



## Select Victims' Rights – New Mexico

### USING THIS RESOURCE

This resource is intended to provide a base of knowledge regarding crime victims' rights in New Mexico and promising practices to ensure compliance with and enforcement of those rights. To keep this *Guide* as user-friendly as possible in light of the breadth, complexity and evolving nature of law, the *Guide* does not include all laws. The *Guide* is intended for informational purposes only. It does not constitute legal advice, nor does it substitute for legal advice. For more in-depth information about the laws governing privacy, confidentiality and privilege in New Mexico, see the companion resource: *Law Enforcement-Based Victim Services in New Mexico: Privacy, Privilege and Confidentiality*.

The following icons are used throughout this resource to highlight key moments for the user.



= Promising Practices: As used in this *Guide*, the “promising practices” indicator highlights procedures, methods or techniques, grounded in victim-centered and trauma-informed research and experience, that afford victims meaningful rights in the justice system.




= Take Note: As used in this *Guide*, the “take note” indicator provides context for the law cited or discussed. For example, if a law has a particularly narrow application or does not explicitly prohibit an action the “take note” indicator is used to highlight or provide clarity around the law.


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<b>SELECT DEFINITIONS</b>	<b>New Mexico Statutes</b>
<p><b>Victims of Crime Act Definitions.</b></p> <p>As used in the Victims of Crime Act:</p> <p>A. “court” means magistrate court, metropolitan court, children’s court, district court, the court of appeals or the supreme court;</p> <p>B. “criminal offense” means:</p> <ul style="list-style-type: none"> <li>(1) negligent arson resulting in death or bodily injury, as provided in Subsection B of Section 30-17-5 NMSA 1978;</li> <li>(2) aggravated arson, as provided in Section 30-17-6 NMSA 1978;</li> <li>(3) aggravated assault, as provided in Section 30-3-2 NMSA 1978;</li> <li>(4) aggravated battery, as provided in Section 30-3-5 NMSA 1978;</li> <li>(5) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;</li> <li>(6) negligent use of a deadly weapon, as provided in Section 30-7-4 NMSA 1978;</li> <li>(7) murder, as provided in Section 30-2-1 NMSA 1978;</li> <li>(8) voluntary manslaughter, as provided in Section 30-2-3 NMSA 1978;</li> <li>(9) involuntary manslaughter, as provided in Section 30-2-3 NMSA 1978;</li> <li>(10) kidnapping, as provided in Section 30-4-1 NMSA 1978;</li> <li>(11) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;</li> <li>(12) criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;</li> <li>(13) armed robbery, as provided in Section 30-16-2 NMSA 1978;</li> <li>(14) homicide by vehicle, as provided in Section 66-8-101 NMSA 1978;</li> <li>(15) great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978;</li> <li>(16) abandonment or abuse of a child, as provided in Section 30-6-1 NMSA 1978;</li> <li>(17) stalking or aggravated stalking, as provided in the Harassment and Stalking Act;</li> </ul>	<p>N.M. Stat. Ann. § 31-26-3.</p>

<p>(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;</p> <p>C. “court proceeding” means a hearing, argument or other action scheduled by and held before a court;</p> <p>D. “family member” means a spouse, child, sibling, parent or grandparent;</p> <p>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;</p> <p>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</p> <p>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.</p> <p> These definitions apply to New Mexico’s Victims of Crime Act, N.M. Stat. Ann. § 31-26-1 through § 31-26-15. These statutory provisions are included below in the section “Select Crime Victims’ Rights.”</p>	
<p><b>Sexual Assault Survivor’s Bill of Rights Definitions.</b></p> <p>M. For the purposes of this section:</p>	<p>N.M. Stat. Ann. § 30-9-21(M).</p>

<p>(1) “health care provider” means a sexual assault examination nurse or another health care provider authorized to examine and collect samples of biological material from a survivor of sexual assault following the assault; and</p> <p>(2) “sexual assault examination kit” means samples of biological material derived from a human body, including bodily fluid, hair and skin cells, collected during a medical examination of a survivor following a sexual assault.</p> <p> These definitions apply to New Mexico’s Sexual Assault Survivor’s Bill of Rights, N.M. Stat. Ann. § 30-9-21(A)–(L). This statutory provision is included below in the section “Select Crime Victims’ Rights.”</p>	
<p><b>Victim Restitution Definitions.</b></p> <p>It is the policy of this state that restitution be made by each violator of the Criminal Code to the victims of his criminal activities to the extent that the defendant is reasonably able to do so. This section shall be interpreted and administered to effectuate this policy. As used in this section, unless the context otherwise requires:</p> <p>(1) “victim” means any person who has suffered actual damages as a result of the defendant’s criminal activities;</p> <p>(2) “actual damages” means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish and loss of consortium. Without limitation, “actual damages” includes damages for wrongful death;</p> <p>(3) “criminal activities” includes any crime for which there is a plea of guilty or verdict of guilty, upon which a judgment may be rendered and any other crime committed after July 1, 1977 which is admitted or not contested by the defendant; and</p>	<p>N.M. Stat. Ann. § 31-17-1(A).</p>

<p>(4) “restitution” means full or partial payment of actual damages to a victim.</p> <p> These definitions apply to New Mexico’s Victim Restitution provision, N.M. Stat. Ann. § 31-17-1(B)-(J). This statutory provision is included below in the section “Select Crime Victims’ Rights.”</p>	
<p><b>Crime Victims Reparations Act Definitions.</b></p> <p>As used in the Crime Victims Reparation Act:</p> <p>A. “child” means an unmarried person who is under the age of majority and includes a stepchild and an adopted child;</p> <p>B. “collateral source” includes benefits for economic loss otherwise reparable under the Crime Victims Reparation Act which the victim or claimant has received or which are readily available to him from:</p> <ul style="list-style-type: none"> <li>(1) the offender;</li> <li>(2) social security, medicare and medicaid;</li> <li>(3) workers’ compensation;</li> <li>(4) proceeds of a contract of insurance payable to the victim;</li> <li>(5) a contract providing prepaid hospital and other health care services or benefits for disability, except for the benefits of any life insurance policy;</li> <li>(6) applicable indigent funds; or</li> <li>(7) cash donations;</li> </ul> <p>C. “commission” means the crime victims reparation commission;</p> <p>D. “dependents” means those relatives of the deceased or disabled victim who are more than fifty percent dependent upon the victim’s income at the time of his death or disability and includes the child of a victim born after his death or disability;</p>	<p>N.M. Stat. Ann. § 31-22-3.</p>

<p>E. “family relationship group” means any person related to another person within the fourth degree of consanguinity or affinity;</p> <p>F. “injury” means actual bodily harm or disfigurement and includes pregnancy and extreme mental distress. For the purposes of this subsection, “extreme mental distress” means a substantial personal disorder of emotional processes, thought or cognition that impairs judgment, behavior or ability to cope with the ordinary demands of life;</p> <p>G. “permanent total disability” means loss of both legs or arms, loss of one leg and one arm, total loss of eyesight, paralysis or other physical condition permanently incapacitating the worker from performing any work at any gainful occupation;</p> <p>H. “relative” means a person’s spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister or spouse’s parents; and</p> <p>I. “victim” means:</p> <p>(1) a person in New Mexico who is injured or killed by any act or omission of any other person that is a crime enumerated in Section 31-22-8 NMSA 1978;</p> <p>(2) a resident of New Mexico who is injured or killed by such a crime occurring in a state other than New Mexico if that state does not have an eligible crime victims compensation program; or</p> <p>(3) a resident of New Mexico who is injured or killed by an act of international terrorism, as provided in 18 U.S.C. Section 2331.</p> <p> These definitions apply to New Mexico’s Crime Victims Reparation Act, N.M. Stat. Ann. § 31-22-1 through § 31-22-23. Some of these statutory provisions are included below in the section “Select Crime Victims’ Rights.”</p>	
<p><b>Victim Counselor Confidentiality Act Definitions.</b></p>	<p>N.M. Stat. Ann. § 31-25-2.</p>



As used in the Victim Counselor Confidentiality Act:

A. “confidential communication” means any information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process and which is disclosed in the course of the counselor’s treatment of the victim for any emotional or psychological condition resulting from a sexual assault or family violence;

B. “victim” means a person who consults a victim counselor for assistance in overcoming adverse emotional or psychological effects of a sexual assault or family violence;

C. “victim counseling” means assessment, diagnosis and treatment to alleviate the adverse emotional or psychological impact of a sexual assault or family violence on the victim. Victim counseling includes crisis intervention;


D. “victim counseling center” means a private organization or unit of a government agency which has as one of its primary purposes the treatment of victims for any emotional or psychological condition resulting from a sexual assault or family violence; and



E. “victim counselor” means any employee or supervised volunteer of a victim counseling center or other agency, business or organization that provides counseling to victims who is not affiliated with a law enforcement agency or the office of a district attorney, has successfully completed forty hours of academic or other formal victim counseling training or has had a minimum of one year of experience in providing victim counseling and whose duties include victim counseling.






These definitions apply to New Mexico’s Victim Counselor Confidentiality Act, N.M. Stat. Ann. § 31-25-1 through § 31-25-6. Some of these statutory provisions are included below in the section “Select Crime Victims’ Rights.”



<p><b>Confidential Substitute Address Act Definitions.</b></p> <p>As used in the Confidential Substitute Address Act:</p> <p>A. “agency” means an agency of the state or of a political subdivision of the state;</p> <p>B. “applicant” means a person who submits an application to participate in the confidential substitute address program;</p> <p>C. “application assistant” means a person who works or volunteers for a domestic violence or sexual assault program and who assists in preparing an application for the confidential substitute address program;</p> <p>D. “confidential substitute address” means an address designated for a participant by the secretary of state pursuant to the Confidential Substitute Address Act;</p> <p>E. “delivery address” means the address where an applicant or a participant receives mail, and it may be the same as the person’s residential address;</p> <p>F. “domestic violence” means “domestic abuse”, as defined in the Family Violence Protection Act;</p> <p>G. “participant” means a person certified to participate in the confidential substitute address program pursuant to the Confidential Substitute Address Act;</p> <p>H. “public record” means “public records”, as defined in the Inspection of Public Records Act; and</p> <p>I. “residential address” means the street address where an applicant or participant resides or will relocate.</p>	<p>N.M. Stat. Ann. § 40-13B-2.</p>
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 <p>These definitions apply to New Mexico’s Confidential Substitute Address Act, N.M. Stat. Ann. § 40-13B-1 through § 40-13B-9. Some of these statutory provisions are included below in the section “Select Crime Victims’ Rights.”</p>	
<p><b>Promoting Financial Independence for Victims of Domestic Abuse Act Definitions.</b></p> <p>As used in the Promoting Financial Independence for Victims of Domestic Abuse Act:</p> <p>A. “domestic abuse” has the same meaning as it does in the Family Violence Protection Act;</p> <p>B. “domestic abuse leave” means intermittent paid or unpaid leave time for up to fourteen days in any calendar year, taken by an employee for up to eight hours in one day, to obtain or attempt to obtain an order of protection or other judicial relief from domestic abuse or to meet with law enforcement officials, to consult with attorneys or district attorneys’ victim advocates or to attend court proceedings related to the domestic abuse of an employee or an employee’s family member;</p> <p>C. “employee” means a person who is employed by an employer;</p> <p>D. “employer” includes a person, a firm, a partnership, an association, a corporation, a receiver or an officer of the court of New Mexico, a state agency, or a unit of local government or a school district;</p> <p>E. “family member” means a minor child of the employee or a person for whom the employee is a legal guardian;</p> <p>F. “order of protection” means a court order granted pursuant to the Family Violence Protection Act; and</p>	<p>N.M. Stat. Ann. § 50-4A-2.</p>

<p>G. “retaliation” means an adverse action against an employee, including threats, reprisals or discrimination for engaging in the protected activity of taking domestic abuse leave.</p> <p> These definitions apply to New Mexico’s Victims of Domestic Abuse Act, N.M. Stat. Ann. § 50-4A-1 through § 50-4A-8. Some of these statutory provisions are included below in the section “Select Crime Victims’ Rights.”</p>	
<p><b>Redaction of Victim Information from Materials Subject to Disclosure Obligations Definitions.</b></p> <p>B. Definitions. For purposes of this rule the following definitions apply:</p> <p>(1) “counsel team” means the attorneys representing the parties and their employees or contractors who are participating in the preparation of the prosecution or the defense, provided that “counsel team” does not include the defendant or any members of the public;</p> <p>(2) “personal contact information” means a person’s home address, home phone number, personal cell phone number, or personal email address;</p> <p>(3) “protected personal identifier information” means social security number, taxpayer identification number, financial account number, or driver’s license number, and all but the year of a person’s date of birth; and</p> <p>(4) “public” means any person or entity except members of the counsel team or court personnel.</p> <p> These definitions apply to New Mexico’s District Court Rule of Criminal Procedure Addressing the Redaction of Victim Information from Materials Subject to Disclosure Obligations, N.M. Dist. Ct. R. Crim. P. 5-502.1(A), (C)–(D). This provision is included below in the section “Select Crime Victims’ Rights.”</p>	<p>N.M. Dist. Ct. R. Crim. P. 5-502.1(B).</p>

