

**JOURNAL OF COMMISSION WORK SESSION**  
**August 1, 2017**

City Commission Work Session  
Civic Center, Gibson Room 212

Mayor Kelly presiding

**CITY COMMISSION MEMBERS PRESENT:** Bob Kelly, Bill Bronson, Bob Jones, Tracy Houck and Fred Burow.

**STAFF PRESENT:** City Manager Greg Doyon; City Attorney Sara Sexe; Fiscal Services Director Melissa Kinzler; Public Works Director Jim Rearden; Municipal Court Judge Steve Bolstad; Deputy Prosecutor Cassidy Blomgren; Police Chief Dave Bowen; and, Deputy City Clerk Darcy Dea.

**\*\* *Action Minutes of the Great Falls City Commission. Please refer to the audio/video recording of this meeting for additional detail.* \*\***

1. **CALL TO ORDER:** 5:30 p.m.

2. **PUBLIC COMMENT**

There were no public comments.

3. **LEASE WITH GREAT FALLS INTERNATIONAL AIRPORT**

City Attorney Sara Sexe provided and discussed a handout with regard to the history of the 911 Center. City Attorney Sexe reported that the Regional Airport Authority was created by the City and County in 1980 and that the Municipal Airport Authority was abolished about the same time. The Community Task Force was created to come up with a competitive proposal to FAA for Automated Flight Service Station (FSS or AFSS).

Commissioner Burow received clarification that \$800,000 local money was expended into building the FSS.

Referring to page 2 of the handout, Mayor Kelly inquired about the January 12, 1988 Staff Report. City Attorney Sexe responded that it is a summary of pertinent facts.

City Manager Greg Doyon pointed out that renewing the lease for 5 years would require discussion about additional compensation. City Attorney Sexe explained that the lease has language with regard to the current market upgrades for the Airport. City Manager Doyon further mentioned that funding would come from an economic development fund, as well as additional funding.

Great Falls International Airport Director John Faulkner explained that according to the FAA's requirements, a Quit Claim Deed was required for the purchase of the property. Mr. Faulkner further commented that it is better to work through a lease that is approved regionally instead of at the federal level. He pointed out that there is an opportunity to develop the lease for the property adjacent to the 911 Center for retail uses.

City Manager Doyon commented that the 911 Center is an asset to the Airport and requested that the potential impact be considered when the Airport works through its master planning with regard to the use of the properties adjacent to the facility.

Commissioner Houck inquired if the lease agreement allows the City to sell the lease. City Attorney Sexe responded that there would need to be written permission from the Airport.

Commissioner Burow expressed concern with regard to the amount of money that was spent on building the facility. City Attorney Sexe explained that the property and building are two separate issues.

#### **4. MARSY'S LAW, HB 133 AND UNFUNDED MANDATES IMPACT ON CITY RESOURCES**

City Attorney Sara Sexe reviewed and discussed the attached PowerPoint that included constitutional changes and legislative impact on criminal prosecutions, as well as the history and background of Marsy's Law.

Municipal Court Judge Steve Bolstad commented that prior to Marsy's Law, the prosecutors did a good job collecting restitution and that they have always been in compliance with the law.

Commissioner Houck received clarification that the Marsy's Card allows a victim to participate at anytime during the proceedings, as well as the level of protection with the information that is on the Marsy's Card. With regard to jurisdiction, Commissioner Houck inquired and received clarification that the Marsy's Card is not federally mandated.

Deputy Prosecutor Cassidy Blomgren explained the process involved with regard to filling out the form for the Marsy's Card. Deputy Prosecutor Blomgren further pointed out that the information on the Marsy's Card that is entered into the Police Department system could be accessed by the County.

Police Chief Dave Bowen commented that Marsy's Law is intended to focus on the victims of crimes; however, there is an operational impact. Police Chief Bowen reported that they are in compliance with HB 133, except for fingerprinting.

Commissioner Burow inquired about the fingerprinting process. Chief Bowen responded that a digital live scan is the equipment that the Police Department is ordering; however, the Records Management System is not in place.

