

NEW MEXICO VICTIMS' RIGHTS LAWS¹

Constitution

Article II, § 24 – Rights of Crime Victims

A. A victim of arson resulting in bodily injury, aggravated arson, aggravated assault, aggravated battery, dangerous use of explosives, negligent use of a deadly weapon, murder, voluntary manslaughter, involuntary manslaughter, kidnapping, criminal sexual penetration, criminal sexual contact of a minor, homicide by vehicle, great bodily injury by vehicle or abandonment or abuse of a child or that victim's representative shall have the following rights as provided by law:

- (1) the right to be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;
- (2) the right to timely disposition of the case;
- (3) the right to be reasonably protected from the accused throughout the criminal justice process;
- (4) the right to notification of court proceedings;
- (5) the right to attend all public court proceedings the accused has the right to attend;
- (6) the right to confer with the prosecution;
- (7) the right to make a statement to the court at sentencing and at any post-sentencing hearings for the accused;
- (8) the right to restitution from the person convicted of the criminal conduct that caused the victim's loss or injury;
- (9) the right to information about the conviction, sentencing, imprisonment, escape or release of the accused;
- (10) the right to have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause; and

¹ Not intended to be exhaustive.

- (11) the right to promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property.
- B. A person accused or convicted of a crime against a victim shall have no standing to object to any failure by any person to comply with the provisions of Subsection A of Section 24 of Article 2 of the constitution of New Mexico.
- C. The provisions of this amendment shall not take effect until the legislature enacts laws to implement this amendment.

Statutes

Chapter 31, Criminal Procedure; Article 26, Victims of Crime Act § 31-26-1 – Short title

Chapter 31, Article 26 NMSA 1978 may be cited as the “Victims of Crime Act”.

§ 31-26-2 – Purpose of act

Recognizing the state's concern for victims of crime, it is the purpose of the Victims of Crime Act to assure that:

- A. the full impact of a crime is brought to the attention of a court;
- B. victims of violent crimes are treated with dignity, respect and sensitivity at all stages of the criminal justice process;
- C. victims' rights are protected by law enforcement agencies, prosecutors and judges as vigorously as are the rights of criminal defendants; and
- D. the provisions of Article 2, Section 24 of the constitution of New Mexico are implemented in statute.

§ 31-26-3 – Definitions

As used in the Victims of Crime Act:

- A. "court" means magistrate court, metropolitan court, children's court, district court, the court of appeals or the supreme court;
- B. "criminal offense" means:
 - (1) negligent arson resulting in death or bodily injury, as provided in Subsection B of Section 30-17-5 NMSA 1978;
 - (2) aggravated arson, as provided in Section 30-17-6 NMSA 1978;

- (3) aggravated assault, as provided in Section 30-3-2 NMSA 1978;
 - (4) aggravated battery, as provided in Section 30-3-5 NMSA 1978;
 - (5) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;
 - (6) negligent use of a deadly weapon, as provided in Section 30-7-4 NMSA 1978;
 - (7) murder, as provided in Section 30-2-1 NMSA 1978;
 - (8) voluntary manslaughter, as provided in Section 30-2-3 NMSA 1978;
 - (9) involuntary manslaughter, as provided in Section 30-2-3 NMSA 1978;
 - (10) kidnapping, as provided in Section 30-4-1 NMSA 1978;
 - (11) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;
 - (12) criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;
 - (13) armed robbery, as provided in Section 30-16-2 NMSA 1978;
 - (14) homicide by vehicle, as provided in Section 66-8-101 NMSA 1978;
 - (15) great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978;
 - (16) abandonment or abuse of a child, as provided in Section 30-6-1 NMSA 1978;
 - (17) stalking or aggravated stalking, as provided in the Harassment and Stalking Act;
 - (18) aggravated assault against a household member, as provided in Section 30-3-13 NMSA 1978;
 - (19) assault against a household member with intent to commit a violent felony, as provided in Section 30-3-14 NMSA 1978;
 - (20) battery against a household member, as provided in Section 30-3-15 NMSA 1978; or
 - (21) aggravated battery against a household member, as provided in Section 30-3-16 NMSA 1978;
- C. "court proceeding" means a hearing, argument or other action scheduled by and held before a court;
- D. "family member" means a spouse, child, sibling, parent or grandparent;
- E. "formally charged" means the filing of an indictment, the filing of a criminal information pursuant to a bind-over order, the filing of a petition or the setting of a preliminary hearing;
- F. "victim" means an individual against whom a criminal offense is committed. "Victim" also means a family member or a victim's representative when the individual against whom a criminal offense was committed is a minor, is incompetent or is a homicide victim; and

G. "victim's representative" means an individual designated by a victim or appointed by the court to act in the best interests of the victim.

