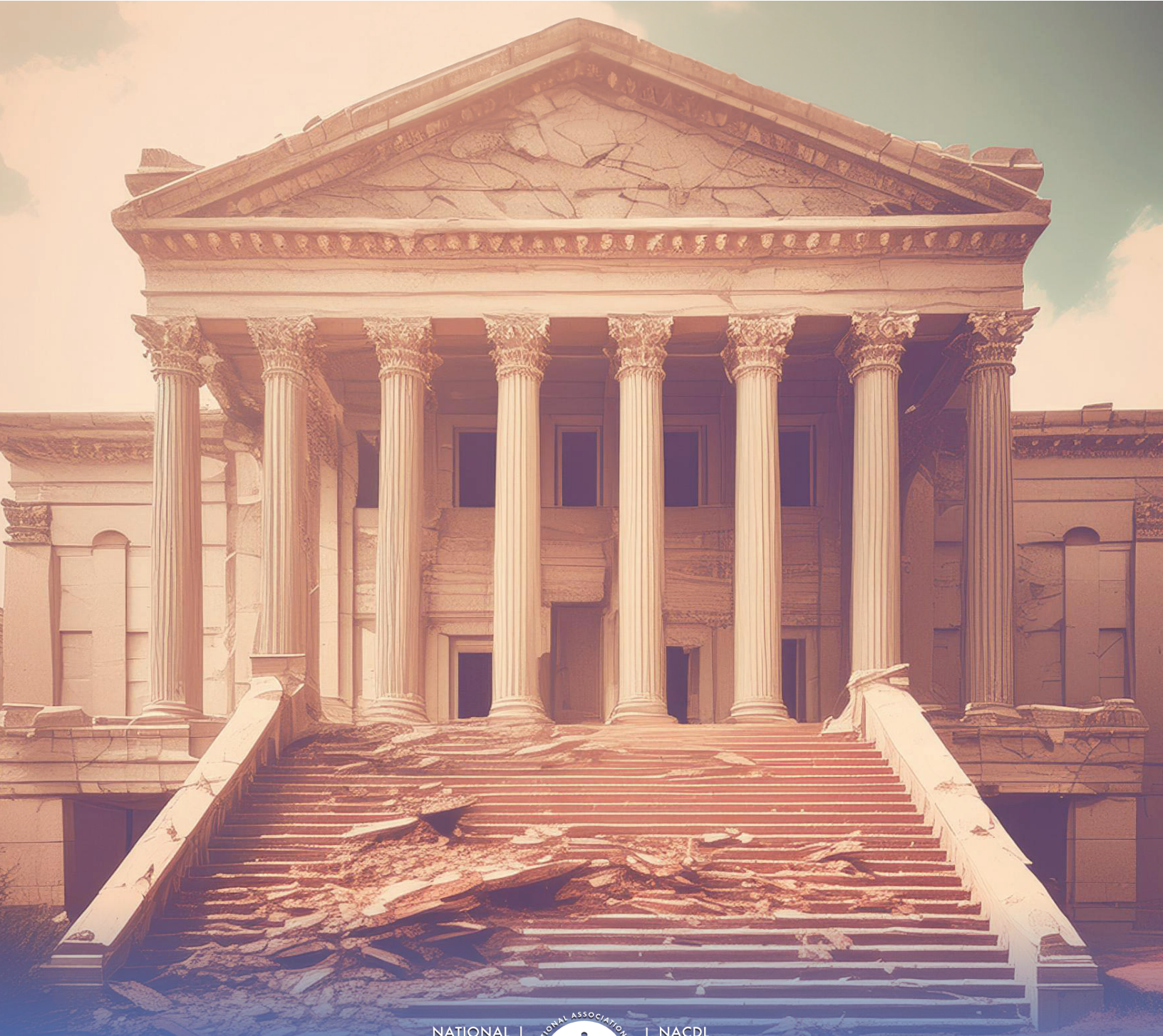


JUSTICE FOR NONE

HOW MARSY'S LAW UNDERMINES THE CRIMINAL LEGAL SYSTEM



NATIONAL
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OF CRIMINAL
DEFENSE LAWYERS



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CRIMINAL
JUSTICE

Report Authors: Ráchael A. Powers, Ph.D. & Jacquelyn Burckley, MA



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This publication is available online at NACDL.org/JusticeForNone

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HOW MARSY'S LAW UNDERMINES THE CRIMINAL LEGAL SYSTEM

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THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AND THE NACDL FOUNDATION FOR CRIMINAL JUSTICE

The National Association of Criminal Defense Lawyers (NACDL) is the preeminent organization in the United States advancing the goal of the criminal defense bar to ensure justice and due process for persons charged with a crime or wrongdoing. NACDL envisions a society where all individuals receive fair, rational, and humane treatment within the criminal legal system.

NACDL's mission is to serve as a leader, alongside diverse coalitions, in identifying and reforming flaws and inequities in the criminal legal system, and redressing systemic racism, and ensuring that its members and others in the criminal defense bar are fully equipped to serve all accused persons at the highest level.

The members of NACDL — and its 90 state, local and international affiliates — include private criminal defense lawyers, public defenders, active U.S. military defense counsel, and law professors committed to promoting fairness in America's criminal legal system. Representing thousands of criminal defense attorneys who know firsthand the inadequacies of the current system, NACDL is recognized domestically and internationally for its expertise on criminal justice policies and practices.

The NACDL Foundation for Criminal Justice (NFCJ) is a 501(c)(3) charitable non-profit organized to preserve and promote the core values of the American criminal legal system guaranteed by the Constitution — among them access to effective counsel, due process, freedom from unreasonable search and seizure, the right to a jury trial, and fair sentencing. The NFCJ supports NACDL's efforts to promote its mission through resources, education, training and advocacy tools for the public, the nation's criminal defense bar, and the clients they serve.

ACKNOWLEDGEMENTS

This report is the final product of a collaboration between Monica L. Reid, former Senior Director of Advocacy at NACDL, and the authors of this report, Ráchael Powers, Associate Professor in the School of Criminal Justice at the University of Cincinnati and Jacquelyn Burckley, doctoral student in the Department of Criminology at the University of South Florida.

First and foremost, NACDL would like to thank our state affiliate organizations who are in states impacted by Marsy's Law and those who are in states that have considered or are considering Marsy's Law. Also, thank you to the amazing collaboration of organizations — defense organizations, civil rights and civil liberty organizations, community organizations, and other advocates — that are working to oppose Marsy's Law.

NACDL would like to thank Michael Iacopino, longtime Chair of NACDL's State Legislative Affairs Committee, and Amy Hirota, former Vice Chair of NACDL's State Legislative Affairs Committee.

The authors of this report and NACDL thank all the stakeholders who participated in the focus groups, interviews, and survey. Further, the authors and NACDL extend their thanks to the attorneys who provided the legal analysis that is included in this report. Their expertise and experience provided invaluable information.

Thanks also to Nora Zimmerman, former staff member at NACDL, who contributed to the data collection efforts.

And lastly, thanks to the following NACDL staff members for their contributions to this report: Lisa Wayne (Executive Director), Kyle O'Dowd (Deputy Director), Jessica Stepan (Chief Marketing Officer), Bonnie Hoffman (Senior Director of Public Defense Reform & Training), Nathan Pysno (Director of Economic Crime & Procedural Justice), Quintin Chatman (Senior Editor, The Champion Magazine), Jonathan Hutson (Senior Director for Public Affairs and Communications), Jessie Diamond (Deputy Director, Public Affairs and Communications), Cathy Zlomek (Art Director) and Michelle Leguia (Design and Production Assistant).

EXECUTIVE SUMMARY

Marsy's Law is the colloquial name for a model Victims' Bill of Rights that enshrines victims' rights within state constitutions. Marsy's Law was first passed in California in 2008 and has since been adopted in 12 states. To date, over \$100 million has been spent by Marsy's Law for All, LLC in campaigning efforts for Marsy's Law. The aim of Marsy's Law for All, LLC is that victims' rights be included in all state constitutions and ultimately, the U.S. Constitution. In many states, victims' rights were already included in their statutes. However, Marsy's Law enshrines its model (or a slight variation of the model) within the state constitutions, expanding rights of victims, including the definition of a victim.

While the language varies across states, the specific constitutional protections that have substantially impacted the criminal legal system fall into four main areas: the right to notification, the right to be heard, the right to privacy, and the right to restitution.

ABOUT THIS REPORT

This report aims to shed light on the impact of Marsy's Law. While Marsy's Law proponents argue that the impact on due process for accused individuals has been minimal while the benefits for victims have been immense, legal challenges and news reports from impacted states suggest otherwise. Many of the provisions of Marsy's Law are impractical and conflict with the constitutional due process protections for defendants. There is a need for systematic scrutiny of Marsy's Law across impacted states to study its impact including identifying challenges, unintended consequences, and the gaps in the collective knowledge and awareness of its effects. While there has been vocal opposition to Marsy's Law from many stakeholders including defense attorneys, civil rights groups, a bipartisan group of state legislators, legal experts, victim advocates, and police chiefs and sheriffs, these critiques have largely been siloed within their respective states.

This report synthesizes existing information on Marsy's Law and presents the findings of new research on the effects of Marsy's Law in impacted states. Case law, legal and expert analysis, stakeholder experiences, and empirical research are utilized to provide insights on the impact and consequences of Marsy's Law on the criminal legal system, including effects on accused individuals, victims, and public safety. In addition to the secondary data (e.g., court rulings, newspaper articles, press releases), a mixed-methods approach was used to gather data from stakeholders in impacted states. The aim of this research was to obtain an understanding of how Marsy's Law has impacted the criminal legal system in their states, and their experiences before and after implementation. A quantitative survey instrument was designed and administered to a variety of stakeholders. This report presents the results of the experiences of defense attorneys (n=299) in impacted states. Second, focus groups with defense attorneys and other relevant stakeholders were conducted to bring to light in-depth expertise and experiences with Marsy's Law. Appendix A provides a detailed description of the methodology.

KEY FINDINGS

- Legal challenges to the ballot initiatives, analysis of Marsy's Law campaign materials, and results from the survey and focus groups suggest that voters were ill-informed prior to voting for Marsy's Law.
- The definition of a victim under Marsy's Law is too broad. This has led to abuses of Marsy's Law in two main ways:
 - Corporations and municipalities have claimed victimhood for the purposes of obtaining financial gain through restitution.
 - Police in multiple states have used Marsy's Law to conceal their identity from the public in use of force incidents. Marsy's Law is being used extensively in some states for this purpose in both lethal and non-lethal use of force incidents.
- Preliminary cost analyses and fiscal impact reports in several states raise concerns that Marsy's Law may be costly to implement. Costs include, but are not limited to, additional administrative personnel and records management positions, prosecutors to balance the increase in workload associated with case processing, and victim advocates embedded in both law enforcement and local prosecutor offices. Further, some states report that the expansion of notification requirements to all offenses likely requires a substantial increase in resources of personnel and/or notification systems.
- There has been substantial confusion about whether victims' rights to notification and privacy begin immediately and automatically or whether victims must "opt-in" to these rights. This has implications for the notification of victims and the right to be heard. Even in states that have specified that victims must opt-in, there is remaining confusion because these rights attach "at the point of victimization," which suggests they are self-executing. This interpretation broadly expands privacy rights and erodes the availability of public safety information.
- The expansion of who is considered a victim, the requirements to notify the victim of all proceedings, and the right of the victim to be heard and confer with the prosecution have overburdened local criminal legal systems; these developments have resulted in substantial delays for all stages of criminal legal processing. Further, they have caused delays in defendants being released in a timely manner from pretrial detention and after serving their sentences.
- The right to be heard has posed substantial challenges to the plea negotiation process, delaying or thwarting plea deals that are in the public's interest. Respondents in the survey identified this to be one of the greatest challenges in their experience with Marsy's Law as it is much more difficult to work with prosecutors who indicate they must confer with victims prior to any plea deal.
- Marsy's Law may adversely impact the parole system. In California, for example, the length of time between parole hearings has increased substantially. In addition, due to the expansion of the definition of a victim, parole hearings have increased in length.
- Obtaining discovery and interviewing victims and witnesses have been complicated by Marsy's Law. The right of the victim to refuse to participate in interviews and discovery severely hampers the ability of defense attorneys to investigate the case and delays the resolution of cases.
- Restitution under Marsy's Law has created untenable conditions for defendants. Without considering their ability to pay, restitution has become punitive for defendants, impacted the financial health of their families, and presented barriers to successful re-entry after serving their sentences. These concerns extend to youth in the criminal legal system as well.
- The troubling implications of Marsy's Law for youth in the criminal legal system, including a risk of a loss of confidentiality of records pertaining to juvenile defendants, have not been fully reconciled in impacted states.

KEY IMPLICATIONS

- Most importantly, Marsy's Law improperly seeks to give equal weight to victims' and defendants' rights. Marsy's Law violates defendants' due process rights, increases the potential for wrongful convictions, and undermines the principles of the U.S. legal system.
- Marsy's Law conflates the proper role of the prosecutor in representing the State with advocacy for individual victims.
- The abuse of Marsy's Law by corporations, municipalities, and law enforcement erodes public trust in the criminal legal system, wastes limited resources, and undermines reform efforts to increase transparency and accountability in government.
- Marsy's Law has exacerbated the collateral consequences of incarceration by delaying the timely release of incarcerated individuals. Because of the scope of Marsy's Law, these consequences extend to individuals who are merely accused and still presumed innocent.
- The changes to restitution under Marsy's Law have the potential to exacerbate the risk of recidivism associated with fines and fees.
- Marsy's Law has created additional substantial burdens to an already overburdened criminal legal system.
- Marsy's Law threatens public safety by preventing the release of crime information to the public and shielding the identities of law enforcement who have engaged in misconduct.
- Several provisions in Marsy's Law have the potential to exacerbate the trauma experienced by victims.
- The costs of Marsy's Law may come at the expense of resources that could be allocated toward underfunded victim services and community-based crime prevention initiatives.

POLICY RECOMMENDATION

While efforts have been made to revise Marsy's Law to address some of the concerns, there is no set of discrete and direct policy recommendations that can be provided to mitigate the harms of Marsy's Law. Put quite simply, the existence of Marsy's Law is too damaging to defendants' due process and the underlying principles of the U.S. legal system.

As such, NACDL opposes the adoption of Marsy's Law, and urges the public and elected officials at all levels of government to oppose Marsy's Law. States that have already adopted Marsy's Law should conduct cost analysis to determine the fiscal impact of the provisions.

OVERVIEW OF MARSY'S LAW

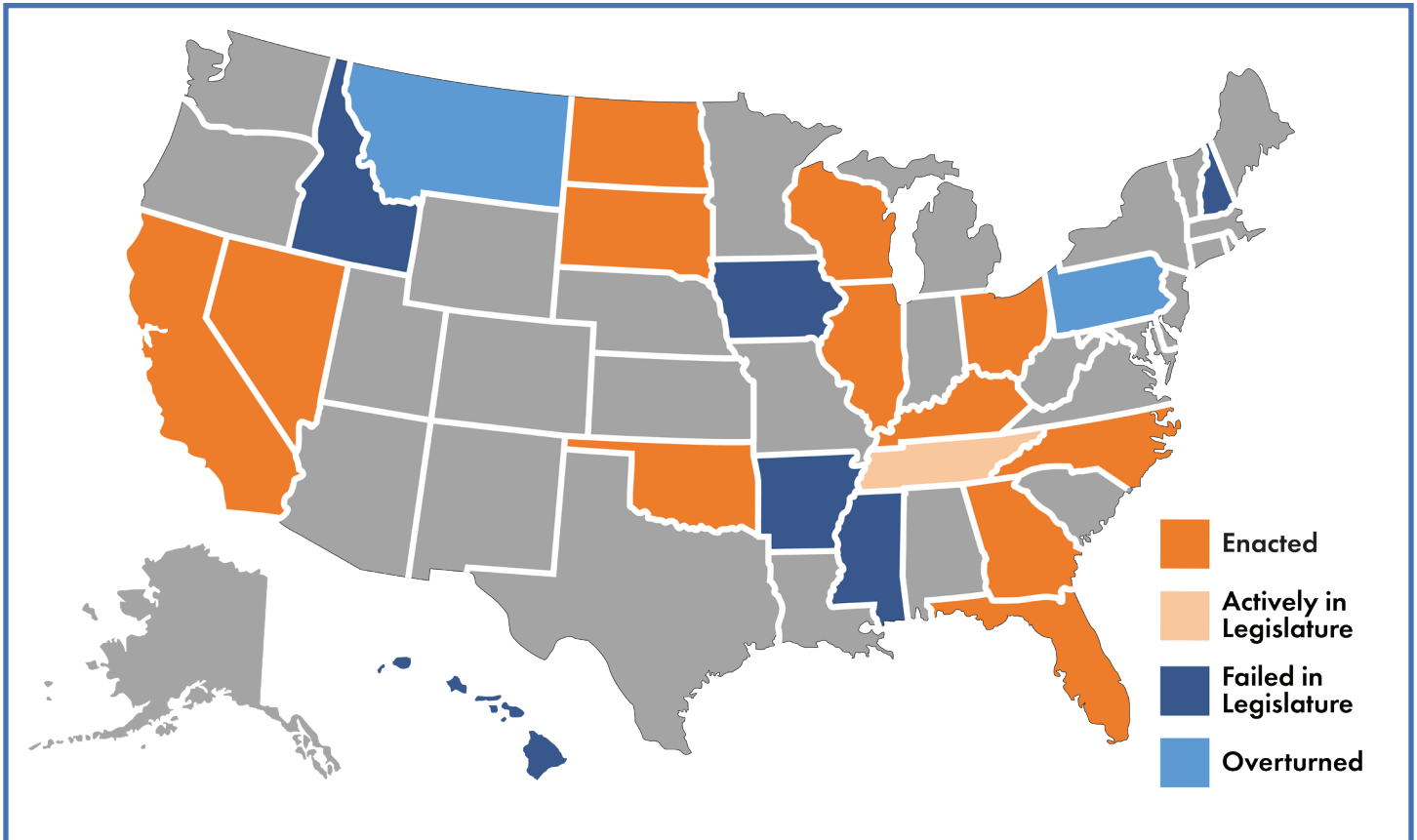
BRIEF HISTORY OF VICTIMS' RIGHTS MOVEMENT

The crime victims' rights movement began in the context of the civil rights movement and emerged from vocal concern that victims were being disenfranchised and their needs following victimization were unmet. Beginning in the late 1960s, amid increases in crime rates, activists began to mobilize to create agencies and coalitions to assist victims and advocate for change. In 1966, Frank G. Carrington founded Americans for Effective Law Enforcement, a legal advocacy group formed in response to the successes of the American Civil Liberties Union (ACLU) in protecting defendants' rights before the Supreme Court. Carrington is often cited as coining the term "victims' rights" in his book where he argues that victims are neglected in the criminal legal system.¹ In 1975, the National Organization for Victim Assistance (NOVA) was formed and initiated a nationwide campaign for victims' rights.

