

'Marsy's Law': The Push To Constitutionalize Crime Victims' Rights

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May 8, 2019

A determined national campaign has resulted in the enactment in California, Ohio, Illinois, and several other states of state constitutional amendments promoted as a bill of rights for crime victims, often known as “Marsy’s Law” after a murder victim whose brother has backed the campaign. In addition to spreading the idea to other states — the exact provisions vary from state to state — proponents seek to take the idea nationwide through a constitutional amendment.

Unfortunately, most versions of Marsy’s Law so far impinge on legitimate rights of criminal defendants, constitutionalize issues better left to resolution by judges or lawmakers, and create ongoing tension with the presumption of innocence. [Matthew Harwood explores some of these questions in an excellent new analysis in Reason](#), and others have filled in more examples in recent online discussions. For example: In the name of protecting their privacy, and especially shielding them from fear of possible intimidation, the measures restrict dissemination of personal information about crime victims. While the impulse involved is understandable, and there have long been legitimate ways of accommodating it, it is also essential that accused persons have access to evidence they need to prepare the case in their defense. Some Marsy's Law provisions give victims and their attorneys a basis to resist defendant-side requests for pre-trial depositions and medical records relevant to the incident and injury, even when potentially exculpatory.

One generally accepted way to harmonize the legitimate interests on each side is for judges to review requests for potentially sensitive personal information in chambers, and decide what information is needed for the defense and whether a protective order should attach that would prohibit dissemination beyond the lawyers themselves. But the laws can override that discretion, [notes Jerome Buting on Twitter](#).

Meanwhile, the laws can deprive the public of information about crime that is legitimately important to them, as when, for example, a murder occurs in their neighborhood. Twitter user [Timothy Burke offers a Tampa instance](#).

Some Marsy’s Law provisions purport to give victims a right to have the process over and done within a certain time limit such as two or five years. Trouble is, not every exculpation or appeal is finished that fast. Note that the Bill of Rights’ Sixth Amendment asymmetrically assigns the accused, but not the public in whose name he is accused, the right to a speedy trial.

Underlying several of these problems is a point made by Buting above: “In many cases whether the accuser is a ‘victim’ is only decided after a trial.” To be accorded rights before that point may presume the outcome, and can also give a complainant or accuser valuable leverage.

Consider, for example, the phenomenon by which cops have employed the laws to conceal their identities from the public after shooting civilians who were then charged with having assaulted the officer. Harwood has more on that in a [separate Reason piece](#), as does my Cato colleague Jonathan Blanks in a recent [Cato Daily Podcast](#). (See also [Overlawyered](#).) 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’.”

Twenty-two years ago Roger Pilon, founder of Cato’s legal studies program, [testified against](#) a proposed constitutional amendment along similar lines. His reasons remain valid today. While considerate treatment of victims is important, and it can make sense to take steps to assure them (e.g.) better notice of proceedings and return of their lost property, it is dangerous to let the conduct and timing of criminal process itself depend too much on their wishes. Interests of evenhanded justice counsel against letting patterns of conviction and punishment depend too much on whether the complainant in any particular case is angry, energetic, articulate, or for that matter present at all. The function of criminal prosecution cannot be to validate the victim’s suffering. It must instead be to ascertain the truth as best as possible and impartially carry out the legal consequences on the guilty.

In short, there are very good reasons why the Framers included in the Constitution and Bill of Rights many protections for criminal defendants, but relatively few for victims. We forget that wisdom at our peril.

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