

IN THE SUPREME COURT OF THE STATE OF MONTANA  
No. OP \_\_\_\_\_

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MONTANA ASSOCIATION OF COUNTIES (“MACo”), LEO GALLAGHER, ADRIAN M. MILLER, MONTANA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, AND ACLU OF MONTANA FOUNDATION, INC.,

*Petitioners,*

v.

THE STATE OF MONTANA, BY AND THROUGH TIMOTHY C. FOX, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL, AND COREY STAPLETON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE,

*Respondents.*

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**PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF ON  
ORIGINAL JURISDICTION**

**EXPEDITED CONSIDERATION REQUESTED**

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## I. RELIEF REQUESTED

This Petition challenges the validity of how Constitutional Initiative 116 (“CI-116”), also known as “Marsy’s Law,” was enacted into law in Montana’s November 8, 2016 general election.<sup>1</sup> As of July 1, 2017, CI-116 will add a new Section 36 to Article II of Montana’s Constitution. *See Montana County Attorneys Assoc. v. State*, Final Order, OP 16-0720 (Jan. 3, 2017). This new Section 36, which was sold to the Montana electorate as a “bill of rights” for crime victims, is broad-sweeping in its contrary effect, stripping privacy and decisional rights from actual victims of crime and granting instead never-before-existing rights to the kin (and friends) of traditional victims.

Among other concerns, CI-116 diminishes Montanans’ “right to know” as championed and protected by the free press, and demotes to second-class status the due process and rehabilitation rights of the accused and the convicted by imposing conflicting and unethical requirements on prosecutors who – before CI-116 – were required to see that justice is done, but now are tasked to interpret “justice” from the viewpoint of victims, not society. Rather than tailor their initiative to Montana’s Constitution, the proponents of CI-116 shoehorned the product of their nationwide Marsy’s Law crusade into Article II as a new section, ignoring the Constitution’s pre-existing text. Thus, if allowed to stand, CI-116 will cut a broad

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<sup>1</sup> *See* Ex. 1 (CI-116 ballot text); Ex. 2 (Voter Information Pamphlet text).

swath through the pre-CI-116 rights of all Montanans via its amendment of several sections of Montana's Constitution, all without any warning on the ballot to the voters that passage of CI-116 would have such an effect.

Recognizing the absence of deliberative process inherent in amendment by initiative, the prescient Framers of Montana's Constitution protected against this type of out-of-state financed, "hostile takeover" of Montana's Constitution. They included in the text of the Constitution a "single vote, multiple amendment" prohibition, and a "single subject" requirement, which provide the controlling procedure by which – and only by which – a citizen's initiative can amend the Constitution. *See* Article XIV, §11; Article V, §11(3); *Marshall v. State ex rel. Cooney*, 1999 MT 33 (declaring CI-75 void as enacted in violation of Article XIV, §11); *Armatta v. Kitzhaber*, 959 P.2d 49 (Or. 1998) (declaring victims' rights initiative void as enacted in violation of the separate-vote requirement in Oregon's constitution).

When these constitutionally-required procedures are measured against the ballot's text, and the pre-existing text of Montana's Constitution, CI-116 must be declared void in its entirety, and enjoined from becoming law. *Marshall*, ¶¶25-26. This is the relief Petitioners seek. As the Court explained in *Marshall*, such a ruling will "do no more and no less than affirm the clear intent of the people of



Montana, as set forth in Montana’s Constitution, that constitutional amendments be voted upon separately.” *Id.*, ¶26.

## II. PARTIES

### A. Petitioners.

Petitioner Montana Association of Counties (“MACo”) is an incorporated, non-partisan association representing 56 Counties in Montana. To comply with the constitutional mandates imposed by CI-116, MACo’s members will be required to hire victim-support staff and additional attorneys, print and provide “Marsy’s Law cards,” seek tax increases, etc.<sup>2</sup> To the extent MACo’s members are unable to do so, or are prevented from doing so, they will be subject to suit filed under the self-executing provision of Section 36(3). These suits – and suits brought by the media seeking disclosure contrary to the preference of victims – will have to be defended at taxpayer expense with public resources. MACo’s members will also be injured by incurring the costs of jailing more accuseds, and holding them longer, because of Section 36’s bail hearing requirements.

Petitioner Leo Gallagher is a Montana citizen, qualified elector and taxpayer, and County Attorney for Lewis & Clark County, Montana. Gallagher has been injured as a citizen and elector by the amendment of Montana’s Constitution in violation of its text. The costs required for his county and city of

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<sup>2</sup> See Ex. 3 (June 11, 2017 Billings Gazette: “*Law Enforcement Agencies Prepare for Marsy’s Law in July*”); Ex. 4, 5 (examples of “Marsy’s Law” cards/pamphlets).

residence to comply with the mandates of CI-116 also will injure him via raised taxes or fees, or fewer services. Also, under the rules of professional conduct adopted and enforced by this Court, the obligations of Section 36 regarding, *inter alia*, non-disclosure of victim-information to accuseds and interaction by prosecutors with victims (or their counsel), will create conflicts for, and thereby injure Gallagher in the performance of his duties as County Attorney.

Petitioner Adrian Miller is a Montana citizen, qualified elector and taxpayer, and a partner in the Billings firm of Sullivan Miller Law PLLC. She has been, or will be, injured as an individual citizen and taxpayer like Gallagher. Miller represents and advocates for traditional victims of domestic abuse and sexual assault. Because of the new expenditures required by CI-116, Miller's ability to serve her clients will be injured by diminished funding for victim-services she otherwise would counsel her clients to utilize, and by Section 36's requirement that victims' kin – *e.g.*, family members who pressure her clients to return to their abusers – be accorded the same rights as the traditional victims she represents, thereby obligating Miller to provide a shield between her clients and their fully-informed family members (or their counsel) in a manner not required before CI-116's enactment.

Petitioner Montana Association of Criminal Defense Attorneys is a 501(c)(6) unincorporated association of State Bar members who defend and

represent “the accused” and “the convicted” traditionally protected by Montana’s Constitution. *See, e.g.*, Article II, §§24, 28. Under Section 36’s provision of “due process” and other rights to victims, the rights of their clients to those traditional protections will be diminished. Petitioner’s members also will be injured by CI-116’s fact disclosure and discovery prohibitions that will interfere with their ability and duty to provide effective representation to their clients.

Petitioner ACLU of Montana Foundation is a non-profit, non-partisan corporation whose mission is to support civil liberties in the State of Montana. Petitioner has more than 4400 members, the overwhelming majority of whom are Montana citizens, electors and taxpayers injured by the improper process used to enact CI-116, and by the new taxes or fees it will require. Some of Petitioner’s members have been convicted of a crime and will be injured by application of Section 36 against their interests, and some will in the future be accused of a crime and be injured by application of Section 36, including its bail provisions. Petitioner and its members also have been (and will be) injured by Section 36’s changes to “the right to know.” *See, e.g.*, Exhibit 6 (June 1, 2017 Great Falls Tribune Editorial – “Unintended consequences of victims’ rights law may trample all of our rights”). If not declared void, Petitioner will be forced to divert resources to litigate against the consequences of CI-116.

## **B. Respondents.**

Respondent Timothy C. Fox is Attorney General of the State of Montana, who is charged, *inter alia*, with defending and enforcing Montana law, including law enacted by initiative. Respondent is named in his official capacity only.

Respondent Corey Stapleton is the Secretary of State of Montana, who is charged, *inter alia*, with overseeing and certifying the election process in Montana. Respondent is named in his official capacity only.

## **III. FACTS**

In OP 16-0720, this Court found that CI-116 “was approved by a majority of Montana voters at the November 8, 2016 general election,” that it “amends the Constitution of the State of Montana by adding Article II, Section 36, rights of Crime Victims,” and that it is subject to the requirements of “Article XIV.” *See* Final Order, p.1. The ballot identified no sections of the Constitution that CI-116 would amend, and provided for a single “yes or no” vote only. *See* Ex.1, p.1. The ballot also identified the title of new Section 36 as “Rights of crime victims,” a single-subject title that did not identify as a separate subject the expansion of the term “victim” to grant rights to the spouse, parent, grandparent, child, sibling, grandchild, guardian or person with a “substantially similar relationship,” as “crime victims” in their own rights. *See* Ex.1, p.2.

## IV. ARGUMENT

### A. The Requirements for Original Jurisdiction are Satisfied.

A challenge to the process utilized to amend Montana's Constitution by initiative is one of law applied to the facts of the ballot language and, thus, is appropriate for original jurisdiction over a purely legal question of constitutional interpretation. *See, e.g., Marshall*, ¶¶1-2; *Cole v. State of Montana ex. rel. Brown*, 2002 MT 32, ¶¶17-18; Mont.R.App.P. 14(4). Constitutional amendments are necessarily a matter of state-wide importance, and the imminence of CI-116's applicable date provides the urgency underlying the necessity of original and expedited review by this Court.

### B. The Matter is Justiciable.

#### 1. Petitioners Have Standing.

With its Final Order in OP 16-0720, this Court accepted the standing of three of the current Petitioners to challenge CI-116. This Court also has recognized elector and citizen standing for injury caused by improper amendment of the Constitution, taxpayer standing, attorney standing regarding the rules of professional conduct, and representational standing. *See, e.g., Montana Immigrant Justice Alliance v. Bullock*, 2016 MT 104, ¶19; *In re Rules of Professional Conduct*, 2000 MT 110, ¶9; *Marshall*, ¶1; *Grossman v. Dep't of Natural Resources*, 209 Mont. 427, 438-39 (1984). *See also Fla. State Conference of NAACP v. Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008)(parties forced to divert resources

to litigate have standing to sue); *Armatta*, 959 P.2d at 69 (recognizing propriety of challenge to victims’ rights initiative by law enforcement personnel and tax payers).

**2. The Issues Are Ripe.**

In *Cole*, this Court held that process challenges to enacted constitutional initiatives become ripe for review after the election. *Id.*, ¶27; *citing Marshall*.

**C. The Enactment of CI-116 Violated Article XIV, §11’s Single Amendment, Separate Vote Requirement.**

Article XIV, §11 of Montana’s Constitution provides as follows:

“**Submission.** If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.” In *Marshall*, this Court held that this language “requires a separate vote for each constitutional amendment.” *Id.*, ¶23. Despite the existence of only a single “yes or no” space on the ballot, the extensive language of CI-116 amends, at least, the eight sections of Montana’s Constitution discussed below.

**1. Article II, §17.**

Section 36(1)(a) provides that “beginning at the time of victimization” a “crime victim” has the right “to due process[.]” Article II, §17, thus, has effectively been amended to provide (with new language underlined) as follows:

“No person shall be deprived of life, liberty or property, and no crime victim shall be dealt with by prosecutors or the courts, without due process of law.”

The meaning of “due process of law” is well-established for individuals accused of a crime. It guarantees to an accused, *inter alia*, the presumption of innocence, holds the government to proof beyond a reasonable doubt, and otherwise promises a fair and unbiased trial. *See, e.g., State v. Williams*, 184 Mont. 111, 112 (1979) (the presumption of innocence guaranteed by “Article II, Section 17 ... lies at the foundation of the administration of our criminal law”). If an alleged victim (in particular for a specific intent crime like assault or fraud) is presumed the victim of a crime before a jury returns a verdict, then the accused is not presumed innocent. The presumption of innocence and right to a fair trial are further diminished by allowing crime victims’ counsel to participate at trial, and under Section 36(1)(i),(j) and (2), to “be heard” by the prosecutor and court during “adjudication” by the jury, as a type of assistant prosecutor whispering in the actual prosecutor’s ear, and making pro-victim motions to the court.

This is an unprecedented change to the common understanding of due process in Montana criminal proceedings. Montanans were entitled to a separate vote on this amendment of Article II, §17.

## **2. Article VII, §2(3).**

Section 36(1) provides victims with “a right to justice” for their “interests,” which are to “be protected by law in a manner no less vigorous than the protections afforded to a criminal defendant and a delinquent youth.” In general, of course, a

victim's "interests" favor conviction. But this creates a conflict with the rules of professional conduct that this Court has the authority to adopt under Article VII, §2(3), and under which "the prosecutor is the representative" of neither the accused nor the victim, but "of the State." *State v. Lawrence*, 2016 MT 346, ¶20.