In 1980, Wisconsin passed the first Crime Victims' Bill of Rights. In 1981, these efforts were recognized by President Ronald Reagan, who endorsed National Victims' Rights Week and echoed those sentiments in 1982 when reporting on the work of the Task Force on Victims of Crime.² One of the recommendations of that task force was to augment the Sixth Amendment of the U.S. Constitution to include "the victim, in every criminal prosecution, shall have the right to be present and to be heard at all critical stages of judicial proceedings." In 1996, Senators Jon Kyl and Dianne Feinstein proposed such an amendment, but despite its repeated proposal and revision, it has yet to pass. The Justice for All Act was passed in 2004,³ which established victims' statutory rights in federal criminal proceedings. Despite failed attempts to enshrine these rights in the U.S. Constitution, most states passed victims' rights constitutional amendments in the 1990s and all states have some form of victims' rights legislation. See the [National Crime Victim Law Institute's repository](#) for all state amendments.

ORIGINS OF MARSY'S LAW

Marsy's Law is named for Marsalee ("Marsy") Nicholas, who was murdered by her ex-boyfriend in 1983. The boyfriend was released on bail without Marsy's family being notified. As a result, the family learned of his release when they encountered him in a grocery store. Marsy's Law initiatives are financially backed by Marsy's Law for All, LLC. Henry Nicholas III, Marsy's brother, founded Marsy's Law for All, LLC in 2009 and has provided substantial financial support for Marsy's Law campaigns. To date, over \$100 million has been spent by Nicholas and Marsy's Law for All, LLC in campaigning for Marsy's Law.⁴



Marsy's Law has been codified in 12 states. Voters in Pennsylvania⁵ and Montana⁶ approved Marsy's Law, but the amendments were not certified and instead were overturned for violating state requirements regarding language or voting procedures on constitutional amendments. Wisconsin faced a similar challenge — that there was insufficient information provided to voters on the ballot. However, the Wisconsin Supreme Court upheld the amendment.⁷ Ballot language was also an issue in Kentucky, as the full text of Marsy's Law was not included on the ballot at the time of its first vote, but in 2020 voters approved Marsy's Law for the second time. The map above provides the current landscape for Marsy's Law.

The table below provides background on the states that have codified Marsy’s Law, including the timeline for when states voted on the amendment, the extent of voter support for the ballot initiative, and the amount of campaign funds allocated to that state by Marsy’s Law for All, LLC.

STATE	YEAR ON BALLOT	VOTER SUPPORT	STATUS	CAMPAIGN FUNDS
California	2008	53.84%	Enacted	\$5,149,931.00
Illinois	2014	78.45%	Enacted	\$7,101,500.00
South Dakota	2016	59.61%	Enacted	\$2,091,698.15
North Dakota	2016	62.03%	Enacted	\$2,377,803.00
Montana	2016	66.09%	Overtured	\$2,445,925.32
Ohio	2017	82.59%	Enacted	\$10,573,703.62
Oklahoma	2018	78.01%	Enacted	\$4,214,350.00
North Carolina	2018	62.13%	Enacted	\$8,047,000.00
Nevada	2018	61.19%	Enacted	\$9,284,254.19
Kentucky	2018; 2020	63.36%	Overtured; Reenacted	\$5,095,000.00
Georgia	2018	80.96%	Enacted	\$8,730,000.00
Florida	2018	61.61%	Enacted	\$37,252,863.00
Pennsylvania	2019	74.01%	Overtured	\$6,850,000.00
Wisconsin	2020	74.90%	Enacted	\$3,994,782.81

Campaign fund and voter information obtained from Ballotpedia

THE FRAMEWORK AND IMPACT OF MARSY'S LAW

According to proponents, the goal of Marsy's Law is to "give crime victims meaningful and enforceable constitutional rights equal to the rights of the accused."⁸ Beyond victims' rights measures in state statutes, which are present in all states, Marsy's Law aims to enshrine these rights in state constitutions. For the majority of states that have victims' rights amendments already in their state constitutions, the goal is to substantially expand those rights and make them enforceable on par with defendants' rights. The original model amendment (which has been provided by archived materials from NACDL) is provided in Appendix B.

These rights begin at the time of alleged victimization, prior to any criminal legal proceeding. Marsy's Law also expands the definition of a victim. The model version of Marsy's Law defines a victim as not only the person harmed but "any spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim that is substantially similar to a listed relationship..."

States that have enacted Marsy's Law assert that victims will be treated with "fairness and respect" and that their safety and well-being will be considered throughout the criminal legal process. While the language varies across states, and there are additional provisions (e.g., the right for proceedings to be free from unreasonable delay), the specific constitutional protections that have substantially impacted the criminal legal system fall into four main areas: (1) the right to notification, (2) the right to be heard, (3) the right to privacy, and (4) the right to restitution.

Victims are informed of their rights with "Marsy's Cards" that detail the rights of crime victims and how to assert those rights. Many states have published a webpage detailing these rights, and it often includes a downloadable copy of a victims' rights card. Below is an example of a victims' rights card from Georgia.

Georgia Crime Victim's Rights Notification

The Georgia Constitution (Art. I, Sect. I, Paragraph XXX) and the Georgia Crime Victims Bill of Rights (O.C.G.A. 17-17-1, et seq.) declare that victims of certain crimes and delinquent acts be accorded certain basic rights. These rights include, but are not limited to:

- The RIGHT to be treated fairly and with dignity by the criminal justice system.
- The RIGHT to reasonable, accurate, and timely notice of the arrest, release, or escape of the accused.
- The RIGHT to reasonable, accurate, and timely notice of any scheduled court proceedings.
- The RIGHT not to be excluded from scheduled court proceedings involving the alleged act.
- The RIGHT to be heard at any scheduled court proceedings involving the release, plea, or sentencing of the accused.
- The RIGHT to be informed of ALL rights included within the Georgia Crime Victims Bill of Rights.
- The RIGHT to restitution and compensation as provided by law.
- If a victim's constitutional right is denied, the RIGHT to assert these rights by filing a motion with the same court that is handling the criminal or delinquent proceeding. [Marsy's Law (Article I, Section I, Paragraph XXX)].

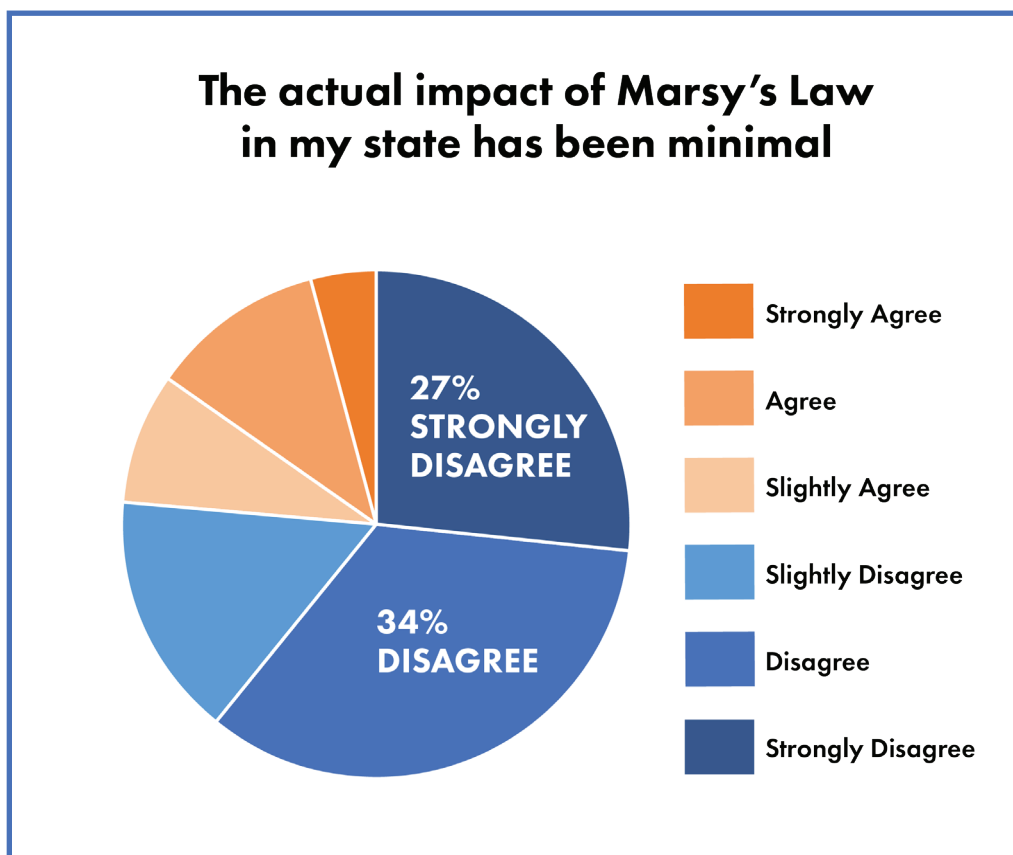
It is the RIGHT and the RESPONSIBILITY of any victim who desires notification under this chapter or any other notification statute to "OPT-IN" to the notification process and **KEEP ALL CRIMINAL JUSTICE AGENCIES INFORMED OF CURRENT CONTACT INFORMATION.**

Please reference the reverse side of this notice for additional resources.

Most states include language that explicitly indicates that victims must opt-in to some or all of these rights, meaning they must specifically assert them. For example, North Dakota's formal guidance on Marsy's Law rights states, "a victim must affirmatively assert his or her rights outlined in Marsy's Law," and this directive is printed on its Marsy's Cards.⁹ California also requires victims to opt in to each right enumerated by the law; the state's Department of Justice website includes boldface font to underscore "upon request," and that phrase is repeated on their Marsy's Card for each right where it is applicable.¹⁰ Often, victims assert their rights by remitting a form to law enforcement or the prosecutor's office in the jurisdiction where the case will be handled.

However, as discussed in more detail throughout this report, in practice, there is confusion over whether these rights must be asserted or whether victims are automatically granted these rights. Some of this confusion stems from when victims' rights begin, specifically at the time of alleged victimization. This suggests an automatic vesting where victims must affirmatively opt out of those rights. For the rights of notification and privacy, jurisdictions have interpreted Marsy's Law differently, with some granting these rights automatically and others doing so upon request. This has led to inconsistent applications of Marsy's Law within states.

For many states, most of these victims' rights were already included in their statutes. This does not mean that the impacts of Marsy's Law have been minimal. Marsy's Law has expanded the definition of a victim, expanded the range of crimes that are subject to victims' rights, and added new rights or expansions of those rights. From the survey data, over 60% of defense attorneys disagreed or strongly disagreed that Marsy's Law has not had a substantial impact in their state (see Appendix C for a detailed breakdown of all survey responses).



THE IMPACT OF MARSY'S LAW ON YOUTH IN THE CRIMINAL LEGAL SYSTEM

Youth defendants are treated differently in the criminal legal system because of their relative lack of maturity (i.e., brain development), the malleability of future behavior, and the understanding that the collateral consequences of criminal legal sanctions can impact young individuals' ability to lead productive adult lives. The criminal legal system takes special precautions to protect juvenile defendants' privacy and confidentiality, focuses on rehabilitation over punitive sanctions, and tailors sanctions appropriately. Marsy's Law does not accommodate this rehabilitative approach to youth justice or include provisions to protect youth engaged with the criminal legal system.

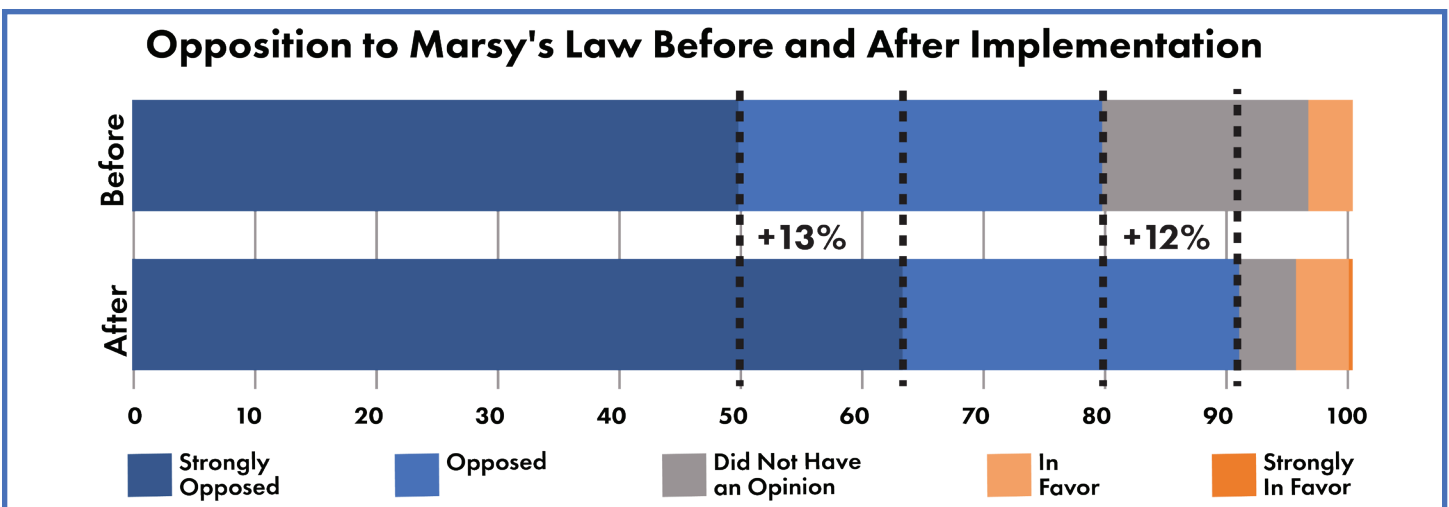
On its website, Marsy's Law for North Carolina asserts, "This amendment does not undermine the rights of young people as it has no effect on how defendants/respondents in juvenile cases are treated." However, it also includes the disclaimer, "There really should be no difference in the way victims of crime are treated because of the age of the offender."¹¹

There are two main considerations for youth justice that Marsy's Law may serve to undermine. The first is the confidentiality of records. Confidentiality of records throughout the process and of the final result of the case is vital to the youth justice system. Because of the nature of the youth justice system, these records often contain information related to the youth's home life, mental health, substance abuse issues, and other sensitive matters. The confidentiality of records serves to protect their ability to obtain treatment and future employment to prevent recidivism. Marsy's Law in some states allows for the victim to request this information, either disposition information or information related to the final judgement. Given that judgements involving youth defendants often involve treatment through placement or programs, even access to the final judgement has the potential to harm the youth.

The second consideration pertains to restitution. Under Marsy's Law, victims have the right to timely restitution that is not tied to the financial abilities of the defendant. Oftentimes youth defendants are not eligible to work. In these cases, young people earn restitution through community service. Due to the limited number of hours they can work, timely restitution is extremely difficult. Further, in many states restitution is typically limited. For example, in North Carolina restitution is limited to \$500 unless specifically ordered by the court for serious cases.¹² Marsy's Law is at odds with measures designed to ensure that restitution from youth defendants is appropriately tailored to their abilities and not overly punitive.

OPPOSITION TO MARSY'S LAW

There has been consistent vocal opposition to Marsy's Law from defender organizations and civil rights groups such as the ACLU, who foresaw the potential impacts of Marsy's Law on due process for defendants. Approximately half of the defense attorneys included in the survey reported that they were strongly opposed to Marsy's Law prior to its implementation. An additional 30% were opposed and 17% did not have an opinion. Reflecting on their opposition after implementation, 63% say they are strongly opposed, 28% say they are opposed and 5% report that they do not have an opinion. While it is anticipated that defense attorneys would be opposed to Marsy's Law because of the potential impacts on their clients, this data show an increase in the extent to which they are opposed to Marsy's Law after implementation and a shift to opposition among those who did not have an opinion prior to implementation.



Outside of defense attorneys and civil rights groups, a variety of stakeholders have voiced opposition, including law enforcement chiefs and sheriffs, victim advocates, and local and state representatives. Reasons for opposition span a wide range of concerns such as due process violations, undermining police accountability and transparency, and impacts on local and state budgets. These concerns are detailed in various sections of this report. To illustrate that opposition to Marsy's Law has not come from only expected sources (e.g., defense attorneys and civil rights groups), a comprehensive, but non-exhaustive list of individuals, agencies, and organizations that have opposed Marsy's Law and stated reasons for the opposition is provided in Appendix D.

There have been bipartisan concerns expressed about Marsy's Law from local and state representatives. In Kentucky, Senator John Schikel (R) expressed concern that the legislation "puts the constitution in conflict with itself" by undermining the accused's presumption of innocence.¹³

Echoing that sentiment, one participant in this study noted:

Experimentation to find the right balance is such an important thing and as soon as you enshrine something in the state constitution, there is no more conversation between the various organs of government...All of the traditional ways you know to hit that balance get destroyed.

