claims payments under S. 2290. The composition of those claims and a summary of the resulting costs is displayed in Table 2.

Although CBO estimates that the Asbestos Fund would pay more for claims over the 2005–2014 period than it would collect in revenues, we expect that the administrator of the fund could use the borrowing authority authorized by S. 2290 to continue operations for several years after 2014. Within certain limits, the fund's administrator would be authorized to borrow funds to continue to make payments to asbestos claimants, provided that forecasted revenues are sufficient to retire any debt incurred and pay resolved claims. based on our estimate of the bill's likely long-term cost and the revenues likely to be collected from defendant firms, insurance companies, and certain asbestos bankruptcy trust funds, we anticipate that the sunset provisions in section 405(f) would have to be implemented by the Asbestos Fund's administrator before all future claimants are paid. Those provisions would allow the administrator to continue to collect revenues but to stop accepting claims for resolution. In that event, and under certain other conditions, such claimants could pursue asbestos claims in U.S. district courts.

TABLE 2.—SUMMARY OF ESTIMATED ASBESTOS CLAIMS AND AWARDS UNDER S. 2290

[Dollars in billions]

	Initial 10-year period		Life of fund	
	Number of claims	Cost	Number of claims	Cost of claims
Claims for malignant conditions	59,000	$36	127,000	$82
Claims for nonmalignant conditions	627,000	17	1,230,000	36
Pending claims	300,000	22	300,000	22
Total	986,000	75	1,657,000	140

Major differences in the estimated costs of claims under S. 1125 and S. 2290

You also requested that CBO explain the major differences between our cost estimates for S. 1125 and S. 2290. On March 24, 2004, in a letter to Senator Hatch, CBO updated its October 2, 2003, cost estimate for S. 1125, principally to reflect new projections about the rate of future inflation and an assumed later enactment date for the bill. That letter explains that we now estimate enactment of S. 1125 at the end of fiscal year 2004 would result in claims payments totaling $123 billion over the lifetime of the Asbestos Fund (about 50 years).

Three factors account for the difference between the estimated cost of claims under S. 1125 and that under S. 2290 (see Table 3):

The award values specified in S. 2290 are higher for certain types of diseases. That difference would add about $11 billion to the cost of claims, CBO estimates.

Under S. 2290, most asbestos claims could not be settled privately once the bill is enacted. In contrast, under S. 1125, asbestos claims could continue to be settled by private parties between the date of enactment and the date when the Asbestos Fund is fully implemented; defendant firms could credit any payments made during that period against required future payments to the fund. Consequently, CBO estimates that the fund created by S. 2290 would face about $5 billion in claims that, under S. 1125, we anticipate would be settled privately.

S. 2290 specifies that administrative expenses of the program would be paid from the fund. Under S. 1125, in contrast, administrative costs would be appropriated from the general funds of the Treasury. That difference would increase costs to the fund by about $1 billion over its lifetime.

In the limited time available to prepare this estimate, CBO has not evaluated the differences between the two bills in administrative procedures. Under S. 2290, the Asbestos Fund would be operated by the Department of Labor rather than the U.S. Court of Federal Claims. This and other differences between the two bills could affect the cost of administration, the timing and volume of claims reviewed, and the rate of approval for claims payments.

TABLE 3.—DIFFERENCES IN ESTIMATED CLAIMS AGAINST THE ASBESTOS FUND UNDER S. 1125 AND S. 2290

	In billions of dollars
Estimated cost of asbestos claims under S. 1125:	123
Added costs due to higher award values under S. 2290	11
Additional claims not privately settled after enactment under S. 2290	5
Administrative costs under S. 2290 [1]	1
Total estimated claims against the fund under S. 2290	140

[1] Under S. 1125 administrative costs would be appropriated from the general fund of the Treasury.

Major differences in estimated revenue collections under S. 1125 and S. 2290

CBO estimates that the Asbestos Fund under S. 2290 would be limited to revenue collections of about $118 billion over its lifetime, including contingent collections. CBO has not estimated the maximum amount of collections that could be obtained under S. 1125, but they could be greater than $118 billion under certain conditions. In our cost estimate for S. 1125, we concluded that revenue collections and interest earnings were likely to be sufficient to pay the estimated cost of claims under that bill. That is not the case for S. 2290.

Over the first 10 years of operations, we estimate that revenue collections under S. 1125 would exceed those under S. 2290 by $7 billion. Thus, under S. 2290 we estimate that there would be little interest earnings on surplus funds and that the Asbestos Fund would need to borrow against future revenues to continue to pay claims during the first 10 years of operations.

Estimates of the cost of resolving asbestos claims are uncertain

Any budgetary projection over a 50-year period must be used cautiously, and as we discussed in our analysis of S. 1125, estimates of the long-term costs of asbestos claims likely to be presented to a new federal fund for resolution are highly uncertain. Available data on illnesses caused by asbestos are of limited value. There is no existing compensation system or fund for asbestos victims that is identical to the system that would be established under S. 1125 or S. 2290 in terms of application procedures and requirements, medical criteria for award determination, and the amount of award values. The costs would depend heavily on how the criteria would be interpreted and implemented. In addition, the scope of the proposed fund under this legislation would be larger than existing (or previous) private or federal compensation systems. In short, it is difficult to predict how the legislation might operate over 50 years until the administrative structure is established and its operations can be studied.

One area in which the potential costs are particularly uncertain is the number of applicants who will present evidence sufficient to obtain a compensation award for nonmalignant injuries. CBO estimates that about 15 percent of individuals with nonmalignant medical conditions due to asbestos exposure would qualify for awards under the medical criteria and administrative procedures specified in the legislation. The remaining 85 percent of such individuals would receive payments from the fund to monitor their future medical condition. If that projection were too high or too low by only 5 percentage points, the lifetime cost to the Asbestos Fund could change by $10 billion. Small changes in other assumptions—including such routine variables as the future inflation rate—could also have a significant impact on long-term costs.

Intergovernmental and private-sector mandates

S. 2290 would impose an intergovernmental mandate that would preempt state laws relating to asbestos claims and prevent state courts from ruling on those cases. In addition, the bill contains private-sector mandates that would:

Prohibit individuals from bringing or maintaining a civil action alleging injury due to asbestos exposure;

Require defendant companies and certain insurance companies to pay annual assessments to the Asbestos Fund;

Require asbestos settlement trusts to transfer their assets to the Asbestos Fund;

Prohibit persons from manufacturing, processing, or distributing in commerce certain products containing asbestos; and

Prohibit certain health insurers from denying or terminating coverage or altering any terms of coverage of a claimant or beneficiary on account of participating in the bill's medical monitoring program or as a result of information discovered through such medical monitoring.

S. 2290 contains one provision that would be both an intergovernmental and private-sector mandate as defined in UMRA. That provision would provide the fund's administrator with the power to subpoena testimony and evidence, which is an enforceable duty.

CBO estimates that the aggregate direct cost of complying with the intergovernmental mandates in S. 2290 would be small and would fall well below the annual threshold ($60 million in 2004, adjusted annually for inflation) established in UMRA. CBO also estimates that the aggregate direct cost of complying with the private sector mandates in S. 2290 would well exceed the annual threshold established in UMRA ($120 million in 2004 for the private sector, adjusted annually for inflation) during each of the first five years those mandates would be in effect.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Walker (for federal costs, who can be reached at 226–2860, Melissa Merrell (for the impact on state, local, and tribal governments), who can be reached at 225–3220, and Paige Piper/Bach (for the impact on the private sector), who can be reached at 226–2960.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Mr. NICKLES. I yield the floor.

SCOTT CAMPBELL, STEPHANIE ROPER, WENDY PRESTON, LOUARNA GILLIS, AND NILA LYNN CRIME VICTIMS' RIGHTS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 2329, which the clerk will report.

The bill clerk read as follows:

A bill (S. 2329) to protect crime victims' rights.

The PRESIDING OFFICER. Under the previous order, each of the following Senators control 30 minutes: Senators KYL, HATCH, LEAHY, and FEINSTEIN.

The Senator from California is recognized.

Mr. REID. Will the Senator yield for a parliamentary inquiry?

Mrs. FEINSTEIN. Absolutely.

Mr. REID. Following the use or yielding back of the time, the Chair just announced we will vote on this measure; is that true?

The PRESIDING OFFICER. That is correct.

Mrs. FEINSTEIN. Mr. President, 8 years ago the Senator from Arizona asked me if I would join with him in a pursuit to give victims basic rights under the Constitution of the United States. It was something I knew a little bit about and I was delighted to do it. What I didn't know a lot about was the drafting of a constitutional amendment and how difficult it was. The next 8 years actually proved to be one of the most rewarding times of my Senate experience.

First, I thank the Senator from Arizona for his collegiality, for the ease with which we have been able to work together, and for his leadership on this issue, which has been absolutely 100 percent unrelenting.

In a time of increasing partisan separation in this body, the friendship, the collegiality, and the leadership has been so appreciated by me. It has been one of the bright spots in my Senate career. I want him to know how much I appreciate it.

I also thank victims, about 30 or 40 of whom are present in the gallery. These are victims who have had terrible things happen to them, but rather than sink back into the depths of despair, have decided they would fight for something so that anyone who had similar things happen to them could have a part in the criminal justice system. Particularly, I would like to acknowledge a few of those victims.

The first is Colleen Campbell. Colleen Campbell has lost two members of her family as a product of murder. Senator KYL, in his remarks, will make that clear. She has become an ardent supporter of our efforts, and a small pin that Senator KYL and I are wearing today is the pin which represents a group called ''Force 100.'' These are victims who have been asking Congress to take this action. The pin depicts an angel holding a checkered flag. Her brother, Mickey Thompson, who was murdered, was a race car driver, and therefore the checkered flag. Her son, Scott Campbell, was also murdered. Colleen, a brilliant leader and a wonderful woman, has lost two members of her family—her son and her brother—to murder.

The other was Roberta Roper. Roberta is one of the first people I met. She hails from Maryland. Again, Senator KYL will say more about the circumstances of that crime.

The third is Steve Twist, who has represented the victims with integrity and steadfastness over these past 8 years, to try to get for them as much as could be possible in the recognition of their rights.

Essentially, bottom line, what we have found after numerous Judiciary Committee subcommittee hearings, committee hearings, markups, putting the victims' rights constitutional amendment out on the Senate floor in a prior session, taking it down because we didn't have the votes, beginning anew in this session, going through the processes in committee, and recognizing that we didn't have the 67 votes necessary for a constitutional amendment—both Senator KYL and I, as well as the victims and their advocates, decided that we should compromise. There are Members of this body who very much want a statute. There are Members of this body who very much want a constitutional amendment. We have drafted a statute which we believe is broad and encompassing, which provides enforcement rights for victims, provides funding for the Department of Justice victims' rights programs, for legal clinics, for enforcement to carry out this law federally and also to spread the word to local and State jurisdictions to enact similar laws.

We basically provide a set of eight rights:

The right to be reasonably protected from the accused; the right to reasonable, accurate, and timely notice of public proceedings so that you know what is happening as well as notice if the accused is released or escapes from custody—

I can't tell you how many victims who may have testified against their assailant live in dread of the fact that an assailant will be released, they won't know it, they won't be able to protect themselves, and the assailant will come after them. That is not theory. It has happened over and over again. There are cases of that, with which I am intimately, unfortunately, knowledgeable—

The right to be present at public proceedings, not to be barred from a court hearing, not to be barred by a public proceeding involving a plea agreement;

The right to be reasonably heard at critical steps in the process, those involving release, plea, or sentencing; the right to confer with the prosecutor;

The right to full and timely restitution, as provided by law;

The right to proceedings free from unreasonable delay;

And the right to be treated with fairness and with respect for the victim's dignity and privacy.

At one time the system of criminal justice in the United States of America provided these rights. Victims had rights until about the mid-19th century, the 1850s, when the concept of the public prosecutor was developed in our Nation. Up to that time, victims brought cases. Victims hired lawyers. Victims even hired sheriffs to prosecute cases. That changed in the mid-19th century, and in that change the victim became left out of the process.

Nowhere was the need for this legislation made more clear than during the trials over the Oklahoma City bombing.

Because we got involved, the Senate and the House, because victims were not being given the rights afforded to them by prior legislation, victims then went to a district court of appeals and victims were then subsequently still told that they had no standing.

A brief account of the trial in the Oklahoma City bombing case illustrates this point:

During pre-trial conference in the case against Timothy McVeigh, the District Court issued a ruling to preclude any victim who wished to provide victim impact testimony at sentencing from observing any proceeding in the case.

In a hearing to reconsider the issue of excluding victim witnesses, the trial court denied the victims' motion asserting standing to present their claims and denied the motion for reconsideration.

Three months later in February 1997, the Tenth Circuit Court of Appeals, rejected, without oral argument, the victims' claims on jurisdictional grounds finding they had no ''legally protected interest'' to be present at the trial and had suffered no ''injury in fact.''

Congress reacted the next month by overwhelmingly passing the Victims' Rights Clarification Act of 1997, which provided that watching a trial does not constitute grounds for denying the chance to provide a victim impact statement at sentencing. President Clinton signed the bill into law on March 20, 1997.

When the victims filed a motion with the District Court seeking a hearing to assert their rights under the new law, the District Court concluded ''any motions raising constitutional questions about this legislation would be premature and would present issues that are not now ripe for decision.''

The court then entered a new order on victim-impact witness sequestration, and refused to grant the victims a hearing on the application of the new law, stating that its ruling rendered the request ''moot.''

I believe the result would be different if the bill we are considering today was law then. The victims and the families would have had standing, and would have been able to avail themselves of the mandamus proceeding to get a timely ruling on the merits from the Court of Appeals. Perhaps that would not have been necessary—the District Court judge, armed with the standing provision of this bill, perhaps would have reached a different result during the trial.

We have written a bill that we believe is broad. We have written a bill that provides an enforcement remedy; namely, the writ of mandamus.

This part of the bill is what makes this legislation so important, and different from earlier legislation: It provides mechanisms to enforce the set of rights provided to victims of crime.

These mechanisms fall into four categories:

A direction to our courts that they ''shall ensure that the crime victim is afforded the rights described in the law.''

A direction to the Attorney General of the United States to take steps to ensure that our Federal prosecutors ''make their best efforts'' to see that crime victims are aware of, and can exercise these rights.

A specific statement that the victim of a crime, or their representative, may assert these rights; the result is that, for the first time victims will have clear standing to ask our courts to enforce their rights.

And a new use of a very old procedure, the writ of mandamus. This provision will establish a procedure where a crime victim can, in essence, immediately appeal a denial of their rights by a trial court to the court of appeals, which must rule ''forthwith.'' Simply put, the mandamus procedure allows an appellate court to take timely action to ensure that the trial court follows the rule of law set out in this statute.

These procedures, taken together, will ensure that the rights defined in the first section are not simply words on paper, but are meaningful and functional.

The bill also has two separate resource provisions, which together will authorize the appropriation of $76 million over the next five years to ensure that the federal government assist crime victims in asserting these rights, and to encourage states to do the same: The bill authorizes a total of $51 million over five years for crime victim assistance grants administered by the Department of Justice to establish and maintain legal assistance programs throughout the nation.

These institutions are key to the success of this legislation, for this is how victims' rights will be really asserted and defended—by lawyers, standing up in court, and explaining to judges and prosecutors what the law means, and how it applies in the case at hand. Rights and remedies need articulation to work, and this money will help make that happen.

These grants, championed by my colleague Senator LEAHY, provide a total of $25 million over five years for a specific, and critical, purpose: to ''develop and implement'' the type of notification systems that take full advantage of modern technology.

Computers, linked to sophisticated telephone or automatic mailing systems, can help us ensure that the right to notice, set out in the first section of this bill, is not simply abstract, but is made real by a notification system that can provide ''accurate, and timely'' notice to victims' of crime and their families.

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.

Never before have these three critical components, rights, remedies and resources, been brought together. It has been said ''a right without a remedy is no right at all,'' and this law would couple victims' rights with victims' remedies in a way that has never been done before in the federal system. I believe that taken together we have a formula for success, and this law will work, and hopefully become the model for our States.

So why is the law needed?

Senator KYL and I have been working on this issue for the past 8 years. We offer this legislation because the scales of justice are out of balance—while criminal defendants have an array of rights under law, crime victims have few meaningful rights.

In case after case we found victims, and their families, were ignored, cast aside, and treated as non-participants in a critical event in their lives. They were kept in the dark by prosecutors to busy to care enough, by judges focused on defendant's rights, and by a court system that simply did not have a place for them.

