Legislative Oversight Committee

Full Committee Study of the Commission on Prosecution Coordination

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 19, 2018 October 23, 2018 October 23, 2018

CONTENTS

AGENCY SNAPSHOT

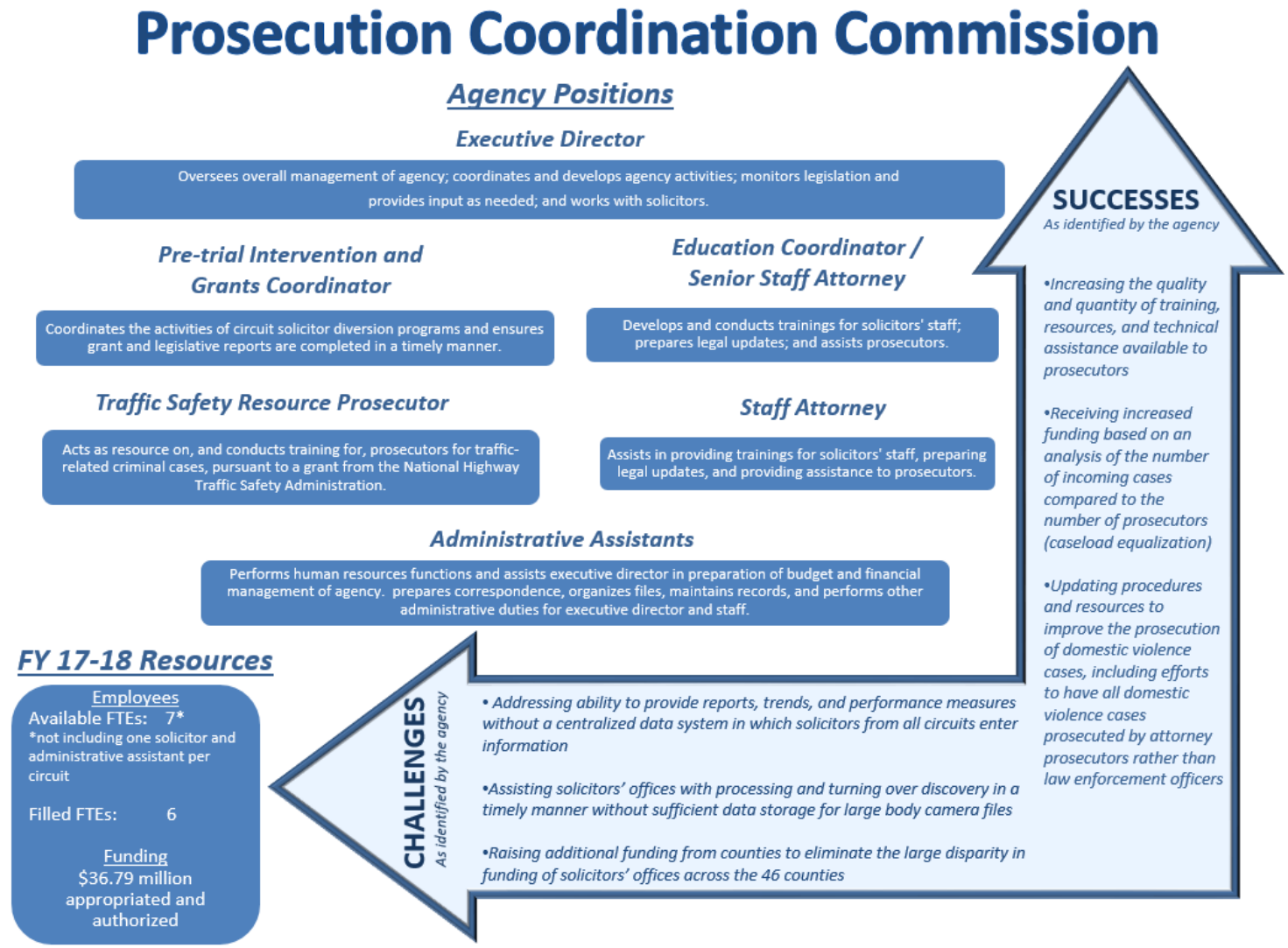


Figure 1. Snapshot of agency positions, fiscal year 2017-18 resources (employees and funding), successes, and challenges.[1]

EXECUTIVE SUMMARY

Purpose of Oversight Study

As stated in S.C. Code Section 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 Commission on Prosecution Coordination (SCCPC, Commission, Prosecution Coordination, or agency) includes actions by the full Committee; Law Enforcement and Criminal Justice Subcommittee (Subcommittee); the agency; and the public. Key dates and actions are listed below in Figure 2.

Legislative Oversight Committee Actions

- December 19, 2017 - Prioritizes the agency for study
- January 12, 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 #1** to obtain **public input** about the agency
- October 23, 2018 - Holds **Meeting #6** 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

- June 18, 2018 - Holds **Meeting #2** to discuss an **overview of the agency** and the agency's **deliverables and strategic plan**
- July 24, 2018 - Holds **Meeting #3** to discuss agency **finances** and continue discussion of the agency's **deliverables and strategic plan**
- August 20, 2018 - Holds **Meeting #4** to discuss **authority of Office of the Attorney General** over solicitors; **warrant approval** process; county **investigative grand juries**; cloud-based **evidence databases**; and continue discussion of the agency's **deliverables and strategic plan**
- September 18, 2018 - Holds **Meeting #5** to discuss agency internal and law **recommendations** and questions from topics presented during prior meetings

Commission on Prosecution Coordination Actions

- March 31, 2015 - Submits its **Annual Restructuring and Seven-Year Plan Report**
- January 11, 2016 - Submits its **2016 Annual Restructuring Report**
- September 2016 - Submits its **2015-16 Accountability Report**
- September 2017 - Submits its **2016-17 Accountability Report**
- April 6, 2018 - Submits its **Program Evaluation Report**
- June, 2018 - October 2018 - Responds to Committee's inquiries

Public's Actions

- January 23 - March 1, 2018 - Provides input about the agency via an **online public survey**
- April 26, 2018 - Provides **testimony** about the agency

Figure 2. Key dates in the study process (December 2017 - October 2018).

Findings

The **Committee has three findings** arising from its study of the agency. The first identifies an emerging issue for the General Assembly. The second and third identify lack of transparency available in criminal justice data.

First, the Committee finds the **expense of storing body camera videos and other law enforcement videos is an emerging issue** the General Assembly may need to address in the future.[3]

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

Third, the Committee finds the Commission on Prosecution Coordination and the Commission on Indigent Defense currently do not track the **performance** of circuit solicitor and circuit public defender 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 35 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) collaboration; and (7) modernization of statutes.

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

Topic	Recommendations
Accountability	1. Authorize the agency to enforce its regulations applicable to circuit solicitors* 2. Affirm appropriate internal finance policies exist at each circuit solicitor's office prior to providing state funding* 3. (a) Publish online the agency's finance task force report (b) Follow up with the agency on its finance task force's report^
Efficiencies in operations	4. Establish electronic transfer of state funds to circuit solicitors' offices 5. Reduce personnel time and costs when collecting data from circuit solicitors' offices for analysis and reporting 6. Establish a replacement plan for technology and educational resources essential to agency staff 7. Research case management options to determine if software may allow for receipt of evidence from law enforcement in the way it is currently transmitted (i.e., compact disc and flash drive) as well as via cloud upload 8. Create a uniform method of case data management for circuit solicitors 9. Conduct management training for circuit solicitors
Effectiveness of programs	<u>Prosecution of Cases</u> 10. Define, in regulation, the term "case" for circuit solicitors to utilize in measuring workload, backlog, and other metrics 11. Promulgate regulations outlining a procedure to measure the success of circuit solicitors' offices 12. Report concerns, if any, about court rules for the General Assembly's consideration <u>Diversion Programs</u> 13. Define recidivism for measuring outcomes of diversion programs 14. Track which diversion programs most frequently and efficiently obtain the outcomes sought by the General Assembly* 15. Require circuit solicitors to seek input from circuit public defenders on establishing and/or revising diversion programs 16. Meet on a regular basis with Commission on Indigent Defense to discuss diversion programs and performance of these programs* 17. Update standards and guidelines to measure the effectiveness and efficiency of pre-trial intervention programs <u>Communication with Customers</u> 18. Analyze the agency's new communication methods and use the data to continually improve investment in technology

Topic	Recommendations
Transparency	19. Obtain data on the number of individuals prosecuted annually by circuit and county* 20. Collect and publish employee data (e.g., number of employees, years of experience, etc.) at each circuit solicitor's office 21. List any additional data the agency recommends collecting and potential benefits of each 22. Determine the intended purpose of agency funds appropriated to the S.C. Center for Fathers and Families 23. Consider whether funds appropriated to the S.C. Center for Fathers and Families should pass through a different agency* 24. Determine who pays for asbestos abatement and removal in the offices of state agencies^
Employee input	25. Allow opportunities for anonymous employee feedback
Collaboration	26. Collect and share data, which may indicate a need for targeted training for law enforcement entities, with the Criminal Justice Academy 27. Track the following information:+ (i) training recommended to specific law enforcement entities based on data received from circuit solicitors' offices; (ii) whether those law enforcement entities are taking part in the training; and (iii) customer satisfaction related to the training 28. Evaluate the need for potential legislation to encourage increased communication between law enforcement and circuit solicitors prior to arrests* 29. Collect information on the costs associated with cloud-based transfer of electronic evidence
Modernization of statutes	30. Eliminate older statutes authorizing staff for individual judicial circuits as newer statutes grant the same authority statewide* 31. Strike the agency's statutory duty to provide solicitors indictment forms since the forms are now computer-generated* 32. Repeal older criminal domestic violence statute authorizing prosecution in General Sessions Court, in light of new statutes which accomplish the same* 33. Eliminate or enforce the statutory requirement that circuit solicitors study the office of other elected officials* (i.e., sheriff, clerk of court, and register of deeds) 34. Revise statutes which have been held unconstitutional relating to the setting of court dockets by circuit solicitors* 35. Ensure court records are not destroyed before the timeframe in which a defendant may appeal expires*

Table Note: An asterisk (*) indicates the entire recommendation, or a portion of it, is for the General Assembly. A caret (^) indicates the recommendation is for the House Legislative Oversight Committee. A plus (+) indicate the recommendation is for the Criminal Justice Academy.

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

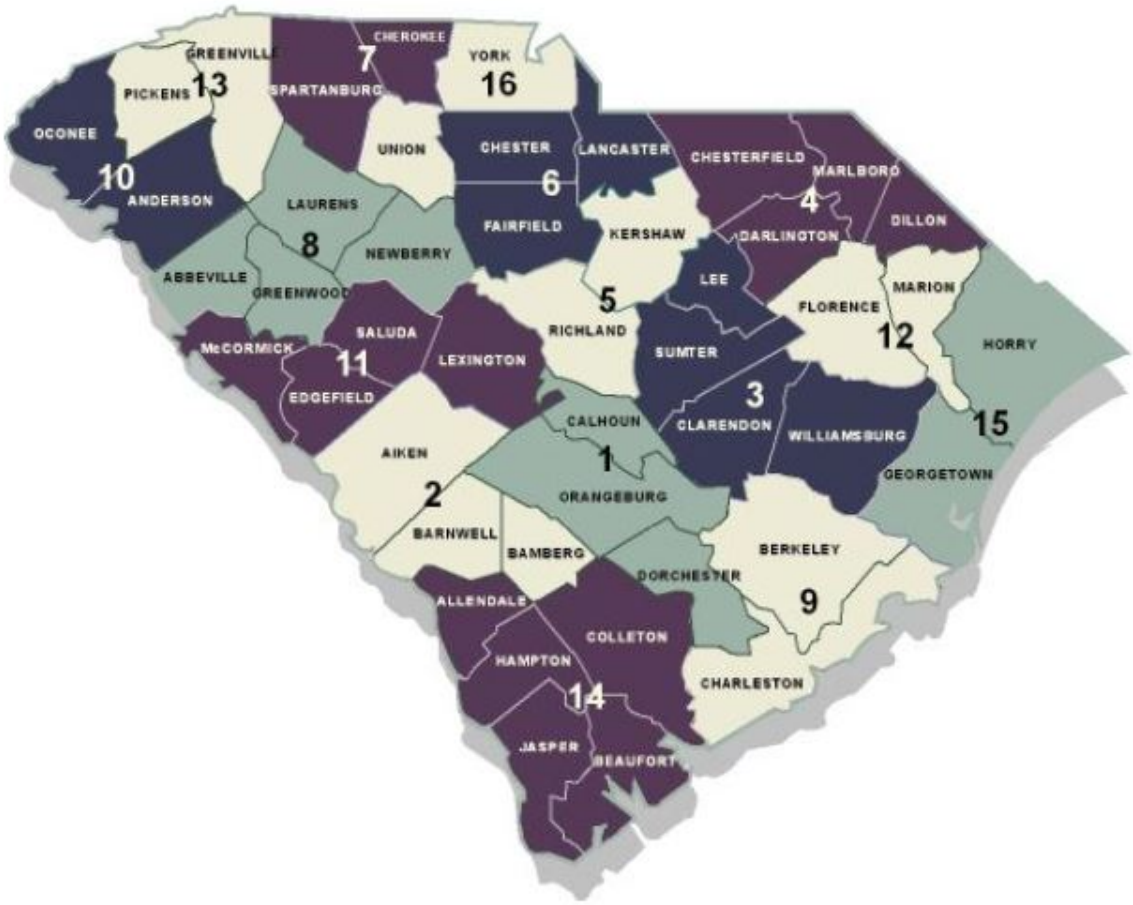
Internal Changes Implemented by Agency Related to Study Process

During the study process, the agency implements two internal changes directly related to participation in the study process. The internal changes implemented are as follows:

1. The agency corrects a report provided to legislative committees containing information on individual solicitor office spending and funding.[4]

2. The agency is made aware of, and in 2018, complies with, two state agency reporting requirements.[5] S.C. Code Section 2-1-230 requires agencies to submit data and reports collected for the General Assembly to the Legislative Services Agency for publication on the legislature's website. S.C. Code Section 60-2-30 requires submission of reports to the State Library. Agency reports subject to these requirements include:
    a. a report on the solicitors' diversion programs required by S.C. Code Section 17-22-1120;
    b. domestic violence prosecution data report, required by Proviso 60.7, 2017-18 General Appropriations Act, Part 1B;
    c. driving under the influence prosecution data report, required by Proviso 60.9, 2017-18 Appropriations Act, Part 1B; and
    d. driving under the influence prosecution data report, required by Proviso 117.109, 2017-18 General Appropriations Act, Part 1B.

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 Leiendecker
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 solicitors and public defenders (Current as of August 2018).[6]

AGENCY OVERVIEW

History

SCCPC has provided the Committee with an overview of the agency's history.[7] In addition, Committee staff confirms the accuracy of assertions of legislative action.

1990

- May - The General Assembly **creates the S.C. Commission on Prosecution Coordination**.[8] It also sets forth the SCCPC membership duties, election of chairman and officers, executive director and staff positions, compensation, funding, and salaries of elected circuit solicitors.[9]
- September - The Commission holds its first meeting. During the meeting the Commission establishes the positions of executive director and administrative assistant.

1991

- January - The Commission **appoints Mr. William D. Bilton as executive director**; and creates the curriculum developer position. Also, the Commission approves the initial budget for the remainder of the fiscal year.
- July - The General Assembly transfers elected solicitors and their administrative assistants from employees of the Attorney General's Office to employees of the SCCPC.[10]

1992

- October - The General Assembly exempts SCCPC employees from the state employee classification and state employee grievance procedures.[11]

1993

- August - The Commission grants the executive director authority to hire a pre-trial intervention (PTI) state office coordinator. Also, the Commission approves and adopts the *SCCPC Operations and Management Manual*.

1995

- October - The Commission adopts PTI training standards.

1996

- October - The Commission approves the executive director making a request to the General Assembly for permanent state funding for a child abuse attorney specialist and victim-witness coordinator.

1997

- September - The Commission receives state funding for a child abuse attorney specialist position from the General Assembly.

1998

- September – The General Assembly authorizes a state victim-witness assistance coordinator position at SCCPC.[12]

1999

- October – The Commission creates a victim-witness assistance advocate position, which is funded by grants.

2000

- October – The SCCPC receives a National Highway Traffic Safety Administration (NHTSA) grant to create a driving under the influence (DUI) unit.

2001

- July – The General Assembly provides SCCPC a non-recurring state appropriation to fund drug treatment courts.[13]
- October – The SCCPC creates a child victim advocate position, DUI attorney specialist position, and DUI support secretary position, all of which are funded by the NHTSA grant to create a DUI unit.

2003

- September – The SCCPC establishes alcohol diversion programs (later called alcohol education programs) in Lexington County (eleventh judicial circuit) and Richland County (fifth judicial circuit).

2006

- October – The SCCPC changes the DUI attorney and support secretary positions to traffic safety resource prosecutor (TSRP) and TSRP administrative assistant positions. Both are funded by a TSRP grant from the NHTSA.

2007

- September – The SCCPC creates an education coordinator position.

2009

- February – The SCCPC holds its first "prosecution bootcamp" program, which lasts three days.

2010

- December – The SCCPC eliminates the deputy director position and creates a legislative coordinator position (effective January 1, 2011). Also, the SCCPC eliminates the child abuse attorney specialist and child victim advocate positions.

2011

- January – The Commission **appoints Mr. David M. Ross** as executive director of the SCCPC.
- February – The SCCPC extends its "prosecution bootcamp" program from three days to four days.

2012

- January – The SCCPC relocates its offices from 1401 Main Street, Suite 825 in Columbia, S.C. to the Wade Hampton Building on the state house complex.
- March – The SCCPC extends its "Prosecution Bootcamp" program from four days to five days.

2015

- October – The TSRP grant eliminates funding for an administrative assistant position.

2018

- September – The Commission **appoints Ms. Lisa H. Catalanotto** as executive director of the SCCPC.

Legal Directives

The 1990 enabling legislation for the SCCPC includes the following **statement of intent**:

- The importation, sale, and use of dangerous narcotic substances in South Carolina has reached epidemic levels;
- This epidemic has resulted in an explosion in drug-related crimes, many of which are violent in nature;
- On January 1, 1990, there was a **record backlog** of 42,577 criminal cases in General Sessions and Family Courts;
- There is a need to provide **uniform and efficient administration of justice** through the prosecution of criminal cases in South Carolina. (emphasis added)[14]

To address these issues, the General Assembly directs the **SCCPC "to coordinate all activities involving the prosecution of criminal cases in this State**."[15] The unfettered discretion to prosecute rests solely in the prosecutor's hands. A prosecutor may pursue a case to trial, or may offer a plea to a lesser offense, or may opt to not prosecute the offense.[16] Absent a statute to the effect, "a court has no power …to dismiss a criminal prosecution except at the instance of the prosecutor."[17] 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."[18] Under the state constitution, the Attorney General is "the chief prosecuting officer of the state with authority to supervise the prosecution of all criminal cases in courts of record."[19] The Attorney General carries out the duties of the office through his staff and through "his constitutional authority to supervise and direct the activities of solicitors or prosecuting attorneys located in each judicial circuit of the State."[20] Attorney General opinions have "consistently recognized that the solicitor is the chief prosecutor of his or her circuit and controls disposition of all cases therein."[21]

Other specified duties of the SCCPC include:[22]

(1) coordinate all administrative functions of the solicitors' offices and any affiliate services;

(2) submit the budgets of the solicitors and their affiliate services to the General Assembly;

(3) encourage and develop legal education programs and training programs for solicitors and their affiliate services, organize and provide seminars to help increase the effectiveness and efficiency of the prosecution of criminal cases in this state, act as a clearinghouse and distribution source for publications involving solicitors and their affiliate services, and provide legal updates on matters of law affecting prosecution of criminal cases; and

(4) provide blank indictments for the solicitors.

The General Assembly authorizes the agency to promulgate any regulations necessary to assist it in performing its duties.[23] Notably, while the agency believes it can promulgate regulations which require solicitors to provide specific information or follow certain policies to assist the agency in coordinating activities which strive to accomplish the General Assembly's intent, agency representatives are unclear whether the agency has statutory authority to create an enforcement mechanism to ensure compliance with the regulations.[24]

Backlog

During the study process, the Committee asks the agency about backlog of criminal cases and how it is tracked. The Commission chair testifies that in order to understand backlog, there first has to be consensus on how the term "case" is defined.[25] Currently, different entities define this term in different manners.[26] Once there is a consensus on how the term "case" is defined, next there needs to be consensus on what is considered "backlog." According to the Commission chair, backlog is not the same as pending cases.[27] Appendix A includes additional preliminary information from the agency on defining case and backlog, and the Committee makes recommendations to assist in finalizing these decisions so the agency can begin tracking data.

Uniformity

During the study process, the agency provides a list of activities that are currently uniform as well as those it seeks to make uniform in the future.[28] **Uniform activities in the prosecution of criminal cases** in South Carolina include those required or overseen by SCCPC:

- Pre-trial intervention - general administration (SCCPC adopted standards/guidelines);
- Diversion programs - entry of data related to applications for and enrollment in the programs;
- Diversion programs - reporting of certain information by the solicitors to SCCPC;
- DUI prosecutions - reporting of certain information by the solicitors to SCCPC;
- Domestic violence prosecutions - reporting of certain information by the solicitors to SCCPC; and
- Training and resource materials - availability and receipt of these materials for newly-elected solicitors, new prosecutors, and new victim/witness advocates.

The **SCCPC has no direct control over how solicitors in each individual judicial circuit handle and/or dispose of criminal cases**. However, there are specific procedures, requirements, and timing of events in a criminal prosecution that require adherence by prosecutors and defense attorneys. These are set out either in statutes, court rules, judicial decisions, or the state and federal constitutions. Examples include:

- Disclosure of materials and information requested by the defense, within a specific time;[29]
- Mandatory disclosure of exculpatory evidence and information by the prosecution regardless of whether it is requested by the defense;[30]
- Mandatory sentencing procedure before a juvenile may be sentenced to life imprisonment without the possibility of parole;[31]
- Jury strikes - set procedure for challenging a party's exercise of jury strikes;[32] and
- Case management orders, which provide deadlines and procedures related to the process of a case through the trial court, issued in each county.[33]

Activities SCCPC seeks to make uniform in the future:[34]

- Pre-trial intervention programs - specific administration;
    - In the near future SCCPC will begin the process of reviewing and evaluating the current standards and guidelines to update and either expand to address all diversion programs or create separate standards and guidelines for other diversion programs.
- Expungement - procedures and processes;
- Trial dockets - procedures and processes for setting; and
- Case statistics - definition of "case" for purposes of counting number of cases.

Finances

Reporting expenditures and revenues of solicitors' offices has been intermittently required by the General Assembly. From 1979 through 2005 solicitors were required by statute to provide a report on expenditures.[35] From 2005 to 2016, there was no requirement for solicitors to report their expenditures. Since fiscal year 2015-16, the General Assembly has enacted a proviso, which requires the SCCPC to obtain detailed expenditure reports and associated revenue streams for each solicitor, annually .[36]

Mission and Vision

The agency provides S.C. Code Section 1-7-940 as the basis for its mission and vision.[37] It also provides Rule 3.8, Comment 1, S.C. Rules of Professional Conduct (Rule 407, SCACR) as additional basis for its mission.[38]

SCCPC's **mission** is to enhance the professionalism and effectiveness of South Carolina's solicitors and their staff. The agency does this by providing legal education and publications, providing technical assistance, coordinating with other state, local, and federal agencies involved in the criminal justice system, providing administrative functions for the solicitors at the state level, as well as being a resource for the General Assembly on a range of issues.[39]

SCCPC's **vision** is to enhance the ability of South Carolina's state prosecutors to seek justice.[40]

Agency Organization

Governing Body

In the Program Evaluation Report, the Committee asks the agency to provide information about the agency's governing body.[41] The SCCPC provides the information below.

The **governing body of the SCCPC is the Commission**. The Commission elects a chair, who serves a two-year term.[42] The Commission has the authority to appoint an executive director, who serves at the pleasure of the Commission.[43] The **executive director is responsible for the day-to-day operation** of the Commission and the coordination of the work with other state agencies.[44]

The Commission is comprised of eleven members:

a) Chairmen of the Senate and House Judiciary Committees for the terms for which they are elected or their legislative designees;

b) Chief of the South Carolina Law Enforcement Division for the term for which he is appointed;

c) Director of the Department of Public Safety for the term for which he is appointed;

d) A director of a judicial circuit pre-trial intervention program appointed by the Governor for a term of two years;

e) A judicial circuit victim-witness assistance advocate appointed by the Governor for a term of two years; and

f) Five judicial circuit solicitors appointed by the Governor for terms of four years.

There are no term limits for members of the Commission as long as they meet the qualifications. If a vacancy arises, it must be filled in the same manner as the initial appointment. Table 2 lists the current Commission members' names, statutory roles, and dates of current terms.

Table 2. Agency Commission members' names, statutory roles, and dates of current terms.[45]

Term	Statutory Role	Name
7/1/14 – 6/30/18^	Solicitor-Appointed by the Governor	Solicitor Isaac McDuffie Stone, III Fourteenth Judicial Circuit
7/1/16 - 6/30/18^	Solicitor-Appointed by the Governor	Solicitor William W. Wilkins, III Thirteenth Judicial Circuit
7/1/14 – 6/30/18^	Solicitor-Appointed by the Governor	Solicitor Kevin S. Brackett Sixteenth Judicial Circuit
7/1/13 – 6/30/17^	Solicitor-Appointed by the Governor	Solicitor J. Strom Thurmond Second Judicial Circuit
7/1/13 – 6/30/17^	Solicitor-Appointed by the Governor	Solicitor Scarlett A. Wilson Ninth Judicial Circuit
N/A	Chairman of the Senate Judiciary Committee or his/her designee	Senator Greg Hembree
N/A	Chairman of the House Judiciary Committee or his/her designee	Representative Thomas E. Pope Speaker Pro Tem
N/A	Chief, Law Enforcement Division	Chief Mark A. Keel
N/A	Director, Department of Public Safety	Director Leroy Smith
Currently Vacant*	Director, Judicial Circuit Pretrial Intervention Program-Appointed by the Governor	Vacant since May 17, 2017 (former Commission member retired)
Currently Vacant*	Judicial-Circuit Victim-Witness Assistance Advocate-Appointed by the Governor	Vacant since October 2, 2017 (former Commission member left the Solicitor's Office)

Table Note: An asterisk (*) indicates names have been submitted to the Governor for consideration. A caret (^) indicates the person is serving in a hold-over capacity.

Internal Audit Process

In the Program Evaluation Report, the Committee asks the agency to provide information about its internal audit process, if it has one.[46] The SCCPC does not have internal audit staff or an internal audit process. The Office of State Auditor conducts financial reviews according to procedures agreed to by the agency; the last review was conducted in fiscal year 2016-2017.

Organizational Units

The agency's Program Evaluation Report includes information about its organizational units.[47] 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. Figure 4 includes an agency organizational chart, current as of April 2018.

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) objectives, strategies, or goals for which it is solely responsible.

Since the SCCPC only has seven employees outside of the circuit solicitors and their administrative assistants the agency utilizes job descriptions as its organizational units.

The executive director oversees the overall management of the agency; coordinates and develops agency activities; monitors legislation and provides input as needed; and works with solicitors. The position requires a law license and the agency pays for, or provides in-house, all continuing education classes and dues necessary to maintain the license.

Administrative assistant 1 performs human resources functions and assists the executive director in preparation of the agency's budget and financial information. The position does not require any certifications.

Administrative assistant 2, which is currently vacant, prepares correspondence, organizes files, maintains records, and performs other administrative duties for the executive director and agency staff. The position does not require any certifications.

The pretrial intervention and grants coordinator organizes the activities of the solicitor diversion programs and ensures grant and legislative reports are completed in a timely manner. The position does not require any certifications.

The education coordinator/senior staff attorney, under limited supervision, develops and conducts trainings for solicitors' staff, prepares legal updates, and assists prosecutors. The position requires a law license and the agency pays for, or provides in-house, all continuing education classes and dues necessary to maintain the license.

The staff attorney, under limited supervision, assists in providing trainings for solicitors' staff, preparing legal updates, and providing assistance to prosecutors. The position requires a law license and the

agency pays for, or provides in-house, all continuing education classes and dues necessary to maintain the license.

The traffic safety resource prosecutor, under limited supervision and pursuant to a grant from the National Highway Traffic Safety Administration, acts as resource on, and conducts training for, prosecutors for traffic-related criminal cases. The position requires a law license, and the grant pays for continuing education classes and the agency provides in-house continuing education classes and dues necessary to maintain the license.

