



**CRIME VICTIMS' RIGHTS:  
A QUICK REFERENCE GUIDE  
FOR CONSTITUTIONAL,  
STATUTORY, AND CASE LAW**

**South Carolina Victim Assistance Network  
P.O. Box 212863  
Columbia, SC 29221  
(803) 750-1200  
[www.scvan.org](http://www.scvan.org)**

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**1st Edition Edited by:**

**Daniel S. Evans, Esq.**

**Rebekah Hiatt, Esq.**

**Lindsey D. Jacobs, Esq.**

**Hali M. Selert, J.D. Candidate '19, Univ. of South Carolina School of Law**

**Alexander P. Zuraff, J.D. Candidate '18, Univ. of South Carolina School of Law**



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## **TABLE OF CONTENTS**

<b>Note from the Editors</b>	p. 1
<b>South Carolina Victims' Bill of Rights</b>	pp. 2-3
<b>Foundational Rights</b>	p. 3
<b>Right to Due Process</b>	p. 4
<b>Right to Privacy</b>	p. 4
<b>Participatory Rights</b>	pp. 4-5
<b>Right to Notice</b>	pp. 5-6
<b>Right to Protection</b>	p. 6
<b>Right to Be Present</b>	p. 7
<b>Right to Be Heard</b>	p. 7
<b>Right to Confer</b>	p. 8
<b>Right to Restitution</b>	pp. 8-10
<b>Right to Writ of Mandamus</b>	pp. 10-11
<b>Orders of Protection vs. Restraining Orders</b>	p. 11
<b>Orders of Protection</b>	p. 11
<b>Permanent Restraining Orders</b>	pp. 12-13
<b>Temporary Restraining Orders</b>	p. 13
<b>Emergency Restraining Orders</b>	pp. 13-14

*Note from the Editors:*

Crime victims' rights enforcement is an emerging area of the law in South Carolina and across the United States. The purpose of this publication is to provide practitioners new to crime victims' rights enforcement with a "quick reference" guide to our State's applicable laws. This publication is in no way a substitute for reading, in their entirety, the Victims' Bill of Rights and the crime victims' rights statutes.

We urge you to keep in mind the breadth of legal issues affecting crime victims. Victimization can permeate every aspect of a person's life, including but not limited to their housing, employment, education, and familial relations. This publication is not intended to address all civil legal needs of a crime victim. We encourage you to seek out the resources of other victims' rights and legal service organizations, provided in the list below.

**National Crime Victim Law Institute**

[www.ncvli.org](http://www.ncvli.org)

**Victim Rights Law Center**

[www.victimrights.org](http://www.victimrights.org)

**National Alliance of Victims' Rights Attorneys**

[www.navra.org](http://www.navra.org)

**South Carolina Legal Services**

[www.sclegal.org](http://www.sclegal.org)

**South Carolina Coalition Against Domestic Violence and Sexual Assault**

[www.sccadvasa.org](http://www.sccadvasa.org)

**South Carolina Crime Victims' Ombudsman**

[www.cvo.sc.gov](http://www.cvo.sc.gov)

**South Carolina State Office of Victim Assistance**

[www.sova.sc.gov](http://www.sova.sc.gov)

## SOUTH CAROLINA VICTIMS' BILL OF RIGHTS

S.C. Const. art. I, § 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:

(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.

### **FOUNDATIONAL RIGHTS**

Under the South Carolina Victims' Bill of Rights, S.C. Const. art. I, § 24(C)(2), a 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 [them]." The term also includes the person's spouse, parent, child, or lawful representative of a crime victim who is deceased, who is a minor or incompetent or who was a homicide victim or who is physically or psychologically incapacitated. *Id.* This broad definition of victim allows not only the actual, harmed victim to assert the rights enumerated under the Victims' Bill of Rights but also grants a victim's family the ability to assert the same rights.

The foundational rights of victims include the Right to Due Process and the Right to Privacy.

## **Right to Due Process**

The Victims' Bill of Rights preserves and protects victims' rights to justice and due process regardless of race, sex, age, religion, or economic status. The right to due process is based in the U.S. Const. amend. XIV, § 1. This same right is reiterated in the S. C. Const. art. I, § 3 which states, "Nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

## **Right to Privacy**

South Carolina's Constitution grants an explicit right to privacy to the citizens of the state. S.C. Const., art. I, § 10. A federal right to privacy is implied in the U.S. Constitution. See Roe v. Wade, 410 U.S. 113, 114 (1973).