The result was terrible—often the experience of the criminal justice system left crime victims and their families victimized yet again.

Let me be clear. I am not talking about the necessary emotional and psychological difficulties which are almost inevitable in our adversary system. Cross examination can be hard. The legal system sometimes must seem complex and irrational to those who do not work in it. Sometimes judges and juries make decisions that victims of crime do not like. But that is not the problem that this law addresses.

That problem is one of process and fairness. The rights I have spoken about are basic, and do not come at the expense of defendant's rights.

Boiled down, they involve the simple right to know what is going on, to participate in the process where the information that victim's and their families can provide may be material and relevant, and the right to be safe from violence.

I mentioned earlier the dramatic disparity between the rights of defendants in our constitution and laws, and the rights of crime victims and their families. My point is to illustrate that our government, and our criminal justice system, can and should care about both the rights of accused and the rights of victims. That is what this law addresses.

Some have said that current law is adequate. For instance, the Victim of Crime Act of 1984 sets out rights for victims—in fact the bill before us restates many of those rights. But prior laws did not have the critical combination of rights and remedies that we now offer.

In fact, a number of victims' rights laws have been passed:

1982, the Victim and Witness Protection Act, mentioned before, which provided for victim restitution and the use of victim impact statements at sentencing in federal cases;

1984, the Victims of Crime Act, which encouraged the States to maintain programs that serve victims of crime, and established a Crime Victims' Fund, which now matches up to 60 percent of the money paid by States for victim compensation awards;

1990, the Victims' Rights and Restitution Act, which increased funding for victim compensation and assistance, and codified a victims' Bill of Rights in the federal justice system;

1994, the Violence Against Women Act, which authorized over $1.6 billion over six years to assist victims of violence and prevent violence against women and children;

1996, the Mandatory Victims Restitution Act, which required courts to order restitution when sentencing defendants for certain offenses;

1996, the Justice for Victims of Terrorism Act, which appropriated funds to assist and compensate victims of terrorism and mass violence;

And 1997, the Victim Rights Clarification Act, which reversed a presumption against crime victims observing any part of the trial proceedings if they were likely to testify during the sentencing hearing, an issue which developed during the Oklahoma City bombing case. Specifically, this legislation prohibited courts from (1) excluding a victim from the trial on the ground that he or she might be called to provide a victim impact statement at sentencing, and (2) excluding a victim impact statement on the ground that the victim had observed the trial.

All of these laws represent a step in the right direction. But they are not enough. They don't really work to protect victims' many had hoped. Why is this? I believe it because they fail to provide an effective procedure for victims to assert standing and vindicate their rights. The bill before us builds on these earlier attempts, and goes one very important step farther—linking rights to remedies, and, I hope, fixing the problem with these earlier laws.

Some have asked—why proceed with a statute, rather than a Consitutional 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.

The standing provision, coupled with the mandamus provision, may have the desired effect. This will be a test, and I, for one, will be watching it closely.

I think for both Senator KYL, and now for Senator HATCH, the distinguished chairman of the Judiciary Committee, and Senator LEAHY, the distinguished ranking member, who join us as major cosponsors of this bill, that we will follow this bill carefully and we will see whether the enforcement rights contained in this bill are adequate. If not, you can be sure as the Sun will rise tomorrow, we will be back with a constitutional amendment.

This bill is named after some of the victims. Both Senator KYL and I briefly want to state the story of the victims after whom the bill is named. I would like to tell the Senate a little bit about Louarna Gillis, who was 22 years old when she was slain on January 17, 1979, as part of a gang initiation. Her murderer wanted to enter the world of narcotics as part of the Mexican Mafia and was told the quickest way to do so was to murder the daughter of a Los Angeles Police Department officer. Can you believe it? It is true.

Louarna Gillis was targeted by the killer. He knew her in high school. That was the reason he targeted her. The murderer picked her up a few blocks from her home, drove her to an alley in East Los Angeles where he shot her in the head as she sat in the car. He pushed her into the alley and fired additional shots into her back.

Louarna's murderer was apprehended 6 months later. He had a long history of violence, including felony convictions.

Louarna's family was not notified of the arraignment, nor were they notified of other critical proceedings in this case. Her family's rights were largely ignored. The first trial resulted in a hung jury, 11 for first-degree murder, 1 not guilty. Louarna's father, John Gillis, was not allowed in the courtroom.

At the second trial, the murderer pled guilty to second-degree murder to avoid the death penalty. He was sentenced to 17 years to life. Parole for Louarna's murderer has successfully been blocked by her family to this day. He will be eligible for parole again in the next 6 to 8 months. Louarna's father, a former homicide detective with LAPD, had just left an intelligence assignment working against street gangs and the Mexican Mafia at the time of her murder. Can you imagine?

Mr. Gillis was later appointed by President George W. Bush as the Director of the Justice Department's Office for Victims of Crime. He testified before Congress on July 17, 2002. I said:

> I know firsthand the personal, financial, and emotional devastation that violent crime exacts on its victims. As a survivor of a homicide victim, I testify . . . with the unique advantage of understanding the plight that victims and their families face in the criminal justice system . . . When a person is victimized by crime, he or she is thrust into a whole new world in which the State's or the government's needs take priority.
>
> This is the most devastating time in a person's life, when they have lost a loved one to homicide or violent crime; they need protection.
>
> They need to let the court know how this crime has impacted their lives, because it will have a long-lasting, traumatic impact in their lives. It's important that they have the opportunity to say something to defend their loved one.

This terrible story took place in my home State of California. This bill will help fathers like Mr. Gillis: he would be notified of key proceedings, and be able to participate in a meaningful way.

I would like to tell you about Nila Ruth Lynn. Here is her picture. She was 69 years old. She was murdered at a homeowners association meeting on April 19, 2000, when an angry man stormed into the meeting and announced: ''I'm going to kill you.''

He was unhappy with the way the association had trimmed the bushes in his yard the previous month. Nila and another woman were killed and several other men were injured during the rampage. She died on the floor in the arms of her husband Duane. They had been married 49 years and 9 months. Nila left behind Duane and six children. The money the children had been saving for a 50th wedding anniversary gift was instead used to pay for her casket.

Duane Lynn suffered through long delays and continuances in this case. Despite clear State constitutional and statutory rights, Duane was not allowed to make a sentencing recommendation for his wife's murderer. Nila's killer was sentenced to death. Duane wanted the defendant to be sentenced to life imprisonment without the possibility of parole, rather than deal with the continuing appeals involving the death sentence.

The U.S. Supreme Court has denied its petition for a review of the Arizona Supreme Court's refusal to protect the right. He testified before the Senate Judiciary Committee on April 8. Here is what he said:

> We, as a family of the victim, which was my wife, my love, the person I still expect to walk through my front door every day—she was a real person, not just a name and a number on a document. We could say nothing about the consequences of that man who took all this away from me. You have no idea what this feels like. The evil done by a murderer inflicts tragedy, and that is bad enough. But injuries inflicted by our legal system are even harder to take. I felt kicked around and ignored by the very system the government has in place to protect law-abiding citizens.

This is not the way criminal justice should be practiced in the United States of America. The time has come to give victims of crime the right to participate in the system, the right to notice of a public hearing, the right to be present at that public proceeding, the right to make a statement when appropriate, the right to have restitution, if ordered by a judge, the right to know when your assailant or attacker is released from prison, and the right to be treated by our prosecutors and by our criminal justice system with respect and dignity. That is not too much for the Congress of the United States to strive energetically to achieve for the 22 million victims in this country.

It is with great pleasure that over the years I have worked with Senator KYL to achieve this. Once again, I cannot thank him too much.

I thank the Chair. I yield the remainder of my time to the distinguished Senator from Arizona.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Arizona.

Mr. KYL. Madam President, it isn't always possible for us to schedule matters in the Senate in a convenient way. I am aware Senator FEINSTEIN must leave to attend another meeting. It is my hope she will able to be here before we vote.

While she is still here, I must say I share her sentiment that some of the most gratifying work I have done in the Senate has been my work with Senator FEINSTEIN and her good staff in putting together a constitutional amendment and working hard to try to get it passed and preparing for the hearings—speaking with the victims, meeting with the Justice Department—literally hundreds of hours of time we have spent together working on this issue. It has helped to foster a bond of trust and friendship between us that I think could be used as a template for our colleagues in this body to work together in a bipartisan way.

I can never thank Senator FEINSTEIN enough for her work on this amendment. I know the many victims who are here in the gallery share that sentiment.

This legislation would not be before us today without Senator FEINSTEIN. That is simply a fact. For all of the hard work we have put in with her cooperation and her commitment to this, I thank Senator FEINSTEIN deeply. She knows that bond of trust will continue to exist between us.

Mrs. FEINSTEIN. Madam President, I thank the Senator. I do appreciate those words. They mean a great deal to me.

If I might, I ask unanimous consent to add the Senator from Maryland, Senator MIKULSKI, as a cosponsor of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Madam President, I would like to retain the remainder of my time.

Mr. KYL. Madam President, I ask unanimous consent that Senators NICKLES and INHOFE be added as original cosponsors of the legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Madam President, I join Senator FEINSTEIN in supporting S. 2329, which is the statutory version of the constitutional amendment we have prepared and about which Senator FEINSTEIN has spoken.

The legislation, as I will describe in a moment, will attempt to accomplish as much as possible the same goals the constitutional amendment which has been pending before us would have accomplished.

But before I discuss the details of that, there are several people I would like to thank. In addition to Senator FEINSTEIN—again it is impossible to express my appreciation enough for all of the hard work she put into this effort. We simply couldn't be here, because in order to get things passed in the Senate it is critical there be a bipartisan consensus, especially so for something that requires a supermajority. Without Democrats and Republicans working together, we would have never gotten to this point. Certainly Senator FEINSTEIN was largely responsible for the work on the Democratic side of the aisle.

I appreciate all of my colleagues' understanding and support on this as well.

Senator FRIST, who is willing to trust us in scheduling this for time on the floor—and there is very little time to take up matters, as the Presiding Officer knows—understood this was a very important commitment we had made to the victims of crime. During Crime Victims' Rights Month was the time to try to accomplish this. I appreciate his support.

I appreciate the support of Senator HATCH who throughout the years has never stood in the way but always lent us a hand in setting up a hearing and getting a time and a room for markup on the constitutional amendment and supporting its passage.

Again, it is not easy to get a constitutional amendment through even the Judiciary Committee, let alone to get it adopted. But Senator HATCH was supportive of that effort. I very much appreciate his cosponsorship of the statutory version of this amendment, as well as the support of Senator LEAHY.

I think I would be remiss if I didn't make the point that the first cosponsors of this legislation were Senator FEINSTEIN, myself, and Senators HATCH and LEAHY, chairman and ranking member of the Judiciary Committee.

Obviously this legislation has very strong support. We anticipate it will pass overwhelmingly and will be quickly sent to the House for action there, and hopefully to the President, who I am confident will be supportive of it and will sign it.

Let me at this point thank some of the victims' rights organizations. Again, they were responsible for bringing the issue to our attention and for providing a lot of the information we needed to be able to make the cases and for, frankly, the moral support to keep going. When Senator FEINSTEIN and I would get discouraged, after meeting with victims' rights groups we were no longer discouraged; we were even more committed to pursue this head on. Some of them are headed by remarkable people. There is a whole page of groups I will thank.

Specifically, I thank Mothers Against Drunk Driving, the National Organization for Victim Assistance, Parents of Murdered Children, and Force 100, and especially Colleen Campbell for her leadership of Force 100. Senator FEINSTEIN has already spoken of Colleen Campbell, and this pin in memory of Mickey Thompson speaks volumes about her leadership of this effort.

The fact this is Crime Victims' Rights Month and week I think is important. President Reagan actually had the first recognition of crime victims in a week that was designated for that purpose.

I think it is important at this time we especially recognize the victims of crime all over America; that with this year's memorial of victims' rights, America's values will be vindicated to some extent with the passage of this legislation.

It is especially poignant we would be waiting at this time to recognize these rights of victims of crime. Indeed, it is right to take up this issue. The right to fairness for crime victims and the right to notice and presence and participation are deeply rooted concepts in the United States of America. This country is all about fair play and giving power to the powerless in our society. It is about recognizing the values of liberty of the individuals against encroachments of the Government.

Fair play for crime victims, meaningful participation of crime victims in the justice system, protection against a government that would take from a crime victim the dignity of due process—these are consistent with the most basic values of due process in our society.

I was involved in Arizona issues for victims of crime even before I ever ran for the U.S. House of Representatives, so this was to some extent a cause for me before I became a public official. It was after I became a public official and people really came to me with these stories that I realized I had an opportunity to do more than the things I had done before. I have come to see the need for these protections as critical for our country.

While engaged in all of the other important activities, at bottom, it is a country about individuals who have inherent rights recognized and given to us by God. That is the basis for the creation of this country. Human dignity and the right that all people are made in God's image is such an important part of the foundation of our country that we would be remiss if we did not recognize that concept, that value, especially for those who have been victimized in our society because we could not as a government provide adequate protection for them.

I came to realize in many cases these victims were being victimized a second time because while we were asking them sometimes to come into court and testify against the perpetrators of the crime so they could be incarcerated or dealt with in an appropriate way for the further protection of society, we were not helping these victims at all. They were suffering through the trauma of the victimization and then being thrown into a system which they did not understand, which nobody was helping them with, and which literally prevented them from participation in any meaningful way. I came to realize there were literally millions of people out there being denied these basic rights, being victimized by our criminal justice system.

Let me mention two circumstances, but we will discuss all of the rights in a moment. The one circumstance that seemed to be the most frequent is: My mother was murdered, my daughter was murdered—whatever the situation—and I could not attend the trial. That is what our system says today.

While there are statutes in States and even some State constitutional provisions that purportedly guarantee a victim will not be denied access to the courtroom, it is still the case today that the victims, the victims' families, cannot even go into the courtroom. The defendant is there, the defendant's family is there seated in a reserved row seats, but the victim and the victim's family cannot be present. That is fundamentally wrong. We are not talking even about them saying anything. Obviously, everyone in the courtroom has to behave. The judge can throw anybody out if they do not behave or if they express emotions or try to communicate with the jury. That is not the issue.

They could not attend sometimes because the defendant's lawyer would say: It would be prejudicial to my client if the victims are seen in the courtroom. This was one of the circumstances that I could not believe our criminal justice system was imposing. It is one of those things that is fixed in this statute.

The other circumstance—and there is an especially telling, emotional case in Arizona I became familiar with which induced me to pursue this with all the vigor I could—is the circumstance where a crime has been committed, the perpetrator has been convicted and is in prison or jail, but unbeknown to the victim and the victim's family, the individual gets out of jail. The individual escapes, has some kind of a parole hearing or in some other way is able to leave before the sentence is up, and the victims are not even notified, let alone given an opportunity to appear before that parole board and say: Wait a minute, this person has a 15-year sentence and you are letting him out after 8 years. Let me tell you what he did to me.

Not to go into detail but to finish that story, in one of the Arizona cases with which I am familiar, the woman having been brutally raped and slashed and left to die recovered. Her perpetrator was convicted and put into prison. He had a parole hearing and the parole board decided to release him prematurely. She got no notice of that. She got no opportunity to be present.

By not quite coincidence but enormous alertness and compassion on the part of an individual in the Governor's office at the time routinely reading through the notices of the parole board, a staff person saw this and again almost coincidentally thought, Wait a minute, I don't think that is right under our law. He tracked down this individual who had by then moved to California and asked her if she would like an opportunity to appear before another parole board hearing if that could be arranged. She said yes. The parole board agreed to revisit the issue in a subsequent hearing and she testified. She told her story. After she told her story, the parole board reversed its opinion.

I asked her later: Were you afraid he would come after you if he were released? She said: No. My victimization was random. I was trying to hitchhike. I should never have done it.

He—and, by the way, his wife—picked her up and she was then brutalized as I described it. She said: It was random. I don't think he would come after me again. What I was concerned about was knowing the nature of the kind of individual that commits this kind of crime, he would do it again to somebody else. I didn't want him to have that opportunity to hurt somebody else like he hurt me.

That tells you about the motivation of these victims of crime who are willing, despite the hurt that it causes them, to participate in the criminal justice system—not just for themselves because they get nothing out of it—because they know what it is like and they want to prevent that harm to others.

