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VICTIMS

Does the California Victims' Rights Law Narrow the Rights of Crime Victims?



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In 2008, California voters passed "Marsy's Law," the Victims' Bill of Rights Act of 2008. Curiously, Marsy's Law's definition of "victim" appears at first glance to narrow the scope of victims' rights.

Marsy's Law defines a victim as follows:

A "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term "victim" also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term

"victim" does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim. [§ 4(e) of the Act (2008)]

Based on the definition's final sentence, a reader might conclude that all individuals in custody are excluded from "victim" status, and thus that "in custody" victims of sex trafficking and child prostitution are excluded from the protections of Marsy's Law. Such a broad interpretation would apply the exclusions in the final sentence to both of the preceding two sentences of the definition.

We argue, instead, that the exclusions qualify only the second sentence (which defines derivative victims) and do not qualify the first sentence (which defines direct victims). Under this reading, the second sentence expands California's traditional definition of victims from direct victims to include individuals closely connected to a direct victim. The third sentence then limits the scope of the second sentence and does not exclude any direct victim of crime from recognition as a "victim."

Broader interpretation leads to absurd results. Applying the exclusions to direct victims creates absurd results that courts will not recognize. *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 510-511 (1989); *People v. Birkett*, 21 Cal. 4th 226, 231-232 (Cal. 1999).

If the exclusions listed in the third sentence modify the first sentence, then the definition of "victim" would exclude people who suffered direct harm and who are

for some reason unable to act in the best interests of a minor victim. Consider the following scenario: A court has decided that a medically incapacitated mother is incapable of acting in the best interests of her daughter. If the mother and daughter are joint victims of a violent assault, the mother would be excluded from recognition as a “victim” simply because she is “a person whom the court finds would not act in the best interests of a minor victim.” To avoid such absurd results, the exclusions of the third sentence should be interpreted as modifying only the second sentence and not the first.

Grammar and structure support narrow interpretation.

In English, the same verb may be repeated when referring to a series of similar concepts, but differing verbs are used when dealing with different concepts. “That is why we cannot, without comic effect, yoke radically different nouns to a single verb, e.g., ‘He caught three salmon, two trout, and a cold.’” *Ali v. Federal Bureau of Prisons*, 552 U.S. 214, 245 (2007) (Breyer, J., dissenting).

The first sentence, defining a direct victim, uses the verb “to be,” thereby equating the term “victim” with those directly impacted by crime. On the other hand, the second and third sentences use the verb “include,” thereby expressing that the traditional meaning of “victim” is being expanded to encompass certain derivative victims: “The term ‘victim’ also includes . . . and includes The term ‘victim’ does not include”

Additionally, according to the principle of *noscitur a sociis*, words in a series are interpreted as having similar scope. *Gutierrez v. Ada*, 528 U.S. 250, 255 (2000). The phrase “a person in custody for an offense” appears at the beginning of a series of phrases (“the accused” and “a person whom the court finds would not act in the best interests of a minor victim”) that can only refer to derivative victims. After all, the perpetrator of a crime (“the accused”) is not a victim of the crime committed. Cf. *People v. Tackett*, 144 Cal. App. 4th 445, 455 (Cal. Ct. App. 2006) (rejecting defendant’s “new and novel theory” that he is his own victim). And, as noted above, it is absurd to exclude a direct victim on the basis that the direct victim cannot act in the best interests of a minor. Therefore, the phrase “a person in custody” should likewise apply only to derivative victims.

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Marsy’s Law mirrors federal statutes that apply exclusions only to derivative victims. When a court construes a statute, it is “informed by interpretations of parallel definitions in previous statutes.” *Bragdon v. Abbot*, 524 U.S. 624, 631 (1998). Marsy’s Law appears to have been modeled upon federal victims’ rights laws, all of which share the same three-part structure: (1) direct victims are “victims”; (2) certain derivative victims are also “victims”; and (3) certain other derivative victims are not “victims.” See, e.g., Crime Victims’ Rights Act, 42 U.S.C. § 3771(e) (2004); Mandatory Victims Restitution Act, 18 U.S.C. § 3663A (1986); Victim and Witness Protection Act, 18 U.S.C. § 3663 (1982).

Marsy’s Law shares this same structure, and it should likewise be interpreted as applying to derivative victims. This interpretation is all the more reasonable in light of the fact that no federal or California statute excludes direct victims from recognition as “victims.”

Narrow interpretation is consistent with Marsy’s Law’s intent. If there is any ambiguity in Marsy’s Law, courts should look to the amendment’s intent—and Marsy’s Law’s undisputed intent was to expand the rights of victims. See *People v. Broussard*, 5 Cal. 4th 1067, 1069 (Cal. 1993) (declaring that statutory provisions enacted in response to the 1982 version of Marsy’s Law must be “interpreted reasonably in light of [Marsy’s Law’s] evident purpose”).

The text of the amendment shows that it was created to expand access to the justice system to derivative victims of crime. See, e.g., Marsy’s Law, § 9. To interpret Marsy’s Law as restricting victims’ rights “would be in derogation of [its] expressed intent and purposes.” *People v. Carbajal*, 10 Cal. 4th 1114, 1122 (Cal. 1995) (discussing 1982 version of Marsy’s Law).

Conflicts provision supports narrow interpretation. Marsy’s Law states that, if it conflicts with other laws providing rights to victims of crime, the law providing greater rights shall prevail. Marsy’s Law, § 7. Arguably, one of the rights Marsy’s Law provides is the right to be recognized as a victim. See, e.g., Marsy’s Law § 4(d)-(e). Thus, to the extent that Marsy’s Law restricts the definition of “victim” beyond earlier victims’ rights laws, the conflicts provision arguably broadens the scope of Marsy’s Law.

Neither federal nor state law definitions of “victim” in existence prior to Marsy’s Law carved out exceptions for direct victims who are “in custody.” Therefore, even if Marsy’s Law’s definition of “victim” would otherwise exclude direct victims who are “in custody,” this definition would not supplant the broader pre-existing definition of “victim.”

Narrow interpretation is sound from policy perspective. The narrow interpretation of the exclusion sentence makes sense for policy reasons.

Marsy’s Law grants derivative victims the right to attend a wide variety of legal proceedings. Cal. Const., Art. I, § 28(b)(7)-(10), (15). There is a legitimate public policy concern that extending “victim” status to incarcerated derivative victims would overburden the prison system by requiring the state to transport these individuals to numerous proceedings. However, this public policy rationale does not apply in the case of a direct victim, who would typically attend trial proceedings as a witness anyway.

Similarly, if there were no exclusion of individuals “in custody for a crime,” then incarcerated perpetrators of family violence could transform into “victims” due to their family relationship to the direct victim. For example, if a father sexually assaulted his adult daughter, and the daughter later became a victim in an unrelated matter, the father would be a “victim” with the right to

attend all proceedings. After all, the father could not be excluded as “the accused” (because the crime is unrelated) or for failing to act in the best interests of a minor (because the daughter is an adult). A narrow interpretation avoids this result. In the case of a direct victim, there is no analogous need for the “in custody for a crime” exception to be applied.