Due to the time, Mayor Kelly requested that the Marsy's Law update be continued at the August 15, 2017 work session.

#### **5. DISCUSSION OF POTENTIAL UPCOMING WORK SESSION TOPICS**

City Manager Greg Doyon reported that the next work session will consist of a golf report, as well as continuing Marsy's Law report. No one suggested adding any topics.

**ADJOURN**

There being no further discussion, Mayor Kelly adjourned the informal work session of August 1, 2017, at 6:45 p.m.



# Marsy's Law, HB 133 and Unfunded Mandates impact on City Resources

## City Commission Update

- August 1, 2017 Great Falls City Commission Work Session
  - Presented by: Sara Sexe, City Attorney

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## Constitutional Changes and Legislation Impact on Criminal Prosecutions

- Effects on:
  - Police,
  - Prosecution, and
  - Court
- Effects of:
  - Marsy's Law, Mont. Const. Article II, § 36
  - HB 133
  - HB 333
  - HB 168

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## National History/Background of Marsy's Law

- Originated from domestic violence homicide of Marsalee (Marsy) Nicholas in 1983 in California.
- Mother/brother of victim saw defendant in grocery store after he was charged with and arrested for the crime.
  - They were not advised/aware of his release after bond posted.
- Brother Henry Nicholas committed himself to change treatment of victims in similar situations.

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## Mont. Const. II § 36 Marsy's Law

### Montana version of Marsy's Law:

- Provides crime victims with 18 specific constitutional rights
- Rights asserted upon victimization and follow the victim through trial, sentencing, appeal, and release
- Can be waived at any stage of proceedings.

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## Marsy's Law

Mont. Const. II § 36

### Montana version of Marsy's Law:

#### Definition of a Victim :

- A person who suffers "direct or threatened physical, psychological or financial harm as the result of the commission or attempted commission of a crime."

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## Definition of Victim Also Includes:

- ⦿ “[A] spouse, parent, grandparent, child, sibling, grandchild, or guardian” OR
- ⦿ a relationship to a victim “substantially similar” to these - e.g., boyfriend, girlfriend, close family friend.”

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## BUT...MCA § 46-24-335 (HB 600)

- ⦿ Limits Marsy’s Law applicability to Title 30, Title 41, Title 45, Title 49, and Title 52
  - Does not apply to traffic offenses (Title 61) or City Ordinances (cell phone, animal tickets, etc.)
  - Corporations are included as persons and possible victims

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## Marsy’s Card

- ⦿ Victim Information
- ⦿ Crime/Suspect Information
- ⦿ Initial Appearance Information
- ⦿ Officer Information
- ⦿ Appropriate Prosecutor’s Office/Court Information

The image shows a form titled "Marsy's Card" with various fields for victim and suspect information, including name, address, phone number, and date of birth. It also includes checkboxes for "Initial Appearance" and "Prosecutor's Office/Court Information".

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## Marsy’s Card

- ⦿ Great Falls-specific process
- ⦿ City Attorney’s office coordinated meetings and communications with:
  - Police Department
  - Municipal Court
  - Cascade County Attorney’s Office
  - Cascade County Sheriff’s Office
  - Cascade County Detention Center
  - Victim-Witness Services

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## Great Falls Marsy’s Card

- ⦿ Being adopted by other communities with similar limited staffing
- ⦿ Great Falls specific because of size of office
  - Great Falls has four lawyers admitted to practice
  - Bozeman has seven, plus lawyer administrator
    - Great Falls City Attorney is working lawyer, not administrator
  - Missoula has eight, plus student interns
  - Helena has four lawyers

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## Great Falls Marsy’s Card

- ⦿ Advises victim of Defendant’s Initial Appearance date/time
  - If victim wants to participate in the proceedings
    - Call appropriate Prosecutor’s Office as soon as possible
    - Both City Attorney and County Attorney have 24 hour message centers
    - City has given Investigator/Witness Coordinator’s number for text messages for hearing impaired victims

