

Legislative Oversight Committee

Full Committee Study of the Commission on Indigent Defense

November 2, 2018



FULL COMMITTEE OPTIONS STANDARD PRACTICE 13	FULL COMMITTEE ACTION(S)	DATE(S) OF FULL COMMITTEE ACTION(S)
(1) Refer the study and investigation back to the Subcommittee or an ad hoc committee for further evaluation; (2) Approve the Subcommittee’s study; or (3) further evaluate the agency as a full Committee, utilizing any of the available tools of legislative oversight	Study Available for Consideration Study Presentation and Discussion Approved Study	October 22, 2018 October 23, 2018 October 23, 2018

CONTENTS

Contents	2
Agency Snapshot	6
Figure 1. Snapshot of agency’s organizational units, fiscal year 2017-18 resources (employees and funding), successes, and challenges.	6
Executive Summary	7
Purpose of Oversight Study	7
Study Process	7
Figure 2. Summary of key dates and actions of the study process.	7
Findings	8
Recommendations	8
Table 1. Summary of recommendations arising from the study process.	8
Internal Changes Implemented by Agency Related to Study Process	10
Figure 3. Map of S.C. judicial circuits from the S.C. Judicial Department; list of circuit public defenders and circuit solicitors (Current as of August 2018).	11
Agency Overview	12
History	12
Legal Directives	14
Mission and Vision	14
Agency Organization	15
<i>Governing Body</i>	<i>15</i>
Table 2. Manner of appointing Commissioners, terms, and Commissioners as of September 2018.	15
<i>Organizational Units</i>	<i>16</i>
Table 3. SCCID Organizational Unit: Administration.	16
Table 4. SCCID Organizational Unit: Death Penalty Trial Division.	16
Table 5. SCCID Organizational Unit: Division of Appellate Defense.	17
Table 6. SCCID Organizational Unit: Office of Circuit Public Defenders.	17
<i>Organizational Chart</i>	<i>18</i>
Figure 4. Organizational chart provided by the agency. (Current as of March 2018).	18
<i>Circuit Public Defenders</i>	<i>19</i>
Table 7. Attorney turnover rates in each circuit public defender office during fiscal years 2015-16 through 2017-18.	19
<i>Evaluation of Current and Separating Employees</i>	<i>20</i>

<i>Contract Attorneys</i>	20
<i>Internal Audit Process</i>	20
<i>Associated Non-Profit</i>	20
Services, Products, and Customers	21
Table 8. List of the Administration division’s deliverables.	22
Table 9. List of the Death Penalty Trial Division’s deliverables.	24
Table 10. List of the Appellate Defense Division’s deliverables.	25
Table 11. List of the Office of Circuit Public Defenders’ deliverables.	26
<i>Other Agencies with Similar Goals</i>	27
Resources, Strategic Plan, and Performance	27
Table 12. Funding and expenditures for public defender offices statewide in fiscal years 2015-16 and 2016-17.	27
<i>Agency Funding</i>	28
Table 13. SCCID Revenue Sources, FY17 and FY18, as reported in the agency’s program evaluation report.	28
<i>Indigent Defense Application Fees and Amount Spent to Represent Each Indigent Defendant</i>	28
Table 14. Average amount spent by the state, per indigent defendant in fiscal year 2016-17.	29
<i>Allocation of Resources</i>	30
Table 15. Allocation of agency resources to strategic plan, as reported by SCCID in its program evaluation report.	30
<i>Case Management System</i>	31
<i>Technology, Replacement Plans, and Other Essential Resources</i>	32
<i>Performance Measures</i>	33
Table 16. SCCID performance measures, as reported in its program evaluation report.	33
Study Process	34
Agency Selection	34
Subcommittee Membership	34
Agency Reports to Legislative Oversight Committee	34
<i>Restructuring Report</i>	34
<i>Seven-Year Plan for Cost Savings and Increased Efficiencies</i>	35
<i>Program Evaluation Report</i>	35
Information from the Public	35
<i>Public Survey</i>	35
Figure 5. January 2018 public survey respondent opinion of SCCID.	36
<i>Public Input via Committee Website</i>	36
<i>Public Input via In-Person Testimony</i>	36

Meetings Regarding the Agency	37
<i>122nd General Assembly (2017-2018)</i>	37
Next Steps	39
Findings	40
Recommendations	41
General Information	41
Continue	41
Curtail (i.e. Revise)	41
<i>Accountability</i>	41
Table 17. Summary of recommendations related to accountability.	41
<i>Efficiencies in Operations</i>	44
Table 18. Summary of recommendations related to efficiencies in operations.	44
<i>Effectiveness of programs</i>	46
Table 19. Summary of recommendations related to effectiveness of programs.	46
Defense of Indigents	46
Diversion Programs	49
<i>Transparency</i>	50
Table 20. Summary of recommendations related to transparency.	50
<i>Employee Input</i>	51
Table 21. Summary of recommendations related to employee input.	51
<i>Indigency Screening</i>	52
Table 22. Summary of recommendations related to indigency screening.	52
<i>Modernization of Statutes</i>	55
Table 23. Summary of recommendations to modernize statutes.	55
Duplicative	55
Table 24. Potentially duplicative statutes relating to applications for indigent representation.	56
Table 25. Potentially duplicative statutes relating to creation of claims against assets of individuals receiving indigent representation.	58
Table 26. Duplicative and antiquated statute relating to funds and expenses for appointed counsel and public defenders.	59
Table 27. Proposed statutory changes to remove the reference to a duplicative and antiquated statute relating to funds and expenses for appointed counsel and public defenders.	60
Antiquated	61
Table 28. Proposed statutory changes to revise an antiquated statute, S.C. Code Section 17-3-50, relating to determination of fees for appointed counsel and public defenders.	61

Table 29. Proposed statutory changes to eliminate an antiquated statute relating to appropriation of funds prior to creation of the statewide circuit public defender system.	62
Table 30. Proposed statutory changes to eliminate an antiquated statute relating to voucher procedures for payment of services by private appointed counsel.	63
Correct Scriveners Error in Title	63
Eliminate	64
Internal Changes Implemented By Agency Related to Study Process	65
Selected Agency Information	66
Appendices	67
Appendix A. Statutory Duties of the Commission on Indigent Defense	68
Table 31. Statutory duties of the Commission on Indigent Defense and the Office of Indigent Defense.	69
Appendix B. Public Defender Involvement in Diversion Programs	72
Table 32. Circuit public defender involvement, if any, in diversion programs in each judicial circuit.	73
Contact information	76
Endnotes	76

AGENCY SNAPSHOT

Commission on Indigent Defense

Agency Organizational Units

Office of Circuit Public Defenders

Provides a statewide public defender system with standards and accountability for the delivery of legal representation to indigent defendants in state courts.

Division of Appellate Defense

Represents indigents in the majority of criminal appeals, including death penalty appeals before the S.C. Court of Appeals and the S.C. Supreme Court.

Administration

Provides leadership and direction for the agency to include administrative, financial, and support services.

Death Penalty Trial Division

Represents indigents in trials involving the death penalty (i.e., capital trials) statewide.

FY 17-18 Resources

Employees
 Available FTE: 70.5
 Filled FTE: 68.5
 Temp/Grant: 1

Funding
 \$45.06 million appropriated and authorized

SUCCESSES

Identified by agency

- Implementing the statewide public defender system which enabled oversight by the Commission.
- Coordinating the Rule 608 contract system which allows the agency to take applications and select those attorneys qualified to handle specific types of cases to include criminal, post-conviction relief, sexually violent predator, and certain family court matters.

CHALLENGES

Identified by agency

- Addressing whether defendants are being adequately screened to assess their financial status for appointed counsel.
- Representing individuals in an efficiently functioning criminal justice system with a disparity in funding at the county level between prosecution and defense.
- Finding enough contract attorneys qualified to handle specific types of cases in the rural areas of the state where a county may have a very limited number of attorneys.

Figure 1. Snapshot of agency's organizational units, fiscal year 2017-18 resources (employees and funding), successes, and challenges.¹

EXECUTIVE SUMMARY

Purpose of Oversight Study

As stated in S.C. Code § 2-2-20(B), “[t]he purpose of these oversight studies and investigations is to determine if agency laws and programs within the subject matter jurisdiction of a standing committee: (1) are being implemented and carried out in accordance with the intent of the General Assembly; and (2) should be continued, curtailed, or eliminated.” In making these determinations, the Committee evaluates (1) the application, administration, execution, and effectiveness of the agency’s laws and programs, (2) the organization and operation of the agency, and (3) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation pertaining to the agency.²

Study Process

The House Legislative Oversight Committee’s (Committee) process for studying the South Carolina Commission on Indigent Defense (agency or SCCID) includes actions by the full Committee; Law Enforcement and Criminal Justice Subcommittee (Subcommittee); the agency; and the public. A summary of the key dates and actions is included below in Figure 2.

Legislative Oversight Committee Actions

- December 19, 2017 - Prioritizes the agency for study
- January 22, 2018 - Provides the agency notice about the oversight process
- January 23 - March 1, 2018 - Solicits input about the agency in the form of an online public survey
- April 26, 2018 - Holds **Meeting #2** to **obtain public input** about the agency
- October 23, 2018 - Holds **Meeting #7** to discuss study; approves study; and provides an opportunity for individual Committee Members to provide written comments for inclusion with the study

Law Enforcement and Criminal Justice Subcommittee Actions

- April 24, 2018 - Holds **Meeting #1** to discuss the agency’s **history, legal directives, mission, vision**, general information about **employees and finances**, details about the agency’s **administration** unit, and agency **recommendations**
- May 1, 2018 - Holds **Meeting #3** to discuss **questions on information presented by the agency** during the previous meeting
- August 14, 2018 - Holds **Meeting #4** to discuss the **process** from the time an indigent defendant is arrested to case resolution, **indigency screening, death penalty trial division**, and **division of appellate defense**
- August 28, 2018 - Holds **Meeting #5** to discuss the **performance measures** that may be utilized in indigent defense, and the **circuit public defenders**
- October 9, 2018 – Holds **Meeting #6** to discuss the agency’s recommendations for internal and law changes

Commission on Indigent Defense Actions

- March 9, 2015 - Submits its **Annual Restructuring and Seven-Year Plan Report**
- January 20, 2016 - Submits its **2016 Annual Restructuring Report**
- September 2016 - Submits its **2015-16 Accountability Report**
- September 2017 - Submits its **2016-17 Accountability Report**
- March 16, 2018 - Submits its **Program Evaluation Report**
- September 2018 – Submits its **FY 2017-18 Accountability Report/Annual Restructuring Report**
- April - October 2018 - Meets with and **responds to Committee inquiries**

Public’s Actions

- January 23 - March 1, 2018 - Provides input about the agency via an **online public survey**
- Ongoing - **Submits written comments on the Oversight Committee's webpage** on the General Assembly's website

Figure 2. Summary of key dates and actions of the study process.

Findings

The Committee has **four findings** arising from its study of the agency.

First, the Committee finds S.C. Code Section 17-3-45(b) is an example of lack of clarity regarding which entity is responsible for ensuring accurate **collection and remittance of fines and fees** as it states the entity responsible is the clerk of court “or other appropriate official.”³ This issue, relating to fines and fees which fund indigent defense services, further supports the Committee’s recommendation from its study of the Law Enforcement Training Council and Criminal Justice Academy that the General Assembly should consider clarifying statutes regarding fines and fees (e.g., to indicate which entity is responsible for ensuring county and local governments properly collect and remit these and additional options for enforcement to ensure compliance).⁴

Second, the Committee finds there is not uniformity across the state with regards to **screening for indigent defense representation**.⁵ The entity performing the screening process varies from county to county.⁶ Also, the information required from an individual to determine indigency varies from county to county.⁷

Third, the Committee finds no state agency has aggregated data on the **total number of individuals prosecuted each year**.⁸ Additionally, there is not an efficient method in place in every jurisdiction by which this data may be obtained.

Fourth, the Committee finds the Commission on Indigent Defense and Commission on Prosecution Coordination currently do not track the **performance** of circuit public defender and circuit solicitor offices. While agency personnel are passionate about the work they perform and strive to obtain the best outcomes for their respective clients, as a means to help inform decisions when analyzing programs and/or processes to keep, revise or eliminate, the entities should track their performance.

Recommendations

The **Committee has 34 recommendations** arising from its study of the agency. These recommendations fall into seven categories: (1) accountability; (2) efficiencies in operations; (3) effectiveness of programs; (4) transparency; (5) employee input; (6) indigency screening; and (7) modernization of statutes.

Table 1. Summary of recommendations arising from the study process.

Topic	Recommendations
Accountability	...for all agencies
	<ol style="list-style-type: none"> 1. Require commission/board members to affirm acknowledgement of their duties in writing* 2. Require onboarding and annual training for commission/board members* 3. Require submission to the Legislative Services Agency, for publication online, a copy of any report provided to a legislative committee*
	...for the Commission on Indigent Defense
	<ol style="list-style-type: none"> 4. Require circuit public defenders to affirm acknowledgement of their duties in writing 5. Conduct formal evaluations of circuit public defenders 6. Require circuit public defenders to conduct formal evaluations of their employees 7. Authorize the agency to enforce its regulations applicable to circuit public defenders*

<p>Efficiencies in operations</p>	<p>8. Track the expenses (i.e., time and costs) associated with manually entering information from court administration’s database</p> <p>9. Train circuit public defenders on making presentations to policy makers (i.e., county council)</p> <p>10. Conduct management training for circuit public defenders</p>
<p>Effectiveness of programs</p>	<p><u>Defense of Indigents</u></p> <p>11. Define, in regulation, the term “case” for circuit public defenders to utilize in measuring workload, backlog, and other metrics</p> <p>12. Promulgate regulations outlining a procedure to measure the success of indigent defense representation (e.g., percent of cases resulting in non-conviction; percent of felony cases resulting in misdemeanor conviction; percent of cases where case resolution included consolidation of multiple charges)</p> <p>13. Research data collection options for how to measure the success of Rule 608 contract attorneys⁹</p> <p>14. Determine and track indicators for effective defense during a case (e.g., regular client contact, active investigation, written motion practice, etc.)</p> <p>15. Report concerns, if any, about court rules for the General Assembly’s consideration</p> <p>16. Add statistics to the agency’s annual human resources and funding report</p> <p><u>Diversion Programs</u></p> <p>17. Require circuit public defenders to provide regular input to circuit solicitors on establishing and/or revising diversion programs</p> <p>18. Meet on a regular basis with Commission on Prosecution Coordination to discuss diversion programs and performance of these programs*</p>
<p>Transparency</p>	<p>19. Post online eligibility qualifications for indigent defense services</p> <p>20. Post online information for where to submit complaints</p> <p>21. Post online the agency’s annual human resources and funding report</p>
<p>Employee input</p>	<p>22. Conduct exit interviews in each circuit public defender office and compile statewide data</p> <p>23. Allow opportunities for anonymous employee feedback</p>
<p>Indigency screening</p>	<p>24. Obtain data necessary to estimate the total cost to provide every defendant a public defender which policy makers may utilize when considering indigency screening options</p> <p>25. Consider the feasibility of a data system a magistrate may utilize when screening applicants for indigent defense</p> <p>26. Consider any efficiencies which may be gained from utilizing Department of Employment and Workforce information in the indigency screening process</p> <p>27. Promulgate in regulation a uniform method to screen applicants for indigent defense representation</p>

	...for General Assembly
Modernization of statutes	<p><u>Duplicative</u></p> <p>28. Repeal a duplicative statute, S.C. Code Section 17-3-30, relating to applications for indigent representation*</p> <p>29. Repeal a duplicative statute, S.C. Code Section 17-3-40, relating to creation of claims against assets of individuals receiving indigent representation*</p> <p>30. Repeal a duplicative and antiquated statute, S.C. Code Section 17-3-80, and reference to it in other statutes, relating to funds and expenses for appointed counsel and public defenders*</p> <p><u>Antiquated</u></p> <p>31. Revise an antiquated statute, S.C. Code Section 17-3-50, relating to determination of fees for appointed counsel and public defenders*</p> <p>32. Repeal an antiquated statute, S.C. Code Section 17-3-85, relating to appropriation of funds prior to creation of the statewide circuit public defender system*</p> <p>33. Repeal an antiquated statute, S.C. Code Section 17-3-90, relating to voucher procedures for payment of services by private appointed counsel*</p> <p><u>Correct Scriveners Error in Title</u></p> <p>34. Revise the title of a statute which incorrectly states circuit public defenders are elected by the S.C. Prosecution Coordination Commission✓</p>

Table Note: An asterisk (*) indicates General Assembly action is necessary. A check mark (✓) indicates the recommendation has been implemented.

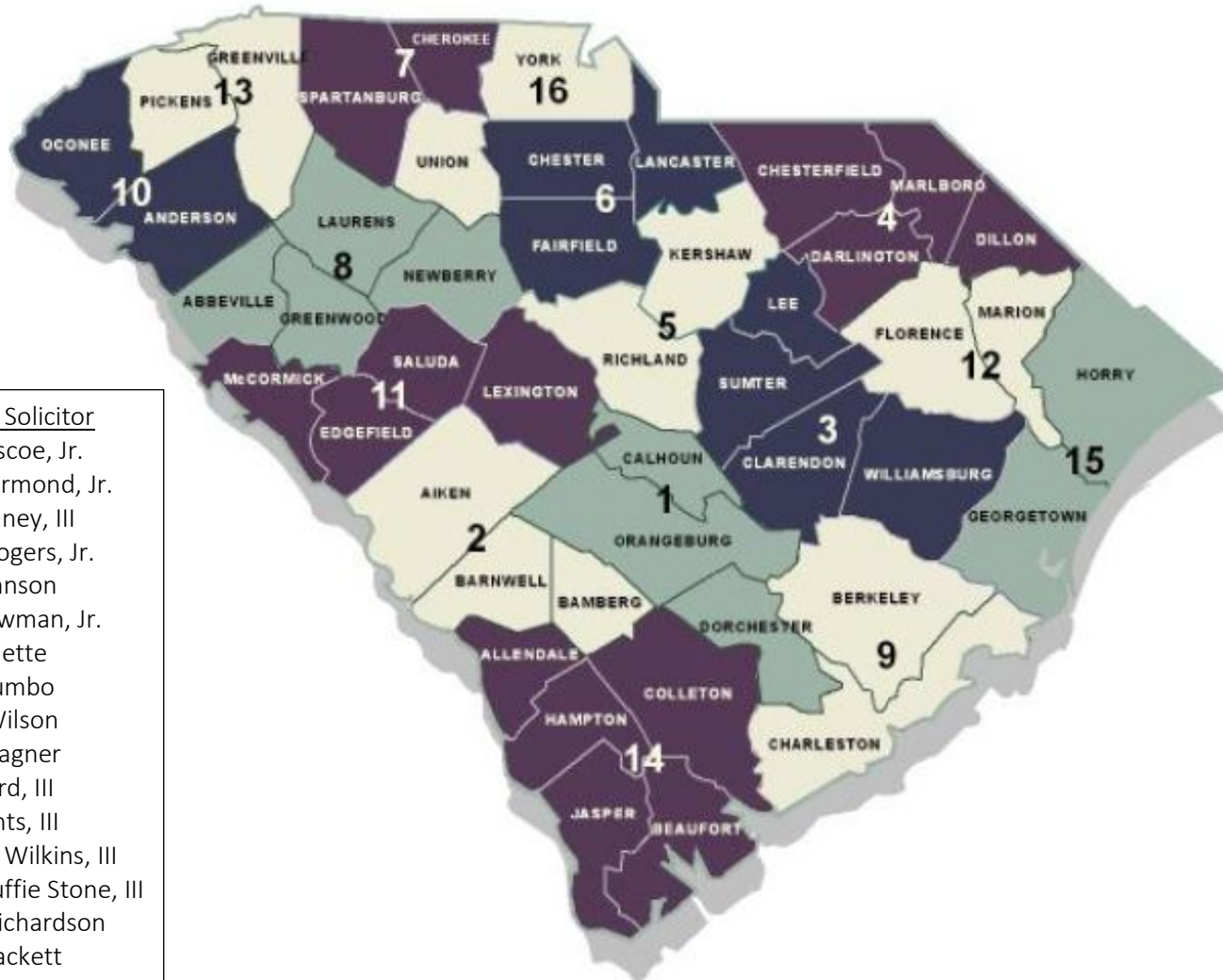
There are no specific recommendations with regards to continuance of agency programs or elimination of agency programs.

Internal Changes Implemented by Agency Related to Study Process

During the study process, the agency implements three internal changes directly related to participation in the study process. Those changes include the following:

- implementing an exit interview process for employees that separate from the agency;¹⁰
- creating a resource book, which includes duties of commissioners;¹¹ and
- posting online minutes from the agency commission meetings.¹²

S.C. JUDICIAL CIRCUITS



- Circuit and Solicitor
- 1 - David M. Pascoe, Jr.
 - 2 - J. Strom Thurmond, Jr.
 - 3 - Ernest A. Finney, III
 - 4 - William B. Rogers, Jr.
 - 5 - Daniel E. Johnson
 - 6 - Randy E. Newman, Jr.
 - 7 - Barry J. Barnette
 - 8 - David M. Stumbo
 - 9 - Scarlett A. Wilson
 - 10 - David R. Wagner
 - 11 - S.R. Hubbard, III
 - 12 - E.L. Clements, III
 - 13 - William W. Wilkins, III
 - 14 - Isaac McDuffie Stone, III
 - 15 - Jimmy A. Richardson
 - 16 - Kevin S. Brackett

- Circuit and Public Defender
- 1 - Mark Leiendoeker
 - 2 - De Grant Gibbons
 - 3 - Jack D. Howle, Jr.
 - 4 - Matt Rivers
 - 5 - Fielding Pringle
 - 6 - Mike Lifsey
 - 7 - Clay T. Allen
 - 8 - Janna A. Nelson
 - 9 - D. Ashley Pennington
 - 10 - Jennifer L. Johnson
 - 11 - Robert M. Madsen
 - 12 - Scott Floyd
 - 13 - Christopher D. Scalzo
 - 14 - Stephanie Smart-Gittings
 - 15 - Orrie E. West
 - 16 - Harry A. Dest

Figure 3. Map of S.C. judicial circuits from the S.C. Judicial Department; list of circuit public defenders and circuit solicitors (Current as of August 2018).¹³

AGENCY OVERVIEW

History

The Commission on Indigent Defense has provided the Committee with an overview of the agency's history.¹⁴ In addition, Committee staff confirms the accuracy of assertions of legislative action.

1993

- The General Assembly creates the Commission and Office of Indigent Defense (OID).¹⁵ The Commission appoints Mr. Tyree Lee as the OID's first executive director.
- The primary duties of the OID include: (1) serving as the entity which distributes all funds appropriated by the General Assembly for the defense of indigents; (2) maintaining a list of death-penalty certified attorneys; (3) compiling accurate statistical data related to the indigent defense system; and (4) reporting to the General Assembly on the indigent defense system.¹⁶
- The General Assembly creates three funds applicable to the indigent defense system: (1) capital defense fund; (2) conflicts fund; and (3) public defender fund.

1997

- The General Assembly begins appropriating funds to pay for the legal representation of indigent persons in abuse and neglect cases, termination of parental rights cases, protective placement cases, and as counsel for the guardians ad litem involved in those cases.¹⁷

1998

- The General Assembly approves a method for funding legal aid, the civil case counterpart to the criminal case work performed by the public defender offices.¹⁸ SCCID serves as a pass-through for these funds. It is only responsible for collecting and disbursing the funds to the local legal aid offices twice per year.

2001

- SCCID budget is reduced by more than 55% of its pre-2000 budget, through mid-year budget reductions.

2005

- The Commission appoints Mr. T. Patton Adams as executive director of OID.
- The General assembly revises the (1) membership of the Commission; (2) duties of the Commission, OID, and OID executive director; and creates the Division of Appellate Defense within SCCID.¹⁹

2007

- The General Assembly revises the membership of the Commission.²⁰
- Also, the **General Assembly establishes the circuit public defender system (Office of Circuit Public Defenders), which replaces the independent public defender corporations with sixteen circuit-wide public defender offices.**²¹

2009

- The Commission creates the Division of Capital Defense within OID to provide specialized representation in capital murder cases throughout the state.

2012 - 2013

- The Commission implements a contract system for appointment of private attorneys in criminal cases when a public defender has a conflict. Also, the Commission implements a contract system for appointment of private attorneys in family court abuse and neglect cases, termination of parental rights cases, and certain civil cases such as post-conviction relief and sexually violent predator cases.

2014

- As an annual way to train new public defenders, the OID establishes a series of training seminars and workshops titled, "Public Defense 100."

2015

- The OID creates a new position, Deputy General Counsel and Training Director. This position is responsible for providing legal services and stable oversight, coordination, and expansion of agency legal training programs.

2016

- The OID Assistant Director, Ms. Lisa Graves, retires. The OID names Ms. Lori Frost as the new Assistant Director.

2017

- The OID Executive Director, Mr. Patton Adams, retires. The Commission promotes Mr. Hugh Ryan from Deputy Director/General Counsel to the position of OID Executive Director.
- Director Ryan appoints Mr. Herverly Young as the new Deputy Director/General Counsel.
- The OID expands the public defender training program to include regular trainings for attorneys representing juveniles.

Legal Directives

A citizen's right to trial and equal protection under the law are rights guaranteed by both the U.S. Constitution and our S.C. Constitution.²²

The South Carolina Commission on Indigent Defense, through S.C. Code Section 17-3-310, exists to develop rules, policies, procedures, regulations, and standards it considers necessary to comply with state law, regulations, and the rules of the S.C. Supreme Court, as it relates to the nature and scope of services, clientele to be served, and the establishment of criteria to be used in the determination of indigency and qualifications for services for indigent legal representation. Appendix A includes a detailed list of legal directives applicable to the Commission, which is the governing body of the agency, and directives applicable to the Office of Indigent Defense, which operates under the jurisdiction of the Commission.

The 2007 enabling legislation for the Commission includes the following statement of intent:²³

- Provide effective assistance of counsel to indigent criminal defendants;
- Establish parity in benefits and salaries between prosecution and defense systems;
- Ensure that the system is free from undue political interference and conflict of interest;
- Provide for the delivery of public defender services by qualified and competent counsel in a manner that is fair and consistent throughout the state; and
- Ensure that adequate public funding of a statewide public defender system is provided and managed in a fiscally responsible manner.

Mission and Vision

The agency provides Act 164 of 1993 and S.C. Code Section 17-3-310, et. seq., as the basis for its mission and vision.

