

**Report and Recommendations to
Improve Enforcement of Crime Victims' Rights &
Increase Access and Quality of Services for Crime Victims**

**New Mexico Victim Rights Alliance
July 2007**

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Governor Bill Richardson established the Victim Rights Alliance (hereinafter "Alliance") in 2005 through Executive Order 2005-020. Through Executive Order 2007-002, the Governor charged the Alliance with the task of investigating and reporting on the status of crime victims' rights in New Mexico by July 31, 2007. It is with great pleasure that the members of the Alliance and their partners present the findings and recommendations based on six months of collaborative inquiry into the implementation and enforcement of victims' rights and the quality of services offered to crime victims in New Mexico.

Throughout this investigative process, the Alliance sought to gather information about the experiences of crime victims throughout New Mexico. However, as it is always challenging to represent the interests of all groups, the members of the Alliance do not feel it is accurate to suggest that this Report reflects the opinions and experiences of *all* crime victims in New Mexico. Rather, the Alliance has gathered information from professionals who serve diverse groups of victims. The Alliance also collected survey data from selected victims to identify statewide trends and themes related to rights enforcement and the quality of services they received. In order to gather more population or geographic region-specific data, the Alliance believes a statewide, in-depth needs assessment would be necessary as reflected in Recommendation Three of this Report.

The members of the Alliance also recognize that many of the recommendations included in this Report will require funding and the commitment of state agencies, communities, and tribal entities in order to be implemented. It is not the intention of the Alliance to suggest that the Governor's Office should be responsible for the execution of each of these recommendations. Instead, the Alliance seeks support and guidance from the Governor's Office in selecting appropriate partners and strategies for the improvement of victims' rights enforcement and services through the implementation of the recommendations included in this Report. It is the belief of the Alliance that by improving rights enforcement and services in the ways suggested in this Report, crime victims will receive the services they need to heal and will be afforded the rights they are guaranteed under the New Mexico Constitution and state statutes.

Sincerely,
 Members
 Victim Rights Alliance

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EXECUTIVE SUMMARY

The New Mexico Legislature passed its first Crime Victims' and Witnesses' Bill of Rights in 1987. In 1992, the state adopted a constitutional amendment, Article II Bill of Rights, Section 24. Following the amendment, the enabling statute was passed in 1994 (see Appendices A and B for the full text of the amendment and statute). In 2004, Governor Bill Richardson, established New Mexico's first Governor's Office of Victim Advocacy. This office is charged with the tasks of reviewing and investigating complaints from crime victims, advocating for victims when their rights have been violated, and, if necessary, intervening in cases to assure that the criminal justice system honors victims' rights. In addition, the office engages in public education and legislative initiatives as needed.

In 2005, Governor Bill Richardson again demonstrated his commitment to victims' rights by establishing the Victim Rights Alliance through Executive Order 2005-020. The Alliance's work has continued under Executive Order 2007-002. In accordance with this Order, over the past six months the Alliance has collected and reviewed data from available sources and collected new data related to the enforcement of crime victims' rights in New Mexico. Additionally, the Alliance focused on the quality of services provided to crime victims.

Through this process, the Alliance developed 16 recommendations. The recommendations are presented in two distinct categories: 1) recommendations to improve enforcement of crime victims' rights and 2) recommendations to improve services for crime victims. Additionally, each recommendation is accompanied by a brief rationale and, if applicable, suggestions for effective methods for implementation. The following three recommendations were identified by Alliance members as the *top three key remedies* to address identified gaps and needs:

- ✓ Establish and fund, through legislative action, a crime victims' rights ombudsman to:
 - Investigate claims that an entity has violated a crime victim's rights.
 - Document findings in a report to the subject entity and the victim. In cases in which rights are violated, the report will include recommendations to correct errors and improve responses to victims. Recommended remedies may include development of policies and procedures and other measures necessary to prevent future violations.
 - When necessary and appropriate in cases in which a victim's rights have been violated, bring complaints to the entity responsible for the conduct of those violating professionals and/or issue public reprimands for rights violations.
 - Ensure ombudsman immunity.
- ✓ Establish and fund a universally accessible Statewide Automated Victim Information Notification System (SAVIN) for statutorily required victim notification, through a commercial off-the-shelf solution, to significantly improve victim notification.
- ✓ Conduct a comprehensive, statewide needs assessment to document crime victims' rights violations and to further assess the experiences of crime victims' interactions with the criminal justice system and service providers.

SUMMARY OF RECOMMENDATIONS

Recommendations to Improve Enforcement of Crime Victims' Rights

1. Establish and fund, through legislative action, a crime victims' rights ombudsman to:
 - a. Investigate claims that an entity has violated a crime victim's rights.
 - b. Document findings in a report to the subject entity and the victim. In cases in which rights are violated, the report will include recommendations to correct errors and improve responses to victims. Recommended remedies may include development of policies and procedures and other measures necessary to prevent future violations.
 - c. When necessary and appropriate in cases in which a victim's rights have been violated, bring complaints to the entity responsible for the conduct of those violating professionals and/or issue public reprimands for rights violations.
 - d. Ensure ombudsman immunity.
2. Establish and fund a universally accessible Statewide Automated Victim Information Notification System (SAVIN) for statutorily required victim notification, through a commercial off-the-shelf solution, to significantly improve victim notification.
3. Conduct a comprehensive, statewide needs assessment to document crime victims' rights violations and to further assess the experiences of crime victims' interactions with the criminal justice system and service providers.
4. Amend language of NM Stat. 31-26-3(B) to include attempted violent crimes in the definition of "criminal offense."
5. Amend language of NM Stat. 31-26-4(F) to require district attorneys to confer with victims of crimes before negotiating plea agreements with defendants, reducing charges, or dismissing charges.
6. Submit to the New Mexico judicial rules committee rules conforming to the NM constitutional amendment and NM Stat. 31-26-1.
7. Request the court to: A) create a rule of criminal procedure that requires the restitution amount to appear on the Judgment and Sentence (J&S) or to explain why the restitution amount is not on the face of the order and B) create pro se forms and guidelines to facilitate victim enforcement of restitution.
8. Develop and implement, through continuing education programming and other professional training opportunities, standardized curricula for the judiciary, prosecutors, and law enforcement about:
 - a. Victims' constitutional and statutory rights.
 - b. Impact of crime on victims that necessitates those rights.
 - c. Diversity, cultural, and orientation issues that influence how victims universally access and interact with law enforcement, the criminal justice system, and victim service providers.

9. Require all criminal justice programs at New Mexico institutions of higher learning and criminal law and criminal procedure classes in New Mexico law schools to include education about New Mexico crime victims' constitutional and statutory rights.

Recommendations to Improve Services for Crime Victims

10. Develop, implement and maintain a statewide website and toll-free number as tools for crime victims to learn about victims' rights and services.
11. Develop and implement an ongoing, statewide media campaign to increase crime victim and public awareness of victims' rights and services and to advertise a crime victims' rights website and toll-free number.
12. Prohibit the sharing of location and contact information of crime victims of enumerated crimes without the prior approval from the victim.
13. Provide additional funding to entities that receive state funding, including federal funding managed by New Mexico state agencies, to work with local community members and advocates to translate and edit outreach and awareness raising materials into languages and formats most appropriate and effective for diverse communities.
14. Provide funding to help agencies, both public and nonprofit, to come into compliance with the Americans with Disabilities Act to accommodate victims with disabilities.
15. Provide funding to state and tribal prosecutors earmarked for expert testimony in order to support victim statements and behavior.
16. Require ongoing training for victim service providers receiving state funding including federal funding managed by New Mexico state agencies about:
 - a. Victims' constitutional and statutory rights.
 - b. Impact of crime on victims that necessitates those rights.
 - c. Diversity, cultural, and orientation issues that influence how victims universally access and interact with law enforcement, the criminal justice system, and victim service providers.

DEMOGRAPHIC & CRIME STATISTICS IN NEW MEXICO

New Mexico's diverse population includes nearly two million residents living in the fifth largest state in the country. Forty-three percent of New Mexicans are non-Hispanic white, forty-three percent are Hispanic, ten percent are Native American, two percent are African American, and one percent is Asian American (U.S. Census Bureau). New Mexico boasts the largest proportion of Hispanic residents and the second highest proportion of Native American residents among all states. Among Hispanic residents, the largest proportion is from families that have occupied NM for multiple generations, ten percent are more recent foreign-born immigrants, and over two percent are undocumented immigrants primarily from Mexico. There are twenty-two Native American tribes with reservation and/or pueblo communities in New Mexico. Each of these groups has a unique cultural identity and sovereign authority. The diversity among these groups contributes to a rich, culturally varied state. However, this diversity also necessitates the development of culturally specific programming to address elevated rates of victimization—nationally it is estimated that Native Americans are victimized at two to three times the rate of their white counterparts.

Additionally, the New Mexico Department of Health reports that twenty-five percent or 300,000 of adult, non-institutionalized New Mexicans report having a disability. Nationally, for Americans with disabilities, the risk of being a victim of crime, especially a victim of sexual assault, is four to ten times higher than for those without disabilities. However, it has been reported that only four percent of cases involving a victim with a disability ever makes it to court for prosecution. There are numerous issues that contribute to the lack of justice for victims of crime with disabilities, including underreporting of crimes and limited access to law enforcement and the judicial system.

New Mexico ranks forty-seventh nationally in per capita income at \$24,291 (U.S. Census Bureau). Pervasive poverty, in combination with geographic isolation and language barriers for many residents, means many individuals and communities do not receive the services and resources needed to respond to victimization.

Residents of New Mexico experience some of the highest rates of violent crime in the country as evidenced by the Federal Bureau of Investigation, Uniform Crime Report data reported in the table below. However, these data only include those cases that are reported to police and entered into the UCR database. For most violent crimes, it is estimated that as few as thirty to forty percent are reported to police and even fewer are pursued for investigation and prosecution. For those victims who are able to attain victim status under the constitution of the State of New Mexico, unique and critically important rights are extended. Over the past six months, the members of the Victim Rights Alliance have worked to evaluate the enforcement of these rights and the provision of services to crime victims.

New Mexico Crime Rates per 100,000 and National Ranking (2000-2005)

Year	2000		2004		2005	
Population	1,819,046		1,903,006		1,928,384	
Crime	Rate	Rank	Rate	Rank	Rate	Rank
All Violent	759.9	4	687.4	6	702.2	6
Murder	7.4	5	8.9	3	7.4	10
Rape	50.7	3	54.1	2	54.1	2
Robbery	137.4	19	108.4	25	98.7	27
Agg. Assault	562.4	3	515.6	3	541.9	4
All Property	4761	3	4198	13	4148.3	11
Burglary	1173.1	1	1047	3	1093.9	2
Theft	3184.4	7	2736.1	15	2639.9	18
Auto Theft	403.6	18	414.2	17	414.5	16

Data provided by Uniform Crime Reports of the FBI. Ranks are calculated by the Disaster Center.

STATUS OF CRIME VICTIMS' RIGHTS & SERVICES IN NEW MEXICO

The New Mexico Legislature passed its first Crime Victims' and Witnesses' Bill of Rights in 1987. In 1992, the state then adopted a constitutional amendment, Article II Bill of Rights, Section 24. Following the passage of the amendment, an enabling statute was passed in 1994 (see Appendices A and B for the full text of the amendment and statute). In 2004, Governor Bill Richardson, established New Mexico's first Governor's Office of Victim Advocacy. This office was charged with the tasks of reviewing and investigating complaints from crime victims, advocating for victims when their rights have been violated, and, if necessary, intervening in cases to assure that the system honors victims' rights. In addition, the office engages in public education and legislative initiatives as needed.

In 2005, Governor Bill Richardson again demonstrated his commitment to victims' rights by establishing the Victim Rights Alliance through Executive Order 2005-020. The Alliance's work has continued under Executive Order 2007-002. Over the past six months, the Alliance has reviewed data from available sources and collected new data related to the enforcement of crime victims' rights in New Mexico. Additionally, the Alliance reviewed data related to the quality of services provided to crime victims. Selected findings are included below and a full report of each relevant data set is included in the appendices.

Statewide Survey of Crime Victims (2007)

In the spring of 2007, the Alliance distributed surveys to 240 crime victims who had previously sought reparations through the New Mexico Crime Victims Reparation Commission (NMCVRC). The survey specifically asked about twenty-five victims' rights provided to crime victims under the New Mexico Constitution and enabling statute. The survey addressed victims' rights in all cases, including cases processed through the criminal justice system, cases with convictions, and cases processed through state corrections. The survey was developed by the Alliance in consultation with Anne Seymour, a consultant to the U.S. Department of Justice Office for Victims of Crime, Training and Technical Assistance Center.

The results of the forty-two returned surveys were analyzed in June 2007. Findings indicated that the majority of victims received information about supportive services for crime victims (76 %), felt they were treated with dignity and respect (63 %), and were given contact information by the district attorney should they have questions or concerns (63 %). However, the survey indicated there is much room for improvement in enforcing victims' rights among law enforcement entities in New Mexico. Only thirty-nine percent of survey respondents reported receiving information about the district attorney from law enforcement. Additionally, only thirty-six percent received referral information about medical and/or crisis intervention services or a police report number from law enforcement. The survey also revealed that thirty-three percent of respondents felt that their safety needs were not addressed and only twenty-five percent of respondents indicated that restitution was sought by the prosecutor. A full report of survey findings is included in Appendix C. Note: Because survey respondents were drawn from NMCVRC lists, the Alliance has concluded that these were likely individuals who had increased knowledge of their rights as victims as they had been processed through both the criminal justice and reparations systems.

Advocacy in Action Conference Survey (2007)

Survey questionnaires were distributed on the final day of the New Mexico Crime Victim Reparations Commission's annual conference, Advocacy in Action, in March 2007. This conference attracts criminal justice, health, social service, corrections, and probation and parole professionals who serve crime victims from across the state. A total of 60 completed surveys were received and the results were analyzed by Dr. Joan Crowley of New Mexico State University to examine trends and themes related to challenges in serving crime victims and resources needed to improve victim services (see Appendix D for full survey results). The following challenges in serving crime victims were identified by survey participants: inadequate funding; lack of staff; lack of services including transportation to existing services, housing, therapists, legal assistance, and child care; lack of coordination among agencies; lack of information and awareness about victims' rights and the dynamics of crime victimization; and client characteristics including the challenges of working with low income, rural, and culturally diverse populations. Likewise, the following were identified as needs that would address these challenges:

- Increased resources: funding, staff, volunteers, and victim advocates.
- Improved coordination: cooperation among agencies and community involvement.
- More information: outreach and awareness efforts for victims and communities.
- Increased services: transportation, housing, therapists, and substance abuse services.
- Training for criminal justice professionals: to assure that police, prosecutors, and judges are informed about key victim issues, needs and concerns.
- Improved criminal justice performance: to include legislative changes, legal support, Attorney General oversight, enforcement of current laws, and expanded criminal justice services.

Special Population Focus Groups (2007)

Five focus groups were convened by Tammi Lambert of the New Mexico Governor's Office of Victim Advocacy with advocates for specific populations in order to gather more specific information related to the experiences and needs of traditionally underserved communities. Focus groups were conducted with child protection professionals and advocates for African American, rural, Native American, and immigrant communities. The notes from these groups were reviewed and summarized by Dr. Crowley (see Appendix E for full focus group results).

Participants in most of the focus groups voiced frustration with the lack of enforcement and follow-through on the part of the criminal justice system. The court system was faulted for lack of timely actions and lack of enforcement of orders. Advocates pointed out that the civil and criminal courts need to work in cooperation to reduce the pressure on families in crisis. Respondents representing African American and immigrant groups expressed distrust of law enforcement. Specifically, participants from the immigrant group expressed concerns about immigration officials picking up domestic violence victims at court, in shelters, and from other social service programs. Professionals participating in the child protective services group wanted more accountability for abusive parents, in addition to a greater range of treatment programs to break the cycle of violence in those families. Rural victim advocates pointed out that police and prosecutors in their areas lack the training and resources to appropriately investigate cases of domestic violence and child abuse. Representatives from the Native American communities cited transportation to shelters; a lack of services and shelters, and the need for housing, clothing, food and money as primary concerns for victims. Similarly, child protective services, as well as the immigration community note the difficulty undocumented people have accessing services, notably health care. A lack of bilingual staff was noted as a problem by both child protection and immigrant community participants. Representatives from the African American community noted a total lack of appropriate, population specific victim services statewide. Advocates also noted that this is also true for the Lesbian, Gay, Bisexual, and Transgender (LGBT) communities.

Statewide Victimization Survey (2005)

In 2005, the New Mexico Department of Health funded Dr. Betty Caponera at the New Mexico Coalition of Sexual Assault Programs to conduct a statewide victimization survey to assess the incidence and prevalence of domestic and sexual violence and stalking in New Mexico. Four thousand telephone interviews were completed with residents of the state. Among numerous other findings, the survey results revealed that fifty-one percent of victims of sexual violence reported dissatisfaction with the way police handled their case. Specifically, sixty-six percent of male victims reported they were very dissatisfied with the way police handled their case compared to thirty-eight percent of women who reported the same. Additionally, the report data showed that thirty-four percent of victims reported being dissatisfied or very dissatisfied with the way they were treated during the court process. The complete findings from this survey are included in the most recent domestic and sexual violence reports, which are available from the New Mexico Coalition of Sexual Assault Programs.

