

**National Crime Victims' Rights Week**  
April 19–25, 2020



**Seek Justice**  
**Ensure Victims' Rights**  
**Inspire Hope**

For more information, contact:



## A Message from the Crime Victim Ombudsman

As we endure an historic worldwide crisis in the form of a pandemic, Victim Service Providers (VSPs) are dealing with problems they never prepared for or imagined. It is in those moments our Advocates shine.

Take, for example, a survivor of family violence who fled her home and moved into a shelter in another county. When she and her four children contracted COVID, they were moved out of the shelter and into a one-bedroom hotel room far away in Sumter County for the safety of shelter residents. The shelter was understaffed and overwhelmed, caring for the needs of exposed and sick residents. The survivor contacted our office for help.

Any Advocate reading this message probably foresees what occurred, because VSPs excel during moments of crisis such as this. CVO reached out to the local Victim Services community, and Law Enforcement Advocates from the Sumter City Police and Sumter County Sheriff answered the call. They shopped for medicine, food, diapers and toys and hand-delivered them to the hotel room door. They cooked for this family and stood ready to drive them to the hospital if necessary. We all took turns talking to the mother almost hourly to help her maintain her sanity as her four children bounced around that little hotel room. And they all made it through, safely. Thank you, Team Sumter, for all your help!

This is just one example of the incredible sacrifices and dedication shown by our state's VSPs. It makes me very proud to be a small part of this community, and it gives me great pleasure to present the *South Carolina Crime Victim Ombudsman's Annual Report for 2019-2020*, which is mandated by S.C. Code Section 16-3-1630. We are available to answer any questions you may have about this Report, or about South Carolina's crime victim services system. We are here to serve.

Thank you for all you do to help others!



Veronica Swain Kunz  
Crime Victim Ombudsman  
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# Table of Contents

|   |    |
|---|----|
| Message from the Ombudsman .....                      | 3  |
| Crime Victim Ombudsman (CVO) Mission .....            | 5  |
| How We Accomplish Our Mission .....                   | 6  |
| Referral Cases and Statistics .....                   | 7  |
| Assist Cases and Examples .....                       | 10 |
| Criminal Justice System Assists .....                 | 13 |
| Data .....  | 13 |
| Allegations in Formal Complaints .....                | 16 |
| Formal Complaint Dispositions and Case Examples ..... | 17 |
| Ombudsman’s Statutory Authority .....                 | 26 |
| Victims’ Bill of Rights: S.C. Constitution .....      | 28 |
| Crime Victim Ombudsman Staff .....                    | 29 |





## South Carolina Crime Victim Ombudsman

Our mission is to ensure that victims of crime are served equitably and treated fairly by the South Carolina criminal justice system and its victim service organizations by providing third-party liaison assistance.

### Our Philosophy: Building a Better Victim Services System

The CVO staff serves constituents in the most efficient manner possible and in a way which may prevent or reduce further victimization. Our goals are to:

- Efficiently resolve complaints made by crime victims.
- Collaborate with the criminal justice/victim service community to ensure ethical performance and accountability.
- Enhance victim service programs' ability to collaborate within their communities to provide comprehensive, wraparound services to victims of crime.
- Educate the criminal / juvenile justice/ victim service community and the public about crime victims' rights and services to increase their ability to comply with South Carolina law and provide supportive assistance to crime victims.

*"What others see as an inconvenience is for the victim an endless nightmare."*

*"Balancing competing interests and equities in deciding a sentence can require a Solomon-like-wisdom – and even Solomon heard from both sides."*

*"To blame victims for crime is like analyzing the cause of World War II and asking, 'What was Pearl Harbor doing in the Pacific, anyway?'"*

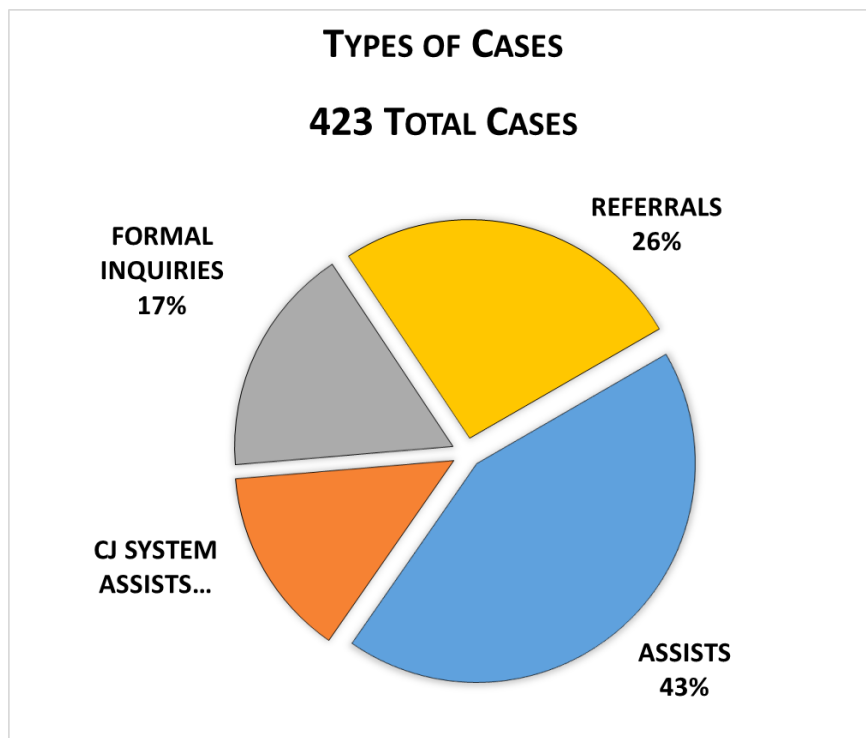
Quotations from victims who testified at hearings of the President's Task Force on Victims of Crime, 1982

