



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2017 Assembly
Joint Resolution 47**

**Assembly Substitute
Amendment 2
and Assembly Amendment 6 to
Assembly Substitute
Amendment 2**

Memo published: September 11, 2017

Contact: Melissa Schmidt, Senior Staff Attorney
Michael Queensland, Senior Staff Attorney

2017 Assembly Joint Resolution 47 (“the joint resolution”) is a proposal to amend the Wisconsin Constitution (on first consideration), relating to the rights of crime victims. The joint resolution has commonly been referred to as “Marsy’s Law.” To become law, the joint resolution must be passed by both the Assembly and the Senate in two successive Legislatures and then submitted to the people for ratification. [Wis. Const. art. XII, s. 1.]

This memorandum describes Assembly Substitute Amendment 2 (“the substitute amendment”) to the joint resolution, and Assembly Amendment 6 (AA 6) to the substitute amendment.

WISCONSIN CONSTITUTION

The joint resolution amends Wis. Const. art. I, s. 9m, which grants crime victims certain rights and provides remedies for violations of those rights, as established by the Legislature. The current constitutional provision reads as follows:

This state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy. This state shall ensure that crime victims have all of the following privileges and protections as provided by law: timely disposition of the case; the opportunity to attend court proceedings unless the trial court finds sequestration is necessary to a fair trial for the defendant; reasonable protection from the accused throughout the criminal justice process; notification of court proceedings; the opportunity to confer with the prosecution; the opportunity to make a statement to the court at disposition;

restitution; compensation; and information about the outcome of the case and the release of the accused. The legislature shall provide remedies for the violation of this section. Nothing in this section, or in any statute enacted pursuant to this section, shall limit any right of the accused which may be provided by law. [Wis. Const. art. I, s. 9m.]

ASSEMBLY SUBSTITUTE AMENDMENT 2

Definition of Victim

The substitute amendment creates a definition of “victim” in the Wisconsin Constitution. Under the substitute amendment, a victim is defined to mean any of the following: (a) a person against whom an act is committed that would constitute a crime if committed by a competent adult; (b) if the victim is deceased or is physically or emotionally unable to exercise his or her rights, the person’s spouse, parent or legal guardian, sibling, child, person who resided with the deceased at the time of death, or other lawful representative; (c) if the victim is a minor, the person’s parent, legal guardian or custodian, or other lawful representative; or (d) if the victim is adjudicated incompetent, the person’s legal guardian or other lawful representative. Under the substitute amendment, a victim does not include the accused or a person who the court finds would not act in the best interests of a victim who is deceased, incompetent, a minor, or physically or emotionally unable to exercise his or her victim rights.

Victims’ Rights

The joint resolution grants victims several constitutional rights. The purpose of these rights is to “preserve and protect victims’ rights to justice and due process throughout the criminal and juvenile justice process.” Under the substitute amendment, these rights vest at the time of victimization and must be protected by law in a manner no less vigorous than the protections afforded to the accused. The specific list of enumerated victims’ rights created by the substitute amendment includes the following:

- To be treated with dignity, respect, courtesy, sensitivity, and fairness.
- To privacy.
- To proceedings free from unreasonable delay.
- To timely disposition of the case, free from unreasonable delay.
- Upon request, to attend all proceedings involving the case.
- To reasonable protection from the accused throughout the criminal and juvenile justice process.
- Upon request, to reasonable and timely notification of proceedings.
- Upon request, to confer with the attorney for the government.

- Upon request, to be heard in any proceeding during which a right of the victim is implicated, including release, plea, sentencing, disposition, parole, revocation, expungement, or pardon.
- To have information pertaining to the economic, physical, and psychological effect upon the victim of the offense submitted to the authority with jurisdiction over the case and to have that information considered by that authority.
- Upon request, to timely notice of any release or escape of the accused or death of the accused if the accused is in custody or on supervision at the time of death.
- To refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused.
- To full restitution from any person ordered to pay restitution to the victim and to be provided with assistance collecting restitution.
- To have any moneys or property collected from a person who has been ordered to make restitution to the victim be applied first to restitution of the victim before being applied to any amounts owed by that person to the government.
- To compensation as provided by law.
- To timely information about the outcome of the case.
- To timely notice about all rights granted under this constitutional amendment and all other rights, privileges, or protections of the victim provided by law, including how such rights, privileges, or protections are enforced.

Self-Executing Rights

The substitute amendment provides that victim rights afforded under the State Constitution are, with one exception, “self-executing” and allows the Legislature to provide further procedures for compliance and enforcement of these rights. Additionally, the substitute amendment, similar to current law, allows the Legislature to “prescribe further remedies” for the violation of victim rights.

Standing to Enforce Victim Rights

The substitute amendment allows enforcement of victim rights in any circuit court or before any other authority of competent jurisdiction. The substitute amendment also provides that victims may obtain review of all adverse decisions concerning their rights as victims by courts or other authorities with jurisdiction by filing petitions for supervisory writ in the Court of Appeals and Wisconsin Supreme Court.

Enforcement and Remedies

The joint resolution imposes obligations on courts to act on actions to enforce victim rights and to provide explanations for the court’s actions relating to victim rights. The joint

resolution adds constitutional language requiring a court or other authority with jurisdiction over a case to “act promptly” on a victim’s attempts to seek enforcement of his or her rights and to provide a “remedy” for the violation of victim rights. The substitute amendment requires the court to clearly state on the record, and provide to the victim or legal representative, the reasons for any decision the court reaches regarding a victim’s rights. The substitute amendment also provides that the victim rights conferred by the Constitution is not intended and may not be interpreted to supersede a defendant’s federal constitutional rights or to not afford party status to any victim.

Limitation on Claims for Money Damages

The substitute amendment specifies that the constitutional rights provided to victims do not create any cause of action for damages against the state; any political subdivision of the state; any officer, employee, or agent of the state or a political subdivision of the state acting in his or her official capacity; or any officer, employee, or agent of the courts acting in his or her official capacity.

ASSEMBLY AMENDMENT 6 TO THE SUBSTITUTE AMENDMENT

AA 6 to the substitute amendment amends the constitutional right related to receiving “**timely information about the outcome of the case.**” Under AA 6 to the substitute amendment, a victim has, “**upon request,**” the constitutional right to “**receive reasonable and timely information about the status of the investigation and the outcome of the case.**”

RESOLUTION HISTORY

The substitute amendment was introduced by Representatives Novak and Crowley on September 5, 2017, and AA 6 to the substitute amendment was introduced by Representatives Novak and Goyke on September 6, 2017. On September 7, 2017, the Assembly Committee on Criminal Justice and Public Safety voted to recommend adoption of AA 6 to the substitute amendment by a vote of Ayes, 12; Noes, 0. The committee subsequently voted to recommend adoption of the substitute amendment, as amended, by a vote of Ayes, 11; Noes, 1; and to recommend passage of the joint resolution, as amended, by a vote of Ayes, 11; Noes, 1.

MS:MQ;jal