

# The Law Enforcement Process

Note: In most cases throughout the text of this folder, the masculine gender is used to represent both sexes, as is proper in formal writing. If you do not understand a term used in the text, consult the glossary (Words You Are Likely to Hear.)

ll be through the dispatcher or the **patrol officer**. It is the patrol officer's job to respond to emergency situations and begin the **investigation** process (gathering information about the crime.) The patrol officer may play a major role in the investigation, but his work may be passed on to an **investigator (or detective)** who will be in charge of the investigation until the solicitor's office becomes involved in the case. The **solicitor (or deputy solicitor)**, called district attorney in many states, is the attorney for the State. The police will conduct the investigation. The solicitor's office makes decisions about the prosecution of the case.

The person who takes photographs, searches for fingerprints, and collects items of evidence at the crime scene is the **forensics officer** (sometimes known as crime scene technician or criminologist), if your law enforcement agency has such a specialized officer. If you are the victim of an attack, you may actually be part of the "crime scene." Evidence may be on your person that needs to be collected (including clothing or samples taken by swabbing or scraping under the fingernails) or documented (such as by photographs.)

Some of the evidence that needs to be collected might require the service of a **medical doctor or Forensic Nurse**. In those cases, you will be required to go to a doctor's office or hospital. The doctor has a list of things he must do to collect evidence. This list is often called a "protocol".

Anyone who has control over a person or property may give permission for the police to collect evidence. Sometimes when the police are not given permission to collect evidence, they must go to a **judge** to get a search warrant.

Anyone who has any information about your case is a potential **witness**. They might not have seen the crime committed, but what they know may help prosecute the case, and convict the offender.

The person who committed the crime is the **offender or perpetrator**. In the beginning, he is usually called the

**suspect**. Once a warrant is issued charging him with the crime, he becomes the **defendant**. His attorney is the **defense attorney**. If the defendant cannot afford an attorney, the court may appoint one to represent him, or he may qualify to be represented by a defense attorney that is paid for by the taxpayers called a **public defender**.

Anyone who knowingly helps the offender commit the crime, but doesn't participate in the criminal act, is an **accessory** and also may be charged with a crime.

The criminal **prosecution** begins when the police begin efforts to arrest a suspect. Up until that point, the police are conducting an investigation.

The investigation may take several days or more until the case is solved, or it may never be solved. Your cooperation likely will be necessary throughout the investigation. However, your participation in the case may go on for much longer, perhaps years.

The person who will help you with your needs is the **victim advocate**. Your victim advocate may be at the police or sheriff's department, the solicitor's office, another governmental agency, or a private organization. You may have more than one victim advocate. The victim advocate's job is to answer your questions, help you with filing necessary paperwork, keep you informed about the status of your case, and provide you with information about the resources that are available to you. *All solicitors' offices and all law enforcement agencies are required to have victim advocates.*

Our state has a **Crime Victims' Ombudsman**. If you have problems getting the service you need from people in the criminal justice system, you may want to contact the Ombudsman at 803-734-0357. The Ombudsman has a process in place to look into the problem you are having and help you navigate the criminal justice system.

Law enforcement agencies must provide victims, free of charge, the following:

- a copy of the initial incident report of the case,
- documents which describe your Constitutional rights as a crime victim,
- your responsibilities as a crime victim,
- local victim assistance contact information,
- social service providers,
- victim compensation information,
- rights concerning harassment and threats,
- assistance with creditors, landlords and employers,
- information concerning the status and progress of the case and investigation.

**It is the responsibility of law enforcement to provide a copy of the incident report, free of charge.**

# The Criminal Court Process

**Where you fit in the process.** As a victim, witness, or the survivor of a victim, you may feel that you are not part of the process, but you are! Don't be afraid to ask all the questions you have or to be kept informed each step of the way. You will be asked or allowed to participate at various points throughout the prosecution of the case and later during the defendant's incarceration, if he is convicted. You have rights, which are stated in the South Carolina State Constitution (and in this folder). If you are a victim, or the survivor of a victim, how the crime has affected you is a very important part of the case.

**Warrant and arrest.** If a suspect has been positively identified, you, a witness, or a police officer may be the person who signs the arrest warrant that charges the suspect with the crime. The police will be able to tell you who must sign the warrant. If you are to sign the warrant, you will have to go to an office to do so. It may be the magistrate's office, an office at the county courthouse, or at the city court. You will speak with a judge or a clerk who will prepare the warrant. You will be required to swear that the crime happened and that the suspect did the crime. Whoever listens to what you have to say must be satisfied that there is probable cause to issue the warrant. If they believe what you tell them, a warrant will be issued at that time. Once the arrest warrant is issued, a police officer will serve it (read and give a copy) to the defendant, the person accused of the crime. If the defendant is in jail, the warrant will be served there. If he is not in jail, a police officer must find the defendant, serve the arrest warrant, take the defendant into custody, and take him to jail. At the jail, the defendant will be photographed, fingerprinted, and placed in a cell. Usually, as soon as he can after he is arrested, the defendant contacts his attorney to help him with his defense against the charges made against him. In less serious or juvenile cases, the defendant may be released instead of being kept in custody. The defendant may be required to post bond before he is released. The purpose of the bond is to assure that the defendant will appear in court. It is not intended to make it impossible for the defendant to get out of jail. **You have a right to be notified of and to be present at a bond hearing.** If you are not notified, please call SCVAN or the Office of the Crime Victims' Ombudsman at 803-734-0357. Very often the defendant will be out of jail in a matter of hours after he is arrested. Typically within a day or two after the arrest warrant is served, the defendant is brought before a judge to be arraigned (formally charged.)

