

**IN THE
SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

IN RE: THE PETITION OF THE : No. 70 M.M. 2020
PENNSYLVANIA PRISON :
SOCIETY, BRIAN MCHALE, :
JEREMY HUNSICKER, :
CHRISTOPHER AUBRY, MICHAEL :
FOUNDOS, AND FREDERICK :
LEONARD, ON BEHALF OF ALL :
SIMILARLY SITUATED :
INDIVIDUALS, PETITIONERS :

**APPLICATION FOR LEAVE TO INTERVENE,
OR IN THE ALTERNATIVE, APPLICATION FOR LEAVE TO
FILE *AMICUS CURIAE* ANSWER IN OPPOSITION TO
PETITIONERS' EXTRAORDINARY JURISDICTION APPLICATION**

Pursuant to Pa.R.A.P. 106, 123, 531(b) and 3309(b), and Pa.R.C.P. No. 2328, Proposed Intervenors, Marsy's Law for Pennsylvania, LLC and Kelly Williams, hereby seek leave to intervene in this matter as party respondents, or in the alternative, leave to file an *Amicus Curiae* Answer in Opposition to Petitioners' Application for Extraordinary Relief, and in support thereof, aver as follows:

1. Proposed Intervenor Marsy's Law for Pennsylvania, LLC is a Pennsylvania limited liability company with a registered address of 600 North Second Street, Suite 401, Harrisburg, PA 17101.

2. Marsy's Law for Pennsylvania, LLC, is an organization founded to advance the cause of meaningful, enforceable constitutional rights for victims of crime in the Commonwealth of Pennsylvania.

3. Proposed Intervenor Kelly Williams is an adult resident of the Commonwealth of Pennsylvania, with an address of 2702 Maple Ave, Altoona, PA 16601.

4. Proposed Intervenor Kelly Williams is a sexual assault survivor and an advocate for sexual assault survivors.

5. As victims of crime and advocates for survivors of crime, Proposed Interveners hereby seek to intervene and file an answer in opposition to Petitioners' Application for Extraordinary Relief, pursuant to Pa.R.A.P. 3309 as "persons who may be affected thereby".

6. Proposed Interveners have a direct and substantial interest in the paramount rights of victims and their families to secure their safety, and Proposed Interveners therefore qualify as "persons who may be affected" by Petitioners' Application for Extraordinary Relief.

7. Proposed Intervenors have a direct and substantial interest in the right of victims and their family members to protect their safety through the cash bail process, and Proposed Intervenors therefore qualify as “persons who may be affected” by Petitioners’ Application for Extraordinary Relief.

8. As this Application for Leave to Intervene has promptly been filed, no delay of these proceedings or prejudice to any party will be caused by allowing Proposed Intervenors leave to intervene.

9. If permitted to intervene as party respondents, Proposed Intervenors will file in this action the “Answer in Opposition to Petitioners’ Application for Extraordinary Relief under the Court’s King’s Bench Jurisdiction, or in the alternative, Answer of *Amicus Curiae* in Opposition to Petitioners’ Application for Extraordinary Relief under the Court’s King’s Bench Jurisdiction”, (attached as Appendix “A” hereto).

10. If not permitted to intervene as party respondents, Proposed Intervenors hereby seek leave to file the Answer attached as Appendix “A” hereto as *Amicus Curiae*.

11. A copy of this Application for Leave to Intervene is being served on all parties contemporaneous with its filing as set forth in the accompanying Proof of Service, as required by Pa.R.A.P. 106 and Pa.R.C.P. No. 2328.

WHEREFORE, Proposed Intervenors, Marsy's Law for Pennsylvania, LLC and Kelly Williams, hereby respectfully request that this Honorable Court GRANT this Application for Leave to Intervene, and DIRECT the Prothonotary of the Commonwealth Court to docket in this action Proposed Intervenors' Answer in Opposition to Petitioners' Application for Extraordinary Relief under the Court's King's Bench Jurisdiction, (attached as Appendix "A" hereto), OR IN THE ALTERNATIVE, GRANT Proposed Intervenors leave to file the Answer of *Amicus Curiae* in Opposition to Petitioners' Application for Extraordinary Relief under the Court's King's Bench Jurisdiction, (attached as Appendix "A" hereto)

Respectfully submitted,

Dated: April 1, 2020

By: /s/ David H. Pittinsky

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By: /s/ Scot R. Withers

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*Counsel for Proposed Intervenors,
Marsy's Law for Pennsylvania, LLC
and Kelly Williams*

VERIFICATION

I, Jennifer Riley, verify and affirm that the statements made in the foregoing filing are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: April 1, 2020


A handwritten signature in black ink, appearing to read "Jennifer Riley", is written over a horizontal line.

