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.

HISTORY: 2001 Act No. 97, Section 1.

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

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

HISTORY: 1962 Code Section 16‑51; 1952 Code Section 16‑51; 1942 Code Section 1101; 1932 Code Section 1101; Cr. C. ‘22 Section 1; Cr. C. ‘12 Section 135; Cr. C. ‘02 Section 108; G. S. 2453; R. S. 108; 1712 (2) 418.

**SECTION 16‑3‑20.** Punishment for murder; separate sentencing proceeding when death penalty sought.

 (A) A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life. 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” or “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 to life 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 to life 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, 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 to life. 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) trafficking in persons;

 (d) burglary in any degree;

 (e) robbery while armed with a deadly weapon;

 (f) larceny with use of a deadly weapon;

 (g) killing by poison;

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

 (i) physical torture;

 (j) dismemberment of a person; or

 (k) 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.

HISTORY: 1962 Code Section 16‑52; 1952 Code Section 16‑52; 1942 Code Section 1102; 1932 Code Section 1102; Cr. C. ‘22 Section 2; Cr. C. ‘12 Section 136; Cr. C. ‘02 Section 109; G. S. 2454; R. S. 109; 1868 (14) 175; 1894 (21) 785; 1974 (58) 2361; 1977 Act No. 177 Section 1; 1978 Act No. 555 Section 1; 1985 Act No. 104, Section 1; 1986 Act No. 462, Section 27; 1990 Act No. 604, Section 15; 1992 Act No. 488, Section 1; 1995 Act No. 83, Section 10; 1996 Act No. 317, Section 1; 2002 Act No. 224, Section 1, eff May 1, 2002 (applicable to offenses committed on or after that date); 2002 Act No. 278, Section 1, eff May 28, 2002; 2006 Act No. 342, Section 2, eff July 1, 2006; 2007 Act No. 101, Section 1, eff June 18, 2007; 2010 Act No. 273, Section 21, eff June 2, 2010; 2010 Act No. 289, Section 4, eff June 11, 2010.

Editor’s Note

2006 Act No. 342, Section 1, provides as follows:

“This act may be cited as the ‘Sex Offender Accountability and Protection of Minors Act of 2006’.”

2006 Act No. 342, Section 12, provides as follows:

“It is the intent of the General Assembly that one of the purposes of this act is to provide for the death penalty for a subsequent offense of first degree criminal sexual conduct with a minor who is less than eleven years of age and that this act does not alter or amend and is separate and distinct from the provisions of Section 16‑3‑20, providing for the imposition of the death penalty for murder.”

**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).

HISTORY: 1996 Act No. 448, Section 2.

Editor’s Note

1996 Act No. 448, Section 1, eff June 18, 1996, provides as follows:

“SECTION 1. This act [consisting of Sections 16‑3‑21, 17‑25‑380, 17‑27‑130, 17‑27‑150, and 17‑27‑160] is known and may be cited as the ‘South Carolina Effective Death Penalty Act of 1996’.”

**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.

HISTORY: 1962 Code Section 16‑52.1; 1977 Act No. 177 Section 2.

**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.

HISTORY: 1962 Code Section 16‑52.2; 1977 Act No. 177 Section 3; 1978 Act No. 555 Section 2; 1986 Act No. 462, Section 26; 1993 Act No. 164, Part II, Section 45D; 1994 Act No. 497, Part I, E23‑Section 14; 1995 Act No; 145, Part I, Section 14; 1996 Act No. 458, Part II, Section 26A.

**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.

HISTORY: 1977 Act No. 177 Section 5; 1986 Act No. 462, Section 43.

**SECTION 16‑3‑29.** Attempted murder.

 A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder. A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted.

HISTORY: 2010 Act No. 273, Section 6.A, eff June 2, 2010.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

**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.

HISTORY: 1962 Code Section 16‑55; 1952 Code Section 16‑55; 1942 Code Section 1107; 1932 Code Section 1107; Cr. C. ‘22 Section 10; Cr. C. ‘12 Section 148; Cr. C. ‘02 Section 120; G. S. 2465; R. S. 120; 1869 (14) 175; 1931 (38) 332; 1934 (38) 1463; 1993 Act No. 184, Section 159.

**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.

HISTORY: 1962 Code Section 16‑55.1; 1968 (55) 2626; 1993 Act No. 184, Section 160.

**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.

HISTORY: 1962 Code Section 16‑56; 1952 Code Section 16‑56; 1942 Code Section 1108; 1932 Code Section 1108; Cr. C. ‘22 Section 11; Cr. C. ‘12 Section 149; Cr. C. ‘02 Section 121; G. S. 2466; R. S. 121; 1859 (12) 832; 1898 (22) 812; 1993 Act No. 184, Section 161.

**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.

HISTORY: 1984 Act No. 477, Section 1; 1993 Act No. 184, Section 162.

**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.

HISTORY: 1992 Act No. 412, Section 1; 2000 Act No. 261, Section 1.

**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.

HISTORY: 2000 Act No. 261, Section 2.

ARTICLE 3

Lynching

**SECTION 16‑3‑210.** Assault and battery by mob; investigation and apprehension; civil liability.

 (A) For purposes of this section, a “mob” is defined 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.

 (B) 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 felony crime of assault and battery by mob in the first degree and, upon conviction, an offender shall be punished by imprisonment for not less than thirty years.

 (C) Any act of violence inflicted by a mob upon the body of another person, which results in serious bodily injury to the person, shall constitute the felony crime of assault and battery by mob in the second degree and, upon conviction, an offender shall be punished by imprisonment for not less than three years nor more than twenty‑five years.

 (D) Any act of violence inflicted by a mob upon the body of another person, which results in bodily injury to the person, shall constitute the misdemeanor crime of assault and battery by mob in the third degree and, upon conviction, an offender shall be punished by imprisonment for not more than one year.

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

 (F) The solicitor of any circuit has 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.

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

HISTORY: 1962 Code Section 16‑57; 1952 Code Section 16‑57; 1951 (47) 233; 2010 Act No. 273, Section 4, eff June 2, 2010.

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.

HISTORY: 1962 Code Section 16‑61; 1952 Code Section 16‑61; 1942 Code Section 1117; 1932 Code Section 1117; Cr. C. ‘22 Section 15; Cr. C. ‘12 Section 153; Cr. C. ‘02 Section 125; G. S. 2468; R. S. 125; 1880 (17) 501; 1993 Act No. 184, Section 88.

**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.

HISTORY: 1962 Code Section 16‑62; 1952 Code Section 16‑62; 1942 Code Section 1118; 1932 Code Section 1118; Cr. C. ‘22 Section 16; Cr. C. ‘12 Section 154; Cr. C. ‘02 Section 126; G. S. 2469; R. S. 126; 1880 (17) 502.

**SECTION 16‑3‑440.** Principal or second 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.

HISTORY: 1962 Code Section 16‑64; 1952 Code Section 16‑64; 1942 Code Section 1014; 1932 Code Section 1014; Cr. P. ‘22 Section 100; Cr. C. ‘12 Section 155; Cr. C. ‘02 Section 127; G. S. 2470; R. S. 127; 1823 (6) 208.

**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.

HISTORY: 1962 Code Section 16‑65; 1952 Code Section 16‑65; 1942 Code Section 1015; 1932 Code Section 1015; Cr. P. ‘22 Section 101; Cr. C. ‘12 Section 156; Cr. C. ‘02 Section 128; G. S. 2471; R. S. 128; 1823 (6) 208.

**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.

HISTORY: 1962 Code Section 16‑66; 1952 Code Section 16‑66; 1942 Code Section 1015; 1932 Code Section 1015; Cr. P. ‘22 Section 101; Cr. C. ‘12 Section 156; Cr. C. ‘02 Section 128; G. S. 2471; R. S. 128; 1823 (6) 208.

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.

HISTORY: 1987 Act No. 73 Section 1; 2002 Act No. 310, Section 4, eff June 5, 2002.

**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.

HISTORY: 1987 Act No. 73 Section 2.

**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.

HISTORY: 1987 Act No. 73 Section 3.

**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.

HISTORY: 1987 Act No. 73 Section 4.

ARTICLE 7

Assault and Criminal Sexual Conduct

**SECTION 16‑3‑600.** Assault and battery; definitions; degrees of offenses.

 (A) For purposes of this section:

 (1) “Great bodily injury” means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

 (2) “Moderate bodily injury” means physical injury that involves prolonged loss of consciousness, or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ, or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. Moderate bodily injury does not include one‑time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.

 (3) “Private parts” means the genital area or buttocks of a male or female or the breasts of a female.

 (B)(1) A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and:

 (a) great bodily injury to another person results; or

 (b) the act is accomplished by means likely to produce death or great bodily injury.

 (2) A person who violates this subsection is guilty of a felony, and, upon conviction, must be imprisoned for not more than twenty years.

 (3) Assault and battery of a high and aggravated nature is a lesser‑included offense of attempted murder, as defined in Section 16‑3‑29.

 (C)(1) A person commits the offense of assault and battery in the first degree if the person unlawfully:

 (a) injures another person, and the act:

 (i) involves nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent; or

 (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft; or

 (b) offers or attempts to injure another person with the present ability to do so, and the act:

 (i) is accomplished by means likely to produce death or great bodily injury; or

 (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

 (2) A person who violates this subsection is guilty of a felony, and, upon conviction, must be imprisoned for not more than ten years.

 (3) Assault and battery in the first degree is a lesser‑included offense of assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16‑3‑29.

 (D)(1) A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and:

 (a) moderate bodily injury to another person results or moderate bodily injury to another person could have resulted; or

 (b) the act involves the nonconsensual touching of the private parts of a person, either under or above clothing.

 (2) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than two thousand five hundred dollars, or imprisoned for not more than three years, or both.

 (3) Assault and battery in the second degree is a lesser‑included offense of assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16‑3‑29.

 (E)(1) A person commits the offense of assault and battery in the third degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so.

 (2) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars, or imprisoned for not more than thirty days, or both.

 (3) Assault and battery in the third degree is a lesser‑included offense of assault and battery in the second degree, as defined in subsection (D)(1), assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16‑3‑29.

HISTORY: 2010 Act No. 273, Section 6.B, eff June 2, 2010; 2011 Act No. 39, Sections 1, 2, eff June 7, 2011; 2015 Act No. 58 (S.3), Pt II, Section 3, eff June 4, 2015.

Effect of Amendment

2015 Act No. 58, Section 3, rewrote (A)(2).

**SECTION 16‑3‑610.** Certain offenses committed with a carried or concealed deadly weapon.

 If a person is convicted of an offense pursuant to Section 16‑3‑29, 16‑3‑600, or manslaughter, and the offense is committed with a deadly weapon of the character as specified in Section 16‑23‑460 carried or concealed upon the person of the defendant, the judge shall, in addition to the punishment provided by law for such offense, sentence the person to imprisonment for the misdemeanor offense for not less than three months nor more than twelve months, or a fine of not less than two hundred dollars, or both.

HISTORY: 1962 Code Section 16‑93; 1952 Code Section 16‑93; 1942 Code Section 1258; 1932 Code Section 1258; Cr. C. ‘22 Section 153; Cr. C. ‘12 Section 160; Cr. C. ‘02 Section 132; 1897 (22) 427; 2010 Act No. 273, Section 6.C, eff June 2, 2010.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

**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.

HISTORY: 1991 Act No. 139, Section 1; 1994 Act No. 295, Sections 1, 3; 1997 Act No. 95, Section 2.

**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”.

HISTORY: 1980 Act No. 511, Section 1; 1995 Act No. 83, Section 11.

**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.

HISTORY: 1977 Act No. 157 Section 1.

**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, trafficking in persons, 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.

HISTORY: 1977 Act No. 157 Section 2; 1998 Act No. 372, Section 4; 2000 Act No. 355, Section 1; 2010 Act No. 289, Section 5, eff June 11, 2010.

**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.

HISTORY: 1977 Act No. 157 Section 3.

**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.

HISTORY: 1977 Act No. 157 Section 4.

**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) A person is guilty of criminal sexual conduct with a minor in the third degree if the actor is over fourteen years of age and the actor wilfully and lewdly commits or attempts to commit a lewd or lascivious act upon or with the body, or its parts, of a child under sixteen years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor or the child. However, a person may not be convicted of a violation of the provisions of this subsection if the person is eighteen years of age or less when the person engages in consensual lewd or lascivious conduct with another person who is at least fourteen years of age.

 (D)(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 nor 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 in 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 in 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 nor 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 in the discretion of the court.

