



TESTIMONY OF MARY LOU LEARY
Executive Director, National Center for Victims of Crime

Before the
Subcommittee on the Constitution
Committee on the Judiciary
United States House of Representatives

“Implementation of the Crime Victims’ Rights Provisions of
The Justice for All Act”

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Good afternoon, Chairman Chabot, ranking member Nadler, and members of the Subcommittee. My name is Mary Lou Leary, and I am the executive director of the National Center for Victims of Crime. The National Center is a nonprofit resource and advocacy organization that recently celebrated our 20th year of championing the rights and interests of victims of crime. Our members include victim service providers and allied professionals who assist crime victims at the federal, state, and local levels. I appreciate the opportunity to appear before you this afternoon to address the implementation of some historic victims’ rights legislation, the Justice for All Act of 2004. We supported this Act initially and have monitored its implementation.

Victims’ rights provisions

The *Justice for All Act* provided clear and enforceable legal rights to all direct victims of crime at the federal level. While many of these rights existed previously, they were codified primarily in Title 42 of the Federal Code: the Public Health and Welfare title. As a consequence, judges and many others in the criminal justice system remained unaware of their existence. The *Justice for All Act* moved the list of crime victims’ rights to Title 18, the Federal Criminal Code.

At the same time, it strengthened many of those rights. For example, under the Act, the rights “to be notified” of court proceedings and the release of the offender became the right “to reasonable, accurate, and timely notice” of such events. The right to restitution became the right to “full and timely restitution.” The right to be heard, previously limited to certain victims at certain proceedings, was expanded to “the right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.”

This Act also addressed enforcement of federal victims' rights. Crime victims, their attorneys, and prosecutors were given legal standing to assert victims' rights, and procedures were set out for seeking a writ of mandamus to enforce those rights. The act also required the Attorney General to develop regulations to promote victims' rights through training, disciplinary sanctions for violations of rights, and the designation of an office to receive and investigate crime victim complaints.

Moving the rights of crime victims to the U.S. Criminal Code and adding remedies for their violation has had a significant impact on the federal criminal justice system. Prior to the passage of the Act, victims' rights were viewed as ancillary by many federal prosecutors and administrators. One of our members told us the *Justice for All Act* has "ended some of the hesitancy [about victims' rights] that attorneys may have had in the past," that attorneys were asking more questions of the victim/witness staff and ensuring that crime victims were provided their rights.

Another National Center member who is a victim advocate reported that following implementation of the Act, "[m]anagement has ... placed more emphasis on victims' rights at in-house meetings and in memos" and that "[a]ttorneys seem to be taking a much more proactive approach to the issue rather than waiting for me to come by and say something to them."

A third person said the *Justice for All Act* "has provided many opportunities to discuss the rights of victims in our office, and I embrace each of those opportunities."

Importantly, the Act also provided the funding that Congress recognized would be crucial to the effective implementation of the victims' rights provision. It authorized an additional \$2 million the first year and \$5 million each of the following four years to augment victim/witness programs in U.S. Attorneys' offices, and it authorized identical amounts to enhance the federal Victim Notification System. Congress specifically authorized this funding **in addition to** funding already provided through the Victims of Crime Act Fund.

We have heard of several specific cases where the *Justice for All Act* made a difference to a specific victim. In one case, where a court failed to provide notice of the sentencing date to the attorney and advocate in time for them to notify the victim, sentencing was continued to allow the victim to be notified and attend. In another, a victim had driven hundreds of miles to attend a sentencing, only to be told that he could not address the court. In that case, the prosecutor reminded the judge of the crime victims' rights act, and the victim was then given an opportunity to be heard.

We have heard of courts factoring in the victim's right to a speedy disposition of the case in setting a trial date; of prosecutors asserting the victim's right to be heard at a detention hearing in which the judge was likely to release the defendant; and of greater efforts to identify victims and their losses earlier in the case.

One member told us that in her more than 30 years of experience in law enforcement and victim services, "the *Justice for All Act* is . . . the best piece of legislation to help crime victims." Another told us "this law was much needed and very late."

Current issues:

While the *Justice for All Act* has truly benefited victims of federal crime, there are three issues that demand Congress' attention for the Act to fulfill its promise.

First, the demands on victim/witness staff and the federal victim notification system have significantly increased, as was anticipated. The Department of Justice estimates that in the year following passage of the Act, the number of identified victims and resulting notifications has doubled.

Unfortunately, it appears that the additional funding authorized to meet this increased demand was never provided. From around the country, our office has heard of victim assistants who are simply overwhelmed by the notification requirements, particularly with regard to entering information into the notification system. While the burden on offices increased exponentially, the staffing has not increased.

The implications go beyond an unhappy workforce. Such conditions also mean that victim/witness staff struggling to keep up with data entry responsibilities have less time to provide other crucial victim services, such as accompanying victims to court, conducting safety planning, helping victims with their impact statements, and working with victims seeking restitution to detail their losses. Talented and dedicated victim assistance staff have essentially become data entry clerks, depriving victims of much-needed service.

The solution is clear: Congress must appropriate the money authorized in the *Justice for All Act* for victim/witness staff. This money could support additional clerical staff to ease the data entry burden on victim/witness coordinators and allow them to better meet their other responsibilities to victims.

On a similar front, Congress should provide the additional funding authorized for the Victim Notification System (VNS) to ensure that it operates efficiently, is user-friendly, and can receive information such as revised court dates directly from the federal court computer system.

I do note that, unlike the new grant programs contained within the *Justice for All Act*, the increases in authorization for the victim assistance programs and VNS were not explicitly supportable by moneys collected under the False Claims Act. This Committee may want to amend the statute to clarify that False Claims Act funding is also available to support these two items.

Secondly, the *Justice for All Act* did not include victims' rights at the investigatory stage. However, these rights were established and remain codified under Title 42, Section 10607 of the U.S. Code. That section provides that “[a]t the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall” identify each victim and provide certain rights and services, including notice of the status of the investigation, the arrest of the accused, the filing of charges, and the release of an offender.

Victims' rights must certainly be understood to include notifying a crime victim who has reported an offense of a decision not to file charges in a case.

Because the listing of rights moved to the criminal code does not include these rights at the investigatory stage, they have received uneven attention and have often been neglected in the federal criminal justice system. The National Center strongly urges Congress to clarify that crime victims have the right to be informed of the status of an investigation, the arrest of the accused, and the filing or decision not to file charges. A commitment to victims' rights prior to the filing of charges will also require an authorization of funding to support the collection of crime victim information at this earlier stage in the criminal justice process.

A third issue we've identified regarding implementation of the *Justice for All Act* relates to crime victims in the District of Columbia. The Act states that it applies to victims "directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia." Thus, it logically applies to Superior Court cases in the District that are handled by the U.S. Attorney. However, the law is not explicit, nor is it explicit where a victim in such a case would seek a writ of mandamus if his or her rights were denied in the lower court: the D.C. Court of Appeals, the typical appellate court for Superior Court cases, or the U.S. Court of Appeals for the District of Columbia. This matter should be clarified to provide that such a writ would be sought in the D.C. Court of Appeals, which, under D.C. law, D.C. Code § 11-721, has jurisdiction over other appeals of Superior Court rulings in criminal matters brought by the United States.

In summary, the *Justice for All Act* significantly advanced the rights of crime victims at the federal level. However, the Act will not achieve the full measure of justice it promised for victims until Congress provides the funding required for implementation and reaffirms our national commitment to crime victims starting at the investigatory stage.

The National Center stands ready to assist you as you work toward ensuring that justice truly is for "all." Thank you for your attention, and I welcome any questions you may have.