Those are the kind of people whose portraits are behind me and who Senator FEINSTEIN was talking about. That is why we are trying to do something about righting this wrong, about balancing the scales of justice. Rightly, defendants in this country are protected better than in any country in the world through constitutional amendments that give them rights. We are not trying to take one single right away from any defendant. That would be wrong under our system. But we do think it is time to balance the scales of justice. That was the motivation for Senator FEINSTEIN and me.

Let me talk about some of these individuals. Senator FEINSTEIN talked about Duane Lynn. Duane is from Arizona. I will not repeat the entire story, but he enjoyed the Navy as a young man. He performed in the military. He had a successful career as a highway patrolman upholding the laws of the State of Arizona. He and his wife Nila literally fell in love as teenagers and had been married 49 years and 9 months, just 3 months shy of their 50th anniversary when she was brutally murdered as Senator FEINSTEIN talked about. They had left their home to attend this homeowners' meeting and just happened to be in the wrong place at the wrong time because the murderer, who was a disgruntled and enraged former resident of the community, burst into the room saying, I am going to kill you, and he started shooting.

As I said, Duane and Nila had been married not quite 50 years when she was brutally murdered. In anticipation of the golden anniversary of their parents, the Lynn children had secretly been saving money to throw a surprise anniversary party, and that money was used to pay for Nila's casket.

It is at this point that Duane's journey through the legal system really started. As Senator FEINSTEIN recounted, he did not really understand what it meant to participate in the judicial system at that time but at least understood that he would have some voice in what happened.

Under the Arizona law and constitution, he had a right, for example, to make a recommendation to the judge when the judge sentenced the perpetrator. But despite having that right in the Arizona Constitution—and, by the way, Arizona judges are pretty good about enforcing these rights—he was denied the right to even appear at the time of sentencing to tell the judge the sentence he thought the perpetrator should get.

He lost an appeal to the Arizona Supreme Court and a petition for certiorari to the U.S. Supreme Court. They all told him his rights were unenforceable because for him to speak would violate the defendant's eighth amendment rights against cruel and unusual punishment.

Now, that is one of the reasons that Senator FEINSTEIN and I believed that a constitutional amendment was necessary, because as long as the defendant's rights are always asserted as Federal constitutional rights, a mere statutory right, such as we are creating today, is going to be subservient to that. It will be very difficult for victims to win in cases where the defendant's right is asserted under the U.S. Constitution.

Even as a State constitutional right, Duane Lynn was denied the right to speak because the court perceived that the Federal eighth amendment superseded the Arizona State Constitution. So we may still have problems, even with the adoption of a statute here. But Senator FEINSTEIN and I are committed to moving the cause forward, to see whether it is possible to make statutes work, so that we do not need a Federal constitutional amendment. If, as it turns out, we do, then we will revisit the issue, as she said. Hopefully, we will not need to do that.

Just a final I think paradoxical or ironic ending in the Duane Lynn matter. He wanted to speak at the time of sentencing, not to urge the court to impose the death sentence but to impose life without parole. That recommendation was denied because, as I said, the court held that the defendant's rights outweighed his rights.

Let me talk about some of the other victims. I just briefly want to mention Louarna Gillis, because John Gillis, her father, who was a Los Angeles police officer at the time, is now a very important person in our Government in protecting victims' rights because he heads up the Office for Victims of Crime in the Department of Justice.

One of the reasons the Attorney General and the President wanted him in that position is because he felt firsthand the sting of being a crime victim when his daughter was killed, picked out at random by a gang member because the gang member, to be initiated in the gang, had to kill the child of a cop. She just happened to be a child of a cop and she was killed.

John could not be here today, but his wife Patsy is in attendance. I commend her for her support of this effort as well.

Their family has suffered further tragedy in the very recent death of their only other child, their son John. So it reminds us that it is important not only for people to have rights as victims of crime, but to recognize that these very people are the people who are willing to take up the cause here to right this injustice.

By John Gillis' efforts, he literally became the person in charge of this issue in our Government. He is doing an incredibly great job. Part of this legislation is to give him some additional responsibility and a little bit more in the way of resources to see to it that our Federal Government, through the Department of Justice, the Attorney General, and the Office for Victims of Crime, can continue to support the effort of crime victims. I applaud John Gillis very much and appreciate his wife Patsy being with us today.

Let me mention three other people, because this legislation is named for five people—the two I mentioned and then the other three I will mention. Let me discuss each of them.

Roberta Roper is also in attendance. There is nobody who has pursued the cause for victims' rights more strongly than Roberta Roper. She has made numerous trips to Washington. She has testified before the Judiciary Committee in support of the constitutional amendment. She has given us incredible advice and strength. What she did, after her victimization, when her daughter Stephanie was murdered at the age of 22, was to start a foundation in her daughter's name, and that Stephanie Roper Foundation has been a tremendous asset in pursuing the cause of victims around the country.

Her daughter, on April 3, 1982, was kidnapped and raped, tortured and dismembered by two men. The killers had just come upon her when Stephanie's car had been disabled. They had kidnapped her and over a period of 5 hours had repeatedly tortured her. She tried to escape but was caught and killed in a most brutal manner.

Her parents were not even notified of the many continuances that were granted in this case. They were excluded from the courtroom for the entire first trial that occurred. They could not even go into the courtroom. In 1982, the defense convinced the court that the victims would be emotional, irrelevant, and probable cause for a reversal of an appeal. The court agreed and, therefore, denied Vince and Roberta Roper the right to be a voice for their daughter.

That is one of the things that will be corrected by this legislation. We hope a statutory correction will serve to be sufficient.

Roberta Roper is in attendance, and I thank her from the bottom of my heart. She and Collene Campbell—who I will mention next—have been two of the real troopers in this battle.

I also want to say, with regard to Collene Campbell, when Senator FEINSTEIN discussed the death of her son Scott, it is unfortunately the case in many of these situations that more than once people are victimized. Collene and Gary Campbell have been victimized twice. Collene's brother was killed as well and that has been discussed as well.

One of the killers of their son Scott was released from prison. By the way, the circumstances of Scott's murder were especially gruesome. He met an individual who was going to fly him to North Dakota, and somewhere between Los Angeles and Catalina Island, Scott Campbell was killed. His body was literally thrown out of the airplane into the ocean and has never been located.

His parents were not permitted to enter the courtroom during the trials for the men who murdered their son. They were not even notified of a district court of appeals hearing. When one of the killers was released, as I said, the Campbell family was not notified. They only learned of the developments through the newspaper.

You can argue that a defendant might be prejudiced in certain situations by victims having certain rights, but to treat victims this way is not to treat them with the fairness and dignity any American deserves under our values as a nation. Even when these rights exist in statute, when they are not observed, it is time for the Congress to act. That is why we act here, so that no one else will have to suffer through this kind of unfair treatment.

Scott Campbell is shown in this picture. I mentioned Nila Lynn before, as shown in this picture. Roberta Roper's daughter Stephanie is this beautiful young lady shown in this picture right here. As I said, her mother is with us today.

I would also like to mention Robert Preston. In the case of Bob Preston's 22-year-old daughter, Wendy—the beautiful young lady shown in this picture right here—she was murdered in his home on June 23, 1977. She was killed when a man broke into the home to steal money to buy drugs. Her body was found 6 days later. Wendy's murderer was arrested and charged with first-degree murder. Her parents were told that the State of Florida was the victim in the case and they would be notified if and when they were called as witnesses. That was it.

After nearly 6 years, the murderer was allowed to plead to a second-degree murder charge, and he was sentenced to life in prison. In 1987, the Florida Supreme Court overturned the killer's conviction, and in the decision also held that the victims had no rights. This is the kind of example that needs to be brought to light so Americans can appreciate that it is time for Congress to act.

This is Wendy Preston, yet another example of victims being treated unfairly.

There are a lot of other cases we could talk about. Wendy Preston and Stephanie Roper, Scott Campbell, Mickey Thompson, Nila Lynn, and Louarna Gillis are the best of America. We owe them our best. Our best is to ensure the families of future victims will not suffer through the same indignity their families have had to endure.

That is why Senator FEINSTEIN and I began the effort to try to persuade our colleagues a constitutional amendment was necessary to protect these rights, because the defendant's right was always constitutional. Unless we had an equal constitutional right, there was no chance in a conflict the court would ever afford the victim an equal right. That is why we still have reservations about a statutory remedy.

But a lot of our colleagues have said, try a statutory remedy and let's see if by bringing these situations to light, by providing incentives for States to follow the Federal example, by embodying these same rights that were in the constitutional proposal in a statute and giving the victims a right to sue, a remedy, a mandamus remedy, let's see if that can work.

After 8 years of work on the Federal constitutional amendment, supported by President Bush and the Attorney General, we were able to schedule, after we passed the bill through the Judiciary Committee, that constitutional amendment for floor action today. Knowing we would not have the 67 votes to pass it, we decided it was time to get something tangible in 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.

Through the significant help of an individual who I am sure all would acknowledge has been the national leader of this effort, Steve Twist, a lawyer from Phoenix, AZ, communicating with the various victims' rights groups, the consensus was reached 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.

These are the rights that are set forth in the new statute: That the victim would be reasonably protected from the accused; afforded reasonable, accurate, and timely notice of any public proceedings involving the crime or any release or escape of the accused; included in public proceedings; ensured proceedings are free from unreasonable delay; that they could confer with the attorney for the government in the case; that they would be given a voice to be heard at any public proceeding involving release or plea or sentencing.

I ask unanimous consent to take time from the time under the control of Senator FEINSTEIN.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. I noted in a rather inaccurate Washington Post editorial of yesterday that somehow victims would have a right to speak to the jury. That is what the Washington Post thought. They were very wrong, as they were in other comments in the editorial. There is nothing in here about anything like that. It is only during the time of a release, like the parole hearing I talked about earlier, or sentencing or pleading there would be an opportunity to speak.

They would have a right to full and timely restitution in appropriate cases, and the right to be treated fairly, with respect for their dignity and privacy. Most importantly, they would be granted the right to enforce these rights. They would have legal standing to enforce their rights in court with the appropriate writ procedure to be able to take the court's decision to the higher court. That is one of the problems with existing Federal law which

the Tenth Circuit Court of Appeals noted did not grant the victims the standing to sue. So that had to be corrected here.

Finally, we authorized an appropriation of funds to assure the proper oversight of these rights is exercised, that moneys would be made available to enhance the victim notification system, managed by the Department of Justice's Office for Victims of Crime, and the resources additionally to develop state-of-the-art systems for notifying crime victims of important states of development.

To pursue that a moment, all courts notify attorneys for the defendant, the prosecutor's office, and it is a relatively simple matter to add another name and telephone number or address to that list. That is what we are talking about here. It is now being done electronically. It is very easy. So the notice to victims of crime is not something that should be seen as an impediment.

I would like to conclude by thanking some people. Since I know Senator FEINSTEIN did have to attend another meeting, let me thank some folks. Before I do that, I ask unanimous consent to add Senators LOTT and NICKLES as original cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. As soon as Senator LEAHY is here, I will relinquish the floor to him.

I do want to thank President Bush and Attorney General Ashcroft; the Office for Victims of Crime Director John Gillis and the administration for their help; Colleen Campbell and her husband Gary; Roberta Roper; Bob Preston; Duane Lynn; Earlene Eason from Indiana, whose son Christopher was murdered; Sally Goelzer from Arizona, whose brother was murdered; Myssey Hartley from Arkansas, whose brother was murdered; Dee Engles, also from Arkansas, a family member murdered; the National Organization for Victim Assistance, especially Beth Rossman, president, Marlene Young, executive director, and John Stein, deputy director, who has been a tremendous help; the National Organization of Parents of Murdered Children, Nancy Ruhe-Munch, executive director; Mothers Against Drunk Driving, Wendy Hamilton, president, and Stephanie Manning; Professor Douglas Beloof, director of the National Crime Victim Law Institute, one of the entities integral to ensuring these rights are enforced—he has done a tremendous job in Oregon in setting up the programs and the lawyers who can defend victims' rights—Attorney Meg Garvin, lead staff attorney at NCVLI; Attorney General Jane Brady and the National Association of Attorneys General—this has been a bipartisan effort and almost every attorney general in the country has signed on; the National District Attorneys Association; the Fraternal Order of Police, strongly in support of what we are doing; the International Association of Chiefs of Police; the National Restaurant Association; U.S. Chamber of Commerce; Maricopa County attorney Rick Romely and county attorney Barbara LaWall in Arizona, who have helped me a lot in this effort; District Attorney Josh Marquis; the Arizona Voice for Crime Victims.

On Senator HATCH's staff, I thank Grace Becker, and on Senator CORNYN's staff, Jim Ho. On Senator FEINSTEIN's staff, I can't thank enough Steve Cash and David Hantman who have been tremendously helpful in providing great advice and counsel, particularly in the last 3 or 4 days, helping us to convert the amendment to a statutory provision and in working on the Democratic side to make this a truly bipartisan process.

Without their assistance, we would not have the statute before the body either.

I have a couple legal interns, Tom Stack and Kevin Wilson, who provided tremendous help to me, and finally I wish to thank my chief person on my staff, Stephen Higgins and I mentioned Steve Twist.

All of these organizations and individuals have been of tremendous help in getting to this point and ensuring we will be able to get this statutory provision passed and sent over to the House for action.

Madam President, I am going to conclude with a couple of points. As soon as Senator LEAHY arrives, I am going to relinquish the floor to him because Senator FEINSTEIN has the remainder of the time, and I advise colleagues, if anyone wishes to speak, they should do so right away because I suspect at the conclusion of Senator LEAHY's remarks and anything Senator HATCH and Senator FEINSTEIN wish to say, we will proceed to the final passage vote.

The act before us, in addition to setting forth the rights and providing a remedy for the victims of crime, has an authorization of funding. Let me describe that authorization.

In the first year, fiscal year 2005, $16.3 million will be available to the U.S. Attorney's Victims Witness Office for the Victims of Crime Office in the Department of Justice; $300,000 is for the Office of Victims of Crime to administer these new rights; $7 million to the Office of Victims of Crime for the National Crime Victim Law Institute to provide grants and assistance to lawyers to help victims of crime in court. It is the only entity in the country that provides lawyers for victims in criminal cases, and it will provide for two new regional offices and nine specific clinics. Finally, borrowing a provision from a bill Senator LEAHY had earlier, there is $5 million for grants to States to develop and implement state-of-the-art victim notification systems.

In the following 4 years, there will be each year authorized an appropriation of $26.5 million generally to the same entities and offices to ensure that these programs are carried out, that victims will have the support they need, and that the notice that is guaranteed in the legislation will be provided. Those are the authorizations for the funding. That is a description of the legislation.

I will close by again referring to the people who have driven this effort, the people who represent the families and who are themselves victims of crime, who did not simply retreat into a shell following the tragedy that befell them but who were willing to muster the courage and the strength to do something about the issue, not necessarily so that they could receive any particular kind of vindication, but so future victims would not have to suffer through the same kind of problems and the same indignities they did.

This is the real spirit of great people, of leaders, and it is the spirit of America. I commend all of these victims for the leadership role they have played in being willing to step out in very difficult circumstances to prod those of us in the legislative body to move this process forward and to get this legislation adopted. They are the ones who deserve the primary thanks today.

The victory, when we pass this legislation, will be largely a victory for them and all of the future victims who will never have to suffer the same kind of indignities that they did.

Mr. President, as the sponsor of this bill, I would like to enter into a colloquy with the Senator from California. She is the primary cosponsor of this bill. After extensive consultation with our colleagues, we have drafted a bill with a broad bipartisan consensus. It is not the intent of this bill to limit any laws in favor of crime victims that may currently exist, whether these laws are statutory, regulatory, or found in case law. I ask Senator FEINSTEIN if she agrees.

Mrs. FEINSTEIN. Yes, it is not our intent to restrict victims' rights or accommodations found in other laws. I would like to turn to the bill itself and address the first section, (a)(1), the right of the crime victim to be reasonably protected. Of course, the Government cannot protect the crime victim in all circumstances. However, where reasonable, the crime victim should be provided accommodations such as a secure waiting area, away from the defendant before and after and during breaks in the proceedings.

Mr. KYL. I would like to address the notice provisions of section 2, (a)(2). The notice provisions are important because if a victim fails to receive notice of a public proceeding in the criminal case at which the victim's right could otherwise have been exercised, that right has effectively been denied. Public proceedings include both trial level and appellate level court proceedings. It does not make sense to enact victims' rights that are rendered useless because the victim never knew of the proceeding at which the right had to be asserted. Simply put, a failure to provide notice of proceedings at which a right can be asserted is equivalent to a violation of the right itself.