 (4) A person convicted of a violation of subsection (C) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than fifteen years, or both.

 (E) 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 items (1) and (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 pursuant to the provisions of Section 14, 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 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, kidnapping, or trafficking in persons.

 (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.

 When 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. When 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 this subsection. 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. When a statutory aggravating circumstance is not found, the trial judge shall sentence the defendant to life imprisonment. No person sentenced to life imprisonment pursuant to 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 the death 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 the jury and shall sentence the defendant to life imprisonment, as provided in this subsection.

 (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 those beliefs or attitudes would render him unable to return a verdict according to law.

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

 (2) The verbal instruction must 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 as provided in item (1).

 (G)(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 whether the:

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

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

 (c) 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, is 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 provided for, must 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 in subsection (E)(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 this 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 is in addition to direct appeal, if taken, and the review and appeal must 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.

 (H)(1) Whenever the solicitor seeks the death penalty pursuant to this section, he shall notify the defense attorney of his intention to seek the death penalty at least thirty days prior to the trial of the case. At the request of the defense attorney, the defense attorney must 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 the person is unable financially to retain adequate legal counsel, shall appoint two attorneys to defend the 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 may be the public defender or a member of his staff. In all cases when no conflict exists, the public defender or member of his staff must be appointed if qualified. If a conflict exists, the court then shall turn first to the contract public defender attorneys, if qualified, before turning to the Office of Indigent Defense.

 (b) Notwithstanding another 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 must 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 may not exceed twenty‑five thousand dollars and must 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 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 deems appropriate. Payment of these 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 item (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 services cannot await prior authorization, the court may authorize the provision of and payment for 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 in this subsection. 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 must be made to present an attorney from the area or region where the action is initiated.

 (8) The payment schedule provided in this subsection, 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 item 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.

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

HISTORY: 1977 Act No. 157 Section 5; 1978 Act No. 639 Section 1; 1984 Act No. 509; 2005 Act No. 94, Section 1, eff June 1, 2005; 2006 Act No. 342, Section 3, eff July 1, 2006; 2006 Act No. 346, Section 1, eff July 1, 2006; 2008 Act No. 335, Section 18, eff June 16, 2008; 2010 Act No. 289, Section 6, eff June 11, 2010; 2012 Act No. 255, Section 1, eff June 18, 2012.

Editor’s Note

2006 Act No. 342, Section 1, provides as follows:

“This act may be cited as the ‘Sex Offender Accountability and Protection of Minors Act of 2006’.”

2006 Act No. 342, Section 12, provides as follows:

“It is the intent of the General Assembly that one of the purposes of this act is to provide for the death penalty for a subsequent offense of first degree criminal sexual conduct with a minor who is less than eleven years of age and that this act does not alter or amend and is separate and distinct from the provisions of Section 16‑3‑20, providing for the imposition of the death penalty for murder.”

2006 Act No. 346, Section 5, provides as follows:

“Expenses incurred relating to the defense of a constitutional challenge to the application of the provisions of Section 16‑3‑655, relating to the imposition of the death penalty, must be borne in their entirety by the Office of the Attorney General. The Office of the Attorney General is solely responsible for the defense of these actions and the Prosecution Coordination Commission and the offices of the individual circuit solicitors in the State must be held harmless.”

2006 Act No. 346, Section 6, provides as follows:

“The General Assembly is aware that this act amends sections of the South Carolina Code of Laws that are also amended in S.1267 of 2006 [Act 342], and it is the intent of the General Assembly that the provisions of this act control in their entirety as to those code sections.”

**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.

HISTORY: 1977 Act No. 157 Section 6; 1978 Act No. 639 Section 2.

**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.

HISTORY: 1977 Act No. 157 Section 7.

**SECTION 16‑3‑658.** Criminal sexual conduct; when 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.

HISTORY: 1977 Act No. 157 Section 8; 1991 Act No. 139, Section 2; 1997 Act No. 95, Section 3.

**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.

HISTORY: 1977 Act No. 157 Section 9.

**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 admissible under subsection (1). If new evidence is discovered during the presentation of the defense that may make the evidence described in subsection (1) admissible, the judge may order an in‑camera hearing to determine whether the proposed evidence is admissible under subsection (1).

HISTORY: 1977 Act No. 157, Section 10; 1994 Act No. 295, Section 2.

**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.

HISTORY: 1962 Code Section 16‑73; 1952 Code Section 16‑73; 1942 Code Section 1016; 1932 Code Section 1016; Cr. P. ‘22 Section 107; Cr. C. ‘12 Section 92; 1909 (26) 206.

**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.

HISTORY: 1962 Code Section 16‑74; 1952 Code Section 16‑74; 1942 Code Section 1016; 1932 Code Section 1016; Cr. P. ‘22 Section 107; Cr. C. ‘12 Section 92; 1909 (26) 206.

**SECTION 16‑3‑680.** Sheriff shall secure 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.

HISTORY: 1962 Code Section 16‑79; 1952 Code Section 16‑79; 1942 Code Section 1016; 1932 Code Section 1016; Cr. P. ‘22 Section 107; Cr. C. ‘12 Section 92; 1909 (26) 206.

**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.

HISTORY: 1962 Code Section 16‑77; 1952 Code Section 16‑77; 1942 Code Section 1016; 1932 Code Section 1016; Cr. P. ‘22 Section 107; Cr. C. ‘12 Section 92; 1909 (26) 206.

**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.

HISTORY: 1962 Code Section 16‑75; 1952 Code Section 16‑75; 1942 Code Section 1016; 1932 Code Section 1016; Cr. P. ‘22 Section 107; Cr. C. ‘12 Section 92; 1909 (26) 206.

**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.

HISTORY: 1962 Code Section 16‑76; 1952 Code Section 16‑76; 1942 Code Section 1016; 1932 Code Section 1016; Cr. P. ‘22 Section 107; Cr. C. ‘12 Section 92; 1909 (26) 206.

**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.

HISTORY: 1962 Code Section 16‑78; 1952 Code Section 16‑78; 1942 Code Section 1016; 1932 Code Section 1016; Cr. P. ‘22 Section 107; Cr. C. ‘12 Section 92; 1909 (26) 206.

**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.

HISTORY: 1962 Code Section 16‑81; 1952 Code Section 16‑81; 1942 Code Section 1275; 1932 Code Section 1275; Cr. C. ‘22 Section 170; Cr. C. ‘12 Section 317; 1909 (26) 208; 1979 Act No. 23.

**SECTION 16‑3‑740.** Testing of certain convicted offenders for Hepatitis B and HIV.

 (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 adults and juveniles.

 (B) Upon the request of a person who is the victim of a criminal offense which involves the sexual penetration of the victim’s body or who has been exposed to body fluids during the commission of a criminal offense, or upon the request of the legal guardian of a person who is the victim of a criminal offense which involves the sexual penetration of the victim’s body or who has been exposed to body fluids during the commission of a criminal offense, the solicitor, after the offender is charged, must petition the court for an order to have the offender tested for Hepatitis B and HIV. An offender must be tested pursuant to this section for Hepatitis B and HIV as soon as practicable after the court order is issued but not later than forty‑eight hours after the date the person is indicted for the offense or waives indictment for the offense. If the offender is subject to the jurisdiction of the family court, he must be tested not later than forty‑eight hours after the petition is filed with the family court alleging he is delinquent for committing the offense. If the offender cannot be located before the end of the forty‑eight hour period as provided in this subsection, the forty‑eight hour period is tolled until the offender is located by law enforcement. To obtain a court order, the solicitor must demonstrate the following, that the:

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

 (2) offender has been charged with, indicted for, or waived indictment for an offense which involved the sexual penetration of the victim’s body or that there is probable cause that during the commission of the criminal offense there was a risk that body fluids were transmitted from one person to another; and

 (3) 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 but disclosed to the solicitor who obtained the court order. As soon as practicable, the solicitor shall notify only those persons designated in subsection (C) of the results of the initial Hepatitis B and HIV tests and the results of any follow‑up HIV tests.

 (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. 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 a person with intellectual disability 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 test 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 test results and must provide counseling to the offender regarding the disease, syndrome, or virus. The Department of Health and Environmental Control must provide counseling for the victim, advise the victim of available medical treatment options, refer the victim to appropriate health care and support services, and, at the request of the victim or the legal guardian of a victim, test the victim for HIV and Hepatitis B and provide post‑testing counseling to the victim.

 (D) If deemed medically appropriate, the offender must undergo follow‑up testing for HIV. The follow‑up testing, and any counseling which may be ordered, shall be performed on dates that occur six weeks, three months, and six months following the initial test. Any follow‑up testing shall be terminated if the offender obtains an acquittal on, dismissal of, or is not adjudicated delinquent for 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).

HISTORY: 1988 Act No. 490, Section 17; 1994 Act No. 430, Section 1; 2000 Act No. 218, Section 1; 2009 Act No. 59, Sections 2, 3, eff June 2, 2009; 2010 Act No. 292, Section 2, eff August 27, 2010; 2011 Act No. 36, Section 1, eff June 7, 2011.

**SECTION 16‑3‑750.** Request that victim submit to polygraph examination.

 A law enforcement officer, prosecuting officer, or other governmental official may request that the victim of an alleged criminal sexual conduct offense as defined under federal or South Carolina law submit to a polygraph examination or other truth telling device as part of the investigation, charging, or prosecution of the offense if the credibility of the victim is at issue; however, the officer or official must not require the victim to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation, charging, or prosecution of the offense.

HISTORY: 2009 Act No. 59, Section 4, eff June 2, 2009.

**SECTION 16‑3‑755.** Sexual battery with a student.

 (A) For purposes of this section:

 (1) “Aggravated coercion” means that the person affiliated with a public or private secondary school in an official capacity threatens to use force or violence of a high and aggravated nature to overcome the student, if the student reasonably believes that the person 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 student.

 (2) “Aggravated force” means that the person affiliated with a public or private secondary school in an official capacity uses physical force or physical violence of a high and aggravated nature to overcome the student or includes the threat of the use of a deadly weapon.

 (3) “Person affiliated with a public or private secondary school in an official capacity” means an administrator, teacher, substitute teacher, teacher’s assistant, student teacher, law enforcement officer, school bus driver, guidance counselor, or coach who is affiliated with a public or private secondary school but is not a student enrolled in the school.

 (4) “Secondary school” means either a junior high school or a high school.

 (5) “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.

 (6) “Student” means a person who is enrolled in a school.

 (B) If a person affiliated with a public or private secondary school in an official capacity engages in sexual battery with a student enrolled in the school who is sixteen or seventeen years of age, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a felony and, upon conviction, must be imprisoned for not more than five years.

 (C) If a person affiliated with a public or private secondary school in an official capacity engages in sexual battery with a student enrolled in the school who is eighteen years of age or older, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for thirty days, or both.

 (D) If a person affiliated with a public or private secondary school in an official capacity has direct supervisory authority over a student enrolled in the school who is eighteen years of age or older, and the person affiliated with the public or private secondary school in an official capacity engages in sexual battery with the student, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a felony and, upon conviction, must be imprisoned for not more than five years.

 (E) This section does not apply if the person affiliated with a public or private secondary school in an official capacity is lawfully married to the student at the time of the act.

HISTORY: 2010 Act No. 265, Section 1, eff June 24, 2010.

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.

HISTORY: 1984 Act No. 267.

**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.

HISTORY: 1984 Act No. 267.

**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.

HISTORY: 1984 Act No. 267.

**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.

HISTORY: 1984 Act No. 267.

**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.

HISTORY: 1984 Act No. 267.

**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.

HISTORY: 1987 Act No. 168 Section 4; 2001 Act No. 81, Section 3.

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.

HISTORY: 1962 Code Section 16‑91; 1952 Code Section 16‑91; 1942 Code Section 1122; 1937 (40) 137; 1966 (54) 2151; 1974 (58) 2361; 1976 Act No. 684; 1991 Act No. 117, Section 1.

**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.

HISTORY: 1962 Code Section 16‑92; 1952 Code Section 16‑92; 1942 Code Section 1122; 1937 (40) 137; 1991 Act No. 117, Section 1.

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.

HISTORY: 1962 Code Section 16‑94; 1954 (48) 1479.

**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.

HISTORY: 1962 Code Section 16‑95; 1952 Code Section 16‑95; 1942 Code Section 1189; 1932 Code Section 1189; Cr. C. ‘22 Section 80; Cr. C. ‘12 Section 240; 1904 (24) 383.

**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.

HISTORY: 1982 Act No. 299; 1990 Act No. 579, Section 8; 1998 Act No. 435, Section 1.