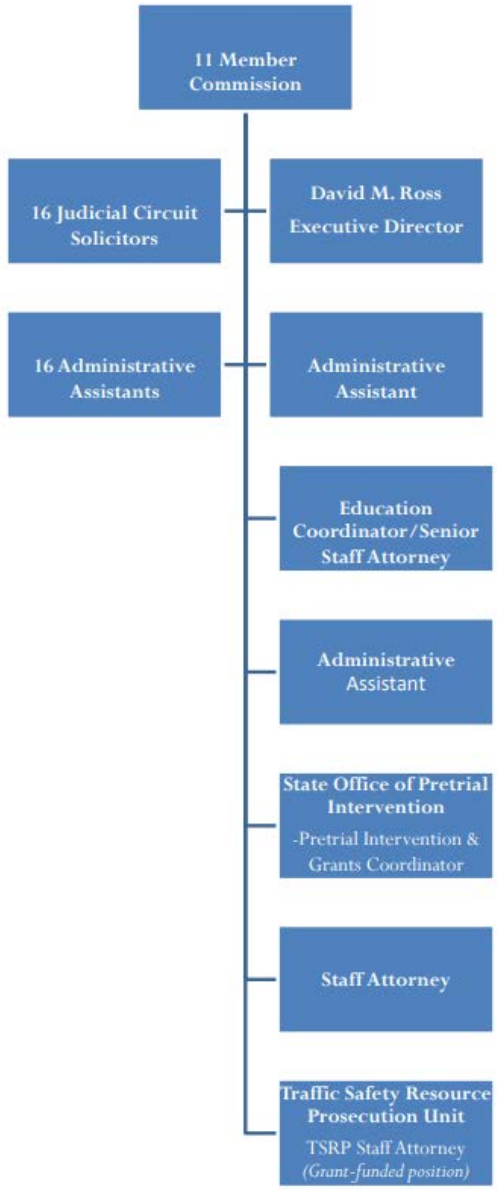


Figure 4. Agency organizational chart (Current as of April 2018). In September 2018, Ms. Lisa H. Catalanotto was appointed executive director.[48]

Personnel Numbers

The Department of Administration's Division of State Human Resources provides the numbers of authorized, actual, and filled full time equivalents (FTE) positions for the last five fiscal years.[49] Table 2 and Figure 4 provide that information. The authorized total FTE positions is as of July 1 of the fiscal year, as stated in the appropriations act. The actual total FTE positions is the sum of filled FTE positions and vacant FTE positions, based on what the agency has entered in South Carolina Enterprise Information System (SCEIS) and is as of June 30. If actual is more than authorized, it may be because during the course of the year, the Executive Budget Office authorizes interim FTE positions. The agency typically requests authorization for these positions in the next budget. If actual is less than authorized, it is because the agency has not setup all of the authorized positions in SCEIS yet. Filled FTE positions are those the agency has set up in SCEIS in which someone is actually working as of June 30.

The agency indicates in its Program Evaluation Report that during FY 2014-15 through FY 2016-17, it did not obtain information from employees leaving the agency (e.g., exit interview, survey, evaluation, etc.).[50] However, the agency notes it is small, and the executive director has an open door policy.[51]

While Table 3 shows the agency has 38 FTE positions, 32 of those positions are the 16 elected circuit solicitors and their administrative assistants (one in each solicitor's office, who are managed by and report to their respective solicitor).[52] There are only seven positions physically located within the SCCPC, and only six of those are currently filled.[53]

There are no statistics about the SCCPC in the 2018 annual Human Affairs Commission's report on the status of equal employment opportunity in state government because information is only provided on agencies under the jurisdiction of the Human Affairs Commission (e.g., entities with 15 or more employees). The SCCPC does not have more than 15 employees because, pursuant to S.C. Code Section 1-13-30(H), "employee" does not include any person elected to public office in this state (i.e., solicitors), or any person chosen by such officer to be on such officer's personal staff (i.e., administrative assistant for each solicitor).

Table 3 summarizes the number of authorized, filled, vacant, and actual employee positions in fiscal years 2013-2014 through 2017-2018.

Table 3. SCCPC authorized, filled, vacant, and actual FTE positions (fiscal years 2014-FY 2018).[54]

Authorized	2013-14	2014-15	2015-16	2016-17	2017-18	Trend Line
Total	38	38	38	38	38	
State	38	38	38	38	38	

Filled	2013-14	2014-15	2015-16	2016-17	2017-18	Trend Line
Total	35.625	36.625	36.625	36.625	34.625	
State	35.625	36.625	36.625	36.625	34.625	

Vacant	2013-14	2014-15	2015-16	2016-17	2017-18	Trend Line
Total	2	1	1	1	3	
State	2	1	1	1	3	

Actual	2013-14	2014-15	2015-16	2016-17	2017-18	Trend Line
Total	37.625	37.625	37.625	37.625	37.625	
State	37.625	37.625	37.625	37.625	37.625	

Products, Services, and Customers

In the Program Evaluation Report, the Committee asks an agency **to provide a list of its deliverables** (i.e., products and services) as well as additional information related to laws, customers, costs, and potential negative impacts.[55] Table 4 includes an overview of the deliverables provided by the agency. The Committee website includes details about each of the products and services, including components, greatest harm if not provided, whether the agency evaluates customer satisfaction and outcomes obtained, etc.

Table 4. List of the agency's deliverables.

Deliverable	Does law require, allow, or not address it?
Administrative functions of solicitors' offices, coordinate	Required by S.C. Code Section 1-7-940(A)(1). Duties.
State budget support to solicitors, provide	Required by S.C. Code Section 1-7-940(A)(2). Duties.
Solicitors' expenditure reports, collect/submit to legislature	Required by Proviso 117.109, 2017-2018 Appropriation Act Part 1B
Legal issues, including legislation and court rules affecting prosecutors and prosecution,…	Required by…
provide technical assistance	S.C. Code Section 1-7-940(A)(3). Duties.
provide and assist with general research	S.C. Code Section 1-7-940(A)(3). Duties.
develop, coordinate, and conduct training	S.C. Code Section 1-7-940(A)(3). Duties.
act as clearinghouse for distribution of publications	S.C. Code Section 1-7-940(A)(3). Duties.
provide updates	S.C. Code Section 1-7-940(A)(3). Duties.
monitor	Not specifically mentioned in law, but provided to achieve the requirements of S.C. Code Section 1-7-940(A)(3). Duties.

Deliverable	Does law require, allow, or not address it?
Blank indictments to the solicitors' offices, provide	Required by S.C. Code Section 1-7-940(A)(3). Duties.
Domestic violence…	Required by…
prosecutions, collect/maintain non-privileged data, and prepare/submit annual report	Proviso 60.7, 2017-2018 Appropriation Act, Part 1B
First-time offender programs, collect reports	S.C. Code Section 22-3-546. Establishment of program for prosecution of first offense misdemeanor criminal domestic violence offenses.
fatalities, develop protocols related to the review	S.C. Code Section 16-25-720. Establishment of interagency circuit-wide committees; protocols; membership of committees; confidential information; limitation in investigations; access to information.
Fatality Review Committees, collect and maintain reports from each solicitor	Not specifically mentioned in law, but provided to achieve the requirements of S.C. Code Section 16-25-720.
Driving under the influence…	Required by…
prosecutions, collect/maintain information, and prepare/submit annual report	Proviso 60.9, 2017-2018 Appropriation Act, Part 1B
Traffic education programs…	Required by…
procedures, oversee administration	S.C. Code Section 17-22-310. Prosecutorial discretion of Circuit Solicitor to establish traffic education program; administration.
reports, collect from each solicitor	S.C. Code Section 17-22-360. Annual report.
identifying information of participants, maintain	S.C. Code Section 17-22-370. Submission of information necessary for creation and maintenance of list of participants.
Alcohol education programs…	Required by…
procedures, oversee administration	S.C. Code Section 17-22-510. Prosecutorial discretion of Circuit Solicitor to establish alcohol education program; administration.
enrollment and completion, maintain records	S.C. Code Section 17-22-530. Disposition of alcohol-related offense on completion of program.

Deliverable	Does law require, allow, or not address it?
identifying information of participants, maintain	S.C. Code Section 17-22-560. Records.
Pre-trial intervention…	Required by…
procedures for these programs, oversee administration	S.C. Code Section 17-22-30. Circuit solicitors to establish pretrial intervention programs; oversight of administrative procedures.
coordinator office, create and maintain	S.C. Code Section 17-22-40. Pretrial intervention coordinator; staff; funding.
solicitors' inquiries regarding eligibility, respond to	S.C. Code Section 17-22-130. Reports and identification as to offenders accepted for intervention program.
Diversion programs (including pre-trial intervention, traffic education, and alcohol education), collect and report data	Required by S.C. Code Section 17-22-1120. Diversion program data and reporting.
Prosecutors and Defenders Public Service Incentive Program, develop, implement and administer	Required by Proviso 117.63, 2017-2018 Appropriation Act, Part 1B
Serve on…	Required by…
Adult Protection Coordinating Council	S.C. Code Section 43-35-310. Council created; membership; filling vacancies.
Victim Services Coordinating Council	S.C. Code Section 16-3-1430(B)(5). Victim assistance services; membership of Victim Services Coordinating Council.
Attorney General's Interagency Task Force on Human Trafficking	S.C. Code Section 16-3-2050. Interagency task force established to develop and implement State Plan for Prevention of Trafficking in Persons; members; responsibilities; grants.
Disburse funds to the S.C. Center for Fathers and Families	Required by Section 60, 2017-2018 Appropriation Act, Part 1A
Disburse funds to the solicitors' offices…	Required by…
from the appropriations to the SCCPC	Section 60, 2017-2018 Appropriation Act, Part 1A; Provisos 60.1 through 60.4 and 60.6 through 60.12, 2017-2018 Appropriation Act, Part 1B
from traffic education programs $140 application fee for summary court (County Magistrate and City/Town Municipal) level offenses (6.74%)	S.C. Code Section 17-22-350(B)&(C). Fees; waiver; distribution of fee proceeds.

Deliverable	Does law require, allow, or not address it?
from filing fees on civil court motions	S.C. Code Section 8-21-320. Motion fees.
from conditional discharge fees	S.C. Code Section 44-53-450(C). Conditional discharge; eligibility for expungement.
from a portion of $25 surcharge imposed on fines, forfeitures, escheatments or other monetary penalties	S.C. Code Section 14-1-212. Surcharges on fines; distribution.
from surcharge drug convictions	S.C. Code Section 14-1-213. Surcharge on monetary penalties imposed for drug offenses; apportionment and use of funds; examination of financial records by State Auditor.

Associated Non-Profit Organization

The Solicitor's Association of South Carolina is a non-profit entity comprised of the 16 elected solicitors and their assistants.[56] Individual assistant solicitors pay dues to join the association. It is not mandatory for assistant solicitors to join the association.

This association partners with the agency by financially supporting different types of training for prosecutors.[57] The annual boot camp, which is a five-day program providing approximately 25 hours of continuing legal education, is an example of this partnership.[58] The association charges a registration fee which pays the cost of the hotel facility at which the boot camp is located, travel expenses for any speakers, and supplies.[59] The agency staffs the boot camp event and prints materials for it.[60] The annual solicitor's conference is another example. Agency representatives assert the agency would be unable to hold programs of this caliber without the partnership and financial support of the association.[61]

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**. In the Program Evaluation Report and during the study of an agency, the Committee asks how the agencies work together to effectively and efficiently achieve both agencies' goals. SCCPC does not list any agencies as having similar goals.

Resources, Strategic Plan, and Performance

Annually, each agency submits a strategic plan.[62] Of interest in the oversight process are the total resources available to an agency and how the agency allocates its resources to the goals and objectives in the agency's strategic plan.

Funding Solicitors' Offices

As shown in Table 5, approximately $35.7 million of the agency's funding goes directly to the solicitors' offices and the agency has no control over how the solicitors spend that money. Table 5 includes an overview of all sources of funding, and expenditures, for solicitors' offices statewide. The Committee website includes details about the funding and expenditures for solicitors' offices by judicial circuit and county.

Table 5. Funding and expenditures for solicitors' offices in fiscal years 2015-16 and 2016-17.[63]

FUNDING		
	2015-16	2016-17
Total	$70,837,004.72	$85,378,396.56
County	60.56%	51.53%
State	21.99%	33.93%
Other	13.60%	8.94%
Municipal	0.83%	1.62%
Grants	3.02%	3.97%
EXPENSES		
Total	$67,666,051.63	$83,479,497.23
Salaries and Fringe	87.58%	86.29%
Other	0.66%	0.82%
Operating	11.76%	12.89%

The SCCPC has formed a finance task force to help shed additional light on the funding and expenditures of the solicitors' offices. Below are details regarding the task force's plans.[64]

- *Answers sought* - How to provide a financial best practices framework for the solicitors to ensure transparency, uniformity, and accountability.
- *Areas reviewing* - The necessary checking accounts required by practice and statute and the use of (1) audits, (2) host county finance personnel, and (3) transparency measures.
- *Entities communicating with* - The entities represented on the Commission, which include solicitors and their staff, House of Representatives, Senate, Department of Public Safety, and State Law Enforcement Division are aware of the task force's goals and progress.
- *Timeline for completion of each stage of analysis and publication of recommendations* - The task force is gathering information now. It expects to have most of the information by September 2018 and to begin analysis immediately. SCCPC anticipates receiving recommendations from the task force by February 2019.

Agency Funding

In the Program Evaluation Report, the Committee asks the agency to provide information about its revenue sources, as well as how these funds are utilized to achieve the agency's comprehensive strategic plan. The agency provides the information below.

The agency **receives** funds through the following sources:[65]

- General fund appropriations
- Drug courts in Richland, Kershaw, and Saluda Counties; and 12th judicial circuit
- DUI prosecution
- Criminal domestic violence prosecution
- Violent crime prosecution
- Caseload equalization funding
- Victims' assistance program
- Prosecution in summary courts

The agency **generates** funds through the following sources:[66]

- Fee for motions
- Family and circuit court filing fee
- Conditional discharge - general sessions, magistrate, and municipal
- Conviction surcharge - law enforcement funding
- Drug conviction surcharge
- Traffic education program application fee - magistrate and municipal
- Refund of prior year
- Federal grant

The agency receives approximately $36.8 million in funding annually, but only has control over $1 million as the other 97% of the funding goes directly to the solicitors' offices, which is shown in Table 6.

Table 6. Agency revenue utilized to achieve comprehensive strategic plan in fiscal years 2016-17 and 2017-18.[67]

Strategic Plan Item	Spent to achieve plan in 2016-17	Percent of total spent	Budgeted to achieve plan in 2017-18	Percent of total spent
Goal 1 - Protect the community by vigorously but fairly prosecuting those who violate the law*	$35,771,567	97.23%	$35,784,935	97.26%
Strategy 2.1 - Provide administrative support to the Offices of Solicitor.	$191,560	0.52%	$193,093	0.52%
Goal 2 - Provide quality support services to the Offices of Solicitor.				
Strategy 2.2 - Enhance the professionalism and effectiveness of South Carolina's Solicitors and their staff.	$490,368	1.33%	$ 493,584	1.34%
Strategy 2.3 - Work with SLED to write a new computer program that will modernize the Pre-Trial Intervention Database as well as add additional Diversion Databases.	$215,169	0.58%	$ 215,204	0.58%
Goal 3 - Operate in an effective and efficient manner to enable staff to accomplish the mission of the agency.				
Strategy 3.1 - Enable staff to perform job duties.	$37,792	0.10%	$38,002	0.10%
Strategy 3.2 - Respond to inquiries and requests for assistance from the public (persons other than those covered by Goal 2).	$83,303	0.23%	$84,038	0.23%
TOTAL	$36,789,759	100%	$36,808,856	100%

Table Note: An asterisks (*) indicates all state funding provided for the accomplishment of Goal 1 is received by the SCCPC as pass-through funds to the solicitors' offices.

Carryforward

Table 7 includes information on the amount of funds the agency has carried forward during fiscal years 2012-13 through 2016-17. The agency plans to utilize these funds, almost $900,000, on several projects, including:[68]

- Construction, including asbestos abatement, to add a room in which to conduct training;
- Diversion case management system with the State Law Enforcement Division (SLED). The agency has spent over $300,000 so far on the system, which is not a budget item. The agency committed to supporting the project until it's finished. Pursuant to the agency's contract with SLED, the agency pays for the employee who is developing the program, and, once the program is complete, the agency is responsible for the yearly maintenance fee which is around $10,000.
- Purchasing subscriptions to computer programs or systems that help the agency provide assistance to the solicitors. In the first six months of 2018, agency representatives testify the agency spent approximately $9,000 to $10,000 on a plan that will allow the agency to have online event registration and create a single database that can be used with each event, instead of using either Access or Excel.
- New website for which the agency has received quotes ranging from $9,000 to over $100,000.[69]

Table 7. Agency carryforward.[70]

Fiscal year	Amount remaining at end of year that agency could use the next year
2012-13	$594,716.53
2013-14	$754,833.37
2014-15	$875,853.16
2015-16	$934,634.11
2016-17	$896,620.66

Allocation of Resources to Strategic Plan

Table 8 provides a summary of the amount the agency spent on each goal or strategy as a percentage of the total amount the agency was appropriated and authorized to spend, along with the name of the performance measures associated with each applicable goal or strategy, if any. The Committee website includes additional details about each aspect of the agency's strategic plan.

Table 8. Summary of the amount the agency spent on each goal or strategy as a percentage of the total amount the agency was appropriated and authorized to spend in fiscal years 2016-17 and 2017-18, along with the name of the performance measures associated with each applicable goal or strategy, if any.[71]

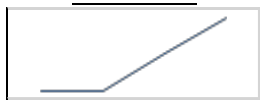
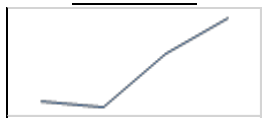
	Number of employee equivalents in FY16-17	Spent FY16 -17 and Percentage of total funds budgeted	Number of employee equivalents in FY17-18	Budgeted FY17-18 and Percentage of total funds budgeted	Associated Performance Measure(s)
Goal 1 - Protect the community by vigorously but fairly prosecuting those who violate the law					
*All state funding provided for the accomplishment of Goal 1 is received by the SCCPC as pass-through funds to the solicitors' offices, and the SCCPC has no control over how that money is spent. None of the six SCCPC FTEs spend time on this goal, which is accomplished by the solicitors and their staff.	32 FTE	$35,771,567* (97.23%)	32 FTE	$35,784,935* (97.22%)	None tracked by agency; individual solicitors may set and track their own, but are not required to
Goal 2 - Provide quality support services to the offices of solicitor					
Strategy 2.1 - Provide administrative support to the offices of solicitor	3 FTE	$191,560 (0.52%)	3 FTE	$193,093 (0.52%)	None
Strategy 2.2 - Enhance the professionalism and effectiveness of solicitors and their staff	4 FTE	$490,368 (1.33%)	4 FTE	$493,584 (1.34%)	• Trainings held, number of • Persons trained, number of • Continuing education hours provided, number of
Strategy 2.3 - Work with S.C. Law Enforcement Division to write a new computer program that will modernize the pre-trial intervention database as well as add additional diversion databases	1 FTE	$212,169 (0.58%)	1 FTE	$215,204 (0.58%)	None
Goal 3 - Operate in an effective and efficient manner to enable staff to accomplish the mission of the agency					
Strategy 3.1 - Enable staff to perform job duties	2 FTE	$37,792 (0.10%)	2 FTE	$38,002 (0.10%)	None
Strategy 3.2 - Respond to inquiries and requests for assistance from the public (persons other than those covered by Goal 2)	4 FTE	$83,303 (0.23%)	4 FTE	$84,038 (0.23%)	None

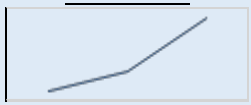
Performance

Table 9 includes information on performance measures the agency tracks, many of which the agency does not specifically associate with any aspect of its strategic plan.

Table 9. Other performance measures tracked by the agency.

Performance Measure	Type of Measure		2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Trainings held, number of Required by: Agency selected (not required by federal or state government) Time Applicable: July - June	Output	Target:	DNE	15-20	15-20	15-20	15-20	15-20
		Actual:	21	21	22	26	24	Trend Line 
Persons trained, number of Required by: Agency selected (not required by federal or state government) Time Applicable: July - June	Output	Target:	DNE	DNE	DNE	1,000	1,000	1,000
		Actual:	1,412	1,434	2,014	1,784	1,931	Trend Line 
Continuing education hours provided, number of Required by: Agency selected (not required by federal or state government) Time Applicable: July - June	Output	Target:	DNE	DNE	DNE	100	100	100
		Actual:	143.17	159.4	151.75	142.75	184.65	Trend Line 

Performance Measure	Type of Measure		2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
General sessions cases added, number of Required by: Agency selected (not required by federal or state government) Time Applicable: July - June	Input / Activity	Target:	DNE	DNE	DNE	DNE	DNE	DNE
		Actual:	DNE	113,771	113,711	120,407	127,017	Trend Line 
General sessions cases disposed of, number of Required by: Agency selected (not required by federal or state government) Time Applicable: July - June	Output	Target:	DNE	DNE	DNE	More than 114,891	More than 114,891	More than 114,981
		Actual:	DNE	115,763	117,281	114,891	123,915	Trend Line 
Cases pending in general sessions, number of Required by: Agency selected (not required by federal or state government) Time Applicable: July - June	Input / Activity	Target:	DNE	DNE	DNE	Less than 113,168	Less than 113,168	Less than 113,168
		Actual:	DNE	105,933	104,947	113,168	118,860	Trend Line 

Performance Measure	Type of Measure		2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
General sessions cases added, 3 year average of Required by: Agency selected (not required by federal or state government) Time Applicable: July - June	Input / Activity	Target:	DNE	DNE	DNE	DNE	DNE	DNE
		Actual:	DNE	DNE	114,198	115,930	120,378	Trend Line 
Pending general sessions cases over 541 or 545 days old, number of Required by: Agency selected (not required by federal or state government) Time Applicable: July - June	Output	Target:	DNE	DNE	DNE	Less than 19,486	Less than 19,486	Less than 19,486
		Actual:	DNE	DNE	20,590	19,486	18,897	Trend Line 
General sessions incoming cases assigned to a prosecutor during the previous three years, average number of Required by: Agency selected (not required by federal or state government) Time Applicable: July - June	Input / Activity	Target:	DNE	DNE	DNE	281	281	281
		Actual:	DNE	DNE	377	383	331	Trend Line 

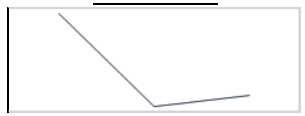
Performance Measure	Type of Measure		2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Days, from arrest to disposition (resolution of a criminal charge, which may be either conviction, not guilty verdict, or dismissal), of a general sessions case, average number of Required by: Agency selected (not required by federal or state government) Time Applicable: July - June	Output	Target:	DNE	DNE	DNE	Less than 365	Less than 365	Less than 365
		Actual:	DNE	DNE	416	398	400	Trend Line 
Counties without an assigned prosecutor, number of Required by: Agency selected (not required by federal or state government) Time Applicable: July - June	Input / Activity	Target:	DNE	DNE	DNE	0	0	0
		Actual:	DNE	DNE	DNE	3	0	Trend Line Not enough data to create a trend line
Full-time general sessions prosecutors, number of Required by: Agency selected (not required by federal or state government) Time Applicable: July - June	Input / Activity	Target:	DNE	DNE	DNE	408	408	408
		Actual:	DNE	DNE	303	303	364 or less (some are part-time)	Trend Line 
Circuits with secure, cloud based, prosecution case management system, data storage and e-discovery platform, number of Required by: Agency selected (not required by federal or state government) Time Applicable: July - June	Input / Activity	Target:	DNE	DNE	DNE	DNE	DNE	16
		Actual:	No Data	No Data	No Data	No Data	No Data	Trend Line Not enough data to create a trend line

Table Note: For each measure, the agency identified which "type of measure" it considered the performance measure. "DNE" means did not exist.

STUDY PROCESS

Agency Selection

The Commission on Prosecution Coordination is an agency subject to legislative oversight.[72] On December 19, 2017, during the 122nd General Assembly, the Committee prioritizes the agency for study.[73]

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**.[74] Throughout the study, the Honorable Edward R. Tallon, Sr. served as chair. Other Subcommittee Members include:

- The Honorable Katherine E. Arrington;
- The Honorable William M. Hixon; and
- The Honorable Jeffrey E. 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 of Laws § 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.

The agency submits its Annual Restructuring Reports on March 31, 2015, and January 11, 2016.[75] The agency's Annual Accountability Reports to the Governor and General Assembly, which it submits in September 2016 and September 2017, serve as its Annual Restructuring Reports thereafter.[76]

Seven-Year Plan for Cost Savings and Increased Efficiencies

S.C. Code of Laws § 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."[77] The agency submits its plan on March 31, 2015.[78]

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 of Laws § 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 the agency's Program Evaluation Report (PER) on January 23, 2018. The agency submits its report on April 6, 2018.

The PER includes information in the following areas - agency snapshot; agency legal directives, strategic plan and resources; agency performance; agency strategic plan summary; agency ideas and recommendations; and additional documents. 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.[79] 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.[80] During the study, media articles related to the agency are compiled for member review.

Public Survey

From January 23, 2018 - March 1, 2018, the Committee posts an **online survey to solicit comments from the public about the SCCPC** 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.[81]

There are 501 responses to the online survey seeking citizens' input about the SCETV Commission; Commission on Indigent Defense; Department of Labor, Licensing, and Regulation; Department of Parks, Recreation, and Tourism; Commission on Prosecution Coordination; and Department of Revenue. Responses are received from about 72% of the counties (33). Of the total responses, 378 indicate they would like to provide input on the Commission on Prosecution Coordination, but only 20 actually provide input.

Of those survey participants that respond to questions related to the Commission on Prosecution Coordination, 50% have a positive or very positive opinion of the agency and 55% think the agency functions much better, better, or about the same on an overall basis in comparison to other state agencies in South Carolina. [82] The comments vary, ranging from one statement that agency staff are very helpful when seeking information to another statement that questions the need for the agency.[83]

These comments are not considered testimony.[84] 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."[85] 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.[86]

Public Input via Committee Website

Throughout the course of the study, people are able to submit comments anonymously on the Committee website. The Committee posts comments verbatim to the website, but they are not the comment or expression of the House Legislative Oversight Committee, any of its Subcommittees, or the House of Representatives.[87] During the study, the Committee receives no public input about SCCPC in this manner.

Public Input via In-Person Testimony

During the study, the Committee offers the opportunity for the public to appear and provide sworn testimony.[88] A press release announcing this opportunity is sent to media outlets statewide on February 9, 2018.[89] The Committee holds a meeting dedicated to public input about SCCPC and other agencies on April 26, 2018.[90] Further detail on the public input meeting is in the meetings section of this report.

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 four 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 beginning on page nine.

122nd General Assembly (2017-2018)

December 2017

During the December 19, 2017, meeting, the Committee selects the agency for study.

April 2018

On **April 26, 2018**, the Committee holds **Meeting # 1** with the agency to obtain public input. Mr. Ronnie Steele, from Charleston County, provides public testimony about the agency.[91] Mr. David Ross, Executive Director, Commission on Prosecution Coordination, testifies he has no comments at this time. Meeting materials and minutes are available online.

June 2018

On **June 18, 2018**, the Subcommittee holds **Meeting # 2** with the agency. The purpose of the meeting is for agency representatives to provide an overview of the agency as a whole, and details about services and products the agency provides; the agency's strategic plan, resource allocation, and associated performance measures; other performance measures tracked by the agency; and agency recommendations for internal and law changes.

The following individuals from the agency are placed under oath: (a) Fourteenth Judicial Circuit Solicitor Isaac McDuffie (Duffie) Stone, III, Chair of the Commission; (b) Ms. Amie L. Clifford, Education Coordinator/Senior Staff Attorney; (c) Ms. Tina Thompson, Administrative Assistant; (d) Mr. N. Mark Rapoport, Staff Attorney; and (e) Mr. W. Mattison Gamble, Traffic Safety Resource Prosecution Attorney.

The Commission chair provides remarks. Members ask questions, which the Commission chair answers, related to the following topics:

a. Caseloads, including how the term "case" is defined, and items which impact the number of cases;
b. Solicitor's Association and other limited liability companies or non-profits operating in individual judicial circuits;
c. Findings of General Assembly when the agency was created, including: (1) tracking and decreasing backlogs of cases; and (2) examples of uniformity in prosecution created by the agency;
d. Legal directives including: (1) solicitors determining the trial docket and recent S.C. Supreme Court decision in State v. Langford which held the statute is unconstitutional; and (2) solicitors annually conducting an examination of the offices of the clerk of the court, sheriff, and register of deeds to determine if those officers are performing their duties under the law (S.C. Code Section 1-7-730);
e. Issues around law enforcement entities' production of evidence to solicitors' offices; and
f. Law enforcement officers prosecuting driving under the influence cases in magistrate courts.

Ms. Clifford provides information about the following: (a) agency's creation, mission, and vision; (b) agency's governing body; (c) agency staff; (d) duties of the agency; (e) details about the following duties: (i) coordination of administrative functions of the solicitors' offices; (ii) administrative functions of the agency; and (iii) continuing education. Members ask questions related to the topics, which Ms. Clifford answers.

Subcommittee members make various motions during the meeting. A roll call vote is held for each of these motions, and, among the members present, the motions pass unanimously. Meeting materials and minutes are available online.

