

Marsy's Law- Asserting a Constitutional Right for Victims- Why You Should Vote NO

The Law Today	The Change that Marsy's Law Will Make	The Harm to Justice
The person who brings a criminal charge against someone is a "complaining witness" and not a proven victim until a trial finds that the crime occurred and the person accused committed the crime.	The person who brings the criminal charge is immediately deemed a "victim" with constitutional rights to limit the defense of the person accused even though there has been no trial or guilty plea or proof that a crime occurred and that the person accused committed the crime.	Even though the law says that the "presumption of innocence" won't be altered, by definition, the person who brings the criminal complaint now has the leverage over the person accused of the crime and can limit her or his defense.
Constitutional provisions cannot be changed without a vote by the people.	The Legislature can change the definition of a victim by statute and thereby altering this constitutional amendment to be more punitive at any time that the legislature is in session. For example, stating that every police officer is a victim where he or she brings the charges.	A constitution is a foundational document. We should only change it with extreme care. Language is important. Other provisions are very clear cut and not as contradictory. Permitting the legislature to tinker with the constitutional amendment can create chaos.
At hearings, in order to ensure that witnesses for the State and the defense do not change their testimony based on what other witnesses say, either the prosecution or the defense can move for a separation of witnesses at a hearing. Only the person who faces the criminal charges and is presumed innocent until proven guilty, has a right to be present and hear all of the testimony against her or him. Only one witness can assist the prosecution and be in the courtroom all of	The complaining witness, who will now automatically be called the "victim" as soon as they file a charge, will have the right to be at all hearings even if they are a witness and would previously have to remain outside of the hearing if there were a separation of witnesses.	The complaining witness will hear other witnesses who might present conflicting testimony and will be able to alter their testimony to try and be more persuasive.

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the time. That witness can be the victim or an investigating officer and can be there the whole time even if they have to testify. Usually, they are called first by the Commonwealth.		
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A defendant has a US constitutional right to a fast and speedy trial but if they need more time to prepare for a hearing or trial, they can make a motion and request it of the judge. There is no state constitutional or statutory right to a fast and speedy trial.	This change will give a complaining witness the right to demand of the judge and prosecutor that they go forward with the trial even if the person accused is not ready. Since the overall constitutional right of the complaining witness is to be "at least" as great as that of the defendant/accused, this means the rights of the complaining witness (who has automatically been made a victim) may be protected more greatly than the rights of the defendant/accused.	An accused person who is not ready for a hearing or a trial, who may not have counsel who is prepared, can still be made to proceed despite the fact that they are not ready.
Counsel for an accused person has a duty to investigate their client's case. This can include investigating the truth of the accusations against a person and the character or background of those bringing the accusations as well as any other evidence.	Complaining witnesses who will automatically be deemed "victims" will be able to secure protective orders from judges to stop defense counsel from investigating the case in any way that the complaining witness finds offensive. This could include stopping defense counsel or their investigators from talking to witnesses who know the complaining witness or	Cases will not be investigated vigorously by the defense resulting in people who are not guilty being found guilty because evidence that could show the inaccuracy or falsity of accusations against them will not be presented to judges or juries.

