

# Tampa Bay Times

## Florida cops who use force keep names secret with Marsy's Law

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TAMPA — Shortly after two officers shot a man last month, Tampa police Chief Brian Dugan approached them with a request.

Dugan told them he wanted to release their names after they wounded the 34-year-old man who brandished a handgun. That used to be standard practice when an officer was involved in a shooting or other use-of-force incident. But because the man they shot threatened them with a gun, Dugan said, the officers had a right to privacy under a state constitutional amendment known as Marsy's Law.

The officers initially declined. At that point, Dugan said, his hands were tied by a law that he doesn't think should apply to officers acting in the line of duty.

"There is a sense of frustration," Dugan said in an interview two days after the Jan. 13 shooting. "I do think we should be able to release this information, but I have to respect their rights under Marsy's Law."

In the year since Marsy's Law took effect, law enforcement agencies in Florida have cited the measure as they withhold names of officers who use force on the job, in some cases lethally.

In July, the Charlotte County Sheriff's Office declined to release the names of two deputies who fatally shot a man they say fired at them. In October, the Pasco Sheriff's Office withheld the names of two deputies who opened fire on a man who they said drove a car at them. The suspect was not hit.

Most recently, the Hernando County Sheriff's Office cited Marsy's Law in withholding the name of a deputy who fatally shot a man Saturday during a domestic disturbance call in Spring Hill. The Sheriff's Office said the deputy returned fire after the man shot at him.

Supporters of this approach say officers deserve the same rights as the general public. Critics say the public has a right to know the identities of law enforcement officers who use force in the line of duty.

When the names are hidden, “there’s no oversight and there’s no accountability,” said Barbara Petersen, president emeritus of the nonprofit First Amendment Foundation, which advocates for the state’s open records law.

“What if we have a law enforcement officer who is found to have violated department policy?” Petersen said. “There will be repercussions and we’ll never know.”

Passed in November 2018 by 62 percent of Florida voters, Amendment 6 was modeled after a similar measure that originated in California and is now law in 10 states. It’s named after Marsy Nicholas, a University of California senior who was murdered by her ex-boyfriend in 1983.

The 11 rights outlined in the amendment include consideration of a crime victim’s safety when authorities set bail for the accused and informing a victim of developments in the prosecution.

The amendment also includes the right “to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim’s family, or which could disclose confidential or privileged information of the victim.” The amendment doesn’t specify whether this confidentiality provision is automatic or if crime victims have to request the protection.

That vagueness has prompted many Florida agencies, including the Hillsborough and Pasco sheriffs’ offices and the Tampa Police Department, to automatically withhold the names of all crime victims, whether their bike was stolen or they died in a homicide. Other agencies withhold victim names only if the victims or, in the case of a homicide or incapacitating crime, their families, request the privacy protection. The Pinellas County Sheriff’s Office and St. Petersburg Police Department take this approach.

This same inconsistency has surfaced as agencies decide whether and how to apply the privacy provision to law enforcement officers on the job.

The sheriffs’ offices in Pasco and Hernando counties are among agencies that automatically apply the law to their personnel working in the line of duty.

“When Marsy’s Law was overwhelmingly approved by voters, there were no clauses that limited the rights of victims by their careers,” Pasco Sheriff Chris Nocco said in emailed responses to questions from the *Times*. “I support this law and agree that, just because a person chooses a career in law enforcement, their rights should not be limited.”

A spokeswoman for Hernando Sheriff Al Nienhuis said in an email that the sheriff must err on the side of caution when dealing with rights spelled out in the state’s Constitution.

“The state’s voters apparently believed that increasing the rights of victims was a fair trade for some reduced transparency,” spokeswoman Denise Moloney said.

The St. Petersburg Police Department withholds officers’ names upon their request, a spokeswoman said.

Other agencies do not apply the law to their officers who become crime victims before or during a use-of-force incident.

The Hillsborough Sheriff's Office releases the names because deputies are working as representatives of the office, spokeswoman Crystal Clark said in an email.

"At the scene of an incident, a discussion is had with the deputy involved prior to a media briefing advising them that their name will be released to the public in the interest of transparency," Clark said.