— Appellate Attorney, OH (Focus Group Participant)

Other state representatives mention that Marsy's Law provides no legislation or policy that their state does not already have in place for victims. For example, Mississippi Senator Chris Johnson (R) specifically stated that "Marsy's law [sic] is not providing any new protections for victims that do not already exist."¹⁴ Kentucky Representative Chad McCoy (R) was also hesitant to make drastic changes to his state's constitution because of the vague language and realistic implementation challenges posed by the law, stating, "[These] problems far outweigh any benefit from changing the constitution," and highlighting the unnecessary additions of the law "knowing the victim already has the law on their side."¹⁵

Several state representatives voiced opposition because they did not think Marsy's Law would ultimately serve the best interests of victims. For example, Iowa Representative Lynn Luker (R) noted that proponents of Marsy's Law look to the implementation failure and non-compliance of existing victims' rights legislation stating, "It does need to change, but it needs to change where the rubber meets the road, not the law." Iowa Representative Ilana Rubel (D) cited concerns about nonviolent minor crimes being on par with major crimes, stating that "it might have [a] diluted effect on real victims."¹⁶

While there has been bipartisan opposition, focus group participants noted that concerns over reelection are a salient factor in politicians' support of Marsy's Law. Likewise, there was sentiment in the focus groups and in the open-ended survey responses that prosecutors and judges also oppose Marsy's Law because it limits their discretion and further overburdens the criminal legal system, but again, taking that public position is challenging. As quoted by Ed Fallone, associate law professor, "A lot of people knew that this was a problem coming ... and unfortunately, if you were an elected official or candidate for office, like myself, the smart thing to do from a vote-getting standpoint was to keep your mouth shut."¹⁷



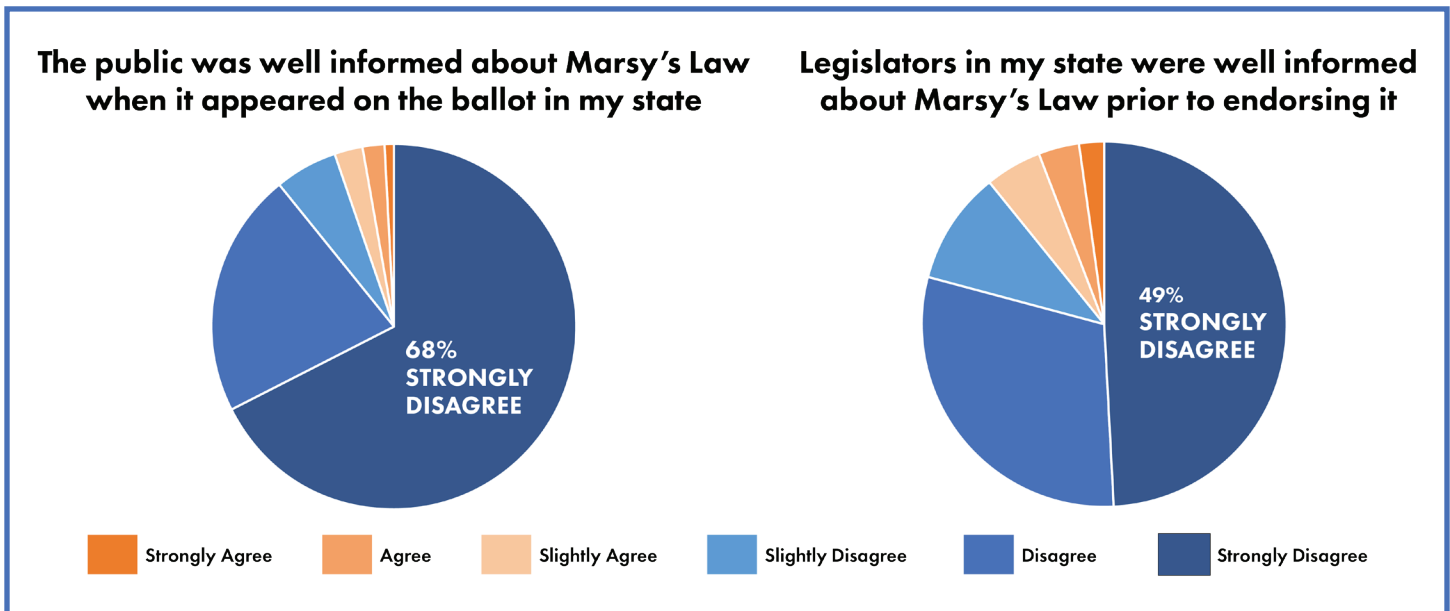
If you sit down and explain this [Marsy's Law] to prosecutors, they will *silently* be on your side

— Public Defender (Ret.), IL (Focus Group Participant)

Opposing victim-centered legislation is politically unpalatable when the public, and potentially legislators, are not aware of the problems with the proposal.

DO VOTERS KNOW WHAT THEY ARE VOTING FOR?

Overwhelmingly, respondents in this survey reported that both the public and legislators were not well informed about Marsy's Law prior to endorsing it or voting for it. Approximately 80% of respondents disagreed or strongly disagreed that the public and legislators were well informed about Marsy's Law. From the focus groups, respondents indicated that the public was not informed about the impact of Marsy's Law on defendants' rights or the financial cost of implementing Marsy's Law.



Proponents of Marsy's Law utilize media campaigns that appeal to voters' emotions rather than evidence. Unfortunately, it is difficult to counteract those messages. In California, the first state to pass Marsy's Law, the "Argument in Favor of Proposition 9," written by proponents and appearing on the official voting guide, opens by detailing the anguish of Marsy's family and arguing that the California Constitution protects violent offenders.¹⁸

In addition to the general lack of awareness of the potential problems with Marsy's Law, the ballot initiative process has been flawed, which has led to Marsy's Law being overturned in two states,

ARGUMENT IN FAVOR OF PROPOSITION 9

"No pain is worse than losing a child or a loved one to murder . . . EXCEPT WHEN THE PAIN IS MAGNIFIED BY A SYSTEM THAT PUTS CRIMINALS' RIGHTS AHEAD OF THE RIGHTS OF INNOCENT VICTIMS.

The pain is real. It's also unnecessary to victims and costly to taxpayers.

Marsy Nicholas was a 21-year-old college student at UC Santa Barbara studying to become a teacher for disabled children. Her boyfriend ended her promising life with a shotgun blast at close range. Due to a broken system, the pain of losing Marsy was just the beginning.

ARGUMENT IN FAVOR OF PROPOSITION 9

Marsy's mother, Marcella, and family were grieving, experiencing pain unlike anything they'd ever felt. The only comfort was the fact Marsy's murderer was arrested.

Imagine Marcella's agony when she came face-to-face with Marsy's killer days later . . . at the grocery store!

How could he be free? He'd just killed Marcella's little girl. This can't be happening, she thought. Marsy's killer was free on bail but her family wasn't even notified. He could've easily killed again.

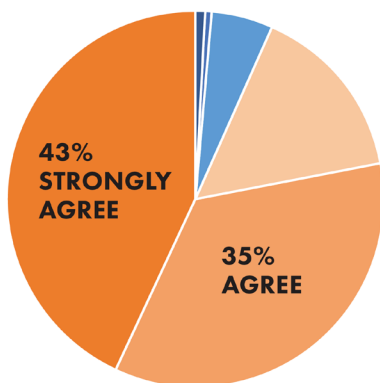
CALIFORNIA'S CONSTITUTION GUARANTEES RIGHTS FOR RAPISTS, MURDERERS, CHILD MOLESTERS, AND DANGEROUS CRIMINALS."

Pennsylvania and Montana.¹⁹ Presenting the rights in the amendment as a whole, instead of allowing voters to vote on each issue separately, violates the separate-vote requirement for amendments to some state constitutions. This requirement is designed to avoid subversion and confusion of the electorate. Montana Supreme Court Justice Laurie McKinnon wrote in the court opinion, "When voters were required to vote 'yes' or 'no' for CI-116 in its entirety, they were forced to vote for or against multiple, not closely related, changes to the Montana Constitution with one vote. Voters had no way to express their opinions as to each proposed constitutional change."²⁰ Leo Gallagher, Lewis and Clark County Attorney and petitioner, was quoted in a press release,

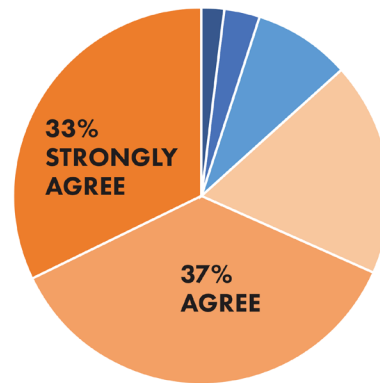
Although well intentioned, the process leading to CI-116's passage deprived Montana voters of the ability to consider the many, separate ways it changed Montana's constitution or explain the significant administrative, financial, and compliance burdens its unfunded mandates imposed upon state, county and local governments while jeopardizing the existing rights of everyone involved with the criminal judicial system.²¹

As a result of how these ballot questions have appeared and the wording of them, when implemented they have been criticized for being too vague and open to interpretation. This vagueness translates to inconsistent implementation. Of the respondents in this study, 78% agreed or strongly agreed that the implementation of Marsy's Law has been inconsistent *between* jurisdictions and 70% responded that it was inconsistent *within* their jurisdiction.

The implementation of Marsy's Law provisions has been inconsistent *between* jurisdictions in my state



The implementation of Marsy's Law provisions has been inconsistent *within* jurisdictions in my state



Strongly Agree Agree Slightly Agree Slightly Disagree Disagree Strongly Disagree

WHO IS A VICTIM UNDER MARSY'S LAW?

VAGUENESS IN THE DEFINITION OF A VICTIM

One aspect of the vagueness of Marsy's Law surrounds who is a victim for the purposes of invoking Marsy's Law. The definition for who is considered a victim, and thus can assert their rights, varies by state. For example, in Florida, "A victim is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term victim includes the victim's lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim, except upon a showing that the interest of such individual would be in actual or potential conflict with the interests of the victim. The term victim does not include the accused."²²

In this study, more than one-third (36%) of attorneys agreed or strongly agreed that the definition of a victim in their state was vague. Further, 59% of those surveyed agreed or strongly agreed that the definition of a victim under Marsy's Law was too broad and that too many parties can be considered a victim.

The definition under Florida's Constitution...is pretty broad. It does not have meaningful boundaries

— Defense Attorney & member of a civilian investigative panel, FL (Focus Group Participant)

We [Nevada] have Marsy's Law which has a definition [of a victim] that is completely limitless

— Defense Attorney & member of a civilian investigative panel, FL (Focus Group Participant)

The vagueness and broadness of the definition of victim have led to police and municipalities claiming victimhood. In Ohio, Marsy's Law changed the definition of victims from individuals identified in police reports to include "a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act." It does not define "person" or the range of harms. In 2018, a man, likely under the influence of substances, falsely reported an active shooter situation to the Centerville Police Department. He was charged with the false report and ordered to pay Centerville \$1,375 in restitution for the resources the police expended in responding to the 911 call. The defendant appealed and while his convictions were upheld, the restitution was vacated by Ohio's Second District Court of Appeals. Centerville appealed to the Ohio Supreme Court, arguing that under Marsy's Law the city is considered a victim. While the Supreme Court upheld the judgment of the Second District Court of Appeals, the court wrote in its majority opinion that the intent of Marsy's Law, as voters would have interpreted it on the ballot, was that a victim would be an individual and perhaps a private corporation, not a municipal corporation.²³ While this court ultimately ruled that Centerville was not a victim under Marsy's Law and therefore did not have the right to restitution, in her concurring opinion Justice Sharon Kennedy said, "I would not foreclose the possibility that a municipal corporation can be considered a victim of crime under Article I, Section 10a of the Ohio Constitution."

A similar case in North Dakota provides little clarification on the state's definition of victim. In this case, a man was convicted of assault for breaking another man's jaw. Blue Cross Blue Shield (BCBS), the injured man's insurer, claimed victimhood for having to pay its customer's medical costs and sued the assailant for \$27,500. The North Dakota Supreme Court heard the case and ordered the man to pay what was owed to BCBS,

ignoring the disagreement over the term “victim,” with Justice Jon Jensen commenting, “It is unnecessary to determine whether the definition of a victim (under Marsy’s Law) is limited to individuals.”²⁴ This case and others set a dangerous precedent for companies and corporations to claim victimhood under Marsy’s Law, diluting victim status and converting criminal courts into civil judgment collectors.

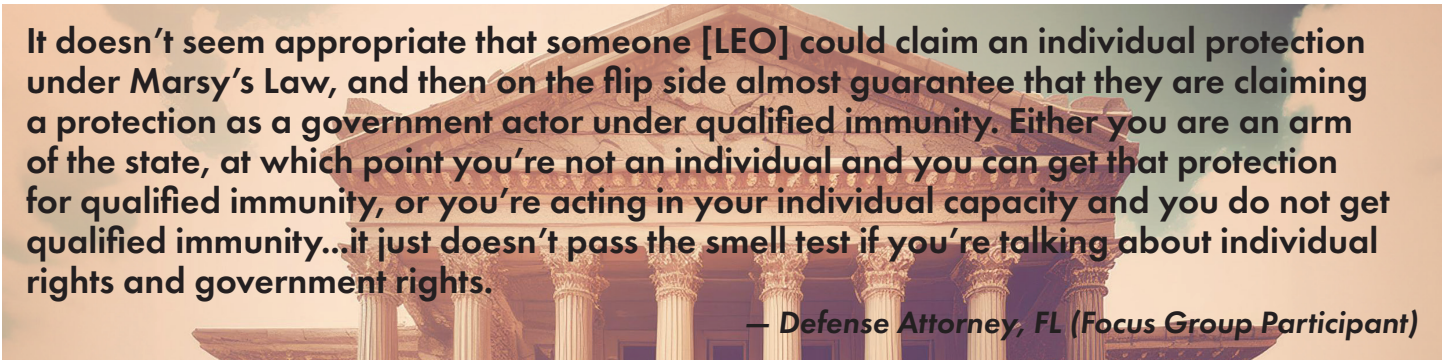
THE USE OF MARSY’S LAW TO SHIELD POLICE

There have been numerous cases in states such as Florida, Wisconsin, Ohio, and South Dakota, where law enforcement agencies, citing Marsy’s Law, have withheld the identity of police officers involved in the use of force while performing their duties, arguing that the police officers themselves were victims in these cases.

In May 2020, a Tallahassee police officer shot and killed a man who had allegedly stabbed someone to death that morning.²⁵ While eyewitness accounts differ, the police contend that the suspect had a gun and “made a move consistent with using the firearm” during the confrontation.²⁶ After the shooting, the Florida Police Benevolent Association sued the city of Tallahassee to prevent the public release of the names of the two officers involved in the incident. The police union argued that because the suspect threatened the officers with a gun, the officers should be protected under Marsy’s Law as crime victims. In July of that year, a trial court ruled in favor of the city of Tallahassee, finding that police are not considered victims when performing their official duties. The decision was appealed, and the appellate court overturned the previous decision, finding that there is no basis for an exception to Marsy’s Law for police, even while acting in their official capacity. The Florida Supreme Court agreed to review the case at the request of the City of Tallahassee and several media groups.²⁷ The Florida Supreme Court did not weigh in on whether police could be considered crime victims under Marsy’s Law. Rather, the court ruled that the wording of the amendment does not protect any crime victim’s *identity* from being disclosed.²⁸ Following that ruling, legislation has been introduced in Florida to expand the definition of crime victims to include “law enforcement officers, correctional officers, or correctional probation officers who use deadly force in the course and scope of their employment or official duties” and expand public records exemptions to encompass the identity of victims.²⁹

In the few months after Marsy’s Law went into effect in Ohio in 2023, officers in the Columbus Police Department asserted Marsy’s Law in four separate shootings.³⁰ In one of these incidents involving a police pursuit, police redacted the body camera and dash camera footage to remove all footage of the actual shooting before releasing it to the media.³¹ In August of the same year, a pregnant woman was shot by an officer while parked in her vehicle after being approached by police under suspicion of shoplifting. The Blendon Township Police Chief said in a statement that Marsy’s Law applied because the car made contact with the officer, constituting vehicular assault.³² Two key individuals responsible for Marsy’s Law in Ohio, a victims’ rights advocate and the sponsor of the bill, have told the media that extending privacy protections to police officers in these situations was never considered.³³

At the heart of this is whether police, during the performance of their official duties, can claim their rights as individual victims while at the same time being afforded protections because of their status as police. One focus group participant summarized the contradiction:



It doesn’t seem appropriate that someone [LEO] could claim an individual protection under Marsy’s Law, and then on the flip side almost guarantee that they are claiming a protection as a government actor under qualified immunity. Either you are an arm of the state, at which point you’re not an individual and you can get that protection for qualified immunity, or you’re acting in your individual capacity and you do not get qualified immunity...it just doesn’t pass the smell test if you’re talking about individual rights and government rights.

— Defense Attorney, FL (Focus Group Participant)

The concern expressed by media groups and civilian oversight boards is that not releasing the names of officers involved in these cases undermines police accountability. This is especially pertinent in the wake of the murders of George Floyd and Breonna Taylor and other high-profile cases that have highlighted that Black individuals are killed by police at higher rates than white individuals.³⁴

Concerns over the tensions between police and the communities they serve and efforts to increase accountability to repair those relationships are the reason that some law enforcement leaders oppose the use of Marsy's Law by police officers during their official duties. Sheriff Bob Gualtieri of Pinellas County and Sheriff Michael Chitwood of Volusia County in Florida both filed friend-of-the-court briefs in the Florida Supreme Court in opposition to extending the privacy protections to police during the course of their duties. As stated by Sheriff Chitwood,

This disclosure of the deputies' names not only promotes transparency and accountability but helps to rebuild the eroding public trust in law enforcement. VSO desires to continue disclosing the names of deputies who are involved in the use of deadly force while in the execution of their official duties in order to continue promoting transparency and accountability.³⁵

The appellate court in *Florida Police Benevolent Association v. Doe* recognized that publishing the names of officers involved in use of force cases is in the public's interest as it is a mechanism to hold police accountable. However, the court concluded that other accountability mechanisms, such as internal affairs investigations and grand jury proceedings, are also available.³⁶ However, as noted by one of the focus group participants:

If we can't learn who the officer is — if the now deceased suspect's family can't even find out who the officer was that shot their family member, there's no effective mechanism to even get an internal affairs investigation going. It creates this bizarre scenario. There's no time limit. It's in perpetuity. It's a blanket prohibition against the disclosure of this information.

— Director, Civilian Investigation Panel, FL (Focus Group Participant)

This undermines the work of civilian oversight boards who cannot obtain the relevant information to conduct their investigation.³⁷ Even in cases where the same officers are involved in multiple incidents, which can be considered as a potential indicator of misconduct, the civilian oversight boards are not able to obtain this information to conduct a proper investigation.

There is concern that this opens the door for police to invoke Marsy's Law and their right to confidentiality for any case where an officer could argue he or she suffered harm, such as charges of battery on law enforcement or the suspect physically resisting arrest.³⁸ This concern was echoed in the focus groups:

I'm afraid that slippery slope will have officers devising all kinds of different factual scenarios to claim their anonymity without a police report taken by a co-worker.

— Director, Civilian Investigation Panel, FL (Focus Group Participant)

Indeed, there are several cases in which this has already happened. In late 2021, Florida police attempted to pull over a 13-year-old boy on a dirt bike for driving recklessly.³⁹ The minor was killed in the police chase after losing control of his bike and colliding with a median. The Boynton Police contended that Marsy's Law applied because the officer feared retaliation from the public.⁴⁰

A ProPublica and USA Today investigation found that Marsy's Law was being extensively used by law enforcement in Florida to shield officers' names following use of force incidents; in some counties, the law was invoked in 1 out of 3 cases involving use of force with injuries.⁴¹ Further, officers sustained no physical injuries in half of the records reviewed as part of this investigation, and many cases did not involve the use of weapons, lethal or otherwise, by the suspects.⁴²

THE COSTS OF MARSY'S LAW

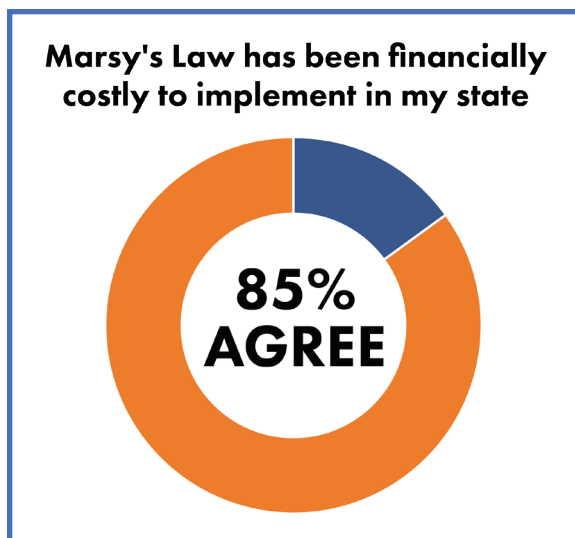
As an unfunded mandate, the cost of implementing Marsy's Law falls on the state, and ultimately the taxpayers. While a systematic cost analysis has not been conducted or made publicly available by any of the impacted states, there are preliminary estimates, prepared ahead of implementation, and budget requests available from several states that demonstrate anticipated costs. In North Dakota, Marsy's Law was expected to cost \$2 million every year.⁴³ A fiscal note prepared by the Administrative Office of the Courts in North Carolina estimated that the additional district attorney staff needed will cost the state \$30.5 million every year, plus an additional \$16.4 million to implement the law in its first year.⁴⁴

Most jurisdictions in impacted states need to hire additional administrative personnel and records management positions, prosecutors to balance the increase in workload associated with case processing, and victim advocates embedded in both law enforcement and local prosecutor offices. For example, in preparation for implementation, in 2017 the Gallatin County Attorney's Office requested \$179,374 for three new positions, one of which was a full-time administrative assistant whose primary responsibility would be to redact information from discovery materials.⁴⁵

The requirement that all victims be notified of all proceedings may result in the largest fiscal impact for states.⁴⁶ In North Dakota, a fiscal note prepared ahead of implementation reported that the expansion of the notification requirements to all offenses, including misdemeanors, property crimes, and juvenile crime, would require a substantial increase in tax-supported staff "or cause a significant erosion of services to those victims of serious crimes (murder, assault, rape, etc.)."⁴⁷ Some of these costs are associated with increased personnel, but notification systems also require technology experts to design, implement, evaluate, and troubleshoot the systems.

