

VICTIM ASSISTANCE LAWS - ON LINE

PRESENTED BY

DPS – Law Enforcement Academy
Santa Fe, New Mexico

Date: _____

GOALS

- Students will gain knowledge of legislation affecting the rights of victims.
- Students will learn how to apply this knowledge when working with victims.

OBJECTIVES

- Know the purpose of the Crime Victims Reparations Act.
- State the kind of crimes a victim can be compensated for.
- Explain who is eligible for benefits.
- Explain how a victim can apply for benefits.
- Describe who can authorize awarding benefits to a victim.
- Know the purpose of the Victims of Crime Act.
- Know what rights the victim of a crime has.
- Describe what a victim must do to qualify for benefits.
- Know the role of law enforcement in assisting victims of crimes.
- Know the role of other agencies in assisting victims of crimes.

SOURCES

- New Mexico Criminal and Traffic Manual.
- New Mexico Statutes Annotated.
- State and federal case law.

ESTIMATED TIME Two hours.

PREPARED BY

Legal Instructor
Department of Public Safety
Law Enforcement Academy
Santa Fe, New Mexico

DATE APPROVED _____

ACCREDITATION NUMBER _____

INTRODUCTION

One reason many officers have chosen a law enforcement career is to help the community. This includes assisting victims. To become effective in helping victims, it is very helpful to know the various statutes that affect them. This outline, in one place, contains the more important statutes relating to victims and their rights.

Sometimes, in reviewing statutes, we lose sight of what is really going on. As we look at the following statutes, we need to remind ourselves that for many victims, this is a traumatic situation, a defining moment in their lives. We must never become indifferent or jaded in what we do. This is when we as officers can be at our very best.

We will discuss how to help victims by looking at two different sections:

- Chapter 31, Article 22: Crime Victims Reparation Act
- Chapter 31, Article 26: Victims of Crime Act

ARTICLE 22: CRIME VICTIMS REPARATIONS ACT

INTRODUCTION

Which victim qualifies for compensation? For what kind of crimes will the state of New Mexico provide compensation? How much compensation is available? Looking at state statutes can help us find the answers.

What is the purpose of the Crime Victims Reparations Act?

This Crime Victims Reparations Act provides a way for the state to give money to victims of certain crimes. Some people ask why victims should get money from the state for being a victim. There are actually two reasons for this:

- Financial compensation by the state encourages victims to cooperate with law enforcement. NMSA 1978, Section 31-22-2.
- A person or family who suffers from a violent crime often has immediate expenses, including medical and funeral expenses.

What kind of crimes can a victim be compensated for?

NMSA 1978, Section 31-22-8. There are numerous crimes which offer compensation:

- Arson resulting in bodily injury

- Aggravated arson
- Aggravated assault or 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 or great bodily injury by a vehicle
- Abandonment or abuse of a child
- Aggravated indecent exposure
- Aggravated stalking

Who qualifies as a victim?

A victim within New Mexico

- A person in New Mexico who is injured or killed by any act or omission that is a crime listed above, or

A resident of New Mexico who is a victim outside of New Mexico

- 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
- a resident of New Mexico who is injured or killed by an act of international terrorism. NMSA 1978, Section 31-22-3 (i).

How much money is a victim eligible for?

- A victim can get up to \$20,000. An additional \$30,000 may be given for extraordinary losses if the injury to a victim is catastrophic and results in permanent total disability. NMSA 1978, Section 31-22-14.
- The extraordinary losses compensated may include (1) loss of wages, (2) the cost of home health care, (3) the cost of making a home or automobile accessible, (4) the cost of training in the use of special application, or (5) job training.

It is important to let victims know that compensation is available. Law enforcement officers are in a good position to do this.

Who awards the benefits?

- The Crime Victims Reparation Commission. It has five members appointed by the Governor. NMSA 1978, Section 31-22-4.

How do victims eligible for benefits get benefits?

- An application is made to the Crime Victims Reparation Commission. If the application is denied, the victim can appear before the commission to present evidence on his or her behalf. NMSA 1978, Section 31-22-5.

Who is eligible for benefits?

- The victim, of course. In case of the victim’s death, the victim’s dependents. Also, any individual who voluntarily assumes funeral or medical expenses for the victim. NMSA 1978, 31-22-7.

