

Statement by U.S. Senator Jon Kyl (R-Arizona)

on S.J.Res.3, the Crime Victims' Rights Constitutional Amendment

To ensure that crime victims are treated with fairness, dignity, and respect, Senator Feinstein and I have reintroduced a resolution proposing a constitutional amendment to establish and protect the rights of victims of violent crime.

This resolution is the product of extended discussions with House Judiciary Committee Chairman Henry Hyde, Senators Hatch and Biden, the Department of Justice, the White House, law enforcement officials, major victims' rights groups, and such diverse scholars as Professors Larry Tribe and Paul Cassell. As a result of these discussions, the core values in the original amendment remain unchanged, but the language has been refined to better protect the interest of all parties.

Before I discuss the amendment in detail, I would like to thank Senator Feinstein for her efforts to advance the cause of crime victims' rights and for her very valuable work on the language of the amendment. She has been a tireless and invaluable advocate for the 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 is a constitutional amendment that would bring balance to the judicial system by giving crime victims the rights to be informed, present, and heard at critical stages throughout their ordeal — the least the system owes to those it failed to protect.

The current version, which is the 62nd draft of the amendment, contains the rights that we believe victims should have -- the rights to:

- To be notified of the proceedings
- To attend all public proceedings
- To be heard at certain crucial stages in the process
- To be notified of the offender's release or escape

- To consideration for a trial 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 and standing to enforce them

These rights are the core of the amendment.

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 a Presidential 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 materially 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. Our amendment will correct this imbalance.

It is important to note that the number one recommendation in a recent 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 right for victims of crime.” 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.” 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 amendment 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.”

Until crime victims are protected by the United States Constitution, the rights of victims will be subordinate to the rights of the defendant. Indeed, the National Governors Association — by a vote of 49-1 — passed a resolution strongly supporting a constitutional amendment for crime victims. The resolution stated: “Despite . . . widespread state initiatives, the rights of victims do not receive the same consideration or protection as the rights of the accused. These rights exist on different judicial levels. Victims are relegated to a position of secondary importance in the judicial process.” The resolution also stated that “The rights of victims have always received secondary consideration within the U.S. Judicial process, even though states and the American people by a wide plurality consider victims' rights to be fundamental. Protection of these basic rights is essential and can only come from a fundamental change in our basic law: the U.S. Constitution.”

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. All we need to do is pass some good statutes to make sure that victims are treated fairly." But statutes have been inadequate to restore balance and fairness for victims. 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.

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.” Attempts to establish rights by federal or state statute, or even state constitutional amendment, have proven inadequate, after more than twenty years of trying.

On behalf of the Department of Justice, Ray Fisher, the Associate Attorney General, recently 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.”

A number of legal commentators have reached similar conclusions. In the 1997 Harvard Law Bulletin, Professor 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.” He has 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”

Additionally, in the Baylor Law Review, Texas Court of Appeals Justice Richard Barajas has explained that “[i]t is apparent . . . that state constitutional amendments alone cannot adequately address the needs of crime victims.” Federal statutes are also inadequate. Professor Cassell’s detailed 1998 testimony about the Oklahoma City Bombing Case shows that, as he concluded, “federal statutes are insufficient to protect the rights of crime victims.”

Judiciary Committee Action

Mr. President, I was pleased that in July 1998 the Senate Judiciary Committee passed the amendment, S.J. Res. 44, by a bipartisan vote of 11 to 6. The amendment has strong bipartisan support. It was cosponsored by 30 Republicans and 12 Democrats, including leadership members such as Senators Lott, Thurmond, Mack, Coverdell, Craig, Breaux, Reid, Torricelli, and Ford (now retired).

Conclusion

Again, 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.

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