

The victims' rights constitutional amendment

Mr. KYL. Mr. President, to ensure that crime victims are treated with fairness, dignity, and respect, I rise--along with Senator Feinstein--to introduce a joint resolution proposing a constitutional amendment to establish and protect the rights of crime victims .

This joint resolution is the product of extended discussions with Senators Hatch and Biden, the Department of Justice, the White House, law enforcement, major victims ' rights groups, and such diverse scholars as Professors Larry Tribe and Paul Cassell.

This latest joint resolution is still a work in progress; Senator Feinstein and I anticipate modifications. We are introducing this new version to show the changes that have been made and to make clear that Senate Joint Resolution 52--which was introduced on April 22--has been superseded. We welcome suggestions on ways to improve the amendment and ask that comments refer to this new joint resolution.

Three principal issues remain unresolved. First, whether there should be an effective remedy when crime victims are denied rights regarding sentences or pleas. Second, whether to include non-violent crimes--other crimes--and if these crimes are included, whether they should be defined by Congress or by Congress and the states. Third, whether to have a right to a final disposition free from unreasonable delay or whether to limit this right to trial proceedings.

The introduced version--and the most recent version--contain the core principles that crime victims should have:

To be informed of the proceedings.

To be heard at certain crucial stages in the process.

To be notified of the offender's release or escape.

To proceedings free from unreasonable delay.

To an order of restitution.

To have the safety of the victim considered in determining a release from custody.

To be notified of these rights.

The language describing these rights has changed--and we continue to welcome suggestions. But it is clear that these rights are necessary. They are the core of the amendment .

In putting together a constitutional amendment , a broad consensus has to be reached to obtain two-thirds approval in the House and Senate and to ensure ratification by three-fourths of the States. In making changes, Senator Feinstein and I have tried to accommodate the concerns of those who work in the criminal justice system--including judges, prosecutors, police officers, corrections officials, and defense attorneys--while at the same time protecting fundamental rights for crime victims .

Senator Feinstein and I will continue to work intensively with these groups, law professors, and other Members of Congress from both parties and both Houses over the ensuing months to craft the best amendment possible. We then intend to introduce the finished revised amendment at the beginning of the next Congress. We believe that we now are close to a version that can be voted on by the House and Senate. We welcome comments and input as we move forward.

In closing, I would like to thank Senator Dianne Feinstein for her hard work on this amendment and for her tireless efforts on behalf of crime victims .

Mr. President, 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. We need a new definition of justice--one that includes the victim .

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the Record.

There being no objection, the joint resolution was ordered to be printed in the **Record**, as follows:

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S.J. Res. 65

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid for all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

Section 1. victims of crimes of violence and other crimes that Congress and the States may define by law pursuant to section 3, shall have the rights to notice of and not to be excluded from all public proceedings relating to the crime; to be heard if present and to submit a statement at a public pre-trial or trial proceeding to determine a release from custody, an acceptance of a negotiated plea, or a sentence; to these rights at a parole proceeding to the extent they are afforded to the convicted offender; to notice of a release pursuant to a public or parole proceeding or an escape; to a final disposition free from unreasonable delay; to an order of restitution from the convicted offender; to have the safety of the victim considered in determining a release from custody; and to notice of the rights established by this article.

Section 2. The victim shall have standing to assert the rights established by this article; however, nothing in this article shall provide grounds for the victim to challenge a charging decision or a conviction, obtain a stay of trial, or compel a new trial; nor shall anything in this article give rise to a claim of damages against the United States, a State, a political subdivision, or a public official; nor shall anything in this article provide grounds for the accused or convicted offender to obtain any form of relief.

Section 3. The Congress and the States shall have the power to enforce this article within their respective federal and state jurisdictions by appropriate legislation, including the power to enact exceptions when required for compelling reasons of public safety.

Section 4. The rights established by this article shall be applicable to all proceedings occurring after ratification of this article.

Section 5. The rights established by this article shall apply in all federal, state, military, and juvenile justice proceedings, and shall also apply to victims in the District of Columbia, and any commonwealth, territory, or possession of the United States.

Mrs. FEINSTEIN. Mr. President, I rise today along with my distinguished colleague from Arizona, Senator Jon Kyl, to introduce a revised and substantially improved version of the victims ' rights amendment to the U.S. Constitution .

Since Senator Kyl and I originally introduced a victims ' rights amendment in April, we have been working very diligently and intensively with the Department of Justice, law enforcement, the White House, major victims ' rights groups, Senate Judiciary Committee Chairman Hatch and Ranking Member Biden, House

Judiciary Committee Chairman Hyde, and a variety of distinguished scholars in the field of law enforcement, to more finely craft this amendment and resolve various concerns with its initial language. We have gone through 41 different drafts of the amendment, so far, as the language has evolved, culminating in the resolution that we are introducing today.

We are introducing this most recent version so that interested people have an up to date draft to evaluate. Many of the people who have commented on the victims' rights amendment were commenting on an out of date draft, leading to erroneous and false conclusions by some, including legal scholars.

What really focused my attention on the need for greater protection of victims' rights was a particularly horrifying case, in 1974, in San Francisco, when a man named Angelo Pavageau broke into the house of the Carlson family in Portero Hill. Pavageau tied Mr. Carlson to a chair, bludgeoning him to death with a hammer, a chopping block, and a ceramic vase. He then repeatedly raped Carlson's 24-year old wife, breaking several of her bones, He slit her wrist, tried to strangle her with a telephone cord, and then, before fleeing, set the Carlson's home on fire--cowardly retreating into the night, leaving this family to burn up in flames.

