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A REVIEW OF PROPOSED CHANGES TO WISCONSIN'S  
VICTIMS OF CRIME CONSTITUTIONAL AMENDMENT

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**I. The Process for Amending Wisconsin’s Constitution**

A proposed amendment to the Wisconsin State Constitution must be approved by two consecutive legislative sessions (also known as first consideration and second consideration) in identical form and be ratified by a simple majority in a statewide election. The wording of the ballot question for the referendum is specified in the resolution presented for second consideration, as is the election date for presenting the question to the voters. If the voters approve the amendment by simple majority it is ratified and at that time becomes part of the state’s constitution.

**II. 2019 Senate Joint Resolution 2 “Marsy’s Law”**

A proposal to amend Article I, section 9m (Victims of Crime) has been approved by two consecutive legislative sessions (the 2017 and 2019 biennial sessions). On second consideration, the legislature approved a referendum question for the April 2020 statewide election ballot. With this vote, the voters will ratify or reject the proposed amendment. The approved referendum question is: “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?*”

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Attached: Enrolled Joint Resolution SJR 2	

**III. Current Constitutional Language Article 1, section 9m:**

**Victims of crime. Section 9m.** *[As created April 1993]* 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 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. *[1993 J.R. 2, vote April 1993]*

### III. Proposed Constitutional Language

The following represents the language Article I, Section 9m will contain if the amendment is ratified. *The official Enrolled Joint Resolution (2019 Senate Joint Resolution 2).*

**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.

**Article I Section 9m (2) (intro)** 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, free from unreasonable delay.
- e) Upon request, to attend all proceedings 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 proceedings.

- h) Upon request, to confer with the 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 as provided by law.
- o) Upon request, to reasonable and timely information about the status of the investigation and the outcome of the case.
- 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.

**Article I Section 9m (3)** Except as provided under sub. (2) (n), all provisions of this section are self-executing. The legislature may prescribe further remedies for the violation of this section and further procedures for compliance with and enforcement of this section.

**Article I Section 9m (4)** 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.

**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.

**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.

## V. SIDE-BY-SIDE COMPARISON

The pages that follow list the proposed language next to any current related victims' rights constitutional and/or statutory language.

**NOTE Attachment:** The official Enrolled Joint Resolution (2019 Senate Joint Resolution 2) is attached.

Subject	Proposed Provision	Current Constitutional Language	Current Statutory Language
<p><b>Introductory Language</b></p>	<p><b>Article I Section 9m (2) (intro.)</b></p> <p>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:</p>	<p><b>Article I Section 9m</b></p> <p>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:</p>	<p><b>950.01 Legislative intent.</b></p> <p>In recognition of the civic and moral duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy and sensitivity; and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants. This chapter does not prohibit a public official, employee, or agency from sharing information with victim service organizations that are eligible to receive grants under s. <a href="#">49.165 (2)</a> or <a href="#">165.93 (2)</a>. Nothing in this chapter shall be construed to impair the exercise of prosecutorial discretion.</p>

Subject	Proposed Provision	Current Constitutional Language	Current Statutory Language
<b>Dignity &amp; Respect</b>	<p><b>Article I Section 9m (2)</b></p> <p>(a) To be treated with dignity, respect, courtesy, sensitivity, and fairness.</p>	<p><b>Article I Section 9m</b></p> <p>This state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy.</p> <p><i>Note: This language was determined by the Wisconsin Supreme Court to be a statement of purpose which does not provide “an enforceable, self-executing right.” Patrick G. Schilling v. State of Wisconsin Crime Victims Rights Board.</i></p>	<p><b>950.04 (1v) (ag)</b> To be treated with fairness, dignity, and respect for his or her privacy by public officials, employees, or agencies. This paragraph does not impair the right or duty of a public official or employee to conduct his or her official duties reasonably and in good faith.</p>
<b>Privacy</b>	<p><b>Article I Section 9m (2)</b></p> <p>(b) To privacy.</p>	<p><b>Article I Section 9m</b></p> <p>This state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy.</p> <p><i>Note: This language was determined by the Wisconsin Supreme Court to be a statement of purpose which does not provide “an enforceable, self-executing right.” Patrick G. Schilling v. State of Wisconsin Crime Victims Rights Board.</i></p>	<p><b>950.04 (1v) (ag)</b> To be treated with fairness, dignity, and respect for his or her privacy by public officials, employees, or agencies. This paragraph does not impair the right or duty of a public official or employee to conduct his or her official duties reasonably and in good faith.</p>