Editor’s Note

1990 Act No. 579, Section 7 eff June 12, 1990, provides as follows:

“This act may be cited as the ‘Safe Schools Act of 1990’.”

**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.

HISTORY: 1996 Act No. 290, Section 1.

**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.

HISTORY: 1999 Act No. 56, Section 5.

**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.

HISTORY: 1984 Act No. 474, Section 1; 1988 Act No. 653, Section 18A.

**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.

HISTORY: 1999 Act No. 69, Section 1.

**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.

HISTORY: 1993 Act No. 163, Section 1; 1998 Act No. 402, Section 1.

**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.

HISTORY: 2001 Act No. 100, Section 1.

**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.

HISTORY: 2006 Act No. 325, Section 2, eff June 2, 2006.

Editor’s Note

2006 Act No. 325, Section 1, provides as follows:

“This act may be cited as the ‘Unborn Victims of Violence Act of 2006’.”

**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.

HISTORY: 2001 Act No. 100, Section 2.

**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).

HISTORY: 1998 Act No. 398, Section 1.

ARTICLE 12

Crime Victim Assistance Grants

**SECTION 16‑3‑1095.** Creation of Department of Crime Victim Assistance Grants; solicitation and administration of grants and awards.

 (A) The Department of Crime Victim Assistance Grants is created within the Office of the Attorney General, South Carolina Crime Victim Services Division to administer the Victims of Crime Act grants, the Violence Against Women Act grants, and the State Victim’s Assistance Program grants. The Director of the Crime Victim Services Division shall appoint a deputy director of the department.

 (B) The deputy director shall establish a process to solicit and administer the disbursement of funds for Victims of Crime Act grants, the Violence Against Women Act grants, and the State Victim’s Assistance Program grants available under Public Law 98‑473 establishing the Victims of Crime Act of 1984, and the Violence Against Women Act (VAWA‑I) established under Title IV of the Violent Crime Control and Law Enforcement Act of 1944, Public Law No. 103‑322, 108 Stat. 1796 (September 13, 1994), and administer all other crime victim service funding as provided by law, including, but not limited to, the authority to solicit for federal formula or discretionary grant awards and foundation funding.

HISTORY: 2017 Act No. 96 (S.289), Section 8.A, eff July 1, 2017.

ARTICLE 13

Compensation of Victims of Crime

**SECTION 16‑3‑1110.** Definitions.

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

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

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

 (3) “Fund” means the South Carolina Victim Compensation Fund, which is administered by the Office of the Attorney General, South Carolina Crime Victim Services Division.

 (4) “Director” means the Director of the Office of the Attorney General, South Carolina Crime Victim Services Division who is appointed by the Attorney General.

 (5) “Field representative” means a field representative of the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation 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. The term also includes a minor who is a witness to a domestic violence offense pursuant to Section 16‑25‑20 or Section 16‑25‑65.

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

 (11) “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:

 (a) medical and psychological counseling expenses;

 (b) specific damages and economic losses;

 (c) funeral expenses and related costs;

 (d) vehicle impoundment fees;

 (e) child care costs; and

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

 (B) 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.

 (C) 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.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 1988 Act No. 405, Section 1; 1993 Act No. 181, Section 271; 1996 Act No. 437, Section 6; 1997 Act No. 45, Section 1; 1998 Act No. 321, Section 2; 2015 Act No. 58 (S.3), Pt IV, Section 17, eff June 4, 2015; 2017 Act No. 96 (S.289), Section 5.A, eff July 1, 2017.

Editor’s Note

1996 Act No. 437, Section 8, eff January 1, 1997, provides as follows:

“Implementation of the changes in law effectuated by this act to Sections 16‑3‑1110, 16‑3‑1535, 17‑25‑322, 17‑25‑324, and 24‑21‑490 of the 1976 Code and the requirements thereunder or in any new provisions of law contained herein which would necessitate funding are contingent upon appropriations of sufficient funding by the General Assembly. Nothing herein shall relieve the various agencies and authorities within the offices of the respective clerks of court or judicial, correctional, and parole systems of this State from continuing to meet, enforce, and address those provisions of law related to restitution in effect prior to the enactment hereof.”

Effect of Amendment

2015 Act No. 58, Section 17, in (8), added the last sentence, relating to Sections 16‑25‑20 and 16‑25‑65.

2017 Act No. 96, Pt. II, Section 5.A, inserted the (A), (B), and (C) identifiers; in (A)(1), substituted “Victim” for “Victim’s”; in (A)(3), substituted “Victim Compensation Fund, which is administered by the Office of the Attorney General, South Carolina Crime Victim Services Division” for “Victim’s Compensation Fund, which is a division of the Office of the Governor”; in (A)(4), substituted “Office of the Attorney General, South Carolina Crime Victim Services Division who is appointed by the Attorney General” for “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”; in (A)(5), substituted “Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation” for “State Victim’s Compensation Fund”; deleted (A)(10), which had related to the definition of “deputy director”, and redesignated accordingly; and made nonsubstantive changes.

**SECTION 16‑3‑1120.** Director of Crime Victim Services Division; powers and duties.

 (A) A director of the South Carolina Crime Victim Services Division must be appointed by the Attorney General 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 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.

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

 (1) to appoint a deputy director of the Department of Crime Victim Compensation, and staff necessary for the operation of the department, 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) 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;

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

 (4) 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;

 (5) 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;

 (6) to render each year to the Governor and to the General Assembly a written report of the activities of the Department of Crime Victim Compensation and the Victim Compensation Fund pursuant to this article;

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

 (8) 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;

 (9) 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;

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

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 1988 Act No. 658, Part II, Section 16; 1993 Act No.181, Section 272; 2017 Act No. 96 (S.289), Section 5.B, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 5.B, inserted the (A) and (B) identifiers; in (A), substituted “South Carolina Crime Victim Services Division” for “Victim’s Compensation Fund”, “Attorney General” for “Governor”, and “Victim” for “Victim’s”; in (B), substituted “Victim” for “Victim’s”; in (B)(1), substituted “Department of Crime Victim Compensation” for “Victim’s Compensation Fund” and “of the department” for “thereof”; deleted (B)(2), relating to regulations and redesignated accordingly; in (B)(3), deleted “investigate or” prior to “reopen” and inserted “director or”; and, in (B)(6), substituted “Department of Crime Victim Compensation and the Victim Compensation Fund” for “Victim’s Compensation Fund”.

**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.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 1989 Act No. 181, Section 1.

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

 (A) 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.

 (B) Upon receipt of an application for review pursuant to subsection (A), the deputy director shall forward all relevant documents and information to the Chairman of the Crime Victim 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 (A), his decision becomes the final decision of the Department of Crime Victim Compensation.

 (C) 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.

 (D) 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.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 2017 Act No. 96 (S.289), Section 5.C, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 5.C, made nonsubstantive changes throughout the section.

**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:

 (1) the amount of each emergency award shall not exceed five hundred dollars;

 (2) the total amount of such emergency awards shall not exceed one thousand dollars;

 (3) the amount of such emergency awards must be deducted from any final award made to the claimant; and

 (4) 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 Compensation Fund as created by this article.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 1986 Act No. 540, Part II, Section 27A; 2017 Act No. 96 (S.289), Section 5.D, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 5.D, made nonsubstantive changes throughout the section.

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

 (A) There is created a board to be known as the South Carolina Crime Victim Advisory Board to consist of eleven members to be appointed by the Attorney General. 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.

 (B) 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 Attorney General when making the initial appointments. The initial terms of four additional members to be appointed as provided in this section are for two, three, four, and five years, respectively, the initial term of each member to be designated by the Attorney General when making the appointment. The Attorney General shall select a chairman. The board may elect a secretary and other officers as deemed necessary.

 (C) Any vacancy must be filled for the remainder of the unexpired term by appointment in the same manner of the initial appointments. On June 30, 2017, the terms of the members of the board currently serving shall terminate, and members serving on that date, or subsequently appointed by the Attorney General, are eligible for reappointment at the discretion of the Attorney General.

 The board shall meet at least twice each year and must be subject to the call of the chairperson, to consider improvements in and monitor the effectiveness of the Victim Compensation Fund, and to review and comment on the budget and approve the regulations pertaining to the Victim Compensation Fund and the Victim/Witness Assistance Program of Article 14. 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 Compensation Fund as created by this article.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 2008 Act No. 273, Section 4, eff June 4, 2008; 2017 Act No. 96 (S.289), Section 5.E, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 5.E, inserted the paragraph identifiers; substituted “Attorney General” for “Governor” throughout the section; in (C), added the second sentence, relating to the termination of board members currently serving; and made nonsubstantive changes.

**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 Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation.

 (B) For the purposes of subsection (A)(3), 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.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 1988 Act No. 405, Section 2; 2017 Act No. 96 (S.289), Section 5.F, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 5.F, in (A)(4), substituted “Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation” for “South Carolina Victim’s Compensation Fund”; and in (B), substituted “subsection (A)(3)” for “item (3) of subsection (A)”.

**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 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 Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation 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 or deputy director determines there is a need to reopen the case as specified in Section 16‑3‑1120(B)(3).

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 1986 Act No. 540, Part II, Sections 27B, 2C; 1988 Act No. 406; 1990 Act No. 480, Section 1; 1991 Act No. 144, Section 1; 1995 Act No. 83, Section 12; 1996 Act No. 458, Part II, Section 51A; 2008 Act No. 271, Section 1, eff January 1, 2009; 2017 Act No. 96 (S.289), Section 5.G, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 5.G, in (C), substituted “Victim” for “Victim’s”; in (E), substituted “Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation” for “State Office of Victim Assistance”, inserted “deputy director”, and substituted “16‑3‑1120(B)(3)” for “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.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1.

**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.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1.

**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.

HISTORY: 1982 Act No. 455 Section 2. 1984 Act No. 489, Section 1; 1989 Act No. 181, Section 2; 1997 Act No. 45, Section 2; 1997 Act No. 141, Section 2.

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

 A person listed in Section 16‑3‑1210 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.

HISTORY: 1982 Act No. 455, Section 2. 1984 Act No. 489, Section 1; 1989 Act No. 181, Section 3; 1991 Act No. 144, Section 2; 2017 Act No. 96 (S.289), Section 5.H, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 5.H, substituted “Section 16‑3‑1210” for “Section 16‑3‑1210(1)”.

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

 (A) 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.

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

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

 (2) the death of the victim;

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

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

 (C) 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 Compensation Fund but does not mean simply ignorance of the law.

 (D) Claims must be filed in the Department of Crime Victim Compensation with input from the board 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 (A) and meeting the requirements as to the form of the claim contained in the form developed by the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 1989 Act No. 181, Section 4; 2006 Act No. 380, Section 5, eff upon approval (became law without the Governor’s signature on June 14, 2006); 2008 Act No. 271, Section 2, eff January 1, 2009; 2017 Act No. 96 (S.289), Section 5.I, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 5.I, renumbered the section; in (C), substituted “Victim Compensation Fund” for “Victim’s Compensation Fund”; and, in (D), substituted “Department of Crime Victim Compensation with input from the board” for “office of the director”, “subsection (A)” for “subsection (1)”, and “form developed by the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation” for “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 fund, 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 pursuant to the provisions of this article 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 4, Title 30.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 2017 Act No. 96 (S.289), Section 5.J, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 5.J, substituted “fund” for “victim’s compensation program”, “pursuant to the provisions of this article” for “hereunder”, “Chapter 4, Title 30” for “Chapter 3 of Title 30”, and made nonsubstantive changes.

**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.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 1996 Act No. 458, Part II, Section 51B.

**SECTION 16‑3‑1260.** Reimbursement of State by convicted person for payment by Office of the Attorney General, South Carolina Crime Victim Services Division.

 (A) 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.

 (B) 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.

 (C) 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.

 (D) 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 Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, 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.

 (E) Payments authorized or required under this section must be paid to the Office of the Attorney General, South Carolina Crime Victim Services Division. The Director of the Office of the Attorney General, South Carolina Crime Victim Services Division, together with the Deputy Director of the Department of Crime Victim Compensation, 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 fund.

 (F) Restitution payments to the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund 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.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 1995 Act No. 83, Section 13; 2017 Act No. 96 (S.289), Section 5.K, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 5.K, redesignated the paragraph identifiers; in (D), substituted “Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation” for “State Office of Victim Assistance”; in (E), substituted “Office of the Attorney General, South Carolina Crime Victim Services Division” for “State Office of Victim Assistance”, “Office of the Attorney General, South Carolina Crime Victim Services Division, together with the Deputy Director of the Department of Crime Victim Compensation,” for “State Office of Victim Assistance”, and “fund” for “State Office of Victim Assistance”; in (F), substituted “Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund” for “State Office of Victim Assistance”; and made nonsubstantive changes throughout.

