



Victim Protection Legislation

*2025 Regular Legislative Session
Summaries and Draft Language*

Summary of Bill: Victim's Right to Refuse Pretrial Statement or Interview

Attorney General Raúl Torrez has seen firsthand a child or adult victim be held subject to as many as seven interviews before they ever stepped foot in the courtroom. This incessant number of pretrial interviews retraumatizes victims and can sometimes be used as a tactic to wear victims down, causing some to stop cooperating or participating in the case in the hopes of halting the secondary trauma these interviews pose. Many pretrial interviews are conducted by attorneys who are not trained on how to execute forensic interviews, causing questions to be violating and damaging to the victim. This proposed amendment to the Victims of Crime Act grants new protections for child and adult victims involved in criminal proceedings, aiming to strengthen victim protections, ensure their privacy and dignity, and prevent undue pressure during criminal proceedings.

Key provisions include:

1. **Child Victims:** A child victim or witness (under 18) cannot be forced to give a pretrial statement or interview.
2. **Adult Victims:** Adult victims have the right to refuse or limit pretrial interviews. If they decline, the opposing party may petition the court for written questions, which must be asked by a trained forensic interviewer in a recorded session, with the parties observing remotely.
3. **Court Oversight:** Courts will reject irrelevant or repetitive questions and may modify questions to protect the victim's health, privacy, and safety without limiting access to essential information.
4. **Defendant Contact:** Defendants cannot directly contact victims; all communication must go through the prosecutor's office, which is also responsible for protecting the victim's personal information unless a court deems it necessary to disclose.
5. **Victim's Interview Conditions:** If an adult victim agrees to an interview, they can set conditions, have an advocate present, and end the interview at any time. The prosecutor's office has the authority to protect the victim from harassment or abuse during the interview.
6. **Non-Disclosure of Refusal:** Defendants are prohibited from commenting during trial on the victim's refusal to give an interview. If such comments are made, the judge must instruct the jury that the victim has the right to refuse.

SECTION 1. A new section of the Victims of Crime Act is enacted to read:

"[NEW MATERIAL] RIGHT TO REFUSE PRETRIAL STATEMENT OR INTERVIEW.—

A. A child victim or child witness in a criminal proceeding shall not be compelled to give a pretrial statement or interview. For purposes of this section, a “child” means an individual under the age of eighteen at the time of the requested pretrial statement or interview.

B. An adult victim shall have the right to refuse a pretrial statement or interview conducted or initiated by a party in a criminal proceeding. If an adult victim declines to be interviewed or places limits on the scope of questioning during an interview pursuant to subsection D of this section, a party may petition the court for approval of written interrogatories that shall be asked of the victim by an individual trained in forensic interviews, such as a law enforcement officer, in a recorded interview at which the parties shall not be present but may observe remotely. The court shall deny interrogatories that are not material to the party’s preparation for trial or that duplicate questions previously answered by the victim in a statement that has been made available to the parties. The court may modify interrogatories in a manner that protects the victim's health, safety and privacy provided the modification does not substantially diminish the parties’ access to material information that is not contained in a previous interview.

C. The defendant shall not initiate contact with the victim except through the prosecutor's office. The prosecutor's office shall promptly inform the victim of the defendant's request for an interview and shall advise the victim of the victim's right to refuse the interview. The prosecutor's office shall not notify the defendant of the victim's address, telephone number, location or any other personally identifiable information unless it is ordered to do so by a court upon a showing of compelling need for the information.

D. When an adult victim consents to an interview, the prosecutor's office shall inform the defendant of the time, place and manner the adult victim has selected for the interview. If the adult victim wishes to impose other conditions on the interview, the prosecutor's office shall inform the defendant of the conditions. The victim shall have the right to have an advocate present at the interview, to terminate the interview at any time or to refuse to answer any questions during the interview. At the request of the victim, the prosecutor shall have authority to protect the victim from harassment, intimidation or abuse during the interview and may seek a protective order. All parties participating in the interview shall respect the victim's health, privacy and dignity.

E. Unless otherwise directed by the victim and except as provided in subsection B of this section, the prosecutor may attend all interviews. If the prosecutor is not in attendance, the prosecutor may request a copy of an interview transcript at the prosecutor's expense.

F. The defendant shall not comment on the victim's refusal to undergo an interview during trial. If such comment is made, the judge shall instruct the jury that the victim has the right to refuse an interview."

