



PATRICK TESTIN

STATE SENATOR

DATE: April 15, 2021
RE: **Testimony on Assembly Bill 43**
TO: The Assembly Committee on Judiciary
FROM: Senator Patrick Testin

I would like to thank Chairman Tusler and members of the committee for accepting my testimony on Assembly Bill 43 (AB 43).

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 more than 150% 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.

AB 43 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.



THE BRAINS BEHIND SAVING YOURS:

**Testimony of Michael Bruhn, Director of Public Policy,
Alzheimer's Association - Wisconsin Chapter on Assembly Bill 43**

Chairman Tusler and Committee members, I want to thank you for the opportunity to testify in support of Assembly Bill 43. This legislation will expedite and strengthen the legal process for older crime victims and witnesses who may have declining health.

In Wisconsin, there are currently more than 120,000 residents aged 65 or older living with Alzheimer's disease or a related dementia, 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.

Assembly Bill 43, which was a recommendation of Attorney General Schimel's Task Force on Elder Abuse, would allow for expedited hearings and the ability to preserve testimony through a video-taped court hearing. As the Task Force's final report noted: "as degenerative brain diseases increase in populations, the system must be able to respond to the unique needs of an elderly victim's ability to testify." As the prevalence of Alzheimer's disease and dementia continues to rise nationwide, we have witnessed an increase in criminal defendants and their attorneys utilizing the court system to delay court proceedings. These delays are meant to prolong a criminal case until a victim's health deteriorates or a cognitive impairment progresses to the point that the victim is no longer able to testify in the case.

According to the National Council on Aging (NCOA), nearly 10% of all Americans 60 years of age or older have experienced some form of elder abuse, and one study estimated that only 1 in 14 cases of abuse are reported to authorities. Recent studies have also shown that nearly half of the population with dementia experienced abuse or neglect. In Wisconsin, there were nearly 9,000 reported cases of elder abuse in 2018, an increase of more than 50% since 2010.

The need to address this issue will only grow in the coming years as Wisconsin's population continues to age and the prevalence of Alzheimer's and related dementias nearly doubles by 2040. The Alzheimer's Association appreciates the efforts of the State Legislature and the Task Force on Elder Abuse to safeguard older adults by recognizing the unique challenges they may have providing testimony in a court proceeding.

Thank you for allowing me to provide testimony on Assembly Bill 43.

ELDER LAW AND SPECIAL NEEDS SECTION

To: Assembly Committee on Judiciary

From: Elder Law and Special Needs Section - State Bar of Wisconsin

Re: Support AB 43

Date: April 15, 2021

Dear Representative Tusler and members of the committee:

My name is Carol Wessels and I am an attorney member of the State Bar of Wisconsin. Today I appear on behalf of the Elder Law and Special Needs (ELSN) Section of the State Bar of Wisconsin to testify in support of AB 43.

AB 43 is part of a package of bills arising out of Former Attorney General Schimel's Task Force on Elder Abuse. The ELSN supports this bill, AB 43, as well as AB 44, and opposes AB 45 and 46.

ELSN supports this bill because it increases the likelihood that elder victims of abuse will meaningfully be able to participate in a criminal proceeding to seek justice.

I have worked on the civil side with victims of elder abuse. Some of these individual have no medical or cognitive issues that impact their ability to participate meaningfully in the justice process. However, research suggests that the stress of elder abuse leads to declines in health, and even premature death, in victims. Moreover, issues that are related to health and cognitive ability, such as dementia, are much more prevalent in individuals as they age. The nature of dementia is that it is a deadly, progressive disease. This unfortunately leads to a situation where a victim of abuse who has capacity when the crime occurs, may lose capacity as the case goes on, if it is not resolved with expedience. I personally have had the unfortunate experience of having some of my elder clients die or become legally incapacitated before we came to the end of their financial exploitation civil matter.

As a result, national centers evaluating best practices for the creation of elder justice courts recommend examining a number of issues around the ways that "typical" courts operate, in order to create a more effective system of justice for



STATE BAR OF WISCONSIN

elders. AB 43 implements some of the procedures that move toward the goal of an elder-friendly justice system.

The American Bar Association has published recommended guidelines for State Courts handling elder abuse cases.

(https://www.americanbar.org/content/dam/aba/administrative/law_aging/2011/2011_aging_ea_rec.pdf) One of these recommendations is that “Courts should expedite cases involving elder abuse on the calendar.”

Similarly, the National Center for Elders and Courts publishes a list of “Accommodations in the Courtroom and Judicial Process.”

(<https://www.eldersandcourts.org/aging/the-role-of-the-courts>) One of the recommendations is that “While preserving the defendant’s right of confrontation, consider procedures that assure the elder victim’s testimony is memorialized, such as videotaped examinations and conditional exams.” Another is to “expedite guardianship and elder abuse cases and avoid unnecessary continuances and delays.” The provisions of this bill are consistent with those recommendations.

Because AB 43 is a step in the right direction toward the creation of a system of justice that respects the needs and characteristics of elders, we ask that this bill be enacted into law.

If you have any additional questions please contact Cale Battles, Government Relations Coordinator, at (608) 695-5686 or cbattles@wisbar.org.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.



Greater Wisconsin
Agency on Aging Resources, Inc.