Whether as a matter of due process – *i.e.*, the "fundamental" right to be prosecuted by someone with no conflicting loyalties – or under rules approved by this Court, the prosecutor's interest is not to convict but to see that justice is done. *Lawrence*, ¶¶17,20; *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 803 (1987); Model Rules of Professional Conduct, Rule 3.8, cmt. 1 (2016) ("A prosecutor has the responsibility of a minister of justice and not simply that of an advocate"). Montana Rule of Professional Conduct 3.8 prohibits Montana prosecutors from "prosecuting a charge that the prosecutor knows is not supported by probable cause." Yet, under Section 36, prosecutors must consider the victim's "interest" to convict, and the victim's right to such "justice" from the victim's point of view. In short, the very purpose of CI-116 is to force prosecutions that otherwise might not happen, no matter the rules adopted by this Court.

Article VII, §2(3), thus, has effectively been amended as follows: The Supreme Court "may make rules governing ... the conduct of its members except such rules to the contrary notwithstanding, prosecutors must confer with crime



victims and assert and seek enforcement of their rights and interests as provided in Section 36.” A separate vote was required to so amend this Court’s authority.

**3. Article II, §9.**

With no limitations requiring balancing with Article II, §9’s right-to-know provision, Section 36(1)(f) provides a new right “to privacy” to crime victims, who are defined as “persons” not “individuals” in Section 36(4)(b). This change in language imbues corporations and other “non-human entities” with privacy rights that before CI-116 were limited to “individuals,” and removes the right-to-know balancing requirement. *See Great Falls Tribune v. Montana Public Service Commission*, 2003 MT 359, ¶¶36-38.

Article II, §9 has, thus, effectively been amended as follows: “No person shall be deprived of the right to examine documents, or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in which the demand of individual privacy clearly exceeds the merits of public disclosure, unless a crime victim’s rights under Section 36 are involved, in which case individual and non-human victims have an overriding right to privacy.” In sum, the “right to know” must now contend with this new supercharged “right to privacy” for human and corporate victims added by CI-116. *See, e.g., Ex. 6.* Montanans were entitled to a separate vote on this amendment.

#### 4. Article II, §10.

Section 36(4)(b) defines certain kin and “persons with substantially similar relationships” as victims with the same rights as traditional victims, *i.e.*, the persons assaulted or defrauded. Formerly, a victim had a right of individual privacy subject only to the clear demands of public disclosure in Article II, §9, or a “compelling state interest” under Article II, §10. This included a right *not* to have information about the offense shared with family, *e.g.*, a rape resulting in abortion. It is an unfortunate truth that families do not always protect victims. *See, e.g.*, Ex. 7-9. Under Section 36, however, kinship victims (parents, siblings, etc.) now have a group right, *inter alia*, to be fully informed regarding the alleged crime and traditional victim.

Thus, Article II, §10 effectively has been amended as follows: “The right of individual privacy ... shall not be infringed without the showing of a compelling state interest, except that the kin of an individual crime victim (and “substantially similar” others) defined as victims in Section 36(4)(b) are entitled to full information regarding alleged crimes, and to the full participation in criminal proceedings, set forth in Section 36(1) and (2), without the need to show a compelling or other interest. Montanans were entitled to a separate vote on this amendment to their fundamental right of privacy.

**5. Article II, §20.**

Under Section 36(1)(g), victims have the right to notice and to be present “at all proceedings involving the criminal conduct” of the accused. As such, CI-116 effectively amended Article II, Section 20(1), as follows: “All criminal actions in district court ... shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court following reasonable, accurate, and timely notice to the victim and the opportunity of the victim to be present and heard, or by indictment without such examination, commitment or leave.” Likewise, Article II, §20(2) is amended to read: “A grand jury ... shall be drawn and summoned only at the discretion and order of the district judge, with reasonable, accurate, and timely notice provided to the victim and the opportunity of the victim to be present and heard at the proceedings.”

In sum, §20 contains protections for accused persons meant to prevent improper prosecutions. Those protections have now been limited by the “interests” and “right to justice” of victims to push for prosecutions. Montanans were entitled to a separate vote on this amendment.

**6. Article II, §21.**

Section 36(1)(d),(g),(i), and (4)(a),(b) provide victims (traditional and kinship) the right to be “present” and “be heard” before bail/release is granted, even for misdemeanors. These rights effectively amended Article II, §21 as

follows: “All persons shall be bailable by sufficient sureties, but before bail is granted for any “crime” as defined in Section 36(4)(a), all “victims” as defined in Section 36(4)(b) must be notified and given the opportunity to be heard provided by Section 36(1).”

By requiring bail hearings (or pre-bail notice and knowing waiver by all defined victims of their fundamental rights), Section 36 effectively prohibits cite-and-release signature bonds and “set amount” bail procedures. Indeed, not until grandpa arrives and exercises his right “to be heard” can bail even be considered for the accused Minor-In-Possession who damaged the property grandpa bought for his grandson. The same is true for the out-of-state corporate pizza seller or casino owner *vis-a-vis* the accused writer of an NSF check. Montanans were entitled to a separate vote on this amendment to their bail rights.

**7. Article II, §24.**

Article II, §24 provides many long-recognized fair trial rights for the accused, and CI-116 amended many of them. For example, as discussed above, Section 36 provides rights for victims to be involved at all stages of a criminal proceeding before, during and after trial. Accommodating Section 36’s new appearance rights for victims, particularly ones with large families, will make speedy trials a thing of the past. Thus, Article II, §24 effectively has been amended, *inter alia*, as follows: “In all criminal prosecutions the accused shall

have the right to ... a speedy and public trial, except when the rights of victims cannot be accommodated in a speedy manner.”

Article II, §24 also provides constitutional rights to prepare a defense, and to effective assistance of counsel, including “diligent investigation of facts.” *State v. Couture*, 2010 MT 201, ¶77; *State v. Henderson*, 2004 MT 173, ¶15. Section 36(e) and (f) severely limits these rights by curtailing disclosure of information, and empowering all victims (traditional and kinship) to “refuse an interview, deposition, or other discovery request.” Section 36 also amends Article II, §23, which since 1889 has provided the prosecution and the accused a constitutional right to take witness depositions. *See, e.g., State v. Vanella*, 40 Mont. 326, 368 (1910); *Tooker v. State*, 147 Mont. 207, 215-16 (1966). Montanans were entitled to a separate vote on CI-116’s amendments to Sections 23 and 24.

#### **8. Article II, §28.**

Article II, §28 provides rights to the convicted and to traditional crime victims. A 1998 referendum properly amended this section. Before then, only “the convicted” were included, and they were protected by the Framers’ decision that “laws for the punishment of crime” were required to be “founded on the principles of prevention and reformation,” not on “the spirit of revenge.” 1889 Constitutional Convention Notes, p.125. The 1889 Framers of Article III, §24 considered this focus on reformation (*i.e.*, rehabilitation of the convicted) to “be

one of the progressive ideas of our present civilization, and one of the ideas which perhaps will shine as brightly in the years to come as any other – that our laws are based upon principles of humanity and not principles of revenge.” *Id.*,p.126.

This rehabilitation right was retained by the 1972 Framers, and was not changed by the 1998 amendment except to add “restitution for victims” into Section 28’s “criminal justice policy” balance along with prevention, public safety and reformation. CI-116 changed this. Revenge in the guise of “a crime victim’s right to justice,” and the protection of victims’ “interests,” now control when sentencing, release, clemency and expungement matters are considered, as does a victim’s right to “full” restitution rather than restitution balanced with rehabilitation.

Thus, CI-116 effectively amended Section 28 as follows: “Laws for the punishment of crime shall be founded on the principles of prevention, reformation, public safety, justice for victims and protection of their interests, and full restitution for victims.” This inclusion of “victim justice” in Montana’s Constitution, contrary to the intent of the Framers, required a separate vote.

**D. The Enactment of CI-116 Also Violated Article V, §11(3)’s Single Subject Requirement.**

While it did not need to reach the issue, in *Marshall* this Court also recognized a “single subject” requirement for constitutional amendments by initiative. *Id.*,¶23, n.1. Relying on *Armatta*, the Court explained that “a

constitutional amendment may be valid under the single-subject rule but [still] fail under the separate-vote requirement.” *Marshall*, ¶22 (citing *Armatta* at 64: “if a proposed amendment contained two different subjects, it could not be considered a single amendment regardless” of the single-subject requirement, because the “separate-vote requirement” is more restrictive). Here, CI-116 violated both requirements.

Extending rights to traditional victims of crime is a single, fairly contained subject. The creation of kinship victims is something altogether different. Western “systems of law were designed to take revenge out of the hands of families and put the right to retaliation into the hands of authorities” because much of “the course of Western Civilization [involved] a long retreat” from the type of “tribal vendetta and blood revenge” that occurred far too often when kinship groups were considered victims. S. Bloom, *Commentary: Reflections on the Desire for Revenge*, *Journal of Emotional Abuse* 2(4): 61-94 (2001). “It was through the law that private revenge was separated from public revenge,” and a public justice system eventually evolved that now encompasses our current American understanding of a just and fair system of criminal law as enshrined, *inter alia*, in Montana’s Declaration of Rights. *Id.* The inherent problems with kin-based, victim-centered retributive justice systems, and family control over

criminal justice decisions, are amply evidenced by reports from other countries, and from our own. *See, e.g.*, Exhibits 7-11.

The long history of prying “private justice” rights away from the kin of crime victims, and removing family from involvement in criminal justice decisions, is apparent in the history of Montana law. *See e.g.*, 1889 Constitution, art. III, §9 (prohibiting corruption of blood); art. XX, §7 (outlawing private prosecution of crimes). In short, involving victims’ kin in criminal justice decisions again is a subject separate from providing rights to traditional victims. These two subjects were improperly bundled together, and the title of Section 36 does not clearly express this second subject. Accordingly, the enactment of CI-116 also violated the single-subject requirement of Article V, §11(3). *See, e.g.*, *Marshall*, ¶23, n.1; *State v. Steen*, 144 Mont. 61, 66 (1964) (single subject requirement applies to initiatives).

## V. CONCLUSION

For the foregoing reasons, Petitioners ask this Court to grant their Petition to declare void the enactment of CI-116, to enjoin its implementation and enforcement, and to require decertification of the election results with respect to it.



Respectfully submitted,

*/s/ Kyle A. Gray*

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*Counsel for Petitioners*

## CERTIFICATE OF COMPLIANCE

The undersigned, Kyle A. Gray, certifies that the foregoing complies with the requirements of Rule 7.1(d)(2). The lines in this document are double spaced, except for footnotes and quoted and indented material, and the document is proportionately spaced with Times New Roman Font typeface consisting of fourteen characters per inch. The total word count is 4,000 words or fewer, excluding caption, table of contents, table of authorities, index of exhibits, signature blocks and certificate of compliance. The undersigned relies on the word count of the word processing system used to prepare this document.

*/s/ Kyle A. Gray*  
Kyle A. Gray

## CERTIFICATE OF SERVICE

I, Kyle Anne Gray, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ - Other to the following on 06-20-2017:

Timothy Charles Fox (Prosecutor)  
Montana Attorney General  
215 North Sanders  
PO Box 201401  
Helena MT 59620

Representing: State of Montana, Timothy Fox, official capacity, Attorney General, Corey Stapleton, Official Capacity, Sec. of State  
Service Method: eService

James P. Molloy (Attorney)  
777 E. Main Street, Suite 203  
PO Box 70  
Bozeman MT 59771-0070

Representing: Montana Association of Counties, Leo Gallagher, Adrian M. Miller, Montana Association of Criminal Defense Lawyers, ACLU of Montana Foundation, Inc.  
Service Method: Conventional

Alexander H. Rate (Attorney)  
Rate Law Office, P.C.  
P.O. Box 1387  
Livingston MT 59047

Representing: Montana Association of Counties, Leo Gallagher, Adrian M. Miller, Montana Association of Criminal Defense Lawyers, ACLU of Montana Foundation, Inc.  
Service Method: Conventional

Electronically Signed By: Kyle Anne Gray  
Dated: 06-20-2017

**BALLOT LANGUAGE FOR CONSTITUTIONAL INITIATIVE NO. 116 (CI-116)**

## CONSTITUTIONAL INITIATIVE NO. 116

## A CONSTITUTIONAL AMENDMENT PROPOSED BY INITIATIVE PETITION

CI-116 would add a new section to the Montana Constitution establishing specific rights for crime victims. The rights enumerated include the right to participate in criminal and juvenile justice proceedings, to be notified of major developments in the criminal case, to be notified of changes to the offender's custodial status, to be present at court proceedings and provide input to the prosecutor before a plea agreement is finalized, and to be heard at plea or sentencing proceedings, or any process that may result in the offender's release. CI-116 guarantees crime victims' rights to restitution, privacy, to confer with the prosecuting attorney, and to be informed of their rights. CI-116 defines specific terms and requires no further action by the Legislature for implementation. CI-116, if passed by the electorate, will become effective immediately.