## How We Accomplish Our Mission

### S.C. Code Section 16-3-1620(B)

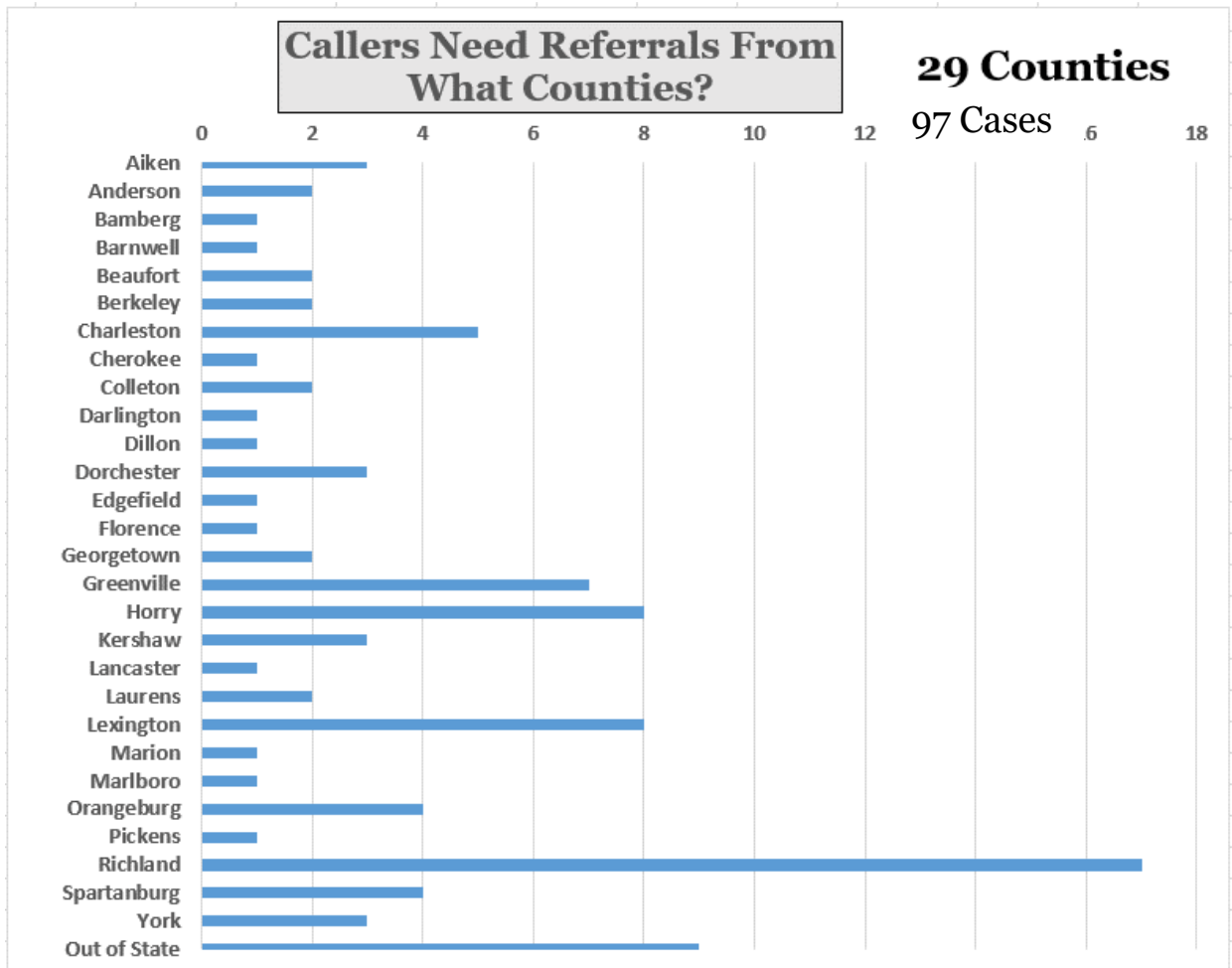
1. **Refer crime victims** to the appropriate element of the criminal and juvenile justice systems or victim assistance programs, when services are requested by crime victims or are necessary as determined by the Ombudsman;
2. **Act as a liaison** between elements of the criminal and juvenile justice systems, victim assistance programs, and victims when the need for liaison services is recognized by the Ombudsman;
3. **Review and attempt to resolve complaints** against elements of the criminal and juvenile justice systems or victim assistance programs, made to the Ombudsman by victims of criminal activity within the state's jurisdiction.

## 2019 – 2020 STATISTICS



# CVO PROVIDES REFERRALS

We serve as a hub of information in the State to help anyone find crime victim assistance. Much of our work involves educating callers about who in their own community can assist them and how they can help. We connect victims to the expert Victim Service Providers working in law enforcement agencies, Solicitors' Offices, courts, detention centers/jails, state agencies and in non-profit organizations to ensure their needs are rapidly and effectively met.



**97 Referral Cases Arising from  
29 South Carolina Counties and  
Other States**

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## EXAMPLES: CVO REFERRAL CASES

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A caller's daughter was murdered; the suspect killed himself in jail. The caller was concerned because they had not been receiving case updates from the Solicitor.

A caller was threatened with a weapon by their spouse. What should they do?

The stepmother of an adult child abuse survivor requested information about bringing criminal charges years later.

Apartment residents were being terrorized by fellow resident. Who can help them?

A person was concerned about corrupt lawyers and judges in probate court.

A caller's child was shot and killed by police. The parents wanted information on the incident and victim services since they could not afford a tombstone.

A woman alleged her boyfriend was arrested for domestic violence based on a false statement by police: her boyfriend did not assault her.

A caller needed information about how to have someone committed to mental health treatment.

A parent believed their child was being targeted by police and was being mistreated by the mental health facility in which they were both being treated.

A caller had checks stolen in 2012 and complained about a lack of police assistance.

A victim requested a defense attorney be removed from the defendant's case because she previously dated the lawyer.

A caller's elderly mother was "conned into" accepting a subprime auto loan.

A caller was confused by and dissatisfied with victim compensation.

A caller's ex-spouse was killed in a home invasion and wanted to be notified of upcoming hearings for the offender. Is that possible?

A caller was experiencing issues with neighbor wandering in their yard at night and leaving 'signs'.



A victim of a kidnapping and assault in 1999 believes an officer was 'derelict of duty' by not fully investigating. They requested further investigation into their case.

An offender continued to trespass on caller's property. A judge denied a request for restraining order and police have not rearrested the trespasser again.

A caller's ex-spouse was indicted for burglary; she suspected her son and current husband were also involved.

A witness was subpoenaed to testify in court but has severe PTSD from past court experiences. They were reaching out for help and support.

A father was concerned his child was in a violent marriage and was trying to get the offender arrested.

Due to COVID, a judge released a dangerous offender. The caller was afraid for her child, the victim.

A person walked in for consultation with CVO. They were concerned that in 1980, while in prison for burning their grandmother's house down, prison guards traded sex for cigarettes. They requested an investigation be conducted.

A caller believed they were being given drugs by their neighbors.

A caller tried to report a stolen vehicle, but law enforcement would not report it as stolen since the caller knew where it was located.

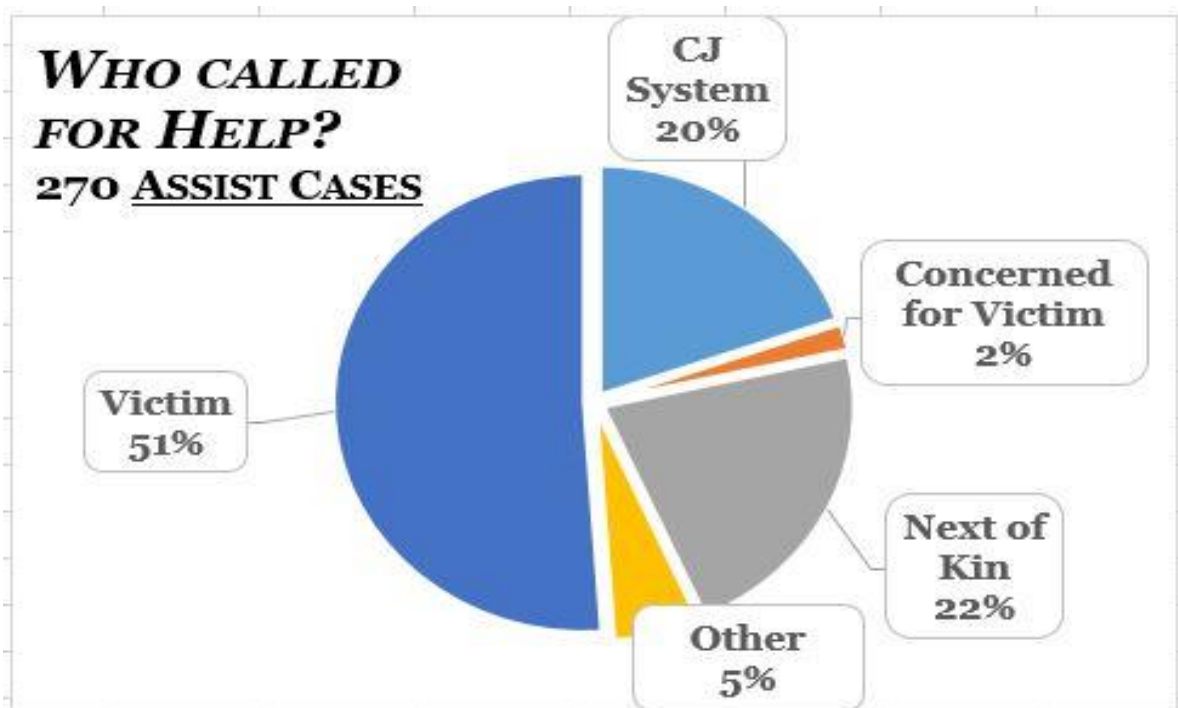
A teacher was concerned that a person was harassing a vulnerable (adult) student. What should they do?