**Attorneys.** There are two kinds of attorneys in criminal cases: the solicitor (or deputy solicitor or assistant

solicitor), who prosecutes the case for the State, and the defense attorney, who represents the defendant. However, if you are considering a civil lawsuit regarding the case and you have retained an attorney, he may want to follow the progress of the criminal case. Your attorney will not participate in the criminal trial, but you do have the right to representation throughout the criminal justice process if you choose to hire a private attorney. The victim advocate in the solicitor's office will keep you informed of the case's progress. You do not have to talk with the defense attorney prior to trial. However, he may request to interview you. Before you do, please discuss whether or not you should speak to him with the solicitor handling your case. Always keep the solicitor's office informed before you start a civil case.

**Preliminary Hearing.** Before a case goes to trial, it typically goes through at least two hearings. The first is the preliminary hearing. The purpose of the preliminary hearing is to present the basic elements of the case so that the judge may decide whether or not there is probable cause and sufficient reason to go forward with the case and to continue to hold the defendant to the requirements of his bond. Sometimes the defendant chooses not to be present at the preliminary hearing. However, the defense attorney may be present at the hearing. He has a right to know what evidence exists against his client. This is called the "right of discovery." The defense attorney may ask questions at the preliminary hearing. The preliminary hearing is open to the public. You do not need to attend unless the police or solicitor asks you to. You might wish to attend in order to follow the progress of the case, and you have that right.

**The Plea.** After probable cause is established at a preliminary hearing, the defendant is formally arraigned and charged with the crime and advised of his rights. At the arraignment, the defendant pleads either "guilty" or "not guilty." Many plead "guilty." If he pleads "guilty," he may be sentenced immediately or at some future time. He may change his plea up to the point where the judge accepts his plea of "guilty." If he pleads "not guilty," his case will go to trial. He may change his plea to "guilty" up to the point where either a judge or jury declares a verdict. **The vast majority of criminal cases in South Carolina are handled through guilty pleas, and not trials.**

**Grand Jury.** The second hearing is held before the Grand Jury, a group of eighteen citizens. Grand Jury hearings are not open to the public. The grand jury listens to the basic elements of lots of cases, one right after the other. The solicitor may be the only one who presents your case, or several witnesses may testify. The solicitor might ask you to testify. If the Grand Jury issues a "No Bill," the case will not go to trial. If the Grand Jury issues a "True

Bill" (or indictment), the case will be handled in the General Sessions Court.

***Trials.*** A trial may be held before both a judge and jury (a jury trial) or before a judge with no jury (a bench trial.) The more serious criminal trials are held in General Sessions court. The judge or jury must listen to all the facts of the case and decide whether or not the defendant is guilty of the crime. If the defendant is found "not guilty," he will be released from custody. If the defendant is found "guilty," he may be sentenced right then or at a later time. Almost always the judge decides the sentence. Under South Carolina law, the jury decides the sentence only in cases in which the solicitor asks for the death penalty (called "capital" cases.)

***Victim Impact Statement (VIS.)*** The VIS is a voluntary, written or oral statement by the victim telling how the crime has affected the victim's life and family. The VIS form has a place for you to request notification of court hearings and other proceedings: post-sentence hearings affecting probation, parole, and release; and notification in the event the offender escapes. The VIS is used by the solicitor to prepare a sentence recommendation and by the judge to determine the sentence and restitution, if any. Depending on the sentence, your VIS also may be sent to the SC Department of Corrections and/or Probation, Parole, and Pardon Services. The Parole Board may use your VIS to determine restitution. **Make sure that you ask for and complete a VIS.** This insures your voice is heard and that the criminal justice system knows how the crime affected you. Make sure it is filed with the solicitor's office if your case is going forward to General Sessions Court.

*Completing the VIS may be the most important thing you do.*

Your victim advocate is required to advise "all victims of their right to submit to the court, orally or in writing at the victim's option, a victim impact statement to be considered by the judge at the sentencing or disposition hearing in general sessions court and at a parole hearing" and provide you with a copy of the VIS form (SC Code §16-3-1550.) You may make your statement orally in court, if you wish, instead of in writing, but a written VIS can be sent places where it is useful, such as to the SC Department of Corrections (SCDC), the Department of Probation, Parole, and Pardon Services (DPPPS), and the Parole and Community Corrections Board to be considered every time the defendant has a hearing.

***Pre-trial intervention (PTI.)*** The defendant may be eligible for the Pre-trial Intervention Program. The program serves mostly first-time offenders charged with a less serious offense. However, the solicitor may request that any defendant be allowed to participate. The

defendant pays for this program. It allows him to make restitution (to pay for the damage or injury he has caused) and to attend classes that teach him the impact of his behavior and how to avoid repeating his offense. You should be notified when the defendant applies for PTI and be allowed to express your opinion to the solicitor regarding the defendant's participation. If he successfully completes PTI, his case will be dismissed. If he fails to complete PTI, his case will be sent back to court.

***Sentencing.*** After a plea of "guilty" is entered or a verdict of "guilty" is reached in the case, the judge will sentence the defendant (except in death penalty cases, in which the jury decides the sentence.) The judge will consider all the information he has, including your VIS, as well as the information the defense presents.

***Testifying in Court.*** Testifying means telling the truth. Always tell the truth. If you learn that you will be asked to testify, you will want to talk with the solicitor about what to expect. The solicitor's office victim advocate may help you prepare to testify. In court, all you need to do is tell what you know and answer the questions you are asked. You might be nervous and the defense attorney might try to upset you, but do your best to stay calm, take your time, and answer questions with simple, truthful answers.