Other costs are not as easily anticipated. For example, victims have the right to legal counsel under Marsy's Law. The law, however, provides no language on who these counselors will be and who will pay their salaries. Likewise, if transportation to and from all proceedings must be provided in order for the victim to be heard at all proceedings, this is another potential substantial cost to taxpayers.⁴⁸

The cost of Marsy's Law was a major factor in Lewis and Clark County Attorney Leo Gallagher's decision to file a lawsuit that overturned Marsy's Law in Montana. He states,



CI-116 will force me to make the impossible choice between seeking justice for all Montanans and enforcing long-standing constitutional protections or serving the narrow, competing interests of Marsy's Law's newly expanded pool of victims harmed or allegedly harmed by even the most petty of offenders. **Moreover, the county must now secure around \$95,000 from taxpayers by raising taxes or decreasing services, including the potential to diminish existing services to victims of serious, violent criminals.**⁴⁹

Proponents of Marsy's Law have argued that the actual fiscal impact of Marsy's Law has been minimal, that in many cases these fiscal impacts are projected prior to implementation

rather than reflecting the actual fiscal impact on states after implementation.⁵⁰ However, a report published by the Berkeley School of Law identified inadequate resources and funding as a salient barrier to fully realizing Marsy's Law in California years after its implementation.⁵¹ As noted by one of the focus group participants:

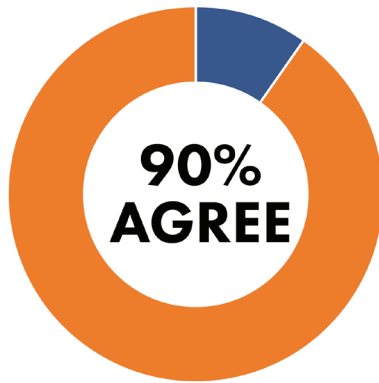
It's an expensive proposition with...not a whole lot of return, even for the victims.

— Public Defender (Ret.), IL (Focus Group Participant)

While the above-cited fiscal notes are projected costs, the information provided in those analyses and provided from stakeholders in impacted states suggests that Marsy's Law requires a substantial increase in resources to implement and sustain.

THE THREAT OF MARSY'S LAW TO DUE PROCESS

Marsy's Law violates due process for defendants



In this survey, most respondents (90%) agreed that Marsy's Law violates the due process of defendants. This finding is perhaps not surprising given the sample of defense attorneys; however, it is important to note that Marsy's Law has also been opposed by victims' rights advocates, prosecutors, and those who work with victims of crime because of the damaging impact of Marsy's Law on due process. This section discusses how the basic framework of Marsy's Law results in violations of due process.

A RETURN TO PRIVATE PROSECUTION

The legal system of the American colonial period was dominated by individual prosecutors and individual defendants. A person would accuse another person of wrongdoing, and each person would be individually

responsible for his or her own advocacy.⁵² Because of the personal nature of this process, the legal system was primarily motivated by revenge to "settle the score." This "eye-for-an-eye" system encouraged personal retribution to keep balance in the communities.⁵³ This system was unsustainable and eventually replaced by the modern-day legal system. Today, crimes are no longer prosecuted by the victim but rather by the state. This imposed limitation on the victim's involvement ensures that "an offender's liability and punishment [is dependent] on his blameworthiness (including primarily, the seriousness of his offense) not on his good luck as to the forgiving or vindictive nature of his victim."⁵⁴ Enacting Marsy's Law "is a step down a slippery slope to returning our criminal legal system to a time of private prosecutions when personal vengeance ruled the outcome of cases."⁵⁵

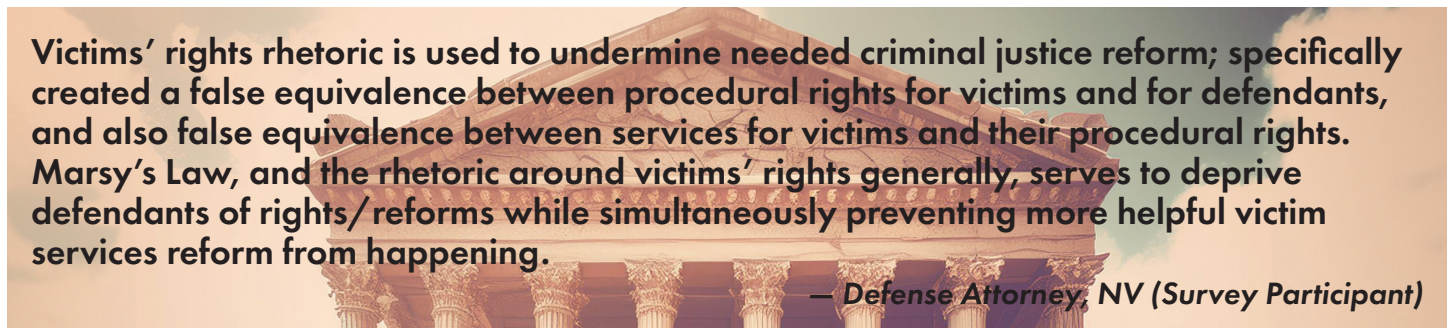
As discussed in detail in the remaining sections of the report, Marsy's Law has subverted the role of the criminal legal system and conflated prosecutors' responsibility to the State with an untenable responsibility to individual victims. Under Marsy's Law, a victim can request that a prosecutor defend the victim's rights "in a manner no less vigorous than the protections afforded to the accused."⁵⁶ However, the prosecutor's primary duty is to exercise independent judgment in the administration of justice, seeking justice within the bounds of the law, not merely convictions.⁵⁷ It is unclear which duty—the duty to support the victim vigorously or the duty to objectively seek justice within the boundaries of the law—supersedes the other in states with Marsy's Law, and the ramifications of this language have not been fully reconciled.

FALSE EQUIVALENCY OF VICTIMS' AND DEFENDANTS' RIGHTS

Marsy's Law for Iowa argues that victims are seen as "pieces of evidence" and that this outlook strips them of "fairness and dignity." Marsy's Law for Iowa further contends that balancing victims' and defendants' rights is necessary and possible, that they are not mutually exclusive and not in conflict when invoked. As argued by Sarah Shambrook, State Policy Director for Marsy's Law for Iowa, "The fallacious reasoning for this misconception typically symbolizes constitutional rights as a pie and argues that for any right a victim is granted, a slice of pie, or right, is taken away from a criminal defendant."⁵⁸

This analogy assumes that the function of these rights is comparable. Extending the same analogy in opposition to Marsy’s Law, Kathryn Young, law professor, writes, “The idea that these two things should somehow be balanced suggests that they are a zero-sum game: any win for victims is a loss for offenders, and vice versa. At best, this construction is inaccurate. At worst, it is an invidious rhetorical move calculated to swell prisons (and corrections budgets).”⁵⁹ Further, “to speak of ‘balance’ assumes a duality of positions in diametric opposition. It is inappropriate to consider the position of victims this way. This is true in the sentencing context, and even more so in the parole hearings context, where punishment has already been assessed.”⁶⁰

As one respondent noted in the survey:



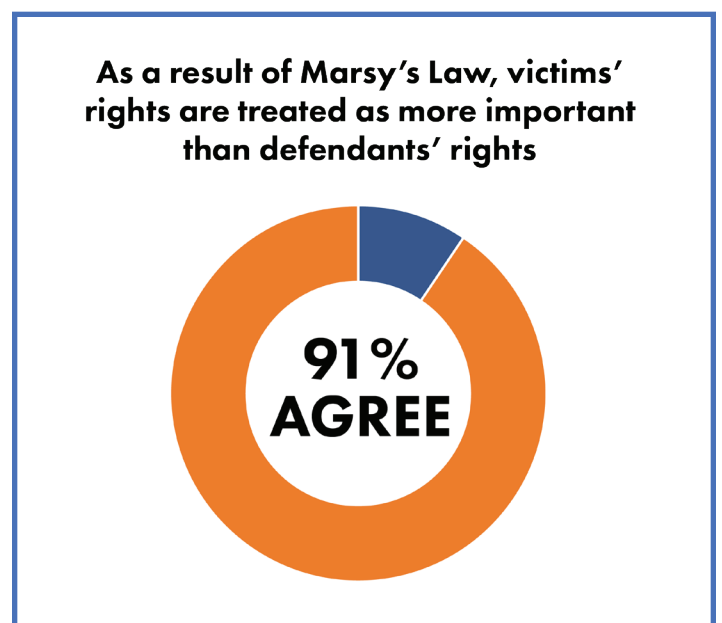
Victims’ rights rhetoric is used to undermine needed criminal justice reform; specifically created a false equivalence between procedural rights for victims and for defendants, and also false equivalence between services for victims and their procedural rights. Marsy’s Law, and the rhetoric around victims’ rights generally, serves to deprive defendants of rights/reforms while simultaneously preventing more helpful victim services reform from happening.

— Defense Attorney, NV (Survey Participant)

The false equivalency of defendants’ and victims’ rights in the context of Marsy’s Law ignores the reasons why defendants have constitutional rights. These rights do not signify relative value between defendants and victims; the presence of defendants’ rights does not mean that they are valued more than victims. Constitutional protections afforded to defendants limit the power of the State to deprive individuals of life and liberty.⁶¹ Defendants need outlined constitutional rights because they face the entire political, financial, and prosecutorial forces of the state. Their constitutional rights serve as checks on the government, a necessary protection of due process to ensure the State does not overstep. In short, where victims are situated in opposition to defendants, defendants are situated in opposition to the state.

Marsy’s Law seeks to trigger victim rights *at the time of victimization*. Marsy’s Law upends the foundation of the criminal legal system, as an accused person who should be presumed innocent until proven guilty is now simply presumed guilty.⁶² Some proponents of Marsy’s Law claim that the presumption of innocence is a trial-specific concept that Marsy’s Law does not impact.⁶³ Others, however, have pointed out that the innocence presumption specifically and explicitly starts at the first point of contact with the legal system. Albert Scherr from ACLU New Hampshire explains that “the presumption of innocence means that a court cannot make decisions, pre-trial or during trial, based on the defendant’s guilt.”⁶⁴

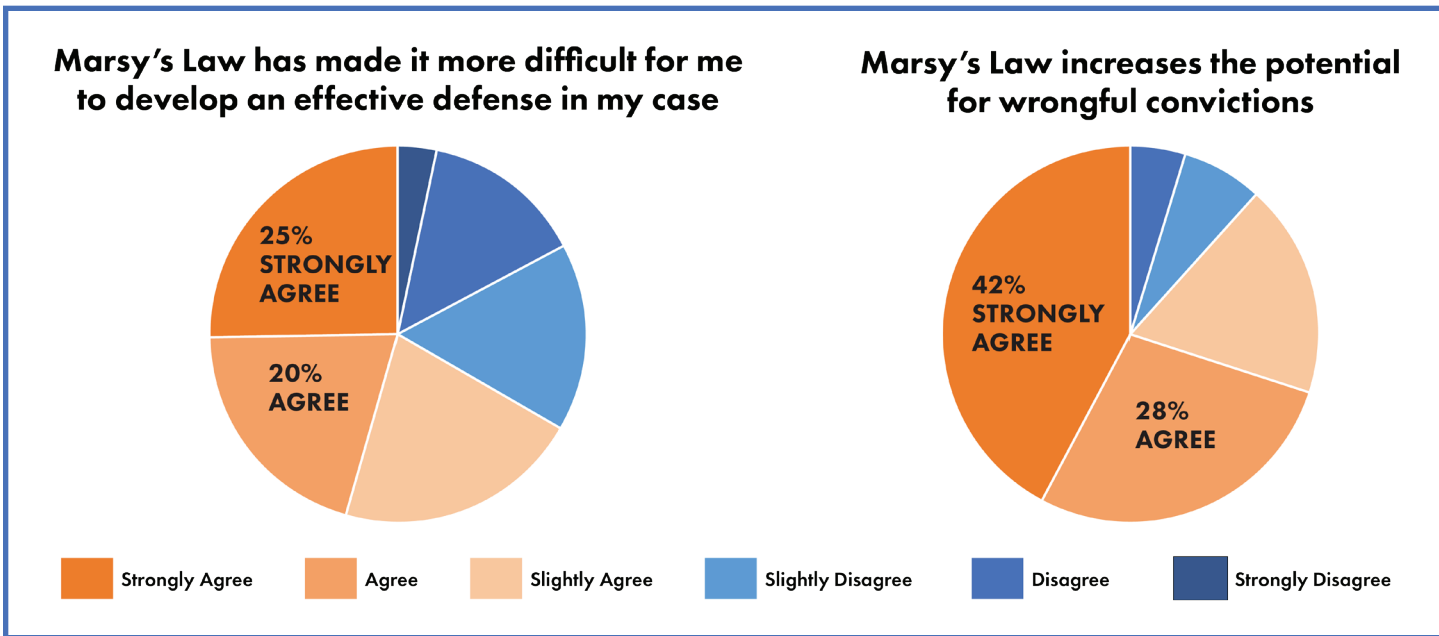
The extent of victims’ rights in state constitutions and the point at which they begin results in diminished rights for defendants. In the survey, 91% of respondents agreed that victims’ rights are given more weight than defendants’ rights. Very few defense attorneys in impacted states suggested that there was a balance between victims’ and defendants’ rights in practice.



DUE PROCESS AND WRONGFUL CONVICTIONS

Not only does Marsy's Law foster constitutional contradictions, but it also results in severe, negative impacts on defendants who are innocent. In this survey of defense attorneys in states impacted by Marsy's Law, 66% of participants agreed that Marsy's Law has made it more difficult to prepare an effective defense, and 88% agreed that it increases the potential for wrongful convictions.⁶⁵

For example, while defendants' right to a speedy trial is designed to prevent prolonged pretrial detention



and ensure a fair trial, victims' right to a speedy trial is designed to facilitate prompt closure and mitigate trauma from participating in criminal legal proceedings. In Florida, the State Attorney can demand a speedy trial under Marsy's Law. This effectively means the court could force a defendant to trial within 75 days of the demand. This allows virtually no time for defense counsel to properly prepare a defense in complicated cases. In reflecting on this addition, a defense attorney in Florida noted:

As any practitioner knows, the State's investigation is generally finished at the filing of a criminal charge. The defense's job, however, is just beginning. While I have never seen this provision attempted to be used, the prospect is a frightening one. This is especially true in Florida, where depositions in felony cases are commonplace and a primary tool of the criminal discovery process.

— Defense Attorney, FL (Legal Analyst)

With the trend of national exonerations climbing since 2003,⁶⁶ Marsy's Law provides more opportunity for due process violations ending in wrongful convictions. Beyond the unimaginable toll on the wrongfully convicted and incarcerated, Marsy's Law also harms the measure's intended beneficiaries. Not only could others be victimized, but the victims may have to endure the legal system all over again when and if the State decides to prosecute the correct suspect.⁶⁷ In a joint statement by the Iowa Coalition Against Domestic Violence and the Iowa Coalition Against Sexual Assault—victim advocacy coalitions—they note, "The accused have constitutional rights because getting it wrong means we imprison innocent people and an offender remains free to harm others."⁶⁸

The remaining sections of this report discuss in detail the specific constitutional protections under Marsy's Law that have substantially impacted the criminal legal system. These fall into four main areas: (1) the right to notification; (2) the right to be heard; (3) the right to privacy; and (4) the right to restitution.

THE RIGHT TO NOTIFICATION

Under Marsy's Law, victims have the right to be notified of all proceedings that are relevant to the case of their victimization. These proceedings include bond hearings, competency hearings, trials, parole hearings, and release dates, among others. Prior to Marsy's Law, all 50 states already had processes that afforded victims the right to be notified of criminal legal proceedings.⁶⁹ The purpose of this right in the context of Marsy's Law is to expand the right to encompass all proceedings, for all crimes, and enhance the enforcement of this right.

One of the biggest problems with the right to be notified under Marsy's Law goes back to its definition of a "victim." Because a victim becomes one at the time of the alleged offense, the number of proceedings one has the right to be notified of increases dramatically. The vagueness of the language means that any entity that is a victim of any kind of crime is afforded the rights under Marsy's Law. A person whose belongings were stolen from an unlocked car, a store that experiences shoplifting, a building that is graffitied, and a company whose website is hacked are all afforded the same rights as individuals who have experienced violent victimization. As one Ohio judge stated, "Many are concerned that this unbridled expansion of "victim" could make the notification process overburdensome, leading to conflicts with the accused's right to a speedy trial and delays in presenting the case, all to the detriment of the victim(s)."⁷⁰ This concern is compounded with the confusion as to whether victims must opt into these rights or receive them automatically. While generally victims must assert these rights, some jurisdictions have interpreted the right to notification to be automatic unless victims indicate they do not want to be notified of future proceedings.