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## Senate Bill 250

- Section 1. Prosecutorial immunity.
  - (3) A public safety officer has qualified immunity for a claim based on Article II, section 36, of the Montana constitution.
  - (4) Local governments and the state of Montana are immune from a claim based on Article II, section 36, of the Montana constitution.
  - (5) The provisions of Article II, section 36, of the Montana constitution have no effect on the duty of the state of Montana or a local government to defend or indemnify prosecutors and public safety officers from a claim based on Article II, section 36, of the Montana constitution.
  - Qualified immunity is designed to shield government officials from actions "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

## City Compliance

- Prosecution and Police Department initiated Marsy's procedures June 19
  - Anticipation of July 1 effective date
  - Weeks of training by Chief and Deputy Prosecutor
    - Court coverage by Assistant City Attorney
  - Allow for trial period to work on processes before formal effective date

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## City Compliance, cont.

- Municipal Court revised:
  - Initial appearance dates
  - Other procedures and schedules

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## Changes to Municipal Court Schedule

- Monday:
  - Open Court – 10:30 am (check in 10:00 – 10:30) **\*no longer just for DUI's\***
  - Prisoner Arraignments – 1:30 pm
- Tuesday:
  - Open Court and Prisoner Arraignments – 9:30 am (check in 9:00 – 9:30) **\*no more afternoon open court and no more juvenile open court session\***

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## Changes to Municipal Court Schedule

- Wednesday: **\*stays the same\***
  - Open Court and Prisoner Arraignments – 9:30 am (check in 9:00 – 9:30)
- Thursday: **\*stays the same\***
  - Prisoner Arraignments – 8:45 am
  - Open Court – 9:30 am (check in 9:00 – 9:30)
- Friday: **\*stays the same\***
  - Open Court and Prisoner Arraignments – 9:30 am (check in 9:00 – 9:30)

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## City Compliance, cont.

- City Attorney's office processes revised
  - Investigator/Witness Coordinator hired
    - In part because of Marsy's Law
    - Primarily because of the need for witness coordination already in prosecution office
    - Position is primary contact for all witnesses, including victims
      - Coordination of subpoenas
      - Coordination of Corporate MOU's

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## CORPORATE VICTIMS

- Investigator/Witness Coordinator requested MOU's with businesses who are frequent crime victims (i.e. Walmart, Albertson's, Super 1, etc).
- Under the MOU, the business would waive certain Marsy's Law rights.

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## Corporate Victims, cont.

- A list of businesses who have entered into MOU's with the City will be kept at dispatch
  - Dispatch will advise the officer if the business has an MOU. If so, the Officer does not need to provide a Marsy's Card to the business
  - If no MOU, a Marsy's Card will have to be provided to the business...every time

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## City Compliance, cont.

- Website changes
  - On City website, Marsy's tab added
  - Provides contact information for City Attorney's office
    - Investigator/Witness Coordinator
  - Provides identification of rights
- Police Department processes for online crime reporting

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## RECORDS: Web Reports

- All persons filing Web Reports will receive notification of the Marsy's Law Rights.
- In order to complete a Web Report, the complainant will have to certify that they have read and understood Victim Rights under Marsy's Law.
- Complainants are provided with City Attorney's contact information for any questions

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## Constitutional Challenge to Marsy's Law

- Petition for Declaratory and Injunctive Relief with the Montana Supreme Court
  - arguing that CI-116 violated:
    - Article XIV, §11 of the Montana Constitution which states a single amendment, separate vote requirement, and
    - Article V, §11(3)'s single subject requirement.

