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CHAPTER 3.

 OFFENSES AGAINST THE PERSON

ARTICLE 1.

 HOMICIDE

**SECTION 16‑3‑5.** Person causing injury which results in death at least three years later not to be prosecuted for homicide.

A person who causes bodily injury which results in the death of the victim is not criminally responsible for the victim’s death and must not be prosecuted for a homicide offense if at least three years intervene between the injury and the death of the victim.

**SECTION 16‑3‑10.** “Murder” defined.

“Murder” is the killing of any person with malice aforethought, either express or implied.

**SECTION 16‑3‑20.** Punishment for murder: separate sentencing proceeding to determine whether sentence should be death or life imprisonment.

(A) A person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years. If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. For purposes of this section, “life imprisonment” means until death of the offender without the possibility of parole, and when requested by the State or the defendant, the judge must charge the jury in his instructions that life imprisonment means until the death of the defendant without the possibility of parole. In cases where the defendant is eligible for parole, the judge must charge the applicable parole eligibility statute. No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. No person sentenced to a mandatory minimum term of imprisonment for thirty years pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years required by this section. Under no circumstances may a female who is pregnant be executed so long as she is pregnant or for a period of at least nine months after she is no longer pregnant. When the Governor commutes a sentence of death to life imprisonment under the provisions of Section 14 of Article IV of the Constitution of South Carolina, 1895, the commutee is not eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the mandatory imprisonment required by this subsection.

(B) When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding. In the proceeding, if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty‑four hours unless waived by the defendant. If trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge. In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment. Only such evidence in aggravation as the State has informed the defendant in writing before the trial is admissible. This section must not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the State of South Carolina or the applicable laws of either. The State, the defendant, and his counsel are permitted to present arguments for or against the sentence to be imposed. The defendant and his counsel shall have the closing argument regarding the sentence to be imposed.

(C) The judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence:

(a) Statutory aggravating circumstances:

(1) The murder was committed while in the commission of the following crimes or acts:

(a) criminal sexual conduct in any degree;

(b) kidnapping;

(c) burglary in any degree;

(d) robbery while armed with a deadly weapon;

(e) larceny with use of a deadly weapon;

(f) killing by poison;

(g) drug trafficking as defined in Section 44‑53‑370(e), 44‑53‑375(B), 44‑53‑440, or 44‑53‑445;

(h) physical torture;

(i) dismemberment of a person; or

(j) arson in the first degree as defined in Section 16‑11‑110(A).

(2) The murder was committed by a person with a prior conviction for murder.

(3) The offender by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person.

(4) The offender committed the murder for himself or another for the purpose of receiving money or a thing of monetary value.

(5) The murder of a judicial officer, former judicial officer, solicitor, former solicitor, or other officer of the court during or because of the exercise of his official duty.

(6) The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.

(7) The murder of a federal, state, or local law enforcement officer or former federal, state, or local law enforcement officer, peace officer or former peace officer, corrections officer or former corrections officer, including a county or municipal corrections officer or a former county or municipal corrections officer, a county or municipal detention facility employee or former county or municipal detention facility employee, or fireman or former fireman during or because of the performance of his official duties.

(8) The murder of a family member of an official listed in subitems (5) and (7) above with the intent to impede or retaliate against the official. “Family member” means a spouse, parent, brother, sister, child, or person to whom the official stands in the place of a parent or a person living in the official’s household and related to him by blood or marriage.

(9) Two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct.

(10) The murder of a child eleven years of age or under.

(11) The murder of a witness or potential witness committed at any time during the criminal process for the purpose of impeding or deterring prosecution of any crime.

(12) The murder was committed by a person deemed a sexually violent predator pursuant to the provisions of Chapter 48, Title 44, or a person deemed a sexually violent predator who is released pursuant to Section 44‑48‑120.

(b) Mitigating circumstances:

(1) The defendant has no significant history of prior criminal conviction involving the use of violence against another person.

(2) The murder was committed while the defendant was under the influence of mental or emotional disturbance.

(3) The victim was a participant in the defendant’s conduct or consented to the act.

(4) The defendant was an accomplice in the murder committed by another person and his participation was relatively minor.

(5) The defendant acted under duress or under the domination of another person.

(6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(7) The age or mentality of the defendant at the time of the crime.

(8) The defendant was provoked by the victim into committing the murder.

(9) The defendant was below the age of eighteen at the time of the crime.

(10) The defendant had mental retardation at the time of the crime. “Mental retardation” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

The statutory instructions as to statutory aggravating and mitigating circumstances must be given in charge and in writing to the jury for its deliberation. The jury, if its verdict is a recommendation of death, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances which it found beyond a reasonable doubt. The jury, if it does not recommend death, after finding a statutory aggravating circumstance or circumstances beyond a reasonable doubt, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances it found beyond a reasonable doubt. In nonjury cases the judge shall make the designation of the statutory aggravating circumstance or circumstances. Unless at least one of the statutory aggravating circumstances enumerated in this section is found, the death penalty must not be imposed.

Where a statutory aggravating circumstance is found and a recommendation of death is made, the trial judge shall sentence the defendant to death. The trial judge, before imposing the death penalty, shall find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor. Where a statutory aggravating circumstance is found and a sentence of death is not recommended by the jury, the trial judge shall sentence the defendant to life imprisonment as provided in subsection (A). Before dismissing the jury, the trial judge shall question the jury as to whether or not it found a statutory aggravating circumstance or circumstances beyond a reasonable doubt. If the jury does not unanimously find any statutory aggravating circumstances or circumstances beyond a reasonable doubt, it shall not make a sentencing recommendation. Where a statutory aggravating circumstance is not found, the trial judge shall sentence the defendant to either life imprisonment or a mandatory minimum term of imprisonment for thirty years. No person sentenced to life imprisonment or a mandatory minimum term of imprisonment for thirty years under this section is eligible for parole or to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the sentence required by this section. If the jury has found a statutory aggravating circumstance or circumstances beyond a reasonable doubt, the jury shall designate this finding, in writing, signed by all the members of the jury. The jury shall not recommend the death penalty if the vote for such penalty is not unanimous as provided. If members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment as provided in subsection (A).

(D) Notwithstanding the provisions of Section 14‑7‑1020, in cases involving capital punishment a person called as a juror must be examined by the attorney for the defense.

(E) In a criminal action in which a defendant is charged with a crime which may be punishable by death, a person may not be disqualified, excused, or excluded from service as a juror by reason of his beliefs or attitudes against capital punishment unless such beliefs or attitudes would render him unable to return a verdict according to law.

**SECTION 16‑3‑21.** Jury instruction as to discussion of verdict.

(A) In all cases in which an individual is sentenced to death, the trial judge shall, before the dismissal of the jury, verbally instruct the jury concerning the discussion of its verdict. A standard written instruction shall be promulgated by the Supreme Court for use in all capital cases.

(B) The verbal instruction shall include:

(1) the right of the juror to refuse to discuss the verdict;

(2) the right of the juror to discuss the verdict to the extent that the juror so chooses;

(3) the right of the juror to terminate any discussion pertaining to the verdict at any time the juror so chooses;

(4) the right of the juror to report any person who continues to pursue a discussion of the verdict or who continues to harass the juror after the juror has refused to discuss the verdict or communicated a desire to terminate discussion of the verdict; and

(5) the name, address, and phone number of the person or persons to whom the juror should report any harassment concerning the refusal to discuss the verdict or the juror’s decision to terminate discussion of the verdict.

(C) In addition to the verbal instruction of the trial judge, each juror, upon dismissal from jury service, shall receive a copy of the written jury instruction set forth in subsection (A).

**SECTION 16‑3‑25.** Punishment for murder: review by Supreme Court of imposition of death penalty.

(A) Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Supreme Court of South Carolina. The clerk of the trial court, within ten days after receiving the transcript, shall transmit the entire record and transcript to the Supreme Court of South Carolina together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of his attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report shall be in the form of a standard questionnaire prepared and supplied by the Supreme Court of South Carolina.

(B) The Supreme Court of South Carolina shall consider the punishment as well as any errors by way of appeal.

(C) With regard to the sentence, the court shall determine:

(1) Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor, and

(2) Whether the evidence supports the jury’s or judge’s finding of a statutory aggravating circumstance as enumerated in Section 16‑3‑20, and

(3) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

(D) Both the defendant and the State shall have the right to submit briefs within the time provided by the court and to present oral arguments to the court.

(E) The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

(1) Affirm the sentence of death; or

(2) Set the sentence aside and remand the case for resentencing by the trial judge based on the record and argument of counsel. The records of those similar cases referred to by the Supreme Court of South Carolina in its decision, and the extracts prepared as hereinafter provided for, shall be provided to the resentencing judge for his consideration. If the court finds error prejudicial to the defendant in the sentencing proceeding conducted by the trial judge before the trial jury as outlined under Item (B) of Section 16‑3‑20, the court may set the sentence aside and remand the case for a resentencing proceeding to be conducted by the same or a different trial judge and by a new jury impaneled for such purpose. In the resentencing proceeding, the new jury, if the defendant does not waive the right of a trial jury for the resentencing proceeding, shall hear evidence in extenuation, mitigation or aggravation of the punishment in addition to any evidence admitted in the defendant’s first trial relating to guilt for the particular crime for which the defendant has been found guilty.

(F) The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration. The court shall render its decision on all legal errors, the factual substantiation of the verdict, and the validity of the sentence.

**SECTION 16‑3‑26.** Punishment for murder: notice to defense attorney of solicitor’s intention to seek death penalty; appointment of attorneys for indigent; investigative, expert or other services.

(A) Whenever the solicitor seeks the death penalty he shall notify the defense attorney of his intention to seek such penalty at least thirty days prior to the trial of the case. At the request of the defense attorney, the defense attorney shall be excused from all other trial duties ten days prior to the term of court in which the trial is to be held.

(B)(1) Whenever any person is charged with murder and the death penalty is sought, the court, upon determining that such person is unable financially to retain adequate legal counsel, shall appoint two attorneys to defend such person in the trial of the action. One of the attorneys so appointed shall have at least five years’ experience as a licensed attorney and at least three years’ experience in the actual trial of felony cases, and only one of the attorneys so appointed shall be the Public Defender or a member of his staff. In all cases where no conflict exists, the public defender or member of his staff shall be appointed if qualified. If a conflict exists, the court shall then turn first to the contract public defender attorneys, if qualified, before turning to the Office of Indigent Defense.

(2) Notwithstanding any other provision of law, the court shall order payment of all fees and costs from funds available to the Office of Indigent Defense for the defense of indigent. Any attorney appointed shall be compensated at a rate not to exceed fifty dollars per hour for time expended out of court and seventy‑five dollars per hour for time expended in court. Compensation shall not exceed twenty‑five thousand dollars and shall be paid from funds available to the Office of Indigent Defense for the defense of indigent represented by court‑appointed, private counsel.

(C)(1) Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant’s attorneys to obtain such services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses not to exceed twenty thousand dollars as the court shall deem appropriate. Payment of such fees and expenses may be ordered in cases where the defendant is an indigent represented by either court‑appointed, private counsel or the public defender.

(2) Court‑appointed counsel seeking payment for fees and expenses shall request these payments from the Office of Indigent Defense within thirty days after the completion of the case. For the purposes of this statute, exhaustion of the funds shall occur if the funds administered by the Office of Indigent Defense and reserved for death penalty fees and expenses have been reduced to zero. If either the Death Penalty Trial Fund or the Conflict Fund has been exhausted in a month and the other fund contains money not scheduled to be disbursed in that month, then the Indigent Defense Commission must transfer a sufficient amount from the fund with the positive fund balance to the fund with no balance and pay the obligation to the extent possible.

(D) Payment in excess of the hourly rates and limit in subsection (B) or (C) is authorized only if the court certifies, in a written order with specific findings of fact, that payment in excess of the rates is necessary to provide compensation adequate to ensure effective assistance of counsel and payment in excess of the limit is appropriate because the services provided were reasonably and necessarily incurred. Upon a finding that timely procurement of such services cannot await prior authorization, the court may authorize the provision of and payment for such services nunc pro tunc.

(E) After completion of the trial, the court shall conduct a hearing to review and validate the fees, costs, and other expenditures on behalf of the defendant.

(F) The Supreme Court shall promulgate guidelines on the expertise and qualifications necessary for attorneys to be certified as competent to handle death penalty cases.

(G) The Office of Indigent Defense shall maintain a list of death penalty qualified attorneys who have applied for and received certification by the Supreme Court as provided for herein. In the event the court appointed counsel notifies the chief administrative judge in writing that he or she does not wish to provide representation in a death penalty case the chief administrative judge shall advise the Office of Indigent Defense which shall forward a name or names to the chief administrative judge for consideration. The appointment power is vested in the chief administrative judge. The Office of Indigent Defense shall establish guidelines as are necessary to ensure that attorneys’ names are presented to the judges on a fair and equitable basis taking into account geography and previous assignments from the list. Efforts shall be made to present an attorney from the area or region where the action is initiated.

(H) The payment schedule set forth herein, as amended by Act 164 of 1993, shall apply to any case for which trial occurs on or after July 1, 1993.

(I) Notwithstanding another provision of law, only attorneys who are licensed to practice in this State and residents of this State may be appointed by the Court and compensated with funds appropriated to the Death Penalty Trial Fund in the Office of Indigent Defense. This proviso shall not pertain to any case in which council has been appointed on the effective date of this Act.

(J) The Judicial Department biennially shall develop and make available to the public a list of standard fees and expenses associated with the defense of an indigent person in a death penalty case.

**SECTION 16‑3‑28.** Punishment for murder: right of defendant to make last argument.

Notwithstanding any other provision of law, in any criminal trial where the maximum penalty is death or in a separate sentencing proceeding following such trial, the defendant and his counsel shall have the right to make the last argument.

**SECTION 16‑3‑30.** Killing by poison.

All wilful killing by poisoning of any person shall be adjudged, taken and deemed wilful murder, of malice prepense, and the offender therein, his aiders, abetters, procurers and counselors, shall suffer death as in other cases of wilful murder.

**SECTION 16‑3‑40.** Killing by stabbing or thrusting.

Whoever shall stab or thrust any person who has not then any weapon drawn or who has not then first stricken the person who shall so stab or thrust, so that the person so stabbed or thrust shall thereof die within the space of six months then next following, although it cannot be proved that the same was done of malice aforethought, yet the party so offending, and being thereof convicted, shall suffer death as in the case of wilful murder; provided , that nothing herein contained shall extend to any person:

(1) Who shall kill any person in self‑defense or by misfortune or in any other manner than as aforesaid;

(2) Who, in keeping and preserving the peace, shall chance to commit manslaughter if such manslaughter be not committed wittingly, willingly and of purpose under pretext and color of keeping the peace; nor

(3) Who, in chastising or correcting his child, shall, besides his intent and purpose, chance to commit manslaughter.

**SECTION 16‑3‑50.** Manslaughter.

A person convicted of manslaughter, or the unlawful killing of another without malice, express or implied, must be imprisoned not more than thirty years or less than two years.

**SECTION 16‑3‑60.** Involuntary manslaughter; “criminal negligence” defined.

With regard to the crime of involuntary manslaughter, criminal negligence is defined as the reckless disregard of the safety of others. A person charged with the crime of involuntary manslaughter may be convicted only upon a showing of criminal negligence as defined in this section. A person convicted of involuntary manslaughter must be imprisoned not more than five years.

**SECTION 16‑3‑70.** Administering or attempting to administer poison.

(A) It is unlawful for a person to:

(1) maliciously administer to, attempt to administer to, aid or assist in administering to, or cause to be taken by, another person a poison or other destructive thing, with intent to kill that person; or

(2) counsel, aid, or abet a person under item (1) of this subsection.

(B) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than twenty years.

**SECTION 16‑3‑75.** Tampering with human drug product or food item; penalty.

It is unlawful for a person to maliciously tamper with a human drug product or food item with the intent to do bodily harm to a person.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than twenty years.

**SECTION 16‑3‑85.** Homicide by child abuse; definitions; penalty; sentencing.

(A) A person is guilty of homicide by child abuse if the person:

(1) causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life; or

(2) knowingly aids and abets another person to commit child abuse or neglect, and the child abuse or neglect results in the death of a child under the age of eleven.

(B) For purposes of this section, the following definitions apply:

(1) “child abuse or neglect” means an act or omission by any person which causes harm to the child’s physical health or welfare;

(2) “harm” to a child’s health or welfare occurs when a person:

(a) inflicts or allows to be inflicted upon the child physical injury, including injuries sustained as a result of excessive corporal punishment;

(b) fails to supply the child with adequate food, clothing, shelter, or health care, and the failure to do so causes a physical injury or condition resulting in death; or

(c) abandons the child resulting in the child’s death.

(C) Homicide by child abuse is a felony and a person who is convicted of or pleads guilty to homicide by child abuse:

(1) under subsection (A)(1) may be imprisoned for life but not less than a term of twenty years; or

(2) under subsection (A)(2) must be imprisoned for a term not exceeding twenty years nor less than ten years.

(D) In sentencing a person under this section, the judge must consider any aggravating circumstances including, but not limited to, a defendant’s past pattern of child abuse or neglect of a child under the age of eleven, and any mitigating circumstances; however, a child’s crying does not constitute provocation so as to be considered a mitigating circumstance.

**SECTION 16‑3‑95.** Infliction or allowing infliction of great bodily injury upon a child; penalty; definition; corporal punishment and traffic accident exceptions.

(A) It is unlawful to inflict great bodily injury upon a child. A person who violates this subsection is guilty of a felony and, upon conviction, must be imprisoned not more than twenty years.

(B) It is unlawful for a child’s parent or guardian, person with whom the child’s parent or guardian is cohabitating, or any other person responsible for a child’s welfare as defined in Section 63‑7‑20 knowingly to allow another person to inflict great bodily injury upon a child. A person who violates this subsection is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) For purposes of this section, “great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious or permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(D) This section may not be construed to prohibit corporal punishment or physical discipline which is administered by a parent or person in loco parentis in a manner which does not cause great bodily injury upon a child.