§ 31-26-4 – Victim's rights

A victim shall have the right to:

- A. be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;
- B. timely disposition of the case;
- C. be reasonably protected from the accused throughout the criminal justice process;
- D. notification of court proceedings;
- E. attend all public court proceedings the accused has the right to attend;
- F. confer with the prosecution;
- G. make a statement to the court at sentencing and at any post-sentencing hearings for the accused;
- H. restitution from the person convicted of the criminal offense that caused the victim's loss or injury;
- I. information about the conviction, sentencing, imprisonment, escape or release of the accused;
- J. have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause;
- K. promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property; and
- L. be informed by the court at a sentencing proceeding that the offender is eligible to earn meritorious deductions from the offender's sentence and the amount of meritorious deductions that may be earned by the offender.

§ 31-26-5 – Exercise of rights; requirements for victim

A victim may exercise his rights pursuant to the provisions of the Victims of Crime Act only if he:

- A. reports the criminal offense within five days of the occurrence or discovery of the criminal offense, unless the district attorney determines that the victim had a reasonable excuse for failing to do so;
- B. provides the district attorney with current and updated information regarding the victim's name, address and telephone number; and

- C. fully cooperates with and fully responds to reasonable requests made by law enforcement agencies and district attorneys.

§ 31-26-6 – When rights and duties take effect; termination of rights and duties

The rights and duties established pursuant to the provisions of the Victims of Crime Act take effect when an individual is formally charged by a district attorney for allegedly committing a criminal offense against a victim. Those rights and duties remain in effect until final disposition of the court proceedings attendant to the charged criminal offense.

§ 31-26-7 – Designation or appointment of victim's representative

- A. A victim may designate a victim's representative to exercise all rights provided to the victim pursuant to the provisions of the Victims of Crime Act. A victim may revoke his designation of a victim's representative at any time.
- B. When a victim is deceased, incompetent or unable to designate a victim's representative, the court may appoint a victim's representative for the victim. If a victim regains his competency, he may revoke the court's appointment of a victim's representative.
- C. When the victim is a minor, the victim's parent or grandparent may exercise the victim's rights; provided, that when the person accused of committing the criminal offense against the victim is the parent or grandparent of the victim, the court may appoint a victim's representative for the victim.

§ 31-26-8 – Procedures for providing victims with preliminary information; law enforcement agencies

The law enforcement agency that investigates a criminal offense shall:

- A. inform the victim of medical services and crisis intervention services available to victims;
- B. provide the victim with the police report number for the criminal offense and a copy of the following statement: "If within thirty days you are not notified of an arrest in your case, you may call (telephone number for the law enforcement agency) to obtain information on the status of your case."; and
- C. provide the victim with the name of the district attorney for the judicial district in which the criminal offense was committed and the address and telephone number for that district attorney's office.

§ 31-26-9 – Procedures for providing victims with notice of rights and information regarding prosecution of a criminal offense; district attorneys

- A. Within seven working days after a district attorney files a formal charge against the accused for a criminal offense, the district attorney shall provide the victim of the criminal offense with:

- (1) a copy of Article 2, Section 24 of the constitution of New Mexico, regarding victims' rights;
- (2) a copy of the Victims of Crime Act;
- (3) a copy of the charge filed against the accused for the criminal offense;
- (4) a clear and concise statement of the procedural steps generally involved in prosecuting a criminal offense; and
- (5) the name of a person within the district attorney's office whom the victim may contact for additional information regarding prosecution of the criminal offense.

B. The district attorney's office shall provide the victim with oral or written notice, in a timely fashion, of a scheduled court proceeding attendant to the criminal offense.

§ 31-26-10 – Procedures for providing victims with notice of a court proceeding; courts; district attorneys

A court shall provide a district attorney's office with oral or written notice no later than seven working days prior to a scheduled court proceeding attendant to a criminal offense, unless a shorter notice period is reasonable under the circumstances. The district attorney's office shall convey the information concerning the scheduled court proceeding to the victim, as provided in Subsection B of Section 9 of the Victims of Crime Act.

§ 31-26-10.1 – Crime victim presence at court proceedings; plea agreement notification

A. At any scheduled court proceeding, the court shall inquire on the record whether a victim is present for the purpose of making an oral statement or submitting a written statement respecting the victim's rights enumerated in Section 31-26-4 NMSA 1978. If the victim is not present, the court shall inquire on the record whether an attempt has been made to notify the victim of the proceeding. If the district attorney cannot verify that an attempt has been made, the court shall:

- (1) reschedule the hearing; or
- (2) continue with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and
- (3) order the district attorney to notify the victim of the rescheduled hearing.

B. The provisions of this section shall not limit the district attorney's ability to exercise prosecutorial discretion on behalf of the state in a criminal case.

C. The provisions of this section shall not require the court to continue or reschedule any proceedings if it would result in a violation of a jurisdictional rule.