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<p><b>Proceedings Free from Delay</b></p>	<p><b>Article I Section 9m (2)</b>  (c) To proceedings free from unreasonable delay</p>	<p><b>Article I Section 9m</b>  This state shall ensure that crime victims have all of the following privileges and protections as provided by law:  ...timely disposition of the case</p>	<p><b>950.04 (1v) (ar)</b> To have his or her interest considered when the court is deciding whether to grant a continuance in the case, as provided under ss. <a href="#">938.315 (2)</a> and <a href="#">971.10 (3) (b) 3.</a>  <b>950.04 (1v) (k)</b> To a speedy disposition of the case in which they are involved as a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.</p>
<p><b>Timely Disposition of the Case</b></p>	<p><b>Article I Section 9m (2)</b>  (d) To timely disposition of the case, free from unreasonable delay.</p>	<p><b>Article I Section 9m</b>  This state shall ensure that crime victims have all of the following privileges and protections as provided by law:  ...timely disposition of the case</p>	<p><b>950.04 (1v) (ar)</b> To have his or her interest considered when the court is deciding whether to grant a continuance in the case, as provided under ss. <a href="#">938.315 (2)</a> and <a href="#">971.10 (3) (b) 3.</a>  <b>950.04 (1v) (k)</b> To a speedy disposition of the case in which they are involved as a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.</p>

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<p><b>Present at Proceedings</b></p>	<p><b>Article I Section 9m (2)</b></p> <p>(e) Upon request, to attend all proceedings involving the case.</p>	<p><b>Article I Section 9m</b></p> <p>This state shall ensure that crime victims have all of the following privileges and protections as provided by law:</p> <p>...the opportunity to attend court proceedings unless the trial court finds sequestration is necessary to a fair trial for the defendant</p>	<p><b>950.04 (1v) (b)</b> To attend court proceedings in the case, subject to ss. <a href="#">906.15</a> and <a href="#">938.299 (1)</a>. The court may require the victim to exercise his or her right under this paragraph using telephone or live audiovisual means, if available, if the victim is under arrest, incarcerated, imprisoned or otherwise detained by any law enforcement agency or is admitted or committed on an inpatient basis to a treatment facility under ch. <a href="#">51</a>, <a href="#">971</a> or <a href="#">980</a>, and the victim does not have a person specified in s. <a href="#">950.02 (4) (a) 3.</a> to exercise the victim's right under this paragraph.</p> <p><b>950.04 (1v) (em)</b> To have his or her interests considered by the court in determining whether to exclude persons from a preliminary hearing, as provided under s. <a href="#">970.03 (4)</a>.</p> <p><b>950.04 (1v) (nn)</b> To attend parole interviews or hearings and make statements as provided under s. <a href="#">304.06 (1) (eg)</a>.</p>

Subject	Proposed Provision	Current Constitutional Language	Current Statutory Language
<p><b>Present at Proceedings (continued)</b></p>			<p><b>950.04 (1v) (nt)</b> To attend a hearing on a petition for modification of a bifurcated sentence and provide a statement concerning modification of the bifurcated sentence, as provided under s. <a href="#">302.113 (9g) (d)</a>.</p> <p><b>950.04 (1v) (nx)</b> To attend a hearing on a petition for modification of a term of probation under s. <a href="#">973.09 (3) (d)</a> and provide a statement to the court concerning modification of the term of probation as provided under s. <a href="#">973.09 (3m)</a>.</p>
<p><b>Protection</b></p>	<p><b>Article I Section 9m (2)</b></p> <p>(f) To reasonable protection from the accused throughout the criminal and juvenile justice process.</p>	<p><b>Article I Section 9m</b></p> <p>This state shall ensure that crime victims have all of the following privileges and protections as provided by law:</p> <p>...reasonable protection from the accused throughout the criminal justice process</p>	<p><b>950.04 (1v) (e)</b> To be provided a waiting area under ss. <a href="#">938.2965</a> and <a href="#">967.10</a>.</p> <p><b>967.10 (2)</b> If an area is available and use of the area is practical, a county shall provide a waiting area for a victim or witness to use during court proceedings that is separate from any area used by the defendant, the defendant's relatives and defense witnesses. If a separate waiting area is not available or its use is not practical, a county shall provide other means to minimize the contact between the victim or witness and the defendant, the defendant's relatives and defense witnesses during court proceedings.</p> <p><b>938.2965 (2)</b> County to provide. If an area is available and use of the area is practical, a</p>