(E) This section does not apply to traffic accidents unless the accident was caused by the driver’s reckless disregard for the safety of others.

ARTICLE 3.

 LYNCHING

**SECTION 16‑3‑210.** Lynching in the first degree.

Any act of violence inflicted by a mob upon the body of another person which results in the death of the person shall constitute the crime of lynching in the first degree and shall be a felony. Any person found guilty of lynching in the first degree shall suffer death unless the jury shall recommend the defendant to the mercy of the court, in which event the defendant shall be confined at hard labor in the State Penitentiary for a term not exceeding forty years or less than five years at the discretion of the presiding judge.

**SECTION 16‑3‑220.** Lynching in the second degree.

Any act of violence inflicted by a mob upon the body of another person and from which death does not result shall constitute the crime of lynching in the second degree and shall be a felony. Any person found guilty of lynching in the second degree shall be confined at hard labor in the State Penitentiary for a term not exceeding twenty years nor less than three years, at the discretion of the presiding judge.

**SECTION 16‑3‑230.** “Mob” defined.

A “mob” is defined for the purpose of this article as the assemblage of two or more persons, without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another.

**SECTION 16‑3‑240.** Members of mob guilty as principals.

It is permissible to infer that all persons present as members of a mob when an act of violence is committed have aided and abetted the crime and are guilty as principals.

**SECTION 16‑3‑250.** Duties of sheriff and solicitor with respect to acts of violence committed by mob.

When any mob commits an act of violence the sheriff of the county wherein the crime occurs and the solicitor of the circuit wherein the county is located shall act as speedily as possible to apprehend and identify the members of the mob and bring them to trial.

**SECTION 16‑3‑260.** Solicitor’s summary power to conduct investigation.

Pursuant to Section 16‑3‑250 the solicitor of any circuit shall have summary power to conduct any investigation deemed necessary by him in order to apprehend the members of a mob and may subpoena witnesses and take testimony under oath.

**SECTION 16‑3‑270.** Civil liability of members of mob.

This article shall not be construed to relieve any member of any such mob from civil liability.

ARTICLE 5.

 DUELING

**SECTION 16‑3‑410.** Sending or accepting challenge to fight.

It is unlawful for a person to challenge another to fight with a sword, pistol, rapier, or any other deadly weapon or to accept a challenge.

A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than two years. A person convicted under this section is deprived of the right of suffrage, and is disabled from holding any office of honor or trust in this State.

**SECTION 16‑3‑420.** Carrying or delivering challenge; serving as second.

Whoever shall (a) willingly or knowingly carry or deliver any such challenge in writing or verbally deliver any message intended as, or purporting to be, such a challenge, (b) be present at the fighting of any duel as a second or (c) aid or give countenance thereto shall, for every such offense, on conviction thereof, be forever disabled from holding any office of honor or trust in this State and shall be imprisoned in the Penitentiary for a term not exceeding two years, at the discretion of the court, and shall be fined in a sum not less than five hundred dollars nor more than one thousand dollars.

**SECTION 16‑3‑430.** Killing in a duel.

In case any person shall kill another in any duel with a deadly weapon or shall inflict a wound or wounds upon any person in any duel so that the person so wounded shall thereof die within the space of six months then next following, such person so killing another or so wounding any person whereby such person so wounded shall die as aforesaid, being thereof convicted, shall suffer death, as in the case of wilful murder.

**SECTION 16‑3‑440.** Principal or second shall be compelled to give testimony.

Upon the trial of all indictments for dueling any person concerned therein, either as principal or second or as counseling, aiding and abetting in such duel, shall be compelled to give evidence against the person actually indicted, without incriminating himself or subjecting or making himself liable to any prosecution, penalty, forfeiture or punishment on account of his agency in such duel.

**SECTION 16‑3‑450.** Persons concerned in duel as witnesses.

When two or more persons shall be charged in any indictment for fighting a duel or being concerned therein either of such persons may be used as a witness in behalf of the State by having his name stricken out of the indictment, or otherwise, at the discretion of the Attorney General or solicitor or other attorney acting for the State conducting such prosecution, of which an entry shall immediately be made on the minutes of the court.

**SECTION 16‑3‑460.** Pleading in bar by State’s witness to subsequent indictment.

In case any such person so used as a witness in behalf of the State in any prosecution for fighting a duel or for being concerned therein shall afterwards be indicted for the same offense, the fact of his having been used as a witness in the former prosecution for the same offense may be pleaded in bar to such subsequent indictment and, on proof thereof by competent evidence, such person shall be thereof acquitted and discharged.

ARTICLE 6.

 HAZING

**SECTION 16‑3‑510.** Hazing unlawful; definitions.

It is unlawful for a person to intentionally or recklessly engage in acts which have a foreseeable potential for causing physical harm to a person for the purpose of initiation or admission into or affiliation with a chartered or nonchartered student, fraternal, or sororal organization. Fraternity, sorority, or other organization for purposes of this section means those chartered and nonchartered fraternities, sororities, or other organizations operating in connection with a school, college, or university. This section does not include customary athletic events or similar contests or competitions, or military training whether state, federal, or educational.

**SECTION 16‑3‑520.** Unlawful to assist in or fail to report hazing.

It is unlawful for any person to knowingly permit or assist any person in committing acts made unlawful by Section 16‑3‑510 or to fail to report promptly any information within his knowledge of acts made unlawful by Section 16‑3‑510 to the chief executive officer of the appropriate school, college, or university.

**SECTION 16‑3‑530.** Penalties.

Any person who violates the provisions of Sections 16‑3‑510 or 16‑3‑520 is guilty of a misdemeanor and, upon conviction, must be punished by a fine not to exceed five hundred dollars or by imprisonment for a term not to exceed twelve months, or both.

**SECTION 16‑3‑540.** Consent not a defense.

The implied or express consent of a person to acts which violate Section 16‑3‑510 does not constitute a defense to violations of Sections 16‑3‑510 or 16‑3‑520.

ARTICLE 7.

 ASSAULT AND CRIMINAL SEXUAL CONDUCT

**SECTION 16‑3‑610.** Assault with concealed weapon.

If any person be convicted of assault, assault and battery, assault or assault and battery with intent to kill or manslaughter and it shall appear upon the trial that the assault, assault and battery, assault or assault and battery with intent to kill or manslaughter shall have been committed with a deadly weapon of the character specified in Section 16‑23‑460 carried concealed upon the person of the defendant so convicted the presiding judge shall, in addition to the punishment provided by law for such assault, assault and battery, assault or assault and battery with intent to kill or manslaughter, inflict further punishment upon the person so convicted by confinement in the Penitentiary for not less than three months nor more than twelve months, with or without hard labor, or a fine of not less than two hundred dollars or both fine and imprisonment, at the discretion of the judge.

**SECTION 16‑3‑612.** Student committing assault and battery against school personnel; definitions.

(A) For purposes of this section:

(1) “Student” means a person currently enrolled in any school.

(2) “School” includes, but is not limited to, a public or private school that contains any grades of kindergarten through twelfth grade, public or private colleges, universities, and any vocational, technical, or occupational school.

(B) A student who commits an assault and battery, other than one that is aggravated, on school grounds or at a school‑sponsored event against any person affiliated with the school in an official capacity including, but not limited to, administrators, teachers, faculty, substitute teachers, teachers’ assistants, student teachers, custodial staff, food service staff, volunteers, law enforcement officers, school bus drivers, school crossing guards, or other regularly assigned school‑contracted persons is guilty of assault and battery against school personnel which is a misdemeanor and, upon conviction, must be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

**SECTION 16‑3‑615.** Spousal sexual battery.

(A) Sexual battery, as defined in Section 16‑3‑651(h), when accomplished through use of aggravated force, defined as the use or the threat of use of a weapon or the use or threat of use of physical force or physical violence of a high and aggravated nature, by one spouse against the other spouse if they are living together, constitutes the felony of spousal sexual battery and, upon conviction, a person must be imprisoned not more than ten years.

(B) The offending spouse’s conduct must be reported to appropriate law enforcement authorities within thirty days in order for that spouse to be prosecuted for this offense.

(C) The provisions of Section 16‑3‑659.1 apply to any trial brought under this section.

(D) This section is not applicable to a purported marriage entered into by a male under the age of sixteen or a female under the age of fourteen.

**SECTION 16‑3‑620.** Assault and battery with intent to kill.

The crime of assault and battery with intent to kill shall be a felony in this State and any person convicted of such crime shall be punished by imprisonment not to exceed twenty years.

**SECTION 16‑3‑625.** Resisting arrest with deadly weapon; sentencing; “deadly weapon” defined; application of section.

A person who resists the lawful efforts of a law enforcement officer to arrest him or another person with the use or threat of use of a deadly weapon against the officer, and the person is in possession or claims to be in possession of a deadly weapon, is guilty of a felony and, upon conviction, must be punished by imprisonment for not more than ten nor less than two years. No sentence imposed hereunder for a first offense shall be suspended to less than six months nor shall the persons so sentenced be eligible for parole until after service of six months. No person sentenced under this section for a second or subsequent offense shall have the sentence suspended to less than two years nor shall the person be eligible for parole until after service of two years.

As used in this section “deadly weapon” means any instrument which can be used to inflict deadly force.

This section does not affect or replace the common law crime of assault and battery with intent to kill nor does it apply if the sentencing judge, in his discretion, elects to sentence an eligible defendant under the provisions of the “Youthful Offenders Act”.

**SECTION 16‑3‑630.** Conviction of assault upon state or local correctional facility employee; penalty.

A person convicted of assault upon an employee of a state or local correctional facility performing job‑related duties must serve a mandatory minimum sentence of not less than six months nor more than five years. A sentence under this provision must be served consecutively to any other sentence the person is serving.

**SECTION 16‑3‑635.** Assault and battery upon emergency medical service provider, firefighter or home healthcare worker.

(A) As used in this section:

(1) “Emergency medical service provider” means an individual or employee of a health care provider who provides medical or health care services in the course of his employment or training which includes, but is not limited to, emergency physicians, nurses, emergency medical technicians, paramedics, members of rescue squads, and anyone directed by these individuals.

(2) “Firefighter” means an employee of a town, city, county, or state fire service including, but not limited to, firefighters, volunteer firefighters, fire investigators, fire inspectors, and any one directed by these individuals.

(3) “Home healthcare worker” means a licensed nurse who provides health care in a home under the direction of a physician, county or state public health agency, or medical facility.

(B) A person is guilty of the misdemeanor of assault and battery upon an emergency medical service provider, firefighter, or home healthcare worker and, upon conviction, must be fined not more than one thousand dollars or imprisoned not less than two months nor more than three years, or both, if he knowingly or wilfully resists or obstructs a person listed in subsection (A), or commits an assault on a person listed in subsection (A), in the lawful discharge of that person’s official duties and the resistance, obstruction, or assault is unaccompanied by any of the circumstances of aggravation listed in subsection (C).

A person sentenced under this section for a second or subsequent offense shall not have his sentence suspended to less than six months’ imprisonment nor shall the person be eligible for parole until after service of six months.

(C) A person is guilty of the felony of assault and battery of a high and aggravated nature upon an emergency medical service provider, firefighter, or home healthcare worker and, upon conviction, must be fined not less than one thousand dollars nor more than ten thousand dollars or imprisoned not less than one year nor more than ten years, or both, if he knowingly or wilfully resists or obstructs a person listed in subsection (A), or commits an assault on a person listed in subsection (A), in the lawful discharge of that person’s official duties and the resistance, obstruction, or assault is accompanied by at least one of the following circumstances of aggravation:

(1) physical injury to a person listed in subsection (A);

(2) the use of a deadly weapon;

(3) great disparity in the physical conditions of the parties;

(4) great disparity in the ages of the parties;

(5) great disparity in the sizes of the parties; or

(6) indecent liberties with a female.

As used in this section “deadly weapon” means any instrument which can be used to inflict death or serious physical injury.

**SECTION 16‑3‑651.** Criminal sexual conduct: definitions.

For the purposes of Sections 16‑3‑651 to 16‑3‑659.1:

(a) “Actor” means a person accused of criminal sexual conduct.

(b) “Aggravated coercion” means that the actor threatens to use force or violence of a high and aggravated nature to overcome the victim or another person, if the victim reasonably believes that the actor has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion, under circumstances of aggravation, against the victim or any other person.

(c) “Aggravated force” means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon.

(d) “Intimate parts” includes the primary genital area, anus, groin, inner thighs, or buttocks of a male or female human being and the breasts of a female human being.

(e) “Mentally defective” means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct.

(f) “Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause.

(g) “Physically helpless” means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

(h) “Sexual battery” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

(i) “Victim” means the person alleging to have been subjected to criminal sexual conduct.

**SECTION 16‑3‑652.** Criminal sexual conduct in the first degree.

(1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses aggravated force to accomplish sexual battery.

(b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act.

(c) The actor causes the victim, without the victim’s consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance.

(2) Criminal sexual conduct in the first degree is a felony punishable by imprisonment for not more than thirty years, according to the discretion of the court.

**SECTION 16‑3‑653.** Criminal sexual conduct in the second degree.

(1) A person is guilty of criminal sexual conduct in the second degree if the actor uses aggravated coercion to accomplish sexual battery.

(2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than twenty years according to the discretion of the court.

**SECTION 16‑3‑654.** Criminal sexual conduct in the third degree.

(1) A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances.

(b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery.

(2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than ten years, according to the discretion of the court.

**SECTION 16‑3‑655.** Criminal sexual conduct with a minor; aggravating and mitigating circumstances; penalties; repeat offenders.

(A) A person is guilty of criminal sexual conduct with a minor in the first degree if:

(1) the actor engages in sexual battery with a victim who is less than eleven years of age; or

(2) the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23‑3‑430(C) or has been ordered to be included in the sex offender registry pursuant to Section 23‑3‑430(D).

(B) A person is guilty of criminal sexual conduct with a minor in the second degree if:

(1) the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age; or

(2) the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim. However, a person may not be convicted of a violation of the provisions of this item if he is eighteen years of age or less when he engages in consensual sexual conduct with another person who is at least fourteen years of age.

(C)(1) A person convicted of a violation of subsection (A)(1) is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum of twenty‑five years, no part of which may be suspended or probation granted, or must be imprisoned for life. In the case of a person pleading guilty or nolo contendere to a violation of subsection (A)(1), the judge must make a specific finding on the record regarding whether the type of conduct that constituted the sexual battery involved sexual or anal intercourse by a person or intrusion by an object. In the case of a person convicted at trial for a violation of subsection (A)(1), the judge or jury, whichever is applicable, must designate as part of the verdict whether the conduct that constituted the sexual battery involved sexual or anal intercourse by a person or intrusion by an object. If the person has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for first degree criminal sexual conduct with a minor who is less than eleven years of age or a federal or out‑of‑state offense that would constitute first degree criminal sexual conduct with a minor who is less than eleven years of age, he must be punished by death or by imprisonment for life, as provided by this section. For the purpose of determining a prior conviction under this subsection, the person must have been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent on a separate occasion, prior to the instant adjudication, for first degree criminal sexual conduct with a minor who is less than eleven years of age or a federal or out‑of‑state offense that would constitute first degree criminal sexual conduct with a minor who is less than eleven years of age. In order to be eligible for the death penalty pursuant to this section, the sexual battery constituting the current offense and any prior offense must have involved sexual or anal intercourse by a person or intrusion by an object. If any prior offense that would make a person eligible for the death penalty pursuant to this section occurred prior to the effective date of this act and no specific finding was made regarding the nature of the conduct or is an out‑of‑state or federal conviction, the determination of whether the sexual battery constituting the prior offense involved sexual or anal intercourse by a person or intrusion by an object must be made in the separate sentencing proceeding provided by this section and proven beyond a reasonable doubt and designated in writing by the judge or jury, whichever is applicable. If the judge or jury, whichever is applicable, does not find that the prior offense involved sexual or anal intercourse by a person or intrusion by an object, then the person must be sentenced to imprisonment for life. For purposes of this subsection, imprisonment for life means imprisonment until death.

(2) A person convicted of a violation of subsection (A)(2) is guilty of a felony and, upon conviction, must be imprisoned for not less than ten years nor more than thirty years, no part of which may be suspended or probation granted.

(3) A person convicted of a violation of subsection (B) is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty years according to the discretion of the court.

(D) If the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant pursuant to this section, a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (D)(1) and (D)(2), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. For purposes of this section, “life imprisonment” means until death of the offender without the possibility of parole, and when requested by the State or the defendant, the judge must charge the jury in his instructions that life imprisonment means until the death of the defendant without the possibility of parole. No person sentenced to life imprisonment, pursuant to this subsection, is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. Under no circumstances may a female who is pregnant be executed, so long as she is pregnant or for a period of at least nine months after she is no longer pregnant. When the Governor commutes a sentence of death imposed pursuant to this section to life imprisonment under the provisions of Section 14 of Article IV of the Constitution of South Carolina, 1895, the commutee is not eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the mandatory imprisonment required by this subsection.

(1) When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant pursuant to this section, the court shall conduct a separate sentencing proceeding. In the proceeding, if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty‑four hours unless waived by the defendant. If trial by jury has been waived by the defendant and the State, or if the defendant pled guilty, the sentencing proceeding must be conducted before the judge. In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment. Only such evidence in aggravation as the State has informed the defendant in writing before the trial is admissible. This section must not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States, or the State of South Carolina, or the applicable laws of either. The State, the defendant, and his counsel are permitted to present arguments for or against the sentence to be imposed. The defendant and his counsel shall have the closing argument regarding the sentence to be imposed.

(2) In sentencing a person, upon conviction or adjudication of guilt of a defendant pursuant to this section, the judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence:

(a) Statutory aggravating circumstances:

(i) The victim’s resistance was overcome by force.

(ii) The victim was prevented from resisting the act because the actor was armed with a dangerous weapon.

(iii) The victim was prevented from resisting the act by threats of great and immediate bodily harm, accompanied by an apparent power to inflict bodily harm.

(iv) The victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity preventing his resistance.

