



2023 SENATE JOINT RESOLUTION

- 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 (second
3 consideration).

Analysis by the Legislative Reference Bureau

EXPLANATION OF PROPOSAL

This proposed constitutional amendment, to be given second consideration by the 2023 legislature for submittal to the voters in April 2023, was first considered by the 2021 legislature in 2021 Assembly Joint Resolution 107, which became 2021 Enrolled Joint Resolution 6.

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 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.

PROCEDURE FOR SECOND CONSIDERATION

When a proposed constitutional amendment is before the legislature on second consideration, any change in the text approved by the preceding legislature causes the proposed constitutional amendment to revert to first consideration status so that second consideration approval would have to be given by the next legislature before the proposal may be submitted to the people for ratification [see joint rule 57 (2)].

If the legislature approves a proposed constitutional amendment on second consideration, it must also set the date for submitting the proposed constitutional amendment to the people for ratification and must determine the question or questions to appear on the ballot.

1 Whereas, the 2021 legislature in regular session considered a proposed
2 amendment to the constitution in 2021 Assembly Joint Resolution 107, which
3 became 2021 Enrolled Joint Resolution 6, and agreed to it by a majority of the
4 members elected to each of the two houses, which proposed amendment reads as
5 follows:

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

[Article I] Section 8 (2) All persons, before conviction, shall be eligible for release under reasonable conditions designed to assure their appearance in court, protect members of the community from serious bodily harm as defined by the legislature by law, or prevent the intimidation of witnesses. Monetary conditions of release may be imposed at or after the initial appearance only upon a finding that there is a reasonable basis to believe that the conditions are necessary to assure appearance in court, or if the person is accused of a violent crime as defined by the legislature by law, only upon a finding that there is a reasonable basis to believe that the conditions are necessary based on the totality of the circumstances, taking into account 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. The legislature may authorize, by law, courts to revoke a person's release for a violation of a condition of release.

Now, therefore, be it resolved by the senate, the assembly concurring,

That the foregoing proposed amendment to the constitution is agreed to by the 2023 legislature; and, be it further

Resolved, That the foregoing proposed amendment to the constitution be submitted to a vote of the people at the election to be held on the first Tuesday of April, 2023; and, be it further

Resolved, That the question concerning ratification of the foregoing proposed amendment to the constitution be stated on the ballot as follows:

QUESTION 1: “*Conditions of release before conviction.* Shall section 8 (2) of article I of the constitution be amended to allow a court to impose on an accused person being released before conviction conditions that are designed to protect the community from serious harm?”

QUESTION 2: “Cash bail before conviction. Shall section 8 (2) of article I of the constitution be amended to allow a court to impose cash bail on a person accused of a violent crime based on the totality of the circumstances, including the seriousness of the crime, previous convictions of the accused, the probability that the accused will fail to appear, the need to protect the community from serious harm and prevent witness intimidation, and potential affirmative defenses?”

(END)