At Least Treat Us Like Criminals: South Carolina Responds to Victims' Pleas for Equal Rights

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AT LEAST TREAT US LIKE CRIMINALS!*  
SOUTH CAROLINA RESPONDS TO VICTIMS’ PLEAS FOR EQUAL RIGHTS

The justice system stinks! It’s all for the criminals and their families. Where’s the justice for us?**

I. INTRODUCTION

For many years South Carolina’s crime victims have been effectively locked out of the criminal justice process. Astonishingly, the people who suffer the most from the conduct of criminals play only a minor role in the justice system; this is a product of the American criminal justice system’s evolution.1 However, on November 5, 1996, South Carolina’s citizens overwhelmingly ratified the Victims’ Rights Amendment (SCVRA)2 to the state constitution.

* This is the paraphrased statement of a New York crime victim and is representative of many victims’ feelings. The original quote was, “All we ask is to be treated like criminals.” A Proposed Constitutional Amendment to Establish a Bill of Rights for Crime Victims: Hearing Before the Senate Comm. on the Judiciary on S.J. Res. 52, 104th Cong. 43 (1996) [hereinafter Senate Hearing] (statement of Robert E. Preston, Co-Chairman, National Victims’ Constitutional Amendment Network).

** Interview with Betty Stoudemire Slusher, in South Congaree, S.C. (Oct. 12, 1997). Mrs. Betty Stoudemire Slusher is a South Carolina crime victim. Her husband, Ralph Stoudemire, was robbed and murdered by Larry Gilbert and J.D. Gleaton in July 1977. The men confessed to the murder and have been convicted and sentenced to death after two previous trials. On July 29, 1997, Judge C. Weston Houck of the District of South Carolina overturned the second conviction. However, on January 22, 1998, the Fourth Circuit Court of Appeals reversed Judge Houck’s decision. Gilbert v. Moore, No. 96-12, 1998 WL 19936, at *1 (4th Cir. Jan. 22, 1998). Gilbert and Gleaton have been on death row for twenty years. Mrs. Slusher has attended many judicial proceedings during the past twenty years, but has never had the opportunity to voice her feelings in a courtroom. This is only one sad fact in a series of tragic encounters with South Carolina’s judicial system. Recently, Mrs. Slusher formed the South Carolina Victim Assistance Project, in memory of her husband, to provide research and educational efforts on the issue of victims’ rights. Mrs. Slusher explained her intentions by stating, “This has moved far beyond Betty Slusher. I am now working to make sure this does not happen to any future victims.” Id.

1. See infra notes 17-34 and accompanying text.

2. In 1996, 89% of South Carolina’s voters voted for ratification of the SCVRA. South Carolina Election Commission, November 5, 1996, South Carolina State Wide General Election - Official Results, Amendment 1A (1996) (on file with author) [hereinafter South Carolina Election Commission Official Results]. Amendment 1A was the crime victims’ amendment. South Carolina Election Commission, South Carolina Constitutional Amendment Questions for the November 5, 1996 General Election (Nov. 5, 1996) (on file with author) (unpublished handout distributed to South Carolina’s voters at the polls).
"[t]o preserve and protect victims' rights to justice and due process." The South Carolina General Assembly previously enacted statutes outlining the rights of crime victims, but recognized these provisions did not sufficiently address the problem. Victims need and deserve rights guaranteed by an amendment to the constitution. South Carolina's crime victims must not be forced to view the judicial system from offstage; instead, they should play an essential role in the system.

South Carolina's voters have ratified an amendment that strives to prevent the system from victimizing victims a second time. This comment explains the justifications for guaranteeing victims' rights in South Carolina, and examines the SCVRA and implementing statutes. The examination reveals that the SCVRA, in its current form, may cause devastating problems for South Carolina's criminal justice system. This comment offers possible solutions to these problems. Finally, this comment places South Carolina's actions within the context of a national victims' rights movement.

II. THE STIMULUS FOR PROTECTING VICTIMS' RIGHTS

A. A Brief History of Victims' Rights

The SCVRA is a reaction to inherent inequities that developed in the current criminal justice system over a long period of time. The citizens of South Carolina recognized the system was not fair and overwhelmingly chose to balance the scales of justice. Interestingly, the American criminal justice system evolved from ancient practices that emphasized balance. The SCVRA simply attempts to restore victims to their traditional role in the criminal justice system.

3. S.C. CONST. art. I, § 24. On February 17, 1998 the South Carolina Victims' Rights Amendment was formally ratified as an amendment to the South Carolina Constitution. After a majority of qualified electors voted in favor of the proposed amendment, the General Assembly was required to formally ratify the provision by a majority vote. S.C. CONST. art. XVI, § 1. In 1997, the South Carolina Senate approved the amendment; however, the South Carolina House of Representatives adjourned debate on the matter until January 13, 1998. SOUTH CAROLINA LEGISLATIVE INFORMATION SYSTEMS, DIGEST OF SENATE AND HOUSE BILLS AND RESOLUTIONS, 112th Leg., 1st Sess., at 9 (1997). The debate was most likely adjourned so there would be time for the implementing statutes, enacted June 13, 1997, see infra notes 78-80 and accompanying text, to take effect and be reviewed before the General Assembly finally voted on the amendment. Interview with J. Philip Land, Director of Governor's Division of Victim Assistance, in Columbia, S.C. (Oct. 14, 1997).


5. Interview with J. Philip Land, supra note 3.

6. Id.

7. See supra note 2.

8. In eleventh-century England, the victims possessed the right to accuse and the criminals possessed the right to defend. See infra notes 10-13 and accompanying text.
system.

1. The Victims' Role Under Early English Law

English law formed the foundation for America’s legal system. Before the Norman invasion, Anglo-Saxon England operated under a system of compensatory justice. After the Norman invasion of 1066, the successors of William the Conqueror introduced the practice of appeal into the legal system. “Appeal . . . was a private accusation made by the victim or, in cases of homicide, the next of kin, against the suspect. The main characteristic of appeal was that it placed squarely on the victim and kin the entire responsibility for bringing the suspect to justice and proving the accusation.” Therefore, Anglo-Norman law placed the responsibility of doing justice on the victim.

