Statement of

The Honorable Orrin Hatch

United States Senator
Utah
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Statement of Chairman Orrin G. Hatch
before the United States Senate Committee on the Judiciary

Executive Business Meeting

Good morning. It is my hope to complete work on the DNA legislation today.

I plan to move more quickly through the amendments than the one amendment per mark-up pace we are on.

I understand that there are a number of ongoing discussions and negotiations among interested parties, including the Administration, to achieve an acceptable compromise on this bill.

I support these talks. The issues are narrowing.

I also understand that the House Judiciary Committee is once again taking up legislation this week that encompasses the DNA Bill. This may present another path to secure passage of both the DNA bill and the Victims Rights legislation.

I will carefully consider all amendments that are offered today and plan to vote in concert with Senator Leahy and the other co-sponsors on this legislation.

S. 1700 reflects a carefully balanced compromise that has already passed the House overwhelmingly. I believe that a clear majority of the Senate supports this important bill.

This bill will help victims of crimes receive justice. It will also help those who have been wrongly accused or convicted of crimes. We must keep in mind that the wrongly accused or wrongly convicted are also victims who deserve the just treatment that this bill helps provide.

While it is true, as Senator Biden noted, that Title III of this bill, the Innocence Protection Act, somewhat complicates passage of this legislation, it is also true the Title III is a critical and meritorious component of S. 1700.

Frankly, as I indicated last week, I am somewhat sympathetic to many of the specific arguments that some, including DOJ, have made against some particular features of the bill.

But every complicated piece of legislation can be refined and improved. We must not let the perfect become the enemy of the good. Many compromises were made to get this bill to this

stage. If additional compromises bring us additional supporters, Senator Leahy and I will take this into consideration but do not expect us to compromise with those who will continue to oppose this bill.

This is the end of the session. It is rug-cutting time.

It may be the case that we will have both the DNA bill and the Victims Rights bill or we will have neither. We can pass an important crime bill if we all work together.

We must not lose sight of the forest for the trees.

In this regard, I find some of the arguments against the merits of the proposed $100 million discretionary grant program for capital defense representation and prosecution -- let me repeat that for emphasis -- defense and prosecution of State capital cases to be overblown.

Although this is a discretionary program -- a carrot, not a stick -- many have made the argument that the states would somehow feel compelled to enact a series of supposedly egregious defendant-friendly provisions.

For example, the 22-page DOJ views letter asserts, "... as a practical matter, many states would obviously be under strong pressure to accept the funding and submit to the Federal regulation of their capital counsel by systems that it entails."

While this letter is something of a bureaucratic masterpiece, I find this conclusion hard to believe. We are talking about a total authorization of $100 million, which would be split 50:50 between capital prosecution and defense -- and we all know that not every authorization gets a full appropriation.

If Title III was only half as bad as its critics would have us believe, it is hard for me to conclude that the maximal $50 million in annual funds that could go to the defense side of the ledger would be such an irresistible incentive that any State would rush to adopt measures that would somehow unravel the State's criminal justice system with respect to capital cases.

We must keep in mind exactly just what kind of conditions that the DOJ letter has characterized as "controversial measures".

Let me list a few of these so-called controversial measures that a participating state must satisfy:

1) establish qualifications for capital defense attorneys;

2) establish a roster of qualified attorneys;

3) assign two attorneys from the roster to represent an indigent capital case defendant;

4) operate training programs for capital defense counsel;

5) monitor the performance of attorneys on capital punishment cases and debar incompetent attorneys; and

6) see that public defenders are paid commensurate with the salaries of prosecutors in the locality.

These requirements are hardly earth-shaking and do not seem controversial.

As a general matter of philosophy, I am always sensitive to the conditions of participation that federal statutes erect as pre-conditions for state receipt of federal funds. But in this case, I do not think we have gone too far.

The financial incentive at stake here -- a maximum of $50 million per year if all of these funds are appropriated -- does not appear likely to result in States acting in ways inconsistent with longstanding State practices, principles and values.

Yet somehow DOJ asserts, on page 20 of this impressive missive, that this relatively modest discretionary -- let me repeat -- discretionary -- grant program somehow amounts to "a blank check on the State Treasury" and, further, "promotes a serious imbalance, threatening the future ability of the States to impose and carry out the death penalty..." I think that DOJ doth protest too much.

If any state genuinely shared these concerns, the remedy is simple: do not participate in this relatively small discretionary grant program. Not all states chose to participate in every discretionary grant program funded by the federal government.

The Justice Department somewhat grudgingly concedes this reality: Page 19 of its letter states: "States could escape the regulation by not participating in the grant program."

While I take issue with the term regulation because it connotes a command-and-control, one-size-fits-all, mandated federal stick approach -- which this bill decidedly avoids, I do agree with the inescapable truth that if a state does not want to satisfy the federal requirements, it may simply elect not to do so if it decides the benefits of the grant program do not exceed its costs or is counter to its interests.

In any event, I hope we can get a lot of work done on this bill today and finish our consideration of amendments.

I support all the behind the scenes talks that have been taking place among interested parties over the last few days and I remain hopeful that we may be able to reach a broader compromise that improves this important crime bill that already enjoys broad support.

I am always for improving legislation and building a broader consensus. But it is late in the year and I think it best to get this bill on the Senate calendar.