

Van H. Wanggaard

Wisconsin State Senator

Testimony in Support of Senate Joint Resolution 53/Assembly Joint Resolution 47

Thank you Chairman Spiros and members of the committee for participating in today's hearing on Senate Joint Resolution 53 and Assembly Joint Resolution 47, which re-codifies and updates Wisconsin's victim's rights amendment.

In 1991 and 1993, on the recommendation of then-Attorney General Doyle, the Senate unanimously adopted one of the first victims' rights constitutional amendments in the country. This was followed up by adding additional statutory rights for victims over the years, most recently in my bill from 2011.

This issue is close to my heart, and I have a unique perspective on the issue of victims' rights. As a police officer for close to 30 years, I worked on the prosecution side of the criminal justice equation. As a law enforcement officer, I was frequently the first point of contact for crime victims. Even though I was under no legal obligation to treat them with respect or keep them informed through the criminal justice process, I did so because it was the right thing to do. I believed then, as I do now, that working with crime victims to make sure their voice is heard is the duty of everyone in the criminal justice system. Unfortunately, that belief is not shared by everyone in the system.

When my career was ended by a federal fugitive fleeing custody that crashed head-on into my squad car, rupturing the C 5/6 disc in my neck and flattening my spinal cord, I became a crime victim. This was an eye opening experience for me. I was lucky to have had the previous first-hand experience with the criminal justice system to help guide me through the process. But I also saw how the maze of hearings, subpoenas, and motions can overwhelm a victim. A victim can feel helpless, lost, and unfortunately, revictimized in the criminal justice system.

To me, preventing that revictimization is the goal of this legislation. A victim shouldn't have to feel threatened and harassed by the alleged criminal through unnecessary discovery motions, or reliving their victimization in an interview or deposition. They should be heard throughout the process, and have the government act as their advocate for privacy, information and restitution.

Since we first introduced the resolution, we have heard from several groups with concerns. We have to remember that unlike other states, we're not creating this constitutional amendment out of whole cloth. Many of the rights proposed to be enshrined in our constitution already exist and have case law at the statutory level. Because the proposed amendment allows for statutory interpretation, many concerns are already addressed including remedies, appellate rights and others. I would briefly like to mention three other changes we made based on feedback

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First, we removed two provisions from our proposal that could be considered duplicative, or subject to extensive court battles regarding interpretation.

Next, to stop the amendment from slowing down the criminal justice process, or being too burdensome on prosecutors, we have clarified that several rights can be available "upon request." This change also will help prevent claims that rights have been violated.

Finally, we have also made changes that clarifies that this amendment applies only to the criminal justice system, not the civil justice system.

There is one last point that I want to address. I have heard repeatedly, and wrongly, that we are trying to shift the balance of justice from a defendant to victims and the prosecution. This is just not true. We are seeking to balance – to equalize - the rights of a victim with those of a defendant. To do so, we are elevating certain statutory rights to a constitutional level. Prosecutors are not gaining any additional rights. To be certain the balance of justice doesn't shift too far to victims, we have added language to the Amendment similar to the existing language stating clearly that the victim's rights do not supersede the constitutional rights of the defendant.

I hope you will join us, along with the Wisconsin District Attorney's Association, Wisconsin's Sheriffs and Deputy Sheriffs, Mothers Against Drunk Driving, the Coalition Against Sexual Assault, the WPPA and Milwaukee Police Association, Sojourner Family Peace Center, H.E.L.P. of Dane County, Golden House of Green Bay, the Wisconsin Troopers and Chiefs of Police, and countless victims of crime across the state and support giving a victim a constitutional voice in the criminal justice process.



TODD NOVAK

STATE REPRESENTATIVE • 51ST ASSEMBLY DISTRICT

(608) 266-7502
Toll-Free: (888) 534-0051
Rep.Novak@legis.wi.gov

P.O. Box 8953
Madison, WI 53708-8953

Assembly Joint Resolution 47

Thank you chairman and members of the committee for holding a hearing on Senate Joint Resolution 53/Assembly Joint Resolution 47, also known as Marsy's law which elevates the rights of the victim to a level more equal to that of the defendant by updating the victims' rights amendment to Wisconsin's constitution.

Prior to serving in the State Assembly, I was a newspaper editor for a local paper in my hometown of Dodgeville. Too often, terrible stories of violent crimes would come across my desk and I would follow the progress as the case moved through the criminal justice system.

In a small town, victims of violent crimes can feel trapped. They quickly become a sort of local intrigue where suddenly, everyone knows their name. Rumors run rampant and the truth is stretched. The victim is no longer a human being, but a name everyone knows; a character in a story. Through no fault of their own, they are thrust into the spotlight. It is only fair that they have the right to be present and the right to be heard throughout the criminal proceedings that are only happening because of the harm done to them.

Marsy's Law does just this. This legislation guarantees that the victim of a crime has the right to, among others and upon request, be notified of court proceedings, be heard at court proceedings, and confer with the prosecution. It is also key to understand that the rights of the defendant are equally as important, which is why this legislation explicitly states that any rights granted to the victim may not be interpreted to supersede a defendant's federal constitutional rights. We are simply leveling the playing field.

I cannot express how strongly I support this constitutional amendment. Soon, you will hear from law enforcement leaders, victims' advocates and, most importantly, from crime victims who share this same sentiment. I hope you will listen carefully to their stories and understand how this amendments stands to benefit a great number of victims in our state.

Before I close, I would like to thank Sen. Wanggaard for all of his hard work on this legislation. There were countless other people involved who helped identify ways that we could improve this legislation and I am very grateful for their help and expertise. I believe we have produced a complete and well thought out proposal.

Thank you for your time.

Todd Novak



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**BRAD D. SCHIMEL
ATTORNEY GENERAL**

**Paul W. Connell
Deputy Attorney General**

**Delanie M. Breuer
Chief of Staff**

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
TTY 1-800-947-3529

PREPARED TESTIMONY OF ATTORNEY GENERAL BRAD D. SCHIMEL

Testimony on Senate Joint Resolution 53
Senate Committee on Judiciary and Public Safety
Assembly Committee on Criminal Justice and Public Safety
Thursday, June 15, 2017

Good morning Chairmen and committee members,

Thank you for the opportunity to testify in support of Senate Joint Resolution 53, the constitutional amendment to enhance victim's rights, also known as Marsy's Law.

Wisconsin has a proud tradition of being at the forefront of protecting victims' rights. Before I became a prosecutor 28 years ago, the Milwaukee County DA's Office created one of America's first Victim/Witness Services division in a prosecutor's office. In 1980, Wisconsin enacted into law the nation's first Crime Victims Bill of Rights. In 1993, Wisconsin amended our Constitution to enshrine victims' rights. We, as a state, thought these rights were as important as other rights we hold sacred, such as the freedom of religion and the right to bear arms. Marsy's Law continues this proud tradition and Wisconsin's efforts on behalf of crime victims.

Before getting into the details of this proposed amendment, I'd like to specifically thank Senator Wanggaard for his work to protect victims of crime. This includes his sponsorship of legislation enhancing the rights of crime victims and his steadfast commitment to law enforcement.

The Department of Justice serves a critical role in Wisconsin's treatment of crime victims. I am proud to lead some of the best--and most dedicated--public servants in the country, who staff DOJ's Office of Crime Victim Services, or OCVS, and the Crime Victim Rights Board. Our OCVS provides countless resources for crime victims, their families, friends and professionals in the victim service field. We administer the crime victim compensation fund, which provides victims financial assistance to pay for medical and

mental health counseling expenses, costs of caregiver services, crime scene clean-up costs, and even funeral costs. The last thing we want a family to worry about as they bury a loved one who was a murder victim is “how do I pay for this?”