But Mrs. Carlson survived the fire. She courageously lived to testify against her attacker. But she has been forced to change her name and continues to live in fear that her attacker may, one day, be released. When I was mayor of San Francisco, she called me several times to notify me that Pavageau was up for parole. Amazingly, it was up to Mrs. Carlson to find out when his parole hearings were.

Mr. President, I believe this case represents a travesty of justice--It just shouldn't have to be that way. I believe it should be the responsibility of the State to send a letter through the mail or make a phone call to let a victim know that her attacker is up for parole, and she should have the opportunity to testify at that hearing.

But today, in most States in this great Nation, victims still are not made aware of the accused's trial, many times are not allowed in the courtroom during the trial, and are not notified when convicted offender is released from prison.

I have vowed to do everything in my power to add a bit of balance to our Nation's justice system. This is why Senator Kyl and I have crafted the victim's rights amendment before us today.

The people of California were the first in the Nation to pass a crime victims' amendment to the State Constitution in 1982--the initiative proposition 8--and I supported its passage. This measure gave victims the right to restitution, the right to testify at sentencing, probation and parole hearings established a right to safe and secure public school campuses, and made various changes in criminal law. California's proposition 8 represented a good start to ensure victims' rights.

Since the passage of proposition 8, 20 more States have passed constitutional amendments guaranteeing the rights of crime victims --and five others are expected to pass by the end of this year. In each case, these **amendments** have won with the overwhelming approval of the voters.

But citizens in other States lack these basic rights. The 20 different State constitutional amendments differ from each other, representing a patchwork quilt of rights that vary from State to State. And even in those States which have State **amendments**, criminals can assert rights grounded in the Federal Constitution to try to trump those rights.

I stand before you today to appeal to my colleagues in this body--the highest legislative institution in the land--that the time is now to amend the U.S. Constitution in order to protect the rights of victims of serious crimes.

The U.S. Constitution guarantees numerous rights to the accused in our society, all of which were established by amendment to the Constitution. I steadfastly believe that this Nation must attempt to

guarantee, at the very least, some basic rights to the millions **victimized** by crime each year.

For those accused of crimes in this country, the Constitution specifically protects: The right to a grand jury indictment for capital or infamous crimes; the prohibition against double jeopardy; the right to due process; the right to a speedy trial and the right to an impartial jury of one's peers; the right to be informed of the nature and cause of the criminal accusation; the right to confront witnesses; the right to counsel; the right to subpoena witnesses--and so on.

I must say to my colleagues that I find it truly astonishing that no where in the text of the U.S. Constitution does there appear any guarantee of rights for crime victims .

To rectify this disparity, Senator Kyl and I introduce the victims ' rights amendment in April. That amendment , like the one we introduced today, provides for certain basic rights for victims of crime: The right to be notified of public proceedings in their case; The right to be heard at any proceeding involving a release from custody or sentencing; The right to be informed of the offender's release or escape; The right to restitution from the convicted offender; and

the right to be made of all of your rights as a victim .

Personally, I can say that the process of forging a constitutional amendment for victims ' rights has been truly fascinating. The Constitution our forefathers scribed 200 years ago is a remarkable document that has withstood the test of time. Earlier this year, Senator Kyl and I embarked on a journey to include an amendment to this magnificent document that would ensure that the rights of the roughly 43 million people **victimized** by crime each year will be protected.

Our ongoing effort to include a victims ' rights amendment in the Constitution has been at times frustrating, while at other times exhilarating. Each sentence, each word, and each comma has undergone hours of deliberation and questioning.

Having said that, I must tell this body and share with my colleagues that this latest resolution is still a work in progress--let me be perfectly clear, we anticipate modifications. Three principal issues remain unresolved:

First, whether there should be an effective remedy when crime victims are denied rights regarding sentences or pleas.

Second, whether to include nonviolent crimes (`other crimes'), and if these crimes are included, whether they should be defined by Congress or by Congress and the States.

Third, whether to have a right to a `final disposition free from unreasonable delay', whether to limit this right to trial proceedings, or whether to exclude this altogether.

Mr. President, Senator Kyl and I believe that the latest resolution before us is much better than the version than was previously introduced for a number of reasons. The language describing these rights has changed--and we continue to welcome suggestions to ensure that this amendment pass with the largest majority.

Unfortunately, there was precious little time to advance the amendment in this Congress, and once it became clear that the other Chamber would not proceed with the amendment this session, Senators Kyl and Biden and I decided not to press for Senate action in the last few weeks of the Congress, but, rather, to spend the next few months continuing to work to fine tune the amendment and build a consensus for its passage.

We implore Members of this body to examine this amendment , and to help to secure passage of this monumental piece of legislation. After 200 years, doesn't this Nation owe something to the millions of victims of crime? I believe that is our obligation and should be our highest priority--not only for the crime victims , but, for all Americans--to ensure passage of a victims ' rights constitutional amendment .

I want to personally thank Senator Kyl for his tireless efforts to accomplish this amendment, and to say that I look forward to continuing to work with him in the months to come.