Victim Rights Survey (2004)

In 2004, the DWI Resource Center/NM Victims Right's Project conducted a brief survey of 1280 crime victims to determine the level of enforcement of victims' rights each received. One hundred and fifty-five crime victims responded to the survey. Selected survey results are included in the table below (see Appendix F for full survey results).

New Mexico Victim Rights Survey Results (2004)

Survey Question	Yes	No
1. Given a police report number or a copy of the police report?	39%	53%
2. Told when (or if) the offender was released from jail or prison?	17%	50%
3. Given a copy of the charges files against the offender?	41%	40%
4. Restitution ordered in your case?	20%	50%
5. Given a restitution payment schedule? (if restitution ordered)	5%	89%
6. Prosecutor told about right to speak at the hearing?	46%	27%
7. Allowed to make statement to the court at the time of sentencing or any	36%	26%

other hearing?		
8. After sentencing hearing, received any information relating to additional hearings in case?	10%	48%
9. Receive notice of the parole hearing in time to attend?	13%	84%

RECOMMENDATIONS

The following recommendations were developed by Alliance members in response to the process of inquiry and analysis of data related to enforcement of crime victims' rights and provision of services to crime victims described above. The recommendations included in the report were selected by the Alliance because they are achievable and they address immediate needs. Other longer-term, complex issues were discussed by the group and deferred for future consideration. The recommendations are presented in two distinct categories: 1) recommendations to improve the enforcement of crime victims' rights and 2) recommendations to improve services for crime victims. Additionally, each recommendation is accompanied by a brief rationale and, if applicable, suggestions for effective methods for implementation. While these recommendations are being presented to the Governor for review, it is not the expectation of the Alliance that the Governor should implement all of these recommendations. Instead, the Alliance seeks support and guidance from the Governor on appropriate strategies, partnerships, and agencies through which these recommendations can be enacted most efficiently and cost-effectively so that crime victims' constitutional rights in New Mexico are consistently enforced and crime victims receive the quality services needed to heal from victimization.

Recommendations to Improve Enforcement of Crime Victims' rights

- 1. Establish and fund, through legislative action, a crime victims' rights ombudsman to:**
 - a. Investigate claims that an entity has violated a crime victim's rights.**
 - b. Document findings in a report to the subject entity and the victim. In cases in which rights are violated, the report will include recommendations to correct errors and improve responses to victims. Recommended remedies may include development of policies and procedures and other measures necessary to prevent future violations.**
 - c. When necessary and appropriate in cases in which a victim's rights have been violated, bring complaints to the entity responsible for the conduct of those violating professionals and/or issue public reprimands for rights violations.**
 - d. Ensure ombudsman immunity.**

Rationale: The Victim's Rights Amendment to the New Mexico Constitution, along with the Victims of Crime Act, requires the state to keep victims informed and involved in the criminal justice process as their cases proceed through the system. This includes providing notice of all court hearings, allowing victims to be present at all hearings, consulting victims before plea agreements are offered, allowing them to provide information and testimony at sentencing, and informing them when criminals are released from jail or prison. Problems arise when law enforcement, prosecutors, or judges refuse to or are unable to comply with the mandated constitutional provisions. The issue is further exacerbated because there is no remedy or enforcement authority over those entities charged with enforcing victims' rights.

The Victim Rights Alliance recommends that the Governor's Office formally designate a state office or outside entity with authority to serve as an ombudsman. It is essential that crime victims be able to bring complaints to an independent entity responsible for investigating whether or not their rights were upheld throughout their interactions with the criminal justice system. No organization in New Mexico currently has the authority to request and receive all necessary records and information for complaints, nor are state, local, and private agencies required to cooperate with the Governor's Office for Victim Advocacy or any other organization in investigation or enforcement efforts. In other states, including South Carolina, Connecticut, and Wisconsin, these functions have been afforded to ombudsman offices and have resulted in different forms of remedy to address victims' rights violations and victims' service issues.

2. Establish and fund a universally accessible Statewide Automated Victim Information Notification System (SAVIN) for statutorily required victim notification, through a commercial off-the-shelf solution, to significantly improve victim notification.

Rationale: Automated notification of victims regarding the incarceration status of their offenders is a national priority of the Department of Justice. In fact, currently over two-thirds of the nation, including New Mexico's Dona Ana County, is using the Victim Information and Notification Everyday (VINE) system. This system is connected to the Appriss Data Network, the nation's largest integrated criminal justice information database. The Alliance developed a victim notification subcommittee charged with reviewing available options to augment existing notification processes in order to better comply with the right of victims to be notified about offender release. The subcommittee identified key gaps in the notification system that compromise victim and public safety 1) inconsistent notification due to uneven allocation of resources; 2) the absence of victim notification from county jail, prison, or other secure facilities not affiliated with the Corrections Department; and 3) incomplete data needed for effective notification. Additionally, the subcommittee recognized the need to develop notification methods that address the state's diversity and the need for communication between state and tribal lands. The subcommittee identified a host of barriers that must be considered in order to develop an effective victim notification system, including but not limited to access to technology, cultural and linguistic barriers, geographic location of victim, distrust of the system, access for victims with disabilities, and funding to implement the notification system.

After deliberation, the subcommittee identified the Statewide Automated Victim Information and Notification (SAVIN) system as the most effective and efficient victim notification system for New Mexico. The SAVIN system includes access by phone, email, and website and operates a twenty-four hour call center. The subcommittee considered, interviewed, and researched agencies nationwide and found that those states that attempted to design their own SAVIN computer program far outspent their counterparts, one state spending as much as twelve times more. The subcommittee determined that it would be cost effective to utilize an off-the-shelf solution. The Alliance also recommends that the SAVIN program initially augment existing notification programs.

The subcommittee recommended that implementation of the SAVIN system be guided by a group consisting of representatives from the New Mexico Corrections Department; New Mexico State Association of Counties; Police and Sheriffs Association; Native American representatives to possibly include American Indian Development Associates (AIDA) and/or the All Indian Pueblo Chair; Department of Public Safety; Governor's Office; Parole Board; Supreme Court

Judicial Information Division; Attorney General's Office; Association of District Attorneys; Children, Youth and Families Department; the Office of Computer Information; and state information technology professionals. The subcommittee recommends that this guidance group investigate opportunities, available through the Bureau of Justice Assistance within the U.S. Department of Justice, for grant funding to help states plan and implement SAVIN systems and cover startup costs, as well as technical assistance to create effective SAVIN systems. Additionally, the subcommittee suggests that the SAVIN design be developed in accordance with the Institute of Justice Information System (IJIS) SAVIN guidelines. Finally, the subcommittee recommends that the Alliance form a grant writing support team to develop a collaborative grant application to fund the development and implementation of SAVIN in New Mexico.

3. Conduct a comprehensive, statewide needs assessment to document crime victims' rights violations and to further assess the experiences of crime victims' interactions with the criminal justice system and service providers.

Rationale: While the Alliance was fortunate to have a number of sources of data to consult in the development of these recommendations, members felt that additional detail and information would be required to develop a comprehensive understanding of the extent and nature of crime victims' rights enforcement violations. Specifically, the Alliance noted that limited data are available from crime victims who did not receive services from the New Mexico Crime Victim Reparations Commission or other service providers. As a result, it can be assumed that the available data represent crime victims who have successfully accessed the system and therefore may report higher levels of victims' rights enforcement and adequate service provision.

Additionally, the Alliance was concerned about the lack of data related to how specific groups, such as ethnic and racial groups, children and the elderly, immigrant communities, and the disability community, experience the criminal justice system. The Alliance recommends the development of a statewide victims' rights needs assessment in order to fully capture the status of victims' rights enforcement and the provision of services to victims. This needs assessment should combine traditional survey techniques with qualitative data collection that is more appropriate for gathering information from some underserved and high-risk communities. Likewise, the needs assessment should carefully consider the interaction of members of the disability community with the criminal justice system including the accessibility of criminal justice and social services. The survey and qualitative data collection methods should be available in languages appropriate for the audience from which information is sought. Additionally, community-based leaders who represent Native, immigrant, disability, rural, and other underserved and high-risk populations should be identified to serve as advisors to the needs assessment project.

New Mexico can utilize statewide needs assessment strategies developed by other states, including Oregon, Hawaii, and Delaware, to inform our needs assessment methodology and processes. The development of a thorough, statewide needs assessment will help to develop a baseline measure of crime victims' rights enforcement, identify gaps requiring further action, inspire corrective or supportive agency public policy, and provide statistics for grants and other funding requests from state, federal, and private entities for victim services in New Mexico.

4. Amend language of NM Stat. 31-26-3(B) to include attempted violent crimes in the definition of “criminal offense.”

Rationale: Victims of violent crime in New Mexico have victims’ rights only if the crime charged is enumerated on the list of crimes 31-26-1 NMSA 1978. New Mexico is one of a very few states that limit the class of persons defined as “victims” in this manner, excluding a host of victims from its protections. Currently, victims of *attempted* serious violent offenses, such as murder and rape, have no statutory or constitutional protections. As a consequence of this gap in protection, victims of attempted serious violent offenses do not get basic information such as notice of hearings, information about the release of an accused, and the right to address the court or parole board with a victim impact statement, despite the fact that the offenders who attempt to commit these crimes possess the same criminal intent as those who successfully commit violent offenses. For example, in a case where a defendant stands accused of attempted murder or rape, it can be argued that the victim of that crime currently has no victims’ rights under state law regardless of the violence he or she experienced because the defendant did not successfully complete the crime. However, if the case was charged as aggravated battery, the victim of the same crime would retain his or her post-conviction rights.

In order to bring consistency and fairness to the Victims of Crime Act, the Alliance recommends that the inchoate crimes (such as attempted murder, attempted rape) related to the violent offenses already listed in 31-26-3(B) be added to those enumerated offenses. This addition would provide constitutional and statutory rights for victims of attempted serious violent offenses consistent with the underlying purpose of the Act that the full impact of this type of crime be “brought to the attention of a court.” This change would also ensure that most victims of violent crimes are “treated with dignity, respect and sensitivity at all stages of the criminal justice process.”

Although there is no recommendation at this time, the Alliance discussed two further issues of concern: 1) expanding the range of victims who are assured of rights and 2) attaching rights at an earlier point in the criminal justice process. Background information about these issues is provided in Appendix H.

5. Amend language of NM Stat. 31-26-4(F) to require district attorneys to confer with victims of crimes before negotiating plea agreements with defendants, reducing charges, or dismissing charges.

Rationale: There is currently no case law providing guidance regarding the term “confer” for prosecutors statutorily charged with the responsibility to “confer” with victims of violent crime. See N.M. Const. Art. II, sec. 24(A)(7) and N.M. Stat. §§ 31-26-4(F). In addition, although the best practices in New Mexico involve prosecutors who always confer with victims prior to all crucial decision points in a case, there is wide variance between and within state prosecutors regarding the meaning and application of the “confer” requirement. As a result, some prosecutors only inform victims of plea agreements and the reduction of charges after these actions have taken place, and after any feedback or insight from the victim could have informed the prosecutor's use of his or her discretion. Furthermore, a significant percentage of prosecutors never “confer” with a victim prior to dismissing charges, which has resulted in many painful experiences for victims who believed that a case was ongoing against an accused defendant.

The Alliance recommends clarifying the term "confer" to explicitly require conversation between a prosecutor and a victim *prior* to making the key decisions of offering a plea or choosing to reduce or dismiss charges against an accused. This change will result in a standard expectation for all prosecutors and will ensure that victims of crime receive the same respect for their rights around the state. In addition, it will maximize the critical information available to prosecutors, some of which may uniquely be in the possession of a victim, prior to prosecutors exercising their prosecutorial discretion on handling of a case.

Recognizing some prosecutorial concern about ABA model rules 3.6 and National Prosecutor Standards 33.1-34.2. and 35.1 comments and their possible conflict with communicating plea terms prior to discussing them with a defendant, the Alliance has consulted with the APRI (American Prosecutors Association), which has officially endorsed prior consultation with victims as both best practice and fully within the boundaries of professional conduct. In addition, the Alliance will seek New Mexico-specific guidance from the New Mexico Supreme Court Ethics Advisory Committee to allay this prosecutorial anxiety.

6. Submit to the New Mexico judicial rules committee rules conforming to the NM constitutional amendment and NM Stat. 31-26-1.

Rationale: In New Mexico, court proceedings are regulated primarily by the rules of criminal and appellate procedure. These rules are drafted by committees of lawyers and judges appointed by the Supreme Court. Those committees review proposed rules and submit those rules to the high court for approval and inclusion in the court rules. The Alliance believes the most effective way to address this inconsistency in the enforcement of victims' rights is to prepare and submit rules for consideration by the Supreme Court committees on criminal procedure and appellate procedure, as follows:

- a) A Rule of Criminal Procedure that sets out the rights of the crime victim and requires the Court to inquire before each hearing whether the victims have been informed of their rights and the prosecutors have complied with the notice requirements of the constitution.
- b) A Rule of Appellate Procedure that allows crime victims the right of appeal where their rights may have been violated.

7. Request the court to: A) create a rule of criminal procedure that requires the restitution amount to appear on the Judgment and Sentence (J&S) or to explain why the restitution amount is not on the face of the order, and B) create pro se forms and guidelines to facilitate victim enforcement of restitution.

Rationale: A subcommittee of the Alliance found extensive gaps and inconsistencies in intra-agency facilitation of restitution payment delivery to victims. An intensive file-by-file study of 2387 incarcerated inmates by the New Mexico Corrections Department, conducted for purposes of this report, revealed that where restitution was ordered, only one in five (123 out of 627) cases has a dollar amount on the restitution order. The Alliance believes this substantially decreases the likelihood of victim identification, restitution quantification, and collection at the often much later probation and parole stage. The study also revealed that statewide only eight incarcerated inmates are currently paying restitution to victims, pursuant to a court order. Additionally, results from the Statewide Survey of Crime Victims and the Victim Rights Survey both revealed that few prosecutors

sought and received restitution on behalf of the victims in cases they represent (25 % and 20 %, respectively).

Upon further investigation of this issue, the Alliance discovered that on many judgment and sentence forms, a restitution amount was not listed. Alliance members learned that in some cases the restitution amount is not listed on the form because it is anticipated that the restitution amount will continue to increase as victims proceed through the system and access services. However, without an amount listed on the J&S, it is not possible for victims to receive restitution while their offender is in prison, nor is it possible for the victim to exercise their statutory right to wage garnishment through the civil court system. Some judges will not permit the probation officer to enter a restitution order upon the inmate's release and probation/parole period because the order was not entered at the sentencing phase.

In order to remedy these concerns and to increase the number of victims able to seek and receive restitution, the Alliance recommends that the restitution amount and/or an explanation for the lack thereof appear on the J&S, and also recommends the development of forms and guidelines that victims may use to pursue collection of restitution on their own behalf. This recommendation streamlines the process by having the court take leadership in the restitution delivery quandary. A rule of criminal procedure will create an enforceable buy-in from judges statewide.

- 8. Develop and implement, through continuing education programming and other professional training opportunities, standardized curricula for the judiciary, prosecutors, and law enforcement about:**
 - a. Victims' constitutional and statutory rights.**
 - b. Impact of crime on victims that necessitates those rights.**
 - c. Diversity, cultural, and orientation issues that influence how victims universally access and interact with law enforcement, the criminal justice system, and victim service providers.**

Rationale: Through anecdotal evidence and survey data collected by members of the Alliance, it was evident that victims' rights are not equally understood and enforced throughout all jurisdictions in the state. Likewise, the dynamics of victimization and the impact of culture, orientation, and disability status on the experience of victimization and the ability to access services are not widely comprehended by many criminal justice professionals, attorneys, and judges. Recognizing the importance of addressing this gap so that victims' rights are enforced uniformly as guaranteed by the state constitution and statute, the Alliance recommends the development of three standardized victims' rights curricula. Further, the Alliance recommends that these curricula be delivered through existing continuing education and professional training opportunities for members of the judiciary, prosecutors, and law enforcement officers.

- 9. Require all criminal justice programs at New Mexico institutions of higher learning and criminal law and criminal procedure classes in New Mexico law schools to include education about New Mexico crime victims' constitutional and statutory rights.**

Rationale: Data reviewed by the Alliance and presented earlier in this Report revealed that many crime victims and advocates believe that criminal justice and legal professionals need additional training about victims' rights, the dynamics of victimization, and crime victims' needs. The vast

majority of criminal justice professionals and attorneys in New Mexico received training in New Mexico schools. In order to increase awareness of crime victims' rights in New Mexico among criminal justice and legal professionals, the Alliance felt it would be most effective to augment existing curricula at New Mexico institutions of higher learning and in New Mexico law schools to include information about crime victims' constitutional and statutory rights. Additionally, by enhancing curricula to include additional information about crime victims and victims' rights, young professionals may be attracted to this field of work, which could help increase the pool of qualified professionals dedicated to protecting crime victims' rights in New Mexico.