Equally important to this right to notice of public proceedings contained in this subsection is the right to notice of the escape or release of the accused. This provision helps to protect crime victims by notifying them that the accused is out on the streets.

For these rights to notice to be effective, notice must be sufficiently given in advance of a proceeding to give the crime victim the opportunity to arrange his or her affairs in order to be able to attend that proceeding and any scheduling of proceedings should take into account the victim's schedule to facilitate effective notice.

Restrictions on public proceedings are in 28 CFR Sec. 50.9, and it is not the intent here today to alter the meaning of that provision.

I ask Senator FEINSTEIN, if she can comment on her understanding of section (a)(2)?

Mrs. FEINSTEIN. My understanding of this subsection is the same the Senator's. Too often crime victims have been unable to exercise their rights because they were not informed of the proceedings. Pleas and sentencings have all too frequently occurred without the victim ever knowing that they were taking place. Victims are the persons who are directly harmed by the crime and they have a stake in the criminal process because of that harm. Their lives are significantly altered by the crime and they have to live with the consequences for the rest of their lives. To deny them the opportunity to know of and be present at proceedings is counter to the fundamental principles of this country. It is simply wrong. Moreover, victim safety requires that notice of the release or escape of an accused from custody be made in a timely manner to allow the victim to make informed choices about his or her own safety. This provision ensures that takes place.

I would like to turn to section 2, (a)(3) of the bill, which provides that the crime victim has the right not to be excluded from any public proceedings. This language was drafted in a way to ensure that the government would not be responsible for paying for the victim's travel and lodging to a place where they could attend the proceedings.

In all other respects, this section is intended to grant victims the right to attend and be present throughout all public proceedings.

This right is limited in two respects. First, the right is limited to public proceedings, thus grand jury proceedings are excluded from the right. Second, the Government or the defendant can request, and the court can order, judicial proceedings to be closed under existing laws. This provision is not intended to alter those laws or their procedures in any way. I ask the Senator is that is his understanding of this section.

Mr. KYL. Yes. That it is my understanding as well. There may be organized crime cases or cases involving national security that require procedures that necessarily deny a crime victim the right not to be excluded that would otherwise be provided under this section. This is as it should be. National security matters and organized crime cases are especially challenging, and there are times when there is a vital need for closed proceedings. In such cases, the proceedings are not intended to be interpreted as ''public proceedings'' under this bill. In this regard, it is not our intent to alter 28 CFR Sec. 50.9 in any respect.

Despite these limitations, this bill allows crime victims, in the vast majority of cases, to attend the hearings and trial of the case involving their victimization. This is so important because crime victims share an interest with the government in seeing that justice is done in a criminal case and this interest supports the idea that victims should not be excluded from public criminal proceedings, whether these are pretrial, trial, or post-trial proceedings.

This right of crime victims not to be excluded from the proceedings provides a foundation for the next section, section 2, (a)(4), which provides victims the right to reasonably be heard at any public proceeding involving release, plea, or sentencing. This provision is intended to allow crime victims to directly address the court in person. It is not necessary for the victim to obtain the permission of either party to do so. This right is a right independent of the Government or the defendant that allows the victim to address the court. To the extent the victim has the right to independently address the court, the victim acts as an independent participant in the proceedings. When a victim invokes this right during plea and sentencing proceedings, it is intended that the he or she be allowed to provide all three types of victim impact—the character of the victim, the impact of the crime on the victim, the victims' family and the community, and sentencing recommendations. Of course, the victim may use a lawyer, at their own expense, to assist in the exercise of this right. This bill does not provide victims with a right to counsel but recognizes that a victim may enlist counsel on their own.

It is not the intent of the term ''reasonably'' in the phrase ''to be reasonably heard'' to provide any excuse for denying a victim the right to appear in person and directly address the court. Indeed, the very purpose of this section is to allow the victim to appear personally and directly address the court. This section would fail in its intent if courts determined that written, rather than oral communication, could generally satisfy this right. On the other hand, the term ''reasonably'' is meant to allow for alternative methods of communicating a victim's views to the court when the victim is unable to attend the proceedings. Such circumstances might arise, for example, if the victim is incarcerated on unrelated matters at the time of the proceedings or if a victim cannot afford to travel to a courthouse. In such cases, communication by the victim to the court is permitted by other reasonable means. Is this the understanding of the Senator of this provision?

Mrs. FEINSTEIN. Yes. That is my understanding as well. The victim of crime, or their counsel, should be able to provide any information, as well as their opinion, directly to the court concerning the release, plea, or sentencing of the accused. This bill intends for this right to be heard to be an independent right of the victim, and thus cannot prevent the victim from being heard.

It is important that the ''reasonably be heard'' language not be an excuse for minimizing the victim's opportunity to be heard. Only if it is not practical for the victim to speak in person or if the victim wishes to be heard by the court in a different fashion should this provision mean anything other than an in-person right to be heard.

Of course, in providing victim information or opinion it is important that the victim be able to confer with the prosecutor concerning a variety of matters and proceedings. Section 2, (a)(5) provides a right to confer with the attorney for the Government in the case. This right is intended to be expansive. For example, the victim has the right to confer with the Government concerning any critical stage or disposition of the case. The right, however, is not limited to these examples. I ask the Senator if he concurs in this intent.

Mr. KYL. Yes. The intent of this section is just as the Senator says. This right to confer does not give the crime victim any right to direct the prosecution. Prosecutors should consider it part of their profession to be available to consult with crime victims about concerns the victims may have which are pertinent to the case, case proceedings or dispositions. Under this provision, victims are able to confer with the Government's attorney about proceedings after charging.

I would like to turn now to the section on restitution, section 2, (a)(6). This section provides the right to full and timely restitution as provided in law. This right, together with the other rights in the act to be heard and confer with the Government's attorney in this act, means that existing restitution laws will be more effective.

I am interested in the Senator's views of this restitution provision.

Mrs. FEINSTEIN. I thank the Senator. I join his comments.

I would like to move on to section 2, (a)(7), which provides crime victims with a right to proceedings free from unreasonable delay. This provision does not curtail the Government's need for reasonable time to organize and prosecute its case. Nor is the provision intended to infringe on the defendant's due process right to prepare a defense.

Too often, however, delays in criminal proceedings occur for the mere convenience of the parties and those delays reach beyond the time needed for defendant's due process or the Government's need to prepare. The result of such delays is that victims cannot begin to put the crime behind them and they continue to be victimized. It is not right to hold crime victims under the stress and pressure of future court proceedings merely because it is convenient for the parties or the court.

This provision should be interpreted so that any decision to continue a criminal case should include reasonable consideration of the rights under this section.

I am eager to hear the Senator's view on this.

Mr. KYL. I concur in the Senator's comments. I would add that the delays in criminal proceedings are among the most chronic problems faced by victims. Whatever peace of mind a victim might achieve after a crime is too often inexcusably postponed by unreasonable delays in the criminal case. A central reason for these rights is to force a change in a criminal justice culture which has failed to focus on the legitimate interests of crime victims, a new focus on limiting unreasonable delays in the criminal process to accommodate the victim is a positive start.

I would like to turn to section 2, (a)(8). This provision contains a number of rights. The broad rights articulated in this section are meant to be rights themselves and are not intended to just be aspirational. One of these rights is the right to be treated with fairness. Of course, fairness includes the notion of due process. Too often victims of crime experience a secondary victimization at the hands of the criminal justice system. This provision is intended to direct Government agencies and employees, whether they are in executive or judiciary branches, to treat victims of crime with the respect they deserve.

Does the Senator agree?

Mrs. FEINSTEIN. Yes.

It is not the intent of this bill that its significance be whittled down or marginalized by the courts or the executive branch. This legislation is meant to correct, not continue, the legacy of the poor treatment of crime victims in the criminal process. This legislation is meant to ensure that cases like the McVeigh case, where victims of the Oklahoma City bombing were effectively denied the right to attend the trial and to avoid federal appeals courts from determining, as the Tenth Circuit Court of Appeals did, that victims had no standing to seek review of their right to attend the trial under the former victims' law that this bill replaces.

I would also like to comment on section 2, (b), which directs courts to ensure that the rights in this law be afforded and to record, on the record, any reason for denying relief of an assertion of a crime victim. This provision is critical because it is in the courts of this country that these rights will be asserted and it is the courts that will be responsible for enforcing them. Further, requiring a court to provide the reasons for denial of relief is necessary for effective appeal of such denial.

Is that the understanding of the Senator?

Mr. KYL. Yes, it is.

Turning briefly to section 2, (c), there are several important things to point out in this subsection. First, where there is a material conflict between the Government's attorney and the crime victim, this provision protects crime victims' rights. This means that if Government lawyers interpret a right differently from a victim, urge a very narrow interpretation of a right, or do not believe a right should be asserted, they are in conflict with the victim and this provision requires that they inform the victim of this and direct the victim to independent counsel, such as the legal clinics for crime victims contemplated under this law. This is an important protection for crime victims because it ensures the independent and individual nature of their rights. Second, the notice section immediately following limits the right to notice of release where such notice may endanger the safety of the person being released. There are cases, particularly in domestic violence cases, where there is danger posed by an intimate partner if the intimate partner is released. Such circumstances are not the norm, even in domestic violence cases as a category of cases. This exception should not be relied upon as an excuse to avoid notifying most victims.

Is that the Senator's understanding of this section?

Mrs. FEINSTEIN. Yes.

I would now like to address the enforcement provisions of the bill, specifically section 2, subsection (d)(1). This provision allows a crime victim to enter the criminal trial court during proceedings involving the crime against the victim and assert the rights provided by this bill. This provision ensures that crime victims have standing to be heard in trial courts so that they are heard at the very moment when their rights are at stake and this, in turn, forces the criminal justice system to be responsive to a victim's rights in a timely way. Importantly, however, the bill does not allow the defendant in the case to assert any of the victim's rights to obtain relief. This prohibition prevents the individual accused of the crime from distorting a right intended for the benefit of the individual victim into a weapon against justice.

The provision allows the crime victim's representative and the attorney for the Government to go into a criminal trial court and assert the crime victim's rights. The inclusions of representatives and the Government's attorney in the provision are important for a number of reasons. First, allowing a representative to assert a crime victim's rights ensures that where a crime victim is unable to assert the rights on his or her own for any reason, including incapacity, incompetence, minority, or death, those rights are not lost. The representative for the crime victim can assert the rights.

Second, a crime victim may choose to enlist a private attorney to represent him or her in the criminal case—this provision allows that attorney to enter an appearance on behalf of the victim in the criminal trial court and assert the victim's rights. The provision also recognizes that, at times, the Government's attorney may be best situated to assert a crime victim's rights either because the crime victim is not available at a particular point in the trial or because, at times, the crime victim's interests coincide with those of the Government and it makes sense for a single person to express those joined interests. Importantly, however, the provision does not mean that the Government's attorney has the authority to compromise or co-opt a victim's right. Nor does the provision mean that by not asserting a victim's right the Government's attorney has waived that right. The rights provided in this bill are personal to the individual crime victim and it is that crime victim that has the final word regarding which of the specific rights to assert and when. Waiver of any of the individual rights provided can only happen by the victim's affirmative waiver of that specific right.

Does all of this correspond with Senator KYL's understanding of the bill?

Mr. KYL. Absolutely. The enforcement provision the Senator addressed is critical to this bill. Without the ability to enforce the rights in the criminal trial and appellate courts of this country any rights afforded are, at best, rhetoric. We are far past the point where lip service to victims' rights is acceptable. The enforcement provisions of this bill ensure that never again are victim's rights provided in word but not in reality.

I want to turn to section 2, subsection (d)(2) because it is an unfortunate reality that in today's world there are crimes that result in multiple victims. The reality of those situations is that a court may find that the sheer number of victims is so large that it is impracticable to accord each victim the rights in this bill. The bill allows that when the court makes that finding on the record the court must then fashion a procedure that still gives effect to the bill and yet takes into account the impracticability. For instance, in the Oklahoma City bombing case the number of victims was tremendous and attendance at any one proceeding by all of them was impracticable so the court fashioned a procedure that allowed victims to attend the proceedings by close circuit television. This is merely one example. Another may be to allow victims with a right to speak to be heard in writing or through

other methods. Importantly, courts must seek to identify methods that fit the case before that to ensure that despite numerosity of crime victims, the rights in this bill are given effect.

Does the Senator agree with this reading of the bill?

Mrs. FEINSTEIN. Absolutely. It is a tragic reality that cases may involve multiple victims and yet that fact is not grounds for eviscerating the rights in this bill. Rather, that fact is grounds for the court to find an alternative procedure to give effect to this bill.

I now want to turn to another critical aspect of enforcement of victims' rights, section 2, subsection (d)(3). This subsection provides that a crime victim who is denied any of his or her rights as a crime victim has standing to appellate review of that denial. Specifically, the provision allows a crime victim to apply for a writ of mandamus to the appropriate appellate court. The provision provides that court shall take the writ and shall order the relief necessary to protect the crime victim's right. This provision is critical for a couple of reasons. First, it gives the victim standing to appear before the appellate courts of this country and ask for review of a possible error below. Second, while mandamus is generally discretionary, this provision means that courts must review these cases. Appellate review of denials of victims' rights is just as important as the initial assertion of a victim's right. This provision ensures review and encourages courts to broadly defend the victims' rights.

Mr. President, does Senator KYL agree?

Mr. KYL. Absolutely. Without the right to seek appellate review and a guarantee that the appellate court will hear the appeal and order relief, a victim is left to the mercy of the very trial court that may have erred. This country's appellate courts are designed to remedy errors of lower courts and this provision requires them to do so for victim's rights. For a victim's right to truly be honored, a victim must be able to assert the rights in trial courts, to then be able to have denials of those rights reviewed at the appellate level, and to have the appellate court take the appeal and order relief. By providing for all of this, this bill ensures that victims' rights will have meaning.

I would like to turn our attention to section 2, subsection (d)(4) because that also provides an enforcement mechanism. This section provides that in any appeal, regardless of the party initiating the appeal, the government can assert as error the district court's denial of a crime victim's right. This subsection is important for a couple of reasons. First, it allows the Government to assert a victim's right on appeal even when it is the defendant who seeks appeal of his or her conviction. This ensures that victims' rights are protected throughout the criminal justice process and that they do not fall by the wayside during what can often be an extended appeal that the victim is not a party to.

Is that the Senator's understanding of the bill?

Mrs. FEINSTEIN. Yes.

I would like to turn to the next provision, section 2, subsection (d)(5). This subsection provides that a failure to afford a right under the act does not provide grounds for a new trial. This provision demonstrates that victim's rights are not intended to be, nor are they, an attack on defendants' protections against double jeopardy. This provision is not intended to prevent courts from vacating decisions in nontrial proceedings in which victims' rights were not protected and ordering those proceedings to be redone. It simply assures that a trial will not be redone. Thus, defendants' and victims' rights are both protected.

Is that the Senator's understanding?

Mr. KYL. Yes, it is. We have, over the years, tried to reassure those that oppose victims' rights that they are not an attempt to undermine defendants' rights. This provision reiterates that. It is important for victims' rights to be asserted and protected throughout the criminal justice process, and for courts to have the authority to redo proceedings other than the trial such as release hearings, pleas, and sentencings where victims' rights are abridged, but to not tread upon defendant's rights against double jeopardy in the process. Victims' rights are about a fair and balanced criminal justice system—one that considers defendant's rights as well as victims' rights. This provision protects that careful balance.

I want to turn to the definitions in the bill, contained in section 2, subsection (e). There are a couple of key points to be made about the definitions. A ''crime victim'' is defined as a person directly and proximately harmed as a result of any offense, felony or misdemeanor. This is an intentionally broad definition because all victims of crime deserve to have their rights protected, whether or not they are the victim of the count charged. Additionally, crime victims may, for any number of reasons, want to employ an attorney to represent them in court. This definition of crime victim allows crime victims to do that. It also assures that when, for any reason, crime victims are unable to assert rights on their own, those rights will still be protected.

Is that the Senator's understanding of the bill as well?

Mrs. FEINSTEIN. It is.

Now I would like to turn to the portion of the bill concerning administrative compliance with victims' rights, section 2, subsection (f). The provisions of this subsection are relatively self-explanatory, but it important to point out that these procedures are completely separate from and in no way limit the victim's rights in the previous section.

Is that Senator KYL's understanding?

Mr. KYL. Yes.

Let me comment briefly on section 4, Reports. Subsection (a) requires the Administrative Office of the U.S. Courts to report annually the number of times a right asserted in a criminal case is denied the relief requested, and the reasons therefore, as well as the number of times a mandamus action was brought and the result of that mandamus.

