

# CONSTITUTIONAL INITIATIVE NO. 116

## A CONSTITUTIONAL AMENDMENT PROPOSED BY INITIATIVE PETITION

CI-116 would add a new section to the Montana Constitution establishing specific rights for crime victims. The rights enumerated include the right to participate in criminal and juvenile justice proceedings, to be notified of major developments in the criminal case, to be notified of changes to the offender's custodial status, to be present at court proceedings and provide input to the prosecutor before a plea agreement is finalized, and to be heard at plea or sentencing proceedings, or any process that may result in the offender's release. CI-116 guarantees crime victims' rights to restitution, privacy, to confer with the prosecuting attorney, and to be informed of their rights. CI-116 defines specific terms and requires no further action by the Legislature for implementation. CI-116, if passed by the electorate, will become effective immediately.

Fiscal impacts are expected for the Office of the Public Defender, Judicial Branch, Department of Corrections and local governments from passage of CI-116, but those costs could not be accurately determined at this time.

YES on Constitutional Initiative CI-116     NO on Constitutional Initiative CI-116

---

### COMPLETE TEXT OF CONSTITUTIONAL INITIATIVE NO. 116

---

WHEREAS, the People of the State of Montana find that a crime victim in Montana is entitled to enhanced, specific, and meaningful rights to participate in criminal and youth court proceedings and enact the following new section of Article II of The Constitution of the State of Montana. The section is named for a noted victim of crime, Marsy, in whose name many states have enacted comparable reforms.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Article II of The Constitution of the State of Montana is amended by adding a new section 36 that reads:

**Section 36. Rights of crime victims.** (1) To preserve and protect a crime victim's right to justice, to ensure a crime victim has a meaningful role in criminal and juvenile justice systems, and to ensure that a crime victim's rights and interests are respected and protected by law in a manner no less vigorous than the protections

afforded to a criminal defendant and a delinquent youth, a crime victim has the following rights, beginning at the time of victimization:

(a) to due process and to be treated with fairness and respect for the victim's dignity;

(b) to be free from intimidation, harassment, and abuse;

(c) to be reasonably protected from the accused and any person acting on the accused's behalf;

(d) to have the victim's safety and welfare considered when setting bail and making release decisions;

(e) to prevent the disclosure of information that could be used to locate or harass the victim or that contains confidential or privileged information about the victim;

(f) to privacy, including the right to refuse an interview, deposition, or other discovery request and to set reasonable conditions on the conduct of any interaction to which the victim consents;

(g) to receive reasonable, accurate, and timely notice of and to be present at all proceedings involving the criminal conduct, plea, sentencing, adjudication, disposition, release, or escape of the defendant or youth accused of delinquency and any proceeding implicating the rights of the victim;

(h) to be promptly notified of any release or escape of the accused;

(i) to be heard in any proceeding involving the release, plea, sentencing, disposition, adjudication, or parole of the defendant or youth accused of delinquency and any proceeding implicating the rights of the victim;

(j) to confer with the prosecuting attorney;

(k) to provide information regarding the impact the offender's conduct had on the victim for inclusion in the presentence or predisposition investigation report and to have the information considered in any sentencing or disposition recommendations submitted to the court;

(l) to receive a copy of any presentence report and any other report or record relevant to the exercise of a right of the victim, except for those portions made confidential by law;

(m) to the prompt return of the victim's property when no longer needed as evidence in the case;

(n) to full and timely restitution. All money and property collected from a person who has been ordered to make restitution must be applied first to the restitution owed to the victim before paying any amounts owed to the government.

(o) to proceedings free from unreasonable delay and to a prompt and final conclusion of the case and any related postjudgment proceedings;

(p) to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the offender, including any scheduled release date, actual release date, or escape;

(q) to be informed of clemency and expungement procedures; to provide information to the Governor, the court, any clemency board, or any other authority and to have that information considered before a decision is made; and to be notified of any decision before the release of the offender; and

(r) to be informed of the above rights and to be informed that the victim may seek the advice and assistance of an attorney with respect to the above rights. This information must be made available to the general public and provided to all crime victims on what is referred to as a Marsy's card.