The expansion of notification has prolonged pretrial detention and other forms of incarceration.⁷¹ A woman in South Dakota, for example, had her request for bond delayed because the victims in her case needed to be notified.⁷² Having to notify every victim of every case at every step of the process severely delays proceedings and keeps non-convicted citizens unnecessarily detained for sometimes lengthy periods of time.⁷³ Minnehaha County Public Defender Traci Smith reported that the courts have delayed plea deals at the prosecutor's request so victims can be notified: "Victim notification, in other words, can keep people who have not been convicted of any crime in jail longer than they otherwise would be, depriving them of their liberty and throwing their lives into disarray."⁷⁴

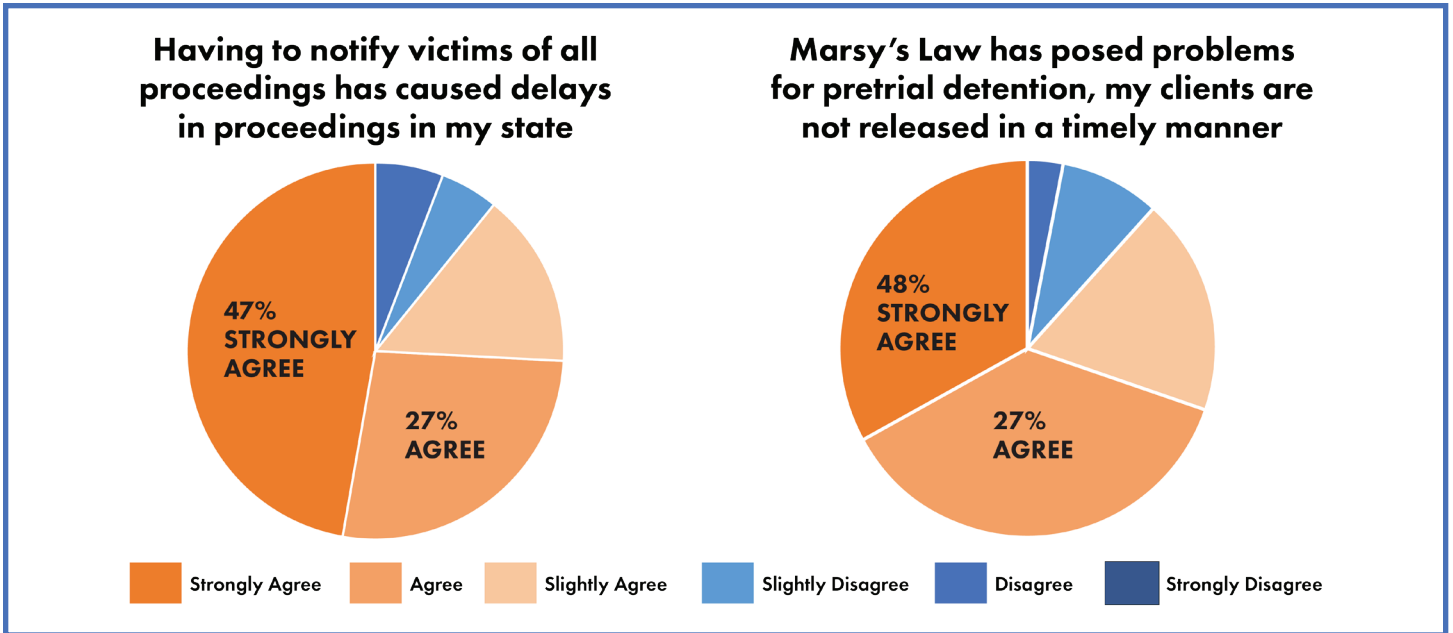
Over 10 million Americans cycle through the jail system annually,⁷⁵ and at any given point in time, 79% of people in jail are there for pretrial detention.⁷⁶ At the individual level, scholars have empirically linked pretrial detention stays with several negative outcomes, including worse plea deal offers,⁷⁷ higher conviction rates,⁷⁸ and harsher sentences.⁷⁹ Those who experience pretrial detention are more likely to plead guilty so they can return to their family and employment.

Those who are incarcerated, even for short periods of time, not only experience disparate court outcomes, but they also experience heightened levels of depression and anxiety. Pretrial detention is associated with a higher risk of suicide linked to the lack of health resources in jails.⁸⁰ In fact, most suicides that occur in jails happen within the first seven days of detention — almost exclusively the time period of pretrial detention. In contrast, incarcerated individuals who have been sentenced who died by suicide did so after an average of 49 days, highlighting the direct effect of pretrial detention on suicide risk.⁸¹

In addition to the psychological impacts, those in pretrial detention experience a loss in employment, housing, and child custody. Together, these losses eliminate prosocial opportunities, resulting in criminogenic effects.⁸² This is especially true for those who are considered low risk. Longer pretrial detentions are associated with committing new crimes both pending trial and post-disposition.⁸³

In the open-ended responses to the survey, a number of the defense attorneys noted that Marsy's Law has increased the length of pretrial detention as overburdened prosecutors may fail to notify victims, or are

unable to locate them, in a timely manner. In fact, 71% of survey respondents strongly agreed or agreed that Marsy’s Law has posed problems for pretrial detention and that their clients are not released in a timely manner, and 74% strongly agreed or agreed that having to notify victims in all proceedings has caused delays in proceedings.



States with Marsy’s Law have attempted to handle their overburdened notification systems in various ways. In smaller counties like Bay County, Florida, lawyers simply wait for weeks for hearings while their client waits in pretrial detention. Larger counties like Los Angeles, California, began prioritizing violent cases with physical injury to the victim to deal with the mountain of notification requests caused by Marsy’s Law. Victims that do not meet this priority criteria are sent a letter informing them of proceedings, which may not constitute “timely notice.” As the League of Women Voters of Pennsylvania notes, “Picking and choosing victims creates a state-imposed hierarchy, where residents are treated disparately based on criteria determined by individual prosecutors’ office.”⁸⁴

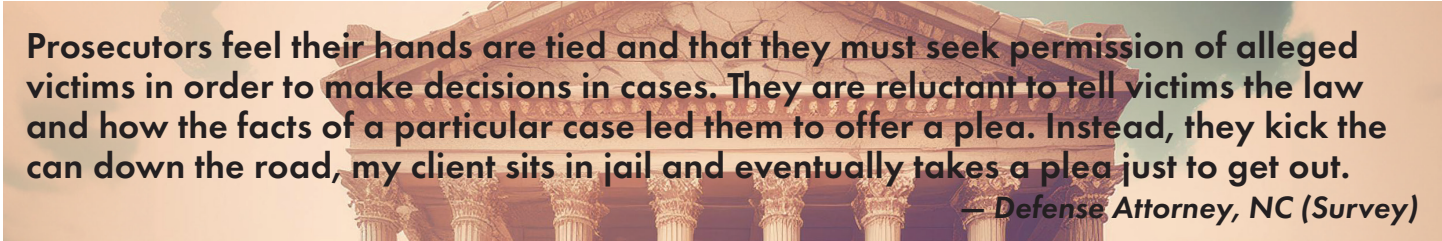
It is important to note that the stakeholders represented in this survey, as well as many vocal opponents of Marsy’s Law, are not against victims being notified about the status of their case or the release of the defendant. Rather, the expansion of victim notification to include *all* victims of crime, for *all* proceedings, without procedures to ensure that it does not infringe on the defendants’ rights, is unconstitutional. To do so in a manner that does not impact due process and exacerbate the collateral consequences associated with pretrial detention requires substantial guidance and increased personnel, conditions that have not been met in the states that have implemented Marsy’s Law.

THE RIGHT TO BE HEARD

Marsy's Law expands the right to be heard to every public proceeding in the case, including bond hearings, plea deals, parole hearings, and other forms of release. Included in this section is not only the right to be heard publicly through victim impact statements, but also the right to confer with prosecutors prior to any disposition of the case. Together, these rights have led to extreme delays in these processes, barriers to plea negotiations, and disparities in sentences.

MARSY'S LAW MAKES PLEA NEGOTIATIONS MORE DIFFICULT

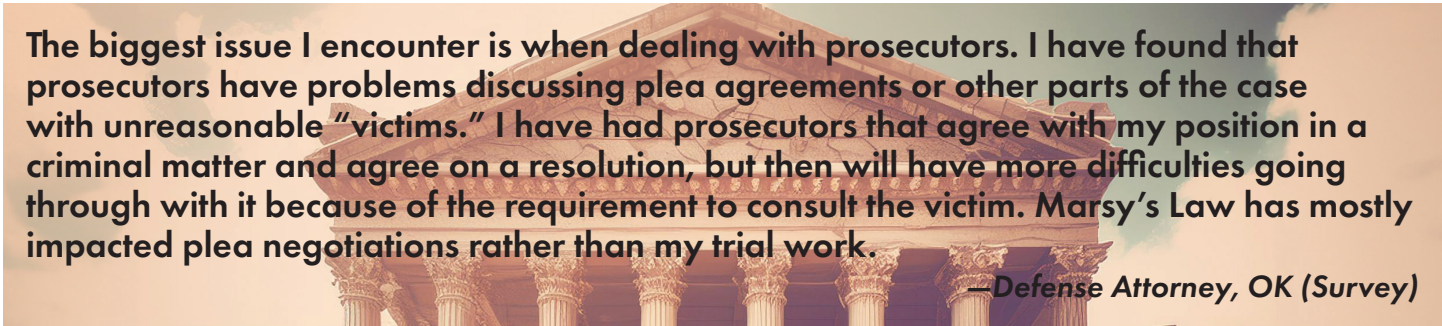
A victim's right to be heard under Marsy's Law extends to plea agreements between the State and the defendant. This means that the prosecutor must confer with the victim before engaging in plea negotiations and before accepting any terms of the plea deal. A victim's right to be heard before and during plea negotiations results in longer pretrial detention and may force defendants to consider accepting plea deals they otherwise would reject as inappropriate. For example, some defendants will accept plea deals in order to be released from pretrial detention regardless of their actual culpability. As one study participant pointed out:



Prosecutors feel their hands are tied and that they must seek permission of alleged victims in order to make decisions in cases. They are reluctant to tell victims the law and how the facts of a particular case led them to offer a plea. Instead, they kick the can down the road, my client sits in jail and eventually takes a plea just to get out.

— Defense Attorney, NC (Survey)

The right to be heard in plea agreements under Marsy's Law also creates unfulfilled expectations of "justice" for victims who adamantly advocate for trials in cases with unconvincing evidence.⁸⁵ One survey participant responded that the largest impact of Marsy's Law has been on the ability to work with the State on plea negotiations:

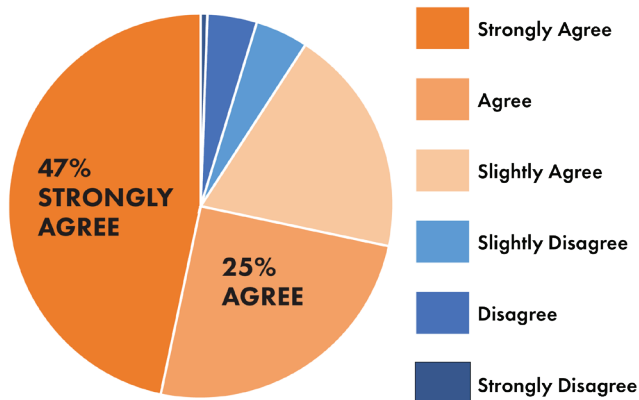


The biggest issue I encounter is when dealing with prosecutors. I have found that prosecutors have problems discussing plea agreements or other parts of the case with unreasonable "victims." I have had prosecutors that agree with my position in a criminal matter and agree on a resolution, but then will have more difficulties going through with it because of the requirement to consult the victim. Marsy's Law has mostly impacted plea negotiations rather than my trial work.

— Defense Attorney, OK (Survey)

Indeed, 72% of survey participants strongly agreed or agreed that Marsy's Law has made it more difficult to work with prosecutors on plea deals.

Marsy's Law has made it more difficult for me to work with the prosecutor on plea deals



The extensive use of plea deals, including coercing individuals to accept plea deals or risk a lengthier sentence by going to trial, undermines the framework of the criminal legal system and defendants' constitutional rights.⁸⁶ However, precluding that option because victims demand harsher judgements reduces defense attorneys' ability to work with the State to secure the best options for their clients, including alternatives to incarceration.

SHIFTING THE FOCUS FROM SOCIETAL HARM TO INDIVIDUAL HARM

The right to be heard under Marsy's Law extends to all proceedings. While there is not much empirical research or case law that examines this issue as it pertains to all proceedings, research and case law have considered victim impact statements given at the sentencing stage. Victim impact statements detail the harms done to the victim or the victim's family, including physical, psychological, social, and financial harm.⁸⁷

The problem with the right of the victim to be heard is that it shifts the court's focus from addressing *societal* harm to addressing *individual* harm.⁸⁸ As noted previously in this report, the insertion of victims into the criminal legal process opens the door for vindictiveness to be a driving force in how a case is resolved. This is the rationale for the U.S. Supreme Court ruling that prohibits the prosecution from presenting an argument that a homicide victim's family wants the State to seek the death penalty.⁸⁹

As one focus group participant stated:

We've all been raised that the court system is basically a 3-legged stool: you've got the judge, you've got the defendant, and you've got the prosecutor. Suddenly we've added this fourth leg, and nobody quite knows what to do with it.

— Public Defender (Ret.), IL (Focus Group Participant)

SENTENCING AND PAROLE DISPARITIES

Proponents of victim impact statements claim that sentencing and parole decisions will be more effective if victims convey their feelings to those involved.⁹⁰ This movement toward a therapy-centric system seems to dominate the rhetoric around a victim's right to be heard. Words like "closure" and "healing" are cited as major motivations for victim involvement within the court system.⁹¹ However, victim closure threatens proportionality in case dispositions.

The right to be heard potentially threatens the fairness, objectivity, and consistency of sentences. For example, in the case of written victim impact statements, better writers are more likely to sway the decision maker.⁹² Likewise, the allocution model (i.e., oral statements delivered by the victim) adds a layer of performance to the effectiveness rubric. Victims can be more convincing based on their emotional delivery of their statement. Sentence length then becomes contingent upon "the resiliency, vindictiveness or other personality attributes of the victim"⁹³ rather than the facts of the case. Further, the content of the victim impact statements rarely provides novel information, as both mitigating and aggravating factors are already provided to the court.⁹⁴

Not only does this right to be heard create sentencing disparities, but it also increases the time spent incarcerated during the parole process. One researcher looked at the impact of victim impact statements on the parole process in the context of California's Marsy's Law.⁹⁵ She found the implementation of Marsy's Law was associated with an increase in opposition letters sent to parole boards but had no impact on physical presence during parole hearings. Though opposition letters increased in frequency, their quality did not change. More importantly, Richardson found the implementation of Marsy's Law doubled the time in between parole hearings from 2.5 to 5 years, effectively increasing time incarcerated. As one survey participant notes:

I represent people in parole hearings who, due to Marsy's Law, are subject to parole denials as long as 15 years. The shortest possible denial length is now three years, as opposed to one year (pre-Marsy's Law.) Additionally, the fact that there are effectively no limits on who may show up as a victim or what they can say in a parole proceeding means that hearings can have hours of victim testimony, despite the fact that this testimony is predicated on who a person was back when they committed their crime — not who they are today, which is the legal standard for parole consideration. Nonetheless, the emotional impact of victim statements has a disproportionate influence on hearing outcomes, resulting in unlawful denials.

— Defense Attorney, CA (Survey Participant)

Longer sentences are associated with chronic health problems for the individual, and they also negatively impact the families of those who were incarcerated,⁹⁶ including the deterioration of familial relationships⁹⁷ and the exacerbation of poverty.⁹⁸ These negative effects also extend to children, including poor educational performance⁹⁹ and developmental behavioral problems,¹⁰⁰ and public health ills such as infant mortality,¹⁰¹ death by suicide,¹⁰² and infection rates of immunodeficiency syndromes and sexually transmitted infections.¹⁰³

These costs do not come with parallel benefits to public safety. A large meta-analysis of studies on the effect of custodial sentences on reoffending finds that there is no association or that custodial sentences actually increase reoffending compared to alternatives to incarceration.¹⁰⁴ This is because incarceration destabilizes individuals and creates collateral consequences that increases recidivism. Individuals who are released from incarceration experience challenges reintegrating back into their communities, including difficulty maintaining healthy relationships¹⁰⁵ and obtaining employment.¹⁰⁶ Further, social science research finds that individuals mature out of criminal involvement, suggesting that before middle age, criminal careers tend to end regardless of criminal legal system involvement.¹⁰⁷ Taken together, long sentences result in negative psychological and community-level effects, which are associated with worse public health and recidivism outcomes.

MARSY'S LAW'S IMPACT ON PAROLE IN CALIFORNIA

An empirical study was conducted to identify the effects of Marsy's Law on parole in California. The study included an analysis of 211 randomly selected transcripts from California parole hearings both before and after the implementation of Marsy's Law. The main results of the analysis are presented below.¹⁰⁸

For those serving indeterminate life sentences, Marsy's Law has had the effect of increasing the minimum time between parole hearings from one to three years, with the option of forcing individuals to wait 15 years if denied the first time.¹⁰⁹ Before this law, the waiting period between parole hearings was nine years; on the whole, therefore, incarcerated individuals are spending more time incarcerated as a result of Marsy's Law. This also applies retroactively to *all incarcerated individuals with a life sentence*.¹¹⁰ A lawsuit filed by an individual impacted by these changes argued he was unfairly subjected to the extended parole hearing schedule in violation of state and federal ex post facto laws, claiming the parole schedule under Marsy's Law guaranteed him a longer sentence than before the law was passed and before his crime was committed. The California Supreme Court unanimously dismissed his lawsuit, claiming Marsy's Law applies retroactively "because it wasn't intended to prolong punishment or change any inmate's sentence."¹¹¹

Regardless of intent, however, the impact of Marsy's Law on parole hearings has been substantial. The California Board of Parole Hearings notes that many incarcerated individuals are cancelling their hearings rather than risk being denied and having to wait up to 15 years for the next hearing, as required under Marsy's Law.¹¹²

The language of Marsy's Law also permits anyone who claims to be a victim (directly or indirectly) to appear and be heard in all court proceedings, including parole hearings. Because there is no limit to the definition of victim, there is no limit on who can speak and for how long, and parole hearings can include hours of victim testimony. There is concern that parole boards who are unduly influenced by insistent victims keep individuals incarcerated for longer periods of time.¹¹³

THE RIGHT TO PRIVACY

The right to privacy under Marsy's Law is designed to protect the safety of victims and prevent further trauma through participation in the criminal legal system. There are two main aspects to the right to privacy, and each carries with it unique problems. The first is the right to prevent the disclosure of records that could be used to locate and harass the victim. The abuse of this provision to shield the names of officers in use of force incidents is covered elsewhere in this report. In addition to the implications for police accountability, the privacy provision has caused public safety concerns and undermines community-based efforts to reduce violence. The second aspect is the victim's right to refuse discovery, which undermines due process and further overburdens the criminal legal system. Each of these is discussed in turn in this section.

RIGHT TO PREVENT DISCLOSURE OF INFORMATION TO THE PUBLIC

In some jurisdictions, the interpretation of Marsy's Law has posed substantial impediments for the investigation of crime and the release of crime information to the public. In South Dakota, when Marsy's Law was enacted, the Sioux Falls police removed the publicly available crime information that provided the addresses of violent crime incidents, replacing it with very broad geographic information. In cases where the victim was a business, the police did not disclose the name of the business.¹¹⁴ Likewise, the South Dakota State Department of Public Safety stopped releasing the names of individuals involved in fatal traffic accidents. The Florida Highway Patrol has a similar policy.¹¹⁵

Proponents of Marsy's Law in South Dakota argued that withholding crime information from the public was not necessary, maintaining that the law creates an opt-in process whereby victims request their information be withheld.¹¹⁶ However, local state attorneys countered that Marsy's Law rights, including the right to privacy, begin at the point of victimization.¹¹⁷ Ultimately, South Dakota amended its constitution to allow for crime information to be disclosed.