***Criminal Law.*** The purpose of criminal law is to enforce the laws regarding how people behave. Those who disobey the criminal law must answer for their crimes and be made to obey the law. Both the State of South Carolina and the United States government have laws that define crimes. Most criminal cases are tried in state courts.

***Constitutional Law.*** The Constitution of the United States (and its amendments, or changes) guarantees the rights of citizens. One who is charged with a crime is presumed innocent until he is proven guilty beyond a reasonable doubt. Crime Victims have rights in our State Constitution.

***Definitions of crimes.*** The definitions of crimes are found in the statutes (laws) that make up the criminal code and in the common law. The common law is the entire set of court decisions of both the United States and England.

***Jurisdiction.*** In order for a court to hear a case, it must have jurisdiction, the authority to hear it and make a decision. Which court has jurisdiction is determined by what kind of crime was committed and where it happened.

***Juveniles.*** Juveniles (persons 16 years of age and younger) who commit crimes usually are not tried in

criminal court. Instead the juvenile's case is heard in family court. There is another section in this folder dealing with juvenile cases.

### ***Final Note***

There is no way to predict the outcome of the criminal court process. What is important for you is to go through the process to its conclusion. Once a defendant found guilty is sentenced, you may register to be notified about hearings regarding probation and parole and request the solicitor's office and the Attorney General's Office to keep you posted regarding the phases of the appeals process.

## **Sentencing, Probation, Incarceration, Parole, and Pardon**

***Sentencing.*** Once a defendant pleads "guilty" or is found "guilty" by a jury, the judge will sentence him. A defendant may be sentenced to time in prison, a fine, restitution, community service, a variety of other activities, or any combination of these. If the defendant is sentenced to prison, the judge might suspend that sentence and place the defendant on probation.

***Probation.*** As an alternative to incarceration (locked up in prison as an inmate), a circuit judge may suspend an offender's sentence and allow him to serve that sentence in the community under the supervision of the South Carolina Department of Probation, Parole, and Pardon Services (SCDPPPS). As conditions of probation, the offender may have to meet certain requirements such as: meet regularly with a probation officer, undergo counseling, perform community service, make restitution to the victim(s), or have no contact with victim/victim's family. If he/she fails to meet any of the requirements, he/she may be arrested for violating the conditions of probation. At a violation hearing, the case can be continued (possibly with more restrictions) or the case may be revoked, which means the offender will be sent to jail or the South Carolina Department of Corrections, depending on the amount of the sentence that was revoked. If you think an offender might be violating the terms of probation or have questions concerning the supervision of the offender, you can contact SCDPPPS (**see Resources List.**)

***Incarceration.*** While the convicted offender is incarcerated, victims and witnesses usually feel confident that they don't have to be concerned about his whereabouts or activities. However, nearly all inmates eventually are released, after they serve their sentences or go on parole. The amount of time an inmate stays in

prison may be shortened by his earning credits for good behavior, work activity, completing education classes, and/or receiving parole. If an inmate is sentenced to more than 90 days at the Department of Corrections, you can apply to the SC Department of Corrections (SCDC) Victim/Witness Notification Program (**see Resources List**) to be kept informed in the event of his escape or potential release. If you do not register, you will not be notified.

***Parole.*** Inmates incarcerated on or after January 1, 1996 may not be eligible for parole due to the Truth-in-Sentencing Bill. Inmates incarcerated before this date may be eligible for parole after serving the required portion (which is determined by state law) of the sentence. If the inmate is serving for a violent (by statute) offense, he will be eligible after serving 1/3 of the sentence less any earned credits. For a non-violent (by statute) offense, he will be eligible after serving 1/4 of the sentence less any earned credits. Some inmates may not be eligible for parole if they are deemed to be subsequent violent offenders by the legal department at SCDPPPS.

You must register with SCDPPPS if you wish to be notified of parole hearings. Provided SCDPPPS has your current address, you will receive written notification 30 days prior to the parole hearing date. You may call SCDPPPS' Office for Victim Services (**see Resources List**) to voice your opposition to parole or you may write letters or submit petitions from the community. Some victims are allowed by law to submit a video tape of their testimony. You may also attend the parole hearing and address the Parole Board in person if you wish to do so.

**It is your responsibility to notify SCDC or DPPPS of any changes of your address or telephone number.**

The Parole and Pardon Board meets at SCDPPPS' administrative offices located at 2221 Devine Street in Columbia, SC to review cases for parole. Victims who wish to attend the parole hearings will also go to this location, or to a location in Charleston where you can participate in the hearing via videoconferencing (contact SCDPPPS victim services department to arrange details). The offender will remain in prison during the hearing. The Board will see and talk to the inmate and his family via videoconferencing.

If parole is denied, inmates may have another hearing in one year for non-violent offenses or in two years for violent (by statute) offenses, provided they do not "max-out" their sentence before then.

If an inmate is granted parole, he will be released under the supervision of a parole officer and may have many of the same requirements and restrictions as an offender on

probation. If he violates the terms of parole, a revocation hearing may be held and he may be sent back to prison.

***Pardons.*** The South Carolina Parole and Pardon Board has the authority to grant or deny a pardon - not the Governor.

Offenders who have completed their probationary period or who have been on parole for five years may apply for a pardon. If the length of parole supervision is less than five years, the offender can apply for a pardon when the parole expires. Incarcerated offenders can only apply for a pardon under extraordinary circumstances (ex. Terminal illness) If an individual's request for a pardon is denied, he may apply again in one year. There is no limit on the number of times an individual can apply.

