



State of Wisconsin
2017 - 2018 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO ASSEMBLY JOINT RESOLUTION 47**

September 5, 2017 - Offered by Representatives NOVAK and CROWLEY.

1 ***To renumber and amend*** section 9m of article I; and ***to create*** section 9m (1) of
2 article I, section 9m (4) of article I, section 9m (5) of article I and section 9m (6)
3 of article I of the constitution; **relating to:** the rights of crime victims (first
4 consideration).

Analysis by the Legislative Reference Bureau

This constitutional amendment, proposed to the 2017 legislature on first consideration, provides the following rights to victims of crime in this state:

1. To be treated with dignity, respect, courtesy, sensitivity, and fairness.
2. To privacy.
3. To proceedings free from unreasonable delay.
4. To timely disposition of the case, free from unreasonable delay.
5. Upon request, to attend all proceedings involving the case.
6. To reasonable protection from the accused throughout the criminal and juvenile justice process.
7. Upon request, to reasonable and timely notification of proceedings.
8. Upon request, to confer with the attorney for the government.
9. Upon request, to be heard in any proceeding during which a right of the victim is implicated.

10. To have information submitted to and considered by the authority with jurisdiction over the case pertaining to the economic, physical, and psychological effect of the crime or juvenile offense upon the victim.

11. Upon request, to timely notice of any release, escape, or death of the accused.

12. To refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused.

13. To full restitution from any person ordered to pay restitution to the victim and to be provided with assistance collecting restitution.

14. 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.

15. To compensation, as provided by law.

16. To timely information about the outcome of the case.

17. 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.

Currently, the constitution requires the state to ensure that crime victims be afforded certain privileges and protections, as provided by law, some of which are similar to some of the rights enumerated above.

The constitutional amendment also authorizes the victim to enforce his or her rights in the court of appeals and supreme court, and the attorney for the government in the case involving the victim may seek enforcement of the victim's rights upon request of the victim. The court or other authority with jurisdiction over the case must act promptly with respect to such an action and must afford a remedy for the violation of the victim's rights.

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 9m of article I of the constitution is renumbered section 9m.

3 (2) (intro.) of article I and amended to read:

4 [Article I] Section 9m (2) (intro.) ~~This state shall treat crime victims, as defined~~
 5 ~~by law, with fairness, dignity and respect for their privacy. This state shall ensure~~
 6 ~~that crime victims have all of the following privileges and protections as provided by~~
 7 ~~law: In order to preserve and protect victims' rights to justice and due process~~
 8 ~~throughout the criminal and juvenile justice process, victims shall be entitled to all~~

1 of the following rights, which shall vest at the time of victimization and be protected
2 by law in a manner no less vigorous than the protections afforded to the accused:

3 (a) To be treated with dignity, respect, courtesy, sensitivity, and fairness.

4 (b) To privacy.

5 (c) To proceedings free from unreasonable delay.

6 (d) To timely disposition of the case; ~~the opportunity to attend court, free from~~
7 unreasonable delay.

8 (e) Upon request, to attend all proceedings unless the trial court finds
9 sequestration is necessary to a fair trial for the defendant; involving the case.

10 (f) To reasonable protection from the accused throughout the criminal and
11 juvenile justice process;.

12 (g) Upon request, to reasonable and timely notification of court proceedings;
13 the opportunity to.

14 (h) Upon request, to confer with the prosecution; the opportunity to make a
15 statement to the court at disposition; attorney for the government.

16 (i) Upon request, to be heard in any proceeding during which a right of the
17 victim is implicated, including release, plea, sentencing, disposition, parole,
18 revocation, expungement, or pardon.

19 (j) To have information pertaining to the economic, physical, and psychological
20 effect upon the victim of the offense submitted to the authority with jurisdiction over
21 the case and to have that information considered by that authority.

22 (k) Upon request, to timely notice of any release or escape of the accused or
23 death of the accused if the accused is in custody or on supervision at the time of death.

24 (L) To refuse an interview, deposition, or other discovery request made by the
25 accused or any person acting on behalf of the accused.