(v) The crime was committed by a person with a prior conviction for murder.

(vi) The offender committed the crime for himself or another for the purpose of receiving money or a thing of monetary value.

(vii) The offender caused or directed another to commit the crime or committed the crime as an agent or employee of another person.

(viii) The crime was committed against two or more persons by the defendant by one act, or pursuant to one scheme, or course of conduct.

(ix) The crime was committed during the commission of burglary in any degree or kidnapping.

(b) Mitigating circumstances:

(i) The defendant has no significant history of prior criminal convictions involving the use of violence against another person.

(ii) The crime was committed while the defendant was under the influence of mental or emotional disturbance.

(iii) The defendant was an accomplice in the crime committed by another person and his participation was relatively minor.

(iv) The defendant acted under duress or under the domination of another person.

(v) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(vi) The age or mentality of the defendant at the time of the crime.

(vii) The defendant was below the age of eighteen at the time of the crime.

The statutory instructions as to statutory aggravating and mitigating circumstances must be given in charge and in writing to the jury for its deliberation. The jury, if its verdict is a recommendation of death, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances, which it found beyond a reasonable doubt. The jury, if it does not recommend death, after finding a statutory aggravating circumstance or circumstances beyond a reasonable doubt, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances it found beyond a reasonable doubt. In nonjury cases, the judge shall make the designation of the statutory aggravating circumstance or circumstances. Unless at least one of the statutory aggravating circumstances enumerated in this section is found, the death penalty must not be imposed.

Where a statutory aggravating circumstance is found and a recommendation of death is made, the trial judge shall sentence the defendant to death. The trial judge, before imposing the death penalty, shall find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor. Where a statutory aggravating circumstance is found and a sentence of death is not recommended by the jury, the trial judge shall sentence the defendant to life imprisonment as provided in subsection (D)(4). Before dismissing the jury, the trial judge shall question the jury as to whether or not it found a statutory aggravating circumstance or circumstances beyond a reasonable doubt. If the jury does not unanimously find any statutory aggravating circumstances or circumstances beyond a reasonable doubt, it shall not make a sentencing recommendation. Where a statutory aggravating circumstance is not found, the trial judge shall sentence the defendant to life imprisonment. No person sentenced to life imprisonment under this section is eligible for parole or to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the sentence required by this section. If the jury has found a statutory aggravating circumstance or circumstances beyond a reasonable doubt, the jury shall designate this finding, in writing, signed by all the members of the jury. The jury shall not recommend the death penalty if the vote for such penalty is not unanimous as provided. If members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant upon conviction or adjudication of guilt of a defendant pursuant to this section, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment, as provided in subsection (D)(4).

(3) Notwithstanding the provisions of Section 14‑7‑1020, in cases involving capital punishment a person called as a juror must be examined by the attorney for the defense.

(4) In a criminal action pursuant to this section, which may be punishable by death, a person may not be disqualified, excused, or excluded from service as a juror by reason of his beliefs or attitudes against capital punishment unless such beliefs or attitudes would render him unable to return a verdict according to law.

(E)(1) In all cases in which an individual is sentenced to death pursuant to this section, the trial judge shall, before the dismissal of the jury, verbally instruct the jury concerning the discussion of its verdict. A standard written instruction shall be promulgated by the Supreme Court for use in capital cases brought pursuant to this section.

(2) The verbal instruction shall include:

(a) the right of the juror to refuse to discuss the verdict;

(b) the right of the juror to discuss the verdict to the extent that the juror so chooses;

(c) the right of the juror to terminate any discussion pertaining to the verdict at any time the juror so chooses;

(d) the right of the juror to report any person who continues to pursue a discussion of the verdict or who continues to harass the juror after the juror has refused to discuss the verdict or communicated a desire to terminate discussion of the verdict; and

(e) the name, address, and phone number of the person or persons to whom the juror should report any harassment concerning the refusal to discuss the verdict or the juror’s decision to terminate discussion of the verdict.

(3) In addition to the verbal instruction of the trial judge, each juror, upon dismissal from jury service, shall receive a copy of the written jury instruction set forth in subsection (1).

(F)(1) Whenever the death penalty is imposed pursuant to this section, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Supreme Court of South Carolina. The clerk of the trial court, within ten days after receiving the transcript, shall transmit the entire record and transcript to the Supreme Court of South Carolina together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of his attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report shall be in the form of a standard questionnaire prepared and supplied by the Supreme Court of South Carolina.

(2) The Supreme Court of South Carolina shall consider the punishment as well as any errors by way of appeal.

(3) With regard to the sentence, the court shall determine:

(a) Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor; and

(b) Whether the evidence supports the jury’s or judge’s finding of a statutory aggravating circumstance as enumerated in subsection (D)(2)(a); and

(c) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

(4) Both the defendant and the State shall have the right to submit briefs within the time provided by the court and to present oral arguments to the court.

(5) The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

(a) affirm the sentence of death; or

(b) set the sentence aside and remand the case for resentencing by the trial judge based on the record and argument of counsel. The records of those similar cases referred to by the Supreme Court of South Carolina in its decision, and the extracts prepared as hereinafter provided for, shall be provided to the resentencing judge for his consideration. If the court finds error prejudicial to the defendant in the sentencing proceeding conducted by the trial judge before the trial jury as outlined under subsection (D)(1), the court may set the sentence aside and remand the case for a resentencing proceeding to be conducted by the same or a different trial judge and by a new jury impaneled for such purpose. In the resentencing proceeding, the new jury, if the defendant does not waive the right of a trial jury for the resentencing proceeding, shall hear evidence in extenuation, mitigation, or aggravation of the punishment in addition to any evidence admitted in the defendant’s first trial relating to guilt for the particular crime for which the defendant has been found guilty.

(6) The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration. The court shall render its decision on all legal errors, the factual substantiation of the verdict, and the validity of the sentence.

(G)(1) Whenever the solicitor seeks the death penalty pursuant to this section, he shall notify the defense attorney of his intention to seek such penalty at least thirty days prior to the trial of the case. At the request of the defense attorney, the defense attorney shall be excused from all other trial duties ten days prior to the term of court in which the trial is to be held.

(2)(a) Whenever any person is charged with first degree criminal sexual conduct with a minor who is less than eleven years and the death penalty is sought, the court, upon determining that such person is unable financially to retain adequate legal counsel, shall appoint two attorneys to defend such person in the trial of the action. One of the attorneys so appointed shall have at least five years’ experience as a licensed attorney and at least three years’ experience in the actual trial of felony cases, and only one of the attorneys so appointed shall be the public defender or a member of his staff. In all cases where no conflict exists, the public defender or member of his staff shall be appointed if qualified. If a conflict exists, the court shall then turn first to the contract public defender attorneys, if qualified, before turning to the Office of Indigent Defense.

(b) Notwithstanding any other provision of law, the court shall order payment of all fees and costs from funds available to the Office of Indigent Defense for the defense of the indigent. Any attorney appointed shall be compensated at a rate not to exceed fifty dollars per hour for time expended out of court and seventy‑five dollars per hour for time expended in court. Compensation shall not exceed twenty‑five thousand dollars and shall be paid from funds available to the Office of Indigent Defense for the defense of indigent represented by court‑appointed, private counsel.

(3)(a) Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant’s attorneys to obtain such services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses not to exceed twenty thousand dollars as the court shall deem appropriate. Payment of such fees and expenses may be ordered in cases where the defendant is an indigent represented by either court‑appointed, private counsel or the public defender.

(b) Court‑appointed counsel seeking payment for fees and expenses shall request these payments from the Office of Indigent Defense within thirty days after the completion of the case. For the purposes of this statute, exhaustion of the funds shall occur if the funds administered by the Office of Indigent Defense and reserved for death penalty fees and expenses have been reduced to zero. If either the Death Penalty Trial Fund or the Conflict Fund has been exhausted in a month and the other fund contains money not scheduled to be disbursed in that month, then the Indigent Defense Commission must transfer a sufficient amount from the fund with the positive fund balance to the fund with no balance and pay the obligation to the extent possible.

(4) Payment in excess of the hourly rates and limit in subsection (2) or (3) is authorized only if the court certifies, in a written order with specific findings of fact, that payment in excess of the rates is necessary to provide compensation adequate to ensure effective assistance of counsel and payment in excess of the limit is appropriate because the services provided were reasonably and necessarily incurred. Upon a finding that timely procurement of such services cannot await prior authorization, the court may authorize the provision of and payment for such services nunc pro tunc.

(5) After completion of the trial, the court shall conduct a hearing to review and validate the fees, costs, and other expenditures on behalf of the defendant.

(6) The Supreme Court shall promulgate guidelines on the expertise and qualifications necessary for attorneys to be certified as competent to handle death penalty cases brought pursuant to this section.

(7) The Office of Indigent Defense shall maintain a list of death penalty qualified attorneys who have applied for and received certification by the Supreme Court as provided for herein. In the event the court‑appointed counsel notifies the chief administrative judge in writing that he or she does not wish to provide representation in a death penalty case, the chief administrative judge shall advise the Office of Indigent Defense which shall forward a name or names to the chief administrative judge for consideration. The appointment power is vested in the chief administrative judge. The Office of Indigent Defense shall establish guidelines as are necessary to ensure that attorneys’ names are presented to the judges on a fair and equitable basis, taking into account geography and previous assignments from the list. Efforts shall be made to present an attorney from the area or region where the action is initiated.

(8) The payment schedule set forth herein, as amended by Act 164 of 1993, shall apply to any case for which trial occurs on or after July 1, 1993.

(9) Notwithstanding another provision of law, only attorneys who are licensed to practice in this State and residents of this State may be appointed by the court and compensated with funds appropriated to the Death Penalty Trial Fund in the Office of Indigent Defense. This proviso shall not pertain to any case in which counsel has been appointed on the effective date of this act.

(10) The judicial department biennially shall develop and make available to the public a list of standard fees and expenses associated with the defense of an indigent person in a death penalty case.

(H) Notwithstanding any other provision of law, in any trial pursuant to this section where the maximum penalty is death or in a separate sentencing proceeding following such trial, the defendant and his counsel shall have the right to make the last argument.

**SECTION 16‑3‑656.** Criminal sexual conduct: assaults with intent to commit.

Assault with intent to commit criminal sexual conduct described in the above sections shall be punishable as if the criminal sexual conduct was committed.

**SECTION 16‑3‑657.** Criminal sexual conduct: testimony of victim need not be corroborated.

The testimony of the victim need not be corroborated in prosecutions under Sections 16‑3‑652 through 16‑3‑658.

**SECTION 16‑3‑658.** Criminal sexual conduct: where victim is spouse.

A person cannot be guilty of criminal sexual conduct under Sections 16‑3‑651 through 16‑3‑659.1 if the victim is the legal spouse unless the couple is living apart and the offending spouse’s conduct constitutes criminal sexual conduct in the first degree or second degree as defined by Sections 16‑3‑652 and 16‑3‑653.

The offending spouse’s conduct must be reported to appropriate law enforcement authorities within thirty days in order for a person to be prosecuted for these offenses.

This section is not applicable to a purported marriage entered into by a male under the age of sixteen or a female under the age of fourteen.

**SECTION 16‑3‑659.** Criminal sexual conduct: males under fourteen not presumed incapable of committing crime of rape.

The common law rule that a boy under fourteen years is conclusively presumed to be incapable of committing the crime of rape shall not be enforced in this State. Provided, that any person under the age of 14 shall be tried as a juvenile for any violations of Sections 16‑3‑651 to 16‑3‑659.1.

**SECTION 16‑3‑659.**1. Criminal sexual conduct: admissibility of evidence concerning victim’s sexual conduct.

(1) Evidence of specific instances of the victim’s sexual conduct, opinion evidence of the victim’s sexual conduct, and reputation evidence of the victim’s sexual conduct is not admissible in prosecutions under Sections 16‑3‑615 and 16‑3‑652 to 16‑3‑656; however, evidence of the victim’s sexual conduct with the defendant or evidence of specific instances of sexual activity with persons other than the defendant introduced to show source or origin of semen, pregnancy, or disease about which evidence has been introduced previously at trial is admissible if the judge finds that such evidence is relevant to a material fact and issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value. Evidence of specific instances of sexual activity which would constitute adultery and would be admissible under rules of evidence to impeach the credibility of the witness may not be excluded.

(2) If the defendant proposes to offer evidence described in subsection (1), the defendant, prior to presenting his defense shall file a written motion and offer of proof. The court shall order an in‑camera hearing to determine whether the proposed evidence is admissable under subsection (1). If new evidence is discovered during the presentation of the defense that may make the evidence described in subsection (1) admissable, the judge may order an in‑camera hearing to determine whether the proposed evidence is admissable under subsection (1).

**SECTION 16‑3‑660.** Deposition testimony of rape victim or victim of assault with intent to ravish.

Before or during the trial of a person charged with rape or assault with intent to ravish, when the female who is alleged to have been assaulted is a witness, the judge of the court in which the case is to be tried may, in his discretion, by an order direct that the deposition of such witness be taken at a time and place designated in such order within the county in which the trial is to be had upon such notice to the accused as the judge may direct.

**SECTION 16‑3‑670.** Procedure for taking deposition.

Such deposition shall be taken by the clerk of the court of general sessions for the county in which the case is to be tried or by such other officer as the presiding judge may name in his order, at the taking of which the accused shall be present and shall have the same rights in regard to the examination of the witness as if she were testifying in open court. No persons other than the attorneys for the State and accused shall be present unless expressly admitted by the judge, and the accused shall have the right to object to the admissibility of the testimony of such witness, either at the time of the taking of the deposition or when the same is offered in evidence on the trial in open court.

**SECTION 16‑3‑680.** Sheriff shall procure attendance of accused; absence of counsel.

The sheriff of the county shall secure the personal attendance of the accused at the time and place of taking such depositions, and the absence of either the attorney for the State or for the accused, after notice prescribed in the order, shall not prevent or delay the taking of such depositions.

**SECTION 16‑3‑690.** Custody of deposition.

Such depositions, when taken, shall be signed by the witness in the presence of the clerk or other officer taking the same, placed in a sealed envelope, the title of the case endorsed thereon, and be retained by the clerk of court until the same is opened in court; and if taken by another officer he shall deliver the same to the clerk, to be retained by him as herein provided.

**SECTION 16‑3‑700.** Reading deposition to jury.

Such deposition shall be read to the jury upon the trial and shall be considered by them as though such testimony had been given orally in court.

**SECTION 16‑3‑710.** Depositions in rebuttal.

The judge may, in like manner, direct other depositions of such witness, in rebuttal or otherwise, which shall be taken and read in the manner and under the conditions herein prescribed as to the first deposition.

**SECTION 16‑3‑720.** Destruction of deposition.

The clerk of the court in which such case is tried, in the event no appeal is taken, shall, as soon as the time for appealing has elapsed, withdraw the deposition from the record of the case and destroy it. And in case there is an appeal, as soon as the case is finally disposed of, the clerk shall destroy the depositions herein provided for.

**SECTION 16‑3‑730.** Publishing name of victim of criminal sexual conduct unlawful.

Whoever publishes or causes to be published the name of any person upon whom the crime of criminal sexual conduct has been committed or alleged to have been committed in this State in any newspaper, magazine or other publication shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or imprisonment of not more than three years. The provisions of this section shall not apply to publications made by order of court.

**SECTION 16‑3‑740.** Testing of certain convicted offenders for Hepatitis B, sexually transmitted diseases, and Human Immunodeficiency Virus.

(A) For purposes of this section:

(1) “Body fluid” means blood, amniotic fluid, pericardial fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen or vaginal secretions, or any body fluid visibly contaminated with blood.

(2) “HIV” means the human immunodeficiency virus.

(3) “Offender” includes a person under seventeen years of age.

(B) Upon the request of a victim who has been exposed to body fluids during the commission of a criminal offense, or upon the request of the legal guardian of a victim who has been exposed to body fluids during the commission of a criminal offense, the solicitor must, at any time after the offender is charged, or at any time after a petition has been filed against an offender in family court, petition the court to have the offender tested for Hepatitis B and HIV. An offender must not be tested under this section for Hepatitis B and HIV without a court order. To obtain a court order, the solicitor must demonstrate the following:

(1) the victim or the victim’s legal guardian requested the tests;

(2) there is probable cause that the offender committed the offense;

(3) there is probable cause that during the commission of the offense there was a risk that body fluids were transmitted from one person to another; and

(4) the offender has received notice of the petition and notice of his right to have counsel represent him at a hearing.

The results of the tests must be kept confidential and disclosed only to the solicitor who obtained the court order. The solicitor shall then notify only those persons designated in subsection (C).

(C) The tests must be administered by the Department of Health and Environmental Control through the local county health department or the medical professional at the state or local detention facility where the offender is imprisoned or detained. If the tests are performed prior to conviction or adjudication, the results of the tests must be reported only to the solicitor who obtained the court order. The solicitor shall notify the following persons of the tests results:

(1) the victim or the legal guardian of a victim who is a minor or is mentally retarded or mentally incapacitated;

(2) the victim’s attorney;

(3) the offender and a juvenile offender’s parent or guardian; and

(4) the offender’s attorney.

The results of the tests shall be provided to the designated recipients with the following disclaimer: “The tests were conducted in a medically approved manner, but tests cannot determine infection by Hepatitis B or HIV with absolute accuracy. Additionally, the testing does not determine exposure to or infection by other sexually transmitted diseases. Persons receiving the tests results should continue to monitor their own health, seek retesting in approximately six months, and should consult a physician as appropriate”.

The solicitor also shall provide to the state or local correctional facility where the offender is imprisoned or detained and the Department of Health and Environmental Control the test results for HIV and Hepatitis B which indicate that the offender is infected with the disease. The state or local correctional facility where the offender is imprisoned or detained shall use this information solely for the purpose of providing medical treatment to the offender while the offender is imprisoned or detained. The State shall pay for the tests. If the offender is subsequently convicted or adjudicated delinquent, the offender or the parents of an adjudicated offender must reimburse the State for the costs of the tests unless the offender or the parents of the adjudicated offender are determined to be indigent.