Fiscal impacts are expected for the Office of the Public Defender, Judicial Branch, Department of Corrections and local governments from passage of CI-116, but those costs could not be accurately determined at this time.

YES on Constitutional Initiative CI-116

NO on Constitutional Initiative CI-116

## THE COMPLETE TEXT OF CONSTITUTIONAL INITIATIVE NO. 116 (CI-116)

WHEREAS, the People of the State of Montana find that a crime victim in Montana is entitled to enhanced, specific, and meaningful rights to participate in criminal and youth court proceedings and enact the following new section of Article II of The Constitution of the State of Montana. The section is named for a noted victim of crime, Marsy, in whose name many states have enacted comparable reforms.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Article II of The Constitution of the State of Montana is amended by adding a new section 36 that reads:

**Section 36. Rights of crime victims.** (1) To preserve and protect a crime victim's right to justice, to ensure a crime victim has a meaningful role in criminal and juvenile justice systems, and to ensure that a crime victim's rights and interests are respected and protected by law in a manner no less vigorous than the protections afforded to a criminal defendant and a delinquent youth, a crime victim has the following rights, beginning at the time of victimization:

(a) to due process and to be treated with fairness and respect for the victim's dignity;

(b) to be free from intimidation, harassment, and abuse;

(c) to be reasonably protected from the accused and any person acting on the accused's behalf;

(d) to have the victim's safety and welfare considered when setting bail and making release decisions;

(e) to prevent the disclosure of information that could be used to locate or harass the victim or that contains confidential or privileged information about the victim;

(f) to privacy, including the right to refuse an interview, deposition, or other discovery request and to set reasonable conditions on the conduct of any interaction to which the victim consents;

(g) to receive reasonable, accurate, and timely notice of and to be present at all proceedings involving the criminal conduct, plea, sentencing, adjudication, disposition, release, or escape of the defendant or youth accused of delinquency and any proceeding implicating the rights of the victim;

(h) to be promptly notified of any release or escape of the accused;

(i) to be heard in any proceeding involving the release, plea, sentencing, disposition, adjudication, or parole of the defendant or youth accused of delinquency and any proceeding implicating the rights of the victim;

(j) to confer with the prosecuting attorney;

(k) to provide information regarding the impact the offender's conduct had on the victim for inclusion in the presentence or predisposition investigation report and to

have the information considered in any sentencing or disposition recommendations submitted to the court;

(l) to receive a copy of any presentence report and any other report or record relevant to the exercise of a right of the victim, except for those portions made confidential by law;

(m) to the prompt return of the victim's property when no longer needed as evidence in the case;

(n) to full and timely restitution. All money and property collected from a person who has been ordered to make restitution must be applied first to the restitution owed to the victim before paying any amounts owed to the government.

(o) to proceedings free from unreasonable delay and to a prompt and final conclusion of the case and any related postjudgment proceedings;

(p) to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the offender, including any scheduled release date, actual release date, or escape;

(q) to be informed of clemency and expungement procedures; to provide information to the Governor, the court, any clemency board, or any other authority and to have that information considered before a decision is made; and to be notified of any decision before the release of the offender; and

(r) to be informed of the above rights and to be informed that the victim may seek the advice and assistance of an attorney with respect to the above rights. This information must be made available to the general public and provided to all crime victims on what is referred to as a Marsy's card.

(2) A victim, the victim's attorney, the victim's legal representative, or the prosecuting attorney at the request of the victim may assert and seek enforcement of the rights enumerated in this section and any other right afforded to the victim by law in any trial or appellate court or any other authority with jurisdiction over the case as a matter of right. The court or other authority shall act promptly on the request, affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding disposition of a victim's right must be clearly stated on the record.

(3) This section may not be construed to deny or disparage other rights possessed by victims. This section applies to criminal and youth court proceedings, is self-executing, and requires no further action by the Legislature.

(4) As used in this section, the following definitions apply:

(a) "Crime" means an act defined as a felony, misdemeanor, or delinquency under state law.

(b) "Victim" means a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime.

(i) The term includes:

(A) a spouse, parent, grandparent, child, sibling, grandchild, or guardian of the victim;

(B) a person with a relationship to the victim that is substantially similar to a relationship described in subsection (4)(b)(i)(A); and

(C) a representative of a victim who is a minor or who is deceased, incompetent or incapacitated.

(ii) The term does not include the accused or a person who the court believes would not act in the best interests of a minor or of a victim who is deceased, incompetent or incapacitated.





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The cover photo for the Voter Information Pamphlet features Secretary of State Linda McCulloch voting in Lewis and Clark County.



# Secretary of State

Dear Montana Voter,

As Americans, voting is the most fundamental right we have and Montana has a unique and proud history of voter engagement and participation. Our Montana Constitution guarantees many ways to protect our Montana heritage. Almost 45 years ago, we came together as Montanans to rewrite a Constitution that would better reflect our state and values. As the first woman elected as Secretary of State, I am proud to protect and extend those rights to all Montanans.

As Montana's Chief Election Official, I am pleased to provide the Voter Information Pamphlet to assist you in making informed decisions about the issues that will appear on the 2016 General Election ballot. I hope you will continue our state's strong legacy of voter participation, advocacy, and civic duty.

Our Montana Constitution secures the right for individuals, groups and the Legislature to propose constitutional and statutory changes to Montana law through the initiative and referendum process. This process allows for proposed changes to the law to be placed on the ballot, and voted on by Montanans.

This year's ballot will include four ballot initiatives. Please take the time to carefully read this pamphlet and to ask questions as needed. Your vote not only counts, but it has the power to initiate change in government and society. Generations of Montanans have always taken this duty in the highest regard.

Thank you for being an informed voter and a dedicated Montanan.

Linda McCulloch  
Montana Secretary of State

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To access a digital copy of the Voter Information Pamphlet and for more election information please visit [sos.mt.gov](http://sos.mt.gov).

# CONSTITUTIONAL INITIATIVE NO. 116

## A CONSTITUTIONAL AMENDMENT PROPOSED BY INITIATIVE PETITION

CI-116 would add a new section to the Montana Constitution establishing specific rights for crime victims. The rights enumerated include the right to participate in criminal and juvenile justice proceedings, to be notified of major developments in the criminal case, to be notified of changes to the offender's custodial status, to be present at court proceedings and provide input to the prosecutor before a plea agreement is finalized, and to be heard at plea or sentencing proceedings, or any process that may result in the offender's release. CI-116 guarantees crime victims' rights to restitution, privacy, to confer with the prosecuting attorney, and to be informed of their rights. CI-116 defines specific terms and requires no further action by the Legislature for implementation. CI-116, if passed by the electorate, will become effective immediately.

Fiscal impacts are expected for the Office of the Public Defender, Judicial Branch, Department of Corrections and local governments from passage of CI-116, but those costs could not be accurately determined at this time.

YES on Constitutional Initiative CI-116     NO on Constitutional Initiative CI-116

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### COMPLETE TEXT OF CONSTITUTIONAL INITIATIVE NO. 116

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WHEREAS, the People of the State of Montana find that a crime victim in Montana is entitled to enhanced, specific, and meaningful rights to participate in criminal and youth court proceedings and enact the following new section of Article II of The Constitution of the State of Montana. The section is named for a noted victim of crime, Marsy, in whose name many states have enacted comparable reforms.

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afforded to a criminal defendant and a delinquent youth, a crime victim has the following rights, beginning at the time of victimization:

(a) to due process and to be treated with fairness and respect for the victim's dignity;

(b) to be free from intimidation, harassment, and abuse;

(c) to be reasonably protected from the accused and any person acting on the accused's behalf;

(d) to have the victim's safety and welfare considered when setting bail and making release decisions;

(e) to prevent the disclosure of information that could be used to locate or harass the victim or that contains confidential or privileged information about the victim;

(f) to privacy, including the right to refuse an interview, deposition, or other discovery request and to set reasonable conditions on the conduct of any interaction to which the victim consents;

(g) to receive reasonable, accurate, and timely notice of and to be present at all proceedings involving the criminal conduct, plea, sentencing, adjudication, disposition, release, or escape of the defendant or youth accused of delinquency and any proceeding implicating the rights of the victim;

(h) to be promptly notified of any release or escape of the accused;

(i) to be heard in any proceeding involving the release, plea, sentencing, disposition, adjudication, or parole of the defendant or youth accused of delinquency and any proceeding implicating the rights of the victim;

(j) to confer with the prosecuting attorney;

(k) to provide information regarding the impact the offender's conduct had on the victim for inclusion in the presentence or predisposition investigation report and to have the information considered in any sentencing or disposition recommendations submitted to the court;

(l) to receive a copy of any presentence report and any other report or record relevant to the exercise of a right of the victim, except for those portions made confidential by law;

(m) to the prompt return of the victim's property when no longer needed as evidence in the case;

(n) to full and timely restitution. All money and property collected from a person who has been ordered to make restitution must be applied first to the restitution owed to the victim before paying any amounts owed to the government.

(o) to proceedings free from unreasonable delay and to a prompt and final conclusion of the case and any related postjudgment proceedings;

(p) to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the offender, including any scheduled release date, actual release date, or escape;

(q) to be informed of clemency and expungement procedures; to provide information to the Governor, the court, any clemency board, or any other authority and to have that information considered before a decision is made; and to be notified of any decision before the release of the offender; and

(r) to be informed of the above rights and to be informed that the victim may seek the advice and assistance of an attorney with respect to the above rights. This information must be made available to the general public and provided to all crime victims on what is referred to as a Marsy's card.

(2) A victim, the victim's attorney, the victim's legal representative, or the prosecuting attorney at the request of the victim may assert and seek enforcement of the rights enumerated in this section and any other right afforded to the victim by law in any trial or appellate court or any other authority with jurisdiction over the case as a matter of right. The court or other authority shall act promptly on the request, affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding disposition of a victim's right must be clearly stated on the record.

(3) This section may not be construed to deny or disparage other rights possessed by victims. This section applies to criminal and youth court proceedings, is self-executing, and requires no further action by the Legislature.

(4) As used in this section, the following definitions apply:

(a) "Crime" means an act defined as a felony, misdemeanor, or delinquency under state law.

(b) "Victim" means a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime.

(i) The term includes:

(A) a spouse, parent, grandparent, child, sibling, grandchild, or guardian of the victim;

(B) a person with a relationship to the victim that is substantially similar to a relationship described in subsection (4)(b)(i)(A); and

(C) a representative of a victim who is a minor or who is deceased, incompetent or incapacitated.

(ii) The term does not include the accused or a person who the court believes would not act in the best interests of a minor or of a victim who is deceased, incompetent or incapacitated.

# CONSTITUTIONAL INITIATIVE NO. 116

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## ARGUMENT FOR CI-116

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A 'Yes' vote on CI-116, known as Marsy's Law for Montana, will establish a Crime Victims' Bill of Rights in the Montana constitution.

Montana is one of just eighteen states that fails to provide an equal level of rights under the constitution to victims of crime. The U.S. and Montana constitutions provide those accused of crimes with due process protections, but our state constitution does not accord crime victims the right to meaningfully participate in the criminal justice process as the state prosecutes the accused.

Marsy's Law raises victims' rights to a level equal with the rights of the accused.

The rights enumerated in Marsy's Law are simple and straightforward. Victims of crime should have the right to be notified of hearings in their case, and the right to be present and be heard at those hearings. Victims should have the right to confer with the prosecuting attorney in their case and to provide input before a plea agreement is finalized.

Crime victims should have the right to privacy and to refuse unreasonable requests for discovery or the release of personal information. Victims should have the right to be notified of any changes in the custodial status of the offender in their case. These all are examples of Constitutional rights that crime victims in Montana currently do not have.

No one expects to be a victim of a crime. But when you are, you want justice, and you should have a reasonable expectation that the judicial system will hold all rights as equal. Providing victims of crime with long-overdue equal rights will be a huge step toward ensuring victims of crime are treated with dignity, notified of important legal events like bail and parole hearings, provided a voice in the process, and finally afforded an equal level of rights.

