

A Victims' Rights Constitutional Amendment

- Definition: The term victim will be used to refer to either the actual crime victim, or in the case of homicide, to surviving family members.
- The Victims' Rights Constitutional Amendment, if passed, would provide federal constitutional rights to victims of violent crime or their representatives. Although the term is not defined, representatives presumably would include surviving family members. Many state constitutional amendments or statutes provide rights to family members of homicide victims. See Ariz. Const., art. II, § 2.1(C); Colo. Const., art. II, § 16a; Fla. Const., art. I, § 16(b); N.J. Const., art. I, § 22; Okla. Const., art. II, § 34(A); Or. Const., art. I, § 42(5).
- The U.S. Constitution does not guarantee rights to victims of violent crime. No such guarantee was drafted by the framers in 1787 nor has any such guarantee been added as an amendment for the more than two centuries of the country's existence; although this latter remark may soon be subject to correction.
- Beginning in the 1960s amidst concerns over domestic violence, child abuse, and sexual assault and with the formation of such organizations as Mothers Against Drunk Driving and Parents of Murdered Children, there has been an increased interest in victim's rights. At first the movement sought compensation for victims of violent crime; now it aims at improving the role of the victim in the judicial process.
- Today more than 29 states have amended their constitutions to include a Victim's Bill of Rights. And in July of 1998 Senate Joint Resolution 44, enumerating the rights to be reflected in a new Amendment to the U.S. Constitution, was sent to the full Senate. Two years earlier President Clinton announced his support for an amendment, thereby "signing on" to a Victim's Rights Movement that has been gaining momentum for the last three decades. Already in 1982 Congress was prompted to establish an Office of Victims of Crime in the Justice Department as well as to propose that a clause be added to the Sixth Amendment that guaranteed victims "the right to be present and to be heard at all critical stages of judicial proceedings."

A Brief History of the Victim's Rights Movement: The Victim's Rights Movement surfaced during a period in which liberal theories of crime prevention that focused on rehabilitation, open-ended sentencing, and the constitutional rights of the accused began to be replaced by a punitive approach that focused on harsher sentences, fewer chances of parole and an increased use of the death penalty. This shift from the preventative approaches of the 1950s and 1960s to the "tough" talk on crime today has helped to fuel the Victim's Rights Movement. Indeed the rise of the movement was sparked by the widespread perception that the criminal justice system placed too heavy an emphasis on defendant's rights. "How is it," many victims of violent crime wondered, "that a defendant has the right to parade any number of witnesses ready to testify to the defendant's good character without an equal opportunity given to a victim's relatives and friends to introduce testimony regarding the victim's worth and impact of his or her loss on loved ones and the community?"

It is not without irony that "tough" talk on crime has escalated as rates of reported crime are coming down. Indeed, crime rates have been falling since 1973. Still American fear of violent crime has remained steady throughout this period. One out of every four Americans has installed security systems in their homes and one out of five has purchased a weapon for self-protection. One hundred thousand students carry guns to school every day and 160,000 miss class because they are afraid of physical harm. "Of course," as Orlando Patterson recently commented in an Op-Ed column in The New York Times, "our liberties have to be protected from criminals among us. But there are two complementary ways of going about this: we can take preventative measures. . .to reduce the incidence of crime before it happens, and we can punish those who do commit crimes, giving the police and courts strong powers of enforcement and incarceration." The latter approach now dominates the rhetoric of the leading Presidential candidates.

“Mourning Becomes Electric”: One reason that proponents of victim’s rights have sought a greater voice for victims in the criminal process has been motivated by a desire to help victims and their relatives regain a sense of control over their lives or, to achieve “closure.” But there is often another motivation that accompanies the desire for healing—that is a desire to ensure that the perpetrator receive a harsh sentence. In capital cases, the effect of a relative’s testimony may be life or death for the defendant. In this light prosecutors have welcomed such testimony since it helps juries identify more personally with the victim and hence be more willing to impose a sentence of death. The question then becomes whether the needs and interests of crime victims can be accommodated during the sentencing phase of death penalty cases without—at the same time— infringing upon the rights of a defendant, in particular a defendant’s right to a fair trial.

Indeed the psychological and emotional nature of victim testimony raises the question: Does the admissibility of victim impact evidence during the sentencing phase of capital trials bring justice or revenge?

The Text of the proposed Constitutional Amendment before Congress reads:
(see S. J. Res. 3, 106th Cong as amended on October 4, 1999,

“Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid for all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of submission by Congress: Article Section 1. A victim of a crime of violence, as these terms may be defined by law, shall have the rights: to reasonable notice of, and not to be excluded from, any public proceedings relating to the crime; to be heard, if present, and to submit a statement at all public proceedings to determine a conditional release from custody, an acceptance of a negotiated plea, or a sentence; to the foregoing rights at a parole proceeding that is not public, to the extent those rights are afforded to the convicted offender; to reasonable notice of and an opportunity to submit a statement concerning any proposed pardon or commutation of a sentence; to reasonable notice of a release or escape from custody relating to the crime; to consideration of the interest of the victim that any trial be free from unreasonable delay; to an order of restitution from the convicted offender; to consideration for the safety of the victim in determining any conditional release from custody relating to the crime; and to reasonable notice of the rights established by this article. Section 2. Only the victim or the victim's representative shall have standing to assert the rights established by this article. Nothing in this article shall provide grounds to stay or continue any trial, reopen any proceeding or invalidate any ruling except with respect to conditional release or restitution or to provide rights guaranteed by this article in future proceedings, without staying or continuing a trial. Nothing in this article shall give rise to or authorize the creation of a claim for damages against the United States, a State, a political subdivision, or a public official. Section 3. The Congress shall have the power to enforce this article by appropriate legislation. Exceptions to the rights established by this article may be created only when necessary to achieve a compelling interest.. The right to an order of restitution established by this article shall not apply to crimes committed before the effective date of this article. Section 5. The rights and immunities established by this article shall apply in Federal and State proceedings, including military proceedings to the extent that Congress may provide by law, juvenile justice proceedings, and proceedings in the District of Columbia and any commonwealth, territory, or possession of the United States.

The current version of H.J. Res. 64 is different from S.J. Res. 3 in two respects: Section 1 of H.J. Res. 64 grants rights to a victim of a crime "for which the defendant can be imprisoned for a period longer than one year or any other crime that involves violence." This would include all felonies, both crimes of violence and property crimes, and misdemeanor crimes of violence. S.J. Res. 3 applies only to crimes of violence. Also, S.J. Res. 3 was revised in the committee process to include an amendment providing rights to victims "to reasonable notice of and an opportunity to submit a statement concerning any proposed pardon or commutation of sentence." This right is not included in the House version.