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<p><b>Protection (continued)</b></p>			<p>county shall provide a waiting area for a victim or witness to use during hearings under this chapter that is separate from any area used by the juvenile, the juvenile's relatives, and witnesses for the juvenile. If a separate waiting area is not available or its use is not practical, a county shall provide other means to minimize the contact between the victim or witness and the juvenile, the juvenile's relatives, and witnesses for the juvenile during hearings under this chapter.</p>
<p><b>Notice of Proceedings</b></p>	<p><b>Article I Section 9m (2)</b>  (g) Upon request, to reasonable and timely notification of proceedings.</p>	<p><b>Article I Section 9m</b> This state shall ensure that crime victims have all of the following privileges and protections as provided by law:  ...notification of court proceedings</p>	<p><b>950.04 (1v) (g)</b> To have reasonable attempts made to notify the victim of hearings or court proceedings, as provided under ss. <a href="#">302.113 (9g) (g) 2.</a>, <a href="#">302.114 (6)</a>, <a href="#">938.27 (4m)</a> and <a href="#">(6)</a>, <a href="#">938.273 (2)</a>, <a href="#">971.095 (3)</a> and <a href="#">972.14 (3) (b)</a>.</p> <p><b>950.04 (1v) (f)</b> To have the parole commission make a reasonable attempt to notify the victim of applications for parole, as provided under s. <a href="#">304.06 (1)</a>.</p> <p><b>950.04 (1v) (gm)</b> To have reasonable attempts made to notify the victim of petitions for sentence adjustment as provided</p>

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<p><b>Notice of Proceedings (continued)</b></p>			<p>under s. <a href="#">973.09 (3m)</a>, <a href="#">973.195 (1r) (d)</a>, or <a href="#">973.198</a>.</p> <p><b>950.04 (1v) (vm)</b> To have the appropriate clerk of court send the victim a copy of an inmate's petition for extended supervision and notification of the hearing on that petition under s. <a href="#">302.114 (6)</a>.</p> <p><b>950.04 (1v) (ym)</b> To have the governor make a reasonable attempt to notify the victim of a pardon application, as provided under s. <a href="#">304.09 (2)</a> and <a href="#">(3)</a>.</p>
<p><b>Confer</b></p>	<p><b>Article I Section 9m (2)</b></p> <p>(h) Upon request, to confer with the attorney for the government.</p>	<p><b>Article I Section 9m</b></p> <p>This state shall ensure that crime victims have all of the following privileges and protections as provided by law:</p> <p>...the opportunity to confer with the prosecution</p>	<p><b>950.04 (1v) (i)</b> To have, at his or her request, the opportunity to consult with intake workers, district attorneys and corporation counsel in cases under ch. <a href="#">938</a>, as provided under ss. <a href="#">938.245 (1m)</a>, <a href="#">938.265</a> and <a href="#">938.32 (1) (am)</a>.</p> <p><b>950.04 (1v) (j)</b> To have, at his or her request, the opportunity to consult with the prosecution in a case brought in a court of criminal jurisdiction, as provided under s. <a href="#">971.095 (2)</a>.</p>

