



2021 ASSEMBLY JOINT RESOLUTION 107

January 10, 2022 - Introduced by Representatives DUCHOW, NEYLON, ALLEN, BRANDTJEN, BROOKS, CABRAL-GUEVARA, DITTRICH, GUNDRUM, HORLACHER, JAMES, KITCHENS, KRUG, KUGLITSCH, MAGNAFICI, MURPHY, NOVAK, ROZAR, SORTWELL, THIESFELDT, TUSLER, VANDERMEER, VORPAGEL, WICHGERS and WITKE, cosponsored by Senators WANGGAARD, DARLING, JACQUE, KOOYENGA, ROTH, STROEBEL and TESTIN. Referred to Committee on Judiciary.

1 **To amend** section 6 of article I, section 8 (2) of article I and section 8 (3) of article I
2 of the constitution; **relating to:** eligibility and conditions for release prior to
3 conviction of persons accused of certain crimes and considerations for imposing
4 bail (first consideration).

Analysis by the Legislative Reference Bureau

Under the Wisconsin Constitution, all of the following apply:

1. A person accused of a crime is eligible for release before conviction under reasonable conditions designed to assure the appearance of the accused in court, protect members of the community from serious bodily harm, or prevent the intimidation of witnesses.

2. The legislature is authorized to provide by law that a court may deny release to a person accused of certain serious felonies for specified periods of time only if the court finds based on clear and convincing evidence that the accused committed the felony and that available conditions of release will not adequately protect members of the community from serious bodily harm or prevent the intimidation of witnesses.

3. Monetary bail may be imposed only upon a finding that there is a reasonable basis to believe that it is necessary to assure the appearance of the accused in court.

This constitutional amendment, proposed to the 2021 legislature on first consideration, does all of the following:

1. Provides that the accused is eligible for release before conviction under reasonable conditions designed to protect members of the community from serious harm, not just serious bodily harm, in addition to the other conditions specified above.

2. Authorizes the legislature to provide by law that a court may deny release to a person accused of certain serious felonies if the court finds that available conditions of release will not adequately protect members of the community from serious harm, not just serious bodily harm, in addition to the other findings specified above.

3. Eliminates the requirement that monetary bail may be imposed only upon a finding that there is a reasonable basis to believe that it is necessary to assure the appearance of the accused in court. Instead, the constitutional amendment authorizes the court, in fixing the amount of bail, to consider the seriousness of the offense charged, the previous criminal record of the accused, the probability that the accused will appear in court, and the need to protect members of the community from serious harm or prevent the intimidation of witnesses.

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

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

2 **SECTION 1.** Section 6 of article I of the constitution is amended to read:

3 [Article I] Section 6. Excessive bail shall not be required, nor shall excessive
4 fines be imposed, nor cruel and unusual punishments inflicted. In fixing an amount
5 of bail, the court may take into consideration the seriousness of the offense charged,
6 the previous criminal record of the accused, the probability that the accused will
7 appear in court, and the need to protect members of the community from serious
8 harm, as defined by the legislature by law, or prevent the intimidation of witnesses.

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

10 [Article I] Section 8 (2) All persons, before conviction, shall be eligible for
11 release under reasonable conditions designed to assure their appearance in court,
12 protect members of the community from serious bodily harm or prevent the
13 intimidation of witnesses. Monetary conditions of release may be imposed at or after
14 the initial appearance ~~only upon a finding that there is a reasonable basis to believe~~
15 ~~that the conditions are necessary to assure appearance in court.~~ The legislature may

1 authorize, by law, courts to revoke a person's release for a violation of a condition of
2 release.

3 **SECTION 3.** Section 8 (3) of article I of the constitution is amended to read:

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