Gradually, private prosecution was supplanted by public prosecution. Public prosecution was feasible once the legal system became better organized and more centralized. The shift continued toward public prosecution because the king felt it was more reliable than private accusation. While these changes

10. Id. Victims received a monetary payment, called a “bot,” for various kinds of offenses. Id. “According to one Anglo-Saxon code, the compensation for inflicting a wound one [inch] long under the hairline was 1 shilling; for cutting off an ear, 50 shillings; [and] for cutting off a nose, 60 shillings . . . .” Id. at 79-80. Furthermore, the criminal was required to make an additional payment to the king. Id. at 80. However, the most serious offenses were “botless’ and unemendable.” These offenses were usually punishable by death or mutilation. Id.
11. Id. at 80-81. The term “appeal” did not have the same meaning in early English law as it has in the modern justice system. Appeal only referred to a private accusation against another; it did not relate to a review of lower court decisions as it is used in America’s justice system. Id. at 80.
12. Id. at 80 (citations omitted). Several requirements had to be met for an appeal to be successful. First, the appellant must have been personally harmed by the crime. Second, the appellant had to be physically present, “within sight and hearing of the act.” Third, the appeal had to be made with certain words which included the allegation that the act was committed in breach of the king’s peace, and the date, place, and the time of the offense. Fourth, the victim had to have raised the “hue and cry,” which served as notification to the community of the criminal act. Id. at 85-86. Fifth, “[t]he appellant was also expected to find sureties for prosecution, men who pledged that the appeal would be properly pursued. This meant appealing the alleged offender at four successive meetings of the county court and finally appearing before the royal justices for trial.” Id. (citation omitted) Most courts required the parties to engage in an “ordeal of battle [as] the appropriate method of proof.” Id. However, this practice began to subside during the thirteenth-century. Id. at 85-87.
13. Id. at 81.
14. Id. at 96-98. “Although appeal was not officially abolished until 1819, it waned in importance in the later middle ages, as public prosecution gradually supplanted private accusation in criminal matters.” Id. at 96.
15. Greenberg, supra note 9, at 96.
16. Id. Private accusations were deemed unreliable because the appellant was required to follow intricately detailed procedures or face dismissal of his claim. Id. at 85-86.

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provided the victim with the state’s resources in vindicating wrong, the changes also required the victim to sacrifice the right to play a central role in the process. Victims, who once controlled the responsibility for adjudicating criminal acts and receiving compensation, were relegated to the status of passive participants in the criminal justice process.

2. **The Evolution of the Modern Crime Victims’ Movement**

The American colonists’ legal system adhered to the customs and practices of the English common law. The colonists followed procedures that allowed private prosecutions, but quickly altered the process to include public prosecutions as their governments became more organized. During colonial times, separate rights for victims was unnecessary because the victims were allowed to protect their own interests. As a result, “[i]t seems plausible that the institution of private prosecutions explains why drafters of the bills of rights of the colonies and of the United States Constitution saw no need for including rights for crime victims.”

The modern victims’ rights movement originated with the work of Margery Fry, a reformer who developed her beliefs in the United Kingdom through her contacts with the Quakers. Fry discussed the distinctions between the early English law customs of restitution and the modern criminal justice system by stating:

It is noteworthy that the aim was to compensate the party aggrieved; the idea of punishment for a public crime came later. It is perhaps unfortunate that we have got so far away as we have from these primitive usages. . . . The tendency of English criminal law in the past has been to ‘take it out of the offender’ rather than to do justice to the offended.

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18. *Id. at 29*. The Dutch communities in New York maintained an office for the “schout” who was responsible for duties comparable to a sheriff and prosecutor. *Id. at 29*. Although the American public prosecutor may have originated from this practice, *Id. at 29-30*, the idea for public prosecutions may simply have originated from the colonial belief that the colonists had an obligation to find and punish behavior contrary to God’s commandments, which was “too important to be left to the whims, and the pocketbooks, of individual victims.” *Id. at 30*.
20. *Id.*
22. *Id. at 3-4*.
23. *Id. at 4*. Fry argued that the victims’ need for compensation offset society’s need for punishment. Her suggestions involved placing the victims within a special category of the state’s
Fry’s ideas of victim compensation were first adopted by New Zealand in 1963 and the United Kingdom in 1964.24 These efforts provided guidance for the subsequent development of similar victim assistance programs in the United States.

Several historical events probably stimulated the increased support of the victims’ rights movement in the United States. The increase in crime rates during the 1960s and 1970s25 produced fear in the general public and encouraged a popular belief that the criminal justice system should be used to rectify the problem.26 Also, during the 1960s a series of Supreme Court decisions dramatically expanded the rights of the criminally accused.27 Although there were numerous decisions, a few cases in particular attracted an enormous amount of attention. In Mapp v. Ohio,28 the Court established the exclusionary rule, which provides for the exclusion at trial of unlawfully attained evidence.29 In Gideon v. Wainwright,30 the Court mandated that all courts provide indigent defendants with legal counsel at the government’s expense.31 In Miranda v. Arizona,32 the Court required law enforcement to notify persons under arrest of their rights prior to interrogation.33 These famous decisions helped heighten the public’s perception that the “system” was more

social welfare programs. Id. Although most jurisdictions within the United States have decided not to include victims in the welfare state, many have developed practical and helpful compensation programs. Interview with J. Philip Land, supra note 3.

Fry’s argument for the superiority of victim compensation has not come to fruition in the modern criminal justice system. The use of prisons and capital punishment in the United States signifies that the modern justice system more closely follows the utilitarian theory of punishment as explained by the British philosopher, Jeremy Bentham. Bentham argued that the general purpose of law is “to augment the total happiness of the community.” JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 158 (J.H. Burns & H.L.A. Hart eds., Clarendon Press 1996) (1970). Bentham’s argument requires that criminals be punished, because it would serve the greatest happiness of the community. JEREMY BENTHAM, 9 THE WORKS OF JEREMY BENTHAM 8-9 (John Bowring ed., Russell & Russell Inc. 1962) (1838-1843).

