

**SOUTH CAROLINA BAR YOUNG LAWYERS DIVISION
VOICES AGAINST VIOLENCE COMMITTEE**

Presents



January 29, 2016

*USC School of Law
Columbia, South Carolina*

SOUTH CAROLINA BAR YOUNG LAWYERS DIVISION

VOICES AGAINST VIOLENCE COMMITTEE

Presents

Using the Law as a Sword and a Shield for Domestic Violence and Human Trafficking Survivors CLE

January 29, 2016

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AGENDA

- | | |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8:45 a.m. – 9:00 a.m.: | Registration |
| 9:00 a.m. – 9:10 a.m.: | Welcome |
| 9:10 a.m. – 10:10 a.m.: | Overview of New Domestic Violence Laws
<i>AAG Megan Gresham, SCAGO</i> |
| 10:10 a.m. – 11:10 a.m.: | Training for Civil Attorneys (Civil Protective Orders and Other
Legal Mechanisms to Protect Victims)
<i>Leslie Fisk, Esquire, SC Legal Services</i> |
| 11:10 a.m. – 11:20 a.m.: | Break |
| 11:20 a.m. – 12:20 p.m.: | Survivors' Panel: What Can Attorneys Be Aware of to Help
Interaction with Victims?
<i>Moderator: Johanna Valenzuela, Esquire</i>
<i>Chandra McPherson, Carrie Pettit, Valerie Ekue, & Julie Aldie</i> |
| 12:20 p.m. – 1:20 p.m.: | Lunch on your own |
| 1:20 p.m. – 2:20 p.m.: | Working with Immigrant Survivors - U & T Visas
<i>Patricia Ravenhorst, Esquire, SC Victim Assistance Network</i> |
| 2:20 p.m. – 3:20 p.m.: | Ethics in Enforcement of Domestic Violence Laws
<i>Amie Clifford, Esquire</i> |
| 3:20 p.m. – 3:30 p.m.: | Break |

3:30 p.m. – 4:30 p.m.:

Human Trafficking in South Carolina
AAG Marie Sazehn, SCAGO

4:30 p.m. – 5:30 p.m.:

Secondary Trauma, Burnout, and Compassion Fatigue: Mental
Health for the Attorney (SA/MH credit)
Jasmine Smith, Ed.S., Esq., and Danielle Dixon, Esquire

SC BAR YLD VOICES AGAINST VIOLENCE COMMITTEE CLE
Using the Law as a Sword and a Shield for Domestic Violence and Human Trafficking Survivors

Julie Aldie
jaldie@greenville.k12.sc.us

My name is Julie Aldie and I am 40 years old. I moved around quite a bit in my lifetime, but I mainly grew up in New Hampshire and Massachusetts. I graduated high school from Manchester Central High School, which is the alma mater of Adam Sandler. I received my BS in Exercise Science from Arizona State University. While in college, I worked for a medical company working with postoperative orthopedic patients. After moving back to Massachusetts, I realized I could no longer tolerate the cold and relocated to Greenville, South Carolina, in 2001.

In 2004, I became a Registered Nurse and worked in the third shift in the ER at Spartanburg Regional for about four years until I had my son, Jackson. I stayed home with him for almost a year due to his medical issues before returning to work as a private pediatric nurse.

Since 2008, I have worked with medically fragile children. These are children that have very serious conditions requiring ventilators to breathe and feeding tubes to eat. Most of my patients will never be able to speak or move, but they have a soul and personality that is so inspiring. I love being a nurse. My experience working with medically fragile children led me to a career with the Greenville County School System where I was employed as a substitute nurse and that eventually led to a full-time position at Oakview Elementary School for one year. Currently, I am one of four float nurses for the entire County of Greenville.

When I am not working, I'm enjoying my life with my son who is eight years old. He is the love of my life and the reason I work so hard to live a good peaceful life. I have been in a healthy relationship for over a year with Brad. He has three children, a dog, two hysterically funny cats, and two turtles. It is great to watch all the kids grow and change so much so fast. There is never a dull moment. As for me, I love to garden, hike, ski, kayak, try cooking experiments with Brad, swimming, and simply travel. In September, we traveled to the Netherlands and Venice and had a wonderful time. I truly love how travel opens my view of the world.

SC BAR YLD VOICES AGAINST VIOLENCE COMMITTEE CLE
Using the Law as a Sword and a Shield for Domestic Violence and Human Trafficking Survivors

Danielle Dixon
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South Carolina Court of Appeals
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Danielle Dixon is a Senior Staff Attorney at the South Carolina Court of Appeals. Danielle's duties as a Senior Staff Attorney include overseeing appeals from DSS abuse and neglect proceedings. Prior to working for the Court of Appeals, Danielle worked for South Carolina Legal Services, where she provided legal services for victims of domestic violence. Danielle graduated from the University of South Carolina School of Law in 2005. She lives in Columbia with her husband and her two children.

SC BAR YLD VOICES AGAINST VIOLENCE COMMITTEE CLE
Using the Law as a Sword and a Shield for Domestic Violence and Human Trafficking Survivors

Leslie Ragsdale Fisk
Family Law Unit Head/Staff Attorney
South Carolina Legal Services
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LeslieFisk@sclegal.org

Leslie Ragsdale Fisk has worked for South Carolina Legal Services for eight years; including four years in the Spartanburg Office and four years in the Greenwood Office. She previously held the position of Lead Domestic Violence Attorney, and was promoted to Family Law Unit Head in 2015. She chairs the Young Lawyer Division Cinderella Project for Greenwood County and serves on the South Carolina Bar's Wellness Committee. She graduated from the Bar's Leadership Academy in 2014 and tied for SCLS Attorney of the Year for 2014. Leslie was the 8th Judicial Circuit nominee for Young Lawyer of the Year for 2015. However, the award was given to a different deserving candidate. Leslie studied History and Business at Baylor University and attended law school at West Virginia University. She recently learned to scuba dive and looks forward to more adventures under the sea.

SC BAR YLD VOICES AGAINST VIOLENCE COMMITTEE CLE
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MEGAN K. GRESHAM
Assistant Attorney General
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211-1549

EDUCATION:

B.A. (Political Science), Furman University, Greenville, South Carolina (2006).
J.D., University of South Carolina School of Law, Columbia, South Carolina (2011).

BAR ADMISSIONS/PROFESSIONAL CERTIFICATIONS:

South Carolina (2012).

PROFESSIONAL EXPERIENCE:

Law Clerk for SCANA Corporation Office of the General Counsel (2007 – 2009);
Paralegal for Law Offices of Desa Ballard (2009 – 2011); Law Clerk for CDV prosecutor,
Fifth Judicial Circuit Solicitor's Office (2011 – 2012); Assistant Attorney General,
Prosecution/State Grand Jury, South Carolina Attorney General's Office (2012 – Present).

PUBLICATIONS:

Author of materials for CLE programs conducted by South Carolina Attorney General's
Office; contributor to/editor of statewide Domestic Violence Protocol.

TEACHING EXPERIENCE:

Statewide trainer to law enforcement, prosecutors, and judges on the 2015 Domestic
Violence Reform Act; speaker at statewide trainings sponsored by the South Carolina
Attorney General's Office for law enforcement, victim advocates, prosecutors, and the
judiciary on topics related to domestic violence, sexual assault, and human trafficking;
presenter on the Criminal Justice System for SCCADVASA CSP Core Certification
programs; presenter on CDV, Magistrates Advisory Council Intensive Training Seminar,
Magistrate Orientation School, and Magistrate Mandatory School; panelist, 2nd Annual Pro
Bono Summit concerning the South Carolina Attorney General's Office's Pro Bono
Program for CDV prosecutions; presenter on judicial ethics, 9th Annual Interpersonal
Violence Conference.

CURRENT PROFESSIONAL ACTIVITIES:

South Carolina Bar Young Lawyers' Division, Voices Against Violence Committee, Bar
Foundation Committee, and the Cinderella Project Committee; South Carolina Bar Law
Related Education Division and Mock Trial Subcommittee; volunteer judge at mock trial
competitions on the middle school, high school, college, and law school levels.

SC BAR YLD VOICES AGAINST VIOLENCE COMMITTEE CLE
Using the Law as a Sword and a Shield for Domestic Violence and Human Trafficking Survivors

Chandra C. McPherson
Director of Victims' Services
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Chandra C. McPherson is the Director of Victims' Services for the Orangeburg County Sheriff's Office. She oversees the day-to-day operation of the Victims' Services Unit. She is responsible for implementing programs and activities into the community highlighting the services offered by the Victim Services Unit. She assists in the training of advocates and law enforcement on meeting the needs of crime victims throughout the County. Throughout her career she has maintained the objective of ensuring that the rights of the victims are always protected and maintaining excellence in the services offered to the victim and/or their family.

Prior to joining, Orangeburg County Sheriff's Office, McPherson was a Department Manager with the Administration Department within the State Office of Victim Assistance (SOVA). She was responsible for communicating with members and other stakeholders as it related to the day-to-day working of the Victim Services Coordinating Council as a staffer and assist with providing non-partisan leadership in strategic planning efforts. She provided research and scheduled expert speakers for training as deemed appropriate and/or warranted for the Council. She also prepared regular progress reports and annual written reports that are submitted to the Governor and General Assembly. She was responsible for compiling information received from the Solicitor's offices and conducting site visits with their Victim/Witness Assistance Programs and distributing an annual report to all 16 Circuits. McPherson utilized her expertise as she conducted trainings providing technical support regarding inquiries relating to the fines, fees, and assessment monies used to assist agencies in meeting the needs of crime victims within the municipalities across the State. McPherson was also responsible for the oversight of the processing of all mail as well as serving as one of the agencies legislative liaisons.

McPherson served as the first civilian based Victim Services Coordinator for the South Carolina Highway Patrol developing a policy and procedure manual. She was responsible for providing services to victims of highway crimes to include DUI, reckless driving, reckless homicide, and hit and run. She assisted victims and their families with properly completing the crime victims' compensation applications. McPherson served as the liaison between victims and the Troopers. McPherson conducted in-service training for law enforcement as it relates to the needs and services of victims. McPherson was very instrumental in the implementation of a statewide program servicing the citizens of South Carolina. McPherson served as an advocate for Highway Safety awareness in schools and local civic organizations across the State. She also served as an advocate for the Orangeburg County Sheriff's Office. While at the Sheriff's Office, McPherson developed brochures and community outreach projects servicing victims of domestic violence. McPherson assisted victims throughout their legal process and provided overall support to the victims and their families.

McPherson is a graduate of the first South Carolina Victim Assistance Academy. She is a member of the South Carolina Law Enforcement Victim Advocate Association and became credentialed by the National Organization for Victim Assistance (NOVA) in 2006 as a certified Crisis Responder. McPherson has conducted and attended numerous trainings and special conferences. She has a vast knowledge of Victim Services and the protection of Victim's rights. She has also been granted certification as a victim service provider by South Carolina's Office of Victim Services Education and Certification.

SC BAR YLD VOICES AGAINST VIOLENCE COMMITTEE CLE
Using the Law as a Sword and a Shield for Domestic Violence and Human Trafficking Survivors

Carrie A. Pettit, MA
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Carrie Pettit started at Safe Harbor as their Community Counselor in October of 2004 and is currently the Director of Community Services. Her duties include providing clinical supervision and oversight to employees and interns who work in the Community Counseling and Advocacy Program, providing counseling and advocacy services to victims of DV, and contributing to Safe Harbor's Leadership team.

SC BAR YLD VOICES AGAINST VIOLENCE COMMITTEE CLE
Using the Law as a Sword and a Shield for Domestic Violence and Human Trafficking Survivors

**Patricia S. Ravenhorst, Director/Attorney,
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Patricia Standaert Ravenhorst, Esq. is the Director and Attorney of the South Carolina Victim Assistance Network's (SCVAN), Legal Assistance to Victims Program. Her work with the SCVAN is dedicated to ensuring meaningful access to justice for victims of crime throughout South Carolina. Ms. Ravenhorst demonstrates her passion for the needs of victims of crime by frequently speaking to community groups, victim service providers, judges and law enforcement officials regarding the rights of victims of human trafficking, domestic violence, sexual assault, child abuse and other violent crimes.

Prior to joining SCVAN, Ms. Ravenhorst practiced law in the areas of immigration, employment and general litigation with Wyche, Burgess, Freeman & Parham in Greenville, South Carolina. Her work experience also includes an internship with the South African Secretariat for Safety and Security in Pretoria, South Africa, where she worked collaboratively with the South African Police Service and the Security Officer's Board to propose revisions to South Africa's laws and regulations governing South Africa's private security industry. She graduated *summa cum laude* from Florida State University with a degree in International Affairs emphasizing Latin American studies. She then graduated from Duke University with both her law degree and masters degree in political science with a certification in Latin American studies. Ms. Ravenhorst is licensed to practice before both federal and state courts in South Carolina and is a member of the American Immigration Lawyers Association and the National Association for Victim's Rights Attorneys.

In honor of her work with immigrant victims and her advocacy for immigrant rights, Ms. Ravenhorst was honored to receive the Greenville County Guardian ad Litem Program's "Ethel M. Piper Angel Award"; to be named as one of Greenville's "Best and Brightest Under 35" by the *Greenville Magazine* and as one of Greenville's "Most Beautiful Women" by Greenville's *TALK Magazine*; to receive the Riley Institute's Diversity Leadership Award for International Diversity and the *SC Lawyer's Weekly* Leadership in Law Award; and to be a member of the 2012 class of the Liberty Fellowship. She currently serves of the Leadership Team of LiveWell Greenville, and is the Past President of the FSU Flying High Circus Alumni Association, a former Board member of the Center for Developmental Services, Safe Harbor, the Greenville Chamber of Commerce's Leadership Development Board, Greenville Sister Cities International and Greenville's Alianza Hispana.

SC BAR YLD VOICES AGAINST VIOLENCE COMMITTEE CLE
Using the Law as a Sword and a Shield for Domestic Violence and Human Trafficking Survivors

S. Marie Sazehn

South Carolina Office of the Attorney General

PO Box 11549, Columbia, South Carolina 29211

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Assistant Attorney General

Human Trafficking Program Coordinator

VAWA Program Director

EDUCATION

Elon University School of Law, Greensboro, NC

Juris Doctor, May 2013

Hunt Scholarship

Family Law Society, Women's Law Society, Criminal Law Society

Columbia College, Columbia, SC

Bachelor of Arts, *summa cum laude*, Political Science and History, May 2007

President's List (all semesters), departmental awards, recognition, and scholarships

Voices for South Carolina's Children Intern, Every Child Matters Campaign, Red Cross

MEMBER OF BAR

State of South Carolina, admitted 2013

EMPLOYMENT

South Carolina Office of the Attorney General, Columbia, SC

Assistant Attorney General

August 2013 – Present

Coordinates efforts of the South Carolina human trafficking task force. Works to develop connections, promote education, and raise awareness across South Carolina pertaining to human trafficking. Facilitated the release of *South Carolina State Plan to Address Human Trafficking* in June 2014. Directs and supervises programmatic aspects of the VAWA division of the office, to include trainings, the annual Silent Witness Ceremony, and protocols. Prosecutes human trafficking and criminal sexual conduct cases.

