

**STATE OF SOUTH CAROLINA
OFFICE OF THE GOVERNOR**

**CRIME VICTIMS' OMBUDSMAN
ANNUAL REPORT**

FISCAL YEAR 2000-2001



GOVERNOR JIM HODGES

**Annual Report
Fiscal Year 2000-2001**

**OFFICE OF THE GOVERNOR
CRIME VICTIMS' OMBUDSMAN**

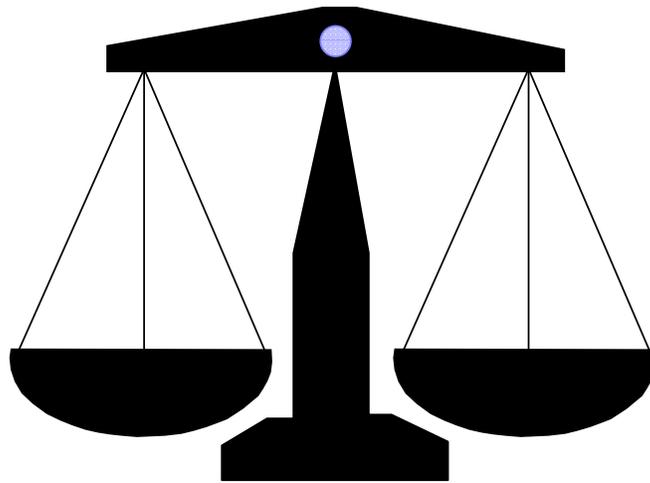
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***A MESSAGE FROM
THE CRIME VICTIMS' OMBUDSMAN***



February 2002

As I write this year's message, I cannot help but constantly be overshadowed by thoughts of 9-11 and of the horrible, unspeakable acts brought upon our country. On that day, everyone became a crime victim.

It has been only five months and the effects of that day are still being seen, still being heard, and still being felt. It is a tragedy that changed our nation and forever changed the way we live and breathe. As a result, this heinous act has without question altered the face of the criminal justice system at the federal level and in the State of South Carolina.

As the criminal justice system in S.C. adjusts to this different world, by preparing, reorganizing and focusing its resources, it is more important than ever for its citizens and especially its crime victims to continue to have a confidential arena for their concerns. The Office of the Crime Victims' Ombudsman (OCVO) has provided this service since November 1996 and continues to maintain a high standard for factual, unbiased results for each concern brought to our attention.

In Fiscal Year 2000-2001, this office responded to 89 cases compared to 58 cases the previous fiscal year. The OCVO also received approximately 2,200 phone calls during this same fiscal year and handled approximately 250 assists/referrals. There are a number of reasons for the rise in the number of actual cases handled by the OCVO. However, I believe the most attributable factor is the number of public engagements where the OCVO has taken the opportunity to talk about its resources and thus, created a situation where more and more service providers and constituents are learning about the duties, responsibilities and resources of the OCVO.

And as we begin the new year, the OCVO looks forward to continuing the integral roles it plays in the field of victim services as well as the criminal justice system. It is my hope that together we will sustain and hopefully expand the reputation South Carolina has earned for being at the forefront of victim services. I commend those who work daily to ensure the integrity of the criminal justice system as well as equally uphold those rights afforded to victims of crime.

I applaud your efforts and wish you well for the new year.

Debbie Depra Curtis
Crime Victims' Ombudsman

Mission Statement

And

Purpose

Mission Statement

The mission of the Office of the Crime Victims' Ombudsman (OCVO) is to ensure that all crime victims are served justly, equitably and fairly by South Carolina's criminal justice organizations.

Purpose

The OCVO's primary responsibility is to receive and to respond to complaints filed by victims of crime. These complaints may be verbal or in writing and the OCVO, as mandated by law, responds to each complaint in one of three ways:

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

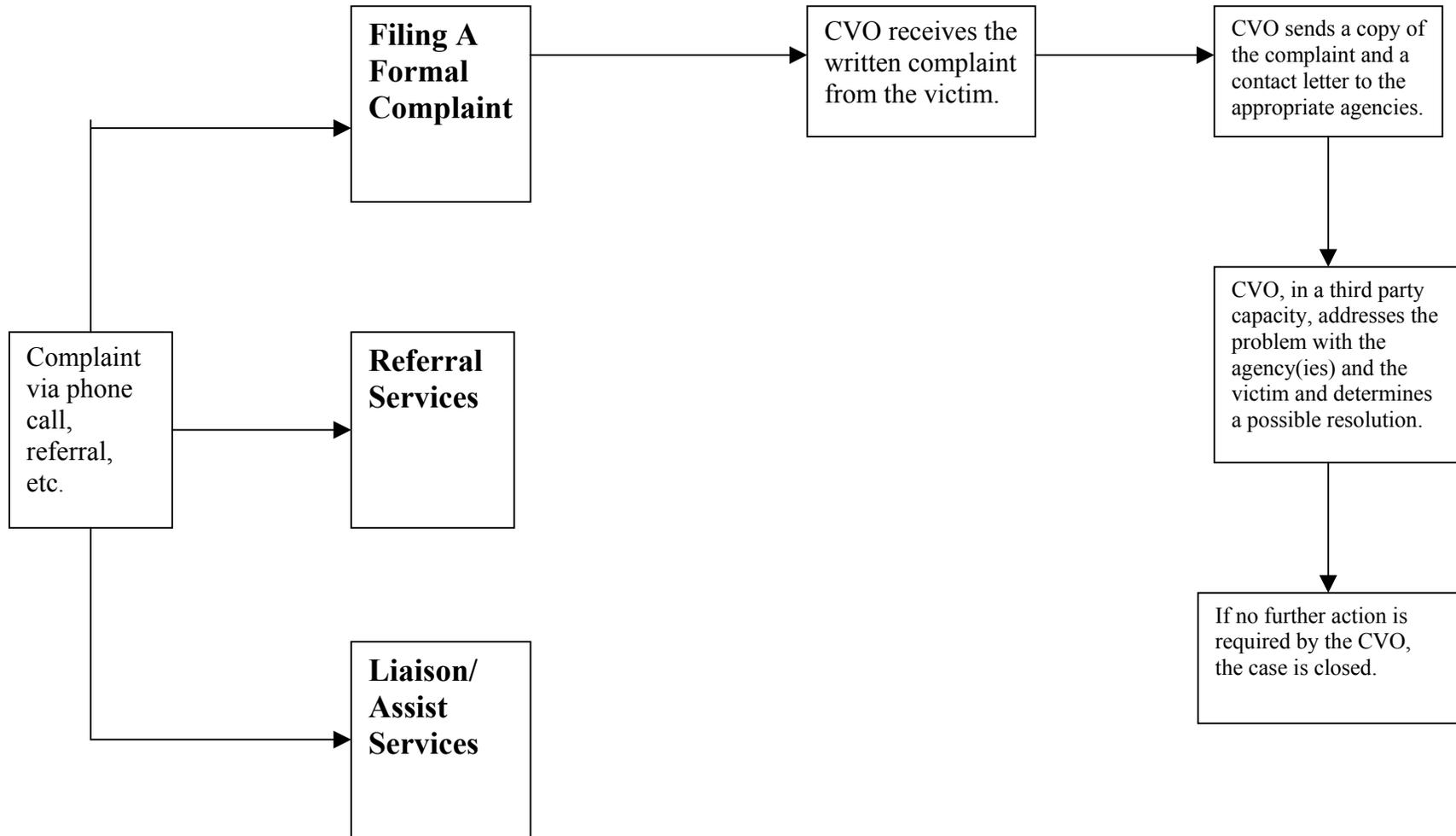
Most questions and concerns from victims of crime are easily remedied using the first and second method. Verbal communication and discussion among the OCVO, the subject of the complaint and the crime victim usually results in a much quicker resolution. However, should the victim require a formal inquiry, the victim must file a written, signed complaint. By choosing this option, the OCVO then has the authority to initiate an inquiry. The OCVO forwards a copy of the complaint to the subject of the complaint and requests their assistance in providing information about the concerns listed in the complaint by the crime victim. Once the OCVO has gathered all the necessary information from both sides of the complaint, the OCVO issues a report verbally or in writing to both parties as to the disposition and recommendations of the OCVO. The OCVO then

requests a final report (verbal or in writing) from the subject of the complaint as to any actions they have taken regarding the recommendations by the OCVO.

Additionally, although the majority of the work handled by the OCVO is complaint resolution, the OCVO is also a valuable, educational resource for criminal and juvenile justice organizations. In FY 2000-2001, the OCVO provided training to various disciplines within the criminal justice system.

As the familiarity of working within the constitutional framework settles in the S.C. criminal and juvenile justice systems, the OCVO believes that because of its unique position in the field of victim services, training in the area of compliance is crucial to balancing the scales of justice.

How Complaints are Handled in the CVO
General Overview



*Selected
Case Summaries*

Case Summaries
Fiscal Year 2000-2001

Selected Case Summary #1

Crime: Lewd Act upon Minor

Complaint: 1. Victim was not notified of defendant's release from prison and subsequent release to probation.
2. Law enforcement would not return any of the victim's calls.

Subject(s) of Complaint: 1. Solicitor's Office
2. Jail
3. Law Enforcement

Scenario: Defendant molested victim. He was convicted and sentenced to time in jail. Victim's mother heard the defendant was released from jail and started his probation but she was not notified. Victim's mother also tried to seek assistance from law enforcement but no one would return the victim's calls.