**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.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 1997 Act No. 34, Section 1.

Editor’s Note

Section 24‑23‑210 was repealed by 1994 Act No. 497, Part II Section 36.U, and section 24‑23‑220 was repealed by 1996 Act No. 292, Section 6.

**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.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1.

**SECTION 16‑3‑1290.** Victim Compensation Fund; payment of claims, expenses and administrative costs.

 (A) There is hereby created a special fund to be known as the Victim Compensation Fund for the purpose of providing for the payment of all necessary and proper expenses incurred by the operation of the 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.

 (B) The funds placed in the Victim 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.

 (C) 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 fund.

 (D) Interest earned on all monies held in the fund shall be remitted to the general fund of the State.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 1984 Act No. 512, Part II, Section 73; 2017 Act No. 96 (S.289), Section 5.L, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 5.L, redesignated the paragraph identifiers; in (A), substituted “Victim Compensation Fund” for “Victim’s Compensation Fund” and “fund” for “Victim’s Compensation Fund”; in (B), substituted “Victim Compensation Fund” for “Victim’s Compensation Fund”; in (C), substituted “fund” for “Victim’s Compensation Fund”; in (D), substituted “fund” for “Victim’s Compensation Fund”; and made nonsubstantive changes.

**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.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1.

**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.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1.

**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.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1.

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

 (A) When the director determines that projected revenue in any fiscal year will be insufficient to pay projected claims or awards in the amounts provided pursuant to the provisions of this article, 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.

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

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 1988 Act No. 367, Section 1; 2017 Act No. 96 (S.289), Section 5.M, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 5.M, inserted the paragraph identifiers; in (A), substituted “pursuant to the provisions of this article” for “herein”; and, in (B), deleted “hereunder” following “Any award”, and substituted “Victim Compensation Fund” for “Victim’s Compensation Fund”.

**SECTION 16‑3‑1340.** Attorney for claimant; fees; attorney for Department of Crime Victim Compensation; soliciting employment to pursue claim or award; penalties.

 (A) A claimant may be represented by an attorney in proceedings under this article. Attorneys’ fees must be paid from the Victim 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 within the Office of the Attorney General shall represent the Department of Crime Victim Compensation in proceedings under this article.

 (B) Any person who receives any fee or other consideration or any gratuity on account of services so rendered, unless the 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 more than one year, or both.

HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1; 1993 Act No. 181, Section 996; 2017 Act No. 96 (S.289), Section 5.N, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 5.N, rewrote the section, making conforming changes reflecting the restructuring of victim services generally relating to the Victim Compensation Fund and certain responsibilities of the newly created Office of the Attorney General, South Carolina Crime Services Division, Department of Crime Victim Compensation.

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

 (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 Office of the Attorney General, South Carolina Crime Victim Services Division with production costs to be paid from funds appropriated for the Victim Compensation Fund. These exams must include treatment for sexually transmitted diseases, 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 in this subsection.

 (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 Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation if the offense occurred in South Carolina. The department 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 department must reimburse eligible health care facilities directly from the fund.

 (D) The Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation 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 fund. For the purpose of this particular exam, the one hundred dollar deductible is waived for award eligibility under the fund. The department must develop appropriate guidelines and procedures and distribute them to law enforcement agencies and appropriate health care facilities.

HISTORY: 1997 Act No. 141, Section 1; 2009 Act No. 59, Section 5, eff June 2, 2009; 2017 Act No. 96 (S.289), Section 5.O, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 5.O, rewrote the section, making conforming changes reflecting the restructuring of victim services generally relating to the Victim Compensation Fund and certain responsibilities of the newly created Office of the Attorney General, South Carolina Crime Services Division, Department of Crime Victim Compensation.

**SECTION 16‑3‑1360.** Debt collection activities prohibited until award is made or denied; suspension of statute of limitations; definition.

 (A) When a person files a claim pursuant to this article, a health care provider that has received written notice of a pending claim is prohibited from all debt collection activities relating to medical and psychological treatment received by the person in connection with the claim until an award is made on the claim or the claim is determined to be noncompensable and is denied, or ninety days have passed after the health care provider first received notice of a pending claim. The statute of limitations for collection of the debt is suspended during the period in which the applicable health care provider is required to refrain from debt collection activities.

 (B) For purposes of this section, “debt collection activities” means repeatedly calling or writing to the claimant and threatening to turn the matter over to a debt collection agency or to an attorney for collection, enforcement, or filing of other process. The term does not include routine billing or inquiries about the status of the claim.

HISTORY: 2010 Act No. 241, Section 1, eff June 11, 2010.

ARTICLE 14

Crime Victim Services Training, Provider Certification, and Statistical Analysis

**SECTION 16‑3‑1400.** Omitted.

HISTORY: Former Section, titled Definitions, had the following history: 1984 Act No. 489, Section 2; 1988 Act No. 405, Section 3; 2008 Act No. 271, Section 3, eff January 1, 2009; 2010 Act No. 293, Section 1, eff August 27, 2010. Omitted by 2017 Act No. 96, Section 6, eff July 1, 2017. See now, Section 16‑3‑1420.

**SECTION 16‑3‑1410.** Department of Crime Victim Services Training, Provider Certification, and Statistical Analysis; public crime victim assistance programs.

 (A) The Department of Crime Victim Services Training, Provider Certification, and Statistical Analysis is created within the Office of the Attorney General, South Carolina Crime Victim Services Division. The Director of the Crime Victim Services Division shall appoint a deputy director of the department.

 (B) The Department of Crime Victim Services Training, Provider Certification, and Statistical Analysis shall:

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

 (2) in cooperation with 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;

 (5) maintain records of certified victim service providers; and

 (6) collect and analyze statistical data gathered from providers; grant providers; grant recipients; all victim services funding streams; and local, state, and federal crime data and publish analysis, needs assessments, and reports.

 (C) Public crime victim assistance programs shall ensure that all victim service providers employed in their respective offices are certified through the department.

 (1) Private, nonprofit programs shall ensure that all crime 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) Crime victim service providers, serving in public or private nonprofit programs and employed on the effective date of this article, are exempt from basic certification requirements but must meet annual continuing education requirements to maintain certification. Crime victim service providers, serving in public or private nonprofit programs and employed after the effective date of this article, 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 deputy director, may not exceed fifteen hours, and the mandatory minimum requirements for continuing advocacy education, as promulgated by the deputy director, 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.

HISTORY: 2017 Act No. 96 (S.289), Section 6, eff July 1, 2017.

Editor’s Note

Prior Laws: Former Section 16‑3‑1410 was titled Victim assistance services; membership of Victim Services Coordinating Council, and had the following history: 1984 Act No. 489, Section 2; 2008 Act No. 271, Section 3, eff January 1, 2009. See now, Code 1976 Section 16‑3‑1430.

**SECTION 16‑3‑1420.** Definitions.

 For purposes 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.

 “Victim service provider” does not include a municipal court judge, magistrates court judge, circuit court judge, special circuit court judge, or family court judge.

 (2) “Witness” means a 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 an action or proceeding is commenced.

HISTORY: 1984 Act No. 489, Section 2; 1988 Act No. 405, Section 3; 2008 Act No. 271, Section 3, eff January 1, 2009; 2010 Act No. 293, Section 1, eff August 27, 2010. Formerly Section 16‑3‑1400, renumbered by 2017 Act No. 96 (S.289), Section 6, eff July 1, 2017.

Editor’s Note

Prior Laws: Former Section 16‑3‑1420 was titled Director, and had the following history: 1984 Act No. 489, Section 2; 2008 Act No. 271, Section 3, eff January 1, 2009.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 6, reenacted former Section 16‑3‑1400 as Section 16‑3‑1420.

**SECTION 16‑3‑1430.** Victim assistance services; membership of Victim Services Coordinating Council.

 (A) The Department of Crime Victim Services Training, Provider Certification, and Statistical Analysis, in collaboration with the Department of Crime Victim Compensation, is authorized to provide the following victim assistance services, contingent upon the availability of funds in the Victim Compensation Fund:

 (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 Office of the Attorney General, South Carolina Crime Victim Services Division, or his designee, who shall serve as chairperson;

 (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 deputy directors of the three departments and the ombudsman under the Office of the Attorney General, South Carolina Crime Victim Services Division;

 (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) three 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 child advocacy organization; and

 (c) one crime victim; and

 (15) three 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.

HISTORY: 1984 Act No. 489, Section 2; 2008 Act No. 271, Section 3, eff January 1, 2009. Formerly Section 16‑3‑1410, renumbered and amended by 2017 Act No. 96 (S.289), Section 6, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 6, in (A), substituted “Department of Crime Victim Services Training, Provider Certification, and Statistical Analysis, in collaboration with the Department of Crime Victim Compensation,” for “Victim Compensation Fund”, and added “in the Victim Compensation Fund”; in (B)(1), substituted “Office of the Attorney General, South Carolina Crime Victim Services Division” for “State Office of Victim Assistance”, and added “, who shall serve as chairperson”; in (B)(6), substituted “deputy directors of the three departments and the Ombudsman under the Office of the Attorney General, South Carolina Crime Victim Services Division” for “Governor’s Crime Victims’ Ombudsman, or his designee”; deleted (B)(14), which related to the administrator of the Office of Justice Programs and redesignated accordingly; in (B)(14), substituted “three” for “four”; deleted (B)(14)(b), which related to one representative of a statewide crime victim organization and redesignated accordingly; in (B)(15), substituted “three” for “four”; and made nonsubstantive changes.

ARTICLE 15

Victim and Witness Services

**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.

HISTORY: 1997 Act No. 141, Section 3.

**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.

HISTORY: 1984 Act No. 418, Section 1; 1997 Act No. 141, Section 3; 1998 Act No. 343, Section 1A.

**SECTION 16‑3‑1515.** Victim or witness to supply certain information; requirements for 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 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.

HISTORY: 1997 Act No. 141, Section 3.

Code Commissioner’s Note

Pursuant to 2017 Act No. 96, Section 14, the reference to “victim’s compensation fund” in (B) was changed to “victim compensation fund”.

**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.

HISTORY: 1984 Act No. 418, Section 2; 1988 Act No. 405, Section 4; 1997 Act No. 141, Section 3.

**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.

HISTORY: 1997 Act No. 141, Section 3; 1998 Act No. 343, Section 1B; 2005 Act No. 106, Sections 3, 4, eff January 1, 2006; 2006 Act No. 380, Section 4, eff upon approval (became law without the Governor’s signature on June 14, 2006).

**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.

HISTORY: 1984 Act No. 418, Section 3; 1991 Act No. 68, Section 1; 1995 Act No. 83, Sections 14, 15; 1997 Act No. 141, Section 3; 1998 Act No. 343, Section 1C; 2005 Act No. 106, Section 5, eff January 1, 2006.

**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.

HISTORY: 1996 Act No. 437, Section 1; 1997 Act No. 141, Section 3; 2005 Act No. 106, Section 6, eff January 1, 2006.

Editor’s Note

1996 Act No. 437, Section 8, eff January 1, 1997, provides as follows:

“Implementation of the changes in law effectuated by this act to Sections 16‑3‑1110, 16‑3‑1535, 17‑25‑322, 17‑25‑324, and 24‑21‑490 of the 1976 Code and the requirements thereunder or in any new provisions of law contained herein which would necessitate funding are contingent upon appropriations of sufficient funding by the General Assembly. Nothing herein shall relieve the various agencies and authorities within the offices of the respective clerks of court or judicial, correctional, and parole systems of this State from continuing to meet, enforce, and address those provisions of law related to restitution in effect prior to the enactment hereof.”

**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.

HISTORY: 1984 Act No. 418, Section 4; 1997 Act No. 141, Section 3.

**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.

HISTORY: 1997 Act No. 141, Section 3.

**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.

HISTORY: 1984 Act No. 418, Section 5; 1987 Act No. 9, Section 1; 1988 Act No. 579; 1995 Act No. 83, Section 16; 1997 Act No. 141, Section 3.

**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.

HISTORY: 1997 Act No. 141, Section 3; 1998 Act No. 343, Section 1D; 2005 Act No. 106, Section 10, eff January 1, 2006.

**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.

HISTORY: 1984 Act No. 418, Section 6; 1988 Act No. 367, Section 2; 1996 Act No. 458, Part II, Section 51C; 1997 Act No. 141, Section 3; 1998 Act No. 321, Section 3; 1998 Act No. 343, Section 1E.

