
Wisconsin Legislative Council

INFORMATION MEMORANDUM



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“MARSY’S LAW”: THE PROPOSED CRIME VICTIMS’ RIGHTS CONSTITUTIONAL AMENDMENT

The Wisconsin constitution requires the state to “treat victims with fairness, dignity, and respect for privacy” and to ensure that crime victims have certain privileges and protections, as provided by law. [Wis. Const. art. I, s. 9m.] These rights include timely disposition and notification of court proceedings, protection from the accused, and the opportunity to seek restitution or compensation. To give effect to this provision of the Constitution, Wisconsin statutes contain numerous statutes relating to victims’ rights in chs. 938 (the Juvenile Justice Code) and 950, Stats. (the rights of victims and witnesses of crime). Included in these statutes is the victim bill of rights, s. 950.04 (1v), Stats., which confers almost 50 statutory rights to crime victims.

[2019 Enrolled Joint Resolution 3](#) (the proposed victims’ rights constitutional amendment) amends Wis. Const. art. I, s. 9m, on second consideration. Commonly referred to as “Marsy’s Law,” the proposed victims’ rights constitutional amendment is part of the nationwide campaign, “Marsy’s Law for All,” which advocates for the enumeration of 19 model victim rights in all 50 state constitutions and eventually the U.S. Constitution.¹ The proposed victims’ rights constitutional amendment is the second of two successive resolutions proposing to amend Wis. Const. art. I, s. 9m, that have been adopted by the Legislature.² It will be submitted to the people for ratification on the spring ballot on April 7, 2020.

This information memorandum provides an overview of crime victims’ rights under current law and the proposed crime victims’ rights constitutional amendment.

CRIME VICTIMS’ RIGHTS

Current Law

Wisconsin Constitution, article I, section 9m, relating to crime victims provides as follows:

Victims of crime. 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: timely disposition of the case; the opportunity to attend court proceedings unless the trial court finds

¹ Marsy’s Law is named after Marsalee (Marsy) Nicholas, who was stalked and killed by her ex-boyfriend in 1983 in California. Her brother, Dr. Henry Nicholas, created the nationwide campaign in response to his family’s experience, which included an incident where he and his mother were confronted by the accused murderer a week after the murder even though they did not know that he had been released on bail. More information about Marsy’s Law for All is available at: <https://act.marsyslaw.us/faq>.

² Information about the history of victims’ rights and Marsy’s Law in Wisconsin is available in the [Constitutional Amendment Relating to Crime Victims’ Rights, Report 5.1](#) (March 2020), prepared by the Legislative Reference Bureau.

sequestration is necessary to a fair trial for the defendant; reasonable protection from the accused throughout the criminal justice process; notification of court proceedings; the opportunity to confer with the prosecution; the opportunity to make a statement to the court at disposition; restitution; compensation; and information about the outcome of the case and the release of the accused. The legislature shall provide 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.

The Wisconsin Supreme Court has held that the requirement in Wis. Const. art. I, s. 9m, to treat crime victims with “fairness, dignity, and respect for their privacy”, does not confer constitutional rights. Rather, the Court has interpreted this amendment as a policy regarding the treatment of crime victims and as a guide for courts to use when interpreting the state’s constitutional and statutory provisions concerning the rights of victims. In *Schilling v. Wisconsin Crime Victims’ Rights Board*, the Court stated that this constitutional amendment is “a statement of purpose that describes the policies to be promoted by the State and does not provide an enforceable, self-executing right.” [2005 WI 17, ¶¶27-28.]

Wisconsin Constitution Article I, section 9m, also contains a list of six privileges and protections that the Legislature must effectuate by statute. Most of these privileges and protections are codified in ch. 950, Stats. For example, the basic bill of rights for victims found in s. 950.04 (1v), Stats, provides almost 50 statutory rights for crime victims derived from the rights enumerated in the constitutional amendment.

Lastly, Wis. Const. art. I, s. 9m, requires the Legislature to define by statute who is considered to be a crime victim. The statutes define a victim to mean any of the following: (1) a person against whom a crime has been committed; (2) a parent, guardian, or legal custodian of a child (if a crime was committed against the child); (3) a family member or person designated by a victim (if the victim is physically or emotionally unable to exercise their rights); (4) a family member or a person who resided with the victim (if the victim is deceased); or (5) an appointed guardian (if the victim has been adjudicated incompetent). The current definition of a crime victim excludes the criminal defendant. [s. 950.02 (4), Stats.]