24. See Weed, supra note 21, at 5.
25. BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS—1996, at 330 (Kathleen Maguire & Ann L. Pastore eds., 1997). The total crime index increased 120.8% between 1960 and 1980. Id. This index “[i]ncludes the violent crimes of murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault, and the property crimes of burglary, larceny-theft, and motor vehicle theft.” Id.
26. See Weed, supra note 21, at 6. Also, during this time, the baby boom generation entered the age group in which people are most likely to commit a crime. Id.
29. Id. at 655.
31. Id. at 344.
33. Id. at 444.
concerned with mechanically following procedures, thereby releasing criminals for reasons they perceived as technicalities, than administering justice.\textsuperscript{34}

Although the more conservative Burger and Rehnquist Courts have eroded the rights of the accused,\textsuperscript{35} the Court has not affirmatively recognized special rights for victims. In 1982 the President’s Task Force on Victims of Crime\textsuperscript{36} published a report which concluded that “[t]he innocent victims of crime have been overlooked, their pleas for justice have gone unheeded, and their wounds—personal, emotional, and financial—have gone unattended.”\textsuperscript{37} The task force proposed the ratification of a constitutional amendment that would guarantee the protection of victims’ rights.\textsuperscript{38} The action of this influential task force helped spark a national dialogue that focused a spotlight on victims’ rights.\textsuperscript{39} Furthermore, the organization of victims’ advocates\textsuperscript{40} has created a modern victims’ rights movement in the United States. This movement has helped secure the ratification of twenty-nine state constitutional amendments and the passage of numerous victims’ rights statutes.\textsuperscript{41}

B. \textit{The Need For a Constitutional Amendment in South Carolina}

Prior to the ratification of the SCVRA, the rights of South Carolina’s many victims\textsuperscript{42} were only protected by statute. In 1984 the South Carolina General Assembly adopted the Victim’s and Witness’s Bill of Rights and other

\begin{enumerate}
\item 34. \textit{Weed, supra} note 21, at 6. These decisions have triggered a national debate over the appropriate application of the fourth, fifth, and sixth amendments to the United States Constitution.
\item 35. \textit{Decker, supra} note 27, at 7.
\item 37. \textit{Id.} at ii.
\item 38. \textit{Id.} at 114.
\item 39. Letter from David Beatty, Acting Executive Director and Project Director, The National Victim Center, to Thad Westbrook, Member, \textit{University of South Carolina Law Review} 1 (Oct. 1, 1997) (on file with author).
\item 40. These groups include the following: Mothers Against Drunk Driving (MADD), National Organization for Victim Assistance (NOVA), National Victim Center (NVC), and National Victims Constitutional Amendment Network (NVCAN).
\item 42. Unfortunately, South Carolina’s violent crime rate is the second highest in the United States. Clif LeBlanc, S.C.’s \textit{Rate of Violence No. 2 in U.S., The State} (Columbia, S.C.), Oct. 4, 1997, at A1. “[South Carolina] has ranked among the 10 most violent states, when adjusted per 100,000 people, for several years. Most recently, it was No. 2 in 1994 and No. 4 in 1995. It returned to No. 2 in 1996...” \textit{Id.} at A8. In 1996, 36,651 violent crimes and 191,326 property crimes were reported to law enforcement authorities in South Carolina. \textit{Id.} These statistics indicate that a minimum of 227,977 citizens encountered the South Carolina criminal justice system in 1996. However, this number is likely much greater because more than one victim is often involved in each case.
This summer I attended a victim rights training session here in South Carolina. At one of the seminars I heard a deputy solicitor complaining about how difficult it will be to fulfill the requirements provided for in the Victims’ Rights Amendment. Specifically, he was explaining that it would be costly to provide separate waiting areas for the victim and the defendant because many of the state’s old courthouses were not constructed in a way that would easily allow for separate waiting areas. Unfortunately, I had to notify him that the General Assembly already required the courts to provide separate waiting areas in a statute passed in 1984. This is the problem. Many of the people in the system were not aware of the statutes’ provisions.  

This was a fundamental reason for ratifying the constitutional amendment. Many statutes had been promulgated, but few were fully enforced. The SCVRA provides the heightened awareness that victims need for full protection in South Carolina.

III. SOUTH CAROLINA’S VICTIMS’ RIGHTS AMENDMENT

South Carolina’s Victims’ Rights Amendment adds Article I, Section 24 to the state constitution. The SCVRA contains three main features. First, the

43. S.C. CODE ANN. §§ 16-3-1530 to -1560 (Law. Co-op. 1985) (rewritten by amendment in 1997). These provisions provided victims the same basic rights enumerated in the recent constitutional amendment.

44. Interview with J. Philip Land, supra note 3.

45. Id. Some were aware of these provisions, but were unable to comply with the requirements. Interview with Robert G. Rightsell, Director of the Victim Witness Program for the Eleventh Judicial Circuit, in Lexington, S.C. (Nov. 6, 1997). For example, it is nearly impossible to provide separate waiting areas for victims and defendants in the Edgefield County Courthouse, which was constructed in 1839. To adequately comply with this requirement, the old courthouses must be replaced or renovated. There is not enough money to fund the construction costs. Id.

46. Interview with J. Philip Land, supra note 3; see also Cassell, supra note 19, at 1383-85 (explaining that other states ratified victims’ rights amendments because it was the only way victims would gain the respect of the system).


Victims are becoming more aware of their rights. For example, the Governor’s Office, Division of Victim Assistance has seen a twenty percent increase in the number of applications for victims’ benefits since the SCVRA was placed on the ballot in November 1996. Interview with J. Philip Land, supra note 3.

48. The South Carolina General Assembly also incorporated an explanation of the SCVRA’s
SCVRA enumerates the rights that will be guaranteed in the constitution. Second, although victims may enforce their rights, the SCVRA proclaims that it creates no civil cause of action against any public employee or entity. Third, the SCVRA provides parameters for applying the provisions of the amendment. The following discussion will examine these three parts.

A. The Rights of South Carolina’s Victims

1. The Definition of a Victim

Defining who is a victim is a necessary part of drafting a victims’ rights amendment. The drafters must consider which individuals and crimes merit inclusion within the definition. The SCVRA contains an all-inclusive definition of a victim so as to include the victim of almost any type of crime.49 Indeed, the term “victim” includes those directly victimized and their families who were indirectly victimized.50 By including such a large number of potential victims within the SCVRA, the General Assembly has proclaimed that the justice system must be fair for everyone.

2. The Right to Fairness and Dignified Treatment

The SCVRA guarantees victims the right to “be treated with fairness, respect, and dignity.”51 First, this provision guarantees victims they will be treated with dignity throughout the criminal justice process.52 For example, the intended purpose. The purpose of the SCVRA is “[t]o preserve and protect victims’ rights to justice and due process regardless of race, sex, age, religion, or economic status.” S.C. CONST. art. I, § 24(A).

49. The SCVRA defines a victim as:
   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.

50. Id.

51. S.C. CONST. art. I, § 24(A)(1). The full provision provides that victims have the right to “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 [their] constitutional rights, provided by statute.” Id.

52. Dignified treatment is essential to a victim’s ongoing healing. Interview with J. Philip Land, supra note 3. Healing also requires that the process be concluded within a reasonable time. Therefore, the SCVRA requires “a reasonable disposition and prompt and final conclusion of the case.” S.C. CONST. art. I, § 24(A)(11).