Montana's law enforcement officials and prosecutors are among the finest in the country and many of them are vocal supporters of crime victims' rights and CI-116. Unfortunately, the Montana criminal justice system is not designed with the victim in mind.

A 'Yes' vote for CI-116 is a vote to ensure that victims of crime are afforded rights on a level equal to those of the accused and convicted. A 'Yes' vote is for equal rights.

# CONSTITUTIONAL INITIATIVE NO. 116

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## ARGUMENT AGAINST CI-116

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CI-116, or Marsy's law, is not a Montana law written for Montanans. CI-116 is backed by a businessman from California and his coalition. Montana has strong laws to protect crime victims – this amendment is costly and unnecessary. To handle all the requirements of CI-116, Montana cities and counties will be forced to either cut other services to citizens, or raise taxes to pay for adding staff. Montana taxpayers will have to fund significant spending increases in the Department of Corrections and other state agencies. The out-of-state backers of CI-116 would give new rights to some people, but take rights from others.

CI-116 has a vague definition of "victim" that will include many people who are not victims at all, including people who are simply friends of actual victims. CI-116 is besieged with problems. Years of costly lawsuits will be needed to determine whether the new rights are superior to the rights being taken away or minimized. Cities and counties will have to raise local taxes to pay for this unfunded mandate.

It's clear that Montanans care about victims' rights and have acted to improve them. In 1985, Montana enacted the Treatment of Victims Act. Montanans amended the Constitution in 1998, to assure restitution to victims of crime. The sponsors of CI-116, although well-intentioned, have missed an opportunity to further advance victims' rights by improving existing laws. Instead, the sponsors propose a massive, 863-word, addition to our Constitution that contains many problems that are likely to cause more trauma to victims and setbacks to victims' existing rights.

Citizens accused of crimes are presumed innocent until proven guilty. They have a constitutional right to defend themselves and to a fair trial. CI-116 creates new victims' rights that conflict with a defendant's constitutional rights. For example, under CI-116, a victim, under the new definition, may refuse an interview with a defendant's lawyer - clearly unconstitutional. If CI-116 is approved, lawsuits will pit the victim's new rights against the civil liberties of a person who is presumed innocent. This will create uncertainty and delay within Montana's criminal justice system. Far from benefiting crime victims, this will make it harder for victims to receive justice.

Montana's cities and counties employ crime victim advocates to notify crime victims of cases and to help law enforcement keep victims safe from harm. Currently, Montana's crime victim advocates focus on victims of violent crime, including sex crimes and domestic violence. CI-116 will dilute the services local governments are able to provide to people who desperately need these services immediately after a traumatic event.

Montanans care about victims and provide services to protect victims of crime. Montana does not need this costly, confusing change.

# CONSTITUTIONAL INITIATIVE NO. 116

## PROPONENTS' REBUTTAL OF ARGUMENT AGAINST CI-116

What the opponents of the victims' rights amendment say and don't say speaks volumes.

They say, "Montana has strong laws to protect crime victims." Perhaps we have a different definition of "strong."

When a victim has no right to confer with a prosecutor before the prosecutor decides whether to charge a crime or to decline to charge a crime, there is no strong law to protect victims. When trial dates come and go repeatedly with long delays without regard for the impact on a victim's ability to reach closure, there is no strong law to protect victims.

They assert that the amendment's language includes a vague definition of "victim." We're unclear what's vague about it. The definition encompasses the universe of people who have lives upended by a crime.

When they say Montana's crime victim advocates focus on victims of violent crime, they are admitting that state law offers virtually no rights to victims of fraud and other property crimes.

They fail to provide any evidence to support their claim that CI-116 will result in "higher taxes" or "cuts to other services." Thirty-two states have constitutional rights for victims without the budget impacts described by the opponents. CI-116 can be implemented with no additional cost.

More to the point, shouldn't victims' rights be a budget priority? Providing rights to crime victims—on a level equal to those accused of committing the crime—should be a primary function of government.

## OPPONENTS' REBUTTAL OF ARGUMENT FOR CI-116

The sponsors of Marsy's law refuse to acknowledge that current Montana law provides important rights for crime victims. The sponsors also refuse to address the increased financial impact of Marsy's law on state and local taxpayers.

Marsy's law's sponsors could work through the legislative process to improve existing laws. By proposing a constitutional amendment, the sponsors avoid a full and fair debate on proposed changes. Instead of a discussion about the costs and need for such changes and improvements in the law, the sponsors propose a constitutional amendment that will create conflicts between the rights of people accused of crime and the rights of crime victims. Instead of listening to Montanans in an open, public hearing, where the problems with Marsy's law can be fixed, the sponsors wrote a massive amendment that will take another amendment, or multiple lawsuits, to correct.

The Montana Constitution provides 7 enumerated rights for defendants, compared to 19 new rights for victims. Montana's Constitution uses 99 words to protect the rights of defendants, compared to 863 words Marsy's law uses for victims. This does not bear out the sponsor's claim that the amendment will provide "an equal level of rights" or that it is "simple." It is not simple or equal.

Marsy's law will result in costly litigation and uncertainty for crime victims. Montana simply cannot disregard the rights granted in the U.S. and Montana Constitutions.



## Law enforcement agencies prepare for Marsy's Law in July



BOZEMAN — Law enforcement agencies across Montana are looking to add staff and equipment preparation for a crime victims' rights law that goes into effect next month.

Voters passed Marsy's Law as an amendment to the Montana Constitution last November. It is essentially a victims' bill of rights, such as their right to participate criminal proceedings and to be notified of an offender's release from jail.

The Gallatin County attorney's office is asking for \$179,000 for three positions to deal with the extra work.

Bozeman City Attorney Greg Sullivan says his office also needs more staff and better technology. He is requesting an extra \$150,000.

Missoula County Attorney Kirsten Pabst says her office has added two victim witness coordinators and may need another.

**Billings/Yellowstone County Resources**

- Adult Resource Alliance – (406)259-5212
- Angela's Piazza – (406) 255-0611
- Bureau of Indian Affairs – (406) 247-7943
- Big Brothers Big Sisters – (406) 248-2229
- Billings Food Bank – (406) 259-2856
- Billings Homeless Veterans Office – (406) 841-2840
- Billings Job Service Center – (406) 652-3080
- The Center for Children and Families – (406) 294-5090
- Community Crisis Center – (406) 259-8800
- Community Leadership & Development Inc. – (406) 256-3002
- Family Promise of Yellowstone Valley – (406) 294-7432
- Family Service, Inc. – (406) 259-2269
- Family Tree Center – (406) 252-9799
- First Time Home Buyer – (406) 657-3045
- Friendship House – (406) 259-5569
- Harmony House – (406) 247-4732
- Harvest Church Community Center – (406) 259-5648
- Head Start – (406) 245-7233
- Healthcare for the Homeless – (406) 247-3350
- Home Repair Program – (406) 657-8284
- Housing Authority of Billings – (406) 245-6391
- HOIST Teen Outreach – (406) 690-0504
- HRDC District 7 – (406) 247-4732
- The HUB – (406) 248-4803
- Independence Hall – (406) 259-5368
- Indian Health Board of Billings – (406) 245-7318
- Job Connection – (406) 245-6323
- Labor Ready – (406) 252-8989
- Living Independently for Today and Tomorrow (LIFTT) – (406) 259-5259
- Lincoln Center – (406) 281-5005
- Montana Legal Services Association – 800-666-6899
- MT Migrant & Seasonal Farmworkers Council – (406) 248-3149
- Montana Rescue Mission (Men's) – (406) 259-6079
- Montana Rescue Mission (Women's) – (406) 259-3105
- MSUB American Indian Outreach Office – (406) 657-2182
- Native American Development Corporation – (406) 259-3804
- NAMI Billings – (406) 256-2001
- Office of Public Assistance – (406) 237-0520
- Mental Health Center P.A.T.H. Program – (406) 248-4803
- Peace Lutheran Food Pantry – (406) 252-5504
- Planned Parenthood Heights/West – (406) 869-5040/656-9980
- PRAISE Center – (406) 245-7609
- Rimrock Foundation – (406) 248-3175
- RiverStone Health – (406) 247-3350
- Rocky Mountain Tribal Leaders Council – (406) 252-2550
- The Salvation Army – (406) 245-4659
- South Central MT Regional Mental Health Center – (406) 252-5658
- St. Vincent de Paul – (406) 252-1855
- Tumbleweed – (406) 259-2558
- United Methodist Church Free Store – (406) 259-1897
- Vocational Rehabilitation & Blind Services – (406) 248-4801
- Yellowstone AIDS Project – (406) 245-2029
- Yellowstone Boys and Girls Ranch – (406) 655-2100
- YWCA – (406) 245-4472 (24 hour hotline)

**Marsy's Card**

<b>Officer</b>				
<b>Badge #</b>	BPD <input type="checkbox"/>	LPD <input type="checkbox"/>	OTHER <input type="checkbox"/>	
<b>Case #</b>	MHP <input type="checkbox"/>	YCSO <input type="checkbox"/>		
<b>Offender Name</b>				
<input type="checkbox"/> Felony	<input type="checkbox"/> Misdemeanor			
<input type="checkbox"/> An N. T. A has been issued for the offender to appear in _____ court on _____				
<input type="checkbox"/> A warrant or arrest could be made at a later date.				
Please note: an offender of a misdemeanor may plead guilty at the time of their first appearance.				

- ◇ **Billings Police Officer**  
Misdemeanor → Billings City Attorney's Office  
Felony → Yellowstone County Attorney's Office
- ◇ **Yellowstone County Sheriff's Deputy**  
All Cases → Yellowstone County Attorney's Office
- ◇ **Montana Highway Patrol Trooper**  
All Cases → Yellowstone County Attorney's Office
- ◇ **Laurel Police Officer**  
Misdemeanor → Laurel City Attorney's Office  
Felony → Yellowstone County Attorney's Office
- ◇ **Youth Court Services**  
Cases involving juvenile offenders

*Not all crimes or cases can be prosecuted.*

*For more information visit:*

[www.co.yellowstone.mt.gov/coattorney/](http://www.co.yellowstone.mt.gov/coattorney/)  
[www.ci.billings.mt.us/102/city-attorney](http://www.ci.billings.mt.us/102/city-attorney)

**EXHIBIT 4**

MARSY'S CARD AND RESOURCES

**MONTANA  
CRIME VICTIMS'  
RIGHTS**

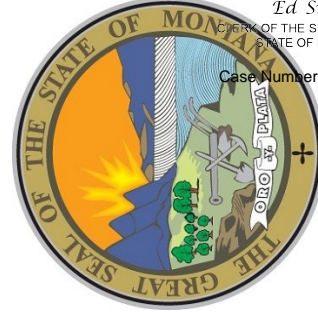
**FILED**

06/20/2017

Ed Smith

CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 17-0358





On November 8, 2016, the voters of the State of Montana voted to amend the Montana State Constitution to include the following rights for victims of all crimes:

1. To due process and to be treated with fairness and respect for the victims' dignity;
2. To be free from intimidation, harassment, and abuse;
3. To be reasonably protected from the accused;
4. To have the victims' safety and welfare considered when setting bail and making release decisions;
5. To have personal information kept confidential;
6. To privacy, including the right to refuse an interview/deposition;
7. To receive reasonable, accurate and timely notice and to be present at all proceedings involving the criminal conduct;
8. To be promptly notified of any release or escape of the accused;
9. To be heard in any proceeding;
10. To confer with the prosecutor;
11. To provide a victim impact statement;
12. To receive a copy of any pre-sentence report, except confidential portions;

13. To prompt return of property when no longer needed as evidence;
14. To full and timely restitution;
15. To proceedings free from unreasonable delay;
16. To be informed of conviction, sentence, adjudication, place and time of incarceration, or other disposition of the offender;
17. To be informed of clemency or expungement procedures;
18. To be informed of the above rights and to be informed that the victim may seek advice and the assistance of an attorney with respect to the above rights.