If the tests given pursuant to this section indicate infection by Hepatitis B or HIV, the Department of Health and Environmental Control shall be provided with all tests results and must provide counseling to the offender regarding the disease, syndrome, or virus. The Department of Health and Environmental Control must also provide testing and counseling for the victim at the victim’s request and referral for appropriate health care and support services.

(D) At the request of the victim or the victim’s legal guardian, the court may order a follow‑up HIV test and counseling for the offender if the initial HIV test was negative. The follow‑up test and counseling shall be performed on dates that occur six weeks, three months, and six months following the initial test. An order for a follow‑up test shall be terminated if the offender obtains an acquittal on, or dismissal of, all charges for which testing was ordered.

(E) If, for any reason, the testing requested under subsection (B) has not been undertaken, upon request of the victim or the victim’s legal guardian, the court shall order the offender to undergo testing for Hepatitis B and HIV following conviction or delinquency adjudication. The testing shall be administered by the Department of Health and Environmental Control through the local county health department or the medical professional at the state or local detention facility where the offender is imprisoned or detained. The results shall be disclosed in accordance with the provisions of subsection (C).

(F) Upon a showing of probable cause that the offender committed a crime, the collection of additional samples, including blood, saliva, head or pubic hair may be contemporaneously ordered by the court so that the State may conduct scientific testing, including DNA analysis. The results of the scientific testing, including DNA analysis, may be used for evidentiary purposes in any court proceeding.

(G) Any person or entity who administers tests ordered pursuant to this section and who does so in accordance with this section and accepted medical standards for the administration of these tests shall be immune from civil and criminal liability arising from his conduct.

(H) Any person who discloses information in accordance with the provisions of this section or who participates in any judicial proceeding resulting from the disclosure and who does so in good faith and without malice shall have immunity from civil or criminal liability that might otherwise be incurred or imposed in an action resulting from the disclosure.

(I) Results of tests performed pursuant to this section shall not be used as evidence in any criminal trial of the offender except as provided for in subsection (F).

ARTICLE 8.

 SEXUAL PERFORMANCE BY CHILDREN

**SECTION 16‑3‑800.** Definitions.

As used in this article:

(1) “Sexual performance” means any performance or part thereof that includes sexual conduct by a child younger than eighteen years of age.

(2) “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado‑masochistic abuse, or lewd exhibition of the genitals.

(3) “Performance” means any play, motion picture, photograph, dance, or other visual representation that is exhibited before an audience.

(4) “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.

**SECTION 16‑3‑810.** Engaging child for sexual performance; penalty.

(a) It is unlawful for any person to employ, authorize, or induce a child younger than eighteen years of age to engage in a sexual performance. It is unlawful for a parent or legal guardian or custodian of a child younger than eighteen years of age to consent to the participation by the child in a sexual performance.

(b) Any person violating the provisions of subsection (a) of this section is guilty of criminal sexual conduct of the second degree and upon conviction shall be punished as provided in Section 16‑3‑653.

**SECTION 16‑3‑820.** Producing, directing or promoting sexual performance by child; penalty.

(a) It is unlawful for any person to produce, direct, or promote a performance that includes sexual conduct by a child younger than eighteen years of age.

(b) Any person violating the provisions of subsection (a) of this section is guilty of criminal sexual conduct of the third degree and upon conviction shall be punished as provided in Section 16‑3‑654.

**SECTION 16‑3‑830.** Reasonable belief as to majority of child as affirmative defense.

It is an affirmative defense to a prosecution under this article that the defendant, in good faith, reasonably believed that the person who engaged in the sexual conduct was eighteen years of age or older.

**SECTION 16‑3‑840.** Methods of judicial determination of age of child.

When it becomes necessary for the purposes of this article to determine whether a child who participated in sexual conduct was younger than eighteen years of age, the court or jury may make this determination by any of the following methods:

(1) personal inspection of the child;

(2) inspection of the photograph or motion picture that shows the child engaging in the sexual performance;

(3) oral testimony by a witness to the sexual performance as to the age of the child based on the child’s appearance at the time;

(4) expert medical testimony based on the appearance of the child engaging in the sexual performance; or

(5) any other method authorized by law or by rules of evidence.

**SECTION 16‑3‑850.** Film processor or computer technician to report film or computer images containing sexually explicit pictures of minors.

Any retail or wholesale film processor or photo finisher who is requested to develop film, and any computer technician working with a computer who views an image of a child younger than eighteen years of age or appearing to be younger than eighteen years of age who is engaging in sexual conduct, sexual performance, or a sexually explicit posture must report the name and address of the individual requesting the development of the film, or of the owner or person in possession of the computer to law enforcement officials in the state and county or municipality from which the film was originally forwarded. Compliance with this section does not give rise to any civil liability on the part of anyone making the report.

ARTICLE 9.

 KIDNAPPING

**SECTION 16‑3‑910.** Kidnapping.

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years unless sentenced for murder as provided in Section 16‑3‑20.

**SECTION 16‑3‑920.** Conspiracy to kidnap.

If two or more persons enter into an agreement, confederation, or conspiracy to violate the provisions of Section 16‑3‑910 and any of such persons do any overt act towards carrying out such unlawful agreement, confederation, or conspiracy, each such person shall be guilty of a felony and, upon conviction, shall be punished in like manner as provided for the violation of Section 16‑3‑910.

**SECTION 16‑3‑930.** Trafficking in persons for forced labor or services; penalty; exceptions.

(A) A person who knowingly subjects another person to forced labor or services, or recruits, entices, harbors, transports, provides, or obtains by any means another person knowing that the person will be subjected to forced labor or services, or aids, abets, attempts, or conspires to do any of the above acts is guilty of a felony known as trafficking in persons for forced labor or services and, upon conviction, must be imprisoned for not more than fifteen years.

(B) “Forced labor or services” means any type of labor or services performed or provided by a person rendered through another person’s exertion of physical, financial, or other means of control over the person providing the labor or services.

(C) This section does not apply to labor or services performed or provided by a person in the custody of the Department of Corrections or a local jail, detention center, or correctional facility.

ARTICLE 11.

 MISCELLANEOUS OFFENSES

**SECTION 16‑3‑1010.** Failing to remove doors from abandoned airtight containers.

Any person who abandons or discards any icebox, refrigerator, ice chest or other type of airtight container of a capacity sufficient to contain any child and who neglects prior to such abandonment to remove the door, lid or other device for the closing thereof and any owner, lessee or other person in charge of property who knowingly permits any abandoned icebox, refrigerator, ice chest or other type of airtight container to remain thereon accessible to children without removing the door, lid or other closing device therefrom shall be guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned not more than thirty days.

**SECTION 16‑3‑1020.** Maintaining open and unprotected abandoned wells.

It shall be unlawful for any owner or tenant to permit or allow any abandoned well to remain open and unprotected, curbed or fenced in on any place or premises owned or occupied in this State. Any person convicted of allowing any such abandoned well to remain open and unprotected, curbed or fenced in shall be fined in the sum of ten dollars or imprisoned not more than thirty days.

**SECTION 16‑3‑1040.** Threatening life, person or family of public official or public employee; punishment.

(A) It is unlawful for a person knowingly and wilfully to deliver or convey to a public official or to a teacher or principal of an elementary or secondary school any letter or paper, writing, print, missive, document, or electronic communication or verbal or electronic communication which contains a threat to take the life of or to inflict bodily harm upon the public official, teacher, or principal, or members of his immediate family if the threat is directly related to the public official’s, teacher’s, or principal’s professional responsibilities.

(B) It is unlawful for a person knowingly and wilfully to deliver or convey to a public employee a letter or paper, writing, print, missive, document, or electronic communication or verbal or electronic communication which contains a threat to take the life of or to inflict bodily harm upon the public employee or members of his immediate family if the threat is directly related to the public employee’s official responsibilities.

(C) A person who violates the provisions of subsection (A), upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

(D) A person who violates the provisions of subsection (B), upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(E) For purposes of this section:

(1) “Public official” means an elected or appointed official of the United States or of this State or of a county, municipality, or other political subdivision of this State.

(2) “Public employee” means a person employed by the State, a county, a municipality, a school district, or a political subdivision of this State, except that for purposes of this section, a “public employee” does not include a teacher or principal of an elementary or secondary school.

(3) “Immediate family” means the spouse, child, grandchild, mother, father, sister, or brother of the public official, teacher, principal, or public employee.

**SECTION 16‑3‑1045.** Use or employment of person under eighteen to commit certain crimes.

(A) It is unlawful for any person at least eighteen years of age to knowingly and intentionally:

(1) use, solicit, direct, hire, persuade, induce, entice, coerce, or employ a person under eighteen years of age to commit a violent crime as defined in Section 16‑1‑60, the crime of lynching as a result of mob violence prohibited by Article 3, Chapter 3 of this title, or the unlawful distribution of cocaine, crack cocaine, heroin, marijuana, or LSD;

(2) conspire to use, solicit, direct, hire, persuade, induce, entice, coerce, or employ a person under eighteen years of age to commit a violent crime as defined in Section 16‑1‑60, the crime of lynching as a result of mob violence prohibited by Article 3, Chapter 3 of this title, or the unlawful distribution of cocaine, crack cocaine, heroin, marijuana, or LSD.

(B) Any person who violates subsections (A)(1) or (A)(2) is guilty of a felony and, upon conviction, must be punished by a term of imprisonment of not less than five years nor more than fifteen years. Each violation of this section constitutes a separate offense.

(C) The felonies established in this section are supplemental to and do not supersede any other provisions of law which make the conduct referred to in subsection (A) unlawful.

**SECTION 16‑3‑1050.** Failure to report, perpetrating or interfering with an investigation of abuse, neglect or exploitation of a vulnerable adult; penalties.

(A) A person required to report abuse, neglect, or exploitation of a vulnerable adult under Chapter 35 of Title 43 who has actual knowledge that abuse, neglect, or exploitation has occurred and who knowingly and wilfully fails to report the abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty‑five hundred dollars or imprisoned not more than one year. A person required to report abuse, neglect, or exploitation of a vulnerable adult under Chapter 35 of Title 43 who has reason to believe that abuse, neglect, or exploitation has occurred or is likely to occur and who knowingly and wilfully fails to report the abuse, neglect, or exploitation is subject to disciplinary action as may be determined necessary by the appropriate licensing board.

(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(D) A person who knowingly and wilfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.

(E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

(F) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years.

(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to Chapter 35 of Title 43, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned not more than three years.

As used in this section, “great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

**SECTION 16‑3‑1060.** Receipt of compensation for relinquishing custody of child for adoption; penalty.

No person may sell or buy a minor child, or request, or accept, receive, or pay any fee, compensation, or any other thing of value as consideration for relinquishing the custody of a child for adoption. Provided, however, release or termination of prior support obligations shall not be construed as compensation or any other thing of value within the meaning of this section. However, reasonable costs may be assessed if they are reimbursements for expenses incurred or fees for services rendered, as provided for in Section 63‑9‑310(F). This section does not prohibit the assumption by a prospective adoptive parent of child support obligations previously established by the order of any court.

Any person violating the provisions of this section or the provisions of Section 63‑9‑310(F) is guilty of a felony and, upon conviction or plea of guilty, must be fined not more than ten thousand dollars or imprisoned for not more than ten years, or both, in the discretion of the court.

**SECTION 16‑3‑1072.** Reporting medical treatment for gunshot wound; immunity; physician‑patient privilege abrogated; penalties.

(A) Any physician, nurse, or any other medical or emergency medical services personnel of a hospital, clinic, or other health care facility or provider who knowingly treats any person suffering from a gunshot wound or who receives a request for such treatment shall report within a reasonable time the existence of the gunshot wound to the sheriff’s department of the county in which the treatment is administered or a request is received. However, no report is necessary if a law enforcement officer is present with the victim while treatment is being administered.

(B) The reports provided for in subsection (A) may be made orally, or otherwise. A hospital, clinic, or other health care facility or provider may designate an individual to make the reports provided for in this section. However, a report must be made as soon as possible, but no later than the time of the victim’s release from that facility.

(C) A person required to make a report pursuant to this section or who participates in judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil and criminal proceedings, good faith is rebuttably presumed.

(D) For purposes of this section, the confidential or privileged nature of communication between physician and patient and any other professional person and his patient or client is abrogated and does not constitute grounds for failure to report or the exclusion of evidence resulting from a report made pursuant to this section.

(E) A person required to report the existence of a gunshot wound who knowingly fails to do so is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars.

**SECTION 16‑3‑1075.** Felony of carjacking; penalties.

(A) For purposes of this section, “great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(B) A person is guilty of the felony of carjacking who takes, or attempts to take, a motor vehicle from another person by force and violence or by intimidation while the person is operating the vehicle or while the person is in the vehicle. Upon conviction for this offense, a person must:

(1) be imprisoned not more than twenty years; or

(2) if great bodily injury results, be imprisoned not more than thirty years.

**SECTION 16‑3‑1080.** Committing or attempting to commit a violent crime while wearing body armor a felony.

(A) Except as provided in subsection (B), a person who commits or attempts to commit a violent crime, as defined in Section 16‑1‑60 , or threatens to commit a violent crime, as defined in Section 16‑1‑60, while wearing body armor is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than two thousand dollars, or both. A term of imprisonment imposed for violating this section may be served consecutively to any term of imprisonment imposed for the crime committed or attempted.

(B) Subsection (A) does not apply to:

(1) a peace officer of this State or another state, or of a local unit of government of this State or another state, or of the United States, while in the performance of his official duties; or

(2) a security officer while in the performance of his official duties.

(C) As used in this section:

(1) “Body armor” means clothing or a device designed or intended to protect a person’s body or a portion of a person’s body from injury caused by a firearm;

(2) “Security officer” means a person lawfully employed to protect another person or to protect the property of another person.

**SECTION 16‑3‑1083.** Death or injury of child in utero due to commission of violent crime.

(A)(1) A person who commits a violent crime, as defined in Section 16‑1‑60, that causes the death of, or bodily injury to, a child who is in utero at the time that the violent crime was committed, is guilty of a separate offense under this section.

(2)(a) Except as otherwise provided in this subsection, the punishment for a separate offense, as provided for in subsection (A)(1), is the same as the punishment provided for that criminal offense had the death or bodily injury occurred to the unborn child’s mother.

(b) Prosecution of an offense under this section does not require proof that:

(i) the person committing the violent offense had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(ii) the defendant intended to cause the death of, or bodily injury to, the unborn child.

(c) If the person engaging in the violent offense intentionally killed or attempted to kill the unborn child, that person must, instead of being punished under subsection (A)(2)(a), be punished for murder or attempted murder.

(d) Notwithstanding any provision of this section or any other provision of law, the death penalty must not be imposed for an offense prosecuted under this section.

(B) Nothing in this section may be construed to permit the prosecution under this section:

(1) of a person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) of a person for any medical treatment of the pregnant woman or her unborn child; or

(3) of a woman with respect to her unborn child.

(C) As used in this section, the term “unborn child” means a child in utero, and the term “child in utero” or “ child who is in utero” means a member of the species homo sapiens, at any state of development, who is carried in the womb.

(D) Nothing in this section shall be construed to broaden or restrict any other rights currently existing for the child who is in utero.

**SECTION 16‑3‑1085.** Violent offender prohibited from purchasing, owning, or using body armor; exceptions.

(A) Except as otherwise provided in this section, it is unlawful for a person who has been convicted of a violent crime, as defined in Section 16‑1‑60, to purchase, own, possess, or use body armor.

(B)(1) A person who has been convicted of a violent crime whose employment, livelihood, or safety is dependent on his ability to purchase, own, possess, or use body armor may petition the chief of police of the local unit of government in which he resides or, if he does not reside in a local unit of government that has a police department, he may petition the county sheriff for written permission to purchase, own, possess, or use body armor.

(2) The chief of police of a local unit of government or the county sheriff may grant a person who properly petitions the chief of police or county sheriff under subsection (B)(1) written permission to purchase, own, possess, or use body armor as provided in this section if the chief of police or county sheriff determines that the petitioner:

(a) is likely to use body armor in a safe and lawful manner; and

(b) has reasonable need for the protection provided by body armor.

(3) In making the determination required under subsection (B)(1), the chief of police or county sheriff must consider:

(a) the petitioner’s continued employment;

(b) the interests of justice; and

(c) other circumstances justifying issuance of written permission to purchase, own, possess, or use body armor.

(4) The chief of police or county sheriff may restrict written permission issued to a petitioner under this section in any manner determined appropriate by that chief of police or county sheriff. If permission is restricted, the chief of police or county sheriff must state the restrictions in the permission document.

(5) Chiefs of police and county sheriffs must exercise broad discretion in determining whether to issue written permission to purchase, own, possess, or use body armor under this section. However, nothing in this section requires a chief of police or county sheriff to issue written permission to any particular petitioner. The issuance of written permission to purchase, own, possess, or use body armor under this section does not relieve any person or entity from criminal liability that might otherwise be imposed.

(6) A person who receives written permission from a chief of police or county sheriff to purchase, own, possess, or use body armor must have the written permission in his possession when he is purchasing, owning, possessing, or using body armor.

(C) A law enforcement agency may issue body armor to a person who is in the custody of a law enforcement agency or a local or state correctional facility or who is a witness to a crime for his protection without a petition being filed under subsection (B). If the law enforcement agency issues body armor to a person under this subsection, the law enforcement agency must document the reasons for issuing the body armor and retain a copy of that document as an official record. The law enforcement agency must issue written permission to the person to possess and use body armor under this section.

(D) A person who violates this section is guilty of:

(1) a felony for a violation of subsection (A) and, upon conviction, must be imprisoned not more than five years or fined not more than two thousand dollars, or both;

(2) a misdemeanor for a violation of subsection (B)(6) and, upon conviction, must be imprisoned not more than ninety days or fined not more than one hundred dollars, or both.

(E) As used in this section “body armor” means clothing or a device designed or intended to protect a person’s body or a portion of a person’s body from injury caused by a firearm.

