



## ISSUE BRIEF:

### Revising Certain Provisions Relating to the Rights of Crime Victims — Constitutional Amendment Y

Approved by the Board of Directors: May 23, 2018

***The Sioux Falls Area Chamber of Commerce encourages a “YES” vote on Constitutional Amendment Y on the 2018 primary election ballot and for the Chamber to actively campaign on the measures behalf.***

The 93<sup>rd</sup> legislature proposed and submitted to the voters a Constitutional amendment to revise certain provisions relating to the rights of crime victims through a joint resolution (HJR 1004).<sup>1</sup> The coalition urging legislative adoption was comprised of both those who supported and opposed the 2016 Marsy’s Law ballot measure. The HJR 1004 passed the House unanimously, passed the Senate amended 22/13. The House then concurred with the Senate amendments 61/6.<sup>2</sup>

The Attorney General’s 2018 ballot explanation<sup>3</sup> states:

Marsy’s law amendment, Constitutional Amendment Y (CA-Y), revises certain provisions relating to the rights of crime victims. This amendment makes changes to the Marsy’s Law ballot measure, adopted by the voters in 2016.

The amendment narrows the definition of “victim” to mean a person against whom a crime or delinquent act is committed. If the victim is killed, incapacitated, or a minor, then “victim” may include that person’s spouse, parent, child, sibling, grandparent, grandchild, or guardian.

The amendment makes it clear that a victim must make an affirmative request to receive the benefits of several of the rights provided by Marsy’s Law. In addition, the amendment clarifies law enforcement is allowed to share information with the public to help solve crimes.

The amendment also provides a person may not file a lawsuit for money damages against the State, local governments, or their officers and employees, if the person’s rights under Marsy’s Law are violated.

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<sup>1</sup> The prime sponsors of HJR 1004 were Representative Mickelson (D-13) and Senator Bolin (D-16). *Note additional legislation was enacted by the legislature relating to Marsy’s law. HB 1162 provided for the placement of a proposed constitutional amendment on the June primary ballot and provided funding for the change to local election officials. HB 1174 revised certain provisions regarding rights for crime victims.*

<sup>2</sup> Legislative Research Council webpage:

[http://www.sdlegislature.gov/Legislative\\_Session/Bills/Bill.aspx?Bill=HJR1004&Session=2018](http://www.sdlegislature.gov/Legislative_Session/Bills/Bill.aspx?Bill=HJR1004&Session=2018) (2018). *Note: Joint resolutions do not require the Governor’s signature.*

<sup>3</sup> Attorney General 2018 Ballot Explanation of Constitutional Amendment Y. Secretary of State website:

[https://sdsos.gov/elections-voting/assets/2018\\_CA\\_HJR1004\\_AGStatement.pdf](https://sdsos.gov/elections-voting/assets/2018_CA_HJR1004_AGStatement.pdf) (2018).

## **Proponent Rationale<sup>4</sup>**

Proponents of CA-Y assert the 2016 original version of Marsy's Law had unintended consequences and the propose amendment fixes the law. First, the amendment maintains the constitutional right of victims of criminal acts to participate in criminal proceedings in South Dakota. In addition, it clarifies that most of these rights are available at the request of the victim and in most cases the victim must be the individual victimized by a criminal act to assert these rights. The amendment also clarifies law enforcement can share information with the public to help solve crimes.

Passing this amendment will save money for county governments and it will avoid unnecessary lawsuits about these rights.

The amendment is widely supported by victim's rights and their advocates, state's attorneys, sheriffs, police chiefs and county officials. It was supported by the Governor and by legislators from both political parties. In addition, the national group who wrote and promoted Marsy's Law in the 2016 election, also supports CA-Y.

## **Opponent Rationale<sup>5</sup>**

Opponents of CA-Y believe it is better to repeal Marsy's Law rather than amend it. Marsy's Law, even with amendments, will still place demands on county budgets. They assert the law is unnecessary, costly and unconstitutional and prefer the initial repeal proposed in HJR 1004 before it was amended. Moreover, opponents assert the Marsy's Law was imposed on South Dakotans by a California billionaire who has no ties to South Dakota.

