North Dakota Constitution
Article I Section 25

1. To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role throughout the criminal and juvenile justice systems, and to ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than the protections afforded to criminal defendants and delinquent children, all victims shall be entitled to the following rights, beginning at the time of their victimization:

a. The right to be treated with fairness and respect for the victim's dignity.

b. The right to be free from intimidation, harassment, and abuse.

c. The right to be reasonably protected from the accused and any person acting on behalf of the accused.

d. The right to have the safety and welfare of the victim and the victim's family considered when setting bail or making release decisions.

e. 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 about the victim, and to be notified of any request for such information or records.

f. The right to privacy, which includes the right to refuse an interview, deposition, or other discovery request made by the defendant, the defendant's attorney, or any person acting on behalf of defendant, and to set reasonable conditions on the conduct of any such interaction to which the victim consents. Nothing in this section shall abrogate a defendant's sixth amendment rights under the Constitution of the United States nor diminish the state's disclosure obligations to a defendant.

g. The right to reasonable, accurate, and timely notice of, and to be present at, all proceedings involving the criminal or delinquent conduct, including release, plea, sentencing, adjudication, and disposition, and any proceeding during which a right of the victim is implicated.

h. The right to be promptly notified of any release or escape of the accused.

i. The right to be heard in any proceeding involving release, plea, sentencing, adjudication, disposition, or parole, and any proceeding during which a right of the victim is implicated.

j. The right, upon request, to confer with the attorney for the government.

k. The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any presentence or disposition investigation or compiling any presentence investigation report or recommendation regarding, and to have any such information considered in any sentencing or disposition recommendations.

l. The right, upon request, to receive a copy of any report or record relevant to the exercise of a victim's right, except for those portions made confidential by law or unless a court determines disclosure would substantially interfere with the investigation of a case, and to receive a copy of any presentence report or plan of disposition when available to defendant or delinquent child.

m. The right, upon request, to the prompt return of the victim's property when no longer needed as evidence in the case.

n. The right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal or delinquent conduct. All monies and property collected from any person who has been ordered to make restitution shall be first applied to the restitution owed to the victim before paying any amounts owed to the government.

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o. The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related post-judgment proceedings.

p. The right, upon request, to be informed of the conviction, adjudication, sentence, disposition, place, and time of incarceration, detention, or other disposition of the offender, any scheduled release date of the offender, and the release of or the escape by the offender from custody or commitment.

q. The right, upon request, to be informed in a timely manner of all post-judgment processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole authority shall extend the right to be heard to any person harmed by the offender.

r. The right, upon request, to be informed in a timely manner of any pardon, commutation, reprieve, or expungement procedures, to provide information to the governor, the court, any pardon board, and other authority in these procedures, and to have that information considered before a decision is made, and to be notified of such decision in advance of any release of the offender.

s. The right to be informed of these rights, and to be informed that victims can seek the advice of an attorney with respect to their rights. This information shall be made available to the general public and provided to all crime victims in what is referred to as a Marsy's Card.

2. The victim, the retained attorney of the victim, a lawful representative of the victim, or the attorney for the government upon request of the victim may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, ensuring that no right is deprived without due process of law, and affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding disposition of a victim's right shall be clearly stated on the record.

3. The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims. All provisions of this section apply throughout criminal and juvenile justice processes and are self-enabling. This section does not create any cause of action for damages against the state, any political subdivision of the state, any officer, employee, or agent of the state or of any of its political subdivisions, or any officer or employee of the court.

4. As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. If a victim is deceased, incompetent, incapacitated, or a minor, the victim's spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim that is substantially similar to a listed relationship, may also exercise these rights. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

Credits

Init. Measure No. 3, § 1, approved November 8, 2016.

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North Dakota
Campaign Finance Online

Marsy's Law for North Dakota LLC
Ballot Measure Committee
Registration Date: 1/20/2016
Reporting Year 2016

The Committee **Supports**
Measure/Petition **Protecting the Rights of Crime Victims - Constitutional**

Committee Information

Name	**Marsy's Law for North Dakota LLC**
Acronym	
Telephone	**(701) 222-8628**
Email	**marsha@marsyslaw.us**
Address	**117 W. Front Street Bismark, ND 58504**

Agent Information

Name	**Chrissie Hastie**
Title/Position	**Treasurer**
Telephone	**(702) 259-5559**
Email	**chrissie@incompliance.net**
Address	**117 W. Front Street Bismark, ND 58504**

Has this committee or organization incorporated solely for the purpose of liability protection? **No**