<p><b>SELECT CRIME VICTIMS' RIGHTS</b></p>	<p><b>New Mexico Constitutional, Statutory &amp; Rule-Based Provisions</b></p>
<p><b>Victims' Right to Be Treated with Fairness and Respect for the Victim's Dignity and Privacy.</b></p> <p>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:</p> <p>(1) the right to be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process[.]</p> <p> New Mexico's victims' rights laws extend similar statutory rights to victims. <i>See, e.g.</i>, N.M. Stat. Ann. § 31-26-4(A) (guaranteeing victims of crime the right to “be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process”). This statutory provision is included below.</p>	<p>N.M. Const. art. 2, § 24(A)(1).</p>
<p><b>Victims' Right to Timely Disposition of the Case.</b></p> <p>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</p>	<p>N.M. Const. art. 2, § 24(A)(2).</p>

<p>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:</p> <p>...</p> <p>(2) the right to timely disposition of the case[.]</p> <p> New Mexico’s victims’ rights laws extend similar statutory rights to victims. <i>See, e.g.</i>, N.M. Stat. Ann. § 31-26-4(B) (guaranteeing victims of crime the right to “timely disposition of the case”). This statutory provision is included below.</p>	
<p><b>Victims’ Right to Be Reasonably Protected from the Accused.</b></p> <p>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:</p> <p>...</p> <p>(3) the right to be reasonably protected from the accused throughout the criminal justice process[.]</p> <p> New Mexico’s victims’ rights laws extend similar statutory rights to victims. <i>See, e.g.</i>, N.M. Stat. Ann. § 31-26-4(C) (guaranteeing victims of crime the right to “be reasonably protected from the accused throughout the criminal justice process”). This statutory provision is included below.</p>	<p>N.M. Const. art. 2, § 24(A)(3).</p>
<p><b>Victims’ Right to Notification of Court Proceedings.</b></p>	<p>N.M. Const. art. 2, § 24(A)(4).</p>


<p>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:</p> <p>...</p> <p>(4) the right to notification of court proceedings[.]</p> <p> New Mexico’s victims’ rights laws extend similar statutory rights to victims. <i>See, e.g.</i>, N.M. Stat. Ann. § 31-26-4(D) (guaranteeing victims of crime the right to “notification of court proceedings”). This statutory provision is included below.</p> <p> A promising practice is to have a policy and procedure in place that enables crime victims to easily keep their contact information up-to-date across agencies.</p>	
<p><b>Victims’ Right to Attend All Public Court Proceedings.</b></p> <p>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:</p> <p>...</p> <p>(5) the right to attend all public court proceedings the accused has the right to attend[.]</p>	<p>N.M. Const. art. 2, § 24(A)(5).</p>


<p> New Mexico’s victims’ rights laws extend similar statutory rights to victims. <i>See, e.g.</i>, N.M. Stat. Ann. § 31-26-4(E) (guaranteeing victims of crime the right to “attend all public court proceedings the accused has the right to attend”). This statutory provision is included below.</p> <p> A victim’s right to be present should provide for the victim’s presence during the entirety of the trial. Even if the victim is to be a witness and the court concludes that the victim’s testimony would be materially altered if the victim hears other testimony, consider discussing with the prosecutor the possibility of the victim testifying first to best ensure the victim’s right to be present during the entirety of the trial.</p>	
<p><b>Victims’ Right to Confer with the Prosecution.</b></p> <p>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:</p> <p>...</p> <p>(6) the right to confer with the prosecution[.]</p> <p> New Mexico’s victims’ rights laws extend similar statutory rights to victims. <i>See, e.g.</i>, N.M. Stat. Ann. § 31-26-4(F) (guaranteeing victims of crime the right to “confer with the prosecution”). This statutory provision is included below.</p>	<p>N.M. Const. art. 2, § 24(A)(6).</p>
<p><b>Victims’ Right to Make a Statement at Sentencing and Any Post-Sentencing Hearings.</b></p>	<p>N.M. Const. art. 2, § 24(A)(7).</p>






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:



...  
(7) the right to make a statement to the court at sentencing and at any post-sentencing hearings for the accused[.]




 New Mexico's victims' rights laws extend similar statutory rights to victims. *See, e.g.*, N.M. Stat. Ann. § 31-26-4(G) (guaranteeing victims of crime the right to "make a statement to the court at sentencing and at any post-sentencing hearings for the accused"). This statutory provision is included below.




 A promising practice is to be familiar with the acceptable formats for victim impact statements so that victims can be informed about all of their options. Depending on your jurisdiction's law, victims may choose to: (1) read or speak their impact statement aloud at the sentencing proceeding, or have another person do it for them; (2) submit a written victim impact statement to the court in advance of sentencing; (3) provide an impact statement using technology to facilitate remote attendance; and/or (4) play or submit an impact statement that was created using audio and video technology.





 A defendant's filing of post-sentencing pleadings and/or the conduct of post-sentencing hearings may take place long after the victim's initial contact with the justice system. A promising practice is to have a policy and procedure in place that enables crime victims to easily keep their contact information up-to-date across agencies.





<p><b>Victims' Right to Restitution.</b></p> <p>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:</p> <p>...</p> <p>(8) the right to restitution from the person convicted of the criminal conduct that caused the victim's loss or injury[.]</p> <p> New Mexico's victims' rights laws extend similar statutory rights to victims. <i>See, e.g.</i>, N.M. Stat. Ann. § 31-26-4(H) (guaranteeing victims of crime the right to “restitution from the person convicted of the criminal offense that caused the victim's loss or injury”). This statutory provision is included below.</p> <p> A promising practice is to inform victims that they are entitled to restitution upon the conviction of defendant for losses caused by defendant's criminal conduct. Assisting victims with the documentation of their losses—including anticipated future expenses—is recommended from the earliest moments of the case.</p>	<p>N.M. Const. art. 2, § 24(A)(8).</p>
<p><b>Victims' Right to Information About Conviction, Sentencing, Imprisonment, Escape and Release.</b></p> <p>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</p>	<p>N.M. Const. art. 2, § 24(A)(9).</p>





<p>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:</p> <p>...</p> <p>(9) the right to information about the conviction, sentencing, imprisonment, escape or release of the accused[.]</p> <p> New Mexico’s victims’ rights laws extend similar statutory rights to victims. <i>See, e.g.</i>, N.M. Stat. Ann. § 31-26-4(I) (guaranteeing victims of crime the right to “information about the conviction, sentencing, imprisonment, escape or release of the accused”). This statutory provision is included below.</p> <p> A promising practice is to have a policy and procedure in place that enables crime victims to easily keep their contact information up-to-date across agencies.</p>	
<p><b>Victims’ Right to Employer Notification.</b></p> <p>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:</p> <p>...</p> <p>(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[.]</p>	<p>N.M. Const. art. 2, § 24(A)(10).</p>

<p> New Mexico’s victims’ rights laws extend similar statutory rights to victims. <i>See, e.g.</i>, N.M. Stat. Ann. § 31-26-4(J) (guaranteeing victims of crime 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”). This statutory provision is included below.</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, of their employment-related rights and to provide employers with this information.</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must “request” the exercise of certain rights. Agencies should carefully maintain documentation of a victim’s request to exercise rights.</p>	
<p><b>Victims’ Right to Prompt Return of Property.</b></p> <p>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:</p> <p>...</p> <p>(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.</p>	<p>N.M. Const. art. 2, § 24(A)(11).</p>






<p> New Mexico’s victims’ rights laws extend similar statutory rights to victims. <i>See, e.g.</i>, N.M. Stat. Ann. § 31-26-4(K) (guaranteeing victims of crime 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”). This statutory provision is included below.</p> <p> It is a promising practice to have a policy and procedure in place to ensure that victims’ property is returned to them as soon as possible, once it is no longer needed for evidentiary purposes. Instructions should be ready and available to provide to victims, explaining how they may promptly obtain their property, in addition to the name of a person they may contact to check the status of the return.</p>	
<p><b>Purpose of the Victims of Crime Act.</b></p> <p>Recognizing the state’s concern for victims of crime, it is the purpose of the Victims of Crime Act to assure that:</p> <ul style="list-style-type: none"> <li>A. the full impact of a crime is brought to the attention of a court;</li> <li>B. victims of violent crimes are treated with dignity, respect and sensitivity at all stages of the criminal justice process;</li> <li>C. victims’ rights are protected by law enforcement agencies, prosecutors and judges as vigorously as are the rights of criminal defendants; and</li> <li>D. the provisions of Article 2, Section 24 of the constitution of New Mexico are implemented in statute.</li> </ul> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p>	<p>N.M. Stat. Ann. § 31-26-2.</p>




<p><b>Victims' Right to Be Treated with Fairness and Respect for the Victim's Dignity and Privacy.</b></p> <p>A victim shall have the right to:</p> <p>A. be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process[.]</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section "Select Definitions."</p> <p> New Mexico extends similar constitutional rights to victims. <i>See, e.g.</i>, N.M. Const. art. 2, § 24(A)(1) (guaranteeing victims of crime the right to "be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process"). This constitutional provision is included above.</p>	<p>N.M. Stat. Ann. § 31-26-4(A).</p>
<p><b>Victims' Right to Timely Disposition of the Case.</b></p> <p>A victim shall have the right to:</p> <p>...</p> <p>B. timely disposition of the case[.]</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section "Select Definitions."</p> <p> New Mexico extends similar constitutional rights to victims. <i>See, e.g.</i>, N.M. Const. art. 2, § 24(A)(2) (guaranteeing victims of crime the right to "timely disposition of the case"). This constitutional provision is included above.</p>	<p>N.M. Stat. Ann. § 31-26-4(B).</p>




<p><b>Victims' Right to Be Reasonably Protected from the Accused.</b></p> <p>A victim shall have the right to:          ...          C. be reasonably protected from the accused throughout the criminal justice process[.]</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section "Select Definitions."</p> <p> New Mexico extends similar constitutional rights to victims. <i>See, e.g.,</i> N.M. Const. art. 2, § 24(A)(3) (guaranteeing victims of crime the right to "be reasonably protected from the accused throughout the criminal justice process"). This constitutional provision is included above.</p>	<p>N.M. Stat. Ann. § 31-26-4(C).</p>
<p><b>Victims' Right to Notification of Court Proceedings.</b></p> <p>A victim shall have the right to:          ...          D. notification of court proceedings[.]</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section "Select Definitions."</p> <p> New Mexico extends similar constitutional rights to victims. <i>See, e.g.,</i> N.M. Const. art. 2, § 24(A)(4) (guaranteeing victims of crime the right to "notification of court proceedings"). This constitutional provision is included above.</p>	<p>N.M. Stat. Ann. § 31-26-4(D).</p>






 A promising practice is to have a policy and procedure in place that enables crime victims to easily keep their contact information up-to-date across agencies.	
<p><b>Victims' Right to Attend All Public Court Proceedings.</b></p> <p>A victim shall have the right to:</p> <p>...</p> <p>E. attend all public court proceedings the accused has the right to attend[.]</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section "Select Definitions."</p> <p> New Mexico extends similar constitutional rights to victims. <i>See, e.g.</i>, N.M. Const. art. 2, § 24(A)(5) (guaranteeing victims of crime the right to "attend all public court proceedings the accused has the right to attend"). This constitutional provision is included above.</p> <p> A victim's right to be present should provide for the victim's presence during the entirety of the trial. Even if the victim is to be a witness and the court concludes that the victim's testimony would be materially altered if the victim hears other testimony, consider discussing with the prosecutor the possibility of the victim testifying first to best ensure the victim's right to be present during the entirety of the trial.</p>	<p>N.M. Stat. Ann. § 31-26-4(E).</p>
<p><b>Victims' Right to Confer with the Prosecution.</b></p> <p>A victim shall have the right to:</p> <p>...</p>	<p>N.M. Stat. Ann. § 31-26-4(F).</p>








<p>F. confer with the prosecution[.]</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p> <p> New Mexico extends similar constitutional rights to victims. <i>See, e.g.</i>, N.M. Const. art. 2, § 24(A)(6) (guaranteeing victims of crime the right to “confer with the prosecution”). This constitutional provision is included above.</p>	
<p><b>Victims’ Right to Make a Statement at Sentencing and Any Post-Sentencing Hearings.</b></p> <p>A victim shall have the right to:</p> <p>...</p> <p>G. make a statement to the court at sentencing and at any post-sentencing hearings for the accused[.]</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p> <p> New Mexico extends similar constitutional rights to victims. <i>See, e.g.</i>, N.M. Const. art. 2, § 24(A)(7) (guaranteeing victims of crime the right to “make a statement to the court at sentencing and at any post-sentencing hearings for the accused”). This constitutional provision is included above.</p> <p> A promising practice is to be familiar with the acceptable formats for victim impact statements so that victims can be informed about all of their options. Depending on your</p>	<p>N.M. Stat. Ann. § 31-26-4(G).</p>





