

To Supporters of Senate Joint Resolution 1, the Crime Victims Rights Amendment
From Steve Twist, Chief Counsel, National Victims Constitutional Amendment Project
Date April 28, 2004

BULLETIN

Our Congressional fight for victim justice is not over. Jump to the final paragraphs to see what we need victim advocates to do *right now*.

As I am certain that you know, on the afternoon of Thursday, April 22, Senators Jon Kyl (R-AZ) and Dianne Feinstein (D-CA), the primary sponsors of the S. J. Res. 1, proposed a statutory substitute for their amendment proposal. The bill, S. 2329, had no one to speak against it, and when the roll was called, it passed by a vote of ninety-six to one.

I want to give you the reasoning that caused our two champions and me, as the lead representative of the victim's movement in the discussions, first, to explore and, in the end, to support a statutory alternative.

In all this, I believe we acted honorably and with the best interests of crime victims at heart – and I hope this memo will lead you to the same conclusions. But in one respect, we let you down, and as the counsel to the National Victims Constitutional Amendment Project, I bear full responsibility an explanatory memo like this one should have been sent to all of our supporters at the same time that S. 2329 was revealed to the full Senate. I'm sorry that I did not do that.

What I did do was to bring MADD, POMC, NOVA, Force 100, and all of our supporters present in Washington in on the statutory alternative, as I did by phone to a number of our prominent leaders around the country, including Roberta Roper and Bob Preston, NVCAP's co-chairs. That I didn't circulate the plan more widely was at the request of our sponsors as they were building the extraordinary bipartisan support that greeted the proposal.

While all of us deeply regretted the failure to get 67 votes for S. J. Res. 1, we all accepted the idea that Federal legislation which establishes real and enforceable rights would advance our cause in the long run. You should know that we would not have even been able to achieve this much without the unflagging support of Sen. Kyl and Sen. Feinstein. They are truly deserving of our highest honors. I saw them in action and marveled at their legislative abilities on our behalf. Please make sure they know how much we honor their work for our cause.

In addition, none of this achievement would have been possible without Stephen Higgins, Sen. Kyl's Chief Counsel, and Steven Cash and David Hantman, on Sen. Feinstein's staff. This whole team worked for us in the best bi-partisan tradition of the Senate for the good of the country and we owe them our thanks. Finally, Colleen Campbell was our leader extraordinaire who, with her husband Gary, visited 91 senate offices in the weeks leading up to the debate.

Let me review how the statutory alternative came into play and why its provisions make it a very strong victim rights statute

The genesis of the bill was simply this: we came to the sober realization that despite our best efforts, we didn't have the 67 needed votes for final passage. Senator Kyl elaborated on that on the Senate floor

”After eight years of work on the Federal constitutional amendment, supported by President Bush and the Attorney General, we were able to schedule ... the constitutional amendment for floor action today. [But] knowing we would not have the 67 votes to pass it, we decided it was time to get something tangible in a statute to protect the rights of victims, and accompanying it could be a modest appropriation of money to help

actually support these victims in court when that was necessary and called for. We believed despite the potential that it would not serve adequately, it was time to try something, to be successful, and to at least move the ball forward.

“As Senator Leahy said in a press conference we had earlier, the Judiciary Committee of the Senate will provide very strong oversight of implementation of this statute, so we will know if it is not working. If it does not work, we will be able to come back and pursue the constitutional remedy. But we consulted with the victims’ rights groups that have been most active in support of this. They concurred it was time to pursue the statutory remedy, if we could get some assurance we would be successful in that pursuit and that it would not be simply a fool’s errand.

“... Consensus was reached that it was time for us to convert the constitutional proposal into a statute. This occurred within the last 48 hours. Through the cooperation of Senator Leahy, Senator Hatch, staff, and several other Senators, but most importantly because of the very hard work done by Senator Feinstein’s staff and mine, they were able to literally convert these rights in the constitutional proposal into the statutory proposal for submission. That is what is before us today and what we will be voting on.” ‘

Senator Feinstein’s comments were much the same

“Some have asked – why proceed with a statute, rather than a Constitutional amendment? Why a law and not a constitutional amendment?

“Senator Kyl and I have been working for many years towards a constitutional amendment to establish these rights. I have always believed that amending the Constitution is the best way to ensure victims’ rights are protected in the criminal justice process. But many have disagreed, arguing that we should try, once again, a legislative approach.

