

# JRC

Justice Reform Consortium



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## Stayin' Alive

The Iowa Legislature has a process of eliminating certain bills from the in-box so that it can move on to more important issues, like the budget. It's called the funnel, and there are two of them. We met the 1<sup>st</sup> funnel last week. Accordingly, most bills that didn't pass out of a committee are ineligible for debate on the floor for the rest of the session. Ahem! A bill may become ineligible, but an issue NEVER dies!

And speaking of death, all capital punishment bills are no longer in a position to be debated. However, the issue remains.

The following is a list of bills that are of interest to Justice Reform Consortium and have safely made it out of a committee prior to last Friday's deadline:

[House Study Bill 618](#) – An Act relating to the criminal elements and penalties for the commission of sexual misconduct with offenders and juveniles, and including effective date provisions. This bill was requested by JRC. It passed out of the [House Public Safety Committee](#) on Thursday, Feb. 15, but it was amended to strike portions of the bill that pertain to adult corrections. The amendment leaves language that enhances the penalty for a person having sex with a juvenile in a juvenile facility. JRC SUPPORTS this legislation even after amendment.

[HF 2394](#) - An Act relating to criminal acts committed on or against critical infrastructure property and providing penalties. JRC OPPOSES. The original bill, [HSB 603](#), carried a class "B" felony and a fine of \$100,000 for "critical infrastructure sabotage". JRC expressed concerns that the fine could be considered an "excessive fine" in certain circumstances and violative of the Eighth Amendment<sup>1</sup>. The bill that came out of the House Public Safety Committee, [HF 2394](#), tweaks the fine to not less than \$85,000 nor more than \$100,000. Those reductions are not enough to satisfy the concerns of JRC. See also [Senate Study Bill 3062](#) and [Senate File 2235](#). Both HF 2394 and SF 2235 are funnel-proof. That means that the issue (either bill) is eligible for debate in its respective chamber until the very last day of the session.

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<sup>1</sup> Excessive bail shall not be required, **nor excessive fines imposed**, nor cruel and unusual punishments inflicted.

[HF 2389](#) - An Act prohibiting the tampering with an electronic handling device attached to or worn by a dog or attached to an item worn by a dog, and providing penalties. Some legislation screams “WHAT!” Do we really need a law that addresses the tampering of a device on a dog? How many times does this happen in Iowa? Bills like this are called “Code Clutter”, and for a very good reason. If the law is enacted, the language sits in the Code without ever being used, thereby making the Iowa Code thicker year-by-year. The written Code has already ballooned from two volumes in the early 1960s to seven volumes in 2017. It’s too bad that a prosecutor cannot get creative with charging a violator with trespassing, criminal mischief, or another closely-related law. Often, the prosecutor did choose an alternative charge currently in the books, and lost. That is why we often see these bills that pertain to a particular circumstance. Of course, JRC OPPOSES legislation like this that places unnecessary laws with accompanying punishment into the Iowa Code.

[SF 2196](#) - An Act modifying criminal code provisions relating to criminal records, penalties, prosecutions, appeals, driving privileges, and postconviction relief, and including effective date provisions. This bill has everything but the kitchen sink. JRC believes there may be a constitutional problem with the title of the bill. Article III, Section 29 of the Iowa Constitution says: “Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.” The title of the bill relates to the “criminal code”, but it covers so much more. The bill addresses subjects such as the “medical examiner” and “drivers’ licenses”.

Our main objection is a segment of the bill in which convictions in another state may be “counted as previous offenses” for the purpose of enhancing penalties. JRC expressed our view that this provision may violate the Iowa Supreme Court’s opinion in [Young v. State](#), 863 N.W.2d 249 (2015) “conclude that under the right to counsel provision of article I, section 10 of the Iowa Constitution<sup>2</sup>, a misdemeanor defendant has a right to the assistance of counsel when the defendant faces the possibility of imprisonment.” The problem arises when two persons have similar circumstances in Iowa, but have not had similar circumstances in others states. An individual who has been convicted of a simple misdemeanor in another state, and has been afforded the right to counsel is going to be charged with a subsequent offense, enhancing the penalty. However, an individual who was convicted in another state of the same simple misdemeanor, but has not been afforded the right to an attorney at the time, will have a legitimate right to invoke the holding in [Young](#). The two individuals will not be treated identically, raising the issue of equal protection under the Iowa Constitution’s Article I, Section 6<sup>3</sup>.

