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## SB 127 - Criminal Procedure


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## Criminal Procedure

***Crime Victims' Bill of Rights: Amend Section 15 of Chapter 17 of Title 17 of the Official Code of Georgia Annotated, Relating to the Failure to Provide Notice Not Rendering Responsible Person Liable or Comprising a Basis for Error, the Chapter not Conferring Standing, Existing Rights not Affected, and Waiver of Rights by Victim, so as to Allow a Victim to File a Motion in a Criminal Case to Assert Certain Rights; Provide for Procedure; Provide for Related Matters; Provide for a Contingent Effective Date and Automatic Repeal; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS:	O.C.G.A. § 17-17-15
BILL NUMBER:	SB 127
ACT NUMBER:	468
GEORGIA LAWS:	2018 Ga. Laws 920
SUMMARY:	The Act introduces procedure by which victims who were not provided notice criminal proceedings, after requesting notice, may file a motion to be acknowledged by the court. This Act is meant to create a means by which a victim's rights, as introduced by the constitutional amendment in SR 146, may be raised or enforced.
EFFECTIVE DATE:	January 1, 2019

### *History*

In 1983, Californian Marsy Nicholas was murdered by her ex-boyfriend.<sup>1</sup> One week later, after attending her funeral, Marsy's brother and mother unexpectedly found themselves face-to-face with

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1. Jason Moon, *How One Group Is Pushing Victims' Rights Laws Across the Country*, NAT'L PUB. RADIO, INC. (Mar. 29, 2018, 2:24 PM), <https://www.npr.org/2018/03/29/597684647/how-one-group-is-seeding-victims-rights-laws-across-the-country> [<https://perma.cc/9YZV-NMGG>].

her killer in a grocery store; neither had been notified by local authorities that he had been released on bail.<sup>2</sup> In 2008, Marsy's brother Henry Nicholas funded a campaign for a "California state constitutional amendment designed to make sure that moment outside the grocery store wouldn't happen to others," calling it "Marsy's Law."<sup>3</sup>

Today, national organization Marsy's Law for All (MLFA) seeks to ensure that the United States Constitution and all state constitutions enumerate rights for victims of crimes which parallel those extended to the accused.<sup>4</sup> A handful of states have adopted Marsy's Law, and efforts to introduce similar legislation are ongoing in additional states, including Hawaii, Montana, and Nevada.<sup>5</sup> Georgia is among the states without explicitly enumerated rights for victims of crime in its state constitution.<sup>6</sup> Although Georgia's 2010 Bill of Rights for Crime Victims seeks to provide the right to be heard and the right to be notified of proceedings to victims of crime, proponents of Marsy's Law contend that the law is toothless.<sup>7</sup> Representative Rick Williams (R-145th) argued that, despite the 2010 Bill of Rights for Crime Victims, "victims often find that [rights listed in the 2010 law] aren't enforceable" and stated that a constitutional amendment guaranteeing rights to victims of crime

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2. *Id.*

3. *Id.*

4. *About Marsy's Law*, MARSY'S LAW, <https://marsyslaw.us/about-marsys-law/> [<https://perma.cc/9G8R-L2NW>] (last visited Jun. 17, 2018).

5. Troy Carter, *Elections 2016: Montana Ballot Measures Proposed on Marijuana, Guns, Criminal Justice*, BOZEMAN DAILY CHRON. (Oct. 15, 2015), [https://www.bozemandailychronicle.com/news/politics/elections-montana-ballot-measures-proposed-on-marijuana-guns-criminal-justice/article\\_3b0e6e72-bb87-5bc2-8ff2-37dfbc9ae20.html](https://www.bozemandailychronicle.com/news/politics/elections-montana-ballot-measures-proposed-on-marijuana-guns-criminal-justice/article_3b0e6e72-bb87-5bc2-8ff2-37dfbc9ae20.html) [<https://perma.cc/3JQQ-LMKP>]; Marcella Corona, *Bills to Help Child Abuse, Revenge Porn Victims*, RENO GAZETTE J., <https://www.rgj.com/story/news/2015/06/10/bills-help-child-abuse-revenge-pornography-victims/71039104/> [<https://perma.cc/JU75-Q67V>] (last updated Jun. 12, 2015); Sophia Tareen, *Illinois Voters to Face a Rare 5 Ballot Questions*, DAILY HERALD, <http://www.dailyherald.com/article/20141019/news/141018076/> [<https://perma.cc/T4VA-4JGB>] (last updated Oct. 20, 2014); *Hawaii Lawmakers Consider Crime Victims' Right-to-know Bill*, KHON2 (Mar. 3, 2015, 4:01 PM), <http://khon2.com/2015/03/03/crime-victims-right-to-know-bill-under-consideration-by-hawaii-lawmakers/> [<https://perma.cc/CP27-VEQZ>];

6. *See About Marsy's Law*, *supra* note 5.