<p>jurisdiction’s law, victims may choose to: (1) read or speak their impact statement aloud at the sentencing proceeding, or have another person do it for them; (2) submit a written victim impact statement to the court in advance of sentencing; (3) provide an impact statement using technology to facilitate remote attendance; and/or (4) play or submit an impact statement that was created using audio and video technology.</p>	
<p><b>Victims’ Right to Restitution.</b></p> <p>A victim shall have the right to:</p> <p>...</p> <p>H. restitution from the person convicted of the criminal offense that caused the victim’s loss or injury[.]</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p> <p> New Mexico extends similar constitutional rights to victims. <i>See, e.g.</i>, N.M. Const. art. 2, § 24(A)(8) (guaranteeing victims of crime the right to “restitution from the person convicted of the criminal conduct that caused the victim’s loss or injury”). This constitutional provision is included above.</p> <p> A promising practice is to inform victims that they are entitled to restitution upon the conviction of defendant for losses caused by defendant’s criminal conduct. Assisting victims with the documentation of their losses—including anticipated future expenses—is recommended from the earliest moments of the case.</p>	<p>N.M. Stat. Ann. § 31-26-4(H).</p>




<p><b>Victims' Right to Information About Conviction, Sentencing, Imprisonment, Escape and Release.</b></p> <p>A victim shall have the right to:          . . .          I. information about the conviction, sentencing, imprisonment, escape or release of the accused[.]</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section "Select Definitions."</p> <p> New Mexico extends similar constitutional rights to victims. <i>See, e.g.</i>, N.M. Const. art. 2, § 24(A)(9) (guaranteeing victims of crime the right to "information about the conviction, sentencing, imprisonment, escape or release of the accused"). This constitutional provision is included above.</p> <p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	<p>N.M. Stat. Ann. § 31-26-4(I).</p>
<p><b>Victims' Right to Employer Notification.</b></p> <p>A victim shall have the right to:          . . .          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[.]</p>	<p>N.M. Stat. Ann. § 31-26-4(J).</p>

<p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p> <p> New Mexico extends similar constitutional rights to victims. <i>See, e.g.</i>, N.M. Const. art. 2, § 24(A)(10) (guaranteeing victims of crime 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”). This constitutional provision is included above.</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must “request” the exercise of certain rights. Agencies should carefully maintain documentation of a victim’s request to exercise rights.</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, of their employment-related rights and to provide employers with this information.</p>	
<p><b>Victims’ Right to Prompt Return of Property.</b></p> <p>A victim shall have the right to:</p> <p>...</p> <p>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[.]</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These</p>	<p>N.M. Stat. Ann. § 31-26-4(K).</p>



<p>definitions are included above in the section “Select Definitions.”</p> <p> New Mexico extends similar constitutional rights to victims. <i>See, e.g.</i>, N.M. Const. art. 2, § 24(A)(11) (guaranteeing victims of crime 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”). This constitutional provision is included above.</p> <p> It is a promising practice to have a policy and procedure in place to ensure that victims’ property is returned to them as soon as possible, once it is no longer needed for evidentiary purposes. Instructions should be ready and available to provide to victims, explaining how they may promptly obtain their property, in addition to the name of a person they may contact to check the status of the return.</p>	
<p><b>Victims’ Right to Information About Meritorious Deductions from an Offender’s Sentence.</b></p> <p>A victim shall have the right to:</p> <p>...</p> <p>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[.]</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p>	<p>N.M. Stat. Ann. § 31-26-4(L).</p>




<p><b>Victims' Right to Notification of Availability of and Procedures to Apply for Crime Victims Reparation.</b></p> <p>A victim shall have the right to:</p> <p>...</p> <p>M. be notified by the district attorney of the availability of and procedures to apply for crime victims reparation.</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section "Select Definitions."</p> <p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	<p>N.M. Stat. Ann. § 31-26-4(M).</p>
<p><b>Prerequisites to the Exercise of Victims' Rights.</b></p> <p>A victim may exercise his rights pursuant to the provisions of the Victims of Crime Act only if he:</p> <p>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;</p> <p>B. provides the district attorney with current and updated information regarding the victim's name, address and telephone number; and</p>	<p>N.M. Stat. Ann. § 31-26-5.</p>



<p>C. fully cooperates with and fully responds to reasonable requests made by law enforcement agencies and district attorneys.</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p> <p> A promising practice is to have a policy in place to establish what constitutes “reasonable excuse,” “fully cooperat[ing]” and “fully respond[ing] to reasonable requests” and to communicate this information to victims.</p> <p> A promising practice is to have a policy and procedure determining who is responsible for providing victims with such information regarding their rights and when. If the timing of notice is not otherwise specified, consideration should be given to providing such information at or promptly after the victims’ initial contact with law enforcement. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p> <p> A promising practice is to let victims know, upon first contact, of their obligation to keep their contact information current.</p>	
<p><b>Timeframe for Victims’ Rights.</b></p> <p>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.</p>	<p>N.M. Stat. Ann. § 31-26-6.</p>




<p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p>	
<p><b>Designation or Appointment of a Victim’s Representative.</b></p> <p>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.</p> <p>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.</p> <p>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.</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p> <p> A promising practice is to notify victims that they have standing to enforce their rights in court and that they may do so personally or with the assistance of an attorney. This notice should include an explanation of the different roles of a prosecuting attorney vs. an attorney hired by the victim to represent their interests and assert their rights.</p>	<p>N.M. Stat. Ann. § 31-26-7.</p>









<p><b>Victims' Right to Information from Law Enforcement Agencies.</b></p> <p>The law enforcement agency that investigates a criminal offense shall:</p> <p>A. inform the victim of medical services and crisis intervention services available to victims;</p> <p>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</p> <p>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.</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section "Select Definitions."</p> <p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	<p>N.M. Stat. Ann. § 31-26-8.</p>
<p><b>Victims' Right to Information from District Attorneys.</b></p> <p>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:</p>	<p>N.M. Stat. Ann. § 31-26-9.</p>



<p>(1) a copy of Article 2, Section 24 of the constitution of New Mexico, regarding victims' rights;</p> <p>(2) a copy of the Victims of Crime Act;</p> <p>(3) a copy of the charge filed against the accused for the criminal offense;</p> <p>(4) a clear and concise statement of the procedural steps generally involved in prosecuting a criminal offense; and</p> <p>(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.</p> <p>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.</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section "Select Definitions."</p> <p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p> <p> A promising practice is to have a policy and procedure in place that enables crime victims to easily keep their contact information up-to-date across agencies.</p>	
<p><b>Procedures Relating to Victims' Right to Notice of Court Proceedings.</b></p> <p>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</p>	<p>N.M. Stat. Ann. § 31-26-10.</p>


<p>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.</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p> <p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	
<p><b>Procedures Relating to Victims’ Right to Be Present at Court Proceedings &amp; Notice of Plea Agreements.</b></p> <p>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 <a href="#">Section 31-26-4 NMSA 1978</a>. 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:</p> <ul style="list-style-type: none"> <li>(1) reschedule the hearing; or</li> <li>(2) continue with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and</li> <li>(3) order the district attorney to notify the victim of the rescheduled hearing.</li> </ul> <p>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.</p>	<p>N.M. Stat. Ann. § 31-26-10.1.</p>

<p>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.</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p> <p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	
<p><b>Procedures Relating to Victims’ Right to Notice of Escape.</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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.</li> </ul> <p>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.</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p>	<p>N.M. Stat. Ann. § 31-26-11.</p>


<p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p> <p> A promising practice is to have a policy and procedure in place that enables crime victims to easily keep their contact information up-to-date across agencies.</p>	
<p><b>Procedures Relating to Victims' Right to Notice of Consideration of Release and Release.</b></p> <p>A. The adult parole board and the children, youth and families department 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. The district attorney shall notify any person known to reside in the district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.</p> <p>B. The adult parole board or the children, youth and families department 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.</p> <p>C. Following consideration of a release docket by the adult parole board or the children, youth and families department, the board and department shall promptly notify each district attorney of recommendations for release of an inmate from incarceration or a delinquent child from custody. The district attorney shall notify any person known to reside in the district attorney's district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.</p>	<p>N.M. Stat. Ann. § 31-26-12.</p>

<p>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 the district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section "Select Definitions."</p> <p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p> <p> A promising practice is to have a policy and procedure in place that enables crime victims to easily keep their contact information up-to-date across agencies.</p>	
<p><b>Victims' Rights Do Not Create a Cause of Action.</b></p> <p>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.</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section "Select Definitions."</p>	<p>N.M. Stat. Ann. § 31-26-13.</p>

 A promising practice is to notify victims that they have standing to enforce their rights in court and that they may do so personally or with the assistance of an attorney. This notice should include an explanation of the different roles of a prosecuting attorney vs. an attorney hired by the victim to represent their interests and assert their rights.	
<p><b>Standing to Assert Victims' Rights.</b></p> <p>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.</p>  N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section "Select Definitions."	<p>N.M. Stat. Ann. § 31-26-14.</p>
<p><b>Victims' Right to Identity Theft Passport.</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>(1) a certified copy of a court order obtained pursuant to Section 5 of this 2009 act or a full set of fingerprints;</li> <li>(2) a driver's license or other government-issued identification or record; and</li> <li>(3) other information as required by the attorney general.</li> </ul> <p>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.</p>	<p>N.M. Stat. Ann. § 31-26-15.</p>

<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p> N.M. Stat. Ann. § 31-26-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p>	
<p><b>Sex Offense Victims’ Rights to Sexually Transmitted Infection Testing of Convicted Persons.</b></p>	<p>N.M. Stat. Ann. § 24-1-9.1.</p>



<p>A. A test designed to identify any sexually transmitted infection may be performed on an offender convicted pursuant to state law of any criminal offense:</p> <ul style="list-style-type: none"> <li>(1) involving contact between the penis and the vulva;</li> <li>(2) involving contact between the penis and anus;</li> <li>(3) involving contact between the mouth and penis;</li> <li>(4) involving contact between the mouth and vulva;</li> <li>(5) involving contact between the mouth and anus; or</li> <li>(6) when the court determines from the facts of the case that there was a transmission or likelihood of transmission of bodily fluids from the offender to the victim of the criminal offense.</li> </ul> <p>B. When consent to perform a test on an offender cannot be obtained, the victim of a criminal offense described in Subsection A of this section may petition the court to order that a test be performed on the offender. When the victim of the criminal offense is a minor or incompetent, the parent or legal guardian of the victim may petition the court to order that a test be performed on the offender. The court shall order and the test shall be administered to the offender within ten days after the petition is filed by the victim or the victim's parent or guardian. Except for disclosures made pursuant to Section 24-1-7 NMSA 1978, the results of the test shall be disclosed only to the offender and to the victim or the victim's parent or legal guardian.</p> <p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	
<p><b>Sex Offense Victims' Rights to Sexually Transmitted Infection Testing of Charged Persons.</b></p>	<p>N.M. Stat. Ann. § 24-1-9.2.</p>


A. A test designed to identify any sexually transmitted infection may be performed on a person, upon the filing of a complaint, information or an indictment alleging that the person committed a state criminal offense:

- (1) involving contact between the penis and the vulva;
- (2) involving contact between the penis and anus;
- (3) involving contact between the mouth and penis;
- (4) involving contact between the mouth and vulva; or
- (5) involving contact between the mouth and anus.

B. If consent to perform a test on an alleged offender cannot be obtained, the victim of the alleged criminal offense described in Subsection A of this section may petition the court, through the prosecuting office or personally, to order that a test be performed on the alleged offender; provided that the same test is first performed on the victim of the alleged criminal offense. The test may be performed on the alleged offender regardless of the result of the test performed on the victim of the alleged criminal offense. If the victim of the alleged criminal offense is a minor or incompetent, the parent or legal guardian of the victim of the alleged criminal offense may petition the court to order that a test be performed on the alleged offender.

C. The court may issue an order based on a finding of good cause after a hearing at which both the victim of the alleged criminal offense and the alleged offender have the right to be present. During the hearing, only affidavits, counter affidavits and medical reports regarding the facts that support or rebut the issuance of an order shall be admissible. The hearing shall be conducted within seventy-two hours after the victim petitions the court for the order. The petition and all proceedings in connection therewith shall be under seal. The court shall issue an order and the test shall be administered to the alleged offender within ten days after the petition is filed by the victim of the alleged criminal offense or the victim's parent or legal guardian.

D. Except for disclosures made pursuant to Section 24-1-7 NMSA 1978, the results of the test shall be disclosed only to the alleged offender and to the victim of the alleged criminal

<p>offense or the victim’s parent or legal guardian. When the victim of the alleged criminal offense or the alleged offender has a positive test result, both the alleged offender and the victim of the alleged criminal offense shall be provided with counseling.</p> <p>E. A prosecuting attorney may not use in a criminal proceeding arising out of the alleged criminal offense the fact that a test was administered to the alleged offender or the results of the test.</p> <p>F. The provisions of this section shall not affect the rights and remedies available to the victim of the alleged criminal offense and the alleged offender in any civil action.</p> <p>G. The administration of a test to an alleged offender pursuant to the provisions of this section shall not preclude the subsequent administration of another test pursuant to the provisions of Section 24-1-9.1 NMSA 1978.</p> <p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	
<p><b>Sex Offense Victims’ Rights to Sexually Transmitted Infection Testing: Confidentiality.</b></p> <p>A. Except as provided in Section 24-1-9.2 NMSA 1978, no person or the person’s agents or employees who require or administer a test for sexually transmitted infections shall disclose the identity of any person upon whom a test is performed or the result of such a test in a manner that permits identification of the subject of the test, except to the following persons:</p> <p>(1) the subject of the test or the subject’s legally authorized representative, guardian or legal custodian;</p>	<p>N.M. Stat. Ann. § 24-1-9.4.</p>

- (2) any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
- (3) an authorized agent, a credentialed or privileged physician or an employee of a health facility or health care provider if the health care facility or health care provider itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues and the agent or employee has a need to know such information;
- (4) the department of health and the centers for disease control and prevention of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted infection;
- (5) a health facility or health care provider that procures, processes, distributes or uses:
  - (a) a human body part from a deceased person, with respect to medical information regarding that person;
  - (b) semen for the purpose of artificial insemination;
  - (c) blood or blood products for transfusion or injection; or
  - (d) human body parts for transplant with respect to medical information regarding the donor or recipient;
- (6) health facility staff committees or accreditation or oversight review organizations that are conducting program monitoring, program evaluation or service reviews, as long as any identity remains confidential;
- (7) authorized medical or epidemiological researchers who may not further disclose any identifying characteristics or information; and
- (8) for purposes of application or reapplication for insurance coverage, an insurer or reinsurer upon whose request the test was performed.