Jennifer Riley
State Director for
Marsy's Law of Pennsylvania, LLC

VERIFICATION

I, Kelly Williams, verify and affirm that the statements made in the foregoing filing are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: April 1, 2020


Kelly Williams

PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE

It is hereby certified by the undersigned that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: April 1, 2020

By: /s/ David H. Pittinsky

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APPENDIX “A”

**IN THE
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SOCIETY, BRIAN MCHALE, :
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**ANSWER IN OPPOSITION TO
PETITIONERS' APPLICATION FOR EXTRAORDINARY RELIEF
UNDER THE COURT'S KING'S BENCH JURISDICTION,
OR IN THE ALTERNATIVE,
ANSWER OF *AMICUS CURIAE* IN OPPOSITION TO
PETITIONERS' APPLICATION FOR EXTRAORDINARY RELIEF
UNDER THE COURT'S KING'S BENCH JURISDICTION**

A. Introduction

Under the mantle of addressing the coronavirus problem in Pennsylvania's county jails, Petitioners are extraordinarily seeking the abolition of cash bail in Pennsylvania and the evisceration of an overwhelmingly approved constitutional

right “to have the safety of the victim and the victim’s family considered in fixing the amount of bail and release conditions for the accused.” *See* the Plain English Statement of the Office of Attorney General (“OAG Statement”), annexed hereto as Exhibit A, at 3 §9.1(a).¹ Whatever action this Court takes concerning Petitioners’ Application, it should not countenance the abolition of cash bail and the tandem elimination of victims’ presumptively constitutional rights in protecting their safety throughout criminal proceedings.

B. Petitioners’ Extraordinary Application

Petitioners’ Application seeks, *inter alia*, the following extraordinary relief:

1. The release from all Pennsylvania county jails of all people “detained pretrial solely due to an order imposing cash bail” (Application at 29 ¶1.d);
2. Limiting the persons who could object to such a release to a “district attorney” (Application at 29-30 ¶¶1-2); and

¹ Based on unofficial published reports in the November 2019 General Election the electorate approved a Proposed Amendment enshrining enhanced rights for victims in the Pennsylvania Constitution by an overwhelming supermajority. *E.g.*, [https://ballotpedia.org/Pennsylvania Marsy’s Law Crime Victims Rights Amendment \(2019\)](https://ballotpedia.org/Pennsylvania_Marsy's_Law_Crime_Victims_Rights_Amendment_(2019)) (last visited December 13, 2019) (reporting that the Proposed Amendment garnered 74.01% of votes with 100% of precincts reporting (citing Pennsylvania Department of State 2019 Municipal Election Unofficial Returns at <https://www.electionreturns.pa.gov/>)). The League of Women Voters of Pennsylvania and one voter have sought to enjoin the certification and validation of this result. A single Judge of the Commonwealth Court granted their request. Oral argument before the Commonwealth Court *en banc* is now scheduled for early June 2020. *League of Women Voters of Pennsylvania, et al. v. Kathy Boockvar*, No. 578 MD 2019.

3. “Cease setting cash bail for any newly arrested indigent defendant, and order them released on reasonable and appropriate non-monetary conditions” (Application at 31 ¶3.a).

In fact, if this Court were to approve Petitioners’ extraordinary relief in paragraph 3.a of their Application, any and all persons accused of committing a violent crime would immediately claim to be “indigent” and would be entitled to be released without cash bail.

What’s more, the foregoing requests for relief run roughshod over the paramount rights of victims and their families to secure their safety. Only a “district attorney” can object to the release of an accused who has been detained pretrial for failure to post cash bail and, since cash bail would no longer exist for any newly arrested indigent defendant, no victim or family member would have the right to seek cash bail for such a defendant. The safety of victims and their family members would be in constant and devastating jeopardy.