July 2018

On **July 24, 2018**, the Subcommittee holds **Meeting # 3** with the agency. The purpose of the meeting is for agency representatives to provide an overview of the following: (a) different courts, cases heard in each, and who prosecutes the cases; (b) actions required to move cases forward from arrest to disposition, in particular the actions for which the prosecutor is responsible, and issues which could arise that may slow down the process, as in all criminal prosecutions, the sixth amendment to the U.S. Constitution provides the accused the right to a speedy and public trial; (c) solicitor funding and expenses including an explanation of the Commission's financial task force's goals, timeline, and information it has already collected and is in the process of collecting; and (d) agency funding.

The Commission chair and education coordinator/senior staff attorney provide remarks related to the following topics:

a. warrant approval;
b. definition of a "case";
c. investigative versus screening grand juries;
d. case management orders;
e. electronic evidence transfer and case data management systems;
f. drug courts, including funding and how success is measured;
g. backlog of cases;
h. solicitor offices funding, including where funds are maintained, accountability, and Commission's finance task force; and
i. agency funding.

Members ask questions, which agency representatives answer.

Subcommittee members make various motions during the meeting. A roll call vote is held for these motions, and, among the members present, the motions pass unanimously. Meeting materials and minutes are available online.

August 2018

On **August 20, 2018**, the Subcommittee holds **Meeting # 4** with the agency. The purpose of the meeting is for a representative from the office of the Attorney General to testify about the office's interpretation of its authority and supervision of solicitors outlined in the state constitution and statutes; representatives from the Sheriffs' Association, Association of Counties, and Municipal Association to provide comments on warrant approval process, county grand juries having investigative authority, and cloud-based evidence databases; and the agency to present information not finished in previous meetings. Subcommittee Chairman Tallon notes representatives from the Law Enforcement Training Council, Police Chiefs' Association, and Law Enforcement Officers' Association are unable to attend, but they plan to provide written comments.

The following are placed under oath:

a. Ms. Lisa Catalanotto, Executive Director of the S.C. Commission on Prosecution Coordination;
b. Mr. Tiger Wells, Government Affairs Liaison, Municipal Association of S.C.;
c. Mr. James Knox, Staff Attorney, S.C. Association of Counties;
d. Mr. Bob Cook, Solicitor Attorney General, Office of the Attorney General;

e. Mr. Jeff Young, Chief Deputy General, Office of the Attorney General; and
f. Mr. Matthew Gates, Deputy General of Governmental Affairs, Office of the Attorney General.

Mr. Young testifies about the Office of Attorney General's interpretation of its authority and supervision of solicitors which is outlined in the state constitution and statutes. Members ask questions, which Mr. Young and Mr. Cook answer.

The Commission chair provides a brief summary of the following topics: (1) warrant approval process; (2) county grand juries having investigative authority; and (3) cloud-based evidence databases. After the summary of each, representatives from the S.C. Sheriffs' Association, S.C. Association of Counties, and Municipal Association of S.C., provide comments on the topics. Members ask questions, which Solicitor Stone and association representatives answer.

Subcommittee members tour the Commission on Prosecution Coordination offices on the state house grounds, which lasts approximately 45 minutes.

A Subcommittee member makes a motion during the meeting. A roll call vote is held for the motion, and, among the members present, the motion passes unanimously. Meeting materials and minutes are available online.

September 2018

On **September 18, 2018**, the Subcommittee holds **Meeting # 5** with the agency. The Subcommittee receives testimony from the agency on its internal and law recommendations. Following this testimony, Subcommittee members ask questions related to the following topics: (a) general responsibilities of the agency; (b) agency website; (c) performance; (d) employees; (e) court dockets; (f) diversion programs; (g) case management software; and (h) solicitor discussions with law enforcement. The Commission chair and executive director answer the questions. Subcommittee members make motions for various recommendations and findings. A roll call vote is held for each of these motions, and, among the members present, the motions pass unanimously. Meeting materials and minutes are available online.

October 2018

On **October 23, 2018**, the Committee holds **Meeting # 6** 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 Chairman Tallon, which he answers. Also, members ask questions of agency personnel, which they answer. Subcommittee Chairman 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 three findings** arising from its study of the agency. The first identifies an emerging issue for the General Assembly. The second and third identify lack of transparency available in criminal justice data.

First, the Committee finds the **expense of storing body camera videos and other law enforcement videos is an emerging issue** the General Assembly may need to address in the future.[92]

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

Third, the Committee finds the Commission on Prosecution Coordination and the Commission on Indigent Defense currently do not track the **performance** of circuit solicitor and circuit public defender 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 35 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) collaboration; and (7) modernization of statutes.

Accountability

The Committee has **three recommendations related to accountability**, and a summary is set forth in Table 10.

Table 10. Summary of recommendations to provide accountability.

Topic	Recommendations
Accountability	1. Authorize the agency to enforce its regulations applicable to circuit solicitors* 2. Affirm appropriate internal finance policies exist at each circuit solicitor's office prior to providing state funding* 3. (a) Publish online the agency's finance task force report (b)Follow up with the agency on its finance task force's report^

Table Note: An asterisk (*) indicates the entire recommendation, or a portion of it, is for the General Assembly. A caret (^) indicates the recommendation is for the House Legislative Oversight Committee.

1. The Committee recommends the General Assembly consider authorizing the agency to enforce its regulations applicable to circuit solicitors. Specifically, the Committee recommends the General Assembly consider revising S.C. Code Section 1-7-990, which allows the agency to promulgate regulations, to state the agency has statutory authority to enforce, through mechanisms the agency deems effective, its regulations applicable to circuit solicitors .[93] There is no recommendation for a particular enforcement mechanism. However, accountability may be improved with statutory revisions that provide the agency enforcement authority.[94]

Granting this authority is consistent with existing law. Under existing law, the General Assembly directs the agency, "to coordinate all activities involving the prosecution of criminal cases in this state."[95] Additionally, the General Assembly authorizes the agency to promulgate any regulations necessary to assist in performing its duties.[96] While the agency believes it can promulgate regulations which require solicitors to provide specific information or follow certain policies to assist the agency in coordinating activities which strive to accomplish the General Assembly's intent, the agency is unclear whether it has statutory authority to create an enforcement mechanism to ensure compliance with the regulations.[97]

As evidence for the necessity of this express authority, the General Assembly requires the agency to provide a report on each circuit solicitor's financial information, and the agency has been unable to obtain necessary information from all circuits.[98] When the Commission on Indigent Defense had a similar issue with circuit public defenders, the General Assembly authorized it to withhold the circuit public defender's funding as an enforcement mechanism.[99]

2. The Committee recommends the General Assembly consider requiring affirmation that appropriate finance policies exist at each circuit solicitor's office prior to providing state funding. Circuit solicitors receive more than 35 million dollars in funding from the state.[100] Accordingly, the Committee recommends the General Assembly consider adding prerequisites to each circuit solicitor office receiving state funding. These prerequisites may include, but are not limited to: proof of spending policies, such as those recommended in financial audits, and assurances those with access to funds have undergone and passed appropriate background checks.[101] As an example for the necessity of this recommendation, a recent audit of the fifth circuit solicitor reportedly has found the office did not have a credit card usage policy and alleges a staffer with a history of financial fraud had credit card oversight authority.[102]

3(a). The Committee recommends the agency publish online its finance task force report. In an effort to ensure transparency, uniformity, and accountability, the agency has of its own initiative formed a finance task force to determine a financial best practices framework for circuit solicitors.[103] This task force begins the process of gathering information during the study.[104] The information gathering phase is expected to conclude in the fall with the analysis phase to begin thereafter.[105] The agency anticipates receiving recommendations from the task force by February 2019.[106]

To increase government accountability through transparency, the Committee recommends the agency's finance task force publish online a report, which includes: the questions the task force seeks to answer, information reviewed, recommendations, and the basis for the recommendations.[107]

Circuit solicitors are responsible for their respective offices' funding, including the establishment of proper procedures and audits of their funds.[108] However, as the Commission chair notes during the study process, circuit solicitors are dedicated prosecutors, not accountants; therefore, some circuit solicitors may prefer to have a framework of uniform financial best practices to follow.[109]

3(b). The Committee recommends follow-up with the agency on its finance task force's report and any other matters. The Committee recommends it follow up with the agency about its finance task force report after the agency publishes it online.[110]

Efficiencies in Operations

The Committee has **six recommendations to improve efficiencies in operations**, and a summary is set forth in Table 11.

Table 11. Summary of recommendations to improve efficiencies in operations.

Topic	Recommendations
Efficiencies in operations	4. Establish electronic transfer of state funds to circuit solicitors' offices 5. Reduce personnel time and costs when collecting data from circuit solicitors' offices for analysis and reporting 6. Establish a replacement plan for technology and educational resources essential to agency staff

	7. Research case management options to determine if software may allow for receipt of evidence from law enforcement in the way it is currently transmitted (i.e., compact disc and flash drive) as well as via cloud upload 8. Create a uniform method of case data management for circuit solicitors 9. Conduct management training for circuit solicitors

4. The Committee recommends the agency establish electronic transfer of state funds to circuit solicitors' offices. The agency transfers state appropriations and funds to the sixteen circuit solicitors' offices on a quarterly basis. To improve efficiencies in operations through time and cost savings, the Committee recommends the agency transfer state appropriations and funds to the sixteen circuit solicitors' offices electronically, instead of printing and mailing individual checks each quarter.[111] This recommendation supports a change the agency is in the process of implementing.[112]

5. The Committee recommends the agency reduce personnel time and costs when collecting data from circuit solicitors' offices for analysis and reporting. This recommendation is made to improve efficiencies in operations by avoiding the costs of time, which may otherwise be utilized more effectively, in re-entering information. Evidence for the necessity of this recommendation is how the agency currently creates its annual, statutorily required, report on statewide diversion programs: the agency re-enters information from circuit solicitors into a format for analysis and reporting.[113] With other reports (e.g., report on circuit solicitor revenues and expenses required by statute), the agency scans the typed or handwritten information circuit solicitors provide. While this method avoids spending time to re-enter the information, it also limits substantive analysis as the information is not in a searchable, sortable format.[114]

Accordingly, the Committee recommends the agency accomplish the following: (1) determine the cost of re-entering information individual circuit solicitors provide to the agency about traffic education, alcohol education, diversion programs, and pre-trial intervention programs; and (2) research if there is a method, to the extent it can securely and efficiently be done, by which individual circuit solicitors may enter data on these programs so the data automatically is in a format the agency may utilize for analysis and reporting.[115]

6. The Committee recommends the agency establish a r*eplacement plan for technology and educational resources essential to agency staff.* One of the agency's strategic objectives is to "provide sufficient resources for staff."[116] Currently, the agency does not have a plan with a cycle for how often essential resources (e.g., computers, digital or print publications, etc.) will need to be replaced, anticipated costs to purchase replacements, and how the agency may budget for those costs.[117]

To improve efficiencies in agency operations, the Committee recommends the agency develop a formal replacement cycle plan for resources it deems essential.[118] During the study process, the agency identifies the following as essential:

> [t]echnological resources (including computers, productivity software, printers/scanners/copiers, website access and support, Internet research resources such as Westlaw™, remote network accessibility, and tech support); educational resources to ensure that staff is current on issues and trends related to the law and practice (including digital or print publications and in-person and online training

opportunities); adequate staff support; sufficient physical workspace; appropriate delegation of authority; and appropriate managerial guidance and oversight.[119]

The plan should be updated regularly and include, but not be limited to, anticipated costs and how those costs will be paid.[120]

7. The Committee recommends the agency research case management options to determine if software may allow for receipt of evidence from law enforcement in the way it is currently transmitted (i.e., compact disc and flash drive) as well as via cloud upload. To increase efficiencies in operation, the Committee recommends the agency further research case management software to determine if there is software available allowing a circuit solicitor's office to obtain evidence through uploading online as well as through transferring from a portable storage medium (e.g., compact disc or flash drive).[121]

Currently, law enforcement entities transfer evidence to circuit solicitors' offices in two ways, (1) uploading it to a cloud online; and (2) providing it on a compact disc or flash drive. Since all law enforcement entities may not have the same technology capabilities, or the same level of confidence in the security of an online cloud, it may be advantageous for circuit solicitors' offices to obtain case management software with the flexibility to accept evidence received in different manners.

8. The Committee recommends the agency create a uniform method of case data management for circuit solicitors. The Committee recommends the agency meet with applicable law enforcement, circuit solicitors, circuit public defenders, and criminal defense attorneys associations to promulgate a uniform method of case data management, and determine if backlog may be reduced with an electronic case data management system.[122]

Case data management systems provide "an efficiency in the management process," by allowing an office to effectively organize information related to a case including files, emails, and notes.[123] Additionally, these systems can capture other information to assist individual employees and office management in tracking the progress of a specific case and analyzing trends based on aggregating data from all cases in the office or just certain case types.

This recommendation does not request a case data management method that is uniform for all impacted parties as law enforcement, circuit solicitors, and criminal defense attorneys access information in a case at different times. Rather, it seeks discussion among the parties, so the agency may potentially meet as many needs as possible when determining a uniform method for circuit solicitors. A uniform method of case data management for circuit solicitors may help the agency (1) standardize the data collection process (e.g., number of individuals prosecuted, recidivism), (2) increase the information available (e.g., aggregated data statewide) when explaining situations to policy makers, and (3) improve efficiencies and effectiveness of prosecution statewide.

The Commission on Indigent Defense has a statewide system, which allows it to collect case information from across the state without expending time to contact each circuit public defender office to request information.[124] Their system is accessible to all circuit public defender staff in all sixteen judicial circuits, attorneys and administrative assistants from the agency's appellate division, and the agency's database specialist.[125] The upfront cost of unifying the existing systems into the statewide defender data system in 2012-13 was $160,000.[126] The annual cost of the system, which the Commission pays as opposed to the

individual circuit public defender offices paying, 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.[127]

9. The Committee recommends the agency conduct management training for circuit solicitors. Providing legal representation and managing an office of attorneys and non-attorneys require different skill sets. Prior to their election as circuit solicitor, an attorney may have extensive management experience or no management experience. In an effort to seek efficiencies in operation, the Committee recommends the Commission on Prosecution Coordination and Commission on Indigent Defense conduct training, together or separately, when a new circuit solicitor and/or new circuit public defender is first elected, as well as annual training thereafter.[128] 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.[129]

Effectiveness of Programs

The Committee has **nine recommendations related to the effectiveness of programs**, and a summary is set forth in Table 12.

Table 12. Summary of recommendations related to the effectiveness of programs.

Topic	Recommendations
Effectiveness of programs	<u>Prosecution of Cases</u> 10. Define, in regulation, the term "case" for circuit solicitors to utilize in measuring workload, backlog, and other metrics 11. Promulgate regulations outlining a procedure to measure the success of circuit solicitors' offices 12. Report concerns, if any, about court rules for the General Assembly's consideration <u>Diversion Programs</u> 13. Define recidivism for measuring outcomes of diversion programs 14. Track which diversion programs most frequently and efficiently obtain the outcomes sought by the General Assembly* 15. Require circuit solicitors to seek input from circuit public defenders on establishing and/or revising diversion programs 16. Meet on a regular basis with Commission on Indigent Defense to discuss diversion programs and performance of these programs* 17. Update standards and guidelines to measure the effectiveness and efficiency of pre-trial intervention programs <u>Communication with Customers</u> 18. Analyze the agency's new communication methods and use the data to continually improve investment in technology

Table Note: An asterisk (*) indicates the entire recommendation, or a portion of it, is for the General Assembly.

Prosecution of Cases

10. The Committee recommends the agency define, in regulation, the term "case" for circuit solicitors to utilize in measuring workload, backlog, and other metrics.[130] In an effort 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 solicitors to utilize when calculating workload, backlog, cost per case, and other metrics. [131]

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.[132]

c. Publish the memorandum on the agency website.[133]

d. Utilize the definition when the agency or circuit solicitors 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 solicitors, it is not utilized by circuit public defenders nor the judiciary branch.[134]

This may assist the agency in tracking its performance and in fulfilling the intent of the General Assembly to reduce backlog in criminal cases as reflected in the enabling legislation for the agency.[135] Determining if the agency is helping address backlog requires collection of standardized data and a uniform calculation method.

A circuit solicitor may utilize the numbers tracked by court administration. However, court administration tracks the number of warrants (i.e., each individual charge brought against an individual), which is not how most circuit solicitors define the term "case." Additionally, the Commission chair asserts, "backlog is not the number of cases that are sitting on your docket," which court administration tracks.[136] The agency describes backlog as follows:

> Backlog is not the same as pending. A solicitor may have thousands of cases pending that are within months of arrest. These cases should not be considered a backlog. Backlog should be determined as a percentage of cases that are still pending from previous years once at least six months has passed into the next year.[137]

This is an initial description because the agency's Commission has not yet met to vote on a definition or calculation method. Additionally, agency staff is drafting a proposed definition for the term "case" to present to the Commission on Prosecution Coordination.[138]

11. The Committee recommends the agency promulgate regulations outlining a procedure to measure the success of circuit solicitors' offices.[139] 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 solicitor's office in the aggregate. In an effort to increase the effectiveness of the agency's programs, the Committee recommends the agency establish regulations, which provide uniform metrics to measure success of circuit solicitor offices including potential improvements in outcomes and/or cost savings that may be gained from using the metrics.[140]

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 (e.g., backlog of cases) utilized across all circuits may allow for comparison (e.g., from circuit to circuit and county to county).[141]

During the study process, the Commission chair acknowledges the agency should focus on data-driven analysis and not just anecdotal stories.[142] Further, the Commission chair asserts this is where he sees the agency's biggest role.[143]

12. The Committee recommends the agency report concerns, if any, about court rules for the General Assembly's consideration. The Committee recommends the Commission on Prosecution Coordination and the Commission on Indigent Defense 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.[144] This information may help inform policy makers on potential ways to improve the effectiveness and efficiency of the state's criminal justice system.

Diversion Programs

13. The Committee recommends the agency define recidivism for measuring the outcomes of diversion programs. While some circuit solicitors' offices track recidivism for some or all of their diversion programs, others do not.[145] Appendix B includes a chart of information tracked by different circuit solicitors' offices.[146] Even with circuit solicitors that track recidivism, it is unclear if the data can be compared because "there is no adopted uniform definition of recidivism in our state for solicitors in diversion programs."[147] This recommendation seeks to increase the effectiveness of the agency programs by establishing a uniform definition to identify effective programs and to assist those that are not.[148]

The Committee recommends the agency work with impacted parties, including, but not limited to, (a) law enforcement entities, (b) Department of Juvenile Justice, (c) Department of Corrections, (d) Department of Probation, Parole, and Pardon, and (e) Department of Mental Health, to determine a uniform definition, or definitions, of recidivism.[149] The definition(s) should allow each entity involved to collect the type of data the agency needs to reliably report recidivism. There may be several definitions of recidivism to account for different types of cases as well as for adult versus juvenile offenses, but the Committee recommends the definitions be uniform statewide.[150]

The Committee recommends the agency focus first on domestic violence and driving under the influence cases and by the end of next year have the following to promulgate in regulations: (a) uniform definition for recidivism in domestic violence and driving under the influence matters, (b) list of data that can be tracked by all parties involved with their current systems, (c) process for how the data will be tracked, aggregated, and electronically reported, and (d) timeline for determining a uniform definition of recidivism in other types of matters.[151]

14. The Committee recommends the General Assembly consider tracking which diversion programs most frequently and efficiently obtain desired outcomes. A stated intent of the General Assembly in requiring the agency to report data on diversion programs is to provide "cost-effective prison release and community supervision mechanisms and cost-effective and incentive-based strategies for alternatives to

incarceration in order to reduce recidivism and improve public safety."[152] The agency acknowledges the information it is required to collect on the diversion programs "does not provide evidence that can be used to evaluate the effectiveness of the programs in reducing recidivism rates."[153] According to the agency, "[i]nformation on the actual recidivism rate for participants that successfully complete diversion programs would be an indicator of the success of these programs."[154]

To increase the effectiveness of agency programs, the Committee recommends the General Assembly revise statutes that list information entities which administer traffic education, alcohol education, and diversion programs must collect and report by granting the agency discretion to determine the data needed (e.g. recidivism rate, etc.). To track this data, the Committee recommends the agency add the following to its annual report on statewide diversion programs: (a) explanation of the applicable laws and legislative intent, (b) list of the data being collected, and (c) explanation of why the data best illustrates whether the outcomes sought by the General Assembly are being achieved. This recommendation may allow flexibility to account for changes over time in what data and metrics may best illustrate the outcomes being achieved.[155]

15. The Committee recommends the agency require circuit solicitors to seek input from circuit public defenders on establishing and/or revising diversion programs.[156] The unfettered discretion to prosecute rests solely in the prosecutor's hands. A prosecutor may pursue a case to trial, or may offer a plea to a lesser offense, or may opt to not prosecute the offense.[157] Absent a statute to the effect, "a court has no power …to dismiss a criminal prosecution except at the instance of the prosecutor."[158] 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."[159]

16. The Committee recommends the General Assembly consider requiring the Commission on Prosecution Coordination and Commission on Indigent Defense 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 on and discuss diversion programs, performance of these programs, and ideas for how to continually improve the performance of these programs in reducing recidivism.[160]

17. The Committee recommends the agency update standards and guidelines to measure the effectiveness and efficiency of pre-trial intervention programs. To increase the effectiveness of agency programs, the Committee recommends the agency analyze how to measure whether outcomes intended from pre-trial intervention (PTI) programs are being achieved. Further, the Committee recommends inclusion of the following in any updated PTI standards and guidelines: (a) outcome(s) sought from the programs; (b) how each program should measure its effectiveness and efficiency in achieving these outcomes; and (c) method and frequency by which each program must record and report its target and actual results on the measures.[161]

Pre-trial intervention is for first-time offenders.[162] The purpose of the guidelines and standards is to ensure these programs across the state follow the same processes and procedures.[163] During the study, the agency indicates it plans to review the PTI standards and guidelines but is unsure if the standards and guidelines will address outcome measures.[164] Ensuring outcome measures are included in the statewide standards and guidelines may provide standardization to allow the agency, and policy makers, to

determine which programs are most effective in achieving the desired outcomes and which may need to be revised or eliminated.

Communication with Customers

18. The Committee recommends the agency analyze its new communication methods and use the data to continually improve investment in technology.[165] Specifically, the Committee recommends the agency complete the following: (1) obtain baseline customer satisfaction data on the current methods in which the agency provides information, including, but not limited to, frequency and ease with which information may be accessed; and (2) after the new website is created, continue tracking customer satisfaction to gauge the success of the agency's new methods of communicating.[166] Additionally, the Committee recommends the agency retain its data.[167]

The agency's duties include acting as a clearinghouse and distribution source for publications involving circuit solicitors and their affiliate services and providing legal updates on matters of law affecting prosecution of criminal cases.[168] An avenue through which the agency plans to continually improve in this area is upgrading its website as the capabilities of its current website are very limited.[169] The agency anticipates spending between $10,000 and $100,000 on upgrading its website.[170] As this is a significant investment, obtaining data on customer satisfaction may assist the agency in determining the return on its investment in the new technology and assist it in making revisions necessary to continually improve.

Transparency

The Committee has **six recommendations to increase transparency**, and a summary is set forth in Table 13.

Table 13. Summary of recommendations to increase transparency.

Topic	Recommendations
Transparency	19. Obtain data on the number of individuals prosecuted annually by circuit and county* 20. Collect and publish employee data (e.g., number of employees, years of experience, etc.) from each circuit solicitor's office 21. List any additional data the agency recommends collecting and potential benefits of each 22. Determine the intended purpose of agency funds appropriated to the S.C. Center for Fathers and Families 23. Consider whether funds appropriated to the S.C. Center for Fathers and Families should pass through a different agency* 24. Determine who pays for asbestos abatement and removal in the offices of state agencies^

Table Note: An asterisk (*) indicates the entire recommendation, or a portion of it, is for the General Assembly. A caret (^) indicates the recommendation is for the House Legislative Oversight Committee.

19. The Committee recommends the General Assembly consider assisting the agency in obtaining data on the number of individuals prosecuted annually by circuit and county. To increase government transparency, the Committee recommends the General Assembly consider assisting the agency in finding a method to obtain data on the number of individuals prosecuted annually by circuit and county.[171]

Helping the agency find an efficient method to calculate this data may assist policy makers when considering options for indigent screening or making other cost/benefit analyses.

According to the agency, for circuit solicitors who do not have a case management system, it is very hard to track this data.[172] However, circuit solicitors who have already developed a case management system can track this type of data on a per case basis.[173] The agency asserts efficient case management systems have the ability to distinguish between the number of cases prosecuted annually and the number of warrants issued.[174]

20. The Committee recommends the agency collect and publish employee data (e.g., number of employees, years of experience, etc.) from each circuit solicitor's office. To increase government transparency and assist policy makers in comparing caseloads and resources, the Committee recommends the agency (1) create a way for each circuit solicitor to electronically report to the agency the same personnel information included in the Commission on Indigent Defense's annual human resources and funding survey, (2) promulgate regulations to require this reporting from circuit solicitors on a regular basis; and (3) publish this information in a report on the website of each circuit solicitor and the agency.[175]

21. The Committee recommends the agency list any additional data it recommends collecting and potential benefits of each. Specifically, the Committee recommends the agency provide it a list of data it recommends collecting annually (e.g., backlog by circuit) and/or every three years (e.g., caseload analysis). The following should be included for each type of data: (a) to whom it would be available, and (b) what may be gained from knowing it (e.g., notice that changes may be needed in certain circuits to address backlog, number of prosecutors and public defenders needed to maintain reasonable caseload per attorney, etc.)[176]

Requiring this list of data may assist the agency in its strategic, long term planning. According to the Commission chair's testimony, the agency should focus on data driven analysis.[177] The Commission chair views the agency as a clearinghouse for information to help explain to the General Assembly the needs of prosecutors and what may make the biggest difference for them in prosecuting crimes.[178]

22. The Committee recommends the agency determine the intended purpose of agency funds appropriated to the S.C. Center for Fathers and Families. Last year $400,000 passed through the agency to the S.C. Center for Fathers and Families in quarterly disbursements.[179] During the study process, the Commission chair testifies the agency has nothing to do with the organization, does not know what the organization does, and does not receive any reports on how the organization spends the funds.[180]

The 2018-2019 General Appropriation Act requires an organization receiving contributions to submit a report to the state agency making the contribution that includes an accounting of how the funds were spent and the outcome measures used to determine the success of the stated goals.[181] Accordingly, the Committee recommends the agency receive this accountability information.

23. The Committee recommends the General Assembly consider whether funds appropriated to the S.C. Center for Fathers and Families should pass through a different agency.

24. The Committee requests Committee staff determine who pays for asbestos abatement and removal in the offices of state agencies. Specifically, the Committee recommends its staff investigate if an agency's carryforward money may be used in asbestos abatement and removal or if the state covers these costs so an agency may focus the spending of its carryforward funds on the agency mission.[182]

During the study, an agency representative notes the agency has allocated its carryforward funds, which in fiscal year 2016-17 was almost $900,000, to construction for training in their offices.[183] A large sum of money may be needed for construction because part of the discussion includes whether the agency will have to pay to remove asbestos in the building, which the agency leases from the state.[184] The state does not have an asbestos fund, but there is a more general fund for deferred maintenance and critical issues.[185]

Department of Administration representatives inform Committee staff when asbestos abatement is requested based on elective renovations an agency wants to perform, the state does not cover it.[186] However, any construction for deferred maintenance in the building, which would require asbestos abatement, the state would cover.[187]

Employee Input

The Committee has **one recommendation related to employee input**, and a summary is set forth in Table 14.

Table 14. Summary of recommendations related to employee input.

Topic	Recommendations
Employee input	25. Allow opportunities for anonymous employee feedback

25. The Committee recommends the agency allow anonymous employee feedback. In an effort 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 solicitors, to provide anonymous input directly to the agency's Commission relating to any concerns about the agency or individual circuits.[188] Currently, the agency does not allow anonymous input from agency employees or methods through which employees of circuit solicitors can submit anonymous input directly to the agency's Commission.[189]

Collaboration

The Committee has **four recommendations for collaboration**, and a summary is set forth in Table 15.

Table 15. Summary of recommendations for collaboration with law enforcement.

Topic	Recommendations
Collaborate	26. Collect and share data, which may indicate a need for targeted training for law enforcement entities, with the Criminal Justice Academy 27. Track the following information:+ (i) training recommended to specific law enforcement entities based on data received from circuit solicitors' offices; (ii) whether those law enforcement entities are taking part in the training; and (iii) customer satisfaction related to the training 28. Evaluate the need for potential legislation to encourage increased communication between law enforcement and circuit solicitors prior to arrests* 29. Collect information on the costs associated with cloud based transfer of electronic evidence

Table Note: An asterisk (*) indicates the entire recommendation, or a portion of it, is for the General Assembly. A plus (+) indicates the recommendation is for the Criminal Justice Academy.