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<p><b>Heard in Proceedings That Implicate a Right</b></p>	<p><b>Article I Section 9m (2)</b></p> <p>(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.</p>	<p>(No comparable provision)</p>	<p><b>950.105 Standing.</b> A crime victim has a right to assert, in a court in the county in which the alleged violation occurred, his or her rights as a crime victim under the statutes or under article I, section 9m, of the Wisconsin Constitution.</p>
<p><b>Victim Impact Information to Authorities</b></p>	<p><b>Article I Section 9m (2)</b></p> <p>(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.</p>	<p><b>Article I Section 9m</b></p> <p>This state shall ensure that crime victims have all of the following privileges and protections as provided by law:</p> <p>...the opportunity to make a statement to the court at disposition</p>	<p><b>950.04 (1v) (L)</b> To have the district attorney or corporation counsel, whichever is applicable, make a reasonable attempt to contact the victim concerning the victim's right to make a statement, as provided under ss. <a href="#">938.32 (1) (b) 2.</a>, <a href="#">938.335 (3m) (b)</a> and <a href="#">972.14 (3) (b)</a>.</p> <p><b>950.04 (1v) (L) (m)</b> To provide statements concerning sentencing, disposition, or parole, as provided under ss. <a href="#">304.06 (1) (e)</a>, <a href="#">938.32 (1) (b) 1g.</a>, <a href="#">938.335 (3m) (ag)</a>, and <a href="#">972.14 (3) (a)</a>.</p> <p><b>950.04 (1v) (n)</b> To have direct input in the parole decision-making process, as provided by the rules promulgated under s. <a href="#">304.06 (1) (em)</a>.</p> <p><b>950.04 (1v) (nt)</b> To attend a hearing on a petition for modification of a bifurcated sentence and provide a statement concerning</p>

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<p><b>Victim Impact Information to Authorities (continued)</b></p>			<p>modification of the bifurcated sentence, as provided under s. <a href="#">302.113 (9g) (d)</a>.</p> <p><b>950.04 (1v) (nx)</b> To attend a hearing on a petition for modification of a term of probation under s. <a href="#">973.09 (3) (d)</a> and provide a statement to the court concerning modification of the term of probation as provided under s. <a href="#">973.09 (3m)</a>.</p> <p><b>950.04 (1v) (o)</b> To have information concerning the impact of a delinquent act on the victim included in a court report under s. <a href="#">938.33</a> and to have the person preparing the court report attempt to contact the victim, as provided under s. <a href="#">938.331</a>.</p> <p><b>950.04 (1v) (p)</b> To have the person preparing a presentence investigation under s. <a href="#">972.15</a> make a reasonable attempt to contact the victim, as provided in s. <a href="#">972.15 (2m)</a>, and to view the sentence recommendation and any victim information included on the presentence investigation report, as provided in s. <a href="#">972.15 (4m)</a>.</p> <p><b>950.04 (1v) (pd)</b> Subject to the limits set forth in s. <a href="#">972.15 (4r)</a>, to view portions of a presentence investigation report prepared under s. <a href="#">972.15</a> that relate to the crime upon the victim.</p>

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<p><b>Victim Impact Information to Authorities (continued)</b></p>			<p><b>950.04 (1v) (pm)</b> To have the court provided with information pertaining to the economic, physical and psychological effect of the crime upon the victim and have the information considered by the court.</p> <p><b>950.04 (1v) (z)</b> To make a written statement concerning pardon applications, as provided under s. <a href="#">304.10 (2)</a>.</p>
<p><b>Notice of Release, Escape or Death</b></p>	<p><b>Article I Section 9m (2)</b></p> <p>(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.</p>	<p><b>Article I Section 9m</b></p> <p>This state shall ensure that crime victims have all of the following privileges and protections as provided by law:</p> <p>...information about the release of the accused</p>	<p><b>950.04 (1v) (um)</b> To have district attorneys make a reasonable attempt to notify the victim under s. <a href="#">971.17 (4m)</a> regarding conditional releases under s. <a href="#">971.17</a>.</p> <p><b>950.04 (1v) (v)</b> To have the department of corrections make a reasonable attempt to notify the victim under s. <a href="#">301.046 (4)</a> regarding community residential confinements, under s. <a href="#">301.048 (4m)</a> regarding participation in the intensive sanctions program, under s. <a href="#">301.38</a> regarding escapes from a Type 1 prison, under s. <a href="#">301.46 (3)</a> regarding persons registered under s. <a href="#">301.45</a>, under s. <a href="#">302.105</a> regarding release upon expiration of certain sentences, under s. <a href="#">304.063</a> regarding extended supervision and parole releases, and under s. <a href="#">938.51</a> regarding release or escape of a juvenile from correctional custody.</p>

