

Glenda Wiles

From: MACO <MACO@mtcounties.org>
Sent: Friday, June 30, 2017 2:53 PM
To: MACO
Subject: Marsy's Law update

Good afternoon,

On June 30, 2017, the Montana Supreme Court issued an Order temporarily staying (suspending) the implementation of CI-116, Marsy's Law, which was scheduled to go into effect on July 1. This Order was the result of a petition filed earlier this month in which a group of petitioners requested that the Supreme Court issue a judgment voiding the enactment of Marsy's Law due to its apparent noncompliance with the Montana Constitution. At the unanimous direction of the Executive Committee of the Board of Directors, MACo joined this litigation as a co-petitioner.

The Committee's decision to join this litigation was based on some compelling factors. By way of background, Marsy's Law provides 18 enumerated victims' rights which are to be protected and respected in a manner no less vigorously than the protections afforded to criminal defendants. Under this law, "victim" is defined to include a spouse, parents, grandparents, children, grandchildren, and siblings of the actual crime victim, as well as those in a relationship "substantially similar" to those named persons. These two provisions alone create both financial burdens and legal uncertainties for counties. First, in order to comply with the constitutional mandates imposed by Marsy's Law, counties would be required to hire additional victim-support staff and attorneys to ensure that victims are consulted with and notified of all legal proceedings, beginning with the arrest of a defendant and continuing through parole and clemency hearings and release. Second, the definition of "victim" has been written so expansively that it would be difficult for law enforcement personnel and victim advocates to determine how a victim's rights should be protected in any given case, particularly when the true victim's desires and interests are in conflict with those of his or her partner, family member, or others who claim a similar relationship to the victim. Finally, while legislation has been passed to provide a measure of legal immunity to those county officials charged with enforcing victim rights, it is inevitable that Marsy's Law will lead to litigation against counties over interpretation of the victims' 18 stated rights and the adequacy of efforts to enforce those rights.

The Supreme Court has set a briefing deadline of August 10, 2017, so we expect to see a ruling on the petition sometime after that date. We will keep counties advised of further developments in this litigation.

Brian Hopkins
MACo General Counsel