



SIoux FALLS AREA  
CHAMBER OF COMMERCE  
*Progress is everyone's business*

## ISSUE BRIEF:

### Expanding Rights for Crime Victims — Constitutional Amendment S

July 2016

Approved by the Executive Committee: July 25, 2016

Approved by the Board of Directors: July 27, 2016

***The Sioux Falls Area Chamber of Commerce encourages a “NO” vote on Constitutional Amendment S on the 2016 general election ballot.***

#### **Background**

There are two ways in South Dakota to propose an amendment to the State Constitution. The first is by majority vote, whereby the Legislature can endorse a joint resolution to put an issue on the ballot. The second option requires an initiative process with valid signatures equaling at least 10 percent of the vote total from the prior gubernatorial election. Likewise, statutory changes can be initiated by the citizenry by obtaining valid signatures equaling at least 5 percent of the vote total from the prior gubernatorial election.

Constitutional Amendment S, also known as “Marsy’s Law,” deals with expanding rights for crime victims. To amend the constitution or enact the law will require a majority vote.

In summary, Constitutional Amendment S expands the following protections, places them within the State Constitution and gives crime victims written notification of these rights:

- Harassment or abuse
- Right to privacy
- Timely notice of all trial, sentence and post-judgement proceedings including pardon or parole
- Right to confer with the attorney for the government
- Opportunity to provide input during all phases of the criminal justice process

#### **Discussion**

It is first important to qualify the term “victim” as it applies to this amendment. A victim includes anyone who “suffers direct or threatened harm as a result of any crime, attempted crime, or act of juvenile delinquency. It also includes that person’s spouse, children, extended family members, guardians, and others with a substantially similar relationship.” It is also essential to understand that if a victim’s rights conflict with that a criminal defendant’s rights within both the South Dakota Constitution and U.S. Constitution, respectively, a court may determine the defendant’s rights take priority.

This legislation was given the name “Marsy’s Law” after a University of California Santa Barbara college student, Marsalee (Marsy) Leach, was murdered by her former boyfriend in 1983. One week after this crime, her mother and brother were confronted by Marsy’s assailant in a grocery store. They were unaware that he had been released on bail.

Currently, state and federal provisions for crime victims do exist. In 1991, the South Dakota legislature enacted the South Dakota Victim’s Rights Act, (S.D.C.L. 23A-38C-1).

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These protections include, but are not limited to, various notifications to the crime victim's family such as the defendant's release from custody (escape, placement in an intensive supervision program, parole and pending release due to sentence expiration). Legislators have made several modifications to this law over the past 25 years. Additionally, U.S. citizens are protected under federal law within the Crime Victims' Rights Act (18 U.S.C. § 3771).

### **Proponent Rationale**

Proponents of Constitutional Amendment S claim that those accused and convicted of a crime should not have more protections than the victim. Instead, they should have equal rights as those accused/convicted. Many of the changes resulting from Marsy's Law involve victims receiving information in a timely matter. Preservation of dignity and respect for the victims as well as allowing for the safety and welfare of the victims' family is paramount for those in favor of this Constitutional amendment. Additionally, supporters say that the current statute does not have a clear definition for a victim.

### **Opponent Rationale**

Opponents feel seeking these rights may infringe upon the existing Constitutional rights of accused criminals. In addition, opponents say this type of law will only add to the already overabundance of litigation within the court system and lead to the increased need to hire and appoint counsel for victims. Opponents also feel that Marsy's Law would allow those making accusations significant rights before a jury is able to hear evidence, as well as establish more opportunities for convicted offenders to appeal and challenge their convictions. Those opposed state that enacting Marsy's Law would dilute current protections for victims and increase the cost to counties to comply with the state mandate as state's attorneys will be required to resolve countless misdemeanor cases

*Note: Detailing "Proponents" and "Opponents" rationale is designed to provide the reader with an understanding of the opinions and talking points from each perspective. They are not intended to reflect any position of the Sioux Falls Area Chamber of Commerce.*

**Chamber Position:** (Adopted Aug. 17, 2016)

***The Sioux Falls Area Chamber of Commerce encourages a "NO" vote on Constitutional Amendment S on the 2016 general election ballot.***

### **Rationale:**

*A change or expansion of these rights is far better handled in statute rather than our state's constitution. Once inserted into the constitution, the impacts of this measure become much more difficult to change or adjust as need be. Statutes, on the other hand, can be changed in any given legislative session and victims rights are currently included in state law and have been since the early 1990s. Furthermore, recent legislative sessions have not seen significant changes proposed in terms of changes to*

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*our victims' rights statutes like proposed in this measure. It seems this is intended to address a problem that does not really exist in South Dakota.*

*Finally, there is concern of the impact this measure would place upon our states attorneys and their offices, responsibilities, staffing and budget. Prosecutors, the defense bar and the state bar as a whole are strongly opposed to the measure, stating the measure is generally unneeded in South Dakota, would have costly implications and is better handled statutorily.*

**Sources**

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