***The Death Penalty.*** Cases in which the State requests the death penalty are called capital cases. In capital case trials, the jury decides either the guilt or innocence of the defendant as well as his sentence. If the defendant is found "guilty," the trial will go into a sentencing phase, which is much like the original trial. His sentence may be either life in prison or death. In the event that an execution is carried out, three representatives of the family of a victim of the crime for which a death penalty was imposed may attend the execution. If there are multiple victims, the Department of Corrections may reduce the number of family representatives to one person for each victim's family.

***The Appeal Process.*** There are many steps in the appeal process. Some of those steps are in state court and others in federal court. It is even possible a case might be argued in front of the United States Supreme Court. Each case is unique and no set time frame exists for a decision to be rendered in an appeal. Death penalty appeals are often more complicated than normal appellate actions, but the Attorney General's Office has Victim Advocates to guide victims through the appeals process.

Anyone convicted of a crime has the right to an appeal, even someone who has pled guilty. A notice of appeal must be filed within 10 days of sentencing by the defendant. The person you know as the defendant is now called "the appellant". The appellant's attorneys raise issues claiming errors were made during the investigation or the trial. Briefs are written and submitted by the appellant's attorneys and the Attorney General's Office representing the state. Sometimes, oral arguments discussing the case may be heard before the SC Court of Appeals or the SC Supreme Court. The appellant is not present for oral arguments, but the proceeding is open to the public. The court does not issue an opinion at the end of the arguments. It might take a year for their written opinion to be published. Many appeals are decided on written legal briefs instead of oral argument. If the appellant loses his appeal, a "Petition for Certiorari" may

be filed with the US Supreme Court to review the decision of the state court. If the appellant wins his appeal, the Attorney General's Office has the same right

The inmate becomes an "applicant" when a Post Conviction Relief (PCR) hearing is applied for. A public hearing is held in the local county of conviction in front of a circuit court judge and the applicant can be present. During this proceeding the applicant is requesting a new trial based on allegations of legal error or new evidence. In non-death penalty cases, the applicant can also use this hearing to request that his sentence be reduced by the Department of Corrections. If a circuit court judge does not grant PCR, the applicant can file a Petition for Certiorari in the SC Supreme Court, and then the US Supreme Court, to appeal the circuit court decision. Having exhausted avenues of relief through state courts, attorneys for the convicted may file an appeal in federal court, requesting the conviction be overturned. This action is called Writ of Habeas Corpus. The federal courts available in Habeas Corpus are the US District Court, the Fourth Circuit Court of Appeals, and the US Supreme Court. Federal appeals are seldom argued orally. Instead, briefs (legal documents) are filed on each party's behalf. It is important to remember that convictions are reversed and remanded (to be considered again for retrial) based on technicalities, not on guilt or innocence issues.

## Offenses by Juveniles

Juveniles usually enter the juvenile justice system in South Carolina when they're taken into custody by law enforcement or when they're referred to DJJ by a Circuit Solicitor or a school. At this stage, a juvenile is usually interviewed by personnel at a DJJ county office (DJJ has offices in 43 of South Carolina's 46 counties). Law enforcement might also elect to send the juvenile to a South Carolina juvenile detention center, pending a hearing. After county office or detention center personnel have interviewed a juvenile, DJJ makes recommendations to the Circuit Solicitor's office regarding the case. The Solicitor has a number of options available when deciding how to pursue a case. A Solicitor may choose to divert a juvenile to a community program (such as a drug court or juvenile arbitration program) or require the juvenile to make restitution for the offense. Solicitors may also choose to proceed with prosecution or to dismiss a case entirely.

If a Solicitor chooses to prosecute, the next stage of the process involves the family court. A family court judge is charged with determining the guilt or innocence of a juvenile and with sentencing those juveniles "adjudicated delinquent" (found guilty). Often a judge will request a

DJJ evaluation of the child before making his final ruling, or prior to commitment. This involves psychological, social, and educational evaluations conducted either in the community or at one of DJJ's three regional evaluation centers. This evaluation helps the judge decide how to proceed in the best interests of the child. A family court judge may find the juvenile "not delinquent" (not guilty) or "delinquent" (guilty). If found delinquent, the juvenile may be put on probation or given a "determinant (fixed amount of time) or an "indeterminate" commitment.

If a juvenile receives an indeterminate commitment, he or she will be held for an indefinite period of time, up to age 21. Upon commitment, a juvenile will be given a time range or "guideline," determined by the state Board of Juvenile Parole (for all felonies and select misdemeanors) or DJJ's own release authority (for most misdemeanors and all status offenses). This range is based on the severity of the juvenile's offense and his history of previous offenses.

These guidelines can run anywhere from 1-3 months up to 36-54 months. The Board and DJJ use these guidelines – along with an evaluation of the juvenile's behavior and progress – to determine the length of incarceration. Juveniles may remain incarcerated beyond their guideline (up to their 21st birthday). They may also be paroled prior to their minimum guideline for exceptional behavior and progress.

Juveniles may be granted conditional or unconditional releases. A conditional release might involve requiring the juvenile to complete a local aftercare program or program at a wilderness camp or group home. A conditional release also involves a period of parole supervision. DJJ county officers supervise juveniles on parole, much as they supervise juveniles on probation.

For more detailed information on the juvenile justice process, visit the website at:

[www.state.sc.us/djj/process.html](http://www.state.sc.us/djj/process.html)

## Compensation and Restitution

**Restitution.** The judge or the Parole Board may order a convicted defendant to repay you for losses suffered as a result of the crime. In order for the judge or Parole Board to know what losses you have suffered, you must have completed a Victim Impact Statement (VIS.) Your victim advocate will help you complete the VIS. However, some losses may be the kind that cannot be repaid. The defendant may have a limited ability to make

monetary restitution (he may have no money, may be unemployable, or he may be in prison for many years.) Therefore, restitution may not be complete.