Recommendations to Improve Services for Crime Victims

10. Develop, implement, and maintain a statewide website and toll-free number as tools for crime victims to learn about victims' rights and services.

Rationale: Members of the Alliance identified the need for a clear central access point for victims and their families and advocates to learn more about victims' rights and services. In order for victims to access the full range of services available to them and to assess accurately whether or not their rights are being upheld they must first understand what rights they are afforded and which services are available in their area. The development of a website and toll-free number dedicated to providing victims with a clear explanation of their rights, steps to take in the event their rights are not enforced, access to relevant forms, and contact information for service providers will help to ensure that victims receive the services they deserve. The Alliance felt strongly that both a universally accessible website and toll-free number should be provided as not all victims will have access to the Internet. In addition to the general toll-free number, a toll-free TTY/TDD number should be offered to ensure that victims who are hard of hearing or deaf can access information about victims' rights and services.

11. Develop and implement an ongoing, statewide media campaign to increase crime victim and public awareness of victims' rights and services, and to advertise a crime victims' rights website and toll-free number.

Rationale: In order to increase enforcement of victims' rights and utilization of victim services, it is first necessary to increase crime victims' and the general public's awareness of the existence of victims' rights and services in New Mexico. The Alliance recommends the development of an ongoing, statewide media campaign that will seek to increase awareness of victims' rights and services and will also advertise victims' rights tools, including a newly developed victims' rights website and toll-free number. The Alliance recognizes that an effective media campaign must take into account the most effective methods for reaching identified audiences. Therefore, the Alliance recommends that a media consultant or firm with expertise in marketing to diverse populations be selected to guide the development and implementation of this campaign. Additionally, creative marketing methods should be employed to reach culturally and geographically diverse audiences. Materials should be developed in languages and formats appropriate for all target audiences, including ethnically diverse populations, the disability community, immigrant groups, and rural audiences.

12. Prohibit the sharing of location and contact information of crime victims of enumerated crimes without the prior approval from the victim.

Rationale: One of the fundamental rights of victims is freedom from intimidation and to be reasonably protected from the accused throughout the proceedings. In some cases, that freedom is contingent upon keeping the location of the victim secret from the defendant and the defendant's allies. The classic cases of this type are domestic violence and gang-related crimes. Some non-domestic stalking cases also involve defendants who are a continuing threat to the safety of their victims. The need for confidentiality extends throughout the criminal justice process, from arrest to final release from correctional supervision.

In many cases, especially domestic violence and stalking, the need for confidentiality extends beyond the criminal justice system. Abusers and stalkers learn to use the civil court system or other state agencies (such as CYFD) to locate their victims. Court documentation must not allow victims to be located. The confidentiality of this information should be made routine, since a court may be unaware of which cases involve continued jeopardy for the victim. Likewise, specific agreements must be developed that allow appropriate coordination between domestic violence shelters and the criminal justice system without compromising the stringent confidentiality rules maintained by shelters to protect their clients. The threat to victims may continue indefinitely, requiring continuing vigilance against disclosure by probation and parole offices, as well as by the victim advocacy staff of the New Mexico Corrections Department and other state agencies.

Maintaining the confidentiality of a victim's contact information need not conflict with the defendant's rights. It is the responsibility of the criminal justice system to provide a safe venue even while giving the defense access to the victim for purposes of case preparation. When there are children involved, civil courts must take the safety of the victim into account in ordering arrangements for visitation. The consequences of a breach of victims' right to reasonable protection from the accused can be fatal.

13. Provide additional funding to entities that receive state funding, including federal funding managed by New Mexico state agencies, to work with local community members and advocates to translate and edit outreach and awareness raising materials into languages and formats most appropriate and effective for diverse communities.

Rationale: Federal law and implementing regulations promulgated by the Department of Health and Human Services in 2003 require that federally funded agencies provide meaningful access to Limited English Proficiency (LEP) persons, including interpretation and translation services. Likewise, the Americans with Disabilities Act requires that agencies receiving federal funding make reasonable accommodation to serve clients with disabilities. In order to better comply with these federal regulations and to ensure that all victims in New Mexico have equal access to information about their rights, the Alliance strongly supports the development of awareness raising materials in languages and formats appropriate for reaching underserved and high-risk populations. Members of the Alliance recognize that local communities hold key information and details related to how best to communicate victims' rights information to their residents. With this in mind, the Alliance recommends that additional funding be made available to entities that receive state funding so that they may partner with local agencies to develop effective, culturally relevant outreach materials. It is critical that victims' rights information be made available to all audiences in New Mexico as many underserved and high-risk groups, including but not limited to Native American and disability populations, experience disproportionately high rates of victimization.

14. Provide funding to help agencies, both public and nonprofit, to come into compliance with the Americans with Disabilities Act to accommodate victims with disabilities.

Rationale: The Americans with Disabilities Act provides civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. Title II of the ADA requires that state and local governments provide equal access to individuals with disabilities by removing any architectural and/or communication barriers that may prevent individuals with disabilities from having equal access to their programs and services. A recent study conducted by Davis Innovations revealed that in many communities in New Mexico, individuals with disabilities are not able to access the criminal justice system or victim service providers (For a complete study results review, see Davis Innovations, "Evaluating Accessible Domestic Violence and Sexual Assault Services Provided to Individuals with Disabilities," August 16, 2004, Grant No. 2002-WF-BX-0057.) In order to better comply with these federal regulations and to ensure that all victims in New Mexico have equal access to the criminal justice system, the Alliance recognizes the mandate of physical accessibility to the criminal justice system for all New Mexicans. Members of the Alliance recognize that local communities hold the key to access to the criminal justice system and they must provide universal accessibility to their residents. With this in mind, the Alliance recommends that additional funding be made available to entities that receive state funding so that they may eliminate any physical barriers (such as architectural and/or communication barriers) and provide equal access to victims with disabilities.

15. Provide funding to state and tribal prosecutors earmarked for expert testimony in order to support victim statements and behavior.

Rationale: Pervasive and damaging myths about crime victim behavior and action can result in inaccurate judgments by jury members and judges. For example, it is widely misunderstood that victims of abuse who recant their testimony may do so for safety reasons, not out of an attempt to mislead the court. Research involving victims of abuse reveals that victims who withdraw testimony in abuse cases may do so out of fear of retaliation by the abuser or to avoid incarceration of the abuser because the family is reliant on his or her income. In a 1988 case, *State v. Ciskie*, the court allowed the use of expert testimony to explain the behavior and mental state of an adult rape victim. The testimony was used to explain why the victim of numerous physical and sexual assaults perpetrated by her intimate partner did not immediately call the police or take action. The use of expert testimony in cases involving battered women was addressed in the 1992 passage of the Battered Women's Testimony Act.

Despite the need for expert witness testimony to help explain victim behavior or recantation, prosecutors are rarely able to afford such an expert from the limited funds in their expert witness budget. In order to better address myths and misconceptions about crime victim behavior, the Alliance recommends the development of an expert testimony fund available to district attorneys to augment the expert witness funds in their current budget.

16. Require ongoing training for victim service providers receiving state funding including federal funding managed by New Mexico state agencies about:

- a. Victims' constitutional and statutory rights.
- b. Impact of crime on victims that necessitates those rights.

c. Diversity, cultural, and orientation issues that influence how victims universally access and interact with law enforcement, the criminal justice system, and victim service providers.

Rationale: Just as victims' rights are not understood in all jurisdictions in the state by law enforcement, prosecutors, and the judiciary, victims' rights are also not widely understood by victim service providers statewide. Additionally, the dynamics of victimization and the impact of culture, orientation, and disability status on the experience of victimization and the ability to access services are not widely addressed by many agencies receiving state funding. Victim feedback indicates that the lack of core cultural competency training is a barrier to the access of services. Specific underserved communities, such as the LGBT communities and the African American community, have no programs or facilities targeted to their needs anywhere in the state. For these and other underserved communities, victim sensitivity and services cannot exist without a background of core cultural competency being present at every stage of the process. The Alliance recommends that victim service providers in agencies receiving state funding be required to receive training to improve their comprehension of victims' rights and the needs of diverse victim populations. Through the implementation of such training, it is the hope of the Alliance that victims will receive much needed support from service providers in accessing the criminal justice system to ensure their rights are enforced. Additionally, the Alliance hopes that victims from underserved and high-risk groups will receive more appropriate services tailored to address their specific needs, culture, beliefs, abilities, and orientation.

CONCLUSION & IMPLICATIONS

The Alliance is comprised of professionals with many years of experience serving victims through the criminal justice system, government agencies, academia, and non-profit organizations. Based on the professional and personal experiences of the members and a comprehensive review of available data on victims' rights and services, the Alliance has made sixteen recommendations for improvement of rights enforcement and services in New Mexico. Implementation of the suggested recommendations will require years of collaborative work, the development of new partnerships, legislative advocacy, and funding. Just as the Alliance conducted significant research regarding best practices in other states and from national victim assistance and justice organizations, we will continue to study the experiences of other states to implement all recommendations included in this Report. Such an approach will ensure that the implementation of recommendations is cost-effective and based upon sound approaches that have proven effective in other states.

While the Alliance feels these recommendations reflect the depth and breadth of its six-month collaborative process, there are numerous recommendations and suggestions that have not been included in the Report. Improving protection of victims' rights is an iterative process that necessitates ongoing assessment of the current criminal justice and service systems, identification of gaps and needs, implementation of remedies, and assessment of the efficacy of improvements. The Alliance feels that this Report reflects a starting point for improved victims rights enforcement and victim services. Members of the Alliance look forward to participating in the implementation of these recommendations and the development of new recommendations for future improvements.

APPENDICES

APPENDIX A:	Constitution of the State of New Mexico Adopted January 21, 1911: Article II Bill of Rights: Sec.24. [Victim's Rights.] (1992)
APPENDIX B:	Victims of Crime Act
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APPENDIX A

**Constitution of the State of New Mexico Adopted January 21, 1911: Article II Bill of Rights:
Sec.24. [Victim's Rights.] (1992)**

**CONSTITUTION OF THE STATE OF NEW MEXICO ADOPTED JANUARY 21, 1911:
ARTICLE II BILL OF RIGHTS : Sec. 24. [Victim's rights.] (1992)**

A. A victim of arson resulting in bodily injury, aggravated arson, aggravated assault, aggravated battery, dangerous use of explosives, negligent use of a deadly weapon, murder, voluntary manslaughter, involuntary manslaughter, kidnapping, criminal sexual penetration, criminal sexual contact of a minor, homicide by vehicle, great bodily injury by vehicle or abandonment or abuse of a child or that victim's representative shall have the following rights as provided by law:

1. the right to be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;
2. the right to timely disposition of the case;
3. the right to be reasonably protected from the accused throughout the criminal justice process;
4. the right to notification of court proceedings;
5. the right to attend all public court proceedings the accused has the right to attend;
6. the right to confer with the prosecution;
7. the right to make a statement to the court at sentencing and at any post-sentencing hearings for the accused;
8. the right to restitution from the person convicted of the criminal conduct that caused the victim's loss or injury;
9. the right to information about the conviction, sentencing, imprisonment, escape or release of the accused;
10. the right to have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause; and
11. the right to promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property.

B. A person accused or convicted of a crime against a victim shall have no standing to object to any failure by any person to comply with the provisions of Subsection A of Section 24 of Article 2 of the constitution of New Mexico

C. The provisions of this amendment shall not take effect until the legislature enacts laws to implement this amendment. (As added November 3, 1992.)

APPENDIX B

Victims of Crime Act

ARTICLE 26 "VICTIMS OF CRIME ACT"

31-26-1. Short title. (2005)

Chapter 31, Article 26 NMSA 1978 may be cited as the "Victims of Crime Act".

History: Laws 1994, ch. 144, § 1; 2005, ch. 283, § 2.

Annotations: The 2005 amendment, effective June 17, 2005, adds the statutory reference to the act. Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction, and application of state constitutional or statutory victims' bill of rights, 91 A.L.R.5th 343.

31-26-2. Purpose of act. (1994)

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:

- A. the full impact of a crime is brought to the attention of a court;
- B. victims of violent crimes are treated with dignity, respect and sensitivity at all stages of the criminal justice process;
- C. victims' rights are protected by law enforcement agencies, prosecutors and judges as vigorously as are the rights of criminal defendants; and
- D. the provisions of Article 2, Section 24 of the constitution of New Mexico are implemented in statute.

History: Laws 1994, ch. 144, § 2.

31-26-3. Definitions. (2003)

As used in the Victims of Crime Act [31-26-1 NMSA 1978]:

- A. "court" means magistrate court, metropolitan court, children's court, district court, the court of appeals or the supreme court;
- B. "criminal offense" means:
 - (1) negligent arson resulting in death or bodily injury, as provided in Subsection B of Section 30-17-5 NMSA 1978;
 - (2) aggravated arson, as provided in Section 30-17-6 NMSA 1978;
 - (3) aggravated assault, as provided in Section 30-3-2 NMSA 1978;
 - (4) aggravated battery, as provided in Section 30-3-5 NMSA 1978;
 - (5) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;
 - (6) negligent use of a deadly weapon, as provided in Section 30-7-4 NMSA 1978;
 - (7) murder, as provided in Section 30-2-1 NMSA 1978;
 - (8) voluntary manslaughter, as provided in Section 30-2-3 NMSA 1978;
 - (9) involuntary manslaughter, as provided in Section 30-2-3 NMSA 1978;
 - (10) kidnapping, as provided in Section 30-4-1 NMSA 1978;
 - (11) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;
 - (12) criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;

- (13) armed robbery, as provided in Section 30-16-2 NMSA 1978;
- (14) homicide by vehicle, as provided in Section 66-8-101 NMSA 1978;
- (15) great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978;
- (16) abandonment or abuse of a child, as provided in Section 30-6-1 NMSA 1978;
- (17) stalking or aggravated stalking, as provided in the Harassment and Stalking Act [30-3A-1 to 30-3A-4 NMSA 1978];
- (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;
- C. "court proceeding" means a hearing, argument or other action scheduled by and held before a court;
- D. "family member" means a spouse, child, sibling, parent or grandparent;
- 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;
- 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
- 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.

History: Laws 1994, ch. 144, § 3; 1997, ch. 10, § 6; 2003, ch. 411, § 1.

Annotations: The 1997 amendment, effective July 1, 1997, inserted "negligent" and "death or" in Paragraph B(1), substituted "kidnapping" for "kidnaping" in Paragraph B(10), added Paragraph B(13) and redesignated the remaining paragraphs, and added Paragraph B(17).

The 2003 amendment, effective July 1, 2003, inserted "Harassment and" in Paragraph B(17) and added Paragraphs B(18) to (21).

Victim advocates. — Because victim advocates perform many tasks similar to those of other members of the prosecution, even if some of their duties differ, victim advocates are part of the prosecution team and the relevant rules of attorney-client confidentiality and state disclosure are applicable. *State v. Blackmer*, 2005-NMSC-008, 137 N.M. 258, 110 P.3d 66.

31-26-4. Victim's rights. (1999)

A victim shall have the right to:

- A. be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;
- B. timely disposition of the case;
- C. be reasonably protected from the accused throughout the criminal justice process;
- D. notification of court proceedings;
- E. attend all public court proceedings the accused has the right to attend;
- F. confer with the prosecution;

- G. make a statement to the court at sentencing and at any post-sentencing hearings for the accused;
- H. restitution from the person convicted of the criminal offense that caused the victim's loss or injury;
- I. information about the conviction, sentencing, imprisonment, escape or release of the accused;
- 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;
- 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; and
- 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.

History: Laws 1994, ch. 144, § 4; 1999, ch. 238, § 6.

Annotations: The 1999 amendment, effective July 1, 1999, added Subsection L.

Victim impact testimony. — The application of N.M. Const., art. II, § 24 and Subsection G of this section, granting the representatives of a murder victim the right to make a statement to the court at sentencing and at any post-sentencing hearings, does not violate ex post facto prohibitions. Nor do these provisions prevent the jury from hearing victim impact testimony. *State v. Clark*, 1999-NMSC-035, 128 N.M. 119, 990 P.2d 793.

The Rules of Evidence requiring relevance and the balancing of unfair prejudice also apply to testimony and exhibits that are introduced in a capital felony sentencing proceeding for the purpose of showing victim impact. *State v. Allen*, 2000-NMSC-002, 128 N.M. 482, 994 P.2d 728, cert. denied, 530 U.S. 1218, 120 S. Ct. 2225, 147 L. Ed. 2d 256 (2000).

Defendant was not unfairly prejudiced by impact evidence that included a videotaped depiction of the victim prior to her death in addition to the testimony of two witnesses. *State v. Allen*, 2000-NMSC-002, 128 N.M. 482, 994 P.2d 728, cert. denied, 530 U.S. 1218, 120 S. Ct. 2225, 147 L. Ed. 2d 256 (2000).