There are many other problems with the bill. Philip Mears, an attorney in Iowa City who specializes in post-conviction relief, believes that three closely-related sections of the bill are

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<sup>2</sup> *Rights of persons accused*. SEC. 10. In all criminal prosecutions, and in cases involving the life, or liberty of an individual the accused shall have a right to a speedy and public trial by an impartial jury; to be informed of the accusation against him, to have a copy of the same when demanded; to be confronted with the witnesses against him; to have compulsory process for his witnesses; and, to have the assistance of counsel.

<sup>3</sup> Laws uniform. SEC. 6. All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.

troublesome. Section 41 of the bill “takes away the right to appeal, even in felony cases if the person pled guilty. If a person appeals after a guilty plea there are many reasons why the person might appeal. They might appeal the sentence” or may believe their lawyer was ineffective enough to have another court to review their case.

Section 43 eliminates the ability to raise a claim of ineffective assistance of counsel on direct appeal. “That only can be successful if the lawyer was really bad. In that case the defendant should not have to sit in prison waiting for a post-conviction which can take years.”

Section 44 pertains to verdicts being challenged on direct appeal. This provision would change the way courts look at evidence in deciding cases.

The entire bill should be something that has been worked on with defense attorneys, and other entities that have different view points from those who did have input into this bill – law enforcement, prosecutors, etc. There are too many questions about this bill as written. Expect amendments. JRC strongly OPPOSES this bill.

[SSB 3040](#) and [HJR 2003](#) – These two pieces of legislation would start the process of amending the Iowa Constitution to include a victims’ rights amendment. Called Marsy’s Law, JRC OPPOSES this measure. We cannot say it any better than the [Iowa Coalition Against Domestic Violence](#) has said:

**Invest in comprehensive victim rights and protections for victims of violent crimes**  
- ICADV is unwavering in our support for all victims. We oppose Iowa’s Marsy’s Law (SSB 3040; HJR 2003) because experience tells us there are much more effective ways to support victims. Amending the constitution is a symbolic gesture that won’t make the criminal justice system any friendlier to victims. Establishing rights without legitimate remedy gives false hope to victims and diverts resources away from systems and services that can meet the comprehensive needs of Iowa victims. We believe this bill negatively impacts services and support for all victims, including the vast majority who will never set foot in a courtroom. The proposal contradicts essential principals of American justice and would upend our severely underfunded legal system to the detriment of victims. Iowa law already includes comprehensive victim rights and protections. Before amending the constitution, we should ensure we have adequately supported the systems and services that enable victims to access and benefit from statutory protections. The insensitivity and indifference experienced by many victims is not a constitutional failing. It is a failing of common decency by people, society and social systems themselves.

[Click here to read our full statement on Iowa's Marsy's Law.](#)

[Click here to read our Victim Service Providers concerns of Marsy's Law](#)

[SF 2280](#), formerly [SSB 1177](#) – An Act relating to law enforcement profiling by standardizing collection and centralizing the compilation and reporting of officer stop and compliant data, providing for officer training, creating a community policing advisory board, providing for penalties and remedies, and including effective date provisions. **Anti-Racial profiling.** This bill made it out of the Senate Judiciary Committee without amendments and is eligible for debate in

the Senate soon. Please talk to your state senator and ask your senator to support this bill with the Iowa/Nebraska NAACP amendment. The amendment has yet to be introduced. We will let you know when it is available. JRC proudly SUPPORTS this bill.

[SF 2117](#). An Act relating to public funding and regulatory matters and making, reducing, transferring, and supplementing appropriations for expenditures in the fiscal year beginning July 1, 2017, and including effective date provisions. JRC is not declared on this bill. It is a bill of interest, however, in that it cuts \$3,405,688 from the Department of Corrections budget from now through the 30<sup>th</sup> of June. If you're interested, there is a public hearing on the bill on Monday, February 19<sup>th</sup> at 11:00 am in Room 103 of the Capitol (Former Supreme Court Room). You may sign up to speak, or submit comments [here](#).