SCCID's **mission** is as follows:

The Commission on Indigent Defense, through the Office of Indigent Defense and its divisions, and in cooperation and consultation with other state agencies, professional associations and other groups interested in the administration of criminal justice and the improvement and expansion of defender services, **establishes and monitors programs and services for legal representation to indigent defendants charged with criminal offenses in the courts of the state. The agency also manages the Rule 608 Contract program, contracting with attorneys across the state to provide representation in criminal and specific family court cases.** (emphasis added)

SCCID's **vision** is to:

Ensure that individuals, determined to be indigent, are provided the highest quality legal defense representation.

Agency Organization

Governing Body

In the Program Evaluation Report, the Committee asks the agency to provide information about the agency's governing body. The agency provides the information below.²⁴

The agency's governing body is the Commission.²⁵ The Commission consists of thirteen members. Eleven are appointed. Two serve as a function of their legislative office. There are no restrictions on reappointment. The Chairman of the Commission is elected by the Commission from its membership. The Chairman serves for a term of two years. The Chairman may be re-elected. Table 2 outlines the manner in which members are appointed, terms of each, and members as of September 2018.

Table 2. Manner of appointing Commissioners, terms, and Commissioners as of September 2018.²⁶

Number	Requirements	Who Appoints and Manner	Term
4	Circuit public defender (1 from each judicial region of the state)	Governor - Recommended by Public Defender Association	4 years and until successor appointed and qualifies
	16 th Circuit Public Defender Harry A. Dest (Region 1)*	Governor	July 1, 2015 - June 30, 2019
	9 th Circuit Public Defender D. Ashley Pennington (Region 4)	Governor	July 1, 2015 - June 30, 2019
	6 th Circuit Public Defender Michael H. Lifsey (Region 2)	Governor	June 13, 2018 - June 30, 2021
	3 rd Circuit Public Defender Jack D. Howle, Jr. (Region 3)	Governor	June 13, 2018 - June 30, 2021
1	S.C. Bar member whose principal practice is family law	Governor - Recommended by S.C. Bar Membership	2 years
	Ashlin B. Potterfield	Governor	July 1, 2017 - July 1, 2019
2	S.C. Bar member whose principal practice is criminal defense law	Governor - Recommended by S.C. Bar Membership	2 years
	Yvonne R. Murray-Boyles	Governor	July 1, 2017 - July 1, 2019
	William N. Epps, Jr.	Governor	July 1, 2017 - July 1, 2019
2	S.C. Bar member whose principal practice is not criminal defense or family	Governor - Recommended by S.C. Bar Membership	2 years
	John S. Nichols	Governor	July 1, 2017 - July 1, 2019
	Walker H. Willcox	Governor	July 1, 2017 - July 1, 2019
2	1 retired circuit court judge 1 retired family or appellate court judge	Chief Justice of the S.C. Supreme Court	4 years and until successor appointed and qualifies
	Edward B. Cottingham (Retired Circuit Court Judge)	Supreme Court	February 26, 2016 - February 26, 2020
	Daniel F. Pieper (Retired Family or Appellate Judge)	Supreme Court	April 17, 2018 - April 17, 2022
2	Chairmen of the Senate and House Judiciary Committees or their legislative designees	N/A	For the terms for which they were elected
	Designee of the Chair of House Judiciary Committee, Representative G. Murrell Smith, Jr.		
	Designee of the Chair of Senate Judiciary Committee, Senator Gerald Malloy		

Table Note: An asterisk (*) indicates Chairman of the Commission. Also, the table includes the current commission structure which was established in 2007.

Organizational Units

The agency's Program Evaluation Report (PER) includes information about its organizational units.²⁷ Every agency has some type of organization and hierarchy. Within the organization are separate units. An agency may refer to these units as departments, divisions, functional areas, cost centers, etc. Each unit is responsible for contributing to the agency's ability to provide services and products.

To ensure agency employees understand how their work contributes to the agency's overall ability to provide effective services and products in an efficient manner, each organizational unit has at least one (and in most cases multiple) objective, strategy, or goal for which it is solely responsible.

SCCID is comprised of four organizational units: (1) Administration; (2) Division of Appellate Defense; (3) Office of Circuit Public Defenders; and (4) Death Penalty Trial Division.

Administration is one of the agency's organizational units. This unit provides leadership and direction for the agency to include administrative, financial, and support services. Table 3 provides additional information about the unit.

Table 3. SCCID Organizational Unit: Administration.

Details	2014-15	2015-16	2016-17
What is the turnover rate?	0.00%	9.09%	18.18%
Is employee satisfaction evaluated?	×	×	×
Is anonymous employee feedback allowed?	×	×	×
Do any positions require a certification (e.g., teaching, medical, accounting, etc.)?	✓	✓	✓
Did the agency pay for, or provide classes/instruction needed to maintain all, some, or none of required certifications?	Some*	Some*	Some*

Table Note: An asterisk (*) indicates SCCID pays basic S.C. Bar dues for attorneys employed in this division, but does not pay for continuing legal education courses which are required for an attorney to maintain their license in S.C.

Death Penalty Trial Division is one of the agency's organizational units. This unit provides representation and resources for capital trials statewide. Table 4 provides additional information about the unit.

Table 4. SCCID Organizational Unit: Death Penalty Trial Division.

Details	2014-15	2015-16	2016-17
What is the turnover rate?	20%	0%	20%
Is employee satisfaction evaluated?	×	×	×
Is anonymous employee feedback allowed?	×	×	×
Do any positions require a certification (e.g., teaching, medical, accounting, etc.)?	✓	✓	✓
Did the agency pay for, or provide classes/instruction needed to maintain all, some, or none of required certifications?	Some*	Some*	Some*

Table Note: An asterisk (*) indicates SCCID pays basic S.C. Bar dues for attorneys employed in this division, but does not pay for continuing legal education courses which are required for an attorney to maintain their license in S.C.

Division of Appellate Defense is one of the agency’s organizational units. This unit represents indigents in the majority of criminal appeals, including death penalty appeals before the S.C. Court of Appeals and the S.C. Supreme Court. Table 5 provides additional information about the unit.

Table 5. SCCID Organizational Unit: Division of Appellate Defense.

Details	2014-15	2015-16	2016-17
What is the turnover rate?	18.60%	23.26%	27.91%
Is employee satisfaction evaluated?	×	×	×
Is anonymous employee feedback allowed?	×	×	×
Do any positions require a certification (e.g., teaching, medical, accounting, etc.)?	×	×	×
Did the agency pay for, or provide classes/instruction needed to maintain all, some, or none of required certifications?	Some*	Some*	Some*

Table Note: An asterisk (*) indicates SCCID pays basic S.C. Bar dues for attorneys employed in this division, but does not pay for continuing legal education courses which are required for an attorney to maintain their license in S.C.

Office of Circuit Public Defenders is one of the agency’s organizational units. This unit provides a statewide public defender system with standards and accountability for the delivery of legal representation to indigent defendants in state courts. Table 6 provides additional information about the unit.

Table 6. SCCID Organizational Unit: Office of Circuit Public Defenders.

Details	2014-15	2015-16	2016-17
What is the turnover rate?	0.06%	21.88%	28.13%
Is employee satisfaction evaluated?	×	×	×
Is anonymous employee feedback allowed?	×	×	×
Do any positions require a certification (e.g., teaching, medical, accounting, etc.)?	✓	✓	✓
Did the agency pay for, or provide classes/instruction needed to maintain all, some, or none of required certifications?	None	None	None

Organizational Chart

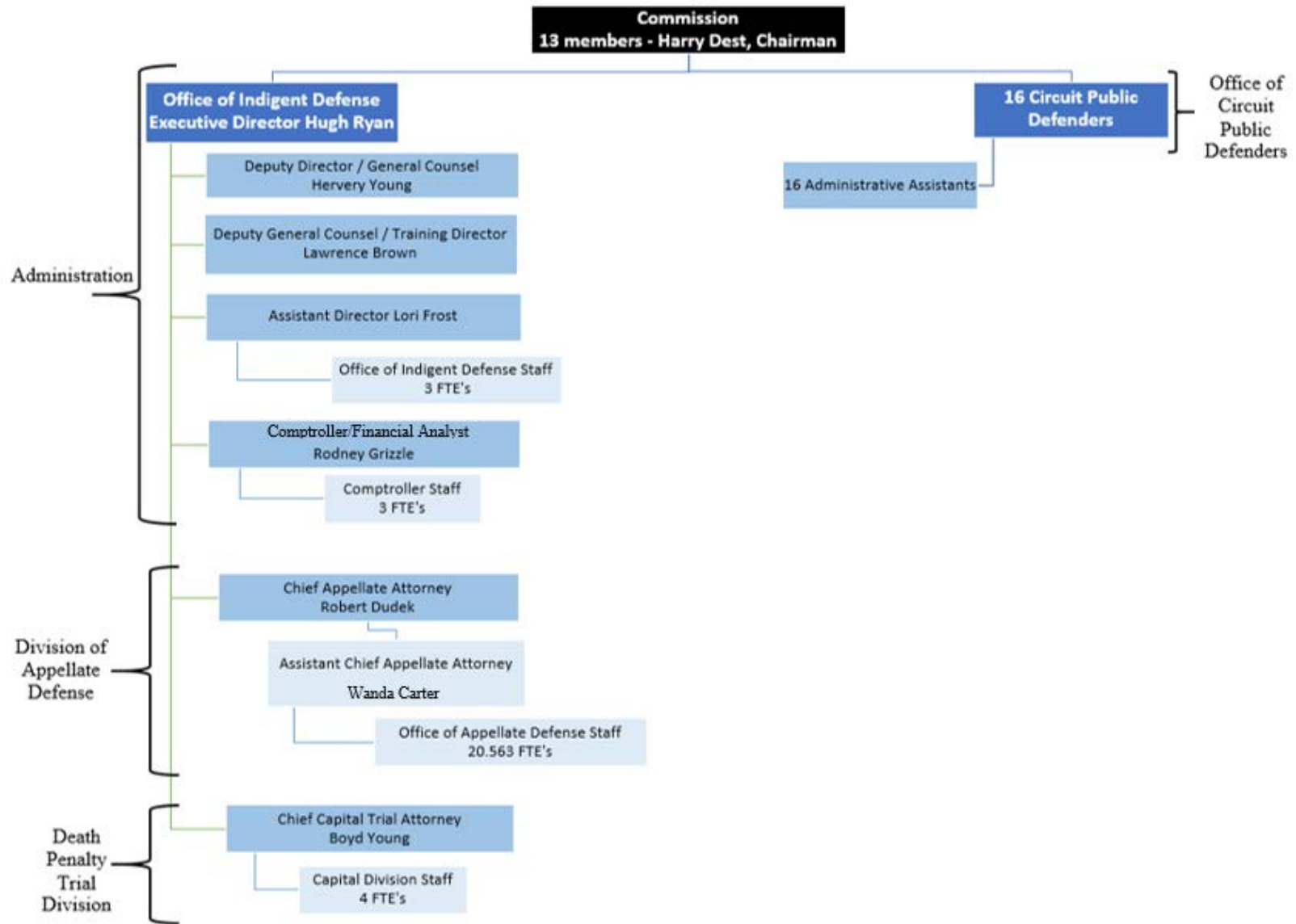


Figure 4. Organizational chart provided by the agency. (Current as of March 2018).²⁸

Figure Note: The agency is involved in the selection of Circuit Public Defenders and hiring of their administrative assistants. The agency is not involved in the hiring of assistant public defenders. Assistant public defenders and other employees of the circuit public defender offices are county employees.

Circuit Public Defenders

The agency commission can approve or disapprove the local selection panel’s nominee for circuit public defender in each judicial circuit. Both the circuit public defenders and one administrative assistant for each are state employees. The agency is not involved in the hiring of assistant public defenders. Assistant public defenders and other employees of the circuit public defender offices are county employees.

Attorneys within each respective judicial circuit can apply to serve as circuit public defender.²⁹ A local circuit public defender selection panel, which is comprised of individuals nominated and elected by attorneys within each county in the judicial circuit, evaluates the candidates for circuit public defender and selects one for nomination to the agency’s commission.³⁰ The commission accepts or rejects the nomination, but may not nominate another person.³¹ Circuit public defenders serve four year terms, and there are no restrictions on re-appointment.³² According to the agency, only one circuit public defender seeking re-appointment has not been re-appointed.³³ Members of the local circuit public defender selection panel serve five year terms.³⁴

Table 7 includes attorney turnover rates in each of the circuit public defender offices during fiscal years 2015-16 through 2017-18. Additional information about personnel in each of the circuit public defender offices is available in the agency’s annual human resources and county funding survey which is on the Committee website.³⁵

Table 7. Attorney turnover rates in each circuit public defender office during fiscal years 2015-16 through 2017-18.³⁶

Circuit	Attorney Turnover FY15-16	Attorney Turnover FY16-17	Attorney Turnover FY17-18	Average Attorney Turnover - 3 years
1 - Calhoun, Dorchester, Orangeburg	0.0%	6.6%	6.6%	4.4%
2 - Aiken, Bamberg, Barnwell	0.0%	11.1%	0.0%	3.7%
3 - Clarendon, Lee, Sumter, Williamsburg	0.0%	47.1%	11.1%	19.4%
4 - Chesterfield, Darlington, Dillon, Marlboro	71.4%	12.5%	46.2%	43.4%
5 - Kershaw, Richland	12.1%	10.5%	22.2%	14.9%
6 - Chester, Fairfield, Lancaster	10.5%	42.1%	21.1%	24.6%
7 - Cherokee, Spartanburg	5.3%	5.3%	17.4%	9.3%
8 - Abbeville, Greenwood, Laurens, Newberry	0.0%	31.6%	21.1%	17.6%
9 - Berkeley, Charleston	12.3%	8.0%	16.0%	12.1%
10 - Anderson, Oconee	44.4%	27.3%	0.0%	23.9%
11 - Edgefield, Lexington, McCormick, Saluda	18.2%	0.0%	20.0%	12.7%
12 - Florence, Marion	12.5%	0.0%	10.0%	7.5%
13 - Greenville, Pickens	21.1%	4.5%	4.4%	10.0%
14 - Allendale, Beaufort, Colleton, Hampton, Jasper	0.0%	17.6%	0.0%	5.9%
15 - Georgetown, Horry	7.4%	13.8%	19.4%	13.5%
16 - Union, York	5.9%	17.4%	11.8%	11.7%

Evaluation of Current and Separating Employees

For current employees, the agency utilizes the state's Employee Performance Management System (EPMS).³⁷ The agency testifies that as part of this process, each supervisor meets with each of their employees to discuss their respective duties and responsibilities for the performance of their positions within the agency. The supervisor and employee work together on defining the success criteria of their position and prepare the planning stage to outline what the success criteria will be for the next year's performance evaluation period. Once the planning stage is complete the employee and supervisor sign the EPMS document. At the end of the one-year performance period, which typically occurs in March, each supervisor evaluates each of their employees based upon the agreed upon success criteria to assess how well the employee did on achieving their goals in the performance of their duties and responsibilities. Sample EPMS reports applicable to the agency are available on the Committee website.³⁸

For separating employees, the agency did not conduct exit interviews prior to the oversight study.³⁹ However, during the oversight process, the agency implements a Committee recommendation to perform exit interviews.⁴⁰ Sample documents utilized are available on the Committee website.⁴¹

Contract Attorneys

In addition to employees of the agency and employees of the individual circuit public defender offices, the agency also utilizes Rule 608 contract attorneys. S.C. Court Rule 608 provides a uniform method for appointing attorneys to represent indigent clients in the South Carolina circuit and family courts, based on statutory and constitutional mandates.⁴² A yearly General Appropriations Act proviso grants the agency authority to retain, on a contractual basis, the services of these attorneys.⁴³ The agency, in conjunction with the S.C. Bar, establishes and administers the program. This contract program allows eligible attorneys to enter an agreement with the agency to receive a flat fee per appointed case.⁴⁴ The S.C. Bar maintains lists of attorneys who have been certified by the state Supreme Court to serve as lead counsel in death penalty cases, counsel for other criminal cases, or counsel in civil court cases.⁴⁵ These lists provide the basis for selecting indigent defense counsel, when contract attorneys are not available.⁴⁶

Internal Audit Process

In the Program Evaluation Report, the Committee asks the agency to provide information about internal audit process, if it has one. The agency does not have an internal audit staff. Financial reviews of SCCID are conducted by the State Auditor's Office. The federal grant the Richland County Circuit Public Defender's Office receives through SCCID is audited at the end of each year by the Department of Public Safety, which administers the grant.⁴⁷

Associated Non-Profit

The S.C. Public Defender Association is a South Carolina non-profit entity, which holds an annual public defender conference along with other training sessions.⁴⁸ Individual circuit public defenders and their assistants pay dues to join the association.⁴⁹ It is not mandatory for public defenders to join the association.⁵⁰

Services, Products, and Customers

In the Program Evaluation Report the Committee asks the agency to provide information about the products and services it provides. Tables 8 through 11 provide a list of the products and services provided by each of the SCCID's organizational units, along with information such as whether the product or service is required in law and data the agency tracks related to customers and costs.

The Committee website contains additional information applicable to the agency's services and products.⁵¹

Table 8. List of the Administration division's deliverables.

Administration Division	Customers					Costs	
	Does the agency... Does law require, allow, or not address the deliverable?	Evaluate the outcome obtained by customers / individuals who receive the deliverable?	Know the annual number of potential customers?	Know the annual number of customers served?	Evaluate customer satisfaction?	Know the cost it incurs, per unit, to provide the product or service?	Does the law allow the agency to charge for it to cover the agency's costs?
Provides for appointment of legal counsel in criminal cases	Require	×	×	✓	×	✓	✓
Provides for appointment of legal counsel in murder cases	Require	×	×	✓	×	✓	✓
Provides for appointment of legal counsel in Sexually Violent Predator Act cases ^A	Require	×	×	✓	×	✓	×
Provides for appointment of legal counsel for children, parents/legal guardians of children, or other persons subject to any judicial proceeding who cannot afford legal representation including: (a) child abuse and neglect cases; (b) termination-of-parental-rights actions; and (c) adoption actions	Require	×	×	✓	×	✓	×
Provide annual report on the Indigent Defense System	Require	×	×	✓	×	×	×
Collection of court costs and expenses from indigent S.C. citizens	Require	×	×	✓	×	×	×

Administration Division	Customers					Costs	
		Does the agency...					
Deliverable	Does law require, allow, or not address the deliverable?	Evaluate the outcome obtained by customers / individuals who receive the deliverable?	Know the annual number of potential customers?	Know the annual number of customers served?	Evaluate customer satisfaction?	Know the cost it incurs, per unit, to provide the product or service?	Does the law allow the agency to charge for it to cover the agency's costs?
Capital case post-conviction relief procedures - provides for appointment of counsel for indigent applicants	Require	×	×	✓	×	✓	×
Training for indigent defense attorneys (public defenders and contract attorneys)	Require	×	×	✓	✓	✓	×

Table Notes:

A. The Appellate Division is also associated with this deliverable.

Table 9. List of the Death Penalty Trial Division's deliverables.

Death Penalty Trial Division	Customers					Costs	
		Does the agency...					
Deliverable	Does law require, allow, or not address the deliverable?	Evaluate the outcome obtained by customers / individuals who receive the deliverable?	Know the annual number of potential customers?	Know the annual number of customers served?	Evaluate customer satisfaction?	Know the cost it incurs, per unit, to provide the product or service?	Does the law allow the agency to charge for it to cover the agency's costs?
Legal representation of indigent S.C. citizens in capital murder cases ^{AC}	Require	×	×	✓	×	✓	✓
Legal representation of indigent S.C. citizens in post-conviction relief cases ^{BC}	Require	×	×	✓	×	✓	✓

Table Notes:

A. The Office of Circuit Public Defenders is also associated with this deliverable.

B. The Administration Division is also associated with this deliverable.

C. Services provided as part of "legal representation" include, but are not limited to:

- (1) working directly with clients to establish trusting, professional relationships which includes (a) maintaining regular contact through correspondence, phone calls, and in-person meetings; (b) visiting incarcerated clients at correctional facilities on a steady basis to discuss case strategies, fact developments, and trial preparation; (c) ensuring all communications with clients remain private; and (d) upholding ethical duties of loyalty and confidentiality to clients throughout all legal representation;
- (2) representing the accused during criminal investigative proceedings, such as (a) attending police line-ups; (b) monitoring physical examinations, such as finger-nail scraping and blood, urine, and DNA testing; (c) being present at the time an accused person is arrested; and (d) arranging for the setting of bail and posting of bond, which allows their clients to be conditionally released pending trial;

(3) researching the facts and laws involved in the criminal case, through pre-trial discovery, interviewing key witnesses, and conducting legal research to prepare for court appearances;

(4) assisting the accused during critical pre-trial phases, such as pretrial conferences with judges and prosecutors, and suppression motions.

(5) engaging in plea negotiations with the prosecutor, to obtain a reduced sentence or to have the charges dropped;

(6) actively defending the accused in court during trial by participating in jury selections, raising defenses that may be available and advantageous for the defendant (such as self-defense, defense of property, etc.); making opening statements, examining witnesses on the witness stand, presenting evidence to judges and juries, and making closing arguments at the conclusion of trials; and

(7) attending post-trial sentencing hearings for clients who negotiate plea bargains, or are found guilty at trial. A public defender also may file an appeal if errors in court proceedings prejudiced his client's rights to a fair trial. Appeal work includes tasks such as ordering trial transcripts and filing appellate briefs and motions. A public defender may request oral arguments before appellate judges, which she must prepare for and attend if her request is granted.

Table 10. List of the Appellate Defense Division's deliverables.

Appellate Defense Division		Customers				Costs	
		Does the agency...	Does the agency...		Does the agency...		Does the law allow the agency to charge for it to cover the agency's costs?
Deliverable	Does law require, allow, or not address the deliverable?	Evaluate the outcome obtained by customers / individuals who receive the deliverable?	Know the annual number of potential customers?	Know the annual number of customers served?	Evaluate customer satisfaction?	Know the cost it incurs, per unit, to provide the product or service?	Does the law allow the agency to charge for it to cover the agency's costs?
Legal representation of indigent S.C. citizens in the process of appealing a conviction from a trial court	Require	×	×	✓	×	✓	×
Provides for appointment of legal counsel in Sexually Violent Predator Act cases ^A	Require	×	×	✓	×	✓	×

Table Notes:

A. The Administration Division is also associated with this deliverable.

Table 11. List of the Office of Circuit Public Defenders' deliverables.

Office of Circuit Public Defenders	Customers				Costs		
		Does the agency...					
Deliverable	Does law require, allow, or not address the deliverable?	Evaluate the outcome obtained by customers / individuals who receive the deliverable?	Know the annual number of potential customers?	Know the annual number of customers served?	Evaluate customer satisfaction?	Know the cost it incurs, per unit, to provide the product or service?	Does the law allow the agency to charge for it to cover the agency's costs?
Legal representation of indigent S.C. citizens in capital murder cases ^{ABC}	Require	×	×	✓	×	✓	✓
Legal representation of indigent S.C. citizens in criminal cases ^C	Require	×	×	✓	×	✓	✓
Legal representation of indigent S.C. citizens in murder cases ^C	Require	×	×	✓	×	✓	✓
Collection of court costs and expenses from indigent S.C. citizens ^C	Require	×	×	✓	×	×	×

Table Notes:

- A. The Death Penalty Trial Division is also associated with this deliverable.
- B. The Administration Division is also associated with this deliverable.
- C. Services provided as part of "legal representation" include, but are not limited to:
 - (1) working directly with clients to establish trusting, professional relationships which includes (a) maintaining regular contact through correspondence, phone calls, and in-person meetings; (b) visiting incarcerated clients at correctional facilities on a steady basis to discuss case strategies, fact developments, and trial preparation; (c) ensuring all communications with clients remain private; and (d) upholding ethical duties of loyalty and confidentiality to clients throughout all legal representation;
 - (2) representing the accused during criminal investigative proceedings, such as (a) attending police line-ups; (b) monitoring physical examinations, such as finger-nail scraping and blood, urine, and DNA testing; (c) being present at the time an accused person is arrested; and (d) arranging for the setting of bail and posting of bond, which allows their clients to be conditionally released pending trial;
 - (3) researching the facts and laws involved in the criminal case, through pre-trial discovery, interviewing key witnesses, and conducting legal research to prepare for court appearances;
 - (4) assisting the accused during critical pre-trial phases, such as pretrial conferences with judges and prosecutors, and suppression motions.
 - (5) engaging in plea negotiations with the prosecutor, to obtain a reduced sentence or to have the charges dropped;
 - (6) actively defending the accused in court during trial by participating in jury selections, raising defenses that may be available and advantageous for the defendant (such as self-defense, defense of property, etc.); making opening statements, examining witnesses on the witness stand, presenting evidence to judges and juries, and making closing arguments at the conclusion of trials; and
 - (7) attending post-trial sentencing hearings for clients who negotiate plea bargains, or are found guilty at trial. A public defender also may file an appeal if errors in court proceedings prejudiced his client's rights to a fair trial. Appeal work includes tasks such as ordering trial transcripts and filing appellate briefs and motions. A public defender may request oral arguments before appellate judges, which she must prepare for and attend if her request is granted.

Other Agencies with Similar Goals

During the study of an agency, the Committee asks the agency if there are any other agencies serving, or which could serve, similar customers or providing similar products or services. SCCID states there are no other state agencies whose missions could encompass the deliverables it provides.

Resources, Strategic Plan, and Performance

Annually, each agency submits a strategic plan.⁵² Of interest in the oversight process are the total resources available to an agency and how the agency allocates human and financial resources to the goals and objectives in the agency’s strategic plan.

Public Defender Funding

Table 12 includes an overview of all sources of funding, and expenditures, for public defender offices statewide in fiscal years 2015-16 and 2016-17. Additional details about circuit public defender, and solicitor, revenue and expenditures, by fiscal year, circuit, and county, is available on the Committee website.⁵³

Table 12. Funding and expenditures for public defender offices statewide in fiscal years 2015-16 and 2016-17.⁵⁴

FUNDING			EXPENDITURES		
	2015-16	2016-17		2015-16	2016-17
Total	\$28,946,281.45	\$36,696,348.93	Total	\$27,889,838.08	\$31,955,688.17
County	57.10%	45.35%	Salaries and Benefits	89.66%	89.73%
State	40.73%	51.88%	Other	2.60%	3.34%
Other	1.27%	0.00%	Auto Expense	0.59%	0.43%
			Non Capital		
Municipal	0.85%	1.39%	Purchases	0.61%	0.95%
			Equipment /		
Non-			Furniture		
governmental	0.04%	0.05%	Postage	0.13%	0.15%
Federal	0.00%	1.33%	Rent	0.84%	0.58%
			Utilities	0.11%	0.08%
			Telecommunications	0.62%	0.62%
			Services		
			Travel	0.26%	0.46%
			Case Services	3.43%	2.26%
			Training	0.93%	1.05%
			Information		
			Technology Services	0.24%	0.36%

Agency Funding

Table 13 includes the sources of revenue the agency confirms it was authorized to spend during fiscal years 2016-17 and 2017-18.