7. Rick Williams, *Rep. Williams: Crime Victims in Georgia Need Marsy's Law*, UNION-RECORDER (Aug. 2, 2017), [http://www.unionrecorder.com/opinion/columns/rep-williams-crime-victims-in-georgia-need-marsy-s-law/article\\_5778f654-7707-11e7-964f-074dc462681e.html](http://www.unionrecorder.com/opinion/columns/rep-williams-crime-victims-in-georgia-need-marsy-s-law/article_5778f654-7707-11e7-964f-074dc462681e.html) [<https://perma.cc/FH8P-5A7D>].

should “not add a burden on Georgia’s criminal justice system because it’s supposed to enforce these rights already.”<sup>8</sup>

In 2015, Georgia House Resolution (HR) 1199 sought a constitutional amendment requiring that victims be informed of “services [] available to them, [] hearings and major developments in the criminal case,” and affirming a victim’s “right to be heard at plea or sentencing proceedings.”<sup>9</sup> HR 1199 also promised to “guarantee the right to restitution for victims.”<sup>10</sup> According to MLFA Georgia spokesman Brian Robinson, Marsy’s Law failed to garner enough support because the MLFA Georgia team was just forming, and the 2015–2016 effort began too late to achieve a constitutional amendment.<sup>11</sup> Over the next two years, Marsy’s Law proponents worked with law enforcement and the victim’s rights community to develop a realistic amendment to the Georgia Constitution.<sup>12</sup>

### *Bill Tracking of SB 127*

#### *Consideration and Passage by the Senate*

Senator John Kennedy (R-18th) sponsored Senate Bill (SB) 127 in the Senate.<sup>13</sup> The Senate read the bill for the first time on February 8, 2017, and committed the bill to the Senate Committee on Judiciary.<sup>14</sup> On February 24, 2017, the Senate Committee favorably reported the bill by Committee substitute.<sup>15</sup>

The Committee substitute revised much of the introduced bill’s text and added more subsections.<sup>16</sup> The Committee substitute changed the language in subsection (c) and divided subsection (c)

8. *Id.*

9. Greg Bluestein, *A National Effort for ‘Victims’ Rights’ Legislation is Headed to Georgia*, POLITICALLY GA. (Feb. 1, 2016), <https://politics.myajc.com/blog/politics/national-effort-for-victims-rights-legislation-headed-georgia/S3vi8Cq41uRteq3JBR0TWM/> [<https://perma.cc/M42M-JTJ4>].

10. *Id.*

11. Interview with Brian Robinson, Representative, Marsy’s Law for Georgia (June 15, 2018) (summary on file with Georgia State University Law Review) [hereinafter Robinson Interview].

12. *Id.*

13. Georgia General Assembly, SB 127, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20172018/SB/127> [<https://perma.cc/7JM8-7H55>] [hereinafter SB 127 Bill Tracking].

14. State of Georgia Final Composite Status Sheet, SB 127, Mar. 29, 2018.

15. SB 127 Bill Tracking, *supra* note 13.

16. *Compare* SB 127, as introduced, 2017 Ga. Gen. Assemb., with SB 127 (SCS), 2017 Ga. Gen. Assemb.

into multiple subsections. The Committee substitute retained language from the introduced bill's subsection (c) in the Committee substitute's subsection (c)(1), denying a victim "standing to participate as a party in a criminal proceeding or to contest the disposition of any charge."<sup>17</sup> However, the Committee substitute introduced a clause before that language that identifies the subsequent sections as exceptions to this denial of standing.<sup>18</sup>