Alamance County Superior Court, Graham, NC

Extern for the Honorable James E. Hardin, Jr.

January 2013 – April 2013

Legal Aid of North Carolina, Inc., Greensboro, NC

Extern, Domestic/Family Law Section

August 2012 - November 2012

South Carolina Office of the Attorney General, Columbia, SC

Law Clerk, General Prosecution

May 2012 - August 2012

South Carolina Office of the Attorney General, Columbia, SC

Law Clerk, Violence against Women Section

May 2011 - August 2011

PRESENTATIONS

South Carolina Law Enforcement Victim Advocate Conference. Presenter; *Human Trafficking in South Carolina*. Myrtle Beach, SC. November 4, 2015.

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SCCADVASA webinar. Presenter; *Intersections of Human Trafficking with Sexual and Intimate Partner Violence*. Columbia, SC. August 21, 2015.

Sexual Trauma Services of the Midlands Training. Presenter; *Sexual Assault in Human Trafficking*. Columbia, SC. August 12, 2015.

South Carolina Prosecution Commission Training. Presenter; *Human Trafficking: What, Where, and How to Stop it*. Columbia, SC. June 12, 2015.

Sarah Schuh Child Abuse Conference. Plenary Presenter; *Commercial Sexual Exploitation of Children (CSEC): Our State and Local Response*. Mt. Pleasant, South Carolina. April 9, 2015.

Palmetto Association for Children and Families Annual Conference. Presenter; *Human trafficking in South Carolina: the victims, the traffickers, the law, and where we go from here*. Myrtle Beach, South Carolina. February 12, 2015.

Columbia World Affairs Council, Panel on Human Trafficking. Panel Participant; *Human Trafficking in South Carolina and the South Carolina Task Force*. Columbia, South Carolina. October 27, 2014.

OTHER ACTIVITIES

- DSS Trauma Informed Development Team, Member
- National Convening on Trafficking and Child Welfare Attendee, June 2015

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South Carolina Court of Appeals
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Jasmine Smith is a cum laude graduate of the University of South Carolina, where she received her Bachelor's Degree in Psychology. Thereafter, she received her Educational Specialist Degree in Counselor Education, specializing in Marriage and Family Therapy from USC's graduate school. She also became certified as a National Certified Counselor. After completing graduate school, Jasmine worked as a counselor and psychology instructor for Spartanburg Community College (formerly Spartanburg Technical College). Jasmine received many years of training and experience working with individuals, couples, and families to address mental health difficulties. Jasmine went on to attend law school at USC's School of Law. As a member of the South Carolina Bar, Jasmine actively serves on several bar and community committees and aims to specifically address mental health issues attorneys encounter. She serves as chair of the SC Bar Attorney Wellness Committee's Resource Assembly and Website Development Subcommittee, where she uses her background in counseling to assist fellow lawyers maintain a healthy mental, physical, and social wellbeing. She also serves as co-chair of the Young Lawyer's Division Voices Against Violence committee. Throughout her career, Jasmine has continually worked to empower and uplift underserved and underprivileged communities. She has received numerous community and professional honors. Jasmine works at the South Carolina Court of Appeals.

SC BAR YLD VOICES AGAINST VIOLENCE COMMITTEE CLE
Using the Law as a Sword and a Shield for Domestic Violence and Human Trafficking Survivors

Johanna C. Valenzuela
Assistant Attorney General
Consumer Protection and Antitrust Section
Office of the Attorney General
State of South Carolina
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Prior to attending law school, Assistant Attorney General Johanna Valenzuela served as an Aircraft Maintenance Officer with the United States Air Force and was stationed at Kadena Air Base in Okinawa, Japan, and then stationed at Pope Air Force Base in Fayetteville, North Carolina. During summers in law school, Johanna clerked for the McNair firm and then the Civil Rights Division of the Department of Justice. After graduating from the University of South Carolina School of Law, Johanna clerked for South Carolina Federal District Court Judge G. Ross Anderson, Jr., and then worked as a prosecutor for two years with the 16th Circuit Solicitor's office in York County, South Carolina. Johanna is currently with the South Carolina Attorney General's Office, working in the Consumer Protection and Antitrust Section.

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**SOUTH CAROLINA BAR YOUNG LAWYERS DIVISION
VOICES AGAINST VIOLENCE COMMITTEE**

Presents



“Overview of New Domestic Violence Laws”

*Megan K. Gresham
Assistant Attorney General
South Carolina Attorney General’s Office
Post Office Box 11549
Columbia, South Carolina 29211*

CRIMINAL DOMESTIC VIOLENCE



OVERVIEW OF DV REFORM ACT CHANGES – EFFECTIVE FOR ACTS OCCURRING ON OR AFTER JUNE 4, 2015

- **Domestic violence**, not CRIMINAL domestic violence (do we have criminal murder?)
- **Change structure of penalties:**
 - Previous CDV charge options for a first offense were 1st offense and CDVHAN – 30 day misdemeanor or 1 to 10 year felony! HUGE range in penalty for WIDE range of conduct.
 - Move from offense-based system (1st offense (lowest), 2nd offense, etc.) to harm-based system (similar to A&B statutes – 3rd degree (lowest), 2nd degree, etc.)
 - Enhancements from one degree to another (“moving up the rungs on the ladder”) based on:
 - Violations of protection orders,
 - Prior convictions, and/or
 - Presence of “special conditions.”
- New PERMANENT RESTRAINING ORDERS (PRO’s) and EMERGENCY RESTRAINING ORDERS (ERO’s)
- Now could be against STATE LAW (instead of just federal law) to have firearm/ammunition after DV conviction

S.C. Code § 16-25-20

(A) It is unlawful to:

- 1) Cause physical harm or injury to a person’s own household member; or
- 2) Offer or attempt to cause physical harm or injury to a person’s own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.



S.C. Code § 16-25-10

As used in this article,
household member means:

- Spouses,
- Former spouses,
- Persons who have a child in common,* OR
- Male and female who are cohabiting or formerly have cohabited.



■*Consider: unborn children? Some courts may differ.

S.C. Code § 16-25-10

■Cohabiting is defined as “the fact or state of living together, ...usually with the suggestion of sexual relations” (Black’s Law Dictionary, Eighth Edition). The following would not qualify:



- Same-sex relationships regardless of sexual intentions (because statute says male and female); and
- Opposite-sex roommate situations that have no sexual relationship involvement; and
- Siblings, parent-child, other family member relationships.

S.C. Code § 16-25-20(B)(1)(D)(1)

- ~~CDV 1st Offense 3rd Degree~~
 - Misdemeanor
 - Up to ~~90~~ 90 days AND/OR \$1000 - \$2500 fine
 - All or part of the fine sentence may be suspended upon successful completion of a Batterer’s Treatment Program, other court orders for the protection of the victim, and restitution as appropriate. (16-25-20(E))
 - NOTE: Restitution now defined to include minors who witness DV offenses (16-3-1110(S))
 - Jurisdiction: MAY BE tried in Summary Court
- ~~CDV 1st 3rd conviction (first offense) is eligible for expungement after 5 years (S.C. Code § 22-5-910) – can only use once, and must have no other conviction during 5-year period. Eligible for PTI.~~



BATTERER TREATMENT – APPROVED BY SOLICITOR OR AG IN JURISDICTION

- Batterer treatment programs should work around the defendant's work schedule to ensure successful completion.
- BATTERER treatment, not anger management.
- NO Defendant may be denied treatment due to their inability to pay.
- Judge may order, or the BTP may refer, defendant to supplemental treatment coordinated through DMH, the VA, the Department of Alcohol and Other Drug Abuse Services with the local alcohol and drug treatment authorities pursuant to S.C. Code § 61-12-20. **JUDGES SHOULD ENSURE THAT, IF YOU ORDER DEFENDANT INTO DRUG/ALCOHOL PROGRAM, THAT SERVICE IS ACTUALLY OFFERED!**
- Some courts may require a guilty plea or conviction to begin treatment (rather than a no contest plea).
- WHEN TO SUSPEND? S.C. Code § 16-25-20(G): The court must consider:
 - the nature and severity of the offense,
 - the number of times the offender has repeated the offense,
 - and the best interests and safety of the victim.
- **Power to suspend is broad for most charges: S.C. Code § 14-25-75 (municipal) and § 22-3-800 (magistrate).**

S.C. Code § 16-25-20(B)(2)(C) OFFENSE

■GDV 2nd Offense Degree

- Violates 16-25-20(A) and
 - **Moderate bodily injury** results or the act is accomplished by means likely to result in moderate bodily injury.
 - MODERATE BODILY INJURY (16-25-10(4)):
 - Physical injury that involves prolonged loss of consciousness or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ or
 - injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or
 - injury that results in a fracture or dislocation.
 - Does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or other minor injuries that do not ordinarily require extensive medical care.
 - → ALSO CHANGED DEFINITION UNDER A&B STATUTES TO MATCH
 - Violates a protection order
 - Has one prior conviction of DV within 10 years
 - Presence of **"special condition"**

DEFINITIONS

- **Protection Order** (16-25-10(6)) – any order of protection, restraining order, condition of bond, or any other similar order issued in this State or foreign jurisdiction for the purpose of protecting a household member
- **Special conditions** (our term, not in statute):
 - Committed in the presence of, or while being perceived by, a minor
 - Committed against a person known, or who reasonably should have been known, to be pregnant
 - Committed during burglary, kidnapping, robbery, or theft
 - Committed by impeding victim's breathing or airflow
 - Committed using physical force or threatened use of physical force to block person's access to cell phone, telephone, or electronic communication device with purpose of interfering, preventing, or obstructing report of offense to law enforcement or request for ambulance or emergency medical assistance to LE or emergency medical provider
 - →Note: Would not include attempts to call family/friends, would not include attempts to leave residence

PREVIOUS CONVICTIONS OF DOMESTIC VIOLENCE (16-25-10(5))

- A DV charge may be enhanced (to be considered as a DV-2nd degree or DV-1st Degree, as appropriate) with any of the following:
 - A conviction in SC within the previous ten years for a prior CDV or DV,
 - A conviction within the previous ten years for a CDVHAN or DVHAN,
 - or
 - A domestic violence offense in another state which includes similar elements to our DV statute AND which is committed against a household member (16-25-10(3))

S.C. Code § 16-25-20(B)(2)(C) PENALTY

- **CDV 2nd Offense Degree**
 - Misdemeanor
 - ~~Mandatory minimum of 30 days but not more than 1 year Up to 3 years AND/OR \$2500 - \$5000 fine~~
 - ~~All or part of the fine sentence may be suspended and offender places on probation upon successful completion of a Batterer's Treatment Program, other court orders for the protection of the victim, terms of probation to protect V, and restitution as appropriate.~~
 - ~~Can do weekend time~~
 - ~~Is eligible for early release based on credits he is able to earn, including, but not limited to, good time credits~~
 - Jurisdiction: Circuit Court
 - ~~Can be handled in transfer court pursuant to S.C. Code § 22-3-546.~~

S.C. Code §§ 56-7-10, 56-7-15, and Ramsey

- **Uniform Traffic Tickets vs. Warrants**
 - "In the presence" OR "freshly committed" analysis is used to make UTT arrests for CDV.
 - Freshly Committed: Freshly committed means within a very short time period. If it has been more than 3 hours, get a warrant.
 - Recent Changes:
 - **State v. Ramsey**, 398 S.C. 275, 727 S.E. 2d 429 (Ct. App. 2012), held that CDV arrests could not be made on UTT unless the offense was committed in the officers presence. Otherwise, a warrant had to be sought. The Supreme Court affirmed the Court of Appeals decision on July 16, 2014. **State v. Ramsey**, Opinion No. 27418 (S.C. Sup. Ct. filed July 16, 2014)
 - S.C. Code § 56-7-10 – This statute includes the list of offenses for which arrests can be made on a UTT. On June 13, 2013, the legislature amended this section to include shoplifting, and ~~CDV-1st and 2nd~~ DV-3rd and 2nd degree offenses, effectively overruling Ramsey.

S.C. Code § 16-25-20(B)(2)(B) OFFENSE

■ CDV 3rd and Subsequent Offense 1st Degree

- Violates 16-25-20(A) and
 - **Great bodily injury** results or the act is accomplished by means likely to result in great bodily injury.
 - GREAT BODILY INJURY (16-25-10(2)):
 - Bodily injury which causes a substantial risk of death or
 - Which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ
 - Has two prior convictions of DV within 10 years
 - Uses a firearm in any manner
- Commits DV-2nd degree and
 - Violates a protection order
 - Presence of **"special condition"**

S.C. Code § 16-25-20(B) PENALTY

- CDV 3rd and Subsequent Offense 1st Degree
- Felony - VIOLENT AND SERIOUS
- **Mandatory minimum of 1 year but not more than 5 years Up to 10 years**
- All or part of the fine sentence may be suspended and offender places on probation upon successful completion of a Batterer's Treatment Program, other court orders, terms of probation to protect V, and restitution as appropriate.
- Jurisdiction: Circuit Court



S.C. Code § 16-25-65 (GDVHAN)

<p>GDV High and Aggravated Nature (GDVHAN):</p> <p>Assault and Battery with Violates 16-25-20(B) and 16-25-20(C)</p> <p>Offense:</p> <p>1) Commits the offense under circumstances manifesting extreme indifference to the value of human life AND great bodily injury results</p> <p style="text-align: center;">OR</p> <p>2) Commits the offense, with or without an accompanying battery AND under circumstances manifesting extreme indifference to the value of human life AND would reasonably cause a person to fear imminent great bodily injury or death</p> <p style="text-align: center;">OR</p> <p>3) Commits DV-1st AND violates protection order (defined) in the process</p>	<p>Circumstances Manifesting Extreme Indifference to the Value of Human Life - include, but ARE NOT LIMITED TO:</p> <ul style="list-style-type: none"> ▪ Using a deadly weapon (pistol, dirk, daggers, metal knuckles, razor, or other instrument which can be used to inflict deadly force (16-25-10(4)) ▪ Knowingly and intentionally impeding the normal breathing and circulation of the blood by applying pressure to the throat or neck or by obstructing the nose or mouth and thereby causing stupor or loss of consciousness for any period of time ▪ Other "special conditions" except no "threat of force" including in interfering with calling 911. <p style="text-align: center;">Guilty of GDVHAN:</p> <ul style="list-style-type: none"> ▪ Felony - VIOLENT AND SERIOUS ▪ Imprisoned - <u>not more than ten (10) years</u> ▪ All or part of the <u>fine</u> sentence may be suspended and offender places on probation upon successful completion of a Batterer's Treatment Program, other court orders, terms of probation, and restitution as appropriate. ▪ Jurisdiction: Circuit Court
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S.C. Code § 16-1-60

- Under South Carolina law, a VIOLENT CRIME includes the offense of GDVHAN (S.C. Code § 16-25-65) AND DV-1st Degree (S.C. Code § 16-25-20(B)).
 - SO WHAT?
 - Parole eligibility
 - Eligible for parole after serving one-third (1/3) of sentence
 - Originally had to serve only one-fourth (1/4) of sentence
 - S.C. Code § 16-23-490 provides for enhanced punishment (see next slide).
 - No guns – unlawful under state law (§ 16-23-500) to possess firearms or ammunition if convicted of a violent crime.
- Old CDVHAN charges for convictions PRIOR to June 4 will be “violent” – unsure about CDVHANS charged for conduct pre-June 4 but for which convictions are obtained after June 4.