Table 13. SCCID Revenue Sources, FY17 and FY18, as reported in the agency's program evaluation report.⁵⁵

Revenue Source	Revenue Authorized to Spend	
	2016-17	2017-18
State General Fund Appropriations	\$29,995,488	\$30,945,217
One-Time	\$100,000	\$100,000
Recurring	\$29,895,488	\$30,845,217
Federal Grant (Recurring)	\$198,595	\$129,829
Other Sources	\$14,059,778	\$13,986,691
Capital Reserve Fund (One-Time)	\$137,906	\$64,819
Recurring Sources	\$13,921,872	\$13,921,872
<i>Civil Action Application Fee</i>	\$32,000	\$32,000
<i>Court Fines</i>	\$900,000	\$900,000
<i>Family and Circuit Court Filing Fee</i>	\$352,600	\$352,600
<i>Public Defender Application Fee</i>	\$12,417,272	\$12,417,272
<i>Traffic Education Program Fee (Magistrate Court)</i>	\$220,000	\$220,000
TOTAL (All Revenue Authorized to Spend)	\$44,253,861	\$45,061,737

Indigent Defense Application Fees and Amount Spent to Represent Each Indigent Defendant

Anyone who asserts they are financially unable to employ counsel and requests indigent defense must pay a \$40 public defender application fee.⁵⁶ The fee may be waived or reduced for those unable to pay. If the fee is waived or reduced, the clerk or appropriate official reports the amount waived or reduced to the trial judge, and the trial judge may order the remainder of the fee paid during probation if the person is granted probation or by a time payment method.⁵⁷

According to the agency, this fee is only collected in about 25% of cases, since judges can waive it.⁵⁸ The amount collected totals approximately \$600,000 per year.⁵⁹ If a municipality is providing indigent representation outside of the public defender's office, this fee should not be charged.⁶⁰ However, the municipality can create its own separate fee to help cover the cost of the indigent representation it provides.

Table 14 includes the average amount the state spent, per indigent defendant, to provide legal representation in fiscal year 2016-17.⁶¹

Table 14. Average amount spent by the state, per indigent defendant in fiscal year 2016-17.⁶²

Average amount spent by the state per indigent defendant			
Type of Case	Attorney	Attorney Fees (Average)	Expenses (Average)*
Criminal Case (All, except Murder)	Contract Attorney ^A	\$1,000 flat fee	\$45
	Public Defender	See Table Note 4	\$1
Non-Capital Murder	Contract Attorney ^A	\$1,000 flat fee Note: The attorney can petition for, and receive, up to \$3,500 in an extraordinary circumstance with S.C. Commission on Indigent Defense approval.	\$881
	Public Defender	See Table Note 4	\$1,125
Non-Capital Murder Post-Conviction Relief (PCR)	Contract Attorney ^A	\$900 flat fee	\$173
Capital Murder	Attorney from Rule 608 Death Penalty List	\$118,058 per case [^] [^] Cost if private attorney from Rule 608 death penalty list is utilized. Private attorney only utilized if the Capital Trial Division attorney and/or circuit public defender have a conflict. Capital Trial Division attorneys and circuit public defenders, who are salaried employees, handle the majority of capital murder cases in S.C. Capital Trial Division operational costs in FY 16-17 were \$570,753.	
	SCCID Capital Trial Division Attorney and Public Defender		
Capital Murder Post-Conviction Relief (PCR)	Attorney from Rule 608 Death Penalty List	\$163,791 per case Includes attorney fees and expenses	
Sexual Violent Predator (SVP)	Contract Attorney ^A	\$900 flat fee	\$910
Family Court	Contract Attorney ^A	\$900 flat fee	\$4
Appeals	SCCID Appellate Division	\$1,113.15 ^B	

Table Notes: (1) An asterisk (*) indicates that examples of expenses include court filing fees, court reporters for depositions, copies of transcripts, etc.; (2) an ^A indicates that if a Contract Attorney has a conflict or is otherwise unavailable, an attorney will be appointed in accordance with the S.C. Court Rule 608 appointment list, which is maintained by the S.C. Bar; (3) a ^B indicates the agency calculates this total by dividing the total expenses for the agency's appellate division in fiscal year 2017-18 by the total number of appeals cases⁶³; and (4) public defenders are on salary and handle all cases assigned which is not broken down by case type.

Allocation of Resources

During the study, the Committee asks the agency to estimate the amount of resources (both employees and funds) it spends on each part of its strategic plan.⁶⁴ Table 15 shows how SCCID reports allocating its resources to its two goals.

Table 15. Allocation of agency resources to strategic plan, as reported by SCCID in its program evaluation report.⁶⁵

		# of FTEs Utilized	Amount Spent/ Budgeted*	% of Total Budget
Goal 1 - Ensure the effective legal representation of South Carolina citizens eligible for Indigent Defense Services	FY17	68.90	\$37,453,8450	85%
	FY18	69.90	\$42,980,418	95%
Strategy 1.1 - Enhance the Circuit Public Defender System	FY17	37.40	\$34,524,212	78%
	FY18	37.40	\$39,551,247	88%
Objectives: 1.1.1 - Provide effective administration for the circuit public defender offices and for the appointment of counsel for all qualified indigent defendants in S.C. trial courts & Family Court 1.1.2 - Increase the number of public defenders in each circuit to reduce the number of cases handled by each public defender to ensure efficient representation of indigent defendants in all S.C. trial courts 1.1.3 - Increase the number of investigators in each circuit 1.1.4 - Monitor the Rule 608 contract system to provide effective representation for parents and other parties in family court matters and to control fees and expenses 1.1.5 - Begin analysis of interface of the circuit public defender offices into the Judicial Department's Case Management System (CMS)				
Strategy 1.2 - Maintain the Appellate Defense System	FY17	24.25	\$2,081,018	5%
	FY18	25.25	\$2,497,936	6%
Objectives: 1.2.1 - Provide effective administration for the Appellate Defense System for all indigent defendants in the S.C. trial courts 1.2.2 - Ensure judicious submission of Direct Appeal or Post Conviction Relief Briefs within the time limits established by the S.C. Supreme Court				
Strategy 1.3 - Ensure quality representation in capital death cases	FY17	7.25	\$848,615	2%
	FY18	7.25	\$931,235	2%
Objectives: 1.3.1 - Provide effective administration for the Capital Defense System for all indigent defendants in the S.C. trial courts 1.3.2 - Require all Capital Trial Division attorneys be certified S.C. Supreme Court Death Penalty Qualified				

		# of FTEs Utilized	Amount Spent/ Budgeted*	% of Total Budget
Goal 2 - Enhance training and professional development of South Carolina public defenders and staff	FY17	0.60	\$107,099	0.24%
	FY18	0.60	\$381,320	0.85%
Strategy 2.1 - Provide mandatory training program for all new public defenders and contract attorneys	FY17	0.55	\$104,414	0.24%
	FY18	0.55	\$378,635	0.84%
Objectives: 2.1.1 - Increase accessibility to PD101, PD 102 and PD 103 training classes 2.1.2 - Conduct topic specific training to all public defenders and contract attorneys 2.1.3 - Implement online training for all public defenders in the Indigent Defense System				
Strategy 2.2 - Enhance mentoring programs in circuit public defender offices	FY17	0.05	\$2,685	0.01%
	FY18	0.05	\$2,685	0.01%
Objectives: 2.2.1 - Expand mentoring programs to all 16 public defender circuits 2.2.2 - Provide mentoring opportunities to newly hired public defenders in Family and Summary Courts				
Funds not controlled by agency (distributed to S.C. Legal Services, a nonprofit entity)	FY17		\$1,317,739	2.98%
	FY18		\$1,700,000	3.77%
Unspent funds	FY17		\$5,375,124	12.15%
	FY18		\$0	0%

Table Note: An asterisk (*) indicates because the agency submitted this information during FY 2017-18, the table reflects the agency's budgeted allocation for that year.

Case Management System

There is a statewide case management system for all circuit public defender offices.⁶⁶ A statewide system standardizes the data collection process, so each circuit public defender office provides the same case information on all cases each office handles.⁶⁷ Also, having a statewide system allows the agency to collect case information from across the state without having to contact each circuit public defender office to request information.⁶⁸ The system is accessible to all circuit public defender staff in the 16 judicial circuits, the appellate attorneys and administrative assistants from the agency's appellate division, and the agency's data base specialist.⁶⁹

When the system was first instituted, at least one of the circuit public defender offices was already utilizing a different system.⁷⁰ To account for this, the agency allowed that office to retain its case management data collection system as long as the office provided the same case-related information required by the agency.⁷¹

The original cost of the unification of the existing systems into the statewide defender data system in 2012-13 was \$160,000.⁷² The annual cost of the system is based upon a \$2.00 per new case charge which totaled \$117,126 in fiscal year 2015-16; \$123,790 in fiscal year 2016-17; and \$128,512 in fiscal year 2017-18.⁷³ The agency pays these annual costs.⁷⁴

Technology, Replacement Plans, and Other Essential Resources

At this time the agency, with the assistance of the Department of Administration's Division of Technology Office (DTO), has not identified any technological deficiencies that affect the agency's performance of its duties or responsibilities.⁷⁵ However, the agency is always looking for upgrades in technology to ensure it operates as efficiently as possible, which is part of the reason the agency migrated the management of its workstations, network, and servers to DTO in 2017.⁷⁶ The agency's service agreement requires DTO to provide services to all agency workstations, network, e-mail, and back up servers as well as the necessary recommendations for upgrades to keep the agency up to date with all information technology security and privacy requirements.⁷⁷






As for replacement plans, the agency plans to adhere to DTO's recommendations to maintain the agency's computer and technology upgrades.⁷⁸ Based on current recommendations from DTO, the agency is replacing all of its computer workstations this fiscal year.⁷⁹ The workstations being replaced are six years old and unable to run the Windows 10 operating system.⁸⁰

According to the agency, the only other types of equipment, besides computers and programs, it needs for its staff are copy machines.⁸¹ As for replacement plans for this equipment, the agency has service agreements with Xerox for the two large production copiers it needs to produce the necessary documents required by the S.C. Supreme Court and the S.C. Appellate Courts.⁸² These service contracts are for a five-year period and are under the S.C. State Procurement contract for state agencies.⁸³

Performance Measures

SCCID provides the performance measures in Table 16. The agency reports it was not using these measures prior to fiscal year 2015-16.⁸⁴

Table 16. SCCID performance measures, as reported in its program evaluation report.⁸⁵

Performance Measure	Required or Selected?		2015-16	2016-17	2017-18	Trend in Results
Increase the number of Full-Time Public Defenders (PD) in all 16 Judicial Circuits	Agency Selected	Target:	291.5	291.5	291.5	
		Actual:	236.5	272.5	272.5	
Decrease the number of cases (Warrants) handled by each individual Public Defender	Agency Selected	Target:	376.0	376.0	376.0	
		Actual:	464.0	426.0	473.0	
Increase attendance in the Public Defender Training Sessions; PD 101, PD 102 and PD 103	Agency Selected	Target:	165.0	165.0	165.0	
		Actual:	79.0	182.0	61.0	
Increase the number of Continuing Education Hours provided to PD's (Continuing Legal Education)	Agency Selected	Target:	60.5	60.0	60.0	
		Actual:	48.5	59.0	59.1	
Increase number of Judicial Circuits the have mentoring programs for new PD's in the Family and Summary Courts	Agency Selected	Target:	16.0	16.0	16.0	
		Actual:	2.0	7.0	9.0	

STUDY PROCESS

Agency Selection

SCCID is an agency subject to legislative oversight.⁸⁶ On December 19, 2017, during the 122nd General Assembly, the Committee prioritizes the agency for study.⁸⁷

As the Committee encourages **collaboration in its legislative oversight process**, the Committee notifies the following individuals about the agency study: Speaker of the House, standing committee chairs in the House, members of the House, Clerk of the Senate, and Governor.

Subcommittee Membership

The **Law Enforcement and Criminal Justice Subcommittee of the House Legislative Oversight Committee studied the agency** during the 122nd General Assembly.⁸⁸ Throughout the study, the Honorable Edward R. “Eddie” Tallon, Sr. served as chair. Other Subcommittee Members include:

- The Honorable Katherine E. “Katie” Arrington;
- The Honorable William M. “Bill” Hixon; and
- The Honorable Jeffrey E. “Jeff” Johnson.

Agency Reports to Legislative Oversight Committee

During the legislative oversight process, the **Committee asks the agency to conduct self-analysis** by requiring it to complete and submit annual Restructuring Reports, a Seven-Year Plan for cost savings and increased efficiencies, and a Program Evaluation Report. The Committee posts each report on the agency page of the Committee’s website.

Restructuring Report

The Annual Restructuring Report fulfills the requirement in S.C. Code Section 1-30-10(G)(1) that annually each agency report to the General Assembly “detailed and comprehensive recommendations for the purposes of merging or eliminating duplicative or unnecessary divisions, programs, or personnel within each department to provide a more efficient administration of government services.” The report, at a minimum, includes information in the following areas - history, mission and vision, laws, strategic plan, human and financial resources, performance measures, and restructuring recommendations.

SCCID submits its Annual Restructuring Reports on March 9, 2015, and January 20, 2016.⁸⁹ Starting in September 2016, the Annual Accountability Reports the agency has submitted to the Governor and General Assembly serve as its Annual Restructuring Reports.⁹⁰

Seven-Year Plan for Cost Savings and Increased Efficiencies

S.C. Code Section 1-30-10 requires agencies to submit “a seven year plan that provides initiatives and/or planned actions that implement cost savings and increased efficiencies of services and responsibilities within the projected seven-year period.”⁹¹ SCCID submits its plan on March 9, 2015.⁹²

Program Evaluation Report

When an agency is selected for study, the Committee may acquire evidence or information by any lawful means, including, but not limited to, "requiring the agency to prepare and submit to the investigating committee a program evaluation report by a date specified by the investigating committee." S.C. Code Section 2-2-60 outlines what an investigating committee's request for a program evaluation report must contain. Also, it provides a list of information an investigating committee may request. The Committee sends guidelines for SCCID's Program Evaluation Report (PER) on January 23, 2018. The agency submits its report on March 16, 2018⁹³.

The PER includes information in the following areas: agency successes and challenges, legal directives, strategic plan, resources, performance, agency ideas/recommendations, agency organization, and additional documents submitted by the agency. The **Program Evaluation Report serves as the base document for the Committee's study of the agency.**

Information from the Public

Public input is a cornerstone of the House Legislative Oversight Committee's process. There are a variety of opportunities for public input during the legislative oversight process. Members of the public have an opportunity to participate anonymously in a public survey, provide comments anonymously via a link on the Committee's website, and appear in person before the Committee.⁹⁴ During the study, media articles related to the agency are compiled for member review.

Public Survey

From January 23 - March 1, 2018, the Committee posts an **online survey to solicit comments from the public about SCCID** and five other agencies. The Committee sends information about this survey to all House members to forward to their constituents. Additionally, in an effort to communicate this public input opportunity widely, the Committee issues a statewide media release.⁹⁵

There are 501 responses to the survey, with 37 of these relating to the agency. The responses relating to the agency come from 14 of South Carolina's 46 counties.⁹⁶ These comments are not considered testimony.⁹⁷ As the survey notes, “input and observations from those citizens who [chose] to provide responses are very important . . . because they may help direct the Committee to potential areas for improvement with these agencies.”⁹⁸ The Committee posts the survey results on the Committee's website. The **public is informed it may continue to submit written comments about agencies online** after the public survey closes.⁹⁹

A majority of respondents report a **positive or very positive opinion of SCCID**.¹⁰⁰ Figure 5 includes a complete breakdown.

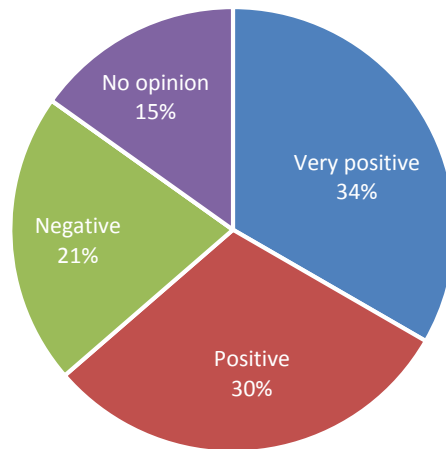


Figure 5. January 2018 public survey respondent opinion of SCCID.

Over 40% of respondents report basing their opinions on personal experience with the agency. The second most commonly cited influence was media coverage of the agency. A majority of those responding about SCCID indicate that they are state employees. Thirteen survey participants provide written comments about the agency on topics including training, resources, and customer service. The complete verbatim comments can be found online.¹⁰¹ They are not the comments or expression of the House Legislative Oversight Committee, any of its Subcommittees, or the House of Representatives.¹⁰²

Public Input via Committee Website

Throughout the course of the study, people are able to submit comments anonymously on the Committee website. The Committee receives one substantive comment about SCCID during this study, on the topic of compensation.¹⁰³

Public Input via In-Person Testimony

During the study, the Committee offers the opportunity for the public to appear and provide sworn testimony.¹⁰⁴ A press release announcing this opportunity is sent to media outlets statewide on February 9, 2018.¹⁰⁵ The Committee holds a meeting dedicated to public input about SCCID and other agencies on April 26, 2018. No one chooses to provide input about SCCID.¹⁰⁶

Meetings Regarding the Agency

The Committee meets with, or about, the agency on three occasions, and the Subcommittee meets with, or about, the agency on five occasions. All meetings are open to the public and stream live online; also, the videos are archived and the minutes are available online. A timeline of meetings is set forth in Figure 2.

122nd General Assembly (2017-2018)

December 2017

On **December 19, 2017**, the full Committee selects the agency for study.¹⁰⁷ Meeting materials and minutes are available online.

April 2018

On **April 24, 2018**, the Law Enforcement and Criminal Justice Subcommittee holds **Meeting #1** with the agency.¹⁰⁸ Subcommittee Chair Tallon places the following individuals under oath: (a) Mr. J. Hugh Ryan, III, Executive Director; (b) Mr. Hervery B.O. Young, Assistant Executive Director/General Counsel; (c) Mr. Rodney Grizzle, Comptroller; (d) Ms. Lori Frost, Assistant Director/Human Resources Director; and (e) Mr. W. Lawrence Brown, Deputy General Counsel and Training Director.

SCCID Director Hugh Ryan provides information on the following topics related to the agency as a whole:

- history;
- legal directives;
- mission and vision;
- resources available, both funding and employees;
- governing body;
- organizational chart; and
- organizational units.

Members ask questions related to the topics, including questions about filing fees and county funding, which Director Ryan answers. Director Ryan also provides details about the agency's **administration organizational unit** and the **agency's recommendations for internal and law changes**. Members ask questions related to the organizational unit and the agency's recommendations, which Director Ryan answers. Meeting materials and minutes are available online.

On **April 26, 2018**, the full Committee holds **Meeting #2** with the agency to receive public **receive public testimony** about SCCID, the Commission on Prosecution Coordination, and the SCETV Commission.¹⁰⁹ No one chooses to provide input about SCCID. Meeting materials and minutes are available online.

May 2018

On **May 1, 2018**, the Subcommittee holds **Meeting #3** with the agency to discuss the information presented during the previous meeting.¹¹⁰ Subcommittee members ask questions related to the following topics, which Director Ryan and other agency representatives answer:

- lack of agency regulations;
- hiring process, vacant positions, and turnover rate;
- employee morale, evaluations, and feedback;
- agency's Commission;
- evaluation of the director, circuit public defenders, and commissioners; and
- screening for indigents in different courts and counties.

The Subcommittee votes on and passes several recommendations (see the *Recommendations* section). Meeting materials and minutes are available online.

August 2018

On **August 14, 2018**, the Subcommittee holds **Meeting #4** with the agency. Subcommittee Chair Tallon places the following individuals under oath: (a) Mr. Boyd Young, Chief Capital Defender; and (b) Mr. Robert M. Dudek, Chief Appellate Defender. The purpose of the meeting is to discuss the following topics:¹¹¹

- the process for individuals involved in the following types of cases: criminal cases (including murder and death penalty); sexually violent predator civil commitment cases; post-conviction relief cases; and juvenile criminal cases;
- differences in how counties and courts screen for whether an individual qualifies as an indigent, and thus is entitled to legal representation from the state;
- the agency's Death Penalty Trial Division; and
- the agency's Division of Appellate Defense.

Director Ryan provides remarks on these topics. Members ask questions, which Director Ryan and other applicable agency personnel answer. The Subcommittee votes on and passes multiple recommendations, which are discussed in the *Recommendations* section. Meeting materials and minutes are available online.

On **August 28, 2018**, the Subcommittee holds **Meeting #5** with the agency to discuss its Office of Circuit Public Defenders and receive information about research and performance measures that may be utilized by public defenders and contract attorneys who represent indigent defendants.¹¹² Subcommittee Chair Tallon places the following individuals under oath:

- 1st Circuit Public Defender Mark Leiendecker (Calhoun, Dorchester, and Orangeburg counties);
- 2nd Circuit Public Defender De Grant Gibbons (Aiken, Bamberg, and Barnwell counties);
- 3rd Circuit Public Defender Jack D. Howle, Jr. (Clarendon, Lee, Sumter, and Williamsburg counties);
- 4th Circuit Public Defender Matt Rivers (Chesterfield, Darlington, Dillon, and Marlboro counties);
- 5th Circuit Public Defender Fielding Pringle (Kershaw and Richland counties);
- 6th Circuit Public Defender Mike Lifsey (Chester, Fairfield, and Lancaster counties);
- 7th Circuit Public Defender Clay T. Allen (Cherokee and Spartanburg counties);

- 8th Circuit Public Defender Janna A. Nelson (Abbeville, Greenwood, Laurens, and Newberry counties);
- 9th Circuit Public Defender D. Ashley Pennington (Charleston and Berkeley counties);
- 10th Circuit Public Defender Jennifer L. Johnson (Anderson and Oconee counties);
- 11th Circuit Public Defender Robert M. Madsen (Edgefield, McCormick, and Saluda counties);
- 12th Circuit Public Defender Scott Floyd (Florence and Marion counties);
- 13th Circuit Public Defender Christopher D. Scalzo (Greenville and Pickens counties);
- 14th Circuit Public Defender Stephanie Smart-Gittings (Allendale, Beaufort, Colleton, Hampton, and Jasper counties);
- 14th Circuit Deputy Public Defender Lauren Carroway;
- 15th Circuit Public Defender Orrie E. West (Georgetown and Horry counties);
- 16th Circuit Public Defender Harry A. Dest (Union and York counties); and
- Ms. Margaret Gressens, Research Director for North Carolina Office of Indigent Defense Services.

Director Ryan testifies about the Office of Circuit Public Defenders, a division of the agency. Members ask questions, which Director Ryan answers. Then the public defender from each of the state's sixteen circuits testifies about the number of attorneys in their office, salary range, and staff evaluations, if any are conducted. Members ask questions, which the circuit public defenders answer. Finally, Ms. Margaret Gressens testifies about performance measures in general and indicators that may be utilized to measure the performance of indigent defense systems, which resulted from the N.C. Systems Evaluation Project's work with four pilot sites around the country over a two and a half year period. Subcommittee members and Director Ryan ask questions, which Ms. Gressens answers. Meeting materials are available online.

October 2018

On **October 9, 2018**, the Subcommittee holds **Meeting #6** with the agency to discuss the agency's recommendations for internal and law changes. At the start of the meeting, Subcommittee members make motions for various recommendations and findings which relate to both their study of the Commission on Indigent Defense and their study of the Prosecution Coordination Commission. Director Ryan then testifies about the agency's internal and law recommendations. Members ask questions, which Mr. Ryan answers. Subcommittee members make additional motions which relate to their study of the Commission on Indigent Defense and take a tour of the agency's office. Meeting materials and minutes are available online.

On **October 23, 2018**, the Committee holds **Meeting #7** with the agency. Subcommittee Chairman Tallon presents a summary of the Subcommittee's study of the agency to the full Committee. The full Committee had a copy of the Subcommittee study prior to the day of the meeting. Committee members ask questions of Subcommittee Chair Tallon, which he answers. Also, members ask questions of agency personnel, which they answer. Subcommittee Chair Tallon makes a motion for the full Committee to approve the Subcommittee Study. Meeting materials are available online.

Next Steps

To support the Committee's ongoing oversight by maintaining current information about the agency, the agency may receive an annual Request for Information.

FINDINGS

The Committee has **four findings** arising from its study of the agency.

First, the Committee finds S.C. Code Section 17-3-45(b) is an example of lack of clarity regarding which entity is responsible for ensuring accurate **collection and remittance of fines and fees** as it states the entity responsible is the clerk of court “or other appropriate official.”¹¹³ This issue, relating to fines and fees which fund indigent defense services, further supports the Committee’s recommendation from its study of the Law Enforcement Training Council and Criminal Justice Academy that the General Assembly should consider clarifying statutes regarding fines and fees (e.g., to indicate which entity is responsible for ensuring county and local governments properly collect and remit these and additional options for enforcement to ensure compliance).¹¹⁴

Second, the Committee finds there is not uniformity across the state with regards to **screening for indigent defense representation**.¹¹⁵ The entity performing the the screening process varies from county to county.¹¹⁶ Also, the information required from an individual to determine indigency varies from county to county.¹¹⁷

Third, the Committee finds no state agency has aggregated data on the **total number of individuals prosecuted each year**.¹¹⁸ Additionally, there is not an efficient method in place in every jurisdiction by which this data may be obtained.

Fourth, the Committee finds the Commission on Indigent Defense and Commission on Prosecution Coordination currently do not track the **performance** of circuit public defender and circuit solicitor offices. While agency personnel are passionate about the work they perform and strive to obtain the best outcomes for their respective clients, as a means to help inform decisions when analyzing programs and/or processes to keep, revise or eliminate, the entities should track their performance.

RECOMMENDATIONS

General Information

The following recommendations include areas the Committee identifies for potential improvement. The Committee recognizes these recommendations will not satisfy everyone nor address every issue or potential area of improvement at the agency. These recommendations are based on the agency’s self-analysis requested by the Committee, discussions with the agency during multiple meetings, and analysis of the information obtained by the Committee. This information, including, but not limited to, the Program Evaluation Report, Accountability Report, Restructuring Report and videos of meetings with the agency, is available on the Committee’s website.