26. The Committee recommends the agency collect and share data, which may indicate a need for targeted training for law enforcement entities, with the Criminal Justice Academy. To foster collaboration, the Committee recommends the agency accomplish the following within the next year:

> (1) work with the Criminal Justice Academy (academy) and Law Enforcement Training Council to determine different statistical information that, if circuit solicitors' offices collect it, may be beneficial to the academy in determining topics which may need additional emphasis during training of all law enforcement personnel, and/or in suggesting specific areas of additional training for certain law enforcement entities or officers.[190] The information may include, but is not limited to, the percentage of cases received from each law enforcement entity which are prosecuted.[191]
> and
> (2) promulgate regulations which accomplish the following: (a) explain why the data is needed, what it is to be used for, and how it can be beneficial for all involved, (b) clearly define what data is tracked, the method of collection, and the method of reporting; and (c) state the frequency in which the information, including examples of how it has helped all impacted parties in the performance of their jobs, will be available to law enforcement entities, circuit solicitors, General Assembly, and the public.[192]

27. The Committee recommends the Criminal Justice Academy track: (i) training recommended to specific law enforcement entities based on data received from circuit solicitors' offices; (ii) whether those law enforcement entities are taking part in the training; and (iii) customer satisfaction related to the training. This data may assist in determining the impact of the training and providing insight on how to improve the training.[193]

28. The Committee recommends the General Assembly evaluate the need for potential legislation to encourage increased communication between law enforcement and circuit solicitors prior to arrests. While law enforcement and circuit solicitors want to collaborate more, the issues of timing and liability are currently preventing increased pre-arrest communication and collaboration.[194] However, if a consensus can be reached, the General Assembly may have an opportunity to assist the parties and criminal prosecution statewide. Accordingly, the Committee recommends the following: (1) the agency continue to obtain input from impacted parties regarding potential language for legislation that may encourage increased communication pre-arrest between circuit solicitors' offices and law enforcement personnel; and (2) **if** a consensus is reached among the parties regarding potential legislation, the General Assembly consider adopting the recommended language.[195]

29. The Committee recommends the agency collect information on the costs associated with cloud-based transfer of electronic evidence. A basis for this recommendation is testimony from the Commission chair that the United States Supreme Court expects circuit solicitors to manage this discovery once an arrest has been made and the desire of some solicitors to accomplish this through the cloud.[196] The Committee does not take a position on the issue, but instead recommends the following occur prior to any General Assembly decisions: the agency communicate with impacted parties (e.g., Law Enforcement Training Council, applicable law enforcement associations, local government associations, and Judicial Department), and other jurisdictions across the country that transfer electronic evidence via the cloud, to (1) determine a method to collect applicable data related to the safekeeping and transfer of evidence upon which policy makers can make recommendations, and (2) collect the applicable data. Applicable data may include, but is not limited to (a) current protections from evidence mishandling (i.e., policies and practices relating to lost/stolen computer/flash drive; access by separated employee; etc.); (b) annual personnel time and costs related to transferring evidence through current methods; and (c) if possible, situations in which all evidence has not been transferred from and to the appropriate parties.[197] See Appendix C for additional information on this topic from the agency.

Modernization of Statutes

The Committee has **six recommendations related to modernization of statutes**, and a summary is set forth in Table 16.

Table 16. Summary of recommendations to modernize statutes.

Topic	Recommendations
Modernization of statutes	30. Eliminate older statutes authorizing staff for individual judicial circuits as newer statutes grant the same authority statewide* 31. Strike the agency's statutory duty to provide solicitors indictment forms since the forms are now computer generated* 32. Repeal older criminal domestic violence statute authorizing prosecution in General Sessions Court, in light of new statutes which accomplish the same* 33. Eliminate **or** enforce the statutory requirement that circuit solicitors study the office of other elected officials* (i.e., sheriff, clerk of court, and register of deeds) 34. Revise statutes which have been held unconstitutional relating to the setting of court dockets by circuit solicitors*

	35. Ensure court records are not destroyed before the timeframe in which a defendant may appeal expires*

Table Note: An asterisk (*) indicates the entire recommendation, or a portion of it, is for the General Assembly.

30. The Committee recommends the General Assembly consider eliminating older statutes authorizing staff for individual judicial circuits as newer statutes grant the same authority statewide. Specifically, the Committee recommends, as requested by the agency, that the General Assembly consider repealing S.C. Code Sections 1-7-420 through 1-7-540, which discuss assistant solicitors and special investigators for individual circuits.

These statutes may no longer be necessary considering S.C. Code Sections 1-7-405 and 1-7-406.[198] S.C. Code Section 1-7-405 allows each circuit solicitor to appoint as many assistant solicitors, investigators, and secretaries as the circuit solicitor deems necessary. S.C. Code Section 1-7-406 states each judicial circuit solicitor shall have at least one assistant solicitor and one investigator. Considering the authority granted in these two statutes, having fourteen separate statutes which provide the same authorization may no longer be necessary.[199] Additionally, each of the sixteen judicial circuit solicitors, whose circuits this recommendation would impact, agree with repealing S.C. Code Sections 1-7-420 through 1-7-540.[200]

For reference, the full text of these statutes is included in Appendix D.

31. The Committee recommends the General Assembly consider striking the agency's statutory duty to provide solicitors indictment forms since the forms are now computer generated. Specifically, the Committee recommends, as requested by the agency, that the General Assembly consider repealing subsection (A)(4) of S.C. Code Section 1-7-940, which relates to indictment forms.[201]

Subsection (A)(4) requires the agency to provide circuit solicitors blank copies of indictment forms.[202] However, each indictment is now created on the computer, based on the unique elements of the crime.[203] Since circuit solicitors no longer need blank copies from the agency, subsection (A)(4) may no longer be necessary.

Proposed language to implement this recommendation is included in Table 17.

Table 17. Proposed statutory changes to repeal duty to provide blank indictment forms.[204]

Recommended revision	SECTION 1-7-940. Duties. (A) The commission has the following duties: (1) coordinate all administrative functions of the offices of the solicitors and any affiliate services operating in conjunction with the solicitors' offices; (2) submit the budgets of the solicitors and their affiliate services to the General Assembly; and (3) encourage and develop legal education programs and training programs for solicitors and their affiliate services, organize and provide seminars to help increase the effectiveness and efficiency of the prosecution of criminal cases in this State, and act as a clearinghouse and distribution source for publications involving solicitors and their affiliate services and provide legal updates on matters of law affecting the prosecution of cases in this State~~;~~

	~~(4) provide blank indictments for the circuit solicitors~~. (B) Nothing in this section may be construed to displace or otherwise affect the functions and responsibilities of the State Victim/Witness Assistance Program as established in Section 16-3-1410.

32. The Committee recommends the General Assembly consider repealing an older criminal domestic violence statute authorizing prosecution in General Sessions Court, in light of new statutes which accomplish the same. Specifically, the Committee recommends, as requested by the agency, that the General Assembly consider repealing S.C. Code Section 22-3-546, which applies to first offense criminal domestic violence (which carried a penalty of 30 days and was triable in the summary court) in circuits with five or more counties.[205]

Since the crime of criminal domestic violence has been replaced with tiered crimes of domestic violence, and S.C. Code Section 16-22-25(D)(1) increases the penalty such that the lowest degree of domestic violence (3rd degree) must be prosecuted in General Sessions Court (unless the circuit solicitor decides to prosecute them in the summary court), a separate statute which only allows circuit solicitors in circuits with five or more counties to prosecute these charges in General Sessions court may no longer be necessary.[206]

For reference, S.C. Code Section 22-3-546 and 16-22-25(D)(1) are included in Table 18.

Table 18. Proposed statutory changes regarding domestic violence.[207]

Statute which makes S.C. Code Section 22-3-546 no longer necessary	SECTION 16-25-20. Acts prohibited; penalties. (D) A person commits the offense of domestic violence in the third degree if the person violates subsection (A). (1) A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars nor more than two thousand five hundred dollars or imprisoned not more than ninety days, or both. Notwithstanding the provisions of Sections 22-3-540, 22-3-545, and 22-3-550, an offense pursuant to the provisions of this subsection may be tried in summary court.
Recommended revision	Title 22 - Magistrates and Constables Article 5 - Criminal Jurisdiction ~~SECTION 22-3-546. Establishment of program for prosecution of first offense misdemeanor criminal domestic violence offenses.~~ ~~A circuit solicitor, in a circuit with five or more counties, may establish a program under his discretion and control, to prosecute first offense misdemeanor criminal domestic violence offenses, as defined in Section 16-25-20, in general sessions court. Whether to establish a program, and which cases may be prosecuted in general sessions court, are within the sole discretion of the solicitor. A solicitor shall report the results of the program to the Prosecution Coordination Commission.~~ ~~HISTORY: 2006 Act No. 366, Section 2, eff June 9, 2006.~~

33. The Committee recommends the General Assembly consider eliminating or providing an enforcement mechanism to the statutory requirement that circuit solicitors study the office of other elected officials (e.g., sheriff, clerk of court, and register of deeds). The Committee recommends the General Assembly consider eliminating S.C. Code Section 1-7-730, which requires examinations of the offices of elected officials, or revise it to include an enforcement mechanism to require compliance with the statute.[208]

S.C. Code Section 1-7-730 requires the Attorney General and circuit solicitors to conduct annual examinations of the offices of the clerk of the court, sheriff, and register of deeds in each county, to determine if those officers are performing their duties under the law, and make a report to the General Assembly.[209] It is unknown when the General Assembly last received a report pursuant to this statute, and the agency is unaware of the last time a circuit solicitor conducted an examination pursuant to the statute.[210] Additionally, the agency believes it would take longer than a year to conduct the examination properly, unless there were only specific areas circuit solicitors were tasked to examine.[211] For reference, the statute at issue is listed below:

> SECTION 1-7-730. Examination of offices of county officers.
> The Attorney General and solicitors shall annually, at such times as they may deem expedient, examine into the condition of the offices of the clerk of the court of common pleas and general sessions, of the sheriff and of the register of deeds in the counties of the respective solicitors and ascertain if such officers have discharged the duties which now are, or shall be, required of them; and they shall make a report of the condition of said offices and of the manner in which said officers have discharged their duties to the circuit court in each county, respectively, at the fall term in each year, and also to the General Assembly at its annual session.
>
> HISTORY: 1962 Code Section 1-263; 1952 Code Section 1-263; 1942 Code Section 3131; 1932 Code Section 3131; Civ. C. '22 Section 813; Civ. C. '12 Section 728; Civ. C. '02 Section 654; G. S. 509; R. S. 571; 1837 (6) 577; 1997 Act No. 34, Section 1.

34. The Committee recommends the General Assembly consider revising statutes which have been held unconstitutional relating to the setting of court dockets by circuit solicitors. A statute granting individual circuit solicitors exclusive authority to determine the order in which cases are called for trial (i.e., setting the court docket), has been held by the S.C. Supreme Court in 2012 as unconstitutional.[212] Currently, there is not uniformity among the counties as to who sets the court docket for criminal cases. In some the circuits, the solicitor controls it, and in others a judge has almost exclusive control.[213]

Accordingly, the Committee recommends the agency make reasonable efforts to communicate with potentially impacted parties about issues present in our state relating to the setting of court dockets; and, afterward, submit to it recommended statutory language to address the issues, so the General Assembly may consider revising S.C. Code Section 1-7-330, which addresses court dockets.[214] As there are multiple parties impacted by any revisions to statute, having the agency work with all potential impacted parties may provide a starting point for language the General Assembly may wish to utilize in revising the statute.

For reference, the statute at issue is below and the S.C. Supreme Court case is included in Appendix E.

SECTION 1-7-330. Attendance at circuit courts; preparation and publication of docket.
The solicitors shall attend the courts of general sessions for their respective circuits. Preparation of the dockets for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial. Provided, however, that no later than seven days prior to the beginning of each term of general sessions court, the solicitor in each circuit shall prepare and publish a docket setting forth the cases to be called for trial during the term.

HISTORY: 1962 Code Section 1-252; 1952 Code Section 1-252; 1942 Code Section 3132; 1932 Code Section 3132; Civ. C. '22 Section 814; Civ. C. '12 Section 729; Civ. C. '02 Section 655; G. S. 510; R. S. 572; 1842 (11) 222; Const. 1895, Art. 5, Section 29; 1972 (57) 2477; 1980 Act No. 462, Section 3.

35. The Committee recommends the General Assembly consider ensuring court records are not destroyed before the timeframe in which a defendant may appeal expires. The Committee recommends the General Assembly consider conforming the retention period for court recordings with the retention period for evidence as established in S.C. Code Section 17-28-320(C), the "Preservation of Evidence Act," so that it is sufficient in duration to cover the time period during which a defendant may challenge a conviction.[215]

The retention period for and, therefore, the availability of recordings of court proceedings is established by the S.C. Supreme Court in Rule 607(i), SCACR. Challenges arise when the period within which defendants can pursue an appeal or a collateral attack upon a conviction exceeds the retention period for recordings of court proceedings.[216] Some conviction challenges pursued by defendants have no time limitation.[217] If such a challenge is made after the retention period for court proceeding recordings have ended, access may be lost to court proceedings which may be necessary to determine the relevancy of any new evidence or to review the actions made in court.[218] Since the agency asserts a court recording is an essential piece of evidence and this evidence may not be available under current law, the General Assembly may wish to consider revising this law.[219]

For reference, the applicable court rule and statute are included in Table 19.

Table 19. Court rule and statute applicable to records retention.[220]

Court Rule
Rule 607(i), SCACR. Retention of Tapes. Except as provided below, **a court reporter shall retain the primary and backup tapes of a proceeding for a period of at least five (5) years after the date of the proceeding**, and the court reporter may reuse or destroy the tapes after the expiration of that period. If the proceeding was a hearing or trial which lasted for more than one day, the time shall be computed from the last day of the hearing or trial. In any proceeding which has been transcribed on or after March 1, 2017, the court reporter shall retain the primary and backup tapes which have been transcribed for a period of at least one (1) year after the original transcript is sent to the requesting party, to allow any party to challenge the accuracy of the transcription. If no challenge is received by the court reporter within the one (1) year period, the tapes may be reused or destroyed. (emphasis added)
Statute

SECTION 17-28-320. Offenses for which evidence preserved; conditions and duration of preservation.
(A) A custodian of evidence must preserve all physical evidence and biological material related to the conviction or adjudication of a person for at least one of the following offenses:
(1) murder (Section 16-3-10);
(2) killing by poison (Section 16-3-30);
(3) killing by stabbing or thrusting (Section 16-3-40);
(4) voluntary manslaughter (Section 16-3-50);
(5) homicide by child abuse (Section 16-3-85(A)(1));
(6) aiding and abetting a homicide by child abuse (Section 16-3-85(A)(2));
(7) lynching in the first degree (Section 16-3-210);
(8) killing in a duel (Section 16-3-430);
(9) spousal sexual battery (Section 16-3-615);
(10) criminal sexual conduct in the first degree (Section 16-3-652);
(11) criminal sexual conduct in the second degree (Section 16-3-653);
(12) criminal sexual conduct in the third degree (Section 16-3-654);
(13) criminal sexual conduct with a minor (Section 16-3-655);
(14) arson in the first degree resulting in death (Section 16-11-110(A));
(15) burglary in the first degree for which the person is sentenced to ten years or more (Section 16-11-311(B));
(16) armed robbery for which the person is sentenced to ten years or more (Section 16-11-330(A));
(17) damaging or destroying a building, vehicle, or property by means of an explosive incendiary resulting in death (Section 16-11-540);
(18) abuse or neglect of a vulnerable adult resulting in death (Section 43-35-85(F));
(19) sexual misconduct with an inmate, patient, or offender (Section 44-23-1150);
(20) unlawful removing or damaging of an airport facility or equipment resulting in death (Section 55-1-30 (3));
(21) interference with traffic-control devices or railroad signs or signals resulting in death (Section 56-5-1030(B)(3));
(22) driving a motor vehicle under the influence of alcohol or drugs resulting in death (Section 56-5-2945);
(23) obstruction of railroad resulting in death (Section 58-17-4090); or
(24) accessory before the fact (Section 16-1-40) to any offense enumerated in this subsection.

(B) The physical evidence and biological material must be preserved:
(1) subject to a chain of custody as required by South Carolina law;
(2) with sufficient documentation to locate the physical evidence and biological material; and
(3) under conditions reasonably designed to preserve the forensic value of the physical evidence and biological material.

(C) **The physical evidence and biological material must be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A). However, if the person is convicted or adjudicated on a guilty or nolo contendere plea for the offense enumerated in subsection (A), the physical evidence and biological material must be preserved for seven years from the date of sentencing, or until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A), whichever comes first.**

HISTORY: 2008 Act No. 413, Section 2, eff January 1, 2009. (emphasis added)

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 two internal changes directly related to participation in the study process. The internal changes implemented are as follows:

1. The agency corrects a report provided to legislative committees containing information on individual solicitor office spending and funding.[221]

2. The agency is made aware of, and in 2018, complies with, two state agency reporting requirements.[222] S.C. Code Section 2-1-230 requires agencies to submit data and reports collected for the General Assembly to the Legislative Services Agency for publication on the legislature's website. S.C. Code Section 60-2-30 requires submission of reports to the State Library. Agency reports subject to these requirements include:
    a. a report on the solicitors' diversion programs required by S.C. Code Section 17-22-1120;
    b. domestic violence prosecution data report, required by Proviso 60.7, 2017-18 General Appropriations Act, Part 1B;
    c. driving under the influence prosecution data report, required by Proviso 60.9, 2017-18 Appropriations Act, Part 1B; and
    d. driving under the influence prosecution data report, required by Proviso 117.109, 2017-18 General Appropriations Act, Part 1B.

SELECTED AGENCY INFORMATION

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APPENDICES

Appendix A. Backlog of Cases

Backlog of Cases

Since the General Assembly, when creating the SCCPC, stated there was a record backlog of 42,577 criminal cases in General Sessions and Family Courts, the Committee asked the agency to provide a recommended methodology for calculating the backlog of cases, and range for acceptable and unacceptable backlog.[223] Additionally, the Committee asked the agency to explain current actions, if any, and actions it is planning for the future, if any, to help reduce the current backlog of criminal cases, and maintain a minimal backlog going forward. Below are the responses provided by the agency.[224]

According to SCCPC, backlog is not the same as pending cases.[225] A solicitor may have thousands of cases pending that are within months of arrest. These cases should not be considered a backlog.

Total Backlog

Backlog should be determined as a percentage of cases pending from previous years after at least six months has passed into the next year.

To obtain the gross backlog number, you should determine the number of pending cases in the previous year and the number of cases that came into the system that year.

The gross backlog should then be converted to a percentage, and a benchmark set to determine best practices for backlogs statewide. Table 20 includes an example.[226]

Table 20. Example of how to calculate backlog for all cases.

Year	Benchmark	# of cases that come in during the year	# of cases still pending (no disposition) at the end of the year	Percentage
2009	0	3111	2	0.06428801
2010	0	3289	0	0
2011	0	2993	0	0
2012	0	2818	2	0.070972321
2013	1	2580	6	0.23255814
2014	5	2548	12	0.470957614
2015	10	3522	207	5.877342419
2016	20	3362	738	21.95121951
2017	40	3160	1363	43.13291139

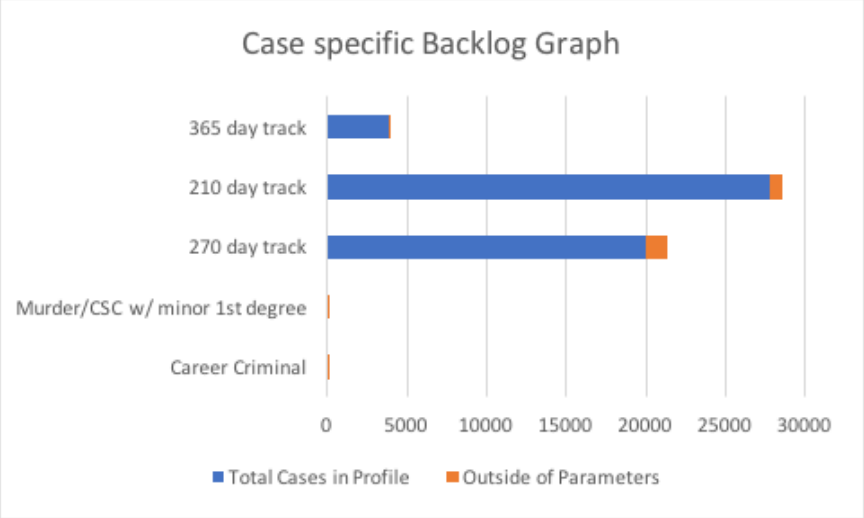
Case Specific Backlog

Some cases take longer than others to prosecute. For example, in comparison to a driving under the influence case, murder or rape cases usually involve scientific testing, gathering of information from multiple agencies, and many more pieces of evidence. Thus, the murder or rape case takes longer to prepare and therefore to prosecute.

To calculate acceptable backlog based on type of cases, cases should be separated by their complexity and then assigned a time table. Cases pending after their assigned timeline has expired are considered backlogged. Table 21 includes an example all cases outside the parameters would be considered backlogged.

Table 21. Example of how to calculate backlog for specific types of cases.

Name	Total Cases in Profile	Outside of Parameters
Career Criminal	39	1
Murder/CSC w/ minor 1st degree	51	6
270 day track	19979	1368
210 day track	27817	700
365 day track	3855	4
Totals	51741	**2079**



These calculations can be performed by the case management systems of both Matrix Pointe Software (MatrixProsecutor) and Karpel Solutions (Prosecutor by Karpel). These systems can also communicate with each other and with SCCPC once all of the solicitors have a system and SCCPC has the information technology infrastructure to collect and process the information.

Note: SCCPC requested additional funding in its 2018-19 budget requests to allow each circuit solicitor to purchase and maintain a case management system. The agency did not receive the funding requested, but plans to request it again next year.

This is one way of calculating a backlog. SCCPC does not know of any studies that have attempted to establish a best practices policy for this issue. Many factors can affect this other than case complexity such as prosecution, defense, or judicial resources available to address the caseload. Most recently, the addition of bodycams to the law enforcement standard equipment has created thousands of hours of new video that need to be reviewed in every prosecutor's office that did not exist before.

Generally, every Circuit strives to move at least as many cases as come in in a given year. A backlog is the accumulation of cases in excess of those moved year over year.

Reduction of Backlog - Agency Actions

According to SCCPC, managing the docket and ensuring backlogs are reduced and maintained low depends entirely on having the appropriate number of prosecutors. SCCPC started this process with the caseload equalization project in 2015. SCCPC studied Court Administration statistics for the number of incoming cases into the general sessions court every year. These numbers were fairly consistent for the previous three years. The average number of cases coming into the system at that time was just under 115,000. There were 303 general sessions prosecutors statewide. SCCPC then studied national standards for caseloads for attorneys and determined South Carolina prosecutors had more than twice the number of cases the American Bar Association recommended for public defenders and four times the number of cases prosecuted by attorneys in other states.

SCCPC determined the goal should be no more than 200 cases per prosecutor. However, as that would have meant a request for funding from the legislature for over $20 million, SCCPC recalculated at 280 cases per prosecutor, requested, and obtained funding for 104 new prosecutors.

SCCPC states that as South Carolina's population continues to grow, so will crime. Accordingly, SCCPC believes it should analyze the caseload every three years in order to react to any surge in caseload. Also, SCCPC believes it should analyze the percentage of cases handled statewide by public defenders in order to advise the legislature on the proper number of public defenders.

SCCPC is unaware of how to potentially calculate the costs to a jurisdiction and/or the state associated with backlogged cases.[227]

Appendix B. Diversion Programs

Appendix includes

- Summary of diversion programs and number of counties in which they are offered; and
- Cost and recidivism rates for drug courts and other diversion programs

Diversion Programs and Counties in Which They Are Offered

The following diversion programs are required by law to be offered in every county: (1) pre-trial intervention; (2) alcohol education; and (3) traffic education.[228] The other programs are allowed in law, but not required. Table 22 includes general statistics on diversion programs.

Table 22. Diversion programs, general statistics.

Program	Counties offering program	Judicial circuits in which no counties offer the program
Pre-trial Intervention	46 of 46	
Alcohol Education	46 of 46	
Traffic Education	46 of 46	
Worthless Check Program	43 of 46	1st
Drug Court	36 of 46	
Veterans Court	11 of 46	1st, 2nd, 3rd, 4th, 6th, 9th, 10th, 11th, 12th, 15th, 16th
Mental Health Court	8 of 46	1st, 2nd, 3rd, 4th, 6th, 7th, 8th, 10th, 11th, 12th
Juvenile Arbitration	41 of 46	
Juvenile Drug Court	14 of 46	2nd, 3rd, 4th, 7th, 8th, 10th, 11th, 15th
Juvenile Pre-trial Intervention	17 of 29	1st, 2nd, 3rd, 6th, 8th, 9th, 10th, 11th, 15th

Table 23 includes a chart of information on cost and recidivism rates for drug courts and other diversion programs.[229]

Table 23. Information on cost and recidivism rates for drug courts and other diversion programs.[230]

INFORMATION ON COST AND RECIDIVISM RATES FOR DRUG COURTS, AND RECIDIVISM RATES FOR OTHER DIVERSION PROGRAMS (Chart only lists those Counties within the 16 Judicial Circuits which have a Drug Court diversion program)						
Circuit	**County(ies) in which Drug Court Program Operated**		**Comparison of Costs Associated with Drug Court to Costs Associated with "Regular Prosecution Track"**	**Recidivism Rate of Successful Drug Court Participants**	**Recidivism Rate of Successful Participants in Other Diversion Programs**	**Comments**
1	**Calhoun**	Juvenile Drug Court	Unknown	Unknown	Unknown	
	Dorchester	Drug Court (Adult)	Unknown	Unknown	Unknown	
	Orangeburg	Juvenile Drug Court	Unknown	Unknown	Unknown	
2	**Aiken**	Drug Court (Adult)	Unknown	Unknown	Unknown	The Solicitor's Office does not track recidivism rates for drug court participants because of the lack of resources to individually monitor the participants long-term following their participation in the program. In addition, there is some concern about how recidivism is to be defined. How long a period (or periods) out should each participant be tracked? Should rates include subsequent arrests or only convictions resulting from subsequent arrests? Should the rates include all participants, or only those people that successfully completed the program? While the Solicitor's Office does not currently track the successful graduates from the program once they leave, the individual responding for the Office is only aware of two people being arrested *in the Second Judicial Circuit* after completing the program (no knowledge of
	Bamberg	Drug Court (Adult)	Unknown	Unknown	Unknown	
	Barnwell	Drug Court (Adult)	Unknown	Unknown	Unknown	

INFORMATION ON COST AND RECIDIVISM RATES FOR DRUG COURTS, AND RECIDIVISM RATES FOR OTHER DIVERSION PROGRAMS (Chart only lists those Counties within the 16 Judicial Circuits which have a Drug Court diversion program)						
Circuit	**County(ies) in which Drug Court Program Operated**		**Comparison of Costs Associated with Drug Court to Costs Associated with "Regular Prosecution Track"**	**Recidivism Rate of Successful Drug Court Participants**	**Recidivism Rate of Successful Participants in Other Diversion Programs**	**Comments**
						whether any successful drug court participants have been arrested outside of the Second Judicial Circuit).
3	**Clarendon**	Drug Court (Adult)	Unknown	Unknown	Unknown	Recidivism is not tracked for any diversion programs.
	Lee	Drug Court (Adult)	Unknown	Unknown	Unknown	
	Sumter	Drug Court (Adult)	Unknown	Unknown	Unknown	
	Williamsburg	Drug Court (Adult)	Unknown	Unknown	Unknown	
4	**Chesterfield**	Drug Court (Adult)	Based on the most current figures available (FY16-17), the State spends an average of $19,935 per year for each incarcerated inmate. Using this figure, the cost of incarcerating 40 inmates for a year would cost the State $797,400. In comparison, the approximate cost of operating a drug court and serving 40 participants for one year is $292,700.	26.6%	Do not track recidivism rates for other diversion programs.	The recidivism rate is not calculated by county; calculated in the Fourth Judicial Circuit, but circuit-wide since some participants transfer to another county for treatment.
	Marlboro	Drug Court (Adult)				
5	**Kershaw**	Juvenile Drug Court	The Fifth Judicial Circuit Solicitor's Office spent $877, 528.93 on its drug courts in FY 20 / and served____participants. The costs includes staff salaries & fringe of $643,731.03; Judges	Unknown	Unknown	Recidivism is not tracked for any diversion programs (insufficient resources to do so).
		Drug Court (Adult)		Unknown	Unknown	