2016 Year End Statement

Date Filed	Starting Balance	Ending Balance	Total of all contributions received of $100 or less	Total of all expenditures of $100 or less	Total contributions received greater than $100	Total of all expenditures greater than $100
1/31/2017	$0.00	$57,783.35	$0.00	$0.00	$2,377,803.00	$2,320,019.65

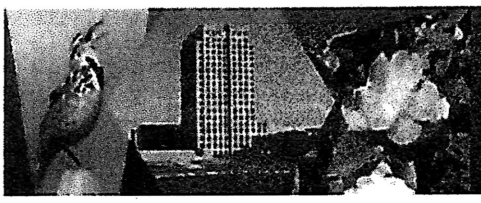
Contributions

Name	Address	Date	Amount	In-Kind (all or in part)
Henry Nicholas	15 Enterprise Suite 550 Aliso Viejo, CA 92656	11/29/2016	$2,377,803.00	☐

Employer: Self Employed
Occupation: Philanthropist/Business Executive

Principal place of business
15 Enterprise
Suite 550
Aliso Viejo, CA 92656

Total: $2,377,803.00



Secretary of State
NORTH DAKOTA

North Dakota
Campaign Finance Online

No On 3
Ballot Measure Committee
Registration Date: 9/19/2016
Reporting Year 2016

The Committee	**Opposes**
Measure/Petition	**Protecting the Rights of Crime Victims - Constitutional**

Committee Information

Name	**No On 3**
Acronym	
Telephone	**(701) 557-3384**
Email	**erica@nodaklaw.com**
Address	**103 S 3rd St Suite 9** **Bismarck, ND 58501**

Agent Information

Name	**Erica J. Shively**
Title/Position	**Treasurer**
Telephone	**(701) 557-3384**
Email	**erica@nodaklaw.com**
Address	**103 S 3rd St Suite 9** **Bismarck, ND 58501**

Has this committee or organization incorporated solely for the purpose of liability protection? **No**

2016 Year End Statement

Date Filed	Starting Balance	Ending Balance	Total of all contributions received of $100 or less	Total of all expenditures of $100 or less	Total contributions received greater than $100	Total of all expenditures greater than $100
5/22/2017	$0.00	$1,411.47	$1,045.00	$40.00	$17,400.00	$17,114.65

(Updated: August 1, 2017)

Office of Attorney General

Guidance on Marsy's Law

(1) Who can invoke the rights provided in Marsy's Law?

An individual must meet the definition of a "victim" to invoke the rights of Marsy's Law. A person must suffer direct or threatened harm as a result of a crime to be considered a "victim."

A "victim" is defined by Marsy's Law as "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. If a victim is deceased, incompetent, incapacitated, or a minor, the victim's spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim that is substantially similar to a listed relationship, may also exercise these rights. The term 'victim' **does not include** the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor or incapacitated victim." N.D. Const. art. I, § 25 (4).

A "victim" is further defined in N.D.C.C. § 12.1-34-01(10) as "a natural person who has suffered direct or threatened physical, financial, or psychological harm as the result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed." The term 'victim' includes the family members of a minor, incompetent, incapacitated, or deceased person."

(2) Who is responsible for distributing "Marsy's Cards" to victims?

Crime victims should be given a "Marsy's Card" outlining his or her rights under Marsy's Law. The Office of Attorney General has developed an official "Marsy's Card" for statewide use by criminal justice agencies in compliance with N.D.C.C. § 12.1-34-08. Criminal justice agencies **must** use this official Marsy's Card, available for download from the Criminal Justice Resources page of the Attorney General's website, www.attorneygeneral.nd.gov.

Law enforcement officials investigating a criminal act should, at the time of initial contact with the victim or as soon thereafter as possible, provide a "Marsy's

Card" to each victim. The prosecuting attorney should provide the victim with a Marsy's Card if the victim does not already have one.

The Department of Corrections & Rehabilitation (DOCR) is responsible for providing post-conviction notifications to victims of offenders in the custody of the DOCR.

The provision of a card to the victim(s) should be documented for the record by the responding law enforcement officer (if applicable) and/or the prosecuting attorney.

(3) Does a victim need to affirmatively assert the rights of Marsy's Law?
Yes - A victim must affirmatively assert his or her rights outlined in Marsy's Law.

(4) How does a victim enforce their rights under Marsy's Law?
Victims must specifically assert their right to the responding law enforcement officer at the time of the initial response, OR thereafter to the appropriate prosecuting attorney's office. The prosecuting authority will be either the State's Attorney or City Attorney, depending on the crime and jurisdiction. Victims may contact the prosecuting attorney's office in the county or city in which the crime or attempted crime was committed in order to assert these rights.