1 (m) To full restitution; from any person who has been ordered to pay restitution
2 to the victim and to be provided with assistance collecting restitution.

3 (n) To have any moneys or property collected from a person who has been
4 ordered to make restitution to the victim be applied first to restitution of the victim
5 before being applied to any amounts owed by that person to the government.

6 (o) To compensation; and as provided by law.

7 (p) To timely information about the outcome of the case and the release of the
8 accused.

9 (q) To timely notice about all rights under this section and all other rights,
10 privileges, or protections of the victim provided by law, including how such rights,
11 privileges, or protections are enforced.

12 (3) Except as provided under sub. (2) (o), all provisions of this section are
13 self-executing. The legislature shall provide may prescribe further remedies for the
14 violation of this section. Nothing in this section, or in any statute enacted pursuant
15 to this section, shall limit any right of the accused which may be provided by law. and
16 further procedures for compliance with and enforcement of this section.

17 **SECTION 2.** Section 9m (1) of article I of the constitution is created to read:

18 [Article I] Section 9m (1) (a) In this section, notwithstanding any statutory
19 right, privilege, or protection, “victim” means any of the following:

20 1. A person against whom an act is committed that would constitute a crime
21 if committed by a competent adult.

22 2. If the person under subd. 1. is deceased or is physically or emotionally unable
23 to exercise his or her rights under this section, the person’s spouse, parent or legal
24 guardian, sibling, child, person who resided with the deceased at the time of death,
25 or other lawful representative.

1 3. If the person under subd. 1. is a minor, the person's parent, legal guardian
2 or custodian, or other lawful representative.

3 4. If the person under subd. 1. is adjudicated incompetent, the person's legal
4 guardian or other lawful representative.

5 (b) "Victim" does not include the accused or a person who the court finds would
6 not act in the best interests of a victim who is deceased, incompetent, a minor, or
7 physically or emotionally unable to exercise his or her rights under this section.

8 **SECTION 3.** Section 9m (4) of article I of the constitution is created to read:

9 [Article I] Section 9m (4) (a) In addition to any other available enforcement of
10 rights or remedy for a violation of this section or of other rights, privileges, or
11 protections provided by law, the victim, the victim's attorney or other lawful
12 representative, or the attorney for the government upon request of the victim may
13 assert and seek in any circuit court or before any other authority of competent
14 jurisdiction, enforcement of the rights in this section and any other right, privilege,
15 or protection afforded to the victim by law. The court or other authority with
16 jurisdiction over the case shall act promptly on such a request and afford a remedy
17 for the violation of any right of the victim. The court or other authority with
18 jurisdiction over the case shall clearly state on the record the reasons for any decision
19 regarding the disposition of a victim's right and shall provide those reasons to the
20 victim or the victim's attorney or other lawful representative.

21 (b) Victims may obtain review of all adverse decisions concerning their rights
22 as victims by courts or other authorities with jurisdiction under par. (a) by filing
23 petitions for supervisory writ in the court of appeals and supreme court.

24 **SECTION 4.** Section 9m (5) of article I of the constitution is created to read:

1 [Article I] Section 9m (5) This section does not create any cause of action for
2 damages against the state; any political subdivision of the state; any officer,
3 employee, or agent of the state or a political subdivision of the state acting in his or
4 her official capacity; or any officer, employee, or agent of the courts acting in his or
5 her official capacity.

6 **SECTION 5.** Section 9m (6) of article I of the constitution is created to read:

7 [Article I] Section 9m (6) This section is not intended and may not be
8 interpreted to supersede a defendant's federal constitutional rights or to afford party
9 status in a proceeding to any victim.

10 **SECTION 6. Numbering of new provisions.** If another constitutional
11 amendment ratified by the people creates the number of any provision created in this
12 joint resolution, the chief of the legislative reference bureau shall determine the
13 sequencing and the numbering of the provisions whose numbers conflict.

14 ***Be it further resolved, That*** this proposed amendment be referred to the
15 legislature to be chosen at the next general election and that it be published for three
16 months previous to the time of holding such election.

17 (END)