S.C. Code § 16-23-490 (additional punishment)

- POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME: If you are in possession of a firearm or visibly display “what appears” to be a firearm or knife during the commission of the violent crime AND you are convicted of committing or attempting to commit that violent crime you may be charged with an additional 5 years (no suspension, no parole, work release, etc.).
- Must indict separately as possession of a firearm during commission of a violent crime (S.C. Code § 16-23-490).
- *State v. Whitesides*, 397 S.C. 313, 725 S.E.2d 487 (2012), requires a nexus between the possession of the firearm and the underlying violent crime be established in order for a defendant to be convicted under this statute.
- Proving the nexus:
 - Showing that the firearm furthered, advanced, or helped in the commission of the crime. *See Wright*, 53 Va. App. at 293, 670 S.E.2d at 780.
 - **EXAMPLE:** A nexus between possession of a firearm and drug trafficking would exist if the firearm is accessible to the trafficker and thereby “provides defense against anyone who may attempt to rob the trafficker of his drugs or drug profits.” Similarly, “possessing a gun, and letting everyone know that you are armed, lessens the chances that a robbery will even be attempted.” *Id.* at 293, 670 S.E.2d at 780 (citing *United States v. Ceballos-Torres*, 218 F.3d 409, 412 (5th Cir. 2000)).

S.C. CODE § 17-25-45

DV-1st Degree and DVHAN are now SERIOUS CRIMES (“strike” offenses)

- If D currently charged with a serious or most serious crime, a conviction = LWOP if D has:
 - Two prior convictions of serious crimes OR
 - Prior convictions for one serious and one most serious crime
- If D currently charged with a most serious crime, a conviction = LWOP if D has:
 - One conviction for a “most serious” crime
- No DV crimes are “most serious”

IF A DV-3RD DEGREE IS ACTUALLY A DV-2ND OR ABOVE

- Get a new warrant for DV-2nd degree, 1st degree, HAN, etc., and show up for your regular DV court appearance.
- Ask the judge for a bond to be set on the amended charge.
- Make sure the victim is present and understands why the case is being "sent up."
- Dismiss the original warrant or ticket, OR
- Proceedings in summary courts commence on information under oath (S.C. Code § 22-3-710) and may be amended any time before trial (S.C. Code §22-3-720).



S.C. CODE § 16-25-20(I)

MANDATORY COURT APPEARANCE - No bond forfeiture

- Person charged with violation must appear before judge for disposition of the case unless charge is dropped/dismissed before court
- D can be tried in his absence if he does not appear

**MANDATORY ARREST?
S.C CODE § 16-25-70**

- (A) A law enforcement officer must complete an investigation of an alleged violation of this chapter even if the LE agency was not notified at the time the alleged violation occurred. The investigation must be documented on an I/R form which must be maintained by the investigating agency.
- (B) A law enforcement officer ~~must~~ **MAY** arrest, with or without a warrant, a person at the person's place of residence or elsewhere if **physical manifestations of injury to the alleged victim are present and the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony** under the provisions of Section 16-25-20(A) or (D), or 16-25-65 even if the act did not take place in the presence of the officer. A law enforcement officer is not required to make an arrest if he determines probable cause does not exist after consideration of the factors set forth in subsection (D) and observance that no physical manifestation of injury is present. The officer may, if necessary, verify the existence of an order of protection by telephone or radio communication with the appropriate law enforcement agency.

18 U.S.C. §922(G)(8)

■ The Ultimate Penalty

- US v. Mahin, 668 F.3d 119 (4th Cir. 2012).
 - Defendant was convicted for carrying a firearm while subject to a domestic violence protective order and challenged his conviction on the grounds that they are in violation of his Second Amendment right to bear arms (**NOTE:** The order advised Defendant that he could not carry a firearm under both Virginia law and federal law)
 - The US Court of Appeals for the Fourth Circuit affirmed the conviction, noting that many courts are affirming Section 922(g) convictions outright; however, please note:
 - “[t]he Supreme Court has not clarified and we have not held that the Second Amendment extends beyond the home or to perpetrators of domestic abuse.”



S.C. CODE § 16-25-30 - STATE FIREARM BAN FOR DVHAN AND DV-1ST

- Unlawful for a person to ship, transport, receive, or possess a firearm or ammunition, if the person is convicted of:
 - DV-1st degree or DVHAN, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16-25-20(B) or Section 16-25-65.
 - PENALTY: felony and, upon conviction, must be fined not more than two thousand dollars or imprisoned for not more than five years, or both.
 - DURATION: DVHAN, for LIFE; DV-1st, ten years from the date of conviction or the date the person is released from confinement for the conviction, whichever is later.

S.C. CODE § 16-25-30 - STATE FIREARM BAN FOR DV-2ND AND DV-3RD

- DV-2nd degree and the court made specific findings and concluded that the person caused moderate bodily injury to their own household member, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16-25-20(C) and the court made specific findings and concluded that the person caused moderate bodily injury to their own household member;
 - PENALTY: misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both.
 - DURATION: three years from the date of conviction or the date the person is released from confinement for the conviction, whichever is later.
- DV-2nd or 3rd degree and the judge at the time of sentencing ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16-25-20(C) or (D) and the judge at the time of sentencing ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition;
 - PENALTY: misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both.
 - DURATION: three years from the date of conviction or the date the person is released from confinement for the conviction, whichever is later.

S.C. CODE § 16-25-30 – STATE FIREARM BAN FOR OOP’S

- Also applies to persons subject to a valid OOP issued by the family court pursuant to Chapter 4, Title 20, or by another court in compliance with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act if:
 - The family court judge at the time of the hearing made specific findings of physical harm, bodily injury, assault, or that the person offered or attempted to cause physical harm or injury to a person's own household member with apparent and present ability under the circumstances reasonably creating fear of imminent peril AND
 - The family court judge ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition.
 - The standard applied in this subsection applies only to the determination of whether to prohibit a person from possessing a firearm or ammunition and does not apply to the issuance of the order pursuant to Chapter 4, Title 20.
 - Penalty: misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned more than thirty days, or both.
 - Duration: life of the order of protection
- **NOTE:** does not include PRO's and ERO's!

S.C. CODE § 16-25-30 – STATE FIREARM BAN – MISC PROVISIONS

- **WAIVER OF RIGHTS:** A person must not be considered to have been convicted of DV for purposes of this section unless
 - They were represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case;
 - In the case of a prosecution for an offense described in this section for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either the case was tried by a jury, or the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.
- **EXPUNGEMENT:** A person must not be considered to have been convicted of DV for purposes of this section if the conviction has been expunged, set aside, or is an offense for which the person has been pardoned.
- **NOTICE FROM COURT:** At the time a person is convicted of violating the provisions of Section 16-25-20 or 16-25-65, or upon the issuance of an order of protection pursuant to Chapter 4, Title 20, the court must deliver to the person a written form that conspicuously bears the following language: "Pursuant to 48 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65, or a person who is subject to a valid order of protection pursuant to Chapter 4, Title 20, to ship, transport, possess, or receive a firearm or ammunition."

S.C. CODE § 16-25-30 – STATE FIREARM BAN – RESTORATION OF STATE RIGHTS

- **Following the period of time established:**
 - IF the person has not been convicted of any other DV offenses pursuant to this article or similar offenses in another jurisdiction, AND
 - If no domestic violence charges are currently pending against the person,
 - AND the person is not otherwise prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition pursuant to any other State law, THEN
 - The person's right to ship, transport, receive, or possess a firearm or ammunition shall be restored.
- **Following the period of time established, if the person requests in writing to SLED,** SLED shall notify the National Instant Criminal Background Check System (NICS) that the State has restored the person's right to ship, transport, receive, or possess a firearm or ammunition, and shall request immediate removal of the person's name to whom the restrictions contained in this section apply.

**SUMMARY: CRIMES FOR UNLAWFUL
POSSESSION OF A WEAPON AFTER
CONVICTION OF DV**

- § 16-25-30(A)(1)
 - D has EVER had conviction for DVHAN or other state equivalent
 - D has conviction for DV-1st or other state equivalent within 10 years from conviction or date of release from confinement
 - Felony, 0-5 years and/or up to \$2,000
- § 16-25-30(A)(2)
 - D has DV-2nd or other state equivalent conviction within 3 years from conviction or date of release from confinement AND
 - Court made finding that D caused MBI
 - Misdemeanor, 0-3 years and/or up to \$1,000
- § 16-25-30(A)(3)
 - D has conviction for DV-3rd or DV-2nd or other state equivalent within 3 years from conviction or date of release from confinement AND
 - Court made finding that D couldn't ship, transport, possess, receive firearm or ammo
 - Misdemeanor, 0-3 years and/or up to \$1,000
- **NOTE:** Convictions under old law do not count!

**SUMMARY: CRIMES FOR UNLAWFUL
POSSESSION OF A WEAPON WHILE UNDER
OOP**

- § 16-25-30(A)(4)
 - D is subject to valid OOP AND
 - Court made specific findings of physical harm, BI, assault, of commission of DV, AND
 - Court found D could not ship, transport, receive, posses, firearms or ammo
 - Misdemeanor, 0-30 days and/or up to \$500
- § 16-25-30(A)(5)
 - Same as A(4) except valid protection order issued by court of other state or tribal territory
- **NOTE:** PRO's and ERO's do not count!

S.C. Code § 17-15-30

Bond Hearings (usually)

- The purpose of a bond hearing is to set conditions of release that will reasonably assure appearance of the defendant and not pose an unreasonable danger to the community.
- In all bond hearings, the court MAY consider:
 - **The nature and circumstances of the offense charged AND**
 - Family ties,
 - Employment,
 - Financial resources,
 - Character and mental conditions,
 - Length of residence in the community,
 - Record of convictions, and
 - Record of flight to avoid prosecutions or other failure to appear.

S.C. Code § 17-15-30

Bond Hearings (GDV)

- (A) In determining conditions to assure appearance or if release may pose danger to community or individual:
- (B) The Court **MUST** consider:
 - The accused's criminal record,
 - Any charges pending against the accused,
 - All incident reports generated as a result of the offense charged, and
 - Whether the accused is an alien unlawfully present in the US.
 - Whether person is in state gang database
- (C)(1) Prior to, or at the time of the hearing the law enforcement officer, local detention center officer or local jail officer **MUST** provide the following (if not available must inform why per (C)(2)):
 - The accused's criminal record.
 - Any charges pending.
 - All incident reports related to the offense charged, and
 - Any other information that will assist the court

S.C. Code § 16-25-120

Bond Hearings (cont.)

- The court **MUST** look at the factors in S.C. Code § 17-15-30, and
- The court **MAX MUST** look at the following (when the person has been charged with a violent offense, the victim of the offense is a household member, and the person is subject to a RO or OOP at the time of the offense OR has a previous conviction for violation of OOP or RO):
 - Person has history of DV or violent offenses,
 - Mental health of the Defendant,
 - Whether the person has a history of violating the orders of the court, and
 - Whether the person poses a potential threat to others.
- For violation of DV laws, bond hearing must occur within 24 hours after arrest and must not proceed without I/R or presence of arresting officer (§ 17-15-30(C)(2))

S.C. Code § 16-25-120

Bond Hearings (cont.)

- The Court **MUST** consider whether to issue a RO or OOP based on the factors listed in the previous slide.
- The Court **MUST**
 - Inform the Defendant of right to counsel or of their right to have counsel appointed, and
 - Provide the Defendant with written notice of the shelter prohibitions that apply to anyone charged with GDV or GDVHAN who is subject to a restraining order or an order of protection.



QUESTIONS?

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**SOUTH CAROLINA BAR YOUNG LAWYERS DIVISION
VOICES AGAINST VIOLENCE COMMITTEE**

Presents



“Training for Civil Attorneys”
(Civil Protective Orders and Other Legal Mechanisms to Protect Victims)

*Leslie Ragsdale Fisk
Family Law Unit Head/Staff Attorney
South Carolina Legal Services
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Civil Relief Options for DV
Survivors

Leslie Fisk
South Carolina Legal Services

- Introduction
- South Carolina Legal Services
 - Our goals
 - Our limitations
 - How to Apply for Representation 1-888-346-5592
 - My experience
 - Audience?
 - How to contact me. LeslieFisk@sclegal.org

- Topics to Cover
- Physical Cruelty Divorce
 - Separate Maintenance
 - Custody
 - Visitation
 - Child Support
 - Order of Protection
 - Options in Magistrate Court
 - Permanent Restraining Order

Divorce

- Available Divorce Grounds in South Carolina
- Advantages of Different Grounds
- Requirements for A Divorce on Physical Cruelty
- Proof
- Witnesses
- Examples

Available Relief in a Divorce

- Temporary Relief
- Divorce
- Name Change
- Division of Property
- Division of Debt
- Alimony
- Attorney's Fees
- Guardian Ad Litem Fees
- Discovery
- Paternity Determination
- Custody
- Visitation
- Child Support
- Restraining Orders
- Children's medical insurance
- Uncovered medical expenses for children

Separate Maintenance

- What is it?
- What does it do?
- When does it apply?
 - Religious reasons
 - For benefits
 - No ground applies
 - To settle the issues

Temporary Hearings

- When do you need one?
- Length of the hearing
- What documents are required?
 - Affidavits
 - Financial Declaration
 - Proposed Parenting Plan
 - Background Information Sheet
- Expiration of a Temporary Order
- Preserve Previous Order of Protection!