Outcome: CVO sent contact letters to all subjects involved in the case. Inquiry revealed the following:
1. Solicitor's office did not have documentation to reflect that a VIS was sent to the jail.
2. Jail sent letter to CVO indicating that they never received a VIS or victim information from Solicitor's office.
3. Law Enforcement faxed file notes regarding victim. The notes indicated that the last time the victim contacted law enforcement was three months ago.
CVO recommended that the Solicitor's office document when VIS forms are sent to post-conviction agencies.

Case Disposition: 1. Jail - Unfounded
2. Solicitor's Office - Founded
3. Law Enforcement - Unfounded

Relevant Law: **S.C. Code Section 16-3-1555 (B)**
The prosecuting agency must forward, as appropriate and within a reasonable time, a copy of each victim's impact statement or the name, mailing address, and telephone number of each victim, or both, to the Department of Corrections, the Department of Probation, Parole and Pardon Services, or the Board of Juvenile Parole and the Department of Juvenile Justice. . .

S.C. Constitution, Article 1, Section 24 (A)(1)(10)

(A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:
(1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victims' constitutional rights, provided by statute. . .
(10) be informed of any proceeding when any post-conviction action is being considered, and be present at any post-conviction hearing involving a post-conviction release decision.

Selected Case Summary #2

Crime: Criminal Domestic Violence

Complaint: Victim was not notified of court hearing.

Subject(s) of Complaint: 1. Summary Court

Scenario: Victim had not heard from the summary court regarding her case. She contacted the clerk's office and discovered that the case had already been heard. The defendant either pled guilty or was found guilty for the CDV charge. Victim was never notified of the hearing or the disposition of the case.

Case Outcome: CVO sent contact letter to subject involved in the case. Inquiry revealed the following:

There was documentation to reflect that notification was sent to the victim advocate and the defendant's attorney. This notification was also carbon copied to another attorney and to the case officer. However, there was no documentation to reflect that the victim was notified. At the time there was not an adequate number of staff to address all of the notifications.

Since, the case was already adjudicated, the CVO made the following recommendations regarding notification:

1. Develop a system in which notification letters are sent to the victim. Notification to the victim advocate does not meet the requirements of the statute.
2. Check into the fines/fees fund generated pursuant to Act 141 and determine accessibility to these funds for the purposes of hiring staff for notification.

Case Disposition: Summary Court - Founded

Relevant Law: **S.C. Code Section 16-3-1535(D)**

The summary court judge reasonably must attempt to notify each victim related to the case of each hearing, trial or other proceeding.

S.C. Constitution, Article 1, Section 24(A)(3)

- (A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:
- (3) be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present.
**Dispositive-directed toward or effecting disposition (as of a case)
(Merriam-Webster's Collegiate Dictionary/Tenth Edition)

Legislation for Act 141 may be found in Title 14, Chapter 1, Section 207 thru 211.

Selected Case Summary #3

Crime: Murder

Complaint: Victim was not notified about court hearings (dispositive in nature) regarding the defendant. Victim was upset with the treatment received from a member of a solicitor's office. The victim did not appreciate the profanity and the harassment from the solicitor's office. Victim also did not agree with how the case was being prosecuted.

Subject(s) of Complaint: Solicitor's Office

Scenario: The victim contacted CVO regarding his conversation with the Solicitor's office. The victim did not agree with how the case was going to be handled for prosecution. The conversation became heated and a member of the Solicitor's office "cussed" out the victim.

Case Outcome: The CVO sent a contact letter to the subject of the complaint. An inquiry by the CVO revealed the following:

1. The victim was notified of every hearing except for one.
2. The Solicitor's office chose a particular strategy to prosecute the case. This strategy did not violate any victims' rights.
3. The Solicitor's office admitted its error for the treatment the victim received from their office.

The CVO advised the victim that the recommended strategy posed by the Solicitor's office is not uncommon and is within their scope of authority. The CVO also advised the victim that the Solicitor's office admitted their error in their treatment of the victim. The victim wished to explore further remedies for this error. The CVO referred the victim to the Office of Disciplinary Conduct.

Case Disposition: Solicitor's Office

1. Lack of notification- Founded
2. Not satisfied with prosecution-Unfounded
3. Treated w/dignity and respect - Founded

Relevant Law: ***S.C. Constitution, Article 1, Section 24(A)(1)(3)***

- (A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:
- (1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional rights, provided by statute;
 - (3) be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present.

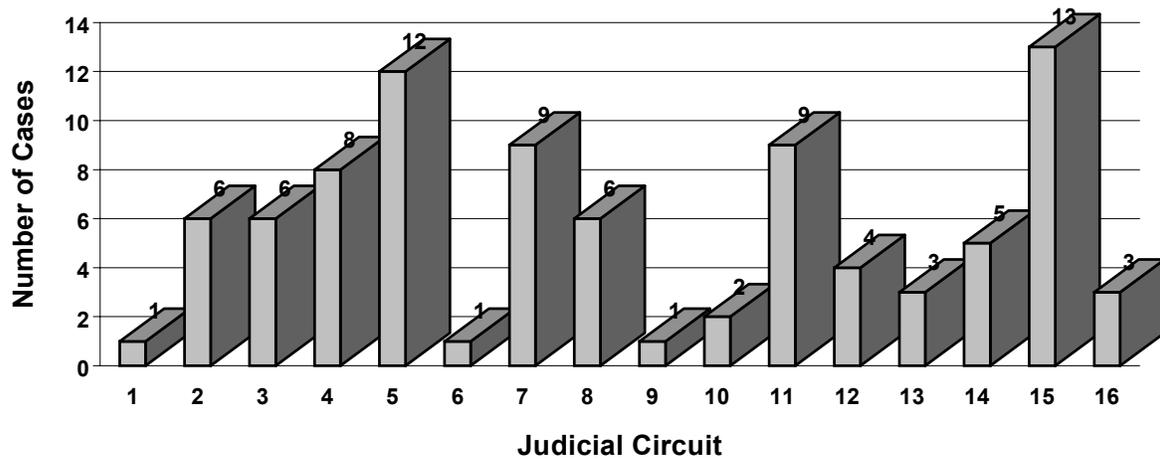
Selected Case Summary #4

Crime:	Criminal Sexual Conduct w/minor
Complaint:	Victim's mother was upset and could not understand why law enforcement would not issue a warrant for defendant despite what appeared to be probable cause.
Subject(s) of Complaint:	Law Enforcement
Scenario:	Defendant molested victim, who is a minor, on the grounds of an institution of higher learning. Law Enforcement took a report, investigated the case and intended to issue a warrant. Law Enforcement was advised not to issue a warrant.
Outcome:	<p>Victim's mother contacted CVO when she received the news from law enforcement that they could not issue a warrant for the suspect. CVO attempted to handle the case initially as an assist, however the case became more complex. Victim's mother filed a formal complaint and CVO sent a contact letter to the subject involved and opened a case. An inquiry revealed the following:</p> <ol style="list-style-type: none">1. Law enforcement during the course of their investigation consulted with an assistant solicitor regarding the facts of the case. CVO contacted that assistant solicitor who felt law enforcement's investigation was thorough and there was probable cause to arrest suspect.2. Law enforcement contacted the CVO pursuant to the contact letter and advised CVO that they were told by a higher authority not to issue the warrant.3. CVO sent a contact letter to this individual and received no response. The case was eventually referred to the Solicitor's office for prosecution and further assistance from the State Law Enforcement Division was required.
Case Disposition:	Law Enforcement-Founded
Relevant Law:	<p><i>S.C. Constitution, Article 1, Section 24(A)(1)(3)</i></p> <p>(A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:</p> <ol style="list-style-type: none">(1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional rights, provided by statute; <p><i>Obstruction of Justice (common law)</i></p> <p>"At common law it is an offense to do any act which prevents, obstructs, impedes or hinders the administration of justice." <u>State v. Cogdell, S.C., 257 S.E.2d 748</u></p>

Summary of
FY 2000-2001
Statistics

Cases Per Judicial Circuit Fiscal Year 2000-2001

Note: Includes all entities in the circuit (law enforcement, solicitor, summary court, etc.)



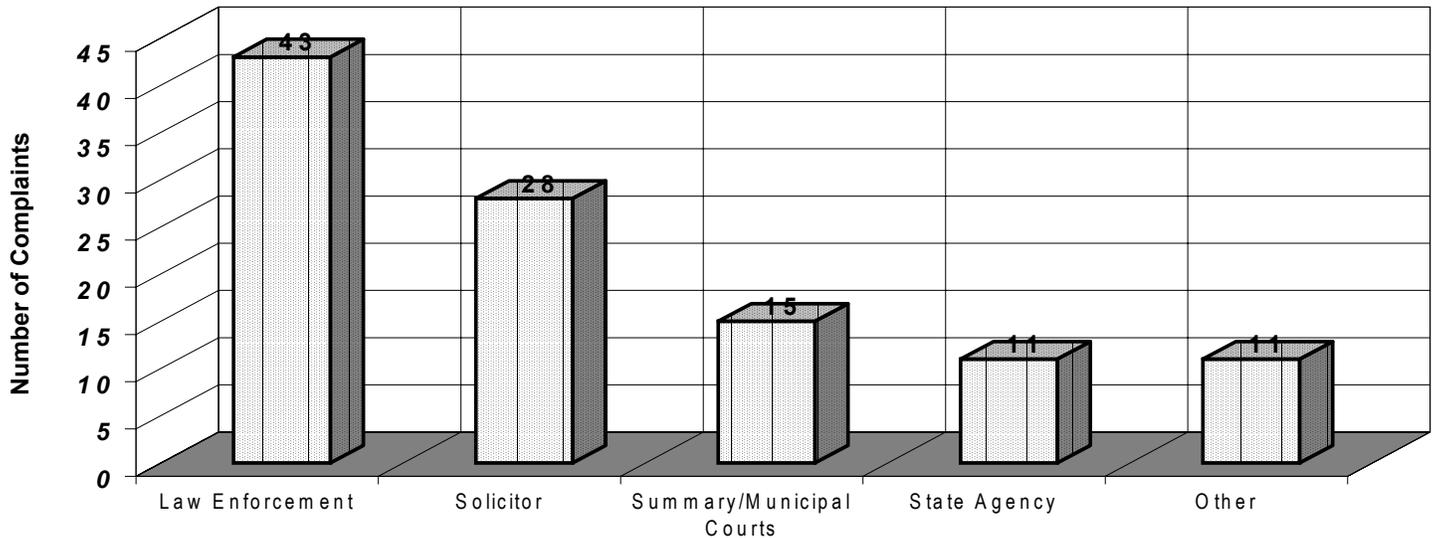
Total Number of Cases for FY 2000-2001:

