

## **SUMMARY OF [2021 WI ACT 76](#) – ISSUES AFFECTING ELDER VICTIMS**

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### **Definition of “Elder Person”**

“Elder person” means any individual who is 60 years of age or older.

(See Wis. Stats. §§ 813.12(1)(ar), 813.125(1)(am)3., 939.623(1), 940.198(1)(a), and 971.109(1)(a))

### **New Requirement for Restraining Order Hearings**

If an elder person petitions for a domestic abuse, individual at risk, or harassment restraining order, the court shall permit the elder person to participate in hearings by telephone or live audiovisual means. (Wis. Stats. §§ 813.12(5b), 813.123(6g), and 813.125(5b))

### **New Modifier – Increased Penalty for Elder Person Victims (Wis. Stat. § 939.623)**

If the crime victim is an elder person, prison sentences may be increased, regardless of whether the defendant knew the victim’s age. (Wis. Stat. § 939.623(2) and (3))

### **New Offense – Physical Abuse of an Elder Person (Wis. Stat. § 940.198)**

- Intentionally cause great bodily harm: Class F, H, or C felony, depending on the circumstances (Wis. Stat. § 940.198(2)(a)-(c))
- Recklessly cause bodily harm: Class I, H, or E felony, depending on the circumstances (Wis. Stat. § 940.198(3)(a)-(c))
- Knowledge of the victim’s age is not a requirement (Wis. Stat. § 940.198(4))

### **New Offense – First Degree Sexual Assault of an Elder Person (Wis. Stat. § 940.255(1)(d))**

Whoever commits second degree sexual assault against an elder person is guilty of a Class B felony, regardless of whether the defendant knows the victim’s age. (Wis. Stat. § 940.225(1)(d))

### **New Process – Freezing Assets of a Person Charged with Financial Exploitation of an Elder Person (Wis. Stat. § 971.09)**

- When a defendant is charged with financial exploitation under Wis. Stat. § 46.90(1)(ed) of an elder person and the property is valued at more than \$2,500, the prosecuting attorney may file a petition to freeze the defendant’s funds, assets, or property up to 100 percent of the alleged value of the funds, assets, or property. The hearing on the petition may be held ex parte and the rules of evidence do not apply. (Wis. Stat. § 971.109(2)(a))
- If there is a showing of probable cause that the defendant engaged in financial exploitation, the court shall issue an order to freeze or seize the funds, assets, or property and the order shall be served upon the defendant. (Wis. Stat. § 971.109(2)(b))
- Within 30 days of service of the order, the defendant or any person claiming an interest in the funds, assets, or property may file a petition to release the funds, assets, or property. The court shall hold a hearing within 10 days and follow the procedure under Wis. Stat. § 968.20 for return of property seized. (Wis. Stat. § 971.109(3))
- If the defendant is convicted of financial exploitation, the court may order the funds, assets, or property be released only for the purpose of paying restitution ordered under Wis. Stat. § 973.20(2). (Wis. Stat. § 971.109(5))