Custody

- Best Interest of the child
- Court must consider the Domestic Violence before making a custody decision. South Carolina Code §16-15-40
- Primary vs. Joint vs. Shared
- Unmarried mothers have custody before litigation.
- When both parents are involved, no preference of mom over dad.
- Guardian Ad Litem
 - Client should cooperate and pay!
 - May require education and advocacy

Visitation

- Effect of DV: South Carolina Code §63-15-50
- Common Visitation Schedules
- Visitation Exchange Options
- No Visitation and Graduated Visitation
- Supervised
 - By whom?
 - When?
- Phone calls and Skype
- Safe discussions about visits

Child Support

- The amount is almost always based on South Carolina's Child Support Calculation.
- Could be paid by wage withdrawal and/or through the Clerk of Court.
- Could be paid weekly or monthly.
- All parents are required to support their children.
- Visitation and child support are NOT connected.
- DSS Child Support Enforcement can initiate an action.

Order of Protection

- Purpose
- Who can apply "Household Member"
- Where to apply
 - County where abuser lives (if SC)
 - County where abuse occurred.
 - County where they last lived together.
 - Can be filed where victim is sheltered, but it will be transferred.
- Length: 6 to 12 months

Order of Protection Continued

- What to File: Petition for OOP, Summons, Financial Declaration, Info Sheet
- Other Relief you can request
 - Custody, visitation
 - Child support
 - Alimony (if married)
 - Possession of the home or allowing person to get their things out of the home
 - Restrain one or both people from destroying or transferring property
 - Possession of a car or pet
- Service

Order of Protection Continued

- “Motion for Further Relief” if Family Court case has **already** been filed.
- If a **subsequent** Family Court case is filed, ask the Court to preserve the Order of Protection!
- Penalties for Violation of the Order
- Order of Protection can be extended upon good cause shown and notice to Respondent.

Order of Protection Hearing

- Prioritize Testimony
- Prepare the client for cross-examination.
- Practice if time allows.
- Discuss evidence, witnesses
- Remember Hearsay Exceptions
- How you can help!
 - PAI
 - Pro Bono

Permanent Restraining Order

- New and Exciting Development!
- Part of DV Reform Act
- General Sessions or Family Court
- What to File
- How it differs from an Order of Protection

Options in Magistrate Court

- Order of Protection
- Restraining Order
 - Must show harassment or stalking §16-3-1700
 - File Complaint, Motion for R.O., police reports
- Emergency Restraining Order
- Telephone Harassment

Special Considerations for Clients who are Survivors of Domestic Violence

- Communication
- Other benefits
 - South Carolina Office of Victim Assistance
 - Unemployment Benefits
- Transportation
- Lack of Witnesses
 - To event
 - Isolation
- May go back, but your help is still valuable

Recommended Resources

- Marital Litigation by Roy T. Stuckey
- South Carolina Family Court Rules
- Blog by Gregory S. Forman (Charleston attorney)
- Victim Advocates
- SCCADVASA

A Few Relevant Domestic Violence Statutes

For Custody

SECTION 63-15-40. Consideration of domestic violence.

(A) In making a decision regarding custody of a minor child, in addition to other existing factors specified by law, the court must give weight to evidence of domestic violence as defined in Section 16-25-20 or Section 16-25-65 including, but not limited to:

(1) physical or sexual abuse; and

(2) if appropriate, evidence of which party was the primary aggressor, as defined in Section 16-25-70.

(B) The absence or relocation from the home by a person, against whom an act of domestic violence has been perpetrated, if that person is not the primary aggressor, must not be considered by the court to be sufficient cause, absent other factors, to deny custody of the minor child to that person.

HISTORY: 2008 Act No. 361, Section 2.

For Visitation

SECTION 63-15-50. Domestic violence and visitation; payment for treatment.

(A) A court may award visitation to a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, as defined in Section 16-25-20 or Section 16-25-65, or in cases in which complaints were made against both parties, to the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor under Section 16-25-70, only if the court finds that adequate provision for the safety of the child and the victim of domestic violence can be made.

(B) In a visitation order, a court may:

(1) order an exchange of a child to occur in a protected setting;

(2) order visitation supervised by another person or agency;

(3) order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by the court to have been the primary aggressor, to attend and complete, to the satisfaction of the court, a program of intervention for offenders or other designated counseling as a condition of the visitation;

(4) order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by the court to have been the primary aggressor, to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;

(5) order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor, to pay a fee to defray the costs of supervised visitation;

(6) prohibit overnight visitation;

(7) require a bond from a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, from the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor, for the return and safety of the child if that person has made a threat to retain the child unlawfully;

(8) impose any other condition that is considered necessary to provide for the safety of the child, the victim of domestic violence, and any other household member.

(C) If a court allows a household member to supervise visitation, the court must establish conditions to be followed during the visitation.

(D) A judge may, upon his own motion or upon the motion of any party, prohibit or limit the visitation when necessary to ensure the safety of the child or the parent who is a victim of domestic violence.

(E) If visitation is not allowed or is allowed in a restricted manner to provide for the safety of a child or parent who is a victim of domestic violence, the court may order the address of the child and the victim to be kept confidential.

(F) The court must order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor, to pay the actual cost of any medical or psychological treatment for a child who is physically or psychologically injured as a result of one or more acts of domestic violence.

HISTORY: 2008 Act No. 361, Section 2.

For Orders of Protection

SECTION 20-4-20. Definitions.

As used in this chapter:

(a) "Abuse" means:

- (1) physical harm, bodily injury, assault, or the threat of physical harm;
- (2) sexual criminal offenses, as otherwise defined by statute, committed against a family or household member by a family or household member.

(b) "Household member" means:

- (i) a spouse;
- (ii) a former spouse;
- (iii) persons who have a child in common;
- (iv) a male and female who are cohabiting or formerly have cohabited.

(c) "Court" means the Family Court.

(d) "Petitioner" means the person alleging abuse in a petition for an order of protection.

(e) "Respondent" in a petition for an order of protection means the person alleged to have abused another or a person alleged to have aided and abetted such abuse.

(f) "Order of protection" means an order of protection issued to protect the petitioner or minor household members from the abuse of another household member where the respondent has received notice of the proceedings and has had an opportunity to be heard.

HISTORY: 1984 Act No. 484, Section 2; 1994 Act No. 519, Sections 2, 3, eff September 23, 1994; 2003 Act No. 92, Section 11, eff January 1, 2004; 2005 Act No. 166, Section 7, eff January 1, 2006.

For Restraining Order in Magistrate Court

Harassment and Stalking

SECTION 16-3-1700. Definitions.

As used in this article:

(A) "Harassment in the first degree" means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the first degree may include, but is not limited to:

(1) following the targeted person as he moves from location to location;

(2) visual or physical contact that is initiated, maintained, or repeated after a person has been provided oral or written notice that the contact is unwanted or after the victim has filed an incident report with a law enforcement agency;

(3) surveillance of or the maintenance of a presence near the targeted person's:

(a) residence;

(b) place of work;

(c) school; or

(d) another place regularly occupied or visited by the targeted person; and

(4) vandalism and property damage.

(B) "Harassment in the second degree" means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the second degree may include, but is not limited to, verbal, written, or electronic contact that is initiated, maintained, or repeated.

(C) "Stalking" means a pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose and is intended to cause and does cause a targeted person and would cause a reasonable person in the targeted person's position to fear:

(1) death of the person or a member of his family;

(2) assault upon the person or a member of his family;

- (3) bodily injury to the person or a member of his family;
- (4) criminal sexual contact on the person or a member of his family;
- (5) kidnapping of the person or a member of his family; or
- (6) damage to the property of the person or a member of his family.

(D) "Pattern" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose.

(E) "Family" means a spouse, child, parent, sibling, or a person who regularly resides in the same household as the targeted person.

(F) "Electronic contact" means any transfer of signs, signals, writings, images, sounds, data, intelligence, or information of any nature transmitted in whole or in part by any device, system, or mechanism including, but not limited to, a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(G) This section does not apply to words or conduct protected by the Constitution of this State or the United States, a law enforcement officer or a process server performing official duties, or a licensed private investigator performing services or an investigation as described in detail in a contract signed by the client and the private investigator pursuant to Section 40-18-70.

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

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

Editor's Note

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

"This act may be cited as 'Mary Lynn's Law'".

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from communicating or attempting to communicate with Petitioner in any way, and from entering or attempting to enter the home of the victim, place of employment, education, or other location as the Court may order.

d. issue an order granting _____ temporary custody of the following minor child(ren).

Name	Date of Birth	Address

grant reasonable visitation or deny visitation.

e. issue an order granting Petitioner temporary child support
(Financial Declaration [Form SCCA 430] MUST be completed and attached).

f. issue an order granting Petitioner temporary financial support
(Financial Declaration [Form SCCA 430] MUST be completed and attached).

g. issue an order granting Petitioner temporary exclusive use and possession of the home and furnishings.

h. issue an order which forbids _____ from transferring, selling, destroying, encumbering, or otherwise disposing of real or personal property belonging to Petitioner or jointly owned.

i. issue an order which gives Petitioner assistance from law enforcement in that Petitioner will be accompanied:

(1) in removing Personal property from _____ (Street Address) in _____ (City) _____ (County), South Carolina.

(2) in placing Petitioner in possession of the home and furnishings at _____ (Street Address) in _____ (City) _____ (County), South Carolina.

j. issue an order reimbursing Petitioner for costs and attorney's fees.

k. hold a hearing within 15 days of the date of filing these papers.

l. hold an emergency hearing within 24 hours.

m. issue an order granting Petitioner the following additional requests: _____

Sworn to and Subscribed before me
this _____ day of _____, _____

Notary Public for South Carolina

Signature of Petitioner or
Person on Behalf of Petitioner under 18 years
old

My Commission expires _____

NOTICE TO RESPONDENT: YOU HAVE THE RIGHT TO EMPLOY COUNSEL TO REPRESENT YOU.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____) IN THE FAMILY COURT
)
 _____) _____ JUDICIAL CIRCUIT
)
) Petitioner) PETITION FOR ORDER OF PROTECTION
) (For Use in Magistrate's Court)
)
 vs.)
)
) FILE NO. _____
)
 _____)
) Respondent.) Respondent's SSN: _____
) DOB: _____ Race: _____ Sex: _____

I ask this court to issue an Order of Protection, because:

1. This is the county where this case should be handled, since (check one):
 - a. The person who caused the abuse lives in this county; or,
 - b. The person who caused the abuse does not live in this State, or can't be found, but I live in this county; or,
 - c. The person who caused the abuse last lived with me in this county, and I still live in this county.
2. The person who caused the abuse lives at _____ in or near the town or city of _____, which is in _____ County, and the State of _____.
3. The person who was abused was (check one or both, and supply information):
 - a. _____, who is the person asking for an Order of Protection; or,
 - b. _____, who is a child under 18 years old who lives with me.
4. That the abuser and the victim (check one or more):
 - are husband and wife were formerly husband and wife
 - are cohabiting formerly cohabiting
 - have a child/children in common
 - are household or family members pursuant to S.C. Code Section 20-4-20 (a)(2)
5. The abuse happened on _____, at _____ o'clock, A.M., when _____ did this _____
6. I ask this court to (check one or both and supply information):
 - a. issue an order of protection which forbids _____ from abusing, threatening to abuse or molesting _____.
 - b. hold an emergency hearing within 24 hours.

Sworn to and Subscribed before me)
 this _____ day of _____, 20____.)
)
 _____)
 Notary Public for South Carolina) Signature of Petitioner or
) Person on Behalf of Petitioner under 18 years old
 My Commission expires _____)

NOTICE TO RESPONDENT: YOU HAVE THE RIGHT TO EMPLOY COUNSEL TO REPRESENT YOU.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE MAGISTRATES COURT

_____)
_____)
_____)
PLAINTIFF(S))
VS.)
_____)
_____)
DEFENDANT(S))

COMPLAINT AND MOTION
FOR RESTRAINING ORDER
(Harassment and Stalking)

CIVIL CASE NUMBER

The Plaintiff alleges:

1. The Plaintiff lives in _____ County.
2. The Defendant lives at _____, which is in _____, _____.
3. The Harassment First or Second Degree or Stalking occurred in _____, _____.
4. Plaintiff further alleges that the following conduct occurred by the defendant on the times, dates, and places listed below, and such conduct falls within the definition of:
 HARASSMENT, FIRST DEGREE (§16-3-1700 (A)), or
 HARASSMENT, SECOND DEGREE (§ 16-3-1700 (B)), or
 STALKING (§ 16-3-1700 (C)).
5. On _____, 20_____, at _____ O'clock, AM at _____, which is in _____, _____, the conduct complained of occurred when the defendant:

On _____, 20_____, at _____ O'clock, AM at _____, which is in _____, _____, the conduct complained of occurred when the defendant:

On _____, 20_____, at _____ O'clock, AM at _____, which is in _____, _____, the conduct complained of occurred when the defendant:

(State details of harassment/stalking and other facts and circumstances upon which relief is sought above. Attach additional sheets if necessary.)

6. Plaintiff requests: (Check one or more)

- a. That the defendant be enjoined from abusing, threatening to abuse, or molesting the plaintiff or members of the plaintiff's family.
- b. That the defendant be enjoined from entering or attempting to enter the plaintiff's place of residence, employment, education, or other location.
- c. That the defendant be enjoined from communicating or attempting to communicate with the plaintiff in a way that would violate Article 17, Chapter 16 of the 1976 South Carolina Code of Laws, as amended.

SWORN to and Subscribed before me)
)
 This ____ day of _____, 20 ____)
)
 _____)
 Notary Public for South Carolina)
 My Commission expires: _____)

 Signature of Plaintiff or Person Filing
 on Behalf of Plaintiff

NOTICE: THE NON-PREVAILING PARTY IN THIS ACTION IS ASSESSED A FILING FEE OF FIFTY-FIVE DOLLARS (\$55.00). THE COURT MAY HOLD A PERSON IN CONTEMPT OF COURT FOR FAILURE TO PAY THIS FILING FEE. §16-03-170(D).

NOTICE TO DEFENDANT: YOU HAVE THE RIGHT TO EMPLOY COUNSEL TO REPRESENT YOU.

STATE OF SOUTH CAROLINA)
 COUNTY OF _____)
)
)
)
)
 _____)
 COMPLAINANT(S))
)
 VS.)
)
)
)
 _____)
 RESPONDENT(S).)

IN THE COURT OF COMMON PLEAS
 THE _____ JUDICIAL CIRCUIT
 CASE NO. _____ -CP - _____ - _____
 COMPLAINT FOR PERMANENT
 RESTRAINING ORDER

I ask the Court to issue a permanent restraining order because:

1. I am (check one):
 - a. The victim of a criminal offense (as defined in SC Code §16-3-1900(3)) that _____ occurred in this State.
 - b. A competent adult who resides in this State and seeks the order on behalf of a minor child who is a victim of a criminal offense (as defined in SC Code §16-3-1900(3)) committed by Respondent that occurred in this State; or
 - c. A witness who assisted the prosecuting entity/agency in the prosecution of a criminal offense (as defined in SC Code §16-3-1900(3)) committed by Respondent that occurred in this State.

