



South Dakota

# Legislative Research Council

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Representative Dean Wink, Chair  
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Sue Cichos, Deputy Director  
Doug Decker, Code Counsel

July 9, 2015

Mr. Jason Glodt  
Marsy's Law for South Dakota  
109 S. Pierre St.  
Pierre, SD 57501

Dear Mr. Glodt:

Pursuant to SDCL 12-13-25, this office is required to review each initiated law or initiated amendment to the South Dakota Constitution. Further, this office is required by SDCL 12-13-24 to determine if each initiative or initiated amendment is "written in a clear and coherent manner in the style and form of other legislation" and that it is "worded so that the effect of the measure is not misleading or likely to cause confusion among voters." You are under no obligation to accept any of the suggestions contained in this letter. But please keep in mind the legal standards established in SDCL 12-13-24.

Attached is a copy of your proposed initiated amendment with all our suggested style and form changes. A couple of changes of note, we use the singular subject instead of the plural when drafting and we use "may not" instead of "shall not." A negative used with "may" negates the obligation and permission to act and is the stronger prohibition. A negative used with "shall" negates the obligation, but not the permission, to act and therefore is avoided.

This letter constitutes neither an endorsement of your initiated amendment nor a guarantee of its legal sufficiency. It does constitute fulfillment of your responsibility pursuant to SDCL 12-13-25 to submit your draft to this office for review and comment. If you proceed with your initiated amendment, please take care to ensure that your statements or advertising do not imply that this office endorses or approves your proposal.

Sincerely,

Jason Hancock  
Director

JH:DO

Enc.

cc/enc: The Honorable Shantel Krebs, Secretary of State  
The Honorable Marty Jackley, Attorney General



# An Amendment to the Const. ~~Law~~ to provide certain rights to the victims of crime.

## MARSHY'S LAW: A SOUTH DAKOTA CONSTITUTIONAL AMENDMENT TO AFFORD VICTIMS MEANINGFUL

### RIGHTS

Section 1. ~~The Article VI of the Constitution of the State of South Dakota be amended~~  
by adding a new section to read as follows:

§ 29. ~~To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role throughout the criminal and juvenile justice systems, and to ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than the protections afforded to criminal defendants and delinquent children, every victim shall be entitled to the following rights, beginning at the time of their victimization:~~ *unnecessary*  
*shall have* *A victim*

- (1) The right to be treated with fairness and respect for the victim's dignity;
- (2) The right to be free from intimidation, harassment and abuse;
- (3) The right to be reasonably protected from the accused and any person acting on behalf of the accused;
- (4) The right to have the safety and welfare of the victim and the victim's family considered when setting bail or making release decisions;
- (5) The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim, and to be notified of any request for such information or records;
- (6) The right to privacy, which includes the right to refuse an interview, deposition or other discovery request, and to set reasonable conditions on the conduct of any such interaction to which the victim consents;
- (7) The right to reasonable, accurate and timely notice of, and to be present at, all proceedings involving the criminal or delinquent conduct, including release, plea, sentencing, *QC* adjudication and disposition, and any proceeding during which a right of the victim is implicated;
- (8) The right to be promptly notified of any release or escape of the accused;
- (9) The right to be heard in any proceeding involving release, plea, sentencing, adjudication, disposition or parole, and any proceeding during which a right of the victim is implicated.
- (10) The right to confer with the attorney for the government;
- (11) The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any pre-sentence or disposition investigation or compiling any pre-sentence investigation report or plan of disposition, and to have any such information considered in any sentencing or disposition recommendations;
- (12) The right to receive a copy of any pre-sentence report or plan of disposition, and any other report or record relevant to the exercise of a victim's right, except for those portions made confidential by law;
- (13) The right to the prompt return of the victim's property when no longer needed as evidence in the case;
- (14) The right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal conduct and as provided by law for all losses suffered as a result of delinquent conduct. All monies and property collected from any person who has been ordered to make restitution shall be first applied to the restitution owed to the victim before paying any amounts owed to the government;
- (15) The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related post-judgment proceedings;



- (16) The right to be informed of the conviction, adjudication, sentence, disposition, place and time of incarceration, detention or other disposition of the offender, any scheduled release date of the offender, and the release of or the escape by the offender from custody;
- (17) The right to be informed in a timely manner of all post-judgment processes and procedures, to be heard in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. <sup>Any</sup> The parole authority shall extend the right to be heard to any person harmed by the offender;
- (18) The right to be informed in a timely manner of clemency and expungement procedures, to provide information to the Governor, the court, any clemency board and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made, and to be notified of such decision in advance of any release of the offender;
- (19) The right to be informed of these rights, and to be informed that <sup>the victim's</sup> victims can seek the advice of an attorney with respect to <sup>a victim</sup> their rights. This information shall be made available to the general public and provided to ~~all crime victims in what is referred to as a Marsy's Card.~~ <sup>each crime victim.</sup>

~~B~~ The victim, the retained attorney of the victim, a lawful representative of the victim, or the attorney for the government, upon request of the victim, may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, ensuring that no right is deprived without due process of law and affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding the disposition of a victim's right shall be clearly stated on the record.

~~C~~ The granting of these rights to <sup>the victim</sup> victims shall not be construed to deny or disparage other rights possessed by <sup>any victim may</sup> victims. All provisions of this section apply throughout criminal and juvenile justice processes, are self-enabling and require no further action by the Legislature.

~~D~~ As used in this section, a <sup>the term, victim, means</sup> "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 or against whom the crime or delinquent act is committed. The term "victim" also includes any spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim that is substantially similar to a listed relationship, and includes a lawful representative of a victim who is deceased, incompetent, a minor, or physically or mentally incapacitated. 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.