“It is clear to me that passage of a Constitutional amendment is impossible at this time. If we tried, and failed, it could be years before we could try again. Victims of crime have waited years for progress, and a compromise approach, resulting in the bill now under consideration, will result in meaningful progress.

“Will it work? I hope so. The bill before us is a new and bolder approach than has ever been tried before in our Federal system.”

In the lead-up to the bill, Senators Kyl and Feinstein – along with Senator Patrick Leahy (D-VT), who had proposed a different statutory alternative – agreed that the bill should encompass three principles:

- the rights listed must be drawn directly from the amendment;
- the enforcement mechanisms must tough;
- and the bill must authorize financial support of victims’ law clinics so that victims could assert their rights not only under the Federal law but state laws as well.

The bill meets every one of those tests.

For all of us in the nine-year Constitutional Amendment campaign this moment is both bitter and sweet. We bent every intellectual and emotional muscle we could muster to put victim justice into our national charter. While we did not succeed, the Senate has overwhelmingly passed a statute that will put the arguments of our opponents to the final test. If this statute in particular will not work (and we will fight hard to make it work for the victims we serve) we will have proven that no statutes alone will work - except as tools to implement a Constitutional amendment.

Be assured, we will fight hard to make it work. And even as we work to have these rights implemented in the Federal courts, we will redouble our efforts to get states to better comply with their bills of victims rights.

As Senator Feinstein observed:

“This act, of course, binds only the federal system, but is designed to affect the states also. First it is hoped that states will look to this law as a model and incorporate it into their own systems. This law encourages that by allowing both types of grants – legal assistance and victim notification – to be provided to state entities, and for use in state systems, where the state has in place ‘laws substantially equivalent’ to this act.”

Note that last phrase. After the Justice Department issues regulations defining "substantially equivalent" victim rights laws, we will all have a benchmark to see how our state statutes measure up – and a ready plan to have them meet that test.

Here are the basic features of the bill the rights established are clear and unequivocal, taken from S. J. Res. 1 and current law; the victim (or the prosecutor) has standing assert the victim's rights in the Federal District court with jurisdiction in the case; further, the enforcement mechanisms require the court which denies a victim's petition to uphold a specified right must explain its denial on the record; at that stage, the victim may seek a review by a Federal Appeals court, which must not only hear the appeal but act on its promptly, and order the District Court to make whatever redress is required.

To help the victim learn of and enforce these rights, funding is authorized for a Federal notification system (so that the administrative dimension of the law is advanced) and for legal clinics to help victims to assert and protect their rights. States that have victim rights laws substantially equivalent to the Federal may also receive grants. A separate funding provision allows states and localities to construct their own compliance systems, with or without lawyers. These too are unprecedented features of any victim rights law.

Finally, the bill requires the Administrative Office of the Courts to report annually every assertion of a victim's right in a criminal case that was not honored by the court and the result of every mandamus action in the Court of Appeals which challenged a lower court's denial of a right.

I encourage you to read the bill in full (go to <http://www.nvcap.org>). The basic features are plain to see. But some are more subtle. For example, as a colloquy during the debate between Senators Kyl and Feinstein indicates, a court that finds that a plea bargain was accepted under circumstances where the victim's rights were ignored, such a plea may be voided. The same is true of sentences handed down improperly.

I was going to start this last paragraph with, “In conclusion ...” But the truth is we have not yet reached a conclusion. While we have lost the amendment for now, we will have gained much if we can get this bill through the House of Representatives. **I urge everyone to press the House leadership with a simple message: take S. 2329 straight to the Floor; don't amend it; and speed its passage to the President.**

That message should be sent to the following people at least once a day until we have action.

State	Representative	Party	Leadership Position	Phone	Fax
IL	J. Dennis Hastert	R	Speaker of the House	(202) 225-2976	(202) 225-0697
TX	Tom Delay	R	House Majority Leader	(202) 225-5951	(202) 225-5241
MO	Roy Blunt	R	House Majority Whip	(202) 225-6536	(202) 225-5604
VA	Eric Cantor	R	House Chief Deputy Majority Whip	(202) 225-2815	(202) 225-0011
OH	Deborah Pryce	R	House Republican Conference Chairman	(202) 225-2015	(202) 225-3529

I again want to thank all of you for your support for our movement for victims' rights; when S.2329 passes the House and is signed by the President, we will have moved our cause forward in a dramatic way.