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

 (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.

HISTORY: 1997 Act No. 141, Section 3.

ARTICLE 16

Crime Victim Ombudsman

Editor’s Note

1994 Act No. 433, Section 2, provides:

“SECTION 2. Upon the effective date of this act, there is transferred from the Division of Victim’s Assistance of the Office of the Governor $125,000 and three full‑time equivalent positions to the Crime Victims’ Ombudsman of the Office of the Governor. The transfer shall apply for the current and succeeding fiscal years.”

**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.

HISTORY: 1994 Act No. 433, Section 1; 2017 Act No. 96 (S.289), Section 7, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 7, reenacted the section with no apparent change.

**SECTION 16‑3‑1620.** Department of Crime Victim Ombudsman.

 (A) The Department of Crime Victim Ombudsman is created in the Office of the Attorney General, South Carolina Crime Victim Services Division. The Crime Victim Ombudsman is appointed by the Director of the Crime Victim Services Division.

 (B) The Crime Victim Ombudsman 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 crime 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.

HISTORY: 1994 Act No. 433, Section 1; 2008 Act No. 271, Section 4, eff January 1, 2009; 2014 Act No. 121 (S.22), Pt V, Section 7.Z, eff July 1, 2015; 2017 Act No. 96 (S.289), Section 7, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 7, rewrote the section, making conforming changes reflecting the restructuring of victim services all generally relating to the newly created Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Ombudsman and its responsibilities.

**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.

HISTORY: 1994 Act No. 433, Section 1; 2017 Act No. 96 (S.289), Section 7, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 7, reenacted the section with no apparent change.

**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.

HISTORY: 1994 Act No. 433, Section 1; 2017 Act No. 96 (S.289), Section 7, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 7, reenacted the section with no apparent change.

**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.

HISTORY: 1994 Act No. 433, Section 1; 2017 Act No. 96 (S.289), Section 7, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 7, reenacted the section with no apparent change.

**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.

HISTORY: 1994 Act No. 433, Section 1; 2017 Act No. 96 (S.289), Section 7, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 7, reenacted the section with no apparent change.

**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.

HISTORY: 1994 Act No. 433, Section 1; 2017 Act No. 96 (S.289), Section 7, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II Section 7, reenacted the section with no apparent change.

**SECTION 16‑3‑1680.** Recommendation of regulations.

 The Department of Crime Victim Ombudsman through the Crime Victim Services Division may recommend to the Attorney General those regulations necessary to assist it in performing its required duties as provided by this chapter.

HISTORY: 2008 Act No. 271, Section 5, eff January 1, 2009; 2014 Act No. 121 (S.22), Pt V, Section 7.AA, eff July 1, 2015; 2017 Act No. 96 (S.289), Section 7, eff July 1, 2017.

Effect of Amendment

2017 Act No. 96, Pt. II, Section 7, substituted “Department of Crime Victim Ombudsman through the Crime Victim Services Division may recommend to the Attorney General” for “Crime Victims’ Ombudsman Office through the Department of Administration may promulgate”.

**SECTION 16‑3‑1690.** Submission of complaints; appeals.

 Complaints regarding any allegations against the Office of the Attorney General, Crime Victim Services Division or any of its affiliated departments concerning crime victim services should be submitted in writing to the Crime Victim Ombudsman, who shall cause a rotating three‑person panel of the Crime Victim Services Coordinating Council chosen by him to record, review, and respond to the allegations. Appeal of the three‑person panel’s response or any decision made by the panel regarding the allegations will be heard by the State Inspector General under the authority provided by the provisions of Chapter 6, Title 1. The State Inspector General shall provide the procedures for this appeal process, including, but not limited to, a written finding at the end of the appeal process, which must be provided to the complainant and to the Attorney General and the Director of the Crime Victim Services Division.

HISTORY: 2017 Act No. 96 (S.289), Section 7, eff July 1, 2017.

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.

 (H) A person who commits the offense of harassment in any degree or stalking, as defined in this section, while subject to the terms of a restraining order issued by the family court may be charged with a violation of this article and, upon conviction, may be sentenced pursuant to the provisions of Section 16‑3‑1710, 16‑3‑1720, or 16‑3‑1730.

HISTORY: 1995 Act No. 94, Section 1; 2001 Act No. 81, Section 4; 2005 Act No. 106, Section 7, eff January 1, 2006; 2013 Act No. 99, Section 1, eff June 20, 2013.

Editor’s Note

2005 Act No. 106, Section 1, provides as follows:

“This act may be cited as ‘Mary Lynn’s Law”‘.

**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.

HISTORY: 2005 Act No. 106, Section 7, eff January 1, 2006.

**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, including a restraining order issued by the family court, 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.

HISTORY: 1995 Act No. 94, Section 1; 1996 Act No. 458, Part II, Section 31B; 2005 Act No. 106, Section 7, eff January 1, 2006; 2013 Act No. 99, Section 2, eff June 20, 2013.

**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, including a restraining order issued by the family court, 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.

HISTORY: 1995 Act No. 94, Section 1; 1996 Act No. 458, Part II, Section 31C; 2005 Act No. 106, Section 7, eff January 1, 2006; 2013 Act No. 99, Section 3, eff June 20, 2013.

**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, including a restraining order issued by the family court, 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.

HISTORY: 1995 Act No. 94, Section 1; 2005 Act No. 106, Section 7, eff January 1, 2006; 2013 Act No. 99, Section 4, eff June 20, 2013.

**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.

HISTORY: 2005 Act No. 106, Section 7, eff January 1, 2006.

**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.

HISTORY: 1995 Act No. 94, Section 1; 2005 Act No. 106, Section 7, eff January 1, 2006.

**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.

HISTORY: 1995 Act No. 94, Section 1; 2002 Act No. 175, Section 1, eff March 5, 2002; 2005 Act No. 106, Section 7, eff January 1, 2006.

**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.

 (E) Upon motion of a party, the court may determine that a temporary restraining order was improperly issued due to unknown facts. The court may order the temporary restraining order vacated and all records of the improperly issued restraining order destroyed.

HISTORY: 1995 Act No. 94, Section 1; 2005 Act No. 106, Section 7, eff January 1, 2006; 2013 Act No. 99, Section 6, eff June 20, 2013.

**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.

HISTORY: 1995 Act No. 94, Section 1; 2005 Act No. 106, Section 7, eff January 1, 2006; 2008 Act No. 319, Section 2, eff June 11, 2008.

**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.

HISTORY: 1995 Act No. 94, Section 1; 2005 Act No. 106, Section 7, eff January 1, 2006.

**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.

HISTORY: 1995 Act No. 94, Section 1; 2005 Act No. 106, Section 7, eff January 1, 2006.

**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.

HISTORY: 1995 Act No. 94, Section 1; 2005 Act No. 106, Section 7, eff January 1, 2006.

**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.

HISTORY: 1995 Act No. 94, Section 1; 2005 Act No. 106, Section 7, eff January 1, 2006.

**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.

HISTORY: 1995 Act No. 94, Section 1; 2005 Act No. 106, Section 7, eff January 1, 2006.

**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.

HISTORY: 1995 Act No. 94, Section 1; 2005 Act No. 106, Section 7, eff January 1, 2006.

**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.

HISTORY: 1995 Act No. 94, Section 1; 2005 Act No. 106, Section 7, eff January 1, 2006.

ARTICLE 18

Permanent Restraining Orders

**SECTION 16‑3‑1900.** Definitions.

 For purposes of this article:

 (1) “Complainant” means a victim of a criminal offense that occurred in this State, a competent adult who resides in this State on behalf of a minor child who is a victim of a criminal offense that occurred in this State, or a witness who assisted the prosecuting entity in the prosecution of a criminal offense that occurred in this State.

 (2) “Conviction” means a conviction, adjudication of delinquency, guilty plea, nolo contendere plea, or forfeiture of bail.

 (3) “Criminal offense” means an offense against the person of an individual when physical or psychological harm occurs, including both common law and statutory offenses contained in Sections 16‑3‑1700, 16‑3‑1710, 16‑3‑1720, 16‑3‑1730, 16‑25‑20, 16‑25‑30, 16‑25‑65 and 23‑3‑430; criminal sexual conduct offenses pled down to assault and battery of a high and aggravated nature; domestic violence offenses pled down to assault and battery or assault and battery of a high and aggravated nature; and the common law offense of attempt, punishable pursuant to Section 16‑1‑80.

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

 (5) “Respondent” means a person who was convicted of a criminal offense for which the victim was the subject of the crime or the witness who assisted the prosecuting entity in prosecuting the criminal offense.

 (6) “Victim” means:

 (a) a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a criminal offense; or

 (b) the spouse, parent, child, or lawful representative of a victim who is deceased, a minor, incompetent, or physically or psychologically incapacitated.

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

 (7) “Witness” means a 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 being called or likely to be called as a witness for the prosecution, whether or not any action or proceeding has been commenced.

HISTORY: 2015 Act No. 58 (S.3), Pt V, Section 24, eff June 4, 2015.

**SECTION 16‑3‑1910.** Permanent restraining orders; procedure.

 (A) The circuit court and family court have jurisdiction over an action seeking a permanent restraining order.

 (B) To seek a permanent restraining order, a person must:

 (1) request the order in general sessions court or family court, as applicable, at the time the respondent is convicted for the criminal offense committed against the complainant; or

 (2) file a summons and complaint in common pleas court in the county in which:

 (a) the respondent resides when the action commences;

 (b) the criminal offense occurred; or

 (c) the complainant resides, if the respondent is a nonresident of the State or cannot be found.

 (C) The following persons may seek a permanent restraining order:

 (1) a victim of a criminal offense that occurred in this State;

 (2) a competent adult who resides in this State on behalf of a minor child who is a victim of a criminal offense that occurred in this State; or

 (3) a witness who assisted the prosecuting entity in the prosecution of a criminal offense that occurred in this State.

 (D) A complaint must:

 (1) state that the respondent was a person convicted of a criminal offense for which the victim was the subject of the crime or for which the witness assisted the prosecuting entity;

 (2) state when and where the conviction took place, and the name of the prosecuting entity and court;

 (3) be verified; and

 (4) inform the respondent of his right to retain counsel to represent the respondent at the hearing on the complaint.

 (E) A complainant shall provide his address to the court and to any appropriate law enforcement agencies. The complainant’s address must be kept under seal, omitted from all documents filed with the court, and is not subject to Freedom of Information Act requests pursuant to Section 30‑4‑10, et seq. The complainant may designate an alternative address to receive notice of motions or pleadings from the respondent.

 (F) The circuit court must provide forms to facilitate the preparation and filing of a summons and complaint for a permanent restraining order by a complainant not represented by counsel. The court must not charge a fee for filing a summons and complaint for a permanent restraining order.

 (G) A complainant shall serve his summons and complaint for a permanent restraining order along with a notice of the date, time, and location of the hearing on the complaint pursuant to Rule 4 of the South Carolina Rules of Civil Procedure. The summons must require the respondent to answer or otherwise plead within thirty days of the date of service.

 (H) The court may enter a permanent restraining order by default if the respondent was served in accordance with the provisions of this section and fails to answer as directed, or fails to appear on a subsequent appearance or hearing date agreed to by the parties or set by the court.

 (I) The hearing on a permanent restraining order may be done electronically via closed circuit television or through other electronic means when possible. If the respondent is confined in a Department of Corrections facility, the complainant may come to the Department of Probation, Parole and Pardon Services in Richland County to have the hearing held electronically via closed circuit television or through other electronic means.

 (J) Upon a finding that the respondent was convicted of a criminal offense for which the victim was the subject of the crime or for which the witness assisted the prosecuting entity, as applicable, the court may issue a permanent restraining order. In determining whether to issue a permanent restraining order, physical injury to the victim or witness is not required.

 (K) The terms of a permanent restraining order must protect the victim or witness and may include enjoining the respondent from:

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

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

 (3) communicating or attempting to communicate with the victim, witness, or members of the victim’s or witness’ family in a way that would violate the provisions of this section.

 (L) A permanent restraining order must conspicuously bear the following language: “Violation of this order is a felony criminal offense punishable by up to five years in prison.”

 (M)(1) A permanent restraining order remains in effect for a period of time to be determined by the judge. If a victim or witness is a minor at the time a permanent restraining order is issued on the minor’s behalf, the victim or witness, upon reaching the age of eighteen, may file a motion with the circuit court to have the permanent restraining order removed.