A mental health provider shall not reveal his client's confidences absent a court order for good cause shown to the extent that the patient's care and treatment or the nature and extent of their mental illness or emotional condition are reasonably at issue in a proceeding; provided, however, confidences revealed shall not be used as evidence of grounds for divorce. S.C. Code § 19-11-95(D)(1) (2017). A marriage and family therapist must maintain the same privileged communications and patient confidentiality as a mental health provider. § 40-75-190(B).

A victim's sexual history is generally inadmissible. § 16-3-659.1.

## **PARTICIPATORY RIGHTS**

The South Carolina Victims' Bill of Rights provides that a victim of a crime has the right to participate throughout the criminal or juvenile process. These rights are provided regardless of the court in which the case is brought. Participatory rights include: Right to Notice, Right to Protection, Right to Be Present, Right to Be Heard, Right to Confer, Right to Restitution, and Right to Writ of Mandamus.

"The applicable statute of limitations for a crime victim...is tolled and does not expire until three years after the offender's release from the sentence including probation and parole time or three years after release from commitment pursuant to Chapter 48 of Title 44, whichever is later." S.C. Code § 16-3-1110(C) (2017).

However, this provision shall not shorten any other tolling period of the statute of limitations which may exist for the crime victim. Id.

### **Right to Notice**

Law enforcement must make reasonable attempts to notify a victim of an accused's arrest, detention, release, transfer, and/or escape. S.C. Code § 16-3-1525 (2017). These attempts may be electronic or automated, unless three attempts to reach the victim are unsuccessful. § 16-3-1525(N)(1). At that point, law enforcement shall attempt to make personal contact. Id. The arresting law enforcement agency must provide, in writing, to the prosecuting agency before a bond or release hearing, the name, address and telephone number of each victim. §§ 16-3-1525(C)-(F).

In cases in which a defendant has bond set, the arresting agency or the prosecuting agency must reasonably attempt to notify the victim of their right to attend the bond hearing and make recommendations to the presiding judge. §§ 16-3-1525(H)-(J). Such notice must be made sufficiently in advance as to allow the victim to exercise their rights. Id. The judge must, before proceeding with a bond hearing in a case involving a victim, ensure that a reasonable attempt was made to notify the victim sufficiently in advance to attend the proceeding. Id. If notice was not given in a timely manner, the hearing must be delayed for a reasonable time to allow notice. Id.

When a juvenile case is referred, or a general sessions charge is received, the prosecuting agency must reasonably attempt to notify a victim of their right to submit an oral or written victim impact statement. § 16-3-1545(A). The prosecuting agency must inform victims of how the criminal and juvenile justice systems work; their right to legal counsel and possible civil remedies; financial assistance, compensation, and fees to which they may be entitled; the updated status and progress of a case, upon request; the timing of each hearing, trial, or other proceeding; and, counselors, social service agencies, and victim assistance providers, as appropriate. §§ 16-3-1545(C)-(M).

A victim of a crime has the right to be informed of any proceeding when any post-conviction action is being considered and the right to be present at any post-conviction hearing involving a post-conviction release decision. S.C. Const. art. I, § 24(A)(10). The Department of Corrections, Department of Probation, Parole,



and Pardon Services, and the Department of Juvenile Justice shall reasonably attempt to notify victims who indicated their desire to be notified of post-conviction proceedings related to probation, parole, or release of the offender and of the victim's right to be present at probation, parole, or release proceedings of said proceedings. S.C. Code § 16-3-1560(A) (2017). The victim must also be notified that a written victim impact statement may be submitted at any post-adjudication proceeding by the Department of Corrections, Department of Probation, Parole and Pardon Services, the Board of Juvenile Parole, or the Department of Juvenile Justice. § 16-3-1545(A). The Attorney General must keep each victim reasonably informed of the status and progress of the appeal or other post-conviction proceedings, including proceedings brought under the Sexually Violent Predator Act, until their resolution. § 16-3-1560(E). The Attorney General must attempt to notify a victim of all post-conviction proceedings and of their right to attend. This notice shall be sufficiently in advance to allow the victim to exercise [their] rights pertaining to post-conviction proceedings. § 16-3-1560(F).

### **Right to Protection**

A crime victim is afforded vigorous protection of their victims' rights. Crime victims have the right to "be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process." S.C. Const., art. I, § 24(A)(6).

When the defendant has a bond set by a summary court judge, bond proceeding before a circuit court judge, or a juvenile defendant has a detention proceeding before a family court judge, the judge must all impose conditions that are sufficient to protect a victim from harassment or intimidation by a defendant, or someone acting on a defendant's behalf. S.C. Code §§ 16-3-1525(H)(1), (I)(3), and (J)(3) (2017).

