



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

- 1     **To amend** section 8 (3) of article I of the constitution; **relating to:** release prior to  
2             conviction of a person accused of a crime (first 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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- 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 allows the legislature to authorize circuit courts to deny release prior to conviction and removes all of the requirements the Wisconsin Constitution specifies the legislature must include in a pretrial detention law.

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

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

1 ~~result from a delay caused by the defendant or a continuance granted which was~~  
2 ~~initiated by the defendant.~~

LC NOTE: This draft removes all of the requirements the Wisconsin Constitution specifies the legislature must include in a pretrial detention law. Is this consistent with the committee's intent? If not, what constitutional parameters does the committee wish to place on the legislature's authority to enact a pretrial detention law?

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

6 (END)