2. This is the proper county for the filing of this case, since (check one):
 - a. The respondent currently resides in this county; or
 - b. The criminal offense occurred in this county; or
 - c. The person who was convicted of a criminal offense, in which I was a victim, does not live in this State, or cannot be found, but I live in this county.

3. The respondent was convicted of the following qualifying criminal offense(s) for which the victim was the subject of the crime or a witness which assisted the prosecuting entity/agency:

4. The conviction took place in _____ County on _____ (date). The prosecuting entity/agency was _____ and the conviction took place in the _____ Court.

5. Complainant requests: (check one or more)
 - a. That the respondent be enjoined from abusing, threatening to abuse, or molesting the victim, witness, or members of the victim's or witness' family.
 - b. That the respondent be enjoined from entering or attempting to enter the victim's or witness' place of residence, employment, education, or other location.
 - c. That the respondent be enjoined from communicating or attempting to communicate with the victim, witness, or members of the victim's or witness' family in a way that would violate the provisions of this section.

Sworn to and Subscribed before me
 this _____ day of _____, _____.

 Notary Public for South Carolina
 My Commission Expires: _____

 Signature of Complainant

NOTICE TO RESPONDENT: YOU HAVE THE RIGHT TO EMPLOY COUNSEL TO REPRESENT YOU AT THE HEARING ON THIS COMPLAINT.

**SOUTH CAROLINA BAR YOUNG LAWYERS DIVISION
VOICES AGAINST VIOLENCE COMMITTEE**

Presents



**“Survivors’ Panel: What Can Attorneys Be Aware of
to Help Interaction with Victims?”**

Moderator: Johanna C. Valenzuela, Assistant Attorney General

Panelists:

Chandra C. McPherson

Director of Victims’ Services Orangeburg County Sheriff’s Office

Carrie A. Pettit, MA

Director of Community Services Safe Harbor, Inc.

Valerie Ekue, Ed.D.

Member Organization Support Coordinator

South Carolina Coalition Against Domestic Violence and Sexual Assault

Julie Aldie

List of Resources, Reference Material for Attorneys working with clients experiencing Domestic Violence

South Carolina Coalition Against Domestic Violence and Sexual Assault

PO Box 7776 Columbia, SC, 29202

803.256.2900

sccadvasa.org

SCCADVASA

The South Carolina Coalition Against Domestic Violence and Sexual Assault (SCCADVASA) is a statewide coalition made up of the 23 domestic violence and sexual assault advocacy organizations in South Carolina. Since 1981, SCCADVASA has been a leader in representing the critical needs of survivors and their families. Domestic violence and sexual assault are crimes with devastating personal, family and community costs. If we are to effectively address them and make South Carolina a safer place, it is essential that they are recognized as public health problems in which our communities have the power to intervene and create positive change. SCCADVASA works to raise awareness of the problems, policies and legislative issues that impact effective prevention and intervention strategies. The mission of SCCADVASA is to end domestic violence and sexual assault in South Carolina by influencing public policy, advocating for social change and building capacity of member programs, organizations and communities across the state. Our vision is to eradicate domestic violence and sexual assault in South Carolina.

Services Provided by SCCADVASA

Training and Technical assistance regarding the following topics:

- Domestic violence
- Sexual assault
- Child abuse
- Primary Prevention for Intimate Partner Violence
- Community Collaboration such as SARTs (Sexual Assault Response Teams),
- CCRs (Collaborative Community Response)
- DVCCs (Domestic Violence Collaborative Community)
- Social Change
- Trauma-informed care

- Offender accountability
- Human Trafficking
- Underserved/Marginalized Communities
- College/University prevention and intervention initiatives
- Legislative advocacy surrounding domestic and sexual violence at the state and federal levels.
- Statewide systemic advocacy on behalf of sexual and domestic violence survivors.
- Legislative advocacy surrounding domestic and sexual violence at the state and federal levels.
- Statewide systemic advocacy on behalf of sexual and domestic violence survivors.

Statistics of Domestic Violence in South Carolina

- South Carolina ranked first in the nation for women killed by men according to the Violence Policy Center 2015 report on data from 2013.**

According to VPC, in 2013 South Carolina:

- For homicides in which the age of the victim was reported (57 homicides), 5 female homicide victims were less than 18 years old and 8 victims (15 percent) were 65 years of age or older.
- The average age of the victim was 44 years old.
- Out of 57 female homicide victims, 1 was Asian or Pacific Islander, 21 were black, 34 were white, 1 was of unknown race.
- Nationally for homicides in which the victim to offender relationship could be identified, 94 percent of female victims (1,438 out of 1530) were murdered by a male they knew.
- Of the homicide victims who knew their offenders, 62% (895 victims) were murdered by a husband, common-law husband, ex-husband, or boyfriend.
- There were 280 women shot and killed by either their husband or intimate partner during an argument.

**According to the Violence Policy Center's annual report titled "When Men Murder Women: An Analysis of 2013 Homicide Data"

Domestic Violence Member Organizations

- In 2014, SCCADVASA's domestic violence member organizations across the state provided shelter to approximately 2,729 adults and children.

- Non-shelter services-including counseling, court advocacy, and support services- to about 15,786 men women and children, and answered over 20,990 hotline calls.

Member Organizations

Beyond Abuse

Sexual Assault Services – Greenwood, Laurens, and Abbeville
Phone: 864-227-1623 Hotline: 864-227-1623

CASA/Family Systems

Domestic Violence and Sexual Assault Services -Orangeburg, Calhoun, and Bamberg
Phone: 803-534-2448 Hotline: 1-800-298-7228

Citizens Opposed to Domestic Abuse

Domestic Violence Services – Beaufort, Colleton, Hampton, and Jasper
Phone: 843-770-1074 Hotline: 843-770-1070

Cumbee Center to Assist Abused Persons

Domestic Violence Services – Aiken, Barnwell and Allendale
Sexual Assault Services -Aiken, Barnwell, Allendale, Edgefield, Saluda, and McCormick
Phone: 803-649-0480 Hotline: 803-641-4162

Family Justice Center

Domestic Violence Services – Horry and Georgetown
Phone: 843-546-3926 Hotline: 843-546-3926

Family Resource Center

Sexual Assault Services – Kershaw and Lee
Phone: 803-425-4357 Hotline: 1-800-585-4455

Foothills Alliance

Sexual Assault Services – Anderson and Oconee
Phone: 864-231-7273 Hotline: 1-800-585-8952

Julie Valentine Center

Sexual Assault Services – Greenville
Phone: 864-331-0560 Hotline: 864-467-3633

Hope Haven of the Lowcountry: Children's Advocacy and Rape Crisis Center

Sexual Assault Services – Beaufort, Colleton, Hampton and Jasper
Phone: 843-524-2256 Hotline: 1-800-637-7273

Laurens County Safe Home

Domestic Violence Services – Saluda, Abbeville, and Laurens
Phone: 864-682-7270 Hotline: 866-598-5932

Meg's House

Domestic Violence Services – McCormick, Edgefield, and Greenwood
Phone: 864-227-1421 Hotline: 1-800-447-7992

My Sister's House

Domestic Violence Services – Charleston, Berkeley, and Dorchester
Phone: 843-747-4069 Hotline: 1-800-273-4673

Palmetto Citizens Against Sexual Assault

Sexual Assault Services – Lancaster, Chester, and Fairfield
Phone: 803-286-5232 Hotline: 1-888-790-8532

Pee Dee Coalition Against Domestic & Sexual Assault

Domestic Violence Services – Florence, Darlington, Marion, Chesterfield, Marlboro, Dillon, and Williamsburg

Sexual Assault Services – Florence, Darlington, Marion, Chesterfield, Marlboro, Dillon, Williamsburg, and Clarendon

Phone: 843-669-4694 Hotline: 1-800-273-1820

People Against Rape

Sexual Assault Services – Charleston, Berkeley, and Dorchester
Phone: 843-577-9882 Hotline: 843-745-0144

Pickens County Advocacy Center

Sexual Assault Services – Pickens
Phone: 864-442-5500 Hotline: 864-442-5500

Rape Crisis Center

Sexual Assault Services – Horry and Georgetown
Phone: 843-448-3180 Hotline: 843-448-7273

Safe Harbor

Domestic Violence Services – Greenville, Oconee, Pickens, and Anderson
Phone: 864-467-1177 Hotline: 1-800-291-2139

SAFE Homes – Rape Crisis Coalition

Domestic Violence Services – Spartanburg, Cherokee, and Union
Sexual Assault Services – Spartanburg and Cherokee
Phone: 864-583-9803 Hotline: 1-800-273-5066

Safe Passage Inc.

Domestic Violence Services – York, Chester, and Lancaster
Sexual Assault Services – York and Union
Phone: 803-329-3336 Hotline: 1-800-659-0977

Sexual Trauma Services of the Midlands

Sexual Assault Services – Richland, Lexington, Newberry, and Sumter
Richland and Lexington Hotline: 803-771-RAPE (7273) Newberry and Sumter Hotline: 1-800-491-RAPE (7273)

Sistercare

Domestic Violence Services – Richland, Lexington, Newberry, Fairfield, and Kershaw
Phone: 803-926-0505 Hotline: 1-800-637-7606

YWCA of the Upper Lowlands

Domestic Violence Services – Sumter, Lee, and Clarendon

Phone: 803-773-7158 Hotline: 803-775-2763

Books:

Why Does He Do That? by Lundy Bancroft

Trauma and Recovery: The Aftermath of Violence—from Domestic Abuse to Political Terror, by Dr. Judith Herman

The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamic, by Lundy Bancroft and Jay Silverman

The Verbally Abusive Relationship, Expanded Third Edition: How to recognize it and how to respond, by Patricia Evans

Websites:

End Violence Against Women International, www.evawintl.org

- “We inspire and educate those who respond to gender-based violence, equipping them with the knowledge and tools they need to support victims and hold perpetrators accountable. We promote victim-centered, multidisciplinary collaboration, which strengthens the response of the criminal justice system, other professionals, allies, and the general public -- making communities safer.”

Start by Believing Campaign (EVAW), www.startbybelieving.org

- Great campaign that encourages anyone who interacts with victims of DV/SA to ‘start by believing’ what they have to say. This openness to believing a victim of intimate partner violence is foundational to any working relationship.

Lundy Bancroft, www.lundybancroft.com

- Mr. Bancroft spent many years working with batterers and their victims and has dedicated his career to educating people about DV. His website has many resources, particularly in his ‘articles’ section that provide a wealth of information.

Lundy Bancroft Child Custody Justice, <http://www.lundybancroft.com/child-custody-justice>

- This section of Mr. Bancroft’s website goes through each aspect of child custody and domestic violence in family court.

Adverse Childhood Experiences Study (ACE), www.cestudy.org

- Ongoing Longitudinal Study by the CDC that links childhood trauma to long-term health and social consequences.

Joyful Heart Foundation, www.joyfulheartfoundation.org

- “The vision of the Joyful Heart Foundation is a community with no sexual assault, domestic violence and child abuse. Our mission is to heal, educate and empower survivors of sexual assault, domestic violence and child abuse, and to shed light into the darkness that surrounds these issues.”

Joyful Heart Foundation on Vicarious Trauma,
<http://www.joyfulheartfoundation.org/learn/vicarious-trauma>

- Great breakdown of vicarious trauma and how it can affect practitioners who work directly with people experiencing trauma. “Vicarious trauma happens when we accumulate and carry the stories of trauma—including images, sounds, resonant details—we have heard, which then come to inform our worldview.”

National Coalition Against Domestic Violence, www.ncadv.org

- “NCADV is the voice of victims and survivors. We are the catalyst for changing society to have zero tolerance for domestic violence. We do this by effecting public policy, increasing understanding of the impact of domestic violence, and providing programs and education that drive that change.”

Praxis International, www.praxisinternational.org

- “Praxis International, Inc. is a nonprofit research and training organization that works toward the elimination of violence in the lives of women and children. We work with local, statewide, and national reform initiatives to bridge the gap between what people need and what institutions provide. Since 1996, we have worked with advocacy organizations, intervention agencies, and inter-agency collaborations to create a clear and cooperative agenda for social change in their communities.”

AEquitas: *The prosecutor’s resource on violence against women.* www.aequitasresource.org

South Carolina Victim Assistance Network: <http://www.scvan.org/>, (803) 750-1200

Violence Policy Center, “When Murder Women”. [When Men Murder Women: An Analysis of 2013 Homicide Data](http://www.vpc.org/revealing-the-impacts-of-gun-violence/female-homicide-victimization-by-males/) (September 2015). <http://www.vpc.org/revealing-the-impacts-of-gun-violence/female-homicide-victimization-by-males/>

Women’s Law: *A project of the [National Network to End Domestic Violence](http://www.nnet.org/), providing legal information and support to victims of domestic violence and sexual assault.* <http://womenslaw.org/>

Resources on Human Trafficking

Attorney General's Office: Human Trafficking www.scaa.gov/human-trafficking

Department of Homeland Security: <http://www.dhs.gov/blue-campaign>

1-866-347-2423

FBI: Innocence Lost National Initiative-https://www.fbi.gov/about-us/investigate/vc_majorthefts/cac/innocencelost

1-800-225-5324

NCMEC (National Center for Missing and Exploited Children):

<http://www.missingkids.com/CSTT>

National Human Trafficking Resource Center: Human Trafficking

<http://traffickingresourcecenter.org>

Polaris Project/NHTRC (National Human Trafficking Resource Center)

<http://www.polarisproject.org/>

1-888-373-7888

South Carolina Attorney General: [South Carolina State Plan to Address Human Trafficking
www.scaa.gov/human-trafficking](http://www.scaa.gov/human-trafficking)

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**SOUTH CAROLINA BAR YOUNG LAWYERS DIVISION
VOICES AGAINST VIOLENCE COMMITTEE**

Presents



“Working with Immigrant Survivors – U & T Visas”

*Patricia S. Ravenhorst, Director/Attorney,
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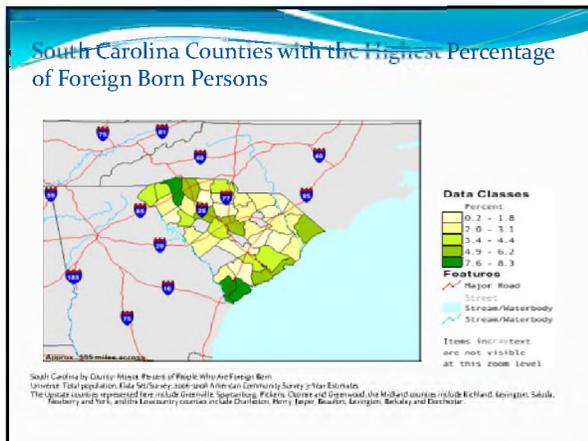
South Carolina
Victim Assistance Network

South Carolina Victim Assistance Network

Working with Immigrant Survivors: U & T Visas

January 2016

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Diversity of Foreign Born South Carolinians

5% OF SC'S POPULATION IS FOREIGN BORN

- An estimated 41% of SC's foreign born are not authorized to live in the US (2012 est.)*

<p>50% from Latin America</p> <ul style="list-style-type: none"> •62% - Mexico •13% - Central America •13% - Caribbean •8% - South America (4% - Spain) 	<p>50% from everywhere else</p> <ul style="list-style-type: none"> •22% from Asia •20% from Europe •3% from North America •3% from Africa, and •5% from Oceania
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Challenges of Immigrant Victims

- Fear of Law Enforcement & Government Officials
- Fear of deportation of themselves, support network & family (including abuser)
- Immigration-related abuse by abuser, i.e. withdrawal of pending immigration petitions, use of immigration status as a form of control
- Ineligible for many public benefits
- Legal fees and costs associated with additional immigration assistance
- Limited ability to speak or understand English
- Lack of understanding of U.S. system/culture/services

Why Immigration Status Matters

- Ability to remain in and/or return to the United States to assist with investigation, prosecution or post-conviction proceedings
 - Danger of loss or change of status
 - Danger of deportation
- Authorization to work
- Eligibility for driver's license
- Access to public benefits
- Eligibility to attend post secondary school

Why Immigration Status does NOT Matter

Immigration status does not determine one's ability to be a good parent or a credible victim/witness.

