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New Mexico Victims' Rights Training for Incarcerated Persons FAQs

Am I a victim?

The word “victim” has many definitions in law and, depending upon which definition(s) apply to you, you will be entitled to different rights. There are two key categories:

- The definition for purposes of New Mexico’s constitutional and statutory rights
 - To be entitled to the rights guaranteed by the New Mexico Constitution, you must be a victim of specifically listed crimes, which includes criminal sexual penetration.¹ In addition to those who are victims of the listed crimes, the New Mexico Victims of Crime Act, a statute, guarantees rights to victims of several additional crimes.²
 - A broader definition of “victim” allows those who have suffered financial harm as a result of a defendant’s criminal activities to seek restitution, which is money paid by the convicted person for those financial harms.³
- The definition for the purposes of The Prison Rape Elimination Act (PREA)
 - PREA protects victims of sexual misconduct, such as sexual assault, sexual abuse and sexual harassment.⁴

If I am victimized while incarcerated, how can I report what happened?

- One option is to make a report directly to the facility at which you are housed. Processes might look different depending on where you are housed, but by law you have the option

¹ The New Mexico Constitution’s full list of crimes includes: “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.” N.M. Const. art. 2, § 24(A).

² The New Mexico Victims of Crime Act guarantees rights to victims of armed robbery, stalking or aggravated stalking, aggravated assault against a household member, assault against a household member with intent to commit a violent felony, battery against a household member and aggravated battery against a household member - these rights are also guaranteed to family members or victims’ representatives when the victim is a minor, is incompetent, or is a victim of homicide. N.M. Stat. Ann. § 31-26-3(B); N.M. Stat. Ann. § 31-26-3(F).

³ See N.M. Stat. Ann. § 31-17-1(A).

⁴ See 28 C.F.R. §§ 115.5-501.

to report by speaking directly to someone at your facility or by submitting a report in writing.⁵ You should have a number of options within the facility about how to privately make a report.⁶ You should never be told that you have to report this type of misconduct to the person who committed it against you.⁷ Facilities are required to accept anonymous reports.⁸

- Another option is to have someone else make an anonymous or non-anonymous report on your behalf directly to the facility.⁹
- You may also choose to make a report, or have someone else make a report on your behalf, to a designated place outside of the facility. This designated place is required to immediately forward a report to the appropriate officials, and the report will remain anonymous, if you or the person reporting on your behalf requests anonymity.¹⁰
- There are protections against retaliation or punishment for reporting sexual abuse or sexual harassment. Once there is a report that you experienced sexual abuse, you will be separated from the abuser and appropriate steps will be taken to collect any evidence.¹¹ The specific details may vary from facility to facility, but multiple protection measures - such as housing changes, removal of the abuser from contact with you, and emotional support services - will be available to protect you against retaliation,¹² and there will be

⁵ “Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.” 28 C.F.R. § 115.51(c).

⁶ “The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.” 28 C.F.R. § 115.51(a).

⁷ “The agency shall ensure that - (1) An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and (2) Such grievance is not referred to a staff member who is the subject of the complaint.” 28 C.F.R. § 115.52(c).

⁸ 28 C.F.R. § 115.51(c) (“Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.”).

⁹ “Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.” 28 C.F.R. § 115.51(c). *See also* 28 C.F.R. § 115.54 (“The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate.”).

¹⁰ “The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.” 28 C.F.R. § 115.51(b). *See also* 28 C.F.R. § 115.51(c) (“Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.”); 28 C.F.R. § 115.54 (“The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate.”); 28 C.F.R. § 115.61(e) (“The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility’s designated investigators.”).

¹¹ *See* 28 C.F.R. § 115.64(a)(1).

¹² *See* 28 C.F.R. § 115.67(b) (“The agency shall employ multiple protection measures, such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and

monitoring in place for at least 90 days after the report of abuse to identify any possible retaliation, so that it can be remedied promptly.¹³ If anyone else who is cooperating with the investigation of abuse fears retaliation, they will also be protected.¹⁴ Any potential use of segregated housing to protect you is subject to strict requirements.¹⁵

Can I access confidential support?