Subject	Proposed Provision	Current Constitutional Language	Current Statutory Language
<p><b>Notice of Release, Escape or Death (continued)</b></p>			<p><b>950.04 (1v) (vg)</b> To have the department of corrections make a reasonable attempt to notify the victim, pursuant to s. <a href="#">302.107</a>, of a revocation of parole or of release to extended supervision under s. <a href="#">302.11 (7)</a>, <a href="#">302.113 (9)</a>, <a href="#">302.114 (9)</a>, or <a href="#">304.06 (3)</a> or <a href="#">(3g)</a>.</p> <p><b>950.04 (1v) (w)</b> To have the department of corrections make a reasonable attempt to notify the victim under s. <a href="#">303.068 (4m)</a> regarding leave granted to qualified inmates under s. <a href="#">303.068</a>.</p> <p><b>950.04 (1v) (x)</b> To have the department of health services make a reasonable attempt to notify the victim under s. <a href="#">971.17 (6m)</a> regarding termination or discharge under s. <a href="#">971.17</a> and under s. <a href="#">51.37 (10)</a> regarding home visits under s. <a href="#">51.37 (10)</a>.</p> <p><b>950.04 (1v) (xm)</b> To have the department of health services make a reasonable attempt to notify the victim under s. <a href="#">980.11</a> regarding supervised release under s. <a href="#">980.08</a> and discharge under s. <a href="#">980.09 (4)</a></p>

Subject	Proposed Provision	Current Constitutional Language	Current Statutory Language
<b>Refuse an Interview, Deposition, or Discovery</b>	<p><b>Article I Section 9m (2)</b></p> <p>(L) To refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused.</p>	(No comparable provision)	<p><b>950.04 (1v) (er)</b> To not be compelled to submit to a pretrial interview or deposition by a defendant or his or her attorney as provided under s. <a href="#">971.23 (6c)</a>.</p>
<b>Restitution</b>	<p><b>Article I Section 9m (2)</b></p> <p>(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</p>	<p><b>Article I Section 9m</b></p> <p>This state shall ensure that crime victims have all of the following privileges and protections as provided by law:</p> <p>...restitution</p>	<p><b>950.04 (1v) (q)</b> To restitution, as provided under ss. <a href="#">938.245 (2) (a) 5.</a>, <a href="#">938.32 (1t)</a>, <a href="#">938.34 (5)</a>, <a href="#">938.345</a>, <a href="#">943.212</a>, <a href="#">943.23 (6)</a>, <a href="#">943.245</a>, <a href="#">943.51</a> and <a href="#">973.20</a>.</p> <p><b>950.04 (1v) (r)</b> To a judgment for unpaid restitution, as provided under ss. <a href="#">895.035 (2m)</a> and <a href="#">973.09 (3) (b)</a>.</p>
<b>Compensation</b>	<p><b>Article I Section 9m (2)</b></p> <p>(n) To compensation as provided by law.</p>	<p><b>Article I Section 9m</b></p> <p>This state shall ensure that crime victims have all of the following privileges and protections as provided by law:</p> <p>...compensation</p>	<p><b>950.04 (1v) (rm)</b> To compensation, as provided under subch. <a href="#">I of ch. 949</a>.</p>

<p><b>Information-Status of Investigation and Outcome of the Case</b></p>	<p><b>Article I Section 9m (2)</b></p> <p>(o) Upon request, to reasonable and timely information about the status of the investigation and the outcome of the case.</p>	<p><b>Article I Section 9m</b></p> <p>This state shall ensure that crime victims have all of the following privileges and protections as provided by law:</p> <p>...information about the outcome of the case</p>	<p><b>950.04 (1v) (y)</b> To have reasonable attempts made to notify the victim concerning actions taken in a juvenile proceeding, as provided under ss. <a href="#">938.24 (5m)</a>, <a href="#">938.25 (2m)</a>, <a href="#">938.312</a> and <a href="#">938.346</a>.</p> <p><b>950.04 (1v) (zm)</b> To request information from a district attorney concerning the disposition of a case involving a crime of which he or she was a victim, as provided under s. <a href="#">971.095 (6)</a>.</p>
<p><b>Notice of Rights</b></p>	<p><b>Article I Section 9m (2)</b></p> <p>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.</p>	<p>(No comparable provision)</p>	<p><b>950.04 (1v) (t)</b> To receive information from law enforcement agencies, as provided under s. <a href="#">950.08 (2g)</a>.</p> <p><b>950.04 (1v) (u)</b> To receive information from district attorneys, as provided under s. <a href="#">950.08 (2r)</a>.</p> <p><b>950.04 (1v) (y)</b> To have reasonable attempts made to notify the victim concerning actions taken in a juvenile proceeding, as provided under ss. <a href="#">938.24 (5m)</a>, <a href="#">938.25 (2m)</a>, <a href="#">938.312</a> and <a href="#">938.346</a>.</p> <p><b>950.08 (2)</b> The department [DOJ] shall provide an informational program to inform crime victims, the general public, criminal justice officials and related professionals about crime victim rights and services.</p>