A judge must recognize and protect the rights of victims and witnesses as diligently as those of a defendant. § 16-3-1550(D). Law enforcement agencies must provide any measures necessary to protect the victims and witnesses, including transportation to and from court, and physical protection in the courthouse. § 16-3-1525(G).

## **Right to be Present**

A crime victim has the right to “be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present.” S.C. Const., art. I, § 24(A)(3).

If a crime victim desires to be present at any plea, trial, or sentencing court proceedings, that victim “must notify the prosecuting agency or summary court judge of [their] desire to be present.” S.C. Code § 16-3-1515(C).

When a summary court retains jurisdiction over an offense involving a crime victim, the court must reasonably attempt to notify the crime victim of their right to, among other things, “be present and participate in all hearings.” § 16-3-1535(A)(1).

Crime victims also have the right to “be informed of any proceeding when any post-conviction action is being considered and be present at any post-conviction hearing involving a post-conviction release decision.” S.C. Const., art. I, § 24(A)(10).

## **Right to be Heard**

A crime victim has the right to submit either an oral or written statement at all hearings affecting bond or bail and to be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing. S.C. Const., art. I, §§ 24(A)(4)-(5).

The prosecuting agency must provide a form to each victim who wishes to make a written victim impact statement which requests pertinent information about the offense’s effect on the victim. S.C. Code § 16-3-1545(A) (2017).

Additionally, the prosecuting agency must offer the victim assistance in creating a written impact statement and preparing, reviewing, and updating a victim impact statement. § 16-3-1545(B). Crime victims must be notified that a written victim impact statement may be submitted at any post-adjudication proceeding. § 16-3-1545(A).

If a crime victim wishes to submit a victim impact statement (written or oral), they must present it to the prosecuting agency or summary court judge within

an appropriate time limit set forth by the agency or judge. § 16-3-1515(D).

### **Right to Confer**

Under the South Carolina Constitution, a crime victim has the right to “confer with 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. I, § 24(A)(7).

A crime victim has the right to have the prosecuting agency, including the Attorney General (at the appellate level), discuss the case with them. The prosecuting agency “must confer with each victim about the disposition of the case including, but not limited to, diversions and plea negotiations.” S.C. Code §§ 16-3-1545(H), 1560(D) (2017).

### Case Law

Reed v. Becka, 333 S.C. 676, 683-684 (Ct. App. 1999): A crime victim has the right to be kept abreast of important prosecutorial events and has the right to confer with the prosecution. The victim of a crime does not have the right to veto a plea agreement. Crime victims must be notified of plea offers, but they do not have the right to reject a proposed plea offer and usurp a prosecutor’s unfettered discretion when it comes to plea negotiations. A solicitor’s prosecutorial discretion is not contracted or limited by victims’ rights laws.

### **Right to Restitution**

Pursuant to the South Carolina Constitution, a crime victim has the right to “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.” S.C. Const., art. I, § 24(A)(9).

Restitution is payment for all injuries, specific losses, and expenses sustained by a crime victim resulting from an offender's criminal conduct. It includes, but is not limited to: (a) medical and psychological counseling expenses; (b) specific damages and economic losses; (c) funeral expenses and related costs; (d) vehicle impoundment fees; (e) child care costs; and (f) transportation related to a victim's participation in the criminal justice process. S.C. Code § 16-3-

1110(A)(11) (2017). Restitution does not include awards for pain and suffering, wrongful death, emotional distress, or loss of consortium. § 16-3-1110(B).

In order for a crime victim to receive restitution, they must provide the prosecuting agency or summary court judge with an itemized list, which includes the following: the values of property stolen, damaged, or destroyed; property recovered; medical expenses or counseling expenses, or both; income lost as a result of the offense; out-of-pocket expenses incurred as result of the offense; any other financial losses that may have been incurred; an itemization of financial recovery from insurance, the offense victim compensation fund, or other sources. § 16-3-1515(B). When pecuniary damages or loss to a crime victim has occurred, the court must hold a hearing to determine the amount of restitution due to the crime victim(s). § 17-25-322(A).

When a defendant has been ordered to make restitution by a magistrate or municipal court, and the defendant is in default, the court, within one (1) year of the imposition of the sentence, upon motion of the victim or victims' legal representative, solicitor, or prosecuting law enforcement agency, or upon its own motion, must hold a hearing to require the defendant to show cause why his default should not be treated as a civil judgment and a judgment lien attached. § 17-25-323(B). The court must enter "judgment in favor of each person entitled to restitution for the unpaid balance if any restitution is ordered plus reasonable attorney's fees and cost ordered by the court." § 17-25-323(B)(2).