## CVO PROVIDES TWO TYPES OF “ASSISTANCE”

Crime victims call for our help when they believe something has gone wrong in their cases. When victims call with concerns, we serve as a neutral third-party to help them understand the issues and work towards a solution. Handling any issue in the form of an “Assist” allows us to conduct an inquiry without the necessity of a formal written letter from the victim. Cases are carefully reviewed, and a determination may be made to handle a complaint in the form of an “Assist” if it is in the best interests of the victim, taking into account his or her safety and other considerations. This year, **51% of Assist cases are requests for help from crime victims or their loved ones.** These cases are more involved than referrals and can take anywhere from a few phone calls to months and a number of meetings to resolve.

As communication and relationships have strengthened between CVO staff and criminal justice agencies, more cases are being handled as “Assists” rather than Formal Inquiries. Positive feedback from both parties suggests the use of this approach is effective. It is our hope that this continued approach may reduce incidences of victims’ rights violations in South Carolina and improve services provided by the criminal justice system to victims.



“Other” includes people with non-criminal issues, (civil issues, family court, offenders, lawyers, educators, therapists, students. )

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## EXAMPLES: CVO 'ASSIST' CASES

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The list below contains *the presenting allegations* CVO received from people seeking help:

- A caller was concerned that a friend's domestic violence “high and aggravated” case was still pending seven years later.
- A victim of grand larceny was not receiving court-ordered restitution.
- A case involving the victim of a hit and run four years ago had no trial scheduled yet.
- A phone belonging to a victim of a home invasion was taken into evidence and victim wanted the phone returned.
- A caller complained that court had been continued eight times in a case involving stolen lottery tickets.
- Despite having an Order of Protection, a victim was not notified that an offender’s GPS monitor had been removed and the offender absconded.
- A survivor of domestic violence was upset that the offender was out on bond and the case had been pending for three years.
- A victim reported their caregivers for fraud and identity theft but was concerned that “nothing was being done” by police. They feared police were conspiring together to keep the suspects out of jail.
- A victim was concerned about an unsafe situation when they arrived for a weekend hearing in Bond Court. They arrived early and the defendant’s family also arrived, but there was no security in the parking lot.
- The next-of-kin of a homicide victim was refused a copy of the coroner’s report.
- A caller’s nephew was recently killed: police were reporting him as a suspect and not a victim.
- A parent did not understand some details of their child's murder case.
- A family friend was concerned about DSS’ inaction regarding reported elder abuse.
- A survivor of domestic violence requested to be included in an Address Confidentiality Program.

- A caller was concerned that her young son was assaulted by her husband weeks prior and no forensic examination had been conducted because of COVID.
- A caller's friend moved out of state to flee her batterer. The caller had just received information that he was on his way to find her. She believed he had a gun and intended to harm her friend.
- A victim was upset that they were run over by a car, but the driver was not charged.
- A child's death was ruled as an overdose, but parent believed police were not properly investigating.
- A caller was married to "a hoarder" who was getting violent. They did not want a divorce but wanted someone to force their spouse to move out or clean up.
- A neighbor was harassing a caller. Police would not arrest him due to his mental health issues.
- A victim complained that a Solicitor did not notify them about a plea agreement.
- A judge refused to sign a warrant for breaking and entering, stating he had a 'conflict of interest'. The victim was confused about what that meant.
- A caller tried to report child neglect by ex-spouse. They were allegedly told 'children lie, get an attorney' by police who refused to write a report.
- A parent, whose child and grandchild were killed in a triple homicide, claimed police were shutting them out and refusing to provide case updates.
- A tenant vandalized a mobile home belonging to a caller. They alleged that police would not assist in locating the tenant.
- A victim was assaulted by a sibling but was not notified of a bond hearing or their release from jail.
- A caller was upset that their child's murderer will not serve 100% of sentence in prison.
- A victim wanted advice about having an eviction notice and an Order of Protection served on an offender before they are released from jail.
- An offender was in jail for threatening a victim. The victim was not notified of bond modification hearing or release of offender.

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## CVO 'CRIMINAL JUSTICE ASSIST' CASES

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It is an honor to assist our colleagues in the criminal justice / victim service community by providing information, advice, research and technical assistance. We also help mediate issues between coworkers or agencies to improve collaboration in providing services to victims. If you need help or answers to any of the questions listed below, please call us!

**Our stakeholders in the victim services / criminal justice community called asking the Ombudsman for help with the following issues:**

- A judge requested a Victim Service Provider (VSP) translate for offenders during bond hearings. The VSP did not want to correct the judge and requested CVO's intervention. CVO contacted the Chief Magistrate to request them to inform all county judges about state law regarding non-English speakers appearing in court, where to locate court translators, and the impropriety of using VSPs in that role.
- A judge wanted to clarify role of court staff as "VSPs" vs. "Court Notifiers."
- A victim with disabilities needed transportation to a plea hearing, but they lived five hours away. CVO coordinated transportation through a number of VSPs located between the victim and the hearing.
- A number of new Law Enforcement Victim Advocates, (LEVAs) Chiefs and Sheriffs requested information about what a LEVAs job entails. CVO sent copies of a PowerPoint presentation we developed entitled "LEVA Duties."
- A new non-profit executive requested CVO's assistance to help improve relations between the agency and law enforcement. CVO hosted a meeting and facilitated numerous conversations to clarify agency roles and best practices for interaction to provide holistic, wrap-around services for victims.
- A LEVA asked CVO if it was their responsibility to notify victims about hearings in Summary Court.
- A judge requested LEVAs to "track down" victims before court. What exactly are their responsibilities in these situations?
- Is there a policy or law about LEVAs attending parole hearings?

