



LEGISLATIVE REFERENCE BUREAU

2017 Enrolled Joint Resolution 13: Constitutional Amendment Approved on First Consideration Relating to the Rights of Crime Victims

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Introduction

The 2017 Wisconsin Legislature adopted on first consideration a proposal to amend the Wisconsin Constitution. The proposal, introduced as 2017 Senate Joint Resolution 53 and published as 2017 Enrolled Joint Resolution 13, provides certain constitutional rights to crime victims. The senate adopted the proposal on November 7, 2017, and the assembly adopted the proposal on November 9, 2017,¹ rendering it eligible for second consideration by the 2019 Wisconsin Legislature.

Under Article XII, Section 1, of the Wisconsin Constitution, amendments to the constitution must be adopted by two successive legislatures and then ratified by the electorate in a statewide election.² On “first consideration,” a proposed change to the constitution is offered as a joint resolution in either the assembly or the senate. A joint resolution, unlike a bill, need not be submitted to the governor for approval, but, like a bill, must pass both houses in identical form. If the assembly and the senate both adopt the joint resolution, the Legislative Reference Bureau must publish the proposed constitutional amendment on the Internet, no later than August 1 preceding the next general election. The proposed constitutional amendment must remain published on the Internet until the conclusion of the general election.³

In the next succeeding legislature, an identical joint resolution may be offered on “second consideration.” Once again, the proposal may be offered in either the assembly or the senate, but must be adopted by both houses without change. The second joint resolution also specifies the wording of the ballot question that will be presented to the voters and sets the statewide election date for submitting the ballot question to the people for ratification. Upon ratification by the electorate, the constitution is amended.

Background

The adoption of a crime victims’ rights constitutional amendment, more commonly known as “Marsy’s Law,” has become part of a nationwide movement. It was started by Henry T. Nicholas who, following his sister’s murder in 1983, felt a lack of compassion and consideration in the justice system for victims of violent crime and their families. Marsy’s Law is named after Nicholas’s sister, Marsalee, and aims to incorporate crime victims’ rights into all state constitutions and eventually the federal Constitution.

In 1980, Wisconsin became the first state to pass a crime victims’ rights bill. The act—Chapter 219, Laws of 1979—created Chapter 950, Wisconsin Statutes; established a

1. Senate Amendments 1 and 2 to Senate Substitute Amendment 2 to 2017 Senate Joint Resolution 53 were adopted.

2. The Wisconsin legislature convenes in January of an odd-numbered year and adjourns in January of the next succeeding odd year.

3. The Legislative Reference Bureau publishes the proposed constitutional amendment on the Wisconsin Legislature’s website at <https://legis.wisconsin.gov>.

basic bill of rights for crime victims and witnesses; and encouraged counties to provide certain services to victims and witnesses. Chapter 219 also outlined the responsibilities of the counties and the Department of Justice in enforcing these rights. In the 1983 legislative session, Wisconsin lawmakers enacted Wisconsin Act 197, which encouraged counties to provide additional services to witnesses of crimes and child victims.

A crime victims' rights constitutional amendment was first introduced during the 1989 legislative session as Senate Joint Resolution 94 and Assembly Joint Resolution 138. Although neither of these bills proceeded past the committee stage, each formed the basis for the successful 1991 and 1993 joint resolutions.⁴ Additionally, Attorney General Donald J. Hanaway appointed a special 15-member task force in June 1990 that was to "work with victim advocacy groups, criminal justice system professionals and the general public to provide information about the needs of crime victims and develop legislation to implement the constitutional amendment."⁵

In the 1991 legislative session, Senate Joint Resolution 41 was introduced as a crime victims' rights constitutional amendment on first consideration. 1993 Senate Joint Resolution 3 was introduced on second consideration the following session. In both sessions, the joint resolutions passed with overwhelming majorities in each house, and in April 1993 Wisconsin voters ratified the crime victims' rights constitutional amendment. The 1993 constitutional amendment created Section 9m of Article I of the Wisconsin Constitution, which directed the state to treat crime victims with "fairness, dignity and respect for their privacy," ensured that they have certain protections and privileges, as provided by law, and directed the legislature to provide remedies for the violation of the section.⁶

1997 Wisconsin Act 181 expanded the rights of crime victims and witnesses, provided further enforcement mechanisms, expanded the definition of "crime victim," created the Crime Victim Rights Board, and reorganized and strengthened the statutory protections of crime victims and witnesses.⁷

2017 Enrolled Joint Resolution 13

The current proposed constitutional amendment would amend Article I, Section 9m, to provide that in order to preserve and protect victim's rights to justice and due process throughout the criminal and juvenile justice process, victims are entitled to the following rights in Wisconsin:

4. Gary Watchke, "Constitutional Amendments and Advisory Referenda to be Considered by Wisconsin Voters April 6, 1993," *Wisconsin Briefs* 93-4 (Madison: Wisconsin Legislative Reference Bureau, March 1993).

5. Press Release, Wisconsin Department of Justice (June 4, 1990) (Theobald Legislative Library State Documents).

6. Watchke, *supra* note 4.

7. Daniel F. Ritsche, "Rights of Crime Victims and Witnesses," *Legislative Briefs* 98-3 (Madison: Wisconsin Legislative Reference Bureau, May 1998).

