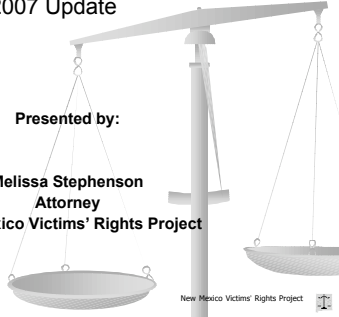


Victims' Rights in the Criminal Justice System 2007 Update

Presented by:
Melissa Stephenson
Attorney
New Mexico Victims' Rights Project



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Training Agenda

July 17 - Updates on Victims' Rights Law



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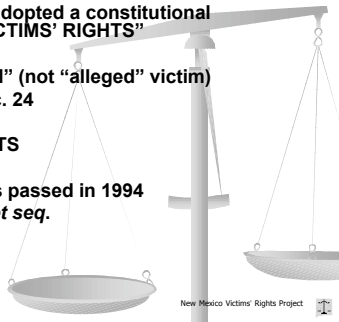
INTRODUCTION

In 1992, New Mexico adopted a constitutional amendment for "VICTIMS' RIGHTS"

LEGAL TERM "VICTIM" (not "alleged" victim)
N.M. Const. Art. II, sec. 24

IN THE BILL OF RIGHTS

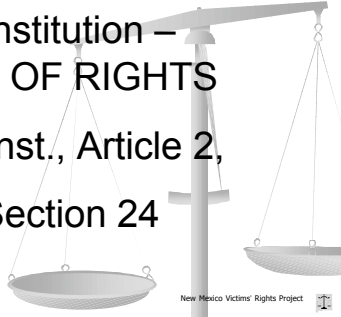
Implementing statutes passed in 1994
N.M. Stat. §§ 31-26-1 *et seq.*



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WHAT IS THE LAW??

Constitution –
BILL OF RIGHTS
N.M.Const., Article 2,
Section 24

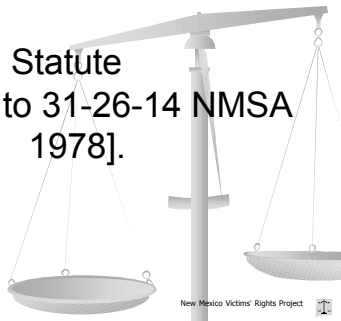


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WHAT IS THE LAW???

Statute
[31-26-1 to 31-26-14 NMSA
1978].



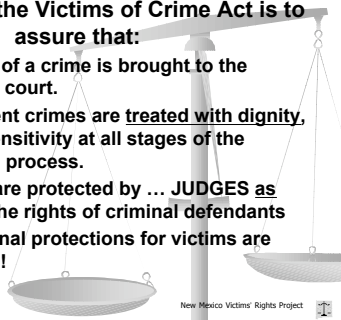
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Purpose of the act

The purpose of the Victims of Crime Act is to assure that:

- The full impact of a crime is brought to the attention of the court.
- Victims of violent crimes are treated with dignity, respect, and sensitivity at all stages of the criminal justice process.
- Victims rights are protected by ... JUDGES as vigorously as the rights of criminal defendants
- The constitutional protections for victims are FULLY enabled!



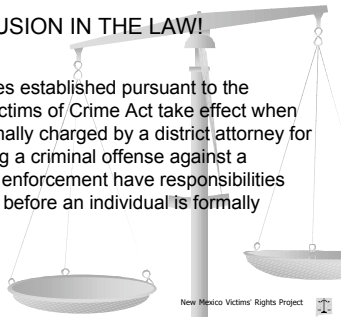
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When rights and duties take effect [31-26-6]

CONFUSION IN THE LAW!

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." BUT law enforcement have responsibilities under the law even before an individual is formally charged.



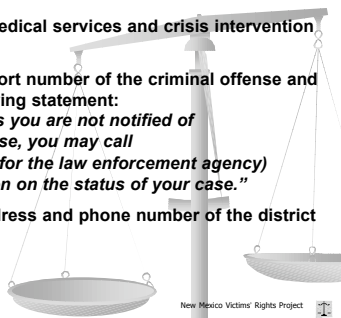
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Duty of Law Enforcement [31-26-8]

Inform the victim of medical services and crisis intervention services

Provide the police report number of 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."