- If you choose to make a report, you are entitled to access a victim advocate who can provide you with confidential support through any medical examination process, as well as in connection with investigatory interviews. This victim advocate will offer you emotional support, crisis intervention, information, and referrals.¹⁶
- Regardless of whether you choose to make a report, you must be provided with access to victim advocates outside your facility who can offer emotional support services related to sexual abuse.¹⁷ Your communications with these advocates will be provided in as

emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.”).

¹³ See 28 C.F.R. § 115.67(c) (“For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.”); 28 C.F.R. § 115.67(d) (“In the case of inmates, such monitoring shall also include periodic status checks.”); *but see* 28 C.F.R. § 115.67(f) (“An agency’s obligation to monitor shall terminate if the agency determines that the allegation is unfounded.”).

¹⁴ See 28 C.F.R. § 115.67(e) (“If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.”).

¹⁵ See 28 C.F.R. § 115.68 (“Any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.”); *see also* 28 C.F.R. § 115.43 (establishing the conditions under which involuntary segregated housing may be utilized).

¹⁶ See 28 C.F.R. § 115.21(d) (discussing who may serve as a victim advocate following the report of sexual misconduct and the services the advocate will be able to offer; and specifying that any person serving in this victim advocacy role must offer “a comparable level of confidentiality as a nongovernmental entity that provides similar victim services”).

¹⁷ See 28 C.F.R. § 115.53(a) (“The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.”); *see also* Department of Justice Interpretive Guidance (Feb. 3, 2020), <https://www.prearesourcecenter.org/frequently-asked-questions> (“While the victim advocacy requirements of PREA Standard 115.21 are generally triggered after an inmate makes a report of sexual abuse within a facility, agencies are required to provide *all* inmates with access to outside confidential support services under PREA Standard 115.53, *whether or not* they make allegations of sexual abuse.”) (emphases in original).

confidential a manner as possible,¹⁸ and you must be told in advance about any limitations on this confidentiality.¹⁹

What are my rights as a crime victim?

- In addition to the rights and reporting processes available through PREA, victims in New Mexico have a number of constitutional and statutory rights - the information below highlights some of the key rights guaranteed to victims. It is not a complete list of all rights.
- New Mexico law guarantees the following rights to those who fit the definition of “victim”:
 - the right to be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;
 - the right to timely disposition of the case;
 - the right to be reasonably protected from the accused throughout the criminal justice process;
 - the right to notification of court proceedings;
 - the right to attend all public court proceedings the accused has the right to attend;
 - the right to confer with the prosecution;
 - the right to make a statement to the court at sentencing and at any post-sentencing hearings for the accused;
 - the right to restitution from the person convicted of the criminal conduct that caused the victim's loss or injury;
 - the right to information about the conviction, sentencing, imprisonment, escape or release of the accused;

¹⁸ Confidential communications between victims and victim counselors are subject to explicit privilege protections in New Mexico. See N.M. Stat. Ann. § 31-25-3 (defining the privilege); see also N.M. Stat. Ann. § 31-25-2 (defining the terms associated with the statutory privilege); *Albuquerque Rape Crisis Ctr. v. Blackmer*, 120 P.3d 820 (N.M. 2005) (holding that victims’ statutory privilege set forth in the Confidentiality Act was consistent with the psychotherapist-patient privilege and was to be given effect, as both privileges are designed to “protect confidential communications made during the course of treatment for an emotional or psychological condition from disclosure during court proceedings”).

¹⁹ See 28 C.F.R. § 115.53(b) (“The facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.”); see also 28 C.F.R. § 115.53(a) (requiring the facility to “enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible”). The Department of Justice has observed that “it is almost always possible for facilities to maintain complete confidentiality with respect to the substance of communications between the inmate and the emotional support service provider.” Department of Justice Interpretive Guidance (Feb. 6, 2020), <https://www.prearesourcecenter.org/frequently-asked-questions>. In some circumstances, such as when services are provided in-person through the visitation process, “certain facility personnel will need to know the nature of the visits. However, in these instances, staff should protect this information from internal dissemination to the greatest extent possible.” *Id.*

- 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;
- 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 property²⁰; and
- the right to restitution for the financial harm caused by a defendant's criminal activities.²¹

How do I make my rights meaningful?