Summary of Bill: Amendments to the Victims of Crime Act

The New Mexico Department of Justice has received complaints regarding victims of crime who have received little to no notice of hearings pertaining to their case, no accessibility to participate in their case's hearings and other violations of the Victims Rights Act (VRA). This breach of the VRA has not only caused immense stress for victims and their families, in some cases it has led to the defendant receiving adjusted probation and other changes to their case that were not previously agreed upon. This legislation aims to strengthen the rights and protections for victims of crime, improve the notification process, and provide legal remedies for breaches of the Act:

1. **Expanded Definition of Criminal Offenses:** The bill adds battery upon a healthcare worker and human trafficking to the list of offenses covered under the Victims of Crime Act.
2. **Right to Legal Representation:** Victims will be allowed to appear in court through an attorney, providing them with stronger representation in legal proceedings.
3. **Court Notification:** The bill mandates court clerks to notify victims of scheduled court proceedings at least seven working days in advance, unless a judge finds that a shorter notice period is reasonable.
4. **Victim Participation in Court:** Victims have the right to appear at all court proceedings, make statements (personally or through a representative), and access any necessary language services.
5. **Remedies for Violations:** Victims can bring a private cause of action against public agencies or employees for violations of their rights under the Act. Attorney's fees and costs can also be awarded. The Attorney General may impose civil penalties of up to \$500 per violation or per day for ongoing violations. Monies recovered as a result of these violations will be deposited into the New Mexico Crime Victims Reparation Fund.
6. **Repeal of Section:** The bill repeals Section 31-26-5 of the Victims of Crime Act which conditions a victim's right on the timing of filing a criminal report and the level of cooperation with the prosecuting authority.

HOUSE BILL ____

59th Legislature - STATE OF NEW MEXICO - First Session, 2025

INTRODUCED BY
[SPONSORS]

AN ACT

RELATING TO THE PROTECTION OF VICTIMS' RIGHTS; AMENDING THE VICTIMS OF CRIME ACT TO ADD BATTERY UPON A HEALTH CARE WORKER AND HUMAN TRAFFICKING TO THE DEFINITION OF CRIMINAL OFFENSE AND TO ALLOW VICTIMS TO APPEAR IN COURT THROUGH AN ATTORNEY; REQUIRING NOTICE FROM THE COURT TO BE GIVEN BY THE COURT CLERK AND REQUIRING JUDICIAL FINDINGS TO REDUCE THE NOTICE PERIOD; CREATING REMEDIES FOR VIOLATING THE VICTIMS OF CRIME ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 36-1-3 NMSA 1978 (being Laws 1994, Chapter 144, Section 3, as amended) is amended to read:

“36-1-3. DEFINITIONS.--

As used in the Victims of Crime Act:

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 [Chapter 30, Article 3A 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;
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- (21) aggravated battery against a household member, as provided in Section 30-3-16 NMSA 1978;
- (22) battery upon a health care worker, as provided in Section 30-3-9.2 NMSA 1978;
or
- (23) human trafficking, as provided in Section 30-52-1 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. A victim may designate an attorney to be a victim's representative and may have a victim's representative speak on the victim's behalf at court proceedings or in court filings."

SECTION 2. Section 31-26-10 NMSA 1978 (being Laws 1994, Chapter 144, Section 10) is amended to read:

"31-26-10. PROCEDURES FOR PROVIDING VICTIMS WITH NOTICE OF A COURT PROCEEDING; COURTS; DISTRICT ATTORNEYS.—

A court clerk 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 judge finds in writing that exceptional circumstances require a shorter notice period [is reasonable] under the circumstances. If a judge finds exceptional circumstances and holds a scheduled court proceeding in the victim's absence, the victim shall have a right to an expedited appeal subject to de novo review. If the appellate court finds that no exceptional circumstances existed to require a shorter notice period, any outcome of the court proceeding shall be vacated, and the court proceeding shall be rescheduled with no less than seven days' notice. 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 of the Victims of Crime Act."

SECTION 3. Section 31-26-10.1 NMSA 1978 (being Laws 2005, Chapter 283, Section 1) is amended to read:

"31-26-10.1. CRIME VICTIM PRESENCE AT COURT PROCEEDINGS; PLEA AGREEMENT NOTIFICATION.--

A. A victim has a right to appear and to make a statement, personally or through a victim's representative, at all scheduled court proceedings and shall be entitled to any language services necessary for participating in or observing any court proceedings. 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.

SECTION 4. Section 31-26-13 NMSA 1978 (being Laws 1994, Chapter 144, Section 13) is amended to read:

“31-26-13. ~~[DISCLAIMER]~~ REMEDIES FOR VIOLATIONS OF THE ACT.—

~~[Nothing in the Victims of Crime Act creates a cause of action on behalf of a person against a public employer, public employee, public agency, the state or any agency responsible for the enforcement of rights or provision of services set forth in that act.]~~

A. A victim may bring a private cause of action against a public agency or public employer for a violation of duties imposed by this Act. A court may award attorney’s fees and costs to a victim who successfully proves a violation of the Act regardless of the amount of damages awarded.

B. The attorney general may seek civil penalties for a violation of the Victims of Crime Act in an amount not exceeding five hundred dollars (\$500.00) per violation or, for ongoing violations, five hundred dollars (\$500.00) per day. Any penalty awarded under this subsection shall be deposited in the crime victims reparation fund created by Section 31-22-21 NMSA 1978.

C. Any award of damages, attorney’s fees, costs, or civil penalties under this section shall be paid by the public agency or public employer of the public officer or employee who violated the Act.

SECTION 5. REPEAL. Section 31-26-5 NMSA 1978 (being Laws 1994, Chapter 144, Section 5) is repealed.