Provide the name, address and phone number of the district attorney

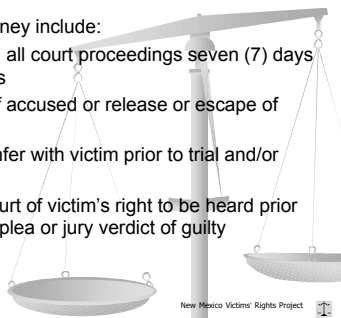


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Duties for District Attorneys [31-26-9 thru 31-26-12]

Duties of District Attorney include:

- 1) Notice of rights and all court proceedings seven (7) days prior to the hearings
- 2) Notice of release of accused or release or escape of offender
- 3) Requirement to confer with victim prior to trial and/or offering of any plea
- 4) Assertion to the Court of victim's right to be heard prior to sentencing after plea or jury verdict of guilty

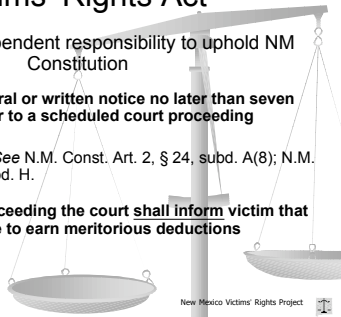


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Duties for the Judiciary Constitution and Victims' Rights Act

Judiciary has independent responsibility to uphold NM
Constitution

- Provide DA with oral or written notice no later than seven working days prior to a scheduled court proceeding
- Order restitution See N.M. Const. Art. 2, § 24, subd. A(8); N.M. Stat. § 31-26-4, subd. H.
- At sentencing proceeding the court shall inform victim that offender is eligible to earn meritorious deductions



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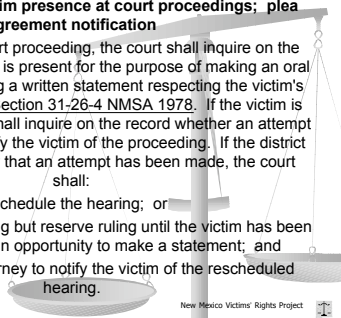
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Duties for the Judiciary, cont.

§ 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.



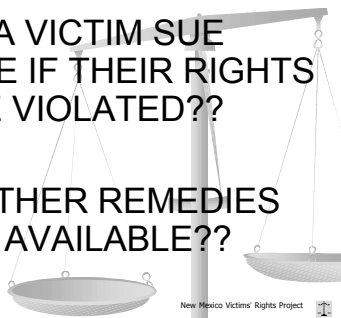
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REMEDY FOR VIOLATION?

CAN A VICTIM SUE
SOMEONE IF THEIR RIGHTS
ARE VIOLATED??

WHAT OTHER REMEDIES
ARE AVAILABLE??



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PURPOSE OF LAW

By promoting victims' rights in the criminal justice system, we institute:

- Balance of rights between defendants and their victims (restorative justice)
- An increase in victim cooperation and empowerment
- An increase in prosecution success
- Heightened safety for victims and community
- Responsibility in the offender



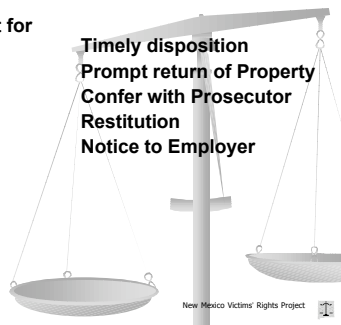
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VICTIMS' CONSTITUTIONAL RIGHTS

Fairness and Respect for Dignity/Privacy

Protection
Notification
Presence
Speak
Information

Timely disposition
Prompt return of Property
Confer with Prosecutor
Restitution
Notice to Employer

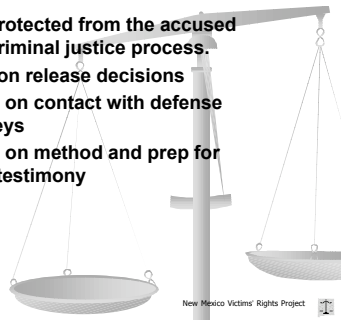


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Victims' Rights LITIGATION LOWER COURTS

To be reasonably protected from the accused throughout the criminal justice process.

Effect on release decisions
Impact on contact with defense attorneys
Impact on method and prep for testimony



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Victims' Rights LITIGATION LOWER COURTS

To be treated with dignity and respect for privacy

- LIMITED waivers of information
- Closed courtrooms
- Private attorney support in pretrial interviews
- Potential for reversals of plea bargains when victim not conferred with



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Victims' Rights LITIGATION NM SUPREME COURT

"A "victim" has constitutional rights, and they are personal to the victim!

(Law enforcement and Prosecutors and JUDGES have RESPONSIBILITIES to victims)

Because the victims' constitutional rights are personal to THEM, they have STANDING to assert those rights when ANYONE in the criminal justice system is violating them, and EVEN when they are being upheld



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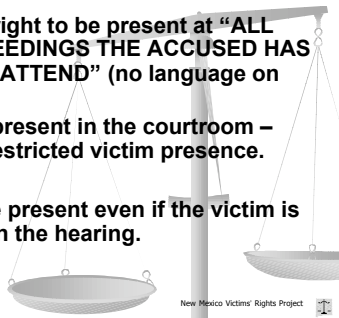
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Victims' Rights LITIGATION NM SUPREME COURT

A victim has the right to be present at "ALL PUBLIC PROCEEDINGS THE ACCUSED HAS THE RIGHT TO ATTEND" (no language on witness!!!)

"Attend" means present in the courtroom – authorized unrestricted victim presence.