Restitution payments may be stretched out over several years. Payments are not paid by the offender directly to the victim but are paid to the clerk of court or the SC Department of Probation, Parole, and Pardon Services who issues a restitution check to the victim.

**The SC Crime Victims' Compensation Fund.** The South Carolina Crime Victims Compensation Fund is a financial assistance program designed to help victims with expenses directly resulting from a crime, and not covered by other payment sources. The Fund is administered by the Office of the Attorney General, Department of Crime Victim Compensation (DCVC), and is governed by state and federal laws.

Expenses reimbursed by DCVC must be related to the injury or death resulting from the criminal victimization and a law enforcement incident report is required for all compensation cases. The maximum payout is **\$15,000** for medical or dental related costs including transportation (mileage) to doctor appointments, or counseling (**from a licensed professional therapist**). A **therapist must confirm** that the trauma resulted from the crime and payment is based on a fee schedule. Burial/funeral bills for a deceased victim is limited to a reimbursement amount of \$6,500. A death certificate is required.

Lost Wages / Loss of Support is considered if the victim has not been able to work for at least two weeks in a row because of the injuries or to take care of a victim. Also, the victim, the victim's dependent or a spouse may be eligible. We encourage all victims to call our office to see if they are eligible for Loss of Support payments. **There is a maximum amount of \$7,500** for all lost wage claims. A Physician's/Employer's Report and a Tax Return Transcript may be required.

Please have provider submit all crime related medical claim forms for payment consideration within 12 months from the date of service. **However, after 18 months** if there is no activity the victim's claim will be closed. Please note, cases may be reopened on a case by case basis depending upon the circumstances.

DCVC **cannot** pay for property damage (to include crime scene cleanup [contact SCVAN for this service] or items taken as evidence), any expenses related to going to court (to include legal fees or transportation), or "pain and suffering.

**The Department of Crime Victim Compensation is the payer of last resort.** If the victim has insurance, Medicare, or Medicaid these sources must be used first. It

is the provider's responsibility to ensure that other avenues of payment are explored and used.

**The eligibility requirements to receive services from DCVC are:**

- The crime must occur in South Carolina
- The victim must sustain direct injury - (Physical or Psychological)
- South Carolina law requires DCVC to consider contributory or illegal behavior when making eligibility determinations
- The victim/claimant must cooperate with DCVC and Law Enforcement
- The crime must be reported within 48 hours (May be waived for good cause)
- The claim must be filed within 180 days (May be waived for good cause)
- The claim must be filed within 4 years of the incident. This requirement may be waived and extended in cases involving criminal sexual conduct of a minor if the victim is now an adult and there has been a diagnosed manifestation of injury.

**Please note, if the victim was incarcerated in any penal system at the time of the victimization, no award of any kind can be made by law.**

For additional information about the Office of the Attorney General, Department of Crime Victim Compensation program, benefits and services, please call [803.734.1900](tel:803.734.1900) or (Victims' Only) [800.220.5370](tel:800.220.5370) or go to [www.sova.sc.gov](http://www.sova.sc.gov)

**Suing the defendant.** In addition to going through the criminal court process, you may consider suing the defendant for damages. This takes place in civil court. These matters are heard at your county courthouse, probably the same place the criminal trial did or will take place, but in a somewhat different kind of trial. In order to determine whether or not you should sue, you will need to discuss the matter with the attorney of your choice. *Before you decide whether or not to proceed with a civil action, please confer with the prosecutor of your criminal case first.* You may contact the SC Bar Lawyer Referral Service or SCVAN to help you find a civil attorney.

**Other Financial Needs.** Your victim advocate or SCVAN staff will gladly help you find additional sources of financial assistance if you feel additional resources are necessary. There are many organizations that can provide you with free or inexpensive clothing, food, furniture, medicine, doctor and dental care, and other vital services.

## When Children are Victims

If your child has been the victim of a crime, he or she will go through much the same procedure as an adult victim. However, your child may not understand much of what is happening. Children think in shorter time spans than adults, so it isn't always necessary to explain what will be happening months in advance. A brief explanation of what is about to happen at each point, and your assurance that you'll be there with them, will help them through each step of the process. In addition to talking with a police officer to report the incident, they may be interviewed by a juvenile officer or other investigator, if your law enforcement agency has an investigations division.

Perpetrators may be strangers, friends or acquaintances, other juveniles, parents, other relatives, temporary care providers (e.g., teachers, child care workers, baby sitters), foster parents, or others. The kind of perpetrator may have significant bearing on the steps the investigation takes.

If the alleged perpetrator is anyone living in the same home as the child (and in certain other circumstances), the Department of Social Services may conduct its own investigation and interview family members and acquaintances. Because children often find it difficult to talk in front of a large group of strange people, under certain conditions the judge might allow them to testify by videotaped recording.

Every law enforcement department in SC has on its staff a "victim advocate." This person will serve as your liaison between the investigator, the court, and you. Please call your victim advocate for help with filling out compensation forms, victim impact statements, finding qualified counselors in your area, and helping you with any problems you may have with school, your employer, etc. Your advocate can help you get answers to questions you may have about the progress of your case and, although most child victims never testify in court, can help you familiarize your child with courtroom procedures (if necessary).

