



Senate Approves Kyl/Feinstein Crime Victims Rights Bill April 22, 2004

Washington, DC – The U.S. Senate today approved legislation sponsored by U.S. Senators Jon Kyl (R-AZ), Dianne Feinstein (D-Calif.), Orrin Hatch (R-UT), and Patrick Leahy (D-VT) to give victims of violent crime a core set of procedural rights under federal law and ensure that they have standing to assert their rights before a court.

The bill is named for five victims of violent crime: Scott Campbell of San Juan Capistrano, CA; Stephanie Roper of Upper Marlboro, MD; Wendy Preston of Venice, FL; Lourana Gillis, Alhambra, CA; and Nila Lynn of Sun City, AZ. Their stories are detailed below.

“The scales of justice are today out of balance,” Senator Feinstein said. **“While criminal defendants have an array of rights under law, crime victims have few meaningful rights. This legislation will ensure that victims of crime in America are included in the criminal justice process. Senator Kyl and I have been working on this issue for more than 8 years. I am pleased that this new approach was embraced by the Senate.”**

“This bill has three key parts, which taken together mark an historic step forward in our effort to ensure that victims of crime are accorded due process in our criminal justice system. Together these parts link rights, remedies, and resources to accomplish basic goals of fairness for victims of crime and will ensure that victims and their families know what is happening in the criminal process, and be present and heard during the process.”

“Passage of this bill means so much to the victims of crime across this nation. I hope the bill will be passed by the House and signed into law soon.”

Rights

Specifically, the legislation gives victims 8 specific rights under civil law including the right to:

- **Be reasonably protected** from the accused offender;
- **Reasonable and timely notice** of any public proceeding involving the crime or of any release or escape of the accused;
- **Not be excluded** from any such public proceeding;
- **Be heard at any public proceeding** involving release, plea, sentencing, reprieve, and pardon;

- **Confer with the Government attorney** in the case;
- **Full and timely restitution** as provided in law;
- **Timely and accurate information** about public proceeding involving the crime or of any release or escape of the accused; and
- Be treated with **fairness and with respect** for the victim’s dignity and privacy.

Enforcement

The bill enforces the rights provided by requiring that:

- Criminal courts ensure that victims be afforded the rights and that any decision denying relief be made on the record.
- Prosecutors and other law enforcement officials to make their best efforts to see that crime victims are notified of and accorded these rights.

If any federal court denies these rights, a victim may apply for a **writ of mandamus** for immediate relief.

Definition:

A “crime victim” is a person directly and proximately harmed as a result of the commission of any offense. If the crime victim is under 18, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or representatives of the crime victim’s estate, family members or persons appointed by the court, may assert the crime victim’s rights. **The defendant cannot be the representative or guardian.**

Standing:

Only the crime victim, his or her lawful representative or the government attorney may assert these rights.

Retrial:

In no case can the failure to afford a right result in a new trial.

Large number of victims:

The court must fashion a procedure to provide for the rights of the victims, when the number of victims makes it impracticable to accord all them the rights outlined in the legislation.

Compliance:

The Attorney General, within one year of enactment must establish regulations to enforce the rights of crime victims and ensure compliance.

Funding

Additionally, the legislation provides \$122.3 million for the Department of Justice for grants to provide these rights and encourage States to provide these rights in State law. This includes:

- \$22 million to the U. S. Attorneys’ Victims Witness Offices to improve services to federal crime victims;

- \$22 million to the Office for Victims of Crime to enhance notification to federal crime victims;
- \$2.3 million to the Office for Victims of Crime to administer a new victims' rights enforcement project;
- \$51 million to the Office for Victims of Crime for the support of the National Crime Victim Law Institute's projects to enforce victims' rights, including 11 legal clinics; and
- \$25 million for grants to States to develop and implement state-of-the-art victim notification systems.