Testimony of the victim's mother regarding actions of defendant while he was awaiting trial should not have been admitted as victim impact testimony because it was not relevant to the crimes for which he was standing trial. *State v. Jacobs*, 2000-NMSC-026, 129 N.M. 448, 10 P.3d 127.

Crimes committed before effective date of victim's rights laws — The effective date of the victim's rights laws did not affect the admission of victim impact evidence in a death penalty case. States are free to admit this type of evidence following the United States Supreme Court's ruling in *Payne v. Tennessee*, 501 U.S. 808 (1991), and 31-20A-1C NMSA 1978 and 31-20A-2B NMSA 1978 already provide authority for the admission of this type of evidence. *State v. Allen*, 2000-NMSC-002, 128 N.M. 482, 994 P.2d 728, cert. denied, 530 U.S. 1218, 120 S. Ct. 2225, 147 L. Ed. 2d 256 (2000).

Court may consider letters or statements from non-victims when sentencing a defendant in a non-capital case. *State v. Aker*, 2005-NMCA-063, 137 N.M. 561, 113 P.3d 384, cert. denied, 2005-NMCERT-005, 137 N.M. 522, 113 P.3d 345.

Error did not warrant reversal. — Where defense counsel claims that it was only able to review 120 of the 192 letters of the victim's unit before the sentencing hearing, and even though the state erred in submitting the letters to the court without notifying defendant, while this error may have deprived defense counsel of an opportunity to fully review the letters, the state's error does not warrant

reversal because there is no evidence that defendant was prejudiced by the admission of the letters. *State v. Aker*, 2005-NMCA-063, 137 N.M. 561, 113 P.3d 384, cert. denied, 2005-NMCERT-005, 137 N.M. 522, 113 P.3d 345.

Law reviews. — For comment, "State v. Jacobs: A Comment on One State's Choice to Restrict Victim Impact Evidence at Death Penalty Sentencing," see 31 N.M.L. Rev. 539 (2001).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Victim impact evidence in capital sentencing hearings - post-Payne v. Tennessee, 79 A.L.R.5th 33.

31-26-5. Exercise of rights; requirements for victim. (1994)

A victim may exercise his rights pursuant to the provisions of the Victims of Crime Act [31-26-1 to 31-26-14 NMSA 1978] only if he:

- 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;
- B. provides the district attorney with current and updated information regarding the victim's name, address and telephone number; and
- C. fully cooperates with and fully responds to reasonable requests made by law enforcement agencies and district attorneys.

History: Laws 1994, ch. 144, § 5.

31-26-6. When rights and duties take effect; termination of rights and duties. (1994)

The rights and duties established pursuant to the provisions of the Victims of Crime Act [31-26-1 to 31-26-14 NMSA 1978] 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.

History: Laws 1994, ch. 144, § 6.

31-26-7. Designation or appointment of victim's representative. (1994)

- 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 [31-26-1 to 31-26-14 NMSA 1978]. A victim may revoke his designation of a victim's representative at any time.
- 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.
- 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.

History: Laws 1994, ch. 144, § 7.

31-26-8. Procedures for providing victims with preliminary information; law enforcement agencies. (1994)

The law enforcement agency that investigates a criminal offense shall:

- A. inform the victim of medical services and crisis intervention services available to victims;
- 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
- 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.

History: Laws 1994, ch. 144, § 8.

31-26-9. Procedures for providing victims with notice of rights and information regarding prosecution of a criminal offense; district attorneys. (2005)

- 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:
 - (1) a copy of Article 2, Section 24 of the constitution of New Mexico, regarding victims' rights;
 - (2) a copy of the Victims of Crime Act [31-26-1 NMSA 1978];
 - (3) a copy of the charge filed against the accused for the criminal offense;
 - (4) a clear and concise statement of the procedural steps generally involved in prosecuting a criminal offense; and
 - (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.
- 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.

History: Laws 1994, ch. 144, § 9; 2005, ch. 283, § 3.

Annotations: The 2005 amendment, effective June 17, 2005, changes the former reference to the legislation that implements the provisions of art. 11, § 24 of the N.M. Const. to the Victims of Crime Act in Subsection A(2) and deletes the phrase "if requested by the victim" in Subsection B.

31-26-10. Procedures for providing victims with notice of a court proceeding; courts; district attorneys. (1994)

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 office shall convey the information concerning the scheduled court proceeding to the victim, as provided in Subsection B of Section 9 [31-26-9 NMSA 1978] of the Victims of Crime Act.

History: Laws 1994, ch. 144, § 10.

31-26-10.1. Crime victim presence at court proceedings; plea agreement notification. (2005)

- A. At any scheduled court proceeding, the court shall inquire on the record whether a victim is present for the purpose of making an oral statement or submitting a written statement respecting the victim's rights enumerated in Section 31-26-4 NMSA 1978. If the victim is not present, the court shall inquire on the record whether an attempt has been made to notify the victim of the proceeding. If the district attorney cannot verify that an attempt has been made, the court shall:
 - (1) reschedule the hearing; or
 - (2) continue with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and
 - (3) order the district attorney to notify the victim of the rescheduled hearing.
- 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.
- 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.

History: Laws 2005, ch. 283, § 1.

Annotations: Effective dates. — Laws 2005, ch. 283 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

31-26-11. Procedures when an inmate or delinquent child escapes; corrections department; children, youth and families department. (1999)

- 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:
 - (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
 - (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.
- 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.

History: Laws 1994, ch. 144, § 11; 1999, ch. 103, § 1.

Annotations: The 1999 amendment, effective July 1, 1999, inserted "or delinquent child" and "children, youth and families department" in the catchline and throughout the section; in Subsection A inserted "or the children's court judge" in the introductory language and "or juvenile justice facility" in Paragraph (1); and inserted "or delinquent" preceding "offense" in Subsection B.

31-26-12. Procedures when an inmate is released from incarceration; adult parole board; corrections department; procedures when a delinquent child is released from custody; juvenile parole board; children, youth and families department; district attorneys. (1999)

- A. The adult parole board and the juvenile parole board 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 by the board. The district attorney shall notify any person known to reside in his district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.
- B. The adult parole board and the juvenile parole board 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 by the board.
- C. Following consideration of a release docket by the adult parole board or the juvenile parole board, each board shall promptly notify each district attorney of any recommendations adopted by the board for release of an inmate from incarceration or a delinquent child from custody. The district attorney shall notify any person known to reside in his district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.
- 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 his district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.

History: Laws 1994, ch. 144, § 12; 1999, ch. 103, § 2.

Annotations: The 1999 amendment, effective July 1, 1999, inserted "adult" in the catchline and in Subsections A and B; added "procedures when a delinquent child is released from custody; juvenile parole board; children, youth and families department" to the catchline; inserted references to the juvenile parole board and "release" throughout the section; in Subsection A added the second sentence; in Subsection C added "or a delinquent child from custody" at the end of the first sentence and added "or the delinquent child was committed" at the end of the second sentence; in Subsection D in the first sentence, inserted the language beginning "or prior" and ending "from custody", inserted "or the children, youth and families department", and inserted "or delinquent child's", and at the end of the second sentence added "or the delinquent child was committed"; and made minor stylistic changes.

31-26-13. Disclaimer. (1994)

Nothing in the Victims of Crime Act [31-26-1 to 31-26-14 NMSA 1978] 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.

History: Laws 1994, ch. 144, § 13.

31-26-14. Effect of noncompliance. (1994)

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 [31-26-1 to 31-26-14 NMSA 1978]. History: Laws 1994, ch. 144, § 14.

APPENDIX C

Victim Restitution Statute

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO

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* CURRENT THROUGH THE RESULTS OF THE NOVEMBER 7, 2006 GENERAL
ELECTION *

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-040 and 2007-NMSC-011 ***

CHAPTER 31. CRIMINAL PROCEDURE

ARTICLE 17. VICTIM RESTITUTION

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N.M. Stat. Ann. § 31-17-1 (2007)

§ 31-17-1. Victim restitution

A. It is the policy of this state that restitution be made by each violator of the Criminal Code [[30-1-1 NMSA](#) 1978] 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:

- (1) "victim" means any person who has suffered actual damages as a result of the defendant's criminal activities;
- (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;
- (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
- (4) "restitution" means full or partial payment of actual damages to a victim.

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 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 [[31-26-1 NMSA](#) 1978] 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 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.

HISTORY: 1953 Comp., § 40A-29-18.1, enacted by Laws 1977, ch. 217, § 2; 1989, ch. 101, § 1; 1993, ch. 221, § 1; 2005, ch. 282, § 1.

NOTES:

STATUTORY NOTES

CROSS REFERENCES. --Conditions of order deferring or suspending sentence, [31-20-6 NMSA](#) 1978.

Parole authority and procedure, [31-21-10 NMSA](#) 1978.

Violations; misdemeanor; penalties, [50-15-7 NMSA](#) 1978.

THE 2005 AMENDMENT, effective June 17, 2005, added Subsection D and redesignated the remaining subsections accordingly; and in Subsection E, added "of each victim".

JUDICIAL DECISIONS

GENERALLY

Definition of "person" in [31-17-1 NMSA](#) 1978 is the same as the definition of "person" appearing in the general provisions of the Criminal Code, specifically, [30-1-12E NMSA](#) 1978. [State v. Ellis, 120 N.M. 709, 905 P.2d 747 \(Ct. App. 1995\).](#)

ACTUAL DAMAGES

"Actual damages" as defined in [31-17-1A\(2\) NMSA](#) 1978, includes 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; earnings are properly includable within actual damages. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\),](#) cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\).](#)

APPLICABILITY

Defendant, an accountant who stole funds from his employer, was properly ordered to pay restitution to the employer's insurer pursuant to [31-17-1A NMSA](#) 1978; the insurer was a victim who had suffered actual damages. [State v. Brooks, 116 N.M. 309, 862 P.2d 57 \(Ct. App. 1993\),](#) aff'd in part and rev'd in part, [117 N.M. 751, 877 P.2d 557 \(1994\),](#) superseded by statute as stated in [State v. Faubion, 1998-NMCA-095, 125 N.M. 671, 964 P.2d 834 \(Ct. App. 1998\),](#) superseded by statute as stated in [State v. Morro, 1999-NMCA-118, 127 N.M. 763, 987 P.2d 420 \(Ct. App. 1999\).](#)

Victim restitution may be limited, pursuant to [31-17-1 NMSA](#) 1978, by what a defendant can

reasonably afford to pay. [State v. Jimenez, 111 N.M. 782, 810 P.2d 801 \(1991\).](#)

Trial court's order that defendant reimburse the Police Contingency Fund was void because the State could not be the victim. [State v. Dean, 105 N.M. 5, 727 P.2d 944 \(Ct. App. 1986\),](#) cert. denied, [104 N.M. 702, 726 P.2d 856 \(1986\).](#)

Purpose of [31-17-1 NMSA](#) 1978 is to make whole the victims of crime of the extent possible; under [31-17-1 NMSA](#) 1978, the state is not a victim, and compensating the state does not further the purpose of victim restitution. [State v. Dean, 105 N.M. 5, 727 P.2d 944 \(Ct. App. 1986\),](#) cert. denied, [104 N.M. 702, 726 P.2d 856 \(1986\).](#)

Trial court properly required defendant pay full restitution to the victims of his embezzlement pursuant to [31-17-1A NMSA](#) 1978 because [31-21-10D NMSA](#) 1978 required restitution as a condition of parole where the trial court invoked the provisions of [31-17-1 NMSA](#) 1978 which established New Mexico's policy as requiring each violator to make restitution. [State v. Gross, 98 N.M. 309, 648 P.2d 348 \(Ct. App. 1982\),](#) cert. denied, [98 N.M. 336, 648 P.2d 794 \(1982\).](#)

BURDEN OF PROOF

Full evidentiary hearing tantamount to a civil trial adjudicating liability is not contemplated as a prerequisite for the trial judge to require restitution; the quantum of restitution need not be proven by a preponderance of the evidence as though the sum were being established in a civil action for damages. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\),](#) cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\).](#)

CONSTRUCTION

Defendant was properly ordered to pay restitution under [31-17-1B NMSA](#) 1978 as a part of his criminal sentence and it was absolutely required where the trial court exercised its discretion under [31-20-6 NMSA](#) 1978; defendant's argument that he could be ordered to pay restitution only during periods of probation or parole, not while he was incarcerated, were without merit. [State v. Palmer, 1998-NMCA-052, 125 N.M. 86, 957 P.2d 71,](#) cert. denied, [125 N.M. 146, 958 P.2d 104 \(1998\).](#)

As a political subdivision of the state, a police department is a person under [30-1-12E NMSA](#) 1978 and therefore is a person under [31-1-17 NMSA](#) 1978. [State v. Ellis, 120 N.M. 709, 905 P.2d 747 \(Ct. App. 1995\).](#)

Defendant and the state incorrectly believed that [31-17-1B NMSA](#) 1978 permitted the sentencing court to impose the requirement of restitution only if the options of deferment or suspension under [31-20-6 NMSA](#) 1978 applied to a defendant's sentence, as [31-17-1B NMSA](#) 1978 made it mandatory to require restitution when a sentence was deferred or suspended. [State v. Gross, 98 N.M. 309, 648 P.2d 348 \(Ct. App. 1982\),](#) cert. denied, [98 N.M. 336, 648 P.2d 794 \(1982\).](#)

DAMAGES

The term "actual damages" in [31-17-1A NMSA](#) 1978 means "compensatory damages;" actual (compensatory) damages occur only when there is an actual loss, and if there is no actual loss there is no actual damage. [State v. Griffin, 100 N.M. 75, 665 P.2d 1166 \(Ct. App. 1983\).](#)

DISCRETION

Pursuant to [31-17-1A NMSA](#) 1978, an order that defendant, who was convicted of attempted murder, make restitution to the victim for hospital and medical expenses was within the trial court's

discretion, even though defendant's sentence was not deferred or suspended; [31-17-1B NMSA](#) 1978 makes restitution mandatory when a sentence is deferred or suspended, but it does not limit the imposition of restitution orders only to those cases in which sentence is suspended or deferred. [State v. Ennis, 99 N.M. 117, 654 P.2d 570 \(Ct. App. 1982\)](#), cert. denied, [99 N.M. 148, 655 P.2d 160 \(1982\)](#).

DUE PROCESS

Where defense counsel was never shown a proposed restitution amount or otherwise told how much restitution was owing, defendant was denied due process under [31-17-1 NMSA](#) 1978, because he did not receive adequate notice or opportunity to challenge the amount of restitution that he would be ordered to pay as part of his sentence for convictions for extortion, commercial burglary, and larceny over \$2500. [State v. Morris, 109 N.M. 726, 790 P.2d 523 \(Ct. App. 1990\)](#), overruled in part by [State v. Palmer, 1998-NMCA-052, 125 N.M. 86, 957 P.2d 71 \(Ct. App. 1998\)](#).

Procedure specified in [31-17-1 NMSA](#) 1978 must be followed in ordering restitution to satisfy the due process rights of a convicted defendant; the amount of restitution and time of payment must be set by the court and may not be left to the discretion of probation authorities. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\)](#), cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\)](#).

EVIDENCE

GENERALLY

Court is not bound by statements that a defendant is unable to make restitution or pay specific amounts, where there is appropriate data or evidence showing otherwise. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\)](#), cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\)](#).

Where the amount of restitution required to be paid is not supported by appropriate documentary evidence such as medical or doctor bills, under [31-17-1 NMSA](#) 1978, the defendant has an obligation to make an objection to the amount of damages known to the sentencing judge at the time the condition is imposed or request a hearing to fix the amount. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\)](#), cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\)](#).

EXPENSES

Audit expenses were properly included in defendant's restitution when the audit was a reasonable attempt to determine the nature and extent of losses caused by defendant. [State v. Whitaker, 110 N.M. 486, 797 P.2d 275 \(Ct. App. 1990\)](#).

JURISDICTION

Under [31-17-1G NMSA](#) 1978, courts have continuing jurisdiction to modify plans of restitution or to extend periods of restitution but not beyond the respective maximum period of probation or parole as provided by [31-20-6](#), [31-20-7](#), [31-21-10 NMSA](#) 1978. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\)](#), cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\)](#).

LIEN

A lien for restitution would be inconsistent with the provisions of [31-17-1 NMSA](#) 1978 because

the statute allows a court to modify an order of restitution at any time, thus removing the certainty of and absolute right to payment characteristic of an ordinary judgment of debt. [State v. Steele, 100 N.M. 492, 672 P.2d 665 \(Ct. App. 1983\).](#)

NON-PROSECUTION AFFIDAVITS

Where a defense attorney paid and attempted to pay defendant's alleged fraud victims in exchange for their sworn affidavits requesting that criminal charges against defendant be dropped, the attorney's conduct was prejudicial to the administration of justice in violation of Rule 16-804(D) NMRA and adversely reflected on his fitness to practice law in violation of Rule 16-804(H) NMRA. While restitution to crime victims was provided for under [31-17-1 NMSA](#) 1978 and non-prosecution affidavits were not per se improper, it was the combination of the two elements on a quid pro quo basis that constituted the proscribed conduct and warranted the attorney's public censure. [In re Steere, 110 N.M. 405, 796 P.2d 1101 \(1990\).](#)

NOTICE

Implicit provision of [31-17-1 NMSA](#) 1978, which requires preparation of restitution plans, is notice to defendants of the amounts of restitution claimed, the opportunity to dispute the amounts, and inquiry into their ability to pay restitution; due process is satisfied by affording each defendant an opportunity to challenge the amount of restitution claimed by the victim where there is a factual basis in the record to support the trial court's calculations as to the proper sum of restitution. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\)](#), cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\)](#).