B. Whenever disclosure is made, it shall be accompanied by a statement in writing that includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom this information pertains or as otherwise permitted by law. A person who makes an unauthorized disclosure of this information is guilty of a

<p>petty misdemeanor and shall be sentenced to imprisonment in the county jail for a definite term not to exceed six months or the payment of a fine of not more than five hundred dollars (\$500), or both.”.</p>	
<p><b>Sex Offense Victims’ Rights to Sexually Transmitted Infection Testing: Disclosure.</b></p> <p>A. A victim of a criminal offense or an alleged criminal offense who receives information pursuant to Section 24-1-9.1 or 24-1-9.2 NMSA 1978 may disclose the offender’s or alleged offender’s test results to the victim’s health care provider as is reasonably necessary to protect the victim’s health and safety or the health and safety of the victim’s family or sexual partner.</p> <p>B. Nothing in this section shall be construed to prevent a person who has been tested from disclosing in any way to any other person that person’s own test results.</p>	<p>N.M. Stat. Ann. § 24-1-9.6.</p>
<p><b>Confidentiality of Public Health Act Records.</b></p> <p>A. The files and records of the department giving identifying information about individuals who have received or are receiving from the department treatment, diagnostic services or preventive care for diseases, disabilities or physical injuries, are confidential and are not open to inspection except where permitted by rule of the department, as provided in Subsection C of this section and to the secretary of health and environment [secretary of health] or to an employee of the health and environment department [department of health] authorized by the secretary to obtain such information, but the information shall only be revealed for use in connection with a governmental function of the secretary or the authorized employee. Both the secretary and the employees are subject to the penalty contained in Subsection F of this section if they release or use the information in violation of this section.</p>	<p>N.M. Stat. Ann. § 24-1-20.</p>

<p>B. All information voluntarily provided to the director or his agent in connection with studies designated by him as medical research and approved by the secretary of health and environment [secretary of health], either conducted by or under the authority of the director for the purpose of reducing the morbidity or mortality from any cause or condition of health, is confidential and shall be used only for the purposes of medical research. The information shall not be admissible as evidence in any action of any kind in any court or before any administrative proceeding or other action.</p> <p>C. The human services department and the office of the state long-term care ombudsman shall have prompt access to all files and records in the possession of the licensing and certification bureau of the department that are related to any health facility investigation. Officers and employees of those agencies with such access are subject to the penalty in Subsection F of this section if they release or use the information in violation of this section.</p> <p>D. The files and records of the department are subject to subpoena for use in any pending cause in any administrative proceeding or in any of the courts of the state, unless otherwise provided by law.</p> <p>E. No person supplying information to the department for use in a research project or any cooperating person in a research project shall be subject to any action for damages or other relief as a result of that activity.</p> <p>F. Any person who discloses confidential information in violation of this section is guilty of a petty misdemeanor.</p>	
<p><b>Sex Offense Victims' Rights to Human Immunodeficiency Virus Testing of Convicted Persons.</b></p>	<p>N.M. Stat. Ann. § 24-2B-5.1.</p>


A. A test designed to identify the human immunodeficiency virus or its antigen or antibody may be performed, without the offender's consent, on an offender convicted pursuant to state law of any criminal offense:

- (1) involving contact between the penis and vulva;
- (2) involving contact between the penis and anus;
- (3) involving contact between the mouth and penis;
- (4) involving contact between the mouth and vulva;
- (5) involving contact between the mouth and anus; or
- (6) when the court determines from the facts of the case that there was a transmission or likelihood of transmission of blood, semen or vaginal secretions from the offender to the victim.

B. If consent to perform a test on an offender cannot be obtained pursuant to the provisions of Section 24-2B-2 or 24-2B-3 NMSA 1978, the district attorney or other prosecutorial authority shall, upon the request of the victim of a criminal offense described in Subsection A of this section, petition the court to order that a test be performed on the offender not later than forty-eight hours from the date of the court order. If the victim of the criminal offense is a minor or incompetent, the parent or legal guardian of the victim may request the district attorney or other prosecutorial authority to petition the court to order that a test be performed on the offender. The petition and all proceedings in connection with the petition shall be under seal. The results of the test shall be disclosed as soon as practicable and only to the offender and to the victim or the victim's parent or legal guardian. If the offender has a positive test result, both the offender and victim shall be provided with counseling, as described in Section 24-2B-4 NMSA 1978.

C. If the offender is sentenced to imprisonment in a state corrections facility, the court's order shall direct the department of health to be responsible for the administration of and payment for the test and the lawful distribution of the test results.

D. If the offender is convicted of a misdemeanor or petty misdemeanor offense or is convicted of a felony offense that is suspended or deferred, the court's order shall direct

<p>the department of health to be responsible for the administration of and payment for the test and the lawful distribution of the test results.</p> <p>E. If the offender is a minor adjudicated as a delinquent child pursuant to the provisions of the Children’s Code<sup>1</sup> and the court transfers legal custody of the minor to the children, youth and families department, the court’s order shall direct the children, youth and families department to be responsible for the administration of and payment for the test and the lawful distribution of the test results.</p> <p>F. If the offender is a minor adjudicated as a delinquent child pursuant to the provisions of the Children’s Code and the court does not transfer legal custody of the minor to the children, youth and families department, the court’s order shall direct the department of health to be responsible for the administration of and payment for the test and the lawful distribution of the test results.</p> <p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	
<p><b>Sex Offense Victims’ Rights to Human Immunodeficiency Virus Testing of Formally Charged Persons.</b></p> <p>A. A test designed to identify the human immunodeficiency virus or its antigen or antibody may be performed, without the person’s consent, on a person upon the filing of a complaint, information or an indictment alleging that the person committed a state criminal offense:</p> <ul style="list-style-type: none"> <li>(1) involving contact between the penis and vulva;</li> <li>(2) involving contact between the penis and anus;</li> <li>(3) involving contact between the mouth and penis;</li> </ul>	<p>N.M. Stat. Ann. § 24-2B-5.2.</p>




(4) involving contact between the mouth and vulva; or  
(5) involving contact between the mouth and anus.

B. If consent to perform a test on an alleged offender cannot be obtained pursuant to the provisions of Section 24-2B-2 or 24-2B-3 NMSA 1978, the district attorney or other prosecutorial authority shall, upon the request of the victim of the alleged criminal offense described in Subsection A of this section, petition the court to order that a test be performed on the alleged offender not later than forty-eight hours from the date of the court order; provided that the same test is first performed on the victim of the alleged criminal offense. If the victim of the alleged criminal offense is a minor or incompetent, the parent or legal guardian of the victim of the alleged criminal offense may request the district attorney or other prosecutorial authority to petition the court to order that a test be performed on the alleged offender. The test may be performed on the alleged offender regardless of the result of the test performed on the victim of the alleged offense.

C. The court may issue an order based on a finding of good cause after a hearing at which both the victim of the alleged criminal offense and the alleged offender have the right to be present. During the hearing, only affidavits, counter affidavits and medical reports regarding the facts that support or rebut the issuance of an order shall be admissible. The hearing shall be conducted within seventy-two hours after the district attorney or other prosecutorial authority petitions the court for the order. The petition and all proceedings in connection therewith shall be under seal.

D. The results of the test shall be disclosed as soon as practicable and only to the alleged offender and to the victim of the alleged criminal offense or the victim's parent or legal guardian. When the victim of the alleged criminal offense or the alleged offender has a positive test result, both the alleged offender and the victim of the alleged criminal offense shall be provided with counseling, as described in Section 24-2B-4 NMSA 1978.

E. The court's order shall direct the department of health to be responsible for the administration of and payment for the test and the lawful distribution of the test results.

<p>F. A prosecuting attorney may not use in a criminal proceeding arising out of the alleged criminal offense the fact that a test was administered to the alleged offender or the results of the test.</p> <p>G. The provisions of this section shall not affect the rights and remedies available to the victim of the alleged criminal offense and alleged offender in any civil action.</p> <p>H. The administration of a test to an alleged offender pursuant to the provisions of this section shall not preclude the subsequent administration of follow-up tests pursuant to the provisions of Section 24-2B-5.1 NMSA 1978.</p> <p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	
<p><b>Sex Offense Victims' Rights to Human Immunodeficiency Virus Testing: Confidentiality.</b></p> <p>A. No person or the person's agents or employees who require or administer the test shall disclose the identity of any person upon whom a test is performed or the result of such a test in a manner that permits identification of the subject of the test, except to the following persons:</p> <ul style="list-style-type: none"> <li>(1) the subject of the test or the subject's legally authorized representative, guardian or legal custodian;</li> <li>(2) any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;</li> <li>(3) an authorized agent, a credentialed or privileged physician or employee of a health facility or health care provider if the health care facility or health care provider itself is</li> </ul>	<p>N.M. Stat. Ann. § 24-2B-6.</p>

authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues and the agent or employee has a need to know such information;

(4) the department of health in accordance with reporting requirements established by regulation;

(5) the department of health for the purpose of providing partner services;

(6) a health facility or health care provider that procures, processes, distributes or uses:

(a) a human body part from a deceased person, with respect to medical information regarding that person;

(b) semen provided prior to the effective date of the Human Immunodeficiency Virus Test Act for the purpose of artificial insemination;

(c) blood or blood products for transfusion or injection; or

(d) human body parts for transplant with respect to medical information regarding the donor or recipient;

(7) health facility staff committees or accreditation or oversight review organizations that are conducting program monitoring, program evaluation or service reviews, so long as any identity remains confidential;

(8) authorized medical or epidemiological researchers who may not further disclose any identifying characteristics or information; and

(9) for purposes of application or reapplication for insurance coverage, an insurer or reinsurer upon whose request the test was performed.


**B.** The department of health may disclose human immunodeficiency virus test results, including the identity of any person upon whom a test is performed:

(1) to the subject of the test or the subject's legally authorized representative, guardian or legal custodian;

(2) to the person who ordered the test or that person's agents or employees;

(3) in the conduct of public health practice, to appropriate municipal, county, state, federal or tribal public health agencies having at least equivalent security and confidentiality standards for human immunodeficiency virus test results as maintained by the department of health; and

<p>(4) to health care personnel where necessary to protect the health of the individual who is the subject of the test or an individual who was significantly exposed to the subject of the test, provided that the health care personnel first provide to the department of health for review relevant medical records or other written attestations that document the need for access to the person’s confidential human immunodeficiency virus test results.</p> <p>C. For the purposes of this section:</p> <p>(1) “partner services” means a protocol that the department of health establishes by regulation similar to those protocols and regulations for other reportable sexually transmitted diseases for contacting individuals whom it identifies to be at risk of human immunodeficiency virus infection due to contact with an individual whom it has identified, through reporting made pursuant to Paragraph (4) or (5) of Subsection A of this section, as having been infected with human immunodeficiency virus;</p> <p>(2) “test” means a procedure that definitively diagnoses the presence of human immunodeficiency virus infection, either through the detection of the virus itself or the detection of antibodies against the virus; and</p> <p>(3) “public health practice” means a population-based activity or individual effort aimed primarily at the prevention of injury, disease or premature mortality or the promotion of health in a community, including:</p> <p>(a) surveillance and response; and</p> <p>(b) developing public health policy.</p>	
<p><b>Sex Offense Victims’ Rights to Human Immunodeficiency Virus Testing: Disclosure.</b></p> <p>Nothing in the Human Immunodeficiency Virus Test Act shall be construed to prevent a person who has been tested from disclosing in any way to any other person his own test results. Any victim of an alleged criminal offense who receives information pursuant to Section 24-2B-5.2 NMSA 1978 may disclose the test results as is reasonably necessary to protect his health and safety or the health and safety of his family or sexual partner.</p>	<p>N.M. Stat. Ann. § 24-2B-8.</p>