We must ensure that these dedicated public servants, and their colleagues doing similar work in our counties, have all the resources necessary to continue supporting victims. If you take one message from my testimony today, I'd like it to be this: We can do more for crime victims.

In particular, we can do more for the women and children who are too often victimized by violent and predatory criminals in our state. The world has changed a lot, and we have learned a lot in the 20 or so years since the existing amendment was put in place. This new amendment, authored by Senator Wanggaard and Representative Novak, will apply those important lessons to our Constitution. This proposal will update our Constitution to ensure that all the rights that crime victims deserve are clear and enforceable constitutional rights. And most importantly, this amendment puts victims on equal footing with the accused.

Many of the rights proposed in this amendment exist in state statute, but do not hold up when a judge is required to balance an accused criminal's constitutional rights with our current victim rights statutes. The constitutional rights of the accused are clear, but the rights of victims need clarification and strengthening. It is time to place victims on equal footing.

The rights captured in this amendment are basic and important. The right to privacy, to confer with counsel, to refuse invasive discovery requests, to full restitution and to compensation as provided by law would be balanced against a criminal defendant's rights. As is explicitly stated in the amendment, nothing in this amendment would be interpreted to supersede a defendant's federal constitutional rights.

Part of my mission as the Attorney General of Wisconsin is to provide unwavering support for our law enforcement agencies and officers, and Wisconsin's law enforcement is on board with Marsy's Law, as you can see from the list of those agencies supporting this amendment. After all, being a law enforcement officer means protecting those most vulnerable and our crime victims. When we strengthen the rights of victims, we help our law enforcement officers do the important work of keeping us safe.

Today, you will hear testimony from women who have experienced and survived heinous crimes. You will hear from a survivor who was beaten to the brink of death with a baseball bat and left for dead in a trash can in a storage shed, and another woman who was

sexually assaulted by her father and yet another strangled and beaten by her boyfriend. These women were thrust into the criminal justice system by no choice of their own and all they ask is that their rights not be automatically preempted by the rights of the accused.

The criminal justice system and our communities rely on crime victims to be willing to come forward and help us hold criminals accountable. If we are to expect victims to participate in the criminal justice system, they must perceive the justice system as a place where they will be treated fairly. Passage of this amendment will send the message to crime victims that the criminal justice system will be a safe place for them to seek services and assert their rights. The Department of Justice looks forward to continuing to assist victims through law enforcement, District Attorneys, and advocacy groups as we do now. Whether through our Office of Crime Victim Services, or through our exceptional grant programs, we will continue to ensure victims are not forgotten, and their rights are honored.

At DOJ we believe that justice isn't served until crime victims are. This amendment ensures that victims are served.

Thank you again for the opportunity to testify in support of Senate Joint Resolution 53.

Please contact Lane Ruhland at ruhlandl@doj.state.wi.us with any questions.



STRANG | BRADLEY LLC

TRIAL LAWYERS

Dean A. Strang
John H. Bradley
Rachel E. Bradley

[608] 535-1550
Fax [608] 406-2602
StrangBradley.com

Author's e-mail:
Dean@StrangBradley.com

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Senator Van H. Wanggaard
WISCONSIN SENATE
319 South, State Capitol
Madison, Wisconsin 53708

Representative John Spiros
WISCONSIN ASSEMBLY, 86TH DISTRICT
15 North, State Capitol
Madison, Wisconsin 53708

RE: *Senate Joint Resolution 53, Substitute Amendment*

Dear Senator Wanggaard and Representative Spiros:

~~Thank you for considering my oral testimony at the June 15 joint hearing on this proposed constitutional amendment, and also for soliciting my written testimony. I am honored to submit that testimony now.~~

1. Briefly, I am a lawyer of 32 years' experience in Wisconsin, my birthplace. For a short time, I was a federal prosecutor in Milwaukee. That followed a stint at a large Milwaukee civil firm, Reinhart Boerner Van Deuren, S.C. Since September 1988, I have practiced almost exclusively as a criminal defense lawyer, in both state and federal courts and at trial and appellate levels. My interest in the proposed victims' rights amendment to the Wisconsin Constitution is rooted in the fact that much of my professional identity and a good bit of my life are tied to the fairness, safety, and reliability of the truth-seeking processes that our institutions of criminal justice employ in an assemblage that we commonly refer to as the "criminal justice system." I have a vital stake in the honesty, integrity, and reliability of the institutions that together compose that system. I and my colleagues in the defense bar fill one (and only one) of many essential functions in that system, if it is to work fairly, reliably, and with integrity.

Specifically, my concern here is that any constitutional rights or promises extended to victims be honest, workable, and useful to victims of crime. Most victims, in my experience, understand implicitly that courts and the components of the criminal justice system must attempt to balance many competing demands: claims of victims, other witnesses, and criminal defendants; law enforcement



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priorities; judicial, prosecutorial, and policing budgetary constraints; media access and public accountability; and sundry other interests. In short, most victims I have encountered know that the process does not and cannot promise them everything. What seems to me especially important, then, is that the system keep such promises as it does make to victims: that it not create false hopes or expectations, not lie to them, and not misuse them for the ambitions and gains of others. Many victims already have suffered misuse at the hands of others who are pursuing selfish gains or objectives of their own. Those people who use victims for their own selfish gains or goals typically are criminals. The institutions of criminal justice should not add to the lies, misuse, and trickery that many victims already have endured.

2. Substantively, I want to reiterate at the outset a point that I have made to many of your Democratic colleagues and to some of your Republican colleagues: I consider the question of whether to elevate victims' rights to a constitutional level beyond my competence to address helpfully. You and all of your colleagues understand, I presume, that constitutional rights affect only the citizen's relation to the state government, not the relation of one citizen to another. That is, a constitutional "right," correctly understood, may be negative: it may impose either a full or partial limitation on state power, such as the Third Amendment (no peacetime quartering of soldiers in private homes; a full limitation) and Fourth Amendment (only "reasonable" searches and seizures; a partial limitation) to the United States Constitution. Or it may be positive: it may allow affirmative claims by the citizen or by any person against the sovereign, such as the Second and Sixth Amendments to the United States Constitution (firearm possession and fair trial assurances, respectively). But in all events, constitutional rights do *not* permit a claim by Citizen A against Citizen B; they provide only possible claims by a person or citizen against the sovereign. Further, in Wisconsin, violations of constitutional rights invoke a commitment to an adequate remedy from the sovereign, as they should. WIS. CONST. Art. I, § 9.

Statutes, by contrast, may establish rights and claims as between citizens — that is, Citizen A may sue Citizen B for violation of some statutory duty. Statutes also may be enacted, modified, and repealed more nimbly.



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But again, the decision whether to elevate a policy goal from statutory to constitutional is beyond my ken. Elevating a claim by a citizen against the state to the constitution says something about priorities or importance; about fundamental values, in other words. Such judgments seem to me peculiarly within the province of legislators and, as to constitutional amendments, of citizen voters in the referendum that comes at the end of the constitutional amendment process.

So I offer no opinion on whether lodging victims' rights in the state constitution is wise or unwise. I have noted only some of the differences between a statutory locus and a constitutional locus, which I again presume you and your colleagues understand.

3. I turn now to the feasibility and honesty of each of the nineteen constitutional rights that Section 1 of the SJR would create. In overview, several of these are both good ideas and readily workable. Others are bad ideas—unconstitutional or misleadingly phrased—or infeasible, or both.

