

From: [Sheryl Wolcott](#)
To: [Dan Dow](#); [DA_MGMT_EXEC](#)
Subject: RE: Cal Const. Marsy's Rights in Setting Bail... (still enforceable during Emergency Order)
Date: Thursday, April 9, 2020 9:39:23 AM
Attachments: [image001.png](#)

I'm forwarding this to Greg. He's working on the written brief. I'll also put him in touch with other offices working on this, like San Mateo.

Thanks
-Sheryl

From: Dan Dow <ddow@co.slo.ca.us>
Sent: Thursday, April 9, 2020 9:31 AM
To: [DA_MGMT_EXEC](#) <da_mgmt_exec@co.slo.ca.us>
Subject: Cal Const. Marsy's Rights in Setting Bail... (still enforceable during Emergency Order)
Importance: High

I sent this to CDAA all Elected DA's this morning. Please have our DDA read this and incorporate this reasoning into our Bail Motion paperwork... we can always ask for PC 1269 and 1275 motions to be filed as well... that is what Sacramento County is doing.

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Colleagues,

I think we can and must also ask the Court to have a bail setting hearing pursuant to Marsy's Law...in appropriate cases... not just a 'denial of bail' hearing. If we only focus on the Emergency Order's language for our authority, we will miss the rest of the Constitutional provision about Victims Rights and Bail setting.

Premise: The Emergency Order and Rules do not suspend specific enumerated rights for Victims contained in the California Constitution. If they do, where is the authority for that premise and where does the Order say so?

If we only argue for denial of bail altogether, we will miss an important argument for "setting bail" at an appropriate amount higher than "zero", notwithstanding the Emergency Order. The Emergency Order that says, "the court retains the ability to **deny bail** after a consideration of

the factors outlined in article I, section 28(f)(3) of the California Constitution.” (Legitimate denial of bail cases are probably included in the zero bail exclusion list).

However, Marsy’s Rights includes an enumerated enforceable right **“To have the safety of the victim and the victim’s family considered in fixing the amount of bail and release conditions for the defendant.” Cal. Const. Art. 1, Sec. 28 (b) (3).** Victims must be considered in bail setting and release conditions. (See below.)

If we only address cases where “denial of bail” would be appropriate, we address a very small number of cases that are probably otherwise serious or violent and excluded from zero bail anyway. And then we miss our Constitutional opportunity to argue for bail to be set in the cases in the middle that present real danger to victims because they would otherwise be left with zero bail. I believe that we must assert a victim’s Constitutional rights to be considered to set bail in appropriate cases...or we succumb to the reality that victims will be revictimized and the community will be much less safe with the perpetrators let out during a time when so many are already vulnerable.

California Constitution, Article 1, Sec. 28 (b) (3) To have the safety of the victim and the victim’s family considered in fixing the amount of bail and release conditions for the defendant.

(this right is personally enforceable by Victims or through our advocacy on their behalf).

Then an additional right for ALL Californians is mentioned in Marsy’s Law here:

(f) In addition to the enumerated rights provided in subdivision (b) that are personally enforceable by victims as provided in subdivision (c), victims of crime have additional rights that are shared with all of the People of the State of California. These collectively held rights include, but are not limited to, the following: *[one and two are not quoted*

here].

(3) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. **In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations.**

Before any person arrested for a serious felony (*not limited to 1192.7 – in my opinion*) may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney and the victim shall be given notice and reasonable opportunity to be heard on the matter.

When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

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