

## QUESTION NO. 1

Amendment to the *Nevada Constitution*

Senate Joint Resolution No. 17 of the 78th Session

### CONDENSATION (Ballot Question)

Shall the *Nevada Constitution* be amended to: (1) remove existing provisions that require the Legislature to provide certain statutory rights for crime victims; and (2) adopt in their place certain expressly stated constitutional rights that crime victims may assert throughout the criminal or juvenile justice process?

Yes       No

### EXPLANATION & DIGEST

**EXPLANATION**—This ballot measure would amend the *Nevada Constitution* by: (1) removing existing provisions that require the Legislature to provide certain statutory rights for crime victims; and (2) replacing those existing provisions with a “Victims’ Bill of Rights” that would give crime victims certain expressly stated constitutional rights that they may assert throughout the criminal or juvenile justice process.

This ballot measure is modeled on a similar ballot measure known as “Marsy’s Law” that California voters approved as an amendment to the *California Constitution* in 2008. However, the Legislature made several revisions in drafting Nevada’s ballot measure, and thus there are some differences between this ballot measure and California’s Marsy’s Law.

In 1996, Nevada voters amended the *Nevada Constitution* to impose a constitutional duty on the Legislature to enact laws expressly providing for the following rights of crime victims that may be asserted personally or through a representative: (1) the right to be informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding; (2) the right to be present at all public hearings involving the critical stages of a criminal proceeding; and (3) the right to be heard at all proceedings for the sentencing or release of a convicted person after trial. In accordance with the 1996 amendment, the Legislature has—throughout the past two decades—enacted and amended laws expressly providing for statutory rights of crime victims. This ballot measure would remove the constitutional provisions added in 1996 and replace them with new state constitutional rights that crime victims may assert throughout the criminal or juvenile justice process.

This ballot measure defines a “victim” of crime as: (1) any person directly and proximately harmed by the commission of a criminal offense under any law of this State; or (2) if the victim is less than 18 years of age, incompetent, incapacitated or deceased, the legal guardian of the victim or a representative of the victim’s estate, member of the victim’s family or any other

person who is appointed by the court to act on the victim's behalf, except that the court cannot appoint the criminal defendant as such a person.

This ballot measure sets forth the following state constitutional rights that victims may assert throughout the criminal or juvenile justice process:

(1) the right to be treated with fairness and with respect for the victim's privacy and dignity, and to be free from intimidation, harassment and abuse;

(2) the right to be reasonably protected from the defendant and persons acting on behalf of the defendant;

(3) the right to have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant;

(4) the right to prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim's family;

(5) the right to refuse an interview or deposition request, unless under court order, and to set reasonable conditions on the conduct of any such interview to which the victim consents;

(6) the right to reasonably confer with the prosecuting agency, upon request, regarding the case;

(7) the right to the timely disposition of the case following the arrest of the defendant;

(8) the right to reasonable notice of all public proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings;

(9) the right to be reasonably heard, upon request, at any public proceeding in any court involving release or sentencing, and at any parole proceeding;

(10) the right to provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant;

(11) the right to full and timely restitution and to have all monetary payments, money and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim;

(12) the right to the prompt return of legal property when no longer needed as evidence;

(13) the right to be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody;

(14) the right to be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the defendant and to be notified, upon request, of the parole or other release of the defendant;

(15) the right to have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made; and

(16) the right to be specifically informed of these constitutional rights and to have information concerning these constitutional rights be made available to the general public.

This ballot measure also provides that the granting of these constitutional rights to victims must not be interpreted to deny or disparage other rights possessed by victims, and this ballot measure authorizes the Legislature to enact any necessary or useful laws to secure to victims the benefit of these constitutional rights.

This ballot measure also provides that a victim has standing to assert these constitutional rights in any court with jurisdiction over the case and that the court must promptly rule on the victim's request, but the victim is not given the status of a party in a criminal proceeding. The victim also may bring a lawsuit to compel a public officer or employee to carry out any duty required by this ballot measure or any law enacted thereto. However, no victim or other person may maintain a lawsuit against this State or any public officer or employee for damages or certain other judicial relief as a result of a violation of this ballot measure or any law enacted thereto.

This ballot measure also states that the defendant does not have standing to assert the rights of any victims, and no violation of this ballot measure or any law enacted thereto authorizes setting aside the defendant's conviction. This ballot measure also states that it does not alter the powers, duties or responsibilities of a prosecuting attorney.

Finally, this ballot measure states that, in addition to the constitutional right given to victims to be heard at the defendant's parole hearing, the parole authority must extend the constitutional right to be heard at a parole hearing to any person harmed by the defendant.