Upon a conversion to a civil judgment, the magistrate or municipal court *must* transmit the judgment to the clerk of the circuit court in the county for entry and must be handled in the same manner and have same force and effect as judgments entered and docketed. § 17-25-323.

#### Case Law

State v. Morgan, 417 S.C. 338, 341-344 (Ct. App. 2016).: The court held that the execution of a civil settlement and covenant between the assault victim and defendant prior to sentencing did not preclude an award of restitution. The court stated that civil settlements and criminal restitution are distinct remedies with different considerations because a civil judgment is not limited to pecuniary loss when addressing crime victims' damages, whereas criminal restitution considers only pecuniary damages or loss.

State v. Cox, 326 S.C. 440, 441-443 (Ct. App. 1997).: A defendant who claims they were less culpable for a crime than a co-defendant can be held jointly and severally liable for restitution in order to assure a victim is fully compensated. See also S.C. Code § 16-3-1530(D)(3).

South Carolina Dept. of Probation, Parole and Pardon Services ex rel. State v. Reynolds, Op. No. 2005-UP-137 (S.C. Ct. App. filed Feb. 24, 2005) (unpublished opinion)<sup>1</sup>.: Once an individual is placed on probation, any restitution owed by that defendant must be collected and distributed by the Department of Probation, Parole and Pardon Services.

### **Right to Writ of Mandamus**

Victims have not traditionally intervened directly in the criminal justice process. However, the Victims' Bill of Rights provides that victims' rights may be enforced through a writ of mandamus. These writs can issued by any Supreme Court Justice or circuit court judge and 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 the Victims' Bill of Rights. S.C. Const., art. I, § 24(B).

Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced or a positive duty to be performed, and there is no other specific remedy available. Willimon v. City of Greenville, 243 S.C. 82, 86 (1963). It is a coercive writ that orders a public official to perform a ministerial duty. Plum Creek Dev. Co. Inc. v. City of Conway, 334 S.C. 30, 39 (1999). This must be a mandatory legal duty of the public official's job. Redmond v. Lexington County School Dist. No. Four, 445 S.E.2d 441, 445 (1994). The primary purpose of a writ of mandamus is to enforce an established right and a corresponding imperative duty created or imposed by law. Id.

When a Petitioner seeks a writ of mandamus, they must show (1) a duty upon the Respondent to perform the act; (2) the duty is ministerial in character; (3) the Petitioner has a specific legal right for which the discharge of duty is necessary; and, (4) the Petitioner has no other legal remedy. Willimon, 243 S.C. at 87.

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<sup>1</sup> This is an unpublished opinion which means that it has no precedential value. Its inclusion in this manual is for illustration purposes only.

When the legal right is doubtful, the performance of duty rests in discretion, or when there is another adequate remedy, a writ of mandamus cannot rightfully be issued. In the Interest of Lyde, 284 S.C. 419, 421 (1985).

Victims currently have no right to appeal a criminal court's adjudication. However, victims' rights attorneys and organizations do file Amicus Curiae briefs at the Appellate level when appropriate.

## **ORDERS OF PROTECTION vs. RESTRAINING ORDERS**

### **Orders of Protection**

An order of protection is issued to protect a victim from the abuse of a household member. S.C. Code § 20-4-20(f) (2017). A petition for relief may be made by any household members in need of protection, or by any household members on behalf of minor household members. § 20-4-40(a).

A petition for relief must allege the existence of abuse to a household member. § 20-4-40(b). It must state the specific time, place, details of the abuse, and other facts and circumstances upon which relief is sought; this information must be verified. *Id.* The petition must also inform the respondent of the right to retain counsel. § 20-4-40(c).

The clerk of court must provide simplified forms which will facilitate the preparation and filing of a petition by any person not represented by counsel. § 20-4-40(e). The clerk of court may not charge a fee for filing a petition for an order for protection from domestic abuse. § 20-4-40(f).

An order of protection may: (1) temporarily enjoin the respondent from abusing, threatening to abuse, or molesting the person for who the petition was filed; and (2) temporarily enjoin the respondent from communicating or attempting to communicate with the petitioner in violation of this chapter and temporarily enjoin the respondent from entering or attempting to enter the petitioner's place of residence, employment, education, or other location as the court may order. § 20-4-60(A).