Notice and opportunity on the part of the defendant to prepare a plan of restitution to the victim or to challenge the accuracy of the amount of restitution or their ability to pay restitution is mandatory under [31-17-1 NMSA](#) 1978. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\)](#), cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\)](#).

PAYMENT FOR SWORN STATEMENT

While the public policy of restitution from convicted defendants to crime victims found in [31-17-1 NMSA](#) 1978 is affirmed, the New Mexico Supreme Court strongly disapproves of the practice by any officers of the court or their agents that involves the payment of money to an alleged crime victim in exchange for that person's execution of any sworn statement. [In re Steere, 110 N.M. 405, 796 P.2d 1101 \(1990\).](#)

PLAN OF RESTITUTION

Implicit in the provisions of [31-17-1 NMSA](#) 1978 requiring the preparation of a restitution plan is the giving of notice to defendants of the amounts of restitution claimed, the opportunity to dispute the amounts, and inquiry into their ability to pay restitution; due process is satisfied by affording each defendant an opportunity to challenge the amount of restitution claimed by the victim where there is a factual basis in the record to support the trial court's calculations as to the proper sum of restitution. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\)](#), cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\)](#).

Notice and opportunity on the part of defendants to each prepare a plan of restitution to the victim or to challenge the accuracy of the amount of restitution or his ability to pay restitution is mandatory under [31-17-1 NMSA](#) 1978; nonetheless, where defendant had not objected on appeal to

his lack of opportunity to prepare a plan of victim restitution for submission to the sentencing judge, the failure to comply with the opportunity requirement was not an error given the case's facts. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\)](#), cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\)](#).

Under [31-17-1 NMSA](#) 1978, where a defendant does not comply with the respective plan of restitution approved or modified by the court, it may be a violation of a condition of probation and parole. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\)](#), cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\)](#).

PROBATION

Pursuant to [31-20-8 NMSA](#) 1978, the governor has discretion to decide whether an individual is entitled to a pardon restoring him or her to full rights of citizenship, and the governor promulgated guidelines that make an individual who receives an unsatisfactory discharge from supervision ineligible for pardon consideration for two years longer than an individual who receives a satisfactory discharge from supervision; therefore, defendant's due process rights were violated by a trial court order giving her an unsatisfactory discharge for failure to comply with her probation terms, which included a restitution order pursuant to [31-17-1 NMSA](#) 1978 that was invalid, because the trial court failed to make an actual determination regarding defendant's reasonable ability to pay restitution. *State v. Carrasco*, 1997-[NMCA-123](#), [124 N.M. 320, 950 P.2d 293](#).

Condition of probation that defendant pay a \$500 donation to the local sheriff's office was not authorized, because unlike a victim under [31-17-1 NMSA](#) 1978, the office was not aggrieved by the crime. [State v. Dominguez, 115 N.M. 445, 853 P.2d 147 \(Ct. App. 1993\)](#), cert. denied, [115 N.M. 409, 852 P.2d 682 \(1993\)](#).

PROCEDURE

TRIAL

At time of sentencing, where restitution is ordered it is incumbent upon defendant to specify whether any amount of actual damages claimed by a victim is contested, and to advise the court whether defendant believes restitution will be able to be made. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\)](#), cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\)](#).

PURPOSE

Legislative enactment of [31-17-1 NMSA](#) 1978, requiring victim restitution is declarative of public policy to make whole the victim of the crime to the extent possible; restitution in a proper case may oftentimes be a compelling reminder of the wrong done and meaningfully contribute to the rehabilitation process as it is an effective way to awaken a defendant's sense of social responsibility and aid in rehabilitation. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\)](#), cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\)](#).

RESTITUTION

Restitution was properly ordered pursuant to [31-17-1A NMSA](#) 1978, when defendants were convicted of receiving stolen property and the trial court ordered restitution in the amount of the retail value of the merchandise, rather than the wholesale value because the retail value was reasonably foreseeable by defendants as resulting from the crime charged. *State v. Lucero*, 1999-

[NMCA-102, 127 N.M. 672, 986 P.2d 468](#), cert. denied, [128 N.M. 149, 990 P.2d 823 \(1999\)](#).

Defendant was properly ordered to pay restitution as part of his criminal sentence where the victim restitution statement contemplated, pursuant to [31-17-1C NMSA](#) 1978, payment to someone other than the victim since there was nothing to suggest that a sexual assault victim's mother would use the restitution in any other way than as ordered by the trial court, to pay for the victim's mental health counseling and her well-being. *State v. Palmer*, 1998-[NMCA-052, 125 N.M. 86, 957 P.2d 71](#), cert. denied, [125 N.M. 146, 958 P.2d 104 \(1998\)](#).

Where defendant was ordered to pay restitution as part of his criminal sentence, appellate court could not consider argument that trial court did not consider defendant's ability to pay because defendant failed to provide a full record on appeal, and if defendant was unable to pay, he could return to the trial court for review of the restitution order under 31-17-1C and F NMSA 1978. *State v. Palmer*, 1998-[NMCA-052, 125 N.M. 86, 957 P.2d 71](#), cert. denied, [125 N.M. 146, 958 P.2d 104 \(1998\)](#).

Defendant was properly ordered to pay restitution under [31-17-1B NMSA](#) 1978 as a part of his criminal sentence and it was absolutely required where the trial court exercised its discretion under [31-20-6 NMSA](#) 1978, and defendant's argument that he could be ordered to pay restitution only during periods of probation or parole, not while he was incarcerated, were without merit. *State v. Palmer*, 1998-[NMCA-052, 125 N.M. 86, 957 P.2d 71](#), cert. denied, [125 N.M. 146, 958 P.2d 104 \(1998\)](#).

Trial court lacked jurisdiction to conduct a hearing and to issue an order determining that defendant be given an unsatisfactory discharge from probation because in ordering defendant to pay restitution as a condition of her probation pursuant to [31-17-1A NMSA](#) 1978, the trial court failed to consider the factors enumerated in [31-17-1D NMSA](#) 1978, including determining defendant's ability to pay restitution and the times and amounts of restitution; rather than making the actual determination of defendant's ability to pay, the trial court had directed such determination to be made by the department of probation and parole. *State v. Carrasco*, 1997-[NMCA-123, 124 N.M. 320, 950 P.2d 293](#).

Restitution a former narcotics officer was required to pay his police department pursuant to [31-17-1 NMSA](#) 1978, was comprised of elements properly assessable under [31-17-1 NMSA](#) 1978, including the salary paid to defendant, expense money to permit him to cozy up to drug dealers, and the outlays for drugs, not just the much smaller amount he actually embezzled from the department. *State v. Ellis*, 120 N.M. 709, 905 P.2d 747 (Ct. App. 1995).

Restitution pursuant to [31-17-1 NMSA](#) 1978, is limited by, and directly related to, a defendant's criminal activities as defined in [31-17-1 NMSA](#) 1978. *State v. Ellis*, 120 N.M. 709, 905 P.2d 747 (Ct. App. 1995).

Restitution order requiring an undercover narcotics officer to repay his former police department for the losses they suffered due to his tampering with evidence and embezzlement was proper under [31-17-1 NMSA](#) 1978, because the department was a victim of the crimes. *State v. Ellis*, 120 N.M. 709, 905 P.2d 747 (Ct. App. 1995).

Convictions of the misdemeanors of attempted tampering with evidence and embezzlement properly formed the basis for a restitution order under [31-17-1 NMSA](#) 1978 directing defendant to pay restitution to the police department that employed him, because he committed the crimes in his duties as an undercover narcotics officer. *State v. Ellis*, 120 N.M. 709, 905 P.2d 747 (Ct. App. 1995).

In defining "criminal activities," [31-17-1A\(3\) NMSA](#) 1978 clearly focuses the conduct for which a defendant may be ordered to pay restitution to only the specific offenses of which the defendant has been convicted. *State v. Ellis*, 120 N.M. 709, 905 P.2d 747 (Ct. App. 1995).

Restitution order, which reflected salary and funds used for investigations, was properly imposed against former police officer, who was convicted of tampering with evidence and embezzlement,

because the police department qualified as a person for restitution purposes. Police department was entitled to recover the funds because defendant's actions jeopardized the police department's efforts in bringing eventual criminal charges and possible convictions of those charged with criminal activity. [State v. Ellis, 120 N.M. 709, 905 P.2d 747 \(Ct. App. 1995\).](#)

Restitution order, which reflected salary and funds used for investigations, was properly imposed against former police officer, who was convicted of tampering with evidence and embezzlement, because the police department qualified as a person for restitution purposes. Police department was entitled to recover the funds because defendant's actions jeopardized the police department's efforts in bringing eventual criminal charges and possible convictions of those charged with criminal activity. [State v. Ellis, 120 N.M. 709, 905 P.2d 747 \(Ct. App. 1995\).](#)

Court abused its discretion in requiring defendant, who was convicted of fraud, to provide security for restitution as a condition of release pending appeal as there was no authorization for this condition in [31-3-2 NMSA](#) 1978 or [31-17-1A NMSA](#) 1978. [State v. Montoya, 116 N.M. 297, 861 P.2d 978 \(Ct. App. 1993\),](#) cert. denied, [116 N.M. 364, 862 P.2d 1223 \(1993\).](#)

An unlicensed contractor could not recover as restitution the full amount owed on a worthless check because the contractor was barred by statute from using the courts to obtain payment. [60-13-30A.NMSA](#) 1978. [State v. Platt, 114 N.M. 721, 845 P.2d 815 \(Ct. App. 1992\).](#)

Restitution order under the requirement of victim restitution under [31-17-1 NMSA](#) 1978 that included the value of property stolen in an uncharged burglary as part to defendant's sentence for receiving stolen property was reversed where no causal connection existed between the stolen property and defendant's crime; the court rejected the state's argument that restitution was correctly assessed against defendant under the public policy of [31-17-1 NMSA](#) 1978 and under the conditions of probation found in [31-20-6 NMSA](#) 1978. [State v. Madril, 105 N.M. 396, 733 P.2d 365 \(Ct. App. 1987\).](#)

Victim in the context of New Mexico's restitution statute, [31-17-1 NMSA](#) 1978, could be a human being or a legal entity, but restitution could be ordered only when the victim has suffered actual damage as a result of a defendant's criminal activity. [State v. McCall, 101 N.M. 616, 686 P.2d 958 \(Ct. App. 1983\).](#)

Where defendant profited from a fraudulently procured loan which was eligible for financing through the Mortgage Finance Authority (MFA), pursuant to [58-18-1 to -27 NMSA](#) 1978, but the MFA did not suffer any actual damage, restitution was not required in connection with a deferred sentence; the court rejected the State's position that the MFA was a "victim" of defendant's criminal activity and that [31-17-1A\(1\) NMSA](#) 1978 made restitution mandatory because it failed to show that MFA was a "victim" within the meaning of [31-17-1\(1\) NMSA](#) 1978. Although the MFA was a "legal entity" pursuant to [58-18-24 NMSA](#) 1978 and therefore a "person" within the meaning of [30-1-12E NMSA](#) 1978, it was not a "victim" because it did not suffer any actual loss or damage and the requirement of actual damage did not authorize restitution based on unjust enrichment. [State v. Griffin, 100 N.M. 75, 665 P.2d 1166 \(Ct. App. 1983\).](#)

The applicable definition of "person" in [31-17-1A NMSA](#) 1978 is the definition appearing in the criminal code, compiled as [30-1-12E NMSA](#) 1978. [State v. Griffin, 100 N.M. 75, 665 P.2d 1166 \(Ct. App. 1983\).](#)

Where defendant and others misrepresented that their intention to live in residences in order to obtain mortgage finance authority (MFA) financed loans, and then resold the residences and made a profit, but the loans did not go into default, the trial court's refusal to require defendant to make restitution was proper because MFA was not a "victim" of defendant's criminal activity and restitution was not mandatory under [31-17-1A\(1\) NMSA](#) 1978, because it did not suffer any actual loss or damage and it was not a "victim" because it did not suffer any actual loss or damage. [State v. Griffin, 100 N.M. 75, 665 P.2d 1166 \(Ct. App. 1983\).](#)

Trial court had legal authority under [31-17-1A NMSA](#) 1978 to order defendant who had been convicted of attempt to commit a capital felony, to-wit, murder in the first degree, in violation of [30-28-1 NMSA](#) 1978 and [30-2-1 NMSA](#) 1978, to make restitution to the victim for her hospital and medical expenses as a condition of parole because [31-17-1B NMSA](#) 1978 did not limit or restrict the application of the policy provided for in [31-17-1A NMSA](#) 1978 only to those cases in which sentence was suspended or deferred. [State v. Ennis, 99 N.M. 117, 654 P.2d 570 \(Ct. App. 1982\)](#), cert. denied, [99 N.M. 148, 655 P.2d 160 \(1982\)](#).

Under [31-17-1 NMSA](#) 1978, restitution to the victim must be considered as part of the sentencing process. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\)](#), cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\)](#).

REVIEW

[State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\)](#), cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\)](#).

Upon submission of a defendant's plan of restitution and the recommendations of the parole or probation officer, the court is required to enter an order approving, disapproving, or modifying the plan after considering each of the factors enumerated in [31-17-1D NMSA](#) 1978, including determination of the defendant's ability to pay restitution and the times and amounts of restitution payable. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\)](#), cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\)](#).

[Section 31-17-1F NMSA](#) 1978 permits a defendant to seek a hearing and court review of any matter related to restitution as ordered by the court. [State v. Lack, 98 N.M. 500, 650 P.2d 22 \(Ct. App. 1982\)](#), cert. denied, [98 N.M. 478, 649 P.2d 1391 \(1982\)](#).

SCOPE

Where defendant was ordered to pay restitution as part of his criminal sentence, appellate court could not consider argument that trial court did not consider defendant's ability to pay because defendant failed to provide full record on appeal; if defendant was unable to pay, he could return to the trial court for review of the restitution order under 31-17-1C and F NMSA 1978. [State v. Palmer, 1998-NMCA-052, 125 N.M. 86, 957 P.2d 71](#), cert. denied, [125 N.M. 146, 958 P.2d 104 \(1998\)](#).

SENTENCE

GENERALLY

Order denying motion to withdraw no contest plea to a conspiracy charge was an abuse of discretion because defendant was not put on notice and did not agree that restitution would be required for the state's losses from charges that the state had agreed to dismiss; defendant was not required to make restitution for offenses that he was not convicted of committing, pursuant to [31-17-1 NMSA](#) 1978. [State v. Lozano, 1996-NMCA-075, 122 N.M. 120, 921 P.2d 316](#).

Under [31-17-1 NMSA](#) 1978 a trial court erred in failing to consider defendant's ability to pay before imposing a sentence that required defendant to make restitution within 30 days. [State v. Whitaker, 110 N.M. 486, 797 P.2d 275 \(Ct. App. 1990\)](#).

STOLEN PROPERTY

Former 1915 Code, § 1536 NMSA required proof as to the title of stolen property only when the owner thereof desired possession prior to conviction and that following conviction of the perpetrator of the theft, the court and its officers were required to return it without further proof. [Supulver v. Gilchrist & Dawson, Inc., 28 N.M. 339, 211 P. 595 \(1922\).](#)

SUBSECTION C

Defendant was properly ordered to pay restitution as part of his criminal sentence and the victim restitution statement contemplated, pursuant to [31-17-1C NMSA](#) 1978, payment to someone other than the victim; there was nothing to suggest that a sexual assault victim's mother would use the restitution in any other way than as ordered by the trial court, to pay for the victim's mental health counseling and her well-being. State v. Palmer, 1998-[NMCA-052, 125 N.M. 86, 957 P.2d 71](#), cert. denied, [125 N.M. 146, 958 P.2d 104 \(1998\)](#).

TIME LIMITATIONS

Where defense counsel was never shown a proposed restitution amount or otherwise told how much restitution was owing, defendant was denied due process when he did not receive adequate notice or opportunity to challenge the amount of restitution that he would be ordered to pay as part of his sentence for convictions for extortion, commercial burglary, and larceny over \$2500; because defendant had a limited time to file his notice of appeal under Rule 12-201 NMRA, defendant was not required to seek a rehearing under [31-17-1 NMSA](#) 1978 prior to filing his appeal. [State v. Morris, 109 N.M. 726, 790 P.2d 523 \(Ct. App. 1990\)](#), overruled in part by State v. Palmer, 1998-[NMCA-052, 125 N.M. 86, 957 P.2d 71 \(Ct. App. 1998\)](#).