<p><b>Victims' Right to the Return of Personal Property.</b></p> <p>This section shall not apply to any personal property for which a notice of intent to claim has been served. Any victim, as defined in Section 31-26-3 NMSA 1978, or alleged victim shall be entitled to serve notice of intent to claim ownership of any personal property upon that person, agency or entity in actual custody or control of the property. Nothing in this subsection shall be construed to limit, interfere with or affect the rights or remedies of the rightful owner of any seized property.</p> <p> It is a promising practice to have a policy and procedure in place to ensure that victims' property is returned to them as soon as possible, once it is no longer needed for evidentiary purposes. Instructions should be ready and available to provide to victims, explaining how they may promptly obtain their property, in addition to the name of a person they may contact to check the status of the return.</p>	<p>N.M. Stat. Ann. § 29-1-14(I).</p>
<p><b>Victims' Right to Inadmissibility of Past Sexual Conduct &amp; Psychological History in Sex Offense Prosecutions.</b></p> <p>A. As a matter of substantive right, in prosecutions pursuant to the provisions of Sections 30-9-11 through 30-9-15 NMSA 1978, evidence of the victim's past sexual conduct, opinion evidence of the victim's past sexual conduct or of reputation for past sexual conduct, shall not be admitted unless, and only to the extent that the court finds that, the evidence is material to the case and that its inflammatory or prejudicial nature does not outweigh its probative value.</p> <p>B. As a matter of substantive right, in prosecutions pursuant to the provisions of Sections 30-9-11 through 30-9-15 NMSA 1978, evidence of a patient's psychological history, emotional condition or diagnosis obtained by an accused psychotherapist during the course of psychotherapy shall not be admitted unless, and only to the extent that, the court finds</p>	<p>N.M. Stat. Ann. § 30-9-16.</p>

<p>that the evidence is material and relevant to the case and that its inflammatory or prejudicial nature does not outweigh its probative value.</p> <p>C. If the evidence referred to in Subsection A or B of this section is proposed to be offered, the defendant shall file a written motion prior to trial. The court shall hear the pretrial motion prior to trial at an in camera hearing to determine whether the evidence is admissible pursuant to the provisions of Subsection A or B of this section. If new information, which the defendant proposes to offer pursuant to the provisions of Subsection A or B of this section, is discovered prior to or during the trial, the judge shall order an in camera hearing to determine whether the proposed evidence is admissible. If the proposed evidence is deemed admissible, the court shall issue a written order stating what evidence may be introduced by the defendant and stating the specific questions to be permitted.</p>	
<p><b>Sexual Assault Survivor’s Bill of Rights.</b></p> <p>A. A health care provider who examines and collects a sexual assault examination kit from a survivor of sexual assault shall:</p> <ul style="list-style-type: none"> <li>(1) obtain contact information for the survivor;</li> <li>(2) provide the survivor with: <ul style="list-style-type: none"> <li>(a) a consent form by which the survivor may authorize the release of the kit to the relevant law enforcement agency and information about how the survivor may authorize the release of the kit to the agency at a later date;</li> <li>(b) a copy of the provider’s kit release policy;</li> <li>(c) provide the survivor with contact and descriptive information regarding free and low-cost human immunodeficiency virus and sexually transmitted disease testing, prevention and treatment services including options and services provided by the department of health; and</li> <li>(d) provide the survivor contact and descriptive information regarding the department of public safety statewide sexual assault examination kit tracking system;</li> </ul> </li> </ul>	<p>N.M. Stat. Ann. § 30-9-21(A)–(L).</p>

(3) if the survivor consents, notify the relevant law enforcement agency of the sexual assault and collection of the kit;  
(4) upon the survivor's request, notify the survivor when the kit is released to a law enforcement agency; and  
(5) provide the survivor's contact information to the law enforcement agency when the survivor's kit is transferred to that agency.

B. No costs incurred by a health care provider for the collection of a sexual assault examination kit shall be charged directly or indirectly to the survivor of the sexual assault.

C. A law enforcement agency or crime laboratory that receives a sexual assault examination kit shall:

(1) confirm the sexual assault survivor's contact information and request that the survivor inform the agency of any changes to that information;  
(2) inform the survivor of the survivor's right to have the kit tested within one hundred eighty days and have the right to the following information from the agency:  
(a) whether the survivor's kit has been tested and the date on which test results are expected, which information shall be provided to the survivor; and  
(b) whether the agency was able to develop a DNA profile using the samples of biological material in the kit;  
(3) inform the survivor of the survivor's right to the following information from the agency:  
(a) information regarding the statewide sexual assault examination kit tracking system;  
(b) upon completion of the law enforcement investigation, whether a DNA profile was developed using the samples of biological material in the kit; and  
(c) upon completion of the law enforcement investigation, whether a DNA profile match was identified through comparison of the DNA profile;  
(4) in a case in which the alleged sexual assault offender has not been identified, notify the survivor in writing at least one hundred eighty days before destruction of a kit, if the law enforcement agency intends to destroy the survivor's kit, and provide information on how the survivor may appeal the agency's decision to destroy the kit; and

(5) with the consent of the survivor, enter designated information from the sexual assault examination kit into the department of public safety statewide sexual assault examination kit tracking system within fourteen days of obtaining consent.

D. A crime laboratory shall complete the processing of a sexual assault examination kit within one hundred eighty days of receipt of the kit.

E. Before commencing an interview of a sexual assault survivor, a law enforcement officer or prosecutor shall inform the survivor of the following:

- (1) the survivor's rights pursuant to this section and other relevant law by providing the survivor with a document to be developed by the department of public safety, which document shall be signed by the survivor to confirm receipt;
- (2) the survivor's right to consult with a counselor or advocate who specializes in sexual assault services or a support person designated by the survivor during any interview by a law enforcement officer, prosecutor or defense attorney, and the counselor shall be summoned by the interviewer before the commencement of the interview, unless no counselor or advocate who specializes in sexual assault services or a support person designated by the survivor can be summoned in a reasonably timely manner;
- (3) the survivor's right to have a support person of the survivor's choosing present during an interview by a law enforcement officer, prosecutor or defense attorney; and
- (4) for interviews by a law enforcement officer, the survivor's right to request a different officer if the survivor believes the officer to be unsupportive or inadequately trained.

F. A law enforcement officer or prosecutor shall not, for any reason, discourage a sexual assault survivor from undergoing an examination or allowing the collection of a sexual assault examination kit.

G. In a civil or criminal case relating to a sexual assault, a sexual assault survivor has the right to:

- (1) be reasonably protected from the defendant and persons acting on behalf of the defendant;






(2) not be required to submit to a polygraph examination as a prerequisite to filing an accusatory pleading or participating in any part of the criminal justice system;  
(3) be heard through a survivor impact statement at any proceeding relevant to the sexual assault; and  
(4) provide a sentencing recommendation to the official conducting a pre-sentence investigation.

H. A sexual assault survivor retains the right to have an advocate present during all stages of any medical examination, interview, investigation or other interaction with representatives from the legal or criminal justice systems within New Mexico. Treatment of the survivor shall not be affected or altered in any way as a result of the survivor's decision to exercise the survivor's right to have an advocate present as provided in this section.

I. A law enforcement agency may require a sexual assault survivor's requests for information pursuant to Subsection C of this section to be made in writing, and the agency shall communicate its responses to those requests in writing.

J. For the purpose of notifications and other communications provided for in this section, a sexual assault survivor may designate another person to receive notifications and information on the survivor's behalf and the survivor shall provide the designee's contact information to a medical provider or law enforcement agency required to communicate with the survivor pursuant to this section.

K. In the case of a sexual assault survivor who is deceased, the following persons shall have the right to receive notifications and information required to be communicated to a survivor pursuant to this section:  
(1) a person who was the deceased sexual assault survivor's spouse at the time of the survivor's death; or  
(2) the deceased sexual assault survivor's parent or sibling or child who is eighteen years of age or older.

<p>L. A prosecutor shall not prosecute a sexual assault survivor for a criminal offense that is not a felony, including underage consumption of alcohol, drug use or prostitution, if the evidence of the commission of the offense is obtained through the examination of and collection of a sexual assault examination kit from the survivor or is obtained through the investigation of the sexual assault.</p> <p> N.M. Stat. Ann. § 30-9-21(M) defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p> <p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must “request” the exercise of certain rights. Agencies should carefully maintain documentation of a victim’s request to exercise rights.</p>	
<p><b>Victims’ Right to Restitution.</b></p> <p>B. If the trial court exercises either of the sentencing options under Section 31-20-6 NMSA 1978, the court shall require as a condition of probation or parole that the defendant, in cooperation with the probation or parole officer assigned to the defendant, promptly prepare a plan of restitution, including a specific amount of restitution to each victim and a schedule of restitution payments. If the defendant is currently unable to make any restitution but there is a reasonable possibility that the defendant may be able to do so at some time during his probation or parole period, the plan of restitution shall also state the</p>	<p>N.M. Stat. Ann. § 31-17-1(B)-(J).</p>

conditions under which or the event after which the defendant will make restitution. If the defendant believes that he will not be able to make any restitution, he shall so state and shall specify the reasons. If the defendant believes that no person suffered actual damages as a result of the defendant's criminal activities, he shall so state.

C. The defendant's plan of restitution and the recommendations of his probation or parole officer shall be submitted promptly to the court. The court shall promptly enter an order approving, disapproving or modifying the plan, taking into account the factors enumerated in Subsection D of this section. Compliance with the plan of restitution as approved or modified by the court shall be a condition of the defendant's probation or parole. Restitution payments shall be made to the clerk of the court unless otherwise directed by the court. The court thereafter may modify the plan at any time upon the defendant's request or upon the court's own motion. If the plan as approved or modified does not require full payment of actual damages to all victims or if the court determines that the defendant is not able and will not be able to make any restitution at any time during his probation or parole period or that no person suffered actual damages as a result of the defendant's criminal activities, the court shall file a specific written statement of its reasons for and the facts supporting its action or determination.

D. An order requiring an offender to pay restitution, validly entered pursuant to this section, constitutes a judgment and lien against all property of a defendant for the amount the defendant is obligated to pay under the order and may be recorded in any office for the filing of liens against real or personal property, or for garnishment. A judgment of restitution may be enforced by the state, a victim entitled under the order to receive restitution, a deceased victim's estate or any other beneficiary of the judgment in the same manner as a civil judgment. An order of restitution is enforceable, if valid, pursuant to this section, the Victims of Crime Act or Article 2, Section 24 of the constitution of New Mexico. Nothing in this section shall be construed to limit the ability of a victim to pursue full civil legal remedies.

E. The probation or parole officer, when assisting the defendant in preparing the plan of restitution, and the court, before approving, disapproving or modifying the plan of restitution, shall consider the physical and mental health and condition of the defendant; the defendant's age, education, employment circumstances, potential for employment and vocational training, family circumstances and financial condition; the number of victims; the actual damages of each victim; what plan of restitution will most effectively aid the rehabilitation of the defendant; and such other factors as shall be appropriate. The probation or parole officer shall attempt to determine the name and address of each victim and the amount of pecuniary damages of each victim.



F. The clerk of the court shall mail to each known victim a copy of the court's order approving or modifying the plan of restitution, including the court's statement, if any, pursuant to the provisions of Subsection C of this section.

G. At any time during the probation or parole period, the defendant or the victim may request and the court shall grant a hearing on any matter related to the plan of restitution.

H. Failure of the defendant to comply with Subsection B of this section or to comply with the plan of restitution as approved or modified by the court may constitute a violation of the conditions of probation or parole. Without limitation, the court may modify the plan of restitution or extend the period of time for restitution, but not beyond the maximum probation or parole period specified in Section 31-21-10 NMSA 1978.

I. This section and proceedings pursuant to this section shall not limit or impair the rights of victims to recover damages from the defendant in a civil action.

J. The rightful owner of any stolen property is the individual from whom the property was stolen. When recovering his property, the rightful owner of the stolen property shall not be civilly liable to any subsequent holder, possessor or retainer of the property for the purchase or sale price of the property or for any other costs or expenses associated with the property. Any subsequent holder, possessor or retainer of returned stolen property shall

<p>return the property to the rightful owner. The subsequent holder, possessor or retainer shall have a cause of action against the person from whom he obtained the property for actual damages.</p> <p> N.M. Stat. Ann. § 31-17-1(A) defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p> <p> A promising practice is to inform victims that they are entitled to restitution upon the conviction of defendant for losses caused by defendant’s criminal conduct. Assisting victims with the documentation of their losses—including anticipated future expenses—is recommended from the earliest moments of the case.</p>	
<p><b>Crime Victims Reparations Act: Claims; Review; Hearings &amp; Evidence.</b></p> <p>A. Where an application is made to the commission pursuant to the Crime Victims Reparation Act, the director of the commission shall determine if a claim for a reparation award is eligible for consideration pursuant to the provisions of the Crime Victims Reparation Act. All claims arising from the injury or death of a person as a direct result of a single crime shall be considered together by a single staff member. When the director determines that a claim for a reparation award is not eligible for consideration, the director shall notify the commission of his determination at the next regular meeting of the commission. If the commission concurs with the director’s determination that a claim for a reparation award is not eligible for consideration, the claimant shall be notified that his claim was denied. When the director determines that a claim for a reparation award is eligible for consideration, the director shall order that the claim be processed and he shall assign the claim to a member of the commission staff.</p> <p>B. The staff member to whom such claim is assigned shall examine the papers filed in support of the claim and shall cause an investigation to be conducted into the validity of</p>	<p>N.M. Stat. Ann. § 31-22-5.</p>

the claim. The investigation may include, but not be limited to, an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury or death upon which the claim is based and other benefits received or to be received.