Date: April 15, 2021

To: Representative Tusler, Representative Kerkman, and members of the Assembly Committee on Judiciary

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

Re: **Support for AB 43** – 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. 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 43. 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. Sadly, reports of elder abuse or neglect can be found in every corner of the state and include allegations of abuse or neglect in nursing homes, assisted living facilities, adult family homes, and private residences.⁴ Given the significant negative impacts of elder abuse, GWAAR supports AB 43 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, AB 43 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

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/>

⁴ Heartbreaking: Elder abuse and neglect reports filed in every corner of Wisconsin; WBAY, Sarah Thomsen, Published: Mar. 24, 2021



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**Assembly
Committee on Judiciary
April 15, 2021
Madison, WI
Helen Marks Dicks**

Good Afternoon. I am Helen Marks Dicks, State Issues Advocacy Director for AARP Wisconsin, which has over 820,000 members here in Wisconsin. We advocate on behalf of Wisconsinites aged 50 and older. The issue of elder abuse and neglect is of grave concern to us and we greatly appreciate the attention being paid to this critical issue. We have supported the full package of Elder Abuse and Financial Exploitation bills. Today I wish to state our support for AB 43.

AB 43 expedites court proceedings when a victim or a witness is an elder person and allows for the preserving of testimony of a victim or witness who is elderly. The stress of going through the procedures is difficult on older victims and witnesses. Often a strategy of the bad actors is to delay, hoping the stress of the proceeding will cause the older victims loss of interest, capacity or desire to pursue the matter.

When this bill was advanced last session, we supported the bill because the situation with the prosecution of elder abuse cases was a grave concern both in the number of cases and the number we suspected went unreported and the delay tactics used by defense attorneys if and when their clients were prosecuted. We fear that during the pandemic the situation has gotten worse with older people being targeted both by scam artists and unfortunately by people they know. Older adults not only received stimulus money but the steady income from pensions and social security became an attractive target. Older people were more isolated with less contact with family and friends whose advice they could seek and who might keep an eye on them. They were lonely and in need of contact, which made them easy targets. The bad actors took advantage of this and I fear the number of cases in need of precaution will increase as more family and friends become aware of what happen to some of the older population during the pandemic.

Wisconsin Justice Initiative



Testimony on AB43

Assembly Judiciary Committee

April 15, 2021

Chair Tusler and committee members:

Thank you for the opportunity to provide testimony on AB43.

The Wisconsin Justice Initiative opposes the bill for several reasons.

First, although we very much sympathize with complainants in criminal cases who are older, this bill duplicates a process that already addresses many of the concerns that exist in these situations. Wisconsin statute 967.04 has a process for depositions in criminal cases “if it appears that a prospective witness may be unable to attend” a trial or hearing. This process has been used and vetted in Wisconsin trial and appellate courts and allows for a party to petition the court for a deposition to preserve witness testimony if it is necessary to prevent a failure of justice.

A second concern with this legislation is that it creates a speedy trial privilege for an alleged victim or witness in a case, which could adversely impact a defendant's ability to prepare a defense. In so doing, it can create grounds for costly appeals which would drag out cases longer than under current law. This is the exact opposite result from what appears to be intended.

The bill would potentially violate the constitutional right to confrontation by allowing the elder alleged victim or witness to testify electronically, by telephone or audiovisual means, and not "live" in a courtroom.

The bill mandates that a judge hold a hearing within 60 days of a prosecutor's request to get the testimony but does not say what happens if that deadline is not met. What if the defendant does not have a lawyer representing him or her? What happens if the defense lawyer has been on the case for just a few days or a week and has not been given adequate time to prepare? What if a defense investigator has not finished work on the case? Again, these are issues that can result in lengthy and costly appeals.

The bill also provides that the elder victim / witness "shall be subject to cross-examination and rebuttal if not unduly repetitious." This is also something that current law allows a judge to do – see sec. 906.11, Stats., which allows a judge to exercise reasonable control over the examination of witnesses, in part to “protect witnesses from harassment or undue embarrassment.” Judges are very good at controlling trials to avoid wasting time.

Finally, the bill says that the elder's testimony "shall be admissible in evidence against the defendant in any court proceeding in the case." It does not make mandatory admissibility of the testimony on *behalf* of the defendant if it is exculpatory.

For all of these reasons, WJI is opposed to AB43 and believes it is fatally flawed.

Please make this testimony part of the committee record.

Thank you.

Craig Johnson,
President,
Wisconsin Justice Initiative

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April 15, 2021

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

Re: Assembly Bill 43/Senate Bill 18



Good afternoon 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 this bill, 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 this bill 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 Assembly Bill 43 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 early stage of the criminal justice process, in person or if good cause is shown 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 physically in these hearings.
 - a. Similar to how child victims and witnesses; duty to expedite proceedings are addressed in Wis. Stats. § 971.105.
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. Not only will this allow for the testimony involving the alleged crime, it will also allow for testimony in regards to the amount of restitution that may be owed to the victim. Since the proposed legislation allows the pre-recorded testimony to be admissible at any court proceedings. This is important, especially, if the victim becomes incapacitated or deceased during the pendency of the criminal justice process. The 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.

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 defendants are intentionally causing delays in the judicial process, in hopes that the victim becomes incapacitated or dies prior to the adjudication of the case; in the hopes that the State will not be able to continue to prosecute the case because they would not be able to confront their accuser at trial.

For the reasons stated above and the reasons expressed in my verbal testimony, I am here to wholeheartedly support Assembly Bill 43 as a representative of the Wisconsin chapter of IAFCI along with the Waukesha County District Attorney's Office.

Respectfully Submitted,

April DeValkenaere

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