UNJUST ENRICHMENT

Where defendant profited from a fraudulently procured loan which was eligible for financing through the Mortgage Finance Authority (MFA), pursuant to [58-18-1 to -27 NMSA](#) 1978, but the MFA did not suffer any actual damage, restitution was not required in connection with a deferred sentence; the court rejected the State's position that the MFA was a "victim" of defendant's criminal activity and that [31-17-1A\(1\) NMSA](#) 1978 made restitution mandatory because it failed to show that MFA was a "victim" within the meaning of [31-17-1\(1\) NMSA](#) 1978. Although the MFA was a "legal entity" pursuant to [58-18-24 NMSA](#) 1978 and therefore a "person" within the meaning of [30-1-12E NMSA](#) 1978, it was not a "victim" because it did not suffer any actual loss or damage and the requirement of actual damage did not authorize restitution based on unjust enrichment. [State v. Griffin, 100 N.M. 75, 665 P.2d 1166 \(Ct. App. 1983\)](#).

OPINIONS OF ATTORNEY GENERAL

PROBATION

When an offense is a violation of the Criminal Code or the Motor Vehicle Code, a magistrate court is authorized pursuant to its sentencing powers, to grant victim restitution as a condition of probation. 1979 Op. Atty. Gen. No. 79-18,

APPENDIX D

Statewide Survey of Crime Victims Report

New Mexico Victim Rights Alliance
Statewide Survey of Crime Victims and Survivors

S U M M A R Y R E P O R T

Prepared by:

**Anne Seymour
Justice Solutions
Washington, DC**

With Support From:

**Office for Victims of Crime
Training and Technical Assistance Center**

Submitted to:

New Mexico Victim Rights Alliance

June 18, 2007

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Introduction

For the past year, the New Mexico Victim Rights Alliance has worked to develop and implement a statewide strategic plan for victim services. A priority of this ongoing process has been to study the implementation of crime victims' rights and provision of victim services throughout New Mexico. The Alliance commissioned a statewide survey of violent crime victims, which was conducted with support from the Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC), within the Office of Justice Programs, U.S. Department of Justice.

Survey Methodology

The Alliance identified 240 violent crime victims through random selection, whose crimes occurred between January, 2005 and December 2006. The survey was disseminated in May 2007 with a self-addressed, stamped envelope provided by the Crime Victims Reparations Commission, and included: a cover letter; a cover page with directions for completing the survey; and the actual survey instrument (please see *Appendix A* for these documents).

Survey responses that were received between May 17 and June 15, 2007 were tabulated for this Summary Report. A total of 42 complete responses were received, for a return rate of 20% percent.

The survey instrument *specifically mirrored and addressed* a total of 25 victims' rights that are provided within New Mexico's State Constitution to victims of crime. It addressed victims' rights in *all* cases; in cases that were processed through the criminal justice system; in cases with convictions; and in cases that have been processed through state corrections. Respondents were also given the opportunity to offer additional comments, which are highlighted in this Summary Report in *Appendix B*.

The survey was collaboratively developed with the Alliance by OVC TTAC Consultant Anne Seymour, a national victim advocate with nearly 25 years of experience in victim services, strategic planning, and survey implementation. Seymour compiled all survey data and authored this Summary Report.

Key Survey Findings

All Cases

The vast majority of victims in New Mexico are receiving information about their rights and available services, and feel that they are being treated with dignity and respect:

- Over three-fourths of victims (76 percent) received information about supportive services.
- Nearly two-thirds of victims (63 percent) were given contact information by the district attorney if they had any questions or concerns.
- Nearly two-thirds of victims (63 percent) felt that they were treated with dignity and respect.

A majority of victims were given a written copy of the charges filed against the accused (56 percent); received an explanation from the DA or his/her staff about the steps in prosecuting the case (56 percent); and were informed of their rights under law (53 percent).

A clear majority of victims (56 percent) also felt that their privacy was protected.

Only 39 percent of victims received contact information for the DA from law enforcement; 36 percent received referrals from law enforcement to medical or crisis intervention services from police; and 36 percent received a police report number for the offense.

Nearly two-thirds of victims (63 percent) felt that they were treated with dignity and respect.

Processed Cases

Nearly three-fourths of victims (74 percent) were told that they could attend court proceedings, and nearly two-thirds (64 percent) actually attended court proceedings. Similarly, sixty-four percent of victims were able to confer with the prosecution and offer their opinions about the case, and over half (56 percent) were provided with information about court proceedings at least seven days prior to each proceeding.

Victims were evenly divided (at 42 percent each) about whether their cases were “processed through the courts in a timely manner.” While 42 percent had their safety concerns addressed, one-third (33 percent) said they did not have their safety concerns addressed.

For the majority of respondents, employer intervention (54 percent) and return of personal property (51 percent) were *not applicable* in their cases.

While 42 percent had their safety concerns addressed, one-third (33 percent) said they did not.

Cases with Convictions

Over half of all victims (59 percent) were given the opportunity to present a victim impact statement prior to sentencing, and received information about the final status of the case (53 percent).

However, only slightly over one-third of victims (35 percent) received assistance about documenting financial losses for the purpose of restitution, and if prosecutors asked the court for restitution, it was only ordered in one-fourth of cases (26 percent). Slightly less than one-fourth of victims (24 percent) were informed about “meritorious deductions” that could affect the amount of time that their convicted offenders actually serve.

Cases Processed Through Corrections

Only one-fourth of all victims (26 percent) received information about the status and location of their convicted offender. And only 18 percent of victims were given the opportunity to present a victim impact statement to the Parole Board (**Investigator’s Note:** After reviewing survey responses, this datum may be skewed and inaccurate because of the way the question was asked. It is clear that in a number of cases that are not yet parole-eligible, the respondents answered “no” instead of “doesn’t apply”).

Only one-fourth of all victims (26 percent) received information about the status and location of their convicted offender.

Figures that describe specific survey data and findings are included in *Appendix C*.

Survey Analysis

The survey data indicate many positive outcomes relevant to the effective implementation of victims' rights in New Mexico. In general, most victims (76 percent) are receiving important information about their rights and available services, and nearly two-thirds (63 percent) feel that they were "treated with dignity and respect."

Nearly two-thirds of survey respondents report being able to confer with the prosecution and actually attending court proceedings. And six out of ten exercised their constitutional right to present a victim impact statement prior to sentencing.

A significant area for improvement lies with law enforcement in New Mexico. Less than four out of ten survey respondents reported receiving information about the district attorney (39 percent); received referral information about medical and/or crisis intervention services (36 percent); and received a police report number (36 percent) – all victims' rights in accordance with New Mexico's State Constitution.

A significant area for improvement lies with law enforcement in New Mexico.

While nearly half of victims whose cases applied to the question about having their "safety needs addressed" reported "yes," there is still room for improvement in terms of helping victims with their safety concerns.

Far too victims who responded to this survey felt that their right to restitution was *not* implemented.

And perhaps the biggest gap in victims' rights implementation occurs between the conviction of the offender and his/her transfer to custody: only one-fourth (26 percent) received information about the status and location of the offender. This indicates a need for victims to be provided with information about this right to notification by district attorneys, courts *and* the Corrections Department. Note: In New Mexico, it is not required by law that victims be notified of the location of the offender.

The survey data indicate many positive outcomes relevant to the effective implementation of victims' rights in New Mexico.

Appendix A

Complete Survey Package Mailed to Violent Crime Victims

Dear Friend:

The fair and respectful treatment of crime victims in New Mexico is very important. We are sorry that you were a victim of crime in our state. As a victim of crime, you have clear rights within the New Mexico State Constitution, and making sure that your rights are implemented is a priority for us. We hope that you will share your opinions with us about how you were treated.

The New Mexico Crime Victims Alliance has developed a statewide plan to improve rights and services for crime victims. One of the most important components of this project is *hearing directly from victims and survivors of crime* – those who have been directly affected by criminal violence. The voices of victims guide *all* that we do to improve how victims are treated in our state.

We have developed the attached survey for victims and survivors to help us determine if you feel your rights were exercised in accordance with the law. The survey is *completely confidential*, and should take you no more than 15 minutes to complete. Your response – and those we receive from other victims – will help us create a plan that makes sure victims are treated with dignity and respect, and that they are aware of and able to exercise their rights.

We know you are busy, and we sincerely appreciate the time you will take to complete this survey. Your voice as a victim matters to us, and any suggestions you can offer to facilitate the fair treatment of victims is welcome.

The Survey Cover Sheet includes information about how to complete and return the survey.

If you have any questions about the survey or our overall planning efforts, please contact Larry Tackman at 505-841-9432.

Thank you in advance for participating in this important survey. Your contribution will *help us to help improve victims' rights and services* in the future.

Sincerely,

Larry Tackman

Attachment: Survey

New Mexico Victim Rights Alliance
Statewide Survey of Crime Victims and Survivors
May 2007

The attached survey addresses all of the rights that are provided for victims within the Constitution of the State of New Mexico. It's important for you to *carefully consider each question, and answer it to the best of your ability and recollection.*

This survey is *completely confidential*; your personal information is not included anywhere in this survey package, and the information requested about the actual crime will be used for demographic purposes only.

For each survey item, there are four possible responses:

- "Yes" indicates that you agree with the statement.
- "No" indicates that you disagree with the statement.
- "Not sure" indicates that you are unsure or don't remember.
- "Doesn't apply" indicates that the statement is not relevant to you or your case.

The survey also includes a final page for you to add any additional comments you think might be helpful to us. Please use this page and as many additional pages as you need.

The Principal Investigator for this Survey is Anne Seymour, who is a Consultant to the U.S. Department of Justice Office for Victims of Crime. Anne has requested that if you'd like to contact her personally to provide additional information, you can call her collect at (202) 547-1732, or email her at annesey@atlantech.net.

Please return your completed survey to New Mexico Crime Victims Reparation Commission in the self-addressed, stamped envelope no later than May 25, 2007.

Demographics

Type of Crime: _____

Date Crime Occurred: _____

Gender: _____ Male _____ Female

All Cases

I was informed by a police officer of medical and crisis intervention services that were available to me as a victim of crime.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

The police officer gave me a police report number for the offense and told me to contact the law enforcement agency if I did not hear anything within 30 days.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

The police officer provided me with the name of the district attorney, and the address and telephone number of the district attorney's office.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

The district attorney (or staff) informed me of my rights under law as a victim of crime, and **I** received a written copy of my rights under law.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

The district attorney (or staff) gave me a written copy of the charges filed against the accused.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

The district attorney (or staff) explained the steps involved in prosecuting the case.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

The district attorney (or staff) gave me contact information for somebody to talk to if I had any questions or concerns.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

I feel I was treated with fairness and respect.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

My privacy as a victim was protected.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

I received information about supportive services that could help my family and me.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

Processed Cases

My case was processed through the courts in a timely manner.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

Any concerns I had about my safety were addressed, and I felt reasonably protected from the accused.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

I was notified about and I was provided with information about court proceedings in my case, at least seven days prior to each proceeding.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

I was told that I could attend all court proceedings at which the accused had the right to attend.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

I actually attended court proceeding(s).

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

I was able to confer with the prosecution and offer my opinions about the case.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

If I requested help from the prosecutor to inform my employer about my need to participate as a witness, this help was provided.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

If any of my personal property was held for evidence by the court, it was returned to me after the case was over.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

Cases with Convictions

I was given the opportunity to present a "victim impact statement" to the court before sentencing.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

I was given assistance to document my financial losses resulting from the crime to seek restitution from the convicted offender.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

The prosecutor asked the court for restitution, and it was ordered.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

I received information about the final status of the case.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

I was told at sentencing about "meritorious deductions" that could be earned by the convicted offender and affect the actual amount of time he or she serves.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

Cases Processed Through Corrections

I received information about the status and location of the convicted offender.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

I was given the opportunity to present a "victim impact statement" to the Parole Board.

_____ Yes _____ No _____ Not Sure _____ Doesn't Apply

Any Additional Comments:

Thank you for taking time to complete this survey!
Your contribution to the
New Mexico Victim Rights Alliance is truly appreciated!

Appendix B

Respondents' Comments from New Mexico Victim Survey*

"The court found the 'person' not guilty. I was brutally beaten and the state of New Mexico did nothing for me but pay my thousand dollar hospital bill. I believe the state is inconsiderate, and does not care about its victims as much as they let on. I was also told I could not attend court but the violent person was allowed to attend all hearings."

"My family and I were not treated fairly. It is an awful and scary thing to go through...lots of fear, doubt, with the help of our dear heavenly Father, we are getting through it."

"I received above information because I called and inquired. No one called me. From time to time, contact the parole officer to see where he – the man who attacked me – is at this point. The parole officer has been very nice, and he has said I could call and check at any time. I need to do so again and soon as I want to know if Judge M did the right thing in sentencing him very leniently."

"The guy who ran over my daughter and killed her got away with it, and is free to have his family. And the night he killed with his truck, he has beat her at the bar the night before that. And how he walks like she was never around. Her son was 10 years old, now 17 years old. I would have to say he is still going through hell, just as I go through hell every day wanting my daughter back, and the same thing 14 months later with my other daughter killed. I could go on and on, but nothing will ever be done...."

"My case is still ongoing; we actually don't go to trial until September of 2007. I am a little irritated due to the fact that the offender has not yet been prosecuted. I just hope that his guy is not going to go back on the streets and do this to someone else."

"Due to a major conflict of interest with the DA and the defense attorney, my case was stalled. I was forced to contact the Attorney General and persist that my case was heard. Still today the information I received depends on me contacting the DA office."

"I was told that my family would get financial help for relocation. I'm still struggling, my home is falling apart. I was forced to move to government housing. It's going on four years and my son's father's murderer has still not faced those charges. This whole nightmare has totally affected my son and myself. The last time I heard about this case was last year, letting me know he was in Arizona waiting for a government warrant (?). And I called the DA to get this information....."

"I received no satisfactory assistance at all. I had to pay all fees to have my son flown here, autopsy and had to take out a \$5000 loan to bury him. I am still struggling to survive since the death of my son."

"I wished for the victims would have help me pay my son's funeral costs but they didn't. I am sorry for that because I am still paying."

"I was very disappointed by the way the media handled the case. Also I was never given the money that my son had at the time of the accident, supposedly couldn't find it where they had it

stored for safekeeping. The way the case was handled was very depressing to me and my family. The sheriff gave information to the media that was not true and made my son look awful of his character.”

“I was jumped and hit in the back of the head with a rock. Nothing was done. I had contact with the DA and nothing was ever done. They were free to walk the streets while I lost everything – my home due to doctor bills I couldn’t pay. Lost time at work. I had to file bankruptcy because everything piled up, ended up divorced. They ruined my life and nothing was done, no court, no trial, nothing. I received a check for \$2000 two years later, that’s all I have seen.”

“In the end, I was pleased with the outcome. I will always believe that the convicted offender had more rights than I during the court proceedings; however, he was able to make decisions. For example: request that a judge be dismissed from the case, etc. I had to sit back and have no say so.”

“While he’s supposed to serve four years (probably less), I will have to suffer the rest of my life, because of the damage to my body and much of the healing could have been better if I had been protected to stay in the hospital longer to receive the proper care medically and mentally. I now suffer daily and rarely sleep through the night, and I’m unable to work because of it. My family is also trying to help me file bankruptcy because of all my unpaid medical bills.”

“I was very satisfied with the outcome of my case. I am happy with the way I was treated and the services offered to me.”

“The person driving the vehicle that hit and ran over me (running a red light at full speed) kept on going and was never apprehended. Law enforcement made little or no effort to do so. After spending five months in hospitals, rehabilitation and a nursing care center, I made contact with the NM Crime Victims Reparations Officer....She has been very helpful, professional and prompt in assisting me and handling some of my smaller medical bills.”

“Although I appeared before the Parole Board, it didn’t make any difference because the two people still came back in the area. Now, they are both back in prison again.”

“I as the victim was asked to leave my house to let the offender stay. The offender never paid what was asked by the court. The offender was never charged with any crime, even after choking me.”

“I would have liked to know and even now would like to know my abuser’s whereabouts since I am forever looking over my shoulder....”

“Church, family and friends. If it wasn’t for them, I don’t know where I would be because the state didn’t give me the assistance I needed....”

“I feel as though I was treated unfairly due to the fact that the men who kidnapped and raped me were licensed bondsmen by the state of New Mexico. And yet they are still licensed in New Mexico. I have heard that they did the same things in other states and I am sure that there are other victims. I don’t feel safe anymore, especially since they were acquitted and are free and continue to rape other women and children. They feel that they are above the law and that they won.”

“The offender was released after time served and showed up at my business. She was there to say ‘hi’. No apology or sadness on her part. Needless to say, I was pretty upset. I don’t know where she lives, but I have seen her around town.”

“My case was passed around three different detectives. It was never investigated. I would call almost daily to find out if anyone had gotten arrested yet, and the police department would tell me that they hadn’t looked into the case yet....”

