

HOUSE BILL 143

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Meredith Dixon and Gay G. Kernan

AN ACT

RELATING TO CRIMINAL PROCEDURE; ALLOWING A VICTIM THE RIGHT TO DENY AN INTERVIEW PURSUANT TO THE VICTIMS OF CRIME ACT; ALLOWING THE ADMISSION OF RECORDED STATEMENTS IN CERTAIN CIRCUMSTANCES.

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

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

"[NEW MATERIAL] FINDINGS.--The legislature finds that:

A. victims of violent crime often experience secondary trauma as a result of participating in the criminal justice system, which may cause psychological harm to victims that interferes with the ability to fully participate in the criminal justice system and may also increase anxiety, depression and posttraumatic stress disorder long after the

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1 criminal justice system has disposed of a case;

2 B. the effects of trauma on victims have economic
3 consequences for the state, and there is a need to mitigate the
4 effects of retraumatization;

5 C. providing more rigorous guidelines for pretrial
6 interviews and trial testimony better preserves victims'
7 health, privacy and dignity; and

8 D. the public has a compelling interest in
9 protecting the health, privacy and dignity of victims
10 throughout the criminal justice process and in the development
11 of a framework to provide complete, truthful and accurate
12 information to the trier of fact while also balancing the due
13 process rights of criminal defendants."

14 SECTION 2. A new section of the Victims of Crime Act is
15 enacted to read:

16 "[NEW MATERIAL] RIGHT TO REFUSE INTERVIEW.--

17 A. A victim that is a child or an adjudicated
18 incapacitated adult who has previously given a statement
19 regarding a criminal offense before the filing of an indictment
20 or plea for the offense shall not be compelled to give an
21 additional statement or interview that is conducted or
22 initiated by the defendant.

23 B. An adult victim shall have the right to refuse a
24 pretrial interview conducted or initiated by the defendant. If
25 an adult victim declines to be interviewed or places limits on

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1 the scope of questioning during an interview pursuant to
2 Subsection D of this section, the defendant may petition the
3 court for approval of written interrogatories that shall be
4 asked of the victim by a law enforcement officer in a recorded
5 interview in a neutral setting at which the defendant or either
6 party's attorney shall not be present. The court shall deny
7 interrogatories that are not material to the defense's
8 preparation or that duplicate questions previously answered by
9 the adult victim in a statement that has been made available to
10 the defendant. The court may also modify interrogatories in a
11 manner that protects the victim's health, safety and privacy,
12 so long as the modification does not substantially diminish the
13 defendant's access to material information that is not
14 contained in a previous interview.

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

24 D. When an adult victim consents to an interview,
25 the prosecutor's office shall inform the defendant of the time,

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

13 E. Unless otherwise directed by the victim, the
14 prosecutor may attend all interviews. If the prosecutor is not
15 in attendance, the prosecutor may request a copy of an
16 interview transcript at the prosecutor's expense.

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

21 G. Except for an acquittal or a case that was
22 dismissed with prejudice, the right of a victim to refuse an
23 interview, deposition or discovery request remains enforceable
24 beyond the final disposition of the charges."

25 SECTION 3. A new section of the Victims of Crime Act is

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1 enacted to read:

2 "[NEW MATERIAL] ADMISSIBILITY OF A CHILD'S OR ADJUDICATED
3 INCAPACITATED ADULT'S PREVIOUS STATEMENTS.--

4 A. When a child or an adjudicated incapacitated
5 adult testifies at a court proceeding as a victim of a criminal
6 offense and is subject to cross-examination, a previously
7 recorded statement of material fact by the child or adjudicated
8 adult may be admitted if the court finds that the recorded
9 statement bears adequate circumstantial guarantees of
10 trustworthiness. In determining the trustworthiness of the
11 statement, the court shall consider the timing of the recorded
12 statement, the content of the statement, the context in which
13 the statement was made and any corroborating evidence.

14 B. A previous statement of material fact by a child
15 or adjudicated incapacitated adult may be admitted as evidence
16 at trial or a preliminary hearing if the court finds that the
17 statement is nontestimonial and the statement bears adequate
18 circumstantial guarantees of trustworthiness or is corroborated
19 by other evidence.