The Committee substitute also introduced subsections (c)(2)(A), (c)(2)(B), (c)(3), and (c)(4). These sections replaced the language in the introduced bill's subsection (c) and expanded on the ideas introduced by that language as exceptions to denial of standing.<sup>19</sup> Subsections (c)(2)(A) and (c)(2)(B) created an exception when a victim is not given an opportunity to be heard after he or she makes a written request to be notified of all criminal proceedings.<sup>20</sup> These subsections give procedural instructions regarding the information the victim must provide in the request and the motion which the victim may file if his or her right to be heard is denied.<sup>21</sup>

The Committee substitute's subsection (c)(3) provided a procedure for when the motion the victim filed in accordance with subsection (c)(2) alleges potential failures by the prosecuting attorney or the court.<sup>22</sup> This subsection allows the prosecuting attorney or judge to recuse himself or herself in accordance with Code section 15-18-5 or Code section 15-18-65 for prosecutors and Code section 15-1-8 for judges.<sup>23</sup> The Committee substitute's subsection (c)(4) provides instructions for a procedure related to setting a hearing or disposing of the motion.<sup>24</sup>

The Senate read SB 127 for the second time on February 27, 2017.<sup>25</sup> The Senate read the bill for the third time on March 3,

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17. *Id.*

18. *Compare* SB 127, as introduced, § 1, p. 1, ll. 12–13, 2017 Ga. Gen. Assemb., *with* SB 127 (SCS), § 1, p. 1, ll. 13–15, 2017 Ga. Gen. Assemb.

19. *Compare* SB 127, as introduced, § 1, p. 1, ll. 13–18, 2017 Ga. Gen. Assemb., *with* SB 127 (SCS), § 1, pp. 1–2, ll. 16–33, 2017 Ga. Gen. Assemb.

20. SB 127 (SCS), § 1, pp. 1–2, ll. 16–28, 2017 Ga. Gen. Assemb.

21. *Id.*

22. *Id.* § 1, p. 2, ll. 29–32.

23. *Id.*

24. *Id.* § 1, p. 2, l. 33.

25. SB 127 Bill Tracking, *supra* note 13.

2017.<sup>26</sup> The Senate passed the Committee substitute on March 3, 2017, by a vote of 51 to 1.<sup>27</sup>

*Consideration and Passage by the House*

Representative Rich Golick (R-40th) sponsored SB 127 in the House.<sup>28</sup> The House read the bill for the first time on March 6, 2017, and referred the bill to the House Judiciary Non-Civil Committee.<sup>29</sup> The House read the bill for a second time on March 9, 2017. On March 21, 2018, the House Judiciary Non-Civil Committee favorably reported the bill by Committee substitute.<sup>30</sup>

The Committee substitute retained all of the language from the bill as passed by the Senate for subsections (c)(1) and (c)(2)(A).<sup>31</sup> The Committee substitute changed subsection (c)(2)(B) minimally, requiring the victim to provide the hearing notice to the prosecuting attorney and defendant in addition to a copy of the motion.<sup>32</sup> The Committee substitute also moved what was subsection (c)(3), as passed by the Senate, to subsection (c)(6).<sup>33</sup> The Committee substitute also introduced new subsections (c)(3), (c)(4), and (c)(5).<sup>34</sup>

The Committee substitute's subsection (c)(3) borrowed language from what was previously subsection (c)(4) of the bill as passed by the Senate.<sup>35</sup> This language gives the court discretion to set the motion for a hearing or to dispose of the motion.<sup>36</sup> However, the Committee substitute also introduced language that gives the

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26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. Compare SB 127 (SCS), § 1, p. 1, ll. 13–25, 2017 Ga. Gen. Assemb., with SB 127 (HCS), § 1, p. 1, ll. 13–25, 2018 Ga. Gen. Assemb.

32. Compare SB 127 (SCS), § 1, p. 2, l. 28, 2017 Ga. Gen. Assemb., with SB 127 (HCS), § 1, p. 2, ll. 28–29, 2018 Ga. Gen. Assemb.

33. Compare SB 127 (SCS), § 1, p. 2, ll. 29–32, 2017 Ga. Gen. Assemb., with SB 127 (HCS), § 1, p. 2, ll. 38–41, 2018 Ga. Gen. Assemb.