At least one more interview, this time with the solicitor (the person who will prosecute the case), will be necessary prior to the child's testifying for court. Some counties have children's centers, which greatly reduce the number of times your child will be interviewed. At children's centers, all the interviewers gather together to do their work in an atmosphere that is friendlier for the child.

Part of the evidence gathering process may include a medical examination, some tests, and photographs. These

are for both your child's benefit and to build a criminal case for court.

Your solicitor's office may have individuals specially trained to handle cases in which children are victims of crime. During this time, your child needs all the love and support you can give. Your victim advocate will be a good source of help and information about what lies ahead.

You may want special counseling for your child. Ask your victim advocate where the best qualified child-counseling services are located. You can find a trauma-trained therapist in your area by checking this website: <http://academicdepartments.musc.edu/projectbest/roster/roster.htm>.

The State Office of Victim Assistance provides funds for counseling for victims of crime. Your advocate will help you fill out compensation forms. Your child may need to tell his or her story several times. Ask your child's counselor about the best way to handle discussing the crime with your child. You should be careful not to encourage your child to say things that he or she thinks will please you, but do encourage your child to tell everything that happened to him or her, and tell it truthfully.

## Finding Your Way Through Difficult Times

Sometimes we lead our emotions. Sometimes they lead us. Feelings are natural. Extreme situations may trigger unusual emotions. Your victimization may have been an extreme situation. You may be experiencing some unusual emotions. Grief and fear are two extreme emotions. Following the death of his wife, the writer C. S. Lewis said that he never before had realized that grief was so much like fear (*A Grief Observed*.)

You may not be able to say exactly what you feel. Your feelings may change unexpectedly. Lewis wrote about what he called "a vague sense of wrongness, something amiss." In the middle of his doing some daily routine, familiar surroundings would seem to change, become unfamiliar, and his feelings would overtake him. You must realize that you are not helpless. We all have resources within us to get through difficult times. But in addition to that, there are many other resources available to crime victims, thanks to the efforts of victim advocates, many of whom were also victims/survivors.

The road you are on now is the road to recovery and restoration. Your foot hit that road immediately following your victimization, even though you may have felt that you had been dropped in a foreign land. Each

victim's method of travel is a little different, but the road is well-travelled. There are maps, signs, guides, fellow-travelers, and stops along the way that you will encounter. These are all resources to guide you to your destination. Some resources are people, books and tapes and activities.

A guide is a welcome friend to a traveler. Your guide is your **victim advocate**. You've already met one, the one who gave you this folder. You may find others along the way.

Every solicitor's office, police department and sheriff's office in South Carolina has a victim advocate. You may consider these your original guides.

If you are not contacted by a victim advocate, they can be located by calling the law enforcement agency that responded to you at the time of the crime, or by calling SCVAN at (888) 852-1900, or the Office of the Crime Victims' Ombudsman at 803-734-0357. These advocates will help you do many of the things you must do as you follow the criminal justice process and travel the road to recovery and restoration. They also can guide you to other resources and other guides. The other guides may be other victim advocates, or they may be professionals, such as counselors, whose services may be useful to you. Remember that your victim advocate is helping lots of people like you, so use the resources to which they refer you. In addition to government agencies, there are many private organizations that are set up to help crime victims. These include rape crisis centers, programs and shelters for victims of domestic violence (violence within a home or family), Mothers Against Drunk Drivers (MADD), Parents of Murdered Children, and centers that help those who have missing children. Centers for religious worship, such as churches or synagogues, may offer help and counseling. Counselors should be "Trauma Trained" therapists so they can effectively help you deal with the after effects of the traumatic event you experienced.

Included in this folder is a list of resources prepared by the South Carolina Victim Assistance Network (SCVAN.) You may also "google" to search the internet for help dealing with the specific type of crime you have experienced. Some of the people and agencies listed there may not be near you. However, if you call or write them, they may be able to put you in touch with someone near you. Your victim advocate already may have given you a list of local resources. Use the ones you need.



# Laws That Affect You

The following summarizes the law (§ 16-3-1506, et seq.) that describes the responsibilities of the criminal justice system to you, as a crime victim (whether it be law enforcement, courts, prosecutors, the Attorney General, jails, other departments of confinement, the Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Juvenile Parole Board, and the Department of Juvenile Justice)

First of all, we ask YOU to help us keep you informed.

- **Responsibilities of Victims and Prosecution Witnesses:**
  - Keep agencies apprised of your legal name, MAILING address, and phone number.
  - In order to receive restitution, you must provide the solicitor or judge details of the financial impact of the crime upon you.
  - Notify prosecutor or judge of your desire to be present for hearings.
  - Submit your Victim Impact Statement in a timely manner to your Victim Advocate.
  - Notify the solicitor of your desire to make an oral statement in court before sentencing.

The following are what you, as a crime victim, can expect from the criminal justice system:

- **Upon Report of Crime, Law Enforcement has the Following Duties to Victims:**
  - Provide you with a free copy of incident report.
  - Provide you with a description of your rights, services available to you, and procedures if you are harassed or threatened.
  - Assist you with filling out SOVA compensation and other social service applications.
  - Assist with you with problems with creditors, employers, landlords and schools.
  - Inform you of the status and progress of case and investigation.
  - Provide you with transportation to and protection in the courthouse.
- **Upon Arrest or Pick-up, the Appropriate Agency has the Following Duties to Victims:**
  - Notify you of the arrest or pick up of defendant.
  - Notify you in advance of pretrial release proceedings.
  - Provide you with information about victim assistance agencies.
  - Notify you before proceeding with bail/bond/detention hearings, and verify that before a judge.
  - Impose measures to protect you as a condition of defendant's pre-trial release.
  - Notify you in advance of preliminary hearings.
- **Upon Release, Transfer or Escape, a Department or Agency Having Custody of a Defendant Must:**
  - Notify you of any release, transfer or escape by the defendant.
- **Upon Referral of Case to Summary Court for Disposition, the Summary Court has the Following Duties to Victims:**
  - Notify you of your rights and about the practices and procedures of the Court.
  - Provide you with a Victim Impact Statement form.
  - Notify you in advance of all hearings.
  - Return your personal property in a timely manner.
  - Recognize and protect your rights.
- **Upon Referral of Offender to Department of Juvenile Justice, DJJ has the Following Duties to Victims:**
  - Inform and confer with you before taking action.
  - Inform you of the status and progress of case.