[HF 2266](#) – An Act relating to the restoration of the rights of citizenship, and providing for a contingent effective date. This bill, providing for a better method of restoring felon voting rights than the current process, was a pleasant distraction from the other bills that seemed to be mean-spirited (with the exception of the Anti-Racial Profiling bill above). A subcommittee meeting was held last week, and, even though the bill did not make the 1<sup>st</sup> funnel deadline, there seems to be a degree of willingness to study the issue and move it along in the future. JRC had SUPPORTED this bill.

There are other bills that made it and didn't make it, and we don't intend to overwhelm you. More information on live bills and ineligible bills we be provided as the General Assembly moves into the final 2/3 of the 2018 session.

## **JRC Works Toward Equity On Telephone Rates**

JRC has worked tirelessly with the Iowa Ombudsman to get the Iowa Department of Corrections to provide reasonable rates for telephone calls to and from IDOC facilities. That effort was successful. However, most county jails do not have a system of accountability with regard to commissions or revenues generated from telephone calls, and the rates are sky high. Currently, it is up to each county to consider the issues below prior to contract negotiations with telephone providers.

Below are talking points to consider when discussing this matter with your county supervisors and sheriffs.

### **Background**

- 1) Studies have shown that offenders and offender's families (especially children) benefit from more contact with an incarcerated loved one. Most people who enter jail do not have the money to pay \$.50 per minute for a phone call (20 minute phone call is \$10). Families usually pay for the phone calls and spend a lot of money staying in contact with their loved one.
- 2) Due to high rates offenders were paying, and jail commissions artificially inflating the cost of a phone call, the FCC began regulating inmate calling services in 2012. They

were successful keeping **interstate** rates to **\$.21 per minute for pre-paid calling** and **.25 per minute for collect calls**. The providers challenged these regulations and the FCC was not successful regulating local and intrastate calls.

- 3) In response to lower interstate rates and to keep jail commissions the same, providers raised the rates of **local** and **intrastate** rates. Arguably, local and intrastate calls represent a large percentage of most jail telephone calls. This is counter-intuitive: historically local and intrastate calls cost less than an interstate call.
- 4) While the FCC investigated, the Iowa Ombudsman pursued this issue with the Board of Corrections and the Iowa Department of Corrections (IDOC). As time passed and the FCC regulation efforts increased, the IDOC reduced their rates to \$.11 per minute for interstate, intrastate, and local calls. International rates also dramatically decreased to reflect actual costs (no profit) or 11 cents per minute, whichever is higher. Not surprisingly, when DOC lowered the telephone rates the number of calls increased and revenues increased. The IDOC and Board of Corrections is in a position to again lower the rate offenders pay. Per the Iowa Administrative Rules, the telephone commissions can only be spent if determined to “benefit the offender” and it must be approved by the Board of Corrections. This decision is conducted in open session.

### **Moving Forward: County Jails**

- 5) To maintain a level of accountability and to be consistent with IDOC, the county should maintain a separate account for telephone revenues (beyond the cost to maintain the system) and telephone expenditures should be approved by the Board of Supervisors (or other governmental body subject to the Iowa Open Meetings law). Since offenders are paying for the fund, it is reasonable that expenditures from the account should directly benefit the offender. Directly benefiting the offender would exclude salaries of security staff, overhead, or general operating expenses, but might include increased opportunity for treatment, education, and recreation while in jail.
- 6) Rates offenders pay for telephone calls should be “just, fair, and reasonable” and based on a per minute basis.
- 7) Contracts with providers should seek the lowest possible rate for offenders without compromising security or quality of service.
- 8) Where budget options are limited, the county has the ability to raise the rates for luxury items (which might include junk food), meanwhile treating telephone calls as essential. Ideally the rate offenders pay would reflect actual costs (i.e. no commission provided back to the jail to artificially inflate the rate offenders pay).