Such reporting is the only way we in the Congress and other interested parties can observe whether reforms we mandate are being carried out. No one doubts the difficulty of obtaining case-by-case information of this nature. Yes, this information is critical to understanding whether Federal statutes really can effectively protect victims' rights or whether a constitutional amendment is necessary. We are certain that affected executive and judicial agencies can work together to implement effective administrative tools to record and amass this data. We would certainly encourage the National Institute of Justice to support any needed research to get this system in place.

Is this Senator FEINSTEIN's understanding?

Mrs. FEINSTEIN. Yes.

One final point. Throughout this act, reference is made to the ''accused.'' Would the Senator also agree that it is our intention to use this word in the broadest sense to include both those charged and convicted so that the rights we establish apply throughout the criminal justice system?

Mr. KYL. Yes, that it is my understanding.

Mr. President, I anticipate Senator LEAHY's arrival. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Madam President, I see my good friend, the Senator from Arizona, in the Chamber. I know the distinguished Senator from California will be joining us shortly. What is the time allocation? I know the distinguished Senator from Arizona wants to make sure we all have time, but I was just curious where we are.

The PRESIDING OFFICER. The Senator from Vermont and the Senator from Utah each have 30 minutes. The Senator from California has 6 minutes 34 seconds.

Mr. LEAHY. I do not anticipate using all my time by any means. I appreciate the courtesy of the Senator from Arizona who had indicated earlier that he fit us in because of conflicting schedules that the Senator from California and I have. Before I even begin, I want to again thank the distinguished Senators from Arizona and California for all they have done on this issue.

This past Sunday, as we all know, marked the start of National Crime Victims' Rights Week. We set this week aside each year to refocus attention on the needs and rights of crime victims. One would almost think we would not have to do that, but as a matter of fact, too often, the needs of victims are not met, and their rights are not fully honored. I learned this during my time as a prosecutor. I think all of us have learned this, from the experiences and some terribly gripping stories that we have heard from our constituents.

This year, the Senate had been scheduled to mark the occasion of National Crime Victims' Rights Week by taking up S.J. Res. 1, a proposed constitutional amendment. It was going to end up being days, maybe weeks, of debate even though everyone knew that the constitutional amendment was not going to pass. We went through this process back in April of the year 2000, during the last Presidential election year.

I said then, during that earlier debate on the constitutional amendment, that I have worked long and hard to protect and advance crime victims' rights, as have many on both sides of the aisle in this body. As a prosecutor for 8½ years, I worked day to day, year to year alongside victims, seeking justice on their behalf. This was back at a time before people spoke much about victims having rights. I like to think that my office was a model in this regard, for making sure that victims were heard.

I have worked on and have led many legislative efforts on behalf of victims throughout my service in the Senate. One of the most recent of those efforts was the creation of the September 11 Victim Compensation Fund. I am grateful to have been able to take part in something that has brought some relief to so many victims.

But I will never forget the victims I worked with as a prosecutor or the needs of the new victims minted each day through the crimes committed against them.

For years, at Christmas time, I received a very poignant letter from a woman who was the victim of a very serious crime. She told me how she was doing, how her children were doing.

When I go to the grocery store in Vermont, or I'm walking down the street, I run into people who were helped during those years and who had a voice during those years. It is gratifying, but I have to think about the fact that every single day, there are a whole lot more crimes, and a whole lot more victims.

I have always believed that victims should be afforded certain basic protections. I believe victims should be notified when the defendant is in court or when he is about to be released. I believe victims should be heard at critical stages of the prosecution. I believe victims are entitled to restitution from offenders.

In recent years, the debate has never been about whether victims should be protected. Of course they should. Rather, the debate has been about how victims should be protected.

I did not think the proposed constitutional amendment was the best way forward. I still believe that. We all agree, and every witness who testified before the Judiciary Committee on this issue agreed, that every right provided by the victims' rights amendment can be, or already is, protected by State or Federal statutory law.

So we have long had the power to enhance victims' rights through regular legislation, passed with a simple majority vote, and make an immediate difference in the lives of crime victims. Legislative enhancements are more easily enacted, more directly applied and implemented, and more able to provide specific, effective remedies. In addition, as Chief Justice Rehnquist and others have pointed out, statutes are more easily corrected if we find, in hindsight, that they need correction, clarification, or improvement.

When we pass the Kyl-Feinstein-Hatch-Leahy Victims' Rights Act, we will take a step that I have long advocated. So I thank and commend the principal sponsors of S.J. Res. 1, the distinguished Senators from California and Arizona. We came from both sides on the constitutional debate, but all of us are deeply committed to the cause of victims' rights, and that is why we came together on this legislation.

This legislation will provide crime victims in the Federal system with all the rights and protections that the proposed constitutional amendment would have provided. In fact, our statute goes further than the constitutional amendment because it gives the same rights and protections to all crime victims, not just to the victims of violent crimes. The elderly woman who is defrauded out of her life savings will get the same protection from this statute as other crime victims.

This statute, S. 2329, also spells out how victims' rights are to be enforced, using language that Senator KENNEDY and I developed in S. 805, the Crime Victims Assistance Act. In addition to providing victims with standing to assert their rights in mandamus actions, S. 2329 will establish an administrative authority in the Department of Justice to receive and investigate victims' claims of unlawful or inappropriate action on the part of criminal justice and victims' service providers. Department of Justice employees who fail to comply with the law pertaining to the treatment of crime victims could face disciplinary sanctions, including suspension or termination of employment.

We have incorporated other proposals from S. 805 as well, to help States implement and enforce their own victims' rights laws. And we have called for two annual reports, one by the Administrative Office of the Courts, and the other by the General Accounting Office, to make sure we get some feedback on how the rights and procedures established by the statute are working in practice. Over time, we will be able to modify and fine-tune the statute so that it provides an appropriate degree of protection for the rights of crime victims.

I have no doubt we are going to pass this law today. I believe the other body will pass the law, and the President will sign it. Then part of our duty is going to have to be to follow up to see how it works.

I said to some of the representatives of victims' groups this morning, keep our feet to the fire. Make sure we follow up. Passage of this bill will necessitate careful oversight of its implementation by Congress. If, as I hope, federal judges and prosecutors take victims' rights seriously, there should be little need for victims to bring mandamus actions to enforce their rights. But if, for whatever reason, victims feel that they are not being treated fairly, we may see a wave of new litigation in the federal courts, with victims and their lawyers having to insert themselves into criminal cases. We will need to monitor the situation closely.

I am committed to giving victims real and enforceable rights. But I am convinced that prosecutors should be capable of protecting those rights, once we make them clear. In my experience, prosecutors have victims' interests at heart.

Senator KENNEDY and I proposed in the Crime Victims Assistance Act a limited-standing provision, which applied with respect to the victim's right to attend and observe the trial, and under which a victim could assert her right if the prosecutor refused to do so. Passing such a provision would have allowed us to observe over a period of time whether direct participation of victims in criminal proceedings has any unanticipated consequences for the administration of justice.

This Victims' Rights Act proposes a bolder experiment, entitling victims to assert a panoply of rights, regardless of whether the prosecution is already asserting the same rights on their behalf. For example, at the insistence of other sponsors, this bill will enable victims to bring mandamus actions alleging the denial of their statutory right ''to be treated with fairness and with respect for the victim's dignity and privacy,'' which may be difficult claims to adjudicate.

I note with some regret that S. 2329 picks up language from S.J. Res. 1 denying victims any cause of action for damages in the event that their rights are violated. Allowing victims to vindicate their rights through separate proceedings for damages instead of through mandamus actions in the criminal case could well be a more efficient as well as a more effective way of ensuring that victims' rights are honored. Certainly the prospect of being held to account in such proceedings would provide a powerful incentive to take victims' rights seriously. But the

Republican sponsors of the bill did not want to provide for damages.

Similarly, some Republican Senators did not want to allow courts to appoint attorneys to help crime victims. It is my hope and belief that victims will seldom need representation, since they already have powerful advocates in our public prosecutors. Still, it is possible that a judge would want to appoint an attorney for a victim in an extraordinary case, as for example if there is a material conflict between the victim's interests and the interests of the prosecution. By failing to provide for this possibility, S. 2329 may perpetuate a system of unequal justice for victims, where the wealthy have the benefit of counsel, and the poor do not.

There are other provisions that were also, regrettably, left on the cutting-room floor during negotiations on this bill. First, we dropped a provision that was in the proposed constitutional amendment, which would have given victims certain rights in the context of clemency proceedings. I know Attorney General Ashcroft, when he was a Member of the Senate, felt strongly that victims should have a voice in these proceedings. I would welcome the chance to work with him, to have him provide for that within the Federal system, to do in the Federal system what he wanted to do while a member of this body.

A second provision that I would have liked to include in the bill would have authorized funding for a broad range of compliance authorities to help enforce the rights of crime victims in the state systems. Senator KENNEDY and I proposed such a program in the Crime Victims Assistance Act, but I was unable to persuade my colleagues to include it in this bill.

There are a variety of remedies for violations of rights that are operating at the State level, all of which have strengths and weaknesses. Some States use more than one approach. Arizona has a non-statutory ombudsman staff position in the Attorney General's office, to receive and investigate victim complaints; a victims' legal assistance project run by a non-profit and the Arizona State University College of Law, and a system of auditing those who receive grants to implement victims' rights. Wisconsin uses a State employee to receive and attempt to resolve victim complaints, as well as a victims' rights board that can formally receive complaints and seek sanctions for violations. Alaska has a State Office of Victims' Rights. South Carolina has an independent victim ombudsman. Connecticut has a State Victim Advocate. Vermont is exploring various options. We do have a Center for Crime Victims Services, which advocates informally for victims and is one of the premier victims' services sites in the country.

Finally, I want to comment on the unusual genesis of this bill, and the extraordinary procedure that has brought us so swiftly to a vote in the Senate. As I mentioned earlier, the Senate was scheduled to begin work this week on the proposed constitutional amendment, S.J. Res. 1. On Wednesday, the Republican leadership moved to invoke cloture on the motion to proceed. I would not have opposed this motion. I voted to proceed to an earlier iteration of this constitutional amendment four years ago, and I would have been prepared to proceed to it again this week. Even given the time this would have taken and the expected outcome, I would not have opposed a debate on the constitutional amendment.

It was under these circumstances that we had so little opportunity to work on crafting the crime victims' statute. I would have liked to have gotten the views of the Office for Victims of Crime and other components of the Department of Justice, for example. Many victims' groups and domestic violence organizations opposed the constitutional amendment, as did many law professors, judges, and prosecutors. I would have liked to hear their views on this statute. I am personally concerned that the statute may not adequately address the special problems raised in domestic violence and abuse situations. If it does not, then we may need to amend it again.

Given the Republican leadership's insistence on proceeding to the constitutional amendment today, there was not as much time as I would have liked to develop the statutory alternative that we vote on today, and no time to hold hearings on it or improve the bill in Committee. Fortunately, however, this is to be a statute, not a constitutional amendment, and it can be modified and improved. We will be able to make it better as we go along.

I commend my good friend, Senator FEINSTEIN, for mediating this consensus legislation. I know that she would have preferred to pass a constitutional amendment. She has made that clear. Nevertheless, she worked hard to produce a bill that we all can support, showing once again that she is first and foremost a legislator who wants to get things done. Due in large part to Senator FEINSTEIN's efforts, we now have an opportunity to advance the cause of victims' rights with strong, practical, bipartisan legislation. I have never doubted Senator FEINSTEIN or Senator KYL's commitment to victims' rights. I am delighted that we have come together to advance that common cause.

My friend and the chairman of the Senate Judiciary Committee, Senator HATCH, is another lead sponsor of this legislation. He and I have worked together on the Judiciary Committee in this area. He has been a tireless advocate for the rights of crime victims, and more generally for fairness in the administration of justice.

I want to thank David Hantman and Steve Cash of Senator FEINSTEIN's staff; Bruce Artim and Grace Becker of Senator HATCH's staff; Steven Higgins of Senator KYL's staff; Robin Toone of Senator KENNEDY's staff; Bob Schiff and Alex Busansky of Senator FEINGOLD's staff; Neil MacBride and Louisa Terrell of Senator BIDEN's staff; Chris Kang of Senator DURBIN's staff; Mark Childress and Jennifer Duck of Senator DASCHLE's staff; and, most especially the members of my own staff for their hard work on this bill over the last several days under extraordinary circumstances and pressures.

I also want to commend and thank the many victims' advocates and service providers in Vermont and across the country who show their dedication every day of the year to crime victims. I want to thank those who work in the area of domestic violence and abuse in particular. I am thankful for their dedication and grateful for their advice and insights over the years.

For more than 20 years I have sponsored and championed legislation to help victims. I have mentioned the recent September 11 Victim Compensation Fund, and I am also proud of such other advancements on behalf of victims as a law to provide assistance to victims of international terrorism, and bills to raise the cap on victims' assistance and compensation programs and to protect the rights of the victims of the Oklahoma City bombing. Today's vote provides us the opportunity to make progress on yet another important measure to address the needs of victims.

I ask unanimous consent that a letter from the National Center for Victims of Crime stating strong support for S. 2329 be printed in the RECORD as well as, for the sake of completeness, a number of editorials that appeared on this subject recently.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE NATIONAL CENTER FOR VICTIMS OF CRIME,
April 21, 2004.

Hon. PATRICK J. LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: The National Center for Victims of Crime strongly supports the Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act. This landmark piece of legislation would provide clear and enforceable legal rights to all direct victims of crime at the federal level. We are pleased to see a long overdue recognition that victims of all crime, violent and nonviolent crime alike, deserve these important rights.

This bill also sets a new standard for federal victims' rights compliance, giving victims and prosecutors the legal standing to assert victims' rights; clearly authorizing victims and the government to seek writs of mandamus to enforce victims' rights; and calling on the Attorney General to develop regulations to promote victims' rights through training, disciplinary sanctions for violations of rights, and the creation of an office to receive and investigate complaints.

By making new funding available to jurisdictions with laws substantially equivalent to those established in this bill, this bill legislation will promote a strengthening of victims' rights across the country. By providing funding to promote victim notification and compliance with victims' rights at the state

level, this bill will improve the implementation of victims' rights nationwide. We urge Congress to go further—to broaden this funding to support other mechanisms to promote compliance, such as state-level victim advocates and other authorities to receive and investigate the complaints of victims, and not limit funding for enforcement to one method.

This legislation represents a real Congressional commitment to improve our nation's response to victims of crime. The National Center for Victims of Crime commends you for your hard work and dedication to this issue, and we urge your colleagues to join you in this effort.

Sincerely,

SUSAN HERMAN.

[From the Washington Times, Apr. 19, 2004]

AMENDMENTITIS

(By Bob Barr)

The circus is back in town. Every 2 years, as we roll around to another grand Olympics of federal, state and local elections, the hopper in Congress begins to fill up with dangerous and unnecessary amendments to our U.S. Constitution.

Few, if any, are for ''great or extraordinary occasions,'' the bar James Madison set for changing our Founding document. In fact, most are either one or two things: a cheap ploy to get votes or an attempt to streamroll through right- or left-wings social policies—think gun control or marriage—that have been unable to get any traction through normal channels of government.

Just this session alone, Congress has seen or will see votes on the Flag Desecration Amendment, the Victims Rights Amendment, the Federal Marriage Amendment, even the Continuity in Government Amendment. Frankly, I would like to see one last constitutional amendment—the No More Amendments Amendment.

In the American political system, the Constitution was meant to operate like people who freeze their credit cards in a block of ice. That is, when faced with supremely important and emotional decisions involving things like the censorship of unpopular ideas or the seizure of firearms, the Constitution makes us walk to the corner and take a time out.

Specifically, we have to get a two-thirds supermajority in both chambers of Congress and then tree-quarters of the States to agree. It is an amazingly onerous process.

The last amendment to the Constitution—the 27th—which set limits on congressional pay, was initially proposed in the States' petitions to the first Constitutional Congress in the 1780s but only started to move in the 1990s. It took more than two centuries to finally earn a spot alongisde free speech and the right not to self-incriminate.

During the Cold War, Americans of conscience like to brag we were a Nation of laws, not men. That is, the main difference between American representative democracy and Soviet tyranny was that the latter's government did not have to abide by a piece of yellowing parchment with some petty clear instructions on what it could or could not do to its citizens.

And, while we have failed to meet those lofty goals on a number of important occasions, for the post part, we have managed to pedal through without too many monumental abridgements of personal liberty. That is why we are still here and they went long ago to a nursing home for evil ideas.

