



NEW MEXICO VICTIMS' RIGHTS BULLETIN

September/October 2004

Federal Criminal Code Amended to Give Victims Rights in Criminal Process

On Saturday, October 30, 2004 President Bush signed H.R. 5107, known as the Justice for All Act of 2004, into law [Public Law 10-405]. The purpose of the bill is to protect crime victims' rights, to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, state and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in state capital cases, and other related goals.

Among the things passed in this important piece of legislation, the Act amends the Federal Criminal Code to grant crime victims specific rights in the federal criminal process, and those rights include:

- the right to be protected from the accused
- the right to be heard at any public proceeding involving release, plea or sentencing
- the right to timely notice of any public proceeding involving the crime or any release or escape of the accused
- the right to have the criminal proceeding progress free from unreasonable delay
- the right to confer with the Government attorney
- the right to full and timely restitution
- the right to be treated with fairness and respect

Although this Act only affects the rights of victims of crime whose offender is being prosecuted in a federal court, the legislation is an important next step in ultimately ensuring that the voices of victims of crime are taken into account in all criminal prosecutions.

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**National Victims Rights Week
April 10 - 16, 2005**

COMING EVENTS

In April, the 25th annual National Crime Victims Rights Week will be commemorated. April 10-16, 2005, will be the Silver Anniversary of this important event memorializing the struggle of victims to have a voice in the criminal justice system.

In the upcoming issues, the NM Victims Rights Project will present an historical look at the evolution of the victims right movement, the 1982 President's Task Force on Victims of Crime, and key developments in victims rights law and advocacy in the ensuing 25 years.

Prosecutor Checklist for Victims Rights

The Victims Rights Project has created the following checklist for prosecutors to help them protect victims rights as outlined in NM Constitution. Please see the following page for the complete checklist and additional information.

- IDENTIFY VICTIM: Is there a victim in this case? Has s/he been informed of rights?
- CONFER: Have I discussed the case with the victim? What was the impact of the crime on the victim? What are the victim's concerns regarding this case? (31-26-4, paragraph F - A victim shall have the right to confer with the prosecutor.)
- RESTITUTION: Did the victim suffer any monetary loss? If yes, determine the amount of restitution. Have the victim bring in bills or estimates. Make a copy for your file. Return the originals to the victim. If the defendant states that he/she is unable to pay restitution, request the court to set a hearing to review offender's income and expenses. Have defendant bring in bank statement, bills, credit card statement, tax return, etc. Does he/she have a cell phone, cable TV? Does he/she smoke, drink, eat out, wear makeup, nail polish, etc.? If the defendant can afford to drink, smoke, cable, cell phone, etc, he/she can pay restitution. (31-17-1 establishes a right to restitution to all victims of crime not just those enumerated in the Victims of Crime Act.)
- TIMELY DISPOSITION: Am I doing all I can to insure a timely disposition of the case without compromising the integrity of the case? (31-26-4, paragraph B - A victim shall have the right to a timely disposition of the case.)

- PLEA AGREEMENT: How does the victim feel about resolving the case with a plea agreement? Prior to entering into any plea agreement check to see if defendant has any pending or prior felony or misdemeanor cases. A plea agreement should take into account, the harm done to the victim as well as the defendant's history. Avoid sentencing agreement. If the judge orders a pre-sentence report, the probation officer may discover priors in other states or other information that would justify a tougher sentence than originally anticipated.
- SENTENCING: Verify that the victim is aware of the sentencing date and is given an opportunity to make a statement prior to the court imposing a sentence. (31-26-4, paragraph G)
- MERITORIOUS DEDUCTIONS: If jail time is imposed, request the court to inform the victim if the offender is eligible to earn good time credit and the amount that may be earned. (31-26-4, paragraph L)
- RETURN OF PROPERTY: Was any property belonging to the victim taken into evidence? (31-26-4, paragraph K requires that property belonging to the victim be promptly returned unless there are compelling evidentiary reasons for retention of the property.)

31-26-4 paragraph A - A victim shall be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process. If this is taken to heart, all of the other rights will follow with ease.



If you or someone you know has been victimized by a crime, call the New Mexico Victims Rights Project at 1-888-410-1084. Remember, you are not alone. You have rights under the law.

CRIME VICTIMS' RESOURCES

Adult Protective Services	(800) 797.3260
Agora Crisis Center	(505) 277.3013
Child Protective Services	(800) 797.3260
Covenant House Hotline	(800) 999.9999
DWI Resource Center	(888) 410.1084
MADD	(800) 522.6233
NM Crime Victims' Reparations	(505) 841.9432
Rape Crisis Center	(505) 266-7711
Hopeline (Suicide Hotline)	(800) 784-2433
NM Coalition Against Domestic Violence	(800) 773-3645
Resources Inc.	(877) 974.3400
Survivors of Homicide	(877) 700.8500
Victims' Rights Project	(888) 410.1084
Women Community Association	(800) 773.3645