C. The Constitutional Rights Of Victims And Their Family Members

There is no provision in the Pennsylvania Constitution which currently grants victims and their family members a place in the cash bail process to secure their safety.² Their ability to protect themselves has, until now, been rested in and

² Article I, §14 of the Pennsylvania Constitution provides that “[a]ll prisoners shall be bailable,” but does not directly grant to victims or their families the right to intercede in the criminal process to directly protect their own safety.

relegated to the local district attorneys and their rights under the Crime Victims Act and the statute governing PFA orders. *See* letter filed April 1, 2020 from the Office of Victim Advocate to the Supreme Court. However, in the November general election, Pennsylvania voters overwhelmingly approved a constitutional amendment – colloquially known as Marsy’s Law – giving victims and their family members numerous enhanced rights in the criminal proceedings, trials and paroles of defendants. *See* n.1, *supra*. One of the rights sought to be enshrined in the Pennsylvania Constitution is the right “to have the safety of the victim and the victim’s family considered in fixing the amount of bail and release conditions for the accused.” *See* OAG Statement at 3 §9.1(a). Significantly, the amendment entitles the “victim” as well as the “attorney for the government upon request of the victim” to enforce the enhanced rights accorded to victims by the amendment. *See* OAG Statement at 4 §9.1(b).

Although the League of Women Voters contends that the Marsy’s Law amendment was not constitutionally approved by the voters and although a single Judge in the Commonwealth Court has agreed with their contention and enjoined the certification and validation of the amendment, the issue is now before the Commonwealth Court *en banc* and is scheduled for oral argument in early June. *See* n.1, *supra*. Moreover, regardless of the outcome before the Commonwealth Court,

the constitutionality of the voter approval process will be appealed to and decided by this Court.³

By having this Court eliminate cash bail for any and all indigent defendants, petitioners with one fell swoop would eviscerate the right of victims and their family members to protect their safety through the cash bail process. Such a draconian result should not be countenanced by this Court under the mantle of dealing with the COVID-19 pandemic.

D. Conclusion

For the foregoing reasons, whatever action this Court takes with respect to the Petitioners' Application, prisoners being detained by cash bail should not be released without the opportunity for victims and their family members to object and cash bail should not be abolished for newly arrested indigent defendants.

³ In fact this Court has the power, *sua sponte*, to take control of and decide this case now under and pursuant to its King's Bench authority, since it will ultimately be making the decision in any event. 42 Pa.C.S. §726 and PA. CONST. Art. V, §10(a).

Respectfully submitted,

Dated: April 1, 2020

By: /s/ David H. Pittinsky

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EXHIBIT A

Ballot Question

Shall the Pennsylvania Constitution be amended to grant certain rights to crime victims, including to be treated with fairness, respect and dignity; considering their safety in bail proceedings; timely notice and opportunity to take part in public proceedings; reasonable protection from the accused; right to refuse discovery requests made by the accused; restitution and return of property; proceedings free from delay; and to be informed of these rights, so they can enforce them?

Plain English Statement of the Office of Attorney General

The proposed amendment, if approved by the electorate, will add a new section to Article I of the Pennsylvania Constitution. That amendment will provide victims of crimes with certain, new constitutional rights that must be protected in the same way as the rights afforded to individuals accused of committing a crime.

The proposed amendment defines "victim" as both a person against whom the criminal act was committed and any person who was directly harmed by it. The accused or any person a court decides is not acting in the best interest of a victim cannot be a victim.

Generally, the proposed amendment would grant victims the constitutional right to receive notice and be present and speak at public proceedings involving the alleged criminal conduct. It would also grant victims the constitutional right to receive notice of any escape or release of the accused and the right to have their safety and the safety of their family considered in setting the amount of bail and other release conditions. It would also create several other new constitutional rights, such as the right to timely restitution and return of property, the right to refuse to answer questions asked by the accused, and the right to speak with a government attorney.