**SECTION 16‑3‑1090.** Assisted suicide; penalties; injunctive relief.

(A) As used in this section:

(1) “Licensed health care professional” means a duly licensed physician, surgeon, podiatrist, osteopath, osteopathic physician, osteopathic surgeon, physician assistant, nurse, dentist, or pharmacist.

(2) “Suicide” means the act or instance of taking one’s life voluntarily and intentionally.

(B) It is unlawful for a person to assist another person in committing suicide. A person assists another person in committing suicide if the person:

(1) by force or duress intentionally causes the other person to commit or attempt to commit suicide; or

(2) has knowledge that the other person intends to commit or attempt to commit suicide and intentionally:

(a) provides the physical means by which the other person commits or attempts to commit suicide; or

(b) participates in a physical act by which the other person commits or attempts to commit suicide.

(C) None of the following may be construed to violate subsection (B):

(1) the withholding or withdrawing of a life sustaining procedure or compliance with any other state or federal law authorizing withdrawal or refusal of medical treatments or procedures;

(2) the administering, prescribing, or dispensing of medications or procedures, by or at the direction of a licensed health care professional, for the purpose of alleviating another person’s pain or discomfort, even if the medication or procedure may increase the risk of death, as long as the medication or procedure is not also intentionally administered, prescribed, or dispensed for the purpose of causing death, or the purpose of assisting in causing death, for any reason; or

(3) the administering, prescribing, or dispensing of medications or procedures to a patient diagnosed with a medical condition that includes an element of suicidal ideation, even if the medication or procedure may increase the risk of death, as long as the medication or procedure is not also intentionally administered, prescribed, or dispensed for the purpose of causing death, or the purpose of assisting in causing death, for any reason.

(D) Subsection (C) must not be construed to affect the duty of care or legal requirements other than those in this section concerning acts or omissions under subsection (C).

(E) A person who violates subsection (B) is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years or fined not more than one hundred thousand dollars, or both.

(F) Injunctive relief may be sought against a person who it is reasonably believed is about to violate or who is in the course of violating subsection (B) by a person who is:

(1) the spouse, parent, child, or sibling of the person who would commit suicide;

(2) entitled to inherit from the person who would commit suicide;

(3) a current or former health care provider of the person who would commit suicide;

(4) a legally appointed guardian or conservator of the person; or

(5) a public official with the appropriate jurisdiction to prosecute or enforce the laws of this State.

An injunction shall legally prevent the person from assisting any suicide in this State regardless of who is being assisted.

(G) The licensing agency which issued a license or certification to a licensed health care professional who assists in a suicide in violation of subsection (B) shall revoke or suspend the license or certification of that person upon receipt of a copy of the record of:

(1) a criminal conviction, plea of guilty, or plea of nolo contendere for the violation of subsection (B); or

(2) a judgment of contempt of court for violating an injunction issued under subsection (F).

ARTICLE 13.

 COMPENSATION OF VICTIMS OF CRIME

**SECTION 16‑3‑1110.** Definitions.

For the purpose of this article and Articles 14 and 15 of this chapter:

(1) “Board” means the South Carolina Crime Victim’s Advisory Board.

(2) “Claimant” means any person filing a claim pursuant to this article.

(3) “Fund” means the South Carolina Victim’s Compensation Fund, which is a division of the Office of the Governor.

(4) “Director” means the Director of the Victim’s Compensation Fund who is appointed by the Governor. The director shall be in charge of the State Office of Victim’s Assistance which is part of this division under the supervision of the Governor.

(5) “Field representative” means a field representative of the State Victim’s Compensation Fund assigned to handle a claim.

(6) “Crime” means an act which is defined as a crime by state, federal, or common law, including terrorism as defined in Section 2331 of Title 18, United States Code. Unless injury or death was recklessly or intentionally inflicted, “crime” does not include an act involving the operation of a motor vehicle, boat, or aircraft.

(7) “Recklessly or intentionally” inflicted injury or death includes, but is not limited to, injury or death resulting from an act which violates Sections 56‑5‑1210, 56‑5‑2910, 56‑5‑2920, or 56‑5‑2930 or from the use of a motor vehicle, boat, or aircraft to flee the scene of a crime in which the driver of the motor vehicle, boat, or aircraft knowingly participated.

(8) “Victim” means a person who suffers direct or threatened physical, emotional, or financial harm as the result of an act by someone else, which is a crime. The term includes immediate family members of a homicide victim or of any other victim who is either incompetent or a minor and includes an intervenor.

(9) “Intervenor” means a person other than a law enforcement officer performing normal duties, who goes to the aid of another, acting not recklessly, to prevent the commission of a crime or lawfully apprehend a person reasonably suspected of having committed a crime.

(10) “Deputy director” means the Deputy Director of the Victim’s Compensation Fund.

(11) “Panel” means a three‑member panel of the board designated by the board chairman to hear appeals.

(12)(a) “Restitution” means payment for all injuries, specific losses, and expenses sustained by a crime victim resulting from an offender’s criminal conduct. It includes, but is not limited to:

(i) medical and psychological counseling expenses;

(ii) specific damages and economic losses;

(iii) funeral expenses and related costs;

(iv) vehicle impoundment fees;

(v) child care costs; and

(vi) transportation related to a victim’s participation in the criminal justice process.

Restitution does not include awards for pain and suffering, wrongful death, emotional distress, or loss of consortium.

Restitution orders do not limit any civil claims a crime victim may file.

Notwithstanding any other provision of law, the applicable statute of limitations for a crime victim, who has a cause of action against an incarcerated offender based upon the incident which made the person a victim, is tolled and does not expire until three years after the offender’s release from the sentence including probation and parole time or three years after release from commitment pursuant to Chapter 48 of Title 44, whichever is later. However, this provision shall not shorten any other tolling period of the statute of limitations which may exist for the crime victim.

**SECTION 16‑3‑1120.** Director of Victim’s Compensation Fund; powers and duties.

A director of the Victim’s Compensation Fund must be appointed by the Governor and shall serve at his pleasure. The director is responsible for administering the provisions of this article. Included among the duties of the director is the responsibility, with approval of the South Carolina Crime Victim’s Advisory Board as established in this article, for developing and administering a plan for informing the public of the availability of the benefits provided under this article and procedures for filing claims for the benefits.

The director, upon approval by the South Carolina Crime Victim’s Advisory Board, has the following additional powers and duties:

(1) to appoint a deputy director of the Victim’s Compensation Fund, and staff necessary for the operation thereof, and to contract for services. The director shall recommend the salary for the deputy director and other staff members, as allowed by statute or applicable law;

(2) the board shall promulgate regulations to carry out the provisions and purposes of this article and Article 14 of this chapter. Regulations pertaining to this article and Article 14 of this chapter in effect on July 1, 1993, shall remain in full force and effect until otherwise amended as provided by law;

(3) to request from the Attorney General, South Carolina Law Enforcement Division, solicitors, magistrates, judges, county and municipal police departments, and any other agency or department such assistance and data as will enable the director to determine whether, and the extent to which, a claimant qualifies for awards. Any person, agency, or department listed above is authorized to provide the director with the information requested upon receipt of a request from the director. Any provision of law providing for confidentiality of juvenile records does not apply to a request of the deputy director, the director, the board, or a panel of the board pursuant to this section;

(4) to reinvestigate or reopen previously decided award cases as the deputy director considers necessary;

(5) to require the submission of medical records as are needed by the board, a panel of the board, or deputy director or his staff and, when necessary, to direct medical examination of the victim;

(6) to take or cause to be taken affidavits or depositions within or without the State. This power may be delegated to the deputy director or the board or its panel;

(7) to render each year to the Governor and to the General Assembly a written report of the activities of the Victim’s Compensation Fund pursuant to this article;

(8) to delegate the authority to the deputy director to reject incomplete claims for awards or assistance;

(9) to render awards to victims of crime or to those other persons entitled to receive awards in the manner authorized by this article. The power may be delegated to the deputy director;

(10) to apply for funds from, and to submit all necessary forms to, any federal agency participating in a cooperative program to compensate victims of crime;

(11) to delegate to the board or a panel of the board on appeal matters any power of the director or deputy director.

**SECTION 16‑3‑1130.** Claims; assignment to field representative; investigation and reports.

(1) A claim, once accepted for filing and completed, must be assigned to a field representative. The field representative shall examine the papers filed in support of the claim and cause an investigation to be conducted into the validity of the claim. The investigation shall include but not be limited to an examination of police, court, and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based. All claims arising from the death of an individual as a direct result of a crime must be considered together by a single field representative.

(2) Claims must be investigated and determined, regardless of whether the alleged criminal has been apprehended, prosecuted, or convicted of any crime based upon the same incident or whether the alleged criminal has been acquitted or found not guilty of the crime in question.

(3) The field representative conducting the investigation shall file with the deputy director a written report setting forth a recommendation and his reason for the recommendation. The deputy director shall render a written decision and furnish the claimant with a copy of the decision.

**SECTION 16‑3‑1140.** Application for review of decision; appeals; subpoenas; report on review.

(1) The claimant may, within thirty days after receipt of the report of the decision of the Deputy Director, make an application in writing to the Deputy Director for review of the decision.

(2) Upon receipt of an application for review pursuant to subsection (1) of this section, the Deputy Director shall forward all relevant documents and information to the Chairman of the Crime Victim’s Advisory Board. The Chairman shall appoint a three‑member panel of the Board which shall review the records and affirm or modify the decision of the Deputy Director; provided, that the Chairman may order, in his discretion, that any particular case must be heard by the full Board. If considered necessary by the Board or its panel or if requested by the claimant, the Board or its panel shall order a hearing prior to rendering a decision. At the hearing any relevant evidence, not legally privileged, is admissible. The Board or its panel shall render a decision within ninety days after completion of the investigation. The action of the Board or its panel is final and nonappealable. If the Deputy Director receives no application for review pursuant to subsection (1), his decision becomes the final decision of the Victim’s Compensation Fund.

(3) The Board or its panel, for purposes of this article, may subpoena witnesses, administer or cause to be administered oaths, and examine such parts of the books and records of the parties to proceedings as relate to questions in dispute.

(4) The Deputy Director shall within ten days after receipt of the Board’s or panel’s final decision make a report to the claimant including a copy of the final decision and the reasons why the decision was made.

**SECTION 16‑3‑1150.** Emergency awards.

Notwithstanding the provisions of Section 16‑3‑1130, if it appears to the deputy director that the claim is one with respect to which an award probably will be made and undue hardship will result to the claimant, if immediate payment is not made, the deputy director may make one or more emergency awards to the claimant pending a final decision in the case, provided that (a) the amount of each emergency award shall not exceed five hundred dollars, (b) the total amount of such emergency awards shall not exceed one thousand dollars, (c) the amount of such emergency awards must be deducted from any final award made to the claimant, and (d) the excess of the amount of any emergency award over the amount of the final award, or the full amount of any emergency award if no final award is made, must be repaid by the claimant to the Victim’s Compensation Fund as created by this article.

**SECTION 16‑3‑1160.** South Carolina Crime Victim’s Advisory Board; appointments; term of office; vacancies in office; meetings; subsistence, mileage, and per diem.

There is created a board to be known as the South Carolina Crime Victim’s Advisory Board to consist of eleven members to be appointed by the Governor. Of the original seven members, at least two of the members shall have been admitted to practice law in this State for not less than five years next preceding their appointment, one member shall be a physician licensed to practice medicine under the laws of this State, and one member shall have at least four years’ administrative experience in a court‑related Victim’s Assistance Fund, provided that such a qualified person is available. Of the four additional members, one must be a law enforcement officer with at least five years’ administrative experience, one shall have at least five years’ experience in directing sexual assault prevention or treatment services, one shall have at least five years’ experience in providing services for domestic violence victims, and one shall have been a victim of crime.

The term of office of each appointed member is five years and until his successor is appointed and qualified. Of those seven members first appointed, two shall serve for a term of one year, two for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, with the initial terms to be designated by the Governor when making the initial appointments. The initial terms of four additional members to be appointed as provided herein are for two, three, four, and five years, respectively, the initial term of each member to be designated by the Governor when making the appointment. The Governor shall select a chairman. The board may elect a secretary and other officers as deemed necessary.

Any vacancy must be filled for the remainder of the unexpired term by appointment in the same manner of the initial appointments.

The board shall meet at least twice each year and must be subject to the call of the chairman, to consider improvements in and monitor the effectiveness of the Victim’s Compensation Fund, and to review and comment on the budget and approve the regulations pertaining to the Victim’s Compensation Fund of this article and the Victim/Witness Assistance Program of Article 14 of this chapter. The members of the board shall receive the same subsistence, mileage, and per diem as is provided by law for members of state boards, committees, and commissions, to be paid from the Victim’s Compensation Fund as created by this article.

**SECTION 16‑3‑1170.** Basis for award.

(A) No award may be made unless:

(1) a crime was committed;

(2) the crime directly resulted in physical or psychic trauma to the victim;

(3) the crime was promptly reported to the proper authority and recorded in police records; and

(4) the claimant or other award recipient has fully cooperated with all law enforcement agencies and with the South Carolina Victim’s Compensation Fund.

(B) For the purposes of item (3) of subsection (A), a crime reported more than forty‑eight hours after its occurrence is not “promptly reported”, absent a showing of special circumstances or causes which justify the delay.

**SECTION 16‑3‑1180.** Amount of award; apportionment among multiple claimants; rejection of application for award.

(A) An award may be made for:

(1) reasonable and customary charges as periodically determined by the board for medical services, including mental health counseling, required and rendered as a direct result of the injury on which the claim is based, as long as these services are rendered by a licensed professional. Payment for mental health counseling is limited to the number of sessions during a one hundred eighty‑day period beginning on the date of the first counseling session or twenty sessions, whichever is greater. Upon recommendation of the director, the board may allow victims who max out the current benefit of twenty mental health counseling sessions to request up to an additional twenty sessions for a total of forty sessions;

(2) reasonable and customary charges as periodically determined by the board for other services required and rendered as a direct result of the injury upon which the claim is based, as long as the service is rendered by a professional or paraprofessional who holds a license, certificate, or other documentary evidence of specific training and qualification in a field of service which, by regulation, the board recognizes as a service required by and beneficial to crime victims;

(3) loss of earning or support, provided that:

(a) claimant is deprived of that income for at least two consecutive weeks;

(b) the loss is not reimbursable;

(c) the amount may not exceed the maximum rate provided in Section 42‑1‑50;

(d) conditions (a), (b), and (c) may be waived in severe hardship cases;

(4) reasonable and customary charges for employment‑oriented retraining or rehabilitative services incurred as a direct result of the injury; and

(5) burial expenses not to exceed four thousand dollars.

(B) If there are two or more family members as specified in Section 16‑3‑1210(c) who are entitled to an award as a result of the death of a person, the award must be apportioned among the claimants; however, the amount awarded for burial expenses must be paid to or on behalf of the person who has paid or is responsible for that expense.

(C) The aggregate of award to and on behalf of victims may not exceed fifteen thousand dollars unless the Crime Victim’s Advisory Board, by two‑thirds vote, and the director concur that extraordinary circumstances exist. In this case, the award may not exceed twenty‑five thousand dollars.

(D) An award may be made only if and to the extent that the amount of compensable loss exceeds one hundred dollars; however, this limitation may be waived in the interest of justice and must be waived upon a showing that the claimant is at least sixty‑five years old.

(E) A previously decided award may be reopened for the purpose of increasing the compensation previously awarded, subject to the maximum provided in this article. In this case the State Office of Victim Assistance shall send immediately to the claimant a copy of the notice changing the award. This review may not affect the award as regards any monies paid, and the review may not be made after eighteen months from the date of the last payment of compensation pursuant to an award under this article unless the director determines there is a need to reopen the case as specified in Section 16‑3‑1120(4).

**SECTION 16‑3‑1190.** Reduction of award.

Any award made pursuant to this article may be reduced by or set off by the amount of any payments received or to be received as a result of the injury (a) from or on behalf of the person who committed the crime, (b) from any other private or public source, including an award of workers’ compensation pursuant to the laws of this State or (c) as an emergency award pursuant to Section 16‑3‑1150; provided, that private sources shall not include contributions received from family members, or persons or private organizations making charitable donations to a victim.

**SECTION 16‑3‑1200.** Conduct of victim or intervenor contributing to infliction of injury; reduction of award; rejection of claim.

In determining the amount of an award, the Deputy Director, the Board, or its panel shall determine whether because of his conduct the victim or intervenor of such crime contributed to the infliction of his injury, and the Deputy Director, the Board, or its panel may reduce the amount of the award or reject the claim altogether in accordance with such determination; provided, however, the Deputy Director, the Board, or its panel may disregard for this purpose the contribution of an intervenor for his own injury or death where the record shows that the contribution was attributable to efforts by the intervenor as set forth in subsection (8) of Section 16‑3‑1110.

**SECTION 16‑3‑1210.** Persons eligible for award.

Except as provided in Section 16‑3‑1220, a victim, surviving spouse, or a parent or legally dependent child of a victim is entitled to file for benefits under this article if either:

(a) the offense was committed in this State; or

(b) the victim was a resident of this State when the crime was committed in either another state or outside the United States if the crime is terrorism. In either case the award payable under this article must be reduced by the amount paid or payable under the laws of another state as a result of the criminal act giving rise to the claim; or

(c) the victim was a resident of this State when the offense was committed in another state. In any case, the award payable under this article must be reduced by the amount paid or payable under the laws of another state as a result of the criminal act giving rise to the claim.

A surviving spouse, parent, or legally dependent child is not entitled to file for benefits under this section if that person is the subject of an investigation, has been charged with, convicted of, or pled guilty or nolo contendere to the offense in question, or acted on behalf of the suspect, juvenile offender, or defendant.

**SECTION 16‑3‑1220.** Persons ineligible for award.

A person listed in Section 16‑3‑1210(1) is not eligible to recover under this article if the person:

(1) committed or aided in the commission of the crime upon which the claim is based or engaged in other unlawful activity which contributed to or aggravated the resulting injury;

(2) is the surviving parent, spouse, or dependent of a deceased victim who would have been barred by subsection (1) had he survived;

(3) is a dependent of the offender who committed the crime upon which the claim is based, and the offender would be a principal beneficiary of the award.