Victims must also be reasonably restored to their condition prior to the crime. In 1982, the President’s Task Force on Victim’s of Crime suggested restitution be required in all cases. Final
SCVRA requires that victims be free from further victimization by the accused as they participate in the criminal justice process.\textsuperscript{53} Furthermore, the provision demonstrates an intention to place the victim on par with the criminal by guaranteeing a fair and respectful administration of the system.\textsuperscript{54} However, due to the abstract nature of these rights, there can be no bright-line test to determine when one of these rights is violated. Nevertheless, this provision conveys to officials the importance of the rights guaranteed by the SCVRA, and allows victims to object to their treatment within the system.

The final substantive phrase of the first provision of rights mandates that victims be informed of their "constitutional rights."\textsuperscript{55} This is essential to the full implementation and application of the SCVRA because victims must know that they have rights and reasonably be able to enforce them. The Governor's Advisory Committee\textsuperscript{56} has recommended that victims be provided information at the crime scene that explains their rights and lists people who they may contact for more information.\textsuperscript{57} State and local officials' adherence to this recommendation would comply with the SCVRA and demonstrate to victims that they are not alone during the difficult time after they have been victimized.\textsuperscript{58}

\footnotesize{REPORT, supra note 36, at 18. The SCVRA adopts the Task Force's recommendation that the victim receive restitution from the offender. S.C. CONST. art. I, \textsection 24(A)(9). This restitutory requirement evinces principles practiced in the early English system of compensatory justice. See supra note 10 and accompanying text.}

\footnotesize{53. S.C. CONST. art. I, \textsection 24(A)(1). A victim has the right to "be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process." S.C. CONST. art. I, \textsection 24(A)(6).}

\footnotesize{54. This intention is demonstrated by a subsequent provision in the SCVRA that guarantees the victim the right to "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." S.C. CONST. art. I, \textsection 24(A)(12). The presiding judge must consider the impact of the rules on both the criminal's and the victim's rights. S.C. CODE ANN. \textsection 16-3-1550(D) (Law. Co-op. Supp. 1997).}

\footnotesize{55. S.C. CONST. art. I, \textsection 24(A)(1). This right is analogous to the \textit{Miranda} requirement that individuals be informed of their rights before custodial interrogation. \textit{Miranda} v. Arizona, 384 U.S. 436, 444 (1966). Although failure to comply with the SCVRA provision does not have ramifications comparable to those of \textit{Miranda}, the provision does emphasize the notion that the victim must be aware of the rights to exercise them. For this reason, the right to notice has been labelled the "threshold right" because "it is the right that enables crime victims to exercise all other rights." \textsc{Victim's Rights Sourcebook}, supra note 41, at 23.}

\footnotesize{56. The Governor's Advisory Victim Services Coordinating Committee was established by executive order on August 14, 1997. Exec. Order No. 97-26, 21 S.C. State Reg. 2-3 (Sept. 26, 1997). The Committee was charged with the responsibility of developing "standards for the coordination and implementation of victim services delivery on a state and local level." \textit{Id}.}

\footnotesize{57. \textsc{Governor's Advisory Victim Services Coordinating Committee, Guide for the Implementation of Act 141: Victim and Witness Service 40 (1997) [hereinafter \textsc{Guide}].}

\footnotesize{58. Although the forms provided in the \textsc{Guide} are only recommendations, most state and local officials will probably, at the least, use the samples to draft their own information sheets. Interview with J. Philip Land, supra note 3.}
3. The Right to Participate

Victims must be given notice of various events that occur during the investigatory and judicial process. The SCVRA expressly guarantees that the victim has a right to "be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present."59 Notification will ensure the victim has sufficient opportunities to participate in the case and feel secure that the assailant is still in custody.60 As one assault victim explained, "One morning I woke up, looked out my bedroom window and saw the man who had assaulted me standing across the street staring at me. I thought he was in jail."61 This is one of the problems the SCVRA seeks to resolve.

The SCVRA allows the victim to be heard during the criminal justice process. In the past, the victim had to remain silent throughout a criminal proceeding, while the defendant and the defendant's family could address the court.62 Under the SCVRA, a victim may "submit either a written or oral statement at all hearings affecting bond or bail."63 Moreover, a victim may "be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing."64 Beyond formal court proceedings, the victim also has the right to confer with prosecutors throughout the process65 and have reasonable access "to all documents relating to the crime against the victim before trial."66 Also, the victim's participation need not end once the accused is convicted and sentenced. The SCVRA also guarantees victims that they will be informed of, and given the opportunity to be present at, any post-conviction hearing.67

61. FINAL REPORT, supra note 36, at 4.
62. Slusher, supra note **; see also FINAL REPORT, supra note 36, at 11 ("You ask permission to address the judge and are told that you are not allowed to do so.").
65. S.C. CONST. art. I, § 24(A)(7). A tragic case is now pending in the South Carolina Court of Appeals involving a solicitor's failure to confer with the victim prior to a plea arrangement with the accused. Appellant's Preliminary Brief at 3, Reed v. Becka (S.C. Ct. App.). The solicitor attempted to revoke the plea arrangement when the victim protested; however, the accused contends that he had a contract with the state in the form of a plea agreement. Id. The South Carolina Supreme Court has noted that a plea agreement should be reviewed under contract principles of law. State v. Thrift, 312 S.C. 282, 292-93, 440 S.E.2d 341, 347 (1994). The court of appeals may decide whether the victim's constitutional right to confer with the solicitor will override a potential agreement between the accused and the state.
67. S.C. CONST. art. I, § 24(A)(10). This right could have substantial benefits for the victim. The story of Patricia Pollard, an Arizona crime victim, illustrates this point. Senate Hearing, supra note *, at 31-32 (statement of Patricia Pollard). Ms. Pollard was the victim of a brutal sexual assault. When her attacker appeared before a parole board, officials did not fulfill their state constitutional obligation to notify Ms. Pollard. Once Ms. Pollard heard about the parole
Persons injured by crime must be allowed to observe the justice system operate and feel confident that their interests are being resolved and properly protected by the state.

4. No Cause of Action or Appealable Issue Created

The SCVRA requires public officials to comply with the amendment’s provisions. Although the SCVRA does not provide a cause of action against a public official or public entity for a violation of its provisions, victims' rights are protected by a writ of mandamus, which may be issued on behalf of the victim by a circuit court judge or any justice of the South Carolina Supreme Court. An official’s “wilful failure to comply with a writ of mandamus is punishable as contempt.” This provision is the “teeth” of the SCVRA. However, this enforcement provision may be inapplicable in some situations. For example, it would not apply to solicitors once a victim’s case is closed. Furthermore, the enforcement provision would fail to protect a victim if prison officials fail to notify the victim that the person charged or convicted for the crime has been released. In short, the enforcement provision only provides a mechanism for requiring future compliance with the SCVRA.