Specifically, the proposed amendment would establish the following new rights for victims:

To be treated with fairness and respect for the victim's safety, dignity and privacy

To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the accused

To reasonable and timely notice of and to be present at all public proceedings involving the criminal or delinquent conduct

To be notified of any pretrial disposition of the case

With the exception of grand jury proceedings, to be heard in any proceeding where a right of the victim is implicated, including, but not limited to, release, plea, sentencing, disposition, parole and pardon

To be notified of all parole procedures, to participate in the parole process, to provide information to be considered before the parole of the offender, and to be notified of the parole of the offender

To reasonable protection from the accused or any person acting on behalf of the accused

To reasonable notice of any release or escape of the accused

To refuse an interview, deposition or other discovery request made by the accused or any person acting on behalf of the accused

Full and timely restitution from the person or entity convicted for the unlawful conduct

Full and timely restitution as determined by the court in a juvenile delinquency proceeding

To the prompt return of property when no longer needed as evidence

To proceedings free from unreasonable delay and a prompt and final conclusion of the case and any related postconviction proceedings

To confer with the attorney for the government

To be informed of all rights enumerated in this section

The proposed amendment would allow a victim or prosecutor to ask a court to enforce these constitutional rights but would not allow a victim to become a legal party to the criminal proceeding or sue the Commonwealth or any political subdivision, such as a county or municipality, for monetary damages.

Once added to the Pennsylvania Constitution, these specific rights of victims cannot be eliminated, except by a judicial decision finding all or part of the amendment unconstitutional or the approval of a subsequent constitutional amendment. If approved, the General Assembly may pass a law to implement these new, constitutional rights, but it may not pass a law eliminating them. If approved, State and local governments will need to create new procedures to ensure that victims receive the rights provided for by the amendment.

Joint Resolution NO. 2019-1

Proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, providing for rights of victims of crime.

The General Assembly of the Commonwealth of Pennsylvania hereby resolves as follows:

Section 1. The following amendment to the Constitution of Pennsylvania is proposed in accordance with Article XI:

That Article I be amended by adding a section to read:

§ 9.1. Rights of victims of crime.

(a) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, as further provided and as defined by the General Assembly, which shall be protected in a manner no less vigorous than the rights afforded to the accused: to be treated with fairness and respect for the victim's safety, dignity and privacy; to have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the accused; to reasonable and timely notice of and to be present at all public proceedings involving the criminal or delinquent conduct; to be notified of any pretrial disposition of the case; with the exception of grand jury proceedings, to be heard in any proceeding where a right of the victim is implicated, including, but not limited to, release, plea, sentencing, disposition, parole and pardon; to be notified of all parole procedures, to participate in the parole process, to provide information to be considered before the parole of the offender, and to be notified of the parole of the offender; to reasonable protection from the accused or any person acting on behalf of the accused; to reasonable notice of any release or escape of the accused; to refuse an interview, deposition or other discovery request made by the accused or any person acting on behalf of the accused; full and timely restitution from the person or entity convicted for the unlawful conduct; full and timely restitution as determined by the court in a juvenile delinquency proceeding; to the prompt return of property when no longer needed as evidence; to proceedings free from unreasonable delay and a prompt and final conclusion of the case and any related postconviction proceedings; to confer with the attorney for the government; and to be informed of all rights enumerated in this section.

(b) The victim or the attorney for the government upon request of the victim may assert in any trial or appellate court, or before any other authority, with jurisdiction over the case, and have enforced, the rights enumerated in this section and any other right afforded to the victim by law. This section does not grant the victim party status or create any cause of action for compensation or damages against the Commonwealth or any political subdivision, nor any officer, employee or agent of the Commonwealth or any political subdivision, or any officer or employee of the court.

(c) As used in this section and as further defined by the General Assembly, the term "victim" includes any person against whom the criminal offense or delinquent act is committed or who is directly harmed by the commission of the offense or act. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor or incapacitated victim.

Section 2. (a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment. The Secretary of the Commonwealth shall submit this proposed constitutional amendment to the qualified electors of this Commonwealth at the first primary, general or municipal election which meets the requirements of and is in conformance with section 1 of Article XI of the Constitution of Pennsylvania and which occurs at least three months after the proposed constitutional amendment is passed by the General Assembly.

PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE

It is hereby certified by the undersigned that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: April 1, 2020

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