Continue

The Committee does not have any specific recommendations with regards to continuance of agency programs.

Curtail (i.e. Revise)

The Committee has 34 recommendations arising from its study of the agency. These recommendations fall into seven categories: (1) accountability; (2) efficiencies in operations; (3) effectiveness of programs; (4) transparency; (5) employee input; (6) indigency screening; and (7) modernization of statutes.

Accountability

The Committee has seven recommendations related to accountability, three for all state agencies, and four for the Commission on Indigent Defense. A summary is set forth in Table 17.

Table 17. Summary of recommendations related to accountability.

Topic	Recommendations
Accountability	...for all agencies
	1. Require commission/board members to affirm acknowledgement of their duties in writing*
	2. Require onboarding and annual training for commission/board members*
	3. Require submission to the Legislative Services Agency, for publication online, a copy of any report provided to a legislative committee*
	...for the Commission on Indigent Defense
4. Require circuit public defenders to affirm acknowledgement of their duties in writing	

	<p>5. Conduct formal evaluations of circuit public defenders</p> <p>6. Require circuit public defenders to conduct formal evaluations of their employees</p> <p>7. Authorize the agency to enforce its regulations applicable to circuit public defenders</p>
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Table Note: An asterisk (*) indicates General Assembly action is necessary.

1. The Committee recommends the General Assembly require commission/board members of state agencies to affirm acknowledgement of their duties in writing.¹¹⁹ A state agency’s commission/board (hereinafter collectively referred to as commission and any reference to commissioner is also a reference to board members) may have numerous and diverse duties and responsibilities. As an example, Appendix A includes a complete list of the statutory duties of the Commission on Indigent Defense.

Accordingly, the Committee recommends: (1) requiring this agency, and all other agencies with a commission, to provide each commissioner a document outlining the commission’s statutory duties, (2) requiring each commissioner to sign the document acknowledging awareness of the duties, and (3) posting the signed document on the agency’s website.

Further, the Committee recommends the Commission on Indigent Defense implement this recommendation as an internal change. Currently, when an individual becomes an agency commissioner, the individual does not receive any documentation outlining his or her duties under the law.¹²⁰

2. The Committee recommends the General Assembly consider requiring onboarding and annual training for state agency commissioners.¹²¹ The Commission on Indigent Defense is an example of an agency with no initial or ongoing training for commissioners tasked with governing the agency.¹²² Onboarding training may assist new commissioners to be aware of and better understand their duties. Additionally, ongoing training provides an opportunity for communicating any revisions to those statutory duties. Further the Committee recommends the Commission on Indigent Defense implement this recommendation as an internal change.

3. The Committee recommends the General Assembly consider requiring submission to the Legislative Services Agency, for publication online, a copy of any report a state agency provides a legislative committee.¹²³ This recommendation seeks to increase accountability and transparency in state government at little to no cost as report submissions may be made via e-mail. Specifically, the Committee recommends the General Assembly consider amending S.C. Code Section 2-1-230(A) to specify that agencies are required to provide the Legislative Services Agency, for publication on the General Assembly website, not only reports an agency is directed to provide to the entire General Assembly, but also reports an agency is directed to provide to one or more legislative committees.¹²⁴ Examples of reports agencies are directed to provide to one or more legislative committees rather than the entire General Assembly include:

- annual report summarizing services provided for preschool children with disabilities and their families;
- annual report including a five-year plan detailing future needs and goals of the state as it relates to all forms of public transit;
- annual report on state energy action plan;

- annual report on the ongoing operations of the South Carolina Enterprise Information System (SCEIS); and
- annual audit of the marketing plan to attract private sector service businesses for the employment of inmates through the prison industries program from Department of Corrections, in conjunction with Department of Commerce.¹²⁵

4. The Committee recommends the agency require circuit public defenders to affirm acknowledgement of their duties in writing. The Committee recommends the agency provide each circuit public defender, at the beginning of each term of office, a document outlining statutory duties for signature acknowledging awareness and understanding of the position's duties. Further, the Committee recommends the agency post the signed document on its website.¹²⁶ While there is an oath taking ceremony for each circuit public defender, the oath does not list each of the circuit public defender's statutory and other obligations.¹²⁷

5. The Committee recommends the agency conduct formal evaluations of circuit public defenders. The Committee recommends the agency create and provide objective, written performance measures to evaluate circuit public defenders annually on the effectiveness and efficiency of their offices.¹²⁸ Also, the Committee recommends the agency provide the local circuit public defender selection panels copies of the annual evaluations and highlight trends in areas the agency tracks in its annual human resources and funding report. Additionally, the Committee recommends the agency utilize the information obtained from the evaluations of circuit public defenders when analyzing successes and areas for improvement on which to focus.

While a statutory requirement is in place providing for the agency's commission to approve and implement standards for performance of public defenders, at present, there is no official evaluation of circuit public defenders.¹²⁹ According to the agency, circuit public defenders are evaluated by local selection panels every four years when they are reappointed.¹³⁰ This selection process includes interviewing the candidates and seeking any other information desired.¹³¹

During the study process, several circuit public defenders note the benefits they currently obtain, or believe they will obtain, from evaluating their individual staff.¹³² Based on the benefits obtained from evaluations of circuit public defender staff, and the agency commission's statutory responsibility to approve and implement standards for performance, similar benefits may be gained from the agency conducting annual evaluations of each circuit public defender. Likewise, local selection panels may find it beneficial to have copies of these annual evaluations during their interviews of candidates in the selection process.

6. The Committee recommends the agency consider requiring circuit public defenders to conduct formal evaluations of their employees. The Committee recommends the agency work with the circuit public defenders to assist each in creating a formal process with some uniform components for evaluating their staff. Further the Committee recommends the agency require each circuit public defender to at minimum evaluate staff using the uniform components.¹³³ Statute requires circuit public defenders to establish and supervise a training and performance evaluation program for attorneys and non-attorney staff members and contractors.¹³⁴ However, only 56.25% (i.e., nine of sixteen) circuit public

defenders utilize a formal evaluation process.¹³⁵ The other seven do not utilize a formal evaluation process, but are either creating a process, think a process would be beneficial, or do not oppose a formal process.¹³⁶

When the General Assembly created the circuit public defender system, one of the stated reasons was “[t]o provide for the delivery of public defender services by qualified and competent counsel in a manner that is fair and consistent throughout the state.”¹³⁷ Requiring uniform components of the formal evaluations in each circuit public defender office lends consistency across the state in the evaluation of indigent defense representation.

7. The Committee recommends the General Assembly consider authorizing the agency to enforce its regulations. Current law authorizes the agency to develop regulations to establish criteria for determining indigency and qualifications for services for indigent legal representation.¹³⁸ However, the agency has not yet established any regulations.¹³⁹ To ensure this is not the result of uncertainty regarding the ability to enforce the regulations, the Committee recommends the General Assembly consider authorizing the agency to create mechanisms that will allow it to enforce its regulations.¹⁴⁰

Efficiencies in Operations

The Committee has **four recommendations related to efficiencies in operations**, and a summary is set forth in Table 18.

Table 18. Summary of recommendations related to efficiencies in operations.

Topic	Recommendations
Efficiencies in operations	8. Track the expenses (i.e., time and costs) associated with manually entering information from court administration’s database 9. Train circuit public defenders on making presentations to policy makers (i.e., county council) 10. Conduct management training for circuit public defenders

8. The Committee recommends the agency track the expenses (i.e., time and costs) associated with manually entering information from court administration’s database. Currently, agency personnel manually enter any information it obtains from court administration’s data system into the agency’s statewide defender data system.¹⁴¹ The Committee website includes a list of information tracked by court administration. In an effort to seek efficiencies in operation, the Committee recommends the agency track the specific information it manually re-enters from court administration, along with the associated costs (i.e., personnel time). Compilation of this data may help inform future conversations with impacted parties about an interface or method to allow for the transfer of information without the need for manual reentry.¹⁴²

While both the agency and court administration track data applicable to court cases, there is no interface between court administration’s system and the circuit public defenders’ system.¹⁴³ Additionally, the Prosecution Coordination Commission does not have direct access to the data Court Administration collects.¹⁴⁴ While SCCID has shared this objective with court administration, it is the agency’s understanding court administration has other multi-year projects ranking higher in priority than the

interface connection.¹⁴⁵ Collecting information on costs incurred to re-enter information may assist the agency, Court Administration, and policy makers in future analyses of projects and the cost/benefit to all parties potentially impacted.

9. *The Committee recommends the agency train circuit public defenders on making presentations to policy makers (i.e., county council).* The Committee recommends the agency annually provide circuit public defenders training with information on, and opportunities for discussion about, how to make effective presentations to policy makers. Topics may include, but are not limited to, funding in general, staff career advancement (e.g., pay tiers), and seeking additional positions for the office.¹⁴⁶ During the study process, multiple circuit public defenders note difficulties in obtaining additional funding from their counties as well as obtaining salary ranges for their staff that are in parity with the solicitor's office in their circuit.¹⁴⁷ However, some circuit public defenders have achieved success after presenting to and negotiating with their county council; accordingly, training sessions for all circuit public defenders may be helpful in implementing efficiencies in operations.¹⁴⁸

10. *The Committee recommends the agency conduct management training for circuit public defenders.* Providing legal representation and managing an office of attorneys and non-attorneys require different skill sets. Prior to their election, by a local selection panel, as circuit public defenders, attorneys may have extensive management experience or no management experience. To seek efficiencies in operation, the Committee recommends the Commission on Indigent Defense and Commission on Prosecution Coordination conduct training, together or separately, when a new circuit public defender and/or new circuit solicitor is first elected, as well as annual training thereafter.¹⁴⁹ These trainings may provide information on, and opportunities for discussion about, a variety of topics, to include, but not be limited to: conducting annual employee evaluations, conducting exit interviews, mentoring staff, tracking data, and leadership styles.¹⁵⁰

The Commission on Indigent Defense is in the process of implementing a mentoring program where newly elected circuit public defenders are assigned a network of around five other circuit public defenders to provide guidance.¹⁵¹ Since there is no initial or ongoing formal training related to topics outside legal skills, management training may pair well with the agency's mentoring program.¹⁵² Additionally, annual training for all circuit public defenders may reinforce current knowledge and impart new methods to help circuit public defenders improve efficiencies in their office operations.

Effectiveness of programs

The Committee has **ten recommendations related to effectiveness of programs**, and a summary is set forth in Table 19.

Table 19. Summary of recommendations related to effectiveness of programs.

Topic	Recommendations
Effectiveness of programs	<p><u>Defense of Indigents</u></p> <ol style="list-style-type: none"> 11. Define, in regulation, the term “case” for circuit public defenders to utilize in measuring workload, backlog, and other metrics 12. Promulgate regulations outlining a procedure to measure the success of indigent defense representation (e.g., percent of cases resulting in non-conviction; percent of felony cases resulting in misdemeanor conviction; percent of cases where case resolution included consolidation of multiple charges) 13. Research data collection options for how to measure the success of Rule 608 contract attorneys¹⁵³ 14. Determine and track indicators for effective defense during a case (e.g., regular client contact, active investigation, written motion practice) 15. Report concerns, if any, about court rules for the General Assembly’s consideration 16. Add statistics to the agency’s annual human resources and funding report <p><u>Diversion Programs</u></p> <ol style="list-style-type: none"> 17. Require circuit public defenders to provide regular input to circuit solicitors on establishing and/or revising diversion programs 18. Meet on a regular basis with Commission on Prosecution Coordination to discuss diversion programs and performance of these programs*

Table Note: An asterisk (*) indicates General Assembly action is necessary.

Defense of Indigents

11. The Committee recommends the agency define, in regulation, the term “case” for circuit public defenders to utilize in measuring workload, backlog, and other metrics. To increase the effectiveness of programs, the Committee recommends the agency address the following.

- a. Determine, and set in regulation, a uniform definition of the term “case” for circuit public defenders to utilize when calculating workload, backlog, cost per case, and other metrics. When setting the definition in regulation, ensure the definition does not alter any statutory definitions or rights of defendants.¹⁵⁴
- b. Draft a memorandum which provides an explanation of the definition and the basis for how it was reached, including any alternative definitions which had substantial discussion, but were not utilized.¹⁵⁵
- c. Publish the memorandum on the agency website.¹⁵⁶

- d. Utilize the definition when the agency or circuit public defenders present information to the General Assembly on a subject which includes “case” statistics. In the information presented, include the definition of “case” and include a statement that while the definition is utilized by circuit public defenders, it is not utilized by circuit solicitors nor the judiciary branch.¹⁵⁷

During the study process, the thirteenth circuit public defender asserts the agency reached a consensus on how to define the term when it began utilizing its statewide defender data system several years ago.¹⁵⁸ Establishing the definition in regulation and providing it whenever presenting information that involves case statistics may maintain standardization and allow those receiving the information to better understand it.

12. The Committee recommends the agency promulgate regulations outlining a procedure to measure the success of indigent defense representation (e.g., percent of cases ending in non-conviction; percent of felony cases ending in misdemeanor conviction; percent of cases where all charges were resolved jointly). This recommendation does not seek to measure an individual attorney’s performance on each case (i.e., guilty verdicts versus non-guilty verdicts). Instead, it seeks to examine the performance of an entire circuit public defender’s office in the aggregate.¹⁵⁹ To increase the effectiveness of the agency’s programs, the Committee recommends the agency establish regulations which accomplish the following:

- a. Outline uniform metrics to measure success of circuit public defender offices and indigent defense statewide including potential improvements in outcomes and/or cost savings that may be gained from using the metrics. The metrics should allow for determination of which circuits and counties are most effective in obtaining desired outcomes for their clients (e.g., percent of cases ending in non-conviction; percent of felony cases ending in misdemeanor conviction; percent of cases where all charges were resolved jointly).¹⁶⁰
- b. Outline standardized data to collect, methods to collect, and methods to transmit the data in a cost efficient manner.¹⁶¹
- c. Ensure access and transparency of the results through publication online.¹⁶²

Statute requires the agency’s commission to approve and implement standards for performance of public defenders.¹⁶³ Also, statute requires the agency’s commission to “collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in the state.”¹⁶⁴ While the agency’s commission has approved documents titled, “Performance Standards for Public Defenders and Assigned Counsel (Non-Capital)” and “Performance Standards for Indigent Defense in Juvenile Cases,” both are over five years old, and neither outline specific metrics every circuit may utilize to show which circuits and counties are obtaining the desired outcomes for their clients and which circuits may need additional assistance.¹⁶⁵ Additionally, there is no baseline information to utilize when analyzing how a new program or process impacts results. There may be several metrics utilized for different types of cases (e.g., adult versus juvenile, first time versus repeat offender, felony versus misdemeanor, etc.), but having some uniform metrics utilized across all circuits, may best allow for comparison from circuit to circuit and county to county.¹⁶⁶

During the study process, the Committee receives testimony and information from a representative of the North Carolina Indigent Defense Services about its two-year research study on metrics for indigent

defense services.¹⁶⁷ Additionally, North Carolina's research includes explanations of how to implement metrics and track the data.¹⁶⁸

13. The Committee recommends the agency research data collection options for how to measure the success of Rule 608 contract attorneys. To increase the effectiveness of the agency's programs, the Committee recommends the agency research what may be required to begin tracking the disposition and other data (e.g., time and cost) of cases handled by Rule 608 contract attorneys in the statewide defender data system or through another method.¹⁶⁹ Currently, Rule 608 contract attorneys do not have access to enter information in the statewide defender data system. The Committee recommends that within the next year, the agency provide the Committee its analysis, along with a recommendation of what additional information, if any, should be tracked to determine the performance of Rule 608 contract attorneys in the aggregate.¹⁷⁰

During the study, individual circuit public defenders note information about the performance of Rule 608 contract attorneys is informally obtained through feedback from judges and observations by other attorneys in the circuit public defender office.¹⁷¹ Like metrics for public defenders, there may be several metrics utilized for Rule 608 contract attorneys for different types of cases (e.g., adult versus juvenile, first time versus repeat offender, felony versus misdemeanor, etc.) but having some uniform metrics utilized across all circuits, may allow for comparisons of the effectiveness of salary and Rule 608 contract attorneys from circuit to circuit; county to county; and case type to case type.

14. The Committee recommends the agency determine and track indicators for effective defense during a case (e.g., regular client contact, active investigation, written motion practice). The Committee recommends the agency further discuss indicators for effective defense during a case and how to track these indicators, with the circuit public defenders and agency commission, to reach a consensus and begin to track the data in which there is consensus.¹⁷²

During the study, the ninth circuit public defender testifies there is additional data (i.e., regular client contact, active investigation (where needed), and written motion practice for the client) he believes the agency may be able to track through the statewide defender data system which may assist each circuit public defender in managing their office.¹⁷³ While agency representatives agree there may be options for how to track this type of data within the current statewide defender data system, the agency prefers to determine if there is a consensus among all circuit public defenders on which indicators to track.¹⁷⁴ If there is a consensus, the agency can map out how to highlight these tasks to the circuit public defender staff and train the staff and managers to record this information.¹⁷⁵ While there would be significant time and energy in this endeavor by managers and staff, the agency does not believe there would be any other direct cash costs.¹⁷⁶

15. The Committee recommends the agency report concerns, if any, about court rules for the General Assembly's consideration. The Committee recommends the Commission on Indigent Defense and Commission on Prosecution Coordination report any concerns on how judicial opinions and court rules are impacting the criminal justice process and recommend revisions or changes to the General Assembly for consideration.¹⁷⁷ This information may help inform policy makers on potential ways to improve the effectiveness and efficiency of the state's criminal justice system.

16. The Committee recommends the agency add statistics to the agency's annual human resources and funding report. To increase the effectiveness of programs, the Committee recommends the agency consider adding the following information and statistics to the report:

- a. brief history of the agency and circuit public defender system, including but not limited to how each of the 39 non-profits previously operated, how the circuits now operate, and any changes to the system through the year the report is published;
- b. summary of the following statewide, and for each circuit and county:
 - o attorney turnover, excluding the circuit public defender;
 - o reasons for separations, based on exit interviews and surveys;
 - o length of time to fill any positions that became vacant during the year, and if any positions are still vacant;
 - o number of cases and average cost of each type;
 - o number of individuals who were provided indigent representation;
 - o key performance indicators;
- c. map of state judicial circuits with the following information in each circuit:
 - o number of attorneys in the circuit public defender office;
 - o salary range for attorneys;
 - o number of cases at start of year, received during the year, and disposed of by the end of the year; and
- d. summaries of information taught, revisions made, and feedback from the agency's management training program.¹⁷⁸

Inclusion of this information may allow the report, which the agency is already publishing, to serve as a central source of information for policy makers.¹⁷⁹

Diversion Programs

17. The Committee recommends the agency require circuit public defenders to provide regular input to circuit solicitors on establishing and/or revising diversion programs.¹⁸⁰ As background on pre-trial intervention and diversion programs, the state constitution and case law place the unfettered discretion to prosecute solely in the prosecutor's hands. Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they may simply decide not to prosecute the offense in its entirety.¹⁸¹ Absent a statute to the effect, "a court has no power ...to dismiss a criminal prosecution except at the instance of the prosecutor."¹⁸² Additionally, where a solicitor makes a decision, "such as there shall be no pretrial diversion programs established for summary court cases - that decision is binding and must be followed."¹⁸³

While solicitors are responsible for all diversion and pre-trial intervention programs, the General Assembly has stated its intent is that they are "cost-effective and incentive-based strategies for alternatives to incarceration in order to reduce recidivism and improve public safety."¹⁸⁴ Since the clients of public defenders are eligible for diversion programs, circuit public defenders may have an informed opinion on the types of programs that may or may not be successful in helping reduce recidivism. However, the agency indicates circuit public defenders provide no input into these programs in more than half of the judicial circuits.¹⁸⁵ Appendix B includes information about the involvement, if any, in each judicial circuit. Accordingly, the Committee's recommendation seeks to help continue to grow the success and overall taxpayer cost savings from these programs (i.e., effectiveness) through additional

input from circuit public defenders.¹⁸⁶ Whether to implement any recommendations remains the sole discretion of the elected circuit solicitor.

18. The Committee recommends the General Assembly consider requiring the Commission on Indigent Defense and Commission on Prosecution Coordination to meet on a regular basis to discuss diversion programs and performance of these programs. The Committee recommends the General Assembly consider requiring these commissions to meet at least annually to collaborate and discuss diversion programs, performance of these programs, and ideas for how to continually improve the performance of these programs in reducing recidivism.¹⁸⁷

Transparency

The Committee has **three recommendations related to transparency**, and a summary is set forth in Table 20.

Table 20. Summary of recommendations related to transparency.

Topic	Recommendations
Transparency	19. Post online eligibility qualifications for indigent defense services 20. Post online information for where to submit complaints 21. Post online the agency's annual human resources and funding report

19. The Committee recommends the agency post online eligibility qualifications for indigent defense services. To increase transparency to the public, the Committee recommends the agency list online the qualifications for indigent defense services, which is in addition to referring and linking to the technical language of the court rules.¹⁸⁸

During the study process, an agency representative testifies the agency does not have a checklist an individual can reference to determine if they, or someone they are screening, qualifies for indigent services.¹⁸⁹

20. The Committee recommends the agency post online information for where to submit complaints. To increase transparency to the public, including defendants and their families, the Committee recommends the agency post online information on how and where (e.g., circuit public defender, circuit selection panel, etc.) individuals may submit complaints.¹⁹⁰

The agency's website includes a form individuals may complete and submit to contact the agency as well as the main phone number and addresses for the agency office.¹⁹¹ When the agency receives a complaint, it typically transfers the information to the local circuit public defender in an attempt to first resolve the issue locally.¹⁹² While the agency seeks to resolve issues at the local level first, there is no information on the agency website which instructs individuals to contact the local circuit public defender first, or information that would allow an individual to know which circuit public defender oversees their area. Having this information online may save agency personnel time by providing individuals additional information about steps to follow when submitting complaints.

21. The Committee recommends the agency post its annual human resources and funding report online. To increase transparency to the public, the Committee recommends the agency make its annual human resources and funding report available in electronic format and publish it on the agency’s website. Having this information in electronic format and online may reduce the costs and increase accessibility, as the approximately one hundred page report is currently only available in hard copy format.

Employee Input

The Committee has **two recommendations related to employee input**, and a summary is set forth in Table 21.

Table 21. Summary of recommendations related to employee input.

Topic	Recommendations
Employee input	22. Conduct exit interviews in each circuit public defender office and compile statewide data 23. Allow opportunities for anonymous employee feedback

22. The Committee recommends the agency encourage each public defender to conduct exit interviews and the agency compile statewide data. To help individual circuit public defenders improve recruitment and retention efforts, the Committee recommends the agency encourage each circuit public defender to utilize exit interviews and/or surveys, including the option for the employee to provide information directly to the agency’s commission, if the employee prefers. Further the Committee recommends the circuit public defenders provide this data to the agency, and the agency compile the statewide data obtained from the exit interviews.¹⁹³

During the study process, two of the sixteen circuit public defenders indicate they conduct exit interviews or surveys.¹⁹⁴ However, after implementing the Committee’s recommendation to utilize exit interviews with agency employees, the agency states it is already seeing benefits as all those interviewed provided what the agency considered good suggestions.¹⁹⁵ Based on the benefits the agency is obtaining from exit interviews with its employees, encouraging circuit public defenders to conduct exit interviews may obtain similar benefits in each individual circuit public defender office.

23. The Committee recommends the agency allow anonymous employee feedback. To address issues before they become a crises, the Committee recommends the agency establish a way for current agency employees, as well as staff of individual circuit public defenders, to provide anonymous input directly to the agency’s Commission relating to any concerns they have about either the agency or individual circuits.¹⁹⁶

During the study process, only one of the sixteen circuit public defenders indicated they have an avenue through which employees may submit anonymous feedback.¹⁹⁷ Allowing anonymous feedback may provide a way for circuit public defender staff to communicate issues with their circuit public defenders, if any arise, prior to those issues become a crises.

Indigency Screening

The Committee has **four recommendations related to indigency screening**, and a summary is set forth in Table 22. Indigency screening refers to the process of determining whether an individual qualifies for legal representation from the state (i.e. circuit public defender’s office).

Table 22. Summary of recommendations related to indigency screening.

Topic	Recommendations
Indigency screening	<p>24. Obtain data necessary to estimate the total cost to provide every defendant a public defender which policy makers may utilize when considering indigency screening options</p> <p>25. Consider the feasibility of a data system a magistrate may utilize when screening applicants for indigent defense</p> <p>26. Consider any efficiencies which may be gained from utilizing Department of Employment and Workforce information in the indigency screening process</p> <p>27. Promulgate in regulation a uniform method to screen applicants for indigent defense representation</p>

24. The Committee recommends the agency obtain data necessary to estimate the total cost to provide every defendant a public defender which policy makers may utilize when considering indigency screening options. As background, the Committee finds there is not uniformity across the state with regards to screening for indigent defense representation. Who performs the screening process varies from county to county. Also, the information required from an individual to determine indigency varies from county to county. To help inform policy makers’ ongoing discussions regarding indigency screening processes, the Committee recommends the agency accomplish the following:

- a. Work with the Prosecution Coordination Commission to determine how to annually calculate, going forward, the total number of individuals prosecuted.¹⁹⁸
- b. Estimate the following for each of the next three calendar years, to provide the General Assembly a ceiling for total additional costs if indigency screening were removed completely:
 - o total additional funding needed if each individual prosecuted was assigned a public defender and current public defender caseload was maintained;
 - o potential revenue if the same percentage of indigent application fees that is currently received, were received from all defendants; and
 - o potential revenue if the same percentage of probations were obtained and same percentage of those fees were received, as are currently received.¹⁹⁹

As part of evaluating options, policy makers may seek to know the total costs involved. In analyzing different costs, it may be helpful for policy makers to know the ceiling, or highest potential cost. The highest potential cost occurs when there is no screening and every defendant is provided legal representation from the state.²⁰⁰

To calculate the total cost if every defendant is provided legal representation, the agency must first know the total number of defendants, or individuals prosecuted, each year. While the agency knows the total

number of defendants circuit public defender offices represent each year, it does not have access to the total number of individuals prosecuted each year.²⁰¹ Therefore, to calculate the ceiling for costs, the agency must first work with the Prosecution Coordination Commission to determine the total number of individuals prosecuted each year. After obtaining this information, the agency can move forward in calculating the rest of the costs to provide policy makers an estimate of the total, along with potential offsetting income, if any.

