



PATRICK TESTIN

STATE SENATOR

DATE: February 11, 2021

RE: **Testimony on Senate Bills 17 and 18**

TO: The Senate Committee on Judiciary and Public Safety

FROM: Senator Patrick Testin

I would like to thank Chairman Wanggaard and members of the committee for accepting my testimony on Senate Bills 17 and 18.

Unfortunately, elder abuse is becoming all too common in our society, and reports of elder abuse continue to grow. According to the Bureau of Aging & Disability Resources, there has been a 177% increase in reported elder abuse in Wisconsin since 2001. One in nine seniors has reported being abused. These numbers are likely to grow as Wisconsin's senior population is on track to have increased by 72% between 2015 and 2040.

In 2017 and 2018, I had the opportunity to serve as a member of the Attorney General's Task Force on Elder Abuse. The task force was made up of stakeholders from state agencies, law enforcement, the court system, long-term care agencies, financial service groups, and citizen advocacy organizations. We were tasked with studying the impact of elder abuse in the state and finding ways to improve outcomes for the elderly.

Senate Bill 17 makes criminal law changes that address crimes against elder populations. The task force found that crimes of elder abuse should better align with provisions under current law that address other vulnerable populations. This legislation will do the following:

- Modifies the law to require a sexual assault of a person over the age of 60 to be Class B Felony.
- Brings the physical abuse of an elder person in line with the age definition of other statutes.
- Creates a mechanism 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.

While Senate Bill 17 focuses on strengthening penalties, Senate Bill 18 will strengthen the process and minimize the amount of stress for elder victims and witnesses who are involved in a

court proceeding by allowing for expedited hearings and the ability to preserve testimony through a video-taped court hearing.

This bill enables a prosecuting attorney to file a motion with a court to preserve the testimony of an elder person involved in criminal and delinquency cases or juvenile dispositional hearings. If a motion is filed, the court must hold a hearing to record testimony within 60 days, the defendant must be present at the hearing, and the witness is subject to cross-examination. The witness can either testify in person, or, under certain circumstances, provide testimony through telephone or live audiovisual means.

The ability to recall certain details is critical to the outcome of court cases. As degenerative brain diseases increase in senior populations, the system must be able to respond to the unique needs of an elderly victim's ability to testify.

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



JOHN J. MACCO

STATE REPRESENTATIVE • 88TH ASSEMBLY DISTRICT

DATE: February 11, 2021
TO: Senate Committee on Judiciary and Public Safety
FROM: Representative John Macco
RE: Testimony on 2021 Senate Bills 17 and 18

Chairman Wanggaard and members of the Senate Judiciary Committee:

Thank you for hearing testimony on these elder care bills. It is my hope that by passing these bills, we will provide increased certainty and security for our elderly and their families.

Today, Americans over the age of 50 hold 70 percent of the nation's disposable income. 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.

Understandably, those who are reaching retirement age are worried about their personal and financial security as they exit the workforce. Since 2001, reported allegations of elder abuse increased by 160 percent in Wisconsin, as did requests for more information. The number of retirees will only increase as more "baby boomers" exit the workforce at a rate of 10,000 individuals per day, making these bills essential for Wisconsin retirees.

Senate Bill 17 helps to discourage bad actors from engaging in the abuse and exploitation of older Wisconsinites by increasing criminal penalties for related crimes and makes it easier for victims to file restraining orders. Additionally, this bill streamlines court processes to freeze assets of a defendant, making it more likely for victims to receive financial restitution.

Senate Bill 18 allows courts to expedite proceedings in cases involving victims or witnesses who are elderly persons and preserve their testimony for use in those proceedings. Victims of elder abuse have a 300% higher risk of death when compared to those who have not experienced abuse, making the need for this legislation far more urgent.

Colleagues, these issues hit close to home for me and my family. My mother-in-law was financially exploited by a relative years ago and my wife and her siblings had little recourse once the damage had been done. Additionally, my own mother was recently the victim of financial fraud and I am not sure if she will ever see that money again. It is my hope that these bills, in addition to the financial pieces also working through the legislative process, will help prevent others from going through what my family went through.

These bills are an important first step in our efforts to end elder abuse and our most vulnerable citizens will benefit from their passage. 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.



Greater Wisconsin
Agency on Aging Resources, Inc.

Date: February 11, 2021

To: Chairman Wanggaard, Vice-Chairman Wimberger, and members of the Senate Committee on Judiciary and Public Safety

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

Re: **Support for SB 17** – 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.

Support for SB 18 – expediting criminal proceedings when a victim or witness is an elder person and preserving the testimony of a crime victim or witness who is an elder person.