89

Percentage of Cases by Judicial Circuit:

<i>1st Circuit (Dorchester, Calhoun & Orangeburg)</i>	1%
<i>2nd Circuit (Aiken, Bamberg & Barnwell)</i>	7%
<i>3rd Circuit (Sumter, Lee, Clarendon & Williamsburg)</i>	7%
<i>4th Circuit (Darlington, Marlboro, Dillon & Chesterfield)</i>	9%
<i>5th Circuit (Richland & Kershaw)</i>	13%
<i>6th Circuit (Fairfield, Chester & Lancaster)</i>	1%
<i>7th Circuit (Spartanburg & Cherokee)</i>	10%
<i>8th Circuit (Greenwood, Laurens, Newberry & Abbeville)</i>	7%
<i>9th Circuit (Charleston & Berkeley)</i>	1%
<i>10th Circuit (Anderson & Oconee)</i>	2%
<i>11th Circuit (Lexington, Saluda, Edgefield & McCormick)</i>	10%
<i>12th Circuit (Florence & Marion)</i>	4%
<i>13th Circuit (Greenville & Pickens)</i>	3%
<i>14th Circuit (Hampton, Colleton, Beaufort, Allendale & Jasper)</i>	6%
<i>15th Circuit (Horry & Georgetown)</i>	15%
<i>16th Circuit (York & Union)</i>	3%

**Subjects of Complaints
Fiscal Year 2000-2001**



Law Enforcement: **All Sheriff Departments
All City and Town Police Departments
All Campus Public Safety/Police Departments**

Solicitor: **All Solicitors and their staff**

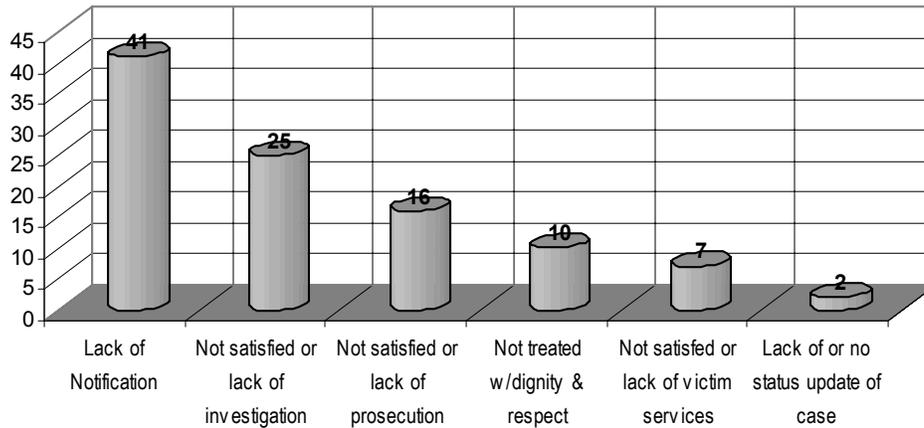
**Summary/Municipal
Courts:** **All magistrate and municipal judges, their clerks
and staff**

State Agency: **Any state agency mandated by law to provide victim services, i.e.
Attorney General's Office, Department of Corrections (DOC),
Department of Probation, Parole and Pardon Services (DPPPS), S.C.
Parole Board, Department of Public Safety (DPS), State Office of Victim
Assistance (SOVA), Department of Juvenile Justice (DJJ), Juvenile
Parole Board**

Other: **All non-profit agencies that provide victim services, detention centers**

****Please note that it is possible for a case to have multiple complaints against multiple agencies. For example, a victim may file a complaint that he or she was not notified of the arrest, bond hearing and release of a defendant from jail. The subjects of that complaint would probably be a law enforcement agency, a summary or municipal court judge and the detention center.**

**Types of Complaints
Fiscal Year 2000-2001**



Examples of each type of complaint the CVO received for FY 2000-2001:

- 1. Lack of notification:**

 - Not notified of an arrest of suspect(s).
 - Not notified of a bond hearing.
 - Not notified of a bond reduction hearing.
 - Not notified of a guilty plea.
 - Not notified of a release from jail.
 - Not notified of a post-conviction hearing.
 - Not notified dismissal of a case.

- 2. Not satisfied with or lack of investigation:**

 - Refusal to serve an authorized warrant.
 - No investigative follow-ups.
 - Non pursuit of warrant despite probable cause.
 - Insufficient investigation.

- 3. Not satisfied with or lack of prosecution:**

 - Victim unhappy with prosecution decision as to disposition of case.
 - Victim perceives conspiracy between prosecution and other members of the criminal justice system.

- 4. Not treated w/dignity & respect:**

 - Use of "colorful" language when speaking with a victim.
 - No return of phone calls (applies to any agency/entity)
 - Victim(s) felt service provider was "rude".
 - Service provider yelled at "victim(s)".

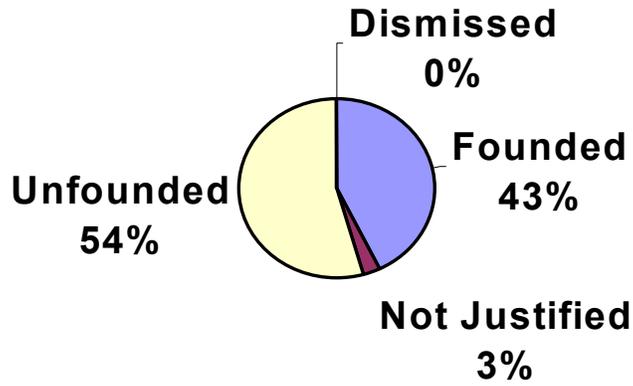
- 5. Not satisfied with or lack of victim services (general):**

 - Victim advocate(s) would not return phone calls.
 - Victim advocate(s) did not assist/guide victim(s) through the criminal justice system.
 - No accessible victim advocate(s) or victim assistance program to answer questions or assist victim(s).

- 6. Lack of or no case status update:**

 - Victim(s) were not kept abreast of significant developments in the case.
 - Victim(s) heard from agency(ies) one time and never heard from them again.

Complaint Resolutions Fiscal Year 2000-2001



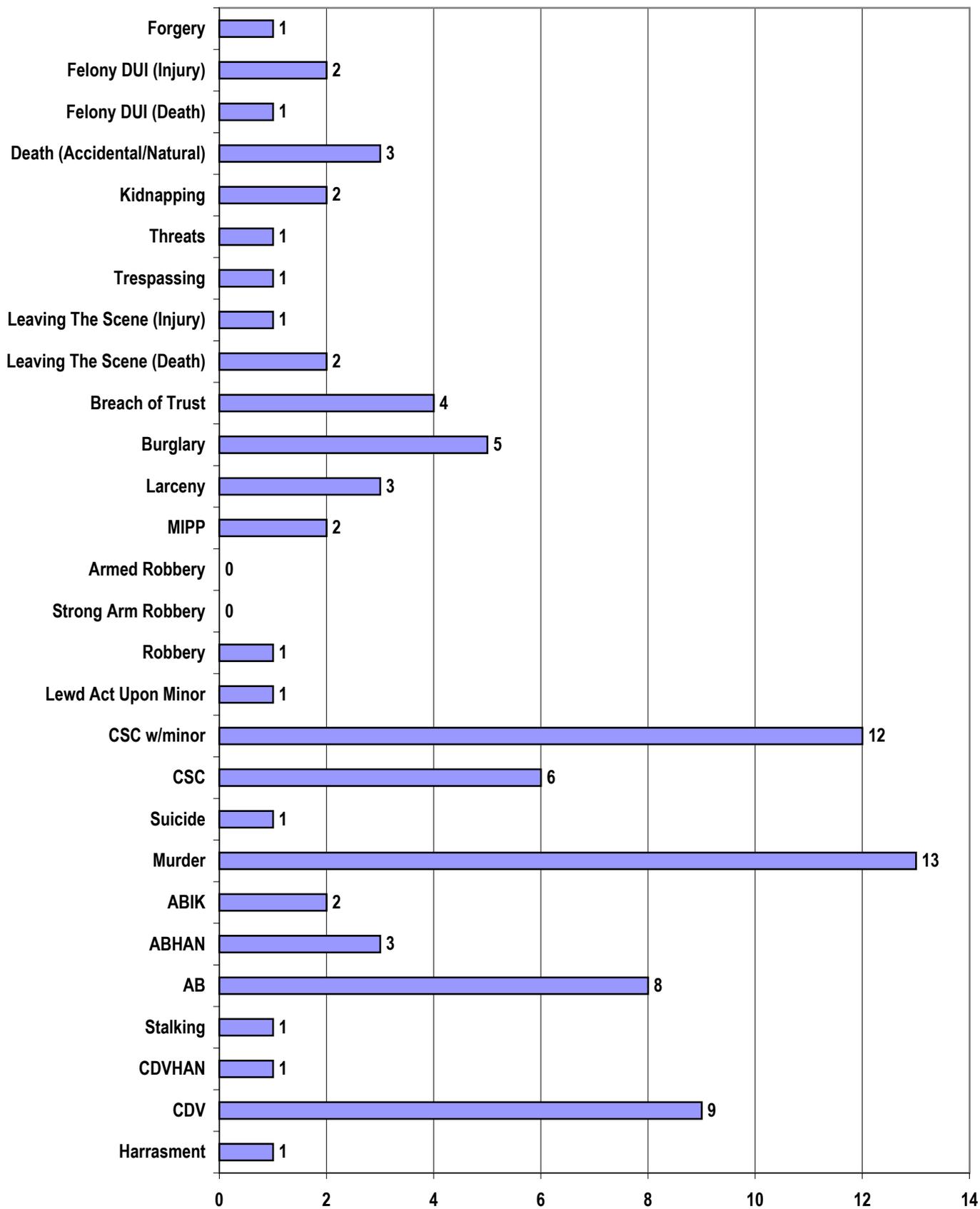
■ Founded
 ■ Not Justified
 ■ Unfounded
 ■ Dismissed