25. *The Committee recommends the agency consider the feasibility of a data system a magistrate may utilize when screening applicants for indigent defense.* The Committee recommends the agency work with applicable entities, to determine the following: (a) if a system could be set up that would run the necessary information from an individual's application for indigent representation, but only show a judge whether the individual does or does not qualify as indigent, without providing the judge access to any other information of the individual; and (b) if it is possible to set up this type of system, (i) how much it would cost initially, and on an ongoing basis, and (ii) if the state could retain the rights over the system so the state could license it to other states, thereby creating a revenue stream to potentially cover any initial or ongoing costs.²⁰²

Since statute does not specify the entity responsible for conducting indigency screening, it is sometimes conducted by magistrate judges. Technology enabling efficient screening of indigents by magistrate judges, while at the same time maintaining a level of privacy for applicants, may be an option policy makers may wish to consider.

26. *The Committee recommends the agency consider any efficiencies which may be gained from utilizing Department of Employment and Workforce information in the indigency screening process.* The Committee recommends the agency further investigate whether utilizing information from the Department of Employment and Workforce (DEW) may provide efficiencies in the indigency screening process, including whether there may be a way for indigent defense applicants to waive privacy or give consent to access their information at DEW.²⁰³

DEW has data that can (1) verify employment, (2) verify reported wages and (3) verify application and receipt of unemployment benefits which is current up to the previous quarter.²⁰⁴ Additionally, the anticipated cost to access the information is only the technology cost on the party performing the screening as the information is web-based.²⁰⁵ While there are some disclosure concerns, there may be a way for an applicant to waive privacy or consent to access to the information.²⁰⁶ Accordingly, further investigation of whether their information may be utilized in the indigency screening process may be beneficial.

27. *The Committee recommends the agency promulgate in regulation a uniform method to screen applicants for indigent defense representation.* To improve transparency, effectiveness, and efficiency of the indigency screening process, the Committee recommends the agency do the following related to screening of applicants for indigent defense representation:²⁰⁷

- a. Outline in regulation a uniform screening process which can be followed by whichever entity a county chooses to conduct the screening. In this process add the amount of the application fee, for those unable to pay it at the time of application, to any costs that are ordered to be

reimbursed after the case. Publish the screening process and definition of indigent on the agency website.

- b. On a regular basis request from each county a list of the entit(ies) responsible for conducting the screening, and in what circumstances each is responsible, if multiple entities are responsible. Publish this information on the agency website and ensure it stays current.
- c. Request the individuals responsible for conducting the screening in each county collect and provide the agency certain data that will allow the agency to track and analyze time, costs, and any other issues relating to the screening process that may assist it when determining if changes are needed in the process.

As background, statute provides the (1) agency is responsible for establishing criteria for determining indigency, (2) clerk of court, or other appropriate official, is responsible for (a) collecting the fee for applying for indigent representation, and (b) maintaining a record of all persons applying and the disposition of the application, and (3) court may waive any application fees or order the applicant to pay their assets or a portion thereof to the agency if it appears the applicant has some assets but they are insufficient to employ private counsel.²⁰⁸ Statute does not explicitly state which entity is responsible for conducting the screening (i.e., applying the criteria for determining indigency set out by the agency). The benefit of the lack of specificity in which entity conducts the screening (and collects the fees and maintains the records on who is applying since statute states clerk of court or other appropriate official), is the flexibility it allows each county to implement a solution that works best for it. The negative to the lack of specificity is lack of uniformity for applicants and the potential that no entity will take responsibility for the duties.

The Committee's recommendation seeks to maintain the flexibility that may allow each county to perform the duties in the most cost-efficient manner, while also providing uniformity for applicants and clarity about which entity or entities is responsible for the duties in each county. Additionally, it builds upon the work the agency has already begun in establishing a workgroup that includes representatives of the clerks of court, circuit public defenders, Department of Probation, Parole, and Pardon, and magistrate court judges to discuss the issues currently surrounding indigency screening and possible options to resolve them.²⁰⁹

Modernization of Statutes

The Committee has **six recommendations to modernize statutes**, and a summary is set forth in Table 23.

Table 23. Summary of recommendations to modernize statutes.

Topic	Recommendations
Modernize statutes	<p><u>Duplicative</u></p> <p>28. Repeal a duplicative statute, S.C. Code Section 17-3-30, relating to applications for indigent representation*</p> <p>29. Repeal a duplicative statute, S.C. Code Section 17-3-40, relating to creation of claims against assets of individuals receiving indigent representation*</p> <p>30. Repeal a duplicative and antiquated statute, S.C. Code Section 17-3-80, and reference to it in other statutes, relating to funds and expenses for appointed counsel and public defenders*</p>
	<p><u>Antiquated</u></p> <p>31. Revise an antiquated statute, S.C. Code Section 17-3-50, relating to determination of fees for appointed counsel and public defenders*</p> <p>32. Repeal an antiquated statute, S.C. Code Section 17-3-85, relating to appropriation of funds prior to creation of the statewide circuit public defender system*</p> <p>33. Repeal an antiquated statute, S.C. Code Section 17-3-90, relating to voucher procedures for payment of services by private appointed counsel*</p>
	<p><u>Correct Scriveners Error in Title</u></p> <p>34. Revise the title of a statute which incorrectly states circuit public defenders are elected by the S.C. Prosecution Commission✓</p>

Table Note: An asterisk (*) indicates General Assembly action is necessary. A check mark (✓) indicates the recommendation has been implemented.

Duplicative

28. The Committee recommends the General Assembly consider repealing a duplicative statute, S.C. Code Section 17-3-30, relating to applications for indigent representation. The Committee recommends the General Assembly consider repealing S.C. Code Section 17-3-30, which addresses applications for indigent representation, as the provisions within it may already be included in S.C. Code Section 17-3-45.²¹⁰ A comparison of the potentially duplicative statutes is in Table 24.

While subsection (c) of S.C. Code Section 17-3-30 is not duplicated in Section 17-3-45, the agency requests deletion of the subsection stating it is vague, lacks clarity, and does not take into account that screening is conducted by several different entities.

Table 24. Potentially duplicative statutes relating to applications for indigent representation.²¹¹

Statute Committee recommends eliminating	Statute in which provisions are also included (see text in bold)
<p>SECTION 17-3-30. Affidavit of inability to employ counsel; payment of indigent's assets to state; application fee; waiver or reduction of fee; disposition of fee revenues; fund for screening applicants.</p> <p>(A) A person to whom counsel has been provided shall execute an affidavit that he is financially unable to employ counsel and that affidavit must set forth all his assets. If it appears that the person has some assets but they are insufficient to employ private counsel, the court, in its discretion, may order the person to pay these assets to the general fund of the State.</p> <p>(B) A forty dollar application fee for public defender services must be collected from every person who executes an affidavit that he is financially unable to employ counsel. The person may apply to the clerk of court or other appropriate official for a waiver or reduction in the application fee. If the clerk or other appropriate official determines that the person is unable to pay the application fee, the fee may be waived or reduced, provided that if the fee is waived or reduced, the clerk or appropriate official shall report the amount waived or reduced to the trial judge upon sentencing and the trial judge shall order the remainder of the fee paid during probation if the person is granted probation. The clerk of court or other appropriate official shall collect the application fee imposed by this section and remit the proceeds to the state fund on a monthly basis. The monies must be deposited in an interest-bearing account separate from the general fund and used only to provide for indigent defense services. The monies shall be administered by the Office of Indigent Defense. The clerk of court or other appropriate official shall maintain a record of all persons applying for representation and the disposition of the application and shall provide this information to the Office of Indigent Defense on a monthly basis</p>	<p>SECTION 17-3-45. Affidavit of assets of persons seeking appointed counsel; application fee; claim against assets and estate of person provided counsel.</p> <p>(A) A person to whom counsel has been provided in any court in this State shall execute an affidavit that the person is financially unable to employ counsel and that affidavit shall set forth all of the person's assets. If it appears that the person has some assets but they are insufficient to employ private counsel, the court, in its discretion, may order the person to pay these assets or a portion thereof to the Office of Indigent Defense.</p> <p>(B) A forty dollar application fee for appointed counsel services must be collected from every person who executes an affidavit that they are financially unable to employ counsel. The person may apply to the court, the clerk of court, or other appropriate official for a waiver or reduction in the application fee. If it is determined that the person is unable to pay the application fee, the fee may be waived or reduced, provided that if the fee is waived or reduced, the clerk or appropriate official shall report the amount waived or reduced to the trial judge and the trial judge shall order the remainder of the fee paid during probation if the person is granted probation or by a time payment method if probation is not granted or appropriate. The clerk of court or other appropriate official shall collect the application fee imposed by this section and remit the proceeds to the Public Defender Application Fund on a monthly basis. The monies must be deposited in an interest-bearing account separate from the general fund and used only to provide for indigent defense services. The monies shall be administered by the Office of Indigent Defense. The clerk of court or other appropriate official shall maintain a record of all persons applying for representation and the disposition of the application and shall provide this information to the Office of Indigent Defense on a monthly basis as</p>

<p>as well as reporting the amount of funds collected or waived.</p> <p>(C) Sufficient funds shall be set aside from allocations provided for the defense of indigent to provide for adequate screening of applications for indigent assistance to ensure the applicant is qualified.</p> <p>HISTORY: 1962 Code § 17-282; 1969 (56) 374; 1977 Act No. 219 Pt II § 19; 1988 Act No. 356, § 1; 1993 Act No. 164, Part II, § 45E; 1994 Act No. 497, Part I, E23-§ 14; 1995 Act No. 145, Part IB, E23-§ 14; 1996 Act No. 458, Part II, § 26B; 1999 Act No. 100, Part II, § 17; 2007 Act No. 108, § 4, eff June 21, 2007.</p>	<p>well as reporting the amount of funds collected or waived.</p> <p>(C) In matters in which a juvenile is brought before a court, the parents or legal guardian of such juvenile shall execute the above affidavit based upon their financial status and shall be responsible for paying any fee. In juvenile matters, the parents or legal guardians of the juvenile, must be advised in writing of this requirement at the earliest stage of the proceedings against the juvenile.</p> <p>(D) Nothing contained in this section restricts or hinders a court from appointing counsel in any emergency proceedings or where there is not sufficient time for an individual to complete the application process.</p> <p>(E) The appointment of counsel creates a claim against the assets and estate of the person who is provided counsel or the parents or legal guardians of a juvenile in an amount equal to the costs of representation as determined by a voucher submitted by the appointed counsel and approved by the court, less that amount that the person pays either to the appointed counsel or defender corporation of the county or counties where he is represented or to the Office of Indigent Defense. The claim shall be filed in the office of the clerk of court in the county where the person is assigned counsel, but the filing of a claim shall not constitute a lien against real or personal property of the person unless, in the discretion of the court, part or all of such claim is reduced to judgment by appropriate order of the court, after serving the person with at least thirty days' notice that judgment will be entered. When a claim is reduced to judgment, it shall have the same effect as judgments, except as modified by this chapter.</p> <p>(F) The court may, in its discretion, order any claim or judgment waived, modified, or withdrawn.</p> <p>HISTORY: 2008 Act No. 353, Section 2, Pt 23I, eff July 1, 2009.</p>
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29. The Committee recommends the General Assembly consider repealing a duplicative statute, S.C. Code Section 17-3-40, relating to creation of claims against assets of individuals receiving indigent representation. The Committee recommends the General Assembly consider eliminating S.C. Code Section 17-3-40, which addresses creation of claims against assets of individuals receiving indigent representation, as the provisions within it are included in S.C. Code Section 17-3-45.²¹²

Subsections A and B of 17-3-40 are combined and repeated in Section 17-3-45(E).²¹³ According to the agency, some of the wording was changed to make the section more understandable and clear. Subsection C of 17-3-40 is repeated verbatim in Section 17-3-45(F).²¹⁴ According to the agency, subsection D was deleted to relieve the judicial department from the duty of administering this section.²¹⁵ Section 17-3-45 is the most recent section which appears to the agency to have been written at the time the public defender system changed to the statewide circuit public defender system.²¹⁶ A comparison of the potentially duplicative statutes is in Table 25.

Table 25. Potentially duplicative statutes relating to creation of claims against assets of individuals receiving indigent representation.²¹⁷

Statute Committee recommends eliminating	Statute in which provisions are also included (see text in bold)
<p>SECTION 17-3-40. Creation of claim against assets and estate of person for whom counsel is provided.</p> <p>(a) The appointment of counsel, as hereinbefore provided, creates a claim against the assets and estate of the person who is provided counsel in an amount equal to the costs of representation as determined pursuant to Sections 17-3-50 and 17-3-80, less that amount that the person pays to the defender corporation of the county or counties wherein he is being represented or the judicial department as provided for in Section 17-3-30.</p> <p>(b) Such claim shall be filed in the office of the clerk of court in the county where the person is assigned counsel, but the filing of a claim shall not constitute a lien against real or personal property of the person unless, in the discretion of the court, part or all of such claim is reduced to judgment by appropriate order of the court, after serving the person with at least thirty days' notice that judgment will be entered. When a claim is reduced to judgment, it shall have the same effect as judgments, except as modified by this chapter.</p> <p>(c) The court may, in its discretion, order any claim or judgment waived, modified or withdrawn.</p> <p>(d) The Judicial Department shall be responsible for administering this section, and all moneys collected hereunder shall be paid over to the Judicial Department.</p>	<p>SECTION 17-3-45. Affidavit of assets of persons seeking appointed counsel; application fee; claim against assets and estate of person provided counsel.</p> <p>(E) The appointment of counsel creates a claim against the assets and estate of the person who is provided counsel or the parents or legal guardians of a juvenile in an amount equal to the costs of representation as determined by a voucher submitted by the appointed counsel and approved by the court, less that amount that the person pays either to the appointed counsel or defender corporation of the county or counties where he is represented or to the Office of Indigent Defense.</p> <p>The claim shall be filed in the office of the clerk of court in the county where the person is assigned counsel, but the filing of a claim shall not constitute a lien against real or personal property of the person unless, in the discretion of the court, part or all of such claim is reduced to judgment by appropriate order of the court, after serving the person with at least thirty days' notice that judgment will be entered. When a claim is reduced to judgment, it shall have the same effect as judgments, except as modified by this chapter.</p> <p>(F) The court may, in its discretion, order any claim or judgment waived, modified, or withdrawn.</p> <p>HISTORY: 2008 Act No. 353, Section 2, Pt 231, eff July 1, 2009.</p>

HISTORY: 1962 Code § 17-283; 1969 (56) 374; 1977 Act No. 219 Part II § 19; 1988 Act No. 356, § 2.	
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30. The Committee recommends the General Assembly consider repealing a duplicative and antiquated statute, S.C. Code Section 17-3-80, and reference to it in other statutes, relating to funds and expenses for appointed counsel and public defenders. In an effort to modernize state statutes, the Committee recommends the General Assembly consider eliminating S.C. Code Section 17-3-80, which relates to funds and expenses for appointed counsel and public defenders.²¹⁸ The agency affirms the defense fund referenced in the statute was established for fiscal year 1969-70 and is no longer funded. Additionally, the agency states expenses of appointed counsel and public defenders are addressed in other code sections and budget provisos, including Proviso 61.1 in the 2018-19 General Appropriations Act, and S.C. Code Sections 17-3-20 and 17-3-50. A comparison of the potentially duplicative statutes is in Table 26.

Further, the Committee recommends the General Assembly also consider removing the reference to this antiquated and duplicative statute in S.C. Code Section 17-3-100.²¹⁹ Proposed language to implement this recommendation is included in Table 27.

Table 26. Duplicative and antiquated statute relating to funds and expenses for appointed counsel and public defenders.²²⁰

Statute Committee recommends eliminating
SECTION 17-3-80. Appropriation for expenses of appointed private counsel and public defenders; restrictions and limitations. In addition to the appropriation as provided by law, there is appropriated for the fiscal year commencing July 1, 1969, the sum of fifty thousand dollars for the establishment of the defense fund which must be administered by the Office of Indigent Defense. This fund must be used to reimburse private-appointed counsel, public defenders, and assistant public defenders for necessary expenses, not to exceed two thousand dollars for each case, actually incurred in the representation of persons pursuant to this chapter, so long as the expenses are approved by the trial judge. No reimbursement may be made for travel expenses except extraordinary travel expenses approved by the trial judge. The total state funds provided by this section may not exceed fifty thousand dollars. HISTORY: 1962 Code § 17-287; 1969 (56) 374; 1977 Act No. 219 Pt II § 19; 1987 Act No. 142 § 1; 1993 Act No. 164, Part II, § 45G.
Relevant other statutes and provisos
Proviso 61.1. (INDEF: Defense of Indigents Formula) The amount appropriated in this act for "Defense of Indigents" shall be apportioned among counties in accord with Section 17-3-330 of the 1976 Code, but on a per capita basis and based upon the most current official decennial census of the United States; provided that no county shall receive funding in an amount less than the amount apportioned to it as of July 1, 2005. The level of contribution of each county as of July 1, 2001, must be maintained. No county shall be permitted to contribute less money than the amount the county contributed in the prior fiscal year. Within the amount of money established for indigent defense services, the State shall set aside \$3,000,000 (Death Penalty Trial Fund) annually for use of the defense in capital cases pursuant to Section 16-3-26 of the 1976 Code, for juveniles facing the possibility of a sentence of life without parole, and for the expenses of the operation of the Commission on Indigent Defense to include salaries and operations expenses of the Death Penalty Trial Division. The State also shall set aside \$2,500,000 annually to pay fees and expenses of private counsel appointed in noncapital cases pursuant to Section 17-3-50 (Conflict Fund). Of the funds generated from the fees imposed under Sections 14-1-206(C)(4), 14-1-207(C)(6) and 14-1-208(C)(6) and the application fee provided in Section 17-3-30(B), on a monthly basis, fifty percent must be deposited into

the Death Penalty Trial Fund, fifteen percent must be deposited into the Conflict Fund, and the remaining funds each month must be apportioned among the counties' public defender offices pursuant to Section 17-3-330. At the end of each fiscal year any leftover funds shall carryover to the next fiscal year. All applications for the payment of fees and expenses in capital cases shall be applied for from the Death Penalty Trial Fund which shall be administered by the Commission on Indigent Defense. All applications for the payment of fees and expenses of private counsel or expenses of public defenders pursuant to Section 17-3-50 shall be applied for from the Conflict Fund administered by the Commission on Indigent Defense. Reimbursement in excess of the hourly rate and limit set forth in Section 17-3-50 is authorized only if the court certifies, in a written order with specific findings of fact, prior to the fees being incurred, that reimbursement in excess of the rates or limit is necessary to provide reimbursement adequate to ensure effective assistance of counsel and reimbursement in excess of the limit is appropriate because the services to be provided are reasonable and necessary. If prior approval by written order of the court is not obtained, no additional fees shall be paid under any circumstances. Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonable and necessary for the representation of the defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall authorize the payment, from funds available to the Commission on Indigent Defense, of fees and expenses not to exceed five hundred dollars as the court considers appropriate. Payment in excess of the five-hundred-dollar limit is authorized only if the court certifies, in a written order with specific findings of fact, prior to the expense being incurred, that payment in excess of the limit is appropriate because the services to be provided are reasonable and necessary to provide adequate defense. Payments shall be made from funds appropriated for this purpose from the Commission of Indigent Defense. If prior approval by written order of the court is not obtained, no additional expenses shall be paid under any circumstances. Indigent defense vouchers authorized in this provision must be reviewed and paid pursuant to procedures and policies established by the Commission on Indigent Defense. The commission shall provide a copy of the established procedures and policies to the Senate Finance Committee and the House Ways and Means Committee.

SECTION 17-3-20. Appointment of counsel for indigents charged with murder; compensation.

In the event any person who shall be charged with murder shall, after investigation by the court, be determined to be unable financially to retain adequate legal counsel, the court shall appoint such qualified and experienced counsel to defend such defendant in the trial of the action.

Such appointed counsel shall be paid such fee and costs as the court shall deem appropriate.

SECTION 17-3-50. Determination of fees for appointed counsel and public defenders; maximum amounts; authorization to exceed maximum; payment for certain services.

(B) Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses not to exceed five hundred dollars as the court considers appropriate.

Table 27. Proposed statutory changes to remove the reference to a duplicative and antiquated statute relating to funds and expenses for appointed counsel and public defenders.²²¹

SECTION 17-3-100. Discretionary authority of judge to appoint counsel is not limited; remuneration and reimbursement.

Nothing herein contained is designed to limit the discretionary authority of a judge to appoint counsel in any case and any such counsel shall be entitled to remuneration and reimbursement as provided in §§ 17-3-50 and 17-3-80 hereof, so long as funds appropriated herein are available therefor.

Antiquated

31. The Committee recommends the General Assembly consider revising an antiquated statute, S.C. Code Section 17-3-50, relating to determination of fees for appointed counsel and public defenders. The Committee recommends the General Assembly consider revising an antiquated statute, S.C. Code Section 17-3-50, relating to determination of fees for appointed counsel and public defenders.²²² The recommendation seeks to conform the language of the statute to budget provisos 61.1 and 61.4 and clarify language to reflect agency procedures and policies.²²³ Proposed language to implement this recommendation, and current law covering appropriation of funds, are included in Table 28.

Table 28. Proposed statutory changes to revise an antiquated statute, S.C. Code Section 17-3-50, relating to determination of fees for appointed counsel and public defenders.²²⁴

Statute Committee recommends revising
<p>SECTION 17-3-50. Determination of fees for appointed counsel and public defenders; maximum amounts; authorization to exceed maximum; payment for certain services.</p> <p>(A) When private counsel is appointed pursuant to this chapter, he must be paid a reasonable fee to be determined on the basis of forty dollars an hour for time spent out of court and sixty dollars an hour for time spent in court. The same hourly rates apply in post-conviction proceedings. Compensation may not exceed three thousand five hundred dollars in a case in which one or more felonies is charged and one thousand dollars in a case in which only misdemeanors are charged. Compensation must be paid from funds available to the Office of Indigent Defense for the defense of indigents represented by court-appointed, private counsel. The same basis must be employed to determine the value of services provided by the office of the public defender for purposes of Section 17-3-40 Section 17-3-45.</p> <p>(B) Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses not to exceed five hundred dollars as the court considers appropriate.</p> <p>(C) Payment in excess of the hourly rates and limits in subsection (A) or (B) is authorized only if the court certifies, in a written order with specific findings of fact, <u>prior to fees or expenses being incurred, that payment in excess of the rates is necessary to provide compensation adequate to ensure effective assistance of counsel and payment in excess of the limit is appropriate because the services provided were reasonably and necessarily incurred. to be provided are reasonable and necessary. If prior approval by written order of the court is not obtained, no additional fees or expenses shall be paid.</u></p> <p>(D) Nothing in this section shall be construed to alter the provisions of Section 17-3-10 concerning those defendants who are entitled to legal representation.</p> <p>HISTORY: 1962 Code § 17-284; 1969 (56) 374; 1993 Act No. 164, Part II, § 45F; 2007 Act No. 108, § 5, eff June 21, 2007.</p>

32. The Committee recommends the General Assembly consider repealing an antiquated statute, S.C. Code Section 17-3-85, relating to appropriation of funds prior to creation of the statewide circuit public defender system. The Committee recommends the General Assembly consider eliminating S.C. Code Section 17-3-85, which relates to appropriation of funds prior to creation of the statewide circuit public defender system.²²⁵ The creation of the statewide circuit public defender system in 2007 replaced the previous system in which some counties had public defender corporations and others did not.²²⁶ According to the agency all counties are now covered by the statewide circuit public defender system, so funds are no

longer appropriated in this manner.²²⁷ Proposed language to implement this recommendation, and current law covering appropriation of funds, are included in Table 29.

Table 29. Proposed statutory changes to eliminate an antiquated statute relating to appropriation of funds prior to creation of the statewide circuit public defender system.²²⁸

Statute Committee recommends eliminating
<p>SECTION 17-3-85. Fiscal year-end disposition of unexpended appropriations for payment of private appointed counsel for counties without public defender corporations.</p> <p>At the end of each fiscal year all funds appropriated for counties without public defender corporations which have not been exhausted shall be combined into one fund and any and all claims of private appointed counsel in other counties remaining unpaid by virtue of the exhaustion of appropriated funds in those respective counties shall be paid on a pro rata basis until such fund is exhausted or until all claims are satisfied. After payment of the above, any funds remaining at the end of a fiscal year maintained by the Judicial Department shall revert to the general fund of the State at the end of that fiscal year.</p>
2018-19 Provisos which cover funding
<p>61.1 (INDEF: Defense of Indigents Formula) The amount appropriated in this act for "Defense of Indigents" shall be apportioned among counties in accord with Section 17-3-330 of the 1976 Code, but on a per capita basis and based upon the most current official decennial census of the United States; provided that no county shall receive funding in an amount less than the amount apportioned to it as of July 1, 2005. The level of contribution of each county as of July 1, 2001, must be maintained. No county shall be permitted to contribute less money than the amount the county contributed in the prior fiscal year. Within the amount of money established for indigent defense services, the State shall set aside \$3,000,000 (Death Penalty Trial Fund) annually for use of the defense in capital cases pursuant to Section 16-3-26 of the 1976 Code, for juveniles facing the possibility of a sentence of life without parole, and for the expenses of the operation of the Commission on Indigent Defense to include salaries and operations expenses of the Death Penalty Trial Division. The State also shall set aside \$2,500,000 annually to pay fees and expenses of private counsel appointed in noncapital cases pursuant to Section 17-3-50 (Conflict Fund). Of the funds generated from the fees imposed under Sections 14-1-206(C)(4), 14-1-207(C)(6) and 14-1-208(C)(6) and the application fee provided in Section 17-3-30(B), on a monthly basis, fifty percent must be deposited into the Death Penalty Trial Fund, fifteen percent must be deposited into the Conflict Fund, and the remaining funds each month must be apportioned among the counties' public defender offices pursuant to Section 17-3-330. At the end of each fiscal year any leftover funds shall carryover to the next fiscal year. All applications for the payment of fees and expenses in capital cases shall be applied for from the Death Penalty Trial Fund which shall be administered by the Commission on Indigent Defense. All applications for the payment of fees and expenses of private counsel or expenses of public defenders pursuant to Section 17-3-50 shall be applied for from the Conflict Fund administered by the Commission on Indigent Defense. Reimbursement in excess of the hourly rate and limit set forth in Section 17-3-50 is authorized only if the court certifies, in a written order with specific findings of fact, prior to the fees being incurred, that reimbursement in excess of the rates or limit is necessary to provide reimbursement adequate to ensure effective assistance of counsel and reimbursement in excess of the limit is appropriate because the services to be provided are reasonable and necessary. If prior approval by written order of the court is not obtained, no additional fees shall be paid under any circumstances. Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonable and necessary for the representation of the defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall authorize the payment, from funds available to the Commission on Indigent Defense, of fees and expenses not to exceed five hundred dollars as the court considers appropriate. Payment in excess of the five-hundred-dollar limit is authorized only if the court certifies, in a written order with specific findings of fact, prior to the expense being incurred, that payment in excess of the limit is appropriate because the services to be provided are reasonable and necessary to provide adequate defense. Payments shall be made from funds appropriated for this purpose from the Commission of Indigent Defense. If prior approval by written order of the court is not obtained, no additional expenses shall be</p>

paid under any circumstances. Indigent defense vouchers authorized in this provision must be reviewed and paid pursuant to procedures and policies established by the Commission on Indigent Defense. The commission shall provide a copy of the established procedures and policies to the Senate Finance Committee and the House Ways and Means Committee.