If a victim immediately asserts his or her rights under Marsy's Law to the responding law enforcement officer, the responding law enforcement agency will need to consider the protected information under Marsy's Law before responding to any record requests, media inquiries or issuing a release/statement. This protected information could include the address of the crime and any contact information pertaining to the victim. Law enforcement officers should refer to question (7), following, for guidance on what information is protected.

An assertion of Marsy's Law rights by the victim(s) should be documented for the record by the responding law enforcement officer (if applicable) and/or the prosecuting attorney.

(5) Which agencies are subject to the asserted rights and enforcement of Marsy's Law?
Marsy's Law provides that "[t]he victim…may assert and seek enforcement of the rights enumerated in this section…in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right." N.D. Const., art. I, § 25(2). This includes any court of the state in which the criminal proceeding is being heard, the prosecuting attorney, and criminal justice agencies.

"Criminal justice agency" is defined as follows:

> **N.D.C.C. § 12-60-16.1(6):** "any government law enforcement agency or entity authorized by law to provide information regarding, or to exercise the powers of, arrest, detention, prosecution, correctional supervision, rehabilitation, or release of persons suspected in, charged with, or convicted of, a crime."
>
> **N.D.C.C. § 44-04-18.7(5):** "any law enforcement agency or prosecutor. The term also includes any other unit of government charged by law with criminal law enforcement duties or having custody of criminal intelligence or investigative information for the purpose of assisting law enforcement agencies in the conduct of active criminal investigations or prosecutions."

(6) Documenting a victim's assertion of rights.

Until an electronic system is in place that provides a central location to record whether a victim has asserted his or her rights under Marsy's law, it is the responsibility of the prosecuting attorney's office to develop an internal system or method to document who has asserted these rights. This internal system or method should be updated regularly.

The individual who is responsible for responding to open records requests within the prosecuting attorney's office should have access to this system and information so that record requests are responded to in a timely manner.

(7) What information and records are protected under Marsy's Law?

Marsy's Law provides 19 enumerated rights for victims in North Dakota including 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 about the victim, and to be notified of any request for such information or records." N.D. Const. art. I, § 25(1)(e). *See also* N.D.C.C. ch. 12.1-34 – Fair Treatment of Victims and Witnesses, N.D.C.C. ch. 12.1-35 – Child Victim and Witness Fair Treatment Standards, and N.D. Sup. Ct. Admin. R. 41.

The North Dakota Constitution also provides "[u]nless otherwise provided by law, all records of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours." N.D. Const. art. XI, § 6. *See also* N.D.C.C. ch. 44-04 – open record and meeting laws, beginning with N.D.C.C. § 44-04-17.1.

The above constitutional and statutory provisions must be read together as a whole to provide a consistent meaning and to reach a just and reasonable result, feasible of execution. N.D.C.C. § 01-02-38(3) and (4).

The following is intended to reconcile Marsy's Law with the state's open records law:

Information that can be used to locate a victim or victim's family:
Under Marsy's Law, addresses or other information that could reasonably be used to locate a victim or a member of the victim's family is protected. This includes employment addresses, references to a building in which an individual works or resides, or any other information that could reasonably be used to locate the victim or the victim's family. This information could be contained in digital media such as audio, video or images, or in witness statements. *See also* N.D.R.Crim.P. 16 and N.D. Sup. Ct. Admin. R. 41.

Information that can be used to harass the victim or victim's family:
Under Marsy's Law, telephone numbers and other contact information that could be used to harass a victim or victim's family is protected. This information could be contained in digital media such as audio, video or images, or in witness statements. *See also* N.D.R.Crim.P. 16 and N.D. Sup. Ct. Admin. R. 41.

Information that would disclose privileged information about the victim:
"Privileged" information is not defined in Marsy's Law or by North Dakota open records law. However, several statutes found throughout the North Dakota Century Code provide protection for certain "privileged" information. The public entity will need to point to such a law to withhold information or records that are "privileged."

Information that would disclose confidential information about the victim:
"Confidential" information is already defined and protected under the open records law and includes "all or part of a record…that is either expressly declared confidential or is prohibited from being open to the public." N.D.C.C. § 44-04-17.1(3). The public entity will need to point to such a law to withhold information or records that are confidential.

Names of a Victim or Victim's family
There is nothing under Marsy's Law that protects the name of a victim or the victim's family. There are, however, limited exceptions under the open records law that would protect the identity of certain crime victims. For example, the identity of victims of domestic violence, sexual offenses, sexual performance of a child, or human trafficking are protected under N.D.C.C. § 44-04-18.20. Child victim names and identifying information, except if they relate to victims of traffic accidents or of a fire, are protected under N.D.C.C. § 12.1-35-03. Unless the victim falls into one of those categories, **the victim's name cannot be withheld**.

