

Understanding Victims' Rights in South Carolina



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South Carolina Facts

- The sexual assault rate in South Carolina has exceeded the national average since **1982**.
- In just one year, domestic violence programs in South Carolina respond to almost **30,000 hotline calls**.
- In just **one day**, DV programs served 437 victims and answered 115 hotline calls.
- In just one year, sexual assault programs in South Carolina serve approximately **5,000 victims**, over **half** of whom are children.

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SC is 1st in the U.S. for the rate of women murdered by men.



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WHAT IS DOMESTIC VIOLENCE?



IT'S MORE THAN PHYSICAL VIOLENCE.

Domestic violence is a pattern of abusive and coercive behavior used to dominate or control a current or former intimate partner.


Domestic Violence is not about violence; it's about POWER.

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WHAT ABOUT THE KIDS?

Abusive parents are more likely to seek sole custody than non-abusive parents.

When abusive parents do seek custody of their children, they are successful 70% of the time.



60% of men who abuse their wives will also abuse their children, usually after separation.

American Psychological Association, Violence and the Family: Report of The American Psychological Association Presidential Task Force on Violence and the Family, (1996). American Judges Foundation, Domestic Violence and the Court House: Understanding the Problem...Knowing the Victim. See Appel & Holden, The Co-Occurrence of Spouse and Physical Child Abuse: A Review and Appraisal, 12(4) Journal of Family Psychology 578-599 (1998). See also Bancroft, L., & Silverman, J. (2002). The Batterer As Parent: Addressing the Impact of Domestic Violence on Family Dynamics. Thousand Oaks, CA: Sage.


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**WHOSE BEHAVIOR
ARE WE TRYING TO CHANGE?**

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**A VICTIM OF DOMESTIC
VIOLENCE will leave
the abuser as soon
as her life will be
better if she does.**



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S.C. Victims' Bill of Rights



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Who is a Crime Victim?

S.C. Code Section 16-3-1510.

An individual who suffers

- Direct or threatened
- Physical, psychological or financial harm
- As a result of the commission or attempted commission of a crime
- Victim also includes
 - victim's **spouse, parent or child**
 - lawful representative a victim who is
 - deceased
 - a minor
 - incompetent
 - physically or psychologically incapacitated

S.C. Constitution, Article I

SECTION 24. Victims' Bill of Rights.

(A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, **victims of crime have the right to:**

- (1) be treated with **fairness, respect, and dignity**, and to be **free from intimidation, harassment, or abuse**, throughout the criminal and juvenile justice process, and **informed of** the victim's constitutional rights, provided by statute;

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- (2) be **reasonably informed** when the accused or convicted person is arrested, released from custody, or has escaped;

- (3) be **informed of and present at** any criminal proceedings which are **dispositive** of the charges where the defendant has the right to be present;

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(4) be reasonably informed of and be allowed to submit either a **written or oral statement** at all hearings affecting bond or bail;

(5) be **heard** at any proceeding involving a post-arrest release decision, a plea, or sentencing;

(6) be reasonably **protected** from the accused or persons acting on his behalf throughout the criminal justice process;

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(7) **confer with the prosecution**, after the crime against the victim has been charged, **before the trial** or before any disposition and informed of the disposition;

(8) have reasonable **access** after the conclusion of the criminal investigation to all **documents** relating to the crime against the victim before trial;

(9) receive **prompt and full restitution** from the person or persons convicted of the criminal conduct that caused the victim's loss or injury, including both adult and juvenile offenders;

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(10) be **informed** of any proceeding when any **post-conviction** action is being considered, and be **present** at any post-conviction hearing involving a post-conviction release decision;

(11) a reasonable disposition and **prompt and final** conclusion of the case;

(12) have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and have these rules subject to amendment or repeal by the legislature to ensure protection of these rights.

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(B) **Nothing in this section creates a civil cause of action** on behalf of any person against any public employee, public agency, the State, or any agency responsible for the enforcement of rights and provision of services contained in this section.

The rights created in this section may be subject to a **writ of mandamus**, to be issued by any justice of the Supreme Court or circuit court judge to require compliance by any public employee, public agency, the State, or any agency responsible for the enforcement of the rights and provisions of these services contained in this section, and a willful failure to comply with a writ of mandamus is punishable as contempt.

Writ of Mandamus

- Order by superior court commanding the performance of a specified act or duty
- Examples?

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So, basically ...

Crime victims have a right to be:

- Informed
- Heard
- Protected



**S.C. Code Section 16, Article 15
Victim and Witness Service**



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**Why is Victim
Notification
Important?**

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SC Code Section 16-3-1515

Victims/witnesses who wish to be notified must provide their:

- legal name
- current mailing address
- current telephone number

to either a law enforcement agency, prosecuting agency, summary court judge, DOC, DPPP, or DJJ.