Generally, though, I note that Section 1 first asserts that victims will have a right to "due process" in criminal prosecutions. Enacting this would open a whole panoply of claims to notice and to be heard, beyond even the expansive specific rights that SJR 53 proposes to establish. This also would create a conflict, as a practical matter, with Section 5, which purports to foreclose party status for a victim. People with due process rights in a given case are parties. As to specifics, I use the subsection letters that Section 1 itself uses.

- A. *Treatment with Dignity, Respect.* This is a good goal and workable as written, because it plainly is aspirational.
- B. *Privacy.* This is undefined and unworkable, at least as many victims would interpret the term "privacy." As a matter of due process, confrontation, and effective assistance of counsel, the names of victims and some of their personal identifying information will be included in police reports that are disclosed (and must be) to the defense. Victims will have to testify in court



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and respond to relevant questions that may intrude upon "privacy," especially as a victim may wish to define it. Other witnesses may disclose information that a victim might wish to deem private. This will create false hopes and expectations for victims, and is a promise that the state cannot keep.

- C. *No Unreasonable Delay.* Again, this broad and undefined aspirational goal does not admit the reality, which is that a victim never will be the person who decides what delay is "unreasonable." A judge will be that person and, as a practical matter, must be. This creates false hopes and expectations.
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- D. *Timely Disposition.* Again, by whose measure? Not the victim's. Further, I do not know what possible tangible remedy the state could offer for a disposition that is not "timely," whether by the victim's measure or even by a judge's. Should the case be dismissed if it is not resolved in a timely way? Should the defendant be found guilty summarily without a trial? I cannot imagine that victims would prefer the former, and neither the state nor federal constitution would tolerate the latter.
- E. *Presence "at All Times."* This would create a constitutional right that no one really intends, I suspect. As written, it purports to guarantee actual presence, in court, "at all proceedings." If the words mean what a reasonable victim would take them to mean, they would require that District Attorney's offices or police agencies furnish taxi fare, bus fare, or airfare for victims who lack transportation to attend every court appearance, no matter how insubstantial. They presumably would require that judges schedule court appearances only when victims are not working or otherwise occupied, including at night and on weekends as necessary to accommodate victims' schedules.



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A fix is possible. This provision easily could be made workable and honest by promising timely notice of and an opportunity to attend, if the victim chooses and is able, court appearances.

- F. *Reasonable Protection from the Accused.* This idea is workable and honest. It is a good idea. Judges, of course, will decide what is "reasonable."
- G. *Timely Notification Upon Request.* This is honest and altogether workable. It should supplant subparagraph (e), in my opinion.
- H. *Conferences with the Attorney for the Government.* This subparagraph is triggered only upon a victim's request, which is wise. Still it is not entirely workable, because it promises time with the prosecutor – not just with a victim/witness coordinator or other employee of the District Attorney's office—upon request, and puts no limitation on how many such requests a victim may make. This state already has a shortage of Assistant District Attorneys, and their caseloads are unconscionably high in many counties. Realistically, they cannot interrupt other trials or their daily work every time a victim may want to confer. This would be foolishly costly and in conflict with the other goals of timely disposition and elimination of unreasonable delay. It is a false promise and would create false hopes. A fix would be fairly easy: for example, you might refer to the "prosecution," not to an attorney for the government, and limit consultation to that which is "reasonable given the prosecution's other legal obligations."
- I. *Heard in Any Proceeding.* This is both unworkable and counterproductive. On its face, it would invite victims to speak at plea hearings, expungement, and many other proceedings on which almost all lay people have no expertise useful to a court. Indeed, as I read this, it would allow a victim to speak directly to



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the court at every proceeding, as I cannot think of any proceeding that would not “implicate[]” a “right of the victim” under this SJR. The likelihood of lengthier proceedings with an additional speaker, and thus of unintended delay in that case and in every other case on a court’s docket on a given day, is obvious.

The more subtle and counterproductive effect of which you should be aware is this: to the extent that a victim takes a position contrary to the prosecutor’s position, the judge will hear dissension and chaos at the state’s table, while he or she typically will hear unison and coherence from the defense table (because only the defense lawyer speaks there, typically). In any adversarial process, the likelihood of success on a given point rises for the party that presents a coherent, clear position; the likelihood of success falls for the party that has an incoherent, conflicting, or confusing position. Quite unintentionally but foreseeably, then, this provision may lead to the defense prevailing on points that it otherwise would lose, because of a fractured and fractious presentation by the state, through competing voices of prosecutor and victim.

In that vein, too, bear in mind that a significant fraction of “victims,” as this SJR defines them, want charges against the defendant reduced or dismissed. This is an unfortunately common occurrence in domestic violence cases. Both judge and prosecutor would be obliged to hear the victim express that view in every court appearance – and the defense would be free at trial to use a victim’s statements in open court to impeach the victim’s testimony at trial.

- J. *Submit Information on Effects of Crime.* This is a good, workable idea. We do it now.



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- K. *Timely Notice of Release or Escape.* This is a good, workable idea, sensibly limited to the victim's request.
- L. *To Refuse Discovery Requests.* This would be unconstitutional in part and thus unworkable and a false hope. Under the federal constitution, specifically the Sixth and Fourteenth Amendments, the accused in a state criminal case has a right to disclosure of exculpatory information, at a minimum. This provision would collide in part with those federal constitutional rights, and to that extent be unenforceable. It would present a measure of false hope or expectations to victims and is dishonest to that extent, too.
- M. *Full Restitution.* This would create an unintentionally broad constitutional right, and one that would be enormously expensive for taxpayers if it means what it says. If it does not mean what it says, then it misleads victims and creates false hopes and expectations. A fix would be easy. A constitutional right "to a restitution order as determined by law" and to "such remedies in collecting restitution as law provides" would be perfectly workable and a good idea. But as written, this gives the victim a claim against the state for "full restitution," regardless whether the defendant is ordered to make that restitution, and regardless whether he can make that restitution as a practical financial matter. Only the taxpayer would be left to fulfill this constitutional guaranty of "full restitution" if, for whatever reason, the defendant does not or cannot make restitution in full.
- N. *Restitution Priority.* This is a good, honest, common-sense idea that is fully workable.
- O. *Compensation as Provided By Law.* Again, this is a good, honest, workable idea.



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- P. *Timely Information About Outcome.* Although I would suggest adding the limitation "upon request," this is in essence a good, honest, workable idea.
- Q. *Timely Notice of Rights.* This is a perfectly good idea, and with a minor adjustment I think would be workable. The adjustment I suggest is that this notice obligation not take effect until charging, so that the burden of notification is on a District Attorney's office, not on a police department. Police agencies operate 24 hours a day, but staffing varies by hour and depends upon the size of the department. Police officers also are less equipped to advise victims of a long list of constitutional rights than are prosecutors and their offices, which are under control of lawyers. Finally, in a meaningful number of cases, a prosecutor may determine that there was no crime, or at least no provable crime, and decline to issue charges. For all of these reasons, it will be more workable to put the onus of notice on a prosecutor's office, at the time it issues charges or shortly after.

4. Finally, I want to note the clear tension between Sections 3 and 4 of the SJR. Section 3 promises that a court or other authority will "afford a remedy for the violation of any right of the victim." But then Section 4 purports to remove the possibility of money damages on the theory that the new constitutional amendment "does not create any cause of action for damages." There are at least three points of conflict or concern.

First, a victim may not need a new cause of action created by Section 4 to pursue a remedy under Section 3: his or her rights now will have been elevated to a constitutional level, and their denial may well invoke pre-existing or long recognized causes of action for constitutional torts. So, in fact, Section 3 may make monetary damages available, if in fact the victim can point to a source of right to bring a monetary claim outside Section 4.



