

## **Worksheet 8.1**

### **Victims' Rights for Case Scenarios<sup>1</sup>**

#### **Constitutional Victims' Rights Amendment**

- 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.

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<sup>1</sup> Adopted from New Mexico law.

- 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.

### **Statutory Victims' Rights**

#### **§ 31-26-3. 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) Crime identified in the constitutional victims' rights amendment; and
  - (2) Armed robbery, as provided in Section 30-16-2 NMSA 1978;
  - (3) Stalking or aggravated stalking, as provided in the Harassment and Stalking Act;
- 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.

#### **§ 31-26-4. Victim's rights.**

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;

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- 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.

**§ 31-26-5. Exercise of rights; requirements for victim.**

A victim may exercise his rights pursuant to the provisions of the Victims of Crime Act 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.

**§ 31-26-6. When rights and duties take effect; termination of rights and duties.**

The rights and duties established pursuant to the provisions of the Victims of Crime Act 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.

**§ 31-26-8. Procedures for providing victims with preliminary information; law enforcement agencies.**

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.

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

- 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 legislation that implements the provisions of Article 2, Section 24 of the constitution of New Mexico;
  - (3) A copy of the charge filed against the accused for the criminal offense;

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- (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. If requested by the victim, 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.

**§ 31-26-10. Procedures for providing victims with notice of a court proceeding; courts; district attorneys.**

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 of the Victims of Crime Act.

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

- 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.

**§ 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.**

- 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.

**§ 31-26-13. Disclaimer.**

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.

**§ 31-26-14. Effect of noncompliance.**

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.

## **Worksheet 8.2**

### **Case Scenarios**

#### **Case Scenario 1: Jason and His Late Hours at the Office**

Jason Silva has been working really late on a big marketing piece for a firm he hopes to gain employment with. One evening he decided to do some work at a local café and enjoy some coffee while he finished up a marketing proposal. Time slipped away quickly and at midnight the manager told him she was closing up. He packed up his computer and was tiredly walking home. On the way to his apartment he was held up at gun point. His wallet, watch, and leather jacket were all taken. He immediately called the police. When the police arrived, Jason was visibly shaken and distraught. The police took down Jason's contact information and description of the crime.

It has been three months and Jason has gotten back to his normal routine. He is excited because his marketing proposal has been accepted and he is now working with one of the largest marketing firms in the city. However, he has not heard anything about the developments with the crime and he is wondering what is happening.

What can you tell him?

#### **Case Scenario 1: Steps and Analysis**

1. Is Jason a constitutional and/or statutory victim?
2. If Jason is a "victim," what rights attach at this point in the case?
3. If Jason is a "victim," and rights do attach, what can you tell him and what can he do?

**Case Scenario 2: A Development in the Crime against Jason**

Same facts as Case Scenario 1, except the prosecutor charged the crime as a low-level felony and is proceeding with a plea offer.

The plea will allow the defendant to plead to a misdemeanor that will not result in any prison time. At the point in time you learn of this situation, Jason has no knowledge of the plea negotiations or plans for a deal. What, if anything, can be done?

**Case Scenario 2: Steps and Analysis**

1. What key rights are at issue?
2. What can be done?

**Worksheet 8.2, continued**

**Case Scenario 3: Karen and Kevin**

Karen Doe has been the victim of domestic violence for years by her boyfriend Kevin. Her family has urged her to leave the abusive relationship, but she hasn't been able to do so. Late one night Kevin came home from work clearly angry about something. When Karen asked him if he was all right, he snapped at her. When she continued to ask questions Kevin attacked her, breaking her arm. Karen called the police and wants the district attorney to prosecute the case and, perhaps more importantly, she is scared of Kevin and wants to leave the relationship.

**Case Scenario 3: Steps and Analysis**

1. Does Karen have any rights to protection?
2. What can be done?
3. What if as the case proceeds she tells you that her employer will not let her off work to attend trial and testify?