The number of complaints per fiscal year is almost always more than the number of cases opened by the CVO because a victim(s) may have several complaints for the same situation and only one case is opened by the CVO. For example, a victim may have a complaint about not having been notified by a magistrate about a bond hearing and depending on the outcome of the bond hearing the victim may also complain about not having been notified by the jail about the defendant's release. One case would be opened but with two complaints against two separate agencies.

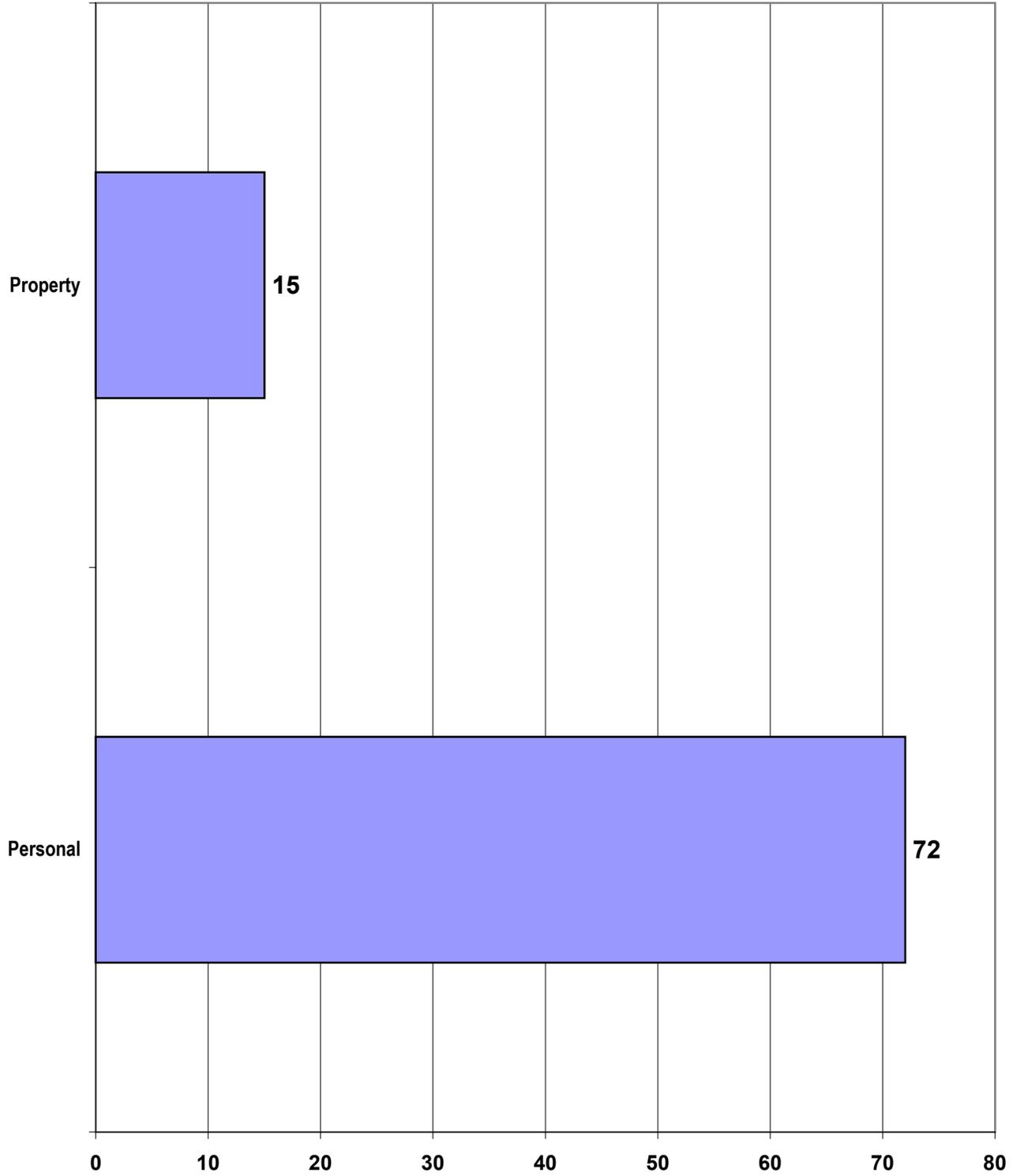
The following is an explanation of the terms used by the CVO to make a final determination as to the outcome of a case.

- FOUNDED:** The reported acts or part of the reported acts occurred.
- UNFOUNDED:** The acts *did not occur* or the acts did occur but were *within the scope of authority* for that individual, agency and/or entity.
- NOT JUSTIFIED:** There was insufficient evidence to prove or disprove the reported acts occurred.
- DISMISSED:** The case was withdrawn due to lack of victim participation.

