
Wisconsin Legislative Council

ACT MEMO



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2021 Wisconsin Act 76 [2021 Senate Bill 17]

Crimes Against and Proceedings Involving Individuals Age 60 or Older

2021 Wisconsin Act 76 creates various provisions related to crimes and other proceedings involving individuals who are 60 years of age or older, defined generally throughout the act as an “elder person.”

PHYSICAL ABUSE OF AN ELDER PERSON

The act 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. In light of this new crime, the act repeals a provision under Wisconsin’s battery statutes that, under prior law, presumed that a defendant’s conduct created a substantial risk of great bodily harm when the victim was 62 years of age or older.

SEXUAL ASSAULT OF AN ELDER PERSON

The act creates a new ground for committing first-degree sexual assault, a crime punishable as a Class B felony. Under the act, 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 act 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 increased penalties 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 act, 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 risk¹ 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 act 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 an elder person. Specifically, under the act, 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 percent of the alleged value of the assets in the defendant's pending criminal case, for purposes of restitution to the crime victim.

Under the act, the court must issue an order freezing or seizing the defendant's assets if, at the hearing, there is a showing of probable cause that the defendant used or is intending to use any assets in a way that constitutes financial exploitation. The court's order must prohibit the sale, gifting, transfer, or wasting of the elder person's assets that are owned by or vested in the defendant, unless otherwise expressly permitted by the court. Financial institutions, and any third party in possession of assets, are bound by the court's prohibition order.

The act allows a defendant or any person claiming an interest in the frozen or seized assets to petition for the assets' release any time within 30 days after service of the court's order freezing or seizing the assets. Within 10 days of the petition's filing, the court must hold a hearing on the petition. The act applies the current law procedure governing requests for the return of seized property to petitions filed seeking release of frozen or seized assets.

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. If the defendant is convicted of the underlying criminal charge, the court may order that the frozen or seized assets be released only for the purpose of paying restitution.

Effective date: August 8, 2021

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¹ Current law, maintained by the act, defines an "elder adult at risk" as any person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.