Other states have wrestled with the same issue. After implementation of Marsy's Law in Florida, there was widespread inconsistency in the way law enforcement agencies interpreted their responsibilities. Some withheld any identifiable information about crime from the public, and some continued to release information unless the victim requested confidentiality. The Hillsborough County Sheriff's Office retroactively redacted reports in order to ensure compliance.¹¹⁸ According to Barry Richard, an attorney and representative of Marsy's Law for Florida, given the ease with which information can be obtained online, any crime information that can be used to identify the location of victims should automatically be considered confidential.¹¹⁹

This especially has created a dramatic change in prosecutorial culture, at least from this practitioner's perspective. Florida has long been deemed "The Sunshine State." In legal circles, this phrase has often been used to describe the robust public records law in place in Florida, and not only the weather. No more is this the case in a criminal prosecution.

— Defense Attorney, FL (Legal Analyst)

Releasing information about crime serves the public's interest. Understanding where crime occurs can impact individuals' safety and communities' resource allocation and crime prevention efforts. In 2019, the Fort Myers Police Department in Florida refused to release the sketch of a man who had broken into a house, attacked a woman, and was still at large.¹²⁰ In Sarasota County, Florida, a daycare worker was arrested on charges of child

abuse and the Sarasota County Sheriff's Office, despite pleas from parents to inform them which daycare was involved, refused to release the name of the daycare, asserting that the establishment was also a victim.¹²¹

Not being able to release crime incident data can impact community-based violence prevention efforts that work with victims' families to prevent retaliatory violence. An accurate understanding of where victimization is occurring and who is involved is necessary for community safety and the development and implementation of effective prevention and intervention programs that reduce violence.

RIGHT TO REFUSE DISCOVERY AND INTERVIEW REQUESTS

Most states adopt verbatim or closely mirror the model amendment endorsed by Marsy's Law for All, LLC: "The right to privacy ... includes the right to refuse an interview, deposition or other discovery request and to set reasonable conditions on the conduct of any such interaction to which the victim consents."

Proponents' rationale for this right is to avoid further trauma for the victim; however, by allowing victims to refuse court cooperation, states that enact Marsy's Law are at higher risk for miscarriages of justice and systemic abuse. For example, mistaken eyewitness identification is the leading factor in wrongful convictions, accounting for approximately 70% of convictions that have been overturned by DNA evidence.¹²² Allowing victim eyewitnesses the right to refuse to be interviewed by the defense attorney leaves this form of unreliable evidence unquestioned. As Asma Kadri Keeler of the ACLU Colorado notes, "Marsy's Law would allow a person accusing another person of a crime to withhold evidence. This is a recipe for more wrongful convictions, more innocent people languishing behind bars, and more families needlessly torn apart by the criminal legal system."¹²³

Outside of eyewitness identification and testimony, the victim has the right to refuse disclosure of relevant documents, including medical and psychological records that establish injury as a result of the victimization, and other exculpatory evidence. Likewise, victims can refuse any pre-trial interviews or depositions by the defense. As Jeanne Hruska (ACLU — New Hampshire) and Holly Welborn (ACLU — Nevada) note, this dismantles both the presumption of innocence and the right to defend oneself.¹²⁴ One survey respondent noted that this has exacerbated an uneven playing field in favor of prosecutors. The State has a great deal of authority to compel witnesses, even being able to obtain a material witness warrant as needed, but defense attorneys are not provided any access to victims who assert their right under Marsy's Law.

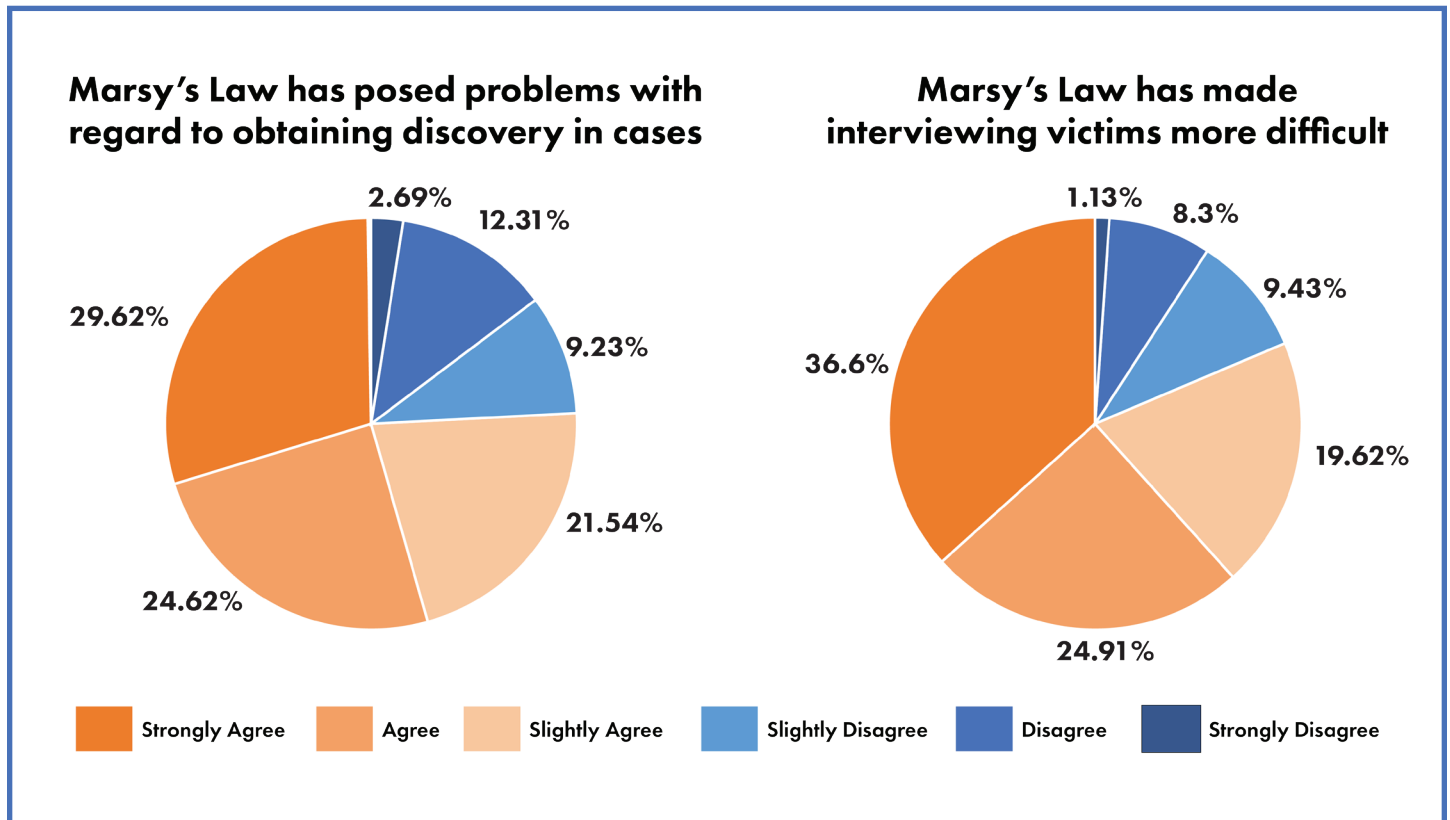
A youth in North Dakota was accused of fatally shooting a man and wounding another behind a commercial establishment. Central to his defense was that his actions were self-defense, that he was lured to the alley to be physically attacked in retaliation for an alleged drug theft. The individual wounded in the incident refused to be interviewed by defense counsel, citing Marsy's Law.¹²⁵ Defense counsel argued that Marsy's Law deprived the defendant of a fair trial because it required counsel "to prepare to cross-examine the sole eyewitness to this alleged incident based upon what information law enforcement wanted to get from him in a single interview." The judge disagreed with the defense's arguments that the eyewitness's refusal to be interviewed violated the defendant's constitutional rights.¹²⁶

In another case in North Dakota, a public defender whose client was accused of robbery and attempted murder received documents with the names and addresses of the victims redacted.¹²⁷ Removal of victims' identifiable information from the discovery documents is now common practice in some jurisdictions, though there is little consistency within states. In the open-ended survey question, one respondent noted that the redaction of victim information causes substantial delays in the appointment of counsel, due in part to difficulties determining any potential conflicts of interest in representation. Another respondent noted that the automatic removal of witness identification thwarts background checks and shrouds information that may relate to the credibility of the witness.

This problem is potentially compounded by the expansive definition of a victim under Marsy's Law. For example, counsel for an individual accused of embezzlement of funds while treasurer of the Missouri Ridge Township requested records pertaining to the township, including meeting minutes, financial transactions, and election results. The township refused, saying that under Marsy's Law, it had rights as the victim to

refuse to provide any and all documents.¹²⁸ While a judge ultimately ordered the township to turn over some documents, this case highlights the opportunities for abuse that Marsy’s Law provides.

The defense attorneys in this study noted that in their experience Marsy’s Law has posed problems to obtaining discovery and interviewing victims. Over 75% of attorneys agreed that Marsy’s Law presented challenges, with 37% strongly agreeing that it made interviewing victims more difficult and 30% strongly agreeing that it made obtaining discovery more difficult.



People waiting in pretrial detention may accept plea deals to avoid trial in cases where the victim refuses to provide relevant case information.¹²⁹ This is problematic because, as attorney Caroline Donato states in a podcast on Marsy’s Law, “[a] guilty plea has to be knowing, intelligent, and voluntary, and if you don’t have all the evidence against you, then it can’t be.”¹³⁰

This right is also unnecessary, as prior to Marsy’s Law, courts did not grant defense counsel unfettered access to victims. Courts are protective of victims and work to ensure that the information requested is relevant and necessary and that procedures for interviewing victims are free from harassment. What Marsy’s Law does is shift the authority from the judge, who is tasked with ensuring that the processes are fair, to the victim, without meaningful independent oversight to ensure that crucial evidence is not withheld.

THE RIGHT TO RESTITUTION

Marsy's Law includes the right to "full and timely" restitution. The change in the states impacted by Marsy's Law is that the defendant's ability to pay can no longer be considered; restitution for victims is not balanced with the defendants' financial situation. This has resulted in municipalities and corporations asserting victimhood for the purposes of restitution and an expansion of the harms for which restitution is requested. Further, in some states it has expanded the prosecutors' role to appealing the restitution decisions of trial courts on behalf of victims. For defendants, it has created substantial financial hardships for them and their families, starting at the time of incarceration, and presents barriers to successful re-entry. These changes have resulted in additional burdens on the criminal legal system and have cost municipalities financial resources.

THE EXPANSION OF RESTITUTION

While restitution is traditionally thought of as being intended for individual victims, Marsy's Law has made restitution more financially lucrative, and non-individual entities such as local governments, insurance companies, and corporations have sought restitution in those states. A related issue is what costs or damages are subject to restitution following Marsy's Law.

Restitution has been sought to compensate for lost wages and other expenses incurred as a result of invoking another Marsy's Law right, the right to be heard. For example, in Ohio, restitution is limited to "economic loss suffered by the victim as a direct and proximate result of the commission of the offense,"¹³¹ where economic loss is restricted to "loss of income due to lost time at work because of any injury."¹³² In 2019, a man pled guilty to violating a civil protection order, and his ex-wife requested compensation for missed wages while she attended court, in accordance with her rights under Marsy's Law. The court approved the restitution of \$1,615 in wages, but the appeals court reversed, finding the loss was not the "direct and proximate result" of the offense. The Ohio Supreme Court affirmed, stating,

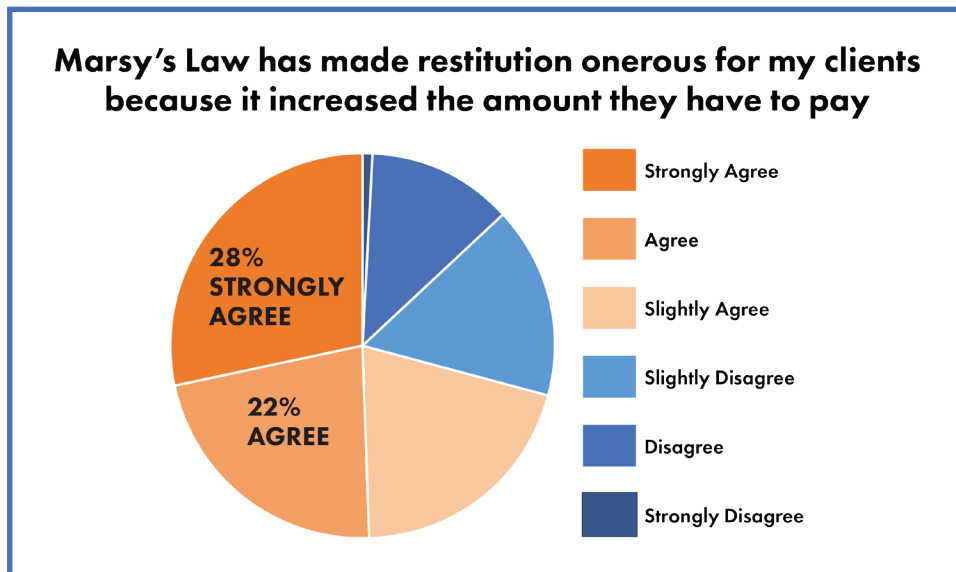
If restitution were to be expanded to include economic detriments that were not "direct and proximate result[s] of the commission of the offense," R.C. 2929.28(A)(1); R.C. 2929.18(A)(1), we would risk mutating sentencing hearings throughout the state into civil trials of all grievances the victim may have against the offender, regardless of their relation to the crimes at issue.¹³³

However, in the dissent, Justice DeWine argued that attendance at any court proceeding is a foreseeable consequence of the crime and therefore costs associated with exercising those rights should be subject to restitution.¹³⁴ This interpretation has the potential to greatly expand the amount and rationale of restitution requested by victims. Attendance and participation in court proceedings, even those where victim testimony or input is not needed or warranted, comes with potential costs outside of lost wages such as transportation and childcare. In addition, this introduces the possibility that victims will request restitution for costs incurred as a result of their engagement in the criminal legal system, such as counseling to manage the stress of participating in proceedings. Indeed, though not awarded, the victim in *State v. Yerkey* sought restitution for counseling services sought in connection to the divorce itself.¹³⁵ Approximately half of defense attorneys surveyed reported that Marsy's Law has made restitution onerous for their clients.

THE EXPANSION OF PROSECUTORS' ROLE IN REQUESTING RESTITUTION

Outside of what constitutes restitution, courts have wrestled with whether Marsy's Law has vested prosecutors with standing to appeal a decision by the trial court to deny or limit restitution. In *State v. Conry*, the district court denied restitution in a case of a motorist leaving the scene of an accident. The North Dakota Supreme

Court dismissed the State’s appeal, noting that other states did not allow the State to appeal restitution denials unless there were specific rights outlined in the appeal statutes.¹³⁶ The court decided that restitution is a right of victims, not the State, because the victim can pursue civil remedies, and those processes are not impacted by the decisions of the criminal court.¹³⁷ This is in line with states without Marsy’s Law.



However, recently, the Ohio Supreme Court ruled in favor of the State appealing restitution decisions under Marsy’s Law. A man who was assaulted sought restitution to cover his medical bills that totaled more than \$177,000. The trial court denied the restitution request because he failed to provide documentation that verified that the Department of Veterans Affairs declined to cover the medical costs. The defendant appealed his conviction and the State cross-appealed the restitution denial. The appeals court upheld the conviction but ruled that the

State did not have standing to appeal the trial court’s restitution decision. The Ohio Supreme Court reversed, finding the trial court’s decision was “needlessly broad and inconsistent with the purposes of Marsy’s Law.”¹³⁸ The expanded role of prosecutors to appeal restitution decisions creates additional burdens on the criminal legal system and shifts the prosecutor’s role from representing the State to representing individual victims.

THE IMPACT ON DEFENDANTS AND FAMILIES

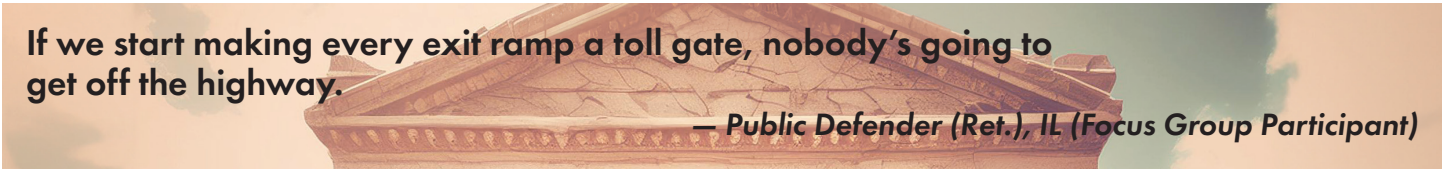
For incarcerated individuals, restitution can be paid from funds earned through work or deposited by family members to pay for commissary items. Some corrections departments have set limits on how much of an incarcerated individual’s funds can be deducted. Florida limits restitution deductions to 10 percent of wages (not family deposited money), but in other states the amount is higher. This means that the families of those incarcerated are paying the restitution, and many are suffering financially as a result.¹³⁹

In Nevada, prior to Marsy’s Law implementation, restitution was taken from money earned during work-release programs or incarcerated individuals’ wages. A small amount from family deposits was sometimes taken to pay for outstanding court fees or medical expenses.¹⁴⁰ However, after Marsy’s Law, the Department of Corrections took 80 percent of both wages and family deposits. This created substantial problems for families who were already struggling to provide for themselves on a single source of income. Some families stopped sending money to their incarcerated family member’s account because they could not send enough for them to purchase commissary goods.¹⁴¹ The percentage of wages and family deposits that was allocated toward victim restitution was later reduced to 50 percent and then further reduced to 25 percent for family deposits.¹⁴²

It makes serving a sentence—which is supposed to be serving your time and equal to paying your debt to society—much much much more difficult in a very punitive way, both for the inmate and for their family and friends who are trying to support them.
— Defense Attorney, NV (Focus Group Participant)

Restitution orders that ignore ability to pay serve no rational purpose and flout the public’s interest in successful reentry. For example, the North Dakota Supreme Court upheld the restitution order of over \$50,000

to the victim and an insurance company in the case of a burglary where the defendant was unemployed and unhoused.¹⁴³ While the judge readily acknowledged that the defendant would not be able to pay the restitution, it was not a relevant factor after the enactment of Marsy’s Law. The lawyer who represented the defendant on appeal noted that this will almost certainly result in his client’s probation revocation for failure to pay the restitution.¹⁴⁴



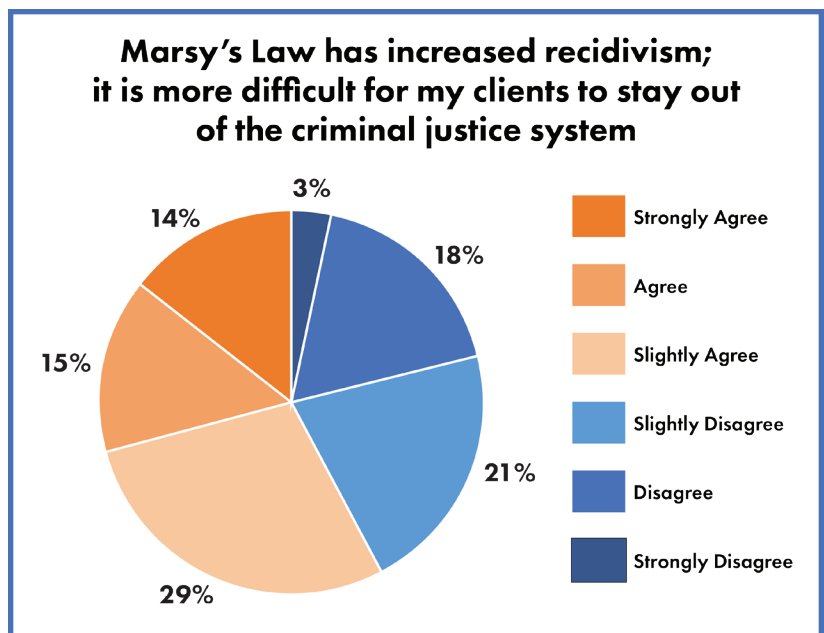
Focus group participants noted that incarcerated individuals are released without financial resources and have substantial barriers to obtaining gainful employment. Indeed, individuals in impacted states sometimes use “gate money,” the small amount of funds provided by the State to individuals released from incarceration, to pay restitution. For individuals who do not benefit from family financial support, these funds are all they have to meet their basic needs, purchase clothing, and obtain transportation for job interviews.¹⁴⁵

Civil rights groups have long combatted the excessive fines and fees associated with the criminal legal system. These fines and fees are substantial¹⁴⁶ and exacerbate racial inequality in the criminal legal system by criminalizing poverty.¹⁴⁷ Despite the time and resources allocated to debt collection efforts, very little is recovered from defendants.¹⁴⁸ It is irrational to expect greater success collecting restitution from indigent individuals than fines and fees.

