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Marsy's Law: It Persuaded Voters, But Will It Persuade the Kentucky Supreme Court?

January 20, 2019

Blog Post | 107 KY. L. J. ONLINE | January 19, 2018

Marsy's Law: It Won Over Voters, But Will It Win Over the Kentucky Supreme Court?

Ameena R. Khan^[1]

On November 6, 2018 an amendment to Kentucky's state constitution, Marsy's Law, appeared on Kentucky voter's ballots. Kentucky's Marsy's Law passed with nearly 63% of the vote. However, three months prior to the election the Kentucky Association of Criminal Defense Lawyers filed its challenge to the proposed amendment in Franklin Circuit Court, arguing the law would "significantly change the criminal justice system" and that the wording on the ballot is "insultingly vague and grossly misleading."^[2] When voters casted their vote on Marsy's Law they read: "Are you in favor of providing constitutional rights to the victims of crime, including the right to be treated fairly, with dignity and respect, and the right to be informed and have a voice in the judicial process?"^[3] Three weeks before the November election, Judge Thomas Wingate ruled that the wording on the ballot did not accurately reflect the impact of the law to voters, effectively blocking the voter's approval.^[4]

Kentucky's Marsy's Law would guarantee ten constitutional rights for crime victims.^[5] Many of the rights asserted in the proposed amendment are already covered by a series of state laws called the "Kentucky Crime Victim Bill of Rights."^[6] These state laws passed in 1986, provide statutory rights to crime victims including, the victim's participation in the criminal justice process, how to register for notifications on the accused's status, information on how they may be protected from intimidation, harassment, and retaliation, prompt updates on judicial proceedings, and the right to submit a victim impact statement.^[7]

However, supporters of Marsy's Law argue that amending the state constitution to include many of these same rights would make them more secure than the already existing statute.^[8] Critics voice concern over the courts granting legal status to a victim, before it has been established that a crime took place, considering that our judicial system fundamentally values the presumption of innocence.^[9] Further, opponents of the proposed amendment assert that they are against letting the legislature set rules for criminal proceedings. ^[10] Rep. Chad McCoy, one of these critics, stated "I am not somebody who thinks we should be messing with the constitution for individual rights, especially when we can do it by statute."^[11]

Six states, including Kentucky, had Marsy's Law on the ballot this year.^[12] In all six states voters approved the law and currently 30 states afford constitutional protections for crime victims.^[13] However, Marsy's Law has faced opposition in states that have adopted the amendment.^[14] In 2017, the Montana Supreme Court ruled the amendment "unconstitutional and void in its entirety" and the legislature in South Dakota was forced to develop a new version of Marsy's Law that "reduces the critical bureaucratic issues the 2016 constitutional amendment."^[15]

The Kentucky Supreme Court will determine the fate of Marsy's Law on an expedited appeal at a hearing on February 8, 2019.^[16] If the Supreme Court chooses not to ratify this amendment, Marsy's Law will be void.^[17]



Contact Us

620 S. Limestone
40508 Lexington, Kentucky

editors@kentuckylawjournal.org

(859) 257-1678



[1] Staff Editor, Kentucky Law Journal, Volume 107; J.D. Candidate, The University of Kentucky College of Law (2020); B.A., University of Kentucky (2017).

[2] *Lawyers Challenge effort to put victim's right in Kentucky Constitution*, COURIER J. (Aug. 13, 2018, 3:40 PM), <https://www.courier-journal.com/story/news/2018/08/13/kentucky-lawyers-challenge-marsys-law-effort/977155002/>.

[3] S.B. 4 Gen. Assemb., Reg. Sess. (Ky. 2017).

[4] *Id.*

[5] *Id.*; see Adam Beam, *Kentucky Judge Blocks Certification of 'Marsy's Law' Vote*, U.S. NEWS (Oct. 15, 2018, 4:27 PM), <https://www.usnews.com/news/best-states/kentucky/articles/2018-10-15/kentucky-judge-blocks-certification-of-marsys-law-vote>.

[6] See Ky. Rev. Stat. Ann. § 421.500–421.575; OFFICE OF THE ATTORNEY GENERAL, KENTUCKY CRIME VICTIMS' BILL OF RIGHTS HANDBOOK 1 (2018), <https://ag.ky.gov/publications/AG%20Publications/Crime-Victim-BoR-Handbook.pdf>.

[7] See sources cited *supra* note 6.

[8] Beam, *supra* note 5.

[9] *Id.*

[10] Daniel Desrochers, *Should Kentucky have a bill of rights for crime victims? You'll decide in November*, LEXINGTON HERALD LEADER (Jan. 24, 2018, 6:28 PM), <https://www.kentucky.com/news/politics-government/article196460159.html>.

[11] *Id.*

[12] *Marsy's Law crime victim rights*, BALLOTPEdia https://ballotpedia.org/Marsy%27s_Law_crime_victim_rights (last visited Jan. 5, 2019).

[13] *Id.*

[14] See Anne Teigen, *Rights for Crime Victims on the Ballot in Six States*, NAT'L CONF. ST. LEGIS.: NCLS BLOG, <http://www.ncsl.org/blog/2018/10/12/rights-for-crime-victims-on-the-ballot-in-six-states.aspx>, (last visited Jan. 19, 2019, 4:11 PM).

[15] *Id.*

[16] *What's Next for Marsy's Law: Supreme Court moves up appeal hearing*, COURIER J. (Nov. 15, 2018, 12:17 PM), <https://www.courier-journal.com/story/news/2018/11/15/marsys-law-appeal-moved-up-kentucky-supreme-court/2011777002/>.

[17] Ky. Rev. Stat. Ann. § 421.500 Legislative Research Commission Note (Mar. 23, 2018).

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