



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-0150/1  
MLJ:klm

## 2021 SENATE BILL 388

June 10, 2021 - Introduced by Senator JACQUE, cosponsored by Representatives SKOWRONSKI, MOSES, MURPHY and WICHGERS. Referred to Committee on Judiciary and Public Safety.

1     **AN ACT to amend** 48.57 (3p) (g) 2., 303.07 (2), 911.01 (4) (c), 968.20 (title), 968.20  
2           (1), 968.20 (1h) and 973.01 (2) (c) 2. a.; and **to create** 813.12 (1) (ac), 813.12 (5b),  
3           813.123 (6g), 813.125 (5b), 939.623, 940.225 (1) (d) and 971.109 of the statutes;  
4           **relating to:** increased penalties for crimes against adults at risk; restraining  
5           orders for adults at risk; freezing assets of a defendant charged with financial  
6           exploitation of an adult at risk; sexual assault of an adult at risk; and providing  
7           a penalty.

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*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 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**

This bill creates 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 adult at risk.

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Under the bill, if a person is charged with a financial exploitation crime, the crime involves property valued at more than \$2,500, and the crime victim is an adult at risk, a prosecuting attorney may file a petition with the court to freeze the funds, assets, or property of the person in an amount up to 100 percent of the alleged value of property involved in the person's pending criminal proceeding for purposes of preserving the property for future payment of restitution to the crime victim.

**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 not more than two years; a maximum term of imprisonment of more than one year but not more than ten years may be increased by not more than four years; and a maximum term of imprisonment of more than ten years may be increased by not more than 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**

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.

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.

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.

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

1           **SECTION 1.** 48.57 (3p) (g) 2. of the statutes is amended to read:  
2           48.57 **(3p)** (g) 2. The person has had imposed on him or her a penalty specified  
3           in s. 939.64, 1999 stats., or s. 939.641, 1999 stats., or s. 939.6195, 939.62, 939.621,  
4           939.623, 939.63 or 939.645 or has been convicted of a violation of the law of any other  
5           state or federal law under circumstances under which the person would be subject  
6           to a penalty specified in any of those sections if convicted in this state.

7           **SECTION 2.** 303.07 (2) of the statutes is amended to read:

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1           303.07 (2) When convicted persons are subject to commitment to the county  
2 jail, or to the Wisconsin state prisons under s. 939.62 (1) (a) or 939.623 (2) (a) for a  
3 term not exceeding 2 years, the court may instead commit them for equivalent terms  
4 to a reforestation camp authorized under sub. (1).

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

6           813.12 (1) (ac) “Adult at risk” has the meaning given in s. 55.01 (1e).

7           **SECTION 4.** 813.12 (5b) of the statutes is created to read:

8           813.12 (5b) ADULT AT RISK PETITIONER. If the petitioner is an adult at risk, the  
9 court shall permit the petitioner to participate in hearings under this section by  
10 telephone or live audiovisual means.

11          **SECTION 5.** 813.123 (6g) of the statutes is created to read:

12          813.123 (6g) INDIVIDUAL AT RISK PETITIONER. If the petitioner is an individual  
13 at risk, the court shall permit the petitioner to participate in hearings under this  
14 section by telephone or live audiovisual means.

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

16          813.125 (5b) ADULT AT RISK PETITIONER. If the petitioner is an adult at risk, as  
17 defined in s. 55.01 (1e), the court shall permit the petitioner to participate in hearings  
18 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 freezing the assets of a person charged with  
24 financial exploitation of an adult at risk under s. 971.109; issuance of subpoenas or  
25 warrants under s. 968.375, arrest warrants, criminal summonses, and search

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1 warrants; hearings under s. 980.09 (2); proceedings under s. 971.14 (1r) (c);  
2 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 of the statutes is created to read:

7 **939.623 Increased penalty for adult at risk victims. (1)** In this section,  
8 “adult at risk” has the meaning given in s. 55.01 (1e).

9 **(2)** If the crime victim is an adult at risk, and the present conviction is for any  
10 crime for which imprisonment may be imposed, the maximum term of imprisonment  
11 prescribed by law for that crime may be increased as follows:

12 (a) A maximum term of imprisonment of one year or less may be increased to  
13 not more than 2 years.

