

REDUCING SECONDARY TRAUMA FOR VICTIMS OF CRIME

House Bill 143

We have an opportunity to address practices in the criminal justice system that do not align with our community's values and unintentionally harm victims.

Most New Mexicans are unaware that the criminal justice system compounds the impact of trauma on victims and unnecessarily forces them to recount their experiences multiple times before they even set foot in a courtroom. The vast majority of states don't allow this to occur and it's time for New Mexico to take action to protect victims while also safeguarding the constitutional rights of victims and defendants.

The effects of trauma continue to impact crime victims long after their physical injuries have healed. The resulting psychological trauma impacts every aspect of a victim's life, leading to higher levels of substance abuse, depression, and anxiety. For some victims, it can adversely impact their ability to pursue an education and hold down a job.

- There are significant, lasting effects pretrial interviews have on children. "Children who testified more than once did not improve as much as children who testified only once or not at all." (National Criminal Justice Reference Service)
- Testifying can also have long-term effects. Children who testified more than once show higher levels of emotional distress 2 years after the initial assessment (Elmi, Daignault, Hebert, 2018).

THE PROPOSAL

- Stop the practice of pre-trial interviews (PTIs) of children and incapacitated adults.
- Protect adult victims of violent crime, such as sexual assaults, from harassment in PTIs by providing clear guidelines for the courts to oversee the questioning.
- Allow the voices of child victims to be heard by creating a clear, constitutional framework for the admission of trauma-informed safehouse interviews of minor children and the admission of non-testimonial statements to teachers, counselors and family members who are often the first to learn about possible abuse.
- Protect the privacy of all crime victims by limiting personal identifying information that can be given to the defendant.

The proposed reforms would bring New Mexico law in line with the vast majority of states and federal criminal practice. Importantly, the proposed changes do NOT impact the basic constitutional rights of criminal defendants.

COMMON MISCONCEPTIONS

Aren't defendants entitled to question witnesses before trial?

No...Defendants have a constitutional right to confront and cross-examine witnesses *at trial*. They do not have a right to examine witnesses outside the courtroom. Defense attorneys across the nation have shown that they are able to effectively represent defendants and adequately prepare for trial with recorded forensic interviews of child witnesses without an additional out-of-court interview by the defense attorney.

Doesn't the admission of a safehouse interview or a statement to a teacher or counselor violate the constitutional rights of defendants?

No...A safehouse interview would only be admissible *if a child testifies and is subject to cross-examination* as required by the Sixth Amendment. Statements to teachers and counselors are, by and large, deemed “nontestimonial” and beyond the scope of the Confrontation Clause.

Aren't defendants entitled to a victims personal identifying information so that their attorneys can run a background check?

No....Defense attorneys are fully able to perform background checks and conflict checks with abbreviated identifying information that does not invade the privacy of victims and put them at risk of harm. Discovery rules should reflect the same protection of privacy already afforded to defendants and witnesses in court documents and public records.