Some common laws that already provide protections to victims include:

- N.D.C.C. § 12.1-34-01(11): "Victim" means a natural person who has suffered direct or threatened physical, financial, or emotional harm where there is probable cause to believe that the harm has been caused by the commission of a criminal act. The term "victim" includes the family members of a minor, incompetent, incapacitated, or deceased person.
- N.D.C.C. § 12.1-34-02(5): Victim contact and location information is confidential.
- N.D.C.C. § 44-04-18.7: Active criminal intelligence and investigative information is exempt.
    - "Personal information" contained in such records is exempt, regardless of whether a case is active or inactive, and includes home street address, home and cell phone numbers, month and date of birth, height and weight, medical records and medical information, motor vehicle operator identification number, social security numbers, any credit, debit, or electronic funds transfer card numbers, and any financial account numbers.
- N.D.C.C. § 44-04-18.7(8): Crime scene images of a victim of a homicide or sex crime or any image of a minor victim of any crime is exempt.
- N.D.C.C. § 44-04-18.7(9): Images from a body camera or similar device taken in a private place is an exempt record.
- N.D.C.C. §§ 11-19.1-11, 23-01-05.5, 44-04-18.18: Autopsy report and images are confidential. The final report of death is confidential until eight days after it is finalized, after which it is an open record. N.D.C.C. § 23-01-05.5.
- N.D.C.C. § 44-04-18.21: Email addresses and telephone numbers are exempt.
- N.D.C.C. § 44-04-18.22: Information regarding the medical condition and medical treatment provided to an individual during an emergency medical response is exempt.
- See also: N.D.R.Ct. 3.4 (privacy protection for filings made with the Court).

(8) Procedure for responding to a request for records.

Unless it is already affirmatively documented by the criminal justice agency, agencies responding to open record requests must contact the prosecuting attorney's office in the city or county in which the crime was committed and ask whether a victim has affirmatively asserted his or her rights under Marsy's Law before responding to record requests. A criminal justice agency may respond to the requestor that the requested records may be subject to Marsy's Law and it is in the process of determining whether such rights have been asserted.

The prosecuting attorney's office should determine whether such rights have been asserted and communicate this to the criminal justice agency. The criminal justice agency must then respond to the request for records taking into account Marsy's Law, if there is an affirmatively asserted right, and open records law.

The prosecuting attorney's office or victim witness coordinators/advocates must notify a victim that a request for records has been made.

(9) How does a victim get notification about a request for information about them?

Under Marsy's Law and N.D.C.C. § 12.1-34-02 (1)(b), a victim has the right to be notified of any request for information or records that could be used to locate or harass the victim or victim's family or that would disclose confidential or privileged information about the victim.

This type of request for information could come in the form of a records request or as a discovery request under the Rules of Criminal Procedure. With regard to compliance with Rule 16, the prosecuting attorney will need to notify the victim that the requested information is subject to disclosure. However, prosecuting attorneys should use their discretion in redacting protected information to be in compliance with this section.

Criminal justice agencies responding to record requests should contact the prosecuting attorney's office to verify whether the victim has invoked his or her rights to the protections afforded under Marsy's Law. The prosecuting attorney, or victim's advocates working with the same, must provide notification to the victim that a records request has been made.

A victim must provide contact information to the prosecuting attorney so he or she can be notified of any such requests. Victims should be informed of their responsibility to provide accurate and up-to-date contact information.

(10) Can a victim receive a copy of a report or record?

Under Marsy's Law, the victim has the right, upon request, to receive a copy of any report or record relevant to the exercise of a victim's right, except for those portions made confidential by law or unless a court determines disclosure would substantially interfere with the investigation of a case, and to receive a copy of any pre-sentence report or plan of disposition when available to defendant or delinquent child. See also N.D.R.Crim.P. 32.

(11) What if a victim doesn't want to talk to the defense attorney?

Under Marsy's Law, a victim has the right to refuse an interview, deposition or other discovery request made by the defendant, the defendant's attorney, or any person acting on behalf of the defendant. If the victim choses to participate in any of the above referenced communications, the victim has the right to set

reasonable conditions on the conduct of any such interactions. See also N.D.R.Crim.P. 15 and N.D.R.Juv.P. 12.1.

However, this right does not apply at trial when a victim is a witness subject to cross examination by the defendant or the defendant's attorney.

(12) How will a victim know what's going on while the case is pending?

Under Marsy's Law, a victim has the right to reasonable, accurate and timely notice of, and to be present at, all proceedings involving the criminal or delinquent conduct, including release, plea, sentencing, adjudication and disposition, and any proceeding during which a right of the victim is implicated.

The prosecuting attorney's office is responsible for providing notice to the victim of any scheduled hearings. A victim must provide contact information to the prosecuting attorney so he or she can be notified of any scheduled hearings.