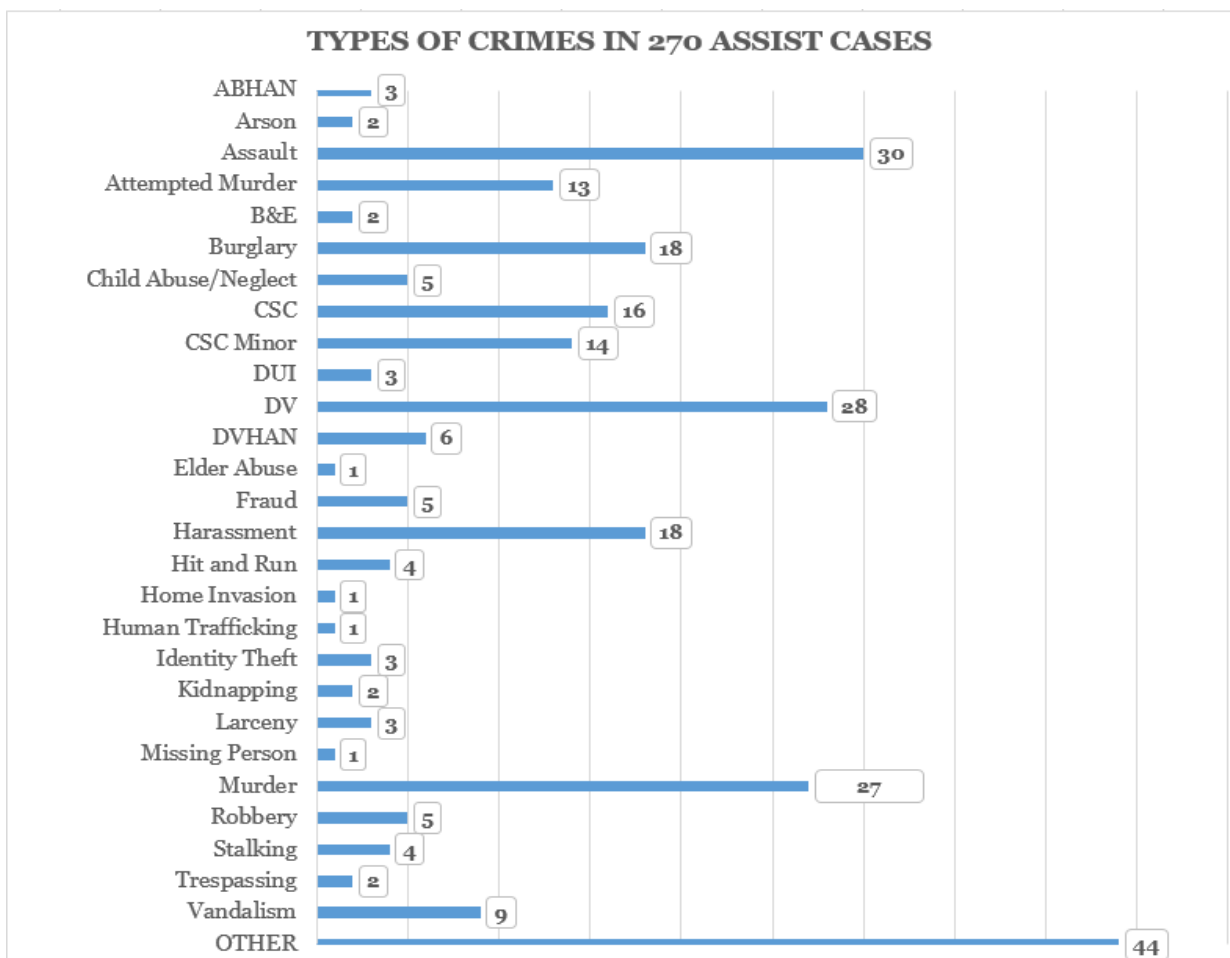
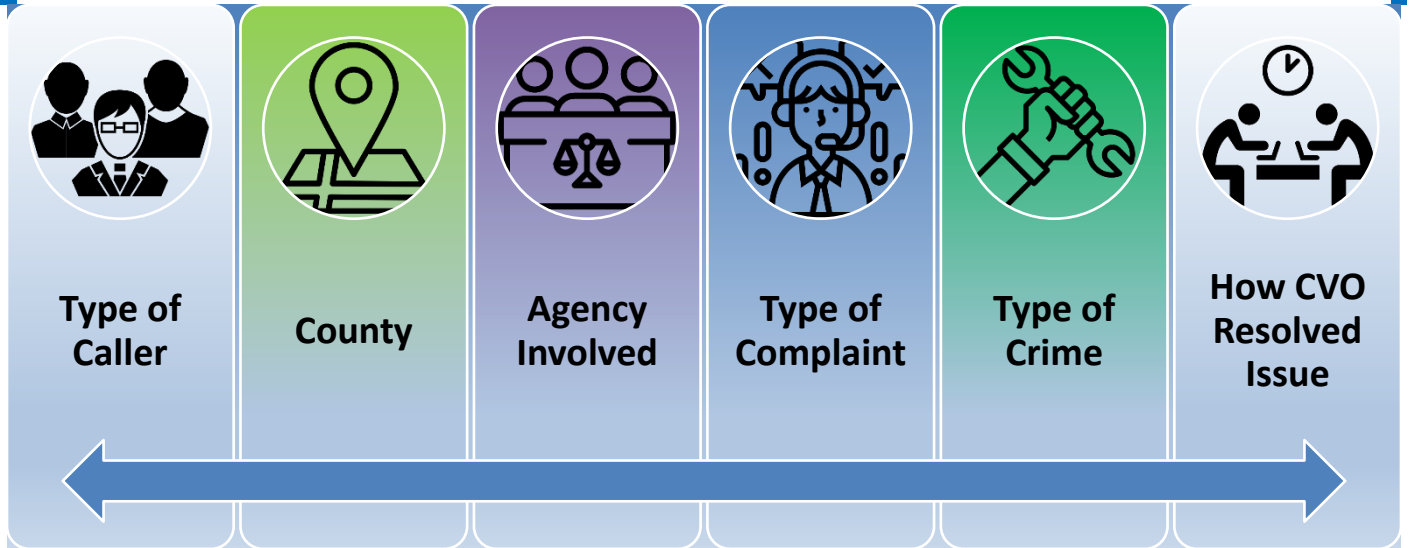
- A LEVA posed the following questions: when officers are attacked on the job, are they still victims? If workman's compensation does not fully cover their medical bills, do they qualify for victim compensation? Are they provided notification for hearings?
- An attempted murder victim was incarcerated, and their trial was coming up. Are they allowed to sit in the courtroom like other victims? Are they allowed to attend the entire trial?
- Can a VSP release a Victim Impact Statement to the news?
- An attorney requested advice when a deputy entered a domestic violence shelter to recover children on behalf of a father using an out-of-state custody order.
- A VSP was subpoenaed and was going to be sequestered during a trial. Is that against the rights of victims?
- Numerous advocates had questions about victims' physical presence in bond court during COVID.
- A member of the Nevada Governor's Office requested guidance on their state's plan to restructure and create a more comprehensive victim services system. CVO provided the plans and legislation from South Carolina that culminated in the establishment of the Crime Victim Services Division of the Attorney General's Office.
- A murder charge involved inmate-on-inmate crime. Does the LEVA still send a victim impact statement and initial letter to the family of the deceased?
- Should victims' names be redacted from incident reports released to the public? A supervisor told a LEVA that it was not necessary.
- Numerous VSPs called when domestic violence shelters closed due to the pandemic. What option do they have to provide safety for survivors?
- A defense attorney made a motion to sequester a mother from a trial involving a juvenile victim of criminal sexual conduct. Can he do that?
- A professor requested training about victims' rights and services at a law school.
- A domestic violence prosecutor was concerned that a judge did not grant an Order of Protection for a victim in danger and requested intervention.

