

ICADV Statement in Opposition to Marsy's Law Victims' Rights Amendment

The Iowa Coalition Against Domestic Violence (ICADV) remains unwavering in our support for all victims and our desire to elevate victim voices. We strongly disagree with Iowa's Marsy's Law proposal and urge policymakers to reject this legislation (SSB 3040/HJR 2003).

Granting constitutional rights to crime victims is a symbolically powerful gesture, but it will not make the criminal justice system friendlier to victims. Having rights without legitimate remedy are just words that give false hope to victims and divert resources away from systems and services that *can* meet the comprehensive needs of victims. For my organization, adding another broken promise to the long list of people and systems that have failed domestic violence survivors, might be the bill's biggest flaw.

We speak from experience in believing there are more effective ways to support victims. Victim services programs across Iowa, including the domestic violence organizations I represent, served 64,547 survivors of violent crime last year and employ service providers with several thousand years of combined experience assisting crime victims.

These are the people law enforcement calls to meet them at the scene of a crime or at the hospital to support victims; that lawyers and judges rely on to accompany victims in court and explain legal proceedings. They collaborate with landlords, employers, and community service providers to help victims obtain housing, jobs, and access to services and safety. They work with communities all over Iowa to assist victims before, during, and long after an encounter with the criminal legal system.

Iowa law already includes comprehensive victim rights and protections. Before amending the constitution, we should ensure that victims are aware of their rights and that the systems and services needed to access and benefit from them are adequately supported. Laws and practices can be strengthened or changed when they fail to protect victims. But a constitutional amendment is inflexible, it is set in stone...as are its flaws.

Specifically, we believe this bill negatively impacts services and support for all victims, including the vast majority who do not, or cannot, find safety or justice in our legal system. We believe it contradicts essential principles of American justice and overwhelms our severely underfunded criminal legal system to the detriment of victims.

In 2016, the Iowa Attorney General's office released results from a statewide survey of crime victims and service providers. The report provided recommendations to address victim needs and current gaps in services. Needs identified included: lack of awareness of rights and services; lack of access to legal services; lack of access to transportation, housing, counseling, and health care services.

Constitutional rights cannot do anything to address the Iowa-specific needs identified in the report. It takes money and people to do that. Unfortunately, funding cuts to the systems and support for victim services is in short supply. A victim cannot exercise her

right to be heard in court proceedings if she has no transportation to the court house or if she is reluctant to participate because no one is available to explain proceedings or help write a victim impact statement. Proposed budget cuts may require the Judicial Branch to close 30 courthouses; funding to Legal Aid attorneys, law enforcement, and corrections all have been cut. And state funds to victim services programs were slashed by 25% last year.

Make no mistake, ICADV's opposition is not about how much this will cost. We fully support investing in victims and would urge you to find the money if this approach were an effective way to achieve its stated goals. We are opposed because we believe it cannot effectively address the needs of Iowa victims and it will divert scarce resources from programs and services that *can* address gaps in victim services.

This proposal raises significant legal and due process issues as well. Pursuing justice is not a zero-sum game. Elevating the rights of one group should not require we diminish rights for others. This bill inhibits due process protections that exist to ensure no one is presumed guilty, that the accused receive a fair trial, and that we do not imprison innocent people. The US constitution protects the rights of the accused because getting it wrong deprives an individual of liberty and means an offender remains free to harm other people.

We oppose undermining due process on principle but please consider the many ways this harms domestic violence victims who become defendants accused of a crime. For a variety of reasons, arrest and prosecution of domestic violence victims is a problem in Iowa. Women comprise a larger proportion of the prison population than ever before and are overwhelmingly survivors of violence and trauma. Many are convicted of crimes they didn't commit and many commit crimes to survive the abuse. Sometimes it is not clear who the victim is until a judge or jury sorts things out.

Victim arrests occur in cases of victims defending themselves from physical abuse, e.g. strangulation leaves visible evidence but fighting back may result in visible injuries to the person causing harm. Or when both parties are arrested and a victim pleads guilty to the actions of the abuser so she can return more quickly to children or jobs. Or sometimes victims commit crimes because their safety is threatened or because they see few alternatives. And too often, biases based on race, gender, or immigration status result in the arrest of victims seeking assistance. Iowa ranks third worst among states for racial disparities in our prisons and many immigrant survivors in Iowa are being denied access to protections in current law.

Victims are best served when the criminal legal system upholds fundamental principles of American justice. This proposal negatively impacts efforts to correct enormous problems and numerous failings in our justice systems that deny equal access to justice.

Additionally, upending the justice system this way appears to run counter to the state goals of supporters. Notification requirements and the right to be present and heard at

all proceedings for an expanded universe of victims will overwhelm Iowa's justice system. It creates a scheduling quagmire for courts and significantly slows down the legal process by creating backlogs at every stage. This could result in delayed proceedings and undermines legal protections and access to justice.

The expansive definition of 'victim' could take away from victims the decision of whether and when to involve families. What happens when a family member 'victim' wants to proceed differently than the victim, e.g. a survivor who does not want the abuser in prison may not want to testify but her mother wants abuser locked up forever?

It will also add significant state and local costs to a system severely underfunded. In South Dakota, offenders are serving longer in pre-trial detention because of the additional time needed to notify an expanded list of victims. This comes at significant costs to due process...and local jails. Ohio attorneys believe the amendment they just passed requires the state to provide court-appointed attorneys for victims. Judges and prosecutors worry how they will accommodate the needs and schedules of a greater number of victims.

Ultimately, even if this proposal did not undermine due process or overwhelm our justice system, amending the constitution should be pursued as an absolute last resort and achieve the stated goals. This proposal fails on both counts.

Crime victims suffer terrible loss- physically, mentally, tangibly- they have been robbed of many things. However, providing constitutional rights without legitimate remedy and without funding the support systems needed to ensure victims can access their rights will not restore any of the things they have lost.

Please resist the easy fix of providing counter-productive rights in the name of elevating victim voices. The insensitivity and indifference experienced by victims is not a constitutional failing. It is a failing of people, communities, and social systems themselves. Of course we can and should be better at helping victims recover and heal. ICADV opposes this bill because symbolic gestures won't achieve that.