34. SB 127 (HCS), § 1, p. 2, ll. 30–37, 2018 Ga. Gen. Assemb.

35. Compare SB 127 (SCS), § 1, p. 2, l. 33, 2017 Ga. Gen. Assemb., with SB 127 (HCS), § 1, p. 2, ll. 30–31, 2018 Ga. Gen. Assemb.

36. Compare SB 127 (SCS), § 1, p. 2, l. 33, 2017 Ga. Gen. Assemb., with SB 127 (HCS), § 1, p. 2, ll. 30–31, 2018 Ga. Gen. Assemb.

prosecuting attorney and the defendant the right to be present should the court conduct a hearing.<sup>37</sup>

The Committee substitute's subsection (c)(4) introduced language that bars appeals for motions made under this section<sup>38</sup>. Subsection (c)(5) introduced language that makes motions under this subsection the only means of raising or enforcing rights provided by the Chapter or Section 1 of Article 1 of the Georgia Constitution.<sup>39</sup>

The House read the bill for the third time on March 27, 2018.<sup>40</sup> The House unanimously passed the Committee substitute on March 27, 2018.<sup>41</sup> On March 29, 2018, the Senate unanimously passed the House Committee substitute.<sup>42</sup>

### *The Act*

The Act amends Code section 17-17-15 of the Official Code of Georgia, relating to the failure to provide notifications within the Crime Victims' Bill of Rights.<sup>43</sup> The overall purpose of the Act is to create a procedure within the Victims' Bill of Rights by which a victim can make a written request to the prosecuting attorney to be notified of all proceedings.<sup>44</sup> In the event of noncompliance on the prosecutor's part, the Act allows a victim to file a request with the court to be heard on the matter.<sup>45</sup>

### *Section 1*

Section 1 of the Act revises subsection (c) of Code section 17-17-15, which previously did not confer standing upon a victim to participate as a party in a criminal proceeding or to contest the disposition of any charge.<sup>46</sup> The Act adds several subsections within

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37. SB 127 (HCS), § 1, p. 2, ll. 30–32, 2018 Ga. Gen. Assemb.

38. *Id.* § 1, p. 2, ll. 33–34.

39. *Id.* § 1, p. 2, ll. 33–37.

40. SB 127 Bill Tracking, *supra* note 13.

41. *Id.*

42. *Id.*

43. 2018 Ga. Laws 920.

44. *Id.*; see also Telephone Interview with Sen. John Kennedy (R-18th) at 2 min., 50 sec. (May 29, 2018) (on file with Georgia State University Law Review) [hereinafter Kennedy Interview].

45. 2018 Ga. Laws 920, § 1, at 920; see also Kennedy Interview, *supra* note 43, at 3 min., 00 sec.

46. 2018 Ga. Laws 920, § 1, at 920.

subsection (c) that confer standing on a victim in certain circumstances.

Subsection (c)(2) has two subparts: (A) and (B). Subsection (c)(2)(A) confers standing on a victim who has made a written request to the prosecuting attorney.<sup>47</sup> Furthermore, this subpart (A) provides a procedure that a victim may utilize in the event a prosecutor or the court does not comply with the request. A victim may file a motion with the court requesting to be heard on this matter.<sup>48</sup> Subsection (c)(2)(A) extends this procedure to file a motion to be heard regarding noncompliance with any provision of this Chapter.<sup>49</sup> Subsection (c)(2)(B) provides administrative guidelines regarding the motion in the previous subpart. The victim must file the motion no later than twenty days after the claimed denial, and the victim must provide a copy of the motion and hearing notice to both the prosecuting attorney and the defendant.<sup>50</sup>

Subsections (c)(3) and (c)(4) describe the court's powers regarding the victim's motion described in subsection (c)(2). Subsection (c)(3) gives the court the discretion to set the victim's motion for a hearing.<sup>51</sup> Should the court choose not to set a hearing, the court may issue an order disposing of the motion.<sup>52</sup> Should the court decide to conduct a hearing, the prosecuting attorney and the defendant have the right to be present at the hearing.<sup>53</sup> Subsection (c)(4) gives the court the final decision on all issues regarding both fact and law.<sup>54</sup> The court's decision will not be subject to appeal.<sup>55</sup> Subsection (c)(5) provides that the motion described in subsection (c)(2) will be the only means of raising or enforcing the rights provided in this Chapter or Section 1 of Article 1 of the Georgia Constitution.<sup>56</sup>

Subsection (c)(6) allows for recusal of those whom the victim makes allegations against. A prosecuting attorney from a district attorney's office may recuse himself or herself in accordance with

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47. *Id.*

48. *Id.* (to be codified at O.C.G.A. § 17-17-15(c)(2)(A)).

