



2019 SENATE JOINT RESOLUTION

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).

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.

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.

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. 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.

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

3 [Article I] Section 8 (3) (intro.) The legislature may by law authorize, but may
4 not require, circuit courts to deny release for a period not to exceed 10 days prior to
5 the hearing required under this subsection to a person who is accused of committing
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
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
18 serious bodily harm or prevent intimidation of witnesses. Any law enacted under

1 this subsection shall be specific, limited and reasonable. In determining the 10-day
2 and 60-day periods, the court shall omit any period of time found by the court to
3 result from a delay caused by the defendant or a continuance granted which was
4 initiated by the defendant. do all of the following:

5 **SECTION 2.** Section 8 (3) (a), (b) and (c) of article I of the constitution are created
6 to read:

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

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

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

12 **SECTION 3. 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)