These policies may also be contributing to an increase in recidivism. Approximately 30% of defense attorneys in this study agreed or strongly agreed that Marsy’s Law increased recidivism and an additional 29% slightly agreed based on their experiences. This is in line with recent research that finds that restitution and fines are associated with juvenile recidivism¹⁴⁹ and adult recidivism.¹⁵⁰

Further, it was noted by the focus group participants that restitution is considered part of a sentence, so for justice-impacted individuals to obtain their full rights back, they must pay restitution. These sentencing policies encompass felony disenfranchisement, an issue that has been the subject of recent reform.¹⁵¹ The majority of states (except for Vermont and Maine) disenfranchise individuals until “completion of their sentence.” For example, Colorado and Nevada apply this policy to those who are actively serving sentences. Once they are released from incarceration, their voting rights are restored. Other states define a criminal sentence differently, and can include repayment of legal debt, either explicitly or as a requirement of probation or parole.¹⁵² Florida and Tennessee, for example, include full repayment of restitution, fines, and fees in their definition of “sentence.”¹⁵³ These state efforts to restrict voters’ rights do not comport with public opinion¹⁵⁴ or current reform efforts.¹⁵⁵

It was noted in these focus groups and in numerous opinions in cases that ruled in favor of limits on restitution that *the issue is not restitution itself*. Most indicate that they are not against restitution, but that restitution under Marsy’s Law has changed the purpose of restitution to be punitive instead of restorative. This has imposed an impossible financial burden, which increases the risk of recidivism and overburdens the criminal legal system while not providing any additional relief for victims.



THE IMPACT OF MARSY'S LAW IN FLORIDA

Prepared by James Hampton Gallagher, Esq.

Florida has long enumerated the rights of accused persons and victims within the state constitution. The rights of accused persons are found in Art. I, section 16(a):

In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties the trial will take place. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.

Prior to adoption of Marsy's Law in 2018, the rights of victims were already constitutionally enumerated in the Florida Constitution, Art. I, section 16(b):

Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.

Between sections 16(a) and 16(b) there was a sort of parity between the rights of accused (providing due process akin to that found in the Federal Constitution) and providing rights to victims of limited participation designed to not interfere with the rights of the accused.

With the passing of the Victims' Rights Act of 1988, this constitutional provision was expressly enforced through various statutes enumerating additional victims' rights. Victims' rights had been statutorily enumerated since at least 1985, without reference to constitutional authority, with the passing of the Victim and Witness Protection Act of 1984. The Victims' Rights Act of 1988 effectively took the language already found in the constitution and enacted it as statute, word for word, by section 960.001, Florida Statutes. Over the years, and through various amendments to section 960, the following victims' rights can be identified prior to the adoption of the Marsy's Law amendment:

- Restitution for damage or loss caused directly or indirectly by the defendant's offense, including rehabilitation, and funeral expenses.
- Submission of an oral or written statement to the court regarding sentencing or release on parole.
- To be heard at all critical stages, when relevant, to the extent that this right does not interfere with the constitutional rights of the accused.
- Notification to the victim of arrest of the defendant and release of the defendant from incarceration or parole, or on pretrial release, or escape.
- Notification of victims' rights by brochure or information at the crime scene or during the investigation, or at the earliest possible time, including crime victim compensation, counseling, and social services.

- Notification of the filing of formal charges, disposition, trial, sentencing, appellate review, modification of sentence, and collateral attack of a judgment.
- Consultation with the State Attorney's Office in felony cases involving physical injury or emotional injury or trauma.
- Advisement by the court at arraignment, sentencing, or case management proceeding of the right to be informed, be present, be heard when relevant at all critical stages, to be notified of proceedings, to seek compensation, to consult with the State Attorney's Office in certain felony cases, to make a victim impact statement at sentencing.
- Victims of sexual offenses to not be asked to submit to a polygraph examination.
- Right to have a victim advocate present at forensic medical examination.
- Prompt and timely disposition of the case.

Some changes have been made to these previously statutorily defined rights since the passing of Marsy's Law. These primarily are:

- The right to be heard now extends to all stages of proceedings, whether or not "crucial" and regardless of whether or not the victim's input is "relevant," and without regard to any interference such right may have with the rights of the accused.
- The right to employ private counsel without regard to any interference such right may have with the rights of the accused.

The following new rights were specifically added to the state constitution with the adoption of Marsy's Law:

- To due process and to be treated with fairness and respect for the victim's dignity.
- To be free from intimidation, harassment, and abuse.
- To be reasonably protected, within the judicial process, from the accused and any person acting on behalf of the accused.
- To have the safety and welfare of the victim and the victim's family considered when setting bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victim's family.
- To prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim.
- To reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary. A victim shall also be provided reasonable, accurate, and timely notice of any release or escape of the defendant or delinquent, and any proceeding during which a right of the victim is implicated.
- To be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.

- To confer with the prosecuting attorney concerning any plea agreements, participation in pretrial diversion programs, release, restitution, sentencing, or any other disposition of the case.
 - *Note: While section 906.001 still references the right to consult only in cases involving injury or emotional trauma, Marsy's Law, within the constitution, has expanded this right to all cases.*
- To provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any presentence investigation or compiling any presentence investigation report, and to have any such information considered in any sentencing recommendations submitted to the court.
- To receive a copy of any presentence report, and any other report or record relevant to the exercise of a victim's right, except for such portions made confidential or exempt by law.
 - *Note: Presentence reports are confidential, and not a public record, pursuant to Fla. R. Crim. Pro. 3.712. Pursuant to Fla. R. Crim. Pro. 3.713, sentencing reports are to be provided, at the discretion of the court, only to the parties. While Marsy's Law by its own terms is self-implementing, this section explicitly states disclosure to a victim is required except where made confidential by law. As the rules of court forbid disclosure, and victims are not "parties" to a criminal case, it is unclear what effect, if any, this provision may have.*
- To be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.
- To be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole or early release authority shall extend the right to be heard to any person harmed by the offender.
- To be informed of clemency and expungement procedures, to provide information to the governor, the court, any clemency board, and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made; and to be notified of such decision in advance of any release of the offender.
- To the prompt return of the victim's property when no longer needed as evidence in the case.
- To full and timely restitution in every case and from each convicted offender for all losses suffered, both directly and indirectly, by the victim as a result of the criminal conduct.
- To proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related post judgment proceedings.
 - *Note: Included by Marsy's Law in the constitution is a new provision for a demand for speedy trial by the State Attorney. This would effectively force a defendant to trial within 75 days of the demand. This appears to be a wholly new procedural tool with no precedent in statute or rule of court in Florida. No enacting statute has yet been passed and no rule of court currently gives effect to this constitutional provision. Marsy's Law, however, does not require enacting legislation.*

- *Note: Included by Marsy's Law in the constitution is a new provision requiring all appeals and collateral attacks (post-conviction proceedings) must be concluded within two years of the date of appeal in non-capital cases and within five years in capital cases. There appears to be no statute or rule of court enforcing this provision, but this provision would also appear to be in conflict with the rules of court currently in effect in Florida, which provide for two years to file a collateral attack following a mandate on an unsuccessful appeal. Marsy's Law, however, does not require enacting legislation.*
- To be informed of these rights, and to be informed that victims can seek the advice of an attorney with respect to their rights. This information shall be made available to the general public and provided to all crime victims in the form of a card or by other means intended to effectively advise victims of their rights under this section.

CRIMINAL LEGAL SYSTEM REFORM IN THE CONTEXT OF MARSY'S LAW

There have been recent efforts to reform many aspects of the criminal legal system, including to address disparities and the importance of examining issues through a public health and community safety lens.¹⁵⁶ These efforts are in line with public opinion. For example, 71% of Americans across all demographics and political ideologies support efforts to reduce the number of people incarcerated and the use of incarceration as a first resort, preferring specialty courts, mental health services, and rehabilitation programs.¹⁵⁷ The majority of Americans also recognize that there is substantial racial bias in the current legal system, and longer sentences exacerbate these disparities.¹⁵⁸ Likewise, the public supports efforts to increase accountability and transparency at every stage of the criminal legal system.¹⁵⁹

However, the four major tenets of Marsy's Law undermine these efforts.

The Office of Justice Programs identified the need to reassess the heavy use of fines and fees in the criminal legal system, which can lengthen felony disenfranchisement and lead to loss of housing and family deterioration.¹⁶⁰ Alternatives to fines and fees, such as job training, mental health treatment, and community service, facilitate the successful reintegration of those who have been incarcerated and strengthen their communities.¹⁶¹

A victim's right to restitution under Marsy's Law shifts the purpose of restitution to be punitive instead of restorative and does not take a defendant's ability to pay into consideration. This allows authorities to take money from all sources of income, including work-release programs and family donations to the commissary. This unbalanced right results in more money spent to collect restitution from those who cannot pay it and directly undermines the current reform efforts to decrease the financial burden on defendants that results in deleterious consequences for them, their families, and communities.

Reform efforts have also focused on decreasing sentence length.¹⁶² At the federal level, many bills have been introduced to offer opportunities to decrease sentences by participating in work programs and treatment programs.¹⁶³ While these reform efforts are supported by most Americans,¹⁶⁴ Marsy's Law creates barriers to progress. The right to notification under Marsy's Law stalls the legal system as legal representatives must find a victim, notify the victim, and allow the victim time to respond, without balancing this with the potential impact on defendants.¹⁶⁵ This process increases time spent detained pretrial, resulting in a loss of employment, housing, and child custody and an increase in the likelihood of recidivism.¹⁶⁶

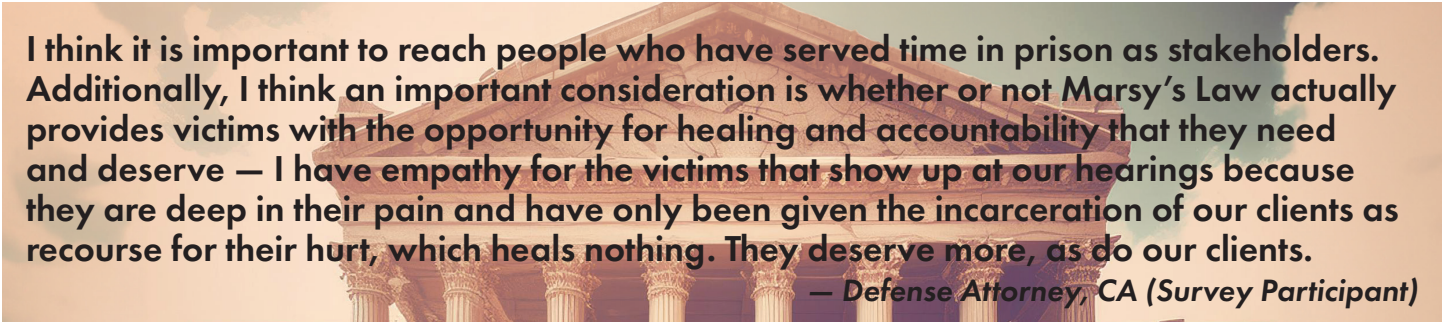
Likewise, states have engaged in efforts to increase the use of probation and parole, allowing individuals to integrate back into society earlier or avoid incarceration.¹⁶⁷ For example, states like West Virginia allowed individuals convicted of nonviolent crimes to apply for parole as soon as their minimum length was served.¹⁶⁸ This reform resulted in over one thousand individuals released under parole, not only reuniting families but also saving the state nearly \$35 million annually.¹⁶⁹ The right to be heard for both direct and indirect victims under Marsy's Law stalls the parole process and increases time incarcerated leading up to and in between parole hearings.

Finally, an overwhelming majority of Americans support policies that improve police transparency and accountability.¹⁷⁰ In response to this sentiment, states across the country have taken steps to increase police oversight. Some of these steps include adopting citizen review boards, enforcing law enforcement misconduct reporting, and reducing police contact for nonviolent and nonemergency calls.¹⁷¹ Marsy's Law directly undermines these efforts in some states, shielding inquiries into police use of force and eliminating police name and badge numbers from public information sources.

These reform efforts are not only supported by legal professionals, researchers, and the American population, but they are also supported by crime victims. The Alliance for Safety and Justice collected a nationally representative sample of crime victims and surveyed them on their experiences with victimization and the criminal legal system and what reforms they think are necessary to facilitate closure for victims and reduce victimization.¹⁷² An overwhelming majority of victims, across demographic groups and violent and nonviolent crime, think that the criminal legal system relies on incarceration too much and that the criminal legal system should focus on rehabilitation, which would reduce criminal offending, instead.

CONCLUSION

Opponents of Marsy's Law are not against victims being treated fairly. A number of participants in this survey noted that a victim's voice is important, that victims should be notified for proceedings and when the defendant is released, and they should be provided appropriate services to address the harm done by victimization.



I think it is important to reach people who have served time in prison as stakeholders. Additionally, I think an important consideration is whether or not Marsy's Law actually provides victims with the opportunity for healing and accountability that they need and deserve — I have empathy for the victims that show up at our hearings because they are deep in their pain and have only been given the incarceration of our clients as recourse for their hurt, which heals nothing. They deserve more, as do our clients.

— Defense Attorney, CA (Survey Participant)

In an open-ended survey question asking for concluding thoughts on Marsy's Law, many respondents noted that these rights are inconsistently invoked by the prosecutor depending on their utility in the case. As such, Marsy's Law has become an optional tool for the State instead of blanket considerations for the needs of victims. This has the potential to further disparities in the criminal legal system while simultaneously depriving victims of the actual resources they need.

An op-ed headline co-authored by an unlikely group including an ACLU attorney, a Republican Senator and members of the Tea Party sums it up best: "We all agree, Marsy's Law offers only empty promises."¹⁷³ The answer to how best serve victims is not Marsy's Law. It is to engage in community-centered efforts that repair the relationship between citizens and the criminal legal system and support communities' capacity to build safe and healthy neighborhoods.

APPENDIX A.

RESEARCH METHODOLOGY AND SURVEY INSTRUMENT

SAMPLE AND METHODOLOGY

The original methodology aimed to provide the perceptions and experiences of a variety of stakeholders that interface with the criminal legal system and are impacted by Marsy's Law, including defense attorneys, prosecutors, judiciary, media/oversight groups, victim advocates and service providers, law enforcement, and civil rights groups. A mixed-methods approach was developed involving an online survey for relevant stakeholders and focus groups to inform the survey instrument, provide detailed information and experiences, and contextualize the survey results.

Three focus groups and one one-on-one interview were facilitated by Ráchael Powers, author of this report, with Monica L. Reid, NACDL's former Senior Director of Advocacy, and Nora Zimmerman, former NACDL State Advocacy Associate, in attendance. NACDL was responsible for recruitment of participants, which included attorneys, civilian investigation panels, and representatives from a variety of justice advocacy, civil rights, and policy groups. There were 21 participants over the three focus groups and one participant who was interviewed for a total of 22 participants for qualitative analysis. The states that were represented in the focus groups included California, Florida, Georgia, Illinois, Kentucky, Nevada, New Hampshire, North Carolina, Ohio, and Wisconsin. The interview protocol began with asking participants for their overall perceptions and experiences with Marsy's Law, then specific provisions were discussed (i.e., privacy, notice, restitution, being heard), and each group concluded with their final thoughts and advice for states without Marsy's Law. All focus groups were video recorded for analysis.

The quantitative survey instrument was designed in two parts — the first part contained overall perceptions of Marsy's Law and the second contained questions aimed at specific occupations (the entire survey is provided at the end of this appendix). Open-ended questions were provided at the end of the survey to obtain respondents' thoughts on benefits and challenges of Marsy's Law as well as concluding thoughts. These survey items were constructed based on the focus groups, expert opinion, media reports, existing case law, and empirical research. The survey instrument was pilot tested and revised accordingly.

Recruitment was done by both the first author of this report as well as NACDL. NACDL sent the survey to its list of email contacts in states impacted by Marsy's Law. NACDL also reached out to partnering prosecutor and law enforcement organizations. As shown, all states, except for North Dakota, are represented in the survey analysis.

STATE	F	%
California	60	19.87
Florida	48	15.89
Georgia	18	5.96
Illinois	15	4.97
Kentucky	22	7.28
Nevada	22	7.28
North Carolina	31	10.26
North Dakota	16	5.30
Ohio	27	8.94
Oklahoma	12	3.97
South Dakota	15	4.97
Wisconsin	13	4.30
Other	3	1.00
TOTAL	302	100

To recruit victim service providers in states impacted by Marsy’s Law, Ráchael Powers contacted their coalitions against sexual and domestic violence. The survey was distributed June — September of 2021 and resulted in 302 responses from defense attorneys or attorneys working on comparable arenas (e.g., criminal appellate attorney). Three respondents indicated practicing in states that do not currently have Marsy’s Law but had relevant insights, so they were retained in the sample. Despite repeated recruitment efforts, the sample sizes for other stakeholders were too small to provide valid estimates in this report.

SURVEY INSTRUMENT

PART 1: GENERAL QUESTIONS

What state do you work in or practice? [Dropdown]

In line with Marsy's Law, victims' rights begin at the point of alleged offense and therefore the use of the term "victim" in this survey is used accordingly. It does not necessarily denote situations where the case has been processed through the criminal justice system.

Please indicate the extent to which you agree or disagree with the following statements —

1 = Strongly Disagree,

2 = Disagree,

3 = Somewhat Disagree,

4 = Somewhat Agree,

5 = Agree,

6 = Strongly Agree.