49. 2018 Ga. Laws 920, § 1, at 920.

50. *Id.* (to be codified at O.C.G.A. § 17-17-15(c)(2)(B)).

51. 2018 Ga. Laws 920, § 1, at 920.

52. *Id.* at 921 (to be codified at O.C.G.A. § 17-17-15(c)(3)).

53. *Id.* at 920 (to be codified at O.C.G.A. § 17-17-15(c)(3)).

54. *Id.* at 921.

55. *Id.* at 921 (to be codified at O.C.G.A. § 17-17-15(c)(4)).

56. 2018 Ga. Laws 920, § 1, at 921.



Code section 15-18-5.<sup>57</sup> A prosecutor from a solicitor general's office may recuse himself or herself in accordance with Code section 15-18-6.<sup>58</sup> The judge may recuse himself or herself when allegations are made against the court in accordance with Code section 15-1-8.<sup>59</sup> The prosecutor and presiding judge have the discretion to recuse himself or herself or remain involved with the proceedings.<sup>60</sup>

### *Section 2*

Section 2 of the Act indicates that the Act will become effective on January 1, 2019.<sup>61</sup> This amendment was introduced alongside the Act as Senate Resolution (SR) 146 during the 2017–2018 regular legislative session.<sup>62</sup> SR 146 outlined the Victims' Bill of Rights as a constitutional amendment.<sup>63</sup> The amendment must be ratified in the November 2018 general election.<sup>64</sup>

### *Section 3*

Section 3 repeals all laws and parts of laws that would conflict with the Act.<sup>65</sup>

## *Analysis*

### *Comparing Marsy's Law in Georgia to Other States*

Like the law in Georgia, California's Marsy's Law also confers upon victims the right to receive notice of court proceedings and the right to be heard at proceedings involving pleas, parole, and

57. *Id.* (to be codified at O.C.G.A. § 17-17-15(c)(6)).

58. *Id.* (to be codified at O.C.G.A. § 17-17-15(c)(6)).

59. *Id.* (to be codified at O.C.G.A. § 17-17-15(c)(6)).

60. *Id.* (to be codified at O.C.G.A. § 17-17-15(c)(6)).

61. 2018 Ga. Laws 920, § 2, at 921. The Act's passage was contingent on the passage of a constitutional amendment in the November 2018 election. *Id.*

62. SB 127 Bill Tracking, *supra* note 13; *see also* Kennedy Interview, *supra* note 43, at 2 min., 8 sec.

63. SB 127 Bill Tracking, *supra* note 13; *see also* Kennedy Interview, *supra* note 43, at 2 min., 15 sec.

64. 2018 Ga. Laws 920, § 2, at 921.

65. 2018 Ga. Laws 920, § 3, at 921.

sentencing.<sup>66</sup> Additionally, California's version promises victims the right to "be reasonably protected from the defendant and persons acting on behalf of the defendant," whereas neither Georgia's Victim's Bill of Rights nor its iteration of Marsy's Law explicitly enumerates this protection.<sup>67</sup> California's law also goes further in terms of consideration for victims' immediate safety. Specifically, California's original version of Marsy's Law requires its courts to consider the "safety of the victim and the victim's family" before determining "bail and release conditions," whereas Georgia's protections for crime victims do not include this requirement.<sup>68</sup> Originally passed in 2008, Marsy's Law remains in effect in California a decade later. Although supporters contend that Marsy's Law has resulted in courts paying increased attention to the safety and well-being of victims, unintended consequences have also arisen. In particular, after the amendment's enactment, the amount of time set by parole boards between parole hearings increased significantly from two and a half years to five years.<sup>69</sup> Analysts hypothesize that this decrease in parole opportunities may have resulted from parole boards sensing a mandate to prioritize victims' rights or backlogs in the judicial system caused by lawsuits related to Marsy's Law.<sup>70</sup> However, in a 2011 study, a law student at the University of California, Los Angeles, School of Law did not find a discernable increase in victim participation in the criminal justice process after 2008.<sup>71</sup>

Montana passed its Marsy's Law amendment in November 2016 with a high degree of public support.<sup>72</sup> Like California's amendment, Montana required courts to consider the implications to victims' safety before making parole decisions.<sup>73</sup> Montana's proposal also

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66. CAL. CONST. art. I, § 28.