INFORMATION ON COST AND RECIDIVISM RATES FOR DRUG COURTS, AND RECIDIVISM RATES FOR OTHER DIVERSION PROGRAMS (Chart only lists those Counties within the 16 Judicial Circuits which have a Drug Court diversion program)						
Circuit	**County(ies) in which Drug Court Program Operated**		**Comparison of Costs Associated with Drug Court to Costs Associated with "Regular Prosecution Track"**	**Recidivism Rate of Successful Drug Court Participants**	**Recidivism Rate of Successful Participants in Other Diversion Programs**	**Comments**
	Richland	Juvenile Drug Court	$72,499.92; drug tests $72,875.00; office Space, etc.: $52,550.38; contractual services (Alpha Center-Kershaw County): $10,750.00; and other operating costs: $25,122.60.	Unknown	Unknown	
		Drug Court (Adult)		Unknown	Unknown	
6	**Chester**	Juvenile Drug Court	Unknown	Unknown	Unknown	The Solicitor's Office does not track recidivism with PTI, TEP or any other adult diversion programs, but its staff reports that it is very rare that they see who has successfully completed a diversion program in the Office come through with new charges. However, apart from periodically running a new NCIC criminal history on graduates, the Solicitor's Office is unsure of how they could track reoffending stats unless a participant reoffends in the same county and staff noticed it. The Adult Drug Court program has only been in place for the last 10 months. While the Office does not yet track graduates, the last stage (the 5th phase) of the program does involve tracking
		Drug Court (Adult)	Unknown	Unknown	Unknown	
	Lancaster	Juvenile Drug Court	Unknown	Unknown	Unknown	

INFORMATION ON COST AND RECIDIVISM RATES FOR DRUG COURTS, AND RECIDIVISM RATES FOR OTHER DIVERSION PROGRAMS (Chart only lists those Counties within the 16 Judicial Circuits which have a Drug Court diversion program)						
Circuit	**County(ies) in which Drug Court Program Operated**		**Comparison of Costs Associated with Drug Court to Costs Associated with "Regular Prosecution Track"**	**Recidivism Rate of Successful Drug Court Participants**	**Recidivism Rate of Successful Participants in Other Diversion Programs**	**Comments**
		Drug Court (Adult)	Unknown	Unknown	Unknown	graduates for a year to ensure they do not reoffend or slip back into using drugs (they are randomly drug-tested for a year after graduation). It takes a drug court participant a minimum of 18 months in the program before they reach the last stage/5th phase. (The Solicitor's Office has only had the program for 10 months, and does not yet have anyone who has reached Stage 5/the final phase yet.) As for Juvenile Drug Court program, the Office does not track recidivism. However, if it did, it would only be up until the juvenile turned 17.
	Fairfield	Juvenile Drug Court	Unknown	Unknown	Unknown	
		Drug Court (Adult)	Unknown	Unknown	Unknown	
7	**Cherokee**	Drug Court (Adult)	Unknown	Unknown	Unknown	
	Spartanburg	Drug Court (Adult)	Unknown	Unknown	Unknown	
8	**Abbeville**	Drug Court (Adult)	Unknown	Unknown	Unknown	
	Greenwood	Drug Court (Adult)	Unknown	Unknown	Unknown	
	Laurens	Drug Court (Adult)	Unknown	Unknown	Unknown	
	Newberry	Drug Court (Adult)	Unknown	Unknown	Unknown	
9	**Berkeley**	Juvenile Drug Court			The Solicitor's Office tracks recidivism rates (by both arrests and convictions within the Ninth Judicial Circuit after	

INFORMATION ON COST AND RECIDIVISM RATES FOR DRUG COURTS, AND RECIDIVISM RATES FOR OTHER DIVERSION PROGRAMS (Chart only lists those Counties within the 16 Judicial Circuits which have a Drug Court diversion program)						
Circuit	**County(ies) in which Drug Court Program Operated**		**Comparison of Costs Associated with Drug Court to Costs Associated with "Regular Prosecution Track"**	**Recidivism Rate of Successful Drug Court Participants**	**Recidivism Rate of Successful Participants in Other Diversion Programs**	**Comments**
		Drug Court (Adult)	The total revenue for the Berkeley County Adult Drug Court is $52,301 (state support - $37,307, and client fees - $15,000), and the total expenses – *not* including judge, solicitor, public defender, deputy sheriff, financial officer, etc. salaries and benefits – is $52,301 (40% of the coordinator's salary - $31,441; drug tests - $18,000; mileage - $1,500; training - $860; and office expenses - $500).		Program completion) for its Berkeley PTI Program going back to at least FY 2010. For FY2017, 248 persons successfully completed PTI. Of those 248, only 6 have been rearrested (but only 1 has been convicted). For FY 2010, 410 persons successfully completed PTI. Of those 410, only 28 have been rearrested (but only 26 have been convicted).	
	Charleston	Juvenile Drug Court	The total revenue for the Charleston County Adult Drug Court is $26,750 (state support - $26,750), and the total expenses – *not* including judge, solicitor, public defender, deputy sheriff, financial officer, etc. salaries and benefits – is $26,750 (drug tests - $15,000; training - $6,250; transportation - $5,000; and office expenses - $500).			
		Drug Court (Adult)	The total revenue for the Charleston County Adult			

INFORMATION ON COST AND RECIDIVISM RATES FOR DRUG COURTS, AND RECIDIVISM RATES FOR OTHER DIVERSION PROGRAMS (Chart only lists those Counties within the 16 Judicial Circuits which have a Drug Court diversion program)						
Circuit	**County(ies) in which Drug Court Program Operated**		**Comparison of Costs Associated with Drug Court to Costs Associated with "Regular Prosecution Track"**	**Recidivism Rate of Successful Drug Court Participants**	**Recidivism Rate of Successful Participants in Other Diversion Programs**	**Comments**
			Drug Court is $221,502 (county support - $101,027; state support - $95,475; and client fees - $25,000), and the total expenses – *not* including judge, solicitor, public defender, deputy sheriff, financial officer, etc. salaries and benefits – is $221,502 (60% of the coordinator's salary - $47,162; counselors - $135,440; drug tests - $31,000; training - $7,000; office expenses - $500; and dues - $500).			
10	**Anderson**	Drug Court (Adult)	Unknown	Unknown	Unknown	The Solicitor's Office does not have a method of tracking recidivism in drug court or other diversion programs.
	Oconee	Drug Court (Adult)	Unknown	Unknown	Unknown	
11	**Edgefield**	Drug Court (Adult)	By bonding offenders into the program as soon as possible after their arrest and while they are incarcerated, the Solicitor's Office's program saves the counties the expense of providing for the inmate at approximately $58/day in our county jail.	Unknown	Unknown	While the Solicitor's Office is not currently tracking recidivism, it is working with the National Association of Drug Court Professionals to revitalize its drug court program. Their goal is not only to have the data necessary to track the progress of participants during and after the program, but to better meet their individual needs to ensure their life-long recovery.
	Lexington	Drug Court (Adult)		Unknown	Unknown	

INFORMATION ON COST AND RECIDIVISM RATES FOR DRUG COURTS, AND RECIDIVISM RATES FOR OTHER DIVERSION PROGRAMS (Chart only lists those Counties within the 16 Judicial Circuits which have a Drug Court diversion program)						
Circuit	**County(ies) in which Drug Court Program Operated**		**Comparison of Costs Associated with Drug Court to Costs Associated with "Regular Prosecution Track"**	**Recidivism Rate of Successful Drug Court Participants**	**Recidivism Rate of Successful Participants in Other Diversion Programs**	**Comments**
	McCormick	Drug Court (Adult)		Unknown	Unknown	In regard to costs, drug testing and counseling begins immediately upon entry into the program, addressing the underlying cause of the offender's criminal behavior. Most participants successfully complete the program, and although the Solicitor's Office has not tracked the recidivism rate, it appears as if the vast majority have not reoffended, thereby reducing costs to the county, state, and victims for crimes that were not committed
	Saluda	Drug Court (Adult)		Unknown	Unknown	
12	**Florence**	Juvenile Drug Court	Cost to operate Adult and Juvenile Drug Court in 2017 was just over $274,000.00. Of the 25 adult participants in 2017, 15 successfully completed. If we assign an average potential sentence exposure of 5 years for the 15 who successfully completed, we realize the potential cost of incarceration would have been $299,025 based on SCDC annual cost of $19,935 per inmate. Instead these participants not only avoided SCDC but were	20%	DUI Court: • Florence 18% • Marion: n/a (no cases) Juvenile Arbitration: • Florence 1.35% • Marion: 5.88%	
		Drug Court (Adult)		17%		

INFORMATION ON COST AND RECIDIVISM RATES FOR DRUG COURTS, AND RECIDIVISM RATES FOR OTHER DIVERSION PROGRAMS (Chart only lists those Counties within the 16 Judicial Circuits which have a Drug Court diversion program)						
Circuit	**County(ies) in which Drug Court Program Operated**		**Comparison of Costs Associated with Drug Court to Costs Associated with "Regular Prosecution Track"**	**Recidivism Rate of Successful Drug Court Participants**	**Recidivism Rate of Successful Participants in Other Diversion Programs**	**Comments**
			employed full time while in Drug Court, paid taxes, paid child support, met other financial obligations and contributed to their communities and families. Juvenile Drug Court Successfully completed 4 participants of the 9 participants for 2017, allowing them to stay with their families and continue their education locally. JDC is cost effective considering DJJ cost of $178.00 per day for housing Juvenile Offenders.			
	Marion	Juvenile Drug Court	See above (Florence County)	25%		
		Drug Court (Adult)		25%		
13	**Greenville**	Juvenile Drug Court	Annual cost to operate Drug Court is $285,591, and the average number of participants per year is 30 for a per participant cost of $19,000. The cost per year to house 30 inmates is $570,000 (almost double the cost of 30 persons going through drug court in that same time period).	Unknown	Unknown	The Solicitor's Office does not maintain recidivism data for the Drugs Courts or any of the other diversion programs.
		Drug Court (Adult)		Unknown	Unknown	

INFORMATION ON COST AND RECIDIVISM RATES FOR DRUG COURTS, AND RECIDIVISM RATES FOR OTHER DIVERSION PROGRAMS
(Chart only lists those Counties within the 16 Judicial Circuits which have a Drug Court diversion program)

<table>
<tr><th>Circuit</th><th colspan="2">County(ies) in which Drug Court Program Operated</th><th>Comparison of Costs Associated with Drug Court to Costs Associated with "Regular Prosecution Track"</th><th>Recidivism Rate of Successful Drug Court Participants</th><th>Recidivism Rate of Successful Participants in Other Diversion Programs</th><th>Comments</th></tr>
<tr><td rowspan="2">14</td><td rowspan="2">Beaufort</td><td>Juvenile Drug Court</td><td rowspan="2"></td><td></td><td rowspan="2">Recidivism rates are not calculated for AEP, TEP, and Worthless Check programs.
Rates for other programs are tracked by county (where offered) and circuit:</td><td rowspan="2"></td></tr>
<tr><td>Drug Court (Adult)</td><td></td><td rowspan="2">
<table>
<tr><td>COUNTY</td><td>PTI</td><td>JA</td><td>JPTI</td></tr>
<tr><td>Allen.</td><td>NP</td><td>0%</td><td>NP</td></tr>
<tr><td>Beau.</td><td>14%</td><td>47.2%</td><td>38.3%</td></tr>
<tr><td>Colle.</td><td>29%</td><td>43.8%</td><td>42.3%</td></tr>
<tr><td>Hamp.</td><td>23%</td><td>25%</td><td>NP</td></tr>
<tr><td>Jasper</td><td>25%</td><td>10%</td><td>NP</td></tr>
<tr><td>Circuitwide</td><td>18%</td><td>38.6%</td><td>388%</td></tr>
</table>
</td><td></td></tr>
<tr><td rowspan="2">15</td><td>Horry</td><td>Drug Court (Adult)</td><td rowspan="2">The Solicitor's Office's 2018-2019 budget for the drug court programs in the two Counties and mental health court in Horry County is $525,077 (includes all salaries, fringes and operating costs).
The Solicitor's Office's funding sources/amounts from the FY 2017/18 budget:
• Client Fees: $163,240.00</td><td>Recidivism Rates:
2013 Graduates (4-5 years out of program): 28%; and
2016 Graduates (1-2 years out of program): 15%</td><td>Mental Health Court (program started in 2015): 0%.
PTI:
• 2013 graduates: 10.3%
• 2016 graduates: 8.6%</td><td></td></tr>
<tr><td>Georgetown</td><td>Drug Court (Adult)</td><td>Recidivism Rates:</td><td>PTI:
• 2013 graduates: 13.5%
• 2016 graduates: 9.6%</td><td></td></tr>
</table>

INFORMATION ON COST AND RECIDIVISM RATES FOR DRUG COURTS, AND RECIDIVISM RATES FOR OTHER DIVERSION PROGRAMS (Chart only lists those Counties within the 16 Judicial Circuits which have a Drug Court diversion program)						
Circuit	**County(ies) in which Drug Court Program Operated**		**Comparison of Costs Associated with Drug Court to Costs Associated with "Regular Prosecution Track"**	**Recidivism Rate of Successful Drug Court Participants**	**Recidivism Rate of Successful Participants in Other Diversion Programs**	**Comments**
			• Conditional Discharges and State Drug Court funding: $216,243.00 • Horry County Government: $80,000.00 (only cost to County) In 2017, the Solicitor's Office provided services to 173 clients through these three programs.	2013 Graduates (4-5 years out of program): 18%; and 2016 Graduates (1-2 years out of program): 0%		
16	**York**	Juvenile Drug Court			York County: • AEP – 13% • PTI – 17% • TEP – 34% Union County: • AEP – 0 % • PTI – 13% • TEP – 0%	
		Drug Court (Adult)	It costs $19,935 per year ($54.47 per day) to house one inmate in SCDC as of 2016. It cost York County $23,360 ($64 per day) to house one inmate for one year. • 25 defendants would cost the state $498,375 to house for one year. • 25 defendants would cost the County $140,160 for six months. One year would cost $584,000. For fiscal year 2017-2018, the Solicitor's Office received $167,431 from the State for Drug Court	28%		The Solicitor's Office tracks the Drug Court participants' income earned and taxes paid while in the program. Drug Court participants paid $160,174.45 in South Carolina income taxes for the last three years, which averages to $53,391.39 per year paid to the State of South Carolina.

INFORMATION ON COST AND RECIDIVISM RATES FOR DRUG COURTS, AND RECIDIVISM RATES FOR OTHER DIVERSION PROGRAMS (Chart only lists those Counties within the 16 Judicial Circuits which have a Drug Court diversion program)						
Circuit	**County(ies) in which Drug Court Program Operated**		**Comparison of Costs Associated with Drug Court to Costs Associated with "Regular Prosecution Track"**	**Recidivism Rate of Successful Drug Court Participants**	**Recidivism Rate of Successful Participants in Other Diversion Programs**	**Comments**
			and spent $166,835, which means FY 2017/18 was the first year the County did not have to kick in extra funds.			

Appendix C. Pros and Cons of Cloud-Based Electronic Discovery

Table 24 includes information SCCPC provided on the pros and cons of all applicable parties (e.g., law enforcement entities, solicitors' offices, court administration, individual defendants, etc.) utilizing a cloud-based system for evidence.

Table 24. Pros and Cons of utilizing a cloud based evidence storage system[231]

Utilization of Cloud Based Evidence Storage	
Pros	Cons
Efficiency - Utilizing a cloud based evidence storage platform provides a quicker method of information dissemination (sending an email link to someone for them to access the data is much more efficient than putting a copy on a DVD and mailing or delivering it to another person). A single link can be shared many times. Example: The "old" way is to receive a copy of a DVD (which might be misplaced, damaged, stolen, might require special software to view, etc.) and then transferring that data by making copies of the DVD for distribution by mail or by hand (is laborious and time consuming). With cloud based storage, a particular file can be shared with the appropriate parties via an email link that requires authentication to view.	
Redundancy - Once in the system data will not be lost or misplaced.	
Protection against tampering of evidence - Versioning occurs when the original component is changed, and it also records by whom the change has taken place. Versioning acts as a form of backup of the original dataset.	
Security and accountability - The data transfer in the cloud is encrypted, and the platform on which the data is residing is encrypted. The person who accesses the data must have (a) email access and (b) the password that has been set up by the email address user. The platform records both the email address and IP address of the person accessing the data. A log of who accesses the data is maintained. The data transfer in the cloud is encrypted, and the platform on which the data is residing is encrypted.	**Security -** Similar scenarios exist whether the data is physical or not. Example: someone downloads the file locally and their laptop is stolen and hacked, or the laptop is taken by someone who has phished the credentials of the laptop owner.
Accessibility - The data is readily accessible from multiple platforms so long as one has the ability to remotely access the data store.	**Ex-employees -** This is for both DVD and cloud based. Ex-employees should have access to data removed at the time of dismissal (requires removing access to be part of the human resources' dismissal process).
Cost - The amount of money saved in expediting the transfer of data is immense. For instance, the value of the amount of time a lawyer spends dealing with sharing or transferring DVD data (finding the data, copying it, mailing or delivering it, and driving back one time) would pay for the software of 20 people for a month. Example: Imagine five lawyers having the ability to move data around securely through the internet per month: three data transfers each in a month (cloud based storage takes less than five minutes to transfer each time, as compared to transferring information via a DVD – for which the lawyer must find data, copy DVD, meet with person or get package mailed with signature security at extra expense – which takes between 30 minutes to an hour each and that's not even delivering the data). Money and time is saved with cloud based evidence storage and sharing.	**Implementation -** Requires supervisors to require 100% adoption within the organization for it to be consistent.
	Upload and download times for large files - If the file is extremely large and the upload speed is minimal, it takes a long time to transfer data.

Appendix D. S.C. Code Sections 1-7-405, 1-7-406, 1-7-420 - 1-7-540

SECTION 1-7-405. Appointment of assistant solicitors, investigators and secretaries.
Each solicitor may appoint as many assistant solicitors, investigators and secretaries as he deems necessary and whose salaries are provided by the counties of the circuit in which they serve. They shall serve at the pleasure of the solicitor and shall have such responsibilities as he directs.

HISTORY: 1976 Act No. 690, Art. IX, Section 2; 1977 Act No. 119, Section 1.

SECTION 1-7-406. Full-time assistant solicitor and investigator for each judicial circuit.
Notwithstanding any other provision of law, each judicial circuit of this State, in addition to its other assistant solicitors, shall have one assistant solicitor and one investigator who shall be full-time employees. Such assistant solicitor and investigator for each circuit shall be appointed by the solicitor of that circuit, shall serve at his pleasure and shall have such responsibilities as the solicitor directs. The compensation of each such assistant solicitor and investigator or such other staff as may be designated by each solicitor for his circuit and related employment expenses shall be as provided by the General Assembly in the annual general appropriations act. Nothing contained herein shall prohibit the funds so provided for such staff to be designated by the solicitor as being utilized with local and federal funds.
HISTORY: 1979 Act No. 191, Section 1.

SECTION 1-7-420. Assistant solicitor for first judicial circuit.
The solicitor of the first judicial circuit may, upon the approval of a majority of the Dorchester County legislative delegation, appoint an attorney who is a resident of Dorchester County as his assistant who shall perform any of the duties and functions imposed by law upon the circuit solicitor relating to Dorchester County. The term of the assistant solicitor shall be coterminous with that of the solicitor and he shall receive such compensation as may be provided by law. The compensation of the assistant solicitor and any other expenses incurred pursuant to the provisions of this section shall be borne by Dorchester County.

In Dorchester County, appointments made pursuant to this section are governed by the provisions of Act 512 of 1996.
HISTORY: 1962 Code Section 1-257.1:1; 1970 (56) 2073.

SECTION 1-7-430. Additional assistant solicitor for first judicial circuit.
The solicitor of the first judicial circuit may appoint an assistant solicitor, who shall be a licensed attorney-at-law residing in the circuit, to serve at the pleasure of the solicitor and have such responsibility as the solicitor shall direct. The salary to be paid such assistant solicitor shall be paid from funds provided by Public Law 90-351, The Omnibus Crime Control and Safe Streets Act of 1968, as amended.
HISTORY: 1962 Code Section 1-257.1:2; 1974 (58) 2989.

SECTION 1-7-440. Assistant solicitor for third judicial circuit.
The solicitor of the third judicial circuit may appoint an assistant solicitor, who shall be a licensed attorney at law residing in the circuit, to serve at the pleasure of the solicitor and have such responsibility as the solicitor shall direct. The solicitor shall also determine the salary to be paid such assistant solicitor and such salary shall be paid from funds provided by Public Law 90-351, The Omnibus Crime Control and Safe Streets Act of 1968, as amended.
HISTORY: 1962 Code Section 1-257.1:3; 1971 (57) 24.

SECTION 1-7-450. Assistant solicitor for fourth judicial circuit.
The solicitor of the fourth judicial circuit may appoint an attorney, who is a resident of the circuit, as an

assistant solicitor, who shall perform such duties and functions as may be assigned him by the solicitor. His term shall be coterminous with that of the solicitor and he shall receive as compensation for his services such salary as may provided by the General Assembly, one fourth of which shall be paid by each county of the circuit.
HISTORY: 1962 Code Section 1-257.2; 1966 (54) 2014.

SECTION 1-7-460. Assistant solicitors for fifth judicial circuit.
The circuit solicitor of the fifth judicial circuit may appoint competent attorneys, who are residents of the circuit, as assistant solicitors who shall perform any and all of the duties and functions imposed by law upon the circuit solicitor as the solicitor shall authorize, designate and direct. The solicitor shall designate in which county of the circuit such assistant solicitors shall perform their duties. The assistant solicitors shall be appointed by the solicitor to serve for the same term as the solicitor. The assistant solicitors performing services in Kershaw County shall receive as compensation for their services such annual salary as may be provided by the Kershaw County Council and the assistant solicitors performing services in Richland County shall receive as compensation for their services such annual salary as may be provided by the Richland County Council.
HISTORY: 1962 Code Section 1-258; 1959 (48) 139; 1975 (59) 819.

SECTION 1-7-470. Assistant solicitor for seventh judicial circuit.
The circuit solicitor of the seventh judicial circuit may appoint a competent attorney, who is a resident of Spartanburg County, as assistant solicitor. He shall perform any and all of the duties and functions now or hereafter imposed by law upon the circuit solicitor in Spartanburg County, as the solicitor of the circuit shall authorize, designate and direct. The assistant solicitor shall be appointed by the solicitor of the seventh judicial circuit and shall after appointment be commissioned by the Governor; provided, however, the solicitor of the seventh judicial circuit shall have the right to remove the assistant solicitor from office at his pleasure, and in no event can the assistant solicitor be appointed for a period beyond the term of office of the circuit solicitor. The assistant solicitor shall receive from Spartanburg County as compensation for his services such sum per year as may be provided by the General Assembly, payable the first and fifteenth of each month, and eight hundred dollars per year for travel.

The assistant solicitor shall appear and represent the State in magistrates' courts when requested by the sheriff's department or the highway patrol located in Spartanburg County. He shall further prosecute appeals from magistrates' courts in that county.
HISTORY: 1962 Code Section 1-260; 1953 (48) 401.

SECTION 1-7-480. Assistant solicitor for eighth judicial circuit.
There is hereby created the office of assistant solicitor for the eighth judicial circuit, the qualifications for which shall be the same as those of a solicitor. The assistant solicitor shall be appointed by and serve at the pleasure of the circuit solicitor and shall perform such duties as may be assigned to him by the solicitor.

The assistant solicitor shall receive an annual salary equal to one half of that received by the solicitor. He shall also receive the same amount for expenses as received by the solicitor. Each county in the circuit shall pay its pro rata share of such salary and expense allowance based upon population according to the latest official United States census. Such amounts shall be paid monthly in equal payments by the treasurer of each county in the circuit from the general fund of the county.
HISTORY: 1962 Code Section 1-260.01; 1970 (56) 2276.

SECTION 1-7-490. Assistant solicitors for ninth judicial circuit.
The Circuit Solicitor for the Ninth Judicial Circuit may appoint seven competent attorneys, each of whom are residents of the circuit, as his assistants who shall perform any and all of the duties and functions now or hereafter imposed by law upon the circuit solicitor as the solicitor of the circuit shall authorize, designate and direct. The assistant circuit solicitors shall be designated in their appointment as first, second, third, fourth, fifth and sixth assistants for Charleston County and assistant circuit solicitor for Berkeley County. The first and second assistants shall enter upon their duties upon the approval of the majority of the Charleston County Legislative Delegation. The first assistant shall receive such compensation for his services as may be provided by law and the second assistant such compensation as may be provided by law to be paid by the County of Charleston. The third assistant shall receive such compensation for his services as may be provided by law, such compensation to be paid from federal funds or from funds appropriated by the Governing Body of Charleston County. The fourth assistant shall devote full time to his duties as assistant solicitor and shall receive such compensation for his services as may be provided by law to be paid from funds appropriated by the Governing Body of Charleston County. The fifth assistant shall receive such compensation for his services as may be provided by law to be paid from funds appropriated by the Governing Body of Charleston County. The sixth assistant shall devote full time to his duties as assistant solicitor and shall receive such compensation for his services as may be provided by law to be paid from funds appropriated by the Governing Body of Charleston County or from federal funds made available to the Governing Body of Charleston County for such purpose. The assistant circuit solicitor for Berkeley County shall enter upon his duties upon the approval of the majority of the Berkeley County Legislative Delegation and shall receive such compensation for his services as may be provided by law to be paid by the County of Berkeley.
HISTORY: 1962 Code Section 1-260.1; 1952 (47) 2076; 1966 (54) 2154; 1969 (56) 2; 1975 (59) 74; 1975 (59) 574; 1976 Act No. 480, Section 1; 1976 Act No. 660, Section 1.

SECTION 1-7-500. Assistant solicitor for tenth judicial circuit.
The solicitor of the tenth judicial circuit may employ a lawyer residing in his circuit to assist in performing the duties of his office. The term of office shall be at the pleasure of the solicitor; however, such term shall not extend beyond the term of office of the employing solicitor; provided, that the person named by the solicitor shall be confirmed by a majority of the members of the Anderson and Oconee delegations.

The salary for the person provided by this section shall be such sum annually as may be provided by the General Assembly, to be paid as follows: Seventy per cent shall be paid by Anderson County and thirty per cent shall be paid by Oconee County and such sum shall be paid by the two counties in the same manner that county officers are paid by such counties. The assistant solicitor may receive from time to time such further compensation as the General Assembly may provide.
HISTORY: 1962 Code Section 1-260.2; 1957 (50) 325.

SECTION 1-7-510. Assistant solicitor for thirteenth judicial circuit.
The solicitor of the thirteenth judicial circuit may appoint an attorney who is a resident of Greenville County as his full-time assistant who shall perform any of the duties and functions imposed by law upon the circuit solicitor relating to Greenville County. The term of the assistant solicitor shall be coterminous with that of the solicitor and he shall receive such compensation as may be provided by the county council for Greenville County. The compensation of the assistant solicitor and any other expenses incurred pursuant to the provisions of this section shall be borne by Greenville County.
HISTORY: 1962 Code Section 1-260.6; 1973 (58) 219.

SECTION 1-7-520. Assistant solicitor for fourteenth judicial circuit.
There is hereby created the office of assistant solicitor for the fourteenth circuit, the qualifications for which shall be the same as those of a solicitor. The assistant solicitor shall be appointed by and serve at the pleasure of the circuit solicitor and shall perform such duties as may be assigned to him by the solicitor.

The assistant solicitor shall receive an annual salary equal to one half of that received by the solicitor. He shall also receive the same amount for expenses as received by the solicitor. Each county in the circuit shall pay its pro rata share of such salary and expense allowance based upon population according to the latest official United States census. Such amounts shall be paid monthly in equal payments by the treasurer of each county in the circuit from the general fund of the county.
HISTORY: 1962 Code Section 1-260.7; 1969 (56) 716.

SECTION 1-7-530. Assistant solicitor for sixteenth judicial circuit.
The solicitor of the sixteenth judicial circuit may appoint an attorney who is a resident of the circuit as an assistant solicitor who shall perform such duties and functions as may be assigned to him by the solicitor. The term of office shall be for a period of one year and the assistant solicitor shall receive for his services such compensation as is provided for in the appropriations acts of Union and York Counties.
HISTORY: 1962 Code Section 1-260.9; 1971 (57) 26.

SECTION 1-7-533. Special investigator for third judicial circuit.
The solicitor of the third judicial circuit may appoint a special investigator to serve at the pleasure of the solicitor and have such responsibility as the solicitor shall direct. The solicitor shall determine the salary to be paid the investigator which shall be paid from such funds as may be provided by law. The investigator, while engaged in official duties of his office, is authorized to carry a pistol or other handgun. He shall give a bond in the sum of two thousand dollars which shall be in the same form and under the same conditions as required for police officers. He shall be commissioned by the Governor and shall have all the powers and duties provided for constables in Section 23-1-60, Code of Laws of South Carolina, 1976, and shall be a "police officer" as defined in Section 9-11-10.
HISTORY: 1976 Act No. 491, Section 1.