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## Petitioners in Constitutional Challenge

- Montana Association of Counties,
- Leo Gallagher (Lewis and Clark County Attorney),
- Adrian M. Miller (victim advocate attorney),
- Montana Association of Criminal Defense Lawyers and
- ACLU of Montana

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## Amicus in Constitutional Challenge (as of 7/28/17)

- The Montana Newspapers,
  - Lee Enterprises
  - Billings Gazette
  - The Missoulian
  - The Helena Independent Record
  - The Ravalli Republic
  - Great Falls Tribune and
  - Bozeman Daily Chronicle
- National Crime Victim Law Institute,
- Marsy's Law for Montana, and
- Constitutional Convention Delegates, Retired Montana Supreme Court Justices and Law Professors

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## Stay by Supreme Court

- Montana Supreme Court temporarily stayed implementation of Marsy's Law
- Because of City's changed processes
  - Continue to provide Marsy's card to victims of crimes against persons offenses
    - Reduces burden on officers on the street
    - Allows for better public service to victims

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- Opposition brief has been filed by:
  - State of Montana
    - Attorney General
    - Secretary of State
  - The Montana Newspapers
- More briefs anticipated by other amicus

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## House Bill 133

(amended over 40 statutes)

- Designed to lower the cost of the OPD and DOC
- Not supported by Law Enforcement
- Went into effect on July 1, 2017.

## House Bill 133

- 45-6-301. Theft.
  - 1<sup>st</sup> misdemeanor \$500.00 fine. No jail.
  - 2<sup>nd</sup> misdemeanor adds up to 6 months in jail.
  - 3<sup>rd</sup> misdemeanor changes to 5 days to 1 year in jail.
- Theft of \$1,500.00 to \$5,000.00
  - 1<sup>st</sup> conviction - \$1,500.00 fine, up to 3 years incarceration.
  - 2<sup>nd</sup> conviction – same fine, up to 5 years.
  - 3<sup>rd</sup> conviction – same fine, minimum of 2 to maximum of 5 years.

## House Bill 133

- New provision (10)
  - A person convicted of the offense of theft of property not exceeding \$100 in value is presumed to qualify for a deferred imposition of sentence as long as the person has not been convicted of a misdemeanor or felony offense in the past 5 years.



## House Bill 133

- 45-8-101. Disorderly conduct.
  - If the violation is of subsections (a) – (f) (fighting, cussing etc..)
    - 1<sup>st</sup> offense \$100.00 fine
    - 2<sup>nd</sup> or subsequent within 1 year adds 10 days in jail, or a \$100 fine, not both.
  - If the violation is of subsections (g) – (i) (false report of a fire, explosion, or creating a hazard)
    - Up to a \$1,000.00 fine and 1 year in jail.

## House Bill 133

- NEW CRIME
  - 45-8-102. Failure of disorderly persons to disperse.
    - (1) Where one or more persons are engaged in disorderly conduct, a peace officer, judge, or mayor may order the participants to disperse. A person who purposely refuses or knowingly fails to obey such an order commits the offense of failure to disperse.
    - (2) A person convicted of the offense of failure to disperse shall be fined an amount not to exceed \$100 or be imprisoned in the county jail for a term not to exceed 1 day, or both.

## House Bill 133

- 45-8-111. Public nuisance.
  - Only \$500 fine.
  - No more jail time.

## House Bill 133

- 61-6-304. No Insurance Penalties
  - No jail for 1<sup>st</sup> and 2<sup>nd</sup>.
  - Jail on 3<sup>rd</sup> or subsequent now limited to 10 days.
  - Fines can now be suspended and conviction deferred.

## HB 133 PUBLIC SAFETY EFFECTS

- Reduction in mandatory minimum, and maximum, sentences:
  - Driving without a valid driver's license;
  - Driving while suspended;
  - Theft;
  - Issuing a bad check;
  - Deceptive practices;
  - Identity theft;
  - Disorderly conduct (fighting and quarreling type);
  - Public Nuisance;
  - Criminal possession of dangerous drugs; and
  - Operating a vehicle without insurance

## PUBLIC SAFETY EFFECTS, CONT.

- The reduction in sentences potentially reduces deterrence to commit these offenses increasing work load of:
  - City Police Department,
  - City Prosecutors' office, and
  - Court.

## HB 133 Additional Requirements

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- ⦿ Fingerprinting
- ⦿ Photographing
- ⦿ All criminal offenses excluding traffic, regulatory, fish and game, and local ordinance offenses
- ⦿ The Court will be required to submit all dispositions to the State repository within 14 days