(2) A victim, the victim's attorney, the victim's legal representative, or the prosecuting attorney at the request of the victim may assert and seek enforcement of the rights enumerated in this section and any other right afforded to the victim by law in any trial or appellate court or any other authority with jurisdiction over the case as a matter of right. The court or other authority shall act promptly on the request, 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 must be clearly stated on the record.

(3) This section may not be construed to deny or disparage other rights possessed by victims. This section applies to criminal and youth court proceedings, is self-executing, and requires no further action by the Legislature.

(4) As used in this section, the following definitions apply:

(a) "Crime" means an act defined as a felony, misdemeanor, or delinquency under state law.

(b) "Victim" means a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime.

(i) The term includes:

(A) a spouse, parent, grandparent, child, sibling, grandchild, or guardian of the victim;

(B) a person with a relationship to the victim that is substantially similar to a relationship described in subsection (4)(b)(i)(A); and

(C) a representative of a victim who is a minor or who is deceased, incompetent or incapacitated.

(ii) The term does not include the accused or a person who the court believes would not act in the best interests of a minor or of a victim who is deceased, incompetent or incapacitated.

# CONSTITUTIONAL INITIATIVE NO. 116

---

## ARGUMENT FOR CI-116

---

A 'Yes' vote on CI-116, known as Marsy's Law for Montana, will establish a Crime Victims' Bill of Rights in the Montana constitution.

Montana is one of just eighteen states that fails to provide an equal level of rights under the constitution to victims of crime. The U.S. and Montana constitutions provide those accused of crimes with due process protections, but our state constitution does not accord crime victims the right to meaningfully participate in the criminal justice process as the state prosecutes the accused.

Marsy's Law raises victims' rights to a level equal with the rights of the accused.

The rights enumerated in Marsy's Law are simple and straightforward. Victims of crime should have the right to be notified of hearings in their case, and the right to be present and be heard at those hearings. Victims should have the right to confer with the prosecuting attorney in their case and to provide input before a plea agreement is finalized.

Crime victims should have the right to privacy and to refuse unreasonable requests for discovery or the release of personal information. Victims should have the right to be notified of any changes in the custodial status of the offender in their case. These all are examples of Constitutional rights that crime victims in Montana currently do not have.

No one expects to be a victim of a crime. But when you are, you want justice, and you should have a reasonable expectation that the judicial system will hold all rights as equal. Providing victims of crime with long-overdue equal rights will be a huge step toward ensuring victims of crime are treated with dignity, notified of important legal events like bail and parole hearings, provided a voice in the process, and finally afforded an equal level of rights.

Montana's law enforcement officials and prosecutors are among the finest in the country and many of them are vocal supporters of crime victims' rights and CI-116. Unfortunately, the Montana criminal justice system is not designed with the victim in mind.

A 'Yes' vote for CI-116 is a vote to ensure that victims of crime are afforded rights on a level equal to those of the accused and convicted. A 'Yes' vote is for equal rights.

# CONSTITUTIONAL INITIATIVE NO. 116

---

## ARGUMENT AGAINST CI-116

---

CI-116, or Marsy's law, is not a Montana law written for Montanans. CI-116 is backed by a businessman from California and his coalition. Montana has strong laws to protect crime victims – this amendment is costly and unnecessary. To handle all the requirements of CI-116, Montana cities and counties will be forced to either cut other services to citizens, or raise taxes to pay for adding staff. Montana taxpayers will have to fund significant spending increases in the Department of Corrections and other state agencies. The out-of-state backers of CI-116 would give new rights to some people, but take rights from others.

CI-116 has a vague definition of "victim" that will include many people who are not victims at all, including people who are simply friends of actual victims. CI-116 is besieged with problems. Years of costly lawsuits will be needed to determine whether the new rights are superior to the rights being taken away or minimized. Cities and counties will have to raise local taxes to pay for this unfunded mandate.