In addition, the victim should register his/her information for relevant court case notifications with the North Dakota Statewide Automated Victim Information and Notification System (ND SAVIN) which will provide notifications of most district court hearings (ND SAVIN does not provide notice of municipal court hearings or juvenile court proceedings).

(13) At what type of hearings is a victim allowed to be heard?

Under Marsy's Law, the victim has a right to be heard in any proceeding involving release, plea, sentencing, adjudication, disposition or parole, and any proceeding during which a right of the victim is implicated. This applies equally to juvenile victims. See N.D.R.Juv.P. 4(3).

The prosecuting attorney's office is responsible for notifying the victim of the court proceedings listed above. Also, the victim should register with the North Dakota Statewide Automated Victim Information and Notification System (ND SAVIN) for court case notifications, which will provide notifications of most district court hearings (ND SAVIN does not provide notice of municipal court hearings or juvenile court proceedings).

The Department of Corrections & Rehabilitation (DOCR) is responsible for notifying the victim of parole board and pardon board proceedings.

In addition, the victim should register with ND SAVIN for DOCR incarceration notifications, which will provide notification of parole board proceedings (ND SAVIN does not provide notice of pardon board proceedings).

It is the victim's responsibility to provide accurate and up to date contact information to the prosecuting attorney, ND SAVIN and DOCR.

(14) Will a victim get the chance to tell the court how this crime has impacted his/her life?

Under Marsy's Law, a victim has the right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any pre-sentence or disposition investigation or compiling any pre-sentence investigation report or recommendation regarding, and to have any such information considered in any sentencing or disposition recommendations.

If the court orders a pre-sentence investigation, the prosecuting attorney's office is responsible for providing the DOCR with a Victim Impact Statement, if one exists. If one does not exist, the DOCR is responsible for contacting the victim to gather the requisite information.

(15) How will a victim know the final outcome of the case?

Under Marsy's Law, the victim has the right to be informed of the conviction, adjudication, sentence, disposition, place and time of incarceration, detention or other disposition of the offender, any scheduled release date of the offender, and the release of or the escape by the offender from custody or commitment.

The prosecuting attorney's office is responsible for providing the court related information to the victim. A victim must provide contact information to the prosecuting attorney so he or she can be notified of any scheduled hearings.

The custodial authority is responsible for providing the incarcerated related information to the victim.

In addition, the victim should be encouraged to register with ND SAVIN to receive automated notifications by telephone, text or email. Multiple registration options are available on ND SAVIN. A victim may select to register to receive some or all of the following types of notifications:

1. Offender incarceration
    - For jails, incarceration notifications include release (with reason when provided), escape, return to custody, transfer, and additional notifications, where available (such as death, temporary leave, and work release).
    - For DOCR notifications it includes all the notifications above, as well as the fact an offender is out to court, returned from court, 30-day advance release, has move to another facility, and parole board notifications.
2. Offender Criminal Case Hearings, case status, and disposition.
3. Offender Parole & Probation
    - Change of address, offender absconded or returned, offender revocation status and off-revocation status, and expiration/discharge.

4. Protection and Restraining Orders
    - Service of order, hearing schedule and changes, order status, and expiration (with 30 day advance notice).

A victim's registration with ND SAVIN alone does not fulfill criminal justice agencies' notification obligations. Criminal justice agencies must routinely use ND SAVIN administrative tools to check to ensure timely notification was made through ND SAVIN to victims who have asserted Marsy's Law rights. If not, they must make timely notification though other means.

(16) What if a victim is afraid the defendant will be released early? Is there anything a victim can do to participate in the process to help prevent that from happening?

Under Marsy's Law, the victim is to be informed in a timely manner of all post-judgment processes and procedures, to participate in proceedings, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole authority shall extend the right to be heard to any person harmed by the offender.

The prosecuting attorney's office is responsible for providing notice to the victim if a post-judgment motion for reduction in sentence is filed with the court. A victim must provide up-to-date contact information to the prosecuting attorney so he or she can be notified of any scheduled hearings.

In addition, the victim should register his/her information for court case notifications with ND SAVIN, which provides notifications of post judgment hearings occurring within two years of the case closure. The victim should also register his/her information for DOCR incarceration notifications with ND SAVIN to receive parole board notifications.

The DOCR is responsible for notifying victims of offenders at the DOCR.

It is the victim's responsibility to provide accurate and up to date contact information to the prosecuting attorney, ND SAVIN and the DOCR.

(17) How will a victim know if the defendant's custody status changes?

Under Marsy's Law, the victim has the right to be promptly notified of any release or escape of the accused.

