

## MEMORANDUM

**DATE:** March 11, 2021

**TO:** South Carolina

**FROM:** The Legal Services Program of the South Carolina Victim Assistance Network

**RE:** Victims' Rights Enforcement during COVID-19

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COVID-19 has affected everyone in unprecedented ways, and victims have largely been left out of the conversation in the memoranda and orders issued by the South Carolina Supreme Court. Due to COVID-19, court hearings are now mostly virtual; access to services for victims may be limited; and the legal system has struggled along with other institutions in implementing ways to quickly keep up with our changing world through the pandemic.

**Due to the parameters put into effect by the South Carolina Supreme Court because of COVID-19, most victims will not be seeing a prompt conclusion to their cases and may not be seeing the disposition they want. This is likely not a violation of their rights.** Under the SC Constitution Art. 1, Sec. 24 (A)(11), “[victims of crime have the right to:] a reasonable disposition and prompt and final conclusion of the case.” Because our Supreme Court is concerned about the spread of COVID-19, jury trials have been postponed, and other types of judicial hearings and proceedings have been limited, causing delays in disposition of cases. At this time, this is not a violation of victims’ rights. Furthermore, offenders may be receiving less stringent sentencing, than they would otherwise have received if not for COVID-19. This is a troubling trend, but this is likely not a violation of their rights.

Despite the policies that have been put in place on the state, circuit, and organizational levels, victims still have rights guaranteed to them under the South Carolina Constitution. Below is a summary of the ways some victims’ rights have been affected during COVID-19.

**Due to the pressure to limit the spread of COVID, many perpetrators are being released without victims being properly informed. This is likely a violation of their rights.** Under the SC Constitution Art. 1, Sec. 24 (A)(2), “[victims of crime have the right to:] be reasonably informed when the accused or convicted person is arrested, released from custody, or has escaped.” Releasing perpetrators without informing the victims also violates Section (A)(6), which states that victims should “be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process.” We are concerned that victims are not being adequately protected through release conditions because they are not informed of or allowed to speak at hearings affecting bond or bail.

**Due to the pressure to limit the spread of COVID, some courts have not notified or allowed victims to submit statements at hearings affecting bond or bail. This is likely a violation of their rights.** Under the SC Constitution Art. 1, Sec. 24 (A)(4), “[victims of crime have the right to:] be reasonably informed of and be allowed to submit either a written or oral statement at all hearings affecting bond or bail.” The same has been true with a victim’s right to “be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing.” (Sec. 24 (A)(5)). This illuminates a worrisome trend whereby prosecuting entities are not properly conferring with the victims, violating Sec. 24 (A) (7) which states, “[victims of crime have the right to:] confer with the prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition.”

**Due to the pressure to limit the spread of COVID, many courts have not allowed victims to be physically present at the hearing although the defendant is allowed to be present. This likely is a violation of the victim’s rights.** Under the SC Constitution Art. 1, Sec. 24 (A)(3), “[victims of crime have the right to:] be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present.” Under paragraph (10), they also have the right to “be informed of any proceeding when any post-conviction action is being considered, and be present at any post-conviction hearing involving a post-conviction release decision.”

**Due to the pressure to limit the spread of COVID, many courts have not allowed the public to enter the courthouses unless there is a hearing. Consequently, victims may not be allowed access to the documents relating to the crime before trial. This is likely a violation of their rights.** Under the SC Constitution Art. 1, Sec. 24 (A)(8), “[victims of crime have the right to:] have reasonable access after the conclusion of the criminal investigation to all documents relating to the crime against the victim before trial.” The State must make every effort to comply with this right and find alternative ways to allow victims to exercise their rights.

While we at SCVAN would never want a crime victim to be forced to attend when they have COVID exposure concerns, we also want to emphasize that victims should not be denied their rights, *especially* when different accommodations are being made for the defendant. The bottom line is: the victim should be able to make an informed decision whether they want to attend a hearing no matter what the venue and must not be denied the opportunity to exercise their rights.

It is essential that victims are brought back into the conversation during the criminal process. If you have questions or concerns related to COVID procedures, contact the Legal Services Program at [www.scvanlegal.org](http://www.scvanlegal.org). We are here to be the voice for all victims of crime and those who serve them.