



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

1     **To renumber and amend** section 8 (3) of article I; and **to create** section 8 (3) (a)  
2             3. and 4. of article I of the constitution; **relating to:** release prior to conviction  
3             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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4     ***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.

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 detain a defendant following a pretrial detention hearing only 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 would modify the Wisconsin Constitution to allow the legislature to also authorize circuit courts to deny release to a defendant who is accused of a crime other than the types of crimes for which the constitution currently allows pretrial detention if there is a serious risk that the person poses a danger to another person or the community or there is a serious risk the person will not appear in court as required. This joint resolution would also eliminate the requirement that, to detain a person following a pretrial detention hearing, the court find, by clear and convincing evidence, that the defendant committed the felony he or she is accused of committing. In addition, this joint resolution makes nonsubstantive formatting revisions.

1           **SECTION 1.** Section 8 (3) of article I of the constitution is renumbered section  
2           8 (3) (a) (intro.) of article I and amended to read:

3           [Article I] Section 8 (3) (a) (intro.) The legislature may by law authorize, but  
4           may not require, circuit courts to deny release for a period not to exceed 10 days prior  
5           to the hearing required under this subsection ~~to a~~ if any of the following apply:

6           1. The person ~~who~~ is accused of committing a murder punishable by life  
7           imprisonment or a sexual assault punishable by a maximum imprisonment of 20  
8           years, ~~or who,~~

9           2. The person is accused of committing or attempting to commit a felony  
10          involving serious bodily harm to another or the threat of serious bodily harm to  
11          another and ~~who~~ has a previous conviction for committing or attempting to commit  
12          a felony involving serious bodily harm to another or the threat of serious bodily harm  
13          to another.

14          (b) The legislature may authorize by law, but may not require, circuit courts  
15          to continue to deny release to those accused persons for an additional period not to  
16          exceed 60 days following the hearing required under this subsection, if there is a

1 requirement that there be a finding by the court based on clear and convincing  
2 evidence presented at after a hearing that the accused committed the felony and a  
3 requirement that there be a finding by the court that available conditions of release  
4 will not adequately protect members of the community from serious bodily harm or  
5 prevent intimidation of witnesses.

6 (c) Any law enacted under this subsection shall be specific, limited, and  
7 reasonable.

8 (d) In determining the 10-day and 60-day periods, the court shall omit any  
9 period of time found by the court to result from a delay caused by the defendant or  
10 a continuance granted which was initiated by the defendant.

LC NOTE: Current law allows the legislature to authorize courts to detain defendants accused of committing certain crimes prior to trial. This draft would expand the circumstances under which pretrial detention could be authorized to allow the pretrial detention of a defendant accused of any offense prior to trial if there is a serious risk the defendant poses a danger to another person or the community or will not appear in court as required. Does this reflect the committee's intent?

LC NOTE: The Wisconsin Constitution currently provides that a person may be detained 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 draft removes the requirement for the first of these findings. The constitution does not currently specify the burden of proof that applies to the finding that the available conditions of release will not adequately protect members of the community from serious bodily harm or prevent intimidation of witnesses. Does the committee wish to specify a burden of proof that should apply to this finding?

LC NOTE: Currently, the constitution limits the amount of time a defendant may be detained, under the pretrial detention procedure, to 10 days prior to a pretrial detention hearing and 60 days following that hearing. This draft does not change those time limits. Does this accurately reflect the committee's intent? If not, what time limits, if any, does the committee wish to include?

11 **SECTION 2.** Section 8 (3) (a) 3. and 4. of article I of the constitution are created  
12 to read:

13 [Article I] Section 8 (3) (a) 3. The court finds there is a serious risk that the  
14 person poses a danger to another person or the community.