SECTION 1-7-540. Special investigator and assistant special investigator for ninth judicial circuit.
The circuit solicitor for the ninth judicial circuit may appoint two competent residents of the circuit who shall be designated as special investigator and assistant special investigator for his office. The special investigator and assistant special investigator shall work under the direction of the solicitor as full-time employees. Their appointment shall be for a period not exceeding the term for which the solicitor was elected. The special investigator and assistant special investigator shall each give a bond in the sum of two thousand dollars, which shall be in the same form and provide the same conditions as required by law of peace officers. The special investigator and assistant special investigator shall be commissioned by the Governor and shall have all the powers, rights and duties, within the ninth judicial circuit, as any State constable, as provided in Section 23-1-60. The special investigator and assistant special investigator shall be "police officers," as defined in Section 9-11-10. The special investigator shall receive such salary as may be provided by law, and an expense allowance of not less than fifteen hundred dollars, such sums to be paid by the Governing Body of Charleston County. The assistant special investigator shall receive such compensation for his services as may be provided by law, such compensation to be paid from federal funds or from funds appropriated by the Governing Body of Charleston County.
HISTORY: 1962 Code Section 1-260.3; 1966 (54) 2155; 1969 (56) 656; 1975 (59) 74.

Appendix E. State v. Langford

Included in this appendix is the S.C. Supreme Court case which held the statute granting individual circuit solicitors exclusive authority to determine the order in which cases are called for trial (i.e., setting the court docket) unconstitutional.

400 S.C. 421
Supreme Court of South Carolina.

The STATE, Respondent,
v.
K.C. LANGFORD, III, Appellant.
Appellate Case No. 2010–173128

No. 27195.
|
Submitted April 18, 2012.
|
Decided Nov. 21, 2012.
|
Rehearing Denied Dec. 20, 2012.

Synopsis

Background: Approximately two years after his arrest, defendant was convicted in a jury trial in the Circuit Court, Edgefield County, William P. Keesley, J., of armed robbery, kidnapping, burglary, and civil conspiracy. Defendant appealed. Public defender sought permission to file amicus curiae brief challenging constitutionality of statute that vested control of the criminal docket in the circuit solicitor. The request was granted.

Holdings: On certification from the Court of Appeals, the Supreme Court, Hearn, J., held that:

[1] otherwise-waived constitutional question was a matter of significant public interest such that it would be reviewed on the merits;

[2] statute that vested exclusive control of the criminal docket in the circuit solicitor violated separation of powers;

[3] defendant suffered no prejudice as result of having circuit solicitor determine the trial date and assign judge pursuant to statute that vested exclusive control of the criminal docket in the solicitor;

[4] statute did not violate defendant's due process rights; and

[5] pretrial delay did not violate defendant's due process rights.

Affirmed.

Costa M. Pleicones, J., issued dissenting opinion.

West Headnotes (38)

[1] Amicus Curiae
Powers, functions, and proceedings

Question as to who should decide when criminal defendants should be tried was a matter of significant public interest such that otherwise-waived issue of whether statute that vested control of the criminal docket in the circuit solicitor violated separation of powers would be reviewed as presented in amicus curiae brief submitted by public defender, even though parties did not raise the issue, in prosecution for armed robbery, kidnapping, burglary, and civil conspiracy. U.S.C.A. Const. Art. 3, § 1 et seq.; Code 1976, § 1–7–330; Appellate Court Rule 213.

Cases that cite this headnote

[2] Criminal Law
Constitutional questions

Constitutional questions must be preserved like any other issue on appeal.

4 Cases that cite this headnote

[3] Amicus Curiae
Powers, functions, and proceedings

Rule permitting review of otherwise-waived argument that is raised by an amicus when the argument concerns a matter of significant public interest must be applied narrowly and only under the appropriate circumstances so as not to eviscerate the long-standing preservation requirements. Appellate Court Rule 213.

Cases that cite this headnote

[4] **Constitutional Law**
Clearly, positively, or unmistakably unconstitutional
Constitutional Law
Proof beyond a reasonable doubt
Constitutional Law
Burden of Proof

The party challenging the statute bears the heavy burden of proving that its repugnance to the constitution is clear and beyond a reasonable doubt.

Cases that cite this headnote

[5] **Constitutional Law**
Executive Exercise of Statutory Authority as Encroaching on Judiciary
District and Prosecuting Attorneys
Statutory and constitutional provisions

Statute that vested exclusive control of the criminal docket in the circuit solicitor violated separation of powers by impermissibly conferring judicial responsibilities upon a member of the executive branch. Const. Art. 1, § 8; Code 1976, § 1–7–330.

4 Cases that cite this headnote

[6] **Constitutional Law**
Purposes of separation of powers

One of the prime reasons for separation of powers is the desirability of spreading out the authority for the operation of the government; it prevents the concentration of power in the hands of too few, and provides a system of checks and balances. Const. Art. 1, § 8.

Cases that cite this headnote

[7] **District and Prosecuting Attorneys**
Nature and functions of office

Though referenced in the state constitutional article creating the judicial department, circuit solicitors are members of the executive branch. Const. Art. 5, § 24.

Cases that cite this headnote

[8] **Constitutional Law**
Encroachment in general

Separation of powers, or the constitutional prohibition against significant interference by one branch of government with the operations of another branch, is not fixed and immutable, as there are grey areas which are tolerated in complex areas of government; there consequently is some overlap of authority and some encroachment to a limited degree. Const. Art. 1, § 8.

Cases that cite this headnote

[9] **Courts**
In general;nature and source of judicial authority

A court's power to hear and decide cases carries with it the inherent power to control the order of its business.

Cases that cite this headnote

[10] **Constitutional Law**
Encroachment on Judiciary

Vesting a member of the executive branch with the exclusive authority to perform an inherently judicial function unquestionably is a violation of separation of powers. Const. Art. 1, § 8.

Cases that cite this headnote

[11] **Constitutional Law**
Time of Trial
Constitutional Law
Selection and assignment
Criminal Law
Duty of prosecution to proceed to trial
Criminal Law
Time for trial or hearing;continuance

Defendant suffered no prejudice as result of having circuit solicitor determine the trial date and assign judge pursuant to

statute that vested exclusive control of the criminal docket in the solicitor, even though the statute violated separation of powers by impermissibly conferring judicial responsibilities upon a member of the executive branch, and thus, use of statute did not constitute reversible error, in prosecution for armed robbery, kidnapping, burglary, and civil conspiracy; use of statute did not violate defendant's due process or speedy trial rights. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, §§ 8, 14.

4 Cases that cite this headnote

[12] **Constitutional Law**
Time of Trial
Constitutional Law
Selection and assignment
District and Prosecuting Attorneys
Statutory and constitutional provisions

Statute that impermissibly granted to the circuit solicitor the exclusive right to control the criminal docket and selection of trial judge, in violation of separation of powers, did not violate defendant's due process rights, absent showing that trial judge was in fact biased, in prosecution for armed robbery, kidnapping, burglary, and civil conspiracy. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 8; Code 1976, § 1–7–330.

3 Cases that cite this headnote

[13] **Constitutional Law**
Impartiality;bias and prejudice

A criminal defendant has a due process right to have his case heard by a fair and impartial judge. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[14] **Constitutional Law**
Impartiality;bias and prejudice

A criminal defendant has the due process right to have a judge assigned to his case in a manner free from bias or the desire to influence the outcome of the proceedings. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[15] **Constitutional Law**
Impartiality;bias and prejudice
Courts
Designation or assignment of judges

A criminal defendant does not have a due process right to any particular procedure for the selection of the judge; thus, there is no right to have one's judge selected randomly, nor is there one to have a case heard by any particular judge. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[16] **Courts**
Designation or assignment of judges

A criminal defendant has no vested right in the order in which cases are assigned for trial.

2 Cases that cite this headnote

[17] **Courts**
Designation or assignment of judges

A state may use any method to select judges so long as it is impartial and not geared towards influencing the trial's outcome.

Cases that cite this headnote

[18] **Courts**
Designation or assignment of judges

Without a doubt, permitting solicitors, who represent a party in the case, to select the judge raises the specter of partiality and calls the validity of the entire system into question.

Cases that cite this headnote

[19] **Constitutional Law**
Impartiality;bias and prejudice
Judges
Bias and Prejudice
Judges

Determination of objections

The right to a judge who is free from the mere appearance of partiality is not part of due process at all; hence, courts will not presume the judge is partial simply because he was selected by the prosecutor, for adopting such a rule would conflate the appearance of partiality with actual partiality. U.S.C.A. Const.Amend. 14.

1 Cases that cite this headnote

[20] **Courts**

Designation or assignment of judges

In order to be entitled to relief from a prosecutor's selection of a trial judge, a defendant must establish actual partiality and prejudice on the part of the judge.

3 Cases that cite this headnote

[21] **Criminal Law**

Delay caused by accused

Criminal Law

Length of Delay

Criminal Law

Prejudice or absence of prejudice

Criminal Law

Presumptions and burden of proof

Twenty-three-month delay in bringing defendant to trial on charges of armed robbery, kidnapping, burglary, and civil conspiracy, though presumptively prejudicial, did not violate his speedy trial rights, where a significant portion of the delay was caused by defendant's coercion of State's witness, and defendant suffered no actual prejudice as result of the delay. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

1 Cases that cite this headnote

[22] **Criminal Law**

Prejudice or absence of prejudice

The main goals of the speedy trial right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused's defense. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

Cases that cite this headnote

[23] **Criminal Law**

Prejudice or absence of prejudice

Delay is not an uncommon defense tactic and deprivation of the right to a speedy trial does not per se prejudice the accused's ability to defend himself. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

1 Cases that cite this headnote

[24] **Criminal Law**

Consent to or waiver of delay

There is no fixed point when the State can put the defendant to the choice of either exercising or waiving the right to a speedy trial. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

Cases that cite this headnote

[25] **Criminal Law**

Constitutional guarantees;speedy trial in general

Criminal Law

Circumstances as determinative

The right to a speedy trial is necessarily relative in that it is consistent with delays and depends upon circumstances. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

1 Cases that cite this headnote

[26] **Criminal Law**

Constitutional guarantees;speedy trial in general

A speedy trial does not mean an immediate one; it does not imply undue haste, for the State, too, is entitled to a reasonable time in which to prepare its case; it simply means a trial without unreasonable and unnecessary delay. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

6 Cases that cite this headnote

[27] **Criminal Law**
In general;balancing test

Factors considered in the speedy trial analysis include the length of the delay, the reason for it, the defendant's assertion of his right to a speedy trial, and any prejudice he suffered; the factors are all related and must be considered along with such other circumstances as may be relevant. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

5 Cases that cite this headnote

[28] **Criminal Law**
Nature and scope of remedy

If a court concludes that the speedy trial right has been violated, dismissal of the charges is the only possible remedy. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

Cases that cite this headnote

[29] **Criminal Law**
Time of trial;continuance

A court's decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion; an abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

5 Cases that cite this headnote

[30] **Criminal Law**
Presumptions and burden of proof

Courts should not even examine the remaining speedy trial factors until there is some delay which is presumptively prejudicial. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

Cases that cite this headnote

[31] **Criminal Law**
Accrual of right to time restraints

The clock starts running on a defendant's speedy trial right when he is indicted, arrested, or otherwise officially accused, and therefore courts are to include the time between arrest and indictment. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

2 Cases that cite this headnote

[32] **Criminal Law**
Presumptions and burden of proof

For speedy trial purposes, a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

Cases that cite this headnote

[33] **Criminal Law**
Deliberate governmental conduct

A deliberate attempt by the State to delay the trial as a means of impairing the accused's ability to defend himself should be weighted heavily against the government for speedy trial purposes. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

Cases that cite this headnote

[34] **Criminal Law**
Necessities of trial procedure;docket congestion

Criminal Law
Delay Attributable to Prosecution

Neutral reasons for a delay in prosecution, which could include overcrowded dockets or negligence, though weighted less heavily against the State for speedy trial purposes, still count against the State because it bears the ultimate responsibility for these circumstances. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

1 Cases that cite this headnote

[35] **Criminal Law**
Delay caused by accused

Delays occasioned by the defendant are weighted against him for speedy trial purposes. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

1 Cases that cite this headnote

[36] **Criminal Law**
Demand for trial

The failure to assert the speedy trial right will make it difficult for a defendant to prove that he was denied a speedy trial. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

Cases that cite this headnote

[37] **Criminal Law**
Prejudice or absence of prejudice

The possibility that the accused's defense will be impaired due to the death or disappearance of witnesses or the loss of memory with the passage of time is the most serious type of prejudice suffered as result of a pretrial delay, for speedy trial analysis purposes, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

Cases that cite this headnote

[38] **Criminal Law**
Prejudice or absence of prejudice

For purposes of considering prejudice prong of speedy trial analysis, the time spent in jail awaiting trial has a detrimental impact on the individual through its attendant job loss, disruption of family life, and encouragement of idleness. U.S.C.A. Const.Amend. 6; Const. Art. 1, § 14.

Cases that cite this headnote

West Codenotes

Held Unconstitutional
S.C. Code Ann. § 1–7–330.

Attorneys and Law Firms

****475** Elizabeth Anne Franklin–Best, of South Carolina Commission on Indigent Defense, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Salley W. Elliott, Assistant Deputy Attorney General David A. Spencer, all of Columbia, and Solicitor Donald V. Myers, of Lexington, for Respondent.

E. Charles Grose, Jr., of Greenwood, and Tara S. Waters, of Laurens, for Amicus Curiae South Carolina Public Defender Association.

Solicitor David M. Pascoe, Jr., of Columbia, for Amicus Curiae Solicitors' Association of South Carolina.

Opinion

Justice HEARN.

***428** We must determine whether Section 1–7–330 of the South Carolina Code (2005), which vests control of the criminal docket in the circuit solicitor, violates the separation of powers principle embodied in ***429** Article 1, Section 8 of the South Carolina Constitution. In 1980, we recognized that "[t]he authority of the court to grant continuances and to determine the order in which cases shall be heard is derived from its power to hear and decide cases." *Williams v. Bordon's, Inc.*, 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980). "This adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants." *Id.* The time has now come for us to acknowledge that section 1–7–330 is at odds with this intrinsically judicial power. We therefore hold that section 1–7–330 violates the separation of powers and therefore is unconstitutional. However, because K.C. Langford, III, the Appellant herein, suffered no prejudice as a result of section 1–7–330, we affirm his convictions.

FACTUAL/PROCEDURAL BACKGROUND

On August 14, 2008, Ji Quing Chen, along with his son, Li Guan Xin, and wife, Li Ai Ming, left the Chinese restaurant they own in Johnston, South Carolina, shortly after 10:00 p.m. and headed home. With them was a black bag containing the day's earnings. When they arrived home, Ji Quing stayed outside to water some plants while his wife and son entered the house. As he was tending to his garden, three men wearing masks came out from the bushes, forced him to the ground, hit him, and took his wallet. Concerned that his father had not yet come inside, Li Guan stepped out onto the porch to check on him. Once he was outside, the men forced Li Guan to the ground and asked where the restaurant's money was. He told them it was in the house, and one of the men went inside to find it. That man returned shortly with the black bag, and all three of them ran off. Because the men wore masks, the victims were unable to provide a useful description to law enforcement. Moreover, it does not appear the men left any forensic evidence during the commission of these crimes.

Investigators eventually met with Alvin Phillips, who in a statement dated September 28, 2008, confessed that he was one of the men who robbed the family. He further identified his cousin and Langford as the two remaining suspects. In the absence of an eye-witness identification and forensic evidence, Phillips' statement was the only evidence implicating ***430** the other men. Langford was arrested shortly thereafter on October 3, and he was indicted for criminal conspiracy a few months later in December 2008. However, ****476** he was not indicted for armed robbery, first degree burglary, and kidnapping until May 5, 2010, nineteen months following his arrest. He would remain incarcerated until his trial.

The State attributed the delay in procuring these indictments to difficulties in finding Chinese interpreters to translate what Ji Quing and his family, none of whom spoke English well, were relaying to investigators. Furthermore, Phillips retracted his statement implicating Langford while the two of them were housed in the same detention facility. He did so first in a signed statement dated January 29, 2009. On March 31, 2009, he signed another statement wherein he attested that the original statement he made to police in September 2008 was not true and he was not in the "right state of mind" when he made it. According to the State, Langford and his co-defendant pressured Phillips into recanting. In fact, Phillips testified Langford even brought him these later statements to sign. To avoid further intimidation, Phillips was moved to another facility. At some point thereafter, although it is not clear when, Phillips again agreed to testify against Langford.

On June 29, 2009, nearly nine months after he was taken into custody, Langford made what appears to be a *pro se* motion for a speedy trial. A hearing was held on May 17, 2010, and Langford renewed his motion at that time and joined it with a motion to dismiss.[1] This was the date on which the State originally planned to try Langford and his co-defendant, with Phillips serving as a cooperating witness who would testify against them. But the State received word that morning that Phillips decided to invoke his privilege against self-incrimination and would not testify at the trial. Allegedly, this was due to pressure Langford and Phillips' cousin continued to exert on him even after his transfer. Phillips now would not be available for cross-examination at trial, and the ***431** State therefore could not use his prior statement implicating Langford.[2] Because the State's case against Langford rested almost exclusively on Phillips' statement, without it the State effectively was prevented from going forward.

To remedy the situation, the State needed to try Phillips first or, presumably, obtain a guilty plea with the attendant waiver of his right to remain silent. However, Phillips had retained new counsel just eight days prior to the hearing who understandably was not ready to move forward during that term of court. The State therefore requested a continuance so it could proceed against Phillips at the next available opportunity, at which point it would then be able to try Langford. Although the court was "deeply concerned" by the twenty-month delay in the case, it found that "[n]one of this delay was occasioned by any impropriety on the part of the State." It also recognized that, for all intents and purposes, the State could not proceed in the absence of Phillips' testimony. The court accordingly denied Langford's motion to dismiss and granted the State a continuance. However, cognizant of the delays which had already accrued, the court ordered the State to try Langford within nine months, and it further directed that Langford could renew his motion at that time if the State failed to do so.[3]

Phillips pled guilty in August 2010 and once again agreed to testify for the State. Langford's case was then called

for trial on September 7, 2010, nearly two years after his arrest.[4] The jury convicted Langford on all **477 four charges, and the court sentenced him to twenty years' imprisonment on the armed robbery, kidnapping, and first degree burglary charges, and *432 five years' imprisonment on the civil conspiracy charges, all to run concurrently. This appeal followed. After the appeal was perfected, the court of appeals granted permission for the South Carolina Public Defender Association to file an amicus curiae brief challenging the constitutionality of section 1–7–330. This case subsequently was certified to us pursuant to Rule 204(b), SCACR.

ISSUES PRESENTED

I. Is section 1–7–330 constitutional?

II. Did Langford suffer any prejudice as a result of the solicitor controlling when his case would be called for trial?

LAW/ANALYSIS

I. SECTION 1–7–330

[1] We agree with the Public Defender Association that section 1–7–330 is unconstitutional. Before we reach the merits of this question, however, we must first address the State's position that it is not preserved for our review.

[2] Constitutional questions must be preserved like any other issue on appeal. *In re McCracken,* 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001). As the State correctly notes, this issue was not raised to or ruled upon by the circuit court. *See Wilder Corp. v. Wilke,* 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (stating an issue must have been raised to and ruled upon to be preserved for review). Moreover, Langford's statements of the issue on appeal do not raise this question. *See* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."). Indeed, this issue is only before us by way of the amicus brief filed by the Public Defender Association, and our rules provide that an amicus brief "shall be limited to argument of the issues on appeal *as presented by the parties.*" Rule 213, SCACR (emphasis added).

[3] Nevertheless, we previously have considered arguments raised only by an amicus when they concern a "matter of significant public interest." *433 *Ex parte Brown,* 393 S.C. 214, 216, 711 S.E.2d 899, 900 (2011). We stress that this exception to Rule 213 must be applied narrowly and only under the appropriate circumstances so as not to eviscerate the long-standing preservation requirements in our jurisprudence. However, we have little trouble concluding that who decides when criminal defendants in this State should be tried is a matter of significant public interest as envisioned by *Brown.*[5] We therefore proceed to analyze the constitutionality of section 1–7–330.

[4] Section 1–7–330 states in full:

> The solicitors shall attend the courts of general sessions for their respective circuits. Preparation of the dockets for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial. *Provided,* however, that no later than seven days prior to the beginning of each term of general sessions court, the solicitor in each circuit shall prepare and publish a docket setting forth the cases to be called for trial during the term.

In reviewing the validity of this statute, we are reluctant to find it unconstitutional. *See In re Treatment and Care of Luckabaugh,* 351 S.C. 122, 134, 568 S.E.2d 338, 344 (2002). We will therefore make every presumption in **478 favor of its validity. *Id.* The party challenging the statute bears the heavy burden of proving that "its repugnance to the constitution is clear and beyond a reasonable doubt." *Id.* at 134–35, 568 S.E.2d at 344.

[5] [6] The Public Defender Association contends section 1–7–330 violates the separation of powers by impermissibly conferring judicial responsibilities upon a member of the executive *434 branch. Our constitution mandates that "the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." S.C. Const. art. I, § 8.

> One of the prime reasons for separation of powers is the desirability of spreading out the authority for the operation of the government. It prevents the concentration of power in the hands of too few, and provides a system of checks and balances. The legislative department makes the laws; the executive department carries the laws into effect; and the judicial department interprets and declares the laws.

State ex rel. McLeod v. McInnis, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982).

[7] We begin by ascertaining where in our system of government solicitors fall. We note the only reference to solicitors in the constitution is in the article creating the judicial department. *See* S.C. Const. art. V, § 24. However, this section also provides that "[t]he General Assembly shall provide by law for their duties." *Id.* To that end, Section 1–1–110 of the South Carolina Code (2005) squarely places solicitors in the executive branch. Moreover, the Solicitors' Association of South Carolina unequivocally states in its own amicus brief defending section 1–7–330, "The Office of Solicitor is part of the Executive Branch of our state government." Accordingly, we conclude solicitors are members of the executive branch.

[8] We must next determine whether vesting solicitors with the exclusive authority to prepare the dockets for General Sessions is an infringement on the court's powers. "[A] usurpation of powers exists, for purposes of [the] constitutional separation of powers doctrine, when there is a significant interference by one branch of government with the operations of another branch." 16A Am.Jur.2d *Constitutional Law* § 246. This rule is not fixed and immutable, however, as there are grey areas which are "tolerated in complex areas of government." *McInnis,* 278 S.C. at 313, 295 S.E.2d at 636 (1982). There consequently is "some overlap of authority and some encroachment to a limited degree." *Id.; see also* ***435** 16A Am.Jur.2d *Constitutional Law* § 244 ("Separation of powers does not require that the branches of government be hermetically sealed; the doctrine of separation requires a cooperative accommodation among the three branches of government; a rigid and inflexible classification of powers would render government unworkable."). At its core, the doctrine therefore "is directed only to those powers which belong exclusively to a single branch of government." 16A Am.Jur.2d *Constitutional Law* § 246.

[9] **[10]** As we noted at the outset of this opinion, a court's power to hear and decide cases "carries with it the inherent power to control the order of its business." *Williams,* 274 S.C. at 279, 262 S.E.2d at 883. Setting the trial docket therefore is the prerogative of the court. Section 1–7–330, on the other hand, states, "Preparation of the dockets for general sessions courts shall be *exclusively vested in the circuit solicitor* and the solicitor shall determine the order in which cases on the docket are called for trial." (emphasis added). Vesting a member of the executive branch with the exclusive authority to perform an inherently judicial function unquestionably is a violation of separation of powers. *See Hagy v. Pruitt,* 331 S.C. 213, 222, 500 S.E.2d 168, 173 (Ct.App.1998) (Howard, J., concurring) ("[A] statute which attempts to exercise ultimate authority over the inherent power of the court is unconstitutional because it violates the separation of powers doctrine...."), *aff'd,* 339 S.C. 425, 529 S.E.2d 714 (2000). This is not a grey area where some encroachment can be tolerated, but rather a complete invasion into the court's domain.

****479** The dissent, however, takes a different approach and contends that finding the statute unconstitutional will somehow permit courts to infringe upon the powers of the solicitor. [6] ***436** Nevertheless, the dissent correctly acknowledges that the discretion afforded the solicitor "does not mean that the solicitor's authority is unrestrained by judicial oversight. The trial judge has the ultimate authority to determine whether a case called by the solicitor will be tried at a particular juncture." Thus, it appears the dissent truly believes the court has always had the authority to control the docket. In light of that position, we are at a loss as to why it believes our holding today infringes on the solicitor's power.

In fact, we believe our holding is consistent with the dissent's support for the importance of judicial restraint on prosecutorial power. However, unlike the dissent, we recognize that by providing that the "[p]reparation of the dockets for general sessions courts shall be *exclusively vested in the circuit solicitor* and the *solicitor shall* determine the order in which cases on the docket are called

for trial" (emphasis added), the plain and unambiguous language of section 1–7–330 cannot be squared with this oversight. The statute must therefore yield.

Accordingly, we hold section 1–7–330 is unconstitutional beyond a reasonable doubt.

II. PREJUDICE

[11] Our determination that section 1–7–330 violates separation of powers is not dispositive of Langford's appeal. To warrant reversal, Langford must demonstrate that he sustained prejudice as a result of the solicitor setting when his case was called for trial. As this case comes to us, two different forms of prejudice are alleged: (1) Langford was denied his right to due process because section 1–7–330 permitted the solicitor to judge shop, and (2) Langford was denied his right to a speedy trial. We disagree that Langford's trial suffered from any infirmities as a result of section 1–7–330 and therefore affirm his convictions.

A. Due Process

[12] We consider first whether the power impermissibly granted to the solicitor by section 1–7–330 enabled him to ***437** violate Langford's due process rights. Although many different violations are discussed anecdotally, the only due process violation said to have occurred in this case is that section 1–7–330 permitted the solicitor to select the judge who would preside over Langford's trial. Although we question the extent to which section 1–7–330 actually permitted judge shopping, we proceed assuming *arguendo* that it did so.

[13] **[14]** **[15]** **[16]** A criminal defendant has a due process right to have his case heard by a fair and impartial judge. *See Schweiker v. McClure,* 456 U.S. 188, 195, 102 S.Ct. 1665, 72 L.Ed.2d 1 (1982) ("[D]ue process demands impartiality on the part of those who function in judicial or quasi-judicial capacities."). Similarly, he has the right to have a judge assigned to his case "in a manner free from bias or the desire to influence the outcome of the proceedings." *Cruz v. Abbate,* 812 F.2d 571, 574 (9th Cir.1987) (Kozinksi, J.). On the other hand, he does not have a right to "any particular procedure for the selection of the judge." *Id.* Thus, there is no right to have one's judge selected randomly, nor is there one to have a case heard by any particular judge. *Sinito v. United States,* 750 F.2d 512, 515 (6th Cir.1984). Moreover, a defendant has "no vested right in the order in which cases are assigned for trial." *Levine v. United States,* 182 F.2d 556, 559 (8th Cir.1950).

[17] **[18]** Accordingly, a state may use any method to select judges so long as it is impartial and not geared towards influencing ****480** the trial's outcome. Without a doubt, permitting solicitors—who represent a party in the case—to select the judge raises the specter of partiality and calls the validity of the entire system into question. *See United States v. Pearson,* 203 F.3d 1243, 1257 (10th Cir.2000) ("In our view, if the assignment of a case to an individual judge should not be based on 'the desire to influence the outcome of the proceedings,' then allowing a prosecutor to perform that task raises substantial due process concerns." (quoting *Cruz,* 812 F.2d at 574)); *Tyson v. Trigg,* 50 F.3d 436, 442 (7th Cir.1995) (Posner, J.) ("The practice of allowing the prosecutor to choose the ... trial judge is certainly unsightly, as the Indiana court of appeals opined; it does lack the appearance of impartiality...."); *Cruz,* 812 F.2d at 574 ("The suggestion that the case assignment process is being manipulated for motives other ***438** than the efficient administration of justice casts a very long shadow, touching the entire criminal justice system...."). Some courts have therefore struck down their systems of permitting prosecutors to select judges. *State v. Simpson,* 551 So.2d 1303, 1304 (La.1989) (doing so on due process grounds); *McDonald v. Goldstein,* 191 Misc. 863, 83 N.Y.S.2d 620, 625 (Sup.Ct.1948) (holding that granting prosecutors control over choosing the judge threatens the independence of the judiciary); *see also Rosemond v. Catoe,* 383 S.C. 320, 326 n. 1, 680 S.E.2d 5, 8 n. 1 (2009) ("We acknowledge the practice of the prosecutor selecting the trial judge is inappropriate and troubling.").

[19] **[20]** However, as Judge Posner wrote, "[t]he presumption that judges are unbiased is more than a pious hope." *Tyson,* 50 F.3d at 439. Furthermore, "[t]he right to a judge who is free from the mere *appearance* of partiality is not part of due process at all." *Id.* at 442. Hence, we will not presume the judge is partial simply because he was selected by the prosecutor, for adopting such a rule would "conflate[ ] the appearance of partiality with actual partiality." *Francolino v. Kuhlman,* 224 F.Supp.2d 615, 636 (S.D.N.Y.2002), *aff'd,* 365 F.3d 137 (2d Cir.2004); *see also Pearson,* 203 F.3d at 1262 ("[W]e cannot presume that a federal judge selected by the prosecutor will be his agent or henchman."). In order to be entitled to relief, a

defendant therefore must establish actual partiality and prejudice on the part of the judge. *Pearson,* 203 F.3d at 1263 (finding prosecutorial selection of judge harmless error because there was no evidence the judge decided any issue in a manner more favorable to the prosecution than other judges would have); *Tyson,* 50 F.3d at 442 (holding permitting the prosecutor to choose the judge "does lack the appearance of impartiality[,] but that is all, so far as the record of this case discloses, and it is not enough"); *Sinito,* 750 F.2d at 515 ("Even when there is an error in the process by which the trial judge is selected ... the defendant is not denied due process as a result of the error unless he can point to some resulting prejudice."); *Francolino,* 224 F.Supp.2d at 636 ("While the Court agrees that the former system gave the appearance of partiality, maintaining that Justice Snyder was in fact partial is a separate matter."); *State v. Huls,* 676 So.2d 160, 167 (La.Ct.App.1996) (noting a ***439** showing of prejudice was required even after the Louisiana Supreme Court struck down the practice of prosecutorial selection of judges on due process grounds).