 (2) The court may modify the terms of a permanent restraining order upon request of the complainant, including extending the duration of the order or lifting the order.

 (N) Notwithstanding another provision of law, a permanent restraining order is enforceable throughout this State.

 (O) Law enforcement officers shall arrest a respondent who is acting in violation of a permanent restraining order after service and notice of the order is provided. A respondent who is in violation of a permanent restraining order is guilty of a felony, if the underlying conviction that was the basis for the permanent restraining order was a felony and, upon conviction, must be imprisoned not more than five years. If the underlying conviction that was the basis for the permanent restraining order was a misdemeanor, a respondent who is in violation of a permanent restraining order is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than three years, or both.

 (P) Permanent restraining orders are protection orders for purposes of Section 20‑4‑320, the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, as long as all other criteria of Article 3, Chapter 4, Title 20 are met. However, permanent restraining orders are not orders of protection for purposes of Section 16‑25‑30.

 (Q) The remedies provided by this section are not exclusive, but are additional to other remedies provided by law.

HISTORY: 2015 Act No. 58 (S.3), Pt V, Section 24, eff June 4, 2015.

**SECTION 16‑3‑1920.** Emergency restraining orders; procedure.

 (A) The magistrates court has jurisdiction over an action seeking an emergency restraining order.

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

 (1) the respondent resides when the action commences;

 (2) the criminal offense occurred; or

 (3) the complainant resides, if the respondent is a nonresident of the State or cannot be found.

 (C) A summons and complaint for an emergency restraining order may be filed by:

 (1) a victim of a criminal offense that occurred in this State;

 (2) a competent adult who resides in this State on behalf of a minor child who is a victim of a criminal offense that occurred in this State; or

 (3) a witness who assisted the prosecuting entity in the prosecution of a criminal offense that occurred in this State.

 (D) The complaint must:

 (1) state that the respondent was convicted of a criminal offense for which the victim was the subject of the crime or for which the witness assisted the prosecuting entity;

 (2) state when and where the conviction took place, and the name of the prosecuting entity and court;

 (3) be verified; and

 (4) inform the respondent of his right to retain counsel to represent the respondent at the hearing on the complaint.

 (E) A complainant shall provide his address to the court and to any appropriate law enforcement agencies. The complainant’s address must be kept under seal, omitted from all documents filed with the court, and is not subject to Freedom of Information Act requests pursuant to Section 30‑4‑10, et seq. The complainant may designate an alternative address to receive notice of motions or pleadings from the respondent.

 (F) The court must provide forms to facilitate the preparation and filing of a summons and complaint for an emergency restraining order by a complainant not represented by counsel. The court must not charge a fee for filing a summons and complaint for an emergency restraining order.

 (G)(1) Except as provided in subsection (H), the court shall hold a hearing on an emergency restraining order within fifteen days of the filing of a summons and complaint, but not sooner than five days after service has been perfected upon the respondent.

 (2) The court shall serve a copy of the summons and complaint upon the respondent at least five days before the hearing in the same manner required for service as provided in the South Carolina Rules of Civil Procedure.

 (3) The hearing may be done electronically via closed circuit television or through other electronic means when possible. If the respondent is confined in a Department of Corrections facility, the complainant may come to the Department of Probation, Parole and Pardon Services in Richland County to have the hearing held electronically via closed circuit television or through other electronic means.

 (4) The court may issue an emergency restraining order upon a finding that:

 (a) the respondent was convicted of a criminal offense for which the victim was the subject of the crime or for which the witness assisted the prosecuting entity, as applicable; and

 (b) a restraining order has expired, is set to expire, or is not available and the common pleas court is not in session for the complainant to obtain a permanent restraining order.

 In determining whether to issue an emergency restraining order, physical injury to the victim or witness is not required.

 (H)(1) Within twenty‑four hours after the filing of a summons and complaint seeking an emergency restraining order, the court may hold an emergency hearing and issue an emergency restraining order without giving the respondent notice of the motion for the order if:

 (a) the respondent was convicted of a criminal offense for which the victim was the subject of the crime or for which the witness assisted the prosecuting entity, as applicable;

 (b) a restraining order has expired, is set to expire, or is not available and the common pleas court is not in session for the complainant to obtain a permanent restraining order;

 (c) it clearly appears from specific facts shown by a verified complaint or affidavit that immediate injury, loss, or damage will result to the victim or witness before the respondent can be heard; and

 (d) the complainant certifies to the court that one of the following has occurred:

 (i) efforts have been made to serve the notice; or

 (ii) there is good cause to grant the remedy because the harm that the remedy is intended to prevent would likely occur if the respondent were given prior notice of the complainant’s efforts to obtain judicial relief.

 In determining whether to issue an emergency restraining order, physical injury to the victim or witness is not required.

 (2) An emergency restraining order granted without notice must be endorsed with the date and hour of issuance and entered on the record with the magistrates court. The order must be served upon the respondent together with a copy of the summons, complaint, and a Rule to Show Cause why the order should not be extended until the hearing for a permanent restraining order.

 (I) The terms of an emergency restraining order must protect the victim or witness and may include temporarily enjoining the respondent from:

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

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

 (3) communicating or attempting to communicate with the victim, witness, or members of the victim’s or witness’ family in a way that would violate the provisions of this section.

 (J) An emergency restraining order conspicuously must bear the following language: “Violation of this order is a felony criminal offense punishable by up to five years in prison.”

 (K) The court shall serve the respondent with a certified copy of the emergency restraining order and provide a copy to the complainant and to the local law enforcement agencies having jurisdiction over the area where the victim or witness resides. Service must be made without charge to the complainant.

 (L)(1) An emergency restraining order remains in effect until a hearing on a restraining order. However, if a complainant does not seek a permanent restraining order pursuant to Section 16‑3‑1910 within forty‑five days of the issuance of an emergency restraining order, the emergency restraining order no longer remains in effect.

 (2) The court may modify the terms of an emergency restraining order.

 (M) Notwithstanding another provision of law, an emergency restraining order is enforceable throughout this State.

 (N) Law enforcement officers shall arrest a respondent who is acting in violation of an emergency restraining order after service and notice of the order is provided. An arrest warrant is not required. A respondent who is in violation of an emergency restraining order is guilty of a felony, if the underlying conviction that was the basis for the emergency restraining order was a felony and, upon conviction, must be imprisoned not more than five years. If the underlying conviction that was the basis for the emergency restraining order was a misdemeanor, a respondent who is in violation of an emergency restraining order is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than three years, or both.

 (O) Emergency restraining orders are protection orders for purposes of Section 20‑4‑320, the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, as long as all other criteria of Article 3, Chapter 4, Title 20 are met. However, permanent restraining orders are not orders of protection for purposes of Section 16‑25‑30.

 (P) The remedies provided by this section are not exclusive but are additional to other remedies provided by law.

HISTORY: 2015 Act No. 58 (S.3), Pt V, Section 24, eff June 4, 2015.

ARTICLE 19

Trafficking in Persons

**SECTION 16‑3‑2010.** Definitions.

 As used in this article:

 (1) “Business” means a corporation, partnership, proprietorship, firm, enterprise, franchise, organization, or self‑employed individual.

 (2) “Charitable organization” means a charitable organization pursuant to Section 33‑56‑20.

 (3) “Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his personal services or those of a person under his control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined or if the principal amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred.

 (4) “Forced labor” means any type of labor or services performed or provided by a person rendered through another person’s coercion of the person providing the labor or services.

 This definition does not include 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.

 (5) “Involuntary servitude” means a condition of servitude induced through coercion.

 (6) “Person” means an individual, corporation, partnership, charitable organization, or another legal entity.

 (7) “Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for one of the following when it is induced by force, fraud, or coercion or the person performing the act is under the age of eighteen years and anything of value is given, promised to, or received, directly or indirectly, by another person:

 (a) criminal sexual conduct pursuant to Section 16‑3‑651;

 (b) criminal sexual conduct in the first degree pursuant to Section 16‑3‑652;

 (c) criminal sexual conduct in the second degree pursuant to Section 16‑3‑653;

 (d) criminal sexual conduct in the third degree pursuant to Section 16‑3‑654;

 (e) criminal sexual conduct with a minor pursuant to Section 16‑3‑655;

 (f) engaging a child for sexual performance pursuant to Section 16‑3‑810;

 (g) producing, directing, or promoting sexual performance by a child pursuant to Section 16‑3‑820;

 (h) sexual battery pursuant to Section 16‑3‑651;

 (i) sexual conduct pursuant to Section 16‑3‑800; or

 (j) sexual performance pursuant to Section 16‑3‑800.

 (8) “Services” means an act committed at the behest of, under the supervision of, or for the benefit of another person.

 (9) “Trafficking in persons” means when a victim is subjected to or a person attempts to subject a victim to sex trafficking, forced labor or services, involuntary servitude, or debt bondage by employing one of the following:

 (a) physically restraining or threatening to physically restrain another person;

 (b) knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or other immigration document, or another actual or purported government identification document, of the victim;

 (c) extortion or blackmail;

 (d) causing or threatening to cause financial harm to the victim;

 (e) facilitating or controlling a victim’s access to a controlled substance; or

 (f) coercion.

 (10) “Victim of trafficking in persons” or “victim” means a person who has been subjected to the crime of trafficking in persons.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012; 2015 Act No. 7 (S.196), Section 3, eff April 2, 2015.

Effect of Amendment

2015 Act No. 7, Section 3, in (7), substituted “person performing the act” for “person forced to perform the act”; deleted former (7)(g), relating to Section 16‑3‑800; and redesignated the remaining paragraphs accordingly.

**SECTION 16‑3‑2020.** Trafficking in persons; penalties; defenses.

 (A) A person who recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, knowing that the victim will be subjected to sex trafficking, forced labor or services, involuntary servitude or debt bondage through any means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in this subsection, is guilty of trafficking in persons.

 (B) A person who recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, for the purposes of sex trafficking, forced labor or services, involuntary servitude or debt bondage through any means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in subsection (A), is guilty of trafficking in persons.

 (C) For a first offense, the person is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

 (D) For a second offense, the person is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

 (E) For a third or subsequent offense, the person is guilty of a felony, and, upon conviction, must be imprisoned not more than forty‑five years.

 (F) If the victim of an offense contained in this section is under the age of eighteen, an additional term of fifteen years may be imposed in addition and must be consecutive to the penalty prescribed for a violation of this section.

 (G) A person who aids, abets, or conspires with another person to violate the criminal provisions of this section must be punished in the same manner as provided for the principal offender and is considered a trafficker. A person is considered a trafficker if he knowingly gives, agrees to give, or offers to give anything of value so that any person may engage in commercial sexual activity with another person when he knows that the other person is a victim of trafficking in persons.

 (H) A business owner who uses his business in a way that participates in a violation of this article, upon conviction, must be imprisoned for not more than ten years in addition to the penalties provided in this section for each violation.

 (I) A plea of guilty or the legal equivalent entered pursuant to a provision of this article by an offender entitles the victim of trafficking in persons to all benefits, rights, and compensation granted pursuant to Section 16‑3‑1110.

 (J) In a prosecution of a person who is a victim of trafficking in persons, it is an affirmative defense that he was under duress or coerced into committing the offenses for which he is subject to prosecution, if the offenses were committed as a direct result of, or incidental or related to, trafficking. A victim of trafficking in persons convicted of a violation of this article or prostitution may motion the court to vacate the conviction and expunge the record of the conviction. The court may grant the motion on a finding that the person’s participation in the offense was a direct result of being a victim. A victim of trafficking in persons is not subject to prosecution pursuant to this article or prostitution, if the victim was a minor at the time of the offense and committed the offense as a direct result of, or incidental or related to, trafficking.

 (K) Evidence of the following facts or conditions do not constitute a defense in a prosecution for a violation of this article, nor does the evidence preclude a finding of a violation:

 (1) the victim’s sexual history or history of commercial sexual activity, the 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;

 (2) the victim’s connection by blood or marriage to a defendant in the case or to anyone involved in the victim’s trafficking;

 (3) the implied or express consent of a victim to acts which violate the provisions of this section do not constitute a defense to violations of this section;

 (4) age of consent to sex, legal age of marriage, or other discretionary age; and

 (5) mistake as to the victim’s age, even if the mistake is reasonable.

 (L) A person who violates the provisions of this section may be prosecuted by the State Grand Jury, pursuant to Section 14‑7‑1600, when a victim is trafficked in more than one county or a trafficker commits the offense of trafficking in persons in more than one county.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012; 2015 Act No. 74 (S.183), Section 1, eff June 8, 2015.