- Although PREA processes and rights apply broadly to sexual abuse and sexual harassment, some of New Mexico's constitutional and statutory rights may only be available to victims of specific crimes, while others, including the right to restitution, apply no matter what type of crime you experience.²²
- Some rights apply automatically, without requiring any special action by you, while sometimes victims are asked to take certain steps before rights will apply.
- Victims who want to exercise their rights under New Mexico's statutory Victims of Crime Act generally need to meet several requirements. They must: (1) report 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; (2) provide the district attorney with current and updated contact information; and (3) fully cooperate with and respond to reasonable requests from law enforcement and the district attorney.^{23, 24}

²⁰ N.M. Const. art. 2, §§ 24(A)(1)-(11); N.M. Stat. Ann. §§ 31-26-4(A)-(K). The statutory New Mexico Victims of Crime Act, in addition to guaranteeing the rights mentioned in New Mexico's constitutional provision, guarantees victims the additional right to 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. N.M. Stat. Ann. § 31-26-4(L).

²¹ See N.M. Stat. Ann. § 31-17-1.

²² Please [contact NCVLI to request technical assistance](#) if you are working with an incarcerated person who is experiencing difficulty in seeking enforcement of their rights as a result of their custodial status. Although litigation of this issue may be necessary because of the structure of New Mexico's constitutional provisions, New Mexico's statutes do not contain the same limitations. See N.M. Const. art. 2, § 24(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."). The form to request technical assistance on this topic is available by clicking on the hyperlink at the beginning of this footnote or by navigating to the following web address: <https://law.lclark.edu/live/forms/50-ta-request-for-attorneys-victim-advocates>.

²³ N.M. Stat. Ann. § 31-26-5.

²⁴ New Mexico's constitutional rights may not be subject to these prerequisites, as this language is not included in the constitution. See N.M. Const. art. 2, § 24 (including no mandatory prerequisites in the guarantee of victims')

- Many of the key statutory victims’ rights in New Mexico apply only after charges have been formally brought against a defendant. Often, this happens when a document called an indictment is filed.²⁵ Many of these rights continue to apply until the final disposition of the court proceedings relating to the criminal offense(s).^{26, 27}
- Restitution is ordered only after a defendant is convicted, but many victims begin keeping track of the expenses they incur as a result of the crime and asking for their right to restitution to be taken into account well before there is a conviction. Many victims speak with the prosecutor or with a victim advocate about the financial costs of the crime beginning early on in the process, to make sure it is not overlooked in connection with any plea negotiations that could take place.²⁸

rights). Please [contact NCVLI to request technical assistance](#) if you require additional assistance on this issue. The form to request technical assistance on this topic is available by clicking on the hyperlink in the previous sentence or by navigating to the following web address: <https://law.lclark.edu/live/forms/50-ta-request-for-attorneys-victim-advocates>.

²⁵ N.M. Stat. Ann. § 31-26-3(E) (defining “formally charged” as “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”); N.M. Stat. Ann. § 31-26-6.

²⁶ N.M. Stat. Ann. § 31-26-6.

²⁷ New Mexico’s constitutional rights may not be subject to these limitations, as this language is not included in the constitution. *See* N.M. Const. art. 2, § 24(A)(1), (3) (guaranteeing rights to crime victims “throughout the criminal justice process”). Please [contact NCVLI to request technical assistance](#) if you require additional assistance on this issue. The form to request technical assistance on this topic is available by clicking on the hyperlink in the previous sentence or by navigating to the following web address: <https://law.lclark.edu/live/forms/50-ta-request-for-attorneys-victim-advocates>.

²⁸ For additional information about victims’ right to restitution, please visit NCVLI’s [Restitution and Other Financial Recovery](#) page, which includes links to additional in-depth information and resources addressing restitution, as well as convenient access to a selection of practice tools and resources. To visit this resource, you may click on the hyperlink at the beginning of this footnote or navigate to the following web address: https://law.lclark.edu/centers/national_crime_victim_law_institute/projects/restitution/.