198 (2) (a) Whoever intentionally causes great bodily harm to an elder
11 person or an adult at risk is guilty of a Class C felony.

12 **SECTION 18.** 940.198 (2) (b) of the statutes is amended to read:

13 940.198 (2) (b) Whoever intentionally causes bodily harm to an elder person
14 or an adult at risk is guilty of a Class H felony.

15 **SECTION 19.** 940.198 (2) (c) of the statutes is amended to read:

16 940.198 (2) (c) Whoever intentionally causes bodily harm to an elder person or
17 an adult at risk under circumstances or conditions that are likely to produce great
18 bodily harm is guilty of a Class F felony.

19 **SECTION 20.** 940.198 (3) (a) of the statutes is amended to read:

20 940.198 (3) (a) Whoever recklessly causes great bodily harm to an elder person
21 or an adult at risk is guilty of a Class E felony.

22 **SECTION 21.** 940.198 (3) (b) of the statutes is amended to read:

23 940.198 (3) (b) Whoever recklessly causes bodily harm to an elder person or an
24 adult at risk is guilty of a Class I felony.

25 **SECTION 22.** 940.198 (3) (c) of the statutes is amended to read:

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1 940.198 (3) (c) Whoever recklessly causes bodily harm to an elder person or an
2 adult at risk under circumstances or conditions that are likely to produce great bodily
3 harm is guilty of a Class H felony.

4 **SECTION 23.** 940.198 (4) of the statutes is amended to read:

5 940.198 (4) KNOWLEDGE OF AGE OR AT RISK STATUS NOT REQUIRED. This section
6 applies irrespective of whether the defendant had actual knowledge of the victim's
7 age or status as an adult at risk. A mistake regarding the victim's age or status as
8 an adult at risk is not a defense to a prosecution under this section.

9 **SECTION 24.** 940.225 (1) (e) of the statutes is created to read:

10 940.225 (1) (e) Commits a violation under sub. (2) against an adult at risk, as
11 defined in s. 55.01 (1e). This paragraph applies irrespective of whether the
12 defendant had actual knowledge of the crime victim's status as an adult at risk. A
13 mistake regarding the victim's status as an adult at risk is not a defense to a
14 prosecution under this paragraph.

15 **SECTION 25.** 971.109 (title) of the statutes is amended to read:

16 **971.109 (title) Freezing assets of a person charged with financial**
17 **exploitation of an elder person or an adult at risk.**

18 **SECTION 26.** 971.109 (1) (a) of the statutes is renumbered 971.109 (1) (am).

19 **SECTION 27.** 971.109 (1) (ac) of the statutes is created to read:

20 971.109 (1) (ac) "Adult at risk" has the meaning given in s. 55.01 (1e).

21 **SECTION 28.** 971.109 (2) (a) of the statutes is amended to read:

22 971.109 (2) (a) If a defendant is charged with a crime that is financial
23 exploitation, the crime involves the taking or loss of property valued at more than
24 \$2,500, and the crime victim is an elder person or an adult at risk, a prosecuting
25 attorney may file a petition with the court in which the defendant has been charged

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1 to freeze the funds, assets, or property of the defendant in an amount up to 100
2 percent of the alleged value of funds, assets, or property in the defendant's pending
3 criminal proceeding for purposes of restitution to the crime victim. The hearing on
4 the petition may be held ex parte. The rules of evidence do not apply in a hearing
5 under this paragraph.

6 **SECTION 29.** 971.109 (2) (c) of the statutes is amended to read:

7 971.109 (2) (c) The court's order shall prohibit the sale, gifting, transfer, or
8 wasting of the funds, assets, or real or personal property of the elder person or adult
9 at risk that are owned by or vested in the defendant without the express permission
10 of the court. The court's order shall be binding upon a financial institution, as defined
11 in s. 943.80 (2), and any 3rd party that is in possession of the funds, assets, or
12 property.

13 (END)