The fundamental purpose of the SCVRA is to assist victims. As a result, criminal defendants will probably not be able to use any provision of the SCVRA for their own gain. For example, the SCVRA includes a provision preventing a convicted criminal from basing an appeal on the grounds that the victim exercised a particular right under the SCVRA.

board’s decision, she requested the county attorney file an action to stay the convict’s release. The Arizona Court of Appeals granted the stay and ordered the parole board to hold another hearing and allow Ms. Pollard to address the board. Once the parole board heard the details of the crime from Ms. Pollard, the board voted again and denied her attacker’s release. Id.

68. S.C. CONST. art. I, § 24(B).
69. Id.
70. Id.
71. Interview with William Bilton, Executive Director of the South Carolina Commission on Prosecution Coordination, in Columbia, S.C. (Nov. 13, 1997). However, officials may now be subject to contempt proceedings because full compliance with the SCVRA may not be financially possible. Interview with Robert G. Rightsell, supra note 45.
72. S.C. CONST. art. I, § 24(B). The SCVRA provides that “[t]he rights created . . . may be subject to a writ of mandamus . . . issued . . . to require compliance.” Id.
73. Id.
74. Id.
75. Interview with J. Philip Land, supra note 3.
B. The Implementation Statutes

The implementation statutes, also referred to as the delineation statutes, were enacted to prepare for the adoption of the SCVRA. The statutes implement the funding mechanisms for the SCVRA and the specific services that a victim should receive under it. These statutes can be divided into four categories: definitions, services, compensation, and funding.

1. Definitions

“Victim,” “person,” and “criminal offense” are the three most significant defined terms in the implementation statutes. First, the definition for a victim is very similar to the SCVRA’s definition, although one notable exclusion exists in the statute. The statutory definition prevents the inclusion of a person who may have participated in the criminal act. Second, the statute defines “person” to mean an “individual.” This definition aims to prevent corporations from claiming victim status under the statute. Third, “criminal

as justification for the victims’ presence in the courtroom. Id.


80. Although the funding mechanisms were instituted on July 1, 1997, the services were not required to be provided until October 1, 1997. 1997 S.C. Acts 141.

81. The statutory definition is as follows:

‘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 criminal offense, as defined in this section.

‘Victim’ also includes the person’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 a spouse, parent, child, or lawful representative 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 a spouse, parent, child, or lawful representative who is acting on behalf of the suspect, juvenile offender, or defendant.


82. Compare § 16-3-1510(1) (excluding the perpetrator of the crime from qualifying as a victim), with S.C. CONST. art. I, § 24(C)(2) (failing to explicitly exclude the perpetrator of the crime from qualifying as a victim).

83. § 16-3-1510(2).

84. Interview with Barbara Morgan, supra note 78.
"offense" is defined as an offense against a person or the property of a person when the cost or damage exceeds one thousand dollars, but excludes "the drawing or uttering of a fraudulent check." These definitions illustrate that the General Assembly wanted to limit the SCVRA by decreasing the number of victims whose rights would be protected by the South Carolina Constitution.

2. Services

The implementing statutes describe the specific services offered in compliance with the SCVRA and delineate responsibility for providing those services to various entities within state and local government. However, before law enforcement can act, victims must provide certain information to a law enforcement agency and give notification of their desire to be present or heard at criminal proceedings. Generally, law enforcement is the first government agency to contact a crime victim. Therefore, the code now requires law enforcement to provide the initial services to a victim. These services include notification of victims' rights and victims' services, the provision of information on compensation benefits, making contact with victims' rights.

85. § 16-3-1510(3).
86. The General Assembly has attempted to statutorily alter the definition of the term "victim" in the SCVRA. See § 16-3-1510(1). Although the SCVRA authorizes the General Assembly to enact laws that shape and protect the rights guaranteed to victims, the amendment does not give power to alter the SCVRA's definition of a victim. S.C. CONST. art. I, § 24(C)(3). The General Assembly simply cannot amend the Constitution by statute. S.C. CONST. art. XVI, § 1. Furthermore, the South Carolina Supreme Court has recognized that statutes in conflict with the Constitution are inoperative. See Trustees of Wofford College v. Burnett, 209 S.C. 92, 102-03, 39 S.E.2d 155, 159 (1946). The South Carolina Supreme Court stated:

"Where, in adjudicating litigated rights under a statute, it appears beyond all reasonable doubt that the statute is in conflict with some express or implied provision of the Constitution, it is then within the power and duty of the court, in order to give effect to the controlling law, to adjudicate the existence of the conflict between the statute and the organic law, whereupon the Constitution, by its own superior force and authority, eliminates the statute or the portion thereof that conflicts with organic law, and renders it inoperative ab initio, so that the Constitution, and not the statute, will be applied by the court in determining the litigated rights."

Id. (quoting State ex rel. Nuveen v. Greer, 102 So. 739, 743 (Fla. 1924)).
87. S.C. CODE ANN. § 16-3-1515 (Law. Co-op. Supp. 1997). Victims should be given this notification opportunity when they fill out their information forms. See GUIDE, supra note 57, at 40 app. E.
89. § 16-3-1520(A)(1)-(3).
90. § 16-3-1520(A)(4).
employers or creditors,\textsuperscript{91} and informing victims of the case status.\textsuperscript{92} After the suspect has been arrested or detained, law enforcement must make a reasonable attempt to notify the victim.\textsuperscript{93} Furthermore, law enforcement must provide the jailor or any other holding facility with the victim’s information\textsuperscript{94} so that the jailor or agency may notify the victim of any release or escape by the accused.\textsuperscript{95} Finally, law enforcement is charged with the responsibility of protecting the victim.\textsuperscript{96}

The prosecuting agency’s role begins once a case is brought against the accused. The agency is responsible for reasonably attempting to notify victims before bond proceedings in circuit and family court.\textsuperscript{97} Moreover, the prosecuting agency must confer with victims about the disposition of the case prior to trial or other court proceedings.\textsuperscript{98} Because our justice system has eliminated a victim’s right to prosecute an offender,\textsuperscript{99} it is possible for those in the system to forget whose case is being processed. Conferring with the victim reminds the prosecutors that they are working on behalf of the state and the victim.

