



Date: November 14, 2019

To: Chair Spiros, Vice-Chair Sortwell, and Members of the Assembly Committee on Criminal Justice and Public Safety

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

Re: **Support for AB 480** – 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

AB 481 – financial exploitation of vulnerable adults – **For Information Only**

AB 482 – 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**

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 this package of bills aimed at combatting elder abuse. Though the number of reported elder abuse cases in the state continues to rise, increasing by 52 percent from 2010 to 2018 when there were 8,803 reported cases, elder abuse remains dramatically underreported. Fear and embarrassment are common reasons for underreporting, especially since family members are the most common perpetrators. It has been estimated that roughly two-thirds of all elder abuse perpetrators are family members. According to the American Bar Association approximately 10% of older adults experience some form of elder abuse (2017).

AB 480: 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, we support AB 480 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. Additionally, we support changes made in this bill to 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. Despite the high number of suspected incidents of elder financial exploitation, the majority of 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 financial institutions efforts to provide information and services to consumers (of all ages) to enhance protections against financial exploitation, we feel it is imperative for these efforts to strike the right balance between autonomy and protection.

AB 481 & AB 482:

Both AB 481 and AB 482 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. GWAAR has several concerns related to AB 481 and AB 482 and we recommend the following changes be made to the bills to ensure this balance is maintained:

Regarding authority for financial institutions (AB 481) and securities agents/ investment advisors (AB 482) to delay transactions and refuse to honor Durable Powers of Attorney (DPOA) -

- **The term “reasonably suspects” is ambiguous and needs clearly defined standards:** We recommend the bill language be changed to include specific standards defining the circumstances that constitute reasonable cause. These circumstances should be documented in the client's account record. Staff training should be provided related to identification of these “red flags” that may prompt a provider to refuse or delay a financial transaction.
- **Individual who is 60 years of age or older:** Age alone is not an indicator of incapacity. We recommend the sentence “*or an individual who is at least 60 years of age*” be deleted from the definition of “vulnerable adult” in the bill and the “adult at risk” definition in § 55.01(1e) be used in its place.
- **Preventive measures:** Financial institutions can provide enhanced protection against the risk of elder financial exploitation (or the financial exploitation of someone at any age) by offering consumers the *option* to select account protections such as restrictions, third party alerts, and other features. We recommend consumers be offered the ability to “opt-in” to these additional protections, if desired.
- **Refusal of power of attorney:** Taking the necessary steps to plan for one's future is encouraged. DPOAs are often part of that planning process. Allowing financial institutions to refuse to honor a power of attorney is a disservice to all who have taken the necessary steps to be prepared for

their future needs. Wis. Stat. § 244.20 was intended to offer protections against the practice of refusing to accept a power of attorney for inappropriate reasons and should not be changed.

- **Protect consumers 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.

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 AB 480 and recommended changes to improve AB 481 and AB 482.

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