*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.*

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## **Historical Background from the 2016 Election.**

In 2016, an amendment to the Constitution, known as Marsy's Law or Constitutional Amendment S (CA-S), was placed on the ballot though the initiative process. In summary, CA-S expanded the following victim's protections, places them within the State Constitution and gives crime victims written notification of these rights:

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<sup>4</sup> South Dakota Secretary of State website, Ballot Question Pamphlet Compiled by the Office of the Secretary of State Shantel Krebs. <https://sdsos.gov/elections-voting/assets/BallotQuestionPamphlet2018Primary.pdf> (2018).

<sup>5</sup> South Dakota Secretary of State website, Ballot Question Pamphlet Compiled by the Office of the Secretary of State Shantel Krebs. <https://sdsos.gov/elections-voting/assets/BallotQuestionPamphlet2018Primary.pdf> (2018).

- 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; and
- Opportunity to provide input during all phases of the criminal justice process.

The Sioux Falls Area Chamber of Commerce encouraged a **No vote on CA-S**<sup>6</sup>. (*The amendment passed by a vote of 215,565 to 146,084*<sup>7</sup>.)

### Key Rationale Points for Opposing CA-S in 2016<sup>8</sup>:

- A change or expansion of these rights is better handled in statute rather than South Dakota's constitution. Once inserted into the constitution, the impacts of this measure become arduous to change or adjust. Statutes, on the other hand, can be changed in a legislative session. State law addresses victims' rights and have been enacted since the early 1990's<sup>9</sup>.
- The term "victim" is overly broad to include individuals not victimized by a criminal act and may be in conflict with a criminal defendant's rights.
- The change in law is intended to address a problem that is addressed in South Dakota through statute.
  - This ballot measure was authored by Dr. Nicolas after his sister, Marsy, was murdered by her boyfriend. Only a week after the murder, Dr. Nicolas and his mother walked into a grocery store after visiting her daughter's grave and were confronted by the accused murderer. The family had no idea that he had been released on bail. Dr. Nicolas first proposed the change to California's state constitution, the state wherein he resides. Since then, he has taken this effort to South Dakota, North Dakota and Ohio. In South Dakota, Dr. Nicolas was the sole funder of the 2016 campaign and invested \$2.1 million dollars<sup>10</sup> to get CA-S passed. He intends to bring Marsy's law to all 15 states that do not extend enumerated rights to victims of crimes in their state constitutions.<sup>11</sup>
- Concern for the impact this measure would place upon South Dakota's state's attorneys and their offices, responsibilities, staffing and budget. Prosecutors, the defense bar and the state bar were strongly opposed to the measure.

<sup>6</sup> Issues Management Council adopted: August 17, 2016.

<sup>7</sup> South Dakota Secretary of State website: <https://sdsos.gov/elections-voting/default.aspx> (2018)

<sup>8</sup> Issues Management Council Issue Brief, July 2016.

[http://www.siouxfallschamber.com/publications/BOD%20MarsysLaw\\_positions\\_rationale\\_final.pdf](http://www.siouxfallschamber.com/publications/BOD%20MarsysLaw_positions_rationale_final.pdf) (2018)

<sup>9</sup> S.D.C.L. 23A-28C- (2012).

[http://www.sdlegislature.gov/Statutes/Codified\\_Laws/DisplayStatute.aspx?Type=Statute&Statute=23A-28C-1](http://www.sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=23A-28C-1)

<sup>10</sup> South Dakota Secretary of State website, campaign finance reporting system, statewide ballot question committee, Marsy's Law for South Dakota: <https://sdcfr.sdsos.gov/Search/Search.aspx> (2018).

<sup>11</sup> Marsy's Law, Justice with Compassion website: <https://marsyslaw.us/about-marsys-law/> (2018).