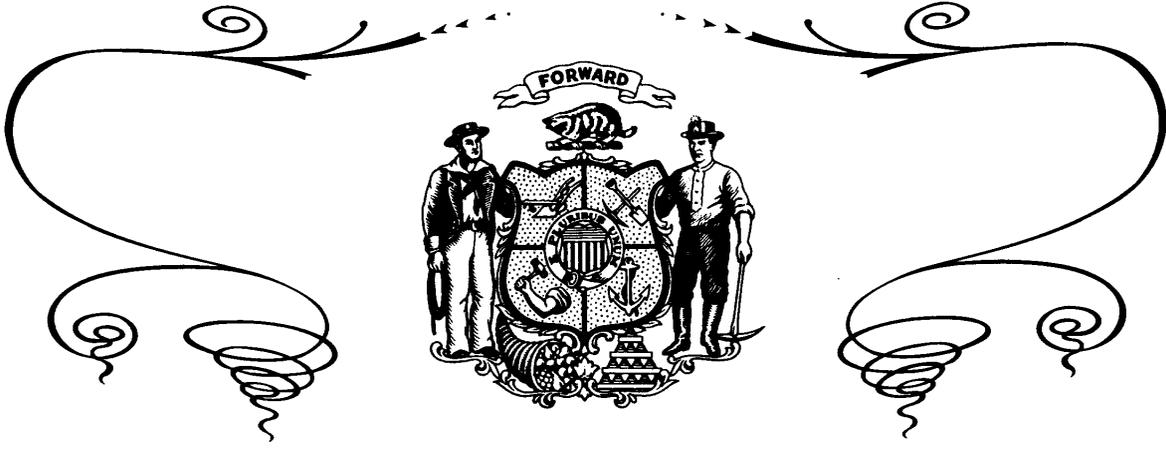
<p><b>Self-Executing Rights</b></p>	<p><b>Article 1 Section 9m (3)</b>  Except as provided under <u>sub. (2) (n)</u>, all provisions of this section are self-executing.</p>	<p><b>Article I Section 9m</b>  This state shall ensure that crime victims have all of the following privileges and protections as provided by law...</p>	<p>(No comparable provision)</p>
<p><b>Legislature May Prescribe Further Remedies and Procedures</b></p>	<p><b>Article 1 Section 9m (3)</b>  The legislature may prescribe further remedies for the violation of this section and further procedures for compliance with and enforcement of this section.</p>	<p><b>Article I Section 9m</b>  The legislature shall provide remedies for the violation of this section.</p>	<p>(No comparable provision)</p>
<p><b>Victim, defined</b></p>	<p><b>Article I Section 9m (1)(a)</b>  In this section, notwithstanding any statutory right, privilege, or protection, “victim” means any of the following:</p> <ol style="list-style-type: none"> <li>1. A person against whom an act is committed that would constitute a crime if committed by a competent adult.</li> <li>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.</li> <li>3. If the person under subd. 1. is a minor, the person's parent, legal guardian or custodian,</li> </ol>	<p>(No comparable provision)</p>	<p><b>950.02 (4) (a)</b> “Victim” means any of the following:</p> <ol style="list-style-type: none"> <li>1. A person against whom a crime has been committed. [Crime is defined at 950.02 (1m) as “an act committed in this state which, if committed by a competent adult, would constitute a crime, as defined in s. <a href="#">939.12.</a>”]</li> <li>2. If the person specified in subd. <a href="#">1.</a> is a child, a parent, guardian or legal custodian of the child.</li> <li>3. If a person specified in subd. <a href="#">1.</a> is physically or emotionally unable to exercise the rights granted under s. <a href="#">950.04</a> or article I, section 9m, of the Wisconsin constitution, a person designated by the person specified in subd. <a href="#">1.</a> or a family member of the person</li> </ol>