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Second, if a victim really cannot recover damages from the state or its political subdivisions or state actors, then Section 3's promise of a "remedy" for violations of many of these new rights really is illusory and empty; it is another false hope for victims or a trick played upon them. What possible remedy other than money would there be, after the fact, for lack of a timely disposition, for unreasonable delay, for denial of a right to be heard, for inability to collect full restitution from the defendant, and for a number of these other rights? None. A wealthy victim might seek an injunction in advance against violation of these rights, but even there, the later remedy for violation of that injunction may not be damages that go to the victim, if Section 4 is interpreted broadly. And a poor victim will have no practical remedy at all.

Third, Section 3(b) seems to create for victims an automatic right to review, not just in our intermediate court of appeals but in the state supreme court, too. I know of no other situation in which a definitional non-party has a right to appellate review. And I know of no party in any situation that has a right to mandatory review by the Wisconsin Supreme Court, which aside from this proposed constitutional amendment has a purely discretionary docket. This SJR would seem to make one non-party, a "victim" as defined here, the only person who could demand that the Wisconsin Supreme Court actually hear his or her claim.

The potential increase in the state supreme court's workload would be incalculable. That court today gives full consideration to perhaps 70-80 cases a year, not including lawyer disciplinary matters. Because of the expansive definition of "victim" under this SJR, there would be one victim—at least—in many of the criminal cases filed in Wisconsin every year. For reference, according to CCAP, in calendar year 2016 Wisconsin courts opened 111,182 new criminal cases. If only .07% of those cases, well under 1 in 1,000, resulted in a victim seeking mandatory appellate review in the Wisconsin Supreme Court, it would double that court's current caseload.

Thank you again for requesting, and now for considering, my written testimony on the substitute amendment to SJR 53. In sum, setting aside as I do the question whether a constitutional amendment is wise or necessary, I view the substitute



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amendment to SJR 53 as including a number of good, honest, and feasible ideas. I also view it as including several bad, overbroad, misleading or mistaken, and infeasible ideas. Creating false hopes or expectations for victims of crime, or providing "rights" that in truth have no substance and no adequate remedy, I think would be unconscionable treatment of victims, and unwise or even debasing public policy for the citizens of this state as a whole. The criminal justice system should be founded on honesty, safety, and reliability in its goals and outcomes. Anything dishonest, misleading, or unreliable—even unworkable—debases that system, which already struggles with legitimacy. If you decide in the end that a constitutional amendment is wise and necessary, my hope is that you and your colleagues can implement the good without including the bad.

Sincerely,

STRANGBRADLEY, LLC

Dean A. Strang

DAS:pkb



To: Members, Senate Committee on Judiciary & Public Safety and
Assembly Committee on Criminal Justice and Public Safety
From: Badger State Sheriffs' Association
Wisconsin Sheriffs and Deputy Sheriffs Association
Date: June 15, 2017
RE: Support for Senate Joint Resolution 53 and Assembly Joint Resolution 47

Good morning, Chairmen Wanggaard and Spiros and committee members. Thank you for the opportunity to testify today in support of Senate Joint Resolution (SJR) 53 and Assembly Joint Resolution (AJR) 47. My name is Sheriff Jim Johnson of Ozaukee County, Past President of the Wisconsin Sheriffs and Deputy Sheriffs Association. I am here today on behalf of both and Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA) and Badger State Sheriffs' Association (BSSA). WS&DSA is a statewide organization representing over 1,000 members, including Sheriffs, Deputies, and jail officers and BSSA is a statewide organization representing all of Wisconsin's 72 Sheriffs. BSSA and WS&DSA have a joint legislative committee and work closely on public safety issues of concern to our members.

As Sheriffs, our job is to keep our communities' safe. This resolution would give victims the rights they deserve and ensure that they are safe in their own communities. Over 17,000 violent crimes occurred in Wisconsin in 2015, not to mention the amount of crimes that go unreported because victims are too afraid to speak up. This resolution would reassure victims that they have rights and protections in the criminal justice system to empower them to come forward.

Critics say this legislation would harm the rights of the accused, but this proposal does not change any of the accused's Constitutional rights. Instead, it ensures that legal rights apply *equally* to victims and defendants, by elevating certain victims' rights statutes to the Constitution and strengthening those that are already part of the Constitution. Under current law, the defendant's rights often trump the victim's, causing more stress, fear and danger for the victim throughout legal proceedings. For example, in one Wisconsin case, a victim was forced to submit for discovery her lifelong medical history to the defendant who abused her, even though it was irrelevant to the case. Passage of this legislation would prevent victims from having to disclose such personal information to their attackers and would also keep safe the victim's home address, contacts and other personal records. Among other protections, this legislation would also guarantee victims and defendants alike the right to a speedy trial, so the defense would no longer be able to purposefully delay proceedings, causing more fear and vulnerability for the victim.

Victims deserve to have the same rights as their attackers, to be notified of these rights, and to be heard throughout the legal process. We need this legislation to support victims, keep them safe, and give them the rights they deserve within Wisconsin's criminal justice system.

Over 80 percent of Wisconsinites support Marsy's Law. I urge you to support this legislation to ensure safety, protection and rights for victims and their families in Wisconsin. Thank you for your time and consideration.

Testimony for Public Hearing
State Senate Committee on Judiciary and Public Safety and the
State Assembly Committee on Criminal Justice and Public Safety
June 15, 2017

Professor Cecelia Klingele
on behalf of the undersigned faculty of the
University of Wisconsin Law School and the Frank J. Remington Center

2017 Senate Joint Resolution 53

STATEMENT OF INTEREST

Thank you for the opportunity to testify before you today. My name is Cecelia Klingele. I am an associate professor at the University of Wisconsin Law School. I am speaking today on my own behalf, and on behalf of my colleagues whose signatures appear at the end of this written testimony. As faculty of the University of Wisconsin Law School and the Frank J. Remington Center, collectively my colleagues and I teach courses on all aspects of criminal justice, and work as clinical educators supervising law students in projects that serve professionals and individuals within the criminal justice system. Our research and the work of several of the projects with which we are affiliated position us to offer experience-based insights to advance state criminal justice policies that improve fairness and public safety.

In particular, for more than two decades, the Law School's Restorative Justice Project has worked to serve crime victims and educate future lawyers about the human impact of crime. Moreover, through the Prosecution Project, many law students have been exposed to the harm crime causes, and to the ways in which our system often marginalizes the voices of those who suffer most directly from crime. Our own advocacy and research often force us to confront these realities, and to consider ways in which the legal system might better acknowledge the needs of crime victims without compromising the legitimate interests of other parties or system actors.

For all of these reasons, we have a particular interest in 2017 Senate Joint Resolution 53. We enthusiastically support strengthening the rights of victims, and applaud the legislative intent of this amendment and the symbolic nature of enshrining victims' rights in our Wisconsin

Constitution. Nonetheless, we do not want such rights to be *merely* symbolic, and believe there is a better, more effective way to accomplish the Legislature's desired result. We take this position because we think framing new rights and remedies for victims as Constitutional rights, rather than as statutory protections, is unintentionally confusing and may mislead victims by appearing to promise more than the State can deliver. Additionally, we are concerned that the amendment may inadvertently undermine the integrity of the criminal process and even the interests of victims themselves—a result none of us desires.

Our first concern is that the amendment, as drafted, appears to make broad promises to victims that will be difficult to keep. A few examples illustrate this point.