Crime Types
Fiscal Year 2000-2001



Personal v. Property Crimes
Fiscal Year 2000-2001



Comparison Charts

for

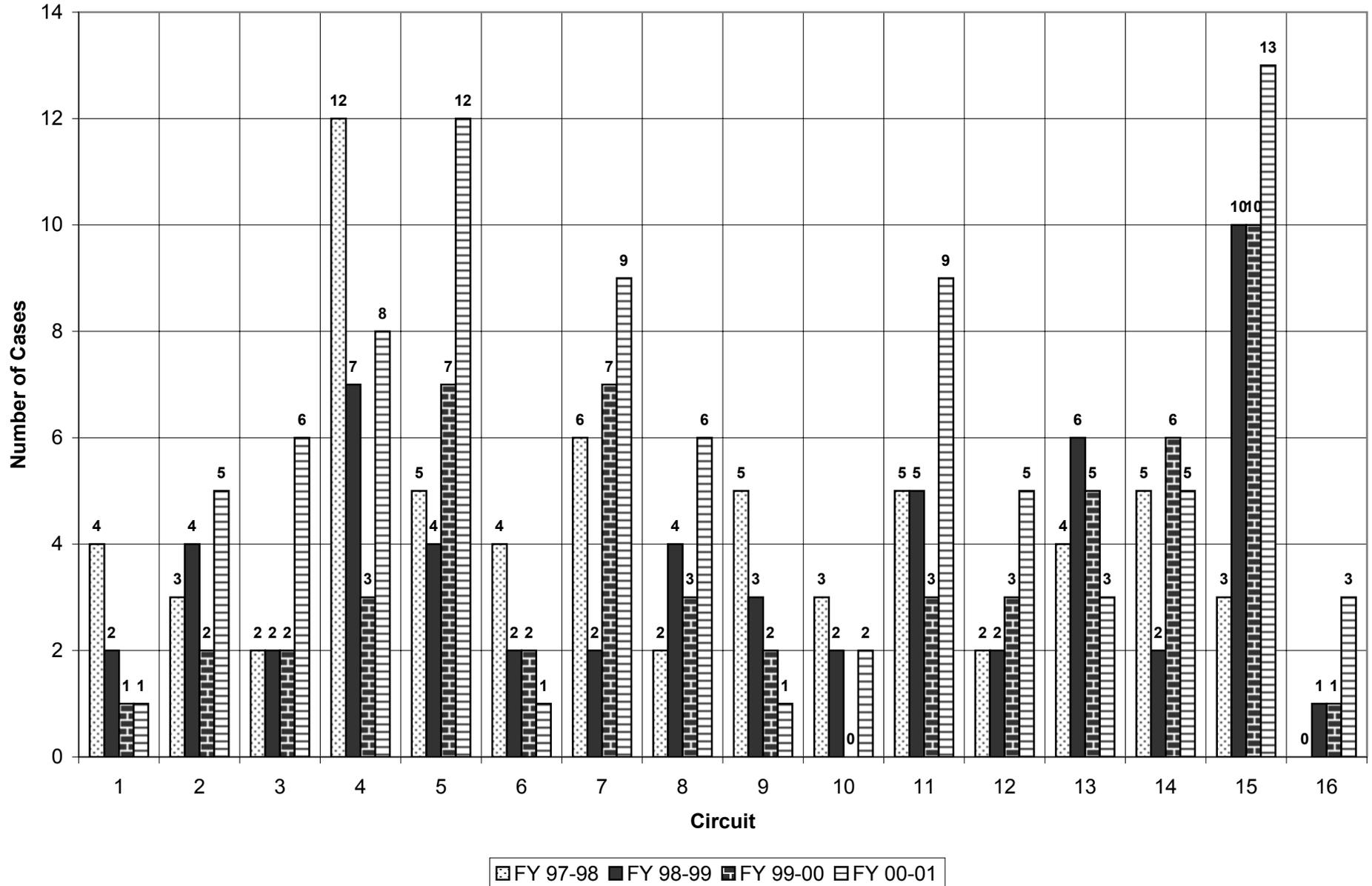
FY 97-98

thru

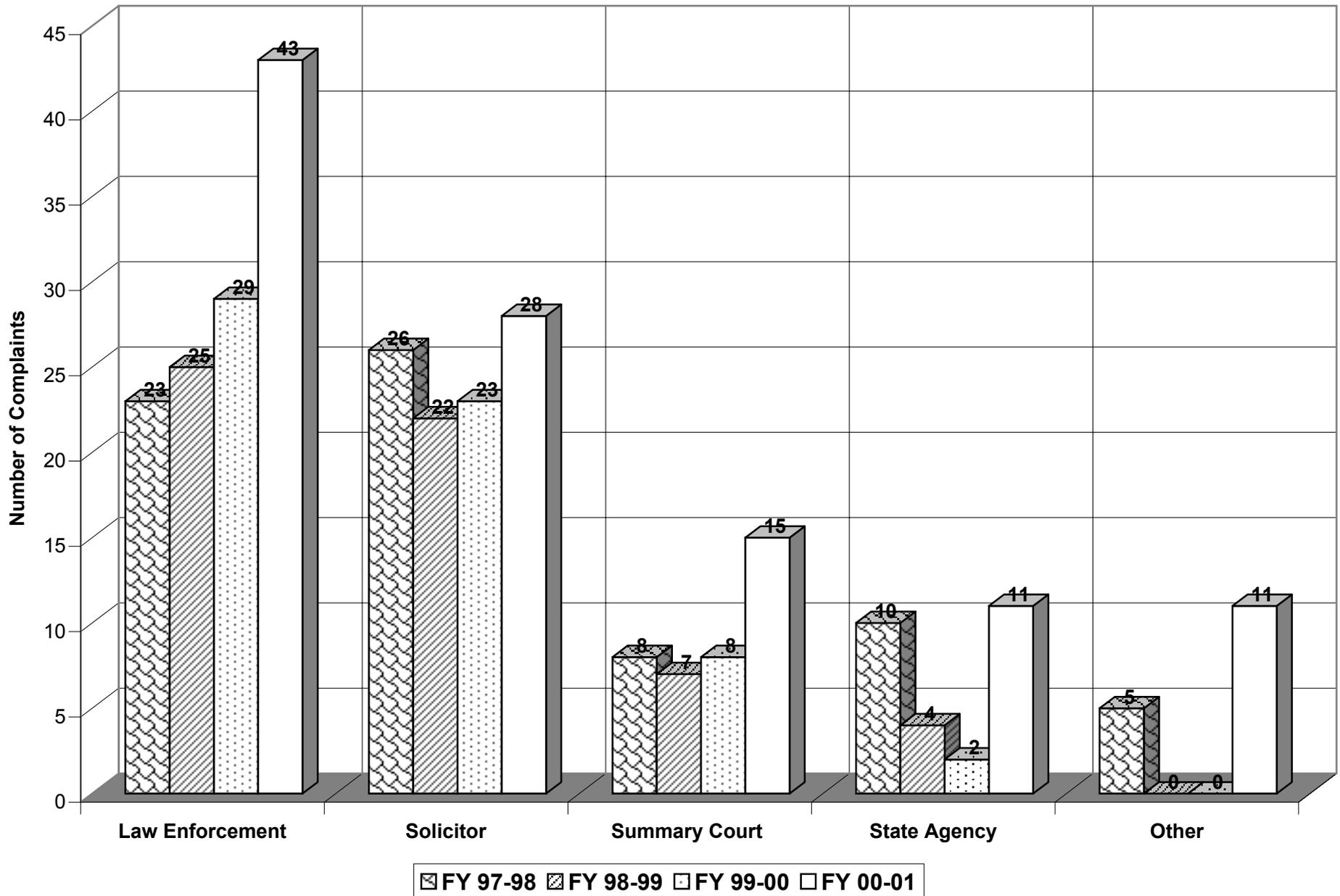
FY 00-01

Cases Per Circuit FY 97-98/ FY 98-99/ FY 99-00/ FY 00-01 Comparisons

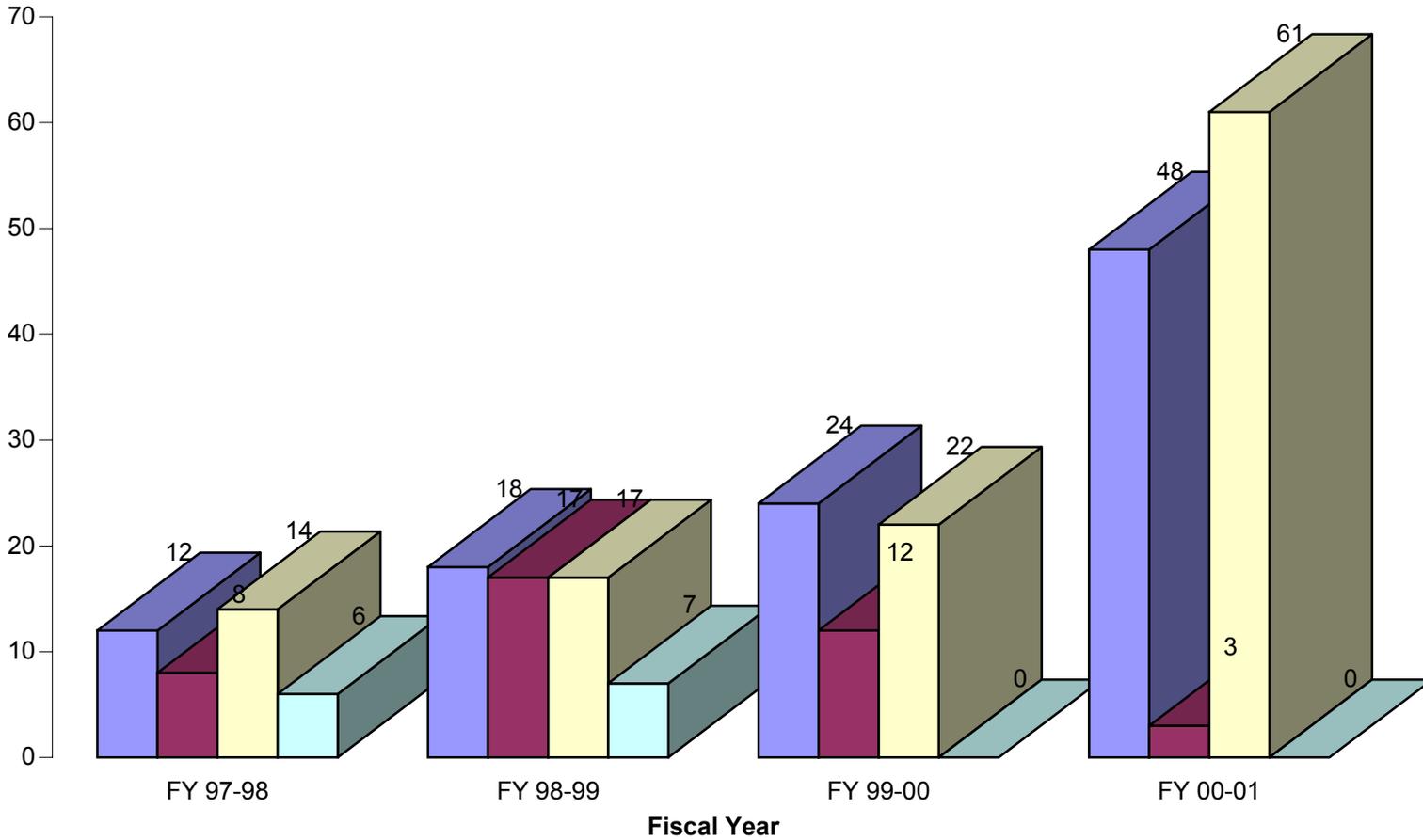
Note: Includes all entities in the circuit (law enforcement, solicitor, summary court, state agencies & other)



