

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;
- 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;
- 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; and
- M. be notified by the district attorney of the availability of and procedures to apply for crime victims reparation.

History: [Laws 1994, ch. 144, § 4](#); [1999, ch. 238, § 6](#); 2019, ch. 211. § 10.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, required that victims be notified by the district attorney of the availability of and procedures to apply for crime victims reparation; and added Subsection M.

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](#), *overruled on other grounds by State v. Martinez*, [2021-NMSC-002](#).

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 Section 31-20A-1C NMSA 1978 (repealed) and Section 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.