First, the proposal promises a constitutionally-based right of privacy, unique to crime victims. But what exactly does that mean? Is it merely a restatement of the right to non-disclosure of personal information already contained in the Wisconsin statutes? If so, it is neither necessary nor desirable, since unlike the Constitution, the statute can be easily amended to offer new protections as technology develops. If the right to privacy is meant to provide greater protection than §950.04(dr), how can such a right be safeguarded? Information about witness and victim identities is widely-available in public records maintained by federal, state and local governments, as well as in the media and in records maintained by private entities and easily accessible online. No constitutional amendment can cover all such information; thus, to promise "privacy" so broadly is to inadvertently mislead.

Similarly, the proposed amendment promises to aid victims in collecting full restitution. Who will offer such aid and how? Section 3 suggests the prosecutor may be the entity to enforce such a right, but state prosecutors already lack sufficient resources to screen and process existing levels of referrals for assistance.

Other provisions present similar ambiguities. The amendment provides a right to notice of various proceedings, but does not indicate who should provide such notice. Another provision promises a right to be present at all proceedings, but does not define what "proceedings" mean in this context. It is hard to imagine that victims will now be given access to all bench conferences, *in camera* review proceedings, or plea negotiation talks—yet the language of the amendment may well lead victims to believe they have the right to be present at all of these. Similarly, Section 9m(4) says that victims may seek redress for enforcement of the rights listed, and that when they do so courts should "act promptly . . . and afford a remedy for the violation of any right of the

victim.” But Section 9m(5) shields the state and state actors from an award of damages against them in their official capacity, and presumably qualified immunity would shield from liability in a personal capacity all but the most brazen wrongdoers. What then does it mean to remedy violations? The amendment is unclear, and risks misleading victims about the availability of meaningful redress.

Without clarification, these and other similarly ambiguous provisions risk inadvertently betraying crime victims by over-promising and under-delivering. Furthermore, these ambiguities invite future litigation to resolve questions about the meaning of the promises contained in the proposed amendment. If avoidable—as we believe it is—such litigation is not in the interest of crime victims, system stakeholders, or Wisconsin taxpayers. These vague provisions will necessarily require the legislature to provide further guidance on procedures for compliance, enforcement, and remedy. Yet, the proposed language in 9m(3) states that these provisions are self-executing and that the legislature is not obliged to offer practical guidance, but rather “may” do so or not, at its discretion. Without further legislative action, the enumerated rights contained in the amendment may ultimately offer little actualized substance or value.

Apart from our concerns about over-promising, we also are concerned that, in several ways, the amendment risks disserving the interest of all parties and victims in ensuring a fair and accurate resolution of all criminal cases. Changing the constitutional rules for adjudicating criminal cases necessarily risks upsetting the careful balance of interests that have developed over the centuries—and that continue to be fine-tuned through experience and learning—which are aimed at fair and accurate resolution of criminal charges. Section 9m(2)(L), for example, which would prohibit, as a constitutional matter, any discovery requests addressed to a victim. While such a prohibition already exists in the Wisconsin statutes, see Wis. Stat. § 950.04(1v)(er), it is in tension with modern trends broadening discovery in criminal cases in order to promote more accurate truth-seeking. Thus, while current law already bars discovery requests to victims in criminal cases, ossifying that rule as a constitutional matter would inhibit the legislature from re-examining aspects of it in the future, and impinge on the legislature’s ability to expand discovery even in limited ways should it someday conclude there is value in doing so.

Ultimately, the danger of constitutionalizing specific, detailed rights that touch on developing areas of law is the possibility of unintended consequences, some of which might actually harm the interests of victims and all of which are difficult to remedy through the normal legislative process.

Our final concern is tied to the first two, but carries with it a solution. Much of the ambiguity and most of the unintended consequences discussed above could be eliminated or dramatically mitigated if the proposed changes to the rights of victims were addressed through statutory legislation rather than through constitutional amendment. Constitutional provisions are drafted broadly by design to express overarching rights and principles, rather than to detail the fine points of implementation, which may need to change over time in ways that the amendment process is not designed to accommodate. That, however, is exactly why any efforts to give clear meaning to the substance of victims' rights and the methods for their vindication should be structured not as constitutional amendments, but as statutes. Statutes are designed to provide concrete guidance on details—such as who must give notice and when and how; at what time and in what manner victims should raise concerns; and what types of remedies are available for courts to award when a victim's rights have been violated—and can be easily changed to correct for omissions or other problems that may arise in giving meaning to victims' rights. While the point about what form new law should take may seem overly technical, in fact, it is critical. It is only by clarifying details that victims' rights can be realized in a meaningful way. And details must be addressed by statutes, not by constitutions.

Therein lies the solution. The needs of crime victims are too important to dismiss with commendable, yet ultimately empty, promises. To address the real needs of Wisconsin crime victims, we respectfully suggest that the legislature create a committee composed of individuals with the personal and professional experience and expertise to examine where our current laws are failing victims and to draft legislation that concretely offers solutions to those identified problems. Such a committee could be tasked with reconciling the current proposal with existing state and federal law, learning from victims and other system shareholders about what areas are most in need of attention, and developing a proposal that can deliver to crime victims all that it promises. Such a response would give Wisconsin crime victims clear and meaningful notice of their rights, and guide system actors in ensuring that those rights are honored promptly and with respect. To the degree we can be helpful to you in such a task, my colleagues and I offer our assistance.

Thank you for your time and attention.

Respectfully submitted,
(in alphabetical order)

Keith Findley
Associate Professor of Law

Ben Kempinen
Distinguished Clinical Professor Law
Director, Prosecution Project

Cecelia Klingele
Associate Professor of Law
Faculty Associate, Frank J. Remington
Center

Michele LaVigne
Distinguished Clinical Professor of Law
Director, Public Defender Project

Mary Prosser
Clinical Professor of Law

Jonathan Scharrer
Clinical Instructor
Director, Restorative Justice Project

Leslie Shear
Clinical Professor of Law
Director, Family Law Project

Adam Stevenson
Clinical Associate Professor of Law
Director, Frank J. Remington Center



Wisconsin State Public Defender

17 S. Fairchild St. - 5th Floor
PO Box 7923 Madison, WI 53707-7923

Office Number: 608-266-0087 / Fax Number: 608-267-0584
www.wispd.org

Kelli S. Thompson
State Public Defender

Michael Tobin
Deputy State
Public Defender

Assembly Committee on Criminal Justice & Public Safety
Senate Committee on Judiciary & Public Safety
Thursday, June 16, 2017
Senate Joint Resolution 53/Assembly Joint Resolution 47

Chairmen and committee members,

Thank you for the opportunity to speak on Senate Joint Resolution (SJR) 53 and Assembly Joint Resolution (AJR) 47.

The State Public Defender (SPD) strongly believes in the principle of procedural justice. This principle is an evidence-based concept that includes treating victims, defendants, and other citizens involved in the judicial process with fairness and respect. Fair treatment of all participants also supports the theory that every interaction within the criminal justice system is an opportunity to reduce harm. That said, the SPD has both general concerns with the concept of adding this extensive language to the state Constitution as well as specific concerns about the language in the proposed amendment.

In practice, the Constitution is generally reserved for broader statements preserving the rights of citizens. Additional context is provided by the legislature through statute and courts through case law. For instance, the current constitutional provision regarding victim rights is a broad but thorough list of protections. These protections have been well defined and expanded in Chapter 950 of Wisconsin statutes. To our knowledge, there have been very few issues with this structure. Any concerns that arise seem to be based more on resource availability and practical issues of applying these existing rights.