67. *Id.*

68. *Id.*

69. Laura L. Richardson, Comment, *Impact of Marsy's Law on Parole in California: An Empirical Study*, 49 UCLA CRIM. L. BULLETIN 18 (2013).

70. *Id.*

71. *Id.*

72. Whitney Bermes, *Montana Supreme Court Strikes Down Marsy's Law*, BOZEMAN DAILY CHRON. (Nov. 1, 2017), [https://www.bozemandailychronicle.com/news/crime/montana-supreme-court-strikes-down-marsy-s-law/article\\_8e039131-f08c-5d3b-9025-b863cd892c64.html](https://www.bozemandailychronicle.com/news/crime/montana-supreme-court-strikes-down-marsy-s-law/article_8e039131-f08c-5d3b-9025-b863cd892c64.html) [https://perma.cc/33YC-T8YB].

73. *Montana Ass'n of Ctys. v. Montana*, 404 P.3d 733, 736 (Mont. 2017).

sought “to prevent the disclosure of information that could be used to locate or harass the victim or that remains confidential or privileged information about the victim.”<sup>74</sup> However, in November 2017, the Montana Supreme Court found the amendment unconstitutional.<sup>75</sup> Opponents to Montana’s version of Marsy’s Law, like former Montana Supreme Court Justice Jim Nelson, argued that although the initiative’s “compassionate language” towards crime victims was appealing, Marsy’s Law had the potential to violate defendants’ constitutional rights.<sup>76</sup> For example, Justice Nelson argued that the provision allowing victims to refuse to be interviewed by defense counsel would hinder effective assistance of counsel and violate defendants’ due process rights.<sup>77</sup> In its petition for declaratory and injunctive relief, the Montana Association of Counties argued that the initiative was unconstitutional because it violated Montana’s single-subject rule and separate vote requirement.<sup>78</sup> Ultimately, the Montana Supreme Court found that because the changes proposed by Marsy’s Law were “substantive and not closely related,” the amendment was unconstitutional.<sup>79</sup> The court emphasized that each amendment must be “prepared and distinguished [so] that it can be voted upon separately.”<sup>80</sup> Because Georgia’s SB 127 narrows its focus to notifying victims of court proceedings, it is unlikely to face a constitutional challenge like Montana’s Marsy’s Law. However, Georgia’s broader companion, SR 146, which seeks to enumerate victims’ rights in the Georgia Constitution, may find itself vulnerable to a similar challenge.<sup>81</sup>

More recently, in spring of 2018, New Hampshire’s version of Marsy’s Law passed “overwhelmingly in the Senate and [with the] backing of Governor Chris Sununu” (R).<sup>82</sup> However, the proposed

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74. *Id.*

75. *Id.*

76. Jim Nelson, *Marsy’s Law: A Solution in Search of a Problem*, INDEP. RECORD (Oct. 11, 2016), [https://helenair.com/news/opinion/guest/marsy-s-law-a-solution-in-search-of-a-problem/article\\_8b812593-760c-54fd-b516-2b6362554137.html](https://helenair.com/news/opinion/guest/marsy-s-law-a-solution-in-search-of-a-problem/article_8b812593-760c-54fd-b516-2b6362554137.html) [<https://perma.cc/289B-LXRL>].

77. *Id.*

78. *Montana Ass’n of Cts.*, 404 P.3d at 737.

79. *Id.* at 742.

80. *Id.* at 741.