The victim is responsible for registering his/her information with the North Dakota Statewide Automated Victim Information and Notification System (ND SAVIN) which will provide notification of a defendant's release from county jail and the DOCR. Some correctional facilities may automatically register victims for notification, provided there is a method for opt-out. Victims can opt out of ND SAVIN notifications by calling the ND SAVIN/VINE Help Line. Victims must

contact the Department of Juvenile Services (DJS) at the DOCR to be registered for notification regarding a juvenile. ND SAVIN does not provide notifications for civil commitments.

Correctional facilities involved in the booking, release and/or transfer of an inmate to a new facility are responsible for changing the status of the inmate in their jail management systems to reflect the status of the offender in a timely manner, including "transfer" status.

If the defendant returns to custody after his/her release on bail, the correctional facility is responsible for notifying the victim of the defendant's change in custody, as a bond hearing is likely to follow. The prosecuting attorney is then responsible for notifying the victim of any court hearings, including bond hearings.

The State Hospital is responsible for notifying victims of an offender's release or escape from commitment.

It is the victim's responsibility to provide accurate and up to date contact information to the prosecuting attorney, ND SAVIN, DOCR, DJS, and the State Hospital.

(18) Does a victim get his/her property back? How?

Under Marsy's Law, a victim has the right, upon request, to the prompt return of the victim's property when no longer needed as evidence in a case.

The victim is responsible for providing the prosecuting attorney with a list of the requested property. The prosecuting attorney is responsible for arranging the release of the requested property. The prosecuting attorney will need to comply with N.D.C.C. ch. 29-31.1 and N.D.C.C. § 29-01-20.

(19) What about restitution?

Under Marsy's Law, a victim has the right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal or delinquent conduct.

All monies and property collected from any person who has been ordered to make restitution shall be first applied to the restitution owed to the victim before paying any amounts owed to the government.

The victim shall provide the prosecuting attorney's office an itemized list of the nature and amount of restitution requested. Restitution will need to be handled in conjunction with the statutory provision found in N.D.C.C. § 12.1-32-08, which requires a restitution hearing prior to a Court's order for restitution.

(20) Who can act on a victim's behalf to assert his/her rights?
Under Marsy's Law, the victim, the retained attorney of the victim, a lawful representative of the victim, or the attorney for the government upon request of the victim, may assert and seek enforcement of the rights enumerated and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right.

(21) Does Marsy's Law create a claim against the State for damages if there's a violation of a victim's rights?
Marsy's Law does not create any cause of action for damages against the State, any officer, employee, or agent of the State or of any of its political subdivisions, or any officer or employee of the court.

(22) What responsibilities does a victim have under Marsy's Law?
A victim must specifically assert their rights to the responding law enforcement officer at the time of the initial response, OR thereafter to the appropriate prosecuting attorney's office.

The victim also is responsible for registering with ND SAVIN to receive notifications as directed, and for ensuring that the victim's contact information is accurate and kept up to date in ND SAVIN and at the prosecuting attorney's office, ND DOCR, DJS, the State Hospital, and/or any other entity as required in order to receive notifications. ❖

MARSY'S CARD

A summary of victim rights in North Dakota.

You have the right to be treated with fairness and respect, to be free from harassment and abuse, to be reasonably protected from the defendant (and any person acting on the defendant's behalf), the right to privacy, to have your safety and welfare (and that of your family) considered when decisions are made about bail or release, to a prompt and final conclusion of the case, to be informed of conviction, sentencing, and any post-judgment proceedings, and to consult an attorney about these rights.

You also have the following specific rights:

- To prevent disclosure of information or records that reasonably could be used to locate or harass you or your family, or which disclose confidential information about you, and to be notified of any request for such information.
- To receive reasonable notice of, and to be present at, all court proceedings.
- To refuse an interview or discovery request made by the defendant, the defendant's attorney, or any person acting on behalf of defendant, and the right to set reasonable conditions if you do consent, all consistent with constitutional requirements.
- To be heard in any proceeding involving release, plea, sentencing, adjudication, disposition or parole, and any proceeding where your rights are implicated.
- To provide information regarding the impact of the defendant's conduct in any pre-sentence investigation,

to have that information considered in sentencing or disposition recommendations, and to receive a copy of a pre-sentence report or plan of disposition, when available.

- To receive a copy of any non-confidential record relevant to the exercise of your rights.
- To the prompt return of your property when it is no longer needed as evidence.
- To restitution for all losses suffered as a result of the criminal or delinquent conduct.
- To be informed of the defendant's conviction, adjudication, sentence, disposition, place and time of incarceration, detention or other disposition, any release date, or the defendant's escape from custody or commitment.