(B) **A victim who wishes to receive restitution must**, within appropriate time limits set by the prosecuting agency or summary court judge, provide the prosecuting agency or summary court judge with an **itemized list** which includes

the values of property stolen, damaged, or destroyed; property recovered; medical expenses or counseling expenses, or both; income lost as a result of the offense; out-of-pocket expenses incurred as a result of the offense; any other financial losses that may have been incurred; an itemization of financial recovery from insurance, the offense victim's compensation fund, or other sources. The prosecuting agency, court, or both, may require documentation of all claims.

This information may be **included in a written victim impact statement**.

(C) A **victim who wishes to be present** for any plea, trial, or sentencing must notify the prosecuting agency or summary court judge of his desire to be present. This notification may be included in a written victim impact statement.

(D) A victim who **wishes to submit a written victim impact statement** must provide it to the prosecuting agency or summary court judge **within appropriate time limits** set by the prosecuting agency or summary court judge.

(E) A victim who wishes to make an **oral victim impact statement** to the court at sentencing must notify the prosecuting agency or summary court judge of this desire in advance of the sentencing.

SECTION 16-3-1520.

(A) A law enforcement agency must provide a victim, **free of charge**, a copy of the **initial incident report** of his case, **and** a document which:

(1) describes the **constitutional rights** the State grants victims in criminal cases;

(2) describes the **responsibilities of victims** in exercising these rights;

(3) lists **local victim assistance** and social service providers;

(4) provides information on eligibility and application for **victim's compensation** benefits; and

(5) provides information about the **rights of victims and witnesses** who are harassed or threatened.

(B) A law enforcement agency, within a reasonable time of initial contact, must **assist each eligible victim** in applying for **victim's compensation benefits and other available financial, social service, and counseling assistance**.

(C) Law enforcement victim advocates, upon request, may intervene with, and seek special consideration from, **creditors** of a victim who is temporarily unable to continue payments as a result of an offense and with the victim's employer, landlord, school, and other parties as considered appropriate through the investigative process.

(D) A law enforcement agency, upon request, must make a reasonable attempt to inform a victim of the **status and progress** of his case from initial incident through:

- (1) disposition in summary court;
- (2) the referral of a juvenile offender to the Department of Juvenile Justice; or
- (3) transmittal of a general sessions warrant to the prosecuting agency.

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SECTION 16-3-1525.

A **law enforcement agency**, upon effecting the **arrest or detention of a person** accused of committing an offense involving one or more victims, must make a **reasonable attempt to notify each victim** of the arrest or detention and of the appropriate bond or other pretrial release hearing or procedure.

A **law enforcement agency, before releasing to his parent or guardian** a juvenile offender accused of committing an offense involving one or more victims, must make a **reasonable effort to inform** each victim of the release.

□ A law enforcement agency, upon effecting the arrest or detention of a person accused of committing an offense involving one or more victims, **must provide** to the jail, prison, or detention or holding facility, including a mental health facility, DJJ (if minor), prosecutor, summary court (if triable in summary court the **name, mailing address, and telephone number of each victim**.

□ The names, addresses, and telephone numbers of victims and witnesses contained in the files of a jail, prison, or detention or holding facility, including a mental health facility, are **confidential** and **must not be disclosed** directly or indirectly, except as necessary to provide notification.

A law enforcement agency must provide any measures necessary to **protect the victims** and witnesses, including transportation to and from court and physical protection in the courthouse.

Examples?

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If bond is set by a summary court judge, **arresting agency** must reasonable attempt to **notify each victim** of his **right to attend the bond hearing** and make recommendations to the judge.

The notification must be made **sufficiently in advance** to allow the victim to exercise his right.

Summary court judge must ask the facility having custody of the defendant to **verify that a reasonable attempt was made to notify the victim** sufficiently in advance.

If notice was not given in a timely manner, the **hearing must be delayed** for a reasonable time to allow notice.

The Judge must impose bond conditions which are sufficient to protect a victim from harassment or intimidation.

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S.C. Code Section 16-3-1525

(K) Upon scheduling a preliminary hearing in a case involving a victim, the **summary court judge reasonably must attempt to notify each victim** of each case for which the defendant has a hearing of his right to attend.

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S.C. Code Section 16-3-1525

Diversion programs – notify victims prior to release from those programs.

Court ordered/ mandatory mental evaluations – facility must notify victims prior to defendant’s release

Notification of a victim pursuant to the provisions of this section may be by electronic or other automated communication or recording.

However, after **3 unsuccessful attempts** to reach the victim in CDV, CSC, stalking or harassment cases, or cases where there has been an injury or a pattern of conduct, notifier shall attempt to **make personal contact with the victim**.

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S.C. Code Section 16-3-1530 (A) (1) (2) (3) (4) and (B)

Department or agencies having custody of an accused person **must notify the victim before the release**, or upon escape or transfer to another facility. (Applies to adults and juveniles)

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S.C. Code SECTION 16-3-1535

The summary court reasonably must attempt to notify each victim of his right to:

- (1) **be present and participate** in all hearings;
- (2) **be represented by counsel**;
- (3) **pursue civil remedies**; and
- (4) submit an **oral or written victim impact statement**, or both, for consideration by the summary court judge at the disposition proceeding.