For more information on victim's rights visit

[www.co.yellowstone.mt.gov/coattorney/](http://www.co.yellowstone.mt.gov/coattorney/)  
[www.ci.billings.mt.us/102/city-attorney](http://www.ci.billings.mt.us/102/city-attorney)

*You must notify the current agency handling your case with any changes to your contact information*



**Billings City Attorney's Office**  
406-657-8205

**Yellowstone County Attorney's Office**  
406-256-2870

**Billings Municipal Court**  
406-657-8490  
*Cases involving city misdemeanors*

**Laurel City Court**  
406-628-1964  
*Cases involving city misdemeanors*

**Yellowstone County Justice Court**  
406-256-2889

**Youth Court Services**  
406-256-2838  
*Cases involving juvenile offenders*

**Yellowstone County Clerk of District Court**  
406-256-2785

*The State of Montana entitles an offender the right to bond after an arrest for most criminal offenses, even before they have made a court appearance. In the event, the offender posts bond and will be released the detention facility will attempt to notify you with the information you have provided in this case.*

For more information please contact:

**Yellowstone County Detention Facility**  
406-256-6881

[www.co.yellowstone.mt.gov/Sheriff/detention/dcsearch.asp](http://www.co.yellowstone.mt.gov/Sheriff/detention/dcsearch.asp)

# Montana Crime Victims' Rights - Marsy's Card and Resources

The Montana Constitution, Article II, Section 36, confers certain rights to victims of crime, including:

*Debra Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA  
Case Number: OP 17-0358

- 1. Fairness and Respect** - The right to due process and to be treated with fairness and respect.
- 2. Free from Intimidation, Harassment and Abuse** - The right to be free from intimidation, harassment, and abuse.
- 3. Protection** - The right to reasonable protection from the accused and any person acting on the accused's behalf.
- 4. Safety and Welfare** - The right to have your safety and welfare be considered when a court sets bail and makes release decisions.
- 5. Prevention of the Disclosure of Confidential Information** - The right to prevent disclosure of information that could be used to locate or harass you or that contains confidential or privileged information about you.
- 6. Refusal to be Interviewed** - The right to privacy, including the right to refuse an interview, deposition, or other discovery request, and to set reasonable conditions on the conduct of any interaction to which you consent.
- 7. Notice of and Presence at Public Proceedings** - The right to receive reasonable, accurate, and timely notice of and to be present at all proceedings involving the criminal conduct, plea, sentencing, adjudication, disposition, release, or escape of the defendant or youth accused of delinquency and any proceeding implicating your rights as a victim.
- 8. Notification of Release or Escape** - The right to prompt notification of any release or escape of the accused.
- 9. Expression of Views** - The right to be heard in any proceeding involving release, plea, sentencing, disposition, adjudication, or parole of the defendant or youth accused of delinquency and any proceeding implicating your rights as a victim.
- 10. Confer with Prosecutor** - The right to confer with the prosecuting attorney.
- 11. Provision of Information on Impact of Offender's Conduct** - The right to provide information regarding the impact the

offender's conduct had on you for inclusion in the pre-sentence or predisposition investigation report and to have the information considered in any sentencing or disposition recommendations submitted to the court.

**12. Receipt of Pre-Sentence Report** - The right to receive a copy of any pre-sentence report and any other report or record relevant to the exercise of a right of your rights as a victim, except for those portions made confidential by law.

**13. Prompt Return of Property** - The right to the prompt return of your property when no longer needed as evidence in the case.

**14. Restitution** - The right to full and timely restitution. All money and property collected from a person who has been ordered to make restitution must be applied first to the restitution owed to the victim before paying any amounts owed to the government.

**15. Proceedings Free from Unreasonable Delay** - The right to proceedings free from unreasonable delay and to prompt and final conclusion of the case any related post-judgment proceedings.

**16. Information About Conviction, Sentence, Incarceration, Release, and Escape** - The right to be informed of the conviction, sentence, adjudication, place and time of incarceration or other disposition of the offender, including any scheduled release date, actual release date or escape.

**17. Information and Participation in Clemency Procedures** - The right to be informed of clemency and expungement procedures; to provide information to the Governor, the court, any clemency board, or any other authority and to have that information considered before a decision is made; and to be notified of any decision before the release of the offender.

**18. Information on Rights as Victim of Crime** - The right to be informed of the rights you have as a crime victim, and your right to seek the advice and assistance of an attorney with respect to these rights.

<b>Montana Victim Acknowledgement of Receipt of Rights and Information</b>					
Victim Name/DOB		Victim Signature		Date	
Cell Phone/Other Phone		Email		Other Contact Method	
Street		City	State	Suspect Known:	YES NO
Suspect Name		Primary Crimes		Suspect Arrested/Cited:	YES NO
Officer Name	Agency	Badge Number	Case Number		
Other Information:					

## **Crime Victims' Resources in (Insert Jurisdiction)**

**Crime Victim Advocacy:** Crime victim advocates provide free, confidential help and services to crime victims throughout Montana. Such services and help include helping victims recover property or restitution; explaining a court proceeding and offering a safe, secure place during proceedings; providing crisis counseling, emotional support and guidance; informing victims of their rights; and helping victims work with their employers if a victim has to miss work because of a trial.

Montana's crime victim advocates are affiliated with local programs and located throughout the state.

(INSERT INFORMATION ABOUT YOUR LOCAL PROGRAM, INCLUDING CONTACT INFO)

**Orders of Protection:** Pursuant to Mont. Code Ann. §40-15-102 you may qualify for an Order of Protection (temporary or permanent). For more information regarding applying for an Order of Protection visit: <https://dojmt.gov/victims/orders-of-protection/>

**Crime Victim Compensation:** The Crime Victims Compensation Act provides financial assistance to help innocent crime victims with crime-related medical expenses. For eligible individuals, the Montana Crime Victim Compensation Program can help with loss of wages, medical expenses and funeral expenses incurred as the result of personal injury crimes. To see if you are eligible, call the Montana Department of Justice Victim Services at 1-800-498-6455, or visit <https://dojmt.gov/victims/crime-victim-compensation>.

### **Contact Information**

(LIST CONTACT INFORMATION FOR CITY POLICE, CITY ATTORNEY, CITY COURT)

(LIST CONTACT INFORMATION FOR COUNTY SHERIFF, COUNTY ATTORNEY, JUSTICE COURT)

(LIST CONTACT INFORMATION FOR DETENTION FACILITY)

# Unintended consequences of victims' rights law may trample all of our rights

Tribune edit board Published 3:34 p.m. MT June 1, 2017 | Updated 5:18 p.m. MT June 1, 2017



(Photo: Franz, Allison)

Unintended consequences was a term we used a lot back when the Montana Legislature approved deregulating utilities back in the '90s. Before the ink on the newly signed law was dry, Montana Power Co. announced it was selling off the utility's dams and power plants. We all know how that turned out.

Montana has a whole new slew of unintended consequences now dealing with the victims' rights Marsy's Law. This time we can't point a finger at elected officials. We passed this law, actually a constitutional amendment, in November, with 66 percent of the voters saying yes. Now Montana crime victims have new constitutional rights in our state.

That sounds reasonable, even desirable. Except for the unintended consequences.

In Cascade County, we've learned that Marsy's Law may mean that law enforcement will no longer release the identities of homicide victims. In the past, as is the case with all deaths, the deceased's family members are notified and then that person's name is released publicly.

Tasha Roberts' body was found May 16 in a Great Falls motel room and a suspect has been charged with deliberate homicide. The Tribune didn't learn Roberts' name from the Great Falls Police. It's not in public documents in District Court either. We learned that this mother of three young boys is the victim because Roberts' aunt in Havre held a fundraiser to raise money for those children.

Pamela Jean Courtnage is charged with deliberate homicide of a 69-year-old woman found dead at Courtnage's Great Falls home on May 27. That woman is identified as "Jane Doe" in court documents, just as Roberts' is. An upset woman called the Tribune, saying she is a family member of the victim and feels it is disrespectful that the victim's name and relationship to the defendant isn't being used in news stories.

Cascade County Attorney Josh Racki says because Marsy's Law gives victims' families a right to privacy, he's instructed all law enforcement personnel not to release victims' names.

"I think all prosecutors in the state are on uncharted ground," said retired Montana Supreme Court Justice James Nelson, who was also the Glacier County attorney before joining the state supreme court. "Marsy's Law is a constitutional amendment, which means crime victims have fundamental rights under the state's constitution now."

There are about 20 new victims' constitutional rights in Montana, including limits about being interviewed by the defendant's legal counsel and meetings with the defendant in the crime. Nelson warned in an October guest opinion that right could conflict with a defendant's constitutional rights to a fair trial, to due process, to effective assistance of counsel, to confront and meet accusers and witnesses face to face. That may lead to charges in both federal and state cases being dismissed.

Chuck Denowh, who led the campaign in Montana to pass Marsy's Law, said the intent in cases such as the two recent Cascade County homicides is for victims' families to be made aware of the crime.

"It seems reasonable that those details become public," Denowh said. He said not releasing the victims' names by the Cascade County Attorney's office is because the law is being interpreted incorrectly by local authorities. Denowh said similar Marsy's Laws are in place already in California, Illinois and North and South Dakota and do not prevent the names of homicide victims from being released to the public in those states.

Not so, said Nelson.

And that is because in Montana, Marsy's Law was implemented as an amendment to the state constitution. The constitutional rights of victims may conflict with other constitutional rights, such as the public's right to know, but now courts will have to sort that out.

Why can't elected lawmakers in the Legislature decide the rules? Because Marsy's Law was an amendment passed by voters to the state constitution, bypassing the state legislature completely.

"It will have to be flushed out in lawsuits filed in district courts or the supreme court," Nelson said. "It is sort of a lawyers' relief act."

Respecting the dignity of crime victims and keeping them in the loop as cases progress is a noble goal. We agreed with Nelson last fall, however, that Marsy's Law was a solution in search of a problem.

And now all of us will deal with the costly unintended consequences of a constitutional amendment that we approved.

NEWS > CRIME & COURTS

# Idaho father takes pregnant teen daughter to marry rapist

By **THE ASSOCIATED PRESS**

May 31, 2016 at 2:17 pm

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ST. ANTHONY, Idaho — An Idaho man will spend about four months in jail for taking his 14-year-old daughter to Missouri to marry a 24-year-old man who raped and impregnated her.

The father pleaded guilty to injury to a child last week, and a judge put him behind bars for 120 days and ordered four years of supervised probation, the Idaho State Journal reported.

“I would note that the 120 days is approximately how long this vile farce of a marriage lasted,” Seventh District Judge Gregory Moeller told him at the sentencing. “While you sit in jail, you will sit and think about the 120 days your daughter was in a vile farce of a marriage to a rapist because of you.”

The Associated Press does not generally identify victims of sexual abuse and is withholding the name of the father and man involved in the marriage to avoid identifying the girl.

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The father believed that a man should marry a girl he gets pregnant and picked a state where 14-year-olds can legally wed, according to court documents. He told the judge that he loved his daughter and would never intentionally harm her but acknowledged making a bad decision.

“Clearly, your daughter underwent great bodily harm based on some of your choices,” Moeller told the girl’s father.

The girl and the man lived together for four months. The teen miscarried, and when she returned to Idaho, her mother filed for an annulment, officials said.

The 24-year-old was sentenced in April to 15 years in prison after pleading guilty to felony rape. He must serve three years behind bars before becoming eligible for parole.



## Sunday Review

OP-ED COLUMNIST

# 11 Years Old, a Mom, and Pushed to Marry Her Rapist in Florida

1359



ANNA PARINI

MAY 26, 2017



**Nicholas  
Kristof**

When she was a scrawny 11-year-old, Sherry Johnson found out one day that she was about to be married to a 20-year-old member of her church who had raped her.

“It was forced on me,” she recalls. She had become pregnant, she says, and child welfare authorities were investigating — so her family and church officials decided the simplest way to avoid a messy criminal case was to organize a wedding.

“My mom asked me if I wanted to get married, and I said, ‘I don’t know, what is marriage, how do I act like a wife?’” Johnson remembers today, many years later.

EXHIBIT 8

“She said, ‘Well, I guess you’re just going to get married.’”

So she was. A government clerk in Tampa, Fla., refused to marry an 11-year-old, even though this was legal in the state, so the wedding party went to nearby Pinellas County, where the clerk issued a marriage license. The license (which I’ve examined) lists her birth date, so officials were aware of her age.

