



Marsy's Law Is a Gift to Bad Cops

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On September 16, 2018, a South Dakota Highway Patrol trooper spotted 21-year-old Kuong Gatluak speeding down I-29. After a 4-mile pursuit at high speeds, the trooper pulled over Gatluak, who got out of his car despite the trooper's orders to remain in the car, and attacked the trooper. During the melee, the trooper felt Gatluak going for her gun, so she fired two shots at Gatluak, hitting him in the left shoulder and bicep.

What the officer did next, however, is part of a worrisome trend. She invoked Marsy's Law, a 2016 constitutional amendment passed by the state's voters that protects victims' rights, which has also been passed in at least 10 other states. "Due to officer safety and the subject being out on bond, and that the trooper has invoked the privacy provisions of Marsy's Law, the Attorney General's Office will not be releasing the name," a spokesperson wrote to the *Rapid City Journal*.

In late November 2018, another South Dakota police officer did the same thing after shooting and killing a suspect during a chase and shootout. "The deputy is invoking his protections under Marsy's Law," the Pennington County Sheriff's Office spokesperson told the *Rapid City Journal*. "The new constitutional amendment affords him protections as it does any victim of crime."

In neighboring North Dakota, a July 2018 investigation by the *Grand Forks Herald* discovered that at least eight officers had claimed the privacy protections of Marsy's Law since the state's voters approved the ballot initiative in November 2016.

Officers claiming they have a victim's right to privacy after shooting someone is another unintended consequence of Marsy's Law and its campaign, Marsy's Law for All—founded and backed by billionaire Henry Nicholas—which seeks to enshrine victims' rights protections in every state constitution and the U.S. Constitution.

The recent occurrences of officers availing themselves of Marsy's Law have civil libertarians and policing experts concerned. (For a fuller discussion of how Marsy's Law threatens due process and the presumption of innocence, see my article in the April issue of *Reason* magazine.)

Jonathan Blanks, a research associate specializing in criminal justice, race, and policing at the Cato Institute, calls victims' rights for cops "absurd" and says it will only bolster the secrecy of police officers and their police departments and unions, who often try to hide the inner workings of policing from the public, "particularly when its controversial or potentially illegal." Blanks notes that police officers wear their names on their uniform and act in the name of the public in public. "That information, by nature, must be public," said Blanks.

David Bordewyk, general manager of the South Dakota Newspaper Association, couldn't agree more. "You have law enforcement officers able to use Marsy's Law to shield their identities in the line of duty, doing the public's work," he told *Reason*. "It's something that none of us ever

contemplated when Marsy's Law was enacted in South Dakota. It obviously flies in the face of good open transparent government at all levels in our state."

The state's former attorney general, Marty Jackley, told the *Rapid City Journal* that his office "took a look at the constitutional amendment" and that "it doesn't have an exception for any category," including cops. *Reason* reached out to South Dakota's new attorney general, Jason Ravensborg, to see if his office has the same interpretation of Marsy's Law as his predecessor, but the office did not respond to requests for comment. The secretary *Reason* contacted even refused to give out the public information officer's name because it would have violated office rules.

Police officers, of course, can be legitimate victims of crime. For instance, it would be impossible to argue that New York City police officer Miosotis Familia wasn't a victim when a gunman walked up to her vehicle in the early morning hours of July 5, 2017, and fired one fatal shot through the mobile command vehicle window she was sitting in.

But according to Blanks, giving police officers the right to invoke privacy protections in use-of-force incidents could have grave effects on community trust. First off, officers with histories of abuse or alleged abuse complaints will be able to hide their identities from public scrutiny—including from prosecutors and defense attorneys—and continue to abuse their authority. This leads to another problem for police departments, says Blanks. Abusive officers, who generally are a very small minority, receive protection while the reputations of the majority of their good officers are tarred and feathered.

"When you're protecting the worst officers," Blanks said, "all of the officers get smeared."

Both the International Chiefs of Police and the Police Executive Research Forum, which advocate for police best practices, ignored repeated requests for comment on how police officers invoking Marsy's Law might protect bad actors and erode community trust.

The Marsy's Law for All campaign, however, continues to roll on with its ill-advised mission to enshrine victims' rights in every state constitution. Though every legislature should defeat the initiative because of the model legislation's vague language that undermines defendants' rights, any legislature that goes forward with it should at the bare minimum amend the language to exclude police officers from its protections.

The notion that a sworn officer who is a member of an organization that releases mugshots of people who are presumed innocent can hide his identity when he uses violence in the public's name left Blanks incredulous.

"No, no," he said, "that's not how it should work."