



Testimony of the American Civil Liberties Union of Kentucky

To Members of the House Standing Committee on Elections,
Constitutional Amendments, and Intergovernmental Affairs

Regarding Senate Bill 15

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March 18, 2020

Chairman Bratcher and members of the Committee:

My name is Heather Gatnarek and I am a Staff Attorney at the ACLU of Kentucky. Unfortunately, I am not able to attend the seventh meeting of the House Standing Committee on Elections, Constitutional Amendments, and Intergovernmental Affairs in person, due to limited Capitol access and public health recommendations to avoid large gatherings as a result of COVID-19. I still wanted to share information regarding Senate Bill 15 and hope you will accept this letter as my testimony.

Preliminarily, I must ask why this committee is prioritizing such a wide-sweeping and controversial¹ bill, which would fundamentally change our constitution, at a time when we are facing one of the greatest public health and economic crises in generations—especially when opponents to this bill, like my organization, are unable to appear to express our opposition on record. Please consider holding this bill until we can return to business as usual, and you can hear from a range of voices in live testimony.

If the committee insists on moving forward with this bill, however, please note our long-standing and steadfast opposition² to this well-meaning but misguided effort.

For several years now, this legislative body has heard³ our concerns about SB15, “Marsy’s Law,” about its lack of clarity and specificity which will lead to confusion in the courts, and about its lack of resources or support for court officers to ensure these rights. When the KY Supreme Court considered the legal challenge to Marsy’s Law last year, the justices across the board stated that

1. www.themarshallproject.org/2018/05/22/nicholas-law
2. www.kentucky.com/opinion/op-ed/article240727646.html
3. https://www.aclu-ky.org/sites/default/files/field_documents/letter_to_kyga20_re_marsyss_law.pdf



they did not know what certain provisions of Marsy's Law mean, and did not know how to interpret it—of course, these are the same justices that will likely end up hearing future legal challenges to Marsy's Law. Because there is no additional guidance or resources provided for these rights, and because Marsy's Law explicitly states that there is no cause of action for victims who feel their rights have been violated, this is in effect an empty promise to victims across Kentucky. Practically speaking, nothing will change for victims if Marsy's Law is passed.

We at the ACLU have also spoken at length about the unintended consequences that Marsy's Law may have. What's different now from the last time the legislature considered Marsy's Law is that a handful of other states have passed a version of this constitutional amendment, and we can learn from them about the pitfalls of this measure.

10 states have passed a version of this constitutional amendment. In the years since states like North Dakota, South Dakota, Nevada, and Florida have passed versions of Marsy's Law, we've seen unexpected and frankly bizarre consequences. For instance, law enforcement officers have interpreted the victims' constitutional right to privacy as requiring police to withhold certain information from the public: the sketch of an assault suspect and name of the community in which the assault took place; the name of a daycare facility where a worker was charged with child abuse; and motor vehicle accident reports, just to name a few. It is important to note that where other states' versions of Marsy's Law contain a specific provision regarding the withholding of certain records, and SB15 does not contain that language, SB15 actually goes even further, by writing a vague and undefined "privacy" right into the constitution that is liable to be interpreted in countless different ways.

Other states have also reported predictable delays and snags within the justice system. For instance, advocates in several of these states report that bond or bail hearings are often delayed pending victim notification, sometimes for weeks or even months. At a time when legislators and advocates across political ideologies are working together to lower our jail and prison populations, this bill has the very real potential to keep people locked up much longer than they should be.

Most importantly, the General Assembly is well-positioned to review the current statutory Victims' Bill of Rights, take a look at what is working and what is not, and make changes in that section



to further ensure that victims are supported and heard as criminal cases move through the legal system. You even have a bill pending in your chamber that is primed to do this—HB617. We strongly encourage the members of this committee, and the House as a whole, to take that positive step, rather than voting for a constitutional amendment that will ultimately let victims down and cause widespread problems in our justice system, especially at such an unprecedented and crucial time as right now.

Sincerely,

A handwritten signature in blue ink that reads "Heather Gatnarek". The signature is written in a cursive, flowing style.

Heather Gatnarek