

# NOTICE OF REFERENDUM ELECTION

APRIL 4, 2023

NOTICE IS HEREBY GIVEN, that at an election to be held in the several towns, villages, wards, and election districts of the State of Wisconsin, on Tuesday, April 4, 2023, the following questions will be submitted to a vote of the people pursuant to law:

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## 2023 ENROLLED JOINT RESOLUTION 2

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

Whereas, the 2021 legislature in regular session considered a proposed amendment to the constitution in 2021 Assembly Joint Resolution 107, which became 2021 Enrolled Joint Resolution 6, 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 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 accused's previous convictions for a violent crime, 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?"

## EXPLANATION

### 1. Explanatory statement regarding Question 1:

Under the current Wisconsin Constitution, courts may impose reasonable conditions on the release of a criminal defendant before trial for three purposes: (1) to

secure the defendant's appearance in court; (2) to protect the community from "serious bodily harm;" and (3) to prevent intimidation of witnesses. Wis. Const. art. I, § 8(2).

Question 1 would change the language of the second factor from "serious bodily harm" to "serious harm as defined by the legislature by law." The question would thus change the type of harm to the community that a court could seek to protect against. Because the term "serious harm" would be defined by the legislature by law, what it means could evolve over time depending on legislative enactments.

A "yes" vote on Question 1 would vote to amend Wis. Const. art. I, § 8(2) to allow a circuit court to impose release conditions based on the purpose of avoiding "serious harm as defined by the legislature" rather than "serious bodily harm."

A "no" vote on Question 1 would vote not to amend Wis. Const. art. I, § 8(2) to change the term "serious bodily harm" as a factor for determining the conditions of a defendant's pretrial release.

## *2. Explanatory statement regarding Question 2:*

Question 2 would also change the language of Wis. Const. art. I, § 8(2), but in a different way from Question 1. Question 2 addresses the circuit court's ability to impose the specific condition of monetary bail.

Currently, the Wisconsin Constitution allows a court to impose a monetary bail requirement only if the court finds a reasonable basis to believe that bail is necessary in order to secure the defendant's appearance in court. Wis. Const. art. I, § 8(2).

Question 2 would expand the factors a circuit court may consider in imposing monetary bail. In cases where a defendant is accused of a "violent crime as defined by the legislature by law," Question 2 would allow a court to impose monetary bail based on circumstances in addition to securing the defendant's appearance in court, including accounting for a previous conviction for a violent crime, the need to protect the community from serious harm, preventing witness intimidation, and potential affirmative defenses the defendant might assert.

A "yes" vote on Question 2 would vote to amend Wis. Const. art. I, § 8(2) in cases where the defendant is accused of a violent crime to allow a court to utilize monetary bail for additional reasons in addition to securing the defendant's appearance in court, including accounting for a previous conviction for a violent crime, the need to protect the community from serious harm, preventing witness intimidation, and accounting for the defendant's affirmative defenses. Because the term "violent crime" would be defined by the legislature by law, what it means could evolve over time depending on legislative enactments.

A "no" vote on Question 2 would vote not to amend Wis. Const. art. I, § 8(2) to expand the factors a court considers in imposing monetary bail.

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## 2023 ENROLLED JOINT RESOLUTION

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**Relating to:** providing for an advisory referendum on the question of requiring able-bodied, childless adults to look for work in order to receive taxpayer-funded welfare benefits.

**Resolved by the senate, the assembly concurring, That** the following question be submitted, for advisory purposes only, to the voters of this state at the spring election to be held in April 2023:  
"Shall able-bodied, childless adults be required to look for work in order to receive taxpayer-funded welfare benefits?"

### EXPLANATION

*Explanatory statement regarding Question 3, the advisory question:*

This is an advisory referendum and would not change Wisconsin law. Wisconsin and federal law currently define various programs available to those with financial need based on criteria such as age, familial status, and disability, among other criteria. Most of those programs are limited to children, families with children, pregnant women, disabled persons, or those 65 or older, who Wisconsin law does not consider "able-bodied" for public assistance purposes. *See, e.g.*, Wis. Stat. § 49.79(1)(am) (defining age limits for "able-bodied" under food stamp program).

Two programs currently available to "able-bodied, childless adults" are Wisconsin's BadgerCare Plus medical assistance program and the FoodShare program, also known as SNAP or food stamps. However, those programs are subject to certain federal requirements and restrictions that either would be inconsistent with the requirement about which the referendum asks or, in some cases, already include such a requirement.

BadgerCare Plus's medical assistance program is subject to federal Medicaid restrictions, and federal law does not allow for work-based requirements for such programs absent a federal waiver. *See* 42 U.S.C. § 1396a(a)(10)(A). Currently, there is no federal waiver in force that would allow Wisconsin to impose work requirements on this program. Wisconsin's FoodShare statute contains requirements that able-bodied, childless adults be employed or participate in an employment and training program, *see* Wis. Stat. § 49.79(9), but that requirement has been suspended by the federal government in response to the COVID-19 pandemic.

A "yes" vote on Question 3, the advisory referendum, would make no change to Wisconsin law.

A "no" vote on Question 3, the advisory referendum, also would make no change to Wisconsin law.

DONE in the City of Madison, this 20th day of March,  
2023.

Scott McDonell  
*Dane County Clerk*