

2019 DRAFTING REQUEST**Senate Joint Resolution**

For: **Legislative Council Staff** Drafter: **mgallagh**
 By: **David and Katie** Secondary Drafters:
 Date: **11/19/2018** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **katie.bender-olson@legis.wisconsin.gov**
 Carbon copy (CC) to: **michael.gallagher@legis.wisconsin.gov**
David.Moore@legis.wisconsin.gov
Elizabeth.wheeler@legis.wisconsin.gov
melinda.johns@legis.wisconsin.gov
rick.champagne@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Release of persons accused of certain crimes; hearing requirement and other limitations.

Instructions:

Eliminate detail in article I, section 8 (3) of the constitution. Keep basic authorization for the legislature to make laws authorizing pretrial detention. Any law authorizing denial of release prior to conviction must require a hearing, specify crimes eligible for denial of release, and specify maximum time period for which accused may be denied release prior to conviction.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mgallagh 11/19/2018	kfollett 11/19/2018			
/P1	mgallagh 11/28/2018	kfollett 11/28/2018	lparisi 11/19/2018		
/P2	mgallagh	kfollett	lparisi		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	11/29/2018	11/30/2018	11/28/2018		
/1	mgallagh 1/18/2019	kfollett 1/18/2019	dwalker 11/30/2018		
/2			lparisi 1/18/2019	lparisi 3/6/2019	

FE Sent For:

<END>



Thanks!

LRB-0850?
MPG...

50
1/11

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
2019 SENATE JOINT RESOLUTION**

1 **To amend ; relating to:** release prior to conviction of a person accused of a crime
2 (first consideration).

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.

3 ***Resolved by the senate, the assembly 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 the legislature may authorize circuit courts to deny release to a defendant 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: (a) 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 (b) 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

section

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SECTION 1. Section 8 (3) of article I of the constitution is renumbered 8 (3) *of article I* (intro.) and amended to read:

SECTION 2. Section 8 (3) of article I of the constitution is amended to read:

[Article I] Section 8 (3) *(intro.)* The legislature may by law authorize, but may not require, circuit courts to deny release for a period not to exceed 10 days prior to the hearing required under this subsection to a person who is accused of committing a murder punishable by life imprisonment or a sexual assault punishable by a maximum imprisonment of 20 years, or who 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 who has a previous conviction for committing or attempting to commit a felony involving serious bodily harm to another or the threat of serious bodily harm to another. The legislature may authorize by law, but may not require, circuit courts to continue to deny release to those accused persons for an additional period not to exceed 60 days following the hearing required under this subsection, if there is a requirement that there be a finding by the court based on clear and convincing evidence presented at a hearing that the accused committed the felony and a requirement that there be a finding by the court that available conditions of release will not adequately protect members of the community from serious bodily harm or prevent intimidation of witnesses. Any law enacted under this subsection shall be specific, limited and reasonable. In determining the 10-day

1 ~~and 60-day periods, the court shall omit any period of time found by the court to~~
2 ~~result from a delay caused by the defendant or a continuance granted which was~~
3 ~~initiated by the defendant. do all of the following:~~

LC NOTE:

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

6 [Article I] Section 8 (3) (a) Specify the crimes or conduct for which the accused
7 may be denied release prior to conviction.

8 (b) Require that the court conduct a hearing before the accused is denied
9 release prior to conviction.

10 (c) Specify the maximum period of time the accused may be denied release prior
11 to conviction.

LC NOTE:

12 **SECTION 4. Numbering of new provisions.** If another constitutional
13 amendment ratified by the people creates the number of any provision created in this
14 joint resolution, the chief of the legislative reference bureau shall determine the
15 sequencing and the numbering of the provisions whose numbers conflict and shall
16 adjust any cross-references to those provisions.