Clark noted state laws that predate Marsy's Law already protect from disclosure law enforcement officers' personal information such as their home address, date of birth and information about dependent children.

Clearwater Police Chief Dan Slaughter also pointed to those exemptions as a factor in his decision not to apply the law to officers on duty.

Pinellas Sheriff Bob Gualtieri, who also declines to apply the law to his deputies, said it's not good public policy to withhold the names of law enforcement officers who use force in their official duties.

"Marsy's Law incentivizes people to come forward and report crime so they don't have to worry about consequences and reprisal," he said. "Cops don't fall into that bucket. This is what we do. If you don't want to be transparent, if you don't want to be forthright, then don't sign up for the job."

In Tampa, Dugan's practice is to ask officers if they will give permission to release their names. After the Jan. 13 shooting of Wayne Wilson, the two officers who initially declined to waive their Marsy's Law rights, John Baker and Joshua Yungaitis, changed their minds.

The right to remain anonymous during a "cooling-off period" after a shooting or other use-of-force incident is valuable for officers who can later provide permission for their names to be released, said Master Patrol Officer Darla Portman, president of the Tampa Police Benevolent Association.

"They need time to decompress and not worry about their safety," Portman said. "These officers took a few days, they notified their families, they've been able to gather their thoughts."

The issue has sparked a lawsuit in at least one Florida county.

The Jacksonville chapter of the Fraternal Order of Police filed suit last month against the Jacksonville Sheriff's Office claiming Sheriff Mike Williams has denied deputies their right to remain anonymous if they become crime victims on the job. A spokesman for the Sheriff's Office said the office does not comment on pending litigation.

Dugan, the Tampa chief, said he would also have to redact the officers' names from internal affairs investigative documents, which outline whether an officer violated policy and if so, how they will be punished, when the documents are requested by the media or general public. A spokeswoman for Hillsborough State Attorney Andrew Warren, which investigates officer-involved shootings, said his office would redact the names in records if officers invoke Marsy's Law.

The names could eventually become public in other ways. For example, they could be included in the court file if a suspect is charged with a crime. And the Pinellas-Pasco State Attorney's Office will not withhold the officers' names in records related to its investigations into officer-involved shootings, said Sara Macks, division director of appeals and public records.

The workings of law enforcement is supposed to take place in public "because it is going on in all of our names," said Walter Olson, a senior fellow at the Cato Institute, a libertarian think tank.

"When you cut off information that people badly want to know and that affects issues they have to vote on, there'd better be a darn good reason, and protecting the police officer's name is not the reason," said Olson, who has written about Marsy's Law. "We know the police are a well-focused lobbying force on disciplinary issues having to do with the use of force and that's something that should make us wary in terms of shutting off one of the main public ways we find out about misconduct."

Gualtieri, who also serves as the president of the Florida Sheriffs Association, said the Legislature needs to address the law's vagueness by passing a clarifying bill. Police departments also want clarification, said David Marsey, general counsel for the Florida Police Chiefs Association.

Neither association has taken a position on whether the law should apply to law enforcement in the line of duty but would review and weigh in on any filed bills, officials said.

In last year's state Legislative session, Sen. Lauren Book filed a bill that would have clarified several facets of the law. The bill, which died in committee, said that law enforcement and corrections officers who become crime victims during their official duties are exempt from the privacy provisions.

Book does not plan to reintroduce the bill this year because the Legislature didn't appear to be interested in addressing the issue, a spokeswoman for the Hollywood Democrat said.

Any legislation on Marsy's Law would likely go through the Senate Criminal Justice Committee, chaired by Sen. Keith Perry, R-Gainesville. Last session, a variety of groups, including prosecutors and public defenders, came to Perry with concerns about how the amendment was going to be implemented, Perry said.

Lawmakers decided to wait a year to act to see whether their concerns became reality. This session, Perry said he hasn't heard from anyone about the issue.

"Nobody has come to me this session saying, 'Here's the concerns we have and the realities now,'" he said.

Because of that, he doesn't expect a bill to come up this session, which is scheduled to end March 13.

*Times/Herald staff writer Lawrence Mower contributed to this report.*