

OPPOSE “MARSY’S LAW” LEGISLATION

What is Marsy’s Law?

Marsy’s Law proposes an amendment change to section 22, Article 1, of the Constitution of the state of Idaho relating to the rights of crime victims. It borrows language from model legislation proposed by the Marsy’s Law for All campaign¹ that attempts to amend state constitutions to expand enumerated rights to all crime victims. However, these expanded rights are likely to come into direct conflict with the state and federal constitutional rights afforded to criminal defendants who are innocent until proven guilty – like the right to due process, the right to a speedy trial, and the right to be informed of and question the evidence against him or her. California was the first state to amend its constitution to include Marsy’s Law provisions in 2008. Since then the initiative been passed in eleven states, which is heavily funded by its key backer Henry Nicholas.²

What problems does Marsy’s Law present?

Marsy’s Law is unnecessary for states like Idaho with existing victims’ rights in the State’s constitution and is an unfunded mandate that would result in large unanticipated costs for the state, unintended consequences for counties, and increased burdens to Idaho’s court system.³

- **Conflict with Due Process:** States that have passed Marsy’s Law report that defendants are spending more time in jail and are experiencing trial delays because more time is required to schedule hearings because many more victims are requesting to testify.⁴
- **Burdened Process:** Although prosecutors and courts are familiar with the notice process in the existing system, some states who have implemented the law has seen a backlog since the law requires victims to be notified and heard at any hearings upon their request.
- **Unclear language:** Marsy’s Law establishes that victims would have a right to counsel separate from the county attorney’s office, which could morph the criminal process into an adversarial proceeding much like a civil trial - with two private parties battling it out instead of the state representing the interests of justice and public safety. It could also establish a system where only wealthy victims will be able to retain attorneys to defend their rights, or an entirely new state-sponsored legal system will need to be formed to provide legal representation to protect poor victims of violent crime.
- **No Funding:** There may be fiscal impacts to the state and local government but they are very difficult to quantify, according to the statement of purpose found for HJR 8, the 2018 legislative version for Marsy’s Law. For example, when South Dakota passed the law in 2016, Pennington County State’s Attorney said the county had to hire more employees to help notify victims of their rights and the status of their cases will cost an extra \$161,000 for his county of about 100,000 residents.⁵

¹ Marsy’s Law for All, <https://marsyslaw.us/about-marsys-law>

² Felton, Emmanuel. “The Billionaire Funding Victims’ Rights Campaigns Across the Country.” Pacific Standard, 17 Jan. 2018, <https://psmag.com/social-justice/billionaire-funding-victims-rights-campaigns-across-the-country>

³ Smith, Kelley. “Marsy’s Law passed in 6 states, South Dakota on track to repeal it.” KSFY, 26 Jan. 2018, <http://www.ksfy.com/content/news/Marsys-Law-passed-in-6-states-South-Dakota-on-track-to-repeal-it-471383263.htm>

⁴ Minnehaha County Jail held offenders longer. Hult, John. Answers will come soon on Marsy’s Law. 2 Dec. 2016 <https://www.argusleader.com/story/news/2016/12/02/ag-answers-come-soon-marsys-law/94817546/>

⁵ Brown, Trevor. As Victims’ Rights Law Makes Ballot, Other States Grapple with Pitfalls. 4 Apr. 2017 <http://oklahomawatch.org/2017/04/04/as-victims-rights-law-makes-ballot-other-states-grapple-with-pitfalls/>