81. SB 127 Bill Tracking, *supra* note 13.

82. Jason Moon, *Marsy’s Law Constitutional Amendment Dies in N.H. House*, N.H. PUB. RADIO (Apr. 26, 2018), <http://nhpr.org/post/marsys-law-constitutional-amendment-dies-nh-house#stream/0> [<https://perma.cc/2QBS-YEV2>].

amendment failed to pass the House of Representatives amid growing concerns regarding “unintended consequences for the criminal justice system.”<sup>83</sup> Both Democrat and Republican representatives spoke against the proposal, with some arguing that its language was too “unclear” and others calling it “contradictory.”<sup>84</sup> New Hampshire’s amendment sought to provide victims with:

the right to be treated with fairness and respect for the victim’s safety, dignity, and privacy, and upon request: to reasonable and timely notice of, and to be present at all court proceedings, including post-conviction proceedings, on the same basis as the accused; to proceedings free from unreasonable delay and a prompt conclusion of the case; to reasonable protection from the accused throughout the criminal justice process; to refuse an unnecessary interview or deposition request made by the accused; to confer with the attorney for the State about the disposition of the case; to be heard at any proceedings involving the release, plea, sentencing, or parole of the accused; to reasonable notice of the release or escape of the accused; to full and timely restitution; and to be informed of all rights under this article.<sup>85</sup>

Like Georgia’s SR 146, New Hampshire’s proposal did not extend as far as California’s (specifically, it did not call for victims’ safety to be considered in bond or parole hearings). Compared to Marsy’s Law in Georgia, New Hampshire’s resolution made more obvious reference to the national organization’s goal of bestowing equal rights upon defendants and victims throughout the criminal justice process by calling for victims to be permitted to attend hearings “on the same basis as the accused.”<sup>86</sup> Opponents viewed this campaign for “equal rights for victims” as impermissibly “chang[ing] the role of individual rights in the New Hampshire Constitution so that they can be “enforced *against* the accused *by* the victim and the state,

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83. *Id.*

84. *Id.*

85. Constitutional Amendment Con. Res. 22, 2018 N.H. Gen. Court.

86. *Id.*

even before the accused has been convicted of a crime.”<sup>87</sup> Acknowledging that the “criminal justice system absolutely owes victims the right to be treated with fairness and respect,” opponents contended that Marsy’s Law does not properly or necessarily help victims but rather “only acts to limit the rights of the accused precisely at the moment when the government is attempting to use its massive police power to deprive the accused of liberty and property.”<sup>88</sup>

### *The Future of Marsy’s Law in Georgia*

Marsy’s Law has been met with little opposition thus far in Georgia, having passed the House and Senate with strong support.<sup>89</sup> Senator John Kennedy (R-18th) believes that the proposal has been successful because it is specifically tailored to Georgia, and lawmakers spent over a year meeting with stakeholders across the State, including legislators, victims of crime, and law enforcement, to collaboratively develop a version of Marsy’s Law that is best suited for Georgia.<sup>90</sup> Those less supportive of Marsy’s Law, like the Vice President of the Georgia Public Policy Foundation, Benita Dodd, urge Georgians to “question whether the [Georgia] Constitution is an appropriate place to embed a broad, expensive mandate.”<sup>91</sup> When asked about whether she foresees legal obstacles for Marsy’s Law in Georgia, Ms. Dodd responded that it “does not unduly burden defendants” and is “quite toothless compared to other Marsy’s Law amendments across the nation,” suggesting that Marsy’s Law will likely not incite constitutional challenges in Georgia as it has in other states like Montana.<sup>92</sup>

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87. Gilles Bissonnette and Mark Sisti, *My Turn: The Equal Rights Fallacy of Marsy’s Law*, ACLU N.H. (Feb. 10, 2018), <https://www.aclu-nh.org/en/news/my-turn-equal-rights-fallacy-marsys-law> [https://perma.cc/S3KU-J7EX].

88. *Id.*

89. SB 127 Bill Tracking, *supra* note 13.

90. Kennedy Interview, *supra* note 43, at 8 min., 42 sec.

91. Benita Dodd, *Marsy’s Law of Unintended Consequences*, GA. PUB. POLICY FOUND. (Dec. 1, 2017), <http://www.georgiapolicy.org/marsys-law-unintended-consequences> [https://perma.cc/F7FS-WRV7].

92. Electronic Mail Interview with Benita M. Dodd, Vice President, Ga. Pub. Policy Found. (May 29, 2018) (on file with Georgia State University Law Review).

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Responding to a nationwide movement, Marsy's Law in Georgia adds procedural mechanisms to the 2010 Bill of Rights for Crime Victims, establishing a victim's right to receive notice of court proceedings and be heard at proceedings involving pleas, parole, and sentencing.

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