Basic Immigration Classifications

- US Citizen
- Legal Permanent Resident (Green card) & Conditional Permanent Residents
- Nonimmigrant (i.e. visitors, temporary workers, students, U & T visa holders)
- Out of Status/Undocumented - foreign national who entered the U.S.
 - without inspection at a border crossing or airport (EWI), or
 - with fraudulent documents, or
 - legally as a nonimmigrant, but then violated that status and remained without authority

Protections for Immigrant Victims

Available Immigration Benefits

- Continued Presence for victims of human trafficking
- U Nonimmigrant Visa & permanent resident status for victims of certain types of crime
- T Nonimmigrant Visa & permanent resident status for victims of trafficking in persons
- VAWA Self-Petition for battered spouses, parents & children of US citizens and legal perm. residents
- Battered spouse waiver for conditional perm. residents
- Special Immigrant Juvenile Status for abused, neglected & abandoned children

U Nonimmigrant Visa for Victims of Crime

Victims of Trafficking and

Violence Protection Act of 2000 (VTVPA)

- Findings: Immigrant women and children are often victims of crimes & they should be encouraged to report
- Purpose: Strengthen the ability of law enforcement to prosecute these crimes and encourage victims to come forward
- Cap: Only 10,000 U Visas granted each Fiscal Year (Oct. 1 – Sept. 30)

** CURRENT WAIT LIST ESTIMATE: 3 YEARS**

U Visa: Statutory Criteria

- (1) suffered substantial physical or mental abuse because of criminal activity
- (2) possesses information about the criminal activity
- (3) has been helpful, is being helpful or is likely to be helpful to government officials
- (4) criminal activity violated the laws of the U.S. or occurred in the U.S. or territories

** The victim must also demonstrate that she/he is "admissible" to the US & if not, victim must ask for a waiver of any past bad acts. (Form I-192)

What is NOT required?

- The outcome of the investigation or prosecution is irrelevant to the victim's eligibility for a U visa
 - Actual charges, arrests or convictions are not required
 - As long as law enforcement believes the person is a victim of a qualifying crime & they provided the required information and assistance, the victim continues to qualify for the U visa

U Visa: Benefits

- Deferred action status & temporary work authorization once placed on the "wait list"
 - **Current processing time to be wait listed: 18 months**
- "nonimmigrant" status & work permit for 4 years after approval
- Eligible to apply for green card at end of 3 years.
- May petition for certain family members:
 - Spouse (including common law)
 - Unmarried children under 21 years of age
 - Unmarried siblings under 18 years of age (if applicant is under 21)
 - Parents (if applicant is under 21)

U Visa: Qualifying Crimes

rape torture TRAFFICKING incest DOMESTIC VIOLENCE SEXUAL ASSAULT abusive sexual contact prostitution sexual exploitation female genital mutilation being held hostage	peonage involuntary servitude slave trade kidnapping abduction unlawful criminal restraint false imprisonment blackmail extortion manslaughter murder	FELONIOUS ASSAULT witness tampering obstruction of justice perjury stalking* FRAUD IN FOREIGN LABOR RECRUITMENT* OR attempt, conspiracy, or solicitation to commit any of the above mentioned crimes
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

*VAWA 2013 added stalking & fraud in foreign labor recruitment, but they have not been included on the U certification form

Who is considered a victim?

- **Direct victims** are people who have suffered direct and proximate (immediate) harm as a result of a crime. (This may include bystanders.)
- **Indirect victims** include certain relatives (spouse & unmarried children under 21) of direct victims when the direct victim is:
 - dead due to murder or manslaughter; or
 - incompetent or incapacitated and cannot provide information about the crime or be helpful in the investigation or prosecution of the crime.
- If a U.S. citizen child is the victim, the parent & minor siblings (under 18) may qualify as indirect victims.

Who is NOT considered a victim?

- If the applicant is considered to have been “culpable” in the crime, he/she will not be considered a victim.
- Cases of concern:
 - Dual Arrest CDV cases
 - Other “Mutual Combat” cases
- If the victim is also arrested, it is critical to provide direct additional evidence to demonstrate that she/he was not culpable in the crime.

** A family member considered culpable in the crime will NOT be granted derivative U status.

Substantial Physical or Mental Abuse

- Being the victim of a qualifying crime is NOT sufficient.
- Victim has burden of demonstrating that he/she has suffered SUBSTANTIAL physical or mental abuse as a result of the crime.
- “Physical or mental abuse” means injury or harm to your body, or harm to your emotional or psychological well-being.
- “Substantial”: This depends on a wide range of factors, including the nature of the injuries, severity of crime, severity of harm, & length of suffering.

USCIS will consider the full history of abuse or a series of incidents, therefore victim should gather records of all prior incidents of abuse.

Substantial Physical or Mental Abuse

- **Primary Evidence**
 - Victim's detailed personal statement describing the details of the crime, the immediate physical & emotional impact and the ongoing physical & emotional suffering.
 - Detailed statements /records of shelter staff, therapists, psychiatrists & victim advocates.
 - Medical records
- **Additional Records to Document Impact of Crime**
 - Police or sheriff reports from the crime
 - Copy of any Orders of Protection or Restraining Orders
 - Certified court records of perpetrator
 - Statements of witnesses to the crime(s) or victim's physical and emotional injuries

Possesses information about the crime

- The victim must have credible & reliable info. of the details of the crime or events leading up to the crime.
- This is not usually a problem, unless the victim is under 16 years old, incapacitated or incompetent.
 - In these cases a “next friend” can stand in the victim's place to provide this information.
 - This person is generally someone who appears on the victim's behalf but the next friend does not actually apply for U visa status.
 - The next friend is not a party in the case or a GAL.

Helpfulness

- From the initiation of the investigation, the victim has not refused or failed to provide information and assistance **reasonably requested** by law enforcement.
- **Continued** cooperation is required.
- Law enforcement agencies can revoke their U certification if the victim refuses to cooperate with a **reasonable** request.
- **PRACTICE TIPS:**
 - Ensure victim knows how to update contact information with each agency & that updated contact information is provided by LEA
 - Ask LEA if a U cert. has been signed & the name of the victim's immigration attorney

U Visa: Law Enforcement Certification Form

- USCIS Form I-918, Supplement B is **REQUIRED** to file for a U nonimmigrant visa. It is not required for the U green card application, but it is preferred.
- Without the signed form, the victim does **NOT** qualify for the U Nonimmigrant Visa.
- It is used to verify that:
 - 1) the person is a victim of a qualifying crime;
 - 2) the victim "possesses information" about the crime &
 - 3) He/she "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of the crime.
- It does **NOT** grant immigration status.

U Visa: Law Enforcement Certification Form

- **Who can sign the Form I-918, Supp. B?**
 - Federal, state and local law enforcement agencies, prosecutors, judges, or
 - Other agencies that have criminal investigative jurisdiction in their respective areas of expertise such as SC DSS, the Equal Opportunity Commission and the Department of Labor
- The person signing the form must be the **head of the agency** or someone in a **supervisory role** designated to sign U certifications.
 - Attach letter from head of agency designating authority to the designated person.
 - NOTE: USCIS may not understand the role of the "Solicitor"; attach general information to educate USCIS.

U Visa: Law Enforcement Certification Form

Is “law enforcement” required to sign the Form I-918, B if the victim qualifies?

- NO – The decision to sign the form is completely discretionary.

National survey of advocates re: common reasons for denial of U certifications

<ol style="list-style-type: none"> 1. The criminal was not prosecuted 2. The crime happening too long ago 3. The criminal was not arrested 4. The victim's case was closed 5. The victim did not show enough assistance to law enforcement 6. Law enforcement has the discretion not to certify 7. The victim did not have any or enough injuries 8. The certifier did not feel comfortable granting legal status 9. The agency does not know they can certify 	<ol style="list-style-type: none"> 10. Victim may stop cooperating after U visa certification is signed 11. The criminal was not identified 12. Victim is a child and the parent is seeking certification 13. The criminal has not been convicted 14. The victim never testified 15. Agency did not want to certify due to concern about liability 16. Victim has a removal order or is in removal proceedings 17. Victim no longer in the U.S. 18. Agency has no certification policy
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Planning Ahead for U Adjustment of Status

- After 3 years of continuous physical presence in the US in U Nonimmigrant Status, the victim may qualify for legal permanent residency.
- Eligibility
 - 3 years in the U.S. in U Nonimmigrant Status
 - Can't have a single absence longer than 90 days or total absences over 180 days
 - Continued cooperation with criminal case. (New I-918, B preferred, but not required)
 - Continued presence in US is justified on humanitarian grounds, to ensure family unity or is in the public interest

Continued Presence
for Trafficking Victims

Law enforcement tool that provides temporary victim/witness relief while a case is investigated and prosecuted.

- Provides lawful immigration status, work authorization and public benefits for 1 year (may be renewed)
- ONLY Federal law enforcement can initiate the application, but local/state LEA can request submission of this application for a state case
- Law enforcement officer remains responsible for victim for duration of continued presence

T Nonimmigrant Visa:
Statutory Criteria

- (1) is or has been a victim of a severe form of trafficking in persons
- (2) is physically present in the U.S. **on account of** such trafficking
- (3) has complied with any reasonable request for assistance in the investigation or prosecution
- (4) would **suffer extreme hardship** involving unusual and severe harm upon removal

ANNUAL CAP: 5,000 per year (no wait list)

T Visa: Benefits

- “nonimmigrant” status for 4 years
- Entitled to work during 4 years
- Eligible to apply for green card at end of 3 years or after conclusion of case.
- Derivative benefits for certain family members may be available, but only upon showing of extreme hardship.
- Public benefits eligibility.

T Visa: Law

Enforcement Certification Form

- USCIS Form I-914, Supplement B
- Encouraged, **but not required** for applicants 18 years of age or older (increased from 15)
- Completed by federal, state or local law enforcement agencies investigating or prosecuting acts of trafficking

OMB No. 118-0146 Expires 05-31-02
 U.S. Department of Justice
 Immigration and Naturalization Service
Declaration of Law Enforcement Officer for Victims of Trafficking in Persons

Instructions to Law Enforcement Officer: This applicant is applying for immigration benefits based upon a claim of having been a victim of a serious form of trafficking in persons. Please complete this form to the best of your knowledge of what is occurring and/or has occurred for either you, as a law enforcement officer investigating the crime.

In order to be granted immigration benefits, the applicant must demonstrate that he or she is present in the United States as a result of being a victim of a serious form of trafficking in persons. Unless the applicant is from a visa-exempt country, the applicant must also demonstrate that he or she is cooperating with law enforcement in the investigation and prosecution of the trafficking crime of which he or she was a victim.

To be completed by Federal Law Enforcement Officers: the victims under the Victims of Trafficking and Violence Protection Act, Public Law 108-21.

PART A - General Information
 Name of the Agency: U.S. Marshall's Service, DOJ U.S. Attorney's Office State or Local
 Foreign Consulate or Embassy of the Applicant Other _____
 Civil Rights Division, DOJ Criminal Division, DOJ

Address of Agency/Officer: _____ Title and Title of Certifying Officer or Official: _____

Role of Immigration & Victim's Rights Attorneys

- Help determine immigration status of victims
- Evaluate victim's eligibility for immigration benefits
 - Advise victim regarding risks and benefits of applying for immigration benefits or pursuing other legal remedies
- Advise victims regarding risks and benefits of reporting crime to law enforcement and continuing to cooperate
- **Help maintain communication with LEA & prosecution**
- Gather information and documents from victim, victim's family, law enforcement and other NGOs to support immigration applications
- Prepare and file immigration applications

Special Concerns for Prosecutors & LEAs

- Concerns of bias and/or credibility of victim
 - Weren't you promised a visa?
 - Didn't you fabricate allegations to get a visa?
- Discoverability of victim's request for U & T certifications and/or LEA decision to sign?
 - *Brady v. Maryland* - constitutional mandate to disclose "material" and "exculpatory" evidence to defendants
 - SC Criminal Procedure, Discovery & Disclosure
- Subpoenas by defense counsel to victim and/or victim's attorney for copy of U & T visa filings to USCIS



South Carolina Victim Assistance Network

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Greenville Office
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**SOUTH CAROLINA BAR YOUNG LAWYERS DIVISION
VOICES AGAINST VIOLENCE COMMITTEE**

Presents



“Ethics in Enforcement of Domestic Violence Laws”

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Ethics in Enforcing Domestic Violence Laws: *Common Ethics Issues for Prosecutors*

Amie L. Clifford
Education Coordinator
S.C. Commission on Prosecution Coordination

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Scope of Presentation

About this presentation:

- This presentation is aimed at attorneys who prosecute domestic violence crimes, and the Rules of Professional Conduct will be examined from that perspective.*

** Because all but Rule 3.8 of the SCRPC apply to ALL lawyers, the discussions about the obligations and restrictions imposed by the other Rules are relevant to all attorneys.*

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Scope of Presentation

About this presentation:

- Because of the length of the presentation,
 - The slides contain more text than the presenter would normally include because time may not allow for a discussion of all issues and rules included, and attendees may wish to use the slides later as a starting point for their own discussion and/or research.
 - Not all relevant Rules may be discussed/reviewed and not all portions of any Rules discussed may be included. In order to ensure that participants understand the complete rules, they should be read in their entirety. They can be found in Rule 407, SCACR (online at <http://www.judicial.state.sc.us/court Reg/>).