**SECTION 16‑3‑1230.** Claim filed on behalf of minor or incompetent; time limitations.

(1) A claim may be filed by a person eligible to receive an award, as provided in Section 16‑3‑1210 , or, if the person is an incompetent or a minor, by his parent or legal guardian or other individual authorized to administer his affairs.

(2) A claim must be filed by the claimant not later than one hundred eighty days after the latest of the following events:

(a) the occurrence of the crime upon which the claim is based;

(b) the death of the victim;

(c) the discovery by the law enforcement agency that the occurrence was the result of crime; or

(d) the manifestation of a mental or physical injury is diagnosed as a result of a crime committed against a minor.

(3) Upon good cause shown, the time for filing may be extended for a period not to exceed four years after the occurrence, diagnosed manifestation, or death. “Good cause” for the above purposes includes reliance upon advice of an official victim assistance specialist who either misinformed or neglected to inform a victim of rights and benefits of the Victim’s Compensation Fund but does not mean simply ignorance of the law.

(4) Claims must be filed in the office of the director by conventional mail, facsimile, in person, or through another electronic submission mechanism approved by the director. The director shall accept for filing all claims submitted by persons eligible pursuant to subsection (1) and meeting the requirements as to the form of the claim contained in the regulations of the board.

**SECTION 16‑3‑1240.** Disclosure of records as to claims; confidentiality; applicability of Freedom of Information Act.

It is unlawful, except for purposes directly connected with the administration of the victim’s compensation program, for any person to solicit, disclose, receive, or make use of or authorize, knowingly permit, participate in or acquiesce in the use of any list, or names of, or information concerning persons applying for or receiving awards hereunder without the written consent of the applicant or recipient. The records, papers, files, and communications of the Board, its panel and the Director and his staff must be regarded as confidential information and privileged and not subject to disclosure under the Freedom of Information Act as contained in Chapter 3 of Title 30.

**SECTION 16‑3‑1250.** Subrogation of State to right of action accruing to claimant, victim, or intervenor.

Payment of an award pursuant to this article subrogates the State to the extent of the payment to any right of action accruing to the claimant or to the victim or intervenor to recover losses resulting from the crime with respect to which the award is made, except that subrogation shall not reduce the financial recovery by the victim, claimant, or intervenor to less than one hundred percent of actual losses or expenses. The subrogation amount must be reduced if there is a jury award or judicial award in a bench trial, which results in a loss to the victim, claimant, or intervenor. Subrogation shall not be reduced if the action is terminated other than by a jury award or judicial award in a bench trial.

**SECTION 16‑3‑1260.** Reimbursement of State by convicted person for payment by State Office of Victim Assistance.

(1) A payment of benefits to, or on behalf of, a victim or intervenor, or eligible family member under this article creates a debt due and owing to the State by a person as determined by a court of competent jurisdiction of this State, who has committed the criminal act.

(2) The Circuit Court, when placing on probation a person who owes a debt to the State as a consequence of a criminal act, may set as a condition of probation the payment of the debt or a portion of the debt to the State. The court also may set the schedule or amounts of payments subject to modification based on change of circumstances.

(3) The Department of Probation, Parole, and Pardon Services shall also have the right to make payment of the debt or a portion of the debt to the State a condition of parole or community supervision.

(4) When a juvenile is adjudicated delinquent in a Family Court proceeding involving a crime upon which a claim under this article can be made, the Family Court, in its discretion, may order that the juvenile pay the debt to the State Office of Victim Assistance, as created by this article, as an adult would have to pay had an adult committed the crime. Any assessments ordered may be made a condition of probation as provided in Section 63‑19‑1410.

(5) Payments authorized or required under this section must be paid to the State Office of Victim Assistance. The Director of the State Office of Victim Assistance shall coordinate the development of policies and procedures for the South Carolina Department of Corrections, the Department of Juvenile Justice, the South Carolina Office of Court Administration, the Department of Probation, Parole, and Pardon Services, and the South Carolina Board of Probation, Parole, and Pardon Services to assure that victim restitution programs are administered in an effective manner to increase payments into the State Office of Victim Assistance.

(6) Restitution payments to the State Office of Victim Assistance may be made by the Department of Corrections from wages accumulated by offenders in its custody who are subject to this article, except that offenders’ wages must not be used for this purpose if monthly wages are at or below minimums required to purchase basic necessities.

**SECTION 16‑3‑1270.** Restitution by offender; lien against offender; filing of lien.

If a person is unable at the time of sentencing or at any other time the court may set to pay a restitution charge imposed by the court pursuant to Sections 24‑23‑210 through 24‑23‑230, such restitution charge shall constitute a lien against the offender and against any real or personal property of the offender. A restitution charge shall not constitute a lien if it is waived by the Director pursuant to Section 24‑23‑210. Such lien may be filed by the Attorney General in the respective offices of the clerks of court and registers of deeds of this State in the same manner state tax liens are filed and may be enforced and collected by the Attorney General in the same manner state tax liens are enforced and collected.

**SECTION 16‑3‑1280.** False claim; penalties.

Any person who knowingly makes a false claim or a false statement in connection with any claim hereunder is guilty of a misdemeanor and upon conviction must be punishable by a fine of not less than five hundred dollars or by a term of imprisonment for not less than one year, or both, and shall further forfeit all money received hereunder, if any.

**SECTION 16‑3‑1290.** State Office of Victim Assistance; payment of claims, expenses and administrative costs.

(1) There is hereby created a special fund to be known as the Victim’s Compensation Fund for the purpose of providing for the payment of all necessary and proper expenses incurred by the operation of the Victim’s Compensation Fund and the payment of claims. The State Treasurer is the custodian of the fund and all monies in the fund are held by the State Treasurer.

(2) The funds placed in the Victim’s Compensation Fund shall consist of all money appropriated by the General Assembly, if any, for the purpose of compensating claimants under this article and money recovered on behalf of the State pursuant to this article by subrogation or other action, recovered by court order, received from the federal government, received from additional court costs, received from assessments or fines, or received from any other public or private source, pursuant to this article.

(3) All administrative costs of this article, except the Director’s salary, must be paid out of money collected pursuant to this article which has been deposited in the Victim’s Compensation Fund.

(4) Interest earned on all monies held in the Victim’s Compensation Fund shall be remitted to the general fund of the State.

**SECTION 16‑3‑1300.** Payment of award; exemption from garnishment, execution, or attachment.

Any award made under this article must be paid in accordance with the discretion and decision of the Deputy Director as to the manner of payment, subject to the regulations of the board and not inconsistent with the Board’s or panel’s award. No award made pursuant to this article is subject to garnishment, execution, or attachment other than for expenses resulting from the injury which is the basis for the claim. In every case providing for an award to a claimant under this article, the Deputy Director, the Board or its panel may, if in its opinion the facts and circumstances of the case warrant it, convert the award to be paid into a partial or total lump sum, without discount.

**SECTION 16‑3‑1310.** Payment of award to victim or intervenor confined in correctional facility.

No award of any kind must be made under this article to a victim or intervenor injured while confined in any federal, state, county, or municipal jail, prison, or other correctional facility.

**SECTION 16‑3‑1320.** Payment of award as not constituting ordinary income for tax purposes.

An award made pursuant to this article shall not constitute a payment which is treated as ordinary income under either the provisions of Chapter 7 of Title 12 of the 1976 Code, or to the extent lawful, under the United States Internal Revenue Code.

**SECTION 16‑3‑1330.** Insufficient funds for payment of claims.

When the director determines that projected revenue in any fiscal year will be insufficient to pay projected claims or awards in the amounts provided herein, he shall reduce the amount of all claims or awards by an amount equal to the ratio of projected revenue to the total projected claims or awards cost. When these reductions are required, the director shall inform the public through the media of the reductions as promptly as possible. The reductions apply to all claims or awards not paid as of the effective date of the reductions order.

Any award hereunder is specifically not a claim against the State if it cannot be paid due to a lack of funds in the Victim’s Compensation Fund.

**SECTION 16‑3‑1340.** Attorney for claimant; fees; attorney for State Office of Victim Assistance; soliciting employment to pursue claim or award; penalties.

A claimant may be represented by an attorney in proceedings under this article. Fees for such attorney must be paid from the Victim’s Compensation Fund, subject to the approval of the Director, except that in the event of an appeal pursuant to Section 16‑3‑1140, attorneys’ fees are subject to the approval of the Board or its panel hearing the appeal. Attorneys for the South Carolina State Accident Fund shall represent the South Carolina Victim’s Compensation Fund in proceedings under this article.

Any person who receives any fee or other consideration or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the Deputy Director, or who makes it a business to solicit employment for a lawyer or for himself in respect to any claim or award for compensation is guilty of a misdemeanor and, upon conviction must for each offense, be punished by a fine of not more than five hundred dollars or by imprisonment not to exceed one year, or by both such fine and imprisonment.

**SECTION 16‑3‑1350.** Medicolegal examinations for victims of criminal sexual conduct or child sex abuse.

(A) The State must ensure that a victim of criminal sexual conduct in any degree, criminal sexual conduct with a minor in any degree, or child sexual abuse must not bear the cost of his or her routine medicolegal exam following the assault if the victim has filed an incident report with a law enforcement agency.

(B) These exams must be standardized relevant to medical treatment and to gathering evidence from the body of the victim and must be based on and meet minimum standards for rape exam protocol as developed by the South Carolina Law Enforcement Division, the South Carolina Hospital Association, and the Governor’s Office Division of Victim Assistance with production costs to be paid from funds appropriated for the Victim’s Compensation Fund. These exams must include treatment for venereal disease, and must include medication for pregnancy prevention if indicated and if desired. The South Carolina Law Enforcement Division must distribute these exam kits to any licensed health care facility providing sexual assault exams. When dealing with a victim of criminal sexual assault, the law enforcement agency immediately must transport the victim to the nearest licensed health care facility which performs sexual assault exams. A health care facility providing sexual assault exams must use the standardized protocol described above.

(C) A licensed health care facility, upon completion of a routine sexual assault exam as described in subsection (B) performed on a victim of criminal sexual conduct in any degree, criminal sexual conduct with a minor in any degree, or child sexual abuse, may file a claim for reimbursement directly to the South Carolina Crime Victim’s Compensation Fund if the offense occurred in South Carolina. The South Carolina Crime Victim’s Compensation Fund must develop procedures for health care facilities to follow when filing a claim with respect to the privacy of the victim. Health care facility personnel must obtain information necessary for the claim at the time of the exam, if possible. The South Carolina Crime Victim’s Compensation Fund must reimburse eligible health care facilities directly.

(D) The Governor’s Office Division of Victim Assistance must utilize existing funds appropriated from the general fund for the purpose of compensating licensed health care facilities for the cost of routine medical exams for sexual assault victims as described above. When the director determines that projected reimbursements in a fiscal year provided in this section exceed funds appropriated for payment of these reimbursements, he must direct the payment of the additional services from the Victim’s Compensation Fund. For the purpose of this particular exam, the one hundred dollar deductible is waived for award eligibility under the fund. The South Carolina Victim’s Compensation Fund must develop appropriate guidelines and procedures and distribute them to law enforcement agencies and appropriate health care facilities.

ARTICLE 14.

 VICTIM ASSISTANCE PROGRAM

**SECTION 16‑3‑1400.** Definitions.

For the purpose of this article:

(1) “victim service provider” means a person:

(a) who is employed by a local government or state agency and whose job duties involve providing victim assistance as mandated by South Carolina law; or

(b) whose job duties involve providing direct services to victims and who is employed by an organization that is incorporated in South Carolina, holds a certificate of authority in South Carolina, or is registered as a charitable organization in South Carolina, and the organization’s mission is victim assistance or advocacy and the organization is privately funded or receives funds from federal, state, or local governments to provide services to victims; and

(2) “witness” means any person who has been or is expected to be summoned to testify for the prosecution or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet been commenced.

**SECTION 16‑3‑1410.** Victim assistance services; membership of Victim Services Coordinating Council.

(A) The Victim Compensation Fund is authorized to provide the following victim assistance services, contingent upon the availability of funds:

(1) provide information, training, and technical assistance to state and local agencies and groups involved in victim and domestic violence assistance, such as the Attorney General’s Office, the solicitors’ offices, law enforcement agencies, judges, hospital staff, rape crisis centers, and spouse abuse shelters;

(2) provide recommendations to the Governor and General Assembly on needed legislation and services for victims;

(3) serve as a clearinghouse of victim information;

(4) develop ongoing public awareness and programs to assist victims, such as newsletters, brochures, television and radio spots and programs, and news articles;

(5) provide staff support for a Victim Services Coordinating Council representative of all agencies and groups involved in victim and domestic violence services to improve coordination efforts, suggest policy and procedural improvements to those agencies and groups as needed, and recommend needed statutory changes to the General Assembly; and

(6) coordinate the development and implementation of policy and guidelines for the treatment of victims with appropriate agencies.

(B) The Victim Services Coordinating Council shall consist of the following twenty‑two members:

(1) the director of the State Office of Victim Assistance, or his designee;

(2) the director of the South Carolina Department of Probation, Parole and Pardon Services, or his designee;

(3) the director of the South Carolina Department of Corrections, or his designee;

(4) the director of the South Carolina Department of Juvenile Justice, or his designee;

(5) the director of the South Carolina Commission on Prosecution Coordination, or his designee;

(6) the Governor’s Crime Victims’ Ombudsman, or his designee;

(7) the director of the South Carolina Sheriffs’ Association, or his designee;

(8) the president of the South Carolina Police Chiefs Association, or his designee;

(9) the president of the South Carolina Jail Administrators’ Association, or his designee;

(10) the president of the Solicitors’ Advocate Forum, or his designee;

(11) the president of the Law Enforcement Victim Advocate Association, or his designee;

(12) the director of the South Carolina Coalition Against Domestic Violence and Sexual Assault, or his designee;

(13) the Attorney General, or his designee;

(14) the administrator of the Office of Justice Programs, Department of Public Safety, or his designee;

(15) four representatives appointed by the State Office of Victim Assistance for a term of two years and until their successors are appointed and qualified for each of the following categories:

(a) one representative of university or campus services;

(b) one representative of a statewide crime victim organization;

(c) one representative of a statewide child advocacy organization; and

(d) one crime victim; and

(16) four at‑large seats elected upon two‑thirds vote of the other eighteen members of the Victim Services Coordinating Council for a term of two years and until their successors are appointed and qualified, at least one of whom must be a crime victim and two of which must be representatives of community‑based nongovernmental organizations.

The Victim Services Coordinating Council shall solicit input on issues affecting relevant stakeholders when those stakeholders are not explicitly represented. The Victim Services Coordinating Council shall meet at least four times per year.

**SECTION 16‑3‑1420.** Director.

The director of the State Victim Assistance Program is the director of the South Carolina State Office of Victim Assistance.

ARTICLE 15.

 VICTIM AND WITNESS SERVICE

**SECTION 16‑3‑1505.** Legislative intent.

In recognition of the civic and moral duty of victims of and witnesses to a crime to cooperate fully and voluntarily with law enforcement and prosecution agencies, and in further recognition of the continuing importance of this citizen cooperation to state and local law enforcement efforts and to the general effectiveness and the well‑being of the criminal and juvenile justice systems of this State, and to implement the rights guaranteed to victims in the Constitution of this State, the General Assembly declares its intent, in this article, to ensure that all victims of and witnesses to a crime are treated with dignity, respect, courtesy, and sensitivity; that the rights and services extended in this article to victims of and witnesses to a crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants; and that the State has a responsibility to provide support to a network of services for victims of a crime, including victims of domestic violence and criminal sexual assault.

**SECTION 16‑3‑1510.** Definitions.

For the purpose of this article:

(1) “Victim” means any individual who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a criminal offense, as defined in this section. “Victim” also includes any individual’s spouse, parent, child, or the lawful representative of a victim who is:

(a) deceased;

(b) a minor;

(c) incompetent; or

(d) physically or psychologically incapacitated.

“Victim” does not include any individual who is the subject of an investigation for, who is charged with, or who has been convicted of or pled guilty or nolo contendere to the offense in question. “Victim” also does not include any individual, including a spouse, parent, child, or lawful representative, who is acting on behalf of the suspect, juvenile offender, or defendant unless his actions are required by law. “Victim” also does not include any individual who was imprisoned or engaged in an illegal act at the time of the offense.

(2) “Individual” means a human being.

(3) “Criminal offense” means an offense against the person of an individual when physical or psychological harm occurs, or the property of an individual when the value of the property stolen or destroyed, or the cost of the damage to the property is in excess of one thousand dollars. This includes both common law and statutory offenses, the offenses contained in Sections 16‑25‑20, 16‑25‑30, 16‑25‑50, 56‑5‑1210, 56‑5‑2910, 56‑5‑2920, 56‑5‑2930, 56‑5‑2945, and the common law offense of attempt, punishable pursuant to Section 16‑1‑80. However, “criminal offense” specifically excludes the drawing or uttering of a fraudulent check or an offense contained in Title 56 that does not involve personal injury or death.

For purposes of this article, a victim of any misdemeanor or felony under state law must be notified of or provided with the information required by this section. The terms “crime”, “criminal conduct”, “charge”, or any variation of these terms as used in this article mean all misdemeanors and felonies under state law except the crimes the General Assembly specifically excludes from the notification provisions contained in this article.

(4) “Witness” means a person who has been or is expected to be summoned to testify for either the prosecution or the defense or who by reason of having relevant information is subject to be called or likely to be called as a witness for the prosecution or defense for criminal offenses defined in this section, whether or not any action or proceeding has been commenced.

(5) “Prosecuting agency” means the solicitor, Attorney General, special prosecutor, or any person or entity charged with the prosecution of a criminal case in general sessions or family court.

(6) “Summary court” means magistrate or municipal court.