Judges are responsible for ensuring that a victim’s rights are protected throughout the judicial process. Historically, judges have been responsible for ensuring the defendant a fair trial; now they must also guarantee the victim a fair trial.\textsuperscript{100} The judge must also determine whether the prosecuting agency made a reasonable attempt to notify the victim before a dispositive hearing.\textsuperscript{101} If not, then the judge must postpone the proceeding until the prosecutor has fulfilled this obligation.\textsuperscript{102} In addition, victims who respond to a subpoena may

\textsuperscript{91} § 16-3-1520(C).
\textsuperscript{92} § 16-3-1520(D).
\textsuperscript{93} S.C. CODE ANN. § 16-3-1525(A) (Law. Co-op. Supp. 1997).
\textsuperscript{94} § 16-3-1525(C). Because the jailor will not take custody of a person until the jailor receives the victim’s information from the arresting officers, the arresting officers may have to keep such person in custody until they are able to locate the victim(s). This situation may create significant risk and inconvenience to all parties involved. Interview with Robert G. Rightsell, supra note 45.
\textsuperscript{95} S.C. CODE ANN. § 16-3-1530(A), (B) (Law. Co-op. Supp. 1997). Notification must also be given if the prisoner is transferred to a less secure facility. § 16-3-1530(C).
\textsuperscript{96} For example, “[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.” § 16-3-1525(G).
\textsuperscript{97} § 16-3-1525(D)(1), (J)(1).
\textsuperscript{99} See supra notes 11-14.
\textsuperscript{100} S.C. CODE ANN. § 16-3-1550(D) (Law. Co-op. Supp. 1997). The code now provides that judges “must recognize and protect the rights of victims and witnesses as diligently as those of the defendant.” Id.
\textsuperscript{101} Id.
\textsuperscript{102} Id.
not be penalized by their employers.\textsuperscript{103} If the defendant is convicted, the judge must allow the victim an opportunity to address the court in a victim impact statement—written or oral—before sentencing.\textsuperscript{104} These are responsibilities the judge must pursue with vigor. In the end, the judge is responsible for ensuring that the scales of justice are balanced and that all parties have fulfilled their obligations to the victim.\textsuperscript{105}

3. Compensation

The implementing statutes define the victims that are eligible and ineligible for compensation from the state.\textsuperscript{106} Victims, or their immediate families, are eligible for benefits if the crime was committed in South Carolina or the victim was a resident of South Carolina when the crime was committed.\textsuperscript{107} However, if the crime was committed in another state, then the benefits will be reduced by the amount paid under the laws of the other state.\textsuperscript{108} The Governor's Office Division of Victim Assistance is solely responsible for deciding whether a victim qualifies for benefits and for ultimately administering those benefits.\textsuperscript{109}

4. Funding

Funding for victims' compensation and services comes from assessments, fees, and court fines.\textsuperscript{110} Ninety-seven percent of victims' compensation benefits are derived from assessments imposed against those who violate the law.\textsuperscript{111} This is not a welfare program; it is based on the idea that criminals should pay

\textsuperscript{103} § 16-3-1550(A).
\textsuperscript{104} § 16-3-1550(F). Once they have addressed the judge, victims often feel they have had their day in court. Interview with Robert G. Rightsell, supra note 45.
\textsuperscript{105} See § 16-3-1550(D).
\textsuperscript{107} § 16-3-1210(a), (b). Only victims of terrorism may receive state compensation for crimes committed outside the United States. § 16-3-1210(b).
\textsuperscript{108} § 16-3-1210(c).
\textsuperscript{109} Interview with J. Philip Land, supra note 3. Benefits are distributed according to need with the average benefit payment approximating $2,500. These benefits pay for lost wages, psychological counseling, and other basic needs a victim may have. Id. However, victims do not receive benefits for property loss, pain and suffering, or legal fees. DIVISION OF VICTIM ASSISTANCE, OFFICE OF THE GOVERNOR, DOVA PROVIDES (n.d.). Generally, victims have 180 days after the crime to file for compensation. Id.
\textsuperscript{110} Interview with J. Philip Land, supra note 3.
\textsuperscript{111} Id. The remaining three percent of the Crime Victim's Compensation Fund comes from a state appropriation earmarked to pay for medicolegal exams provided to the victims of sexual assault. Telephone Interview with Linda C. Steadman, Community Development and Training Administrator, Governor's Office Division of Victim Assistance (Jan. 8, 1998). See discussion infra notes 113-16 and accompanying text.
for victims’ services. The assessments are paid by a person who is “convicted of, pleads guilty or nolo contendere to, or forfeits bond for an offense” in each court. Each assessment statute contains a “hold harmless” provision that requires the city or county to send the State Treasurer money equal to the amount the city or county paid during that month in the previous fiscal year. The surcharges are one hundred dollars in general sessions court and twenty-five dollars in the municipal and magistrates’ courts. Officials in every jurisdiction must be aware of the new assessment and surcharge requirements, because adequate funding is crucial for successful compliance with SCVRA goals. As a result, revenue to support victims’ services must be generated from every available source.

C. The Effects of Victims’ Rights on South Carolina’s Criminal Justice System

The SCVRA and implementing statutes will have a tremendous impact on South Carolina’s criminal justice system. To understand the changes that will occur, the SCVRA and the implementing statutes must be read together. Although victims will benefit from the guaranteed rights and services, the system will be strained to fulfill its obligations. Three significant problems arise from the SCVRA’s enactment. First, the differences between the SCVRA and the implementing statutes may create constitutional problems. Second, the SCVRA’s expansive definition of victims may overburden South Carolina’s criminal justice system. Third, the current funding mechanisms may be inadequate to produce sufficient revenue for the enumerated victims’ services. If victims are to be truly guaranteed rights, and the spirit of the SCVRA

112. Interview with J. Philip Land, supra note 3.
115. Interview with Robert G. Rightsell, supra note 45.
117. Interview with Barbara Morgan, supra note 78.
118. Victims’ compensation benefits are almost completely funded by assessments and surcharges. See supra note 111 and accompanying text. If the funds are not generated by the cities and counties, victims’ will suffer. Interview with J. Philip Land, supra note 3.
119. Interview with William Bilton, supra note 71.
120. See supra note 3.
fulfilled, these problems must be addressed and resolved. South Carolina's victims deserve no less.