Subjects of Complaints
FY 97-98/ FY 98-99/ FY 99-00/ FY 00-01 Comparisons

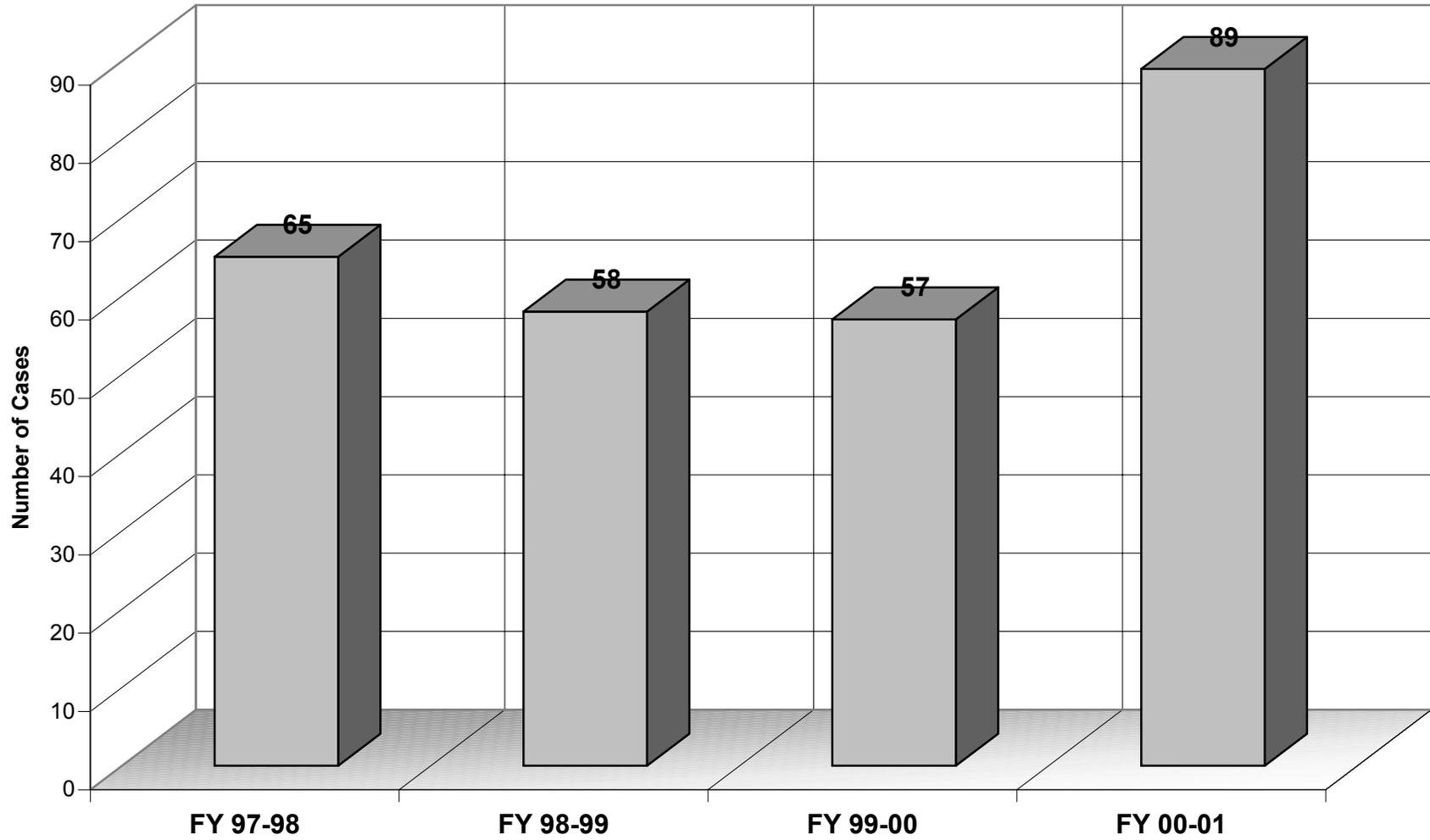


Case Outcomes
FY 97-98/ FY 98-99/ FY 99-00/ FY 00-01 Comparisons



Founded
 Not Justified
 Unfounded
 Dismissed

Fiscal Year Comparisons
Total Number of Cases Per FY
FY 97-98/ FY 98-99/ FY 99-00/ FY 00-01



Appendix

SECTION 24. Victims' Bill of Rights.

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

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

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

(C) For purposes of this section:

- (1) A victim's exercise of any right granted by this section is not grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.
- (2) "Victim" means a person who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a crime against him. The term "victim" also includes the person's spouse, parent, child, or lawful representative of a crime victim who is deceased, who is a minor or who is incompetent or who was a homicide victim or who is physically or psychologically incapacitated.
- (3) The General Assembly has the authority to enact substantive and procedural laws to define, implement, preserve, and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.

(4) The enumeration in the Constitution of certain rights for victims shall not be construed to deny or disparage others granted by the General Assembly or retained by victims. (1998 Act No. 259, Section 1, eff February 17, 1998.)

ARTICLE 15.
VICTIM AND WITNESS SERVICE

SECTION 16-3-1505. Legislative intent.

In recognition of the civic and moral duty of victims of and witnesses to a crime to cooperate fully and voluntarily with law enforcement and prosecution agencies, and in further recognition of the continuing importance of this citizen cooperation to state and local law enforcement efforts and to the general effectiveness and the well-being of the criminal and juvenile justice systems of this State, and to implement the rights guaranteed to victims in the Constitution of this State, the General Assembly declares its intent, in this article, to ensure that all victims of and witnesses to a crime are treated with dignity, respect, courtesy, and sensitivity; that the rights and services extended in this article to victims of and witnesses to a crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants; and that the State has a responsibility to provide support to a network of services for victims of a crime, including victims of domestic violence and criminal sexual assault.

SECTION 16-3-1510. Definitions.

For the purpose of this article:

(1) "Victim" means any individual who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a criminal offense, as defined in this section. "Victim" also includes any individual's spouse, parent, child, or the lawful representative of a victim who is:

- (a) deceased;
- (b) a minor;
- (c) incompetent; or
- (d) physically or psychologically incapacitated.

"Victim" does not include any individual who is the subject of an investigation for, who is charged with, or who has been convicted of or pled guilty or nolo contendere to the offense in question. "Victim" also does not include any individual, including a spouse, parent, child, or lawful representative, who is acting on behalf of the suspect, juvenile offender, or defendant unless his actions are required by law. "Victim" also does not include any individual who was imprisoned or engaged in an illegal act at the time of the offense.

(2) "Individual" means a human being.

(3) "Criminal offense" means an offense against the person of an individual when physical or psychological harm occurs, or the property of an individual when the value of the property stolen or destroyed, or the cost of the damage to the property is in excess of one thousand dollars. This includes both common law and statutory offenses, the offenses contained in Sections 16-25-20, 16-25-30, 16-25-50, 56-5-1210, 56-5-2910, 56-5-2920, 56-5-2930, 56-5-2945, and the common law offense of attempt, punishable pursuant to Section 16-1-80. However, "criminal offense" specifically excludes the drawing or uttering of a fraudulent check or an offense contained in Title 56 that does not involve personal injury or death.

For purposes of this article, a victim of any misdemeanor or felony under state law must be notified of or provided with the information required by this section. The terms "crime", "criminal conduct", "charge", or any variation of these terms as used in this article mean all misdemeanors and felonies under state law except the crimes the General Assembly specifically excludes from the notification provisions contained in this article.

(4) "Witness" means a person who has been or is expected to be summoned to testify for either the prosecution or the defense or who by reason of having relevant information is subject to be called or likely to be called as a witness for the prosecution or defense for criminal offenses defined in this section, whether or not any action or proceeding has been commenced.

(5) "Prosecuting agency" means the solicitor, Attorney General, special prosecutor, or any person or entity charged with the prosecution of a criminal case in general sessions or family court.

(6) "Summary court" means magistrate or municipal court.

(7) "Initial offense incident report" means a uniform traffic accident report or a standardized incident report form completed at the time of the initial law enforcement response. "Initial offense incident report" does not include supplementary reports, investigative notes or reports, statements, letters, memos, other communications, measurements, sketches, or diagrams not included in the initial offense incident report, or any material that may be considered the work product of a law enforcement officer or witness.

(8) "In writing" means any written communication, including electronically transmitted data.

SECTION 16-3-1515. Victim or witness wishing to receive services under article to supply certain information; requirements for receiving restitution; victims wishing to be present in court to notify prosecuting agency or summary court judge; victim impact statement.

(A) A victim or prosecution witness who wishes to exercise his rights under this article or receive services under this article, or both, must provide a law enforcement agency, a prosecuting agency, a summary court judge, the Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Board of Juvenile Parole, or the Department of Juvenile Justice, as appropriate, his legal name, current mailing address, and current telephone number upon which the agency must rely in the discharge of its duties under this article.

(B) A victim who wishes to receive restitution must, within appropriate time limits set by the prosecuting agency or summary court judge, provide the prosecuting agency or summary court judge with an itemized list which includes the values of property stolen, damaged, or destroyed; property recovered; medical expenses or counseling expenses, or both; income lost as a result of the offense; out-of-pocket expenses incurred as a result of the offense; any other financial losses that may have been incurred; an itemization of financial recovery from insurance, the offense victim's compensation fund, or other sources. The prosecuting agency, court, or both, may require documentation of all claims. This information may be included in a written victim impact statement.

(C) A victim who wishes to be present for any plea, trial, or sentencing must notify the prosecuting agency or summary court judge of his desire to be present. This notification may be included in a written victim impact statement.

(D) A victim who wishes to submit a written victim impact statement must provide it to the prosecuting agency or summary court judge within appropriate time limits set by the prosecuting agency or summary court judge.

(E) A victim who wishes to make an oral victim impact statement to the court at sentencing must notify the prosecuting agency or summary court judge of this desire in advance of the sentencing.

SECTION 16-3-1520. Victim entitled to copy of initial incident report; assistance in applying for victim's compensation benefits; information on progress of case.

(A) A law enforcement agency must provide a victim, free of charge, a copy of the initial incident report of his case, and a document which:

(1) describes the constitutional rights the State grants victims in criminal cases;

(2) describes the responsibilities of victims in exercising these rights;

- (3) lists local victim assistance and social service providers;
- (4) provides information on eligibility and application for victim's compensation benefits; and
- (5) provides information about the rights of victims and witnesses who are harassed or threatened.

(B) A law enforcement agency, within a reasonable time of initial contact, must assist each eligible victim in applying for victim's compensation benefits and other available financial, social service, and counseling assistance.