In addition, a process already exists for victims to file complaints about allegations they were mistreated. The Crime Victims' Rights Board (CVRB) has received 58 complaints since it was established in 1999. The top three respondents named in the complaints were prosecutors, law enforcement, and judges. The CVRB found that probable cause existed for at least one allegation in 67% of the complaints filed. It has conducted 34 investigations and 13 evidentiary hearings. To provide remedy, the Board issued 12 private reprimands and has been involved in judicial appeals.

This proposal makes fundamental changes to core principles of the American system of justice. In general, the constitutional amendment could have serious repercussions on the criminal justice system and the constitutional protections afforded defendants who, under the United States and Wisconsin Constitutions, are considered innocent until proven guilty. The totality of the changes contemplated by the amendment create several due process concerns. In addition, these changes are likely to have practical implications as courts and other justice agencies are required to interpret and apply these provisions across the criminal justice system.

The other states that have passed similar constitutional amendments have struggled in practical implementation. While there are some differences, the language is substantially similar to this proposal. Most significantly, the cost to implement and abide by the provisions has impacted counties and law enforcement agencies. There are costs associated with providing notification and services required from the time the rights vest. Within 4 months of passing the amendment in Montana, the legislature began

working on changes based on the unintended practical applications of the law. If the same thing happens in Wisconsin, it will take a minimum of four to five years to correct any issues based on the process to amend our constitution.

We appreciate the opportunity to have talked with the authors and advocates for this resolution before the hearing today. We were invited to provide suggested changes to the language. While the substitute amendment makes changes to ameliorate some of the specific language concerns, a majority of the suggestions were not adopted in the substitute version of the resolution.

The due process rights of a defendant and the presumption of innocence are presently reflected in Wisconsin's Victims of Crime constitutional provision at Article I, Section 9m ("Nothing in this section...shall limit any right of the accused which may be provided by law.") That language is stricken by the proposed constitutional amendment and replaced in Section 5 of the substitute amendment with new language that is less precise and more open to future litigation. While this concept was added back at our request, the actual language is not an adequate substitute for the current provision. Stating that these provisions shouldn't be interpreted to "supersede a defendant's federal constitutional rights" implies that defendant's rights in the Wisconsin constitution and rights set forth in state statutes have been compromised.

Language allowing the victim to refuse an interview, deposition, or other discovery request made by the accused also raises questions in practice. First, it is worth clarifying that criminal depositions in Wisconsin can only be conducted in highly unusual circumstances meaning that they very rarely take place. Second, there is a concern that by allowing a victim to refuse a discovery request, that this may prevent a defendant from obtaining discovery material vital to the constitutional right to present a defense. While advocates say that access to necessary evidence has not been restricted in other states with this provision, the way Arizona's system of providing discovery operates and the way that state's courts interpret this provision does not guarantee that Wisconsin courts will reach the same conclusion.

For example, consider an employer which accuses a former employee of taking money from the cash register. The defense may attempt to subpoena records that could show that the employee was not on duty when the theft occurred. This proposal may prevent defense from obtaining this critical evidence.

Language in Sections 3 and 4 of the substitute resolution appears to be in conflict. Section 3 generally indicates that a victim can ask a court to "afford a remedy for the violation of any right of the victim." Section 4 rules out any cause of action for damages against the state. In addition, the end of Section 3 allows a victim to ask any court - circuit, appeals, or Supreme - to review any adverse decision regarding their rights. While Section 5 states that the victim is not a party, "any adverse decision" could be interpreted very broadly to include nearly every decision by the circuit court judge. This provision could have a significant impact on the workload of courts throughout Wisconsin.

The appeal-of-right provision also appears to allow an unlimited number of pretrial appeals that could delay cases. This provision is an example of a provision that creates ambiguity about the balance between prosecutors and victims in determining how a case proceeds.

To reiterate, SPD supports the fair and respectful treatment of crime victims in the criminal justice system. Our concern stems from the potential to shift the balance of rights within the justice system: not only between defendants and victims, but also between courts and victims. The defendant is already at a comparative disadvantage in the justice system. Every criminal case is filed as State versus defendant, and power of the State as a litigant is supported by significant resources at the municipal, county, and state level for law enforcement and prosecution.

June 15, 2017

If the perceived need is to provide victims with greater support and guidance through the criminal justice system, that goal can be achieved by providing additional resources to supplement the procedures already in statute. Concerns about the operation of Chapter 950 and the practical role of victim support in the criminal justice system can be addressed collaboratively and in the context of statute and the budget.

Thank you for the opportunity to speak today. We look forward to answering any questions you may have now or in the future.



Written Testimony of:

Jim Palmer, Executive Director
WISCONSIN PROFESSIONAL POLICE ASSOCIATION

Before the:

Senate Committee on Judiciary and Public Safety
Assembly Committee on Criminal Justice and Public Safety
WISCONSIN STATE LEGISLATURE

June 15, 2017

Senator Wanggaard, Representative Spiros, and Esteemed Committee Members:

Thank you for the opportunity to testify this morning on behalf of the WPPA in support of 2017 Assembly Joint Resolution 47 and Senate Resolution 53, also known as "Marsy's Law for Wisconsin."

With more than 10,000 members from nearly 300 local affiliates, the WPPA is the Wisconsin's largest law enforcement group. Our mission is to protect and promote public safety, as well as the interests of the dedicated men and women that serve to provide it. We believe that Marsy's Law effectively furthers that interest, and we were pleased to be the first law enforcement association in the state to endorse this effort to amend our state constitution. Additionally, we are encouraged to see this measure garner the bipartisan support of lawmakers dedicated to coming together to strengthen the rights of crime victims in Wisconsin.

Our great state has been a national leader in defining and protecting victims' rights for many years. Most notably, Wisconsin was the first state in the country to adopt a "bill of rights" for the victims and witnesses of crime in 1980. In 1993, Wisconsin's voters approved a constitutional amendment to further strengthen some of those rights. Given this state's well-established leadership and legacy, Marsy's Law for Wisconsin will further enhance the rights of crime victims in a way that does not burden our criminal justice system or dampen the rights of the accused.

The WPPA has established long record of supporting bipartisan measures to improve public safety in Wisconsin, and we are proud to support this important measure to safeguard those most-affected by criminal activity and ensure that they have a meaningful voice in the legal process. In largely elevating the current statutory language regarding the rights of victims to the level of the state constitution, Marsy's

Law will elevate the prominence of those rights in the courtroom as well. In short, this measure sends the powerful and important message that the rights of the victims of crime should be no less than the rights afforded those accused of perpetrating crime. Marsy's Law in Wisconsin will serve to strike that necessary balance.

Oftentimes, law enforcement officers are the first to interact with the victims of crime, and they frequently have to fulfill a variety of roles in doing so, including making the victim feel safe, listening to their concerns, providing them with resources when needed, explaining "what comes next" in the investigation that will follow their ordeal, and informing them of their rights under the law. All of the good that can come from this crucial, albeit underrecognized, form of policework can be all-too-easily easily undone if victims feel that they are at-risk for being revictimized by the court system and the criminal process. Marsy's Law will not only enhance the protections that we afford the victims of crime, but it will give them a degree of engagement in the process that, quite frankly, they deserve. It will empower them. It will help them heal.