1. **Constitutional Problems**

A constitution is the supreme authority within any jurisdiction in which it is ratified. Therefore, all legislative acts must yield to conflicting constitutional provisions. Three provisions in the implementing statutes appear to be unconstitutional. First, the General Assembly attempted to limit the SCVRA definition of victim by denying victim status to a person responsible for the crime. In contrast, the SCVRA does not exclude those individuals from inclusion in its definition of victim; therefore, offenders could technically have a right to benefit from their criminal actions. Second, the implementing statutes attempt to exclude from the SCVRA victims of property loss or damage unless the loss or damage exceeds one thousand dollars. The SCVRA definition of victim contains no such provision; instead, the SCVRA provides rights to all victims of property crime. Third, the General Assembly sought to exclude victims of fraudulent check crimes from invoking rights guaranteed by the SCVRA. Although this provision again attempts to limit the number of victims guaranteed rights, it does so through invalid means. Because a constitution can never be superseded by statute, the General Assembly must employ constitutional means to amend the overly broad SCVRA.

2. **Everyone Is a Victim**

The traditional image of the crime victim is the little old lady whose purse has been snatched, or the widow of a man who was tragically murdered during a convenience store robbery. The SCVRA considers these individuals victims. However, what if corporations and drug dealers claim to be injured? Are they

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122. *See id.*
124. § 16-3-1510(3).
126. There are approximately 300,000 fraudulent check crimes in South Carolina every year. Interview with William Bilton, *supra* note 71. The General Assembly intended to significantly decrease the number of victims protected by the SCVRA with this provision. *Id.* Although it is a practical goal, the means may be unconstitutional.
victims? Under the SCVRA, both may be victims and qualify for state compensation benefits. Clearly, the SCVRA’s definition of a victim is too broad. Nevertheless, the General Assembly’s attempt to limit those who would receive victims’ rights protection may ultimately be unconstitutional. As a result, the SCVRA may protect many persons—and even entities—that we do not consider to be victims of crime.

3. Field of Dreams

“If you build it, it will come!” This is one impression of the approach to funding in the SCVRA and the implementing statutes. South Carolina has constructed a large plan to offer services to victims, and anticipates the money will be available to fund the plan. However, this has left many wondering how the state will actually pay for the services. The current plan estimates the requirements of the SCVRA and implementing statutes will cost approximately fourteen million dollars per year. The assessments and surcharges, implemented by statute on July 1, 1997, are predicted to raise over fourteen and one-half million dollars. However, this surcharge amount predicts a fifty percent collection rate, based on actual assessment collections for fiscal year 1995-96. If collections are less than fifty percent, or if fewer crimes punishable by fines are committed in the state during fiscal year 1997-98, the

129. See supra notes 121-28 and accompanying text.
130. Interview with Donnie Myers, supra note 76. Solicitor Myers paraphrased the famous statement, “If you build it, he will come.” FIELD OF DREAMS (Universal 1989).
132. Laura S. Hudson, Editorial, Victims’ Rights Must Become a Reality in South Carolina, THE STATE (Columbia, S.C.), Oct. 30, 1997, at A17. The South Carolina Commission on Prosecution Coordination has estimated that the victim notification provisions of the SCVRA will cost approximately thirteen million dollars per year. Memorandum from William Bilton of the South Carolina Commission on Prosecution Coordination, Summary of Expenditures for Victim Notification (May 1997) (on file with author). However, victims’ advocates argue that the cost of victims’ services is negligible compared to the $453 million dollars spent for corrections programs and indigent defense services. Hudson, supra.
133. OFFICE OF STATE BUDGET, BUDGET AND CONTROL BD., FISCAL IMPACT STATEMENT ON THE PROPOSED JUDICIARY COMMITTEE AMENDMENT TO S. 616 (May 29, 1997) [hereinafter FISCAL IMPACT 1997]. In 1996, the General Assembly was informed that a victims’ bill of rights would have no impact on the Judicial Department’s operating budget. OFFICE OF STATE BUDGET, BUDGET AND CONTROL BD., FISCAL IMPACT STATEMENT ON BILL NO. S. 1050 (Feb. 9, 1996). Prior to the assessment and surcharge plan in early 1997, the General Assembly was informed that the fiscal impact would be approximately one million dollars. OFFICE OF STATE BUDGET, BUDGET AND CONTROL BD., FISCAL IMPACT STATEMENT ON BILL NO. S. 616 (Apr. 8, 1997).
134. FISCAL IMPACT 1997, supra note 133.
135. Because many people convicted of crimes are unable to pay their fines, less funds will be available for victims’ services. Interview with Robert G. Rightsell, supra note 45. In counties already facing financial difficulties, the SCVRA may be an additional burden. Id.
actual revenues will likely fall short of the estimated costs.\textsuperscript{136} Furthermore, excess costs may lead to more taxes.\textsuperscript{137}

This problem could have been avoided. First, South Carolina could have followed the Michigan plan for implementing a victims’ rights amendment.\textsuperscript{138} Michigan first enacted the implementing statutes,\textsuperscript{139} which included the funding mechanisms,\textsuperscript{140} allowing them to operate for approximately three years.\textsuperscript{141} This allowed the Michigan Legislature to determine the cost of victims’ services and generate the revenue needed to pay for those services. After the Legislature made that determination, Michigan adopted a constitutional amendment that was tailored to the state’s needs and limitations.\textsuperscript{142} South Carolina did the opposite. The SCVRA was submitted to the qualified electors in November 1996\textsuperscript{143} and the implementing statutes were enacted in 1997.\textsuperscript{144} Second, the General Assembly could have submitted an amendment with a clear and limited definition of a victim. For example, the term “victim” might have been initially limited to victims of violent crimes, and then subsequently modified as funds became available. Instead, South Carolina adopted a limitless definition with apparently no consideration of the burden it might place on the criminal justice system.

4. \textit{Proposed Solutions}

The Legislature had to ratify the amendment because the SCVRA is so politically popular.\textsuperscript{145} A refusal to ratify the SCVRA would have likely upset victims’ advocates across the state and leave South Carolina’s victims without guaranteed rights for at least another year. However, the General Assembly could remedy the SCVRA’s problem by submitting new definitions,\textsuperscript{146} along

\textsuperscript{136} This assumes fourteen million dollars will cover all of the services. Currently, no one is sure how much the SCVRA will cost. See Ball, supra note 131.

\textsuperscript{137} Interview with J. Milton Pope, Governmental Affairs Liaison for the Municipal Association of South Carolina, in Columbia, S.C. (Nov. 3, 1997).

\textsuperscript{138} Interview with William Bilton, supra note 71.

\textsuperscript{139} MICH. COMP. LAWS ANN. §§ 780.751-911 (West Supp. 1997).

\textsuperscript{140} §§ 780.901-911.

\textsuperscript{141} Interview with William Bilton, supra note 71.

\textsuperscript{142} MICH. CONST. art. I, § 24.

\textsuperscript{143} See supra note 2 and accompanying text.


