

January 9, 2019



**Testimony of ACLU of Wisconsin
In Opposition to Assembly Joint Resolution 1 and Senate Joint Resolution 2
Joint Hearing: Assembly Committee on Criminal Justice and Public Safety &
Senate Committee on Judiciary and Public Safety**

Chair Wanggaard and members of the committees:

Thank you for the opportunity to provide testimony in opposition to Assembly Joint Resolution 1 and Senate Joint Resolution 2.

In 1980, Wisconsin became the first state in the country to adopt a "crime victim bill of rights," and the State Constitution as well as Chapter 950 of Wisconsin law enumerates these rights.

Victims deserve to be protected and consulted during criminal proceedings, but adjustments to our current robust protections should be done through statutory provisions and without overburdening our criminal justice system and undermining defendants' constitutional rights. AJR1/SJR2 impedes justice and jeopardizes the right to a swift and fair trial by inserting victims - and a wide and uncertain array of other individuals - into stages of the process beyond sentencing.

The ACLU of Wisconsin disputes any claim that the only way to support victims is to support Marsy's Law, and that if you oppose Marsy's Law then you oppose victims. This is an erroneous and unfair characterization. I do not think anyone here today opposes victims or victims' rights. This is not about who supports victims most, but rather about how we protect victims' rights as a state and balance those rights with the rights of the accused.

Much of the campaign in support of Marsy's Law is premised on this notion that victims should have rights equal to those of the accused, and that that can only be achieved through this constitutional amendment. Victim's rights cannot be equated to the rights of the accused because they serve very different roles.

Defendants' rights are in the constitution because they are rights against the state, not because they are valued more by society than are those of victims. Defendants' rights are checks against government abuse. They prevent the government from arresting and imprisoning anyone, for any reason, and at any time.

Protecting the rights of the accused is core to the rule of law and the American system of justice. These restrictions on government power are enshrined in the Bill of Rights for a reason, and they predated the U.S. Constitution. One of our founding fathers, John Adams, said:

It is more important that innocence should be protected, than it is, that guilt be punished; for guilt and crimes are so frequent in this world, that all of them cannot be punished.... when innocence itself, is brought to the bar and condemned, especially to die, the subject will exclaim, 'it is immaterial to me whether I behave well or ill, for virtue itself is no security.' And if such a sentiment as this were to take hold in the mind of the subject that would be the end of all security whatsoever

Victims' rights, on the other hand, are not rights against the state. They are rights that are enforced primarily against the defendant. They are one individual's rights against another individual.

Our legal system manages rights between individuals through statute because they do not relate to the power of the state. The inclusion of rights in statute rather than in the Constitution is not a value judgment. It is a reflection of the role those rights serve.

Marsy's Law was promoted and funded by an out-of-state organization and is not tailored to Wisconsin. Its negative effects will likely be felt by prosecutors, defense attorneys, defendants, and even victims. Other states that have amended their constitutions with similar provisions have had significant operational issues which have created unintended consequences. Issues have included increased costs, delays in court proceedings, conflicts with open records laws, court scheduling conflicts, litigation related to conflicts with U.S. Constitutional provisions, definitions of victims that have been expanded to include retailers such as Walmart, and litigation from victims for unequal application or violations of the new constitutional provisions.

In South Dakota, the implementation of Marsy's Law swamped county staff with paperwork and led to longer jail stays while courts waited for victims to be notified — even for minor crimes such as vandalism. We don't need to, and should not, pass these types of costs on to our local county governments, because that would be irresponsible.

A constitutional amendment does not bring resources. Counties will not suddenly be able to hire more victims' advocates because victims' rights are in the constitution as opposed to in statute. Any problems with enforcement related to insufficient resources will persist and very likely increase if AJR1/SJR2 is added to our constitution.

Protecting victim's rights should not be a zero sum game. We do not have to take away defendants' rights in order to protect victims' rights. We can and should do both. The alternative is to jeopardize the integrity and efficacy of our judicial system.

All Wisconsinites deserve a criminal justice system that is fair, prompt, and adequately resourced. AJR1/SJR2 flies in the face of these goals, and if we run into the same implementation difficulties that other states have seen, it will take at least three years to remedy those problems. Please vote no on AJR1/SJR2.