§ 31-26-11 – Procedures when an inmate or delinquent child escapes; corrections department; children, youth and families department

- A. The corrections department or the children, youth and families department shall immediately notify the sentencing judge or the children's court judge, the district attorney of the judicial district from which the inmate or delinquent child was committed and the probation officer who authored the presentence report when an inmate or delinquent child:
- (1) escapes from a correctional facility or juvenile justice facility under the jurisdiction of the corrections department or the children, youth and families department; or
 - (2) convicted in New Mexico of a capital, first degree or second degree felony and transferred to a facility under the jurisdiction of another state escapes from that facility.
- B. The district attorney shall immediately notify any person known to reside in his district who was a victim of the criminal or delinquent offense for which the inmate or delinquent child was committed.

§ 31-26-12 – Procedures when an inmate is released from incarceration; adult parole board; corrections department; procedures when a delinquent child is released from custody; juvenile parole board; children, youth and families department; district attorneys

- A. The adult parole board and the juvenile parole board shall provide a copy of their respective regular release dockets to each district attorney in the state at least ten working days before the docket is considered by the board. The district attorney shall notify any person known to reside in his district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.
- B. The adult parole board and the juvenile parole board shall provide a copy of a supplemental, addendum or special docket to each district attorney at least five working days before the release docket is considered by the board.
- C. Following consideration of a release docket by the adult parole board or the juvenile parole board, each board shall promptly notify each district attorney of any recommendations adopted by the board for release of an inmate from incarceration or a delinquent child from custody. The district attorney shall notify any person known to reside in his district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.
- D. In the case of an inmate scheduled to be released from incarceration without parole or prior to parole for any reason, or a delinquent child scheduled to be released from custody, the corrections department or the children, youth and families department shall notify each district attorney at least fifteen working days before the inmate's or delinquent child's release. The district attorney shall notify any person known to reside in his district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.

§ 31-26-13. Disclaimer

Nothing in the Victims of Crime Act creates a cause of action on behalf of a person against a public employer, public employee, public agency, the state or any agency responsible for the enforcement of rights or provision of services set forth in that act.

§ 31-26-14 – Effect of noncompliance

A person accused or convicted of a crime against a victim shall have no standing to object to any failure by any person to comply with the provisions of the Victims of Crime Act.

§ 31-26-15. Identity theft passport; database

- A. The attorney general, in cooperation with the department of public safety and the motor vehicle division of the taxation and revenue department, shall issue an identity theft passport to a person who claims to be a victim of identity theft pursuant to Section 30-16-24.1 NMSA 1978 and who provides to the attorney general:
- (1) a certified copy of a court order obtained pursuant to Section 5 of this 2009 act or a full set of fingerprints;
 - (2) a driver's license or other government-issued identification or record; and
 - (3) other information as required by the attorney general.
- B. An identity theft passport shall contain a picture of the person to whom it was issued and other information as the attorney general deems appropriate.
- C. The attorney general may enter into a memorandum of understanding with the motor vehicle division of the taxation and revenue department for the development and issuance of a secure form of identity theft passport. When an identity theft passport is issued, the motor vehicle division shall note on the person's driver record that an identity theft passport has been issued.
- D. An identify [identity] theft passport shall be accepted as evidence of identity by law enforcement officers and others who may challenge the person's identity.
- E. The attorney general shall maintain a database of identity theft victims who have reported to a law enforcement agency or have been issued an identity theft passport. The attorney general may provide access to the database only to criminal justice agencies. For purposes of identification and authentication, the attorney general may allow access to specific information about a person who has become a victim of identity theft to that person or to that person's authorized representative.
- F. The attorney general shall keep on file each application for an identity theft passport and each police report of identity theft submitted by a law enforcement agency.
- G. The attorney general shall prepare and make available to local law enforcement agencies and to the general public an information packet that includes information on how to prevent and stop identity theft.

§ 31-26-16. Expungement from police and court records

- A. A person whose name or other identifying information was used, without consent or authorization, by another person who was charged, arrested or convicted of a crime while using that person's name or identification may, with notice to the prosecutor, file a petition in the criminal action, if pending, or if the criminal action is not pending, then in a court of competent jurisdiction, requesting expungement of the petitioner's personal identifying information from the record. If the court finds that the petitioner did not commit the offense with which the petitioner's identity has been associated, the court shall expunge the petitioner's personal identifying information from the record.
- B. When a court finds that a petitioner did not commit the offense with which the petitioner's identity has been associated, the court shall order that the petitioner's name and other identifying information contained in the court records be removed and the records labeled to show that, due to identity theft, the information is not accurate and does not reflect the perpetrator's true identity. The court may also order expungement of the innocent party's arrest information pursuant to Section 29-3-8.1 NMSA 1978.