More pragmatically, Marsy's Law will make crime victims feel secure, not only in terms of their own personal safety, but in the credibility of the criminal justice system as well. For the law enforcement officers that often represent the face of criminal justice system, and who at times bear the brunt for that system's shortcomings and inequities, Marsy's Law can play an especially meaningful role. If the victims of crime are more engaged and feel as though their voice is being heard, Wisconsin's criminal justice system will be more effective in delivering justice. Marsy's Law will not only represent an important extension of law enforcement's fundamental duty to protect the public, but the state's proud legacy as a national leader in advancing the interests of crime victims as well.

The WPPA is honored to join every major law enforcement association in the state as well as the majority of duly elected sheriffs - Republicans and Democrats alike - in supporting this amendment, and we respectfully urge the members of these committees to support them as well.

Thank you for your consideration.



To: Senator Wanggaard and Representative Spiros
Members of the Senate Committee on Judiciary and Public Safety, and Members of the
Assembly Committee on Criminal Justice and Public Safety

From: Chief Christopher Domagalski, WCPA President

Date: June 15, 2017

Re: Support of AJR47/SJR53

The Wisconsin Chiefs of Police Association (WCPA), representing nearly 600 communities across the State of Wisconsin is pleased to support AJR 47/SJR 53, also known as “Marsy’s Law for Wisconsin”. The WCPA proudly represents chiefs of police throughout the state of Wisconsin, and enjoys membership from many ranks of professional law enforcement within municipal police agencies.

Police officers swear an oath of duty to our communities and citizens that reflect a commitment of honor, trust and ethically sound law enforcement practices. As part of that commitment, law enforcement agencies play a vital role in being responsive to victims of crime, including stabilizing highly charged situations, securing medical attention if needed, and providing victims important information on the criminal justice system and their rights under state law.

Police Chiefs in Wisconsin have worked diligently with the Wisconsin Department of Justice, local victim advocates and other partners to ensure that officers are trained on best practices for interacting with, supporting and referring victims to other resources during our contacts. We recognize that a positive first response and supportive interaction with a victim may lead to better outcomes in subsequent investigation, prosecution of crimes and most important of all the healing of the physical, emotional and psychological injuries of crime victims. Further, we recognize that one of law enforcement’s most important duties is to protect victims of crime.

In that vein, we support AJR 47/SJR 53 as it seeks to clearly define victims’ rights and codify them in the state Constitution. The WCPA respectfully encourages the joint committees to approve AJR 47/SJR 53.



Mothers Against Drunk Driving
National Office
madd.org

1200 18th Street, NW
Suite 700
Washington, DC 20036

877.ASK.MADD
877.MADD.HELP victim support

June 14, 2017

Mothers Against Drunk Driving (MADD) supports Marsy's Law (SJR 53 and AJR 47)

The Honorable Van Wanggaard
Chairman, Senate Committee on Judiciary and Public Safety

The Honorable John Spiros
Chairman, Assembly Committee on Criminal Justice and Public Safety

Dear Chairman Wanggaard and Chairman Spiros,

Mothers Against Drunk Driving (MADD) strongly urges you to support Marsy's Law (SJR 53 and AJR 47). MADD sincerely thanks you Chairman Wanggaard for authoring this important measure and we thank you Chairman Spiros for cosponsoring the Marsy's Law victims' rights amendment to the Constitution. MADD thanks Representative Novak, Attorney General Schimel, and the many cosponsors for their leadership in advocating for this much needed victims' rights amendment.

Wisconsin has a history of being strong on victims' rights, but MADD wants to make sure those rights are truly equal. The Marsy's Law amendment would add the most important of those rights to the Constitution, further strengthening protections currently in state statute.

As a national victim services organization, MADD provides emotional support and assistance with medical and legal struggles that follow a drunk or drugged driving crash. Last year, MADD provided more than 160,000 supportive services to drunk and drugged driving victims to help them cope with the devastating impact of substance-impaired driving crashes.

We know that survivors of drunk driving crashes continue to feel the impact long after the crash. That is why it is so important to MADD that victims' and survivors' rights are protected and honored, and why Wisconsin needs Marsy's Law.

Please support and advance Marsy's Law (SJR 53 and AJR 47). If you have any questions, please contact MADD Director of State Government Affairs Frank Harris at frank.harris@madd.org or 202-688-1194. Thank you for considering this request.

Sincerely,

Colleen Sheehey-Church
MADD National President



Wisconsin State Lodge Fraternal Order of Police

P.O. Box 206 • West Bend, WI 53095 • 262-536-5500



Don Kapla – President
kapla@wifop.org

Shane Wrucke - Secretary
wrucke@wifop.org

June 15, 2017

Chairman Wanggaard and Senate Committee on Judiciary and Public Safety members
Chairman Spiros and Assembly Committee on Criminal Justice and Public Safety members

FROM: Donald Kapla, President of the Wisconsin Fraternal Order of Police

DATE: June 15, 2017

RE: AJR47/SJR53 Marsy's Law for Wisconsin

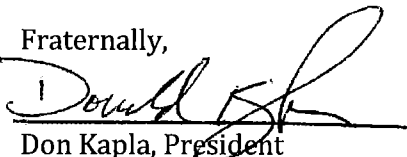
Wisconsin State Lodge Fraternal Order of Police Endorses Marsy's Law for Wisconsin

The Wisconsin Fraternal Order of Police (WI FOP) is pleased that Marsy's Law for Wisconsin enjoys bi-partisan support among state legislators and elected law enforcement across the state. The FOP routinely advocates for legislation that impacts and enhances law enforcement on the local, state and national levels. The men and women of law enforcement have dedicated their lives to the protection of others, and our commitment extends to the protection of crime victims as well. Our members interact with victims and family of victims on a daily basis, which provides the FOP and other law enforcement associations with valuable insight into how victims interact with Wisconsin's criminal justice system.

Wisconsin has been on the forefront of victims' rights for many years by being the first state in the nation to codify a Victim's Bill of Rights and pass a constitutional amendment recognizing victims' rights. FOP members are proud of its past and current role in ensuring victims are treated fairly and their voice is heard throughout the entire legal process. Marsy's Law for Wisconsin builds upon that tradition and enhances the rights of victims without diminishing the constitutional rights of the accused. It's important to note that most of the Amendment's provisions derive from current state statutes, and elevating the statutory language to the state Constitution will provide a level playing field for victims.

The Wisconsin State Lodge Fraternal Order of Police is proud to stand with all major law enforcement associations in the state in support of this Amendment, and it respectfully encourages both committees' members to vote in support of AJR 47/SJR 53.

Fraternally,


Don Kapla, President
Wisconsin State Lodge FOP



Wisconsin Troopers' Association

Executive Director – Ryan Zukowski

Glen Jones – President

4230 East Towne Blvd. #322

Madison, WI 53704

www.wisconsinTrooper.org

To: Chairpersons Wanggaard and Spiros
Members, Senate Committee on Judiciary and Public Safety and Assembly
Committee on Criminal Justice and Public Safety

From: Ryan Zukowski, Executive Director
Wisconsin Troopers' Association

Date: June 15, 2017

Re: **Support of Senate Joint Resolution 53, Assembly Joint Resolution 47, relating to
the rights of crime victims**

The Wisconsin Troopers' Association (WTA) is proud to stand with victims and support Marsy's Law for Wisconsin.

Law enforcement members that make up the statewide WTA are proud to be part of the history in Wisconsin of protecting victims' rights, but we need to update and strengthen our Constitution to ensure those rights for crime victims are equal to those of the accused.

State troopers and inspectors encounter victims on a daily basis, and our members have seen the damage that violence and other crime does to families and the surrounding communities in Wisconsin. Elevating the rights of crime victims to equal standing and updating our state constitution moves Wisconsin's judicial process in the right direction.