C. The staff member to whom a claim is assigned may make his recommendation regarding the claim on the basis of the papers filed in support thereof and the report of the investigation of the claim. If the staff member is unable to make a recommendation upon the basis of the papers and report, he shall present the claim to the commission without a recommendation.



D. When the claim has been processed, the director shall assign the claim to a commission member.

E. After examining the papers filed in support of the claim and the report of investigation and after a hearing, if any, the commission member to whom the claim was assigned shall make a recommendation to the entire commission either granting an award or denying the claim.

F. A quorum of the commission shall act upon the recommendation of the commission member. A quorum of the commission, by majority vote, may affirm, increase, decrease or deny the award.

G. Upon a request from a victim or claimant, the commission shall grant the victim or claimant an informal appearance at a commission meeting. The purpose of the informal appearance shall be for the victim or claimant to present any evidence or information in support of his claim.

H. A formal hearing may be called for by a majority of the commission. The purpose of the hearing shall be for the commission to hear evidence to assist it in making a determination regarding a claim.

<p>I. At the hearing, the claimant and the commission’s legal advisor shall be entitled to appear and be heard, and any other person may appear and be heard who has satisfied the commission member that he has a substantial interest in the proceedings. In any case in which the claimant is a child or is mentally incompetent, the application may be made on behalf of such claimant by his parent, guardian, custodian or any other person authorized to administer his estate.</p> <p>J. Where any person is entitled to appear and be heard, that person may appear in person or by his attorney. All hearings shall be open to the public unless in a particular case the member of the commission assigned to the claim determines that the hearing or a portion thereof shall be held in private, having regard to the fact that the offender has not been convicted or in the interest of the victim of an alleged sexual offense.</p> <p>K. Every person appearing under the provisions of this section shall have the right to produce evidence and to cross-examine witnesses. The commission member may receive in evidence any statement, document, information or matter that may, in his opinion, contribute to the functions of the hearing under the Crime Victims Reparation Act, whether or not such statement, document, information or other matter would be admissible in a court of law.</p> <p> N.M. Stat. Ann. § 31-22-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must “request” the exercise of certain rights. Agencies should carefully maintain documentation of a victim’s request to exercise rights.</p>	
<p><b>Crime Victims Reparations Act: Eligibility.</b></p>	<p>N.M. Stat. Ann. § 31-22-7.</p>

A. If a person is injured or killed by an act or omission of another person coming within the criminal jurisdiction of the state after July 1, 1981, which act or omission includes a crime enumerated in Section 31-22-8 NMSA 1978, and upon application for reparation, the commission may award reparation in accordance with the Crime Victims Reparation Act:

- (1) to the victim;
- (2) in the case of the victim's death, to or for the benefit of any one or more of the deceased victim's dependents; or
- (3) to any individual who voluntarily assumes funeral or medical expenses of the victim.



B. For the purpose of the Crime Victims Reparation Act, a person shall be deemed to have intentionally committed an act or omission constituting a crime, notwithstanding that by reason of age, insanity, drunkenness or otherwise the person was legally incapable of forming a criminal intent.


C. In determining whether to make an order under this section, the commission may consider any circumstances it determines to be relevant. The commission shall consider the behavior of the victim and whether, because of provocation or otherwise, the victim bears responsibility for the act or omission constituting a crime that caused the victim's injury or death and shall reduce the amount of reparation in accordance with its assessment of the degree of responsibility attributable to the victim.



D. An order may be made under this section whether or not any person is prosecuted for or convicted of a crime enumerated in Section 31-22-8 NMSA 1978; provided an arrest has been made or the act or omission constituting a crime has been reported to the police in a reasonable time or the act or omission constituting a crime has been reported to a licensed medical, mental health or counseling provider, or tribal health provider. No order may be made under this section unless the commission finds that:

- (1) the act or omission constituting a crime did occur;




<p>(2) the injury or death of the victim resulted from the act or omission constituting a crime; and                  (3) the claimant or victim fully cooperated with the appropriate law enforcement agencies or the commission finds that the claimant or victim acted reasonably under the circumstances.</p> <p>E. Upon application from the district attorney of the appropriate district, the commission may suspend proceedings under the Crime Victims Reparation Act for such period as it deems desirable on the grounds that a prosecution for the act or omission constituting a crime has commenced or is imminent.</p> <p> N.M. Stat. Ann. § 31-22-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p>	
<p><b>Crime Victims Reparations Act: Confidentiality of Records, Reports &amp; Claim Files.</b></p> <p>Any record or report acquired by the commission, the confidentiality of which is protected by law, rule or regulation, shall be disclosed only under the same terms and conditions which protected its confidentiality prior to such acquisition. The claim file, which contains confidential reports, records and personal information, shall not be released.</p> <p> N.M. Stat. Ann. § 31-22-3 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p>	<p>N.M. Stat. Ann. § 31-22-18.</p>
<p><b>Victim Counselor Confidentiality Act – Confidential Communications.</b></p> <p>A. A victim, a victim counselor without the consent of the victim or a minor or incapacitated victim without the consent of a custodial guardian or a guardian ad litem</p>	<p>N.M. Stat. Ann. § 31-25-3.</p>




<p>appointed upon application of either party shall not be compelled to provide testimony or to produce records concerning confidential communications for any purpose in any criminal action or other judicial, legislative or administrative proceeding.</p> <p>B. A victim counselor or a victim shall not be compelled to provide testimony in any civil or criminal proceeding that would identify the name, address, location or telephone number of a safe house, abuse shelter or other facility that provided temporary emergency shelter to the victim of the offense or occurrence that is the subject of a judicial, legislative or administrative proceeding unless the facility is a party to the proceeding.</p> <p> N.M. Stat. Ann. § 31-25-2 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p>	
<p><b>Victim Counselor Confidentiality Act – Waiver of Protections.</b></p> <p>A. A victim does not waive the protections afforded by the Victim Counselor Confidentiality Act by testifying in court about the crime; provided that if the victim partially discloses the contents of a confidential communication in the course of his testimony, then either party to the action may request the court to rule that justice requires the protections of that act be waived to the extent they apply to that portion of the communication. Waiver shall apply only to the extent necessary to require any witness to respond to questions concerning the confidential communication that are relevant to the facts and circumstances of the case.</p> <p>B. A victim counselor shall not have authority to waive the protections afforded to a victim under the Victim Counselor Confidentiality Act; provided that if a victim brings suit against a victim counselor or the agency, business or organization in which the victim counselor was employed or served as a volunteer at the time of the counseling relationship and the suit alleges malpractice during the counseling relationship, the victim counselor</p>	<p>N.M. Stat. Ann. § 31-25-4.</p>

<p>may testify or produce records regarding confidential communications with the victim without liability for those actions.</p> <p> N.M. Stat. Ann. § 31-25-2 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p>	
<p><b>Victim Counselor Confidentiality Act – Duty to Report and Testimonial Privileges.</b></p> <p>The Victim Counselor Confidentiality Act shall not be construed to relieve a victim counselor of a duty to report suspected child abuse or neglect pursuant to Section 32-1-15 NMSA 1978, to report any evidence that the victim is about to commit a crime or to limit any testimonial privileges available to any person pursuant to other provisions of law.</p> <p> N.M. Stat. Ann. § 31-25-2 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p>	<p>N.M. Stat. Ann. § 31-25-5.</p>
<p><b>Victims’ Rights Unaffected by the Uniform Collateral Consequences of Conviction Act.</b></p> <p>A. The Uniform Collateral Consequences of Conviction Act does not provide a basis for:</p> <ul style="list-style-type: none"> <li>(1) invalidating a plea, conviction or sentence;</li> <li>(2) a cause of action for money damages; or</li> <li>(3) a claim for relief from or defense to the application of a collateral consequence based on a failure to comply with the Uniform Collateral Consequences of Conviction Act.</li> </ul> <p>B. The Uniform Collateral Consequences of Conviction Act does not affect:</p> <ul style="list-style-type: none"> <li>(1) the duty an individual’s attorney owes to the individual, except as provided in Section 5 of the Uniform Collateral Consequences of Conviction Act;</li> </ul>	<p>N.M. Stat. Ann. § 31-29-3.</p>

<p>(2) a claim or right of a victim of an offense; or                  (3) a right or remedy pursuant to law other than the Uniform Collateral Consequences of Conviction Act available to an individual convicted of an offense.</p>	
<p><b>Victims' Right to Have Filings Considered in Proceedings for Orders of Limited Relief.</b></p> <p>A. An individual convicted of an offense may petition for an order of limited relief from one or more collateral sanctions related to employment, education, housing, public benefits or occupational licensing. The petition shall be presented to the sentencing court before sentencing.</p> <p>B. Except as otherwise provided in Section 11 of the Uniform Collateral Consequences of Conviction Act, the court may issue an order of limited relief relieving one or more of the collateral sanctions described in Subsection A of this section only if, after reviewing the petition, the individual's criminal history, any filing by a victim pursuant to Section 14 of the Uniform Collateral Consequences of Conviction Act or a prosecutor and any other relevant evidence, the court finds the individual has established by a preponderance of the evidence that:</p> <ul style="list-style-type: none"> <li>(1) granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits or occupational licensing;</li> <li>(2) the individual has substantial need for the relief requested in order to live a law-abiding life; and</li> <li>(3) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.</li> </ul> <p>C. An order of limited relief may be issued as a part of sentencing. The order of limited relief shall specify:</p> <ul style="list-style-type: none"> <li>(1) the collateral sanction from which relief is granted; and</li> </ul>	<p>N.M. Stat. Ann. § 31-29-10.</p>

<p>(2) any restriction imposed pursuant to Subsection A of Section 12 of the Uniform Collateral Consequences of Conviction Act.</p> <p>D. An order of limited relief relieves a collateral sanction to the extent provided in the order.</p> <p>E. If a collateral sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in Section 8 of the Uniform Collateral Consequences of Conviction Act.</p>	
<p><b>Victims' Right to Participate in Proceedings for Orders of Limited Relief.</b></p> <p>A victim of an offense may participate in a proceeding for issuance of an order of limited relief [from one or more collateral sanctions related to employment, education, housing, public benefits or occupational licensing] in the same manner as at a sentencing proceeding pursuant to the Victims of Crime Act.</p> <p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	<p>N.M. Stat. Ann. § 31-29-14.</p>
<p><b>Victims' Right to Redaction of Identifying Information When Disclosure of a Child's Records is Authorized.</b></p> <p>If disclosure of otherwise confidential records is made to the child or any other person or entity pursuant to a valid release of information signed by the child, all victim or witness identifying information shall be redacted or otherwise deleted.</p>	<p>N.M. Stat. Ann. § 32A-2-32(D).</p>

<p><b>Domestic Violence Victims' Right to Assistance of Law Enforcement &amp; Notification of Release from Custody.</b></p> <p>A. A person who allegedly has been a victim of domestic abuse may request the assistance of a local law enforcement agency.</p> <p>B. A local law enforcement officer responding to the request for assistance shall be required to take whatever steps are reasonably necessary to protect the victim from further domestic abuse, including:</p> <ul style="list-style-type: none"> <li>(1) advising the victim of the remedies available under the Family Violence Protection Act; the right to file a written statement, a criminal complaint and a request for an arrest warrant; and the availability of domestic violence shelters, medical care, counseling and other services;</li> <li>(2) upon the request of the victim, providing or arranging for transportation of the victim to a medical facility or place of shelter;</li> <li>(3) upon the request of the victim, accompanying the victim to the victim's residence to obtain the victim's clothing and personal effects required for immediate needs and the clothing and personal effects of any children then in the care of the victim;</li> <li>(4) upon the request of the victim, assist in placing the victim in possession of the dwelling or premises or otherwise assist in execution, enforcement or service of an order of protection;</li> <li>(5) arresting the alleged perpetrator when appropriate and including a written statement in the attendant police report to indicate that the arrest of the alleged perpetrator was, in whole or in part, premised upon probable cause to believe that the alleged perpetrator committed domestic abuse against the victim and, when appropriate, indicate that the party arrested was the predominant aggressor; and</li> <li>(6) advising the victim when appropriate of the procedure for initiating proceedings under the Family Violence Protection Act or criminal proceedings and of the importance of preserving evidence.</li> </ul>	<p>N.M. Stat. Ann. § 40-13-7.</p>
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<p>C. The jail or detention center shall make a reasonable attempt to notify the arresting law enforcement agency or officer when the alleged perpetrator is released from custody. The arresting law enforcement agency shall make a reasonable attempt to notify the victim that the alleged perpetrator is released from custody.</p> <p>D. Any law enforcement officer responding to a request for assistance under the Family Violence Protection Act is immune from civil liability to the extent allowed by law. Any jail, detention center or law enforcement agency that makes a reasonable attempt to provide notification that an alleged perpetrator is released from custody is immune from civil liability to the extent allowed by law.</p> <p>E. A statement shall be included in a judgment and sentence document to indicate when a conviction results from the commission of domestic abuse.</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must “request” the exercise of certain rights. Agencies should carefully maintain documentation of a victim’s request to exercise rights.</p> <p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p> <p> A promising practice is to have a policy and procedure in place that enables crime victims to easily keep their contact information up-to-date across agencies.</p>	
<p><b>Confidential Substitute Address Program – Application.</b></p>	<p>N.M. Stat. Ann. § 40-13B-3.</p>


A. The “confidential substitute address program” is created in the office of the secretary of state to provide a process by which a victim of domestic violence may protect the confidentiality of the victim’s residential and delivery addresses in public records.