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

20 (END)

Gallagher, Michael

From: Moore, David
Sent: Tuesday, November 27, 2018 3:13 PM
To: Gallagher, Michael
Cc: Bender-Olson, Katie
Subject: Changes to LRB-0850/P1

Hi Mike,

Thanks for putting together the draft joint resolution for the Bail study committee. Katie and I would like to request a few revisions. The revisions would all be to SECTION 2 of the draft and refer to the elements that would be required in a pretrial detention statute. I'll call you in a moment to discuss in more detail, but here is generally what we would like to request:

Please change the first element (currently, Specify the crimes or conduct ...) to something like "Limit the circumstances under which an accused may be denied release prior to conviction.

Please change the second element (currently, Require that the court conduct a hearing before the accused is denied release ...) to something like "Require that the court conduct a pretrial detention hearing."

Please change the third element (currently, Specify the maximum period of time ...) to something like "Limit the period of time the accused may be denied release prior to conviction."

Thanks,
David

David Moore
Wisconsin Legislative Council
(608) 504-5721
David.Moore@legis.wisconsin.gov



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
2019 SENATE JOINT RESOLUTION**

Insert

172

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

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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: (a) 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 (b) 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.

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7 maximum imprisonment of 20 years, or who is accused of committing or attempting
8 to commit a felony involving serious bodily harm to another or the threat of serious
9 bodily harm to another and who has a previous conviction for committing or
10 attempting to commit a felony involving serious bodily harm to another or the threat
11 of serious bodily harm to another. The legislature may authorize by law, but may not
12 require, circuit courts to continue to deny release to those accused persons for an
13 additional period not to exceed 60 days following the hearing required under this
14 subsection, if there is a requirement that there be a finding by the court based on
15 clear and convincing evidence presented at a hearing that the accused committed the
16 felony and a requirement that there be a finding by the court that available
17 conditions of release will not adequately protect members of the community from
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15 adjust any cross-references to those provisions.

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

19 (END)

Insert 3-4

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0850/P2ins
MPG:kjf

INSERT 3-4

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

3 (b) Limit the period of time an accused may be denied release prior to
4 conviction.

5 (c) Require that the court conduct a pretrial detention hearing.

END INSERT 3-4

Gallagher, Michael

From: Moore, David
Sent: Thursday, November 29, 2018 3:05 PM
To: Gallagher, Michael
Cc: Bender-Olson, Katie
Subject: LRB-0850 Pref Note

Mike,

Here is the rest of the pref note for LRB-0850. Can you please insert this and also convert LRB-0850 into an introducible? Also, you left a space for an LC note on page 3, but I don't think I am going to put one in, so that can be removed.

Thanks,
David

me This joint resolution 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 draft specifies that any law authorizing circuit courts to deny release conviction must: (1) *me* limit 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. *prior to*

David Moore
Wisconsin Legislative Council
(608) 504-5721
David.Moore@legis.wisconsin.gov

This is Insert



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
2019 SENATE JOINT RESOLUTION

Insert

11

- 1 **To renumber and amend** section 8 (3) of article I; and **to create** section 8 (3) (a),
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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: (a) 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 (b) 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.

JOSEPH (e-1)

This joint resolution

1 SECTION 1. Section 8 (3) of article I of the constitution is renumbered section
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9 bodily harm to another and who has a previous conviction for committing or
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11 of serious bodily harm to another. The legislature may authorize by law, but may not
12 require, circuit courts to continue to deny release to those accused persons for an
13 additional period not to exceed 60 days following the hearing required under this
14 subsection, if there is a requirement that there be a finding by the court based on
15 clear and convincing evidence presented at a hearing that the accused committed the
16 felony and a requirement that there be a finding by the court that available
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4 to read:

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6 may be denied release prior to conviction.

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8 conviction.

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16 legislature to be chosen at the next general election and that it be published for three
17 months previous to the time of holding such election.