Effect of Amendment

2015 Act No. 74, Section 1, in (E), added a comma following “and”; in (G), added the second sentence; and in (J), added the last three sentences.

**SECTION 16‑3‑2030.** Criminal liability of principal owners of business; loss of profits and government contracts; penalties.

 (A) The principal owners of a business, a business entity, including a corporation, partnership, charitable organization, or another legal entity, that knowingly aids or participates in an offense provided in this article is criminally liable for the offense and will be subject to a fine or loss of business license in the State, or both. In addition, the court may consider disgorgement of profit from activity in violation of this article and disbarment from state and local government contracts.

 (B) If the principal owners of a business entity are convicted of violating a section of this article, the court or Secretary of State, when appropriate, may:

 (1) order its dissolution or reorganization;

 (2) order the suspension or revocation of any license, permit, or prior approval granted to it by a state or local government agency; or

 (3) order the surrender of its charter if it is organized under state law or the revocation of its certificate to conduct business in the State if it is not organized under state law.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012; 2015 Act No. 74 (S.183), Section 2, eff June 8, 2015.

Effect of Amendment

2015 Act No. 74, Section 2, in (A), added the last sentence.

**SECTION 16‑3‑2040.** Restitution for victims of trafficking.

 (A) An offender convicted of a violation of this article must be ordered to pay mandatory restitution to the victim as provided in this section.

 (B) If the victim of trafficking dies as a result of being trafficked, a surviving spouse of the victim is eligible for restitution. If no surviving spouse exists, restitution must be paid to the victim’s issue or their descendants per stirpes. If no surviving spouse or issue or descendants exist, restitution must be paid to the victim’s estate. A person named in this subsection may not receive funds from restitution if he benefited or engaged in conduct described in this article.

 (C) If a person is unable to pay restitution at the time of sentencing, or at any other time, the court may set restitution pursuant to Section 16‑3‑1270.

 (D) Restitution for this section, pursuant to Section 16‑3‑1270, means payment for all injuries, specific losses, and expenses, including, but not limited to, attorney’s fees, sustained by a crime victim resulting from an offender’s criminal conduct pursuant to Section 16‑3‑1110(12)(a). In addition, the court may order an amount representing the value of the victim’s labor or services.

 (E) Notwithstanding another provision of law, the applicable statute of limitations for a victim of trafficking in persons is pursuant to Section 16‑3‑1110(12)(a).

 (F) Restitution must be paid to the victim promptly upon the conviction of the defendant. The return of the victim to his home country or other absence of the victim from the jurisdiction does not prevent the victim from receiving restitution.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012; 2015 Act No. 74 (S.183), Section 3, eff June 8, 2015.

Effect of Amendment

2015 Act No. 74, Section 3, in (D), inserted “, including, but not limited to, attorney’s fees,”, and added the last sentence.

**SECTION 16‑3‑2050.** Interagency task force established to develop and implement State Plan for Prevention of Trafficking in Persons; members; responsibilities; grants.

 (A) The Attorney General shall establish an interagency task force to develop and implement a State Plan for the Prevention of Trafficking in Persons. The task force shall meet at least quarterly and should include all aspects of trafficking in persons, including sex trafficking and labor trafficking of both United States citizens and foreign nationals, as defined in Section 16‑3‑2010. The Attorney General also shall collect and publish relevant data to this section on their website.

 (B) The task force shall consist of, at a minimum, representatives from:

 (1) the Office of the Attorney General, who must be chair;

 (2) the South Carolina Department of Labor, Licensing and Regulation;

 (3) the South Carolina Police Chiefs Association;

 (4) the South Carolina Sheriffs’ Association;

 (5) the State Law Enforcement Division;

 (6) the Department of Health and Environmental Control Board;

 (7) the Office of the Attorney General, South Carolina Crime Victim Services Division;

 (8) the South Carolina Commission on Prosecution Coordination;

 (9) the Department of Social Services;

 (10) a representative from the Office of the Governor;

 (11) a representative from the Department of Employment and Workforce; and

 (12) two persons appointed by the Attorney General from nongovernmental organizations, especially those specializing in trafficking in persons, those representing diverse communities disproportionately affected by trafficking, agencies devoted to child services and runaway services, and academic researchers dedicated to the subject of trafficking in persons.

 (C) The Attorney General shall invite representatives of the United States Department of Labor, the United States Attorneys’ offices, and federal law enforcement agencies’ offices within the State, including the Federal Bureau of Investigations and the United States Immigration and Customs Enforcement office, to be members of the task force.

 (D) The task force shall carry out the following activities either directly or through one or more of its constituent agencies:

 (1) develop the state plan within eighteen months of the effective date of this act;

 (2) coordinate the implementation of the state plan; and

 (3) starting one year after the formation of the task force, submit an annual report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before December thirty‑first of each calendar year.

 (E) The task force shall consider carrying out the following activities either directly or through one or more of its constituent agencies:

 (1) coordinate the collection and sharing of trafficking data among government agencies, which data collection must respect the privacy of victims of trafficking in persons;

 (2) coordinate the sharing of information between agencies for the purposes of detecting criminal groups engaged in trafficking in persons;

 (3) explore the establishment of state policies for time limits for the issuance of Law Enforcement Agency (LEA) endorsements as described in C.F.R. Chapter 8, Section 214.11(f)(1);

 (4) establish policies to enable state government to work with nongovernmental organizations and other elements of civil society to prevent trafficking in persons and provide assistance to United States citizens and foreign national victims;

 (5) review the existing services and facilities to meet trafficking victims’ needs and recommend a system to coordinate services including, but not limited to, health services, including mental health, housing, education and job training, English as a second language classes, interpreting services, legal and immigration services, and victim compensation;

 (6) evaluate various approaches used by state and local governments to increase public awareness of the trafficking in persons, including United States citizens and foreign national victims of trafficking in persons;

 (7) mandatory training for law enforcement agencies, prosecutors, and other relevant officials in addressing trafficking in persons;

 (8) collect and periodically publish statistical data on trafficking, that must be posted on the Attorney General’s website;

 (9) prepare public awareness programs designed to educate potential victims of trafficking in persons and their families on the risks of victimization. These public awareness programs must include, but are not limited to:

 (a) information about the risks of becoming a victim, including information about common recruitment techniques, use of debt bondage, and other coercive tactics, risk of maltreatment, rape, exposure to HIV or AIDS and other sexually transmitted diseases, and psychological harm related to victimization in trafficking cases;

 (b) information about the risks of engaging in commercial sex and possible punishment;

 (c) information about victims’ rights in the State;

 (d) methods for reporting suspected recruitment activities; and

 (e) information on hotlines and available victims’ services;

 (10) preparation and dissemination of awareness materials to the general public to educate the public on the extent of trafficking in persons, both United States citizens and foreign nationals, within the United States and to discourage the demand that fosters the exploitation of persons that leads to trafficking in persons.

 (a) The general public awareness materials may include information on the impact of trafficking on individual victims, whether United States citizens or foreign nationals, aggregate information on trafficking in persons worldwide and domestically, and warnings of the criminal consequences of engaging in trafficking in persons. These materials may include pamphlets, brochures, posters, advertisements in mass media, and other appropriate media. All materials must be designed to communicate to the target population.

 (b) Materials described in this section may include information on the impact of trafficking in persons on individual victims. However, information on the experiences of individual victims must preserve the privacy of the victim and the victim’s family.

 (c) All public awareness programs must be evaluated periodically by the task force to ensure their effectiveness.

 (F) To the extent that funds are appropriated, the task force may make grants to or contract with a state agency, local government, or private victim’s service organization to develop or expand service programs for victims. A recipient of a grant or contract shall report annually to the task force the number and demographic information of all victims receiving services pursuant to the grant or contract.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012; 2015 Act No. 7 (S.196), Section 5, eff April 2, 2015; 2015 Act No. 74 (S.183), Section 4, eff June 8, 2015.

Code Commissioner’s Note

Pursuant to 2017 Act No. 96, Section 14, the reference to “State Office of Victim Assistance” in (B)(7) was changed to “Office of the Attorney General, South Carolina Crime Victim Services Division”.

Effect of Amendment

2015 Act No. 7, Section 5, in (B)(2), inserted “Department of”; deleted former (B)(7), relating to the U.S. Dept. of Labor; and redesignated the remaining paragraphs accordingly; and in (C), inserted “Department of Labor, the United States” and inserted a comma following “Attorneys’ offices”.

2015 Act No. 74, Section 4, added (F).

**SECTION 16‑3‑2060.** Civil action for victim of trafficking; statute of limitations.

 (A) A person who is a victim of trafficking in persons may bring a civil action in the court of common pleas. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and other appropriate relief. A prevailing plaintiff also must be awarded attorney’s fees and costs. Treble damages must be awarded on proof of actual damages when the defendant’s acts were wilful and malicious.

 (B) Pursuant to Section 16‑3‑1110, the applicable statute of limitations for a crime victim who has a cause of action against an incarcerated offender is tolled and does not expire until three years after the offender’s sentence is completed, including probation and parole, or three years after release from commitment pursuant to Chapter 48, Title 44, whichever is later. However, this provision does not shorten any other tolling period of the statute of limitations which may exist for the victim.

 (C) The statute of limitations for the filing of a civil suit does not begin to run until a minor victim has reached the age of majority.

 (D) If a victim entitled to sue is under a disability at the time the cause of action accrues, so that it is impossible or impractical for him to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.

 (E) The running of the statute of limitations may be suspended when a victim could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

 (F) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the victim to delay the filing of the action or placing the victim under duress.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012.

**SECTION 16‑3‑2070.** Compensation for victims of trafficking; identity of victim and victim’s family confidential.

 (A) Victims of trafficking in persons pursuant to this article are considered victims for purposes of the Victims’ Bill of Rights and are entitled to all appropriate forms of compensation available pursuant to the South Carolina Victim Compensation Fund in accordance with the provisions of Article 13, Chapter 3, Title 16. Victims of trafficking in persons pursuant to this article also are entitled to the rights provided in Article 15, Chapter 3, Title 16.

 (B) In addition to the provisions of subsection (A), in a prosecution for violations of the criminal provisions of this article, the identity of the victim and the victim’s family must be kept confidential by ensuring that names and identifying information of the victim and victim’s family are not released to the public, including by the defendant.

 (C) Pursuant to Section 16‑3‑1240, it is unlawful, except for purposes directly connected with the administration of the victim compensation fund, 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 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 4, Title 30.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012.

Code Commissioner’s Note

Pursuant to 2017 Act No. 96, Section 14, the reference to “State Crime Victim’s Compensation Fund” in (A) was changed to “South Carolina Victim Compensation Fund”, and the reference to “victim’s compensation fund” in (C) was changed to “victim compensation fund”.

**SECTION 16‑3‑2080.** Unlawful disclosure; trespassing notice; unlawful entrance or presence on grounds of domestic violence or trafficking shelter; exceptions; penalties.

 (A) For purposes of this section:

 (1) “Domestic violence shelter” means a facility whose purpose is to serve as a shelter to receive and house persons who are victims of criminal domestic violence and that provides services as a shelter.

 (2) “Trafficking shelter” means a confidential location which provides emergency housing for victims of trafficking in persons.

 (3) “Grounds” means the real property of the parcel of land upon which a domestic violence or trafficking shelter or a domestic violence or trafficking shelter’s administrative offices are located, whether fenced or unfenced.

 (B) A person who maliciously or with criminal negligence publishes, disseminates, or otherwise discloses the location of a trafficking victim, a trafficking shelter, a domestic violence shelter, or another place designated as a trafficking shelter or domestic violence shelter, without the authorization of that trafficking victim, trafficking shelter, or domestic violence shelter, is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years.

 (C) It is unlawful for a person who has been charged with or convicted of a violation of Section 16‑3‑2020 to enter or remain upon the grounds or structure of a domestic violence or trafficking shelter in which the victim resides or the domestic violence shelter’s administrative offices or the trafficking shelter’s administrative offices.

 (D) The domestic violence shelter and trafficking shelter must post signs at conspicuous places on the grounds of the domestic violence shelter, trafficking shelter, the domestic violence shelter’s administrative offices, and the trafficking shelter’s administrative offices which, at a minimum, must read substantially as follows: “NO TRESPASSING—VIOLATORS WILL BE SUBJECT TO CRIMINAL PENALTIES”.

 (E) This section does not apply if the person has legitimate business or any authorization, license, or invitation to enter or remain upon the grounds or structure of the domestic violence or trafficking shelter or the domestic violence or trafficking shelter’s administrative offices.

 (F) A person who violates this section 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.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012.