B. An applicant, with the assistance of an application assistant, shall submit an application to the secretary of state on a form prescribed by the secretary of state. The application assistant’s signature shall serve as recommendation that the applicant participate in the confidential substitute address program.



C. An application shall be signed and dated by the applicant and the application assistant and shall include:




- (1) the applicant’s name;
- (2) the applicant’s statement that the applicant fears for the safety of the applicant, the applicant’s child or another person in the applicant’s household because of a threat of immediate or future harm;
- (3) the applicant’s statement that the disclosure of the applicant’s residential or delivery address would endanger the applicant, the applicant’s child or another person in the applicant’s household;
- (4) the applicant’s statement that the applicant has confidentially relocated in the past ninety days or will relocate within the state in the next ninety days;
- (5) a designation of the secretary of state as the applicant’s agent for the purpose of receiving mail, deliveries and service of process, notice or demand;
- (6) the names and ages of those persons in the applicant’s household who will also be participants in the program if the applicant is admitted into the program. Each person in an applicant’s household listed in the application shall be considered a separate participant in the program;
- (7) the applicant’s residential and delivery addresses, if different, the confidentiality of which the applicant seeks to protect;
- (8) the applicant’s telephone number and email address; and
- (9) the applicant’s statement under penalty of perjury that the information contained in the application is true.








<p> N.M. Stat. Ann. § 40-13B-2 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p>	
<p><b>Confidential Substitute Address Program – Confidentiality.</b></p> <p>A. The secretary of state and an agency shall not disclose the residential address, delivery address, telephone number or email address of a participant unless the information is required to be disclosed pursuant to a court order. A person or agency that receives a participant’s residential address, delivery address, telephone number or email address pursuant to a court order shall not in turn disclose that information unless pursuant to a court order or unless the person who was a participant has been decertified.</p> <p>B. The secretary of state shall maintain the confidentiality of all records relating to an applicant for or participant in the confidential substitute address program while the person is a participant and shall:</p> <ol style="list-style-type: none"> <li>(1) store all tangible copies of program records in locked equipment;</li> <li>(2) store all electronic copies of program records in a password-protected system;</li> <li>(3) restrict access to all program records to secretary of state staff members who are approved to access the records as provided in this section; and</li> <li>(4) release program records only on a court’s order.</li> </ol> <p>C. The secretary of state shall establish a system for restricting access to program records to approved staff members. Before being approved and granted access to program records, the staff member shall:</p> <ol style="list-style-type: none"> <li>(1) submit to a criminal background check performed by the department of public safety;</li> <li>(2) not have a record of a sex offense, felony or a misdemeanor violation related to domestic violence or sexual assault on the results of the person’s criminal background check; and</li> </ol>	<p>N.M. Stat. Ann. § 40-13B-8.</p>


<p>(3) complete forty hours of training, including a domestic violence training course provided by the children, youth and families department and sexual assault training provided by the department of health or the crime victims reparation commission or its successor.</p> <p>D. The secretary of state shall appoint a person to be the administrator of the election component of the confidential substitute address program in accordance with the Intimate Partner Violence Survivor Suffrage Act. The administrator shall meet the requirements of Subsection C of this section, and administration of the Intimate Partner Violence Survivor Suffrage Act shall conform to the requirements of Subsections A and B of this section and Subsection E of Section 40-13B-5 NMSA 1978.</p> <p> N.M. Stat. Ann. § 40-13B-2 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p>	
<p><b>Promoting Financial Independence for Victims of Domestic Abuse Act: Victims’ Right to Domestic Abuse Leave.</b></p> <p>An employer shall grant an employee domestic abuse leave without interfering with, restraining or denying exercise of rights under the Promoting Financial Independence for Victims of Domestic Abuse Act or attempting to do so. Retaliation against an employee for using domestic abuse leave is prohibited.</p> <p> N.M. Stat. Ann. § 50-4A-2 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, of their employment-related rights and to provide employers with this</p>	<p>N.M. Stat. Ann. § 50-4A-3.</p>

<p>information.</p>	
<p><b>Promoting Financial Independence for Victims of Domestic Abuse Act: Victims' Right to Domestic Abuse Leave – Certification/Documentation.</b></p> <p>A. When domestic abuse leave is taken in an emergency, the employee or the employee's designee shall give notice to the employer within twenty-four hours of commencing the domestic abuse leave.</p> <p>B. An employer may require verification of the need for domestic abuse leave, and, if so, an employee shall provide one of the following forms of verification through furnishing in a timely fashion:</p> <ul style="list-style-type: none"> <li>(1) a police report indicating that the employee or a family member was a victim of domestic abuse;</li> <li>(2) a copy of an order of protection or other court evidence produced in connection with an incident of domestic abuse, but the document does not constitute a waiver of confidentiality or privilege between the employee and the employee's advocate or attorney; or</li> <li>(3) the written statement of an attorney representing the employee, a district attorney's victim advocate, a law enforcement official or a prosecuting attorney that the employee or employee's family member appeared or is scheduled to appear in court in connection with an incident of domestic abuse.</li> </ul> <p> N.M. Stat. Ann. § 50-4A-2 defines the terms used in this statutory provision. These definitions are included above in the section "Select Definitions."</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, of their employment-related rights and to provide employers with this information.</p>	<p>N.M. Stat. Ann. § 50-4A-4.</p>

<p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	
<p><b>Promoting Financial Independence for Victims of Domestic Abuse Act: Victims' Right to Domestic Abuse Leave – Impact on Other Employee Benefits.</b></p> <p>A. For domestic abuse leave, an employee may use accrued sick leave or other available paid time off, compensatory time or unpaid leave time consistent with the employer's policies.</p> <p>B. To the extent permitted by law, an employer shall not withhold pay, health coverage insurance or another benefit that has accrued to the employee when an employee takes domestic abuse leave. An employer shall not include time taken for domestic abuse leave in calculating eligibility for benefits.</p> <p> N.M. Stat. Ann. § 50-4A-2 defines the terms used in this statutory provision. These definitions are included above in the section "Select Definitions."</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, of their employment-related rights and to provide employers with this information.</p>	<p>N.M. Stat. Ann. § 50-4A-5.</p>
<p><b>Promoting Financial Independence for Victims of Domestic Abuse Act: Victims' Right to Domestic Abuse Leave – Confidentiality.</b></p>	<p>N.M. Stat. Ann. § 50-4A-6.</p>

<p>An employer shall not disclose verification information provided under Subsection B of Section 4 of the Promoting Financial Independence for Victims of Domestic Abuse Act and shall maintain confidentiality of the fact that the employee or employee’s family member was involved in a domestic abuse incident, that the employee requested or obtained domestic abuse leave and that the employee made any written or oral statement about the need for domestic abuse leave. An employer may disclose an employee’s information related to domestic abuse leave only when the employee consents, when a court or administrative agency orders the disclosure or when otherwise required by federal or state law.</p> <p> N.M. Stat. Ann. § 50-4A-2 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, of their employment-related rights and to provide employers with this information.</p> <p> A promising practice is to have a policy and procedure ensuring that victims receive all required information at the earliest possible time. Consideration should be given to providing written information in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	
<p><b>Promoting Financial Independence for Victims of Domestic Abuse Act: Victims’ Right to Domestic Abuse Leave – Enforcement.</b></p>	<p>N.M. Stat. Ann. § 50-4A-7.</p>

<p>A. The workforce solutions department is authorized to enforce the Promoting Financial Independence for Victims of Domestic Abuse Act and to investigate complaints made by persons who claim to be aggrieved pursuant to the provisions of that act.</p> <p>B. The workforce solutions department and the employee have the right to bring an action in violation of the Promoting Financial Independence for Victims of Domestic Abuse Act in a court of competent jurisdiction to enjoin further violations, recover actual damages sustained or both, together with costs and reasonable attorney fees.</p> <p> N.M. Stat. Ann. § 50-4A-2 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, of their employment-related rights and to provide employers with this information.</p>	
<p><b>Promoting Financial Independence for Victims of Domestic Abuse Act: Victims’ Right to Domestic Abuse Leave – Other Laws &amp; Existing Benefits.</b></p> <p>A. Remedies in this section are provided in addition to other common law, federal or state remedies.</p> <p>B. Nothing in the Promoting Financial Independence for Victims of Domestic Abuse Act shall supersede any provision of law or contract that provides greater rights than the rights established under that act.</p> <p>C. The rights provided in the Promoting Financial Independence for Victims of Domestic Abuse Act shall not diminish an employer’s obligation to provide greater rights in</p>	<p>N.M. Stat. Ann. § 50-4A-8.</p>

<p>compliance with another contract, collective bargaining agreement or employment benefit program, policy or plan.</p> <p> N.M. Stat. Ann. § 50-4A-2 defines the terms used in this statutory provision. These definitions are included above in the section “Select Definitions.”</p>	
<p><b>Victims’ Right to Be Free from Unfair Discriminatory Acts or Practices by Insurers Because of Abuse Status.</b></p> <p>A. An insurer or any person employed by or contracting with an insurer shall not engage in an unfair discriminatory act or practice against a person on the basis of a person’s abuse status, including:</p> <p>(1) denying, refusing to issue, renew or reissue or canceling or otherwise terminating a policy, restricting or excluding coverage or benefits of a policy or charging a higher premium for a policy on the basis of a person’s abuse status;</p> <p>(2) terminating group health coverage for a victim of domestic abuse because coverage was originally issued in the name of an alleged abuser who has divorced, separated from or lost custody of a victim of domestic abuse or because the alleged abuser’s coverage has terminated voluntarily or involuntarily. Nothing in this paragraph prohibits an insurer from requiring a victim of domestic abuse to pay the full premium for health insurance coverage or from requiring as a condition of coverage that a victim of domestic abuse reside or work within the insurer’s service area, if the requirements are applied to all insureds. The insurer may terminate group health coverage for a victim of domestic abuse after the continuation coverage required by this subsection has been in force for eighteen months if the insurer offers conversion to an equivalent individual plan. The continuation coverage required in this subsection may be satisfied by coverage that is provided under the Consolidated Omnibus Budget Reconciliation Act of 19851 to a victim of domestic abuse and is not intended to be in addition to coverage provided under that act;</p> <p>(3) disclosing or transferring confidential abuse information when the insurer or its employee or contractor has information in its possession that clearly indicates that the</p>	<p>N.M. Stat. Ann. § 59A-16B-4.</p>

<p>applicant or insured is a subject of domestic abuse. The provisions of this paragraph do not prohibit disclosure of information:</p> <ul style="list-style-type: none"><li>(a) to a victim of domestic abuse or an individual specifically designated in writing by the victim, and nothing in this section prohibits a victim of domestic abuse from obtaining the victim's own insurance records;</li><li>(b) to a health care provider for the direct provision of health care services;</li><li>(c) to a licensed physician identified and designated by the victim of domestic abuse;</li><li>(d) pursuant to an order of the superintendent or a court of competent jurisdiction, or as otherwise required by law;</li><li>(e) when necessary for a valid business purpose to transfer information that includes confidential abuse information that cannot reasonably be segregated without undue hardship or that is relevant to processing a claim, provided the recipient has agreed to be bound by the provisions of the Domestic Abuse Insurance Protection Act in all respects and to be subject to enforcement of that act in the courts of this state, and the information is disclosed or transferred only: 1) to a reinsurer that seeks to indemnify or indemnifies all or part of a policy covering a victim of domestic abuse and that cannot underwrite or satisfy its obligations under the reinsurance agreement without the information; 2) to a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the insurer; 3) to medical or claims personnel contracting with the insurer, its parent or affiliated companies that have service agreements with the insurer, but only when necessary to process an application or claim, perform the insurer's duties under the policy or protect the safety or privacy of a victim of domestic abuse; or 4) with respect to address and telephone number, to entities with which the insurer transacts business when the business cannot be transacted without the address or telephone number;</li><li>(f) to an attorney who needs the information to represent the insurer effectively, provided the insurer notifies the attorney of its obligations under the Domestic Abuse Insurance Protection Act and requires that the attorney exercise due diligence to protect confidential abuse information consistent with the attorney's obligation to represent the insurer;</li><li>(g) to the policy owner or assignee, in the course of delivery of the policy, if the policy contains information about abuse status; or</li><li>(h) to any other entities deemed appropriate by the superintendent; or</li></ul>	
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(4) requesting information about an applicant's or insured's abuse status, or making use of this information, however obtained, except:

- (a) for the limited purpose of complying with legal obligations;
- (b) when verifying a person's claim to be a victim of domestic abuse or to be suffering from an abuse-related medical condition; or
- (c) when cooperating with a victim of domestic abuse in seeking protection from abuse or facilitating the treatment of an abuse-related medical condition.

B. An insurer may deny a claim when the damage or loss is the result of intentional conduct by a named insured who commits an act of domestic abuse, except that the insurer shall make a payment on such a claim to an innocent insured victim of domestic abuse to the extent of that insured's interest in the property and within the limits of coverage where the damage was proximately related to and in furtherance of domestic abuse. An insurer paying such a claim for property damage shall be subrogated to the rights of the innocent insured claimant to recover for any damages paid by the insurance.