**"I swore never to be silent whenever and wherever human beings endure suffering and humiliation. We must take sides. Neutrality helps the oppressor, never the victim.**

**Silence encourages the tormentor, never the tormented."**

**– Elie Wiesel**

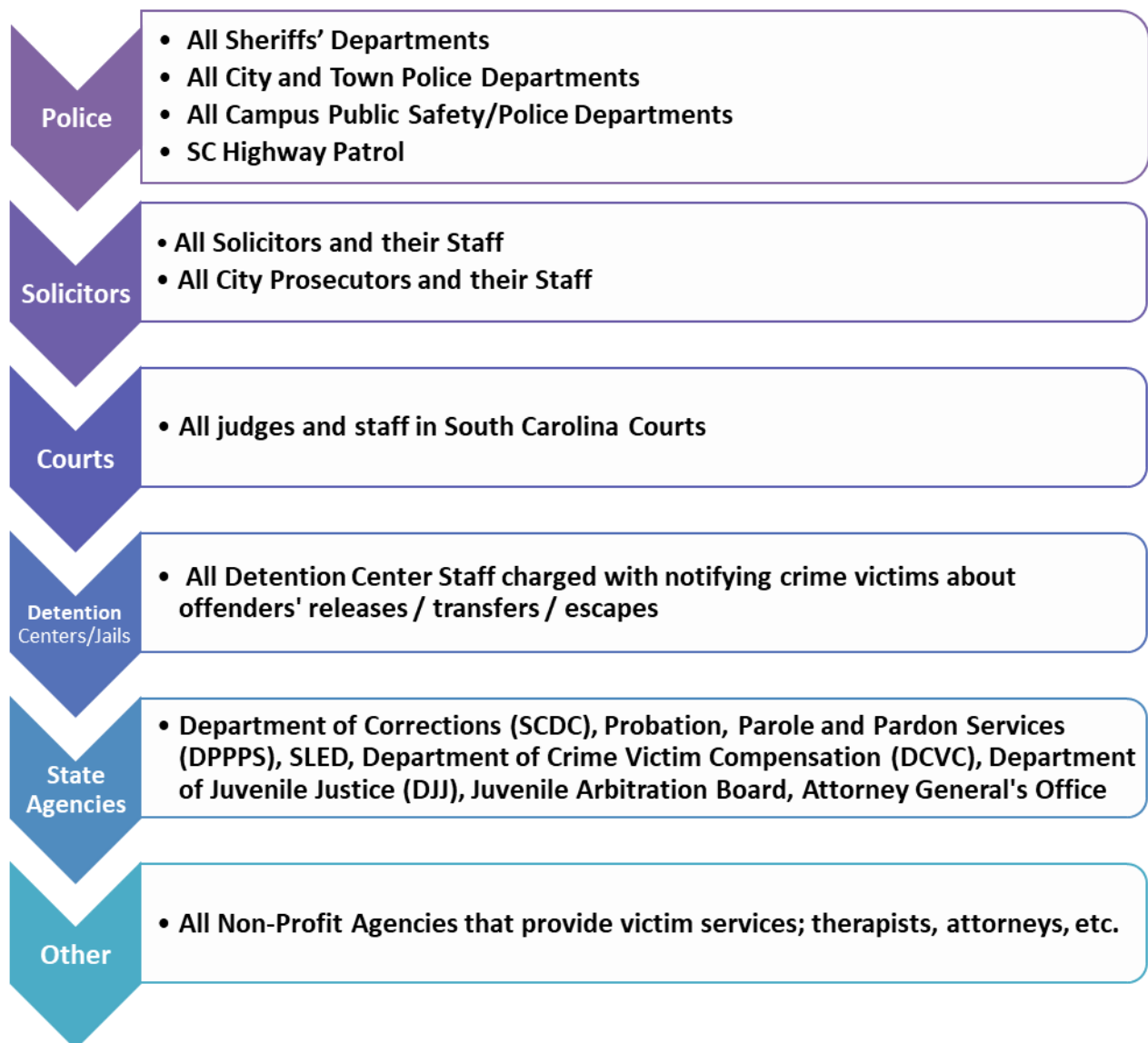
## CVO COLLECTS DATA IN EVERY CASE



“Other” indicates either a general request from the criminal justice / victim services community about “all crimes,” or from someone who has a civil issue or who is not referring to a crime.

# ALLEGATIONS OF VICTIMS' RIGHTS VIOLATIONS: FORMAL COMPLAINTS

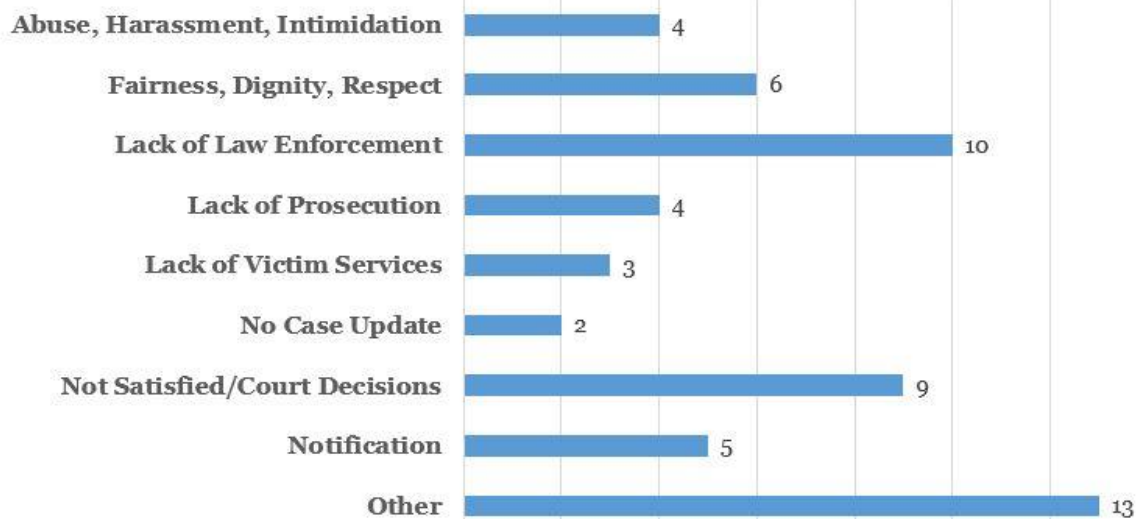
The Ombudsman is mandated to review and attempt to resolve complaints. A crime victim may file a Formal Complaint against any entity, individual and/or victim service program in the criminal and/or juvenile justice system, or non-profit victim/survivor service group:







## ALLEGED VICTIMS' RIGHTS VIOLATIONS 49 COMPLAINTS FILED 56 SEPARATE INQUIRIES



DEPARTMENT OF THE CRIME VICTIM OMBUDSMAN

Our online complaint process allows anyone to submit a Formal Complaint. The complaints that do not allege a person is dealing with a criminal matter is designated as “other.” In carrying out the inquiry, we request information and documents from the agencies to help us make a decision whether or not the entity violated the victim’s legal rights. This decision is called a “Disposition.”