The victim can be present even if the victim is to testify later in the hearing.



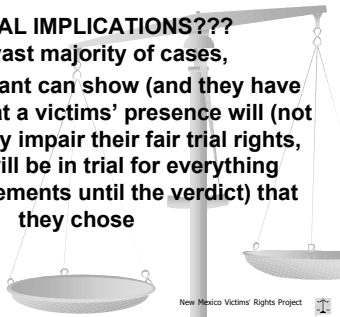
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Victims' Rights LITIGATION NM SUPREME COURT

PRACTICAL IMPLICATIONS???

In the vast majority of cases,
unless a defendant can show (and they have
the burden) that a victims' presence will (not
MAY) seriously impair their fair trial rights,
the victim will be in trial for everything
(opening statements until the verdict) that
they chose



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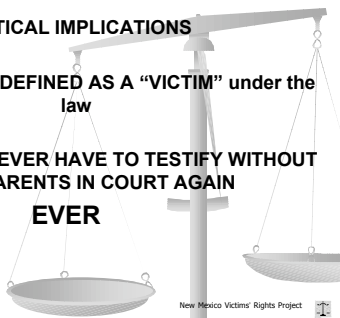
Victims' Rights LITIGATION NM SUPREME COURT

PRACTICAL IMPLICATIONS

A PARENT IS ALSO DEFINED AS A "VICTIM" under the
law

NO CHILD SHOULD EVER HAVE TO TESTIFY WITHOUT
THEIR PARENTS IN COURT AGAIN

EVER

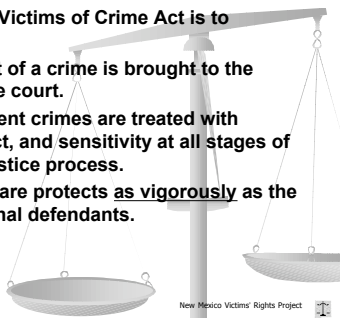


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PURPOSE REVISITED

The purpose of the Victims of Crime Act is to
assure:

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- Victims of violent crimes are treated with dignity, respect, and sensitivity at all stages of the criminal justice process.
- Victims rights are protects as vigorously as the rights of criminal defendants.

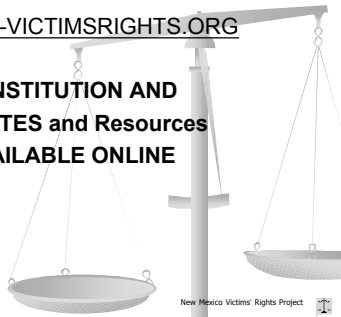


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ASSISTANCE AVAILABLE

WWW.NM-VICTIMSRIGHTS.ORG

**CONSTITUTION AND
STATUTES and Resources
AVAILABLE ONLINE**



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Questions?

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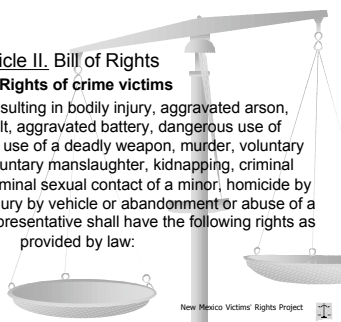


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CONSTITUTION

**Article II, Bill of Rights
§ 24. Rights of crime victims**

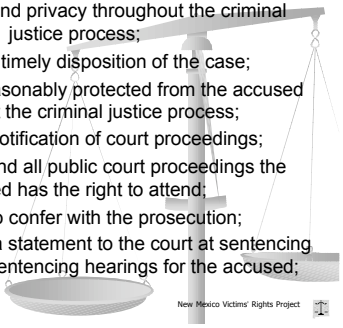
A. A victim of arson resulting in bodily injury, aggravated arson, aggravated assault, aggravated battery, dangerous use of explosives, negligent use of a deadly weapon, murder, voluntary manslaughter, involuntary manslaughter, kidnapping, criminal sexual penetration, criminal sexual contact of a minor, 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:



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CONSTITUTION

- (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;

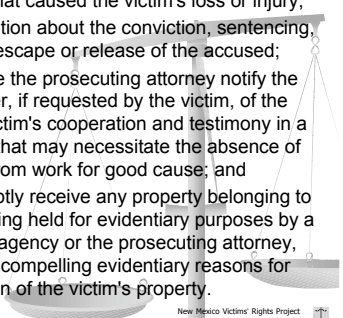


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CONSTITUTION

- (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
- (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.

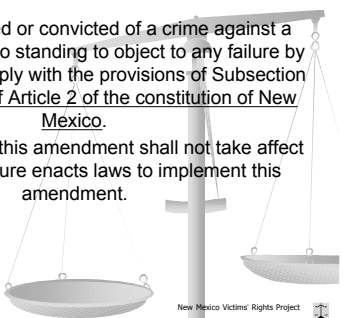


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CONSTITUTION

- 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 affect until the legislature enacts laws to implement this amendment.



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