Rights Conferred Under the Proposed Victims’ Rights Constitutional Amendment

The proposed victims’ rights constitutional amendment provides rights similar to the rights currently provided in the statutory bill of rights for victims.³ Rather than conferring rights by statute, the proposed crime victims’ rights constitutional amendment confers all of the following crime victims’ rights directly through the constitution:

- To be treated with dignity, respect, courtesy, sensitivity, and fairness.
- To privacy.
- To timely proceedings, free from unreasonable delay.
- To timely disposition of the case, free from unreasonable delay.

³ A side-by-side comparison between the rights afforded to victims under current law with the rights under the proposed crime victims’ constitutional amendment is available in [A Review of Proposed Changes to Wisconsin’s Victims of Crime Constitutional Amendment](#) (Updated January 2020), prepared by the Office of Crime Victim Services, Wisconsin Department of Justice.

- Upon request, to attend all proceedings involved in 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 economic, physical, and psychological effects on the victim of the offense submitted to the authority with jurisdiction over the case and to have the 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 provided by law.
- Upon request, to reasonable and timely information about the status of an investigation and the outcome of the case.
- To timely notice about all crime victims' rights under this section of the Wisconsin Constitution and all other crime victims' rights provided by law, including how said rights, privileges, or protections are enforced.

Under the proposed constitutional amendment, all but one right is “self-executing.” This means that the Legislature does not need to enact statutes to implement these rights. Under the proposed constitutional amendment, the only right that is not self-executing is the right to compensation; the procedure for seeking compensation and compensation limits for crime victims' rights violations must be prescribed by the Legislature. Additionally, the proposed crime victims' rights constitutional amendment, similar to current law, allows the Legislature to “prescribe further remedies” for a violation of victims' rights.

In addition to enumerating crime victims' rights in the Wisconsin Constitution, the proposed constitutional amendment also defines who a “victim” is directly in the constitution as 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 victim is deceased or is 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 victim is a minor, the person's parent, legal guardian or custodian, or other lawful representative; or (4) if the victim is adjudicated incompetent, the person's legal guardian or other lawful representative. The definition of victim does not include the accused, or a person whom the court finds would not act in the best interests of a victim who is deceased, incompetent, a minor, or physically unable to exercise their victim rights.

STANDING TO ENFORCE VIOLATIONS OF CRIME VICTIMS' RIGHTS

Current Law

Under current law, crime victims have the right to assert, in a court in the county in which the alleged violation occurred, their statutory or constitutional rights as a crime victim. It is also possible under current law for a district attorney to assert a crime victim's statutory or constitutional rights in a criminal case or in a proceeding or motion. [s. 950.105, Stats.]

The Proposed Crime Victims' Rights Constitutional Amendment

The proposed crime victims' rights constitutional amendment allows enforcement of crime victims' rights in any circuit court or before any other authority of competent jurisdiction. Also under the proposed constitutional amendment, a crime victim may obtain review of all adverse decisions concerning their rights as crime victims by courts or authorities by filing a petition for supervisory writ in the court of appeals and Wisconsin Supreme Court.⁴

ENFORCEMENT AND REMEDIES FOR VIOLATIONS OF CRIME VICTIMS' RIGHTS

Current Law

The statutes provide certain remedies for violations of constitutional and statutory crime victims' rights. If a crime victim's right is denied, a complaint may be filed with the Department of Justice (DOJ) and, if the issue remains unresolved, a complaint may be filed with the Crime Victims' Rights Board (the board). Based on its review of the complaint, the board may do any of the following:⁵ (1) issue private and public reprimands of public officials, employees, or agencies; (2) refer appropriate cases to the Judicial Commission; (3) seek appropriate equitable relief on behalf of a victim if such relief is necessary to protect the rights of the crime victim (the board may not seek to appeal, reverse, or modify a judgment of conviction or a sentence in a criminal case); or (4) with certain exceptions, bring civil actions to assess a forfeiture of not more than \$1,000 against a public official, employee, or agency that intentionally fails to provide a right to a crime victim. [ss. 950.09 (2) and 950.11, Stats.] The statutes do not impose requirements directly on a court regarding how it must act on actions to enforce crime victims' rights.