### The Guidelines for Each of the Dispositions are as Follows:

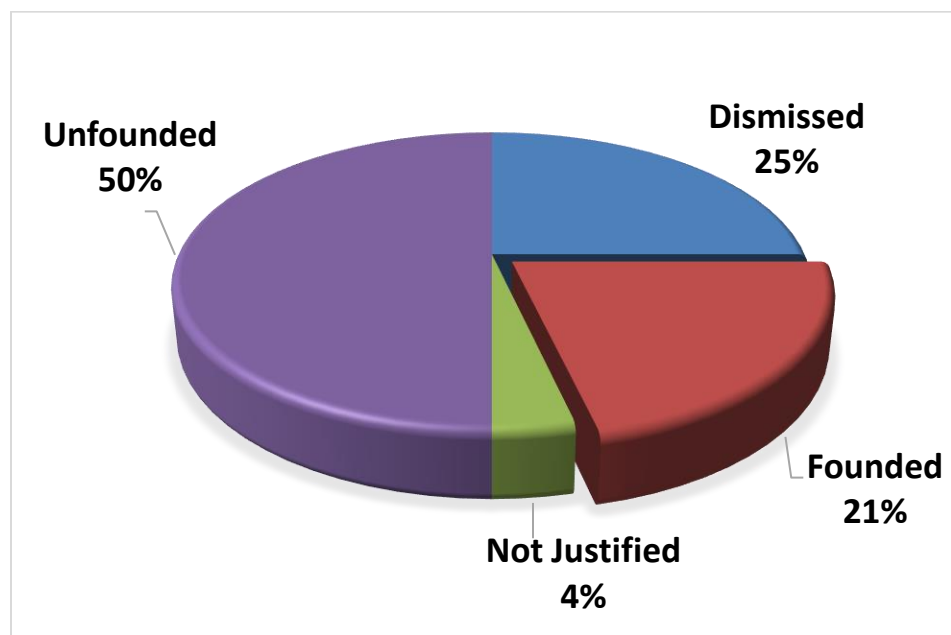
- Founded** The reported acts or part of the reported acts occurred.
- Unfounded** The acts did not occur, or the acts did occur but were within the scope of authority for that individual, agency or entity.
- Undetermined** There was insufficient evidence to prove or disprove the reported acts occurred.
- Dismissed** The case was withdrawn due to lack of victim participation.



# FORMAL CASE DISPOSITIONS

Since many crime victims do not clearly understand the duties or responsibilities an agency has to them, CVO receives numerous “unfounded” complaints. For example, we regularly hear from crime victims who believe an offender should serve more jail time than the judge imposed. We explain that that it is the proper role of the judge to determine sentencing, and that neither CVO nor the victim has the right to change a judge’s decision.

This year, however, **Founded Complaints have increased.**



Following each inquiry, we issue a report to the complainant and the agencies that are the subject of the complaint and make recommendations that, in our opinion, will assist all parties. The agencies respond regarding actions taken, if any, as a result of the Ombudsman’s report and recommendations, as provided by statute.

Cases submitted online from people other than crime victims are deemed “Dismissed.”



# Formal Case Examples

## **Formal Case Summary 1**

**Crime:** Homicide

**Complaint:** Solicitor refused to allow victims to review the entire case file after the investigation.

**Subject of Complaint:** Solicitor

**Scenario:** A woman killed her husband. Mental health evaluations led the prosecutor to recommend a plea to “Not Guilty by Reason of Insanity.” The surviving family members requested to review the case file and the Solicitor agreed but did not allow them to review the mental health evaluations due to concerns that it would violate the defendant’s HIPPA protections.

**CVO Analysis:** CVO consulted with a few seasoned attorneys to assist with our analysis. Constitutional rights always supersede statutory rights or court rules. However, we noted the following laws that impacted the Solicitor’s concerns:

1. Several statutes address the confidentiality of mental health records, particularly in Title 44. Also, S.C. Code Ann. § 19-11-95 prohibits disclosure *by a provider* of confidential mental health information "except when permitted or required by statutory or other law," or when the patient has consented. These statutes are factually distinguishable from our scenario. In particular, Section 44-22-90 contains an express exception for "information related through the course of a court-ordered psychiatric examination if the information is admissible only on issues involving the patient's mental condition." In any event, a state statute mandating confidentiality would be superseded by a constitutional provision mandating access in the event of a conflict.
2. S.C. Constitution Art. I § 10, which mandates that "[t]he right of the people to be secure . . . against . . . unreasonable invasions of privacy shall not be violated." This is legally distinguishable from the question here, in part because Art. I § 24 is a specific provision enacted later in time than the general provision in Art. I § 10. Additionally, the two Sections may be readily read in harmony with each other in part due to the shared reference to reasonableness. This Section may also be factually distinguishable based on the defendant's consent to disclosure to the court.

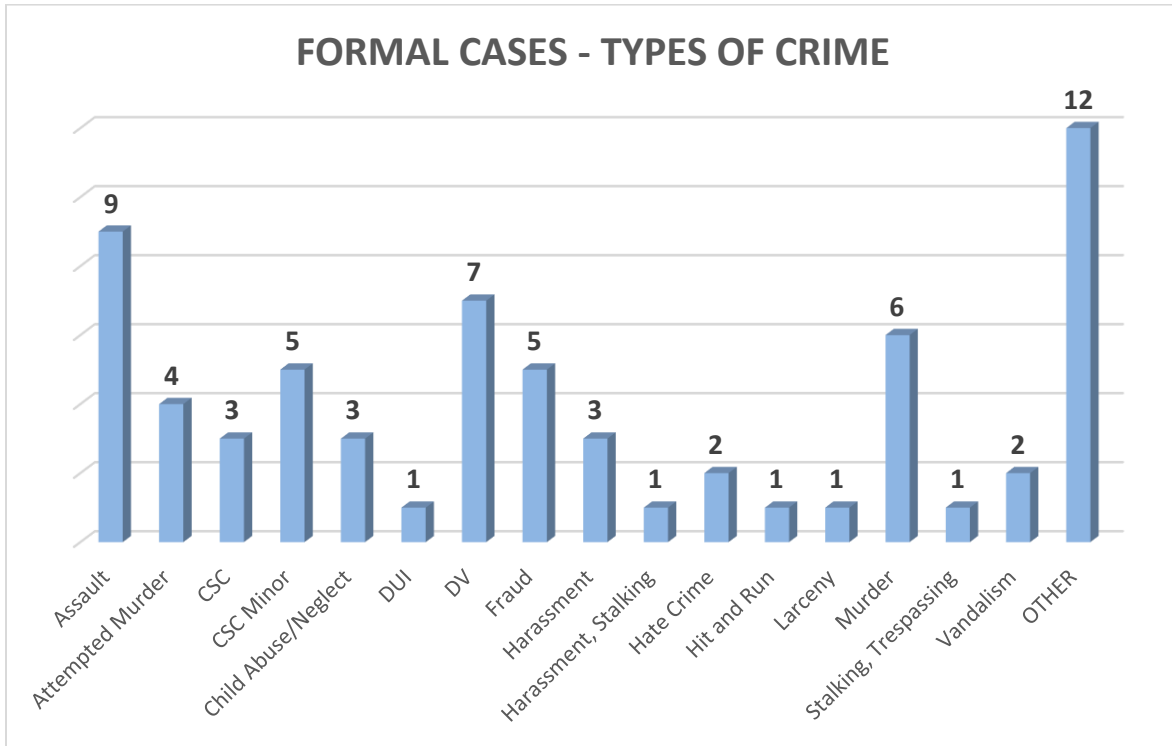
### **Relevant Law:**

**S.C. Constitution, Article I, Section 24** (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:

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

**CONCLUSION:** Since the mental health evaluations are “documents relating to the crime against the victim,” we believe a court would conclude that the victim has a right to reasonable access to them. CVO concluded that the Solicitor should allow the family to review the mental health evaluations upon which the prosecutorial decision was based. We further noted that nothing in the constitution allows victims to retain copies of the documents; rather, review of the materials should be conducted in the Solicitor’s Office. The Solicitor agreed with our analysis and allowed the family members to review the mental health evaluations.

