



ACLU Nevada

MARSY'S LAW

The American Civil Liberties Union of Nevada opposes Question 1, the misguided constitutional amendment known as Marsy's Law for Nevada.

Marsy's Law is an unfunded mandate in search of a problem. This costly amendment will do little more than burden taxpayers and the criminal justice system with constitutional requirements that victims are already entitled to by law.

Question 1 Ignores the Specific Needs of Victims

This effort, while well intentioned, undermines the legal system and promotes the wrong mechanism for advancing victims' rights. Victims, through no fault of their own, are thrust into a complex legal system. But the protections they require are, and should be, provided by statute — not through constitutional amendment. Most of the protections afforded by Marsy's Law already exist in Nevada's "Protection of Victims and Witnesses" statute. Victims of crime in Nevada will gain little to no benefit from enshrining existing rights into our state constitution.

Question 1 unfairly prioritizes the needs of victims seeking remedy in criminal court over the vast majorities who do not. This measure will strain resources for underserved victims who need housing, transportation, counseling, and healthcare, as well as legal assistance. Nevadans should focus

on increasing meaningful services for crime victims, not overcomplicating an already complex legal system.

The proposed definition of "victim" in the ballot measure opens the door for insurance companies and other corporations to claim enforceable rights that could potentially diminish the access natural victims have to justice as well as divert scarce resources to the claims of corporations.

Marsy's Law Undermines the Criminal Justice System and Paramount Rights of the Accused

Granting victims constitutional rights equal to the accused inappropriately undermines due process by creating conflict between victim and defendant rights. The rights of the accused are paramount under the United States Constitution. They are protected by the Fourth, Fifth, Sixth, and Eighth Amendments. The heart of these constitutional inquiries is whether and to

WHAT IS MARSY'S LAW

California billionaire Henry Nicholas is funding a national campaign entitled "Marsy's Law," which seeks to enshrine in state constitutions a specific and lengthy set of victims' rights. Though well intended, the Marsy's Law formula is poorly drafted and is a threat to existing constitutional rights.

The ACLU of Nevada, along with public defenders and Nevada Attorneys for Criminal Justice, worked tirelessly in 2015 and 2017 to mitigate the issues with this misguided policy. We sought to add language stating that the law was not intended to infringe upon the federal or state constitutional rights of criminal defendants, but the language was amended out by politicians.

Because it is a constitutional amendment, it would take several years for Nevada to fix the unintended consequences of Marsy's Law. Other states have faced serious costs and litigation over constitutional concerns with the amendments.

what extent governmental intrusion is necessary when a person is accused of committing a crime. Victims' rights serve a completely different purpose aimed at ensuring recovery for individuals, not protection against state power.

The definition of "victim" in Marsy's Law, "any person proximately harmed by the commission of a criminal offense," is vague and overbroad. This could extend enforceable rights to corporations or result in a vast swath of passionate people inserting themselves into the criminal justice system.

Question 1 undermines the presumption of innocence by allowing victims to be involved in procedural processes prior to conviction.

The measure conflicts with a criminal defendant's 6th Amendment Right to effective assistance of counsel. First, it imposes significant limitations on the discovery process. This is and should continue to be a judicial determination, to ensure that defense attorneys have access to information necessary to effectively represent their clients. Furthermore, it requires a "timely disposition of the case." This is unconstitutionally vague and highly relative.

The amendment expands the rights of victims to be heard at any public proceeding, not just sentencing and parole hearings. This could increase the time a misdemeanor defendant is in detention prior to their bail hearings, as each victim would have to be notified prior to any court proceeding.

Marsy Law turns a victim's right "to be heard" in probation and parole hearings into a right to "prevent" the defendant's probation or parole. Such hearings should continue to be an assessment of the defendant's time in prison, risk to public safety, and their ability to succeed outside of prison.

It Places Financial Strain on an Overburdened Criminal Justice System

Nevada's criminal justice system is overburdened and underfunded. This amendment provides zero budgetary allocations for a measure that is sure to have an immense financial impact.

Marsy's Law creates a constitutionally protected private right of action for the public to sue law enforcement, prosecutors and defense attorneys, thus opening the state to significant financial liability.

Question 1 will limit the prosecution's ability to weigh whether to negotiate

on cases, resulting in more trials and more costs for counties.

The right to timely restitution and the expansive definition of "victim" could place undue financial strain on the state.

Extended detention times and fewer parole and probation grants will overburden corrections budgets.

Question 1 will negatively impact the resources that Nevada allocates to victims' services programs. Victims of violent crime and victims of even simple larceny will be entitled to these rights. Our state's most vulnerable victims stand to lose the most by forcing service providers to strain their budgets.

It delays bond hearings and plea negotiations, causing defendants to be jailed longer.

Other States Face Legal Challenges; Some Consider Repeal

CALIFORNIA

In 2011, Governor Arnold Schwarzenegger commuted a 16-year sentence of voluntary manslaughter to 7 years. Under Marsy's Law, Governor Schwarzenegger was required to notify the victim's family of the commutation, which he did not. Two lawsuits were filed, one by the victim's family and the other by the San Diego County Deputy District Attorney. The lawsuits were combined.

In 2012, a U.S. District Judge ruled that the part of the Victims' Bill of Rights which govern parole revocation was unconstitutional. Parole revocation laws were ruled to violate minimum due process provided by the constitution and affirmed by two SCOTUS cases: *Morrisey v. Brown* (1972) and *Gagnon v. Scarpell* (1973). The law was also found to violate certain rights to a lawyer and rights to a neutral and detached hearing body. The entire parole revocation law was struck down.

SOUTH DAKOTA

South Dakota voters initially passed a constitutional amendment, Constitutional Amendment S, in 2016 that implemented Marsy's Law into the SD state constitution. "Officials say Marsy's Law has had unintended consequences since it first passed such as causing problems for law enforcement and prosecutors and increasing costs for counties."

In June of 2018, voters approved a

subsequent constitutional amendment, Constitutional Amendment Y, that was the result of a compromise between advocates of Marsy's Law and opponents who wanted to repeal the entire amendment. Marsy's Law for South Dakota supported this additional amendment. The amendment guaranteed victims the expanded rights only if they OPTED IN to the rights, rather than guaranteeing all victims of crime these rights by default. Constitutional Amendment Y also contained provisions that prevented ANY lawsuits against state or local government entities or officials based on Marsy's Law rights.

South Dakota found the following problems with its implementation:

- Those seeking car accident reports for insurance claims were unable to get them from the Department of Public Safety
- Prosecutors had to hire staff to contact victims to let them know about their rights, those victim witness assistants have spent more time calling victims of non-violent crimes than victims of more serious offenses

MONTANA

Montanan voters approved the Marsy's Law constitutional amendment in November of 2016. The ACLU of Montana, Montana County Attorneys Association, Montana League of Cities and Towns, and Montana Association of Counties filed litigation calling for the initiation of the amendment to be delayed until July 1st, 2017.

On June 20, 2017, the Montana Association of Counties (MACo), Montana Association of Criminal Defense Lawyers, ACLU of Montana, and two municipal attorneys filed a lawsuit against the State of Montana in the Montana Supreme Court. Plaintiffs claimed that Initiative 116, which was the referendum to approve the Marsy's Law amendment, violated the state's single-subject rule and separate vote requirement. The Montana Supreme Court struck down the initiative in a 5-2 ruling.

FLORIDA

A judge in Florida removed a Marsy's Law initiative from the state's 2018 ballot after ruling the measure was too misleading for voters.

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