61.5. (INDEF: Carry Forward) To offset budget reductions, the Commission on Indigent Defense may carry forward and utilize any unencumbered balances available in the Appellate Conflict Fund and the S.C. Appellate Court Rule 608 Appointment Fund at the end of the prior fiscal year.

33. The Committee recommends the General Assembly consider repealing an antiquated statute, S.C. Code Section 17-3-90, relating to voucher procedures for payment of services by private appointed counsel. In an effort to modernize state statutes, the Committee recommends the General Assembly consider eliminating S.C. Code Section 17-3-90, which relates to voucher procedures for payment of services by private appointed counsel.²²⁹ The agency asserts voucher procedures established by orders of the Supreme Court, budget provisos, and agency policies have superseded the procedure set forth in this statute.²³⁰ Proposed language to implement this recommendation, and other relevant authorities, are included in Table 30.

Table 30. Proposed statutory changes to eliminate an antiquated statute relating to voucher procedures for payment of services by private appointed counsel.²³¹

Statute Committee recommends eliminating	Relevant other authorities
<p>SECTION 17-3-90. Vouchers for payment for services by private appointed counsel and for reimbursement of expenses; approval and submission for payment.</p> <p>Private, appointed counsel shall submit a voucher to the Office of Indigent Defense setting forth all details of the appointment for purposes of remuneration pursuant to Section 17-3-50 and reimbursement of expenses pursuant to Section 17-3-80, and the public defender shall do likewise pursuant to Section 17-3-80. It is the duty of the Office of Indigent Defense to present the voucher to the trial judge for approval and to transmit the same to the Comptroller General for payment to the appropriate party.</p>	<p>2018-19 Proviso:</p> <ul style="list-style-type: none"> • 61.1 <p>Supreme Court Orders:</p> <ul style="list-style-type: none"> • Order dated September 29, 2006, published October 2, 2006: Procedures for the Processing of Indigent Defense Vouchers • Memorandum from Chief Justice Toal dated July 8, 2005: Ordering Additional Fees for Investigative, Expert, or Other Services for Appointed Counsel • Memorandum from Chief Justice Toal dated July 6, 2005: Ordering Additional Attorney's Fees for Appointed Counsel <p>Agency Policies:</p> <ul style="list-style-type: none"> • SCCID Voucher Payment Policy (Revised 4-25-2013)

Correct Scriveners Error in Title

34. The Committee recommends the Legislative Council consider revising the title of a statute which incorrectly states circuit public defenders are elected by the S.C. Prosecution Coordination Commission. The Committee recommends the Legislative Council revise the title of S.C. Code Section 17-3-510, which incorrectly states circuit public defenders are elected by the S.C. Prosecution Coordination

Commission.²³² The title currently reads, “Circuit Public Defender Selection Panel; county representation; nomination of Circuit Public Defender; election by South Carolina **Prosecution Coordination Commission.**” (emphasis added). The portion of the title in bold should read “Commission on Indigent Defense.” The Committee has spoken with the Legislative Council, who agrees with the correction, and will ensure it is made in the next publication of the code of laws.²³³

Eliminate

The Committee does not have any specific recommendations with regards to elimination of agency programs.

INTERNAL CHANGES IMPLEMENTED BY AGENCY RELATED TO STUDY PROCESS

During the study process, the agency implements three internal changes directly related to participation in the study process. Those changes include the following:

- implementing an exit interview process for employees that separate from the agency;²³⁴
- creating a resource book, which includes duties of commissioners;²³⁵ and
- posting online minutes from the agency commission meetings.²³⁶

SELECTED AGENCY INFORMATION

S.C. Commission on Indigent Defense. “Program Evaluation Report, 2018.”

[https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Program%20Evaluation%20Report%20\(March%202016,%202018\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Program%20Evaluation%20Report%20(March%202016,%202018).pdf) (accessed October 5, 2018).

S.C. Commission on Indigent Defense. “Restructuring and Seven-Year Plan Report, 2015.”

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/2015AgencyRestructuringandSevenYearPlanReports/2015%20Commission%20on%20Indigent%20Defense.pdf> (accessed October 5, 2018).

S.C. Commission on Indigent Defense, “Annual Restructuring Report (January 20, 2016).”

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/2016%20ARR/2016%20ARR%20-%20Extensions%20-%20Indigent%20Defense.PDF> (accessed October 5, 2018).

S.C. Commission on Indigent Defense, “2015-16 Agency Accountability Report (September 2016).”

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Reports%20&%20Audits%20-%20Reports%20and%20Reviews/Accountability%20Report%20-%202015-2016.pdf> (accessed October 5, 2018).

S.C. Commission on Indigent Defense. “Agency Accountability Report, 2016-2017.”

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Reports%20&%20Audits%20-%20Reports%20and%20Reviews/Accountability%20Report%20-%202016-2017.pdf> (accessed October 5, 2018).

S.C. House of Representatives, Legislative Oversight Committee. “January 23-March 1, 2018 Survey Results.”

https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/LLR/Public_Survey_January_February_2018.PDF (accessed October 5, 2018).

APPENDICES

Appendix A. Statutory Duties of the Commission on Indigent Defense

Table 31 includes a complete list of the statutory duties of the Commission on Indigent Defense and the Office of Indigent Defense.

Table 31. Statutory duties of the Commission on Indigent Defense and the Office of Indigent Defense.

Legal directives for the...	
Commission on Indigent Defense Applicable statutes: S.C. Code Sections 17-3-310; ²³⁷ 17-3-340 ²³⁸	Office of Indigent Defense (OID) Applicable statutes: S.C. Code Sections 17-3-330; ²³⁹ 17-3-360 ²⁴⁰
<u>Operations</u>	
<p>Commission shall...</p> <p><u>In General</u></p> <ul style="list-style-type: none"> • Establish divisions within the office to administer necessary services and programs.²⁴¹ • Act in the best interest of indigent defendants who are receiving legal representation.²⁴² <p><u>Meetings/Officers</u></p> <ul style="list-style-type: none"> • Meet at least quarterly and at other times and places as it deems necessary or convenient for the performance of its duties.²⁴³ • Elect such officers, other than the chairperson, from the members of the commission as it deems necessary.²⁴⁴ • Adopt rules for the transaction of its business as it desires.²⁴⁵ <p><u>Clients and Services</u></p> <ul style="list-style-type: none"> • Develop rules, policies, procedures, regulations, and standards necessary to comply with state law or regulations and the rules of the Supreme Court including: (1) nature and scope of services to be provided; (2) clientele to be served; (3) establishment of criteria to be used in the determination of indigency; and (4) qualifications for services for indigent legal representation.²⁴⁶ • Approve and implement programs, services, rules, policies, procedures, regulations, and standards for determining indigence and for assessing and collecting the costs of legal representation and related services.²⁴⁷ 	<p>OID shall...</p> <p><u>Office Operations</u></p> <ul style="list-style-type: none"> • Administer and coordinate the operations of the office and all divisions within the office.²⁴⁸ • Maintain proper records of all financial transactions related to the operation of the office.²⁴⁹ <p><u>Commission Operations</u></p> <ul style="list-style-type: none"> • Coordinate the development and implementation of rules, policies, procedures, regulations, and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards.²⁵⁰ • Executive director attends commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the director.²⁵¹ • Maintain proper records of all financial transactions related to the operation of the commission.²⁵² • Ensure the expenditures of the commission are not greater than the amounts budgeted or available from other revenue sources.²⁵³ <p><u>Statewide Indigent Defense Services</u></p> <ul style="list-style-type: none"> • Prepare and submit annually to the commission a proposed budget for the provision of statewide indigent defense services; and prepare and submit an annual report containing pertinent data on the operations, costs, and needs of the state's indigent defense system and other information as the commission may require.²⁵⁴ • Distribute funds appropriated by the General Assembly for the defense of indigents.²⁵⁵ • Apply for and accept on behalf of the Commission funds that may become available from any source, including government, nonprofit, or private grants, gifts, or bequests.²⁵⁶ <p>Implement and perform other duties the Commission may direct or assign.²⁵⁷</p>

Legal directives for the...

Commission on Indigent Defense

Applicable statutes: S.C. Code Sections 17-3-310;²³⁷ 17-3-340²³⁸

Office of Indigent Defense (OID)

Applicable statutes: S.C. Code Sections 17-3-330;²³⁹ 17-3-360²⁴⁰

Circuit Public Defender Division

(operates under jurisdiction of the Commission)

Commission shall...

- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for maintaining and operating circuit public defender offices.²⁵⁸
- Establish and administer the rules and procedures for selection of members to serve on the circuit public defender selection panels.²⁵⁹
- Establish the rules and procedures under which the selection panels shall operate.²⁶⁰
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for the qualifications, employment, and compensation of public defenders and other circuit public defender office personnel.²⁶¹
- Assist the public defenders throughout the state in their efforts to provide adequate legal defense to the indigent.²⁶²
- Negotiate and enter into contracts(not required to, but may), as appropriate, with independent counsel for the provision of indigent defense services in cases in which a conflict of interest exists in a public defender office and in other cases in which indigent representation by independent counsel is necessary or advisable.²⁶³

OID shall...

- Supervise compliance among the circuit defender offices with rules, procedures, regulations, and standards adopted by the commission.²⁶⁴
- Provide for the training of attorneys and other staff involved in the legal representation of persons subject to the provisions of this chapter.²⁶⁵

Contract/Appointed Counsel and Conflicts of Interest

Commission shall...

- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for compensation of attorneys appointed to represent indigent persons pursuant to this chapter.²⁶⁶
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for accepting contractual indigent defense representation.²⁶⁷
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for prescribing minimum experience, training, and other qualifications for appointed counsel where a conflict of interest arises between the public defender and an indigent person.²⁶⁸

OID shall...

- Provide for the training of attorneys and other staff involved in the legal representation of persons subject to the provisions of this chapter.²⁶⁹

Legal directives for the...

Commission on Indigent Defense

Applicable statutes: S.C. Code Sections 17-3-310;²³⁷ 17-3-340²³⁸

Office of Indigent Defense (OID)

Applicable statutes: S.C. Code Sections 17-3-330;²³⁹ 17-3-360²⁴⁰

Specialty Work

Commission shall...

Experts and Investigators

- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for providing and compensating experts, investigators, and other persons who provide services necessary for the effective representation of indigent persons.²⁷⁰

Juveniles

- Approve the development and improvement of programs which provide legal representation to indigent persons and juveniles accused of violations of criminal law.²⁷¹

OID shall...

Appeals

- Provide defense to indigents who desire to appeal a conviction in a trial court, or decision of a proceeding in civil commitment or other voluntary placement in a state, county, or municipal facility.²⁷²

Death Penalty

- Provide defense to indigents in death penalty cases.²⁷³

Statistics/Performance

Commission shall...

- Cooperate and consult with state agencies, professional associations, and other groups concerning²⁷⁴
 - Causes of criminal conduct,
 - Rehabilitation and correction of persons charged with and convicted of crimes,
 - Administration of criminal justice, and
 - Improvement and expansion of defender services.
- Collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in the state.²⁷⁵
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for delivery of indigent services. This includes, but is not limited to, standards for:
 - public defender and appointed counsel caseloads, including a uniform definition of a “case” for purposes of determining caseload statistics;
 - performance of public defenders and appointed counsel representing indigent persons;
 - procedures for prescribing qualifications and performance of independent counsel representing indigent persons in both trial and appellate courts, whether by contract or court appointment; and
 - removing a circuit public defender for cause.²⁷⁶

OID shall...

- Coordinate the services of the office with any federal, county, private, or other programs established to provide assistance to indigent persons entitled to representation pursuant to the provisions of this chapter and consult with professional organizations concerning the implementation and improvement of programs for providing indigent services.²⁷⁷
- Serve as a resource for the compilation of accurate statistical data covering the indigent defense system in this state.²⁷⁸
 - Note: This directive only requires the agency to serve as a resource for others who may be compiling information; it does not require the agency to compile information.²⁷⁹ Currently, the only law requiring the agency to compile information is a proviso which requires the agency to compile information on revenue streams and expenditures by circuit.²⁸⁰
- Report annually to the General Assembly on the indigent defense system.²⁸¹

Appendix B. Public Defender Involvement in Diversion Programs

Table 32 includes information about circuit public defender involvement, if any, in diversion programs in each judicial circuit.

Table 32. Circuit public defender involvement, if any, in diversion programs in each judicial circuit.²⁸²

Circuit	Circuit Public Defender involvement in Diversion Programs in their Circuits
<p>1 Calhoun, Dorchester, Orangeburg</p>	<p>1st circuit public defender office has little direct involvement in the diversion programs in their circuit. The exception may be they have a public defender on the Dorchester drug court review and recommendation committee. This group reviews persons enrolled in the program who have not followed all the requirements and recommends their retention or expulsion from the program. The circuit public defender also has a staff person in Orangeburg and Dorchester Counties who seeks alternative sentencing programs for persons with addiction, mental health and vocational issues. While not technically a diversion program it creates alternatives to traditional incarceration for clients by getting them into programs to help treat the underlying issues in their lives.</p>
<p>2 Aiken, Bamberg, Barnwell</p>	<p>2nd circuit public defender office has no input into the structure of the current diversion programs in their circuit. Recently, the circuit public defender office has been asked to attend weekly drug court meetings, so they could advise participants who were being sanctioned or locked up. The circuit public defender office has asked to start a mental health court, but there has been no progress.</p>
<p>3 Clarendon, Lee, Sumter, Williamsburg</p>	<p>3rd circuit public defender office has no input into the structure of the current diversion programs in their circuit.</p>
<p>4 Chesterfield, Darlington, Dillon, Marlboro</p>	<p>4th circuit public defender office has no input into the structure of the current diversion programs in their circuit.</p>
<p>5 Kershaw, Richland</p>	<p>Other than homeless court, the 5th circuit public defender office has no input in the diversion programs in their circuit. The circuit solicitor runs all programs and does not request any input from the circuit public defender.</p>
<p>6 Chester, Fairfield, Lancaster</p>	<p>6th circuit public defender office is involved in the drug court multidisciplinary team, and has input into who gets in the program and the treatment and sanctions imposed on the participant. Other than drug court the circuit public defender has no input in any other diversion program in their circuit.</p>
<p>7 Cherokee, Spartanburg</p>	<p>In Spartanburg County, the circuit public defender had some input in the creation of the drug court program and, most recently, in the juvenile drug court program. But in the 7th circuit, the circuit public defender has no input in other solicitor-run diversion programs, other than negotiations to get their clients in the program. There was an attempt to create a veteran's court program, in which the circuit public defender attempted to get involved. However, when the solicitor's office decided to make it a diversion program run by their office, the circuit public defender had no input, and the solicitor's office has obtained one or two private attorneys to volunteer to represent the clients in the veteran's court. The circuit public defender office is not involved in this program at all.</p>
<p>8 Abbeville, Greenwood, Laurens, Newberry</p>	<p>8th circuit public defender office has no input into the structure of the current diversion programs in their circuit.</p>

Circuit	Circuit Public Defender involvement in Diversion Programs in their Circuits
<p>9 Berkeley, Charleston</p>	<p>In Charleston County, the circuit public defender office is involved in the structure and teamwork supporting the adult drug court, adult mental health court, and the juvenile drug court. The same is true in the Berkeley County adult drug court. Charleston County has an active criminal justice coordinating council. The circuit public defender plays an active role. The circuit public defender has the MacArthur Safety and Justice Initiative funding that has fostered the local police looking for alternatives to arrest. This includes a crisis stabilization center for police calls involving mentally ill persons who can safely be referred to this clinic and then back into the mental health system. The circuit public defender is adding sobering beds for police calls where an intoxicated person can safely be diverted from arrest for drunk calls to a place to sober up. Also, they are advocating for additional probate supervision with mental health for offenders who are mentally ill and incompetent and unable to be restored to competency.</p>
<p>10 Anderson, Oconee</p>	<p>10th circuit public defender office has no input into the structure of the current diversion programs in their circuit. Anderson County has recently formed a criminal justice coordinating council, so the circuit public defender office may be more involved if other diversion programs are created. There is discussion of a mental health court and veterans' court presently.</p>
<p>11 Edgefield, Lexington, McCormick, Saluda</p>	<p>11th circuit public defender office has no input into the structure of the current diversion programs in their circuit.</p>
<p>12 Florence, Marion</p>	<p>12th circuit public defender office has no input in the pre-trial intervention program. However, for the juvenile drug court and adult drug/driving under the influence court the circuit public defender office has an attorney present at the weekly meetings of these courts. As each of the participant's names are brought up and their progress is tracked, the circuit public defender attorney weighs in on discussions concerning the participants' promotion through the program. Alternatively, if a participant has violated the rules and is facing sanctions, the circuit public defender attorney participates in the decision about the appropriate sanction to be faced for the violation.</p>
<p>13 Greenville, Pickens</p>	<p>13th circuit public defender office has no input into the structure of the current diversion programs in their circuit.</p>
<p>14 Allendale, Beaufort, Colleton, Hampton, Jasper</p>	<p>14th circuit public defender office has no input into the structure of the current diversion programs in their circuit.</p>
<p>15 Georgetown, Horry</p>	<p>15th circuit public defender office has no input into the structure of the current diversion programs in their circuit. Horry and Georgetown Counties have the following programs: mental health court, drug court, pre-trial intervention, and life recovery. Only the circuit solicitor can admit a potential defendant even though there are defense attorneys on both the mental health and drug court boards.</p>

Circuit	Circuit Public Defender involvement in Diversion Programs in their Circuits
<p>16 Union, York</p>	<p>16th circuit public defender office has no input into the structure of the current diversion programs in their circuit. This is vastly different from the way the circuit originally set up their drug court back in the mid-1990s. During the inception of the circuit’s drug court, the circuit public defender office was very involved in the process and helped shape not only policy but had input in determining how to handle participants who were struggling in the program. Unfortunately, that is no longer the case. Over the years the circuit solicitor’s office has gained more control over the process, and as a consequence the circuit public defender office’s influence has diminished.</p>

CONTACT INFORMATION

Committee Contact Information

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Telephone: 803-212-6810

Online:

You may visit the South Carolina General Assembly Home Page (<http://www.scstatehouse.gov>) and click on "Citizens' Interest" then click on "House Legislative Oversight Committee Postings and Reports". This will list the information posted online for the Committee; click on the information you would like to review. Also, a direct link to Committee information is <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php>.

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ENDNOTES

¹ Visual Summary Figure 1 is compiled from information in the Commission on Indigent Defense study materials available online under "Citizens' Interest," under "House Legislative Oversight Committee Postings and Reports," and then under "Indigent Defense, Commission on" <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyPHPFiles/IndigentDefense.php> (accessed September 29, 2018).

² S.C. Code of Laws § 2-2-20(C).

³ S.C. House of Representatives, House Legislative Oversight Committee, "Meeting Minutes" (August 14, 2018), under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Indigent Defense, Commission on" and under "Meetings," <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/SubcommitteeMinutes/LawSub/August%2014,%202018%20-%20Meeting%20Minutes.pdf> (accessed October 13, 2018). A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=7461>. Hereinafter, "August 14, 2018, meeting minutes and video."

⁴ August 14, 2018, meeting minutes and video at 1:47:32 in part one of the archived video.

⁵ S.C. House of Representatives, House Legislative Oversight Committee, "Meeting Minutes (October 9, 2018)," under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Indigent Defense, Commission on" and under "Meetings." A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=7461>; minutes will be posted after approval. Hereinafter, "October 9, 2018, meeting video."

⁶ October 9, 2018, meeting video at 0:33 in part two of the archived video.

⁷ Ibid.

⁸ Interview between Mr. Charles Appleby, House Legislative Oversight Committee, and personnel with S.C. Court Administration, Summer 2018.

⁹ Court Rule 608 provides a uniform method for appointing attorneys to represent indigent clients in the South Carolina circuit and family courts, based on statutory and constitutional mandates. The 2012-2013 General

Appropriations Act granted S.C. Commission on Indigent Defense (SCCID) the authority to retain, on a contractual basis, the services of these attorneys. SCCID, in conjunction with the S.C. Bar, established and administers the Rule 608 Contract Program. This contract program provides eligible attorneys to enter into an agreement with SCCID to receive a flat fee per appointed case. The S.C. Bar maintains lists of attorneys who have been certified by the state Supreme Court to serve as lead counsel in death penalty cases, counsel for other criminal cases, or counsel in civil court cases. These lists provide the basis for selecting indigent defense counsel. For further information, see <https://sccid.sc.gov/608-contract> (accessed October 9, 2018). Hereinafter, “Court Rule 608 explanation.”

¹⁰ August 14, 2018, meeting minutes and at 07:20 in part one of the archived video.

¹¹ August 14, 2018, meeting minutes and at 07:20 in part one of the archived video (Information in the book includes, among other things, the statutory duties of the commission.) See also, S.C. Indigent Defense Commission, “Commissioner Resource Book (2018),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on,” under “History and Organization of Agency,” and under “Governing Body,”

[https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Commissioner%20Resource%20Book%20\(2018\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Commissioner%20Resource%20Book%20(2018).pdf) (accessed October 5, 2018).

¹² Prior to study, it only posted them intermittently. As the result of receiving public input on the issue and questions from the Subcommittee, the agency has now published online minutes from all commission meetings from February 27, 2015 to the most recently approved minutes of May 2018.

Public Survey Response on 2/7/2018 at 4:51 PM (Agendas and minutes of commission meetings should be made available online in a manner that is easy to locate.)

See also, S.C. House of Representatives, House Legislative Oversight Committee, “Meeting Minutes” (May 1, 2018), under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on,” and under “Meetings,”

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/May%201,%202018%20-%20Meeting%20Minutes.pdf> (accessed October 4, 2018). A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=8270>. See at 00:40:20 in the archived video

[When looking at your website, I didn’t see anything about the Commissions meetings and meeting minutes? (Rep. Hixon) We are required to post the meetings, so we post them. We try to post them as far out as we can. **We do not put the minutes up there**, but they are kept and are available anytime under FOIA. The agenda is posted at least 48 hours ahead of time. (Executive Director Hugh Ryan)] Hereinafter, “May 1, 2018, meeting minutes and video.”

See also, S.C. House of Representatives, House Legislative Oversight Committee, “Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on,” and under “Correspondence,” (accessed October 12, 2018).

[https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Letter%20from%20SCCID%20to%20Oversight%20Subcommittee%20with%20attachments%20\(Sept.%207,%202018\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Letter%20from%20SCCID%20to%20Oversight%20Subcommittee%20with%20attachments%20(Sept.%207,%202018).pdf). See question three under section of letter titled Agency’s Response to Oversight Subcommittee’s August 17, 2018 Letter (Minutes for all meetings from February 27, 2015 to the most recently-approved minutes of May 19, 2018 have now been posted. They can be accessed from the main [sccid.sc.gov](https://www.sccid.sc.gov) page under “Commission Meetings” “See All.”) Hereinafter, “Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018).”

¹³ S.C. Judicial Department, “Circuit Court Judges,” <https://www.sccourts.org/circuitCourt/circuitMap.cfm> (accessed October 10, 2018).

¹⁴ S.C. House of Representatives, House Legislative Oversight Committee, “Program Evaluation Report (March 16, 2018),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” and under “Indigent Defense, Commission on”

<http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/PER%20-%20Complete%20-%20Commission%20on%20Indigent%20Defense.pdf> (accessed April 16, 2018).

See question six. Hereinafter, “Agency PER.”

¹⁵ Act 164 of 1993. See also, S.C. Code of Laws § 17-3-310.

¹⁶ S.C. Code of Laws § 17-3-330.

¹⁷ 1996-1997 General Appropriations Act, Part IB, Section 14, Proviso 14.1 (INDEF: Defense of Indigents Formula).

¹⁸ 1998-1999 General Appropriations Act, Part IA, Section 35, Legal Aid Funding.

¹⁹ S.C. Code of Laws § 17-3-360.

²⁰ Act 108 of 2007.

²¹ Ibid. See also, S.C. Code of Laws § 17-3-510.

²² U.S. Constitution, Amendment VI and Amendment XIV.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

See also, S.C. Constitution Article 1, Section 3 and section 14, as explanatory end notes)

SECTION 3. Privileges and immunities; due process; equal protection of laws.

The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.)

SECTION 14. Trial by jury; witnesses; defense.

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both. (1970 (56) 2684; 1971 (57) 315.)

²³ Act 108 of 2007.

²⁴ Agency PER. See pp. 6-9.

²⁵ S.C. Code of Laws § 17-3-310.

²⁶ Agency PER. See question seven. See also, Interview between Mr. Charles Appleby, House Legislative Oversight Committee, and personnel with S.C. Indigent Defense Commission, Mr. Hugh Ryan and Mr. Rodney Grizzle, on April 20, 2018. Hereinafter, "April 20, 2018, interview." See also, S.C. Secretary of State, "Commission on Indigent Defense," under "Boards & Commissions Search," http://search.scsos.com/boards_commissions/default.aspx (Accessed September 29, 2018).

²⁷ Agency PER. See Organizational Units Chart.

²⁸ Agency PER. See Question twenty one.

²⁹ S.C. Commission on Indigent Defense, "Election of circuit public defenders by the selection panel (revised and republished April 25, 2008)," under "Committee Postings and Reports," under "House Legislative Oversight Committee," and under "Indigent Defense, Commission on," under "History and Organization of Agency," under "Organization," and under "Circuit Public Defenders,"

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Election%20of%20circuit%20public%20defenders.pdf> (accessed October 10, 2018). Hereinafter, "Election of circuit public defenders by the selection panel (revised and republished April 25, 2008)."

³⁰ S.C. Code of Laws § 17-3-510(C).

³¹ Ibid.

³² Ibid.

³³ Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018). See question one under section of letter titled Agency's Response to Oversight Subcommittee's August 30, 2018 Letter.

