

Statement of Senator Jon Kyl

Crime Victims' Rights Amendment

Mr. Kyl. Mr. President, I rise to introduced the Crime Victims' Rights Amendment.

Scales of Justice Imbalanced

The scales of justice are imbalanced. The U.S. Constitution, mainly through *amendments*, grants those accused of crime many constitutional rights, such as a speedy trial, a jury trial, counsel, the right against self-incrimination, the right to be free from unreasonable searches and seizures, the right to subpoena witnesses, the right to confront witnesses, and the right to due process under the law.

The Constitution, however, guarantees no rights to crime victims. For example, victims have no right to be present, no right to be informed of hearings, no right to be heard at sentencing or at a parole hearing, no right to insist on reasonable conditions of release to protect the victim, no right to restitution, no right to challenge unending delays in the disposition of their case, and no right to be told if they might be in danger from release or escape of their attacker. This lack of rights for crime victims has caused many victims and their families to suffer twice — once at the hands of the criminal, and again at the hands of a justice system that fails to protect them. The Crime Victims' Rights Amendment would bring balance to the judicial system by giving victims of violent crime the rights to be informed, present, and heard at critical stages throughout their ordeal.

Rights in the Amendment

The amendment gives victims of violent crime the right:

- To reasonable and timely notice of any public proceeding involving the crime and of any release or escape of the accused;
- Not to be excluded from such public proceeding;
- Reasonably to be heard at public release, plea, sentencing, reprieve, and pardon proceedings; and
- To adjudicative decisions that duly consider the victim's safety, interest in avoiding unreasonable delay, and just and timely claims to restitution from the offender.

These rights have been at the core of the amendment since 1996, when Senator Feinstein and I first introduced the Crime Victims' Rights Amendment. The amendment is the product of extended discussions with the White House, the Department of Justice, Representative Steve Chabot, Senators Hatch and Biden, law enforcement officials, major victims' rights groups, and such diverse scholars as Professor Larry Tribe and then-Professor Paul Cassell. The current version is similar to the version in the 107th Congress. As President Bush stated when announcing his support for the language of the amendment, the amendment was “written with care, and strikes a proper balance.”

<<http://www.whitehouse.gov/news/releases/2002/04/20020416-1.html>>.

One of the nation's leading constitutional scholars, Harvard Law Professor Laurence Tribe — who is on the opposite end of the ideological spectrum from President Bush — concurred. Professor Tribe praised the Amendment's “brevity and clarity” and commented, “That you achieved such conciseness while fully protecting defendants' rights and accommodating the legitimate concerns that have been voiced about prosecutorial power and presidential authority is no mean feat. . . . I think you have done a splendid job at distilling the prior versions of the Victims' Rights Amendment into a form that would be worthy of a constitutional amendment.” Letter of April 15,

2002.

Crime Victims Need Rights in the Federal Constitution

If reform is to be meaningful, it must be in the U.S. Constitution. Since 1982, when the need for a constitutional amendment was first recognized by President Reagan's Task Force on Victims of Crime, 32 states have passed similar measures — by an average popular vote of about 80 percent. These state measures have helped protect crime victims; but they are inadequate for two reasons. First, each amendment is different, and not all states have provided protection to victims; a federal amendment would establish a basic floor of crime victims' rights for all Americans, just as the federal Constitution provides for the accused. Second, statutory and state constitutional provisions are always subservient to the federal constitution; so, in cases of conflict, the defendants' rights — which are already in the U.S. Constitution — will always prevail. The Crime Victims' Rights Amendment would correct this imbalance.

It is important to note that the number one recommendation in a 400 page report by the Department of Justice on victims rights and services was that “the U.S. Constitution should be amended to guarantee fundamental rights for victims of crime.” U.S. Department of Justice, Office for Victims of Crime, *New Directions from the Field: Victims' Rights and Services for the 21st Century* 9 (1998). The report continued: “A victims' rights constitutional amendment is the only legal measure strong enough to rectify the current inconsistencies in victims' rights laws that vary significantly from jurisdiction to jurisdiction on the state and federal levels.” *Id.* at 10. Further: “Granting victims of crime the ability to participate in the justice system is exactly the type of participatory right the Constitution is designed to protect and has been amended to permanently ensure. Such rights include the right to vote on an equal basis and the right to be heard when the government deprives one of life, liberty, or property.” *Id.*