** The above comments include **all** those whose penmanship could be deciphered by the Project’s Investigator.*

Survey Demographics

of Responses: 42

Gender

Male: 62%

Female: 38%

Year That Crime Was Committed

Year of Crime	# of Respondents	% of Respondents
2005	14	34%
2004	16	38%
2003	10	24%
2000	1	2%
No response	1	2%

General Categories of Types of Crime

Type of Crime	# of Respondents	% of Respondents
Robbery/Assault/Aggravated Assault	14	34%
Domestic violence/Inter-familial	11	26%
Murder	9	22%
DWI/DUI/Hit and Run	5	5%
Kidnap/Rape	1	2%
House Blown Up	1	2%
No Crime Identified	1	2%
TOTAL NUMBER	42	

ALL CASES				
VICTIMS' RIGHT	YES	NO	NOT SURE	DOESN'T APPLY
I received information about supportive services that could help my family and me.	76%	20%	4%	0%
The district attorney (or staff) gave me contact information for somebody to talk to if I had any questions or concerns.	63%	24%	7%	5%
I feel I was treated with dignity and respect.	63%	22%	10%	5%
The district attorney (or staff) gave me a written copy of the charges filed against the accused.	56%	24%	12%	7%
The district attorney (or staff) explained the steps involved in prosecuting the case.	56%	27%	10%	7%
My privacy as a victim was protected.	56%	17%	20%	7%
The district attorney (or staff) informed me of my rights under law as a victim of crime, and I received a written copy of my rights under law.	53%	29%	15%	2%
The police officer provided me with the name of the district attorney, and the address and telephone number of the DA's office.	39%	51%	7%	2%
I was informed by a police officer of medical and crisis intervention services that were available to me.	36%	44%	10%	10%
The police officer gave me a police report number for the offense, and told me to contact the law enforcement agency if I did not hear anything within 30 days.	36%	53%	5%	5%

PROCESSED CASES				
VICTIMS' RIGHT	YES	NO	NOT SURE	DOESN'T APPLY
I was told that I could attend all court proceedings at which the accused had the right to attend.	74%	23%	2%	2%
I actually attended court proceedings.	64%	28%	2%	6%
I was able to confer with the prosecution and offer my opinions about the case.	64%	21%	6%	8%
I was notified about and I was provided with information about court proceedings in my case, at least seven days prior to each proceeding.	56%	28%	9%	7%
My case was processed through the courts in a timely manner.	42%	42%	9%	7%
Any concerns I had about my safety were addressed, and I felt reasonably protected from the accused.	41%	33%	11%	15%
If I requested help from the prosecutor to inform my employer about my need to participate as a witness, this help was provided.	33%	7%	7%	54%
If any of my personal property was held for evidence by the court, it was returned to me after the case was over.	9%	35%	4%	51%
CASES WITH CONVICTIONS				
VICTIMS' RIGHT	YES	NO	NOT SURE	DOESN'T APPLY
I was given the opportunity to present a victim impact statement to the court before sentencing.	59%	22%	11%	9%
I received information about the final status of the case.	53%	40%	4%	3%
I was given assistance to document my financial losses resulting from the crime to seek restitution from the convicted offender.	35%	48%	4%	13%
The prosecutor asked the court for restitution, and it was ordered.	26%	39%	22%	13%
I was told at sentencing about "meritorious deductions" that could be earned by the convicted offender and affect the actual amount of time he or she serves.	24%	55%	11%	9%
CASES PROCESSED THROUGH CORRECTIONS				
VICTIMS' RIGHT	YES	NO	NOT SURE	DOESN'T APPLY
I received information about the status and location of the offender.	26%	63%	0%	11%
I was given the opportunity to present a victim impact statement to the Parole Board.	18%	57%	7%	20%

APPENDIX E

Advocacy in Action Conference Survey & Findings

Advocacy in Action Survey (2007)

Report Prepared for the New Mexico Victim Rights Alliance

Joan E. Crowley

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New Mexico State University

The Alliance took advantage of the annual Advocacy in Action conference sponsored by the New Mexico Crime Victim Reparations Commission to try to gather information from a wider sample of people concerned with crime victims' rights and services. Surveys were distributed to conference participants on the final day of the conference in March 2007. A total of 60 questionnaires were received. Many people skipped questions, so the number of usable responses varies across items. For each of the three questions of interest to the Alliance, the responses were coded into individual categories, these categories were then grouped into larger themes.

The questionnaires also asked respondents to indicate the area of victim services or the community they represented. These fall into two general categories: criminal justice practitioners, and everyone else. Some respondents selected multiple options. The analysis looks at whether the perceptions of challenges vary according to occupation. Preliminary results indicated that system-based victim advocates differed in some ways from other criminal justice representatives. The final analysis thus uses three categories: criminal justice advocates, other criminal justice staff, and people from outside the criminal justice system. Since the questions were open-ended, many people listed more than one issue. Up to three issues were coded for each respondent on each question.

The responses about the challenges faced in serving victims, and the services needed to address those challenges were organized into more general themes, presented in Tables 1 and 2. Many respondents skipped the question about legal changes, or gave responses that did not fit the question, so there were no coherent themes identified.

Challenges and service themes

To help understand the results, the tables break down respondents along two dimensions. The first was whether the respondent served an area that included a city. Using 2000 Census data, the counties with the highest population density are Bernalillo, Los Alamos, Santa Fe, and Doña Ana. Sandoval county was included as urban due to its proximity to the Santa Fe-Albuquerque metropolitan areas. Respondents covering any of these counties were classified as serving an urban area. All others are coded as rural.

The second dimension was respondent occupation, divided into three categories. People representing law enforcement, courts, prosecution, or corrections were combined into a category of justice professional. Advocates employed by the criminal justice system were put in a second category, and everyone else was put into "other." Almost all of the "others" were providing services such as advocacy or mental health. Six themes emerged in response to the question about the challenges faced in serving victims.

All of these results are based on a small and unrepresentative sample, so the results are at most suggestive. A larger study may show very different patterns. These preliminary results, however, suggest directions for future action.

Challenges

Table one shows the challenges faced by respondents in serving victims. There were six themes that emerged from the responses.

1. Resources: Mostly funding issues, including grants
2. Lack of staff. This includes high caseloads
3. Lack of services. The most commonly mentioned problem was lack of transportation. Other services needed included more therapists, affordable housing, legal assistance for victims, and child care.
4. Coordination. This category includes any mention of a need for cooperation or mutual support.
5. Information. Educating people about victims' rights and services, getting criminal justice system professionals to understand victims, and disseminating information.
6. Client characteristics. Low income, small town or rural problems, and cultural or ethnic issues.

It is not surprising that everyone feels under-resourced. While it was expected that transportation would be especially problematic in rural areas, a higher percentage of urban county respondents mentioned transportation as a challenge. The coordination and information results suggest that rural areas face more challenges in working across agencies, and that advocates in these areas believe that members of the criminal justice system need to be educated about the realities faced by crime victims. Coordination in rural areas involves multiple counties and long distances, and these factors pose formidable challenges. The results suggest a need for enhanced efforts to provide training to criminal justice professionals in the rural counties.

Service needs

Table 2 presents the services that respondents needed in order to meet the challenges they face. Six themes were identified:

1. Resources: more money, more staff, more volunteers. Several respondents mentioned a need for more victim advocates.
2. Coordination: cooperation, community involvement.
3. Information: These responses involved outreach and awareness efforts, including providing information to communities
4. Increase services. Primarily transportation and housing. Several respondents cited a lack of therapists and substance abuse services
5. C J Training. Police, prosecutors, and judges were all mentioned as needing to be better informed about victim issues
6. C J Performance. Needs in this area include legislative changes, legal support, oversight by the Attorney General, enforcing current laws, and expanding criminal justice services.

Once again, the biggest need was for resources, in both money and staff. Echoing the challenges results, coordination emerges as a rural theme. Rural advocates, whether they were inside the criminal justice system or outside of it, reported that criminal justice personnel needed more training in victim issues. Not surprisingly, none of the criminal justice professionals responding to the questionnaire saw this need.

Legal changes

Since few of the respondents are lawyers, there were few specific suggestions in response to this question. The most common recommendation was to lock offenders up longer, which is not

directly a victims' rights issue. Some of the specific suggestions for legal changes are listed below, in no particular order.

- Lack of federal prosecution results in no justice for Native American victims
- Judges at all levels lack knowledge or understanding
- Allow tapes of forensic interviews to replace child testimony during trial
- Need laws concerning victims of financial abuse
- Better legislation concerning crimes against children
- Enforcement of full faith and credit
- Better enforcement of offender conditions
- Clearer rules about deportation
- Implement a \$5 fee from criminal court proceedings to pay for victim services

Conclusions

The Advocacy in Action survey was designed to gather ideas from people outside of the small pool of active Victim Rights Alliance members. As expected, the major problems involve lack of resources. Transportation is a major problem for victims, and presents a barrier to accessing services as well as participating in the criminal justice system.

The analysis highlighted the problems people in rural areas face both coordination and criminal justice training. Over and over again, victim advocates from rural areas mentioned problems with victim blame, lack of enforcement, and anti-victim attitudes in their encounters with the criminal justice system. Coordination is difficult across agencies within a single county. When coordination must involve multiple jurisdictions and people spread over many miles, the problems are even more difficult.

Themes about Challenges in Providing Services to Crime Victims*

Themes	Area served		Occupation			Total
	+Rural Area	Urban Area	#Other	C J Advocate	Justice Professional	
Resources	11 33%	10 63%	9 30%	6 50%	6 86%	21 42.9%
Lack of Staff	6 18%	2 13%	4 13%	3 25%	1 14%	8 16%
Lack of Services	20 61%	8 50%	19 63%	4 33%	5 71%	28 57%
Coordination	9 27%	1 6%	7 23%	2 17%	1 14%	10 20%
Information	9 27%	1 6%	6 20%	4 33%	0 0%	10 20%
Client characteristics	5 15%	7 44%	9 30%	1 8.3%	2 17%	12 25%
*Total	33	16	30	12	7	49

*Percentages are percent of respondents mentioning an issue within each theme. Percentages add up to more than 100% due to multiple responses.

+Urban areas were defined as the counties with the highest population density, based on the 2000 Census: Bernalillo, Los Alamos, Santa Fe, Los Alamos, and Dona Ana. Sandoval County was also included due to its proximity to Albuquerque.

#Justice professionals represent law enforcement, prosecution, courts, or corrections. C J advocates are victim advocates who work within the criminal justice system, either for District Attorneys or for police.

Themes about Services Needed to Address Challenges*

Themes	Area Served		Occupation			Total
	+Rural Area	Urban Area	#Other	C J Advocate	Justice Professional	
Resources	6 20%	6 35%	7 25%	3 25%	2 17%	12 26%
Coordination	8 27%	0 0%	7 25%	0 0%	1 12%	8 17%
Information	9 30%	4 24%	6 21%	5 42%	2 29%	15 28%
More services	8 27%	7 41%	10 36%	3 25%	2 29%	15 32%
Criminal Justice Training	6 20%	0 0%	3 11%	3 25%	0 0%	6 13%
Criminal Justice Performance	12 40%	9 53%	12 43%	5 42%	4 57%	21 45%
Total N	30 64%	17 36%	28 60%	12 26%	7 15%	47

*Percentages are percent of respondents mentioning an issue within each theme. Percentages add up to more than 100% due to multiple responses.

+Urban areas were defined as the counties with the highest population density, based on the 2000 Census: Bernalillo, Los Alamos, Santa Fe, Los Alamos, and Dona Ana. Sandoval County was also included due to its proximity to Albuquerque.

#Justice professionals represent law enforcement, prosecution, courts, or corrections. C J advocates are victim advocates who work within the criminal justice system, either for District Attorneys or for police.

APPENDIX F

Special Population Focus Group Findings

Special Population Focus Groups

Focus Groups Convened by Tammi Lambert

Governor's Office of Victim Advocacy

Summary prepared by

Joan E. Crowley

Department of Criminal Justice

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Five focus groups were convened, representing five underserved communities:

- African American
- Immigrant Community
- Rural Community
- Native American
- Children (child protection professionals)

Because most of the focus groups were asked to consider the same issues raised in the AIA survey, the responses were organized into the same categories that emerged from that project. An additional category was added to the two questions concerning challenges and services, reflecting issues unique to one community.

A few results stand out. The African American respondents expressed concern that police would treat them offenders, not victims. Their distrust of police permeated their answers to all of the questions. Immigrants, too, reported fear and distrust of law enforcement, over and above concerns about deportation. Both of these groups have historically high rates of victimization, and the distrust of police prevents their access to the protections that residents have a right to expect from the justice system. One specific issue was immigration authorities picking up domestic violence victims at court, shelter, and social service areas.

Most of the focus groups voiced frustration with lack of enforcement and follow-through on the part of the criminal justice system. The court system was faulted for lack of timely actions, and lack of enforcement of orders. Advocates pointed out that the civil and criminal courts need to work in cooperation to reduce the pressure on families in crisis. Child Protective services, in particular, wanted more accountability for abusive parents, in addition to a greater range of treatment programs to break the cycle of violence in those families.

Rural victim advocates pointed out that police and prosecutors in their areas lack the training and resources to appropriately investigate cases of domestic violence and child abuse. SANE and safehouse services were specifically mentioned as needs. Family violence cases are complex and difficult for any district, but the lack of proper investigations and presentation of evidence precludes any chance for victims to see their wrongs redressed. Poor outcomes for those victims who try to do the right thing and go to the criminal justice system will further dampen reporting. Especially in rural communities, the local network shares the experiences of each victim.

Rural communities are often far from district courts, and prosecutors are not always willing to go out into these areas. Rural communities feel left out of the policy making process.

The problems caused by a lack of criminal justice resources are compounded by the lack of services, and by the lack of information about services among these underserved groups. Child protective services, as well as the immigration community note the difficulty undocumented people have accessing services, notably health care. A lack of bilingual staff was noted as a problem by both child protection and immigrant community participants.

Most groups mentioned problems in getting information to both victims and service providers. They suggested media campaigns and school programs. Child protection advocated a website the links to service providers.

These results suggest several areas that need improvement. Resources need to reach the rural communities to improve the training and investigative capabilities of law enforcement. It is easy for prosecutors to claim that they do not have enough evidence to prosecute, but those decisions leave victims with no protection from the court system. In the case of abused children, the outcomes can be catastrophic. The effectiveness of services can be enhanced by outreach, including use of the growing networks of access to the internet.

Groups:

CP= Child protection

AA= African American

RC= Rural Community

NA= Native American

IC= Immigrant Community

Challenges

Resources

CP: Not enough resources

CP: Not enough resources for families

RC: Officers need equipment to gather evidence properly

NA: Funding

IC: Lack of resources due to the victim's legal status

Coordination

RC: Too much advocate time spent on reporting processes. Funders of domestic violence advocates need to understand the realities of advocacy

RC: Increase collaboration

Education and outreach

NA: Need to educate victim on their safety as well as their children

IC: Lack of knowledge of the victims about their rights in this country

IC: Lack of knowledge on existing laws that protect immigrant victims of domestic violence

Services

CP: Resources for teenage victims and their families, such as shelter, counseling

CP: There are really no services such as foster homes, shelters or group homes for teenagers.

NA: Transportation

NA: Lack of access to shelters due to distance

NA: Lack of shelters, safe house
NA: Housing
NA: Provide clothing, food, and money till victims get back on their feet.
IC: Very few services for Spanish speaking victims
IC: Need housing option for victim ready to leave their abusers
IC: Lack of interpreters, especially at court, HSD [Tamm—what is this agency?], Children Youth and Family Department, Child Care Bureau, hospitals, domestic violence service providers, and police
IC: Overcrowded shelters

Training

RC: Enhanced training for officers

CJ and Social Services Performance

CP: Victims report and nothing is done. I have never been involved in a case where the parents were held accountable for [physical] abuse
CP: Don't know whether victims get timely or appropriate compensation
CP: Hearings are re-scheduled too often, and child victims are prepared and let down time and again. Makes it hard for child to heal and move on.
CP: Temporary Restraining Orders have no value, so parents cannot protect themselves and their children. Children have to be hurt for something to get done.
AA: Police brutality
RC: Evidence gathering needs to be improved. Investigation techniques are poor.
IC: Getting agencies to service immigrant clients because of the agency's lack of knowledge of their own policies
IC: Responses to 911 calls are known to take up to 2 or more hours

Client Characteristics issues

CP: Undocumented domestic violence victims are not informed about VAWA and miss their window of opportunity
CP: Undocumented rape victims rarely get services due to lack of Medicaid or other payment source
CP: Lack of awareness of available services
CP: Need to have a simple and concise way to relay information about services, appropriate to client education level
CP: Getting clients to utilize resources
AA: Distrust of the system
AA: Economic factors
NA: Sometimes victims don't want their parents prosecuted.
IC: Victim's fear of authorities

Specific issues for underserved group

CP: Not enough services available to help the perpetrators of DV and SA without significant cost—how can we stop the cycle if we won't help?
CP: More services for perpetrators of sex offenses
AA: Fear of being targeted as the perpetrator, rather than the victims, and being re-victimized
RC: When advocating, involve people that are in reservations that are not related to anyone on the reservation, in order to avoid conflict of interest issues

NA: Victims stay in the Native town or community because family and school are there, no DV shelter available.