³⁴ S.C. Code of Laws § 17-3-510(B). See also, S.C. Code Section 17-3-510 through 17-3-600. Additional information about election of individuals to serve on the local selection panel, as well as election of the circuit public defenders is available on the Committee website. Election of circuit public defenders by the selection panel (revised and republished April 25, 2008). See also, documents on election of circuit public defenders in the same place on the Committee website.

³⁵ S.C. Commission on Indigent Defense, "Human Resources and County Funding Survey (July 1, 2018)," under "Committee Postings and Reports," under "House Legislative Oversight Committee," and under "Indigent Defense, Commission on," under "History and Organization of Agency," and under "Other Employee Information," [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Human%20Resources%20and%20County%20Funding%20Survey%20\(July%201,%202018\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Human%20Resources%20and%20County%20Funding%20Survey%20(July%201,%202018).pdf) (accessed October 10, 2018).

³⁶ Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018). See question two under section of letter titled Agency's Response to Oversight Subcommittee's August 30, 2018 Letter.

³⁷ S.C. House of Representatives, House Legislative Oversight Committee, "Letter from Indigent Defense to Oversight Subcommittee (June 5, 2018)," under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Indigent Defense, Commission on," and under "Correspondence," (accessed October 12, 2018). <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/SCCID%20Response%20Letter%206-5-18.pdf>. See question five. Hereinafter, "Letter from Indigent Defense to Oversight Subcommittee (June 5, 2018)."

³⁸ S.C. Commission on Indigent Defense, "Sample EPMS report for an Attorney II," under "Committee Postings and Reports," under "House Legislative Oversight Committee," and under "Indigent Defense, Commission on," under "History and Organization of Agency," under "Organization," and under "Evaluations of Employees," <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Sample%20EPMS%20report%20-%20Attorney%20II.pdf> (accessed October 10, 2018). See also, similar report for an Administrative Coordinator II in the same place on the Committee website.

³⁹ Agency PER. See Organizational Units Chart.

⁴⁰ August 14, 2018, meeting minutes and at 07:20 in part one of the archived video.

⁴¹ "Capital Trial Division (created July 2018)," under "History and Organization of Agency," under "Organization," and under "Exit Interview Questionnaires," [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Exit%20Interview%20Questionnaire%20\(Capital%20Division\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Exit%20Interview%20Questionnaire%20(Capital%20Division).pdf) (accessed October 10, 2018). See also exit interview questionnaires for Appellate Division and Administrative Division in the same section of the Committee website.

⁴² S.C. Commission on Indigent Defense, "Rule 608 Contract Program," <https://sccid.sc.gov/608-contract> (accessed October 9, 2018).

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid. Additional information, including a summary of the steps related to selection and payment of Rule 608 contract attorneys and sample contracts, are available on the Committee website. "Selection and payment of Rule 608 contract attorneys," under "History and Organization of Agency," under "Organization," and under "Contract Attorneys (Rule 608)," <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Selection%20and%20Payment%20of%20Rule%20608%20Attorneys.pdf> (accessed October 14, 2018). See also sample contract for criminal representation and family court representation in the same section of the Committee website.

⁴⁷ Agency PER. See question eight.

⁴⁸ August 14, 2018, meeting minutes and at 1:42:40 in part one of the archived video.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Additional information on the Committee website applicable to the agency's services and products, includes the following:

- Indigency Screening
 - Model for indigency screening recommended by the agency (September 7, 2018)
- Data Analysis
 - Public Defender Database - Information tracked
 - Human Resources and County Funding Survey (July 1, 2017)
 - Number of cases, clients, charges by county and court type (FY15-16 and 16-17)
 - Year-end Caseload Data Report - Division of Appellate Defense (FY 2017-2018)
 - Year-end Report for the Capital Trial Division (FY 2017-2018)
- Legal Representation
 - Average amount spent by the state, per indigent defendant
 - Procedure for applying for public defender services
 - Affidavit of indigency and application for counsel (current as of May 2018)
 - General Sessions
 - Domestic Relations
 - Juvenile Delinquency
 - Appellate
- Sample Training Materials
 - Guide for Juvenile Defense Attorneys: Representing Children in South Carolina's Family Courts (2013)
 - Training & Resource Manual for Juvenile Defense Attorneys (2014)
 - S.C. Juvenile Collateral Consequences Checklist
 - Abuse and Neglect Hearings Benchbook

Also, on the Committee website, is background information about the criminal justice process including, (a) types of courts, cases heard, and who represents prosecution and defense, (b) types of violations and the different courts in which they can be addressed, and (c) types of cases, including flow charts and actions to seek justice. S.C. Indigent Defense Commission, "Types of courts, cases heard, and who represents prosecution and defense," under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Services and Products of Agency," and under "Overview of Courts, Violations, and Cases," <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Types%20of%20courts,%20cases%20heard,%20and%20who%20represents%20prosecution%20and%20defense.pdf> (accessed October 10, 2018). See also, other information referenced in same section of the Committee website.

⁵² Commission on Indigent Defense, "Fiscal Year 2016-17 Accountability Report," under "Publications," under "Current State Agency Reports," under "State Agency Accountability Reports for Fiscal Year 2016-2017," and under "Indigent Defense, Commission on" <https://www.scstatehouse.gov/reports/aar2017/E230.pdf> (accessed October 1, 2018). See page six.

⁵³ S.C. House of Representatives, House Legislative Oversight Committee, "Revenue and Expenditures for Solicitor and Circuit Public Defender Offices compiled by Oversight Staff - Excel," under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Prosecution Coordination, Commission on," under "Goals, Spending, and Performance of Agency," under "Revenue and Spending," and under "Revenue and expense summary by judicial circuit and county," <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Revenue%20and%20Expenses%20by%20County%20-%20Solicitors%20Office%20and%20Indigent%20Defense.xlsx> (accessed October 10, 2018).

⁵⁴ Ibid.

⁵⁵ Agency PER. See Comprehensive Strategic Finances Chart.

⁵⁶ S.C. Code of Laws § 17-3-45(B). See also, General Appropriations Act, Part 1B, §61.1. See also, Letter from Indigent Defense to Oversight Subcommittee (June 5, 2018).

⁵⁷ Ibid.

⁵⁸ S.C. House of Representatives, House Legislative Oversight Committee, “Meeting Minutes” (April 24, 2018), under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on” and under “Meetings,” <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/MeetingMinutes042418.pdf> (accessed October 13, 2018). A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=7461>. See at 00:42:45 in the archived video. Hereinafter, “April 24, 2018, meeting minutes and video.”

⁵⁹ Ibid. See at 00:40:55 in the archived video.

⁶⁰ Ibid. See at 00:45:00 in the archived video.

⁶¹ Letter from Indigent Defense to Oversight Subcommittee (June 5, 2018). See also, August 14, 2018, meeting minutes and at 42:31 in part two of the archived video.

⁶² Ibid.

⁶³ August 14, 2018, meeting minutes and at 42:31 in part two of the archived video.

⁶⁴ Agency PER. See Strategic Plan Summary Chart.

⁶⁵ Ibid.

⁶⁶ Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018). See question three under section of letter titled Agency’s Response to Oversight Subcommittee’s August 30, 2018 Letter.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid. See question four under section of letter titled Agency’s Response to Oversight Subcommittee’s August 30, 2018 Letter.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid. See question fourteen under section of letter titled Agency’s Response to Oversight Subcommittee’s August 17, 2018 Letter.

⁷⁶ Ibid. See question thirteen under section of letter titled Agency’s Response to Oversight Subcommittee’s August 17, 2018 Letter.

⁷⁷ Ibid.

⁷⁸ Ibid. See question fifteen under section of letter titled Agency’s Response to Oversight Subcommittee’s August 17, 2018 Letter.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid. See question sixteen under section of letter titled Agency’s Response to Oversight Subcommittee’s August 17, 2018 Letter.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Agency PER. See Performance Measures Chart.

⁸⁵ Ibid. See also, Interview between Mr. Charles Appleby, House Legislative Oversight Committee, and personnel with S.C. Indigent Defense Commission, Mr. Hugh Ryan and Mr. Rodney Grizzle, on October 18, 2018 (Some numbers under FY 17-18 updated with end of year numbers).

⁸⁶ S.C. Code of Laws § 2-2-10(1).

⁸⁷ S.C. House of Representatives, House Legislative Oversight Committee, “Meeting Minutes” (December 19, 2017), under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on,” and under “Meetings,” https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/FullCommitteeMinutes/12.19.17_Meeting_Minutes_Full_Comm.pdf (accessed October 1, 2018). A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=7461>. Hereinafter, “December 19, 2017, meeting minutes and video.”

⁸⁸ S.C. House of Representatives, House Legislative Oversight Committee, “Subcommittees -2018,” under “Committee Information,” under “House Legislative Oversight Committee,”

https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/Subcommittee_2018_71518.pdf (accessed October 1, 2018).

⁸⁹ S.C. House of Representatives, House Legislative Oversight Committee, “Restructuring and Seven Year Plan Report” (March 9, 2015), under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on,” and under “Other Reports, Reviews, and Audits,” <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/2015AgencyRestructuringandSevenYearPlanReports/2015%20Commission%20on%20Indigent%20Defense.pdf> (accessed October 1, 2018). Hereinafter, “Restructuring and Seven Year Plan Report (March 9, 2015).”

See also, S.C. House of Representatives, House Legislative Oversight Committee, “2016 Annual Restructuring Report” (January 20, 2016), under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on,” and under “Other Reports, Reviews, and Audits,” <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/2016%20ARR/2016%20ARR%20-%20Extensions%20-%20Indigent%20Defense.PDF> (accessed October 1, 2018).

⁹⁰ S.C. House of Representatives, House Legislative Oversight Committee, “Oversight Reports” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on,” and under “Other Reports, Reviews, and Audits,” <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyPHPFiles/IndigentDefense.php> (accessed October 1, 2018).

⁹¹ S.C. Code of Laws § 1-30-10.

⁹² Restructuring and Seven Year Plan Report (March 9, 2015).

⁹³ Agency PER.

⁹⁴ A brochure about the House Legislative Oversight’s Committee process is available online <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/Brochure%205.18.17.pdf> (accessed October 3, 2018).

Also, there are ongoing opportunities to request notification when meetings are scheduled and to provide feedback about state agencies under study that can be found on the Committee’s website at <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php> (accessed October 3, 2018).

⁹⁵ S.C. House of Representatives, House Legislative Oversight Committee, “Press Release announcing Public Survey (January 23, 2018),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on,” and under “Public Survey and Public Input,” [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ETV/Press%20Release%20Announcing%20Public%20Survey%20\(January%2023,%202018\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ETV/Press%20Release%20Announcing%20Public%20Survey%20(January%2023,%202018).pdf) (accessed October 3, 2018). Hereinafter, “Press Release announcing Public Survey (January 23, 2018).”

⁹⁶ S.C. House of Representatives, House Legislative Oversight Committee, “Survey Results (January 23 – March 1, 2018),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on,” and under “Public Survey and Public Input,” https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/LLR/Public_Survey_January_February_2018.PDF (accessed October 3, 2018). Hereinafter, “Survey Results (January 23 – March 1, 2018).”

⁹⁷ Committee Standard Practice 10.4.

⁹⁸ This text is included in the online survey as seen by survey respondents, and is not available after the survey closes.

⁹⁹ S.C. House of Representatives, House Legislative Oversight Committee, “Submit Public Input,” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” and under “Public Participation” <https://www.research.net/r/ProvideInputtotheSCHouseLegislativeOversightCommittee> (accessed October 3, 2018).

¹⁰⁰ Survey Results (January 23 – March 1, 2018).

¹⁰¹ Ibid.

¹⁰² Committee Standard Practice 10.4.

¹⁰³ S.C. House of Representatives, House Legislative Oversight Committee, “September 20, 2018 Input,” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on,” and under “Public Survey and Public Input,” https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Public%20Input%209_20_18.pdf (accessed October 3, 2018).

¹⁰⁴ Also, the chair of any Committee or Subcommittee meeting has the discretion to allow testimony during meetings.

¹⁰⁵ S.C. House of Representatives, House Legislative Oversight Committee, “Statewide Media Release Inviting the Public to Provide Testimony about Six Agencies Under Study (February 9, 2018)” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on,” and under “Public Survey and Public Input,”

[https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ETV/Statewide%20Media%20Release%20Inviting%20the%20Public%20to%20Provide%20Testimony%20about%20Six%20Agencies%20Under%20Study%20\(February%209,%202018\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ETV/Statewide%20Media%20Release%20Inviting%20the%20Public%20to%20Provide%20Testimony%20about%20Six%20Agencies%20Under%20Study%20(February%209,%202018).pdf) (accessed October 4, 2018).

¹⁰⁶ S.C. House of Representatives, House Legislative Oversight Committee, “Meeting Minutes” (April 26, 2018), under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on,” and under “Meetings,”

[https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/FullCommitteeMinutes/4.26.18%20Meeting%20Minutes%20\[FULL\].PDF](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/FullCommitteeMinutes/4.26.18%20Meeting%20Minutes%20[FULL].PDF) (accessed October 4, 2018). A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=8172>. Hereinafter, “April 26, 2018, meeting minutes and video.”

¹⁰⁷ December 19, 2017, meeting minutes and video.

¹⁰⁸ April 24, 2018, meeting minutes and video.

¹⁰⁹ Ibid.

¹¹⁰ May 1, 2018, meeting minutes and video.

¹¹¹ August 14, 2018, meeting minutes and video.

¹¹² S.C. House of Representatives, House Legislative Oversight Committee, “Meeting Minutes” (August 28, 2018), under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on,” and under “Meetings,”

[https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/SubcommitteeMinutes/LawSub/August%2028,%202018%20-%20Meeting%20Minutes%20\(SCCID\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/SubcommitteeMinutes/LawSub/August%2028,%202018%20-%20Meeting%20Minutes%20(SCCID).pdf) (accessed October 4, 2018). A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=8451>. Hereinafter, “August 28, 2018, meeting minutes and video.”

¹¹³ August 14, 2018, meeting minutes and video at 1:47:32 in part one of the archived video.

¹¹⁴ Ibid.

¹¹⁵ October 9, 2018, meeting video at 0:33 in part two of the archived video.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Interview between Mr. Charles Appleby, House Legislative Oversight Committee, and personnel with S.C. Court Administration, Summer 2018.

¹¹⁹ May 1, 2018, meeting minutes and video at 0:37:05 of the archived video.

¹²⁰ Ibid. See at 00:34:45 in the archived video

¹²¹ Ibid.

¹²² Ibid. See at 00:30:45 and 00:56:05 in the archived video.

¹²³ October 9, 2018, meeting video at 16:56 in part one of the archived video.

¹²⁴ Pertinent portions of S.C. Code of Laws § 2-1-230 are as follows:

(A) With the exception of the Governor's Executive Budget and related documents and telephone directories, **an agency, a department, or an entity of state government required by law to report to the General Assembly shall prepare its report and transmit its report electronically to the Legislative Services Agency (LSA) and to the State Library as provided in Section 60-2-30.** LSA shall notify the members of the General Assembly that the report is available. An agency, a department, or an entity of state government may not provide the General Assembly with hard copies of a publication whether or not the publication, report, or other document is required by law to be furnished to the General Assembly, and a publication only may be provided to a member of the General Assembly if the member requests the publication.

(B) The agency, department, or entity of state government shall transmit these publications to the Legislative Services Agency (LSA) by electronic medium in a format and form pursuant to technical standards as may be established by LSA. **LSA shall make information transmitted available through its network.**

¹²⁵ S.C. Code of Laws §§ 48-52-430; 59-36-70; 57-3-40; 11-53-20; and 24-1-290.

¹²⁶ October 9, 2018, meeting video at 1:05:00 in part one of the archived video.

¹²⁷ Election of circuit public defenders by the selection panel (revised and republished April 25, 2008). See also, S.C. House of Representatives, House Legislative Oversight Committee, "Oath of Office for Circuit Public Defenders," under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Indigent Defense, Commission on," under "History and Organization of Agency," under "Organization," and under "Circuit Public Defenders,"

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Oath%20of%20Office%20for%20Circuit%20Public%20Defenders.pdf> (accessed October 14, 2018).

¹²⁸ October 9, 2018, meeting video at 1:06:20 in part one of the archived video.

¹²⁹ May 1, 2018, meeting minutes and at 00:53:50 in the archived video. See also, S.C. Code of Laws § 17-3-340(l)(5) and (6). See also, S.C. Code of Laws § 17-3-510(c), which states that while circuit public defender selection panels nominate individuals to serve as the circuit public defender, the agency commission has the final vote on whether to accept or reject the nomination. See also, August 28, 2018, meeting minutes and at 24:58 in part one of the archived video.

¹³⁰ August 28, 2018, meeting minutes and at 24:58 in part one of the archived video. See also, May 1, 2018, meeting minutes and at 00:49:40 in the archived video.

¹³¹ August 28, 2018, meeting minutes and at 26:20 in part one of the archived video.

¹³² *Ibid.* See at 45:10 (third circuit public defender thinks a yearly formal evaluation process would benefit him and his attorneys); 51:50 (fourth circuit public defender thinks the evaluations benefit him and his team because employees have input and he gets to ask questions); 1:03:05 (eighth circuit public defender wants to get evaluation system in place); 1:17:33 (tenth circuit public defender testifies formal evaluations are not conducted yet because they were just implemented, but expectation is that it is a two way street of communication, wants a meaningful feedback process); in part three of the archived video.

¹³³ October 9, 2018, meeting video at 1:06:20 in part one of the archived video.

¹³⁴ S.C. Code of Laws § 17-3-520(B)(13).

¹³⁵ August 28, 2018, meeting minutes and at 42:30 (second circuit public defender has an annual evaluation based on Aiken county forms); 51:50 (fourth circuit public defender has annual evaluations and thinks the evaluations benefit him and his team because employees have input and he gets to ask questions); 54:15 (Fifth circuit public defender has formal evaluation process); 58:15 (seventh circuit public defender follows Spartanburg county human resource evaluation process); 1:07:25 (ninth circuit public defender use own customized evaluation format that was adopted by the entire county); 1:21:15 (eleventh circuit public defender use formal evaluation process issued by Lexington County every three and six months for new hires, then annually); 1:27:20 (thirteenth circuit public defender use formal evaluation process required by Greenville county human resources); in part three of the archived video; see also, 43:45 (fifteenth circuit public defender uses formal evaluation process required by Horry county); 39:27 (sixteenth circuit public defender uses formal evaluation process required by York County) in part one of the archived video.

The agency utilizes the following process to evaluate agency employees:

Prior to March 30, 2018 each supervisor was to meet with each of their employees to discuss their respective duties and responsibilities for the performance of their positions within the agency. The supervisor and employee were to work together on defining the success criteria of their position and prepare the planning stage to outline what those success criteria would be for the next year's performance evaluation period. Once the planning stage was complete the employee and supervisor would sign the Employee Performance Management System (EPMS) document as the planning stage portion of the EPMS. At the end of the one-year performance period, March 30, 2019 each supervisor will evaluate each of their employees based upon the agreed upon success criteria to assess how well they did on achieving their goals in the performance of their duties and responsibilities.

See also, Letter from Indigent Defense to Oversight Subcommittee (June 5, 2018); see questions five and six.

¹³⁶ *No formal process:*

August 28, 2018, meeting minutes and at 50:58 (first circuit public defender has no formal evaluation process); 45:10 (third circuit public defender has no standard evaluations but thinks a yearly formal evaluation process would benefit him and his attorneys); 50:58 (sixth circuit public defender has no formal evaluation process but is working

on creating one); 1:03:05 (eighth circuit public defender has no formal evaluation process but wants to get evaluation system in place); 1:17:33 (tenth circuit public defender is implementing formal evaluation process this year; testifies formal evaluations are not conducted yet because they were just implemented, but expectation is that it is a two way street of communication, wants a meaningful feedback process); 1:25:20 (twelfth circuit public defender has no formal evaluation process because it is not required by the counties, but is not opposed to formal evaluations); 1:33:05 (fourteenth circuit public defender has no formal evaluation process, but is working on one) in part three of the archived video.

Currently creating a process:

Ibid. See at 50:58 (sixth circuit public defender has no formal evaluation process but is working on creating one); 1:17:33 (tenth circuit public defender is implementing formal evaluation process this year; testifies formal evaluations are not conducted yet because they were just implemented, but expectation is that it is a two way street of communication, wants a meaningful feedback process); 1:33:05 (fourteenth circuit public defender has no formal evaluation process, but is working on one) in part three of the archived video.

Think a process would be beneficial, or do not oppose a formal process

Ibid. See at 45:10 (third circuit public defender has no standard evaluations but thinks a yearly formal evaluation process would benefit him and his attorneys); 1:03:05 (eighth circuit public defender has no formal evaluation process but wants to get evaluation system in place); 1:25:20 (twelfth circuit public defender has no formal evaluation process because it is not required by the counties, but is not opposed to formal evaluations); in part three of the archived video.

¹³⁷ Act 108 of 2007. See preamble, which is not codified.

¹³⁸ S.C. Code of Laws § 17-3-310(G)(2).

¹³⁹ May 1, 2018, meeting minutes and at 00:03:55 in the archived video.

¹⁴⁰ October 9, 2018, meeting video at 1:03:00 in part one of the archived video.

¹⁴¹ Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018). See question six under section of letter titled Agency's Response to Oversight Subcommittee's August 30, 2018 Letter.

¹⁴² October 9, 2018, meeting video.

¹⁴³ Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018). See question six under section of letter titled Agency's Response to Oversight Subcommittee's August 30, 2018 Letter.

¹⁴⁴ S.C. House of Representatives, House Legislative Oversight Committee, "Letter from SCCPC to Oversight Subcommittee (July 16, 2018)," under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Prosecution Coordination Commission," and under "Correspondence," [http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Letter%20from%20SCCPC%20to%20Oversight%20Subcommittee%20with%20attachments%20\(July%2016,%202018\).pdf](http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Letter%20from%20SCCPC%20to%20Oversight%20Subcommittee%20with%20attachments%20(July%2016,%202018).pdf) (accessed July 18, 2018). See question 11a. (The Prosecution Coordination Commission obtains the data from the monthly and annual Court Administration reports posted on the Judicial Department's website, and from sending requests to Court Administration for specific data searches. The types of data Court Administration collects, which the Prosecution Coordination Commission currently utilizes, includes the following: (a) pending cases, (b) number of cases disposed of, (c) number of cases added, and (d) time between arrest and disposition.)

¹⁴⁵ Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018). See question six under section of letter titled Agency's Response to Oversight Subcommittee's August 30, 2018 Letter.

¹⁴⁶ October 9, 2018, meeting video at 1:16:00 in part one of the archived video.

¹⁴⁷ August 28, 2018, meeting minutes and at 50:58 in part one of the archived video and at 42:30 and 45:10 in part three of the archived video.

¹⁴⁸ Ibid. See at 43:45 and 50:58 in part one of the archived video.

¹⁴⁹ October 9, 2018, meeting video at 14:10 in part one of the archived video.

¹⁵⁰ Ibid.

¹⁵¹ August 28, 2018, meeting minutes and at 24:15 in part one of the archived video.

¹⁵² Ibid. See at 22:50 in part one of the archived video.

¹⁵³ Court Rule 608 explanation.

¹⁵⁴ October 9, 2018, meeting video at 07:01 in part one of the archived video.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ August 28, 2018, meeting minutes and at 25:00 in part three of the archived video.

¹⁵⁹ May 1, 2018, meeting minutes and at 00:57:45 in the archived video.

¹⁶⁰ October 9, 2018, meeting video at 1:20:00 in part one of the archived video.

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ May 1, 2018, meeting minutes and at 00:53:50 in the archived video. See also, S.C. Code of Laws § 17-3-340(1)(5) and (6). See also, S.C. Code of Laws § 17-3-510(c), which states that while circuit public defender selection panels nominate individuals to serve as the circuit public defender, the agency commission has the final vote on whether to accept or reject the nomination.

¹⁶⁴ S.C. Code of Laws § 17-3-310(5).

¹⁶⁵ S.C. House of Representatives, House Legislative Oversight Committee, “Non-Capital Public Defenders and Assigned Counsel (effective July 1, 2013),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on,” under “Goals, Spending, and Performance of Agency,” and under “Performance,”

[https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDe](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Non-Capital%20Performance%20Standards%20for%20Public%20Defenders%20and%20Assigned%20Counsel%20as%20adopted%20by%20SCCID%206-7-2013%20with%20revised%20Preamble%208-22-2.pdf)

[fense/Non-Capital%20Performance%20Standards%20for%20Public%20Defenders%20and%20Assigned%20Counsel%20as%20adopted%20by%20SCCID%206-7-2013%20with%20revised%20Preamble%208-22-2.pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Non-Capital%20Performance%20Standards%20for%20Public%20Defenders%20and%20Assigned%20Counsel%20as%20adopted%20by%20SCCID%206-7-2013%20with%20revised%20Preamble%208-22-2.pdf) (accessed October 1, 2018). See also, S.C. House of Representatives, House Legislative Oversight Committee, “Juvenile Representation (effective July 1, 2013)” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Indigent Defense, Commission on,” under “Goals, Spending, and Performance of Agency,” and under “Performance,”

[https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDe](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Juvenile%20Representation%20Performance%20Standards%20as%20adopted%20by%20SCCID%206-7-2013%20With%20Preamble%20Disclaimer%208-22-2013.pdf)

[fense/Juvenile%20Representation%20Performance%20Standards%20as%20adopted%20by%20SCCID%206-7-2013%20With%20Preamble%20Disclaimer%208-22-2013.pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Juvenile%20Representation%20Performance%20Standards%20as%20adopted%20by%20SCCID%206-7-2013%20With%20Preamble%20Disclaimer%208-22-2013.pdf) (accessed October 1, 2018).

¹⁶⁶ October 9, 2018, meeting video at 1:20:00 in part one of the archived video.

¹⁶⁷ August 28, 2018, meeting minutes and at 2:30 in part two of the archived video through 40:34 in part three of the archived video.

¹⁶⁸ North Carolina Court System Office of Indigent Defense Services, under “Research & Reports,” under “Systems Evaluation Project,” under “Performance Measures,” and under “Case Outcome Data and KPI Toolkit,”

<http://www.ncids.org/Systems%20Evaluation%20Project/CaseOutcome/TOC.html> (accessed October 1, 2018); see also, The North Carolina Court System Office of Indigent Defense Services website, under “Research & Reports,” under “Systems Evaluation Project,” under “Performance Measures,” and under “Access to Attorneys Data and KPI Toolkit,” <http://www.ncids.org/Systems%20Evaluation%20Project/Access/TOC.html> (accessed October 1, 2018).