However, we risk betraying that proud history in the political imperative to fiddle with the Constitution. Take, for instance, the Victims Rights Amendment. Pushed by a a mixture of Democrats and Republicans feeling the need to burnish their tough-on-crime badges, the VRA would be a disaster for basic principles of fairness and dispassion in our criminal justice system.

It would guarantee victims of crime—a loosely defined term in the legislation—the ''right'' to notice, to be present and to speak at an array of judicial proceedings, including those dealing with bail, trial, sentencing and parole. It also requires the court to take victims into account in deciding whether to release prisoners or when to schedule a trial.

As with many of these amendments, on its face the measure hits all the right notes. It is tough on crime and soft on victims. It is bipartisan—as a lawmaker, if you oppose it, the other side will accuse you of being ''anti-victim,'' whatever that means. It cost no federal tax dollars (at least, not directly); states have to foot the bill. Finally, it makes for a feel-good, ''I supported such and such'' speech on the campaign trail.

But, as with many of these other amendments, it is seriously flawed. Foremost among its problems is that it will, ironically, obstruct justice. In 2000, Beth Wilkinson, the lead federal prosecutor in the Oklahoma City bombing case, explained in testimony against the amendment that, had it been in force, she might not have successfully sent Timothy McVeigh to death row and Terry Nichols to jail for life.

Their convictions hinged on the testimony of one Michael Fortier, who plea bargained to 12 years in federal prison, for knowing about the impending bombing but not informing authorities, in exchange for taking the witness stand. Had the relatives of the 168 people killed in that horrible tragedy been able to address the courtroom in opposition to Fortier's plea, it could have sunk the whole case.

In addition to these practical concerns, the VRA also threatens basic due process protections and objectivity in the criminal justice system by making it more about vengeance than justice. We trust our adversarial process—which pits zealous advocates against one another in front of a judge and jury—to arrive at the best approximation of the truth in criminal prosecution, which helps ensure the guilty are punished and the innocent go free.

However, when one injects the emotion of a murder victim's family into a bail or a parole hearing, that adversarial system is thrown directly out of whack. The defense counsel then faces an onslaught of vindictiveness that cannot be countered by facts or logic. Justice must remain blindfold to be effective. Otherwise, we will have vigilante posses waiting outside with lit torches and nooses tied every time something really senational goes to trail.

Finally, in an ironic twist that really hammers home the folly of such constitutional amendments, the vast majority of states—and the federal government—already have laws on the books protecting victims and ensuring their interests are not forgotten as their cases progress through the system.

The bottom line with the Victims Rights Amendment and its ilk is that the Constitution should not be co-opted as the tag line for a political attack ad. It is arguable the most sacred secular document in the history of the world, as it has kept humanity's strongest democracy healthy long enough to also make it humanity's oldest democracy.

[From the Chicago Tribune Online Edition, Apr. 18, 2004]

A PHONY PROPOSAL FOR VICTIMS' RIGHTS

THERE IS NO NEED TO TINKER WITH THE CONSTITUTION TO GUARANTEE THE RIGHTS OF VICTIMS—OUR ENTIRE JUDICIAL SYSTEM IS ALREADY SET UP TO DO JUST THAT

(By Steve Chapman)

Americans cherish and revere the Constitution. But often their attitude brings to mind the Broadway show: ''I Love You, You're Perfect, Now Change.'' It seems that the only thing many of them like more than the Constitution is the opportunity to fix its grievous flaws. The latest suggestion for improvement stems from a belief that it shortchanges the needs of crime victims.

The entire criminal justice system, of course, could be seen as a giant apparatus set up to vindicate the interests of crime victims. Every year in the United States, we arrest more than 13 million suspects and keep more than 1.4 million offenders in prison. All those police, prosecutors, judges, parole officers and prison guards are there mainly to detect, investigate, prosecute and punish criminals for what they do to their victims.

But critics say the system often abuses the people it's supposed to protect. And they insist that the only way to assure fairness to victims is to enshrine their rights in the Constitution. President Bush has endorsed the amendment. Sen. John Kerry has not.

Americans often have a tendency to see a problem and conclude, ''There oughta be a law.'' In this instance, though, there is already a multitude of laws. Every state has passed legislation to protect victims' rights, and at least 33 have such provisions in their state constitutions.

But Sen. Jon Kyl (R–Ariz.), co-sponsor of the amendment, says these efforts have been a bust. He says one study found that even in states with strong measures in place, 44 percent of victims weren't alerted to the sentencing hearing, and nearly half weren't notified of plea negotiations.

Why don't existing laws do the job? Because, according to Kyl, ''criminal defendants have a plethora of rights that are protected by the Constitution that are applied to exclude victims rights.''

The only way to correct the imbalance is to give victims' rights equal status.

But where are the constitutional provisions that work against victims?

Defendants do have a right to a speedy public trial by jury, to be represented by a lawyer, to avoid self-incrimination and so on. But nothing in the Constitution prevents authorities from informing victims of proceedings, from letting them speak during trials, sentencing and parole hearings, from altering them when an assailant is about to be released, or from requiring criminals to pay restitution. Those are the victims' rights specified in the constitutional amendment, all of which can be (and often are) safeguarded without the drastic step of altering the nation's charter.

Supporters complain that some courts have been so eager to assure the defendant a fair trial that they bar victims from the courtroom. But that happens only before a victim is scheduled to testify, and it's simply meant to prevent victims from tailoring their testimony (intentionally or not) to match what other witnesses say.

By protecting the truth-seeking function of a trial, the practice works to the benefit of victims—who, after all, gain absolutely nothing from sending the wrong person to jail.

If we want to abolish this custom, despite its virtues, we don't need an amendment. Duke University law professor Robert Mosteller says many states allow victims to

be present throughout a trial even if they are going to testify. The practice of excluding victims until they testify, Mosteller notes, ''is generally a matter of statutory or common law'' and ''rarely even approaches constitutional significance.'' It was an issue in Timothy McVeigh's Oklahoma City bombing trial—but in the end, all victims were allowed to attend even if they were expected to appear as witnesses.

Victims' rights, it's true, have not always been enforced. But that's partly because they're a new concept and take time to be fully implemented. And it's partly because they are administered by large, fallible government bureaucracies trying to keep track of a lot of people and information, sometimes without adequate funds.

Amending the Constitution won't make the bureaucracies less fallible. The obvious way to do that is to make them pay for their mistakes by letting victims collect damages when their rights are ignored. But this proposal explicitly forbids that remedy. It's all bark and no bite.

Unless, of course, the opponents hope to curtail the protections we grant to those accused of crimes. The supporters deny that, but they also decline to include a section stating that the amendment wouldn't diminish any existing guarantees.

So maybe the amendment would be an attack on longstanding constitutional rights, or maybe it would be an ineffectual piece of symbolism. Either way, we're better off without it.

[From the Washington Times, April 20, 2004]

WE, THE CLUTTERERS . . .

(By Bruce Fein, special to the Washington Times)

The Senate should balk at cluttering the Constitution when it votes next Friday on a crime victims' rights amendment [VRA].

To forgo the VRA is not to cherish victims' rights less, but to venerate the brevity and accessibility of the Constitution more. Amendments are appropriate only when flexible and adaptable statutes would be insufficient to achieve a compelling objective; or, to protect discrete and insular minorities from political oppression. Neither reason obtains for the VRA.

Crime victims deserve and evoke legal sympathy. Every state and the District of Columbia feature statutes that endow victims with participatory rights in the criminal justice system. Further, 33 states have amended their state constitutions by overwhelming majorities to protect crime victims.

Congress has enacted a cornucopia of victim-friendly statutes since 1982, including a right to restitution, victim impact statements, and a victims' Bill of Rights. According to the latter, federal law enforcement agencies must treat putative victims with fairness and respect; protect them from accused offenders; provide them notice of court proceedings; offer opportunities to attend public sessions under certain conditions and to confer with government prosecutors; and transmit information about the conviction, sentencing, imprisonment, and release of the offender.

A crime victim's authenticity remains in doubt, it should be remembered, unless and until the accused is convicted.

As I previously testified before the Senate Judiciary Committee: ''Crime victims have no difficulty in making their voices heard in the corridors of power; they do not need protection from the majoritarian political process, in contrast with criminal defendants whose popularity characteristically ranks with that of Gen. William Tecumseh Sherman in Atlanta, Ga.'' A recent vignette from Lake County, Mich., corroborates the political hazards of slighting crime victims. In September 2003, a county prosecutor was recalled by voters angry over a lenient plea bargain that had outraged the family of a murder victim: a 23- to 50-year sentence for the killer. The prosecutor's explanation he was seeking to avoid costly trials on a penurious $200,000 annual budget proved unavailing.

VRA proponents insist statutory rights are second-class rights compared with constitutional rights enjoyed by the accused. Statutes fortified by strong pubic sentiments, however, command virtual constitutional sanctity. The 1964 Civil Rights Act, the 1965 Voting Rights Act, the National Labor Relations Act, and the Sherman Antitrust Act are illustrative. As to the latter, the Supreme Court in United States vs. Topco Associates [1972] amplified: ''Antitrust laws in general, and the Sherman Act in particular, are the Magna Carta of free enterprise.''

Moreover, the elevation of victims' rights from a statutory to a constitutional plateau does not guarantee greater effectiveness. The 14th and 15th Amendment rights of blacks, for instance, slept for 80 years in the chambers of prosecutors and judges because of public indifference. In any event, government officers are every bit as bound by oath to obey statutes as to comply with the Constitution.

VRA crusaders speciously argue victims' constitutional rights in criminal prosecutions should reasonably mirror those of the accused. Unlike a putative victim, a criminal suspect confronts the loss of life, liberty, or property and a formidable arsenal of government investigatory and prosecutorial weapons. The victim, moreover, may seek damages from the defendant, including restitution, in parallel civil proceedings a la the O.J. Simpson wrongful death judgments.

History has also demonstrated a government propensity to persecute by overzealous prosecutions. The Declaration of Independence denounced King George III, ''For transporting us beyond the seas to be tried for pretended offenses.''

Former Attorney General and Associate Justice of the Supreme Court, Robert Jackson, worried that prosecutors are routinely tempted to pick a man to indict for personal or ideological reasons, and then to scour the books to pin an offense on him, in lieu of discovering a crime and then searching for the culprit. To blunt the potential for vindictive or wrongful convictions, the Constitution endows defendants with a modest array of rights, for example, proof beyond a reasonable doubt, jury unanimity, and the right to counsel. Crime victims, however, can point to no corresponding history of government oppression. Indeed, they are the contemporary darlings of state legislatures and Congress.

The VRA would also vitiate the truth-finding objective of trials by injecting victim concerns that could undermine the impartiality and reliability of verdicts. The amendment would require judges in jury selection, evidentiary rulings, or jury instructions to ''consider the victim's safety, interest in avoiding unreasonable delay, and just and timely restitution from the offender.'' It would permit victims who intend to testify to avoid sequestration, a customary requirement to foil the tailoring of witness stories. Sequestration has been celebrated by an icon in the law of evidence, however, as ''one of the greatest engines that the skill of man has ever invented for the detection of liars in a court of justice.''

Thus, the biblical Apocrypha relates how Daniel exonerated Susanna of adultery by sequestering two accusing elders and eliciting conflicting answers as to where the alleged crime occurred.

Much additional mischief besets the VRA, but their telling must be forgone as a concession to the shortness of life. The proposed amendment should be smartly defeated.

[From the Washington Post, Apr. 21, 2004]

WRONG ON RIGHTS

The Senate is due to take up a constitutional amendment designed to grant rights in criminal court proceedings to victims of violent crimes. The last time the proposal arose, its sponsors, Sens. Jon Kyl (R–Ariz.) and Dianne Feinstein (D–Calif.), had to yank it back to avoid defeat. But support for the idea has grown. Nobody likes to oppose crime victims, and on its face the amendment's promises seem unobjectionable: ''reasonable and timely notice'' of proceedings; the right of victims to attend those proceedings and to speak at sentencing, clemency and parole hearings; and the right to seek restitution from perpetrators. What harm can there be in placing victims' rights even with the rights of the accused?

Quite a lot, actually. For starters, none of the amendments' terms are defined—including, critically, who counts as a ''victim.'' Is it limited to immediate relatives or can extended family members qualify? Nor does the amendment specify a remedy for violations of victims' rights. In fact, it specifically says that it does not ''authorize any claim for damages.'' So it is unclear how exactly a victim is supposed to take advantage of his rights. The result will be litigation—a lot of it—as victims seek to exercise their new constitutional rights and defendants seek to ensure that victims' rights don't come at the expense of their own.

The fundamental trouble is that victims' rights, if taken seriously, will come at the expense of the rights of the accused. Sometimes a defendant's right to a fair trial cannot be reconciled with a victim's right to speak to the jury. Right now, the victims' rights yield in such cases, as they should. The state, after all, is not seeking to deprive the victim of liberty or, in the extreme case, life. The rights of the accused flow out of the jeopardy in which the state puts them.

Though the criminal justice system's treatment of victims has improved, it could and should be better. But it would be a profound error to place such obligations on the same plane as the Constitution's essential protections against unchecked government power.

Mr. DEWINE. Mr. President, I rise today in support of the Crime Victims' Rights Act. As a former county prosecuting attorney, this is an issue about which I feel very strongly. All too often, our criminal justice system overlooks the victims of crime in efforts to ensure the legitimate rights of accused defendants.

Crime victims simply have not been given the equal footing that they deserve. From start to finish, the legal system sometimes can be a terrible ordeal for victims—a bureaucratic nightmare that seems to and in fact many times does go on and on and on.

We substantially protect the rights of defendants, as well we should. We ensure that they have every reasonable benefit—and that is good—so as to ensure the acquittal of the innocent. But, in the process, I believe that many times, we don't give the victims of crime the rights that they, too, deserve. When I was a county prosecutor in Greene County, OH in the 1970s I saw too many crime victims—people who

had already been hurt—hurt a second time by a callous legal system. That is why I did everything that I could to protect the rights of those victims. Our bottom line has to be this: To be victimized once by crime is already once too often. To be victimized yet again by an uncaring judicial system is totally unacceptable.

Accordingly, I am pleased to cosponsor this bipartisan legislation that will afford these victims, the fundamental right to participate in the criminal justice system. It just makes good sense for the innocent victim of a crime to be given the right to know if his or her assailant is released or escapes from prison. It is simply fairness to recognize a crime victim's right to reasonable notice of public proceedings involving the crime; the right to not be excluded from such public proceedings; and the right to be heard at the public release, plea, sentencing, reprieve, and pardon proceedings involving that victim's assailant. It's about time that we guarantee crime victims their rights to court decisions that duly consider their safety, their rights to have the courts avoid unreasonable delay in adjudicating those charged with harming them, and their rights to just and timely restitution from their offenders. This legislation is about victims. This legislation is about working to keep victims safe from further harm. This legislation is about keeping their concerns at the forefront.

When I was Green County prosecuting attorney, I had seen the victims of murder and other terrible crimes. I interviewed people who had been abused, assaulted, and raped. I learned a lot from talking to these innocent people. I learned that we have to make the crime victim a full participant—not a forgotten person, not a neglected person—in the criminal justice system.

That is why I cosponsored this bipartisan legislation. It is designed to help guarantee that the victims of crime have access to our criminal justice system. It is time to stop treating the victims like they are the criminals. Let's move the legitimate concerns of victims toward center stage in our criminal justice system and finally provide these innocent victims with the rights they deserve.

Mr. DURBIN. Mr. President, I rise today in support of the Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act.

This week is National Crime Victims' Rights Week—a time to recognize the impact of crime and the rights and needs of victims. In 2002, there were 23 million criminal victimizations in the United States, and many of these crime victims feels as if the criminal justice system has wronged them. These people were innocent victims, but they feel deprived of the fundamental need to participate in the process of bringing the accused to justice.

I support crime victims' rights, and I believed that every effort should be made to ensure that crime victims are not victimized a second time by the criminal justice system. At the same time, I agree with James Madison, who wrote that the United States Constitution should be amended only on ''great and extraordinary occasions,'' and I am reluctant to amend our Constitution for only the 18th time since the adoption of the Bills of Rights.

This is why I am proud to be an original cosponsor of the Crime Victims' Rights Act, which reaches all of the goals that the proposed constitutional amendment sought to achieve, by providing crime victims with the same rights, including the following: No. 1, the right to notice of any public proceeding involving the crime or of any release or escape of the accused; No. 2 the right not to be excluded from any such public proceeding; No. 3, the right to be reasonably heard at any public proceeding involving release, plea, or sentencing; No. 4, the right to full and timely restitution; and No. 5, the right to proceedings free from unreasonably delay.

