

# Wisconsin Association of Criminal Defense Lawyers: Marsy's Law creates unfunded government mandates that jeopardize constitutional rights

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This April 7, 2020 Election, the Wisconsin election ballot asks voters whether they want to amend Wisconsin's Constitution to adopt "Marsy's Law," a national proposal created by a California billionaire to amend our state constitutions for the stated purpose of increasing constitutional rights for victims of crime. Marsy's Law defines a "victim" as any person, or in certain cases a family member or representative, who accuses another person of a criminal act.

While Marsy's Law has good intentions, it was not drafted with the existing protections for victims under the Wisconsin Constitution in mind, and therefore is likely to burden our state with unclear, unfunded mandates while presenting grave risks to the Constitutional protections to citizens of Wisconsin accused of crimes.

The Wisconsin Ballot Referendum question for Marsy's Law states:

"Additional rights of crime victims. Shall section 9m of article I of the constitution, which gives certain rights to crime victims, be amended to give crime victims

additional rights, to require that the rights of crime victims be protected with equal force to the protections afforded the accused while leaving the federal constitutional rights of the accused intact, and to allow crime victims to enforce their rights in court?”

The first problem is that the Wisconsin Ballot Referendum question for Marsy's Law does not explain which “additional rights” it would provide to “victims,” leaving voters in the dark about what they are voting for. The Ballot Referendum question therefore requires Wisconsin citizens to vote on a substantial constitutional change without providing them the text of the proposed constitutional amendment. Expressing similar concerns, the Supreme Court of Montana struck down Marsy's Law as unconstitutional, ruling that Marsy's Law contains multiple constitutional amendments, each of which require a separate vote so that voters are able to make an informed and specific choice about which Constitutional changes they are voting for.

Second, while many of the proposed “additional rights” included in Marsy's Law are indisputably beneficial – – such as treating victims “with dignity, respect, courtesy, sensitivity, and fairness” – the fact is that section 9m, article I of the Wisconsin Constitution *already* provides victims with many of the same constitutional rights. Because Marsy's Law is a national proposal, it was not written with careful consideration about how to improve existing victim's rights in the Wisconsin Constitution, but to advance a national agenda.

Third, states that have rejected Marsy's Law have raised concerns that it would create undefined and potentially far-reaching Constitutional mandates that are likely to directly undermine the Constitutional rights of the accused.

Marsy's Law would allow “victims,” who accuse someone of a crime (whether or not that individual is innocent or guilty) to refuse to provide evidence that may be essential to the determination of the accused's innocence. This mandate

undermines fundamental Constitutional protections that our Founding Fathers guaranteed to protect our citizens who are presumed to be innocent from being wrongfully convicted by allowing them to discover and present evidence in support of their innocence. For these reasons, lawmakers in states such as Iowa, Idaho, Maine, and New Hampshire have recently rejected Marsy's Law. Lawmakers in Idaho specifically cited concerns about the vague and potentially far-reaching language guaranteeing a victim "reasonable protections from the accused throughout the criminal justice process," which they were concerned would be used to confiscate firearms from the accused before trial, even if there were substantial evidence that he or she is innocent.

Finally, states that have passed Marsy's Law have raised significant concerns about paying for the costs of the unfunded mandates created by Marsy's Law. In South Dakota, a sparsely populated state, the four largest counties reportedly spent a half-million dollars in the first year alone responding to the Constitutional mandates created by Marsy's Law. There is no way to accurately calculate all the far-ranging costs that Wisconsin would incur resulting from Marsy's Law becoming law because the mandates are not defined. As a result, Wisconsin judges, prosecutors, law enforcement agencies, and victim rights coordinators would be left to interpret them, creating additional burdens on justice officials and taxpayers.