C. The provisions of this section apply to and protect the following applicants for insurance or insured persons, excluding a person who commits an act of domestic abuse, from an unfair discriminatory act or practice on the basis of any person's abuse status:

- (1) a victim of domestic abuse;
- (2) a person that provides shelter, counseling or protection to victims of domestic abuse;
- (3) a person who employs or is employed by a victim of domestic abuse;
- (4) a person with whom an applicant or insured is known to have a direct, close personal, family or abuse-related counseling relationship;
- (5) a beneficiary of an insurance contract; or
- (6) a participant in an insurance plan.

D. Nothing in the Domestic Abuse Insurance Protection Act prohibits a life insurer from declining to issue a life insurance policy if the applicant or prospective owner of the policy is or would be designated as a beneficiary of the policy and if:

<p>(1) the applicant or prospective owner of the policy lacks an insurable interest in the insured;</p> <p>(2) the applicant or prospective owner of the policy is known, on the basis of medical, police or court records, to have committed an act of domestic abuse against the proposed insured; or</p> <p>(3) the insured or prospective insured is a victim of domestic abuse, and that person, or a person who has assumed the care of that person if a minor or incapacitated, has objected to the issuance of the policy on the ground that the policy would be issued to or for the direct or indirect benefit of the abuser.</p> <p>E. An insurer shall not be civilly or criminally liable for the death of or injury to an insured resulting from an action taken in a good faith effort to comply with the requirements of the Domestic Abuse Insurance Protection Act. The provisions of this subsection do not, however, prevent an action by the superintendent to investigate a violation of that act or to assert any other claims authorized by law.</p> <p>F. Nothing in the Domestic Abuse Insurance Protection Act prohibits an insurer from asking about a medical condition, claims history or other underwriting information or from using that information to underwrite or to carry out its duties under the policy, even if the information is related to a condition or event that the insurer knows or has reason to know is abuse-related.</p> <p>G. An insurer shall not be liable for a violation of the Domestic Abuse Insurance Protection Act by a person who is a contractor with the insurer unless the insurer directed the act or omission that constitutes the violation.</p>	
<p><b>Redaction of Victim Information from Materials Subject to Disclosure Obligations.</b></p> <p>A. Scope of Rule. This rule applies to documents and other materials subject to disclosure under Rules 5-501 and 5-502 NMRA.</p>	<p>N.M. Dist. Ct. R. Crim. P. 5-502.1(A), (C)–(D).</p>

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C. Redaction of protected personal identifier information.

(1) An attorney with an obligation to provide discovery to opposing counsel under Rule 5-501 NMRA or Rule 5-502 NMRA may redact protected personal identifier information or personal contact information if the attorney deems it appropriate under the circumstances of the case. To do so, the attorney must

(a) file a notice that redacted and unredacted discovery is being provided to the opposing party; and



(b) provide two versions of documents and materials subject to disclosure as follows:

(i) The first version may have redacted protected personal identifier information or personal contact information. For discovery provided by the state, the defense counsel team may provide the redacted version to the defendant, and the defendant may retain the redacted version in the defendant's possession.

(ii) The second version shall be an unredacted version of the same discovery and shall be provided to the counsel team for the opposing party to accommodate the need for any conflicts checks and background investigation of victims and witnesses.

(2) If the state has an obligation to provide discovery to a pro se defendant under Rule 5-501 NMRA, the prosecutor may redact protected personal identifier information or personal contact information if the prosecutor deems it appropriate under the circumstances of the case. To do so, the attorney must file a notice that redacted discovery is being provided to the defendant.


(3) If an attorney provides redacted discovery under this rule, unredacted discovery shall not be disclosed to the defendant or a member of the public unless the court issues a written order finding that the defendant or member of the public has a specific compelling need for the unredacted discovery. The court may issue an order permitting the disclosure of unredacted discovery on motion of a party, including a defendant acting pro se, or on the court's own motion.

<p>D. Failure to Comply. An attorney receiving discovery that includes redacted protected personal identifier information or personal contact information shall take all reasonable precautions to ensure that the unredacted version of the discovery is not disclosed by the attorney or any member of the counsel team to the defendant or any member of the public. Failure to comply with the provisions of this paragraph may subject the attorney or other person to sanctions, including sanctions for contempt of court, or the initiation of disciplinary proceedings.</p> <p> N.M. Dist. Ct. R. Crim. P. 5-502.1(B) defines the terms used in this provision. These definitions are included above in the section “Select Definitions.”</p> <p> Similar rules are in place with respect to disclosure obligations in Magistrate Court proceedings, N.M. Magis. Ct. R. Crim. P. 6-504.1, in Metropolitan Court proceedings, N.M. Metro. Ct. R. Crim. P. 7-504.1, and in Municipal Court proceedings, N.M. Mun. Ct. R. P. 8-504.1. These provisions are not included in this document.</p>	
<p><b>Videotaped Depositions of Child-Victims in Certain Instances.</b></p> <p>A. When Allowed. Upon motion, and after notice to opposing counsel, at any time after the filing of the indictment, information or complaint in district court charging a criminal sexual penetration or criminal sexual contact on a child under sixteen (16) years of age, the district court may order the taking of a videotaped deposition of the victim, upon a showing that the child may be unable to testify without suffering unreasonable and unnecessary mental or emotional harm. The district judge must attend any deposition taken pursuant to this paragraph and shall provide such protection of the child as the judge deems necessary.</p> <p>B. Use at Trial. At the trial of a defendant charged with criminal sexual penetration or criminal sexual contact on a child under sixteen (16) years of age, any part or all of the</p>	<p>N.M. Dist. Ct. R. Crim. P. 5-504.</p>

<p>videotaped deposition of a child under sixteen (16) years of age taken pursuant to Paragraph A of this rule, may be shown to the trial judge or the jury and admitted as evidence as an additional exception to the hearsay rule of the Rules of Evidence if:</p> <ol style="list-style-type: none"> <li>(1) the child is unable to testify before the court without suffering unreasonable and unnecessary mental or emotional harm;</li> <li>(2) the deposition was presided over by a district judge and the defendant was present and was represented by counsel or waived counsel; and</li> <li>(3) the defendant was given an adequate opportunity to cross-examine the child, subject to such protection of the child as the judge deems necessary.</li> </ol> <p>C. Additional Use at Trial. In addition to the use of a videotaped deposition as permitted by Paragraph B of this rule, a videotaped deposition may be used for any of the reasons set forth in Paragraph N of Rule 5-503.</p>	
<p><b>Court’s Authority in Discovery to Protect Against Annoyance, Embarrassment, Oppression, Undue Burden or Expense, Risk of Physical Harm, Intimidation, and Bribery or Economic Reprisals.</b></p> <p>A. Motion. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition or statement, the court in the district where the deposition or statement is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, undue burden or expense, the risk of physical harm, intimidation, bribery or economic reprisals. The order may include one or more of the following restrictions:</p> <ol style="list-style-type: none"> <li>(1) that the deposition or statement requested not be taken;</li> <li>(2) that the deposition or statement requested be deferred;</li> <li>(3) that the deposition or statement may be had only on specified terms and conditions, including a designation of the time or place;</li> </ol>	<p>N.M. Dist. Ct. R. Crim. P. 5-507.</p>



<p>(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;</p> <p>(5) that the deposition or statement be conducted with no one present except persons designated by the court;</p> <p>(6) that a deposition or statement after being sealed be opened only by order of the court;</p> <p>(7) that a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way; and</p> <p>(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.</p> <p>B. Written Showing of Good Cause. Upon motion, the court may permit the showing of good cause required under Paragraph A of this rule to be in the form of a written statement for inspection by the court in camera, if the court concludes from the statement that there is a substantial need for the in camera showing. If the court does not permit the in camera showing, the written statement shall be returned to the movant upon request. If no such request is made, or if the court enters an order granting the relief sought, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court having jurisdiction in the event of an appeal.</p> <p>C. Denial of Order. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.</p>	
<p><b>Victims' Right to Have Their Rights Respected by the Court; Duty of the Court to Inquire About Victims' Rights.</b></p> <p>A. The court shall respect all rights of victims of crimes enumerated and filed as specified in the Victims of Crime Act, Sections 31-26-1 to 31-26-14 NMSA 1978.</p>	<p>N.M. Magis. Ct. R. Crim. P. 6-113.</p>

<p>B. At any scheduled court proceeding, the court shall inquire whether any victim entitled to notice of the proceeding, under Article II, Section 24, is present. If the victim is present, the court shall ascertain that the victim has been informed of the right to</p> <ol style="list-style-type: none"> <li>(1) be treated with fairness and respect for the victim’s dignity and privacy throughout the criminal justice process;</li> <li>(2) timely disposition of the case;</li> <li>(3) be reasonably protected from the accused throughout the criminal justice process;</li> <li>(4) notification of court proceedings;</li> <li>(5) attend all public court proceedings the accused has the right to attend;</li> <li>(6) confer with the prosecution;</li> <li>(7) make a statement to the court at sentencing and at any post-sentencing hearings for the accused;</li> <li>(8) restitution from the person convicted of the criminal offense that caused the victim’s loss or injury;</li> <li>(9) information about the conviction, sentencing, imprisonment, escape or release of the accused;</li> <li>(10) 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 with good cause;</li> <li>(11) 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</li> <li>(12) 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.</li> </ol> <p>C. If the victim is not present, the court shall inquire of the district attorney 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, unless doing so would result in a violation of a jurisdictional rule, the court shall</p> <ol style="list-style-type: none"> <li>(1) reschedule the hearing; or</li> </ol>	
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<p>(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.</p>	
<p><b>Victims' Right to Be Present During Closed Courtroom Magistrate Proceedings.</b></p> <p>Courtroom proceedings open. All courtroom proceedings shall be open to the public unless the courtroom is closed by an order of the court entered under this rule. An agreement of the parties to close the courtroom shall not constitute a sufficient basis for the issuance of an order for courtroom closure. Unless otherwise ordered by the court, the following persons may be present during a closed courtroom proceeding: the parties and their attorneys, witnesses while testifying, court employees and security personnel, and victims and victim's representatives as defined in the Victims of Crime Act, Section 31-26-3 NMSA 1978. This rule does not affect the court's inherent authority to impose reasonable time, place, and manner limitations on public access to the courtroom, including reasonable limitations on broadcasting, televising, photographing, and recording of court proceedings as set forth in Rule 23-107 NMRA.</p> <p> Similar rules are in place guaranteeing victims' right to be present in closed Metropolitan Court proceedings, N.M. Metro. Ct. R. Crim. P. 7-115(A), in closed District Court proceedings, N.M. Dist. Ct. R. Crim. P. 5-124(A), and in closed Appellate Court proceedings, N.M. R. App. P. 12-322(A). These provisions are not included in this document.</p>	<p>N.M. Magis. Ct. R. Crim. P. 6-116(A).</p>
<p><b>Victims' Right to Inadmissibility of Sexual Behavior or Sexual Predisposition.</b></p> <p>A. Prohibited Uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:                  (1) evidence offered to prove that a victim engaged in other sexual behavior, or</p>	<p>N.M. R. Evid. 11-412.</p>



<p>(2) evidence offered to prove a victim’s sexual predisposition.</p> <p><b>B. Exceptions.</b> The court may admit evidence of the victim’s past sexual conduct that is material and relevant to the case when the inflammatory or prejudicial nature does not outweigh its probative value.</p> <p><b>C. Procedure to Determine Admissibility.</b></p> <p>(1) <b>Motion.</b> If the defendant intends to offer evidence under Rule 11-412(B) NMRA, the defendant must file a written motion before trial. If the defendant discovers new information during trial, the defendant shall immediately bring the information to the attention of the court outside the presence of the jury.</p> <p>(2) <b>Hearing.</b> Before admitting evidence under this rule, the court shall conduct an in camera hearing to determine whether such evidence is admissible.</p> <p>(3) <b>Order.</b> If the court determines that the proposed evidence is admissible, the court shall issue a written order stating what evidence may be introduced by the defendant and stating the specific questions to be permitted. Unless the court orders otherwise, the motion, order, related materials, and the record of the hearing must remain sealed.</p>	
<p><b>Victims’ Right to Be Present Prevents Exclusion as a Witness.</b></p> <p>At a party’s request, the court must order witnesses excluded so that they cannot hear other witnesses’ testimony, or the court may do so on its own. This rule does not authorize excluding</p> <p>A. a party who is a natural person,          B. an officer or employee of a party that is not a natural person, after being designated as the party’s representative by its attorney,          C. a person whose presence a party shows to be essential to presenting the party’s claim or defense, or          D. a person authorized by law to be present.</p>	<p>N.M. R. Evid. 11-615.</p>

<p> Victims of crime are “authorized by law to be present.” <i>See, e.g.</i>, N.M. Const. art 2, § 24(A)(5) (guaranteeing victims of crime the right to “attend all public court proceedings the accused has the right to attend”); N.M. Stat. Ann. § 31-26-4(E) (same). These provisions are included above.</p> <p> A victim’s right to be present should provide for the victim’s presence during the entirety of the trial. Even if the victim is to be a witness and the court concludes that the victim’s testimony would be materially altered if the victim hears other testimony, consider discussing with the prosecutor the possibility of the victim testifying first to best ensure the victim’s right to be present during the entirety of the trial.</p>	
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