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 SB 17 and SB 18. The number of reported elder abuse cases in the state continues to rise, increasing by nearly 70% percent from 2009¹ to 2019 when there were 8,929 reported cases.² The actual number of elder abuse cases is likely much higher, as fear and embarrassment lead to underreporting of abuse. According to the National Council on Aging approximately 1 in 10 Americans age 60 and older have experienced some form of elder abuse.³

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, GWAAR supports SB 17 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

¹ Wisconsin Coalition Against Domestic Violence, Volume 29, Issue 2; <https://www.endabusewi.org/wp-content/uploads/2018/11/Chronicles-29-2.pdf>

² Wisconsin's Annual Elder Abuse and Neglect Report: 2019; <https://www.dhs.wisconsin.gov/publications/p00124-19.pdf>

³ <https://www.ncoa.org/public-policy-action/elder-justice/elder-abuse-facts/>

against an older adult to aid in the payment of restitution. Additionally, we support changes made in this bill that would 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. GWAAR also supports SB 18 which requires courts to expedite criminal proceedings in cases involving a victim or witness who is 60 years of age or older. Involvement in these types of court proceedings can be very stressful. Court proceedings that drag on and have multiple continuances can create needless stress which can trigger trauma symptoms in both victims and witnesses. Additionally, SB 18 creates a requirement that a court preserve certain testimony in criminal matters involving a victim or witness who is 60 years of age or older. Under the bill, if a prosecuting attorney files a motion to preserve the testimony of an older adult, the court must hold a hearing to record the testimony within 60 days. Recording the testimony in a timely manner preserves the older victim's/witness's testimony in case of illness, later incompetency or even death. Under the bill an older witness, if there is good cause, may even provide testimony into the record by telephone or live audiovisual means thereby minimizing any further negative impacts on the older adult's health, independence, and dignity.

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 SB 17 and SB 18.

Contact:

Janet Zander

Advocacy & Public Policy Coordinator, MPA, CSW

Greater Wisconsin Agency on Aging Resources

janet.zander@gwaar.org

(715) 677-6723 or (608) 228-7253 (cell)

District Attorney
Susan L. Opper

Deputy District Attorneys
Lesli S. Boese
Ted S. Szczupakiewicz
Michael D. Thurston

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
Jack A. Pitzo
Molly M. Schmidt
Zachary A. Wittchow
Randolph P. Sitzberger
Claudia P. Ayala Tabares
Peter M. Tempelis
Edward M., Bremberger

February 11, 2021

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

Re: **Senate Bill 17**
Senate Bill 18



Good morning everyone. My name is April DeValkenaere. I am a paralegal certified by the State Bar of Wisconsin and currently focusing on White Collar Crime, with the Waukesha County District Attorney's Office. I am also a Certified Financial Crimes Investigator (CFCI) through the International Association of Financial Crimes Investigators (IAFCI). The IAFCI is a global non-profit organization comprised of approximately 7000 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 am currently serving my second term as President of the Wisconsin chapter of IAFCI.

I had the honor and 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 assist the victims of financial crimes in Wisconsin.

Most people believe that a majority of elder financial exploitation is being perpetrated by unknown suspects, however studies have shown that approximately 90% of elder financial exploitation is being perpetrated by someone 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 prosecution of these financial crimes as well as provide an opportunity for the victim to be heard, in their own words.

We need Senate Bills 17/18 here in Wisconsin. As they provide a number of benefits in the fight against criminals who engage in fraudulent schemes making victims of our Wisconsin residents. This includes;

1. Allowing a victim to be heard at an injunction hearing via phone or audiovisual means, which is imperative for older adults as they may have medical or physical limitations that would not otherwise allow for them to participate in these hearings. As well as those who have been victims of undue influence and fear retaliation if they have to appear in person.
2. Ability to preserve testimony from a victim/witness early on in the judicial process as the National Council on Aging, states elders who have been abused have a 300% higher risk of death when compared to those who have not been mistreated.
3. Allowing for the freezing or seizing of funds/assets of the defendant up to the amount of the alleged fraud during the pendency of the judicial process, is very important for older adults who have been victimized and are attempting to recoup their losses to keep or secure their homes, their care, etc., so they do not need to or can prolong the need to become a benefit recipient of the State.
4. Providing increased penalties for defendants against elder victims, this would certainly be a deterrent as a lot of elder financial crimes are committed by first time offenders based on the opportunity to take advantage of a situation.

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;

1. Documents were utilized by a trusted individual, whether that be a family member, friend or caregiver, who took advantage of their fiduciary duty.
2. 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.
3. Family and/or caregivers have taken advantage of the frail nature of older adults and used it against them.
4. The victim has lost the capacity to be a witness during the pendency of the case and we did not have the ability to preserve testimony quick enough for the victim to be able to speak for themselves.
5. The current law allows us to use an individual-at-risk enhancer to a theft statute however the amount of money stolen from the elder victim has a higher penalty than the enhancer allows.

For the reasons stated above and the reasons expressed in my verbal testimony, I am here to wholeheartedly support these Bills as a representative of the Wisconsin chapter of IAFCI along with the Waukesha County District Attorney's Office.

