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ACLU of Montana Responds to Passage of CI-116 “Marsy’s Law” threatens Montana’s overburdened criminal justice system

HELENA, Mont. – Voters in Montana passed ballot initiative CI-116, commonly known as “Marsy’s Law.” This initiative unnecessarily complicates the criminal justice process in Montana, and is more problematic and confusing than helpful. It threatens to increase prison populations, interfere with due process, and clog our justice system. Victims can and should be protected through our statutory law, not through a complex constitutional amendment that will have many unintended consequences.

“CI-116 creates more problems than it solves,” said Caitlin Borgmann, Executive Director of the ACLU of Montana. “Victims are already entitled to a number of rights under existing Montana law. Victims deserve to be protected and consulted during criminal proceedings, but this should be done through statutory provisions and without overburdening our criminal justice system and undermining defendants’ federal and state constitutional rights. CI-116 impedes justice and jeopardizes the right to a swift and fair trial by inserting victims - and a wide and uncertain array of other individuals – into most stages of the process (not just sentencing).”

Marsy’s Law was promoted and funded by an out-of-state organization and is not tailored to Montana. Its negative effects will likely be felt by prosecutors, defense attorneys, defendants, and even victims. For example, CI-116 gives victims the right to counsel separate from the county attorney’s office. But CI-116 is unclear whether this requires the state to form an entirely new unit to provide legal representation to all victims (which the state can ill afford), or whether the ability to exercise this right will instead depend on the victim’s personal wealth.

CI-116 also entitles the victim to opt out of being deposed or interviewed by the defense, entitles victims to be heard during a broad range of proceedings, and gives victims input in many stages of the criminal process. CI-116 expansively defines the “victim” to include family members or anyone with a “substantially similar” relationship to the victim.

All Montanans deserve a criminal justice system that is fair, prompt, and adequately resourced. CI-116 flies in the face of these goals. The ACLU of Montana will monitor the consequences of this overreaching addition to Montana’s Constitution and will consider necessary steps to protect Montanans’ rights, including the possibility of legal challenges to CI-116.