**Upon Referral of Case for Disposition in General Sessions or Family Court, the Appropriate Agency (usually the prosecuting agency) has the following Duties to Victims:**

- Provide you with an Victim Impact Statement form and assist you in completing it.
- Inform you of practices and procedures of the criminal justice system.
- Inform you of your right to legal counsel.
- Return your personal property in a timely manner.
- Inform you of compensation, fees, financial assistance and assist with applications.
- Inform you of status and progress of case.
- Talk with you regarding decisions on handling and disposition of your case.
- Notify you in advance of each hearing.
- Assist with creditors, employers, schools and landlords.
- Respond actively to threats and intimidation.
- Minimize your inconvenience and familiarize you with the procedures in court and practices within the criminal justice system.
- Refer you to appropriate service and assistance agencies.

## *Laws that Provide for Protection of Your Constitutional Rights*

- Employers must not retaliate, suspend or reduce your wages or benefits if you are subpoenaed to court.
- Victims and witnesses may not be sequestered (kept out) of the courtroom.
- Victims have the right to a reasonable disposition and a prompt and final conclusion of their case.
- Law enforcement and prosecutors must have separate waiting areas for you and defendants and their witnesses.

- The Court must recognize your rights as diligently as those of the defendant.
- The Court must notify you of all proceedings in a timely manner. If notice was not given in a timely manner, hearings must be delayed.
- The Court must treat sensitively witnesses who have special needs (elderly, handicapped, children) by using closed or taped sessions.
- Judges must hear or review all victim impact statements before sentencing.
- Judges must address the issue of restitution.
- Judges must order reasonable expert witness fees and reimbursement to victims of reasonable out-of-pocket expenses associated with complying with a subpoena to testify.
- Prosecutors must forward victim impact statements and victim contact information to Department of Corrections, SCDPPPS, DJJ, and/or the Juvenile Parole Board. All victim information must be kept confidential.
- Prosecutors must file the Victim Impact Statement with all indictments.
- Prosecutors must inform you about your responsibility to provide your current contact information to all agencies that may deal with the offender.
- Prosecutors must inform you about procedures for the collection of restitution, fees and expenses, and provide you with contact information for criminal justice agencies that can assist you with collection.

## South Carolina Victims' Bill of Rights

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

- (1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional rights, provided by statute;
- (2) be reasonably informed when the accused or convicted person is arrested, released from custody, or has escaped;
- (3) be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present;
- (4) be reasonably informed of and be allowed to submit either a written or oral statement at all hearings affecting bond or bail;
- (5) be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing;
- (6) be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process;
- (7) confer with the prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition;
- (8) have reasonable access after the conclusion of the criminal investigation to all documents relating to the crime against the victim before trial;
- (9) receive prompt and full restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury including both adult and juvenile offenders;
- (10) be informed of any proceeding when any post-conviction action is being considered, and be present at any post-conviction hearing involving a post-conviction release decision;
- (11) a reasonable disposition and prompt and final conclusion of the case;
- (12) have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and have these rules subject to amendment or repeal by the legislature to ensure protection of these rights.

# Words You Are Likely To Hear

**Acquittal** - A verdict of "not guilty."

**Advocate** (noun) - One who speaks for and helps someone else. A victim advocate is someone trained and dedicated to serve those who are victims of crime, family members of victims of crime, and witnesses to crime. An advocate may be a paid professional of a government or private agency or a volunteer.

**Appeal** - The transfer of a case from a lower court to a higher court (appellate court) for a new hearing on the case.

**Arraignment** - The time when a suspect appears before a judge and is charged with a crime. Arraignment usually occurs shortly after the suspect has been arrested and served a warrant or after a preliminary hearing.

**Bail or bond** - Money or property that a defendant puts up as a guarantee that he will appear in court. Not all defendants are required to put up bail. Some are given personal recognizance (PR) bonds.

**Certiorari** (pronounced: ser-shee-ah-rah-ree, usually "writ of certiorari," sometimes "writ of cert") - A writ from a higher court to a lower court requesting the records of a case for review.

**Clemency** - Mercy or leniency. Often refers to a judge's giving a lighter sentence to a defendant because of particular circumstances.

**Competent to stand trial** (or "legally competent") - A decision by the court that a defendant is able to stand trial (usually following an examination by a doctor to find out his mental condition).

**Disposition** - The final result of the case.

**Defendant** - A person arraigned and charged with a crime.

**Defense attorney** - The lawyer who speaks for the defendant and represents his interest in court.

**Discovery** - The right of the defendant to know what evidence the State has against him.

**Expungement** - An expungement is a court order that removes something from your criminal record. It is also called an Order for Destruction of Arrest Records. Expungement works only for minor or first-time offenses. Major offenses cannot be expunged.

