

2019 DRAFTING REQUEST

Senate Joint Resolution

For: Van Wanggaard (608) 266-1832 Drafter: mgallagh
 By: Scott Secondary Drafters:
 Date: 9/11/2018 May Contact:
 Same as LRB: -0946

Submit via email: YES
 Requester's email: Sen.Wanggaard@legis.wisconsin.gov
 Carbon copy (CC) to: michael.gallagher@legis.wisconsin.gov
 rick.champagne@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Rights of crime victims (2nd consideration).

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mgallagh 9/27/2018	kfollett 10/1/2018			
/P1	mgallagh 11/27/2018	kfollett 11/27/2018	lparisi 10/1/2018		
/1			mbarman 11/27/2018	mbarman 11/27/2018	

Per MPG

FE Sent For: <END>

Gallagher, Michael

From: Kelly, Scott
Sent: Tuesday, September 11, 2018 10:36 AM
To: Gallagher, Michael
Subject: SJR 53

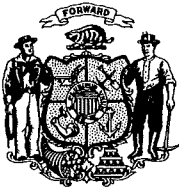
Hi Mike –

Can I get SJR 53 drafted for second consideration for the 2019 session? Also who does the actual wording on the referendum? Is that included in the 2nd consideration, or is that a separate process altogether?

Thanks

Scott

Scott Kelly
Chief of Staff
Senator Van Wanggaard
608-266-1832
scott.kelly@legis.wi.gov



LRB-0299/11
MPG:...

182

PI

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
2019 SENATE JOINT RESOLUTION

Fix

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

Analysis by the Legislative Reference Bureau

EXPLANATION OF PROPOSAL

This proposed constitutional amendment, to be given second consideration by the 2019 legislature for submittal to the voters in April 2019, was first considered by the 2017 legislature in 2017 Senate Joint Resolution 53, which became 2017 Enrolled Joint Resolution 13.

The amendment 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. To attend all proceedings involving the case.
6. To reasonable protection from the accused throughout the criminal and juvenile justice process.
7. To reasonable and timely notification of proceedings.

8. To confer with the attorney for the government.
9. 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 offense upon the victim.
11. 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 compensation, as provided by law.
15. To reasonable and timely information about the status of the investigation and the outcome of the case.
16. 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 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 must act promptly with respect to such an action and must afford a remedy for the violation of the victim's rights.

PROCEDURE FOR SECOND CONSIDERATION

When a proposed constitutional amendment is before the legislature on second consideration, any change in the text approved by the preceding legislature causes the proposed constitutional amendment to revert to first consideration status so that second consideration approval would have to be given by the next legislature before the proposal may be submitted to the people for ratification [see joint rule 57 (2)].

If the legislature approves a proposed constitutional amendment on second consideration, it must also set the date for submitting the proposed constitutional amendment to the people for ratification and must determine the question or questions to appear on the ballot.

1 Whereas, the 2017 legislature in regular session considered a proposed
 2 amendment to the constitution in 2017 Senate Joint Resolution 53, which became
 3 2017 Enrolled Joint Resolution 13, and agreed to it by a majority of the members
 4 elected to each of the two houses, which proposed amendment reads as follows:

Whereas,

SECTION 1. Section 9m of article I of the constitution is renumbered section 9m. (2) (intro.) of article I and amended to read:

[Article I] Section 9m (2) (intro.) 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: In order to preserve and protect victims' rights to justice and due process throughout the criminal and juvenile justice process, victims shall be entitled to all of the following rights, which shall vest at the time of victimization and be protected by law in a manner no less vigorous than the protections afforded to the accused:

- (a) To be treated with dignity, respect, courtesy, sensitivity, and fairness.
 - (b) To privacy.
 - (c) To proceedings free from unreasonable delay.
 - (d) To timely disposition of the case; the opportunity to attend court, free from unreasonable delay.
 - (e) Upon request, to attend all proceedings unless the trial court finds sequestration is necessary to a fair trial for the defendant; involving the case.
 - (f) To reasonable protection from the accused throughout the criminal and juvenile justice process;.
 - (g) Upon request, to reasonable and timely notification of court proceedings; the opportunity to.
 - (h) Upon request, to confer with the prosecution; the opportunity to make a statement to the court at disposition; attorney for the government.
 - (i) 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.
 - (j) 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.
 - (k) 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.
 - (L) To refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused.
 - (m) To full restitution; from any person who has been ordered to pay restitution to the victim and to be provided with assistance collecting restitution.
 - (n) To compensation; and as provided by law.
 - (o) Upon request, to reasonable and timely information about the status of the investigation and the outcome of the case and the release of the accused.
 - (p) To timely notice about all rights under this section and all other rights, privileges, or protections of the victim provided by law, including how such rights, privileges, or protections are enforced.
- (3) Except as provided under sub. (2) (n), all provisions of this section are self-executing. The legislature shall provide may prescribe further 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, and further procedures for compliance with and enforcement of this section.~~

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

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

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

2. If the person under subd. 1. is deceased or is physically or emotionally unable to exercise his or her rights under this section, 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.

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

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

(b) “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 rights under this section.

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

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

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

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

[Article I] Section 9m (5) This section does 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.

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

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

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

1 ***Now, therefore, be it resolved by the senate, the assembly concurring,***
2 ***That*** the foregoing proposed amendment to the constitution is agreed to by the 2019
3 legislature; and, be it further

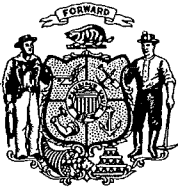
4 ***Resolved, That*** the foregoing proposed amendment to the constitution be
5 submitted to a vote of the people at the election to be held on the first Tuesday of April,
6 2019; and, be it further

7 ***Resolved, That*** the question concerning ratification of the foregoing proposed
8 amendment to the constitution be stated on the ballot as follows:

9 **QUESTION 1: "Additional rights of crime victims.** Shall section 9m of article
10 I of the constitution, which gives certain rights to crime victims, be amended to give
11 crime victims additional rights, to require that the rights of crime victims be
12 protected with equal force to the protections afforded the accused while leaving the
13 federal constitutional rights of the accused intact, and to allow crime victims to
14 enforce their rights in court?"

15

(END)



11/27 Today/Thanks!

LRB-0299/P1
MPG:kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
2019 SENATE JOINT RESOLUTION

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2 protected with equal force to the protections afforded the accused while leaving the
3 federal constitutional rights of the accused intact, and to allow crime victims to
4 enforce their rights in court?"

5 (END)

Gallagher, Michael

From: Kelly, Scott
Sent: Tuesday, November 27, 2018 10:16 AM
To: Gallagher, Michael
Cc: Wolf, Jake
Subject: lrb299

Hi Mike –

Can I get LRB 299 (the first Marsy's Law draft) jacketed for the Senate and Assembly, please?

Thanks

Scott

Scott Kelly
Chief of Staff
Senator Van Wanggaard
608-266-1832
scott.kelly@legis.wi.gov

Barman, Mike

From: LRB.Legal
To: Sen.Wanggaard
Subject: Draft review: LRB -0299/1
Attachments: 19-0299/1

State of Wisconsin - Legislative Reference Bureau
One East Main Street - Suite 200 - Madison

The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent. If you have any questions concerning the draft or would like to have it redrafted, please contact Michael Gallagher, Senior Legislative Attorney, at (608) 504-5811, at michael.gallagher@legis.wisconsin.gov, or at One East Main Street, Suite 200.

We will jacket this draft for introduction.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at LRB.Legal@legis.wisconsin.gov or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.