When the court has issued an order of protection, it may, in addition: (1) award temporary custody and visitation rights with regard to minor children living in the home over whom the parties have custody; (2) direct the respondent to pay temporary financial support for the petitioner and minor child as long as the respondent has a duty to support; (3) when the respondent has a legal duty to

support the petitioner or minor children living in the household, and the residence is jointly leased or owned by the parties, or the respondent is the sole owner or lessee, grant temporary possession of the residence to the exclusion of the respondent; (4) prohibit the transferring, destruction, encumbering, or otherwise disposing of real or personal property mutually owned or leased by the parties or in which one party claims an equitable interest, except when in the ordinary course of business; (5) provide for temporary possession of personal property, including pet animals, of the parties and order assistance from law enforcement in removing personal property of the petitioner if the respondent's eviction has not been ordered; (6) award costs and attorney's fees to either party; (7) award any other authorized relief with due regard for any prior family court orders; and (8) prohibit harm or harassment against any pet animal owned, possessed, kept, or held by the petitioner, family or household member designated in the order, or the respondent. § 20-4-60(C).

An order of protection must be for a fixed time not less than six months and not more than one year. It may be extended or dismissed by order of the court upon motion by either party showing good cause. § 20-4-70(A).

### **Permanent Restraining Orders**

Permanent restraining orders are injunctions or other orders, issued by a tribunal under the domestic violence, family violence, or anti-stalking laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual. Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act § 2(5) (2002).

The following individuals may seek a permanent restraining order: the victim of a crime in South Carolina, a competent adult who resides in South Carolina on behalf of a minor victim of an offense that occurred in South Carolina, or a witness who assisted the prosecuting entity in the prosecution of a criminal offense that occurred in South Carolina. S.C. Code § 16-3-1910(C) (2017).

The circuit court and family court have jurisdiction over an action seeking a permanent restraining order. § 16-3-1910(A). To seek a permanent restraining order, a person must: (1) request the order in general sessions or family court at the time the respondent is convicted for the offense, or (2) file a summons and complaint in common pleas court in the county in which the respondent resides when the action commences, the criminal offense occurred, or the complainant

resides if the respondent is a nonresident of the State or cannot be found. § 16-3-1910(B).

The terms of a permanent restraining order must protect the victim or witness and may include enjoining the respondent from: (1) abusing, threatening to abuse, or molesting the victim, witness, or members of the witness's family; (2) entering or attempting to enter the victim or witness's place of residence, employment, education, or other location; and (3) communicating or attempting to communicate with the victim, witness, or witness's family in a way that would violate the provisions of this section. § 16-3-1910(K).

A permanent restraining order remains in effect for a period of time to be determined by the judge. § 16-3-1910(M)(1). If a victim or witness is a minor at the time the order is issued on the minor's behalf, upon reaching the age of eighteen, they may file a motion with the circuit court to have the permanent restraining order removed. Id. The court may modify the terms of the order upon request of the complainant, including extending the duration of the order or lifting the order. § 16-3-1910(M)(2).

### **Temporary Restraining Orders**

The terms of a temporary restraining order must protect the plaintiff and may temporarily enjoin the defendant from: (1) abusing, threatening to abuse, or molesting the plaintiff or members of the plaintiff's family; (2) entering or attempting to enter the plaintiff's place of residence, employment, education, or other location; and (3) communicating or attempting to communicate with the plaintiff in a way that would violate the provisions of this article. S.C. Code § 16-3-1770(B) (2017).

A temporary restraining order remains in effect until the hearing on the Rule to Show Cause why the order should not be extended for the full one-year period. § 16-3-1780(A). A restraining order must be for a fixed period not to exceed one year, but may be extended by court order on a motion by the plaintiff, showing good cause, with notice to the defendant. § 16-3-1780(B). The defendant is entitled to a hearing on the extension of the order within thirty days upon which the order will expire. Id.

### **Emergency Restraining Orders**

The magistrate court has jurisdiction over an action seeking an emergency restraining order. S.C. Code § 16-3-1920(A) (2017). An emergency restraining



order remains in effect until a hearing on the restraining order. § 16-3-1920(L)(1). If a complainant does not seek a permanent restraining order within forty-five days of the issuance of an emergency restraining order, the emergency restraining order no longer remains in effect. Id. The court may modify the terms of an emergency restraining order. § 16-3-1920(L)(2).

Law enforcement, without an arrest warrant, shall arrest a respondent who is acting in violation of an emergency restraining order after service and notice of the order is provided. § 16-3-1920(N).