The bill is cosponsored by Senators Evan Bayh (D-IN), Hillary Clinton (D-NY), Susan Collins (R-ME), Larry Craig (R-ID), Tom Daschle (D-SD), Mike DeWine (R-OH), Dick Durbin (D-IL), Russ Feingold (D-WI), Bill Frist (R-TN), Lindsey Graham (R-SC), Charles Grassley (R-IA), Edward Kennedy (D-MA), John Kerry (D-MA), Joseph Lieberman (D-CT), Mitch McConnell (R-KY), Bill Nelson (D-FL), Mark Pryor (D-AR), Charles Schumer (D-NY), and Debbie Stabenow (D-MI).

Following are details about the five victims for whom the bill is named:

Murder Victim's Parents Excluded from Trials

Scott Campbell, 27, was last seen in Anaheim, California on April 16, 1982. Police learned that Campbell had met a man named Larry Cowell, and the two were to fly in a private plane to Fargo, N.D. Unbeknownst to Campbell, another man, Donald Dimascio, was hiding in the back of the plane. Somewhere between Los Angeles and Catalina Island, Campbell was killed. According to police, Dimascio broke Campbell's neck, and threw his body into the ocean. His body has never been located. Both Cowell and Dimascio had repeat felony convictions on their records.

The Campbell family was not permitted to enter the courtroom during the trials for the men who murdered their son. They were not notified of a district court appeal hearing. When one of the killers was released from prison, the Campbell family was not notified. The family only learned of these developments through the media.

The victim's mother, Collene Campbell, testified before the Senate on April 8, 2003:

“My only son is dead because of a weak and forgiving justice system. There has been tremendous pain in our family, and multiplying that grief is the fact that the moment we became victims of crime, our rights were ignored in favor of killers. **My husband and I were not permitted ... to be in the courtroom during all three trials for the men who murdered our son.** We weren't going to be witnesses. They just kicked us out there ... and forced us to sit in the hall. We were not allowed to be heard, yet the killers' families were able to testify.”

The Right Not to be Excluded from Public Proceedings

Victims deserve the right not to be excluded from important criminal justice proceedings related to crimes perpetrated against them. Without this right, victims suffer a further loss of dignity and control of their own lives. Detailed legal analysis convincingly demonstrates that there is no general federal constitutional right of criminal defendants to exclude victims from trial. The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis and Nila Lynn Crime Victims' Rights Act would allow victims to be present at public proceedings related to violent crimes committed against them.

Husband's Rights Ignored in Trial of Wife's Murderer

Nila Ruth Lynn, 69, was murdered at a homeowner's association meeting on April 19, 2000, when an angry male 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 their six children. The money their children had been saving for a 50th wedding anniversary gift was 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 in prison without the possibility of parole, rather than deal with the continuing appeals involving the death sentence. **The U.S. Supreme Court has denied his petition for a review of the Arizona Supreme Court's refusal to protect his rights.** Duane has written a book about his struggle in the justice system, titled: "Only Heaven Knows: Victimized by a murderer, then by the courts." He testified before the Senate on April 8, 2003:

"... We, as the 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."

The Right to be Heard at Public Proceedings

Victims deserve the right to be heard at specific points in the criminal justice process: public release, plea, sentencing, reprieve and pardon hearings. Without this right, victims suffer a further loss of dignity and control over their lives. Victims have vital interests at stake when a court decides whether to accept a plea, and courts may not be fully informed of the consequences of releasing a defendant without victim statements. Courts have found victim information helpful in crafting an appropriate sentence, and victim involvement has been said to help the court gauge the effects of the defendant's crime not only on the victim, but on relevant communities. The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis and Nila Lynn Crime Victims' Rights Act confers on crime victims a right to be heard by the relevant decision makers at these critical points in the criminal justice process.

Mother of Murdered Maryland Woman:

Exclusion From Criminal Justice Process Is Devastating

Stephanie Ann Roper, 22, was kidnapped, raped, tortured, and dismembered after her car had broken down on April 3, 1982. The two killers came upon Stephanie while her car was disabled. They kidnapped her, and over a period of five hours, repeatedly raped and tortured her. She was then taken to a deserted shack in another county and these crimes were repeated. Stephanie made several attempts to escape. The final time, when the killers re-captured her, they beat her with logging chains, shot her to death, burned her body, and attempted to dismember her. She was missing for 9 days before her family learned of this tragedy.