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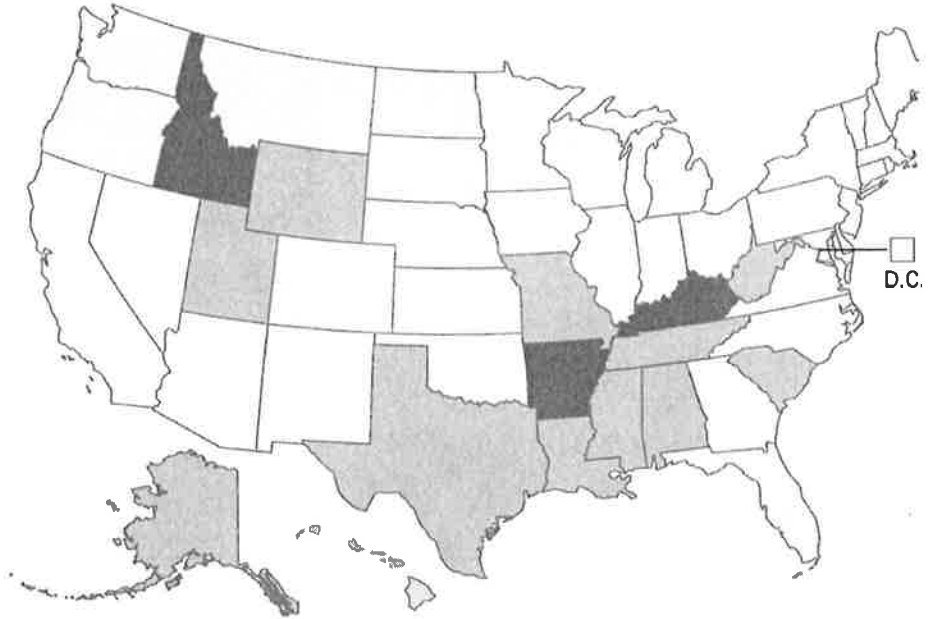
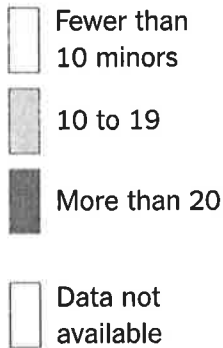
Not surprisingly, the marriage didn’t work out — two-thirds of marriages of underage girls don’t last, one study found — but it did interrupt Johnson’s attendance at elementary school. Today she is campaigning for a state law to curb underage marriages, part of a nationwide movement to end child marriage in America. Meanwhile, children 16 and under are still being married in Florida at a rate of one every few days.

You’re thinking: “Child marriage? That’s what happens in Bangladesh or Tanzania, not America!”

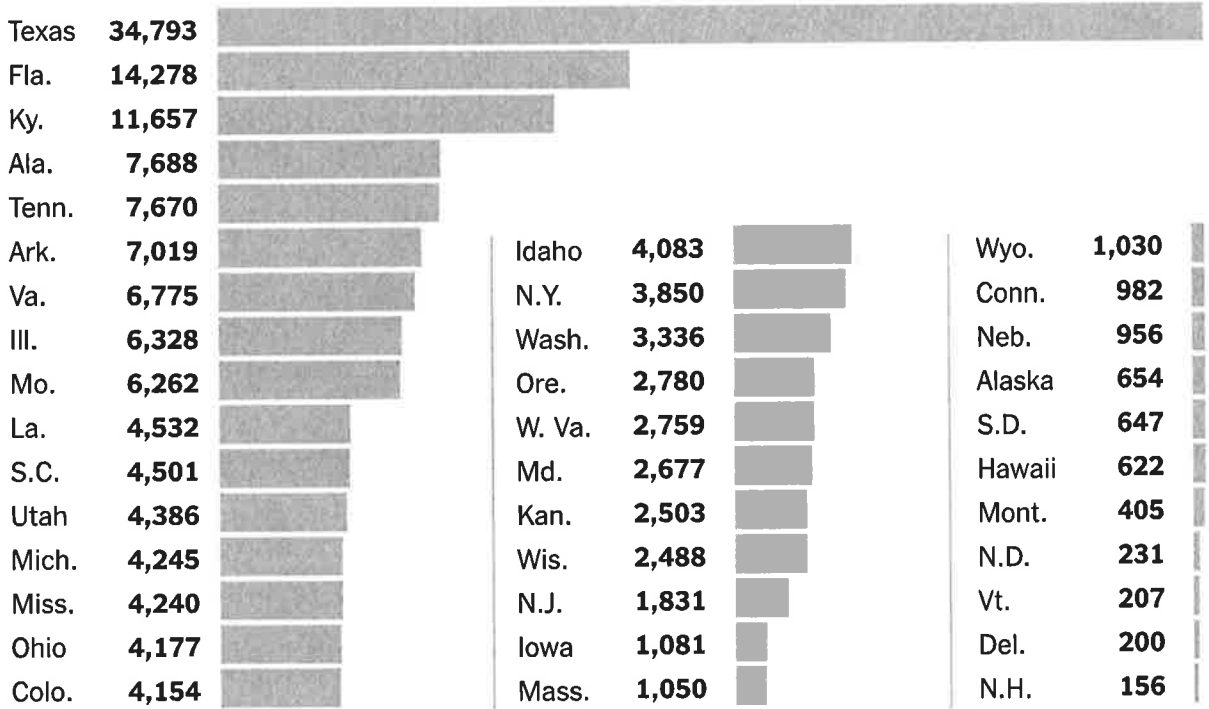
# The Landscape of Child Marriage

Idaho had the most married children on a per-capita basis among states that provided data; Texas led in sheer numbers of children married. Based on state records covering 11 years, 2000 to 2010.

### Married per 10,000 residents:



### Minors who married in 38 states that provided records, 2000-10



Per-capita figures based on the average of each state's population in 2000 and 2010.

Source: Unchained at Last

By The New York Times

In fact, more than 167,000 young people age 17 and under married in 38 states between 2000 and 2010, according to a search of available marriage license data by a group called Unchained at Last, which aims to ban child marriage. The search turned up cases of 12-year-old girls married in Alaska, Louisiana and South Carolina, while other states simply had categories of “14 and younger.”

Unchained at Last was not able to get data for the other states. But it extrapolated that in the entire country, there were almost 250,000 child marriages between 2000 and 2010. Some backing for that estimate comes from the U.S. Census Bureau, which says that at least 57,800 Americans age 15 to 17 reported being in marriages in 2014.

Among the states with the highest rates of child marriages were Arkansas, Idaho and Kentucky. The number of child marriages has been falling, but every state in America still allows underage girls to marry, typically with the consent of parents, a judge or both. Twenty-seven states do not even set a minimum age by statute, according to the Tahirih Justice Center’s [Forced Marriage Initiative](#).

A great majority of the child marriages involve girls and adult men. Such a sexual relationship would often violate statutory rape laws, but marriage sometimes makes it legal.

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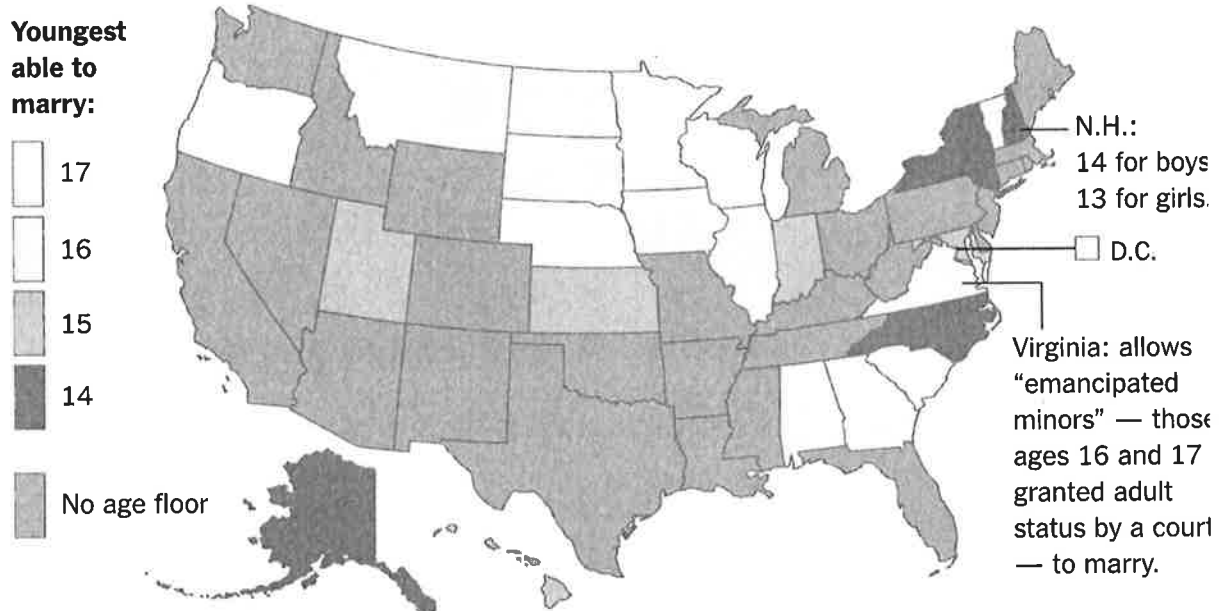
In New Hampshire, a girl scout named Cassandra Levesque learned that girls in her state could marry at 13. So she set out to change the law.

A legislator sponsored Cassandra's bill to raise the age to 18, and researchers found that two 15-year-olds had recently married in New Hampshire, along with one 13-year-old. But politicians resisted the initiative.

"We're asking the Legislature to repeal a law that's been on the books for over a century, that's been working without difficulty, on the basis of a request from a minor doing a Girl Scout project," scoffed one state representative, David Bates. In March the Republican-led House voted to kill the bill, leaving the minimum age at 13. (Legislators seem willing to marry off girls like Cassandra, but not to listen to them!)

## The Youngest Legally Able to Wed

More than half the states have no firm minimum age for marriage.



Source: [Tahirih Justice Center](#)

By The New York Times

New Jersey lawmakers passed a bill that would make their state the first in the country to ban marriages of people under 18, but Gov. Chris Christie this month blocked the legislation. New York legislators are considering a bill backed by Gov. Andrew Cuomo to raise the age to 17, from the current minimum, 14.

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Opponents worry that raising the age will lead to out-of-wedlock births, and they note that many underage marriages are consensual.

Globally, a girl marries before the age of 15 every seven seconds, according to estimates by Save the Children. As in Africa and Asia, the reasons for such marriages in the U.S. are often cultural or religious; the American families follow conservative Christian, Muslim or Jewish traditions, and judges sometimes feel that they shouldn't intrude on other cultures.

Johnson, the former 11-year-old unwitting bride who is now fighting for Florida to set a minimum marriage age (there is none now), says that her family attended a conservative Pentecostal church and that other girls of a similar age periodically also married. Often, she says, this was to hide rapes by church elders.

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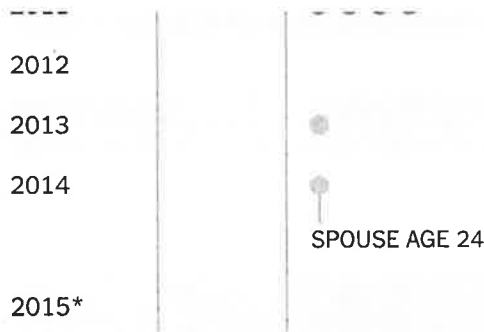
She says she was raped by both a minister and a parishioner and gave birth to a daughter when she was just 10 (the birth certificate confirms that). A judge approved the marriage to end the rape investigation, she says, telling her, “What we want is for you to get married.”

# Statutory Rape Within Marriage?

New Jersey state records show more than 100 marriages between 1995 and 2015 in which sex would constitute statutory rape because of spousal age differences: one person age 13 to 15 and a partner at least four years older. These marriages required court and parental approval.







\*2015 data is provisional. New Jersey stopped tracking gender as same-sex marriage was legalized.

Sources: New Jersey Department of Health; Unchained at Last

By The New York Times

“It was a terrible life,” Johnson recalls, recounting her years as a child raising children. She missed school and remembers spending her days changing diapers, arguing with her husband and struggling to pay expenses. She ended up with pregnancy after pregnancy — nine children in all — while her husband periodically abandoned her.

“They took the handcuffs from handcuffing him,” she says, referring to the risk he faced of arrest for rape, “to handcuffing me, by marrying me without me knowing what I was doing.”

“You can’t get a job, you can’t get a car, you can’t get a license, you can’t sign a lease,” she adds, “so why allow someone to marry when they’re still so young?”

Those are precisely the reasons marriages for even 17-year-olds are problematic, according to Fraidy Reiss, who founded Unchained at Last to fight forced marriage and child marriage. Bullied by their parents into marriage, she says, girls may feel powerless to object — and fearful of telling a judge that they don’t want to wed. If they try to flee an abusive marriage, they are turned away from shelters and may be treated as simple runaways.