TO ASSERT YOUR RIGHTS, **NOTIFY** THE LAW ENFORCEMENT OFFICER WHO GAVE YOU THIS CARD.

You can assert your rights at any time. If you did not assert your rights to the responding officer, YOU **MUST** NOTIFY THE PROSECUTING ATTORNEY. The prosecuting attorney is the:

[___] city attorney in this city;

[___] state's attorney in this county.

You will be required to provide contact information.

For more information or assistance in registering for automatic notifications of court hearings etc., go to the Public Safety link at ***www.attorneygeneral.nd.gov*** or contact the prosecuting attorney's office noted above.

Report Number: _____

Marsy's Law often invoked to withhold officers' names

April Baumgarten Forum News Service

Jul 22, 2018

DEVILS LAKE -- The name of a Devils Lake police officer involved in a shooting two weeks ago cannot be released because of Marsy's Law, Police Chief Joe Knowski said.

Ramsey County State's Attorney Kari Agotness said she doesn't plan to release the name of the officer who fatally shot Daniel A. Fuller on July 5 until the North Dakota Bureau of Criminal Investigation completes its probe into the shooting.

"To tell you the truth, I have no issues with releasing the officer's name," Knowski said, but he said he has been advised that Marsy's Law keeps the name confidential. "I'm not trying to stop anything."

Marsy's Law has become a noticeable reason for keeping the names of officers involved in shootings confidential until the investigation is complete. According to a Herald analysis of news articles, North Dakota has had at least eight officer-involved shootings since Marsy's Law went into effect Dec. 8, 2016, a month after 62 percent of North Dakota's voters approved the constitutional measure. Almost all of the officers in those cases invoked their rights based on the new law, Forum News Service confirmed through interviews with law enforcement agencies and state's attorneys involved in those cases.

The interpretation of the law varies from county to county. Just days after the Devils Lake incident, two Grand Forks police fatally shot 41-year-old John Francis Murphy III on July 8. The officers' names were released two days later.

Grand Forks officers were given cards advising them on Marsy's Law, but Grand Forks County State's Attorney David Jones determined names were not protected under the constitutional measure, Grand Forks Police Lt. Bill Macki said.

Law enforcement agencies involved in shootings have relied on state's attorneys for legal advice when it comes to releasing information to the public. Agotness said Marsy's Law has brought attention to victims' needs, but there is no legislative history to help with certain interpretations.

"I do see some tension in Marsy's law between the rights of victims and the due process rights of defendants," she wrote in an email. "It will take some time before those tensions are better understood."

Because each state's attorney's office is its own entity, interpretations of the law can vary, said Jack McDonald, a Bismarck attorney who represents the North Dakota Newspaper Association. Withholding names of officers keeps the public from learning the whole story, he said.

"The biggest frustration would be that it has been extended to cover too many people," he said of Marsy's Law. "It's been extended to cover situations which I don't think were ever intended to be covered in the first place."

'Convoluted' law

It's unclear exactly how many times officers were involved in shootings or how many of those have invoked Marsy's law.

"This office does not have jurisdiction or authority over local law enforcement agencies," Liz Brocker, a spokeswoman for the Attorney General's Office, wrote in an email. "A local law enforcement agency is not required to notify us of a use of force incident or ask the BCI to assist if there is one. Therefore, we do not have information for any (officer-involved shootings) other than the ones where we have been asked to assist."

The BCI, which is overseen by the Attorney General's Office, is the go-to agency for investigating officer-involved shootings in North Dakota. The BCI investigated 13 use-of-force cases involving officers between 2015 and 2017, according to the latest attorney general's biennial report.

The law allows victims to invoke a set of rights, including keeping "information or records that could be used to locate or harass a victim or the victim's family" confidential. Those rights have extended to officers involved in shootings, and agents from the BCI have informed those officers of Marsy's Law, according to documents obtained by Forum News Service.

But not all officers in shootings are allowed to invoke Marsy's Law. Fargo Police Officer Jacob Rued was not listed as a victim when he shot Orlando Estrada in March, Officer Jessica Schindeldecker said. The knife-wielding suspect survived the shooting, and Rued was cleared of any wrongdoing.

One of the first tests of Marsy's Law in relation to officer-involved shootings came in January 2017, when Rolette County Sheriff's Deputy Colt Allery, 29, was killed in a shootout involving 28-year-old Melvin Delong of Belcourt, N.D. Delong was fatally shot by other officers.

Allery's name was released almost immediately after the shooting, but Delong's and surviving officers' names were withheld by the Rolette County State's Attorney's Office, which cited Marsy's Law. The names eventually were released after the BCI completed its report in late April 2017, though Rolette County State's Attorney Ryan Thompson said in early May he considered the case open.

