



Date: February 24, 2021

To: Chairman Spiros, Vice-Chairman Horlacher, and members of the Assembly Committee on Criminal Justice and Public Safety

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

Re: **Support for AB 44** – 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.

For Information Only AB 45 – 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 AB 46 – financial exploitation of vulnerable adults

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 AB 44, 45, and 46. 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

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/>

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 AB 44 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 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.

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. Nationally, estimated losses related to elder fraud/abuse range from \$2.9 billion to \$36.5 billion a year.⁴ Despite the high number of suspected incidents of elder financial exploitation, most 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 the efforts of financial institutions to provide information and services to consumers (of all ages) to enhance protections against financial exploitation, we feel it is imperative these efforts strike the right balance between autonomy and protection.

AB 45 & AB 46:

Both AB 45 and AB 46 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. Through GWAAR's Elder Law and Advocacy Center and the Guardianship Support Center, GWAAR attorneys have experienced numerous incidents in which financial institutions would not honor valid Powers of Attorney for Finances (POA-F). In one situation, the daughter was the POA-F agent for her mother and needed to access funds in the mother's savings account to pay for her mom's nursing home care (as funds in the mom's checking account had been depleted) and finalize her mom's funeral/burial funds, but the daughter's attempts to withdraw the funds were repeatedly denied. These funds needed to be spent in order for her mother to meet the eligibility requirements (\$2,000 asset limit) for Medicaid. Medicaid funding was needed to continue to pay for her mom's nursing home care. After 9 months, the mom was finally approved for Medicaid as the local Income Maintenance Consortia deemed the savings account as "unavailable" since multiple efforts (including efforts by the local Elder Benefit Specialist and GWAAR attorney) to help the daughter access the savings account funds failed. In another case involving an adult daughter POA-F, the bank refused to accept the POA-F and told the daughter her mother would need to sign a signature card to make the POA-F agent a joint account holder (this should not have been necessary with a POA-F). The mother was in a nursing home for rehabilitation

⁴ Older Americans Hit Hard by Financial Fraud, AARP, February 29, 2019; <https://www.aarp.org/money/scams-fraud/info-2019/cfpb-report-financial-elder-abuse.html>, accessed on Feb. 24, 2021.

and unable to receive visitors (due to the COVID-19 pandemic) making it very difficult to get the card signed. Additionally, the mom may no longer have had the capacity to sign the card, which is why people plan ahead and create a POA-F. GWAAR recognizes financial abuse and exploitation deprive older adults of their resources and ultimately their independence, and therefore; we support balanced measures to provide precautions while still respecting individuals' choices. Documentation of "reasonable cause" and establishing an ascertainable standard for when and under what circumstances a POA-F can be questioned would be a great place to start. In addition, consumers should be protected 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.

Thank you for your consideration of these comments supporting AB 44 and providing additional information on AB 45 and AB 46. 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.

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