

## Obsolete References to Marsy's Law

- **Section 46-11-801. Prosecutorial immunity.**
  - Needs to be repealed in its entirety
  - From SB 250 (2017)
  - 46-11-801. Prosecutorial immunity. (1) A prosecutor performing a judicial function is absolutely immune from a claim based on Article II, section 36, of the Montana constitution.
    - (2) A prosecutor performing an administrative function or an investigatory function has qualified immunity for a claim based on Article II, section 36, of the Montana constitution.
    - (3) A public safety officer has qualified immunity for a claim based on Article II, section 36, of the Montana constitution.
    - (4) Local governments and the state of Montana are immune from a claim based on Article II, section 36, of the Montana constitution.
    - (5) The provisions of Article II, section 36, of the Montana constitution have no effect on the duty of the state of Montana or a local government to defend or indemnify prosecutors and public safety officers from a claim based on Article II, section 36, of the Montana constitution.
  
- **Section 46-18-1101. Expungement of misdemeanor records – petition to district court – criteria for expungement – definitions.**
  - Needs to be amended
  - From HB 168 (2017)
  - Relevant subsections: (1) (a) A person convicted of a misdemeanor offense or offenses who has completed the terms of the sentence for the misdemeanor offense or offenses may petition the district court for an order requiring the expungement of all records of the arrest, investigation, and detention, if any, and any court proceedings that may have been held in the case.
    - (b) The district court shall determine whether a victim is entitled to notification of the request for expungement as provided in Article II, section 36, subsection(1)(g), of the Montana constitution. If a victim is identified by the district court, the prosecution office responsible for the conviction for which expungement is being requested must attempt to notify the victim. If the victim appears, the victim must be given an opportunity to respond.
  - Could be amended:
    - to reference section 46-24-211, MCA, that grants victim right to receive information about appeals or other postconviction proceedings;
    - to remove reference to Marsy's Law but still require a victim to be notified if identified; or
    - remove the entire subsection (1)(b).
  
- **Title 46, Chapter 24, Part 3. Victim's Rights**
  - Needs to be repealed
  - From HB 600 (2017)
  - Includes 3 sections
  - 46-24-301. Enforcement of victim's rights. (1) (a) A peace officer shall make a reasonable attempt to give a victim's rights card to a person who is known to be the primary victim of a crime. A victim who receives a victim's rights card and is given contact information for a peace officer is presumed to have asserted the victim's rights provided in Article II, section 36, of the Montana constitution.
    - (b) Any other victim, a victim's attorney, or a victim's legal representative who is unknown to a peace officer or a prosecutor may assert and seek enforcement of the rights provided in Article II, section 36, of the Montana constitution.

(c) The rights enumerated in Article II, section 36, of the Montana constitution may be asserted or waived by the victim any time after victimization occurs.

(2) With regard to implementation of Article II, section 36, of the Montana constitution:

(a) "delinquency", "felony", and "misdemeanor" refer to offenses under Title 30, Title 41, Title 45, Title 49, and Title 52;

(b) "person" means an individual, a human being, or a natural person and also includes a corporation, organization, or other legal entity;

(c) "proceeding" means a proceeding that is heard or that may be heard before a judicial or other governmental agency or by an official authorized to take evidence under oath, including any referee, hearings examiner, commissioner, or other person taking testimony or a deposition in connection with the proceeding; and

(d) "victim's rights card" means a card, also known as a Marsy's card, that informs a crime victim of the rights enumerated in Article II, section 36, of the Montana constitution.

- 46-24-302. Victim's rights card. The attorney general shall develop a model form of the victim's rights card as provided in Article II, section 36, of the Montana constitution. In addition to the requirements of the card and as provided in Article II, section 36, of the Montana constitution, a local law enforcement agency may provide additional information.
- 46-24-307. Information sharing. (1) Article II, section 36(1)(e), of the Montana constitution does not prohibit the sharing of victim information:
  - (a) with a domestic violence shelter, crisis line, victim's services provider, or multidisciplinary team tasked with responding to issues of domestic and sexual violence; or
  - (b) pursuant to a court order.
- (2) A victim may request that the victim's information not be shared under subsection (1)(a) with a domestic violence shelter, crisis line, victim's services provider, or multidisciplinary team tasked with responding to issues of domestic and sexual violence.

- **Section 53-1-203. Powers and duties of department of corrections**

- Needs to be amended
- HB 600 (2017)
- Relevant subsections: (1) The department of corrections shall:
  - (a) subject to subsection (6), adopt rules necessary: ...
  - (vi) to carry out the purposes of Article II, section 36, of the Montana constitution;