**SECTION 16‑3‑2090.** Forfeiture.

 (A)(1) The following are subject to forfeiture:

 (a) all monies used, or intended for use, in violation of Section 16‑3‑2020;

 (b) all property constituting the proceeds obtained directly or indirectly, for a violation of Section 16‑3‑2020;

 (c) all property derived from the proceeds obtained, directly or indirectly, from any sale or exchange for pecuniary gain from a violation of Section 16‑3‑2020;

 (d) all property used or intended for use, in any manner or part, to commit or facilitate the commission of a violation for pecuniary gain of Section 16‑3‑2020;

 (e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or which have been positioned for use, in violation of Section 16‑3‑2020;

 (f) all conveyances including, but not limited to, trailers, aircraft, motor vehicles, and watergoing vessels, which are used or intended for use unlawfully to conceal or transport or facilitate a violation of Section 16‑3‑2020. No motor vehicle may be forfeited to the State under this item unless it is used, intended for use, or in any manner facilitates a violation of Section 16‑3‑2020;

 (g) all property including, but not limited to, monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for any kind of services under Section 16‑3‑2020, and all proceeds including, but not limited to, monies, and real and personal property traceable to any exchange under Section 16‑3‑2020; and

 (h) overseas assets of persons convicted of trafficking in persons also are subject to forfeiture to the extent they can be retrieved by the government.

 (2) Any property subject to forfeiture may be seized by the investigating agency having authority upon warrant issued by any court having jurisdiction over the property. Seizure without process may be made if the:

 (a) seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

 (b) property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding based upon Section 16‑3‑2020;

 (c) the investigating agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

 (d) the investigating agency has probable cause to believe that the property was used or is intended to be used in violation of Section 16‑3‑2020.

 (3) In the event of seizure, proceedings under this section regarding forfeiture and disposition must be instituted within a reasonable time.

 (4) Any property taken or detained under this section is not subject to replevin but is considered to be in the custody of the investigating agency making the seizure subject only to the orders of the court having jurisdiction over the forfeiture proceedings. Property is forfeited and transferred to the government at the moment of illegal use. Seizure and forfeiture proceedings confirm the transfer.

 (5) For the purposes of this section, whenever the seizure of property subject to seizure is accomplished as a result of a joint effort by more than one law enforcement agency, the law enforcement agency initiating the investigation is considered to be the agency making the seizure.

 (6) Law enforcement agencies seizing property pursuant to this section shall take reasonable steps to maintain the property. Equipment and conveyances seized must be removed to an appropriate place for storage. Monies seized must be deposited in an interest bearing account pending final disposition by the court unless the seizing agency determines the monies to be of an evidential nature and provides for security in another manner.

 (7) When property and monies of any value as defined in this article or anything else of any value is seized, the law enforcement agency making the seizure, within ten days or a reasonable period of time after the seizure, shall submit a report to the appropriate prosecution agency.

 (a) The report must provide the following information with respect to the property seized:

 (i) description;

 (ii) circumstances of seizure;

 (iii) present custodian and where the property is being stored or its location;

 (iv) name of owner;

 (v) name of lienholder; and

 (vi) seizing agency.

 (b) If the property is a conveyance, the report shall include the:

 (i) make, model, serial number, and year of the conveyance;

 (ii) person in whose name the conveyance is registered; and

 (iii) name of any lienholders.

 (c) In addition to the report, the law enforcement agency shall prepare for dissemination to the public upon request a report providing the following information:

 (i) a description of the quantity and nature of the property and money seized;

 (ii) the seizing agency;

 (iii) the make, model, and year of a conveyance; and

 (iv) the law enforcement agency responsible for the property or conveyance seized.

 (d) Property or conveyances seized by a law enforcement agency or department may not be used by officers for personal purposes.

 (B)(1) Forfeiture of property must be accomplished by petition of the Attorney General or his designee or the circuit solicitor or his designee to the court of common pleas for the jurisdiction where the items were seized. The petition must be submitted to the court within a reasonable time period following seizure and shall provide the facts upon which the seizure was made. The petition shall describe the property and include the names of all owners of record and lienholders of record. The petition shall identify any other persons known to the petitioner to have interests in the property. Petitions for the forfeiture of conveyances also shall include the make, model, and year of the conveyance, the person in whose name the conveyance is registered, and the person who holds the title to the conveyance. A copy of the petition must be sent to each law enforcement agency which has notified the petitioner of its involvement in effecting the seizure. Notice of hearing or rule to show cause must be directed to all persons with interests in the property listed in the petition, including law enforcement agencies which have notified the petitioner of their involvement in effecting the seizure. Owners of record and lienholders of record may be served by certified mail, to the last known address as appears in the records of the governmental agency which records the title or lien.

 (2) The judge shall determine whether the property is subject to forfeiture and order the forfeiture confirmed. The Attorney General or his designee or the circuit solicitor or his designee has the burden of proof to establish by a preponderance of the evidence that the property is subject to forfeiture. If the judge finds a forfeiture, he shall then determine the lienholder’s interest as provided in this article. The judge shall determine whether any property must be returned to a law enforcement agency pursuant to this section.

 (3) If there is a dispute as to the division of the proceeds of forfeited property among participating law enforcement agencies, this issue must be determined by the judge. The proceeds from a sale of property, conveyances, and equipment must be disposed of pursuant to this section.

 (4) All property, conveyances, and equipment which will not be reduced to proceeds may be transferred to the law enforcement agency or agencies or to the prosecution agency. Upon agreement of the law enforcement agency or agencies and the prosecution agency, conveyances and equipment may be transferred to any other appropriate agency. Property transferred may not be used to supplant operating funds within the current or future budgets. If the property seized and forfeited is an aircraft or watercraft and is transferred to a state law enforcement agency or other state agency pursuant to the provisions of this subsection, its use and retainage by that agency is at the discretion and approval of the Department of Administration.

 (5) If a defendant or his attorney sends written notice to the petitioner or the seizing agency of his interest in the subject property, service may be made by mailing a copy of the petition to the address provided, and service may not be made by publication. In addition, service by publication may not be used for a person incarcerated in a Department of Corrections facility, a county detention facility, or other facility where inmates are housed for the county where the seizing agency is located. The seizing agency shall check the appropriate institutions after receiving an affidavit of nonservice before attempting service by publication.

 (6) Any forfeiture may be effected by consent order approved by the court without filing or serving pleadings or notices provided that all owners and other persons with interests in the property, including participating law enforcement agencies, entitled to notice under this section, except lienholders and agencies, consent to the forfeiture. Disposition of the property may be accomplished by consent of the petitioner and those agencies involved. Persons entitled to notice under this section may consent to some issues and have the judge determine the remaining issues.

 (7) Disposition of forfeited property under this section must be accomplished as follows:

 (a) Property forfeited under this subsection shall first be applied to payment to the victim. The return of the victim to his home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving compensation.

 (b) The victim and the South Carolina Victim Compensation Fund shall each receive one‑fourth, and law enforcement shall receive one‑half of the value of the forfeited property.

 (c) If no victim is named, or reasonable attempts to locate a named victim for forfeiture and forfeiture fails, then all funds shall revert to the South Carolina Victim Compensation Fund and law enforcement to be divided equally.

 (d) If federal law enforcement becomes involved in the investigation, they shall equitably split the share local law enforcement receives under this section, if they request or pursue any of the forfeiture. The equitable split must be pursuant to 21 U.S.C. Section 881(e)(1)(A) and (e)(3), 18 U.S.C. Section 981(e)(2), and 19 U.S.C. Section 1616a.

 (C)(1) An innocent owner, manager, or owner of a licensed rental agency or any common carrier or carrier of goods for hire may apply to the court of common pleas for the return of any item seized. Notice of hearing or rule to show cause accompanied by copy of the application must be directed to all persons and agencies entitled to notice. If the judge denies the application, the hearing may proceed as a forfeiture hearing.

 (2) The court may return any seized item to the owner if the owner demonstrates to the court by a preponderance of the evidence:

 (a) in the case of an innocent owner, that the person or entity was not a consenting party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture; or

 (b) in the case of a manager or an owner of a licensed rental agency, a common carrier, or a carrier of goods for hire, that any agent, servant, or employee of the rental agency or of the common carrier or carrier of goods for hire was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

 If the licensed rental agency demonstrates to the court that it has rented the seized property in the ordinary course of its business and that the tenant or tenants were not related within the third degree of kinship to the manager or owner, or any agents, servants, or employees of the rental agency, then it is presumed that the licensed rental agency was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

 (3) The lien of an innocent person or other legal entity, recorded in public records, shall continue in force upon transfer of title of any forfeited item, and any transfer of title is subject to the lien, if the lienholder demonstrates to the court by a preponderance of the evidence that he was not a consenting party to, or privy to, or did not have knowledge of, the involvement of the property which made it subject to seizure and forfeiture.

 (D) A person who uses property or a conveyance in a manner which would make the property or conveyance subject to forfeiture except for innocent owners, rental agencies, lienholders, and the like as provided for in this section, is guilty of a misdemeanor and, upon conviction, must be imprisoned for not less than thirty days nor more than one year, fined not more than five thousand dollars, or both. The penalties prescribed in this section are cumulative and must be construed to be in addition to any other penalty prescribed by another provision of this article.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Pursuant to 2017 Act No. 96, Section 14, the references to “Victim’s Compensation Fund” in (B)(7)(b) and (B)(7)(c) were changed to “Victim Compensation Fund”.

**SECTION 16‑3‑2100.** Posting of information regarding National Human Trafficking Resource Center Hotline in certain establishments; fines.

 (A) The following establishments are required to post the information contained in subsection (B) regarding the National Human Trafficking Resource Center Hotline:

 (1) an establishment which has been declared a nuisance for prostitution pursuant to Chapter 43, Title 15;

 (2) an adult business, including a nightclub, bar, restaurant, or another similar establishment in which a person appears in a state of sexually explicit nudity, as defined in Section 16‑15‑375, or seminudity, as defined in Section 57‑25‑120;

 (3) businesses and establishments that offer massage or bodywork services by any person who is not licensed under Chapter 30, Title 40;

 (4) emergency rooms within any hospital;

 (5) urgent care centers;

 (6) any hotel, motel, room, or accommodation furnished to transients for which fees are charged in this State;

 (7) all agricultural labor contractors and agricultural labor transporters as defined pursuant to Section 41‑27‑120; and

 (8) all airports, train stations, bus stations, rest areas, and truck stops.

 (B) The information must be posted in each public restroom for the business or establishment and a prominent location conspicuous to the public at the entrance of the establishment where posters and notices are customarily posted on a poster no smaller than eight and one‑half by eleven inches in size and must state in both English and Spanish on the same poster information relevant to the hotline, including the following or language substantially similar:

 “If you or someone you know is being forced to engage in any activity and cannot leave, whether it is commercial sex, housework, farm work, or any other activity, call the National Human Trafficking Resource Center Hotline at 1‑888‑373‑7888 to access help and services. Victims of human trafficking are protected under federal law and the laws of South Carolina. The hotline is:

 (1) available twenty‑four hours a day, seven days a week;

 (2) operated by a nonprofit, nongovernmental organization;

 (3) anonymous and confidential;

 (4) accessible in one hundred seventy languages;

 (5) able to provide help, referral to services, training, and general information.”

 (C) The Department of Revenue, the State Law Enforcement Division, and the Department of Transportation, as appropriate depending on the regulatory control or authority the respective department exercises over the establishment, are directed to provide each establishment with the notice required to be posted by this section. The departments shall post on the departments’ websites a sample of the notice required to be posted which must be accessible for download. The business must download and post the notice in not less than sixteen point font.

 (D) The Department of Revenue, the State Law Enforcement Division, or the Department of Transportation, as appropriate, is authorized to issue a written warning to an establishment which fails to post the required notice provided in this section and may assess a fine of not more than fifty dollars for each subsequent violation. Each day that the establishment remains in violation of this section is considered a separate and distinct violation and the establishment may be fined accordingly.

 (E) The South Carolina Human Trafficking Task Force, Department of Revenue, and Department of Transportation are directed to collaborate on the design of the required notice to be posted and may partner to develop materials, and shall have the design finalized no later than one hundred twenty days after the effective date of this section. Establishments required to post the notice must be in compliance no later than six months after the effective date of this action.

 (F) This section does not apply to establishments providing entertainment in theatres, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances when the performances presented are expressing matters of serious literary, artistic, scientific, or political value.

HISTORY: 2015 Act No. 7 (S.196), Section 4, eff April 2, 2015.