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PROBLEM AREAS

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Potential "Ethics" Problem Areas for Prosecutors

- Competence and Diligence
- Case Preparation
 - Charging
 - Communications
 - with Unrepresented Persons
 - with Represented Persons
 - with Judges
 - with Jurors
 - Discovery
 - Responsibility for the Actions of Others
- Trial/Advocacy
 - Jury Selection
 - Direct & Cross Examination
 - Objections/Motions
 - Closing Argument

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Always Remember

- **Rule 3.8: Special Responsibilities of a Prosecutor**
 - Prosecutors only type of lawyer who have their "own" rule.
 - Read, reread, and reread the Rule and Comments to ensure understanding and compliance with the black letter of the Rule, as well as the spirit of the Rule.

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Always Remember

- **Rule 3.8, Comment [1]:**

"A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. ...Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4."

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Always Remember

- Rule 3.8 should "influence" all actions, not just those specifically referred to in the Rule and Comments.

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COMPETENCE

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Competence

- **Rule 1.1: Competence**
- **Rule 1.3: Diligence**

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Competence - Rule 1.1

- **RULE 1.1: Competence**
 - "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."
 - Be or Become

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Competence - Rule 1.3

- **RULE 1.3: Diligence**
 - "A lawyer shall act with reasonable diligence and promptness in representing a client."
 - **Comment [2]:**

"A lawyer's work load must be controlled so that each matter can be handled competently."

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Competence - Rule 1.3 (cont'd)

- **Comment [3]:**

"Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client."

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Competence - EAOs

- **Competence as affected by workload**
 - ABA Eth. Op. 06-441 (2006)
 - "Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation"
 - SC Bar Eth. Adv. Op. 04-12 (2004)
 - Ethical obligations of public defenders
 - EAOs from Other States Addressing Prosecutor Workloads

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Competence - What Do the Rules Require?

- **Know the law or become knowledgeable**
- **Know your case**
 - More under "Case Preparation"
- **Be diligent**
- **Act in timely manner**
- **If you have a problem, talk to your supervisor**
 - Regardless of working conditions (workload, hours, pay, resources, etc.) you are *obligated* under the Rules to provide competent representation

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CASE PREPARATION

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Case Preparation -Investigations & Charging: Relevant Rules

- **Rule 3.1:** Meritorious Claims and Contentions
- **Rule 3.4:** Fairness To Opposing Party And Counsel

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Investigations & Charging – Rule 3.1

- **Rule 3.1: Meritorious Claims and Contentions**
 - “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.”

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Investigations & Charging – Rule 3.1 Comments

“[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.”

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Investigations & Charging - Rule 3.1 Comments (*cont'd*)

"[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by good faith argument for an extension, modification or reversal of existing laws."

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Investigations - Rule 3.4

- **RULE 3.4: Fairness to Opposing Party and Counsel**
 - Attorney shall NOT
 - unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value (3.4(a)); or
 - falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law (3.4(b)).

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Case Preparation – Discovery

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Discovery – Relevant Rules

- **Rule 3.4:** Fairness to Opposing Party and Counsel
- **Rule 3.8:** Special Responsibilities of a Prosecutor
- **Rule 8.4:** Misconduct

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Discovery – Rule 3.4(D)

Rule 3.4: Fairness To Opposing Party And Counsel

- “A lawyer shall not: ... (d) in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;....”

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Discovery – Rule 3.8(D)

Rule 3.8: Special Responsibilities of a Prosecutor

- “The prosecutor in a criminal case shall: (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;....”

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Discovery – Rule 3.8 Comments

Comment [3]

"The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest."

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Discovery – Rule 8.4

- **Rule 8.4 Professional Misconduct**

"It is professional misconduct for a lawyer to...

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;...

(e) Engage in conduct that is prejudicial to the administration of justice;...."

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Discovery: Constitutional, Procedural, and Ethics "Rules"

- **Constitutional Obligation and Analysis**
 - *Brady*
- **Procedural Obligation and Analysis**
 - Rule 5/Differentiated Case Mgmt Orders
- **Ethics Obligation and Analysis**
 - Rules 3.4, 3.8, and 8.4

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Discovery: Ethics Opinions

- **Disciplinary**
 - South Carolina
 - Other Jurisdictions
- ***Ethics Advisory Opinions***
 - South Carolina
 - Other Jurisdictions

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Case Preparation – Investigations, Charging & Discovery

What Do the Rules Require?

- **Know your case**
 - Review police reports and all witness statements
 - TALK to witnesses
 - Do not tamper with or obstruct defenses' access to evidence
- **Know the law**
 - Elements of Crime(s)
 - Evidentiary issues
- **TURN OVER DISCOVERY MATERIALS**
- **Only pursue charges supported by PC**

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Case Preparation – Communication

Relevant Rules

- **Rule 4.1: Truthfulness in Statements to Others**
- **Rule 4.2: Communication with Represented Persons**
- **Rule 4.3: Communication with Unrepresented Persons**
- **Rule 4.4: Respect for Rights of Third Persons**
- **Rules 5.1, 5.2, and 5.3: Responsibilities for Actions of Others and Responsibilities of Subordinate Lawyers**
- **Rule 8.4: Misconduct**

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Case Preparation - Communication

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Communication - Rules 4.1 and 8.4

- **RULE 4.1: Truthfulness in Statements to Others**
 - "In the course of representing a client a lawyer shall not knowingly: ...(a) make a false statement of material fact or law to a third person;...."
- **RULE 8.4: Misconduct**
 - "It is professional misconduct for a lawyer to: ...(d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;...."
 - For purposes of Rule 8.4 (c), a misrepresentation may be "a lie, half-truth, or even silence," *In re Gatti*, 8 P.3d 966, 973 (Ore. 2000), or the nondisclosure of a material fact. *Id.* "A material fact consists of information that, if disclosed, would have influenced the recipient's conduct." *Id.*

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Communication - Rules 4.2 and 4.3

- **RULE 4.2: Communication with Represented Persons**
 - Prohibits communication about the subject of the representation
 - Client cannot waive protection afforded by rule
- **RULE 4.3: Communication with Unrepresented Persons**
 - Make role clear
 - Do not provide legal advice if interests are or have reasonable possibility of being in conflict with the unrepresented person's interests

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Communication - Rule 4.4

RULE 4.4: Respect for Rights of Third Persons

- In representing client, attorney shall not use means that have no substantial purpose other than to embarrass, delay, or burden third person, or use methods to obtain evidence that violate such person's legal rights.
- Attorney who receives document relating to representation of client and knows or reasonably should know that document was inadvertently sent shall promptly notify sender.

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Communication - Rule 3.4

- **RULE 3.4: Fairness to Opposing Party and Counsel**
 - Attorney shall NOT
 - unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value
 - falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law

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Communication - Rule 3.4 (cont'd)

- **RULE 3.4: Fairness to Opposing Party and Counsel**
 - Attorney shall NOT
 - request someone other than client to refrain from voluntarily giving relevant information to another party unless:
 - person is relative/employee/agent of client, and
 - attorney reasonably believes that person's interests will not be adversely affected by refraining from giving such information

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Communication - What Do the Rules Require?

- **The Rules mean what they say**
 - Be truthful, and
 - Be courteous, and
 - Do not interfere with the defendant's ability to prepare and present a defense, and
 - Be respectful of (do not violate) the rights of those with whom you communicate, including
 - Any/all witnesses, and
 - Defendants.

Remember: Do NOT talk to represented witness or defendant about subject of the representation unless communication is allowed by law/court order, or you have the attorney's consent (it does not matter if the W/D initiates the conversation).

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RESPONSIBILITY FOR THE ACTS OF OTHERS

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Responsibility for the Acts of Others

All attorneys can be responsible under Rules for the actions of others, including :

- Other attorneys
- Other nonlawyers with whom attorney works (*e.g.*, administrative assistant, investigators, etc.)
- Others (*e.g.*, private investigators, law enforcement, etc.)

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Responsibility for the Acts of Others (*cont'd*)

- **RULE 5.1:** Responsibilities of Partners, Managers, and Supervisory Lawyers
- **RULE 5.3:** Responsibilities regarding Nonlawyer Assistants
- **RULE 8.4:** Misconduct
- **RULE 5.2:** Responsibilities of a Subordinate Lawyer

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Responsibility for the Acts of Others (cont'd)

RULE 5.1: Responsibilities of Partners/Managers /Supervisors

When is a lawyer responsible for another lawyer's violation of the Rules?

- orders or, with knowledge, ratifies the conduct involved
- is a partner (or equivalent) or has direct supervisory authority over the other lawyer, and knows of the conduct when its consequences can be avoided or mitigated but does not take reasonable remedial action.

Under Rule 5.3, responsibility for the acts of nonlawyers is essentially the same.

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Responsibility for the Acts of Others (cont'd)

RULE 8.4 (a): Misconduct

It is professional misconduct for a lawyer to:

- violate or attempt to violate the Rules,
- knowingly assist or induce another to do so,
or
- do so through the acts of another.

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Responsibility for the Acts of Others (cont'd)

RULE 5.2: Responsibilities of a Subordinate Lawyer

- Rules still apply to lawyers who act at the direction of another
- Subordinate lawyers do not violate the Rules if act in accordance with a supervisory lawyer's *reasonable* resolution of an *arguable* question of professional duty.

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Responsibility for the Acts of Others - What Do the Rules Require?

- **Managers/directors/supervisors' responsibility for those they supervise**
 - Must take steps to ensure that those you manage/direct/supervise do not violate the Rules.
- **Responsibility for nonlawyers' actions**
 - Cannot direct/encourage/condone a nonlawyer to do/doing what you cannot.
- **Supervised lawyers**
 - Seek guidance when arguable questions of law arise.

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TRIAL

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Trial

- **RULE 1.3:** Diligence
- **RULE 3.1:** Meritorious Claims and Contentions
- **RULE 3.3:** Candor toward the Tribunal
- **RULE 3.4:** Fairness to Opposing Party and Counsel
- **RULE 3.5:** Impartiality and Decorum of the Tribunal

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Trial - Rule 1.3

- **RULE 1.3: Diligence**
 - "A lawyer shall act with reasonable diligence and promptness in representing a client."
 - **Comment [1]:**
 - Lawyers should take whatever lawful and ethical measures are required to vindicate their clients' cause or endeavor.
 - Lawyers must act with commitment and dedication to the interests of, and with zeal in advocacy upon, their clients' behalf.
 - Lawyers are not required to press for every advantage that might be realized for their clients.
 - A lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

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Trial - Rule 3.1

- **RULE 3.1: Meritorious Claims and Contentions**
 - **Attorney shall NOT**
 - assert or controvert an issue unless there is basis in law and fact for doing so that is not frivolous
 - What does this mean?

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Trial - Rule 3.3

RULE 3.3: Candor toward the Tribunal

- Attorney shall NOT *knowingly*.
 - Make false statement of fact/law or fail to correct previously made false statement of material fact or law;
 - Fail to disclose controlling legal authority directly adverse to client's position and not disclosed by opposing counsel; or
 - Offer evidence attorney knows to be false.
- If know person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to proceeding, attorney must take reasonable remedial measures, including, if necessary, disclosure

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Trial - Rule 3.4

• **RULE 3.4: Fairness to Opposing Party and Counsel**

- Attorney shall not
 - Falsify evidence, present perjured testimony, or offer a witness an unlawful inducement (3.4(b));
 - Knowingly disobey an obligation under the Court rules, "except for an open refusal based on an assertion that no valid obligation exists" (3.4(c));
 - Allude to any irrelevant matter or matter that will not be supported by admissible evidence (3.4(e));
 - Assert personal knowledge of facts *in issue* except when testifying as witness (3.4(e)); or
 - State personal opinion as to justness of cause, witness's credibility, culpability of civil litigant or guilt or innocence of criminal defendant (3.4(e)).

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Trial - Rule 3.5

- **RULE 3.5: Impartiality & Decorum of Tribunal**

Attorney shall not

- "(a) seek to influence a judge, juror, member of the jury venire or other official by means prohibited by law";
- "(b) communicate *ex parte* with such a person during the proceeding unless authorized to do so by law or court order;" or
- "(d) engage in conduct intended to disrupt a tribunal...."

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Trial - What Do the Rules Require?

- **They mean what they say.**

- **Do:**

- Act zealously, be courteous, and adhere to the Oath of Professionalism; and
- Unless there is a valid basis in the law, obey the Court Rules and follow the law.

- **Do NOT:**

- Insert personal knowledge; or
- Improperly persuade/influence (or attempt to improperly persuade/influence) either the finder of or the outcome of trial; or
- Engage in improper *ex parte* communications with the judge.

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Questions?

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**SOUTH CAROLINA BAR YOUNG LAWYERS DIVISION
VOICES AGAINST VIOLENCE COMMITTEE**

Presents



“Human Trafficking in South Carolina”

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VAWA Program Director*

Human Trafficking in South Carolina

Marie Sazehn
South Carolina Office of the Attorney General

Overview

- General overview
- Case examples
- Victimology
- The law, task force, Annual Report

Human Trafficking Stats & Facts

- Market driven criminal industry – “high profits and low risk”
- To traffickers, people are reusable commodities – not as dangerous to deal in.
- Exact numbers are difficult to pin down because of the extreme underground nature of this crime.
 - It's estimated around 300,000 children are trafficked in US, with an average age of 12-14 when they are pulled into the life.
 - **NCMEC states that 1 in 6 endangered runaways reported to them in 2014 were likely sex trafficking victims.**
- Multi-billion dollar business
 - US is one of top ranked countries of destination for sex trafficking victims
 - FASTEST GROWING criminal industry in the world

Human trafficking is **NOT**:

- Gender/Age/Nationality specific
- A crime that requires transportation of victims across borders
 - Not a required component in the statute
- Limited to victims being controlled by violence
 - Also use mental abuse, threats, manipulation, drugs, lies - to name a few
- Smuggling

Who are the traffickers?



Who are the traffickers?

- Nationwide, traffickers that have been identified include:
 - Men and women – working alone/together
 - Intimate partners/family members
 - Gangs & criminal networks
 - Labor brokers
 - Small business owners/managers
 - Large factory owners & corporations
 - Brothel & fake massage parlor owners
 - Not exactly specific...

First South Carolina Conviction



- Greenville sex trafficking case prosecuted by AG's office
- Victim told she would have one job, then forced to perform sex acts with up to 30 men a day
- Couple would hold victim's son hostage while victim worked
- Also threatened victim's family
- Outcome
- Working together on cases like this...

