
Wisconsin Legislative Council

AMENDMENT MEMO



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2023 Senate Bill 75

**Senate
Amendment 1**

BACKGROUND

The Wisconsin Constitution affirmatively provides a right to release under reasonable conditions prior to trial in most cases, and limits the reasons for which monetary bail can be required. Specifically, Article I, Section 8 (2) of the Wisconsin Constitution provides as follows:

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 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. The legislature may authorize, by law, courts to revoke a person's release for a violation of a condition of release.

2023 Senate Joint Resolution 2 (the proposed amendment) modifies Article I, Section 8 (2) of the Wisconsin Constitution in two ways. First, it alters the purposes for which courts may impose conditions of release. Under current law, conditions may be designed to “protect members of the community” from “serious bodily harm,” among other purposes. The constitutional amendment allows conditions to be designed instead to “protect members of the community from serious harm, as defined by the Legislature by law.”

The second change relates to the reasons courts may impose monetary conditions of release. The proposed amendment retains the requirement that monetary conditions may be imposed only if necessary to assure the defendant's appearance in court. But, as an exception to this general requirement, it provides that if a person is accused of a violent crime, as defined by the Legislature by law, monetary conditions of release may be imposed 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 need to prevent the intimidation of witnesses, and the potential affirmative defenses of the accused.

2021 SENATE BILL 75

Senate Bill 75 makes various statutory changes that would take effect if the proposed constitutional amendment is approved in the 2023 Spring Election. Similar to the proposed amendment, the bill generally modifies current law in two ways.

First, it amends statutes governing pretrial release to allow a court to impose nonmonetary conditions of release designed to protect members of the community from “serious harm,” as defined by the bill for this purpose. Second, it modifies statutes related to the reasons a court may impose money bail to permit a court to impose bail based on the totality of the circumstances if an individual is accused of a

“violent crime” and defines that term for this purpose. Very generally, the bill defines “violent crime” as any of a variety of enumerated offenses.

SENATE AMENDMENT 1

Senate Amendment 1 adds the following offenses to the definition of violent crime under the bill:

- Mutilating or hiding a corpse. [s. 940.11, Stats.]
- Assisting suicide. [s. 940.12, Stats.]
- Misdemeanor battery. [s. 940.19 (1), Stats.]
- Misdemeanor battery to an unborn child. [s. 940.195 (1), Stats.]
- Intentionally causing bodily harm an elder person. [s. 940.198 (2) (b), Stats.]
- Recklessly causing bodily harm or great bodily harm to an elder person. [s. 940.198 (3), Stats.]
- Injury by negligent handling of dangerous weapons, explosives, or fire. [s. 940.24, Stats.]
- Abuse of residents of penal facilities. [s. 940.29, Stats.]
- Human trafficking.¹ [s. 940.302 (2), Stats.]
- Criminal gang member solicitation. [s. 941.38 (2), Stats.]
- Burglary (certain circumstances).² [s. 943.10 (1m), Stats.]
- Reckless physical abuse of a child. [s. 948.03 (3), Stats.]
- Repeated acts of physical abuse against the same child (certain circumstances).³ [s. 948.03 (5) (a) 5., Stats.]
- Intentionally taking any vehicle from owner by use or threat of force. [s. 943.23 (1r), Stats.]

The amendment also removes the following offenses from the definition of violent offense under the bill:

- Extortion against a financial institution. [s. 943.86, Stats.]
- Mail fraud. [s. 943.89, Stats.]
- Wire fraud against a financial institution. [s. 943.90, Stats.]

BILL HISTORY

Senator Wanggaard offered Senate Amendment 1 to 2023 Senate Bill 75 on March 14, 2023. On March 16, 2023, the Senate Committee on Judiciary and Public Safety voted to recommend adoption of the amendment and passage of the bill, as amended, both on votes of Ayes, 5; Noes, 3.

For a full history of the bill, visit the Legislature’s bill history page [here](#).

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¹ The bill included a citation to one element of the offense of human trafficking. The amendment clarifies that the crime of human trafficking is included within the definition of violent crime.

² The bill included s. 940.10 (2), Stats. The amendment expands the burglary offenses included within the definition of violent crime to all of the offenses under s. 940.10, Stats.

³ The bill included s. 948.03 (5) (a) 1.-4., which provides elevated penalties for repeated physical abuse of the same child if certain circumstances apply. The amendment provides that all offenses that constitute repeated physical abuse of the same child are included within the definition of violent crime.