By enacting legislation rather than amending the Constitution, our approach today also addresses my concerns regarding the rights of the accused. The premise of criminal justice in America is innocence until proven guilty, and our Constitution therefore guarantees certain protections to the accused. These include the Fifth Amendment protection against double jeopardy, as well as the Sixth Amendment rights to a speedy trial, the assistance of counsel, and an impartial jury.

Although these protections for the accused sometimes are painful for us to give, they are absolutely critical to our criminal justice system. When the victim and the accused walk into the courtroom, both are innocent in the eyes of the law, but when the trial begins, it is the defendant's life and liberty that are at stake.

During the Judiciary Committee debate on the proposed constitutional amendment regarding victims' rights, I offered an amendment that would have ensured that the rights of the accused as guaranteed under the Constitution would not be diminished or denied. However, this language is unnecessary in the bill we are debating today, because rights provided in a statute can not supercede those guaranteed by the Constitution.

For example, I believe this statute would allow courts to protect defendants from possible violations of due process and to preserve the accused's right to an impartial jury, by excluding victims from a public proceeding if the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at trial.

This statutory approach also provides Congress with the flexibility to modify this legislation if we find it is not perfect.

I would like to commend Senators FEINSTEIN and KYL for their efforts to provide rights to crime victims and for introducing this statutory alternative. I am pleased to join them in this effort.

Mr. KENNEDY. Mr. President, I strongly support this bill to provide enforceable rights to victims of crime, and I urge the Senate to approve it.

For too long, our criminal justice system has neglected the hundreds of thousands of victims of crime whose lives are shattered by violence or other crime each year. Victims deserve better from our criminal justice system.

Too often, the current system does not provide adequate relief for victims of crime. They are not given basic information about their case—such as notice of a defendant's arrest and bail status, the schedule of various court proceedings, and the terms of imprisonment. Victims deserve to know about their case. They deserve to know when their assailants are being considered for bail or parole or adjustments of their sentences. They certainly deserve to know when offenders are released from prison.

Since 1997, Senator LEAHY and I have sponsored legislation to provide enhanced protections for victims of violent or non-violent crimes and establish an effective way to implement and enforce these protections. Our legislation is designed to give victims a greater voice in the prosecution of the criminals who injured them and their families, fill existing gaps in Federal criminal law, guarantee that victims of crime receive fair treatment and the respect they deserve, and achieve these goals in a way that respects the efforts of the States to protect victims in ways appropriate to each State's unique needs.

I am pleased to join Senator KYLE and Senator FEINSTEIN, who are the lead sponsors of the proposed Victims' Rights Constitutional Amendment, in moving forward on victims' rights legislation now. Our bill is called the ''Scott Campbell, Stephanie Roper, Wendy Preston, Lourana Gillis and Nila Lynn Crime Victims' Rights Act,'' and is named in honor of five persons who were victims of crime. Our bill provides victims with a number of important rights, including the right to receive notice of public proceedings; to receive notice of the release or escape of the accused; to attend and be heard at proceedings involving release, plea, or sentencing; to confer with the government's attorney; and to receive full and timely restitution as provided by law. The bill also provides for the enforcement of these rights, by directing government officials to notify victims of their rights, requiring courts to grant these rights to victims, and giving standing to both prosecutors and victims or their legal representatives to assert the rights at trial and on appeal.

The legislation will protect all victims of crime, including victims of identity theft, personal property theft, fraud, embezzlement, vandalism, and other non-violent offenses. The National Center for Victims of Crime has

emphasized the great importance of including protections for victims of nonviolent crime. Our legislation does so, and I commend the Center for its leadership on this important aspect of the issue.

Our Victims' Rights Act also directs the Attorney General to act within a year to issue regulations to enforce the rights of crime victims and ensure compliance by all relevant officials. The bill strengthens victims' rights at the Federal, State, and local levels by authorizing the use of Federal funds to establish programs to promote compliance and develop state-of-the-art systems for notifying victims of important dates and developments in their cases.

Once this bill is enacted into law, we intend to monitor its implementation by the Justice Department, other law enforcement and criminal justice agencies, and the courts, so that we can take appropriate action, if necessary, to ensure that the victims' rights are protected, and also ensure that the effective functioning of the law enforcement and criminal justice system is not impaired. I commend my colleagues for their leadership in making this legislation possible, and I urge the Senate approve it. We know that victims of crime have been waiting too long for our action, and hopefully this long-needed measure is finally on the fast track for enactment into law.

Mr. SMITH. Mr. President, I rise to speak about the Crime Victims' Rights Act.

America is a country ruled by law and not by individuals. For that reason, our criminal justice system serves as a beacon of light for many who live in the shadow of tyranny. Nowhere is this better demonstrated than those rights of the accused protected by the U.S. Constitution. A defendant has the right to due process under law, the right to a speedy trial, the right to counsel, the right against self-incrimination, the right to confront witnesses as well as a host of other protections. These constitutional rights aim to protect the innocent and punish only the guilty. No American should be wrongly incarcerated and denied the most basic liberties.

While the Constitution provides a panoply of rights for the accused, it does not guarantee any rights to crime victims. Victims do not have the right to be present during prosecution. Victims do not have the right to be informed of the defendant's hearing. They do not have the right to be heard at sentencing or at parole hearings. Victims have no rights to restitution or notification even if they may be endangered by the release of their attacker.

To maintain the integrity of our judicial system, a careful balance must be struck between the rights of the accused and the rights of victims. Unfortunately, the scales of justice have been tilted. As a result, 32 States have enacted constitutional amendments to provide some protections for victims. Today, I am proud to have joined my colleagues in sponsoring and voting in favor of the Crime Victims' Rights Act which would extend rights to victims of federal crimes as well. Nationally, this sends a clear message to victims that they will finally be given a voice in the Federal criminal process.

I also want to take this opportunity to recognize the leaders of the victim's rights movement in my home state. Established in 2000, the National Crime Victim Law Institute has been committed to the enforcement and protection of victims' rights in the criminal justice system. While there has been a flood of legislation at the State level on victims' rights, there has been a dearth of academic attention paid to this area of the law. The National Crime Victim Law Institute, at the Lewis and Clark School, is one of the first academic institutions to undertake a focused effort to study and enhance the effectiveness of victim rights laws. The Institute's Executive Director, Doug BeLoof, has authored Victims in Criminal Procedure, the first casebook to be published in this area of law.

Along with this important legal scholarship, passage of this legislation is an important step in the fight to protect victims' rights. I look forward to President Bush signing this legislation into law.

Mr. LEAHY. Madam President, I do not see others seeking time so I reserve the remainder of my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ALEXANDER). Without objection, it is so ordered.

Mr. REID. Mr. President, it is my understanding Senator LEAHY still has time remaining under his control.

The PRESIDING OFFICER. That is correct.

Mr. REID. How much time?

The PRESIDING OFFICER. The Senator has 19.5 minutes.

Mr. REID. Mr. President, using Senator LEAHY's time, I will proceed.

The PRESIDING OFFICER. Without objection, it is so ordered.

PATRIOT ACT AND SENATOR KERRY

Mr. REID. Mr. President, during this lull, prior to the vote on this legislation that has been changed from a constitutional amendment to a statute, I would like to take a few minutes hopefully to clear some of the confusion about the record of my colleague, the Senator from Massachusetts, JOHN KERRY. This relates to the PATRIOT Act.

First of all, everyone should understand JOHN KERRY voted for the PATRIOT Act. This, of course, is a man who volunteered to fight for our country in the jungles of Vietnam. He risked his life to keep America safe. He was wounded on three separate occasions, received two medals for heroism for his acts above and beyond the call of duty. These were all in an effort to keep our Nation safe and strong.

Like most of us who voted for the PATRIOT Act, Senator KERRY believed it gave law enforcement officials essential tools they needed in the war against terror.

He not only voted for the PATRIOT Act, he actually authored parts of it. Senator KERRY helped draft the money-laundering provisions of the PATRIOT Act. He believes that provision should be strengthened to include nonbank institutions and increase funding for information gathering and sharing. These provisions have helped choke financial support to terrorist groups.

When Congress enacted the PATRIOT Act we gave it a sunset clause so we, the Senate, the Congress, and the American people, could see how it worked. We understood we were giving the Government unprecedented power and we would want to come back later and fine-tune the balance between the power of Government and the personal rights of citizens.

Some parts of the PATRIOT Act will expire in approximately 20 months. Frankly, with all the important issues and business this Senate has yet to address, I don't understand why we have had a series of speeches on the Senate floor about making permanent the PATRIOT Act. It will not expire, as I have indicated, for 20 more months. At some point we will have to decide which parts of the PATRIOT Act should be reviewed, renewed, expanded, or in some way limited in some instances.

Senator KERRY wants to extend more than 95 percent of the provisions of the PATRIOT Act. That is, so everyone is very clear, Senator KERRY believes 95 percent of the PATRIOT Act should remain as it is. But keeping America strong, as Senator KERRY believes, also means protecting our individual rights and privacy. Keeping America free means keeping a rein on the power of Government, so Senator KERRY does support some adjustments to the PATRIOT Act along with a number of other Senators, including the ''liberals'' CRAIG and SUNUNU. I say that facetiously because Senator CRAIG and SUNUNU are anything other than progressives.

I am also a cosponsor of the amendment Senator KERRY suggests should make adjustments to this act.

Nobody has ever accused any of these Senators—Senators CRAIG, SUNUNU, or KERRY—of being soft on terrorism. They are resolute in their commitment to protect our Nation from terror. But they are also resolute in their commitment to protect our individual rights and our freedom—just like JOHN KERRY.

Senator KERRY believes we need to improve the PATRIOT Act by making some changes in the provisions of a

couple of wiretaps, sneak-and-peek warrants, and the seizure of business and library records.

He isn't alone. The House of Representatives voted 309–118 to ban funds for these so-called ''sneak and peek'' searches, which allow government agents to surreptitiously search the homes of citizens, without ever notifying them.

Senator KERRY wants to strengthen the Patriot Act in other areas, by adding new legal and organizational tools to fight terror.

He has been and will be tough on terror, and he will keep America safe. He knows that the Patriot Act is just one of the many weapons we need in that fight against terror.

Senator KERRY understands that we need to improve the lines of communication between different intelligence agencies, and between federal and local officials. He believes that appropriate state and local authorities should have immediate access to national terrorist lists and 24-hour operations center should be created to link local and federal law enforcement. It is called communication.

Senator KERRY has called for tighter protection of chemical factories that could be targeted by terrorists. I am a cosponsor of that legislation. Bowing to the chemical industry, the Bush administration has opposed common sense measures to improve security of 123 chemical plants where the EPA says a terrorist attack could kill or injure one million people. JOHN KERRY knows that we have to do a better job protecting these potential targets.

Senator KERRY understands that we must give our police, firefighters and other first responders the equipment and training they need to respond to terrorist attacks. Right now, they aren't getting everything they need, and the result could be tragic.

Finally, Senator KERRY knows that we aren't doing everything we should to keep our seaports safe. Ninety five percent of our trade outside North America moves by sea, and most of that is concentrated in a handful of ports. Senator KERRY understands that our economy and our national security both depend on keeping our ports safe. We need to develop security standards for our ports, invest in a system of container security and provide more customs inspectors.

These are common sense measures to protect our homeland. Every day that we delay, we leave ourselves open to potential acts of terrorism.

I hope my colleagues won't impugn Senator KERRY's commitment to national security just because he is concerned about safeguarding our personal rights and privacy.

I understand we don't all agree on the need for measures like ''sneak and peek'' searches of American citizens or improving security at our seaports.

Let's debate those differences—but let us never suggest that any Member of this body is not committed to keeping America strong and safe.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Senator from New Mexico, Senator DOMENICI, be added as a cosponsor of the legislation before us.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, I will say a few words in conclusion to my remarks.

I believe the Senator from Arizona, Senator KYL, will be coming back to the floor to make a small technical modification to the amendment since questions have been developed and they can be easily taken care of. I believe he will do that. Otherwise, I think everyone who is going to speak on this has spoken.

I would like to end by saying how grateful I am for this day. This is an important day for many of us who care about victims' rights—I think every Member of this Senate—because for the first time we have a strong and comprehensive measure to be able to achieve a compendium of victims' rights. That compendium will give victims access to the criminal justice system so they may retain their dignity; so they have an opportunity to know when there is a trial and be present at the trial; to make statements if there is a public proceeding with respect to a plea bargain; to be there to make a statement; to receive restitution, if offered by a judge; to know when their attacker is released from jail or prison—not too much, but certain basic, elemental rights for anyone who has either been the victim of or has been dramatically affected by a crime.

I am very proud of the work on this. I have worked with Senator KYL for a long time, and now with Senators HATCH and LEAHY as well.

I thank everybody who has been involved.

I particularly would like to thank my staff, Steven Cash and Dave Hantman, who over the years I think have grown more determined to get this job done.

I am hopeful we will have a unanimous vote in this body, that the bill will be accepted by the House, and we will be able to say to victims all across this country there is a Federal statute with a remedy and a method of enforcement that will guarantee the very basic rights in Federal crimes; and also the funding to be able to go out and secure some of those same rights under State law.

I thank everybody. I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I thank the distinguished Senator from California for her excellent work, and also the distinguished Senator from Arizona for his excellent work on this. They have worked on this year after year until we have finally reached this point where I believe we can get a bill through the Congress even though it is almost impossible to get a constitutional amendment through the Congress on this very important subject.

I rise today in support of S. 2329, The Crime Victims' Rights Act. The issue addressed by this legislation—protecting the rights of victims of crime—is one of utmost importance to the American people.

At the outset, let me commend the efforts of Senators KYL and FEINSTEIN, who have worked tirelessly since 1996 to try to get the crime victims' rights constitutional amendment passed.

No one has worked harder than these two Senators in trying to protect victims' rights. Over the last 8 years, they have met with countless victims, listened to their tragic stories, held hearings, drafted and redrafted constitutional language, and consulted with academics, outside experts and governmental officials to make sure they got it just right.

While I know their preference is to pass a constitutional amendment—and that would have been my preference as well—they have now prudently opted to pursue a statutory remedy.

I am especially pleased that the ranking minority member of the Judiciary Committee, Senator LEAHY, is joining us in this initiative.

When we last debated victims' rights, it was in April of 2000. There can be no question that the world has irrevocably changed since then.

Four years ago, many could not truly appreciate what it means to be a victim of violence. Today, in the post-9/11 era, it is impossible not to empathize with victims. I am sure that none of us will forget the image of planes crashing into the World Trade Center. None of us will forget the image of victims jumping out of windows to avoid the flames that were creeping up the buildings. None of us will forget the images of two of the tallest buildings in the world crumbling to the ground like a house of cards with the victims trapped underneath the rubble. And none of us will forget the gaping hole in the side of the Pentagon and the grief of the families of those that died that day.

In that single day, nearly 3,000 victims died in New York City and Washington, D.C. Yet as horrific as that statistic is, it cannot be compared to the more than five million violent crimes that are committed in the United States every year. Yet the victims of these violent crimes, as well as their families and loved ones, continue to suffer in silence. Some of them are not able to obtain notice of criminal proceedings; they are not permitted to remain in the courtroom while the trial is ongoing regardless of whether they are expected to be called as a potential government witness. That is why I am an original cosponsor of S. 2329.

Let me give a couple of examples of why we need this legislation.

On December 2, 1998, Jeffrey Weller, who was only 23 years old, was murdered by his childhood friend. The

friend showed up at Jeff's home, where he lived with his new wife of 2 months. While the two men were sitting in a car, the murderer attacked Jeff with a knife. Jeff managed to get out of the car and run, but was shot once in the back. The man then shot Jeff again at point-blank range in the head. Although the defendant was arrested, convicted and sentenced to 10 years in prison, he was released after serving only 4 years. Jeff's family was denied a restraining order against the killer and was told to contact local law enforcement if he comes on the property. In January 2002, the killer kidnapped and murdered Jeff's 5-year old son and committed suicide. It is for families like the Wellers that we need to pass this bill—and there are so many. Yet, S. 2329 gives victims the right to be reasonably protected from the accused.