The complaint against the Solicitor was **FOUNDED**.



Note: 49 individual cases reported, more than one entity reported and investigated for alleged violations of victims’ rights (56 agency inquiries). “Other” includes submissions that do not allege a crime, or the complainant is not a victim.

## **Formal Case Summary 2**

**Crime:** DVHAN

**Complaint:** Victim was not notified of offender’s release from jail; Solicitor did not confer with Victim; Solicitor did not notify Victim for court.

**Subject of Complaint:** Detention Center, Solicitor

**Scenario:** An offender severely assaulted his wife in front of their three minor children. He was arrested and charged with Domestic Violence of a High and Aggravated Nature. The victim was present at the first bond hearing where she requested that bond be denied since she feared the offender would retaliate. Bond was denied and the case was transferred to General Sessions Court. The victim discovered via social media that the offender had been released from jail 38 days after his arrest. The victim was not notified.

**CVO Inquiry:** CVO's inquiry discovered that the offender had an extensive criminal record for violent assaults against this victim and had been in jail for another assault on the victim only a few months prior to this case. The Victim Impact Statement (VIS) was mailed to the victim on December 4. The Public Index showed the offender pled guilty to Assault and Battery 3<sup>rd</sup> Degree on December 12.

The Solicitor Advocate had been out that week. The Assistant Solicitor alleged s/he tried to contact the victim to attend what was supposed to be a second bond hearing but noted that the victim did not return the Victim Impact Statement, nor did the Assistant Solicitor have the entire case file from law enforcement. Apparently, the judge was addressing the offender's other outstanding charges on that date so, ostensibly to fill valuable court time, the Assistant Solicitor allowed the offender to plead guilty to AB3d.

CVO contacted the judge to determine whether or not he verified with the Assistant Solicitor that the victim had been reasonably notified so that she could attend the hearing in accordance with S.C. Code §16-3-1550(D). He admitted that he had not.

CVO requested a meeting with the Assistant Solicitor, the Solicitor and the Judge. Our discussion focused on the following issues which were concerns raised by our office and theirs:

1. The victim did not return the Victim Impact Statement which signified to the Solicitor's Office that she did not wish to be present.
2. Victims of domestic violence often do not participate in the criminal justice process.
3. Neither the court nor the Solicitor's Office was aware of the offender's criminal history.
4. Victims have the right to confer with prosecution before disposition.

## **CVO Analysis:**

### **1. Victim Impact Statements**

The Solicitor's Office relies upon the return of a written form "Victim Impact Statement" (VIS) to alert them about whether or not a victim wishes to be notified, present and heard during the disposition of their case. While it can be very helpful to have the form as an indication of a victim's interest in participating in the criminal justice process, the VIS was not intended to serve in that capacity. Additionally, front-line advocates working in law enforcement and non-profit organizations do not advise victims that they *must* return a victim impact statement; only that they must provide their contact information to the Solicitor's office.

*“The purpose of victim impact statements is to allow crime victims, during the decision-making process on sentencing or parole, to describe to the court or parole board the impact of the crime.”*

National Crime Victim Center

*“A victim impact statement is a written statement that describes the physical or emotional harm, property damage, or economic loss that the victim of an offence has suffered. The Court must take the statement into account when sentencing an offender.*

*The victim impact statement gives victims of crime a voice in the criminal justice system. It allows victims to explain to the Court and the offender, in their own words, how the crime has affected them.”*

US Department of Justice

Victims in South Carolina have an obligation to notify the Solicitor’s Office if they wish to be present and participate in the criminal justice process:

S.C. Code §16-3-1515 (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.

Solicitors must offer help in preparing the victim impact statement:

S.C. Code §16-3-1545 (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.

In this case, the VIS was mailed out 12/4 and the hearing was held on 12/12 – within six business days. This was not adequate time for the Solicitor to determine that a victim is “waiving her rights.”

**Recommendation 1:** While a victim may indicate their desire to be notified on a victim impact statement, the law allows for victims to contact your office in other ways, including a telephone call, to assert their right to be notified. If victims call or email wishing to be notified, please instruct your Advocates to fill out a Victim Impact Form for them, along with updated contact information, and place it in the file for prosecutors. Also, victims need a minimum of three weeks to prepare and return a Victim Impact Form.

## **2. Victims of domestic violence often do not participate in the criminal justice process.**

CVO determined that Advocates from the local Domestic Violence Center who were working with the survivor requested that the Solicitor’s Office notify them about any hearings involving this offender. This was a special request and *not* one of the Solicitor’s legal duties. In this instance, the offender had

been arrested twelve times and convicted six times for serious, violent crimes, including against this victim. He was sentenced to ten years in prison in 2016, serving one year at S.C. Department of Corrections and one year on probation. Less than one year after his release he was rearrested for fleeing police with his three children in the car, as well as the new DVHAN charge. All of these factors are lethality indicators of a survivor who was in serious jeopardy.

CVO explained to the Solicitors that the Advocates' purpose in requesting notification was to help change the life of this woman and her children, and to provide support and transportation to the hearing in the event she needed it. They could have also provided historical information to the Solicitor about the violent history of this couple to help guide them in prosecutorial decisions.

**Recommendation 2:**

Survivors of family violence can be reluctant to participate in the criminal justice process. In these cases, it is often helpful to collaborate with local domestic abuse centers and law enforcement advocates to foster communication with the survivor and participation in the case's prosecution. Working together, Advocates support survivors emotionally, provide transportation and court accompaniment, help gather information about prior arrests and threats in order to make informed prosecutorial decisions. (Domestic violence centers offer many more resources to survivors; the above are just a few.) Consider collaborating with both the domestic abuse center and law enforcement advocates in cases like this, where:

- 1) the offender was charged with a felony offense;
- 2) children witnessed the violence;
- 3) the judge denied bond; and
- 4) where you DO NOT receive a Victim Impact Form.

CVO provided the names and contact information of all local Advocates both system-based and non-profit survivor support agencies.

**3. Neither the Court nor Solicitor was aware of the offender's criminal history at the time of the plea.**

The prosecutor did not have the entire file from law enforcement at the time of the plea. During a meeting with the Solicitors and the Judge, they asserted that the NCIC report was relatively "clean" for this offender. Our cursory check of the Public Index revealed twelve arrests and six convictions in a neighboring county for him, so we ordered an NCIC report. The incident report listed the offender's name, DOB and driver's license number, and the report was easily accessible to us. Those arrests plus numerous others were listed in his criminal history.