<p><b>Victim, defined (continued)</b></p>	<p>or other lawful representative.</p> <p>4. If the person under subd. 1. is adjudicated incompetent, the person's legal guardian or other lawful representative.</p> <p>(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.</p>		<p>specified in subd. <a href="#">1.</a></p> <p><b>4.</b> If a person specified in subd. <a href="#">1.</a> is deceased, any of the following:</p> <p>a. A family member of the person who is deceased. [Defined: spouse, minor child, adult child, sibling, parent or legal guardian.]</p> <p>b. A person who resided with the person who is deceased.</p> <p><b>5.</b> If a person specified in subd. <a href="#">1.</a> has been adjudicated incompetent in this state, the guardian of the person appointed for him or her.</p> <p><b>950.02 (4) (b)</b> “Victim” does not include the person charged with or alleged to have committed the crime.</p>
<p><b>Enforcement &amp; Remedies</b></p>	<p><b>Article I Section 9m (4)</b></p> <p>(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</p>	<p><b>Article I Section 9m</b></p> <p>The legislature shall provide remedies for the violation of this section.</p>	<p><b>950.04 (lv) (zx)</b> To complain to the department of justice concerning the treatment of crime victims, as provided under s. <a href="#">950.08 (3)</a>, and to request review by the crime victims rights board of the complaint, as provided under s. <a href="#">950.09 (2)</a>.</p> <p><b>950.08 (3)</b> The department may receive complaints, seek to mediate complaints and, with the consent of the involved parties, actually mediate complaints regarding the treatment of crime victims and witnesses by public officials, employees or agencies or</p>

<p><b>Enforcement &amp; Remedies (continued)</b></p>	<p>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.</p> <p>(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.</p>		<p>under crime victim and witness assistance programs.</p> <p><b>950.09 (2)</b> ... Based on its review of a complaint under this subsection, the board may do any of the following:</p> <p>(a) Issue private and public reprimands of public officials, employees or agencies ...</p> <p>(b) Refer to the judicial commission a violation or alleged violation by a judge...</p> <p>(c) Seek appropriate equitable relief on behalf of a victim ...</p> <p><b>d)</b> Bring civil actions to assess a forfeiture under s. 950.11....</p> <p><b>950.09 (3)</b> In addition to its powers under sub. (2), the board may issue reports and recommendations concerning the securing and provision of crime victims rights and services.</p> <p><b>950.105 Standing.</b> A crime victim has a right to assert, in a court in the county in which the alleged violation occurred, his or her rights as a crime victim under the statutes or under article I, section 9m, of the Wisconsin Constitution</p> <p><b>950.11 Penalties.</b> A public official, employee or agency that intentionally fails to provide a right specified under s. <u>950.04 (1v)</u> to a victim of a crime may be subject to a forfeiture of not more than \$1,000.</p>
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<p><b>Cause of Action</b></p>	<p><b>Article I Section 9m (5)</b></p> <p>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.</p>	<p>(No comparable provision)</p>	<p><b>950.10 (1)</b> No cause of action for money damages may arise 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 under this chapter or under article I, section 9m, of the Wisconsin constitution or for any act or omission in the performance of any power or duty under ch. <a href="#">938</a> relating to the rights of, services for or notices to victims.</p> <p><b>950.10 (2)</b> A failure to provide a right, service or notice to a victim under this chapter or ch. <a href="#">938</a> or under article I, section 9m, of the Wisconsin constitution 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.</p>
<p><b>Defendant's Rights/Party Status of Victim</b></p>	<p><b>Article I Section 9m (6)</b></p> <p>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.</p>	<p>(No comparable provision)</p>	<p>(No comparable provision)</p>

# State of Wisconsin



2019 Senate Joint Resolution 2

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## ENROLLED JOINT RESOLUTION

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*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 (second consideration).

Whereas, the 2017 legislature in regular session considered a proposed amendment to the constitution in 2017 Senate Joint Resolution 53, which became 2017 Enrolled Joint Resolution 13, and agreed to it by a majority of the members elected to each of the two houses, which proposed amendment reads as follows:

**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.

*Now, therefore, be it resolved by the senate, the assembly concurring, That* the foregoing proposed amendment to the constitution is agreed to by the 2019 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 in April 2020; 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: “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?”

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Representative Robin J. Vos  
Speaker of the Assembly

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Senator Roger Roth  
President of the Senate

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Date

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Jeffrey Renk  
Senate Chief Clerk