NA = Does not apply to me/my profession or I do not know

1. Marsy's Law has been financially costly to implement in my state
2. Marsy's Law has made my job more difficult
3. As a result of Marsy's Law, victims' rights are treated as more important than defendants' rights
4. Victims' rights should be equally enforced relative to defendants' rights
5. Marsy's Law should be enacted in every state
6. The public was well informed about Marsy's Law when it appeared on the ballot in my state
7. Legislators in my state were well informed about Marsy's Law prior to endorsing it
8. The wording of Marsy's Law in my state is vague, it is not clear and open to interpretation
9. The implementation of Marsy's Law provisions has been inconsistent *between* jurisdictions in my state
10. The implementation of Marsy's Law has been inconsistent *within* jurisdictions in my state
11. The actual impact of Marsy's Law in my state has been minimal
12. In my state, it is unclear who is defined as a victim under Marsy's Law

13. In my state, the definition of a victim is too broad in Marsy's Law, too many parties can be considered a victim
14. Marsy's Law undermines recent efforts to increase accountability in the criminal justice system
15. Marsy's Law undermines transparency in the criminal justice system
16. Before Marsy's Law was passed, I was

1 = Strongly opposed; 2 = Opposed; 3 = Did not have an opinion; 4 = In Favor; 5 = Strongly In Favor

17. Now that Marsy's Law has been implemented in my state, I am

1 = Strongly opposed; 2 = Opposed; 3 = Did not have an opinion; 4 = In Favor; 5 = Strongly In Favor

PART 2: STAKEHOLDER SPECIFIC EXPERIENCES

The next few questions pertain to your profession. What best describes your current or most recent position? Please choose the category closest to your field.

1. Defense Attorney / Defendant Rights Organization
2. Mitigation Specialist
3. Social Justice Organization (e.g., ACLU)
4. Prosecutor or State Attorney
5. Judiciary
6. Other Court Personnel
7. Law Enforcement
8. Victim Services
9. Civilian Oversight / Good Government
10. Media
11. Not listed: _____

Please indicate the extent to which you agree or disagree with the following statements

1 = Strongly Disagree,

2 = Disagree,

3 = Somewhat Disagree,

4 = Somewhat Agree,

5 = Agree,

6 = Strongly Agree.

NA = Does not apply to me/my profession or I do not know

Defense Attorneys / Defendant Rights/ Mitigation Specialist

12. Marsy's Law violates defendants' rights
13. Marsy's Law has posed problems for pretrial detention, my clients are not released in a timely manner
14. As a result of Marsy's Law, factors outside of the likelihood of appearing in court are now being considered in bond and first appearance hearings
15. Marsy's Law has made it more difficult for me to develop an effective defense in my clients' cases
16. Marsy's Law has posed problems with regards to obtaining discovery in cases
17. Marsy's Law has made interviewing victims more difficult
18. Marsy's Law has made it more difficult for my clients to successfully reintegrate into society
19. Marsy's Law has increased recidivism; it is more difficult for my clients to stay out of the criminal justice system
20. Marsy's Law has made restitution onerous for my clients because it increased the amount they have to pay
21. Marsy's Law has made it more difficult for me to work with the prosecutor on plea deals
22. Because of the victim privacy provision in Marsy's Law, it is difficult for me to obtain exculpatory evidence
23. Marsy's Law results in increased financial burdens for defendants
24. Having to notify victims of all proceedings has caused delays in proceedings in my state
25. Marsy's Law increases the potential for wrongful convictions

26. Marsy's Law has impacted my ability to cross-examine victims
27. Marsy's Law has impacted my ability to cross-examine witnesses

Prosecutors

1. Because of Marsy's Law, victims have more input in what happens in their cases
2. Because of Marsy's Law, I pay more attention to what victims want
3. Marsy's Law reduces prosecutorial discretion
4. Sometimes having to confer with victims is challenging
5. It is difficult to notify all victims of all proceedings
6. Because of Marsy's Law, victims are more willing to participate in the criminal justice system
7. Marsy's Law builds a more positive relationship between the victim and the criminal justice system
8. Because of Marsy's Law, I feel pressure to pursue cases that I otherwise would not
9. Most victims want to assert their Marsy's Law rights
10. Marsy's Law has increased the workload for prosecutors
11. Marsy's Law has increased the responsibilities of my office
12. My office needs more resources in order to adhere to the provisions in Marsy's Law
13. Marsy's Law has necessitated additional state/locality appropriated resources for my office
14. Police officers should not be allowed to invoke Marsy's Law in cases of police use of force

Law Enforcement

1. All victims in my state are notified of their Marsy's Law rights
2. Marsy's Law has made investigating cases more difficult

3. Marsy's Law has made investigating cases more time consuming
4. Because of Marsy's Law, victims are more willing to report victimization to the police
5. Marsy's Law builds a more positive relationship between the victim and law enforcement
6. Marsy's Law has made it difficult to provide relevant crime information to the public
7. Police officers involved in shootings should be able to protect their privacy (shield their name from the public) through Marsy's Law
8. Police officers involved in situations, other than a shooting, where they fear civilian retaliation, should be able to protect their identity from the public through Marsy's Law
9. My office needs more resources in order to adhere to the provisions in Marsy's Law
10. Marsy's Law has necessitated additional state/locality appropriated additional resources for my office

Victim Advocates and Service Providers

1. Money spent on Marsy's Law in my state would be better applied to other victim services
2. Because of Marsy's Law, more victims are able to be heard in criminal justice proceedings
3. The application of Marsy's Law rights is equitable for all victims, all victims have the same access and ability to assert their rights.
4. Marsy's Law builds a stronger and more positive relationship between the victim and the criminal justice system
5. Marsy's Law has improved victim notification in my state
6. The notification provisions in Marsy's Law have made my clients safer
7. Marsy's Law has increased victim willingness to engage in the criminal justice system
8. Because of Marsy's Law, victims are more willing to report victimization to law enforcement
9. Marsy's Law diverts resources away from services that meet the needs of victims
10. Victims' rights should begin at the point of the offense

Judiciary

1. Marsy's Law violates due process for defendants
2. Marsy's Law builds a stronger and more positive relationship between the victim and the criminal justice system
3. Marsy's Law has increased victim willingness to engage in the criminal justice system
4. Marsy's Law reduces prosecutorial discretion
5. Marsy's Law increases the potential for wrongful convictions
6. Marsy's Law results in increased financial burdens for defendants
7. Marsy's Law has overburdened or created additional burdens on the criminal justice system in my state
8. Marsy's Law has increased the collateral consequences associated with criminal justice processing
9. Marsy's Law has resulted in delays for hearings and trials
10. Police officers should be allowed to invoke Marsy's Law to shield their identity from the public in cases of police use of force or when they otherwise fear public retaliation
11. Marsy's Law has been costly to local taxpayers to implement

Civilian Oversight / Media / Good Government / Social Justice Organizations / Academics

1. Police officers invoking Marsy's Law has eroded the civilian oversight process
2. Marsy's Law has made it difficult to do independent investigations of the police
3. Marsy's Law has made it difficult to provide relevant crime information to the public
4. Police officers involved in shootings should be able to protect their privacy (shield their name from the public) through Marsy's Law
5. Police officers involved in situations, other than a shooting, where they fear civilian retaliation, should be able to protect their identity from the public through Marsy's Law
6. Marsy's Law has increased the resources needed in my community to complete our work

7. Marsy's Law increases the potential for wrongful convictions
8. Marsy's Law has increased victim willingness to engage in the criminal justice system
9. Marsy's Law has overburdened or created additional burdens on the criminal justice system in my state
10. Marsy's Law has increased the collateral consequences associated with criminal justice processing
11. Marsy's Law has made my job more difficult
12. Marsy's Law builds a stronger and more positive relationship between the victim and the criminal justice system
13. Marsy's Law interferes with the public's right to know and access to information from the press

PART 3: ADDITIONAL EXPERIENCES AND PERCEPTIONS

What are the biggest challenges for your profession related to Marsy's Law?

[Open]

Are there any other thoughts you would like to share with regard to Marsy's Law?

[Open]

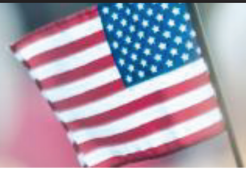

We may have follow-up questions about your experiences with Marsy's Law. If you are open to us contacting you, please put your email below

Email: _____

Thank you very much for your time and responses.

APPENDIX B.

A MODEL CONSTITUTIONAL AMENDMENT



Marsy's Law

A Model Constitutional Amendment To Afford Victims Equal Rights

A. To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role throughout criminal and juvenile justice systems, and to ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than the protections afforded to criminal defendants and juvenile delinquents, every victim shall be entitled to the following rights, beginning at the time of their victimization:

1. The right to due process and to be treated with fairness and respect for the victim's dignity.
2. The right to be free from intimidation, harassment and abuse.
3. The right to be reasonably protected from the accused and any person acting on behalf of the accused.
4. The right to have the safety and welfare of the victim and the victim's family considered when setting bail or making release decisions.
5. The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim.
6. The right to privacy, which includes the right to refuse an interview, deposition or other discovery request and to set reasonable conditions on the conduct of any such interaction to which the victim consents.
7. The right to reasonable, accurate and timely notice of, and to be present at, all proceedings involving the criminal conduct, plea, sentencing, adjudication, any

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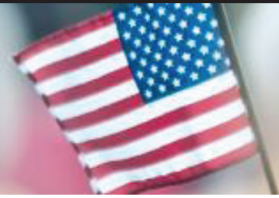
MARSY'S LAW

A Model Constitutional Amendment
To Afford Victims Equal Rights



release or escape of the defendant or delinquent, and any proceeding during which a right of the victim is implicated.

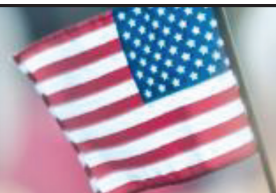
8. The right to be heard in any proceeding involving release, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.
9. The right to confer with the prosecuting attorney.
10. The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any pre-sentence investigation or compiling any pre-sentence investigation report, and to have any such information considered in any sentencing recommendations submitted to the court.
11. The right to receive a copy of any pre-sentence report, and any other report or record relevant to the exercise of a victim's right, except for those portions made confidential by law.
12. The right to the prompt return of the victim's property when no longer needed as evidence in the case.
13. The right to full and timely restitution in every case and from each convicted offender for all losses suffered by the victim as a result of the criminal conduct. All monies and property collected from any person who has been ordered to make restitution shall be first applied to the restitution owed to the victim before paying any amounts owed to the government.
14. The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related post-judgment proceedings.
15. The right to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any



scheduled release date of the offender, and the release of or the escape by offender from custody.

16. The right to be informed of all post-conviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole authority shall extend the right to be heard to any person harmed by the offender.
17. The right to be informed of clemency and expungement procedures, to provide information to the Governor, the court, any clemency board and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made; and to be notified of such decision in advance of any release of the offender.
18. The right to be informed of these rights, and to be informed that victims can seek the advice of an attorney with respect to their rights. This information shall be made available to the general public and provided to all crime victims in what is referred to as a Marsy's Card.

B. The victim, the retained attorney of the victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding disposition of a victim's right shall be clearly stated on the record.



C. The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims. All provisions of this section apply throughout criminal and juvenile justice processes are self-enabling and require no further action by the Legislature.

D. As used in this section, a “victim” is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term “victim” also includes any spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim that is substantially similar to a listed relationship, and includes a lawful representative of a victim who is deceased, incompetent, a minor, or physically or mentally incapacitated. The term “victim” does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor or incapacitated victim. The term “crime” and “criminal” include delinquent acts and conduct.

APPENDIX C.

DESCRIPTIVE STATISTICS OF SURVEY QUESTIONS

ITEM	STRONGLY DISAGREE (%)	DISAGREE (%)	SLIGHTLY DISAGREE (%)	SLIGHTLY AGREE (%)	AGREE (%)	STRONGLY AGREE (%)
The actual impact of Marsy's Law in my state has been minimal	27	34	15	8	11	4
The public was well informed about Marsy's Law when it appeared on the ballot in my state	68	21	6	2	2	1
Legislators in my state were well informed about Marsy's Law prior to endorsing it	49	30	10	5	4	2
The implementation of Marsy's Law provisions has been inconsistent between jurisdictions in my state	1	1	5	15	35	43
The implementation of Marsy's Law provisions has been inconsistent within jurisdictions in my state	0	4	9	19	37	33
Marsy's Law has been financially costly to implement in my state	3	6	6	14	42	29
Marsy's Law violates due process for defendants	1	4	5	16	27	47
As a result of Marsy's Law, victims' rights are treated as more important than defendants' rights	2	2	5	15	24	52
Marsy's Law has made it more difficult for me to develop an effective defense in my case	4	14	16	21	20	25
Marsy's Law increases the potential for wrongful convictions	0	5	7	18	28	42

ITEM	STRONGLY DISAGREE	DISAGREE	SLIGHTLY DISAGREE	SLIGHTLY AGREE	AGREE	STRONGLY AGREE
	(%)	(%)	(%)	(%)	(%)	(%)
Having to notify victims of all proceedings has caused delays in proceedings in my state	0	6	5	15	27	47
Marsy's Law has posed problems for pretrial detention, my clients are not released in a timely manner	1	4	5	19	29	42
Marsy's Law has made it more difficult for me to work with the prosecutor on plea deals	1	4	4	19	25	47
Marsy's Law has posed problems with regard to obtaining discovery in cases	3	12	9	21	25	30
Marsy's Law has made interviewing victims more difficult	1	8	9	20	25	37
Marsy's Law has made restitution onerous for my clients because it increased the amount they have to pay	1	13	16	20	22	28
Marsy's Law has increased recidivism; it is more difficult for my clients to stay out of the criminal justice system	3	18	21	29	15	14

ITEM	STRONGLY OPPOSED	OPPOSED	DID NOT HAVE AN OPINION	IN FAVOR	STRONGLY IN FAVOR
	(%)	(%)	(%)	(%)	(%)
Opposition to Marsy's Law <u>before</u> implementation	50	30	17	3	0
Opposition to Marsy's Law <u>after</u> implementation	63	28	5	4	0

APPENDIX D.

ON THE RECORD OPPOSITION TO MARSY'S LAW

The following table details public statements about Marsy's Law made by advocates, government officials, and other stakeholders

STATE	NAME, AFFILIATION	EXISTING PROTECTIONS	DUE PROCESS VIOLATIONS	CONTRADICTS CONSTITUTION	VAGUE LANGUAGE & IMPLEMENTATION	POLICE ACCOUNTABILITY	FOI VIOLATION	FINANCIAL & RESOURCE CONCERNS
CA	Chris Johnson, State Senate ¹⁷⁴	X		X				
	Los Angeles Times ¹⁷⁵	X	X	X				
DC	Cynthia Roseberry, ACLU Washington DC ¹⁷⁶					X		
FL	Bob Gualtieri, Sheriff ¹⁷⁷			X		X		
	Barbara Petersen, First Amendment Foundation ¹⁷⁸						X	
	Kami Chavis, Wake Forest University Professor ¹⁷⁹					X		
	Christina Kittle, Jacksonville Community Action Committee ¹⁸⁰					X		
ID	Kathy Greismyer, ACLU Idaho ¹⁸¹	X						
	Lynn Luker, State Representative ¹⁸²	X			X			X
	Ilana Rubel, State Representative ¹⁸³	X						

STATE	NAME, AFFILIATION	EXISTING PROTECTIONS	DUE PROCESS VIOLATIONS	CONTRADICTS CONSTITUTION	VAGUE LANGUAGE & IMPLEMENTATION	POLICE ACCOUNTABILITY	FOI VIOLATION	FINANCIAL & RESOURCE CONCERNS
IA	Iowa Coalition Against Domestic Violence and Iowa Coalition Against Sexual Assault ¹⁸⁴	X	X		X			
IL	Susan Bandes, Professor at DePaul College of Law ¹⁸⁵					X		
KY	John Schickel, State Representative, retired law enforcement ¹⁸⁶		X	X				
	Chad McCoy, State Representative ¹⁸⁷	X	X		X			
	Amye Besenhaver, Director of Kentucky Open Government Coalition ¹⁸⁸				X			
	Ben Nelson, US Senator ¹⁸⁹	X						
	Jim Waters, Bluegrass Institute for Public Policy Solutions ¹⁹⁰	X	X					
ME	Stacy Wesen, Gallatin County Victim Services ¹⁹¹							X
MS	Chris Johnson, State Senate ¹⁹²	X	X					
	Ken Winter, Mississippi Association of Chiefs of Police ¹⁹³							X

STATE	NAME, AFFILIATION	EXISTING PROTECTIONS	DUE PROCESS VIOLATIONS	CONTRADICTS CONSTITUTION	VAGUE LANGUAGE & IMPLEMENTATION	POLICE ACCOUNTABILITY	FOI VIOLATION	FINANCIAL & RESOURCE CONCERNS
MT	Brian Gootkin, Sheriff ¹⁹⁴				X			X
	Alex Rate, ACLU Montana ¹⁹⁵			X				
	Montana Association of Counties ¹⁹⁶			X				
ND	Darla Juma, North Dakota Victim Assistance Association	X		X				X
	Janelle Moos, Council on Abused Women's Services North Dakota							X
NV	Tod Story, ACLU Nevada ¹⁹⁷	X		X	X			
	Macy Haverda, ACLU Nevada ¹⁹⁸				X			
	Eve Hanan, UNLV Professor ¹⁹⁹	X		X	X			
NH	Claire Rouillard, State Representative ²⁰⁰				X			
	Paul Berch, State Representative ²⁰¹			X	X			
NC	Marcia Morey, State Representative ²⁰²	X						X
	Sarah Gillooly, ACLU North Carolina ²⁰³				X			X
	Susanna Birdsong, ACLU North Carolina ²⁰⁴	X	X	X	X			X
OH	Frank Forchione, County Court Judge ²⁰⁵	X	X		X		X	X

STATE	NAME, AFFILIATION	EXISTING PROTECTIONS	DUE PROCESS VIOLATIONS	CONTRADICTS CONSTITUTION	VAGUE LANGUAGE & IMPLEMENTATION	POLICE ACCOUNTABILITY	FOI VIOLATION	FINANCIAL & RESOURCE CONCERNS
PA	Elizabeth Randol, ACLU Pennsylvania ²⁰⁶	X	X	X	X			
	Paul Schemel, US House of Representatives ²⁰⁷		X					
	Vic Walczak, ACLU Pennsylvania ²⁰⁸		X					
TN	ACLU Tennessee ²⁰⁹		X	X	X			
	Deborah Fisher, Tennessee Coalition for Open Government ²¹⁰	X					X	
WI	Fred Risser, State Senate ²¹¹	X		X	X			
	Asma Kadri Keeler, ACLU Wisconsin ²¹²		X					
	Matt Rothschild, Wisconsin Democracy Campaign ²¹³		X	X		X		X
	Tom Kamenick, Wisconsin Transparency Project ²¹⁴						X	
	ACLU Wisconsin ²¹⁵		X		X			X

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