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## Life after Prison: A New Guide for Iowans

### Contacts

Mike Cervantes - Director of Inside Out Reentry Community 319-621-6263

[insideoutreentry@gmail.com](mailto:insideoutreentry@gmail.com)

Catrina Carter - Director of Reentry and Treatment Services for Iowa DOC 515-725-5713

(office) 515-314-2645 (cell)

Cord Overton - Communications Director for Iowa DOC 515-725-5707 (office)

[cord.overton@iowa.gov](mailto:cord.overton@iowa.gov)



### Selected links:

<https://www.nytimes.com/2018/02/09/technology/facial-recognition-race-artificial-intelligence.html> Facial Recognition Is Accurate, if You're a White Guy. *New York Times*. STEVE LOHR FEBRUARY 9, 2018.

## UPCOMING EVENTS

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### **SAVE THE DATE!**

**IMPORTANT ANNOUNCEMENT:** Mark your calendars for the evening of October 8th. The Iowa Coalition for Juvenile Justice (a focus group of Iowa CURE) is bringing Jeanne Bishop, author of the moving book, "Change of Heart, Justice, Mercy, and Making Peace with my Sister's Killer". (Tentative location is the court room of the Drake Law Center.)

Ms. Bishop's sister, brother-in-law and their unborn child were brutally killed in their home 25 years ago. In her book she tells of her journey confronting and finally reconciling with the man who took their lives.

Brian Stevenson, Director of the Equal Justice Initiative and author of "Just Mercy" says, "This is an extraordinary witness for survivors of crime and all of us who seek a more compassionate thoughtful and responsible way to manage the tragic ways we hurt each other."

You won't want to miss this opportunity to hear Jeanne Bishop and her inspiring story of healing and peace.

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The next **Friends of Iowa Women Prisoners** meeting is at noon on **Tues., February 20<sup>th</sup>** at Wesley United Methodist Church, 800 East 12<sup>th</sup>.

The guest speaker will be Justin Bogers with Goodwill Industries of Central Iowa. He will be speaking on behalf of all the services that are offered and how they help with job training and placement.

**MISSION: To bring together and inform individuals and groups concerned about women in the Iowa correctional system and to act on their behalf.**

**FRIENDS OF IOWA WOMEN PRISONERS**  
PO Box 71272, Clive, IA 50325  
email: [fiwp2011@gmail.com](mailto:fiwp2011@gmail.com)  
website: [friendsofiowawomenprisoners.org](http://friendsofiowawomenprisoners.org)

Bring your lunch. The place and time are consistent throughout the year. The meetings are always held on the third Tuesday of the month, and always held from noon to 1:00 pm at Wesley United Methodist Church located at 800 East 12<sup>th</sup> Street in Des Moines. The location is a block west of East High School. Please contact [Kirk](#) for more information.

**Voices to be Heard** is a support group for families and children of an incarcerated loved one. The group gathers to support and comfort those who know too well the grief that comes to those left behind when someone they love is incarcerated. The group meets on the first and third Tuesdays of the month at Wesley United Methodist Church (800 East 12<sup>th</sup> St. in Des Moines) from 5:30 – 7:00 p.m. Potluck begins at 5:30 p.m. meeting begins at 6:00 p.m. The group brings in speakers, performs outreach, provide support groups and leadership classes. It is a good idea to contact Melissa Gradischnig ahead of time because a head count is preferred for the pot luck. Contact Melissa at 515/229-2645 for more information.

Voices to be Heard also meets in Cedar Rapids:

Voices to be Heard, Cedar Rapids  
2<sup>nd</sup> and 4<sup>th</sup> Tuesday of the month  
6 to 7pm  
Lundby Townhomes, 845 31<sup>st</sup> Av. SW.  
Contact, Melissa 515-229-2645

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***Justice Reform Consortium member organizations:*** ACLU of Iowa; American Friends Service Committee; Beacon of Life; Compassion, Peace, and Justice Taskforce, Des Moines Presbytery; Des Moines Chapter of WILPF; Friends of Iowa Women Prisoners; Iowa Annual Conference, UMC; Iowa CURE; Iowa Coalition 4 Juvenile Justice; Iowa Justice Action Network; Iowa-Nebraska Chapter of the NAACP; Iowa NOW and Des Moines NOW; Methodist Federation for Social Action; National Association of Social Workers; Plymouth Congregational Church, Board of Christian Social Action; Trinity United Methodist Church; Urban Dreams; and Voices to be Heard – Des Moines & Cedar Rapids.

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