(B) The summary court must provide to each victim who wishes to make a written **victim impact statement** a form that solicits pertinent information regarding the offense, including:

- (1) the victim's personal information and supplementary contact information;
- (2) an itemized list of the victim's economic loss and recovery from any insurance policy or any other source;
- (3) details of physical or psychological injuries, or both, including their seriousness and permanence;
- (4) identification of psychological services requested or obtained by the victim;
- (5) a description of any changes in the victim's personal welfare or family relationships; and
- (6) any other information the victim believes to be important and pertinent.

(C) The summary court judge must inform a victim of the applicable procedures and practices of the court.

(D) The summary court judge reasonably must attempt to notify each victim related to the case of each hearing, trial, or other proceeding.

(E) A law enforcement agency and the summary court must **return to a victim personal property recovered or taken as evidence** as expeditiously as possible, substituting photographs of the property and itemized lists of the property including serial numbers and unique identifying characteristics for use as evidence when possible.

(F) The summary court judge must recognize and protect the rights of victims and witnesses as diligently as those of the defendant.

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(G) If the sentence is **more than 90 days**, the summary court judge must forward a copy of the **victim's impact statement and/or name, mailing address, and telephone number of each victim** within **15 days** to the DOC, DJJ, DPPP, or diversion program.

(H) The names, addresses, and telephone numbers of victims and prosecution witnesses ... are **confidential and must not be disclosed directly or indirectly.**

S.C. Code SECTION 16-3-1550

(C) For proceedings in the circuit or family court, the law enforcement and prosecuting agency must make reasonable efforts to provide victims and prosecution witnesses **waiting areas separate** from those used by the defendant and defense witnesses.

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Crime Victims' Ombudsman

It is our professional duty to hold one another responsible and accountable.

Veronica Swain Kunz

Main Number:
1(803) 734-0357

Victims only:
1(888) 238-0697

WHY IS CONFIDENTIALITY IMPORTANT?

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Because it matters to victims!

Most victims report that their top two concerns are:

1. Privacy
2. Safety

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Learning Through My Mistakes



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Confidentiality and Collaboration

- Essential define and clarify their role with collaborative agency
- Find language that works for you when asked for information from a partnering agency
 - "I can neither confirm nor deny..."
- Expressly communicate the limits of confidentiality
- Be consistent
- Respect others' policies and be confident in your own
- Understand that each agency plays their own role and has rules they must follow

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Ethical Standards

National Victim Assistance
Standards Consortium
(NVASC)

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Ethical Services = Professionalism

- Conduct relationships with colleagues and other professionals in such a way as to promote mutual respect, public confidence, and improvement of service.
- Serve the public interest by contributing to the improvement of systems that impact victims of crime. (Advocate for better systems).
- Conduct relationships with colleagues and other professionals in such a way as to promote mutual respect, public confidence, and improvement of service.

National Victim Assistance Standards Consortium (NVASC) Ethical Standards

Ethical Service = Victims First

- Recognize the interests of the victim as primary responsibility.
- Refrain from behaviors that communicate victim blame, suspicion regarding victim accounts of the crime, condemnation for past behavior, or other judgmental, anti-victim sentiment.
- Respect the victim's right to self-determination.

National Victim Assistance Standards Consortium (NVASC) Ethical Standards

Ethical Services = Unpack Your Own Stuff

- Respect and protect the victim's civil rights.
- Do **not discriminate** against a victim or another staff member on the basis of race/ethnicity, language, sex/gender, age, sexual orientation, (dis)ability, social class, economic status, education, marital status, religious affiliation, or immigration status.



National Victim Assistance Standards Consortium (NVASC) Ethical Standards



Ethical Service Means ...

- Offering non-judgmental services
- Ensuring that victims are not put in more danger by our actions
- Continuing to learn about options for victims
- Maintaining confidentiality—*always*
- Being aware of community resources
- Collaborating with other professionals/agencies
- Understanding that the victim is the expert on his/her life, and should be the driver, not the passenger



EXAMPLE: What if she goes back?

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Remember Our Role

- The victim is the expert on his or her life.
- Everyone has reasons for the decisions they make—safety, children, financial burdens, etc.
- We have an obligation to inform, hear, and protect victims.
- Blaming a victim is the quickest way to close his or her door to safety

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Resources

- Domestic Violence National Hotline:
1-800-799-SAFE (7233)
- Sexual Assault National Hotline:
1-800-656-HOPE (4673)

Local domestic violence and sexual assault advocacy programs. List available at www.sccadvasa.org.

Hotlines are available 24 hours a day, 7 days a week. Will get victim in touch with her closest advocacy program.

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Services Advocacy Programs Provide:

- Shelter
- Individual and Group Counseling
- Medical and Court Advocacy
- Assistance with Orders of Protection
- Support
- Safety Planning

...and much more!



Things to Remember

1. Protecting crime victims' rights helps keep us all safer.
2. Even if we disagree with a victim's choices, s/he is not the one who committed a crime.
3. Domestic violence and sexual assault will only stop when we start holding perpetrators accountable and supporting victims.

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