Some may say, “I'm all for victims' rights but they don't need to be in the U.S. Constitution. The Constitution is too hard to change.” But the history of our country teaches us that constitutional protections are needed to protect the basic rights of the people. Our criminal justice system needs the kind of fundamental reform that can only be accomplished through changes in our fundamental law — the Constitution. Attempts to establish rights by federal or state statute, or even state constitutional amendment, have proven inadequate, after more than twenty years of trying. Then-Attorney General Reno has confirmed the point, noting that, “unless the Constitution is amended to ensure basic rights to crime victims, we will never correct the existing imbalance in this country between defendants' constitutional rights and the haphazard patchwork of victims' rights.” Senate Judiciary Committee Hearing, April 16, 1997, statement of Attorney General Janet Reno, at 41.

On behalf of the Department of Justice, Ray Fisher, then Associate Attorney General, now a judge on the Ninth Circuit Court of Appeals, testified that “the state legislative route to change has proven less than adequate in according victims their rights. Rather than form a minimum baseline of protections, the state provisions have produced a hodgepodge of rights that vary from jurisdiction to jurisdiction. Rights that are guaranteed by the Constitution will receive greater recognition and respect, and will provide a national baseline.” Senate Judiciary Committee Hearing, April 28, 1998, statement of Associate Attorney General Ray Fisher, at 9.

A number of legal commentators have reached similar conclusions. Harvard Professor of Law Laurence Tribe has explained that the existing statutes and state amendments “are likely, as experience to date sadly shows, to provide too little real protection whenever they come into conflict with bureaucratic habit, traditional indifference, sheer inertia, or any mention of an accused's rights regardless of whether those rights are genuinely threatened.” Senate Judiciary Committee Hearing, March 24, 1999, statement of Laurence Tribe, at 6. He also stated, “there appears to be a considerable body of evidence showing that, even where statutory or regulatory or judge-made rules exist to protect the participatory rights of victims, such rights often tend to be honored in the breach” *Id.* at 7. Indeed, according to a report by the National Institute of Justice, even in states that gave “strong protection” to victims rights, fewer than 60 percent of the victims were notified of the sentencing hearing and fewer than 40 percent were notified of the pretrial release of the defendant. National Institute of Justice, Research in Brief, “The Rights of Crime Victims – Does Legal Protection Make a Difference?” at 4 (Dec. 1998).

If crime victims are to have meaningful rights, those rights must be in the U.S. Constitution. As President Bush has stated, "The protection of victims' rights is one of those rare instances when amending the Constitution is the right thing to do. And . . . the Crime Victims' Rights Amendment is the right way to do it."

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Bipartisan

The Crime Victims' Rights Amendment has strong bipartisan support in the House and Senate. Senator Feinstein is the lead Democratic sponsor. I would like to thank her for her tireless efforts on behalf of crime victims and for her hard and very valuable work on the language. Also, a bipartisan group of 39 State Attorneys General has signed a letter expressing their "strong and unequivocal support" for an amendment. In January 1997, the National Governors' Association voted in favor of an amendment. In 1996 and 2000, both the Republican and Democratic Party Platforms called for a crime victims' rights amendment. Additionally, the amendment is supported by the International Association of Chiefs of Police and major national victims' rights groups, including Parents of Murdered Children, the National Organization for Victim Assistance, Mothers Against Drunk Driving (MADD), the Maryland Crime Victims' Resource Center, Arizona Voice for Crime Victims, Crime Victims United, and, Memory of Victims Everywhere.

The amendment has received strong support around the country. As I mentioned earlier, 32 states have passed similar measures — by an average popular vote of almost 80 percent.

Conclusion

Mr. President, since we first introduced the amendment in 1996, Nila Lynn has been murdered in my home state of Arizona. Nila and her husband Duane were three months short of their 50th wedding anniversary. Nila was shot in the back by Richard Glassel and died in Duane's arms. Despite the fact that Duane had a state constitutional right to be heard at Glassel's sentencing and despite the fact that Glassel was afforded the right to make a sentencing recommendation to the jury, Duane's voice was silenced because he had no U.S. Constitutional right to make a similar sentencing recommendation.

For far too long, the criminal justice system has ignored crime victims who deserve to be treated with fairness, dignity, and respect. Our criminal justice system will never be truly just as long as criminals have rights and victims have none.

Mr. President, I ask unanimous consent that the text of the amendment be printed in the Record immediately following my statement.