**A "Yes" vote would remove existing provisions of the *Nevada Constitution* that require the Legislature to provide certain statutory rights for crime victims and would replace those existing provisions with new state constitutional rights that crime victims may assert throughout the criminal or juvenile justice process.**

**A "No" vote would keep existing provisions of the *Nevada Constitution* that require the Legislature to provide certain statutory rights for crime victims and would not change those existing statutory rights that crime victims may assert throughout the criminal or juvenile justice process.**

**DIGEST**—This ballot measure would remove existing provisions of the *Nevada Constitution* that require the Legislature to provide certain statutory rights for crime victims and would replace those existing provisions with new state constitutional rights that crime victims may assert throughout the criminal or juvenile justice process. By creating these new constitutional rights, this ballot measure would add to or change existing laws as summarized below. This ballot measure also would decrease public revenue because: (1) it entitles crime victims to full and timely restitution; and (2) it further provides that all monetary payments, money and property collected from a person ordered to pay such restitution must be applied first to pay all victims, which means that until all victims receive full and timely restitution, the State and local governments may not receive assessments, fees, fines, forfeitures and other charges that the person ordered to pay such restitution may legally owe to those governmental entities.

As required by existing provisions of the *Nevada Constitution*, the Legislature has enacted and amended existing laws expressly providing for statutory rights of crime victims. For purposes of those existing laws, the Legislature has generally defined the term “victim” as: (1) a person against whom a crime has been committed or who has been injured or killed as a direct result of the commission of a crime; and (2) certain relatives of such a victim. Under this ballot measure, the term “victim” is defined as: (1) any person directly and proximately harmed by the commission of a criminal offense under any law of this State; or (2) if the victim is less than 18 years of age, incompetent, incapacitated or deceased, the legal guardian of the victim or a representative of the victim’s estate, member of the victim’s family or any other person who is appointed by the court to act on the victim’s behalf, except that the court cannot appoint the criminal defendant as such a person. The definition of “victim” in this ballot measure is similar to the definition of “crime victim” used in existing federal law commonly known as the federal Crime Victims’ Rights Act of 2004.

Existing laws give victims statutory rights that may be enforced in court actions against public officers or employees who fail to perform any duty arising under those laws. This ballot measure would add to those existing laws by giving victims new state constitutional rights that may be enforced in court actions against public officers or employees who fail to perform any duty arising under this ballot measure or any laws enacted thereto. This ballot measure also would give victims standing to assert their rights in any court with jurisdiction over the case and require the court to promptly rule on their requests. However, this ballot measure would not give victims the status of a party in a criminal proceeding, and no victim or other person may maintain a lawsuit against this State or any public officer or employee for damages or certain other judicial relief as a result of a violation of this ballot measure or any law enacted thereto.

Existing laws give victims statutory rights intended to protect their privacy and dignity, protect them from intimidation, harassment and abuse, protect them from the defendant and persons acting on the defendant’s behalf and protect the confidentiality of their personal information. This ballot measure would add to those existing laws by giving victims the following new state constitutional rights: (1) to be treated with fairness and with respect for their privacy and dignity; (2) to be free from intimidation, harassment and abuse; (3) to be reasonably protected from the defendant and persons acting on the defendant’s behalf; and (4) to prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass victims or their families.

Existing provisions of the *Nevada Constitution* entitle the defendant, before conviction, to be released on bail except for certain capital offenses or murders. Under existing laws, when the court sets the amount of bail and determines whether to impose conditions on the defendant's release, the court considers several factors, including whether the defendant's release would pose any danger to victims, other persons and the community. This ballot measure would add to those existing laws by giving victims new state constitutional rights to have the safety of victims and their families considered as a factor in fixing the amount of the defendant's bail and any release conditions.

Existing laws do not require victims, without their consent, to participate in interviews or deposition requests during the criminal or juvenile justice process, unless they are under a court order. This ballot measure would add to those existing laws by giving victims new state constitutional rights to refuse interviews or deposition requests during the criminal or juvenile justice process, unless they are under a court order, and to set reasonable conditions on the conduct of any interviews to which they consent.

Existing laws require the prosecutor to take certain actions to notify and inform victims regarding the case against the defendant and to protect victims from intimidation, harassment and abuse. This ballot measure would add to those existing laws by giving victims new state constitutional rights to reasonably confer with the prosecutor, upon request, regarding the case against the defendant. However, this ballot measure would not alter the powers, duties or responsibilities of the prosecutor.

Existing laws allow the court to consider whether victims will be adversely impacted by requested continuances, postponements or other delays during the criminal or juvenile justice process. This ballot measure would add to those existing laws by giving victims new state constitutional rights to the timely disposition of the case following the defendant's arrest.