IC: Lack of understanding from service providers of the barriers faced by battered immigrant women

IC: Fear of deportation

What services or policies do you think would help your community meet those challenges?

Resources

CP: More funding for shelters, professional providers, and the non-profit agencies that provide these services

CP: More resources for presentations, notification of resources, pamphlets

RC: Increase funding through the DA's office for advocates

RC: Need funding and information for victims from the start

NA: Mailers

NA: Funding for education

NA: Funding for victims to get to shelters

IC: Have enough staff to answer every 242-COPS (Tammi—what's this number?) call

IC: no money for interpreters

Coordination

CP: More interagency knowledge of community services to help providers more in unsubstantiated cases

RC: Criminal and civil systems need to be integrated, with information sharing on both sides.

Information

CP: TV or radio advertisements let people know there are policies or laws to be enforced.

CP: Educate children in junior and high school about sexual assault

CP: Website where someone can click on an area of need, such as domestic violence, substance abuse, housing, counseling, financial assistance, etc., and find a list of agencies providing those services, and can click on the agency name for more specific information

AA: Lack of public awareness of rights

IC: Increase awareness of how immigration laws impact minority communities

More services

CP: Medicaid/health coverage for undocumented citizens

CP: Higher pay and incentives for bilingual speakers

CP: More shelters

CP: More professional providers

CP: Increase mental health facilities and support groups for victims and their families

RC: SANE unit in remote areas

RC: Need sexual safehouse in the area

NA: Provide vouchers for food, clothing, not only in the tribal town but in other stores nearby

NA: Emergency cell phones

NA: More education

NA: More group sessions (Tammi--for DV offenders?)

NA: More community services in tribal communities

IC: Child care
IC: Food banks
IC: More low-income housing programs and transitional living

Criminal justice training

CP: Provide the same training for all agencies that work with victims
CP: More presentations so we (social service providers) know what is available
IC: Government Agencies need more training on their own policies and how to implement them
IC: Explaining [to?] existing service providers to offer services to undocumented clients as well

Criminal justice performance

CP: Perpetrators of crime know nothing will happen to them other than a police report. Tougher laws, reparation clauses
CP: Expedient trials
CP: Restitution
CP: More police, judges, PO's (probation/parole officers) who hold perpetrators/offenders accountable with more than a slap on the wrist
RC: There is not enough time and information in notification of release from detention centers.
RC: Not enough people handling misdemeanor cases at DA's offices
RC: Lack of experience of DA attorneys handling misdemeanor cases
RC: Gap when domestic violence victims' rights begin
RC: Have victim advocates in every law enforcement agency, every department, every station
RC: Victims not allowed to go to arraignments
RC: Problem with how DV is defined. Misdemeanor crimes not considered as serious
RC: Enhance services to victims depending on the severity of the crime
RC: Follow up on photographing physical injuries
RC: Need continued culturally relevant interviews for child sexual abuse.
RC: Sentence deferment does not work
RC: Create a mandatory arrest, with time limit of 24-48 hours before arraignment
RC: Why have the sexual assault cases taken so long?
RC: Why are domestic violence services constrained by economic guidelines? Domestic violence is not predicted by economics status.
NA: Judges should accept jurisdiction of where the incident happened
NA: Tougher laws for perpetrators, especially repeat DV offenders
NA: Follow through with longer DV classes
NA: Jail time for first offenders
IC: Respond to 911 calls in a timely manner
IC: Make follow-up calls
IC: Explicit policies NOT to ask for social security numbers

Specific service issues for underserved group

CP: More media coverage or public scrutiny might help the community to be better informed and demand justice.
CP: More education, pay and services for foster families that take teenagers
CP: Make it mandatory that substantiated cases of abuse and neglect engage the community services
CP: Anger management courses
CP: Funding for community based parenting classes

AA: Being overlooked

AA: How is core cultural competency measured? An assessment tool is needed

RC: It is hard to get DA's out into rural areas, and the community is too far from the District Court

RC: There is a feeling that tribes and rural communities have been left out of the policy making process

Are there any laws or legal issues the VRA should address?

CP: Laws with power to hold offenders accountable

CP: The DA's office needs to bring charges against perpetrators of child sex abuse with less hesitation regarding evidence. They say "we don't have enough evidence" even though the children have reported repeatedly

CP: In regards to children and child abuse, tougher consequences for abusive parents such as prohibiting them from working in schools or day care

CP: Legal issues pertaining to confidentiality need to be clear. People working with victims need to know what they can and cannot disclose to family, professionals, and others regarding information about the client.

CP: Get tough. Get tougher with 1st time offenders

CP: Expedient trials

CP: Accountability for all, not just some

NA: Legalities with funding and housing

NA: Non-native police and sheriff's departments need to honor Tribal Protection orders

IC: The need for social security numbers for parents who have U.S. citizen children

IC: Accountability for the lack of effectiveness of the emergency responses

IC: Laws that will not allow immigration authorities to pick up victims of DV near or at court, shelter, and social service areas

APPENDIX G

New Mexico Crime Victim Rights Project Survey & Findings

Victim Rights Survey (2004)

New Mexico Victims' Rights laws were enacted in 1987. These "rights" included: the right to appear and be heard at criminal proceedings, the right to be notified of proceedings in time to attend, the right to be informed of prison furloughs, transports, and escapes and the right to attend parole hearings and be informed of prison releases. In 1992, the rights granted to New Mexico crime victims also became part of our State Constitution. Since the criminal justice system cannot function without the participation of victims and witnesses it is important that crime victims and witnesses understand their rights. This survey is designed to gather information on how victims' rights in New Mexico are provided and enforced. Your participation is greatly appreciated.

To protect your privacy, please do not include any personal information about yourself, including name, address and phone number. If you do not understand a question you can call our Victim Advocate at (505) 881-1084. When you call simply state "I am having problems filling out the Victims Rights Survey" – ***you will not be required to provide your name.***

Section 1: The following questions focus on information you received, or did not receive, regarding your rights when you first reported the crime.				
	Question	Circle One		Comments
1.	Were you told of your rights as a victim? <i>If yes, skip to question #2</i>	Yes	No	
2.	Who told you about them? _____ _____			
3.	Were your rights given to you in writing?	Yes	No	
4.	Were you given information regarding any medical services available to you?	Yes	No	
5.	Were you given information regarding crisis intervention services or resources available to you?	Yes	No	
6.	Do you remember any of the services (Please List) _____ _____ _____			

	Question	Circle One		Comments
7.	Were you given a police report number for the criminal offense or a copy of the police report?	Yes	No	
8.	If yes, did you receive a copy of the following statement in writing? <i>"If within 30 days you are not notified of an arrest in your Case you may call (telephone number for law enforcement agency) to obtain information on the status of your case."</i>	Yes	No	
9.	Were you given the name of someone in the District Attorney's office, their address and telephone number that you could contact? If no, skip to question #10.	Yes	No	
10.	Did anyone tell you the offender was released from jail or prison?	Yes	No	
Section 2: As you answer the questions in this section, please keep in mind that you were entitled to general information about the criminal justice process and notice of important case events.				
11.	Do you know if formal charges were filed against the offender and, if so, were there any court proceedings related to the criminal offense? If no, go to question #16.	Yes	No	
12.	Were you given a copy of the charges filed against the offender?	Yes	No	
13.	Was information provided to you that described the steps generally involved in prosecuting a criminal offense?	Yes	No	
14.	Were you allowed to confer with the prosecuting attorney?	Yes	No	

	Question	Circle One		Comments
15.	District Attorney's office provide you with oral or written all scheduled court proceedings involving your case?	Yes	No	
16.	If yes, do you feel you were notified in a timely manner of all court related proceedings?	Yes	No	
17.	When you attended any of the court proceedings, were you or did you feel reasonably protected from the offender?	Yes	No	
Section 3: The following questions relate to restitution (restitution is the term used for the reimbursement of out-of-pocket expenses such as property damage, medical bills, funeral expenses, etc.).				
18.	Did you miss any work to attend court proceedings?	Yes	No	
19.	If yes, was your attendance voluntary or ordered by the prosecution?	Ordered	Voluntary	
20.	Were you paid for your parking expenses to appear in court?	Yes	No	
21.	Was any restitution (out-of-pocket expenses) awarded in your case?	Yes	No	
22.	If yes were you given a payment schedule? If no, skip to question 26.	Yes	No	
23.	If you received or are receiving restitution (reimbursement for out-of-pocket expenses), who do you receive your checks from (i.e., Court Clerk, Probation Office, Corrections Department or the directly from the offender)? <hr/> <hr/> <hr/>			

	Question	Circle One		Comments
Section 4: The following questions relate to Victim Reparations. Reparations is a form of financial assistance made available to crime victims who have expenses that may not be otherwise recoverable. Expenses covered by the New Mexico Reparation Crime Act are: Medical , Dental, Hospital, Funeral, Counseling and Loss of Wages. There are no awards for loss or damage to property or for pain and suffering.				
24.	Did you apply for any financial assistance through the New Mexico Crime Victims Reparation Commission?	Yes	No	
25.	Which service provider gave you the application?	Yes	No	
Section 5: The following questions relate to information about the conviction, sentencing, imprisonment, escape or release of the accused.				
26.	If the accused was convicted, did you receive any information relating to the offender's sentencing?	Yes	No	
27.	Did anyone explain the sentence imposed in full detail (time to be served, time to be charged off as "good time" or "good behavior").	Yes	No	
28.	Were you allowed to make a statement to the court at the time of sentencing or any other hearings related to the accused?	Yes	No	
29.	After the sentencing hearing, did you receive any information relating to additional hearings in your case?	Yes	No	
30.	Has the offender been paroled?	Yes	No	
31.	If yes, did you receive notice of the parole hearing in time to attend it?	Yes	No	
32.	If yes, was that information provided to you in writing?	Yes	No	

Section 6: The following questions relate to information about any property belonging to you that may have been held for evidence.				
33.	Was any of your property taken at the time of the crime to be used for evidence?	Yes	No	
34.	If yes, was that property returned to you?	Yes	No	
Section 7: The following questions relate generally to your rights as a victim of crime. Please be honest and open with your responses.				
35.	<p>Do you feel that you were treated with respect and with fairness by the following agencies?</p> <p><i>If no, how do you feel you were treated unfairly? Please make comments.</i></p> <p>Law enforcement (the police, sheriff's department or other responding agency)?</p> <p>Medical services (the EMTs, emergency room staff, doctors etc.)?</p> <p>Crisis intervention?</p> <p>Prosecutor's office?</p> <p>Judicial system?</p> <p>Any victim organization</p> <p><i>If yes what was the name of the organization?</i></p> <p>_____</p> <p>_____</p> <p>_____</p>	Yes	No	
		Yes	No	_____
		Yes	No	_____
		Yes	No	_____
		Yes	No	_____
		Yes	No	_____
		Yes	No	_____

COMMENTS:

36. As the victim of a violent crime, are there any processes or changes you would like to see changed in order to assist future victims?

37.	Age: _____	Sex: _____	Race: _____
	Residential Zip Code: _____		
	Please describe the type of crime: _____		
	What law enforcement agency(s) were involved: _____		

Victim Rights Survey Results (2004)

In 2004, the DWI Resource Center conducted a brief survey of 1280 crime victims to determine the level of support each received. 155 crime victims responded to this survey. The results of this survey are as follows:

Question 1: Were you told you had certain rights as the victim of a crime?

Yes: 65.8%

No: 23%

Unsure: 6%

No answer: 6%

Question 2: Were you given information about crisis and medical services available to you?

Yes: 61%

No: 29%

Unsure: 5%

No answer: 6%

Question 3: Were you given a police report number or a copy of the police report?

Yes: 39%

No: 53%

Unsure: 3%

No answer: 5%

Question 4: Were you given the name and telephone number of someone in the District Attorney's office for you to contact?

Yes: 69%

No: 25%

Unsure: 1%

No answer: 5%

Question 5: Did anyone tell you when (or if) the offender was released from jail or prison?

Yes: 17%

No: 50%

Unsure: 9%

No answer: 25%

Question 6: Were you given a copy of the charges files against the offender?

Yes: 41%

No: 40%

Unsure: 5%

No answer: 14%

Question 7: Were you allowed to talk with the prosecuting attorney about the charges, a pleas and/or trial?

Yes: 54%

No: 29%

Unsure: 4%

No answer: 14%

Question 8: Did the District Attorney's office inform you of all scheduled court proceedings such as arraignments, motions, pleas and/or sentencing?

Yes: 53%

No: 28%

Unsure: 5%

No answer: 14%

Question 9: Were you told that the offender could be ordered to pay you for certain monetary losses caused by the crime?

Yes: 37%

No: 44%

Unsure: 3%

No answer: 16%

Question 10: Was any restitution ordered in your case?

Yes: 20%

No: 50%

Unsure: 11%

No answer: 20%

Question 11: If yes, were you given a payment schedule?

Yes: 5%

No: 89%

Unsure: 6%

Question 12: Did you apply for any financial assistance through the New Mexico Crime Victims Reparation Commission?

Yes: 74%

No: 16%

Unsure: 5%

No answer: 5%

Question 13: If yes, did someone help you fill out the forms?

Yes: 42%

No: 46%

Unsure: 11%

Question 14: If the offender was convicted, did you receive any information about the sentence?

Yes: 59%

No: 35%

Unsure: 6%

Question 15: Did the prosecutor tell you of your right to speak at the hearing?

Yes: 46%

No: 27%

Unsure: 5%

No answer: 23%

Question 16: Were you allowed to make a statement to the court at the time of sentencing or any other hearing related to your case?

Yes: 36%

No: 26%

Unsure: 7%

No answer: 32%

Question 17: After the sentencing hearing, did you receive any information relating to additional hearings in your case?

Yes: 10%

No: 48%

Unsure: 7%

No answer: 35%

Question 18: Has the offender been released or paroled?

Yes: 30%

No: 24%

Unsure: 16%

No answer: 30%

Question 19: If yes, did you receive notice of the parole hearing in time to attend?

Yes: 13%

No: 84%

Unsure: 3%

Question 20: Did you feel you were treated with respect by:

Law enforcement?

Yes: 69%

Medical services?

Yes: 63%

Crisis intervention?

Yes: 49%

Prosecutor's Office?

Yes: 55%

Judicial System?

Yes: 42%

Any victim organization?

Yes: 50%

From the results of this survey, it is clear that the state of New Mexico continues to have a problem addressing victims' rights.

APPENDIX H

Expanding Victims' rights in New Mexico

Expanding Victims' rights in New Mexico

Governor Bill Richardson's Executive Order 2007-002 mandated that the Alliance identify gaps and barriers in crime victim right implementation, and to create recommendations. There are two significant areas in which the Alliance identified gaps and barriers, but offered no recommendation. This was based on the Alliance determination that to do so would not be feasible at this time. The issues are: (1) Whether crime victims' rights should depend on an enumerated list; and (2) When crime victims' rights should begin.

Currently, New Mexico's constitution and laws guarantee victims' rights only if the prosecutor charges the case with a crime on the list enumerated in New Mexico statute and/or Constitution. This creates an uneven application of victims' rights. In some cases, the enumerated crimes will be pled away, leaving post-conviction rights such as notification of offender release unavailable to victims of brutal crimes. In this, the state is unique. In many other states, rights are given to victims of all types of crimes. This distinction between victims of violence and other victims is artificial, as all crimes can be emotionally, physically, and financially devastating for victims. For example, elderly victims of white collar crime need information and support, but are afforded no victims' rights. Members of the Alliance believe that all victims of crime are should be afforded basic rights.

The major stumbling block to this extension of rights is that expanding rights would create an unfunded mandate, straining an already overburdened system. Some of the recommended actions that the Alliance has proffered in this report will filter into benefits for victims of non-enumerated crimes. The SAVIN recommendation and the training recommendations will benefit both protected and non-protected victims. However, the Alliance has determined that an expansion of rights to all victims would need more support and financial backing than is currently available for additional district attorney victim advocates, law enforcement victim advocates, and other many areas of the criminal justice system.

The second vital gap in victim services upon which the Alliance offers no recommendation is the issue of when victims' rights begin. The New Mexico Victim Bill of Rights states that rights do not apply until a case is formally charged by a district attorney. This restriction excludes a large number of victims, since some misdemeanor crimes and crimes with no known offender are never charged by a district attorney. For example, while New Mexico has made special provisions for household members who are victims of battery, battered victims of non-household members have no rights. A rape victim who cannot identify the offender similarly has no rights in current law because there is no present criminal case in which to apply the rights. The unfortunate and unintended effect is that often victims are not informed of victim services. They may be unaware of resources such as those offered by the Crime Victims Reparation Commission until after the two-year statute of limitation application date, forever barring victims from any meaningful financial assistance. This issue can only be resolved by adding victims' rights that currently do not exist in the statute. The Alliance did not believe that this major undertaking could be responsibly recommended without a more in-depth needs analysis of existing systems.