Some judges and clerks intervene on behalf of young girls; others do not. Reiss says one clerk told a 16-year-old bride: “Don’t cry. This is supposed to be the happiest day of your life.”

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“For almost all of them,” says Reiss, “marriage means rape on their wedding night and thereafter.” Reiss, now 42, says she was forced into a marriage at age 19 by her ultra-Orthodox Jewish family.

Lyndsy Duet, now a school counselor in Texas, told me that she was forced into a marriage at 17 after enduring a series of rapes beginning when she was 14, by a young man her conservative Christian family had taken into the house. Confused, shamed and helpless, she didn’t speak up — but her rapist did.

“He asked my parents if he could marry me,” Duet remembers. “My mom was crying, she was so happy.”

Duet felt powerless to resist her parents’ pressure — and it was eight years before she could flee what she says was a violent marriage. Once, she says, her husband threatened her with a chain saw, and it was only when she went to college on her own and proved a brilliant student (she graduated first in her class) that she was able to escape.

“Most girls who reach out to us love their families,” Reiss says, “and their primary concern is that they don’t want their families to get into trouble.”

The United States has denounced child marriage in other countries as a “human rights abuse that contributes to economic hardship,” in the words of a State Department document published last year.

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Let's listen to ourselves. State legislators must understand that child marriage is devastating in Niger and Afghanistan — and also in New York and Florida. It's past time to end child marriage right here at home.

**The New York Times** | <https://nyti.ms/2dlqz1O>

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ASIA PACIFIC

# Pakistan Toughens Laws on Rape and ‘Honor Killings’ of Women

By SALMAN MASOOD | OCT. 6, 2016

ISLAMABAD, Pakistan — The Pakistani Parliament on Thursday passed laws to increase sentences for rapists and those who commit so-called honor killings of women, and closed a loophole that allowed many of the killers to go free, after hours of heated opposition from Islamist lawmakers.

Each year, hundreds of Pakistani women are killed by relatives angered by behavior they believe has impugned the family’s reputation, according to human rights activists, who have campaigned against the practice and called for tougher laws for years.

Most of those killings have gone without punishment because of a tenet of Islamic law that allows killers to go free if they are forgiven by the woman’s family — something that usually happens because the killers are usually family members.

“Under the new law, relatives of the victim would only be able to pardon the killer if he is sentenced to capital punishment,” Zahid Hamid, the law minister, said on the floor of the National Assembly. “However, the culprit would still face a mandatory life sentence.”

8

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The Parliament was divided in a debate that lasted hours, with particular opposition from Islamist political parties that insisted the bill must be approved by a clerical panel before being passed. That requirement has been a sticking point in past attempts to enact legal protections for women.

This time, the government and supporters of the bill from the opposition benches ruled that step out.

In the other legislation passed on Thursday, Mr. Hamid, the law minister, said that verdicts in rape cases would have to be given within three months, and that sentences would increase.

“We have made it mandatory that the culprit must be imprisoned for 25 years,” he said, adding that laws against the rape of minors and the mentally and physically disabled had also been toughened.

“These bills are hugely important for Pakistani women, where rape conviction rates were almost nonexistent, due in large part to various technical obstacles to accessing justice,” Yasmeen Hassan, the global executive director of the rights group Equality Now, said in a statement. “We hope that these new laws will help generate a cultural shift in Pakistani society and that women will be able to live their lives in safety.”

Prime Minister Nawaz Sharif hailed the passage of the legislation, saying that there was “no honor in honor killings.”

“I congratulate the Parliament, the NGOs, civil society, academia, media and all those who worked hard and supported us in the passage of this legislation,” Mr. Sharif said, referring to nongovernmental organizations.

He said his government would ensure enforcement of the legislation.

“I feel so relieved,” said Sughra Imam, a former senator, who had originally pushed for legislation against the honor-killing practice. “I hope they will help,” Ms. Imam said in an interview referring to the new laws

“No law will completely eliminate crime,” she said. “But at the very least, it should hold those who violate the law and principles of justice to account.”

***Correction: December 1, 2016***

An article on Oct. 7 about tougher laws in Pakistan against rape and the “honor killings” of women referred incorrectly to punishments for the rape of minors and the mentally and physically disabled. Laws against such acts were also toughened; it is not the case that the acts were just made punishable. A reader pointed out the error shortly after publication, but editors failed to follow through with a correction promptly.

*Follow Salman Masood on Twitter @salmanmasood.*

A version of this article appears in print on October 7, 2016, on Page A10 of the New York edition with the headline: Pakistan Toughens Penalties for Rape.

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**The New York Times**

MIDDLE EAST | I.H.T. SPECIAL SECTION: MIDDLE EAST

# Weary Public Pleads for End to Clan Violence in Turkey

By SUSANNE GÜSTEN APRIL 28, 2011

ISTANBUL — As the town of Siverek cowered in dread of the next burst of gunfire in an ongoing war between local clans, a group of citizens ventured out into the spring sunshine to say, Stop!

Brandishing a banner that read, “We don’t want to live in the shadow of guns,” several hundred teachers, tradesmen and trade unionists rallied in a town square to demand an end to the violence and to tribal rule of the region.

“We find it intolerable that these blood feuds, and the feudal structures that cause them, continue to exist here in southeastern Anatolia in the 21st century,” the rally’s organizer, Abdulkadir Kak of the local teachers’ union, called over a megaphone to applause from the crowd.

“Mankind is exploring space, but here we are still suffering the problems of a 16th-century feudal society,” Mr. Kak said in a telephone interview after the rally early this month. “People here really want this to change.”

Public challenges to the rule of clans in this part of Turkey are rare. But social and political shifts could herald an end to the power of the tribes in the region and to the system of indirect rule by which Turkish governments of all stripes have quietly upheld the feudal system in the southeast in exchange for the huge blocks of votes the clans command, sociologists say.

In Siverek, a shootout between the Bucak and Acemoglu clans over a land dispute left five dead on April 4, and the district is waiting for the other shoe to drop.

“They are threatening to kill us all, down to the babes in arms,” a member of the Acemoglu clan told the Taraf newspaper, and a member of the Bucak clan said the Acemoglus had made megaphone announcements of their intention to “avenge their blood.”

Such clashes are by no means rare in southeastern Turkey. Though official statistics do not separate tribal violence from general crime, a tally of local press reports suggests that at least 17 people have been killed and 74 wounded this year in clan battles and blood feuds in Urfa Province, to which Siverek belongs. The province has 1.6 million people.

The governor of Van Province, farther east, with a population of one million, told a conference this year that 52 people had been killed in blood feuds there within 18 months.

The latest clash in Siverek was a fairly typical one, according to Yildiz Akpolat, a sociologist at Ataturk University in Erzurum, who conducted extensive research in the field after 44 men, women and children were massacred in a tribal dispute at a wedding in Mardin Province two years ago.

“These feuds are caused by the struggle over land, women, livestock and water as the primary means of production in the feudal structure of this region,” Mr. Akpolat said during an interview last week.

In Siverek, many people have had enough. Support has been pouring in since the rally, the first of its kind in the town, Mr. Kak said. One show of support came from 13 Siverek news Web sites that went on a joint one-day strike last week to protest the blood feuds.

“We are tired of reporting these deaths,” Abdullah Hakan Lale, editor of Siverek Haberleri, or Siverek News, said by telephone, adding that he had lost count of the killings he had reported in his 10 years on the Siverek beat.



Web sites of the participating media remained black on April 13, except for a statement protesting the violence and calling for a weapons ban.

But to Mr. Lale, the coordinator of the protest, the best news in the struggle against feudalism in southeastern Anatolia has just come from Ankara: Clan chiefs may be about to lose their political power base in the capital, which has long enabled them to sustain their hold on the region and to arm their clans.

In a striking departure from tradition that has the southeast buzzing, the governing Justice and Development Party, or A.K.P., has bumped several tribal chieftains off or down its ticket for Urfa Province for Turkey's general election in June and named an outsider, State Minister Faruk Celik from western Turkey, as its front-runner for Parliament, where the clan chiefs have held comfortable sway since the beginning of the republic.

Zulfikar Izol, leader of the powerful Izol tribe of Siverek, was among those bumped from the ticket after serving four terms in Parliament for various parties. Furious, Mr. Izol immediately resigned from the A.K.P. and announced that he would run as an independent candidate.

Several other chieftains also found themselves reduced to running as independents after failing to find a spot on a party ticket.

"I think this is a wonderful thing to happen," Mr. Lale said. "It's a real change, because for so long the deputies from Siverek, from Urfa, from southeastern Anatolia have all been clan chiefs. We've never been able to elect true representatives of the people here. It's always been like a monarchy, with parliamentary seats passed down from father to son within a tribe."

His assertion is borne out by the numbers. Since 1950, which marked the introduction of the multiparty system in Turkey, 85 percent of all Turkish deputies from Urfa have been chiefs or high-ranking members of local tribes, the historian Ahmet Ilyas concluded in a master's thesis accepted at Konya University in 2009. "Instead of having to convince voters one by one, parties form close links with tribal chieftains and win their tribes' votes in blocks, which comes cheaper and easier," Mr.

Ilyas wrote in his study, adding that this system in turn strengthened the tribes and thus perpetuated the region's feudal structures.

Speaking by phone on Monday from Erzurum, where he is preparing a doctoral thesis on the subject, Mr. Ilyas said he was unconvinced by the A.K.P.'s new ticket. He pointed out that the A.K.P. was still fielding two powerful clan chiefs capable of commanding 30,000 to 40,000 clan votes each in Urfa, while little had changed at all on other parties' tickets.

Still, other experts greeted the A.K.P.'s move as revolutionary.

"This is actually one of the most serious challenges to the region's political style in the history of the republic," Ibrahim Ozcosar, director of the social sciences department at Artuklu University in Mardin, told the Aksam newspaper in an interview published last week.

Sevket Okten, director of the sociology department at Harran University in Urfa, agreed that the departure from a solidly tribal ticket "could be a sign of change" and "could have a positive effect." But Mr. Okten stressed that the dissolution of the feudal society had already begun and that it was happening from the bottom up, not from the top down.

"It is a result of pressure from the grassroots of society," he said in a telephone interview. "People, especially in the towns, increasingly want to escape from the collective identity and to individualize."

The big question now is how the voters will react.

While many in Urfa say that the A.K.P. will be routed by tribal chieftains running as independents, Mr. Lale, the Siverek editor, does not think so. "I think people will vote for change," he said.

Meanwhile, the violence has continued. In the few weeks following the peace rally, one man was shot and critically wounded in a clan-related land dispute in Siverek district. Another battle was fought between feuding clans in the town center, with two handguns, a pump gun, a machine pistol and an assault rifle, according to police reports quoted in the local press.

## And the standoff between the Bucak and Acemoglu clans goes on.

A version of this article appears in print on April 28, 2011, in The International Herald Tribune.

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06/20/2017

*Ed Smith*  
 CLERK OF THE SUPREME COURT  
 STATE OF MONTANA  
 Case Number: OP 17-0358

## Albania's modern-day blood feuds

All over Albania, there are entire generations scared to venture outdoors in case they're killed – all because of decades-old 'blood feuds'. And not even the law can help them.



The grave of a blood feud victim near Tirana Photo: Bevis Fusha

By Colin Freeman

5:35PM BST 01 Jul 2010

In the best tradition of Balkans quarrels, it all began with a mix of strong brandy, fiery tempers and very long memories. One hot summer's night in 2000, Pëllumb Morevataj, a man with a big thirst and a bigger ego, was out drinking in his village in northern **Albania**, when a friend made a chance remark about how the Morevataj family had backed down in a feud some half a century before. An argument ensued, and an evening that should have ended with nothing worse than bad hangovers all round saw Pëllumb shoot his drinking companion dead. The blood has not stopped flowing ever since.

Ten years later, on the wall above the doorway of her dingy parlour, Pëllumb's sister-in-law, Shkurte, has a gallery of photos of dead relatives, all martyrs to the family honour that was offended that night. In one are Pëllumb's two brothers, killed in revenge by his victim's relatives in 2002. In another is Pëllumb himself, who was shot dead in 2006, although not before he had avenged his brothers' deaths with two more murders. And in a third is his grieving wife, who committed suicide a year later.

'So many deaths from that one night,' sighs Shkurte, a gaunt, dark-haired woman who looks 10 years older than her 38 years. 'Pëllumb was a good man, but hot-headed and macho. If he hadn't gone drinking that evening, none of this would ever have happened.' And what, exactly, was the 50-year-old feud about that he took such offence? Shkurte shakes her head. 'It all happened so long ago that not even my aunt here

really knows what caused it,' she says. A wizened, grey face in the corner, clad in a traditional all-black shawl and scarf, nods in assent.