On behalf of the Wisconsin Troopers' Association, we would like to thank Senator Wanggaard and Representative Novak for their efforts in introducing Senate Joint Resolution 53/Assembly Joint Resolution 47, and Attorney General Brad Schimel for his support of these provisions. The WTA urges passage by the committee.

If you have any questions, please contact Annie Early at Martin Schreiber and Associates at 414-405-1050. Thank you.



WISCONSIN COALITION AGAINST SEXUAL ASSAULT

Testimony

To: Members of the State Senate Committee on the Judiciary and Public Safety and the State Assembly Committee on Criminal Justice and Public Safety
From: Wisconsin Coalition Against Sexual Assault
Date: June 15, 2017
Subject: AJR 47/SJR 53: Marsy's Law
Position: Support

The Wisconsin Coalition Against Sexual Assault (WCASA) is a statewide membership agency comprised of organizations and individuals working to end sexual violence in Wisconsin. Among these are the 56 sexual assault service provider agencies throughout the state that offer support, advocacy and information to survivors of sexual assault and their families.

WCASA thanks Chairmen Wanggaard and Spiros for bringing AJR 47/SJR 53, Marsy's Law, forward for consideration. WCASA also thanks the Wisconsin Department of Justice, Representative Novak and all of the bill's cosponsors for supporting this important resolution. WCASA supports this bill.

As you know, Marsy's Law updates our state constitution to give crime victims in Wisconsin rights that are equal to those currently afforded their perpetrators. The bill does this by elevating specific rights currently under statute so that they are fully constitutional rights, and by strengthening other rights that are already part of the state's constitution. For example, Marsy's Law would elevate the current statutory right to legal standing — which allows a sexual assault survivor, for example, to assert their rights in court — to a fully constitutional right. In another example, Marsy's Law would clarify the current constitutional right to be heard throughout the legal process.

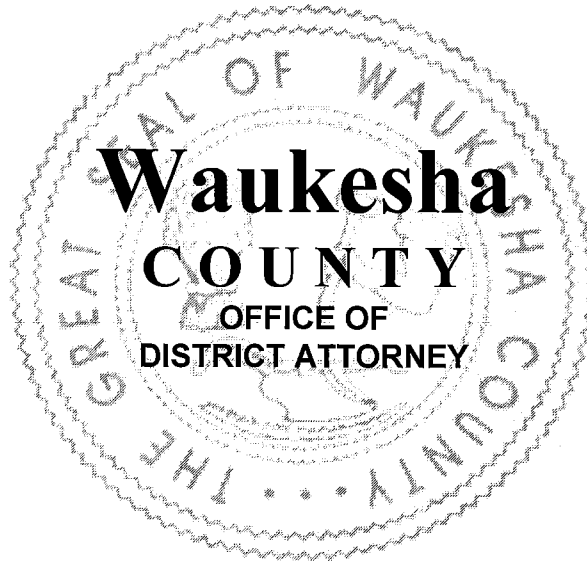
These types of improvements to the law are particularly important in cases of sexual assault, in which survivors frequently face more barriers to justice than victims of other crimes. Out of no fault of their own, when survivors come forward to report sexual assault, they experience devastating blame, shame, disbelief, intimidation and sometimes even worse, from law enforcement, the criminal justice system, and others. It is no wonder approximately 65% of sexual assaults go unreported annually.ⁱ

It is WCASA's hope that Marsy's Law will help more survivors feel safer to report these drastically underreported crimes, and have a fairer chance at justice. WCASA urges the committees to unanimously recommend AJR 47/SJR 53 to the full Senate and Assembly.

Thank you for your consideration. If you have questions, please feel free to contact us.

Dominic W. Holt, M.S.W., M.F.A.
Public Policy & Communications Coordinator
Wisconsin Coalition Against Sexual Assault
2801 West Beltline Highway, Suite 202
Madison, WI 53713
608-257-1516 ext. 113
dominich@wcasa.org

ⁱ U.S. Bureau of Justice. National Crime Victimization Survey. Victimization Not Reported to the Police (2006-2010). August 2012.



June 14, 2017

To the Senate Committee on Judiciary and Public Safety and the Assembly Committee on Criminal Justice and Public Safety:

I write today in support of your consideration of Senate Joint Resolution 53. Wisconsin has always been a leader in support of our citizens who have been victimized by crime. Wisconsin passed the first Crime Victims' Bill of Rights in the nation in 1980, and the first Child Victim and Witness Bill of Rights in 1983. Wisconsin ratified its constitutional amendment regarding victims' rights in 1993, becoming the 14th state in the country to do so. Your careful consideration of this resolution is an important step in maintaining Wisconsin's historic leadership role in championing victims' rights.

In considering the language as proposed in SJR 53, it is important to note that Wisconsin has already made great strides in support of crime victims in our communities, as well as the families who support them. While our statutory provisions and existing constitutional amendments have served as models for other states; we have also made individual progress in our recognition of the magnitude and importance of crime victim rights. "One size fits all" language does not serve the people, or the Constitution of the State of Wisconsin, and great care must be used to ensure that any future changes are meaningful and not arbitrary.

First and foremost, I urge you to seriously reconsider the inclusion of a definition of victims in the proposed constitutional amendment. Wisconsin Statutes 950.02(4a) already defines the word "victim". The current statutory definition was created over 5 years, as part of a very intentional process with much debate and discussion by victim advocates, legal scholars, and the public. That definition has served us well over the last 19 years; it is unnecessary to introduce a new definition in the constitutional amendment.

Including a definition of the word "victim" in the amendment could also cause conflicts between existing law and the Constitution. State statutes cannot be narrower in scope than the Constitution, and some existing statutes regarding victims' rights do apply only to victims of specific types of crime. At the very least, including a new definition of "victim" in the constitutional amendment will require a very thorough review of existing laws.

As time passes and culture changes, definitions evolve. Many words have different legal definitions than they did even a decade ago. It is important to be mindful when including definitions in constitutional amendments, as the process to change the Constitution is significantly harder than a statutory revision.

Second, the proposed definition of "victim" is problematic. The term "proximately harmed" in the proposed language is likely to result in unintended but detrimental consequences. The inclusion of individuals who claim "proximate" harm resulting from crime is too broad and non-specific. It will result in an overwhelming increase in the number of individuals seeking services and the exercise of victim rights during the criminal justice process. Our system is simply not equipped to absorb this enormous influx without corresponding financial support and increased resources.

Additionally, the identification of individuals who claim "proximate harm" with victims as defined in Wisconsin Statute greatly distorts our understanding of the impact that crime has on our citizens. Under this proposed definition, a bystander to a violent crime could claim the same rights and services as the direct victim. The historic recognition and support our state has always afforded crime victims should not be diluted in this fashion.

As someone who has worked in victim services for 23 years, I fully support any effort to broaden the rights afforded to crime victims in our state. However, I urge you to consult with individuals who are knowledgeable about the application of victims' rights in Wisconsin to ensure that the proposed amendment does not have unintended consequences for our citizens. We are fortunate in Wisconsin to have a victim assistance program in every one of the 72 county district attorney offices, with hundreds of dedicated victim service providers with decades of experience fighting for the rights of victims. There is also a Wisconsin Victim Witness Professionals Association, and the Office of Crime Victim Services at the Department of Justice. Both of these organizations boast amazing professionals with a wealth of experience in providing services to and advocating for the rights of crime victims. Please rely on their very relevant experience in these matters when carving out new territory in our proud history of supporting crime victims.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Dunn". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Dunn".

Jennifer Dunn, Waukesha County Director of Victim Services
Member, Wisconsin Victim Witness Professionals