Respectfully Submitted,

April DeValkenaere

April DeValkenaere, SBWCP, CFCI



THE BRAINS BEHIND SAVING YOURS:

**Testimony of Michael Bruhn, Director of Public Policy,
Alzheimer's Association - Wisconsin Chapter on Senate Bill 17**

Chairman Wanggaard and Committee members, I want to thank you for the opportunity to provide written testimony in support of Senate Bill 17. This legislation is an important first step in strengthening the legal process and protecting older crime victims in Wisconsin.

In Wisconsin, there are currently more than 120,000 residents aged 65 or older living with Alzheimer's, and according to estimates prepared by the Department of Health Services, Office on Aging, the estimated number of Wisconsin residents with Alzheimer's or a related dementia is projected to nearly double by 2040. According to the National Center on Elder Abuse, elder abuse is one of the most overlooked public health hazards in the United States. Unfortunately, individuals with Alzheimer's or a related dementia are at an even greater risk of abuse than those in the general elderly population. People with Alzheimer's or dementia can be more susceptible to abuse because of impairments in memory, communication abilities, and judgment. While it is estimated that 47% of adults with dementia will suffer from some form of abuse, these prevalence estimates are underestimated, due to the fact that many people with dementia are unable, frightened, or embarrassed to report abuse. Additionally, as dementia progresses, so does the risk of all types of abuse.

The consequences of elder abuse can be devastating, from the physical and emotional toll victims of abuse endure to the financial hardships faced by victims of financial exploitation. While financial exploitation can occur at any stage in the lifespan, older adults, particularly those who have Alzheimer's or dementia, are disproportionately targeted.

The Attorney General's Task Force on Elder Abuse recommended SB 17 to increase the penalties for crimes against older people, and freeze for possible seizure the assets from a defendant who has been charged with a financial exploitation crime against an older adult. Currently, victims of elder abuse have very little chance of financial recovery, which can and does impact the rest of their lives as they are forced to live in a compromised financial position. Finally, Senate Bill 17 removes barriers for an elderly

individual to seek a restraining order by allowing them to appear in court by telephone or audiovisual system, which is something that is even more important under current circumstances for Wisconsin elderly population.

Thank you for allowing me to provide testimony on Senate Bill 17.

To: Senate Committee on Judiciary & Public Safety

From: Michael Pochowski, CEO

Date: Thursday, February 11, 2021

Re: Testimony on Senate Bill 17 – Section 41



Request modification of “defendant” to “individual”

On behalf of the members of the Wisconsin Assisted Living Association (WALA), I respectfully ask the Senate Committee consider our concerns regarding Section 41 of Senate Bill 17 – 971.109 Freezing assets of a person charged with financial exploitation of an elder person.

WALA members understand the intention of this legislative proposal and have zero tolerance for elder abuse. We were honored to participate and be a member of the Attorney General’s Task Force on Elder Abuse and are overall supportive of these bills. We are requesting a modification to Section 41 to ensure there are no unintended consequences.

As the language in Section 41 is currently drafted, a “defendant” could be broadly interpreted to include not only the alleged perpetrator, but also the employer, management, and ownership of the assisted living facility – even if those entities were unaware of the alleged financial exploitation.

It is our understanding the intent of the bill is to restrict the alleged perpetrator from accessing any of the funding they may have financially exploited from the elderly victim. However, in consultation with legal counsel that specializes in these matters within the long-term care profession, Section 41 could be interpreted to allow the assets of the employer/management/ownership of the assisted living facility to be frozen even if they are not a party of the alleged crime.

While the intent may not be to freeze all assets, there is concern with how the new policy could be interpreted, pursued and applied. If an assisted living facility’s assets were frozen to a significant extent, this could affect cash flow and impact the ability of the affected facility to provide the necessary care and services to its residents.

We propose that the word “defendant” be changed to “individual” so that the employer, management, ownership, health care entity, etc. does not unnecessarily become a “defendant” subject to asset seizure under Senate Bill 17.

Thank you for your consideration in this matter. If you have questions, please feel free to contact me at:

Michael Pochowski, CEO
Wisconsin Assisted Living Association
(414) 803-7415
mpochowski@ewala.org

About the Wisconsin Assisted Living Association (WALA)

The Wisconsin Assisted Living Association is comprised of approximately 1,500 facility members that serve the frail elderly and persons with intellectual and cognitive disabilities who are highly susceptible to COVID-19. This includes community-based residential facilities (CBRFs), residential care apartment complexes (RCACs), and adult family homes (AFHs), both licensed and certified. Our members serve over 20,000 residents and employ tens of thousands of employees.

The Wisconsin Assisted Living Association's mission is to support providers in enhancing the best quality of life for residents in assisted living in Wisconsin through advocacy, education, communication, and quality initiatives.