The multiple body count aside, vendettas like that involving the Morevataj family are not unusual in the more hot-blooded corners of the Mediterranean: similar tales can be heard among the Mafia clans of Sicily and Corsica, and throughout the Balkans from Croatia to Crete.

Yet here in Albania, there is an aspect to such feuds that make them unique - namely, that both sides in the feud claim to be acting entirely within the law. Not the law of 21st-century Europe, but a law that is much older, and in many parts of this ex-Communist state, the only one that is respected. The Kanun, or canon, is a 500-year-old code of conduct covering every aspect of medieval life, from births and marriages to hunting and grazing rights. And amid its edicts on the duties of a village blacksmith, and the penalties for allowing a goat to stray onto a neighbour's land, it lays out detailed procedures for blood feuds, with a chillingly loose definition of an eye-for-an-eye. When someone is killed, revenge can be exacted not just against the killer himself, but all males in his extended clan.

Hence for the Morevataj family, the spilling of Pëllumb's own blood does not draw a line under the affair. Instead, Shkurte's own five sons, aged five to 17, also have a death sentence hanging over them. The only way they can avoid it is to remain within the confines of their shabby breeze-block home, which, under the Kanun, counts as a sanctuary. To step outside their gate would be to show 'disrespect' to the other family, and invite a hitman's bullet.

Freedom will come only when the dead man's clan chooses to forgive them, and given the history of the last 10 years, that may be a long way away.

The threat is greatest for Shkurte's sons Pashk, 17, and Pepa, 15, who, as the eldest males, are most eligible for any tit-for-tat violence. Both have spent most of their lives as virtual prisoners, unable to attend school, unable to socialise with other children, and unable to contemplate any kind of future. 'It has been 10 years that I have been isolated like this,' frowns Pashk, a shy, wide-eyed boy who looks, dresses and longs to be just like any other normal European teenager. 'I spend the days watching football and cable TV, and I can play a bit in the front yard, but not very much. It is a terrible life, not being able to move around at all.'

The Morevataj blood feud is one of an estimated 10,000 to have erupted in Albania since 1990, following the collapse of what had been one of the world's most closed communist regimes. Under dictator Enver Hoxha - a man so hardline he felt the Soviet Union went soft after Khrushchev denounced Stalin - the Kanun was suppressed as ruthlessly as the Bible. But in the anarchy of the early Nineties, its influence quickly re-emerged, as did countless old grievances that had lain dormant in the Hoxha era, particularly over land that was 'redistributed' during the socialist period. Today's blood feuds, though, can erupt over

far more minor things than property or grazing rights: a chance drunken insult, for example, or a glance that lingers on another man's wife too long.

Although the Kanun does not have a chapter marked 'Road Rage', some vendettas have been sparked by someone simply refusing to give way on one of Albania's single-lane highways, be it in a four-wheel drive or horse and cart.

According to some estimates, there are as many as 1,500 families and 800 children currently in isolation in Albania due to blood feuds. The government, which formally applied for EU membership last year, and which wants to project a modern image to EU bureaucrats, insists such figures are exaggerated. But either way, the problem recently attracted the attention of the UN Special Rapporteur on extrajudicial executions, **Professor Philip Alston**, who came to investigate back in February. He concluded that while blood feuds had diminished 'significantly' over recent years, there was still a 'widespread belief in the justness of collective punishment of innocent family members'. Many people, he added, viewed the courts as either corrupt or ineffective, and even when a killer was sent to prison, there was still a desire for 'restoration of the lost blood'.

Such is the case for Samir Zizo, 23, whose brother Shpetim was sentenced to life imprisonment three years ago for the rape and murder of a 10-year-old. Shpetim was mentally ill, but that has not excused the victims' relatives from seeking retribution against Samir: as an adult of sound mind, he is actually deemed a better prize than his brother. Today he is confined to a squat on an abandoned Soviet-era factory works in the capital, Tirana, where his family has built protective 8ft-high walls to hide him from view. 'We have tried to ask their forgiveness but they have refused,' he says. 'Life could not be worse - it would almost be better to be in jail myself.'

The Zizo case is just one of hundreds on the files of Gjin Marku, a professional blood-feud mediator who is the chair of the Committee for National Reconciliation. Based in a peeling tower block in downtown Tirana, his organisation is a reminder of the world that exists beyond the capital's modern exterior, with its brand new airport and smart internet cafés. The committee runs a countrywide network of mediators, whose work is half Jerry Springer, half loss adjuster - consoling warring parties and, where necessary, advising on financial compensation. A former agent of Albania's feared State Intelligence Service, the SHISH, Marku is scarcely the obvious choice for such a sensitive job: peering out from behind a permacloud of thick Balkan tobacco smoke, his steely gaze looks more enforcer than peacemaker.

Yet he considers himself more than qualified for the task. His grandfather, a village elder, was a mediator too, and some of his wife's relatives are currently involved in a blood feud themselves (it began with a murder back in 1953).

'I remember my grandfather with his white horse and white beard and a special seal - he was persecuted by the communists,' says Marku. 'But in parts of Albania, people have always viewed the Kanun as a form of self-government. They prefer their own laws rather than those of outsiders.'

The origins of the Kanun, he explains, go back to the 1400s, when a northern Albanian prince called Lekë Dukagjini laid down a set of word of mouth laws to help the area's quarrelsome mountain clans get along peacefully. While not exactly the most progressive of visions - a wife who goes astray, for example, could expect much harsher penalties than a goat - its edicts were cherished in a land often subject to outside rule, be it by the Ottoman Turks or the neighbouring Serbs or Greeks. By the early 20th century, printed copies of the Kanun appeared, ensuring that the vendetta tradition remained alive and well during the interwar reign of Albania's modernising King Zog: rumour has it that he was the target of more than 600 blood feuds, including 55 assassination attempts.

The real problem today, Marku insists, is not the Kanun itself, but the fact that people no longer follow it properly. The book itself emphasises reconciliation, laying out peacemaking rituals in which the warring parties drink glasses of brandy mixed with each other's blood.

But rather like the way some Islamic terrorists justify violence through the Koran, modern-day blood feuders interpret the Kanun selectively, focusing only on the passages that serve their interests. 'The purpose of the Kanun is to help the rule of law, not weaken it, but unfortunately there is no longer the clan structure that ensured that it was applied correctly,' Marku tells me. 'In one case recently, a young man killed the mother of his brother's murderer. If he was really set on revenge, he should only have killed an adult male. It has become a total mess in every direction.'

It means the Kanun also gets invoked in cases which should never have been deemed matters of honour in the first place. Pal Deliaj and his entire family of 22 people had to leave their village after their nephew, aged 14, accidentally killed a friend when messing about with a hunting rifle. 'The entire village agreed it was an accident, and my nephew was jailed for three months anyway, but the other boy's family do not forgive us,' says Deliaj, sipping brandy in the family's new home in a shabby township on the outskirts of Tirana. 'If only the Kanun was interpreted right, we would have had the forgiveness of the other family. I would prefer the rule of law.'

Like many families in more minor blood feuds, the Deliaj clan do not expect a hit man to be lurking outside their gate: their isolation is, to an extent, self-imposed, a way of showing repentance. But if they were seen not to be observing it, the other family would feel entitled, indeed obliged, to take revenge. Not to do so would be to look weak in front of the neighbours, who, as with the chance remark that saw Pëllumb Morevataj reach for his gun, might still be gossiping about it 50 years later.

'The most complicated cases are where the family of the killer shows no tact or there is pressure from the community on the victim's family to act,' says Marku. 'The police will try to restrain the family of the victim, but they often come from the same areas as the feuders, and if they get directly involved they will make things worse.'

The Albanian government has taken steps to curb blood feuds, imposing severe penalties for retaliations, and funding the 'Second Chance' schooling programme, where children who are in isolation get home tuition. The five boys in the Morevataj clan have a governess who visits three times per week, and have made good progress. But while some want more state funding for governesses and mediators, others say that simply entrenches recognition of the Kanun, when the real priority should be building up the government justice system. Some mediators, they point out, also take a fat cut of any compensation they negotiate, giving them a vested interest in feuds continuing. Marku, though, insists the government is not doing enough to prevent what it sees as an embarrassing relic. 'Sadly, our authorities want to pretend that the problem does not exist,' he says.

Soon, though, the blood feud dramas that play out up and down the country will be recreated on the big screen, courtesy of top US independent filmmaker Joshua Marston, who last month finished shooting a fictional movie about a family in the middle of a blood feud. The writer and director of the acclaimed 2004 drug smuggling drama *Maria Full of Grace*, Marston has spent the past two years in Albania researching his subject. Just as his earlier film chronicled the horrors of life as a drug mule, his latest work aims to strip away the romantic myths about honour and revenge and show the real-life impact that blood feuds have on ordinary families.

'What I found interesting was the way this ancient tradition still existed in a modern country,' says Marston, 41, as he drove to a shoot at a farmstead in the mountain-flanked plains outside the northern town of Shkoder. 'It is not so much the feuds themselves that the film focuses on, but the idea of being in forced isolation, and what that is like for a child. They can be stuck indoors because of this code of honour that is hundreds of years old, yet still be playing computer games and watching *Big Brother* on TV.'

Some of Marston's best insights have come from auditioning for the cast, many of whom are locals who have never acted before. 'For every 10 children we auditioned, roughly one or two had some family members involved in a blood feud,' he says, pointing out of the car window to a red-tiled house on the side of the road where a family has been in isolation for three years. 'It is not something that is going to go away that easily, as it has been here for hundreds of years. Whereas in the US, for example, the default reaction is to let the courts deal with murder, here there is still an expectation in certain parts of society that the males of the family should take vengeance of their own.'

Marston's film focuses on Mark, a village bread-delivery man whose rounds are interrupted one day when a neighbour, Sokol, blocks a shortcut through a field.



Ownership of the field has been disputed ever since communist times, but suddenly flares up into a quarrel which culminates in Sokol's death. The exact rights and wrongs of the matter are never made clear; in this respect, Marston says, it mirrors many of the feuds he researched, which always proved far more complex than at first glance. Instead, the film focuses on the impact on Mark's son, Nik, 17, and daughter Rudina, 14, who are left in isolation after their father goes on the run from the police. While Nik slowly begins to crack under the pressure of confinement, his sister, who as a girl is not subject to the blood feud, has to take on the job of running her father's delivery business. 'It is both a gender reversal and a coming of age movie - the girl learns how to become a business operator and comes into her own,' says Marston.

Playing the part of Nik is local teenager Tristan Halilaj, who got a feel for his character through visiting the home of another 17 year-old who has spent 15 years of his life in isolation. Pictures of the boy show his complexion noticeably whiter than other Albanians, yet otherwise he was little different. 'I thought he would be aggressive,' says Tristan. 'But he wasn't - we spent our time talking about girls and Chelsea FC.' However, Refet Abazi, the professional actor who plays the father, Mark, is in no doubt about the sorrow that blood feuds cause. 'Hopefully this film will help stop this kind of thing by showing the real pain that people who are trapped in their homes go through,' he says, staring out over the farm's tobacco fields, where just beyond the front gate, a gravestone marks the victim of yet another feud.

Abazi speaks not from research, but from personal experience. In 1997 his own brother was murdered, and when the chief suspect was arrested and then released without charge, his family came under 'terrible pressure' to take revenge. Eventually, though, they resolved the situation another way - one that was arguably much harder, and which required a patience that has not traditionally come easily in this part of the world. 'My father decided we couldn't take the law into our own hands,' Abazi says. 'He said that if justice couldn't be delivered by ourselves, or by the state, God would deliver it instead.' So they simply turned the other cheek.

### **Blood feuds: the rules**

The Kanun - or code - is a 500-year-old text that still dictates how blood feuds are carried out in Albania. Here are some of its more extraordinary 'commandments':

'As soon as a murderer has killed someone, he must inform the family of the victim, in order that there should be no confusion regarding his identity'

'The murderer may move around at night, but at the first light of day he must conceal himself'

'He who decides to ambush must take sufficient food with him to provide for his accomplices'

'An ambusher must fire his gun at men, and not at women, children, livestock, or a house'

'The murderer may not dare to take the victim's weapon. If he commits such a dishonourable act, he incurs two blood feuds'

'The value of a man's life is the same, whether he is handsome or ugly'



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