Existing laws require victims' property to be returned promptly when the property is no longer needed as evidence. This ballot measure would add to those existing laws by giving victims new state constitutional rights to the prompt return of legal property when the property is no longer needed as evidence.

Existing laws give victims statutory rights to receive notice, attend, participate, provide information and be heard during certain stages of the criminal or juvenile justice process. This ballot measure would add to those existing laws by giving victims the following new state constitutional rights: (1) to reasonable notice of all public proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings; (2) to be reasonably heard, upon request, at any public proceeding in any court involving release or sentencing, and at any parole proceeding; (3) to provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victims and their families and any sentencing recommendations before the defendant's sentencing; (4) to be informed, upon request, of the defendant's conviction, sentence, place and time of incarceration, or other disposition, the defendant's scheduled release date and the defendant's release or escape from custody; and (5) to be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered

before the defendant's parole and to be notified, upon request, of the defendant's parole or other release. This ballot measure also would require the parole authority to extend the constitutional right to be heard at a parole hearing to any person harmed by the defendant.

Existing laws provide that when determining whether to release the defendant on parole, the parole authority must consider several factors, including any potential threat to society posed by the defendant's release and any documents or testimony submitted by victims. This ballot measure would add to those existing laws by giving victims new state constitutional rights to have the safety of victims, their families and the general public considered before any parole or other postjudgment release decision is made.

Existing provisions of the *Nevada Constitution* provide that all fines collected under the criminal laws of this State are pledged for educational purposes. Under existing laws, the defendant may be ordered or required to pay assessments, fees, fines, forfeitures and other charges to the State and local governments and restitution to victims. This ballot measure would change those existing laws by: (1) giving victims new state constitutional rights to full and timely restitution; and (2) requiring that all monetary payments, money and property collected from a person ordered to pay such restitution must be applied first to pay all victims, which means that until all victims receive full and timely restitution, the State and local governments may not receive their assessments, fees, fines, forfeitures and other charges that the person ordered to pay such restitution may legally owe to those governmental entities.

Finally, existing laws require victims to be provided with certain information regarding their statutory rights. This ballot measure would add to those existing laws by giving victims new state constitutional rights to be specifically informed of their constitutional rights and to have information concerning those rights be made available to the general public.

## **ARGUMENTS FOR PASSAGE**

Question 1, like California's Marsy's Law, expands and elevates victims' rights from a statutory level to a constitutional level to ensure victims receive the fairness, respect and protection they deserve as they navigate the criminal or juvenile justice process. Question 1 gives crime victims constitutional rights equal in stature to those given to the accused and convicted. Although the *Nevada Constitution* requires the Legislature to enact certain statutory rights for crime victims, those rights are too limited and are much easier to weaken than constitutional rights.

Victims of crime have already experienced a traumatizing event and are entitled to compassionate justice. They should not be revictimized by a justice system that does not weigh their rights equally with those of the accused and convicted. By enhancing victims' rights, Question 1 provides much-needed balance at all stages of the justice system—including pretrial, trial, sentencing, probation, parole and postrelease—and guarantees victims the right to be heard at each stage. Victims who are afforded more meaningful rights in the justice system are more likely to report crime and to feel safer engaging in the legal process.

Unlike current Nevada law, Question 1 establishes a clear priority for victims to receive full and timely restitution. It requires that any money collected from those ordered to pay restitution must first be paid in full to victims before going to any other use. The right to full and timely restitution—and assistance in collecting that restitution—ensures that victims get the priority they deserve.

Question 1 gives victims a voice, not a veto. Members of the legal system—including law enforcement, prosecutors, judges, juries and parole boards—retain their ability to make decisions as they see fit, but only after victims have been heard. Question 1 also does not change the rights of the accused at trial, sentencing or any other part of the legal process. It simply creates rights for victims that level the playing field in a system that all too often favors the accused.

Question 1 can be easily implemented. Federal courts have been applying similar rights to federal crimes since 2004, and several states have enacted their own versions of Marsy’s Law over the last decade. Since the legal system has been applying victims’ rights similar to those proposed by Question 1 for many years, implementing these enhanced rights in Nevada will not be difficult.

Nevada voters should level an unfair playing field, ensure the right to full and timely restitution and guarantee crime victims the voice they deserve. Vote “yes” on Question 1.

### **ARGUMENTS AGAINST PASSAGE**

Question 1 is a solution in search of a problem that does not exist. There is no reason to enact this complex, costly and confusing proposal because the *Nevada Constitution* and state law already guarantee comprehensive victims’ rights. Question 1 removes Nevada’s current constitutional and statutory framework that gives the Legislature the flexibility needed to balance victims’ rights with the efficient and effective functioning of the justice system. Instead, Question 1 imposes an inflexible framework, and any unintended consequences cannot be fixed unless the *Nevada Constitution* is amended yet again—an uncertain process that typically takes more than three years.