- To be treated with dignity, respect, courtesy, sensitivity, and fairness.
- To privacy.
- To proceedings free from unreasonable delay.
- To timely disposition of the case, free from unreasonable delay.
- Upon request, to attend all proceedings involving the case.
- To reasonable protection from the accused throughout the criminal and juvenile justice process.
- Upon request, to reasonable and timely notification of proceedings.
- Upon request, to confer with the attorney for the government.
- 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.
- 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.
- 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.
- To refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused.
- To full restitution from any person who has been ordered to pay restitution to the victim and to be provided with assistance collecting restitution.
- To compensation as proved by law.
- Upon request, to reasonable and timely information about the status of the investigation and the outcome of the case.
- To timely notice about all rights granted under this constitutional amendment and all other rights, privileges, or protections of the victim proved by law, including how such rights, privileges, or protections are enforced.

In addition, the amendment would create a definition of “victim,”⁸ authorize the victim to enforce his or her rights in any circuit court or before any other authority of competent jurisdiction, and direct the courts to act promptly with respect to such an action and to afford a remedy for the violation of any right of the victim.⁹

At the public hearing in June 2017, groups and individuals who supported the proposed constitutional amendment argued that the joint resolution provides a better balance between the rights of victims and the rights of defendants. Those opposed to the

8. In 2017 Enrolled Joint Resolution 13, “victim” is defined as (1) a person against whom an act is committed that would constitute a crime if committed by a competent adult; (2) if the person is deceased or physically or emotionally unable to exercise his or her rights, 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 is a minor, the person’s parent, legal guardian or custodian, or other lawful representative; or (4) if the person is adjudicated incompetent, the person’s legal guardian or other lawful representative. A 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.

9. See the Wisconsin Legislative Council’s Amendment Memo, published November 9, 2017, for further reading.

amendment raised concerns about implementation of victims' rights and the possible conflicts with defendants' constitutional rights.¹⁰

Comparison with other states

Every state has some form of a crime victims' rights bill, either in the state constitution, state statutes, or both. The specific rights afforded to crime victims can vary from state to state. Constitutional amendment versions of Marsy's Law, specifically, have been enacted in six states, with California being the first in 2008. Illinois followed in 2014, North Dakota, South Dakota,¹¹ and Montana¹² all ratified amendments in 2016, and Ohio ratified a Marsy's Law amendment in 2017.

There are currently 15¹³ states that do not have crime victims' rights enumerated in their constitution but have these rights codified in their statutes. The other 35 states have crime victims' rights laws in both their constitution and statutes. Many of the states that have crime victims' rights in their constitution ratified the amendments in the 1980s and 1990s. The nationwide crime victims' rights movement during that period came from multiple factors, including the women's liberation movement, the civil rights movement, the conservative law and order movement, the 1973 United States Supreme Court Decision in *Linda R.S. v. Richard D.*, and President Ronald Reagan's 1982 Task Force on the Victims of Crime.¹⁴

In 2018, ballots in three states will prompt voters to either ratify or reject a constitutional amendment relating to the rights of crime victims. Voters will weigh in on the issue in Kentucky, Nevada, and Oklahoma in November. ■

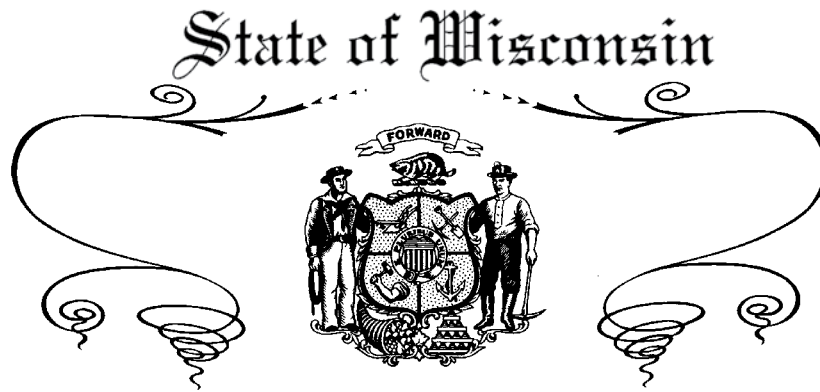
10. Wisconsin Legislative Council, *Hearing Materials for SJR 53* (June 15, 2017).

11. In March 2018, the South Dakota legislature passed House Joint Resolution 1004, which submits to the electorate a constitutional amendment to revise certain provisions of the 2016 Marsy's Law amendment. House Bill 1162 was also enacted, which provides that the proposed amendment shall be on the ballot in June 2018.

12. On November 1, 2017, the Montana Supreme Court declared the Marsy's Law constitutional amendment unconstitutional due to a violation of Montana's "separate-vote" rule.

13. Arkansas, Delaware, Georgia, Hawaii, Iowa, Kentucky, Maine, Massachusetts, Minnesota, New Hampshire, New York, Pennsylvania, Vermont, West Virginia, and Wyoming.

14. Jill J. Karofsky, "Wisconsin's History and the Crime Victims Rights Movement." (Wisconsin Department of Justice, Office of Crime Victim Services, PowerPoint, November 2016).



2017 Senate Joint Resolution 53

ENROLLED JOINT RESOLUTION

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

Resolved by the senate, the assembly concurring, That:

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.

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

Representative Robin J. Vos
Speaker of the Assembly

Senator Roger Roth
President of the Senate

Date

Jeffrey Renk
Senate Chief Clerk