The agency asserts it is different than a lot of agencies and cannot use guilty verdicts versus non-guilty verdicts to measure success. However, this recommendation does not seek to measure an individual attorney’s performance on each case. Instead, it seeks to examine the performance of an entire circuit public defender’s office in the aggregate.

Using aggregated data in the legal field, instead of individual case data, is similar to how it is used in the medical field, where each patient’s case, like each legal case, may be slightly different, with numerous factors in play. A successful outcome for one patient may be complete recovery, while for another patient it may be losing a finger, instead of their entire hand. Hospitals add and eliminate different professionals, programs, and equipment in an effort to improve their success rates for different outcomes. The success rates for these different outcomes are what individuals, who require surgeries, research when determining which hospitals they want to treat them and whether those hospitals are providing adequate health care.

In this same light, the state invests money to ensure indigent individuals are provided quality legal representation. In order to objectively analyze if each office, and public defenders statewide, need to add or eliminate different programs, equipment, and professionals, policy makers need to know what outcomes circuit public defenders are

striving to obtain. Once policy makers know the desired outcomes, the agency can track data to determine which circuits are obtaining these outcomes, figure out ways to help the other circuits, and help the criminal justice process statewide, continually improve. There may be several metrics utilized for different types of cases (e.g., adult versus juvenile, first time versus repeat offender, felony versus misdemeanor, etc.) but having some uniform metrics utilized across all circuits, may best allow for comparison from circuit to circuit and county to county.

The agency does not need to re-invent the wheel when determine different metrics, as it was provided information from North Carolina's Indigent Defense Services' two year research study on potentially beneficial metrics for indigent defense services. Additionally, North Carolina has documents that provide step-by-step explanations of how to implement the process and begin tracking the data.

¹⁶⁹ October 9, 2018, meeting video at 1:21:53 in part one of the archived video.

¹⁷⁰ Ibid.

¹⁷¹ August 28, 2018, meeting minutes and at 50:58 in part one of the archived video and 1:07:25 in part three of the archived video.

¹⁷² October 9, 2018, meeting video at 1:24:24 in part one of the archived video.

¹⁷³ August 28, 2018, meeting minutes and at 1:10:16 in part three of the archived video.

¹⁷⁴ Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018). See question seven under section of letter titled Agency's Response to Oversight Subcommittee's August 30, 2018 Letter.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ October 9, 2018, meeting video at 10:30 in part one of the archived video.

¹⁷⁸ Ibid.

¹⁷⁹ Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018). See question five under section of letter titled Agency's Response to Oversight Subcommittee's August 30, 2018 Letter. The Commission on Indigent Defense utilizes its statewide case management system to obtain the current information in the human resources and funding survey from each of the circuit public defenders. SCCID sends the human resources survey to the circuit public defender offices around July 1 each year and requires they complete and submit it for review by August 1 of each year. The information contained in the survey is based on the prior year's actual numbers since the close of the fiscal year is June 30.

¹⁸⁰ October 9, 2018, meeting video at 11:20 in part one of the archived video.

¹⁸¹ State v. Needs (S.C. 1998) 333 S.C. 134, 508 S.E.2d 857, rehearing denied.

¹⁸² State v. Ridge, 269 S.C. 61, 236 S.E.2d 401 (1977), citing to State v. Brittan, 263 S.C. 363, 210 S.E.2d 600 (1974). See also Op. S.C. Attorney General 1999 WL 1390355 (November 29, 1999) ("The determination to proceed with criminal charges is a function of the executive branch of government, not the judicial branch. State v. Tootle, 330 S.C. 512, 500 S.E.2d 481 (1998) (stating that "judicial discretion cannot be substituted for that of an executive body.") As a general rule, the prosecuting officer's decisions to prosecute and dismiss are almost entirely within his discretion.")

¹⁸³ Op. S.C. Attorney General, 2018 WL 3494001 (July 3, 2018); see also, Order of Chief Justice re Pretrial Diversion Programs, September 12, 2003 ("THEREFORE, IT IS ORDERED THAT pursuant to S.C. Code Ann. Section 17-22-10 et. seq., only solicitors of this State are authorized to establish a pretrial intervention program. Accordingly, no other agency, municipality, county government or member of the judiciary, either circuit, municipal, or magistrate, shall establish, recognize by use refer or permit the referral of any offender to any other pretrial intervention or other diversion' program resulting in the non-criminal disposition of any offense not addressed in this Order or approved by the solicitor. Only solicitors are statutorily authorized to effect a non-criminal disposition of a charge pending against an offender in the event that offender successfully completes an authorized pretrial intervention program. According, a magistrate, municipal, or circuit court judge has no authority to effect a non-criminal disposition of any charge based on the completion of a diversion program without the consent of the solicitor. Finally, no magistrate, municipal, or circuit court judge shall issue an order directing the destruction of any official records relating to an offender's arrest without the written consent of the solicitor or his designee verifying the offender has successfully completed the pretrial intervention program operated by the solicitor or any other diversion program that has been-approved for use by the solicitor.") Hereinafter, "July 3, 2018, Attorney General Opinion."

¹⁸⁴ Act 273 of 2010 (Omnibus Crime Reduction and Sentencing Reform Act), Part II, § 44.

¹⁸⁵ Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018). See question four under section of letter titled Agency’s Response to Oversight Subcommittee’s August 17, 2018 Letter.

¹⁸⁶ S.C. House of Representatives, House Legislative Oversight Committee, “Meeting Minutes” (September 18, 2018), under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Prosecution Coordination, Commission on” and under “Meetings,” <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/SubcommitteeMinutes/LawSub/September%2018,%202018%20-%20Meeting%20Minutes.pdf> (accessed October 12, 2018). A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=7461>. See video at 1:49:28 [“I think most people will tell you, you know nationwide they’re successful. But they reduce everything, they reduce court time, they reduce backlog, they reduce... Jail time? You know the idea is that they reduce recidivism. So that it makes our community a safer place and we don’t have them coming back and breaking into somebody’s house the next month...If they’re not in that drug court program they’re going to prison, and we’re all going to pay for them in prison.” - Solicitor Stone] and 2:11:29 part 1 in the archived video. See also, S.C. House of Representatives, House Legislative Oversight Committee, “Letter from Prosecution Coordination to Oversight Subcommittee (September 13, 2018),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Prosecution Coordination, Commission on,” and under “Correspondence,” [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Letter%20from%20Prosecution%20Coordination%20to%20Oversight%20Subcommittee%20\(Sept.%2013,%202018\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Letter%20from%20Prosecution%20Coordination%20to%20Oversight%20Subcommittee%20(Sept.%2013,%202018).pdf) (accessed October 12, 2018). See question fourteen.

¹⁸⁷ October 9, 2018, meeting video at 11:20 in part one of the archived video.

¹⁸⁸ Ibid. See also, S.C. Code of Laws § 17-3-10, which states an attorney will be appointed when “it is determined that the person is financially unable to retain counsel.” There is no statute or regulation which defines under what circumstances a person is determined financially unable. These qualifications are listed in a rule promulgated by the Supreme Court of South Carolina, Rule 602. If an individual is able to get this far in their research, they will find the following technical language in the last two sentences of subsection (b):

In making a determination whether a person is indigent, all factors concerning the person’s financial condition should be considered including income, debts, assets and family situation. A presumption that the person is indigent shall be created if the person’s net family income is less than or equal to the Poverty Guidelines established and revised annually by the United States Department of Health and Human Services and published in the Federal Register. Net income shall mean gross income minus deductions required by law.

¹⁸⁹ August 14, 2018, meeting minutes and at 1:45:20 in part two of the archived video.

¹⁹⁰ October 9, 2018, meeting video at 1:03:31 in part one of the archived video.

¹⁹¹ S.C. Indigent Defense Commission, “Contact SCCID,” under “Contact” on the main page; <https://sccid.sc.gov/contact> (accessed October 1, 2018).

¹⁹² August 28, 2018, meeting minutes and at 32:40 in part one of the archived video.

¹⁹³ October 9, 2018, meeting video at 1:18:00 in part one of the archived video.

¹⁹⁴ August 28, 2018, meeting minutes and at 37:06 in part one of the archived video.

¹⁹⁵ August 14, 2018, meeting minutes and at 32:15 in part one of the archived video and 08:20 in part two of the archived video

¹⁹⁶ October 9, 2018, meeting video at 15:32 in part one of the archived video.

¹⁹⁷ August 28, 2018, meeting minutes and at 37:29 in part one of the archived video.

¹⁹⁸ October 9, 2018, meeting video at 1:28:00 in part one of the archived video.

¹⁹⁹ Ibid.

²⁰⁰ According to the agency, the indigent defense application fee is only collected in about 25% of cases, since judges can waive it. The amount collected totals approximately \$600,000 per year.

²⁰¹ Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018). See question seventeen under section of letter titled Agency’s Response to Oversight Subcommittee’s August 17, 2018 Letter.

²⁰² August 14, 2018, meeting minutes and video.

²⁰³ October 9, 2018, meeting video at 1:29:55 in part one of the archived video. During the study process, at the request of the Subcommittee, the agency communicated with several entities to determine if they have data that may be accessible for screening purposes, including the Department of Social Services, Department of Revenue, Department of Insurance, and Department of Employment and Workforce (DEW). All of the entities, except DEW,

either did not have information that would assist in the process, or had such tight constraints on access that use with indigency screening was highly unlikely.

²⁰⁴ Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018). See question 20 under section of letter titled Agency's Response to Oversight Subcommittee's August 17, 2018 Letter.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ October 9, 2018, meeting video at 1:30:55 in part one of the archived video.

²⁰⁸ S.C. Code of Laws §§ 17-3-45 and 17-3-310(G)(2).

²⁰⁹ Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018). See question twenty five under section of letter titled Agency's Response to Oversight Subcommittee's August 17, 2018 Letter.

²¹⁰ May 1, 2018, meeting minutes and video.

²¹¹ Agency PER. See Law Changes section.

²¹² May 1, 2018, meeting minutes and video.

²¹³ Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018). See question two under section of letter titled Agency's Response to Oversight Subcommittee's August 17, 2018 Letter.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Agency PER. See Law Changes section.

²¹⁸ October 9, 2018, meeting video at 1:00:55 in part one of the archived video.

²¹⁹ Ibid.

²²⁰ Agency PER. See Law Changes section.

²²¹ Ibid.

²²² October 9, 2018, meeting video at 1:00:55 in part one of the archived video.

²²³ Agency PER. See Law recommendations section, recommendation three.

²²⁴ Agency PER. See Law Changes section.

²²⁵ October 9, 2018, meeting video at 1:00:55 in part one of the archived video.

²²⁶ Agency PER. See Law recommendations section, recommendation five.

²²⁷ Ibid.

²²⁸ Agency PER. See Law Changes section.

²²⁹ October 9, 2018, meeting video at 1:00:55 in part one of the archived video.

²³⁰ Agency PER. See Law recommendations section, recommendation six.

²³¹ Agency PER. See Law Changes section.

²³² October 9, 2018, meeting video at 1:00:55 in part one of the archived video.

²³³ Interview with Ms. Ashley Harwell-Beach, Acting Code Commissioner and Director, S. C. Legislative Council, and Mr. Charles Appleby, House Legislative Oversight Committee, on October 3, 2018.

²³⁴ August 14, 2018, meeting minutes and at 07:20 in part one of the archived video.

²³⁵ August 14, 2018, meeting minutes and at 07:20 in part one of the archived video (Information in the book includes, among other things, the statutory duties of the commission.) See also, S.C. Indigent Defense Commission, "Commissioner Resource Book (2018)," under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Indigent Defense, Commission on," under "History and Organization of Agency," and under "Governing Body,"

[https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Commissioner%20Resource%20Book%20\(2018\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Commissioner%20Resource%20Book%20(2018).pdf) (accessed October 5, 2018).

²³⁶ Prior to study, it only posted them intermittently. As the result of receiving public input on the issue and questions from the Subcommittee, the agency has now published online minutes from all commission meetings from February 27, 2015 to the most recently approved minutes of May 2018.

Public Survey Response on 2/7/2018 at 4:51 PM (Agendas and minutes of commission meetings should be made available online in a manner that is easy to locate.)

See also, May 1, 2018, meeting minutes and video at 00:40:20 in the archived video (When looking at your website, I didn't see anything about the Commissions meetings and meeting minutes? (Rep. Hixon) We are required to post

the meetings, so we post them. We try to post them as far out as we can. **We do not put the minutes up there**, but they are kept and are available anytime under FOIA. The agenda is posted at least 48 hours ahead of time.)

See also, Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018), question three (Minutes for all meetings from February 27, 2015 to the most recently-approved minutes of May 19, 2018 have now been posted. They can be accessed from the main sccid.sc.gov page under "Commission Meetings" "See All.")

²³⁷ S.C. Code of Laws § 17-3-310. Commission created; appointment of members; terms; powers and duties.

(A) There is created the Commission on Indigent Defense consisting of thirteen members.

(B) Nine members shall be appointed by the Governor as follows: (1) One member from each of the four judicial regions of the State appointed upon recommendation of the South Carolina Public Defender Association. Members shall serve for terms of four years and until their successors are appointed and qualify. Vacancies must be filled in the manner of original appointment for the unexpired portion of the term. A person may not be appointed to the commission pursuant to the provisions of this item or, once appointed pursuant to the provisions of this item, may not continue to serve on the commission unless the person is a public defender. (2) A member of the South Carolina Bar whose practice is principally in family law, appointed upon recommendation by the South Carolina Bar membership for a term of two years and who may be reappointed. (3) Two members of the South Carolina Bar whose practice is principally in criminal defense law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for a term of two years and may be reappointed. (4) Two members of the South Carolina Bar whose practice is principally neither criminal defense nor family law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for two-year terms and who may be reappointed.

(C) The remaining four members must be appointed as follows: (1) two members appointed by the Chief Justice of the South Carolina Supreme Court, one of whom must be a retired circuit court judge and one of whom must be either a retired family court judge or a retired appellate court judge, each of whom shall serve for a term of four years and until a successor is appointed and qualifies; and (2) the Chairmen of the Senate and House Judiciary Committees, or their legislative designees, for the terms for which they are elected.

(D) The chairman must be elected by the commission from its membership and shall serve for a term of two years. A chairman may be re-elected.

(E) Members currently serving as of July 1, 2005, shall continue to serve until the expiration of their term and may be reappointed as provided in subsection (B)(1).

(F) The commission may adopt an appropriate seal and promulgate regulations consistent with the provisions of this article to govern its operations and procedures and shall supervise the operations of the Office of Indigent Defense including all the divisions of the office.

(G) The commission: (1) may establish divisions within the office to administer the services and programs as it considers necessary to fulfill the purposes of this article; (2) shall develop rules, policies, procedures, regulations, and standards as it considers necessary to carry out the provisions of the article and comply with state law or regulations and the rules of the Supreme Court, including the nature and scope of services to be provided, the clientele to be served, and the establishment of criteria to be used in the determination of indigency and qualifications for services for indigent legal representation; (3) shall cooperate and consult with state agencies, professional associations, and other groups concerning the causes of criminal conduct, the rehabilitation and correction of persons charged with and convicted of crimes, the administration of criminal justice, and the improvement and expansion of defender services; (4) shall assist the public defenders throughout the State in their efforts to provide adequate legal defense to the indigent. This assistance includes, but is not limited to: (a) the preparation and distribution of a basic defense manual and other educational materials; (b) the preparation and distribution of model forms and documents employed in indigent defense; (c) the promotion of and assistance in the training of indigent defense attorneys; (d) the provision of legal research assistance to public defenders; and (e) the provision of other assistance to public defenders as may be authorized by law; (5) shall collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in

the State; and (6) shall have the authority to negotiate and enter into contracts, as appropriate, with independent counsel for the provision of indigent defense services in cases in which a conflict of interest exists in a public defender office and in other cases in which indigent representation by independent counsel is necessary or advisable. This authority may be delegated by the commission to a circuit public defender, but is at all times subject to standards established by the commission. (7) The commission shall establish and administer the rules and procedures for selection of members to serve on the Circuit Public Defender Selection Panels, and shall establish the rules and procedures under which the selection panels shall operate.

²³⁸ S.C. Code of Laws § 17-3-340. Duties of commission.

(A) All members of the commission shall at all times act in the best interest of indigent defendants who are receiving legal representation pursuant to the provisions of this chapter.

(B) All members of the commission are entitled to vote on all matters before the commission unless otherwise provided by law or by rules adopted by the commission concerning conflicts of interest.

(C) Each member of the commission shall serve until a successor has been appointed. Removal of commission members is for cause and must be in accordance with policies and procedures adopted by the commission.

(D) Unless otherwise provided in this article, a quorum is a majority of the members of the commission who are currently serving in office, and decisions of the commission are determined by majority vote of the members present, except that a majority of the entire commission must approve the appointment or removal of a circuit public defender or the executive director for cause.

(E) The commission shall meet at least quarterly and at other times and places as it deems necessary or convenient for the performance of its duties and shall keep and maintain minutes of all commission meetings.

(F) The commission shall elect such officers, other than the chairperson, from the members of the commission as it deems necessary and shall adopt rules for the transaction of its business as it desires. Elected officers shall serve for a term of one year and may be removed without cause by a vote of two-thirds of the members of the entire commission and for cause by a majority vote of the entire commission. The chairperson shall retain a vote on all matters except those in which the chairperson has a conflict of interest.

(G) The members of the commission shall receive no compensation for their services but will be reimbursed for their actual expenses incurred in the performance of their duties as members of the commission. Expenses incurred by the commission must be paid from the general operating budget of the commission.

(H) The commission shall approve the development and improvement of programs which provide legal representation to indigent persons and juveniles accused of violations of criminal law.

(I) The commission shall approve and implement programs, services, rules, policies, procedures, regulations, and standards as may be necessary or advisable to fulfill the purposes and provisions of this article in the delivery of indigent services. This includes, but is not limited to, standards for: (1) maintaining and operating circuit public defender offices, including requirements regarding qualifications, training, and size of the legal and support staff of the offices and access to data and records, including business records, in each circuit public defender office; (2) prescribing minimum experience, training, and other qualifications for appointed counsel where a conflict of interest arises between the public defender and an indigent person; (3) public defender and appointed counsel caseloads; (4) the qualifications, employment, and compensation of public defenders and other circuit public defender office personnel, based on job description, education, training, and experience; (5) the performance of public defenders and appointed counsel representing indigent persons; (6) procedures for prescribing qualifications and performance of independent counsel representing indigent persons in both trial and appellate courts, whether by contract or court appointment; (7) providing and compensating experts, investigators, and other persons who provide services necessary for the effective representation of indigent persons; (8) determining indigence and for assessing and collecting the costs of legal representation and related services; (9) compensation of attorneys appointed to represent indigent persons pursuant to this chapter; (10) removing a circuit public defender for cause;

(11) a uniform definition of a "case" for purposes of determining caseload statistics; and (12) accepting contractual indigent defense representation.

²³⁹ S.C. Code of Laws § 17-3-330. Duties of Office of Indigent Defense.

(A) The Office of Indigent Defense shall: (1) serve as the entity which distributes all funds appropriated by the General Assembly for the defense of indigents, including funds allocated to public defender offices pursuant to the formula, funds for the defense of capital cases, funds for attorney's fees and expenses in non-capital cases, and other funds appropriated for these purposes; (2) perform those functions provided pursuant to Section 17-3-360; (3) serve as a resource for the compilation of accurate statistical data covering the indigent defense system in this State; (4) implement other duties the commission may direct; and (5) report annually to the General Assembly on the indigent defense system.

(B) On or about June thirtieth of each year, if the Office of Indigent Defense determines, after taking into consideration all outstanding obligations against the fund for payment of attorney fees and expenses in non-capital cases, that unexpended funds remain, these funds shall be rolled over into the fund for payment of attorney's fees and expenses in capital cases; provided, however, this shall occur only in the event the funds in the capital fund have been exhausted at that time. This fund shall at no time exceed three million dollars.

(C) Notwithstanding another provision of law, only attorneys who are licensed to practice in this State and residents of this State may be appointed by the court and compensated with funds appropriated to the Death Penalty Trial Fund in the Office of Indigent Defense.

²⁴⁰ S.C. Code Ann. 17-3-360. Division of Appellate Defense created; administration and staffing; duties and responsibilities.

(A) There is created within the Office of Indigent Defense, the Division of Appellate Defense. All of the allied, advisory, affiliated, or related entities as well as the employees, funds, property, and all contractual rights and obligations associated with the commission and Office of Appellate Defense formerly provided in Chapter 4, Title 17 are transferred to and incorporated in and must be administered as part of the Office of Indigent Defense.

(B) The division must be administered by a chief attorney. The staff of the division shall consist of additional attorneys and administrative, investigative, secretarial, and clerical employees necessary to discharge the duties of the division. No person may be hired to serve as an attorney who is not licensed to practice law in this State. Attorneys employed by the division shall devote full time to their duties and may not engage in the private practice of law.

(C) The division shall carry out the following duties and responsibilities: (1) It shall represent a person who the office determines, subject to court review, falls within the guidelines promulgated pursuant to Section 17-3-310(G)(2) who files Notice of Intention to Appeal or desires to appeal a conviction in a trial court, or decision of a proceeding in civil commitment or other voluntary placement in a state, county, or municipal facility. A person desiring representation by the division shall request a determination of his indigency status in writing from the Supreme Court, the court of appeals, the circuit or family court, or the division. A court receiving a request for indigent appellate representation shall forward the request to the office who, within ten days of the receipt of the request for representation, shall notify the person requesting representation and the court in which the appeal will be effected of its decision. (2) Upon a finding that a person requesting representation qualifies as an indigent and after being appointed as counsel for this person by the court in which the appeal will be effected, the division shall represent this person in his appeal of a conviction in a trial court, or decision of a proceeding in civil commitment or other involuntary placement in a state, county, or municipal facility, provided nothing in this article requires the division to pursue an appeal unless the chief attorney of the division is first satisfied that there is arguable merit to the appeal. (3) It shall represent indigents, other than at trial or commitment proceedings when appointed by the court. (4) It shall represent indigents in appeals of convictions in trial courts of this State, or decisions of civil commitment proceedings or other involuntary placement only in courts of this State.

²⁴¹ S.C. Code of Laws § 17-3-310.

²⁴² S.C. Code of Laws § 17-3-340.

²⁴³ S.C. Code of Laws § 17-3-340.

²⁴⁴ S.C. Code of Laws § 17-3-340.

²⁴⁵ S.C. Code of Laws § 17-3-340.

²⁴⁶ S.C. Code of Laws § 17-3-310.

²⁴⁷ S.C. Code of Laws § 17-3-340.

²⁴⁸ S.C. Code of Laws § 17-3-320. Office of Indigent Defense; executive director; appointment; duties.

(A) There is created the Office of Indigent Defense under the jurisdiction of the commission. The office must be administered by an executive director appointed by the commission. The executive director may hire other administrative, clerical, and legal staff and is authorized to contract with outside consultants on behalf of the office as he considers necessary to provide the services as required pursuant to the provisions of this article.

(B) The executive director shall: (1) administer and coordinate the operations of the office and all divisions within the office and supervise compliance among the circuit defender offices with rules, procedures, regulations, and standards adopted by the commission; (2) maintain proper records of all financial transactions related to the operation of the office; (3) coordinate the services of the office with any federal, county, private, or other programs established to provide assistance to indigent persons entitled to representation pursuant to the provisions of this chapter and consult with professional organizations concerning the implementation and improvement of programs for providing indigent services; (4) prepare and submit annually to the commission a proposed budget for the provision of statewide indigent defense services; and prepare and submit an annual report containing pertinent data on the operations, costs, and needs of the state's indigent defense system and other information as the commission may require; (5) coordinate in the development and implementation of rules, policies, procedures, regulations, and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards; (6) maintain proper records of all financial transactions related to the operation of the commission; (7) apply for and accept on behalf of the commission funds that may become available from any source, including government, nonprofit, or private grants, gifts, or bequests; (8) provide for the training of attorneys and other staff involved in the legal representation of persons subject to the provisions of this chapter; (9) attend all commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the director; (10) ensure that the expenditures of the commission are not greater than the amounts budgeted or available from other revenue sources; and (11) perform other duties as the commission assigns.

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ *Ibid.*

²⁵⁵ S.C. Code of Laws § 17-3-330. This includes funds allocated to public defender offices pursuant to the formula, funds for the defense of capital cases, funds for attorney's fees and expenses in non-capital cases, and other funds appropriated for these purposes.

²⁵⁶ S.C. Code of Laws § 17-3-320.

²⁵⁷ S.C. Code of Laws § 17-3-330.

²⁵⁸ S.C. Code of Laws § 17-3-340.

²⁵⁹ S.C. Code of Laws § 17-3-310.

²⁶⁰ *Ibid.*

²⁶¹ S.C. Code of Laws § 17-3-340.

²⁶² S.C. Code of Laws § 17-3-310.

²⁶³ *Ibid.*

²⁶⁴ S.C. Code of Laws § 17-3-320.

²⁶⁵ *Ibid.*

²⁶⁶ S.C. Code of Laws § 17-3-340.

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid.*

²⁶⁹ S.C. Code of Laws § 17-3-320.

²⁷⁰ S.C. Code of Laws § 17-3-340.

²⁷¹ *Ibid.*

²⁷² S.C. Code of Laws §17-3-330. See also, S.C. Code of Laws § 17-3-360.

²⁷³ S.C. Code of Laws § 17-3-330(B)-(C).

²⁷⁴ S.C. Code of Laws § 17-3-310.

²⁷⁵ Ibid.

²⁷⁶ S.C. Code of Laws § 17-3-340.

²⁷⁷ S.C. Code of Laws § 17-3-320.

²⁷⁸ S.C. Code of Laws § 17-3-330.

²⁷⁹ April 20, 2018, interview.

²⁸⁰ Ibid. See also, 2016-17 Annual General Appropriations Act, Part 1B, § 117.110; 2017-18 Annual General Appropriations Act, Part 1B, § 117.109 (The Prosecution Coordination Commission and the Commission on Indigent Defense shall provide detailed expenditure reports and associated revenue streams for each individual circuit, revenue streams shall include, but not be limited to, state funds, local funds, Federal funds, and also nongovernmental sources of funds, by no later than September first, on the prior fiscal year, to the appropriate commission. The commissions shall then provide the Chairman of the House Ways and Means Committee and Chairman of the Senate Finance Committee with a combined report by September fifteenth of the current fiscal year.)

²⁸¹ S.C. Code of Laws § 17-3-330.

²⁸² Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018). See question four under section of letter titled Agency's Response to Oversight Subcommittee's August 17, 2018 Letter.