The murderers in this case were a 17-year-old male and another 26-year-old male. Both were arrested and sentenced to life in prison. Both killers had prior records in the adult and juvenile criminal justice systems. Stephanie's parents, Vince and Roberta Roper, were notified of the initial proceedings, but not of the continuances. They were excluded from the courtroom for the entire first trial. In 1982, the defense convinced the court that the victims would be emotional, irrelevant, and probable cause for reversal of an appeal. The court agreed, and denied Vince and Roberta the right to be a voice for their daughter.

Stephanie's mother testified before Congress on July 27, 2002:

"I speak to the need ... from personal experience Like countless other victims and survivors, we discovered that, unlike our daughter's killers, we had no rights to be informed, no rights to attend the trial, and no rights to be heard at sentencing. Place yourself in that nightmare. Imagine how it would feel to be shut out of the trial of the accused ... for no good cause. ... **Like countless other families then and now, we struggled not only with the devastating effects of the crimes committed against our loved ones, but the consequences ... of being shut out of the criminal justice system we depended on and trusted.**"

The Right to Standing

If victims' rights are to be meaningful and enforceable, victims need one simple tool: legal standing to have the merits of their case considered. Without legal standing, victims have no ability to demand that courts and prosecutors enforce their rights. The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis and Nila Lynn Crime Victims' Rights Act confers on victims and their lawful representatives the legal standing they need to be able to assert their rights.

Woman Murdered in Gang Initiation: Family of Victim Deprived of Rights

Louarna Gillis, 22, was murdered on January 17, 1979 as part of a gang initiation. Her murderer wanted to enter the world of narcotics in the “Mexican mafia,” and was told the quickest way to do so was to murder the daughter of a Los Angeles Police Department officer. Louarna Gillis was targeted by the killer, as he had known her in high school. The murderer picked her up a few blocks from her home, then drove her to an alley in East Los Angeles where he shot her in the head as she sat in the car, then pushed her into the alley and fired additional shots into her back.

Louarna’s murderer was apprehended six months afterward. 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 date. 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 street gangs and the ‘Mexican mafia’ at the time of her murder. 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 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’ve 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.”

The Right to Notice

Rights for victims in the criminal justice process are of little value if victims are not aware of when such proceedings will take place. Victims deserve to be informed of important public proceedings relating to crimes committed against them. The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis and Nila Lynn Crime Victims’ Rights Act requires that action be taken so victims are given reasonable notification.

The Need to Protect Crime Victims’ Rights — In Their Own Words

Father of Murdered Woman Speaks Out On Victims' Rights

Wendy Preston, 23, was murdered on June 23, 1977 in her parents' Florida home. She was a geriatric nurse who had decided to change careers, and was visiting her mother and father before leaving for the New York School of Ballet. While out with her friends one evening, she was overheard saying she was leaving town, and that her parents wouldn't be home in the coming days. The murderer found the parents' home, and broke in to find money to buy drugs. Wendy was in the home, and was killed. Her body was found 6 days later, when friends who hadn't heard from her began to worry and went looking for her.

Wendy's murderer was arrested and charged with first-degree murder. Her parents were told that the State of Florida was the 'victim' in this case, and that they would be notified if they were to be called as witnesses. After nearly 6 years, the murderer was allowed to plead to a second-degree murder charge, and was sentenced to life in prison. In 1987, the Florida Supreme Court overturned his sentence, on the grounds that existing statutes only protected the rights' of defendants, and courts could not consider victims' rights.

Wendy's father, Robert E. Preston, spoke of the need to protect victims' rights:

“From the standpoint of the process of justice being done, victims who are included in the criminal justice process will be far more cooperative with reporting crime, and cooperating with authorities and proceeding in the prosecution. From the standpoint of the victim, when you are treated with trust and compassion, you start to regain faith in the world, and a view of the fact that life goes on, and that life can be beautiful.”

The Right Not to be Excluded from Any Public Proceedings

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