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	other types of investigation.	
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When the state brings a criminal charge against a person it is the state or commonwealth versus the person accused. The prosecutor does not directly represent the victim as this is not a civil action, but instead represents the state or the commonwealth or the government since the power of the government is prosecuting the accused.	Complaining witnesses will be able to have counsel, if they can afford to hire an attorney or will be able to have the prosecutor represent their interests rather than the interests of the state. This will compromise a prosecutor's ethical obligations.	Sometimes prosecutors discover that complaining witnesses are not telling the whole truth or maybe that they are outright lying about something. Under current law, a prosecutor has an ethical and legal obligation to dismiss a case where they discover that they have untruthful witnesses or the evidence shows someone is not guilty. The pressure with this constitutional amendment will be that prosecutors will be forced to be the lawyer for the victims and have to push forward even though they do not believe the evidence merited a prosecution. It will also be the case that the trial will no longer be the state v. the accused but instead the state + the complaining witness vs. the accused.
The prosecutor has a duty to protect the interests of the victim while also acting with integrity and protecting the constitutional right of the accused, so that the prosecutor is not supposed to hide evidence and must do justice for all. This role is different than the defense who represents the	The constitutional provision puts a duty on the prosecutor to directly represent the victim if requested by the victim while the constitutional provision also states that nothing in the amendment is to be understood to "alter the powers, duties, and responsibilities of the prosecuting attorney."	There will be a lot of extra litigation about the meaning of the constitutional provision, including at the trial and appellate level. This litigation will be costly, draw out cases and will create confusion across the Commonwealth.

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person accused in accord with the Sixth Amendment right to counsel for a person who is being prosecuted by the power of the state.	This makes the constitutional amendment contradict itself.	
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Prosecutors have the authority to make decisions on behalf of the state that may also protect the interests of the complaining witnesses. Prosecutors do not have an explicit constitutional right to immunity. When a person is given immunity, it means they cannot be sued civilly or criminally for wrong-doing.	The amendment will give prosecutors an explicit constitutional right to immunity for any action they take as long as it was in good faith.	Prosecutors have more, rather than less constitutional protections under this provision. The immunity clause does nothing to protect the interests of victims.
Most criminal cases involve two lawyers, one for the defense and one for the prosecution. If there is more than one defendant, each has a lawyer. The case is styled the State v. the Accused (Defendant).	This change in the law will involve lawyers for the complaining witnesses who are automatically assumed to be victims. The judge may only allow one attorney to represent all of the victims or there may be more than one lawyer to represent several victims. The prosecutor may be required to become the lawyer for the victims as well as acting as the lawyer for the state.	We call this the <i>lawyers full employment constitutional amendment</i> . There will be lawyers everywhere. It will become very confusing who has the burden of proof, who is representing whom and what right do the various lawyers have to object, to refuse to turn over discovery, to argue that hearings should not proceed or that trials must happen more quickly.
The complaining witnesses have over 100 rights set forth in statute. (see KRS Chapter 346, KRS 15.245-247, 196.280, 421.500 – 576, 439.340, 532.055, 533.252.). Complaining witnesses have the right to be present at all hearings,	This amendment will elevate all rights of a complaining witness to a constitutional level at least equal to (and can be understood as greater than a defendant). This means that if a witness is not properly notified, the	The prosecutors have told the legislature that this amendment demands an increase in their budgets so that they can hire more victim advocates and ensure that they do all the notifications that will be

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to present evidence at sentencing, to appear before a parole board, to be notified about any bail decisions, to have their safety considered, to be protected from harm.	actions in court may be invalidated. The amendment states that a complaining witness is entitled to a remedy for any wrong and that the remedy CANNOT be an action against the prosecutor. Thus, it can only be an additional action against the defendant or the defendant's lawyer.	required to all complaining witnesses. It also means that there will be no finality. Many times a defendant's rights can be violated at trial or on appeal but those violations are deemed harmless error and the judgment stands. This constitutional amendment says that no violation of a complaining witness can be understood as harmless. A remedy is explicitly required in every circumstance.
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The current statutes do not specify what actions can be brought against the prosecution or whether the victim has standing in court to seek remedies against the prosecution.	The amendment specifies that no action can be brought against the prosecution. It gives victims standing but not party status.	The amendment is internal inconsistent. That means it says contradictory things. What does it mean to have standing but not party status? If the victim cannot take any action against the prosecutor, what will the remedies be except action against the defendant or his lawyer even though it was the prosecutor who failed to protect or assert the victim's interests. The amendment will create more injustices and wrongful convictions and will not bring satisfaction to victims whose voices were not heard because of prosecutorial failures.