(C) Law enforcement victim advocates, upon request, may intervene with, and seek special consideration from, creditors of a victim who is temporarily unable to continue payments as a result of an offense and with the victim's employer, landlord, school, and other parties as considered appropriate through the investigative process.

(D) A law enforcement agency, upon request, must make a reasonable attempt to inform a victim of the status and progress of his case from initial incident through:

- (1) disposition in summary court;
- (2) the referral of a juvenile offender to the Department of Juvenile Justice; or
- (3) transmittal of a general sessions warrant to the prosecuting agency.

SECTION 16-3-1525. Arrest or detention of person accused of committing offense; notification to victims; protection of witnesses; notification of bond proceedings; juvenile detention hearings.

(A) A law enforcement agency, upon effecting the arrest or detention of a person accused of committing an offense involving one or more victims, must make a reasonable attempt to notify each victim of the arrest or detention and of the appropriate bond or other pretrial release hearing or procedure.

(B) A law enforcement agency, before releasing to his parent or guardian a juvenile offender accused of committing an offense involving one or more victims, must make a reasonable effort to inform each victim of the release.

(C) A law enforcement agency, upon effecting the arrest or detention of a person accused of committing an offense involving one or more victims, must provide to the jail, prison, or detention or holding facility having physical custody of the defendant, the name, mailing address, and telephone number of each victim. If the person is transferred to another facility, this information immediately must be transmitted to the receiving facility. The names, addresses, and telephone numbers of victims and witnesses contained in the files of a jail, prison, or detention or holding facility are confidential and must not be disclosed directly or indirectly, except as necessary to provide notifications.

(D) A law enforcement agency, after detaining a juvenile accused of committing an offense involving one or more victims, must provide to the Department of Juvenile Justice the name, address, and telephone number of each victim. The law enforcement officer detaining the juvenile, regardless of where the juvenile is physically detained, retains the responsibility of notifying the victims of the pretrial, bond, and detention hearings, or pretrial releases that are not delegated pursuant to this article.

(E) Upon detention of a person, other than a juvenile, accused of committing an offense not under the jurisdiction of a summary court, and involving one or more victims, the arresting law enforcement agency must provide, in writing, to the prosecuting agency before a bond or release hearing before a circuit or family court judge the name, address, and telephone number of each victim.

(F) Upon detention of a person, other than a juvenile, accused of committing an offense involving one or more victims and which is triable in summary court or an offense involving one

or more victims for which a preliminary hearing may be held, the arresting law enforcement agency must provide, in writing, to the summary court the name, mailing address, and telephone number of each victim.

(G) A law enforcement agency must provide any measures necessary to protect the victims and witnesses, including transportation to and from court and physical protection in the courthouse.

(H) In cases in which a defendant has bond set by a summary court judge:

(1) the arresting agency of the defendant reasonably must attempt to notify each victim of each case for which bond is being determined of his right to attend the bond hearing and make recommendations to the presiding judge. This notification must be made sufficiently in advance to allow the victim to exercise his rights contained in this article;

(2) the summary court judge, before proceeding with a bond hearing in a case involving a victim, must ask the representative of the facility having custody of the defendant to verify that a reasonable attempt was made to notify the victim sufficiently in advance to attend the proceeding. If notice was not given in a timely manner, the hearing must be delayed for a reasonable time to allow notice; and

(3) the summary court judge must impose bond conditions which are sufficient to protect a victim from harassment or intimidation by the defendant or persons acting on the defendant's behalf.

(I) In cases in which a defendant has a bond proceeding before a circuit court judge:

(1) the prosecuting agency reasonably must attempt to notify each victim of each case for which bond is being determined of his right to attend the bond hearing and make recommendations to the presiding judge. This notification must be made sufficiently in advance to allow the victim to exercise his rights contained in this article;

(2) the circuit court judge, before proceeding with a bond hearing in a case involving a victim, must ask the representative of the prosecuting agency to verify that a reasonable attempt was made to notify the victim sufficiently in advance to attend. If notice was not given in a timely manner, the hearing must be delayed for a reasonable time to allow notice; and

(3) the circuit court judge must impose bond conditions which are sufficient to protect a victim from harassment or intimidation by the defendant or persons acting on the defendant's behalf.

(J) In cases in which a juvenile has a detention hearing before a family court judge:

(1) the prosecuting agency reasonably must attempt to notify each victim of each case for which the juvenile is appearing before the court of his right to attend the detention hearing and make recommendations to the presiding judge. This notification must be made sufficiently in advance to allow the victim to exercise his rights pertaining to the detention hearing;

(2) the family court judge, before proceeding with a detention hearing in a case involving a victim, must ask the prosecuting agency to verify that a reasonable attempt was made to notify the victim sufficiently in advance to attend. If notice was not given in a timely manner, the hearing must be delayed for a reasonable time to allow notice; and

(3) the family court judge, if he does not rule that a juvenile must be detained, must impose conditions of release which are sufficient to protect a victim from harassment or intimidation by the juvenile or a person acting on the juvenile's behalf.

(K) Upon scheduling a preliminary hearing in a case involving a victim, the summary court judge reasonably must attempt to notify each victim of each case for which the defendant has a hearing of his right to attend.

SECTION 16-3-1530. Duty to notify victim of release, escape, or transfer of person accused.

Notwithstanding any other provision of law, except the provisions contained in Section 16-3-1525(D) relating to juvenile detention:

- (1) a department or agency having custody or custodial supervision of a person accused, convicted, or adjudicated guilty of committing an offense involving one or more victims reasonably must attempt to notify each victim, upon request, of the release of the person;
- (2) a department or agency having custody or custodial supervision of a person accused of committing an offense involving one or more victims reasonably must attempt to notify each victim, upon request, of an escape by the person;
- (3) a department or agency having custody of a person accused, convicted, or adjudicated guilty of committing an offense involving one or more victims must inform each victim, upon request, of any transfer of the person to a less secure facility;
- (4) a department or agency having custody or custodial supervision of a person convicted or adjudicated guilty of committing an offense involving one or more victims must reasonably attempt to notify each victim and prosecution witness, upon request, of an escape by the person.

SECTION 16-3-1535. Summary court's duty to notify victim of victim's rights; form for victim impact statement.

(A) The summary court, upon retaining jurisdiction of an offense involving one or more victims, reasonably must attempt to notify each victim of his right to:

- (1) be present and participate in all hearings;
- (2) be represented by counsel;
- (3) pursue civil remedies; and
- (4) submit an oral or written victim impact statement, or both, for consideration by the summary court judge at the disposition proceeding.

(B) The summary court must provide to each victim who wishes to make a written victim impact statement a form that solicits pertinent information regarding the offense, including:

- (1) the victim's personal information and supplementary contact information;
- (2) an itemized list of the victim's economic loss and recovery from any insurance policy or any other source;
- (3) details of physical or psychological injuries, or both, including their seriousness and permanence;
- (4) identification of psychological services requested or obtained by the victim;
- (5) a description of any changes in the victim's personal welfare or family relationships; and
- (6) any other information the victim believes to be important and pertinent.

(C) The summary court judge must inform a victim of the applicable procedures and practices of the court.

(D) The summary court judge reasonably must attempt to notify each victim related to the case of each hearing, trial, or other proceeding.

(E) A law enforcement agency and the summary court must return to a victim personal property recovered or taken as evidence as expeditiously as possible, substituting photographs of the property and itemized lists of the property including serial numbers and unique identifying characteristics for use as evidence when possible.

(F) The summary court judge must recognize and protect the rights of victims and witnesses as diligently as those of the defendant.

SECTION 16-3-1540. Department of Juvenile Justice to confer with victims before taking certain actions.

(A) The Department of Juvenile Justice, upon referral of a juvenile accused of committing an offense involving one or more victims, must make a reasonable effort to confer with each victim before:

- (1) placing the juvenile in a diversion program;
- (2) issuing a recommendation for diversion;
- (3) referring the juvenile to the prosecuting agency for prosecution;
- (4) issuing a recommendation for evaluation at the agency's reception and evaluation center; or
- (5) taking other action.

(B) The Department of Juvenile Justice must make a reasonable effort to keep each victim reasonably informed of the status and progress of a case from the time it is referred by law enforcement until it is referred to the prosecuting agency.

SECTION 16-3-1545. Juvenile cases; notification to victims of right to submit victim impact statement for disposition proceeding; form of statement; other required information for victims.

(A) The prosecuting agency, when a juvenile case is referred or a general sessions charge is received involving one or more victims, reasonably must attempt to notify each victim of his right to submit an oral or written victim impact statement, or both, for consideration by the circuit or family court judge at the disposition proceeding. The victim also must be informed that a written victim impact statement may be submitted at any postadjudication proceeding by the Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Board of Juvenile Parole, or the Department of Juvenile Justice. The prosecuting agency must provide to each victim who wishes to make a written victim impact statement a form that solicits pertinent information regarding the offense that may include:

- (1) the victim's personal information and supplementary contact information;
- (2) an itemization of the victim's economic loss and recovery from any insurance policy or another source;
- (3) details of physical or psychological injuries, or both, including their seriousness and permanence;
- (4) identification of psychological services requested or obtained by the victim;
- (5) a description of any changes in the victim's personal welfare or family relationships; and
- (6) any other information the victim believes to be important and pertinent.

(B) The prosecuting agency must offer the victim assistance in preparing a comprehensive victim impact statement and assistance in reviewing and updating the statement, as appropriate, before the case is disposed.

(C) The prosecuting agency must inform victims and witnesses of the applicable procedures and practices of the criminal or juvenile justice system, or both.