**CVO Inquiry:** The Solicitors stated that due to lack of personnel to check the Public Index and acquiring an NCIC report that listed "no crimes," neither the Court nor their Office was aware of the offender's extensive criminal history, including multiple instances of domestic violence.

CVO obtained a copy of the erroneous NCIC support upon which the Solicitor relied to determine the offender's prior criminal record. The search utilized did not contain enough information to properly identify the offender. The Solicitor also admitted that no one checked the Public Index to check his criminal history in that county or neighboring counties.

CVO consulted with SLED's NCIC manager to provide recommendations to the Solicitor's Office to ensure accurate reports could be obtained. SLED advised to enter the suspect's name, birthdate and Social Security number into the system.

**Recommendation 3:** Personnel working with the Solicitor's Office needed NCIC training.

**4. Victims have the right to confer with prosecution before disposition.**

**CVO Inquiry:** The Solicitor admitted s/he did not confer with the victim before disposition.

CVO Analysis: The victim of a crime that is being prosecuted by a solicitor has a legislatively-recognized interest in the outcome of that case. For that reason, the South Carolina Constitution mandates:

... 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 S.C. Const. Art. 1 Sec. 24(A)(7)

Statutory law also requires the prosecutor to discuss the case with victims:

S.C. Code §16-3-1545 (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.

Moreover, S.C. Code §16-3-1535 and S.C. Code §17-25-322 gives victims the right to have the court consider the economic, physical, and psychological effect of the crime on the victim. Whether a victim has been informed about an agreement that could result in a reduction of charges, and the effects of the crime upon the victim are relevant considerations for a court trying to decide whether or not to accept a proposed plea deal is in the public interest.

**Outcome:**

The provision of victims' statutory and constitutional rights can have a significant impact on a victim's perceptions of, and satisfaction with, the criminal justice system. For some victims, the deprivation of a right exacerbates the feelings of helplessness they already feel as a result of the crime. It is in the best interest of the victim and the overall justice system that public officials make sincere and meaningful efforts to comply with their constitutional and statutory duties to victims of crime.

In this case, the Solicitor's Office made the following changes to its policies and procedures:



1. Assigned one Senior Prosecutor to handle all domestic violence cases throughout the circuit. The dedicated, full-time prosecutor has and will continue to attend domestic violence prosecution trainings to ensure the use of best practices.
2. Began sending a second notification to all domestic violence victims, in addition to the victim impact statement, informing them of the court appearance dates and asking them to attend the initial appearance. One domestic violence prosecutor is available to discuss the specifics of each case privately with each victim.
3. Provided court schedule and dates of appearances to the local Domestic Violence Center to invite them to meet with survivors they are currently assisting, as well as new survivors they may not have met, to offer additional assistance.
4. All NCIC certified staff members will receive updated training.
5. Emphasized the importance of proper victim notification to all prosecution staff during recent attorney-staff meeting.

The complaints against the Solicitor's Office were **FOUNDED**.

### **Formal Case Summary 3**

**Crime:** No crime

**Complaint:** A website was publishing defamatory remarks about Complainant.

**Subject of Complaint:** Other

**Scenario:** Complainant alleged a man performed a search for his name and located personal information and a "rating" about him that he did not consent to have published. He requested our help to take it down and help him recover any reparations due to him.

**CVO Inquiry:** CVO did not conduct an inquiry.

**Outcome:** We explained to the Complainant that personal information about most people is now readily available all over the internet. We advised him to seek the assistance of an attorney to determine whether any remedies were available to him.

The complaint was **DISMISSED**.



## **STATUTORY AUTHORITY: South Carolina Crime Victim Ombudsman**

Established in 1994 by S.C. Code §§16-3-1620-1690, the Office of the Crime Victim Ombudsman is statutorily defined:

### **SECTION 16-3-1610.** Definitions.

As used in this article:

- (1) "Criminal and juvenile justice system" means circuit solicitors and members of their staffs; the Attorney General and his staff; law enforcement agencies and officers; adult and juvenile probation, parole, and correctional agencies and officers; officials responsible for victims' compensation and other services which benefit victims of crime, and state, county, and municipal victim advocacy and victim assistance personnel.
- (2) "Victim assistance program" means an entity, whether governmental, corporate, nonprofit, partnership, or individual, which provides, is required by law to provide, or claims to provide services or assistance, or both to victims on an ongoing basis.
- (3) "Victim" means a person who suffers direct or threatened physical, emotional, or financial harm as the result of an act by someone else, which is a crime. The term includes immediate family members of a homicide victim or of any other victim who is either incompetent or a minor and includes an intervenor.

### **SECTION 16-3-1620.** 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.

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

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

In carrying out the inquiry, the ombudsman is authorized to request and receive information and documents from the complainant, elements of the criminal and juvenile justice systems, and victim assistance programs that are pertinent to the inquiry. Following each inquiry, the ombudsman shall issue a report verbally or in writing to the complainant and the persons or agencies that are the object of the complaint and

recommendations that in the ombudsman's opinion will assist all parties. The persons or agencies that are the subject of the complaint shall respond, within a reasonable time, to the ombudsman regarding actions taken, if any, as a result of the ombudsman's report and recommendations.

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

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

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

**SECTION 16-3-1650.** Cooperation with the criminal and juvenile justice systems and victim assistance programs. All elements of the criminal and juvenile justice systems and victim assistance programs shall cooperate with the ombudsman in carrying out the duties described in Sections 16-3-1620 and 16-3-1630.

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

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

**SECTION 16-3-1670.** Purpose.

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

**SECTION 16-3-1680.** 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.

**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.



# CONSTITUTION OF THE STATE OF SOUTH CAROLINA

## ARTICLE I, SECTION 24

Passed January 22, 1998

### SECTION 1. SECTION 24 (A). 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.
- (B) Nothing in this section creates a civil cause of action on behalf of any person against any public employee, public agency, the State, or any agency responsible for the enforcement of rights and provision of services contained in this section. The rights created in this section may be subject to a writ of mandamus, to be issued by any justice of the Supreme Court or circuit court judge to require compliance by any public employee, public agency, the State, or any agency responsible for the enforcement of the rights and provisions of these services contained in this section, and a willful failure to comply with a writ of mandamus is punishable as contempt.

(C) For purposes of this section:

(1) A victim's exercise of any right granted by this section is not grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.

(2) "Victim" means a person who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a crime against him. The term "victim" also includes the person's spouse, parent, child, or lawful representative of a crime victim who is deceased, who is a minor or who is incompetent or who was a homicide victim or who is physically or psychologically incapacitated.

(3) The General Assembly has the authority to enact substantive and procedural laws to define, implement, preserve, and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.

(4) The enumeration in the Constitution of certain rights for victims shall not be construed to deny or disparage others granted by the General Assembly or retained by victims.

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We welcome any feedback, comments, concerns or questions regarding this Annual Report and/or the services we provide. Please feel free to contact us at any time at **803-734-0357**.



**“FOR TOO LONG, THE VICTIMS HAVE  
BEEN THE FORGOTTEN PERSONS OF OUR  
CRIMINAL JUSTICE SYSTEM.**

**THEY HAVE BEEN TRANSFORMED INTO A  
GROUP OPPRESSIVELY BURDENED BY A  
SYSTEM DESIGNED TO PROTECT THEM.”**

PRESIDENT RONALD REGAN



**South Carolina  
Crime Victim Ombudsman**

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