It's clear that Montanans care about victims' rights and have acted to improve them. In 1985, Montana enacted the Treatment of Victims Act. Montanans amended the Constitution in 1998, to assure restitution to victims of crime. The sponsors of CI-116, although well-intentioned, have missed an opportunity to further advance victims' rights by improving existing laws. Instead, the sponsors propose a massive, 863-word, addition to our Constitution that contains many problems that are likely to cause more trauma to victims and setbacks to victims' existing rights.

Citizens accused of crimes are presumed innocent until proven guilty. They have a constitutional right to defend themselves and to a fair trial. CI-116 creates new victims' rights that conflict with a defendant's constitutional rights. For example, under CI-116, a victim, under the new definition, may refuse an interview with a defendant's lawyer - clearly unconstitutional. If CI-116 is approved, lawsuits will pit the victim's new rights against the civil liberties of a person who is presumed innocent. This will create uncertainty and delay within Montana's criminal justice system. Far from benefiting crime victims, this will make it harder for victims to receive justice.

Montana's cities and counties employ crime victim advocates to notify crime victims of cases and to help law enforcement keep victims safe from harm. Currently, Montana's crime victim advocates focus on victims of violent crime, including sex crimes and domestic violence. CI-116 will dilute the services local governments are able to provide to people who desperately need these services immediately after a traumatic event.

Montanans care about victims and provide services to protect victims of crime. Montana does not need this costly, confusing change.

# CONSTITUTIONAL INITIATIVE NO. 116

## PROPONENTS' REBUTTAL OF ARGUMENT AGAINST CI-116

What the opponents of the victims' rights amendment say and don't say speaks volumes.

They say, "Montana has strong laws to protect crime victims." Perhaps we have a different definition of "strong."

When a victim has no right to confer with a prosecutor before the prosecutor decides whether to charge a crime or to decline to charge a crime, there is no strong law to protect victims. When trial dates come and go repeatedly with long delays without regard for the impact on a victim's ability to reach closure, there is no strong law to protect victims.

They assert that the amendment's language includes a vague definition of "victim." We're unclear what's vague about it. The definition encompasses the universe of people who have lives upended by a crime.

When they say Montana's crime victim advocates focus on victims of violent crime, they are admitting that state law offers virtually no rights to victims of fraud and other property crimes.

They fail to provide any evidence to support their claim that CI-116 will result in "higher taxes" or "cuts to other services." Thirty-two states have constitutional rights for victims without the budget impacts described by the opponents. CI-116 can be implemented with no additional cost.

More to the point, shouldn't victims' rights be a budget priority? Providing rights to crime victims—on a level equal to those accused of committing the crime—should be a primary function of government.

## OPPONENTS' REBUTTAL OF ARGUMENT FOR CI-116

The sponsors of Marsy's law refuse to acknowledge that current Montana law provides important rights for crime victims. The sponsors also refuse to address the increased financial impact of Marsy's law on state and local taxpayers.

Marsy's law's sponsors could work through the legislative process to improve existing laws. By proposing a constitutional amendment, the sponsors avoid a full and fair debate on proposed changes. Instead of a discussion about the costs and need for such changes and improvements in the law, the sponsors propose a constitutional amendment that will create conflicts between the rights of people accused of crime and the rights of crime victims. Instead of listening to Montanans in an open, public hearing, where the problems with Marsy's law can be fixed, the sponsors wrote a massive amendment that will take another amendment, or multiple lawsuits, to correct.

The Montana Constitution provides 7 enumerated rights for defendants, compared to 19 new rights for victims. Montana's Constitution uses 99 words to protect the rights of defendants, compared to 863 words Marsy's law uses for victims. This does not bear out the sponsor's claim that the amendment will provide "an equal level of rights" or that it is "simple." It is not simple or equal.

Marsy's law will result in costly litigation and uncertainty for crime victims. Montana simply cannot disregard the rights granted in the U.S. and Montana Constitutions.