\textsuperscript{145} The SCVRA garnered an 89% favorable vote in the November 1996 election. See South Carolina Election Commission Official Results, supra note 2.

\textsuperscript{146} A more narrow definition of a victim would make the SCVRA more manageable for the officials required to comply with it and would decrease the likelihood of funding problems. As the SCVRA is currently drafted, South Carolina’s criminal justice system may be overwhelmed by the number of victims guaranteed all rights and services. Perhaps the SCVRA should first try to protect victims of violent crime and serious property damage. Only when the system is financially stable should the General Assembly consider expanding the number of victims that will be guaranteed rights in the SCVRA. By drafting the amendment in its current form, the General
with a better explanation of the enforcement provisions, to the voters for ratification in November 1998. This approach is more fiscally responsible and administratively manageable than the current SCVRA. South Carolina’s victims and taxpayers deserve nothing less.

IV. NATIONAL TRENDS

A. Victims’ Rights on the State Level

Currently, twenty-nine states have adopted a victim’s rights amendment.147 The amendments range in scope of protection and services offered to victims. Some amendments provide only limited protection for victims.148 For example, victims have the right to be informed, present, and heard as long as they do not interfere with the defendant’s rights.149 At the other end of the spectrum, some amendments provide extensive services and protections to victims.150 South Carolina’s amendment is among the toughest in the United States because of its enforcement provisions and the number of rights it guarantees.151 Arizona’s amendment is probably the strongest because it includes a provision allowing victims the right to refuse an interview with defense counsel.152

B. Victims’ Rights on the Federal Level

As part of its Final Report in 1982, the President’s Task Force on Victims of Crime proposed an amendment to the United States Constitution.153 In

Assembly has simply bitten off more than the system can chew.

147. See ALA. CONST. amend. 557; ALASKA CONST. art. I, § 24; ARIZ. CONST. art. 2, § 2.1; CAL. CONST. art. 1, § 28; COLO. CONST. art. II, § 16a; CONN. CONST. amend. 17b (as amended by amend. 29); FLA. CONST. art. 1, § 16; IDAHO CONST. art. 1, § 22; ILL. CONST. art. 1, § 8.1; IND. CONST. art. 1, § 13(b); KAN. CONST. art. 15, § 15; MD. CONST. art. 47; MICH. CONST. art. 1, § 24; MO. CONST. art. 1, § 32; NEB. CONST. art. 1, § 28; NEV. CONST. art. 1, § 8; N.J. CONST. art. 1, § 22; N.M. CONST. art. II, § 24; N.C. CONST. art. 1, § 37; OHIO CONST. art. I, § 10a; OKLA. CONST. art. 2, § 34; OR. BALLOT MEASURE 40 (approved by voters on Nov. 5, 1996); R.I. CONST. art. 1 § 23; S.C. CONST. art. I, § 24; TEX. CONST. art. 1, § 30; UTAH CONST. art. I, § 28; VA. CONST. art. 1, § 8-A; WASH. CONST. art. 1, § 35; WIS. CONST. art. 1, § 9m. Also, all 50 states have included some victims’ rights statutes in their codes. VICTIMS’ RIGHTS SOURCEBOOK, supra note 41, at 1.

148. See, e.g., FLA. CONST. art. 1, § 16(b) (providing one sentence for victims’ rights); IND. CONST. art. 1, § 13(b) (providing one sentence for victims’ rights).

149. See supra note 148.

150. See, e.g., ARIZ. CONST. art. 2, § 2.1 (providing multiple and detailed provisions for victims’ rights and services); Mich. CONST. art. I, § 24 (providing multiple provisions for victims’ rights).

151. S.C. CONST. art. 1, § 24(B).

152. See ARIZ. CONST. art. 2, § 2.1.

153. FINAL REPORT, supra note 36, at 114. The proposed amendment would augment the Sixth Amendment by adding, “Likewise, the victim, in every criminal prosecution shall have the right to be present and to be heard at all critical stages of judicial proceedings.” Id.
support of a constitutional amendment, the Task Force explained, "[A]n essential change must be undertaken; the fundamental rights of innocent citizens cannot adequately be preserved by any less decisive action." 154 Currently, the United States Constitution has no victims' rights amendment. However, a proposal to amend the Constitution was first introduced in Congress in 1996.155 Several committees have already held hearings on the proposal.156 The proposed amendment is not as rigid and specific as South Carolina's, but it is stronger than the Florida and Indiana amendments.157 The amendment has significant support from many members of Congress, President Clinton,158 and Attorney General Janet Reno.159 Congress has previously enacted a statutory victims' bill of rights that gives victims the right to be notified of and present at court proceedings.160 Opponents of a federal victims' rights amendment raise many questions about the proposal. They are concerned that the amendment would infringe on criminal defendants' rights, conflict with the efforts of the states,161 and draw funds away from other law enforcement responsibilities.162

Although the idea of a federal victims' rights amendment has been debated since the President's Task Force issued its Final Report in 1982,163 passage of such an amendment will not likely come to fruition in the near future. Too many questions remain unresolved. However, as states continue experimenting with victims' rights amendments, Congress may become more knowledgeable about the effects of a federal amendment and how to resolve potential problems.

V. CONCLUSION

"[J]ustice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true."164 The fundamental goal of the modern victims' rights movement as illustrated in the South Carolina victims' rights amendment is to balance the rights of the accused and the rights of the victim.

154. Id. at 115.
158. Id. at 168.
161. See McMillion, supra note 159.
162. See McMurry, supra note 155, at 13.
163. FINAL REPORT, supra note 36.
rights movement is to establish balance in the criminal justice system. The SCVRA achieves this goal. Although the SCVRA has many problems, they are correctable. In principle and spirit, the SCVRA is good for South Carolina’s victims. The General Assembly should submit an amendment to the SCVRA for approval in November 1998. The new amendment should temporarily limit the coverage of the SCVRA and gradually increase the members of the protected class. South Carolinians deserve a well-planned and well-executed SCVRA.

"[T]here is no quick remedy to the innocent victim’s plight. Only the sustained efforts of federal, state, and local governments, combined with the resources of the private sector, can restore balance to the criminal justice system." These efforts will continue throughout the country. Although most people support the victims’ rights amendment, those opposed to it are not necessarily opposed to victims’ rights per se. The questions they raise are legitimate concerns that must be addressed. South Carolina’s criminal justice system must function within fiscally responsible and administratively practical parameters. Nevertheless, as the victims’ rights movement grows and frustration with the current system mounts, the protection of victims’ rights at every level of government will be inevitable. Victims deserve nothing less than the same treatment criminals receive from the system.

Thad H. Westbrook