

Talking Points on “Marsy’s Law”¹

1. Immediately identifying an involved party as a victim erodes the presumption of innocence entitled to the accused.²
 - a. This can compromise the accused’s right to a fair trial.
2. There should be a high bar on pursuing constitutional amendments.
 - a. If a statute results in unintended consequences, lawmakers can amend or repeal it, whereas modifying a constitutional amendment is exceptionally difficult.
3. These initiatives assume that victims are not involved in the legal process—they are.
4. Any constitutional amendment would be redundant. Not only are state statutes already in place, but the interests of victims are already represented by prosecuting attorneys.³
5. The definition of “victim” is overly broad and could include dozens of unaffected people.⁴
6. Providing every victim of every crime with notice and a lawyer wastes scarce resources for the entire justice system.
 - a. Even state prosecutors have been against these proposed amendments.⁵
7. The purpose of a criminal trial is not to advocate for the victim, but rather to determine if the accused is factually and legally responsible for a crime.

It is important to remember the audience when targeting messages. While lawmakers have the time and the will to study policy implications, the general public will only react to simple, clear, and concise ideas. For example, point four and point six above will most likely have more impact with an everyday person, while points one and two will be of more interest to legislators.

Key words and concepts: Redundancy, constitutional rights, wasting taxpayer money, hindering prosecution, fairness, innocent until proven guilty

¹ As these talking points are intended for a wide audience, they are written in response to model “Marsy’s Law” legislation. As such, any messaging should be tailored to a particular state. The national model legislation can be found at <https://marsyslaw.us/resources/im-a-policymaker/> (“Model Legislation”).

² See Model Legislation §A (“...to ensure that crime victims’ rights and interested are respected and protected by law in a manner no less vigorous than the protections afforded to criminal defendants and juvenile delinquents, every victim shall be entitled to the following rights, beginning at the time of their victimization:”).

³ See Purpose, VictimLaw, Office of Justice Programs, U.S. Department of Justice, <https://www.victimlaw.org/victimlaw/pages/moreAbtVL.jsp> (“Today, every state, the District of Columbia, and several territories have an extensive body of crime victims’ rights laws within their statutory codes.”).

⁴ See Model Legislation §D.

⁵ Dana Ferguson, *State Bar says ‘no’ to Marsy’s Law*, Argus Leader, June 24, 2016, available at <http://www.argusleader.com/story/news/2016/06/24/state-bar-says-no-marsys-law/86329130/>.