In my home state of Utah, Pam Kouris lost her 11-year old son, Michael, when he was hit by a car while riding his bicycle. The negligent driver was a police officer who was under the influence of pain killers, muscle relaxers and Valium. He ultimately pled guilty but he was not sentenced until 5½ years after Michael's death and he received probation. It is for people like Pam that we are passing this legislation to protect her right to proceedings free from unreasonable delay.

In addition to those rights, the bill also establishes other fundamental rights for victims, including the right to reasonable notice of public criminal proceedings, the right not to be excluded from those proceedings, and the right to be heard reasonably when a court is considering a criminal's release, plea or sentence. The bill also guarantees victims the right to confer with a Government attorney, the right to full and timely restitution, the right to proceedings free from unreasonable delay, and importantly, the right to be treated with fairness and with respect for the victim's dignity and privacy.

The bill also directs the Department of Justice to promulgate regulations to enforce these rights and to create an administrative authority to receive and investigate complaints relating to the violation of the rights of crime victims. This administrative remedy creates a framework to quickly enforce victims' rights.

Moreover, the bill provides that victims will have standing to sue in Federal court if they are wrongly denied these rights. For those who may be concerned that this bill might lead to new tort causes of action, let me assure you, that victims are not seeking to sue the government and get rich. All the victims want is a chance to participate in the criminal justice process. Accordingly, the bill states that there will be no cause of action for damages.

Public support for victims' rights protection is very strong. All 50 states have some form of victims' rights measures at a statutory or court-based level and 33 states have passed state constitutional amendments to protect victims' rights.

In sum, this bill has strong bipartisan support and I strongly urge my colleagues on both sides of the aisle to vote for this important legislation.

It is time to quit playing around and get this done. It is time to do what is right. The constitutional amendment itself, had we been able to bring that up, has been criticized because people around here say we should never amend the Constitution, it is perfect as it is.

One reason some members want to amend the Constitution is to get it back to where it really was. In other words, we have courts that have gone way beyond the pale and have amended the Constitution by judicial fiat. Most of these constitutional amendments, I have found through the years, have been to get the Constitution back where it really belongs, away from rogue judges just deciding on their own to amend the Constitution because they are in a position that some believe, as Federal judges, is the closest thing to God in this life. Frankly, some of them take advantage of that.

In the process, we wish we could get back to where the people rule and where the Constitution was before they changed it by judicial fiat. There are a number of reasons why judicial fiat has changed the laws with regard to victims' rights. Frankly, this bill will get us back to a point where we will be making headway on victims' rights and protecting the rights of those who have been suffering far too long.

I compliment my two dear friends and colleagues on the Judiciary Committee and others in this Congress who have worked so hard to see this come to fruition.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. I ask unanimous consent Senator KOHL be added as a cosponsor to the legislation pending.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, notwithstanding the previous order, I ask the technical amendment which is at the desk be considered and agreed to and—I withhold on that request for a moment.

The PRESIDING OFFICER. The request is withheld.

Mr. REID. I apologize to my friend from Arizona. It is certainly not his fault. I told him it had all been cleared. I thought it had. Senator FEINSTEIN has cleared it; obviously, there are a couple more people.

Mr. KYL. I withdraw the request until it is clear.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3047

Mr. KYL. Notwithstanding the previous order, I ask the technical amendment at the desk be considered and agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3047) was agreed to, as follows:

On page 7, line 24, strike the first period and insert the following: ", subject to appropriation.".

On page 10, line 20, strike the first period and insert the following: ", subject to appropriation.".

Mr. KYL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, how much time remains on this matter now before the Senate?

The PRESIDING OFFICER. The Senator from Utah has 16 minutes, the Senator from Vermont, 12.

Mr. REID. Mr. President, I yield back the time of the Senator from Vermont.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, I ask unanimous consent that Senator SHELBY be added as a cosponsor of the legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, on behalf of Senator HATCH, I yield back the time that he has remaining.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. KYL. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The bill having been read the third time, the question is, Shall the bill, as amended, pass?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER (Mr. CRAPO). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 70 Leg.]

YEAS—96

Akaka	Dodd	Lincoln
Alexander	Dole	Lott
Allard	Domenici	Lugar
Allen	Dorgan	McCain
Baucus	Durbin	McConnell
Bayh	Edwards	Mikulski
Bennett	Ensign	Miller
Biden	Enzi	Murkowski
Bingaman	Feingold	Murray
Bond	Feinstein	Nelson (FL)
Boxer	Fitzgerald	Nelson (NE)
Breaux	Frist	Nickles
Brownback	Graham (FL)	Pryor
Bunning	Graham (SC)	Reed
Burns	Grassley	Reid
Byrd	Gregg	Roberts
Cantwell	Hagel	Rockefeller
Carper	Harkin	Santorum
Chafee	Hatch	Sarbanes
Chambliss	Hutchison	Schumer
Clinton	Inhofe	Sessions
Cochran	Inouye	Shelby
Coleman	Jeffords	Smith
Collins	Johnson	Snowe
Conrad	Kennedy	Stabenow
Cornyn	Kohl	Stevens
Corzine	Kyl	Sununu
Craig	Landrieu	Talent
Crapo	Lautenberg	Thomas
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wyden

NAYS—1

Hollings

NOT VOTING—3

Campbell	Kerry	Specter

The bill (S. 2329), as amended, was passed, as follows:

S. 2329

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act''.

SEC. 2. CRIME VICTIMS' RIGHTS.

(a) AMENDMENT TO TITLE 18.—Part II of title 18, United States Code, is amended by adding at the end the following:

''CHAPTER 237—CRIME VICTIMS' RIGHTS

''Sec.
''3771. Crime victims' rights.

''§ 3771. Crime victims' rights

''(a) RIGHTS OF CRIME VICTIMS.—A crime victim has the following rights:

''(1) The right to be reasonably protected from the accused.

''(2) The right to reasonable, accurate, and timely notice of any public proceeding involving the crime or of any release or escape of the accused.

''(3) The right not to be excluded from any such public proceeding.

''(4) The right to be reasonably heard at any public proceeding involving release, plea, or sentencing.

''(5) The right to confer with the attorney for the Government in the case.

''(6) The right to full and timely restitution as provided in law.

''(7) The right to proceedings free from unreasonable delay.

''(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

''(b) RIGHTS AFFORDED.—In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

''(c) BEST EFFORTS TO ACCORD RIGHTS.—

''(1) GOVERNMENT.—Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).

''(2) CONFLICT.—In the event of any material conflict of interest between the prosecutor and the crime victim, the prosecutor shall advise the crime victim of the conflict and take reasonable steps to direct the crime victim to the appropriate legal referral, legal assistance, or legal aid agency.

''(3) NOTICE.—Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

''(d) ENFORCEMENT AND LIMITATIONS.—

''(1) RIGHTS.—The crime victim, the crime victim's lawful representative, and the attorney for the Government may assert the rights established in this chapter. A person accused of the crime may not obtain any form of relief under this chapter.

''(2) MULTIPLE CRIME VICTIMS.—In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights contained in this chapter, the court shall fashion a procedure to give effect to this chapter.

''(3) WRIT OF MANDAMUS.—If a Federal court denies any right of a crime victim under this chapter or under the Federal Rules of Criminal Procedure, the Government or the crime victim may apply for a writ of mandamus to the appropriate court of appeals. The court of appeals shall take up and decide such application forthwith and shall order such relief as may be necessary to protect the crime victim's ability to exercise the rights.

''(4) ERROR.—In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.

''(5) NEW TRIAL.—In no case shall a failure to afford a right under this chapter provide grounds for a new trial.

''(6) NO CAUSE OF ACTION.—Nothing in this chapter shall be construed to authorize a cause of action for damages.

''(e) DEFINITIONS.—For the purposes of this chapter, the term 'crime victim' means a person directly and proximately harmed as a result of the commission of a Federal offense. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

''(f) PROCEDURES TO PROMOTE COMPLIANCE.—

''(1) REGULATIONS.—Not later than 1 year after the date of enactment of this chapter, the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.

''(2) CONTENTS.—The regulations promulgated under paragraph (1) shall—

''(A) establish an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;

''(B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;

''(C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and

''(D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.''.

(b) TABLE OF CHAPTERS.—The table of chapters for part II of title 18, United States Code, is amended by inserting at the end the following:

''237. Crime victims' rights ..... 3771''.

(c) REPEAL.—Section 502 of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10606) is repealed.

SEC. 3. INCREASED RESOURCES FOR ENFORCEMENT OF CRIME VICTIMS' RIGHTS.

(a) CRIME VICTIMS LEGAL ASSISTANCE GRANTS.—The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404C the following:

''SEC. 1404D. CRIME VICTIMS LEGAL ASSISTANCE GRANTS.

''(a) IN GENERAL.—The Director may make grants as provided in section 1404(c)(1)(A) to State, tribal, and local prosecutors' offices, law enforcement agencies, courts, jails, and correctional institutions, and to qualified public and private entities, to develop, establish, and maintain programs for the enforcement of crime victims' rights as provided in law.

''(b) FALSE CLAIMS ACT.—Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the 'False Claims Act'), may be used for grants under this section, subject to appropriation.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds made available under section 1402(d) of the Victims of Crime Act of 1984, there are authorized to be appropriated to carry out this Act—

(1) $2,000,000 for fiscal year 2005 and $5,000,000 for each of fiscal years 2006, 2007, 2008, and 2009 to United States Attorneys Offices for Victim/Witnesses Assistance Programs;

(2) $2,000,000 for fiscal year 2005 and $5,000,000 in each of the fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice for enhancement of the Victim Notification System;

(3) $300,000 in fiscal year 2005 and $500,000 for each of the fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice for staff to administer the appropriation for the support of the National Crime Victim Law Institute or other organizations as designated under paragraph (4);

(4) $7,000,000 for fiscal year 2005 and $11,000,000 for each of the fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice, for the support of—

(A) the National Crime Victim Law Institute and the establishment and operation of the Institute's programs to provide counsel

for victims in criminal cases for the enforcement of crime victims' rights in Federal jurisdictions, and in States and tribal governments that have laws substantially equivalent to the provisions of chapter 237 of title 18, United States Code; or

(B) other organizations substantially similar to that organization as determined by the Director of the Office for Victims of Crime.

(c) INCREASED RESOURCES TO DEVELOP STATE-OF-THE-ART SYSTEMS FOR NOTIFYING CRIME VICTIMS OF IMPORTANT DATES AND DEVELOPMENTS.—The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404D the following:

"SEC. 1404E. CRIME VICTIMS NOTIFICATION GRANTS.

''(a) IN GENERAL.—The Director may make grants as provided in section 1404(c)(1)(A) to State, tribal, and local prosecutors' offices, law enforcement agencies, courts, jails, and correctional institutions, and to qualified public or private entities, to develop and implement state-of-the-art systems for notifying victims of crime of important dates and developments relating to the criminal proceedings at issue in a timely and efficient manner, provided that the jurisdiction has laws substantially equivalent to the provisions of chapter 237 of title 18, United States Code.

''(b) INTEGRATION OF SYSTEMS.—Systems developed and implemented under this section may be integrated with existing case management systems operated by the recipient of the grant.

''(c) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds made available under section 1402(d), there are authorized to be appropriated to carry out this section—

''(1) $5,000,000 for fiscal year 2005; and

''(2) $5,000,000 for each of the fiscal years 2006, 2007, 2008, and 2009.

''(d) FALSE CLAIMS ACT.—Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the 'False Claims Act'), may be used for grants under this section, subject to appropriation.''.

SEC. 4. REPORTS.

(a) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—Not later than 1 year after the date of enactment of this Act and annually thereafter, the Administrative Office of the United States Courts, for each Federal court, shall report to Congress the number of times that a right established in chapter 237 of title 18, United States Code, is asserted in a criminal case and the relief requested is denied and, with respect to each such denial, the reason for such denial, as well as the number of times a mandamus action is brought pursuant to chapter 237 of title 18, and the result reached.

(b) GENERAL ACCOUNTING OFFICE.—

(1) STUDY.—The Comptroller General shall conduct a study that evaluates the effect and efficacy of the implementation of the amendments made by this Act on the treatment of crime victims in the Federal system.

(2) REPORT.—Not later than 3 years after the date of enactment of this Act, the Comptroller General shall prepare and submit to the appropriate committees a report containing the results of the study conducted under subsection (a).

Mr. FRIST. Mr. President, I want to take a moment to comment on the passage today of the Crime Victims' Rights Act. I am gratified by the overwhelming, bipartisan support for this crucial legislation.

I especially thank the Senator from Arizona, JON KYL, and the Senator from California, DIANNE FEINSTEIN, for their labor over the past several years on behalf of a constitutional amendment, and for their efforts over the past days to write into Federal law appropriate protections for victims of crime across the country. Without their dedication we would not have this victory.

While a constitutional amendment is preferable, this victims' rights Federal statute represents a significant improvement over the status quo. It ensures that crime victims have the right to fair treatment in the criminal justice system. It will give crime victims new legal standing to enforce their rights in court.

Too often, victims are shut out of the criminal justice process. They aren't informed of hearings, plea deals, trial dates and sentencing, or of parole hearings once their attacker is convicted.

The system rightly strives to protect the rights of defendants. But too often it overlooks the rights of the victims.

Take, for example, the case of Jeanne Brykalski of Knoxville, TN. Nine years ago, Jeanne lost both of her parents in a double homicide.

It was a Friday night, Jeanne's parents, Lester and Carol Dotts, went out for dinner. When they returned, they surprised three burglars in the act of looting their home.

Jeanne's mother was shot seven times, once at point-blank range in the head. Her father was shot six times, first in the neck and then repeatedly while he lay crumpled on the floor. The assailants seized Jeanne's mother's purse. And in a final grisly act, stole her father's wallet from his back pocket as he lay dying.

Jeanne's parents would have celebrated their 45th anniversary that summer.

She tells my office:

Something like this you never get over. At first you don't sleep. You can't sleep, because when you close your eyes, horrible images flood your mind. When you finally can sleep, that's when the nightmares come.

Jeanne found out about the first of the three perpetrators' public hearings on the front page of the local paper. As Jeanne recounts it, one morning before work, her husband went outside to fetch the paper from the delivery box. He came back in and tossed it on the kitchen table, telling her, ''You'll want to read this.''

Says Jeanne:

I saw the headline, and of course had to keep reading. And then I found out for the first time the gruesome details of how my parents were murdered. I completely fell apart. And I still had to go to work that day.

Jeanne says it took a long time for the justice system to acknowledge her need to be a part of the process. In fact, on three occasions, she showed up for hearings that she was never told were canceled. The youngest of the perpetrators was plea bargained without Jeanne and her husband being informed.

Her experience with the system led her to become a volunteer for the East Tennessee Victims' Rights Task Force.

Says Jeanne:

All we want is equality and fair play in the courtroom. We want to be treated with courtesy and respect. I don't think that's too much to ask for.

Mr. President, nor do I. And that is why I strongly support the Crime Victims' Rights Act and look forward to getting this bill to the President's desk.

My home State of Tennessee has a Victims Bill of Rights. It was passed in November of 1998.

Anna Whalley, clinical coordinator of the Shelby County Crime Victims Center, tells my office that the law has improved the status of victims in the Tennessee justice system. Judges are now getting used to seeing victims in their courtrooms and are making their courtrooms more comfortable and accommodating.

Because the Tennessee law does not provide funding, however, victims continue to fall through the cracks. There simply is not enough money to stay on top of all of the cases and keep victims informed throughout the judicial process.

The Crime Victims' Rights Act wisely addresses this problem. It provides legal assistance grants to help local law enforcement agencies promote victims' rights.

It also authorizes over $97 million over the next 5 years to broadly carry out the legislation's goals.

Mr. President, we are not all the way there. Our ultimate goal is to pass a victims' rights constitutional amendment. But this legislation represents a significant leap forward.

I thank my colleagues for their support today.

As we all agree, victims have rights, too.

MORNING BUSINESS

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Senate now proceed to a period for morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Mexico.

Mr. REID. Mr. President, will the Senator from New Mexico yield to me for a question?

Mr. DOMENICI. Yes, I yield.

Mr. REID. Senator LANDRIEU has been waiting for the vote to end. She has to pick up her children, but she first wants to speak about her children for a couple of minutes. Would the Senator allow her 2 minutes prior to beginning his speech?

Mr. DOMENICI. Of course.

Ms. LANDRIEU. I thank the Senator from New Mexico, and I thank my colleague from Nevada.

TAKE OUR DAUGHTERS AND SONS TO WORK DAY

Ms. LANDRIEU. As a wonderful Senator from New Mexico, and also as a father of many girls and a grandfather, I