



May– June 2003

New Mexico Victims' Rights Bulletin

PLEA AGREEMENTS

At least 85% of criminal cases nationwide are resolved through plea agreements. In a typical plea agreement the prosecutor agrees to dismiss or reduce some charges, in exchange the defendant agrees to plea guilty or no contest to specific charges. If a defendant pleads "guilty" s/he is saying, "Yes, I am guilty. I did commit the crime." If a defendant pleads "no contest" s/he is saying, "I am not saying that I did it but if the case went to trial, the prosecutor has enough evidence to convict me." Sometimes the parties agree to a specific sentence and sometimes they leave it to the discretion of the judge.

The plea agreement is a critical stage of the process. If victims are not able to address the court at this stage, a grave injustice can be done, especially if the parties agree to the sentence that will be imposed. In New Mexico victims have a right to confer with the prosecutor. The Office for Victims of Crime (OVC) has printed a series of articles on this issue. According to one article, "in at least 22 states, the victim's right to confer with the prosecutor requires a prosecutor to obtain the victim's view concerning the proposed plea." A few states require the prosecutor to certify that efforts were made to confer with the victim, the victim was given notice of the plea proceeding, the victim was informed of their right to be present and to be heard, and the prosecutor informs the court of the victims' position regarding the negotiated plea. "According to the Bureau of Justice Statistics, guilty pleas in 1996 accounted for 91 percent of felony convictions in state courts... Thus, unless crime victims are afforded the opportunity to be involved during plea negotiations and related proceedings, most of them will be effectively denied any chance for meaningful participation in the criminal justice process.... By sharing the impact the crime has had on their lives and voicing their views on sentencing, victims can play an essential role in the appropriate administration of justice. Victims in many states, however, have not been able to fully exercise the rights provided them by law."

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The New Mexico's Victims of Crime Act states: "Recognizing the state's concern for victims of crime, it is the purpose of the Victims of Crime Act [31-26-1 to 31-26-14 NMSA 1978] to assure that: the full impact of a crime is brought to the attention of the court; victims of violent crimes are treated with dignity, respect and sensitivity at all stages of the criminal justice process; victims' rights are protected by law enforcement agencies, prosecutors and judges as vigorously as are the rights of criminal defendants." Prior to accepting a plea agreement, the judge should determine if the agreement is a just outcome of the crime and ask if the victim was notified. The OVC in its series states: "The impact of the offense is also an important consideration in determining the appropriateness of a plea agreement and the victim can offer the court a unique perspective on the impact of the crime."



In New Mexico this violation of victims' rights seems to be common. We receive numerous complaints from victims because the prosecutor negotiated a plea agreement with the defendant without conferring with them and then the judge sentences the defendant without notifying the victim.

In most of these cases the defendant received a sweet deal which the victim would have objected to. In some cases, the judge has refused to allow the victim to speak even when the victim was present in court. Victims' constitutional and statutory rights are violated on a regular basis and their ability to redress the wrong is severely limited. Once the court accepts the plea with the sentence attached, double jeopardy attaches. It is then futile for the victim to bring in evidence to show that the plea agreement is unreasonable or unjust.

NEW MEXICO VICTIMS' RIGHTS PROJECT

The Victims Rights Project is a joint effort of the DWI Resource Center and other victim organizations.

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The New Mexico Victims Rights' Bulletin is published every other month by the New Mexico Victims' Rights Project. The goal in distributing information, news and updated legislation is to promote justice and healing for crime victims by sharing information and fostering sensitivity within the justice system. Question regarding content may be directed to Linda Atkinson, Executive Director at (505) 292-2838.

RESTITUTION

"Victims suffer staggering economic costs as a result of crime. The tangible cost of crime, including medical expenses, lost earnings, and public victim assistance costs, is an estimated \$105 billion a year. Crime victim compensation programs reimburse victims for part of this loss. However, most of the costs of crime are absorbed by the victims and victim service providers." This is the introduction to a series of articles written by the Office for Victims of Crime (OVC). The article goes on to state: "Every state gives courts the statutory authority to order restitution." Too often, restitution is not ordered and when it is ordered it is not enforced. "32 states have recognized the supreme importance of fundamental and express rights for crime victims by raising those protections to the constitutional level." Judges seem oblivious to the mandates of the constitution, the mandates of statute and the plight of victims and too readily assume defendants cannot pay.

Defendants manage to buy booze, cigarettes, new clothes, makeup, jewelry, etc. Most have cell phones, cable TV or a satellite dish. Judges should require defendants to bring in their paycheck stubs, bank statements, credit card bills, etc., and have wages garnished. If they are not working, require them to get a job or perform eight hours of community service every day until they obtain a job or pay restitution which ever occurs first. If they have a job and say they do not make enough to pay, have them obtain a second job or obtain a loan. If they receive any type of disability pay or government assistance, they should be required to pay at least 10% of each check towards restitution. Have the defendants bring in their income tax return. Are they expecting a refund? Was a cash bond posted in the case? Have the cash bond applied to restitution. Judges who refuse to accept excuses have been very successful in obtaining restitution from defendants. In the rare case that a defendant cannot pay, they should be required to perform community service equal to the amount of restitution. If the defendant is incarcerated, 50% of wages earned on the prison work program should be taken to pay restitution. 50% of money received from family and friends should also be taken until restitution is paid.

According to the OVC, most states allow restitution orders to be converted to civil judgments and several states have amended their laws to allow restitution orders to be referred to private collection agencies. The article concludes with the following: "State legislatures and criminal justice experts alike have recognized that holding a convicted offender financially responsible for the harm caused by the crime is a proper criminal sanction. They also recognize the importance of restitution in promoting the recovery of the crime victim. However, until the process of collecting restitution improves, these twin benefits cannot be fully realized."

In California there is a judge who revoked a defendant's probation and placed her in jail after giving her numerous chances to pay restitution. She also lied to the court regarding a loan application for money to pay restitution. The judge in sentencing the defendant to prison noted the defendant was not put in prison "for nonpayment of a debt. That's against our constitution. But this defendant is totally failing to comply with the orders of the court." According to OVC, the appellate court upheld the trial court judge's ruling.

VICTIM'S REIMBURSEMENT

If you are a victim of a violent crime or the next of kin of a victim who has died as the result of a criminal act, you may apply to the New Mexico Crime Reparations Commission to recover certain expenses. Some expenses you may be able to recover include:

- Medical and dental expenses
- Mental health counseling

Lost wages **Crime Victim Resources (Bernalillo County)**

Albuquerque Police Department	242-2677
Bernalillo County Sheriff's Dept.	798-7000
NM State Police, Albuquerque area	841-9256
District Attorney's Office	841-7100
District Attorney's Victim Impact	841-7020
NM Crime Victims' Reparations	841-9432
MADD	255-2955

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DWI Resource Center	881-1084
UNM Crisis Center	277-3013
Rape Crisis Center	266-7711
Hopeline national suicide hotline	(800) 247-1121
Child Protective Services	841-7800
Survivors of Homicide	232-4099
Women Community Association	247-4219

For resources in your community visit our website at www.nm-victimrights.org