14 (b) A maximum term of imprisonment of more than one year but not more than  
15 10 years may be increased by not more than 4 years.

16 (c) A maximum term of imprisonment of more than 10 years may be increased  
17 by not more than 6 years.

18 **(3)** This section applies irrespective of whether the defendant had actual  
19 knowledge that the crime victim was an adult at risk at the time the crime was  
20 committed. A mistake regarding the crime victim’s status as an adult at risk is not  
21 a defense to an increased penalty under this section.

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

23 940.225 **(1)** (d) Commits a violation under sub. (2) against an adult at risk, as  
24 defined in s. 55.01 (1e). This paragraph applies irrespective of whether the  
25 defendant had actual knowledge of the crime victim’s status as an adult at risk. A

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1 mistake regarding the victim's status as an adult at risk is not a defense to a  
2 prosecution under this paragraph.

3 **SECTION 10.** 968.20 (title) of the statutes is amended to read:

4 **968.20 (title) Return of property frozen or seized.**

5 **SECTION 11.** 968.20 (1) of the statutes is amended to read:

6 968.20 (1) Any person claiming the right to possession of property frozen or  
7 seized under s. 971.109 or seized pursuant to a search warrant or seized without a  
8 search warrant, except for an animal taken into custody under s. 173.13 (1) or  
9 withheld from its owner under s. 173.21 (1) (a), may apply for its return to the circuit  
10 court for the county in which the property was frozen or seized or where the search  
11 warrant was returned, except that a court may commence a hearing, on its own  
12 initiative, to return property seized under s. 968.26. If an initial appearance under  
13 s. 970.01 is scheduled, the application for the return of the property shall be filed  
14 within 120 days of the initial appearance.

15 **SECTION 12.** 968.20 (1h) of the statutes is amended to read:

16 968.20 (1h) If a court orders property returned under sub. (1g), the court shall  
17 order the person not to sell, transfer, assign, or otherwise encumber the property  
18 until the court orders the property either returned under s. 961.55 (3) or 973.075 (5)  
19 ~~or~~, forfeited under s. 961.555 or 973.076, or subject to restitution under s. 973.20. If  
20 the person is subsequently convicted of or found to have committed the offense, the  
21 court shall order the person to surrender the returned property for proceedings  
22 under s. 961.555 or 973.076, whichever is appropriate, or for restitution under s.  
23 973.20.

24 **SECTION 13.** 971.109 of the statutes is created to read:

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1           **971.109 Freezing assets of a person charged with financial**  
2 **exploitation of an adult at risk. (1) DEFINITIONS.** In this section:

3           (a) “Adult at risk” has the meaning given in s. 55.01 (1e).

4           (c) “Financial exploitation” has the meaning given in s. 46.90 (1) (ed).

5           **(2) SEIZURE OF ASSETS.** (a) If a defendant is charged with a crime that is  
6 financial exploitation, the crime involves the taking or loss of property valued at  
7 more than \$2,500, and the crime victim is an adult at risk, a prosecuting attorney  
8 may file a petition with the court in which the defendant has been charged to freeze  
9 the funds, assets, or property of the defendant in an amount up to 100 percent of the  
10 alleged value of funds, assets, or property in the defendant’s pending criminal  
11 proceeding for purposes of restitution to the crime victim. The hearing on the  
12 petition may be held ex parte. The rules of evidence do not apply in a hearing under  
13 this paragraph.

14           (b) In the hearing under par. (a), if there is a showing of probable cause that  
15 the defendant used, was using, is about to use, or intends to use any funds, assets,  
16 or property in a way that constitutes or would constitute financial exploitation, the  
17 court shall issue an order to freeze or seize the funds, assets, or property of the  
18 defendant in the amount calculated under par. (a). A copy of the order shall be served  
19 upon the defendant whose funds, assets, or property has been frozen or seized.

20           (c) The court’s order shall prohibit the sale, gifting, transfer, or wasting of the  
21 funds, assets, or real or personal property of the adult at risk that are owned by or  
22 vested in the defendant without the express permission of the court. The court’s  
23 order shall be binding upon a financial institution, as defined in s. 943.80 (2), and any  
24 3rd party that is in possession of the funds, assets, or property