The only support offered for the allegation of bias by the presiding judge in this case, Judge Keesley, is the simple fact that he ruled in favor of the State on previous issues that arose. Yet, there is not a shred of evidence that he did so out of any animus towards Langford or allegiance to the State. The contention that a judge was biased *solely* because he ruled against a defendant is untenable and insulting towards the court, and it would set a dangerous precedent were we to sanction it. Moreover, Judge Keesley ordered in May 2010 that the State try the case within nine months, and he would have ordered the State to do so sooner but for scheduling conflicts. Simply put, there is no suggestion that Judge Keesley conducted Langford's trial in anything but a fair and impartial fashion. We therefore find no evidence of actual prejudice in the record.

Undoubtedly, section 1–7–330 leaves room for abuses which can deny a defendant due process. Not only can the State theoretically pick a judge to preside because he will favor ****481** the prosecution, but the Public Defender Association's brief contains very troubling examples of abuses occurring in other cases and in other forms. Andrew M. Siegel, *When Prosecutors Control Criminal Court Dockets: Dispatches on History and Policy from a Land Time Forgot,* 32 Am. J.Crim. L. 325, 351–69 (2005) (detailing the potential ills of prosecutorial control of the docket). Perhaps this is why South Carolina until today has stood alone amongst our sister states in permitting the prosecutor to control the docket. *See id.* at 327 (noting that South Carolina is the only state with such a system). Of course, the vast majority of solicitors operate the criminal courts in a fair and even-handed manner, and the abuses cited generally are not associated with any nefarious intent. They do, however, inevitably stem from the nature of a system that allows the prosecution to control the criminal docket.

Nevertheless, we cannot equate the potential for abuse with it actually occurring in this case. Indeed, whether the statute may be unconstitutional in other circumstances has no bearing ***440** on whether it has been unconstitutionally applied in the case at hand. *See Simeon v. Hardin,* 339 N.C. 358, 451 S.E.2d 858, 871 (1994) (holding prosecutorial control of the docket is facially constitutional and must be attacked on an as-applied basis). We must therefore determine whether Langford's rights were infringed based on the record before us. Under the lens of the only deprivation alleged to have occurred in this case, we find no evidence that Langford's due process rights were violated even if the State was able to select Judge Keesley to preside.

B. Speedy Trial

[21] **[22]** Langford also contends the State's dilatory practices in calling his case deprived him of his right to a speedy trial.[7] The Sixth Amendment to the United States Constitution provides, in part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy ... trial." U.S. Const. amend. VI. Similarly, the South Carolina Constitution guarantees that "[a]ny person charged with an offense shall enjoy the right to a speedy ... trial." S.C. Const. art. I, § 14. The main goals of this right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused's defense. *State v. Waites,* 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978).

[23] **[24]** The Supreme Court of the United States has deemed this right "generically different from any of the other rights enshrined in the Constitution for the protection of the accused." *Barker v. Wingo,* 407 U.S. 514, 519, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). This is due in large part to the reality that "[d]elay is not an

uncommon defense tactic" and "deprivation of the right to a speedy trial does not per se prejudice the *441 accused's ability to defend himself." *Id.* at 521, 92 S.Ct. 2182. More important, however, is the vagueness of this right, which makes it nearly impossible to determine when it has been violated. *Id.* Indeed, the various procedural safeguards built into the criminal process require that it "move at a deliberate pace." *United States v. Ewell,* 383 U.S. 116, 120, 86 S.Ct. 773, 15 L.Ed.2d 627 (1966). Thus, "there is no fixed point ... when the State can put the defendant to the choice of either exercising or waiving the right to a speedy trial." *Barker,* 407 U.S. at 521, 92 S.Ct. 2182.

[25] **[26]** **[27]** Accordingly, "[t]he right to a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances." *Beavers v. Haubert,* 198 U.S. 77, 87, 25 S.Ct. 573, 49 L.Ed. 950 (1905). Stated differently, "[a] speedy trial does not mean an immediate one; it does not imply undue haste, for the [S]tate, too, is entitled to **482 a reasonable time in which to prepare its case; it simply means a trial without unreasonable and unnecessary delay." *Wheeler v. State,* 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966). Because of the vagaries of this unavoidably ad hoc inquiry, the Supreme Court has acknowledged that it "can do little more than identify some of the factors" for courts to examine. *Barker,* 407 U.S. at 530, 92 S.Ct. 2182. These factors include the length of the delay, the reason for it, the defendant's assertion of his right to a speedy trial, and any prejudice he suffered. [8] *Id.; see also Waites,* 270 S.C. at 107, 240 S.E.2d at 653 (recognizing the same factors apply under South Carolina law).

[28] **[29]** The Supreme Court has counseled further that none of these factors is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." *Barker,* 407 U.S. at 533, 92 S.Ct. 2182. Instead, they are all related and must be considered along "with such other circumstances as may be relevant." *Id.* Thus, the Supreme Court created a balancing test which is a rejection of "inflexible approaches" and weighs "the conduct of both the prosecution *442 and the defense." *Id.* at 529–30, 92 S.Ct. 2182. If a court concludes that this right has been violated, dismissal of the charges "is the only possible remedy." *Id.* at 522, 92 S.Ct. 2182. A court's decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion. *See State v. Edwards,* 374 S.C. 543, 571, 649 S.E.2d 112, 126 (Ct.App.2007) (applying abuse of discretion standard to speedy trial claim), *rev'd on other grounds,* 384 S.C. 504, 682 S.E.2d 820 (2009); *see also State v. Redding,* 274 Ga. 831, 561 S.E.2d 79, 80 (2002) (noting the inquiry is whether court abused its discretion under *Barker*). "An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support." *Fields v. J. Haynes Waters Builders, Inc.,* 376 S.C. 545, 555, 658 S.E.2d 80, 85 (2008)

[30] **[31]** **[32]** We begin our analysis with the "triggering mechanism" of a speedy trial claim, which is the length of the delay. *Barker,* 407 U.S. at 530, 92 S.Ct. 2182. We should not even examine the remaining factors "[u]ntil there is some delay which is presumptively prejudicial." *Id.* The clock starts running on a defendant's speedy trial right when he is "indicted, arrested, or otherwise officially accused," and therefore we are to include the time between arrest and indictment. *United States v. MacDonald,* 456 U.S. 1, 6, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982). The Supreme Court was quick to remind in *Barker,* however, that even the length of time necessary to trigger the full inquiry "is necessarily dependent upon the peculiar circumstances of the case." 407 U.S. at 530–31, 92 S.Ct. 2182. Thus, a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case. *Id.* at 531, 92 S.Ct. 2182; *see also id.* at 531 n. 31, 92 S.Ct. 2182 (suggesting that a delay of nine months could have been presumptively prejudicial in a case that depended on eyewitness testimony (citing *United States v. Butler,* 426 F.2d 1275, 1277 (1st Cir.1970))).

In the case before us, Langford's speedy trial clock began when he was arrested on October 3, 2008, and ran until he was tried twenty-three months later on September 7, 2010. Moreover, while the charges against him were serious, the factual proof was not complicated. Thus, this length of time is *443 presumptively prejudicial and triggers the remaining *Barker* inquiry. *See Waites,* 270 S.C. at 108, 240 S.E.2d at 653 (holding a two-year-and-four-month delay in a prosecution for assault and battery of a high and aggravated nature and for pointing and presenting a firearm implicated the rest of the *Barker* analysis); *see also Doggett v. United States,* 505 U.S. 647, 652 n. 1, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992) ("Depending on the nature of the charges, the lower courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches one year."); **483 *Brooks v. State,*

285 Ga. 246, 674 S.E.2d 871, 873–74 (2009) (finding a nineteen-month delay presumptively prejudicial in trial for murder, aggravated assault, and firearms offenses).

[33] **[34]** **[35]** Turning to the second element, the Supreme Court has stated that "different weights should be assigned to different reasons" for the delay. *Barker,* 407 U.S. at 531, 92 S.Ct. 2182. A deliberate attempt by the State to delay the trial as a means of impairing the accused's ability to defend himself "should be weighted heavily against the government." *Id.* Neutral reasons, which could include overcrowded dockets or negligence, are "weighted less heavily" but still count against the State because it bears the ultimate responsibility for these circumstances. *Id.; see also State v. Pittman,* 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) ("The ultimate responsibility for the trial of a criminal defendant rests with the State."). Delays occasioned by the defendant, however, weigh against him. *Vermont v. Brillon,* 556U.S. 81, 129 S.Ct. 1283, 1290, 173 L.Ed.2d 231 (2009). This is not only in accord with the reality that delay may be a defense tactic, but it is also a recognition that a defendant should not be able to procure a dismissal of the charges against him due to delays he caused. *See id.*

The State advances two different reasons for the delays in Langford's prosecution. First, it argues that the initial twenty-month delay in indicting him was due to its inability to have a "meaningful" conversation with the victims because it could not find an interpreter. Although we are not persuaded the State used its best efforts to secure an interpreter, there is no evidence that it intentionally tarried in finding one. At most, the State was negligent, and this is a neutral reason for delay which does not weigh heavily against it.

***444** Next, the State contends the final four-month delay in trying Langford, running from May 2010 to September 2010, was the result of Langford coercing Phillips to not testify. From our review of the record, there is evidence that Langford and his co-defendant persuaded Phillips to remain silent. So long as he did so, he would be unavailable for cross-examination. Thus, the State would be unable to use Phillips' original statement as evidence against Langford. *See Bruton,* 391 U.S. at 126, 88 S.Ct. 1620. The loss of this crucial piece of evidence therefore effectively gutted the State's case on the day of trial.

The State consequently needed to first procure a waiver of Phillips' right to remain silent, and then it could try Langford using the statement. Because Phillips' attorney was not ready to proceed during that term of court, however, a continuance was required for this to happen. [9] From that point on, the State moved with reasonable haste given the few General Sessions terms scheduled for Edgefield County during that time. We agree with the circuit court that the delays already incurred are troubling, but we cannot ignore the fact that this additional delay is the product of Langford's efforts to spoil the State's evidence. Therefore, we will not count it against the State. *See United States v. Loud Hawk,* 474 U.S. 302, 316, 106 S.Ct. 648, 88 L.Ed.2d 640 (1986) (holding a defendant who causes delays in his trial "should not be able upon return to the district court to reap the reward of dismissal for failure to receive a speedy trial").

[36] The third factor in the *Barker* analysis is the defendant's assertion of his right to a speedy trial. While Langford first filed what seems to be a *pro se* speedy trial motion in June 2009, the record suggests that he never sought a ruling on it until the May 2010 hearing. Moreover, while Langford did file a *pro se* motion for a speedy trial/motion to dismiss days after the court issued its May 2010 order, it was never ***445** ruled upon and he never renewed his motion when the case was called for trial. Although it may have been futile for him to raise the issue again from an ****484** error preservation standpoint, the "failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." *See Barker,* 407 U.S. at 532, 92 S.Ct. 2182.

[37] Finally, we must consider the prejudice Langford suffered. The Supreme Court has identified three different types of prejudice the right to a speedy trial seeks to prevent: (1) oppressive pre-trial incarceration; (2) anxiety stemming from being publicly accused of a crime; and (3) the possibility that the accused's defense will be impaired due to the death or disappearance of witnesses or the loss of memory with the passage of time. *Id.* "Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Id.*

[38] Langford was in jail for nearly two years pending trial. "The time spent in jail awaiting trial has a detrimental impact on the individual" through its attendant job loss, disruption of family life, and

encouragement of "idleness." *Id.* While we are cognizant of not minimizing the deleterious effects of lengthy pre-trial incarceration, the two-year delay in bringing this case to trial does not amount to a constitutional violation in the absence of any actual prejudice to Langford's case. [10] *See State v. Kennedy,* 339 S.C. 243, 250, 528 S.E.2d 700, 704 (Ct.App.2000) ("While Kennedy may have been slightly prejudiced by the twenty-six month pretrial incarceration, the more important question is whether he was prejudiced because the delay impaired his defense."). To that end, Langford has not demonstrated how his own defense was prejudiced by the delay. Although he does argue the final delay enabled the State to secure Phillips' testimony and thereby bolster its case against him, he fails to recognize that the State only had to do so because of his interference. ***446** Moreover, he cannot point to any evidence of anxiety caused by the stigma of being accused of these crimes.

Looking at these factors and the case as a whole, and taking into account the balance of the State's interests and Langford's, we do not believe the circuit court abused its discretion in finding Langford was not denied a speedy trial in the constitutional sense.

CONCLUSION

For the foregoing reasons, we hold section 1–7–330 is unconstitutional under the separation of powers clause of our constitution. The General Sessions docket will henceforth be managed pursuant to the administrative order issued in conjunction with this opinion. Nevertheless, we affirm Langford's convictions because he has not shown he was prejudiced by the solicitor's control over calling his case for trial. In particular, we find no due process violation or a denial of his right to a speedy trial.

TOAL, C.J., BEATTY and KITTREDGE, JJ., concur.

PLEICONES, J., dissenting in a separate opinion.

Justice PLEICONES, dissenting.

I respectfully dissent from that part of the opinion that finds S.C.Code Ann. § 1–7–330 (2005) unconstitutional. As explained below, the constitutionality of the statute is not before us. It is axiomatic that this Court will not address a constitutional issue unless it is necessary to a resolution of the case. *E.g., S.C. Dep't of Soc. Servs. v. Cochran,* 356 S.C. 413, 589 S.E.2d 753 (2003). It is also axiomatic that we sit to review the lower court's order based upon the issues properly presented by the parties for our consideration. *E.g., Herron v. Century BMW,* 395 S.C. 461, 719 S.E.2d 640 (2011). Constitutional issues are not exempt from issue preservation requirements. *Id.* Further, our rule restricts amicus to the issues presented by the parties, Rule 213, SCACR: to strike down a statute as unconstitutional based upon an amicus brief is tantamount to a *sua sponte* declaration. Unless a statute ****485** infringes upon our jurisdiction, we may not *sua sponte* declare it unconstitutional. *See* ***447** *State v. Keenan,* 278 S.C. 361, 296 S.E.2d 676 (1982). We should not decide the constitutionality of § 1–7–330 on this record.

Even if the constitutionality of § 1–7–330 were before us, under our existing precedents I find that the statute does not offend the separation of powers doctrine. I agree that solicitors are executive officers. S.C.Code Ann. § 1–1–110 (2005). Further, I agree that § 1–7–330 vests the exclusive authority to prepare the general sessions docket in the solicitor, and also authorizes her to determine the order in which the docketed cases are called. Finally, I do not disagree with the majority that by vesting exclusive authority in the solicitor to prepare the general sessions docket, and by permitting the solicitor to call cases from that docket in his desired order, § 1–7–330 could lead to unnecessary delay, oppressive haste, and other abuses. As I interpret the statute, however, I do not believe that it violates the South Carolina Constitution.

We have recently addressed a separation of powers challenge to prosecutorial authority:

> Under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case. Both the South Carolina Constitution [footnote 5 citing S.C. Const. art. V, § 24] and South Carolina case law [footnote 6 citing *McLeod v. Snipes,* 266 S.C. 415, 223 S.E.2d 853 (1976)] place the unfettered discretion to prosecute solely in the prosecutor's hands. The Attorney General as the State's chief prosecutor may decide when and where to present an indictment, and may even decide whether an

> indictment should be sought. Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety. The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion....
>
> *State v. Thrift,* 312 S.C. 282, 291–292, 440 S.E.2d 341, 346–347 (1994) cited with approval in *State v. Needs,* 333 S.C. 134, 146, 508 S.E.2d 857, 863 (1998); *State v. Burdette,* 335 S.C. 34, 40, 515 S.E.2d 525, 528 (1999).

Further, "[a]ll the authorities agree that, in the exercise of a discretionary official act, an executive officer cannot be restrained, ***448** coerced, or controlled by the judicial department." *State v. Ansel,* 76 S.C. 395, 57 S.E. 185 (1907).

Subject to the limitations discussed below, the solicitor has the discretion to decide when to prosecute and how to prosecute a case. This does not mean that the solicitor's authority is unrestrained by judicial oversight. The trial judge has the ultimate authority to determine whether a case called by the solicitor will be tried at a particular juncture. *See State v. Mikell,* 257 S.C. 315, 185 S.E.2d 814 (1971) ("In the calling of cases for trial the solicitor has a broad discretion in the first instance, and the trail [sic] judge has a broad discretion in the final analysis."). This is so because the trial judge has "the inherent power to control the order of [the court's] business to safeguard the rights of litigants" through her discretion to grant a continuance. *Williams v. Bordon's Inc.,* 274 S.C. 275, 262 S.E.2d 881 (1980). In *Williams,* the Court held the General Assembly violated the separation of powers doctrine by enacting a statute which purported to limit the court's discretion to grant a continuance in any case which involved an attorney-legislator as "attorney of record, witness, or otherwise." If we read § 1–7–330 as preventing a trial judge from exercising her discretion to require a solicitor to place a case upon a future docket if necessary to safeguard the rights of the defendant, then we would render the statute unconstitutional. Such an interpretation would create a separation of powers issue, not between the executive and the judiciary, but between the legislative branch and the judicial branch since we would find the statute unconstitutionally infringes upon judicial authority. *Williams, supra.* Nothing in § 1–7–330 affects the court's inherent authority to safeguard litigants' rights; rather, the statute represents the reasonable delegation of preparing ****486** the general sessions docket to the solicitor.

The solicitor is a party to every general sessions proceeding, and has the information and resources necessary to determine when a case is ready to be called. If the solicitor is perceived to be unlawfully delaying the call of a case, the defendant has available the remedy of a speedy trial motion: If it is called with undue haste, the defendant may seek a continuance. It is only logical to have the solicitor initially set the docket since he knows the status of the law enforcement investigation, of the examination of the forensic evidence, of any codefendant's ***449** case, and of the defendant's other charges. *See State v. Mikell, supra* ("A prosecuting attorney normally has many cases for disposition. He must plan ahead to expedite the work of the court...."). The solicitor bears the burden of proof in every case and should not ordinarily be compelled to call his case before he is ready. *Id.* ("solicitor has authority to call cases in such order and in such manner as will facilitate the efficient administration of his official duties, **subject to the broad discretion of the trial judge.**")(emphasis supplied). In my opinion, there is no separation of powers problem with § 1–7–330. *E.g., State v. Thrift, supra.*

Finally, I disagree with the premise of the majority's opinion, "that section 1–7–330 is at odds with [the courts'] intrinsically judicial power." Even if one were to grant that the statute creates some overlap of executive and judicial authority, it cannot be said that preparing a docket and calling cases from that docket usurps the judicial power vested in the unified judicial system under S.C. Const. art. V, § 1 (1977). *See Carolina Glass Co. v. Murray,* 87 S.C. 270, 291–292, 69 S.E. 391, 399 (1910) *overruled in part on other grounds McCall v. Batson,* 285 S.C. 243, 329 S.E.2d 741 (1985).

In my opinion, however, we cannot reach the constitutionality of that statute in this case. Were we to reach the issue, I would interpret the statute in a way that does not offend the separation of powers doctrine. If the Court is nonetheless determined to declare § 1–7–330 unconstitutional, then we must both deal with our precedents and describe the new system in sufficient detail that the parties most intimately involved in the process can implement the necessary changes.

I concur in the majority's decision to affirm this appeal and in the sentiment that our General Sessions docketing system needs reform, but dissent from so much of that opinion as reaches and decides the constitutionality of § 1–7–330.

RE: DISPOSITION OF CASES IN GENERAL SESSIONS

ORDER

Pursuant to the provisions of S.C. CONST. Art. V § 4, and in furtherance of this Court's decision in *State v. Langford,*

***450** IT IS ORDERED that:

Cases in General Sessions Court shall proceed as follows:

(A) All cases shall be assigned to a 180 day track consistent with the Uniform Differentiated Case Management Order which is incorporated herein and made a part hereof by reference. The Chief Judge for Administrative Purposes (CJAP) may entertain motions to remove any case from the track and establish a scheduling order where appropriate.

(B) Cases within the 180 day track or cases that have exceeded the 180 day track by less than one (1) year, shall remain under the control of the Solicitor, subject to the provisions set forth below:

(1) General Docket. The General Docket consists of all pending General Sessions matters. Absent the grant of a speedy trial motion, the Solicitor shall have the initial responsibility for designating when a case is ready for trial. Upon determining that a case is ready for trial, the Solicitor shall file with the Clerk of Court a "NOTICE OF COURT DOCKETING" on a form prescribed by the Supreme Court and shall serve all parties and counsel of record. Upon receiving such notice, the Clerk shall place the case on the Court Docket and the matter may be called for ****487** trial any time after thirty (30) days from the filing of the NOTICE OF COURT DOCKETING. The Court Docket consists of all matters that the Solicitor has deemed ready for trial. Once the case is placed on the Court Docket, the Court assumes the responsibility for setting a trial date and the Clerk, under the direction and supervision of the CJAP, shall publish a trial roster from the Court Docket of cases subject for trial at least twenty-one (21) days before each term of court. Publication shall be effected once the Clerk makes the trial roster available in the Clerk's office or on the Clerk's internet site. The Clerk shall also distribute the trial roster to those attorneys listed upon it by Fax, U.S. Mail, hand delivery, or electronic delivery. Cases on the trial roster not reached for trial will be subject to being called for the next two terms of court before being republished. It is the responsibility of each defense attorney to notify the ***451** defendant that the case is scheduled for trial and to remind the defendant of the right and obligation to be present at trial. Motions for continuance or other relief from a published trial roster shall be made in accordance with Rule 7, SCRCrimP. The CJAP or presiding judge shall rule on the motion.

(2) Nothing herein shall affect the Court's ability to schedule motions or other pretrial proceedings as may be appropriate, or the right of the CJAP to add cases to any trial roster or designate cases for a day certain as the CJAP deems appropriate, subject to the notification requirements set forth in paragraph B(1), above.

(C) Cases more than one year beyond their 180 day track will be automatically transferred to the CJAP's supervision as follows:

(1) Judicial Docket. If the Solicitor has not filed a NOTICE OF COURT DOCKETING in accordance with Paragraph (B)(1) above for any case more than one (1) year beyond its assigned track, it will be automatically transferred to the Judicial Docket, which the Clerk shall maintain separate and apart from the regular Court Docket. The CJAP will administer and supervise the Judicial Docket. The Solicitor must notify the Clerk within fifteen (15) days after expiration of this period of time of all cases that are in this category and furnish the following information: (1) Indictment number; (2) Defendant's name; (3) Date of Arrest; (4) Assigned Assistant Solicitor; (5) Defense Counsel; (6) Date of Indictment (True Bill); (7) Track expiration date; (8) Prior

request(s) for continuance. The Clerk will maintain the Judicial Docket which will include this information.

(2) Upon placement on the Judicial Docket, the CJAP shall arrange for the scheduling of trial or other disposition of the case. Additionally, the CJAP may upon the request of any party transfer the case to the trial roster in accordance with Paragraphs (B)(1) and (2).

***452** (3) If the case has not been disposed of more than one (1) year following its transfer to the Judicial Docket, the CJAP will dismiss the case, absent the Solicitor establishing good cause. Both the Solicitor and the defendant shall be notified of the pending dismissal and be given an opportunity to be heard. Cases dismissed pursuant to this provision will be without prejudice, unless otherwise specified by the CJAP. The Solicitor will notify the victim(s) of cases dismissed pursuant to this provision.

(D) Non–Track Cases:

The Solicitor shall furnish to the CJAP a quarterly status report of all non-track cases. The report shall contain information regarding the progress of the case and the expected disposition date.

(E) Old Case Disposition:

****488** Any case, including non-track cases, pending four (4) or more years from the date of indictment by the Grand Jury shall be dismissed by the CJAP, unless the Solicitor shall show good cause why it should not be dismissed. Such dismissal is without prejudice, unless otherwise specified by the CJAP and the Solicitor shall have the right to re-present the matter to the Grand Jury. Before ordering dismissal, the Clerk of Court shall notify the Solicitor and the defendant of the Court's intention to dismiss the case. The Solicitor shall: (1) within ten (10) days of receiving the notice from the Court, notify the victim(s) in writing of the Court's intended disposition and invite the victim(s) to file a written response with the Solicitor within ten (10) days; and (2) within thirty (30) days file a written response with the Court setting forth in detail the reasons, including the response(s) of the victim(s), why the case should not be dismissed and advising the court of the expected time of disposition. The defendant may submit a written response within thirty days of the Solicitor's filing. The CJAP may schedule a hearing, dismiss the case without a hearing, or take such further action as may be appropriate. Failure to respond as set forth herein will result in the matter being dismissed pursuant to this provision. If the Solicitor shows ***453** good cause, the case shall automatically be transferred to the Judicial Docket.

This order shall be effective February 4, 2013.

JEAN H. TOAL, C.J., DONALD W. BEATTY, JOHN W. KITTREDGE, and KAYE G. HEARN, JJ.
Because I dissent from the opinion, I respectfully do not join in this order.

COSTA M. PLEICONES, J.

All Citations

400 S.C. 421, 735 S.E.2d 471

Footnotes

1 It does not appear the court ever ruled on Langford's ostensibly *pro se* motion prior to this hearing. Moreover, the record suggests that the hearing was held upon the motion of Langford's co-defendant, Phillips' cousin. This motion was styled as a motion to dismiss or, in the alternative, a motion for a speedy trial.

2 *See Bruton v. United States,* 391 U.S. 123, 126, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968) (holding the Confrontation Clause bars the admission of a statement of a co-defendant who remains silent which is to be used against the other defendant at trial).

3 The court would have set an earlier deadline, but there were scheduling conflicts with a pending death penalty trial and a visiting judge. Additionally, while Langford did file what seems to be another *pro se* motion to dismiss on May 25, 2010, it does not appear the court ruled on it.

4 This was only the second General Sessions term of court for Edgefield County after May 17, 2010, the term in which the State received the continuance.

5 We do not take lightly the dissent's concern that by addressing the merits of the Public Defender Association's argument we offend our rules of preservation, but remain convinced this issue falls easily within our exception. Moreover, if the issue is truly unpreserved, as the dissent contends, we are at a loss to understand why the dissent addresses the merits. Preservation in South Carolina is a threshold issue and if an issue is unpreserved, it is not properly before the court and the merits should not be reached. *See State v. Roach,* 377 S.C. 2, 3, 659 S.E.2d 107, 107 (2008) (noting that issues not preserved for review should not be addressed); *State v. Dunbar,* 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (same).

6 Undoubtedly, the solicitor has discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain. True too is the fact that he must grapple with marshaling witnesses, ranging from victims, to police officers, to experts. Because the State bears the burden of proof, the solicitor also does not want to call the case before he himself is ready. Moreover, he is the person most knowledgeable about the status of the case. These are all truisms we cannot dispute, and they are prerogatives of the solicitor (and, to a large degree, of defense counsel as well) and are unaffected by our decision.

7 We reject the State's argument that this issue is not preserved for review due to Langford's failure to renew his motion to dismiss when his case was called for trial. In its May 2010 order denying Langford's original motions, the court required the State to try the case within nine months. It then said Langford could renew his motion to dismiss at that time if the State failed to do so. Because nine months had not yet passed when the case was tried, it would have been futile for Langford to raise the issue again. *See State v. Pace,* 316 S.C. 71, 74, 447 S.E.2d 186, 187 (1994) (finding appellant did not waive an objection by not presenting it to circuit court because it would have been futile to do so).

8 The circuit court did not cite to *Barker* or explicitly apply any of these factors. However, the court's analysis largely tracks the substance of the test, and no party has contended the court did not use the proper legal framework when ruling on Langford's motions.

9 Langford's argument that the State simply could have redacted Phillips' references to him in the statement to avoid *Bruton* misses the point. Phillips was the key prosecution witness, and his testimony was essential to the State's case. Holding that the State was required to forego the use of Phillips' statement against Langford without consideration of why Phillips changed his mind would allow Langford to benefit from his tampering with the State's star witness.

10 While extreme delays may warrant relief based solely on pre-trial incarceration, this case has not crossed that threshold. *See Doggett,* 505 U.S. at 657, 112 S.Ct. 2686 ("[T]o warrant granting relief, negligence unaccompanied by particularized trial prejudice must have lasted longer than negligence demonstrably causing such prejudice.").