**Family Court** - A county court that handles cases involving families and juveniles.

**General Sessions (Circuit) Court** - The higher level of county court, where serious crimes are tried.

**Grand Jury** - A jury of eighteen people who listen to the evidence and decide whether or not a case should go on to General

Sessions Court. Their meetings are conducted in secret. The Grand Jury may give a "true bill" (indictment) or a "no bill."

No Bill - A conclusion by a Grand Jury that a case should not be tried.

**True Bill or Indictment** - A conclusion by a Grand Jury that a case should be tried.

**Habeas Corpus** (pronounced: hay-bee-us kor-pus) - One of a variety of writs that may be issued to bring a person before a court or judge. Its purpose is to release someone from unlawful restraint or imprisonment.

**"Hung jury"** - The situation where a jury cannot all agree on a verdict. When this happens, the case may be tried again.

**Incident Report** - A police report about something that happened. Additional reports about the same happening are called Supplemental Reports.

**Indictment** (pronounced: in-dite-ment) - See Grand Jury, True Bill.

**Jury** - (usually refers to the Petit jury) A group of men and women (usually 12) who must listen to and watch the trial and decide whether or not the defendant is guilty.

**Jury Pool** - A group of randomly chosen citizens from which jurors (people on a jury) are selected.

**Juvenile** - Usually an offender under the age of 17.

**Judge** - The person in charge of the courtroom and the trial.

**Magistrate** - The judge in the first (lower) level of county court.

**Nolle pros** - (pronounced: nahl pross) The voluntary withdrawal of criminal charges by the prosecuting attorney.

**Objection** - An attorney's telling the court that he believes someone has broken a rule of the court.

**Pardon** - An act by a judge, court, governor, or other authority that releases the person pardoned from punishment for the crime he committed. Often, pardon provides for expungement (wiping clean) of the offender's criminal record on that particular crime.

**Parole** - The conditional early release of a prisoner. If a prisoner obeys the conditions of his release, he won't have to serve the remainder of his sentence in prison. If he does not, he may be sent back to prison.

**Petition** - A formal, written request for a court or judge to do something, for example, a petition for an appeal.

**Plea** - The defendant's answer to the charge against him. If he pleads "guilty," a trial is not necessary. He may plead guilty to a less serious charge than the one for which he was indicted. If he pleads "not guilty," the case will probably be tried in court.

A **Guilty Plea** - A defendant's telling the court that he committed the crime.

A **Not Guilty Plea** - A defendant's telling the court that he did not commit the crime.

**Preliminary Hearing** - A hearing before a judge to determine if a case has probable cause to be tried and should be sent to General Sessions Court. The defense attorney uses this hearing to find out what evidence the State has against the defendant (see "Discovery.")

**Pre-Trial Conference** - A meeting among you, other witnesses, and the solicitor or deputy solicitor prior to the trial. You will be able to discuss the case and ask questions.

**Probable Cause** - Evidence that would lead a reasonable person to believe that a crime was committed by the person accused.

**Probation** - Releasing a convicted offender instead of sending him to prison. An offender on probation must agree to follow certain guidelines and limits. If he "violates probation," that is, fails to keep the agreement, he may be sent to prison.

# Words You Are Likely To Hear

**Reasonable Doubt** - Doubt based on a good reason. If a jury has reasonable doubt that the defendant committed the crime, the jury must find him not guilty.

**Recess** - "Time out" in a trial. It may be brief (as for lunch), last overnight, over the weekend, or longer.

**Restitution** – payment made by an offender giving compensation for loss, damage, or injury caused.

**Revocation** (of bond or probation) - The withdrawing (taking back) of bond or probation when the defendant fails to obey the requirements of bond or probation. For example, a defendant released on bond or probation may be required to stay within the state. If he leaves the state, his bond or probation may be revoked, and he may be locked up in jail or prison.

**Sentence** - The punishment or legal consequences given to a convicted defendant.

**Solicitor** - An attorney who prosecutes serious crimes. In other states, they are usually called District Attorneys.

**State** - The people of South Carolina, usually represented in court by the Solicitor.

**Subpoena** - A court order for someone to appear in court.

**Testimony** - The facts as stated by a witness. To give testimony is to "testify."

**Trial** - The presentation of the facts of a case in court before a judge (bench trial) or a judge and jury (jury trial), ending with a decision about the defendant's guilt.

**Verdict** - The decision by a judge or jury.

**Guilty Verdict** - A verdict that the defendant committed the crime.

**Not Guilty Verdict** - A verdict that the State has not proven beyond a reasonable doubt that the defendant committed the crime.

**Victim** - A person who has been directly harmed by crime committed by another person.

**Victim Assistant or Victim Advocate** - Someone whose role it is to help those who are victims of crime, family members of victims of crime, and witnesses to crime. A victim assistant may be a paid professional of a governmental or private agency or a volunteer.

**Victim Compensation Fund Application** - A form that a victim may fill out in order to apply for money from the state to pay for expenses (such as lost wages, medical bills, and funeral expenses) that the victim may have as a result of a crime. In SC the State Office of Victim Assistance is responsible for handling victim compensation claims. (see **resource list**)

**Victim Impact Statement (VIS)** - A victim's form, letter, or oral statement that tells the judge the ways in which the crime has affected him or her. For example, money lost, emotional difficulties, physical problems, job problems, and so on.

**Voir dire** (pronounced: "vwah deer") - The jury selection process. Both the defense attorney and the solicitor may "strike" (reject) a limited number of people in the jury pool.

**Witness** - In court, a witness is a person who testifies in court. A witness to a crime is a person who sees, hears, or notices something that has to do with the crime.

**Writ** - A written order issued by a court commanding someone to do or stop doing a particular act.