(7) “Initial offense incident report” means a uniform traffic accident report or a standardized incident report form completed at the time of the initial law enforcement response. “Initial offense incident report” does not include supplementary reports, investigative notes or reports, statements, letters, memos, other communications, measurements, sketches, or diagrams not included in the initial offense incident report, or any material that may be considered the work product of a law enforcement officer or witness.

(8) “In writing” means any written communication, including electronically transmitted data.

**SECTION 16‑3‑1515.** Victim or witness wishing to receive services under article to supply certain information; requirements for receiving restitution; victims wishing to be present in court to notify prosecuting agency or summary court judge; victim impact statement.

(A) A victim or prosecution witness who wishes to exercise his rights under this article or receive services under this article, or both, must provide a law enforcement agency, a prosecuting agency, a summary court judge, the Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Board of Juvenile Parole, or the Department of Juvenile Justice, as appropriate, his legal name, current mailing address, and current telephone number upon which the agency must rely in the discharge of its duties under this article.

(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.** Victim entitled to copy of initial incident report; assistance in applying for victim’s compensation benefits; information on progress of case.

(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.

**SECTION 16‑3‑1525.** Arrest or detention of person accused of committing offense; notification to victims; protection of witnesses; notification of bond proceedings; juvenile detention hearings.

(A) 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.

(B) 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.

(C) 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, having physical custody of the defendant, the name, mailing address, and telephone number of each victim. If the person is transferred to another facility, this information immediately must be transmitted to the receiving facility. 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.

(D) A law enforcement agency, after detaining a juvenile accused of committing an offense involving one or more victims, must provide to the Department of Juvenile Justice the name, address, and telephone number of each victim. The law enforcement officer detaining the juvenile, regardless of where the juvenile is physically detained, retains the responsibility of notifying the victims of the pretrial, bond, and detention hearings, or pretrial releases that are not delegated pursuant to this article.

(E) Upon detention of a person, other than a juvenile, accused of committing an offense not under the jurisdiction of a summary court, and involving one or more victims, the arresting law enforcement agency must provide, in writing, to the prosecuting agency before a bond or release hearing before a circuit or family court judge the name, address, and telephone number of each victim.

(F) Upon detention of a person, other than a juvenile, accused of committing an offense involving one or more victims and which is triable in summary court or an offense involving one or more victims for which a preliminary hearing may be held, the arresting law enforcement agency must provide, in writing, to the summary court the name, mailing address, and telephone number of each victim.

(G) 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.

(H) In cases in which a defendant has bond set by a summary court judge:

(1) the arresting agency of the defendant reasonably must attempt to notify each victim of each case for which bond is being determined of his right to attend the bond hearing and make recommendations to the presiding judge. This notification must be made sufficiently in advance to allow the victim to exercise his rights contained in this article;

(2) the summary court judge, before proceeding with a bond hearing in a case involving a victim, must ask the representative of the facility having custody of the defendant to verify that a reasonable attempt was made to notify the victim sufficiently in advance to attend the proceeding. If notice was not given in a timely manner, the hearing must be delayed for a reasonable time to allow notice; and

(3) the summary court judge must impose bond conditions which are sufficient to protect a victim from harassment or intimidation by the defendant or persons acting on the defendant’s behalf.

(I) In cases in which a defendant has a bond proceeding before a circuit court judge:

(1) the prosecuting agency reasonably must attempt to notify each victim of each case for which bond is being determined of his right to attend the bond hearing and make recommendations to the presiding judge. This notification must be made sufficiently in advance to allow the victim to exercise his rights contained in this article;

(2) the circuit court judge, before proceeding with a bond hearing in a case involving a victim, must ask the representative of the prosecuting agency to verify that a reasonable attempt was made to notify the victim sufficiently in advance to attend. If notice was not given in a timely manner, the hearing must be delayed for a reasonable time to allow notice; and

(3) the circuit court judge must impose bond conditions which are sufficient to protect a victim from harassment or intimidation by the defendant or persons acting on the defendant’s behalf.

(J) In cases in which a juvenile has a detention hearing before a family court judge:

(1) the prosecuting agency reasonably must attempt to notify each victim of each case for which the juvenile is appearing before the court of his right to attend the detention hearing and make recommendations to the presiding judge. This notification must be made sufficiently in advance to allow the victim to exercise his rights pertaining to the detention hearing;

(2) the family court judge, before proceeding with a detention hearing in a case involving a victim, must ask the prosecuting agency to verify that a reasonable attempt was made to notify the victim sufficiently in advance to attend. If notice was not given in a timely manner, the hearing must be delayed for a reasonable time to allow notice; and

(3) the family court judge, if he does not rule that a juvenile must be detained, must impose conditions of release which are sufficient to protect a victim from harassment or intimidation by the juvenile or a person acting on the juvenile’s behalf.

(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.

(L) A diversion program, except a diversion program administered by the South Carolina Prosecution Coordination Commission or by a circuit solicitor, reasonably must attempt to notify the victim of a crime prior to the defendant’s release from the program unless the defendant is released to a law enforcement agency.

(M) In every case when there is a court‑ordered or mandatory mental evaluation, which takes place in an inpatient facility, the organization or facility responsible for the evaluation reasonably must attempt to notify the victim of the crime prior to the defendant’s release from the facility unless the defendant is released to a law enforcement agency.

(N)(1) Notification of a victim pursuant to the provisions of this section may be by electronic or other automated communication or recording. However, after three unsuccessful attempts to reach the victim in cases involving criminal domestic violence, criminal sexual conduct, and stalking and harassment, and those cases when physical injury has occurred as a result of a physical or sexual assault and in cases where a pattern of conduct exists by the offender or suspected offender that would cause a reasonable person to believe he may be at risk of physical assault the appropriate agency or diversion program shall attempt to make personal contact with the victim, or the victim’s guardian, upon the judicial or administrative release or the escape of the offender.

(2) For purposes of this section, “pattern” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose.

**SECTION 16‑3‑1530.** Notification of victim of release, escape or transfer of accused.

(A) Notwithstanding another provision of law, except the provisions contained in Section 16‑3‑1525(D) relating to juvenile detention:

(1) notwithstanding the provisions of Section 22‑5‑510, a department or agency having custody or custodial supervision of a person accused, convicted, or adjudicated guilty of committing an offense involving one or more victims reasonably must attempt to notify each victim, upon request, before the release of the person;

(2) a department or agency having custody or custodial supervision of a person accused of committing an offense involving one or more victims reasonably must attempt to notify each victim, upon request, of an escape by the person;

(3) a department or agency having custody of a person accused, convicted, or adjudicated guilty of committing an offense involving one or more victims must inform each victim, upon request, before any nonintradepartmental transfer of the person to a less secure facility or to a diversionary program including, but not limited to, a drug court program or a mental health court. The provisions of this item do not apply to transfers to other law enforcement agencies and transfers to other nonlaw enforcement locations if the person remains under security supervision. All victims, upon request, must be notified of intradepartmental transfers after the transfer occurs; and

(4) a department or agency having custody or custodial supervision of a person convicted or adjudicated guilty of committing an offense involving one or more victims must reasonably attempt to notify each victim and prosecution witness, upon request, of an escape by the person.

(B) Notification of a victim pursuant to the provisions of this section may not be only by electronic or other automated communication or recording except in the case of an intradepartmental transfer.

**SECTION 16‑3‑1535.** Summary court’s duty to notify victim of victim’s rights; form for victim impact statement.

(A) The summary court, upon retaining jurisdiction of an offense involving one or more victims, 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.

(G) In cases in which the sentence is more than ninety days, the summary court judge must forward, as appropriate and within fifteen days, a copy of each victim’s impact statement or the name, mailing address, and telephone number of each victim, or both, to the Department of Corrections, the Department of Probation, Parole and Pardon Services, or the Board of Juvenile Parole, the Department of Juvenile Justice, and a diversion program. The names, addresses, and telephone numbers of victims and prosecution witnesses contained in the records of the Department of Corrections, the Department of Probation, Parole and Pardon Services, the Board of Juvenile Parole, and the Department of Juvenile Justice are confidential and must not be disclosed directly or indirectly, except by order of a court of competent jurisdiction or as necessary to provide notifications, or services, or both, between these agencies, these agencies and the prosecuting agency, or these agencies and the Attorney General.

**SECTION 16‑3‑1540.** Department of Juvenile Justice to confer with victims before taking certain actions.

(A) The Department of Juvenile Justice, upon referral of a juvenile accused of committing an offense involving one or more victims, must make a reasonable effort to confer with each victim before:

(1) placing the juvenile in a diversion program;

(2) issuing a recommendation for diversion;

(3) referring the juvenile to the prosecuting agency for prosecution;

(4) issuing a recommendation for evaluation at the agency’s reception and evaluation center; or

(5) taking other action.

(B) The Department of Juvenile Justice must make a reasonable effort to keep each victim reasonably informed of the status and progress of a case from the time it is referred by law enforcement until it is referred to the prosecuting agency.

**SECTION 16‑3‑1545.** Juvenile cases; notification to victims of right to submit victim impact statement for disposition proceeding; form of statement; other required information for victims.

(A) The prosecuting agency, when a juvenile case is referred or a general sessions charge is received involving one or more victims, reasonably must attempt to notify each victim of his right to submit an oral or written victim impact statement, or both, for consideration by the circuit or family court judge at the disposition proceeding. The victim also must be informed that a written victim impact statement may be submitted at any postadjudication proceeding by the Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Board of Juvenile Parole, or the Department of Juvenile Justice. The prosecuting agency must provide to each victim who wishes to make a written victim impact statement a form that solicits pertinent information regarding the offense that may include:

(1) the victim’s personal information and supplementary contact information;

(2) an itemization of the victim’s economic loss and recovery from any insurance policy or another 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.

(B) The prosecuting agency must offer the victim assistance in preparing a comprehensive victim impact statement and assistance in reviewing and updating the statement, as appropriate, before the case is disposed.

(C) The prosecuting agency must inform victims and witnesses of the applicable procedures and practices of the criminal or juvenile justice system, or both.

(D) The prosecuting agency must inform each victim of his right to legal counsel and of any available civil remedies.

(E) A law enforcement agency, the prosecuting agency, and the circuit and family courts 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 to use as evidence when possible.

(F) The prosecuting agency must inform victims and prosecution witnesses of financial assistance, compensation, and fees to which they may be entitled and must offer to the victims and witnesses assistance with applications for these items.

(G) The prosecuting agency, upon request, must make a reasonable attempt to keep each victim informed of the status and progress of a case, with the exception of preliminary hearings, from the time a juvenile case is referred to, or a general sessions charge is received by, the prosecuting agency for disposition of the case in general sessions or family court.

(H) The prosecuting agency must discuss a case with the victim. The agency must confer with each victim about the disposition of the case including, but not limited to, diversions and plea negotiations.

(I) The prosecuting agency reasonably must attempt to notify each victim of each hearing, trial, or other proceeding. This notification must be made sufficiently in advance to allow the victim to exercise his rights contained in this article. When proceedings are canceled or rescheduled, the prosecuting agency must reasonably attempt to inform victims and witnesses in a timely manner.

(J) The prosecuting agency victim advocate, upon request, may intercede with, and seek special consideration from, employers of victims and witnesses to prevent loss of pay or benefits, or both, resulting from their participation in the criminal or juvenile justice system and with the victim’s creditors, landlord, school, and other parties, as appropriate, throughout the prosecution process.

(K) If a victim or witness is threatened, the prosecuting agency immediately must refer the incident to the appropriate law enforcement agency for prompt investigation and make a reasonable attempt to prosecute the case.

(L) The prosecuting agency must take reasonable and appropriate steps to minimize inconvenience to victims and witnesses throughout court preparation and court proceedings and must familiarize victims and witnesses with courtroom procedure and protocol.

(M) The prosecuting agency must refer victims to counselors, social service agencies, and victim assistance providers, as appropriate.

**SECTION 16‑3‑1550.** Restriction on employers of victims and witnesses; protection of rights of victims and witnesses.

(A) Employers of victims and witnesses must not retaliate against or suspend or reduce the wages and benefits of a victim or witness who lawfully responds to a subpoena. A wilful violation of this provision constitutes contempt of court.

(B) A person must not be sequestered from a proceeding adjudicating an offense of which he was a victim.

(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.

(D) The circuit or family court judge must recognize and protect the rights of victims and witnesses as diligently as those of the defendant. A circuit or family court judge, before proceeding with a trial, plea, sentencing, or other dispositive hearing in a case involving a victim, must ask the prosecuting agency to verify that a reasonable attempt was made to notify the victim sufficiently in advance to attend. If notice was not given in a timely manner, the hearing must be delayed for a reasonable time to allow notice.

(E) The circuit or family court must treat sensitively witnesses who are very young, elderly, handicapped, or who have special needs by using closed or taped sessions when appropriate. The prosecuting agency or defense attorney must notify the court when a victim or witness deserves special consideration.

(F) The circuit or family court must hear or review any victim impact statement, whether written or oral, before sentencing. Within a reasonable period of time before sentencing, the prosecuting agency must make available to the defense any written victim impact statement and the court must allow the defense an opportunity to respond to the statement. However, the victim impact statement must not be provided to the defense until the defendant has been found guilty by a judge or jury. The victim impact statement and its contents are not admissible as evidence in any trial.

(G) The circuit and family court must address the issue of restitution as provided by statute.

**SECTION 16‑3‑1555.** Expert witness fees; distribution, maintenance and use of victim’s impact statements.

(A) The circuit or family court must order, in a timely manner, reasonable expert witness fees and reimbursement to victims of reasonable out‑of‑pocket expenses associated with lawfully serving a subpoena.

(B) In cases in which the sentence is more than ninety days, the prosecuting agency must forward, as appropriate and within fifteen days, a copy of each victim’s impact statement or the name, mailing address, and telephone number of each victim, or both, to the Department of Corrections, the Department of Probation, Parole and Pardon Services, or the Board of Juvenile Parole, the Department of Juvenile Justice, and a diversion program. The names, addresses, and telephone numbers of victims and prosecution witnesses contained in the records of the Department of Corrections, the Department of Probation, Parole and Pardon Services, the Board of Juvenile Parole, and the Department of Juvenile Justice are confidential and must not be disclosed directly or indirectly, except by order of a court of competent jurisdiction or as necessary to provide notifications, or services, or both, between these agencies, these agencies and the prosecuting agency, or these agencies and the Attorney General.

(C) The prosecuting agency must maintain the victim’s original impact statement. The victim’s impact statement must not be provided to the defendant until the defendant has been adjudicated, found guilty, or has pled guilty. The victim’s impact statement and its contents are not admissible as evidence in any trial.

(D) The prosecuting agency must inform the victim and the prosecution witnesses of their responsibility to provide the prosecuting agency, the Department of Corrections, the Department of Probation, Parole and Pardon Services, the Board of Juvenile Parole, the Department of Juvenile Justice, or the Attorney General, as appropriate, their legal names, current addresses, and telephone numbers.

(E) The prosecuting agency must inform the victim about the collection of restitution, fees, and expenses, the recovery of property used as evidence, and how to contact the Department of Corrections, the Board of Juvenile Parole, the Department of Probation, Parole and Pardon Services, the Department of Juvenile Justice, or the Attorney General, as appropriate.

**SECTION 16‑3‑1560.** Notification to victim of post‑conviction proceedings affecting probation, parole, or release, and of victim’s right to attend.

(A) The Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Board of Juvenile Parole, or the Department of Juvenile Justice, as appropriate, reasonably must attempt to notify each victim, who has indicated a desire to be notified, of post‑conviction proceedings affecting the probation, parole, or release of the offender, including proceedings brought under Chapter 48 of Title 44, and of the victim’s right to attend and comment at these proceedings. This notification must be made sufficiently in advance to allow the victim to exercise his rights as they pertain to post‑conviction proceedings.

(B) The Attorney General, upon receiving notice of appeal or other post‑conviction action by an offender convicted of or adjudicated guilty for committing an offense involving one or more victims, must request from the Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Board of Juvenile Parole, or the Department of Juvenile Justice, as appropriate, the victim’s personal information.

(C) The Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Board of Juvenile Parole, or the Department of Juvenile Justice, upon receipt of request for the victim’s personal information from the Attorney General in an appeal or post‑conviction proceeding, must supply the requested information within a reasonable period of time.

(D) The Attorney General must confer with victims regarding the defendant’s appeal and other post‑conviction proceedings, including proceedings brought under Chapter 48 of Title 44.

(E) The Attorney General must keep each victim reasonably informed of the status and progress of the appeal or other post‑conviction proceedings, including proceedings brought under Chapter 48 of Title 44, until their resolution.

(F) The Attorney General reasonably must attempt to notify a victim of all post‑conviction proceedings, including proceedings brought under Chapter 48 of Title 44, and of the victim’s right to attend. This notification must be made sufficiently in advance to allow the victim to exercise his rights pertaining to post‑conviction proceedings.

**SECTION 16‑3‑1565.** No cause of action against public employees or agencies under this article.

(A) Nothing in this article creates a cause of action on behalf of a person against a public employee, public agency, the State, or an agency responsible for the enforcement of rights and provision of services set forth in this article.

(B) A sentence must not be invalidated because of failure to comply with the provisions of this article.

(C) This article must not be construed to create a cause of action for monetary damages.

ARTICLE 16.

 CRIME VICTIMS’ OMBUDSMAN OF THE OFFICE OF THE GOVERNOR

**SECTION 16‑3‑1610.** Definitions.

As used in this article:

(1) “Criminal and juvenile justice system” means circuit solicitors and members of their staffs; the Attorney General and his staff; law enforcement agencies and officers; adult and juvenile probation, parole, and correctional agencies and officers; officials responsible for victims’ compensation and other services which benefit victims of crime, and state, county, and municipal victim advocacy and victim assistance personnel.

(2) “Victim assistance program” means an entity, whether governmental, corporate, nonprofit, partnership, or individual, which provides, is required by law to provide, or claims to provide services or assistance, or both to victims on an ongoing basis.

(3) “Victim” means a person who suffers direct or threatened physical, emotional, or financial harm as the result of an act by someone else, which is a crime. The term includes immediate family members of a homicide victim or of any other victim who is either incompetent or a minor and includes an intervenor.

