



State of Wisconsin
2021 - 2022 LEGISLATURE

LRBs0346/1
MPG:all

**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO ASSEMBLY JOINT RESOLUTION 107**

February 4, 2022 - Offered by Representative DUCHOW.

- 1 **To amend** section 8 (2) of article I of the constitution; **relating to:** conditions for
2 release prior to conviction, including the imposition of bail (first consideration).

Analysis by the Legislative Reference Bureau

Under the Wisconsin Constitution, a person accused of a crime is eligible for release before conviction under reasonable conditions designed to assure the appearance of the accused in court, protect members of the community from serious bodily harm, or prevent the intimidation of witnesses. Such conditions of release may include monetary bail only upon a finding that there is a reasonable basis to believe that bail is necessary to assure the appearance of the accused in court.

This constitutional amendment, proposed to the 2021 legislature on first consideration, provides that the accused is eligible for release before conviction under reasonable conditions designed to protect members of the community from serious harm, as defined by the legislature by law, not just serious bodily harm, in addition to the other conditions specified above.

The constitutional amendment also eliminates, only with respect to violent crimes as defined by the legislature by law, the requirement that monetary bail may be imposed as a condition of release before conviction only upon a finding that there is a reasonable basis to believe that it is necessary to assure the appearance of the accused in court. Instead, the constitutional amendment authorizes the imposition of bail as a condition of release for persons accused of violent crimes only upon a finding that there is a reasonable basis to believe that it is necessary based on the

totality of the circumstances, taking into account the seriousness of the offense charged; whether the accused has a previous conviction for a violent crime, as defined by the legislature by law; the probability that the accused will fail to appear in court; the need to protect members of the community from serious harm, as defined by the legislature by law; the need to prevent the intimidation of witnesses; and the potential affirmative defenses of the accused.

A constitutional amendment requires adoption by two successive legislatures, and ratification by the people, before it can become effective.

1 ***Resolved by the assembly, the senate concurring, That:***

2 **SECTION 1.** Section 8 (2) of article I of the constitution is amended to read:

3 [Article I] Section 8 (2) All persons, before conviction, shall be eligible for
4 release under reasonable conditions designed to assure their appearance in court,
5 protect members of the community from serious ~~bodily~~ harm as defined by the
6 legislature by law, or prevent the intimidation of witnesses. Monetary conditions of
7 release may be imposed at or after the initial appearance only upon a finding that
8 there is a reasonable basis to believe that the conditions are necessary to assure
9 appearance in court, or if the person is accused of a violent crime as defined by the
10 legislature by law, only upon a finding that there is a reasonable basis to believe that
11 the conditions are necessary based on the totality of the circumstances, taking into
12 account whether the accused has a previous conviction for a violent crime as defined
13 by the legislature by law, the probability that the accused will fail to appear in court,
14 the need to protect members of the community from serious harm as defined by the
15 legislature by law, the need to prevent the intimidation of witnesses, and the
16 potential affirmative defenses of the accused. The legislature may authorize, by law,
17 courts to revoke a person's release for a violation of a condition of release.

