

Marsy's Law for North Carolina?

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Earlier this month, the North Carolina House overwhelmingly passed [House Bill 551](#), *An Act to Amend the Law and Constitution of North Carolina to Provide Better Protections and Safeguards to Victims*. The bill now awaits consideration by the Senate, where it has been referred to the Committee on Rules and Operations. The legislation is championed by the advocacy group, [Marsy's Law for All](#), which is seeking to amend state constitutions and, ultimately, the U.S. Constitution to enshrine victims' rights. What is the impetus for Marsy's Law and how would enactment of the constitutional amendment proposed in House Bill 551 change North Carolina's existing constitutional and statutory protections for victims?

Marsy's Law is the colloquial name for the [Victim's Bill of Rights](#) that was added to the California state constitution in 2008 and for similar amendments proposed and enacted to other state constitutions. The California amendment was backed by Henry Nicholas, the co-founder of Broadcom Corp., whose sister, Marsy Nicholas, was killed by her ex-boyfriend in 1983. Nicholas and his mother reportedly encountered the ex-boyfriend in the grocery store a week after the murder. To their surprise, he had been released on bail. In 2009, Henry Nicholas founded Marsy's Law for All.

Don't we already have constitutional protections for victims? Marsy's Law for All [seeks to amend state constitutions](#) that don't offer protections to crime victims. Yet, North Carolina's constitution already recognizes victims' rights. In 1995, voters approved the addition of "Section 37. Rights of victims of crime" to Article I of the [North Carolina Constitution](#). That section enumerates several "basic rights" for victims of crimes, leaving it to legislators to prescribe by statute the types of victims and crimes covered. Notwithstanding these provisions, North Carolina is one of several states in which Marsy's Law for All is seeking constitutional change.

What would change under House Bill 551? H.B. 551 proposes substantial amendments to current Article I, Section 37 of the North Carolina Constitution. If the bill is enacted, voters will be asked at the May 2018 primary election whether they are for or against a "[c]onstitutional amendment to strengthen protections for victims of crime, to establish certain, absolute basic rights for victims, and to ensure the enforcement of those rights." If voters approve, the amendment would become effective January 1, 2019. The proposed amendment would change existing law in the following ways:

Victims would have constitutionally protected rights in many more cases. The amendment would expand rights to victims of delinquent acts as well as crimes. It also would expand the types of crimes that are covered by extending rights to victims of all felonies as well as other constitutionally enumerated misdemeanor offenses. Under current law, the legislature defines by statute the types of criminal proceedings in which victims' rights apply. Under the proposed amendment, the legislature would not be authorized to modify the covered offenses.

Victims would have the right to be heard at criminal proceedings other than sentencing. Under current law, victims have a constitutional right to be heard at the defendant's sentencing "in a manner prescribed by law" and "at other times as prescribed by law or deemed appropriate by the court." G.S. § 15A-833 requires that admissible evidence of the impact of the crime on the victim be considered at sentencing. The proposed amendment would provide a victim with the right to be heard "at any proceeding involving a plea, sentencing, parole, release of the defendant, and any proceeding in which the victim's rights are implicated, except for the defendant's initial appearance."

Victims' rights would be broadly defined and not subject to statutory modification. Current Article 1, Section 37 sets forth victim's rights "as prescribed by law." These rights remain -- and indeed are expanded -- in the proposed amendment, but the authority of the legislature to prescribe how the rights are to be afforded is eliminated. For example, a crime victim currently has the right "as prescribed by law to be informed of and to be present at court proceedings" for the defendant. G.S. 15A-832 instructs the district attorney about the proper way in which to ascertain whether the victim wishes to be notified of court proceedings. The proposed constitutional amendment, in contrast, sets out a victim's rights to "be given information about the crime" and other matters, but removes the language authorizing the legislature to prescribe how those rights are to be afforded. Similarly, victims currently have the "right as prescribed by law to receive restitution." The amendment, in contrast, affords victims the absolute "right to receive full and timely restitution from the defendant."

Victims would have several new constitutional rights. The proposed amendment creates the following new constitutional rights for victims: (1) "[t]he right to be reasonably protected from the defendant"; (2) "[t]he right to proceedings free from unreasonable delay and a prompt conclusion to the case"; (3) the right to "assert and seek enforcement of his or her rights in any trial or appellate court" with jurisdiction over the case; and (4) "[t]he right to be treated with fairness and respect for the victim's dignity and privacy."

None of the new rights are qualified by the "as prescribed by law" language that qualifies many of the current constitutional rights afforded to victims. Thus, it is unclear how these rights would be afforded to victims. For example, what might reasonable protection include? Under current law, the district attorney's office is required, whenever practical, to provide a secure waiting area for a victim during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family. G.S. 15A-832(d). The right to reasonable protection set forth in the amendment arguably requires protection of a far more comprehensive nature.

As to the second new right – the right to proceedings free from unreasonable delay – the proposed amendment does not spell out how this right is to be reconciled with the State and the defendant's right to a reasonable time to prepare for trial and the defendant's right to the meaningful assistance of counsel. At a minimum, it seems that courts would be required to consider the interests of the victim in ruling on any motions to continue.

Regarding a victim's right to assert his or her rights in any trial or appellate court, the amendment states that the victim "does not have party status," the right to an attorney, or a collateral civil cause of action. It remains uncertain, however, what the procedure will be for a victim who wishes to assert such rights.

Finally, though the proposed amendment states that a victim's right "to be treated with fairness and respect" does not "affect the State's discovery obligations," it is not clear what precisely this right entails.

Differing viewpoints. Proponents of Marsy's Law in North Carolina say that enshrining victims' rights in the state constitution [is necessary](#) and [is preferable](#) to allowing the legislature to modify those rights through the regular legislative process. Others have expressed concern that the proposed amendment could [impinge on the role of the prosecutor](#), [impose additional burdens on district attorneys' offices](#), and could create adversarial relations between prosecutors and dissatisfied victims.

Have a perspective? Use the comment feature below to share your view.