18 (END)

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0850/lins
MPG:kjf

INSERT 2-1

joint resolution

X This joint resolution 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 draft specifies that any law authorizing circuit courts to deny release prior to conviction must: (1) limit 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. *AB*

END INSERT 2-1

Gallagher, Michael

From: Moore, David
Sent: Wednesday, December 19, 2018 11:30 AM
To: Gallagher, Michael
Cc: Bender-Olson, Katie
Subject: Revisions to LRB-0850/1

Hi Mike,

The study committee requested three changes to LRB-0850/1 during its meeting last week. Would you please revise the draft as follows:

- Please include a new section to amend Article I, Section 8 (2), to insert the word “presumed” before “eligible.” (I.e., “All persons, before conviction, shall be presumed eligible for release under reasonable conditions”
- In SECTION 1 of the draft please strike “but may not require” and the commas on either side of that phrase. (I.e. “The legislature may by law authorize, ~~but may not require,~~ circuit courts to deny release ...”
- In SECTION 2 of the draft in proposed Section 8 (3) (a), please change word “Limit” to “Specify”. [page 3 line, 7.]

I will also work on a revised pref note to reflect these changes. If you have any questions, please let me know.

Thanks,
David

David Moore
Wisconsin Legislative Council
(608) 504-5721
David.Moore@legis.wisconsin.gov

Gallagher, Michael

From: Moore, David
Sent: Wednesday, January 16, 2019 10:07 AM
To: Gallagher, Michael
Cc: Bender-Olson, Katie
Subject: Revisions to the notes to LRB-0850

Mike,

Would you please include the following revisions in the notes to LRB-0850?

- First, please insert this sentence after the sentence “This joint resolution was prepared for the Joint Legislative Council’s Study Committee on Bail and Conditions of Pretrial Release” the following sentence: 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.
- In the first paragraph of the note, please revise the sentence that currently begins “The Wisconsin Constitution provide that the legislature may authorize ...” to the following: “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.
- Please insert as the first sentence in the final paragraph of the note this sentence: “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.”
- In the next sentence, which currently reads “This joint resolution allows the legislature...” please insert the word “also” before “allows.”
- In the same paragraph, in the sentence that lists the requirements for any law authorizing circuit courts to deny release, please change the word “limit” to “specify” following the number (1).
- Please insert at the end of this paragraph the following sentence: “This 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.”

Thanks,
David

David Moore
Wisconsin Legislative Council
(608) 504-5721
David.Moore@legis.wisconsin.gov



1/18 Today Thursday

12

2019 SENATE JOINT RESOLUTION

Insert

1 **To renumber and amend** section 8 (3) of article I; and **to create** section 8 (3) (a),
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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

et Insert 1-4

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: (a) 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 (b) 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 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) limit 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.

Insert 2-1

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6 a murder punishable by life imprisonment or a sexual assault punishable by a

7 maximum imprisonment of 20 years, or who is accused of committing or attempting

8 to commit a felony involving serious bodily harm to another or the threat of serious

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13 additional period not to exceed 60 days following the hearing required under this

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15 clear and convincing evidence presented at a hearing that the accused committed the

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6 to read:

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8 may be denied release prior to conviction.

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19 months previous to the time of holding such election.

20 (END)

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0850/2ins
MPG:kjf

INSERT 1-4

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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.

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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.

END INSERT 1-4

INSERT 2-1

1 **SECTION 1.** Section 8 (2) of article I of the constitution is amended to read:
2 [Article I] Section 8 (3) All persons, before conviction, shall be presumed eligible
3 for release under reasonable conditions designed to assure their appearance in court,

1 protect members of the community from serious bodily harm or prevent the
2 intimidation of witnesses. Monetary conditions of release may be imposed at or after
3 the initial appearance only upon a finding that there is a reasonable basis to believe
4 that the conditions are necessary to assure appearance in court. The legislature may
5 authorize, by law, courts to revoke a person's release for a violation of a condition of
6 release.

END INSERT 2-1

Parisi, Lori

From: Bender-Olson, Katie
Sent: Wednesday, March 06, 2019 3:24 PM
To: LRB.Legal
Cc: Moore, David
Subject: Draft Review: LRB -0850/2

Please Jacket LRB -0850/2 for the SENATE.