

Marsy's Law and Pretrial Bail Hearings in North Carolina

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Marsy's Law began as the California Victims' Bill of Rights Act of 2008¹ and was later adopted as an amendment to the California constitution.² The amendment grants various rights to crime victims in California, including the right to have the safety of the victim's family considered as a factor for determining the defendant's bail;³ the right to notice of the case's pretrial disposition;⁴ and, the right to be heard by the court concerning a defendant's bail, sentencing, and parole.⁵ It is named after Marsalee "Marsy" Nicholas, a University of California Santa Barbara student who was murdered in 1983.⁶ Unbeknownst to her family, the defendant in the case was released on bail days after Marsy's murder. He then confronted Marsy's mother in the grocery store.⁷ After the bill was adopted in California, several other states adopted similar provisions, which are also commonly referred to as "Marsy's Law."

Marsy's Law became part of the North Carolina constitution in 2018.⁸ An amendment for victim's rights had been added to the North Carolina constitution in 1995,⁹ but the more robust version was approved by voters in 2018. The following year, the changes were codified as the Crime Victims' Rights Act in Article 46 of Chapter 15A and the Rights of Victims of Delinquent Acts in Article 20A of Subchapter II of Chapter 7B of the General Statutes.¹⁰ Existing statutes in their respective articles were updated to reflect the amendment, including N.C.G.S. § 15A-831 (responsibilities of law enforcement)¹¹ and § 15A-832 (responsibilities of the district attorney's office);¹² additionally, new statutes were added, including those involving enforcement of victim rights.¹³

¹ Marsy's Law, CAL. DEPT OF CORR. AND REHAB., cdcr.ca.gov/victim-services/marsys-law/ (last visited Dec. 21, 2022).

² CAL. CONST., art. I, § 28(b).

³ *Id.* § 28(b)(3).

⁴ *Id.* § 28(b)(6).

⁵ *Id.* § 28(b)(8) and § 28(b)(15).

⁶ *About Marsy's Law*, MARSY'S LAW FOR ALL. marsyslaw.us/about_marsys_law (last visited Dec. 21, 2022).

⁷ *Id.*

⁸ NC CONST. art. I, § 37 (West, Westlaw through S.L. 2022-75 of the 2022 Regular Session of the General Assembly).

⁹ *See An Act to Amend the Constitution of North Carolina to Establish Rights for Victims of Crime*, ch. 438, § 1, 1995 N.C. Sess. Laws 1188, 1188-89.

¹⁰ *An Act to Implement the Constitutional Amendment to Provide Better Protections and Safeguards to Victims of Crime*, S.L. 2019-216, §§ 2-15, 2019 N.C. Sess. Laws 997, 997-1009. Sections 2-9 refer to the victims of crimes committed by adults; sections 10-15 refer to victims of delinquent acts.

¹¹ *Id.* § 4, 2019 N.C. Sess. Laws 997, 999-1000.

¹² *Id.* § 5, 2019 N.C. Sess. Laws 997, 1000-01.

¹³ *Id.* § 7, 2019 N.C. Sess. Laws 997, 1002-03 and *id.* § 10, 2019 N.C. Sess. Laws 997, 1008-09.

The Marsy's Law provisions adopted in North Carolina are similar but not identical to the rights enumerated in the California constitution.¹⁴ In North Carolina, alleged victims¹⁵ of personal crimes or felony property crimes have the right to be notified of court hearings¹⁶ and the right to be present at those hearings¹⁷—upon request. Victims may be heard at court proceedings that involve the release of the accused¹⁸ and have “[t]he right to present [their] views and concerns to the Governor or agency considering any action that could result in the release of the accused.”¹⁹

N.C.G.S. § 15A-830(2a) explicitly states that, for the purposes of the Crime Victims’ Rights Act, a court proceeding is defined as “a critical stage of the post-arrest process heard by a judge in open court involving a plea that disposes of the case or the conviction, sentencing, or release of the accused.” The statute continues, stating that “term does not include the preliminary proceedings described in Article 29 of Chapter 15A of the General Statutes”, which pertain to first appearances. The provision also does not apply to initial appearances, as they are not heard by a judge in open court per the statute’s definition.²⁰ Thus, Marsy’s Law does not apply to initial appearances or first appearances in adult criminal courts in North Carolina.

The Crime Victims’ Rights Act specifically addresses the responsibilities of judicial officials in N.C.G.S. § 15A-832.1. In applicable court proceedings, a judicial official must ask whether the victim is present and wishes to be heard.²¹ If the victim so wishes, the court must give them an opportunity to be “reasonably heard.”²² The timing of when a victim is to be heard is a matter of judicial discretion; the victim may be heard “when the court deems it appropriate.”²³ The victim may be heard via oral, written, or audio/video statement.²⁴

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¹⁴ For example, the amendments in the North Carolina constitution do not specifically state that the safety of the victim and their family shall be part of a bond determination; however, this information may be considered by a judicial official per the pretrial release procedure outlined in N.C.G.S. § 15A-534(b) (listing “danger of injury to any person” as a factor for consideration when setting conditions of pretrial release) and N.C.G.S. § 15A-534(c) (noting that the “judicial official must, on the basis of available information, take into account...any other evidence relevant to the issue of pretrial release”), as well as § 15A-534.1(a)(1) (stating that, for crimes of domestic violence, a judge may consider the possibility that “the immediate release of the defendant will pose of danger of injury to the alleged victim or to any other person”).

¹⁵ Family members, legal custodians, and/or guardians share these rights in cases where the victim is a minor, legally incapacitated, or deceased. NC CONST. art. I, § 37 (1b)(West, Westlaw through S.L. 2022-75 of the 2022 Regular Session of the General Assembly).

¹⁶ *Id.* § 37(1a).

¹⁷ *Id.* § 37(1a)(a1).

¹⁸ *Id.* § 37(1a)(b).

¹⁹ *Id.* § 37(1a)(g).

²⁰ Furthermore, an initial appearance is not a “critical stage” of a proceeding according to the case law. *State v. Detter*, 298 N.C. 604, 624, 260 S.E.2d 567, 582 (1979).

²¹ N.C.G.S. § 15A-832.1(c) (2019).

²² *Id.*

²³ NC CONST. art I, § 37.

²⁴ *Id.* The medium of the statement is left to the victim’s discretion. *Id.*