(D) The prosecuting agency must inform each victim of his right to legal counsel and of any available civil remedies.

(E) A law enforcement agency, the prosecuting agency, and the circuit and family courts must return to a victim personal property recovered or taken as evidence as expeditiously as possible, substituting photographs of the property and itemized lists of the property including serial numbers and unique identifying characteristics to use as evidence when possible.

(F) The prosecuting agency must inform victims and prosecution witnesses of financial assistance, compensation, and fees to which they may be entitled and must offer to the victims and witnesses assistance with applications for these items.

(G) The prosecuting agency, upon request, must make a reasonable attempt to keep each victim informed of the status and progress of a case, with the exception of preliminary hearings, from

the time a juvenile case is referred to, or a general sessions charge is received by, the prosecuting agency for disposition of the case in general sessions or family court.

(H) The prosecuting agency must discuss a case with the victim. The agency must confer with each victim about the disposition of the case including, but not limited to, diversions and plea negotiations.

(I) The prosecuting agency reasonably must attempt to notify each victim of each hearing, trial, or other proceeding. This notification must be made sufficiently in advance to allow the victim to exercise his rights contained in this article. When proceedings are canceled or rescheduled, the prosecuting agency must reasonably attempt to inform victims and witnesses in a timely manner.

(J) The prosecuting agency victim advocate, upon request, may intercede with, and seek special consideration from, employers of victims and witnesses to prevent loss of pay or benefits, or both, resulting from their participation in the criminal or juvenile justice system and with the victim's creditors, landlord, school, and other parties, as appropriate, throughout the prosecution process.

(K) If a victim or witness is threatened, the prosecuting agency immediately must refer the incident to the appropriate law enforcement agency for prompt investigation and make a reasonable attempt to prosecute the case.

(L) The prosecuting agency must take reasonable and appropriate steps to minimize inconvenience to victims and witnesses throughout court preparation and court proceedings and must familiarize victims and witnesses with courtroom procedure and protocol.

(M) The prosecuting agency must refer victims to counselors, social service agencies, and victim assistance providers, as appropriate.

SECTION 16-3-1550. Restriction on employers of victims and witnesses; protection of rights of victims and witnesses.

(A) Employers of victims and witnesses must not retaliate against or suspend or reduce the wages and benefits of a victim or witness who lawfully responds to a subpoena. A wilful violation of this provision constitutes contempt of court.

(B) A person must not be sequestered from a proceeding adjudicating an offense of which he was a victim.

(C) For proceedings in the circuit or family court, the law enforcement and prosecuting agency must make reasonable efforts to provide victims and prosecution witnesses waiting areas separate from those used by the defendant and defense witnesses.

(D) The circuit or family court judge must recognize and protect the rights of victims and witnesses as diligently as those of the defendant. A circuit or family court judge, before proceeding with a trial, plea, sentencing, or other dispositive hearing in a case involving a victim, must ask the prosecuting agency to verify that a reasonable attempt was made to notify the victim sufficiently in advance to attend. If notice was not given in a timely manner, the hearing must be delayed for a reasonable time to allow notice.

(E) The circuit or family court must treat sensitively witnesses who are very young, elderly, handicapped, or who have special needs by using closed or taped sessions when appropriate. The prosecuting agency or defense attorney must notify the court when a victim or witness deserves special consideration.

(F) The circuit or family court must hear or review any victim impact statement, whether written or oral, before sentencing. Within a reasonable period of time before sentencing, the prosecuting agency must make available to the defense any written victim impact statement and the court must allow the defense an opportunity to respond to the statement. However, the victim impact

statement must not be provided to the defense until the defendant has been found guilty by a judge or jury. The victim impact statement and its contents are not admissible as evidence in any trial.

(G) The circuit and family court must address the issue of restitution as provided by statute.

SECTION 16-3-1555. Expert witness fees; disbursement and filing of victim's impact statement.

(A) The circuit or family court must order, in a timely manner, reasonable expert witness fees and reimbursement to victims of reasonable out-of-pocket expenses associated with lawfully serving a subpoena.

(B) The prosecuting agency must forward, as appropriate and within a reasonable time, a copy of each victim's impact statement or the name, mailing address, and telephone number of each victim, or both, to the Department of Corrections, the Department of Probation, Parole, and Pardon Services, or the Board of Juvenile Parole, and the Department of Juvenile Justice. The names, addresses, and telephone numbers of victims and prosecution witnesses contained in the records of the Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Board of Juvenile Parole, and the Department of Juvenile Justice are confidential and must not be disclosed directly or indirectly, except by order of a court of competent jurisdiction or as necessary to provide notifications, or services, or both, between these agencies, these agencies and the prosecuting agency, or these agencies and the Attorney General.

(C) The prosecuting agency must file with an indictment a copy of a written victim's impact statement. The victim's impact statement may be sealed by the appropriate authority until the defendant has been adjudicated, found guilty, or has pled guilty.

(D) The prosecuting agency must inform the victim and the prosecution witnesses of their responsibility to provide the prosecuting agency, the Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Board of Juvenile Parole, the Department of Juvenile Justice, or the Attorney General, as appropriate, their legal names, current addresses, and telephone numbers.

(E) The prosecuting agency must inform the victim about the collection of restitution, fees, and expenses, the recovery of property used as evidence, and how to contact the Department of Corrections, the Board of Juvenile Parole, the Department of Probation, Parole, and Pardon Services, the Department of Juvenile Justice, or the Attorney General, as appropriate.

SECTION 16-3-1560. Notification to victim of post-conviction proceedings affecting probation, parole, or release, and of victim's right to attend.

(A) The Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Board of Juvenile Parole, or the Department of Juvenile Justice, as appropriate, reasonably must attempt to notify each victim, who has indicated a desire to be notified, of post-conviction proceedings affecting the probation, parole, or release of the offender, including proceedings brought under Chapter 48 of Title 44, and of the victim's right to attend and comment at these proceedings. This notification must be made sufficiently in advance to allow the victim to exercise his rights as they pertain to post-conviction proceedings.

(B) The Attorney General, upon receiving notice of appeal or other post-conviction action by an offender convicted of or adjudicated guilty for committing an offense involving one or more victims, must request from the Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Board of Juvenile Parole, or the Department of Juvenile Justice, as appropriate, the victim's personal information.

(C) The Department of Corrections, the Department of Probation, Parole, and Pardon Services, the Board of Juvenile Parole, or the Department of Juvenile Justice, upon receipt of request for

the victim's personal information from the Attorney General in an appeal or post-conviction proceeding, must supply the requested information within a reasonable period of time.

(D) The Attorney General must confer with victims regarding the defendant's appeal and other post-conviction proceedings, including proceedings brought under Chapter 48 of Title 44.

(E) The Attorney General must keep each victim reasonably informed of the status and progress of the appeal or other post-conviction proceedings, including proceedings brought under Chapter 48 of Title 44, until their resolution.

(F) The Attorney General reasonably must attempt to notify a victim of all post-conviction proceedings, including proceedings brought under Chapter 48 of Title 44, and of the victim's right to attend. This notification must be made sufficiently in advance to allow the victim to exercise his rights pertaining to post-conviction proceedings.

SECTION 16-3-1565. No cause of action against public employees or agencies under this article.

(A) Nothing in this article creates a cause of action on behalf of a person against a public employee, public agency, the State, or an agency responsible for the enforcement of rights and provision of services set forth in this article.

(B) A sentence must not be invalidated because of failure to comply with the provisions of this article.

(C) This article must not be construed to create a cause of action for monetary damages.

ARTICLE 16.
CRIME VICTIMS' OMBUDSMAN OF THE OFFICE OF THE GOVERNOR

SECTION 16-3-1610. Definitions.

As used in this article:

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

SECTION 16-3-1620. Crime Victims' Ombudsman of the Office of the Governor.

(A) The Crime Victims' Ombudsman of the Office of the Governor is created. The Crime Victims' Ombudsman is appointed by the Governor with the advice and consent of the Senate and serves at the pleasure of the Governor.

(B) The Crime Victims' Ombudsman of the Office of the Governor shall:

- (1) refer crime victims to the appropriate element of the criminal and juvenile justice systems or victim assistance programs, or both when services are requested by crime victims or are necessary as determined by the ombudsman;
- (2) act as a liaison between elements of the criminal and juvenile justice systems, victim assistance programs, and victims when the need for liaison services is recognized by the ombudsman; and
- (3) review and attempt to resolve complaints against elements of the criminal and juvenile justice systems or victim assistance programs, or both made to the ombudsman by victims of criminal activity within the state's jurisdiction.

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

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

In carrying out the inquiry, the ombudsman is authorized to request and receive information and documents from the complainant, elements of the criminal and juvenile justice systems, and victim assistance programs that are pertinent to the inquiry. Following each inquiry, the ombudsman shall issue a report verbally or in writing to the complainant and the persons or agencies that are the object of the complaint and recommendations that in the ombudsman's opinion will assist all parties. The persons or agencies that are the subject of the complaint shall respond, within a reasonable time, to the ombudsman regarding actions taken, if any, as a result of the ombudsman's report and recommendations.

The ombudsman shall prepare a public annual report, not identifying individual agencies or individuals, summarizing his activity. The annual report must be submitted directly to the

Governor, General Assembly, elements of the criminal and juvenile justice systems, and victim assistance programs.

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

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

SECTION 16-3-1650. Cooperation with the criminal and juvenile justice systems and victim assistance programs.

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

SECTION 16-3-1660. Grounds for dismissal.

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

SECTION 16-3-1670. Purpose.

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