Attorney General Wayne Stenehjem released a set of guidelines in January 2017, stating, "There is nothing under Marsy's Law that protects the name of a victim or the victim's family."

The law still causes confusion, said Bismarck Deputy Police Chief Randy Ziegler, who called the law "convoluted."

"To be totally honest with you, I'm not even sure half the time what it does even when you invoke it," he said, adding few people have invoked the law.

Part of that might come from the fact that Marsy's Law was an initiated measure, Stutsman County State's Attorney Fritz Fremgen said. Most legislation goes through weeks of vetting in the state Legislature, which gathers input from the public and officials.

"Initiated measures don't" he wrote in an email, adding "what those rights are, most don't know."

https://bismarcktribune.com/news/state-and-regional/marsy-s-law-often-invoked-to-withhold-officers-names/article_8b7afae6-f7d7-5757-bccc-4f7320f8e78f.html

Marsy's Law raised in arguments over change of judge in daycare child abuse case

Jun 11, 2020

Andrea Johnson
Staff Writer
ajohnson@minotdailynews.com

A long running disagreement about the interpretation of Marsy's Law in the North Central Judicial District reemerged this week in written arguments over a demand for a change of judge for a former Carpio daycare owner charged with child abuse.
Local News

Jun 11, 2020

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A long running disagreement about the interpretation of Marsy's Law in the North Central Judicial District reemerged this week in written arguments over a demand for a change of judge for a former Carpio daycare owner charged with child abuse.

Sarah Ann Babinchak, 34, is charged with Class B felony child abuse, Class B felony aggravated assault on a 5 month old baby, and Class C felony child neglect. She is accused of throwing the baby on the floor and fracturing his skull last December and of abusing or neglecting other children at her Country Steps Daycare. Her defense attorney Ashley Flagstad has said Babinchak wants to clear her name. Flagstad said the baby boy had been sick for two weeks prior to the incident and out of Babinchak's care. Babinchak called 911 after the baby had a seizure, Flagstad said.

Flagstad filed a demand for a change of judge last week after Judge Stacy Louser set bond at $150,000 cash or corporate surety for Babinchak. Flagstad had asked for an unsecured appearance bond for Babinchak. Ward County Assistant State's Attorney Christopher Nelson opposed the motion and wrote that Flagstad was wasting the court's time.

Flagstad had noted in her motion that the demand for a change of judge was filed within the allowable time frame and Louser had not yet issued rulings in the case. Nelson wrote that Louser had already set a bond and had also signed off on a "stipulation for order to produce unredacted discovery," an order that has become a standard filing in the North Central District. The boiler plate order allows the prosecution to turn over case evidence to the defense that includes information about victims. According to Ward County State's Attorney Roza Larson's interpretation of Marsy's Law, which was passed by North Dakota voters in 2016, a judge's order

is needed before her prosecutors can turn over that information. Judge Gary Lee, the head judge of the jurisdiction, doesn't agree with the state's attorney.

"Insofar as the discovery order is concerned, there is no requirement that this Order even be issued," wrote Lee in his order granting Babinchak a change of judge. "The Order was developed in response to what the Court believes to be the State's hyper-technical and overly cautious reading of Marsy's Law, Article I, Section 25, NDConst. Marsy's Law guarantees protections for putative crime victims from disclosures of information. What the State's reading ignores is that other provisions of Marsy's Law provide that it does not abrogate a defendant's Sixth Amendment rights under the Constitution of the United States, nor diminish the State's disclosure obligations to the defendant under other laws or rules.

"The Court has simply gone along with the State's hyper-technical reading of Marsy's Law, and has signed the Orders for Unredacted Discovery. Frankly, this was done because it was easier to sign the needless order than to argue endlessly in the face of the State's intransigence. If this Discovery Order is now going to be used by the State as a sword to deny a defendant other statutory rights, it may perhaps be a time to revisit the entire issue.

"Neither the act of setting bond, nor the signing of a needless discovery order by the Court is sufficient grounds to deny a defendant a right to exercise a demand for a change of judge."

Lee then appointed Judge Todd Cresap to hear the case and Flagstad asked for a bond hearing on Tuesday. In court on Tuesday, Flagstad argued that the bond should be lowered to 10 percent of $150,000, requiring the family to post $15,000.

Nelson again opposed lowering the bond. Cresap said it does look like the Ward County State's Attorney's Office was not overly concerned about the safety of the community since it took six months to charge Babinchak but said he would leave the bond at $150,000 cash or corporate surety because of the nature of the charges and because there are multiple allegations of child abuse or neglect involving different alleged victims.

https://www.minotdailynews.com/news/local-news/2020/06/marsys-law-raised-in-arguments-over-change-of-judge-in-daycare-child-abuse-case/