



## 2019 ASSEMBLY JOINT RESOLUTION 107

November 15, 2019 - Introduced by Representatives DUCHOW, HUTTON, KULP, DITTRICH, KNODL, KITCHENS, NEYLON, OTT, QUINN and STEINEKE, cosponsored by Senators WANGGAARD, OLSEN and JACQUE. Referred to Committee on Constitution and Ethics.

1 **To renumber and amend** section 8 (3) of article I; **to amend** section 8 (2) of article  
2 I; and **to create** section 8 (3) (a), (b) and (c) of article I of the constitution;  
3 **relating to:** release of a person accused of a crime prior to conviction (first  
4 consideration).

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### *Analysis by the Legislative Reference Bureau*

This constitutional amendment, proposed to the 2019 legislature on first consideration, is explained in the PREFATORY NOTE provided by the Joint Legislative Council.

A proposed constitutional amendment requires adoption by two successive legislatures, and ratification by the people, before it can become effective.

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5 **Resolved by the assembly, the senate concurring, That:**

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This joint resolution was prepared for the Joint Legislative Council's Study Committee on Bail and Conditions of Pretrial Release. The Wisconsin Constitution provides that all persons, before conviction shall be eligible for release under reasonable conditions designed to assure their appearance in court, protect members of the community from serious bodily harm, or prevent the intimidation of witnesses. Under the Wisconsin Constitution, monetary conditions of release may be imposed only upon a finding that the conditions are necessary to assure appearance in court. The Wisconsin Constitution provides that the legislature may authorize, but may not require, circuit courts to deny release to a defendant prior to conviction under either of the following circumstances:

1. The defendant is accused of committing a murder punishable by life imprisonment or a sexual assault punishable by a maximum imprisonment of 20 years.

2. The defendant is accused of committing or attempting to commit a felony involving serious bodily harm to another or the threat of serious bodily harm to another and has a previous conviction for committing or attempting to commit a felony involving serious bodily harm to another.

Among other requirements, the constitution limits the period of time for which a person may be detained under a pretrial detention statute to 10 days before a pretrial detention hearing and 60 days following a pretrial detention hearing. The constitution also specifies that any pretrial detention law enacted by the legislature must contain a requirement that a court may only detain a defendant following a pretrial detention hearing if: (1) the court finds, by clear and convincing evidence presented at the hearing, that the accused committed the felony he or she is accused of committing; and (2) the court finds that the available conditions of release will not adequately protect members of the community from serious bodily harm or prevent intimidation of witnesses.

This joint resolution inserts the word “presumed” before “eligible” in the Wisconsin Constitution to provide that all persons, before conviction, shall be presumed eligible for release under reasonable conditions designed to assure their appearance in court, protect members of the community from serious bodily harm, or prevent the intimidation of witnesses. The joint resolution also allows the legislature to authorize circuit courts to deny release prior to conviction. It replaces all of the requirements the Wisconsin Constitution currently specifies the legislature must include in a pretrial detention law with three requirements. The joint resolution specifies that any law authorizing circuit courts to deny release prior to conviction must: (1) specify the circumstances under which an accused may be denied release prior to conviction; (2) limit the period of time an accused may be denied release prior to conviction; and (3) require that the court conduct a pretrial detention hearing. The joint resolution also removes language from the Wisconsin Constitution that prohibits the legislature from enacting a law requiring courts to deny release to a defendant prior to conviction.

1           **SECTION 1.** Section 8 (2) of article I of the constitution is amended to read:

2           [Article I] Section 8 (2) All persons, before conviction, shall be presumed eligible  
3           for release under reasonable conditions designed to assure their appearance in court,  
4           protect members of the community from serious bodily harm or prevent the  
5           intimidation of witnesses. Monetary conditions of release may be imposed at or after  
6           the initial appearance only upon a finding that there is a reasonable basis to believe  
7           that the conditions are necessary to assure appearance in court. The legislature may  
8           authorize, by law, courts to revoke a person’s release for a violation of a condition of  
9           release.

10           **SECTION 2.** Section 8 (3) of article I of the constitution is renumbered section  
11           8 (3) (intro.) of article I and amended to read:

1           [Article I] Section 8 (3) (intro.) The legislature may by law authorize, but may  
2 not require, circuit courts to deny release for a period not to exceed 10 days prior to  
3 the hearing required under this subsection to a person who is accused of committing  
4 a murder punishable by life imprisonment or a sexual assault punishable by a  
5 maximum imprisonment of 20 years, or who is accused of committing or attempting  
6 to commit a felony involving serious bodily harm to another or the threat of serious  
7 bodily harm to another and who has a previous conviction for committing or  
8 attempting to commit a felony involving serious bodily harm to another or the threat  
9 of serious bodily harm to another. The legislature may authorize by law, but may not  
10 require, circuit courts to continue to deny release to those accused persons for an  
11 additional period not to exceed 60 days following the hearing required under this  
12 subsection, if there is a requirement that there be a finding by the court based on  
13 clear and convincing evidence presented at a hearing that the accused committed the  
14 felony and a requirement that there be a finding by the court that available  
15 conditions of release will not adequately protect members of the community from  
16 serious bodily harm or prevent intimidation of witnesses. Any law enacted under  
17 this subsection shall be specific, limited and reasonable. In determining the 10-day  
18 and 60-day periods, the court shall omit any period of time found by the court to  
19 result from a delay caused by the defendant or a continuance granted which was  
20 initiated by the defendant. do all of the following:

21           **SECTION 3.** Section 8 (3) (a), (b) and (c) of article I of the constitution are created  
22 to read:

23           [Article I] Section 8 (3) (a) Specify the circumstances under which an accused  
24 may be denied release prior to conviction.

