

FLORIDA SHERIFFS ASSOCIATION

LEGAL ALERT



MARSY’S LAW: *Police Benevolent Association, Inc., John Doe 1 and John Doe 2 v. City of Tallahassee, Florida*, No. 1D20-2193, 2021 WL 1257869 (Fla. 1st DCA Apr. 6, 2021)

In a significant decision that resolves conflicting interpretations of Marsy’s Law, the First District Court of Appeal held that the protections afforded to victims by Marsy’s Law may apply to law enforcement officers.

Background

This case arose from a lawsuit filed against the City of Tallahassee by two police officers of the Tallahassee Police Department (“TPD”) and the Florida Police Benevolent Association (“PBA”) after the officers were involved in separate encounters with suspects involving deadly force. The officers asserted that they were entitled to protection of their identities under Marsy’s Law because they were victims of a crime.

In the first incident, the officer (“John Doe 1”) responded to an aggravated battery. The victim reported that the suspect was armed with knives during his attack. When the officer arrived on the scene, the suspect, who had been hiding in the bushes, threatened the officer with a large hunting knife and rushed towards him. Responding to the threat, the officer shot the suspect, who subsequently died from his wounds.

In the second incident, officer (“John Doe 2”) responded to a reported stabbing in which the suspect fled the scene while in possession of a knife and gun. The officer located the suspect leaning into the passenger window of a parked SUV. A woman leapt from the SUV and asked for help. The suspect moved toward the officer, assumed a shooting stance, and pointed a gun at the officer. Fearing for his safety, the officer fatally shot the suspect.

Both officers requested the City not to release their names, claiming that they were crime victims entitled to Marsy’s Law protection pursuant to article 1, section 16, Florida Constitution. Initially the City agreed not to release their names but then reversed its position, stating that the officers were not victims of a crime within the meaning of Marsy’s Law.

The officers and PBA filed suit to enjoin the City from disclosing the officers’ identities. Several news media also joined the lawsuit, claiming that TPD had improperly relied on Marsy’s Law to withhold records that identified the officers in the shootings. The trial court ruled in favor of the City, holding that Marsy’s law was not intended to apply to law enforcement officers when acting in their official capacity.

In support of its decision, the trial judge balanced the competing interests of victims’ rights under Marsy’s Law with the public’s right to inspect public records under article 1, section 24(a), Florida Constitution, and thereby hold the government accountable. The trial court concluded that withholding their identities would have the practical effect of removing their actions from public

scrutiny, which would be inconsistent with the intent of Marsy's Law. The City was ordered to disclose the requested public records in a manner that identified the officers.

The officers and the union immediately filed an appeal. The trial court's decision was stayed pending the outcome of the appeal.

Marsy's Law

Following the passage of Amendment 6 in November 2018, Marsy's Law became part of the Florida Constitution (article 1, section 16), creating a Bill of Rights for victims of crimes. In an effort to ensure that crime victims' rights are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants, Marsy's Law requires that the following rights be given to every victim beginning at the time of his or her victimization:

1. The right to due process and to be treated with fairness and respect for the victim's dignity.
2. The right to be free from intimidation, harassment, and abuse.
3. The right, within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused.
4. The right to have the safety and welfare of the victim and the victim's family considered when setting bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victim's family.
5. The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim.¹

The immediate question for the First District was whether law enforcement officers were entitled to the protections of Marsy's Law if they were threatened or assaulted while performing their duties. Nothing in this constitutional provision specifically addressed law enforcement officers as victim of crimes. The court, therefore, was required to discern the intent of Marsy's Law and balance the rights of victims against the public's right to inspect records under Article 1, section 24 (codified in the Public Records Law, chapter 119, Florida Statutes).

Opinion of the Appellate Court

In reversing the trial court's decision, the panel of judges looked to the express language of Marsy's Law. In their opinion, nothing within the 2018 constitutional amendment excluded law enforcement officers --- or other government employees --- from the protections granted crime victims.

¹ Art. 1, §16(b), Fla. Const.

The appellate court determined that a law enforcement officer meets the definition of a crime victim under Marsy's Law when a suspect threatens the officer with deadly force, placing the officer in fear for his or her life. The fact that an officer acts in self-defense to that threat did not, in the court's opinion, diminish the officer's status as a crime victim. Therefore, as a crime victim, an officer has the same right to maintain the confidentiality of the officer's identity as any other victim.

The court reconciled the constitutional provisions of Marsy's Law with the public's right of access to public records under article I, section 24 of the Florida Constitution. The court recognized that the public's right to inspect records is not absolute. Rather, article 1, section 24 provides:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, *except with respect to records exempted under this section or specifically made confidential by this constitution.*

(Emphasis supplied.)

In the court's view, Marsy's Law was comparable to statutory protections providing confidentiality to the identity of victims of certain crimes such as child abuse and sexual battery.² Marsy's Law, concluded the court, necessarily required the redaction or withholding of public records of victims' identities because Marsy's Law was intended to preclude the disclosure of information that could be used to locate or harass a victim or the victim's family. As the court observed, "With multiple online search resources available to seek out information about individuals when the person's name is known, a crime victim's name is the key that opens the door to locating the victim."

The court also addressed the trial court's concerns that applying Marsy's Law to law enforcement officers would insulate officers from public scrutiny of their conduct. The First District disagreed. Maintaining confidential information about a law enforcement officer who is a crime victim would not halt an internal affairs investigation nor impede any grand jury proceedings. Additionally, a state attorney would not be prevented from reviewing the facts and considering whether the officer was a victim.

Finally, the court spoke to the question of when the protections of Marsy's Law apply. The trial court had suggested that because many of the rights relate to a criminal prosecution, a crime victim's rights do not commence until the prosecution begins.

The First District, however, seized upon the language in article 1, section 16 which provides that "*every victim is entitled to the enumerated rights, beginning at the time of his or her victimization.*" (Emphasis added) In light of this provision, the court held that the rights of a victim set forth in Marsy's Law begin when the victimization, i.e., the criminal activity, occurs.

² §119.071(2)(h), Fla. Stat.

Conclusion

This case is important because the First District Court of Appeals clearly and emphatically holds that Marsy's Law applies to law enforcement officers who are threatened in use-of-force incidents. The First District's opinion draws no distinction between law enforcement officers and other crime victims for the purposes of its constitutional protections. Sheriffs should be mindful of this ruling when responding to requests for information or records that could be used to locate or harass a deputy or the deputy's family if the deputy has been the victim of a crime in the course of performing his or her official duties.

The court did not address the issue of whether a victim, including an officer, must invoke the protections of Marsy's law or if the protections should be extended without any request from the victim for identifying information to be withheld. Because this issue has not been settled, sheriffs may reasonably construe Marsy's law in either manner. In other words, a sheriff's office may require a victim, including an officer, to make such a request, or the sheriff's office may redact or withhold identifying information without any action taken by the victim to secure Marsy's Law protections.

April 22, 2021
Legal Alert #6

Questions concerning this legal alert should be directed to the sheriff's legal advisor or may otherwise be directed to Wayne Evans, General Counsel for the FSA, at revans@anblaw.com, 850.561.3503.