The Proposed Crime Victims' Rights Constitutional Amendment

The proposed crime victims' constitutional amendment specifies that a victim's rights may be enforced in circuit court or another authority with jurisdiction over the case. The proposed crime victims' constitutional amendment also imposes obligations on the court or other authority to "act promptly" on a victim's attempts to seek enforcement and to provide a "remedy" for the violation of any right of the victim. It requires the court or other authority to

⁴ Very generally, a supervisory writ is a petition to an appellate court (e.g., the court of appeals or the Wisconsin Supreme Court) requesting the appellate court to correct an erroneous ruling made by a lower court when there is either no appeal available or an appeal cannot provide adequate relief. [s. 809.51, Stats.]

⁵ In *Gablerv. Crime Victims Rights Bd.*, 2017 WI 67, the Wisconsin Supreme Court held that the powers described in s. 950.09 (2) (a), (c), and (d), Stats., violated the separation of powers doctrine under the Wisconsin Constitution as it related to the board's review of any complaint filed against a judge.

clearly state on the record the reasons for any decision regarding the disposition of a crime victim's right and to provide those reasons to the crime victim or the crime victim's lawful representative. The proposed crime victims' constitutional amendment also explicitly states that "it is not intended and may not be interpreted to supersede a defendant's federal constitutional rights, nor to afford party status to any victim."⁶

LIMITATION ON CLAIMS FOR MONEY DAMAGES

Current Law

The statutes generally prohibit any cause of action for money damages against the state, any political subdivision of the state, or any employee or agent of the state or a political subdivision of the state for any act or omission in the performance of any power or duty relating to the rights of, services for, or notices to victims. The statutes also provide that a failure to provide a right, service, or notice to a victim "is not a ground for an appeal of a judgment of conviction or sentence and is not grounds for any court to reverse or modify a judgment of conviction or sentence." [s. 950.10, Stats.]

The Proposed Crime Victims' Constitutional Amendment

The proposed crime victims' constitutional amendment specifically states that it 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.

PROCESS FOR AMENDING THE WISCONSIN CONSTITUTION

The process of amending the Wisconsin Constitution requires that the proposed amendment be adopted by both the Assembly and Senate in two successive sessions of the Legislature and then ratified by the people at the next general election by ballot. If the majority of the people vote to ratify the amendment, the amendment becomes part of the Wisconsin Constitution. [Wis. Const. art. XII, s. 1.]

During the first legislative session, a majority of members of each house must approve the proposed constitutional amendment. The Legislature's first consideration of the proposed crime victims' constitutional amendment was [2017 Enrolled Joint Resolution 13](#).⁷ During the second legislative session, the majority of members of each house must approve of the amendment again, along with the question or questions that will be submitted to the people on the ballot. The Legislature's second consideration is [2019 Enrolled Joint Resolution 3](#), which approved the following question for the April 7, 2020, ballot:

⁶ The Supremacy Clause and the doctrine of federal preemption already provide the framework for the interaction between a state constitutional amendment and federal law. The U.S. Constitution contains a Supremacy Clause identifying the U.S. Constitution and laws enacted by the federal government as the highest law governing our country. The Supremacy Clause declares that federal law supersedes any conflicting state law. Federal preemption provides that U.S. constitutional and federal law supersedes or supplant contrary state law and render the state law unenforceable. [U.S. Const. art. VI, cl. 2.]

⁷ Information about 2017 Enrolled Joint Resolution 13 is available in the Legislative Reference Bureau's [2017 Enrolled Joint Resolution 13: Constitutional Amendment Approved on First Consideration Relating to the Rights of Crime Victims, Report 2.3](#) (March 2018).

“Question 1. Additional rights of crime victims. Shall section 9m of article I of the constitution, which gives certain rights to crime victims, be amended to give crime victims additional rights, to require that the rights of crime victims be protected with equal force to the protections afforded the accused while leaving the federal constitutional rights of the accused intact, and to allow crime victims to enforce their rights in court?”⁸

This Information Memorandum was prepared by Melissa Schmidt, Senior Staff Attorney, and Raine Black, Legal Intern, on March 31, 2020 and revised on June 30, 2020.

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⁸ An explanation of the April 7, 2020, ballot question regarding the constitutional amendment is available in the Wisconsin DOJ’s [Explanatory Statement for Proposed Constitutional Amendment](#) (February 27, 2020).