**SECTION 16‑3‑1620.** Crime Victims’ Ombudsman of the Office of the Governor; Office of Victim Services Education and Certification.

(A) The Crime Victims’ Ombudsman of the Office of the Governor is created. The Crime Victims’ Ombudsman is appointed by the Governor with the advice and consent of the Senate and serves at the pleasure of the Governor.

(B) The Crime Victims’ Ombudsman of the Office of the Governor shall:

(1) refer crime victims to the appropriate element of the criminal and juvenile justice systems or victim assistance programs, or both, when services are requested by crime victims or are necessary as determined by the ombudsman;

(2) act as a liaison between elements of the criminal and juvenile justice systems, victim assistance programs, and victims when the need for liaison services is recognized by the ombudsman; and

(3) review and attempt to resolve complaints against elements of the criminal and juvenile justice systems or victim assistance programs, or both, made to the ombudsman by victims of criminal activity within the state’s jurisdiction.

(C) There is created within the Crime Victims’ Ombudsman of the Office of the Governor, the Office of Victim Services Education and Certification which shall:

(1) provide oversight of training, education, and certification of victim assistance programs;

(2) with approval of the Victim Services Coordinating Council, promulgate training standards and requirements;

(3) approve training curricula for credit hours toward certification;

(4) provide victim service provider certification; and

(5) maintain records of certified victim service providers.

(D) Public victim assistance programs shall ensure that all victim service providers employed in their respective offices are certified through the Office of Victim Services Education and Certification within the Office of the Crime Victims’ Ombudsman.

(1) Private, nonprofit programs shall ensure that all victim service providers in these nonprofit programs are certified by a Victim Services Coordinating Council approved certification program. Victim Services Coordinating Council approval must include review of the program to ensure that requirements are commensurate with the certification requirements for public victim assistance service providers.

(2) Victim service providers, serving in public or private nonprofit programs, employed on the effective date of this chapter are exempt from basic certification requirements but shall meet annual continuing education requirements to maintain certification. Victim service providers, serving in public or private nonprofit programs, employed after the effective date of this chapter are required to complete the basic certification requirements within one year from the date of employment and to meet annual continuing education requirements to maintain certification throughout their employment.

(3) The mandatory minimum certification requirements, as promulgated by the Crime Victims’ Ombudsman, may not exceed fifteen hours, and the mandatory minimum requirements for continuing advocacy education, as promulgated by the Crime Victims’ Ombudsman, may not exceed twelve hours.

(4) Nothing in this section shall prevent an entity from requiring or an individual from seeking additional certification credits beyond the basic required hours.

**SECTION 16‑3‑1630.** Ombudsman; responsibilities; authority; annual report.

Upon receipt of a written complaint that contains specific allegations and is signed by a victim of criminal activity within the state’s jurisdiction, the ombudsman shall forward copies of the complaint to the person, program, and agency against whom it makes allegations, and conduct an inquiry into the allegations stated in the complaint.

In carrying out the inquiry, the ombudsman is authorized to request and receive information and documents from the complainant, elements of the criminal and juvenile justice systems, and victim assistance programs that are pertinent to the inquiry. Following each inquiry, the ombudsman shall issue a report verbally or in writing to the complainant and the persons or agencies that are the object of the complaint and recommendations that in the ombudsman’s opinion will assist all parties. The persons or agencies that are the subject of the complaint shall respond, within a reasonable time, to the ombudsman regarding actions taken, if any, as a result of the ombudsman’s report and recommendations.

The ombudsman shall prepare a public annual report, not identifying individual agencies or individuals, summarizing his activity. The annual report must be submitted directly to the Governor, General Assembly, elements of the criminal and juvenile justice systems, and victim assistance programs.

**SECTION 16‑3‑1640.** Confidentiality of information and files.

Information and files requested and received by the ombudsman are confidential and retain their confidential status at all times. Juvenile records obtained under this section may be released only in accordance with provisions of the Children’s Code.

**SECTION 16‑3‑1650.** Cooperation with the criminal and juvenile justice systems and victim assistance programs.

All elements of the criminal and juvenile justice systems and victim assistance programs shall cooperate with the ombudsman in carrying out the duties described in Sections 16‑3‑1620 and 16‑3‑1630.

**SECTION 16‑3‑1660.** Grounds for dismissal.

A victim’s exercise of rights granted by this article is not grounds for dismissing a criminal proceeding or setting aside a conviction or sentence.

**SECTION 16‑3‑1670.** Purpose.

This article does not create a cause of action on behalf of a person against an element of the criminal and juvenile justice systems, victim assistance programs, the State, or any agency or person responsible for the enforcement of rights and provision of services set forth in this chapter.

**SECTION 16‑3‑1680.** Authority to promulgate rules and regulations.

The Crime Victims’ Ombudsman of the Office of the Governor may promulgate those regulations necessary to assist it in performing its required duties as provided by this chapter.

ARTICLE 17.

 HARASSMENT AND STALKING

**SECTION 16‑3‑1700.** Definitions.

As used in this article:

(A) “Harassment in the first degree” means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the first degree may include, but is not limited to:

(1) following the targeted person as he moves from location to location;

(2) visual or physical contact that is initiated, maintained, or repeated after a person has been provided oral or written notice that the contact is unwanted or after the victim has filed an incident report with a law enforcement agency;

(3) surveillance of or the maintenance of a presence near the targeted person’s:

(a) residence;

(b) place of work;

(c) school; or

(d) another place regularly occupied or visited by the targeted person; and

(4) vandalism and property damage.

(B) “Harassment in the second degree” means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the second degree may include, but is not limited to, verbal, written, or electronic contact that is initiated, maintained, or repeated.

(C) “Stalking” means a pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose and is intended to cause and does cause a targeted person and would cause a reasonable person in the targeted person’s position to fear:

(1) death of the person or a member of his family;

(2) assault upon the person or a member of his family;

(3) bodily injury to the person or a member of his family;

(4) criminal sexual contact on the person or a member of his family;

(5) kidnapping of the person or a member of his family; or

(6) damage to the property of the person or a member of his family.

(D) “Pattern” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose.

(E) “Family” means a spouse, child, parent, sibling, or a person who regularly resides in the same household as the targeted person.

(F) “Electronic contact” means any transfer of signs, signals, writings, images, sounds, data, intelligence, or information of any nature transmitted in whole or in part by any device, system, or mechanism including, but not limited to, a wire, radio, computer, electromagnetic, photoelectric, or photo‑optical system.

(G) This section does not apply to words or conduct protected by the Constitution of this State or the United States, a law enforcement officer or a process server performing official duties, or a licensed private investigator performing services or an investigation as described in detail in a contract signed by the client and the private investigator pursuant to Section 40‑18‑70.

**SECTION 16‑3‑1705.** Electronic mail service provider; immunity; definition.

(A) An electronic mail service provider must not be charged with or have a penalty assessed based upon a violation of this article or have a cause of action filed against it based on the electronic mail service provider’s:

(1) being an intermediary between the sender and recipient in the transmission of an electronic contact that violates this article; or

(2) providing transmission of an electronic contact over the provider’s computer network or facilities that violates this article.

(B) For purposes of this article, “electronic mail service provider” means a person or entity which:

(1) is an intermediary in sending or receiving electronic mail; and

(2) provides to users of electronic mail services the ability to send or receive electronic mail.

**SECTION 16‑3‑1710.** Penalties for conviction of harassment in the second degree.

(A) Except as provided in subsection (B), a person who engages in harassment in the second degree is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars, imprisoned not more than thirty days, or both.

(B) A person convicted of harassment in the second degree is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars, imprisoned not more than one year, or both if:

(1) the person has a prior conviction of harassment or stalking within the preceding ten years; or

(2) at the time of the harassment an injunction or restraining order was in effect prohibiting the harassment.

(C) In addition to the penalties provided in this section, a person convicted of harassment in the second degree who received licensing or registration information pursuant to Article 4 of Chapter 3 of Title 56 and used the information in furtherance of the commission of the offense under this section must be fined two hundred dollars or imprisoned thirty days, or both.

**SECTION 16‑3‑1720.** Penalties for conviction of harassment in the first degree.

(A) Except as provided in subsections (B) and (C), a person who engages in harassment in the first degree is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars, imprisoned not more than three years, or both.

(B) A person who engages in harassment in the first degree when an injunction or restraining order is in effect prohibiting this conduct is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars, imprisoned not more than three years, or both.

(C) A person who engages in harassment in the first degree and who has a prior conviction of harassment or stalking within the preceding ten years is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars, imprisoned not more than five years, or both.

(D) In addition to the penalties provided in this section, a person convicted of harassment in the first degree who received licensing or registration information pursuant to Article 4 of Chapter 3 of Title 56 and used the information in furtherance of the commission of the offense under this section must be fined one thousand dollars or imprisoned one year, or both.

**SECTION 16‑3‑1730.** Penalties for conviction of stalking.

(A) A person who engages in stalking is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars, imprisoned not more than five years, or both.

(B) A person who engages in stalking when an injunction or restraining order is in effect prohibiting this conduct is guilty of a felony and, upon conviction, must be fined not more than seven thousand dollars, imprisoned not more than ten years, or both.

(C) A person who engages in stalking and who has a prior conviction of harassment or stalking within the preceding ten years is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars, imprisoned not more than fifteen years, or both.

(D) In addition to the penalties provided in this section, a person convicted of stalking who received licensing or registration information pursuant to Article 4, Chapter 3 of Title 56 and used the information in furtherance of the commission of the offense pursuant to this section must be fined one thousand dollars or imprisoned one year, or both.

**SECTION 16‑3‑1735.** Law enforcement officer empowered to sign warrant in place of victim.

A law enforcement officer or another person with knowledge of the circumstances may sign a warrant in place of the victim for a person alleged to have committed a harassment or stalking offense as provided in Section 16‑3‑1710, 16‑3‑1720, or 16‑3‑1730.

**SECTION 16‑3‑1740.** Mental health evaluations of persons convicted of stalking or harassment; notice to victim in person of unsupervised release.

(A) Before sentencing a person convicted of stalking or harassment in the first or second degree, the court may require the person to undergo a mental health evaluation. If the court determines from the results of the evaluation that the person needs mental health treatment or counseling, the court shall require him to undergo mental health treatment or counseling by a court‑approved mental health professional, mental health facility, or facility operated by the State Department of Mental Health as a part of his sentence.

(B) When the court orders a mental health evaluation, the evaluation may not take place until the facility conducting the evaluation has received all of the documentation including, but not limited to, warrants, incident reports, and NCIC reports associated with the charges.

(C) If the evaluation results in the unsupervised release of the person, the victim must be notified prior to the person’s release. All reasonable efforts must be made to notify the victim personally to assure the notice is received.

**SECTION 16‑3‑1750.** Action seeking a restraining order against a person engaged in harassment or stalking; jurisdiction and venue; forms; enforceability.

(A) Pursuant to this article, the magistrates court has jurisdiction over an action seeking a restraining order against a person engaged in harassment in the first or second degree or stalking.

(B) An action for a restraining order must be filed in the county in which:

(1) the defendant resides when the action commences;

(2) the harassment in the first or second degree or stalking occurred; or

(3) the plaintiff resides if the defendant is a nonresident of the State or cannot be found.

(C) A complaint and motion for a restraining order may be filed by any person. The complaint must:

(1) allege that the defendant is engaged in harassment in the first or second degree or stalking and must state the time, place, and manner of the acts complained of, and other facts and circumstances upon which relief is sought;

(2) be verified; and

(3) inform the defendant of his right to retain counsel to represent him at the hearing on the complaint.

(D) The magistrates court must provide forms to facilitate the preparation and filing of a complaint and motion for a restraining order by a plaintiff not represented by counsel. The court must not charge a fee for filing a complaint and motion for a restraining order against a person engaged in harassment or stalking. However, the court shall assess a filing fee against the nonprevailing party in an action for a restraining order. The court may hold a person in contempt of court for failure to pay this filing fee.

(E) A restraining order remains in effect for a fixed period of time of not less than one year, as determined by the court on a case‑by‑case basis.

(F) Notwithstanding another provision of law, a restraining order or a temporary restraining order issued pursuant to this article is enforceable throughout this State.

**SECTION 16‑3‑1760.** When temporary restraining orders may be granted without notice; notice and hearing on motion seeking restraining order.

(A) Within twenty‑four hours after the filing of a complaint and motion seeking a restraining order pursuant to Section 16‑3‑1750, the court, for good cause shown, may hold an emergency hearing and, if the plaintiff proves his allegation by a preponderance of the evidence, may issue a temporary restraining order without giving the defendant notice of the motion for the order. A prima facie showing of present danger of bodily injury, verified by supporting affidavits, constitutes good cause.

(B) A temporary restraining order granted without notice must be served upon the defendant together with a copy of the complaint and a Rule to Show Cause why the order should not be extended for the full one‑year period. The Rule to Show Cause must provide the date and time of the hearing for the Rule to Show Cause. The defendant must be served within five days before the hearing in the same manner required for service as provided in the South Carolina Rules of Civil Procedure.

(C) In cases not provided in subsection (A), the court shall cause a copy of the complaint and motion to be served upon the defendant at least five days before the hearing in the same manner required for service as provided in the South Carolina Rules of Civil Procedure.

(D) The court shall hold a hearing on a motion for a restraining order within fifteen days of the filing of a complaint and motion, but not sooner than five days after service has been perfected upon the defendant.

**SECTION 16‑3‑1770.** Form and content of temporary restraining order.

(A) A temporary restraining order granted without notice must be endorsed with the date and hour of issuance and entered of record with the magistrates court.

(B) The terms of the restraining order must protect the plaintiff and may include temporarily enjoining the defendant from:

(1) abusing, threatening to abuse, or molesting the plaintiff or members of the plaintiff’s family;

(2) entering or attempting to enter the plaintiff’s place of residence, employment, education, or other location; and

(3) communicating or attempting to communicate with the plaintiff in a way that would violate the provisions of this article.

(C) A restraining order issued pursuant to this article conspicuously must bear the following language:

(1) “Violation of this order is a criminal offense punishable by thirty days in jail, a fine of five hundred dollars, or both.”; and

(2) “Pursuant to Section 16‑25‑125, it is unlawful for a person who has been charged with or convicted of criminal domestic violence or criminal domestic violence of a high and aggravated nature, who is subject to an order of protection, or who is subject to a restraining order, to enter or remain upon the grounds or structure of a domestic violence shelter in which the person’s household member resides or the domestic violence shelter’s administrative offices. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years, or both. If the person is in possession of a dangerous weapon at the time of the violation, the person is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.”.

(D) A restraining order issued by a court may not contain the social security number of a party to the order and must contain as little identifying information as is necessary of the party it seeks to protect.

**SECTION 16‑3‑1780.** Expiration of temporary restraining orders and restraining orders; extensions and modifications.

(A) A temporary restraining order remains in effect until the hearing on the Rule to Show Cause why the order should not be extended for the full one‑year period. The temporary restraining order must be for a fixed period in accordance with subsection (B) if the court finds the defendant in default at the hearing.

(B) In cases not provided for in subsection (A), a restraining order must be for a fixed period not to exceed one year but may be extended by court order on a motion by the plaintiff, showing good cause, with notice to the defendant. The defendant is entitled to a hearing on the extension of an order issued pursuant to this subsection within thirty days of the date upon which the order will expire.

(C) Notwithstanding subsection (B), the provisions included in a restraining order granting relief pursuant to Section 16‑3‑1770 dissolve one year following the issuance of the order unless, prior to the expiration of this period, the court has charged the defendant with the crime of harassment in the first or second degree or stalking and has scheduled a date for trial on the charge. If the trial has been scheduled, relief granted pursuant to Section 16‑3‑1770 remains in effect beyond the one‑year period only until the conclusion of the trial.

(D) The court may modify the terms of an order issued pursuant to this section.

**SECTION 16‑3‑1790.** Service of certified copies of restraining orders.

A magistrates court shall serve the defendant with a certified copy of an order issued pursuant to this article and provide a copy to the plaintiff and to the local law enforcement agencies having jurisdiction over the area where the plaintiff resides. Service must be made without charge to the plaintiff.

**SECTION 16‑3‑1800.** Arrest upon violation of restraining order.

Law enforcement officers shall arrest a defendant who is acting in violation of a restraining order after service and notice of the order is provided. An arrest warrant is not required.

**SECTION 16‑3‑1810.** Law enforcement officer’s responsibilities when responding to a harassment or stalking incident.

(A) The primary responsibility of a law enforcement officer when responding to a harassment in the first or second degree or stalking incident is to enforce the law and protect the complainant.

(B) The law enforcement officer shall notify the complainant of the right to initiate criminal proceedings and to seek a restraining order.

**SECTION 16‑3‑1820.** Immunity from liability for filing a report or complaint or participating in a judicial proceeding concerning alleged harassment or stalking; rebuttable presumption of good faith.

A person who reports an alleged harassment in the first or second degree or stalking, files a criminal complaint, files a complaint for a restraining order, or who participates in a judicial proceeding pursuant to this article and who is acting in good faith is immune from criminal and civil liability that might otherwise result from these actions. A rebuttable presumption exists that the person was acting in good faith.

**SECTION 16‑3‑1830.** Availability of other civil and criminal remedies.

A proceeding commenced pursuant to this article is in addition to other civil and criminal remedies.

**SECTION 16‑3‑1840.** Mental health evaluation prior to setting bail; purpose; report.

Prior to setting bail, a magistrate or a municipal judge may order a defendant charged with harassment in the first or second degree or stalking pursuant to this article to undergo a mental health evaluation performed by the local mental health department. The purpose of this evaluation is to determine if the defendant needs mental health treatment or counseling as a condition of bond. The evaluation must be scheduled within ten days of the order’s issuance. Once the evaluation is completed, the examiner must, within forty‑eight hours, issue a report to the local solicitor’s office, summary court judge, or other law enforcement agency. Upon receipt of the report, the solicitor, summary court judge, or other law enforcement agency must arrange for a bond hearing before a circuit court judge or summary court judge.