What do the benefits cover?

- They can cover expenses incurred as a result of the victim’s injury or death and loss of earning power that results from inability to work. The commission has broad authority to cover any other financial losses directly resulting from the victim’s death or injury. NMSA 1978, Section 31-22-9.

Which victims are not eligible for benefits?

- No reparation (benefits) shall be made if the victim was a member of the offender’s family relationship group where payment of reparation would unjustly enrich the offender or if the victim was an accomplice of the offender. NMSA 1978, Section 31-22-10.
- A victim who is injured while confined in jail or prison or other correctional facility is not eligible for benefits. NMSA 1978, Section 31-22-11.

CONCLUSION

Victims or their families often do not know that they may qualify for benefits in New Mexico. Law enforcement officers can perform a valuable service by advising victims what benefits exist and how to apply for them.

ARTICLE 26: **VICTIMS OF CRIMES ACT**

INTRODUCTION

“Why does the defendant have all the rights?” “What about the victim?”

These questions have been asked for many years. These questions were addressed by constitutional amendment and the state legislature in the 1990’s.

Purpose of the Victims of Crimes Act

- Victim's rights became part of the New Mexico Constitution (Article II, Section 24) in 1992. These rights, however, did not go into effect until the legislature enacted the Victims of Crime Act in 1994.
- The main purpose of the Victims of Crime Act is to make sure law enforcement agencies, prosecutors and judges protect the rights of victims as vigorously as the rights of defendants are protected. NMSA 1978, Section 31-26-2.

Some of the rights the victim has

- Notification of court proceedings,
- Attend all public court proceedings the accused has the right to attend,
- Confer with the prosecution,
- Make a statement to the court at sentencing,
- Restitution from the person convicted of the criminal offense,
- Information about the conviction, sentencing, escape or release of the accused, and
- Prompt return of any property belonging to the victim that is being held for evidence,
NMSA 1978, Section 31-26-4.

What must the victim do to be entitled to these rights?

- He or she must report the criminal offense within five days of the occurrence or discovery of the criminal offense,
- Provide the district attorney with current information regarding name, address and telephone number,
- Fully cooperate with reasonable requests by law enforcement agencies and the DA's office. NMSA 1978, Section 31-26-5.

At what point does a victim become entitled to these rights?

- When the offender is formally charged by the district attorney for committing a criminal offense against the victim. NMSA 1978, Section 31-26-6.

THE ROLE OF LAW ENFORCEMENT AND OTHER AGENCIES

We will first look at what law enforcement can or should do to assist the victim of a crime. Next, we will look at the role of other agencies.

ROLE OF LAW ENFORCEMENT

- Law enforcement should advise the victim of medical services and crisis intervention

services available to victims,

- provide the victim with a 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
- 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. NMSA 1978, Section 31-26-8.

Because many victims have trouble focusing on important information regarding rights and services, especially in the period immediately after their victimization due to trauma, law enforcement officers should provide this information to victims in writing as well as verbally.

ROLE OF DISTRICT ATTORNEY

- The District Attorney’s office is responsible for providing many services to the victim. This includes giving the name of the person within the district attorney’s office that the victim may contact for additional information regarding prosecution of the criminal offense. NMSA 1978, Section 31-26-9.

ROLE OF THE COURTS

- At any scheduled court hearing, the court shall inquire on the record whether a victim is present to make an oral statement or submit a written statement. If the victim is not present, the court shall inquire on the record whether an attempt has been made by the district attorney’s office to notify the victim. NMSA 1978, Section 31-26-10.1.

ROLE OF CORRECTIONS AND CYFD

- The corrections department or CYFD (Children, Youth and Families Department) shall immediately notify the judge, the district attorney and the probation officer who did the presentence report if an offender escapes. The District Attorney shall immediately notify the victim. NMSA 1978, Section 31-26-11.

ROLE OF PAROLE BOARD

- The parole board shall provide a copy of their release docket to the district attorney at least ten days before a hearing. The district attorney shall notify the victim.
- If the inmate is scheduled to be released without parole, the district attorney will be advised and shall notify the victim. NMSA 1978, Section 31-26-12.

CONCLUSION

The rights of the accused are well known. Legislation discussed here addresses the rights of the victims as well.

Officers are in a unique position to inform victims of their rights and possible financial compensation.