### **Case Scenario 4: Karen and Kevin Meet Again**

Karen is still cooperating with the authorities. The last Karen heard, Kevin was incarcerated pending trial. She has tried to move on, although it has been very difficult for her. She is comforted by all of the support of her family and friends. She most enjoys spending time with her two young children. One Sunday afternoon she decided to take the children shopping since it was a rainy afternoon. While she is out shopping with her children and mother, she encounters Kevin. No one told her about a release hearing or his escape or release.

### **Case Scenario 4: Steps and Analysis**

What can be done?

## **Worksheet 8.2, continued**

### **Case Scenario 5: Sara's Lost Innocence**

Sara is a minor who was raped. The defendant has been charged with criminal sexual contact of a minor. He is now seeking discovery of records for Sara's counseling sessions. Sara and her parents want to stop the disclosure. What, if anything, can be done to stop the disclosure?

### **Case Scenario 5: Steps and Analysis**

1. What rights are at issue?
2. What can you do?

**Case Scenario 6: Sara, 3 Years Later**

Recall Sara, the minor who was raped. It has been 3 years since the sexual assault occurred. Sara has been coping with the trauma and has a good support system in her mother and grandparents. The trial is now only a week away. Every time Sara thinks about it she gets physically sick. Now the defendant has brought his fifth motion to continue the trial date. Sara and her mother are very frustrated and they want to know if there is anything that can be done. What do you say?

**Case Scenario 6: Steps and Analysis**

1. What rights are at issue?
2. What can be done?

## **Worksheet 8.2, continued**

### **Case Scenario 7: Remembering Jane and Tom**

In Module 5, we met Jane and Tom. Let's revisit that situation.

Jane and her friend Tom were attacked in the alley outside the restaurant where they worked. Tom was murdered but Jane survived. The alleged assailant will be on trial for the crimes of aggravated assault and murder. The judge plans to order the jury, the prosecution, the defense attorney, and the court reporter to go to the scene of the crime. Jane, Jane's mother, and Tom's mother all want to be present for the whole trial. Who, if anyone, can attend the trial? Now let's analyze the scenario 2 weeks before trial and the day of the trial.

### **Case Scenario 7: Steps and Analysis**

1. Who, if anyone, is a constitutional and/or statutory victim?
2. What rights are at issue?
3. Which of these proceedings is a "public court proceeding" and which does "defendant have the right to attend"?
4. What can be done?

### **Case Scenario 8: A Life without Nicole**

Steven and his fiancée Nicole were vacationing in a beautiful spot a few states away. The weather was warm and they were enjoying a long walk. They were approached by a man in a van who asked for directions. When Steven informed him they weren't from the area, the man pulled them into the van. Despite their efforts to fight him off and escape, they were kidnapped.

Steven and Nicole were both brutally assaulted. Steven survived the attack, but Nicole was murdered. The defendant's case was brought as a capital case. He has been convicted of the crimes and is now being sentenced in a capital sentencing proceeding (meaning he is death penalty eligible). Steven has been grieving the loss of Nicole for some time now. He believes that if he talks at sentencing it will help him put closure on these tragic events.

As he writes his notes he finds that what he wants to say is about a few very specific things: how wonderful Nicole was, how he cries for her every day, and how his life is ruined. He also wants to talk about the brutality of the crime and how the defendant should never be released because he cannot be rehabilitated.

Is Steven allowed to make these comments? How can he do it? What if Steven wants to say all of these things and would like to recommend life in prison? Can he do this?

### **Case Scenario 8: Steps and Analysis**

1. What rights are at issue?
2. What can be done?

## **Worksheet 8.2, continued**

### **Case Scenario 9: Nicole's Murderer is Up for Parole**

Nicole's murderer was only sentenced to 20 years in prison. This gave Steven peace of mind knowing that he would be behind bars for so long. However, 10 years later the murderer is up for parole. What rights does Steven have?

### **Case Scenario 9: Steps and Analysis**

1. What rights are at issue?
2. What can be done?

**Case Scenario 10: Steven, Nicole, and the Right to Notice of the Parole Proceeding**

Now let's assume in the case of Steven and Nicole there is a right to notice of the parole proceeding, and a right to be heard at it. What if anything can be done if the defendant is released on parole and the victim never knew of the proceeding?

**Case Scenario 10: Steps and Analysis**

What can be done?