20 C. Absent a showing of good cause, a proponent
21 seeking admission of a statement of a child or an adjudicated
22 incapacitated adult shall provide notice of intent to introduce
23 such statement at least five days before a preliminary hearing
24 or at least twenty days before trial.

25 D. This section shall not be construed to limit the

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1 admissibility of evidence that is otherwise admissible."

2 SECTION 4. Section 31-26-3 NMSA 1978 (being Laws 1994,
3 Chapter 144, Section 3, as amended) is amended to read:

4 "31-26-3. DEFINITIONS.--As used in the Victims of Crime
5 Act:

6 A. "adjudicated incapacitated adult" means a person
7 eighteen years or older that has been determined by a court to
8 have demonstrated partial or complete impairment by reason of
9 mental illness, mental deficiency, physical illness or
10 disability or chronic use of drugs or alcohol, to the extent
11 that the person is unable to manage personal or financial
12 affairs or unable to manage the person's estate;

13 B. "child" means a person who is less than eighteen
14 years of age;

15 ~~[A.]~~ C. "court" means magistrate court,
16 metropolitan court, children's court, district court, the court
17 of appeals or the supreme court;

18 ~~[B.]~~ D. "criminal offense" means:

19 (1) negligent arson resulting in death or
20 bodily injury, as provided in Paragraph (1) of Subsection [B] G
21 of Section 30-17-5 NMSA 1978;

22 (2) aggravated arson, as provided in Section
23 30-17-6 NMSA 1978;

24 (3) aggravated assault, as provided in Section
25 30-3-2 NMSA 1978;

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1 (4) aggravated battery, as provided in Section
2 30-3-5 NMSA 1978;

3 (5) dangerous use of explosives, as provided
4 in Section 30-7-5 NMSA 1978;

5 (6) negligent use of a deadly weapon, as
6 provided in Section 30-7-4 NMSA 1978;

7 (7) murder, as provided in Section 30-2-1 NMSA
8 1978;

9 (8) voluntary manslaughter, as provided in
10 Section 30-2-3 NMSA 1978;

11 (9) involuntary manslaughter, as provided in
12 Section 30-2-3 NMSA 1978;

13 (10) kidnapping, as provided in Section 30-4-1
14 NMSA 1978;

15 (11) criminal sexual penetration, as provided
16 in Section 30-9-11 NMSA 1978;

17 (12) criminal sexual contact of a minor, as
18 provided in Section 30-9-13 NMSA 1978;

19 (13) armed robbery, as provided in Section
20 30-16-2 NMSA 1978;

21 (14) homicide by vehicle, as provided in
22 Section 66-8-101 NMSA 1978;

23 (15) great bodily ~~[injury]~~ harm by vehicle, as
24 provided in Section 66-8-101 NMSA 1978;

25 (16) abandonment or abuse of a child, as

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1 provided in Section 30-6-1 NMSA 1978;

2 (17) stalking or aggravated stalking, as
3 provided in the Harassment and Stalking Act;

4 (18) aggravated assault against a household
5 member, as provided in Section 30-3-13 NMSA 1978;

6 (19) assault against a household member with
7 intent to commit a violent felony, as provided in Section
8 30-3-14 NMSA 1978;

9 (20) battery against a household member, as
10 provided in Section 30-3-15 NMSA 1978; or

11 (21) aggravated battery against a household
12 member, as provided in Section 30-3-16 NMSA 1978;

13 [~~E.~~] E. "court proceeding" means a hearing,
14 argument or other action scheduled by and held before a court;

15 F. "defendant" means the defendant, the defendant's
16 attorney or an agent of the defendant;

17 [~~D.~~] G. "family member" means a spouse, child,
18 sibling, parent or grandparent;

19 [~~E.~~] H. "formally charged" means the filing of an
20 indictment, the filing of a criminal information pursuant to a
21 bind-over order, the filing of a petition or the setting of a
22 preliminary hearing;

23 [~~F.~~] I. "victim" means an individual against whom a
24 criminal offense is committed. "Victim" also means a family
25 member or a victim's representative when the individual against

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1 whom a criminal offense was committed is a minor, is
2 incompetent or is a homicide victim; and

3 ~~[G-]~~ J. "victim's representative" means an
4 individual designated by a victim or appointed by the court to
5 act in the best interests of the victim."