Upstate Pleas



- Case that started at state level and went on to be investigated by the feds
- Five males ages 19-26 all pled guilty in the trafficking conspiracy
- "Prosecutors say the men recruited minors and young women to work for them, then instructed and supervised them on how to solicit and charge for commercial sex acts."
- Operated in Spartanburg and Charlotte, as well as other Southeastern cities
- <http://www.foxcarolina.com/story/30958931/spartanburg-teen-pleads-guilty-to-human-trafficking>

Richland County



- Kristopher Block pled guilty in Richland County on January 13, 2015.
- Pled to other charges, along with human trafficking of a minor.
- 15 years in prison, will be registered as sex offender, lifetime monitoring because of other offenses
- "Block was arrested after authorities found an exploited minor in a Columbia motel in December 2014. Investigators say Block admitted to taking photos of the victim and advertising her for sale on the Internet."
- <http://www.therepublic.com/view/story/7cf96597dca44306b7ad1008ba8f04b0/SC-Human-Trafficking>

Charleston

- Federal case, indicted week of January 11, 2016
- People indicted included: Damon 'DJ/Daddy Frost' Jackson, Tremel 'Sincere/New York' Black, Da-Shun 'Dae Dae' Shukur Curry, Bakari 'Bizzle' Shahid McMillian, Kerry 'KJ' Taylor, Desmon 'Six' Singletary, Howard 'Poppa' Parker, and Ryan 'Gotti/Qweezy' Shaquon Turner
- Nicknames can be important for recognition with victims in these cases!
- All indicted for conspiracy to commit sex trafficking
- <http://wsav.com/2016/01/15/eight-indicted-in-human-trafficking-conspiracy/>

The Internet



Traffickers are predatory....

Knocking: How to make a ho

She (the ho) must want something. Be it fame, stardom, love, money, respect, security-in order to be a ho, she must want something. That something is that which she is willing to sacrifice ALL to have. That one thing, that need, is what you must attain before the ho does. You then sell it to her for her soul. If a ho wants fame, love, it doesn't matter. You make her believe you can and will give her these things. She must feel that the best and only way is the way you're going. A ho is lost. Either she doesn't know where she wants to be but she knows where she doesn't want to be.

Or, she does know where she wants to be, but doesn't know how to get there. So she chooses a pimp because he appears to know the directions. Maybe he does and maybe he doesn't. The ho pays for the journey, not the destination. The pimp never has to actually deliver; it's his choice. It's always his choice. Remember, he never, ever has to deliver.

You take away everything she has then give her what she needs. You, the pimp, are the cause as well as the solutions to all of her problems. You give her the poison, then sell her the cure. Once she has chosen you to deliver her dreams, you are in control. At this point she is not yet knocked nor is she ready to ho. She is not a ho yet. The best and fastest way to get the ho to choose you and relinquish her soul is to break the bitch down. Once this has happened, she is knocked and completely under your spell. By breaking her down, you leave her no other choice but you.

- *The Pimp Game*, Mickey Royal

Why don't victims seek help?



Human Trafficking Victims: "Why don't they just seek help?"

- Take away papers and legal documents
- Misrepresent US laws to victims
- Threaten victims with deportation/arrest
- Threaten to harm victim's family
- Use debt to create situation where victim has to work it off or be punished
- Move victims often – so they don't know where they are or how to get assistance
- Create dependency using tactics of psychological & emotional abuse – like CDV
- Create a victim dependency on drugs and use supply as way to control victim
- Isolate victims and act as victim's only translator
- Types of victims traffickers target (runaways, people without stable environments)

Human Trafficking Law

Ratified 6/12/12, Approved 6/18/12,
Effective 12/15/12

Updated by S. 196 & S. 183

S.C. Code Ann. 16-3-2010-2100

Definitions in the Law
S.C. Code §16-3-2010

What are we looking for?

Sex Trafficking:

- recruitment, harboring, transporting, provision, or obtaining of a person through force, fraud, or coercion, **OR someone under 18**** when something of value is exchanged, to perform what would be defined as the following crimes:
 - Criminal sexual conduct – 1st, 2nd, 3rd degree, or with a minor
 - Engaging a child for sexual performance
 - Directing or promoting sexual performance by a child
 - Sexual battery, conduct, or performance

What is “something of value” when it comes to sex trafficking of minors?

What is the difference between a prostitute (willing participant) and a victim of sex trafficking?

Types of Labor Trafficking

- Debt bondage: person who pledges personal services or those of someone under his control as security for a debt
- Forced Labor: labor or services performed by someone coerced by another
- Involuntary Servitude: servitude created through coercion
 - **can also be domestic servitude

Force, Fraud, & Coercion

- Force – physical violence -to include rape, beatings, and confinement/restraint
- Fraud – false offers of employment, promises of marriage, a better life, a modeling contract...
- Coercion – threats (to victim & family), debt-bondage, psychological abuse, etc.

What you charge/indict/etc.

The Crime: S.C. Code Ann. § 16-3-2020

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

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

Horizontal lines for notes.

Penalties

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

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

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

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

Horizontal lines for notes.

Penalties, continued

(G) A person who aids, abets, or conspires with another person to violate the criminal provisions of this section must be punished in the same manner as provided for the principal offender and is considered a trafficker.

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

Violent, most serious, sex offender registry for sex trafficking

Horizontal lines for notes.

16-3-2020(J) & New Additions...

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

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

- (1) the victim's sexual history or history of commercial sexual activity, the specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct;
- (2) the victim's connection by blood or marriage to a defendant in the case or to anyone involved in the victim's trafficking;
- (3) the implied or express consent of a victim to acts which violate the provisions of this section do not constitute a defense to violations of this section;
- (4) age of consent to sex, legal age of marriage, or other discretionary age; and
- (5) mistake as to the victim's age, even if the mistake is reasonable.

State Grand Jury Jurisdiction

- (L) A person who violates the provisions of this section may be prosecuted by the State Grand Jury, pursuant to Section 14-7-1600, when a victim is trafficked in more than one county or a trafficker commits the offense of trafficking in persons in more than one county
- SGJ law amended to reflect this in 2015 – now have this jurisdiction!

Criminal liability of principal owners of business (§ 16-3-2030)

(A) The principal owners of a business, a business entity, including a corporation, partnership, charitable organization, or another legal entity, that knowingly aids or participates in an offense provided in this article is criminally liable for the offense and will be subject to a fine or loss of business license in the State, or both.

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

- (1) order its dissolution or reorganization;
- (2) order the suspension or revocation of any license, permit, or prior approval granted to it by a state or local government agency; or
- (3) order the surrender of its charter if it is organized under state law or the revocation of its certificate to conduct business in the State if it is not organized under state law

Victims of Trafficking

Offenders convicted of trafficking must be ordered to pay mandatory restitution (16-3-2040)

- Value of labor or services

Civil Actions are Available – SOL does apply here; treble damages may be available (16-3-2060)

Mandated Posters

Victims of Trafficking, Continued

Identity of the victim & victims family must be kept confidential by ensuring the names and ID information of victim & family are not released to public, including by the defendant (16-3-2070(B))

Asset Forfeiture – may be an option. All provisions explained in 16-3-2090; victim does get a part of compensation from sale of assets.

Human Trafficking Task Force

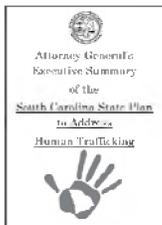
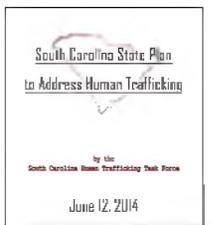
The Attorney General shall establish an interagency task force to develop and implement a State Plan for the Prevention of Trafficking in Persons.

S.C. Code Ann 16-3-2050

Mandated Members of the Task Force

- The HT Task Force includes the following:
- The Office of the Attorney General, who must be chair
- The South Carolina Labor, Licensing and Regulation
- The South Carolina Police Chiefs Association
- The South Carolina Sheriffs' Association
- The State Law Enforcement Division
- The Department of Health and Environmental Control Board
- The State Office of Victim Assistance
- The South Carolina Commission on Prosecution Coordination
- The Department of Social Services
- A representative from the Office of the Governor
- A representative from the Department of Employment and Workforce
- Two persons from nongovernmental organizations (appointed by AG)
- US Attorney's Office, FBI, other federal agencies attend as well

State Plan & Summary



Available at: www.scag.gov/human-trafficking

Areas Focused on in the State Plan

- Determining the Magnitude of Human Trafficking in South Carolina
- Protecting, Supporting, and Serving Victims of Human Trafficking
- Investigating and Prosecuting Human Traffickers
- Preventing Human Trafficking in South Carolina
- Areas for Additional Consideration and Study

Annual Report



- Annual report was released on January 11, 2016. It was turned into the Governor, Speaker of the House, and President of the Senate on December 31 as mandated.
- Also located at www.scag.gov/human-trafficking
- Shows significant advancements by the task force, what we are currently working on, and what we are working on moving forward

- Service providers, all together, reported that they served **155 victims/survivors of human trafficking in SC** in this report period (late 2014 through end of 2015).
 - This includes children, adults, immigrants, citizens, labor trafficking, and sex trafficking. So we are seeing everything here in SC.
 - Good news - organizations are starting to track this information, and we expect this to get more refined and systematic moving forward.

Other notable accomplishments:

- First HT shelter opened in 2014, continues to operate at near capacity.
- Other shelters are working to accommodate victims throughout the state.
- Multi-disciplinary teams are forming to assist victims.
- Emergency response systems developed (for acute situations)
- Ongoing training of professionals, including law enforcement and first responders statewide
- South Carolina Prosecution Commission trained prosecutors on HT
- Some service provider agencies are developed specialized positions dedicated to HT.
- Private attorneys dedicated legal services to victims
- First conviction obtained
- SGJ jurisdiction
- Increased number of tips through Polaris and other sources
- Judges have been trained, and will continue to be trained into 2016.
- Criminal Justice Academy updated HT classes
- Partnership with DHS Blue Campaign
- Legislation for, and creation of, mandated HT Hotline Posters
- SC State Plan won award from State Library as top 10 most notable document
- Public awareness has also reached into the thousands of citizens made aware of human trafficking
- SANE nurses trained on HT recognition

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**SOUTH CAROLINA BAR YOUNG LAWYERS DIVISION
VOICES AGAINST VIOLENCE COMMITTEE**

Presents



**“Secondary Trauma, Burnout, and Compassion
Fatigue: Mental Health for the Attorney”**

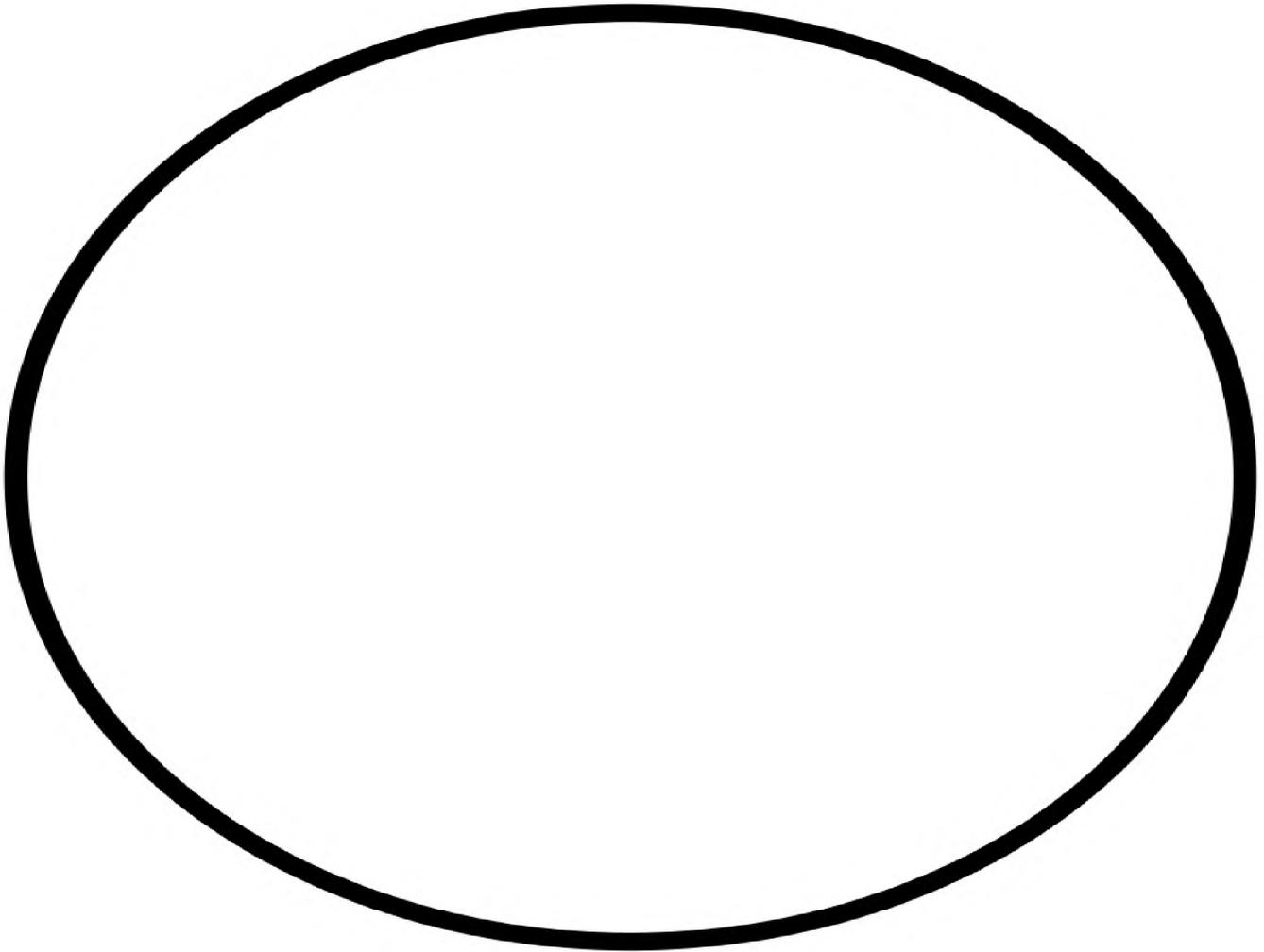
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Secondary Trauma, Burnout, and Compassion Fatigue: Mental Health for the Attorney

Handout by Jasmine D. Smith, Ed.S., Esq.

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South Carolina Bar Resources:

Attorney Wellness Committee's Website: www.sctbar.org/livingabovethebar

Lawyers Helping Lawyers: toll free helpline 1-866-545-9590 or 803-603-3807 for Robert Turnbull, program director for Lawyers Helping Lawyers