Question 1’s confusing and vague language will make it more difficult to ensure that justice is served. For example, because the unclear definition of “victim” extends to any person “directly and proximately harmed” by the crime, it will be extremely difficult and expensive for officials to identify and notify this ill-defined group. Question 1 also includes other vague language that opens the door to lengthy delays, added expense and inconsistent application of the law. Thus, instead of helping victims, Question 1 will make it more difficult for victims to receive justice.

Question 1 threatens rights guaranteed to everyone under the *United States Constitution*, including the rights to be presumed innocent until proven guilty, to effective counsel, to confront one’s accusers and to a speedy trial. For example, by allowing victims to prevent disclosure of certain information or to refuse to participate in interviews or depositions, those wrongfully accused of crimes may be denied access to information proving their innocence. The State, not the victim, is tasked with prosecuting and punishing crimes, but Question 1 allows victims to pursue their own agendas without regard to the individual constitutional rights of those accused of crimes.

Question 1 also creates complex and costly burdens on the State and local governments. The expanded notification provisions will likely require additional staff, technological changes and other resources, all of which will be paid for by taxpayers. Based on the experience of other states that have enacted their own versions of Marsy's Law, Nevada can expect costly litigation challenging the validity, interpretation and implementation of Question 1. Furthermore, Question 1's restitution requirements will decrease revenue collected by the State and local governments from assessments, fees, fines, forfeitures and other charges. These added expenses and decreases in revenue may reduce vital governmental services, including victim assistance programs.

Nevada voters should not approve this poorly written, expensive and unnecessary constitutional amendment that does nothing to improve anyone's rights. Vote "no" on Question 1.

## **FISCAL NOTE**

### **FINANCIAL IMPACT - CANNOT BE DETERMINED**

#### **Anticipated Financial Impact on the State and Local Governments from the Potential Reduction in Revenue Received from Assessments, Fees, Fines, Forfeitures and Other Charges**

Under existing laws, certain persons in the criminal or juvenile justice process may be ordered or required to pay assessments, fees, fines, forfeitures and other charges to the State and local governments and restitution to crime victims. The money collected from assessments, fees, fines, forfeitures and other charges provides revenue to the general operating budgets and specific programs of the State and local governments.

Under this ballot measure, all monetary payments, money and property collected from a person ordered to pay restitution must be applied first to that restitution until all victims are paid in full and then to any assessments, fees, fines, forfeitures and other charges. Therefore, because the State and local governments will not receive revenue from these sources until full and timely restitution is paid, certain state and local governmental budgets or programs funded by these sources may be affected by a reduction in revenue.

However, the potential reduction in revenue received by the State and local governments cannot be determined because the amount of restitution that will be ordered and the amount of restitution that ultimately will be paid cannot be estimated with any reasonable degree of certainty. Consequently, the financial impact on the state and local governmental budgets or programs funded by these sources cannot be determined because it is impossible to predict how the Legislature or local governing bodies may address any impacts on these budgets or programs.

## **Anticipated Financial Impact on the State from the Potential Reduction in Revenue Received from Authorized Deductions Withheld from Offenders' Wages or Individual Accounts**

Under existing laws, offenders incarcerated by Nevada's Department of Corrections are subject to deductions from: (1) any wages they earn through an authorized offender employment program; and (2) any money in their individual accounts in the Prisoners' Personal Property Fund. The Director of the Department of Corrections is authorized to make these deductions to provide funding for various programs and purposes.

Under this ballot measure, all monetary payments, money and property collected from offenders ordered to pay restitution must be applied first to that restitution until all victims are paid in full and then to any authorized deductions. Therefore, because the State will not receive revenue from these deductions until full and timely restitution is paid, certain state programs and purposes funded by these deductions may be affected by a reduction in revenue.

However, the potential reduction in revenue from these authorized deductions received by the State cannot be determined because the amount of restitution that will be ordered and the amount of restitution that ultimately will be paid cannot be estimated with any reasonable degree of certainty. Consequently, the financial impact on the programs and purposes funded by these authorized deductions cannot be determined because it is impossible to predict how the Legislature may address any impacts on these programs and purposes.

## **Anticipated Expenditures Needed by the State and Local Governments to Implement This Ballot Measure**

The Judicial Branch and certain state agencies, such as the Department of Corrections and the Department of Public Safety, as well as local governments, may incur both one-time and ongoing expenses to carry out their additional duties under this ballot measure. However, the potential financial impact on the State and local governments cannot be determined because it is impossible to predict with any reasonable degree of certainty the amount of any one-time or ongoing expenditures that may be needed to carry out these additional duties.