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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 Prosecution Coordination study materials available online under "Citizens' Interest," under "House Legislative Oversight Committee Postings and Reports," and then under "Prosecution Coordination, Commission on" https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyPHPFiles/ProsecutionCoordination.php (accessed October 12, 2018).

[2] S.C. Code of Laws § 2-2-20(C).

[3] 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. Hereinafter, "September 18, 2018, meeting minutes and video."

[4] The report is provided pursuant to provisions in the annual general appropriations act. See 2018-2019 Annual General Appropriations Act, Part 1B, § 117.109 and § 117.110.

[5] S.C. House of Representatives, House Legislative Oversight Committee, "Letter from Prosecution Coordination to Oversight Subcommittee (July 16, 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%20SCCPC%20to%20Oversight%20Subcommittee%20with%20attachments%20(July%2016,%202018).pdf (accessed October 12, 2018). See question thirteen. Hereinafter, "Letter from Prosecution Coordination to Oversight Subcommittee (July 16, 2018)."

[6] S.C. Judicial Department, "Circuit Court Judges," https://www.sccourts.org/circuitCourt/circuitMap.cfm (accessed October 10, 2018).
[7] S.C. House of Representatives, House Legislative Oversight Committee, "Agency PER (April 6, 2018)," under "Committee Postings and Reports," under "House Legislative Oversight Committee," and under "Prosecution Coordination Commission" http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Prosecution%20Coordination%20PER%20-%20Complete.pdf (accessed June 11, 2018). Hereinafter, "Agency PER."
[8] 1990 Act 485. See also, S.C. Code of Laws § 1-7-910.
[9] S.C. Code of Laws § 1-7-920; Commission membership. S.C. Code of Laws § 1-7-940; duties. S.C. Code of Laws § 1-7-950; election of Housman and officers. S.C. Code of Laws § 1-7-960; executive director and staff. S.C. Code of Laws § 1-7-970; compensation and expenses. S.C. Code of Laws § 1-7-980; funding. S.C. Code of Laws § 1-7-1000; salaries of circuit solicitors.
[10] Agency PER. See question six. See also, 1991 Act 171, § 10A.
[11] Ibid. See also, S.C. Code of Laws § 8-17-370(4).
[12] Act 419 of 1998 [1998-1999 Appropriations Bill, Part 1B, § 56DD.20 (GOV: Establish Victim/Witness Program)].
[13] Agency PER. See question six. See also, 2001 Act No. 66, § 33.
[14] 1990 Act 485. See preamble, which is not codified.
[15] S.C. Code of Laws § 1-7-910. See also, 1990 Act 485.
[16] State v. Needs (S.C. 1998) 333 S.C. 134, 508 S.E.2d 857, rehearing denied. Hereinafter, "State v. Needs."
[17] State v. Ridge, 269 S.C. 61, 236 S.E.2d 401 (1977), citing to State v. Brittian, 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.") Hereinafter, "State v. Ridge."
[18] 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."
[19] S.C. Constitution, Article 5, Section 24. Law enforcement officials, prosecutors and administrative officers; Attorney General. There shall be elected in each county by the electors thereof a clerk of the circuit court, a sheriff, and a coroner; and in each judicial circuit a solicitor shall be elected by the electors thereof. All of these officers shall serve for terms of four years and until their successors are elected and qualify. The General Assembly shall provide by law for their duties and compensation. The General Assembly also may provide by law for the age and qualifications of sheriffs and coroners, and the selection, duties, and compensation of other appropriate officials to enforce the criminal laws of the State, to prosecute persons under these laws, and to carry on the administrative functions of the courts of the State. The Attorney General shall be the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record. (1972 (57) 3176; 1973 (58) 161; 1973 (58) 863; 1975 (59) 46; 1985 Act No. 9; 1989 Act No. 10; 1995 Act No. 35.)
[20] Ex parte McLeod, 272 S.C. 373, 252 S.E.2d 126 (1979). See also, informal opinion of the Attorney General, The Honorable Ernest M. Spong, III, 1999 WL 1390355 (November 29, 1999).
[21] Op. S.C. Attorney General, 2018 WL 3494001 (July 3, 2018). In Op. S.C. Att'y Gen., 2004 WL 885184 (April 20, 2004), for example, we recognized that the solicitor controlled the criminal prosecution sin his or her circuit. We noted there in that "…a circuit solicitor retains the ultimate prosecutorial authority as to any case within his or her circuit, including magistrate's and municipal court cases." (emphasis added). We referenced an earlier opinion, dated November 7, 1990, concluding that "…a solicitor should be considered as having control of any criminal case brought in magistrate's court." See State v. Addis, 257 S.C. 482, 487, 186 S.E.2d 882 (1972) ["(i)n every criminal prosecution the responsibility for the conduct of the trial is upon the solicitor and he must and does have full control of the State's case.]. And, in Op. S.C. Att'y Gen., 2015 WL 3919079 (June 16, 2015), we likewise stated that "…we believe that where a charging or prosecution decision has been reached by a solicitor, neither a sheriff nor a police chief can exercise the prosecutorial power by alternative means." (emphasis added)." See also, August 20, 2018 meeting minutes and at 19:55 in part one of the archived video (The Attorney General has authority to assume prosecution of a case from a solicitor.)
[22] S.C. Code of Laws § 1-7-940.

[23] S.C. Code of Laws § 1-7-990. See also, S.C. Code of Laws § 1-7-910.
[24] The Law Enforcement Training Council is an example of an entity with the ability to ensure compliance with its regulations by those in positions which are elected by the public (e.g., sheriffs). The authority to enforce is specifically stated in statute. S.C. Code of Laws § 23-23-80(5) gives authority to "make such regulations as may be necessary for the administration of this chapter, including the issuance of orders directing public law enforcement agencies to comply with this chapter and all regulations so promulgated." Hereinafter, "Law Enforcement Training Council Example."
[25] S.C. House of Representatives, House Legislative Oversight Committee, "Meeting Minutes" (July 24, 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/July%2024,%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. Hereinafter, "July 24, 2018, meeting minutes and video." See at 13:55 in part two of the archived video
[26] Ibid.
[27] Letter from Prosecution Coordination to Oversight Committee (July 16, 2018). See question six.
[28] Ibid. See questions two and three. S.C. House of Representatives, House Legislative Oversight Committee, "Meeting Minutes" (June 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/AgencyWebpages/ProsecutionCoordination/June%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 at 1:21:20 in part one of the archived video. Hereinafter, "June 18, 2018, meeting minutes and video."
[29] S.C. Judicial Department, "Rule 5 Disclosure in Criminal Cases,"
https://www.sccourts.org/courtReg/displayRule.cfm?ruleID=5.0&subRuleID&ruleType=CRM (accessed October 12, 2019).
[30] Brady v. Maryland, 373 U.S. 83 (1963) (failure to abide by these rules may entitle the defense to the suppression of the evidence, a dismissal of the charge(s), or the reversal of the conviction(s) on appeal).
[31] Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014) (failure to follow this procedure will result in a resentencing proceeding).
[32] Batson v. Kentucky, 476 U.S. 79 (1986) (three-step procedure).
[33] These are required by the South Carolina Supreme Court.
[34] Letter from Prosecution Coordination to Oversight Committee (July 16, 2018). See questions two and three. See also, June 18, 2018, meeting minutes and at 1:25:36 in part one of the archived video.
[35] 1979 Act 191, § 3. See also, S.C. Code of Laws § 1-7-408; 2005 Act 164, § 37.
[36] 2015-16 General Appropriations Act, Part 1B,§ 117.113. See also, 2016-17 General Appropriations Act, Part 1B, § 117.110; 2017-18 General Appropriations Act, Part 1B, § 117.109.
[37] Agency's PER. See Strategic Plan Summary Chart. See also, S.C. Code Ann. § 1-7-940.
[38] Agency's PER. See Strategic Plan Summary Chart. Rule 3.8, Comment 1, S.C. Rules of Professional Conduct (Rule 407, SCACR), states: A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4."
[39] Agency's PER. See Strategic Plan Summary Chart.
[40] Ibid.
[41] Ibid. See question seven.
[42] S.C. Code of Laws § 1-7-950.
[43] S.C. Code of Laws § 1-7-960.
[44] Ibid.
[45] Agency PER. See question seven.
[46] Agency PER. See question eight.
[47] Agency PER. See page 47.
[48] Agency PER. See Organizational Charts.
[49] S.C. House of Representatives, House Legislative Oversight Committee, "State HR Dashboard (April 2018)," under Prosecution Coordination, Commission on," Committee Postings and Reports," under "Legislative Oversight," and under "History and Organization of Agency,"
https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Prosecution%20Coord%20Dashboard%20April%202018.pdf (accessed October 12, 2018).

[50] Agency PER. See Organizational Units Chart.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Email from Kevin Paul, State Human Resources Division, to Charles Appleby, House Legislative Oversight Committee, in February 2018.
[55] Agency PER. See Deliverables Chart.
[56] June 18, 2018, meeting minutes and at 42:27 in part one of the archived video. See also, S.C. Secretary of State website, Corporation Search, https://businessfilings.sc.gov/BusinessFiling/Entity/Profile/db4b1418-f8bc-4577-a634-9ab9050dda2c (accessed October 9, 2018).
[57] June 18, 2018, meeting minutes and at 49:31 in part one of the archived video.
[58] Ibid.
[59] Ibid.
[60] Ibid.
[61] Ibid.
[62] Commission on Prosecution Coordination, "Fiscal Year 2015-16 Accountability Report," under "Publications," under "Current State Agency Reports," under "State Agency Accountability Reports for Fiscal Year 2015-2016," and under "Prosecution Coordination, Commission on" https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Reports%20&%20Audits%20-%20Reports%20and%20Reviews/Accountability%20Report%20-%202015-2016.pdf. Hereinafter, "FY 2015-16 Agency Accountability Report."
[63] Agency PER. See Comprehensive Strategic Plan Chart and Strategic Plan Summary Chart.
[64] Letter from Prosecution Coordination to Oversight Committee (July 16, 2018). See question nine.
[65] Agency PER. See Comprehensive Strategic Finances Chart.
[66] Ibid.
[67] Agency PER. See also Strategic Plan Summary Chart.
[68] July 24, 2018, meeting minutes and at 01:25:19 in part two of the archived video.
[69] Ibid. See also at 01:30:18 in part two of the archived video (further testimony regarding the database development process with SLED and how it is impacting the agency's budget and finances).
[70] Agency PER. See question fourteen.
[71] Ibid. See Strategic Plan Summary Chart.
[72] S.C. Code of Laws § 2-2-10(1).
[73] S.C. House of Representatives, House Legislative Oversight Committee, "January 28, 2016 Meeting Minutes," under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Health and Environmental Control, Department of," and under "Meetings," http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/FullCommitteeMinutes/January282016.pdf. A video of the meeting is available at http://www.scstatehouse.gov/video/videofeed.php.
[74] 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 12, 2018).
[75] FY 2015-16 Agency Accountability Report.
[76] Ibid.
[77] S.C. Code of Laws § 1-30-10.
[78] S.C. House of Representatives, House Legislative Oversight Committee, "2016 Annual Restructuring Report," under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Prosecution Coordination, Commission on," and under "Other Reports, Reviews, and Audits," https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/2016%20ARR/2016%20ARR%20-%20Prosecution%20Coordination.PDF (accessed October 12, 2018).
[79] A brochure about the House Legislative Oversight's Committee process is available online. 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 online at http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/Brochure%205.18.17.pdf (accessed October 18, 2018).
[80] S.C. House of Representatives, House Legislative Oversight Committee. http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php (accessed October 10, 2018).
[81] 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 "Prosecution Coordination, Commission on," and under "Public Survey and Public Input via LOC webpage"

https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ETV/Press%20Release%20Announcing%20Public%20Survey%20(January%2023,%202018).pdf (October 8, 2018).

[82] 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 "Prosecution Coordination, Commission of," and under "Public Survey and Public Input,"
https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/LLR/Public_Survey_January_February_2018.PDF (accessed October 8, 2018). Hereinafter, "Survey Results (January 23 – March 1, 2018)."

[83] Ibid.

[84] Committee Standard Practice 10.4.

[85] Survey Results (January 23 – March 1, 2018).

[86] S.C. House of Representatives, House Legislative Oversight Committee, "Submit Public Input," under "Committee Postings and Reports," under "House Legislative Oversight Committee"
http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php (accessed May 23, 2017).

[87] Committee Standard Practice 10.4.2 allows for the redaction of profanity.

[88] Also, the chair of either the Committee or Law Enforcement and Criminal Justice Subcommittee has the discretion to allow testimony during meetings.

[89] 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 "Prosecution Coordination, 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 (accessed October 8, 2018).

[90] S.C. House of Representatives, House Legislative Oversight Committee, "April 26, 2018 Meeting Minutes," under "Committee Postings and Reports," under "House Legislative Oversight Committee," and under "Full Committee Minutes,"
https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/FullCommitteeMinutes/4.26.18_Meeting_Minutes_HLOC_Full.pdf (accessed October 12, 2018). A video of the meeting is available at
http://www.scstatehouse.gov/video/videofeed.php.

[91] Ibid. See at 04:35 in the archived video.

[92] September 18, 2018, meeting minutes and video.

[93] June 18, 2018, meeting minutes and at 1:37:57 in the archived video. See also, July 24, 2018, meeting minutes and video.

[94] S.C. Constitution Article 5, Section 13. Judicial circuits. "The General Assembly shall divide the State into judicial circuits of compact and contiguous territory. For each circuit a judge or judges shall be elected by a joint public vote of the General Assembly; provided, that in any contested election, the vote of each member of the General Assembly present and voting shall be recorded. He shall hold office for a term of six years, and at the time of his election he shall be an elector of a county of, and during his continuance in office he shall reside in, the circuit of which he is judge. The General Assembly may by law provide for additional circuit judges, to be assigned by the Chief Justice. Such additional circuit judges shall be elected in the same manner and for the same term as provided in the preceding paragraph of this section for other circuit judges, except that residence in a particular county or circuit shall not be a qualification for office. S.C. Constitution, Article 5, Section 24. Law enforcement officials, prosecutors and administrative officers; Attorney General. There shall be elected in each county by the electors thereof a clerk of the circuit court, a sheriff, and a coroner; and in each judicial circuit a solicitor shall be elected by the electors thereof. All of these officers shall serve for terms of four years and until their successors are elected and qualify. The General Assembly shall provide by law for their duties and compensation. The General Assembly also may provide by law for the age and qualifications of sheriffs and coroners, and the selection, duties, and compensation of other appropriate officials to enforce the criminal laws of the State, to prosecute persons under these laws, and to carry on the administrative functions of the courts of the State. The Attorney General shall be the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record." (1972 (57) 3176; 1973 (58) 161; 1973 (58) 863; 1975 (59) 46; 1985 Act No. 9; 1989 Act No. 10; 1995 Act No. 35).

[95]S.C. Code of Laws § 1-7-910; Commission on Prosecution Coordination created. See also, 1990 Act 485 (S. 1411).

[96] S.C. Code of Laws § 1-7-990.

[97] Law Enforcement Training Council Example.

[98] July 24, 2018, meeting minutes and at 01:01:06 in part two of the archived video. [Who is responsible for auditing the funds to see that they are expended properly and expenses are expended properly? (Rep. Tallon) At this point, it would be the solicitors. This is something that we've talked in the past, whether or not the commission has the authority or the ability to require the solicitors to provide audits of their accounts or provide us with any information other than the legislatively mandated reports they are supposed to give us at the end of each fiscal year. The consensus has been that we don't have the authority to do anything. In fact, you'll see that one year one circuit did not turn in a report. There's really nothing that we can do under the current legislative authority that we have to insist that a report be turned in because Solicitor Stone mentioned before that he's

talked about does the commission have the authority to withhold funds? We've come to the conclusion that we don't have that authority. (Ms. Clifford)]; and 01:03:01 in part two of the archived video [So, when the requirement was required and it was enforced, there was still no teeth in the enforcement to make a solicitor turn it in? Yes. So has there never been any teeth in the enforcement? No, and I don't mean to speak ill of the solicitors because I know they have other things to do. It is a problem that we have as an agency that is responsible to the legislature to turn in these mandated reports if we don't get them. Especially, this is one dealing with revenue and expenditures, which we know you're interested in.]

[99] 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. A video of the meeting is available at https://www.scstatehouse.gov/video/archives.php?key=7461. See at 1:17:45 in part one of the archived video.

[100] Agency PER. See Strategic Plan Summary Chart.

[101] S.C. House of Representatives, House Legislative Oversight Committee, "Meeting Minutes" (August 20, 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/August%2020,%202018%20-%20Meeting%20Minutes.pdf. A video of the meeting is available at https://www.scstatehouse.gov/video/archives.php?key=7461. See at 1:53:00 part two in the archived video. Hereinafter, "August 20, 2018, meeting minutes and video."

[102] John Monk, "Richland prosecutor spent $25,000 on personal items but says he has paid it back," *The State Newspaper*, August 17, 2018; https://www.thestate.com/news/local/crime/article216877180.html (accessed September 28, 2018).

[103] Letter from Prosecution Coordination to Oversight Committee (July 16, 2018). See question nine. See also, Joseph Cranney, "Require audits for prosecutors," *Post and Courier*, September 26, 2018 https://www.postandcourier.com/opinion/editorials/require-audits-for-prosecutors/article_956700e0-c0f4-11e8-8f4b-9b9a13bf33cb.html (accessed October 9, 2018).

[104] Ibid.

[105] Ibid.

[106] Ibid.

[107] August 20, 2018, meeting minutes and at 1:53:00 part two in the archived video.

[108] July 24, 2018, meeting minutes and at 01:01:06 in part two of the archived video [Who is responsible for auditing the funds to see that they are expended properly and expenses are expended properly? (Rep. Tallon). At this point, it would be the solicitors. (Ms. Amie Clifford)].

[109] Ibid. See at 01:09:57 in part two of the archived video [And you don't have a credit card…Well, I have a credit card but they pay that too, I don't pay that. Everything that we have goes through that, and that's, and I'll tell you this too, I think a lot of us, we are dedicated prosecutors. We're not accountants and I don't think we want to be accountants. So part of what we asked Speaker Pro-Tem Pope to do is to take a look and see if there's a set procedure that they think we should follow in handling any of our expenses. Let us know, because I think we'd all just be very happy to have, here are the rules, here is what you have to do and we can follow them. Many of us, because of doing what we do on a regular basis, are not that comfortable trying to establish financial rules and regulations. There's an entire state auditing system that I could not even begin to explain to you, but that's how all of our money is audited through the county. They have a county way of doing it, I don't know what that is and I would rather them just do it. So I think all the solicitors are open to the idea that we have a uniform approach to all of that, that's what we've asked the taskforce to do. (Commission Chair Stone)].

[110] August 20, 2018, meeting and at 1:53:00 part two in the archived video.

[111] September 18, 2018, meeting minutes and at 12:03 part one in the archived video.

[112] Agency PER. See internal changes section.

[113] Prosecution Coordination Commission, Report on Statewide Diversion Programs (FY 2016-17)," under Services and Products of Agency," and under "Diversion Programs" https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/FY%202016-17%20Report%20on%20Statewide%20Diversion%20Programs.pdf (accessed October 12, 2018).

[114] Prosecution Coordination Commission, "FY16-17 Solicitor Office Revenue and Expenditure Report, by county (Revised June 8, 2018) - PDF", under "Goals, Spending, and Performance of Agency," and under "Revenue and Spending," https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/FY16-17%20Solicitor%20Revenue%20&%20Expenditure%20Report%20-%20SCCPC%20(Revised%20June%208).pdf (accessed October 12, 2018).

[115] September 18, 2018, Subcommittee meeting minutes and at 6:45 part 2 in the archived video.

[116] Agency PER. See Strategic Plan Summary Chart.

[117] 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 (accessed October 12, 2018). See question nineteen. Hereinafter, "Letter from Prosecution Coordination to Oversight Subcommittee (September 13, 2018)."
[118] September 18, 2018, Subcommittee meeting minutes and at 24:20 part 1 in the archived video.
[119] Letter from Prosecution Coordination to Oversight Subcommittee (September 13, 2018). See question nineteen.
[120] September 18, 2018, Subcommittee meeting minutes and at 24:20 part 1 in the archived video.
[121] September 18, 2018, Subcommittee meeting minutes and at 4:50 part 2 in the archived video.
[122] July 24, 2018, meeting minutes and video.
[123] Ibid. See at 37:24 in part two of the archived video.
[124] 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. See question three. When the system was first instituted, at least one of the circuit public defenders offices was already utilizing a different system. To account for this, SCCID allowed that office to retain their case management data collection system as long as office provided the same case-related information SCCID required from the other offices. Hereinafter, "Letter from Indigent Defense to Oversight Subcommittee (September 7, 2018)."
[125] Ibid. See question four.
[126] Ibid.
[127] Ibid.
[128] S.C. House of Representatives, House Legislative Oversight Committee, under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Prosecution Coordination, 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."
[129] Ibid.
[130] Letter from Prosecution Coordination to Oversight Committee (July 16, 2018). See question fourteen. SCCPC proposes that cases be calculated as events, which would be consistent with how law enforcement calculates cases. SCCPC provides the following as an example:

> Assume a defendant breaks into a home, steals stereo equipment and assaults the homeowner. Later the same day the defendant travels across town and breaks into another home, steals more stereo equipment and assaults another homeowner. The defendant is charged with burglary, larceny and assault for the first break in. He is also charged with burglary, larceny and assault for the second break in. Court Administration counts this situation as six different cases. Law enforcement considers these two separate events and assigns two case numbers.

[131] October 9, 2018, meeting video. The Subcommittee further recommends when setting the definition in regulation, ensure it is clear to anyone reading the regulation(s) that the definition does not alter any statutory definitions, rights of defendants, or prosecutor discretion when handling cases.
[132] Ibid.
[133] Ibid.
[134] Ibid.
[135] Ibid.
[136] June 18, 2018, meeting minutes and at 56:30 in the archived video.
[137] Letter from Prosecution Coordination to Oversight Subcommittee (July 16, 2018). See question six.
[138] S.C. House of Representatives, House Legislative Oversight Committee, "Letter from Prosecution Coordination to Oversight Subcommittee (August 15, 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%20SCCPC%20to%20Subcommittee%20with%20attachments%20(August%2015,%202018).pdf (accessed October 12, 2018). See question nineteen. [Please communicate with potentially impacted parties regarding the definition of the term "case" proposed by the agency, including when it may be utilized (e.g., determining backlog, caseload per attorney, etc.), and provide input from the potentially impacted parties, including any definition upon which all parties agree. Agency Response: Chairman Stone is still working on drafting a definition of "case," and will be seeking input from representatives of affected criminal justice agencies (including South Carolina Commission on Indigent Defense, South Carolina Attorney General's

Office, and law enforcement agencies and/or organizations)] Hereinafter, "Letter from Prosecution Coordination to Oversight Subcommittee (August 15, 2018)."

[139] Urban Institute, "Collecting and using Data for Prosecutorial Decisionmaking," under "Research," https://www.urban.org/research/publication/collecting-and-using-data-prosecutorial-decisionmaking (accessed October 9, 2018). (Findings from a national survey of prosecutors demonstrate that many prosecutors' offices collect and use data throughout the case decision making process, from screening to sentencing. Further, the analyses of the survey demonstrates a relationship between data collection and use.

> Offices that want to realize the benefits associated with data use must begin by collecting relevant metrics. By increasing data collection efforts, and later using that data in decision making, prosecutors' offices can better identify and respond to trends, demonstrate their successes, and link their decisions to safety and justice goals.
>
> Thirty-seven percent of offices report using data to implement crime suppression strategies, and some offices reported specific, innovative examples of using data to more efficiently and effectively prosecute crimes. These included implementing and evaluating alternative programs, driving organizational change to address concerning offense trends, and better identifying cases for enhanced prosecution.
>
> A higher level of collecting is correlated with a greater reported use of data. High collectors are the most likely to use data for allocating time or resources, for training and evaluating staff, for setting policy or guidelines, for crime suppression strategies, and for managing evidence; the low collectors report the lowest percentages for those use categories.
>
> The study provides eight recommendations for offices aiming to increase their collection and use of data:
>
> Step 1: Assess if Your Office Is a Low, Medium, or High Data Collector
> Appendix D has a tool to determine whether your office falls within the low, medium, or high collector categories. The tool includes a checklist of metrics as well as general and category-specific recommendations for each group.
>
> Step 2: Ensure Your Office Is Collecting Foundational Information That Describes Case Flow
> The seven foundational measures that offices should track are (a) cases referred, (b) initial charges, (c) final charges, (d) cases declined, (e) cases dismissed, (f) cases resolved by plea, and (g) cases that go to trial.
>
> These foundational metrics are a good starting point for any office looking to start collecting data, especially for low collectors looking to become medium or high collectors. Medium and high collectors can add to the metrics they already collect and strive to track all seven.
>
> Step 3: Ensure Your Office Is Collecting Relevant Case Details
> In addition to the foundational metrics, offices should ensure they're collecting information on relevant case details, including, (a) offense type, (b) misdemeanor/felony classification, (c) referring law enforcement agency, (d) assigned prosecutor, (e) defendant characteristics, and (f) victim characteristics.
>
> Low collectors should prioritize documenting the offense type and misdemeanor/felony classification, while medium collectors should begin collecting defendant and victim characteristics. High collectors should strive to collect all six of these case details.
>
> Step 4: Consider Collecting at Least One Metric at Each Stage of Decision making
> At each stage in the process (screening and charging, pretrial release decision making, alternative approaches, and plea bargaining and sentencing), offices can start collecting one or two metrics that are relevant and meaningful to their own jurisdictions and that will help them effectively address local problems. For example, jurisdictions experiencing an increase in their jail populations could choose to collect data on bail recommendations, and offices in jurisdictions with diversion programs could choose to track the number of referrals to the programs. Medium collectors can select one or two key points at which to expand their data collection capabilities. High collectors should strive to have comprehensive information at each of the four points.

Step 5: Equip and Train Staff to Collect and Analyze Data; Take Advantage of Outside Resources Where Possible

To ensure data are entered accurately and consistently, invest in resources such as staff training and technology to make data entry less burdensome. Low collectors can begin by giving current employees such as office managers, legal assistants, paralegals, and senior attorneys the tools they need to collect basic metrics. Medium and high collectors should further build staff capacity for data analysis and consider hiring staff or outside partners with data analysis expertise, such as university-affiliated research partners.

Step 6: Strengthen Technology Infrastructure to Improve Data Collection

Consider automating data entry and generation of reports. Pursue integrating systems with other agencies to improve the electronic transfer of information. Consider low-cost, electronic alternatives to a case management system when beginning to collect data. For example, some offices report keeping an Excel file to track data that are important to them, such as data related to diversion programs or trial outcomes.

Step 7: Learn from Peers to Implement Innovative Approaches, Such as Dashboards, to Track and Respond to Changes in Trends and Operational Metrics

Offices might be particularly interested in speaking with others that have moved to a higher level of collection; for example, a low collecting office might be interested in speaking with offices that have moved from being low collectors to medium collectors. Appendix E also provides additional information on common practices for each low, medium, and high collectors.

Step 8: Solicit Information from, and Share Findings with, Your Local Community

Low collectors will likely focus on expanding their data collection, but they could consider publishing information on foundational metrics as they begin tracking them. Medium collectors can supplement their metrics by soliciting input and information from the communities. High collectors should ensure they're soliciting information from and providing information to the community.)

[140] September 18, 2018, meeting minutes and at 1:40:27 part 1 in the archived video.

[141] Ibid. 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 in circuit solicitors' offices to prosecute crimes. In order to objectively analyze if each office, and prosecutors statewide, need to add or eliminate different programs, equipment, and professionals policy makers need to know what outcomes circuit solicitors are striving to obtain for the state. 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.

[142] June 18, 2018, meeting minutes and at 20:00 to 20:20 in part one of the archived video.

[143] Ibid.

[144] October 9, 2018, meeting video.

[145] Letter from Prosecution Coordination to Oversight Subcommittee (August 15, 2018). See response to question #12.

[146] Ibid. See Attachment C.

[147] September 18, 2018, meeting minutes and at 2:05:45 part 1 in archived video.

[148] September 18, 2018, meeting minutes and 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." - Commission chair Isaac McDuffie Stone] and 2:11:29 part 1 in the archived video. See also, Letter from Prosecution Coordination to Oversight Subcommittee (September 13, 2018); question #14(a) (Programs are selected by each circuit solicitor based on regional needs utilizing a variety of public and private resources.)

[149] September 18, 2018, meeting minutes and at 2:06:35 part 1 in the archived video.

[150] Ibid.

[151] Ibid.

[152] 2010 Act 273 (Omnibus Crime Reduction and Sentencing Reform Act), Part II, Section 44.

[153] Letter from Prosecution Coordination to Oversight Subcommittee (September 13, 2018). See questions fifteen and sixteen.

[154] Ibid. See question eighteen (a).

[155] September 18, 2018, meeting minutes and at 2:11:29 part 1 in the archived video.
[156] October 9, 201, meeting video.
[157] State v. Needs.
[158] State v. Ridge.
[159] July 3, 2018, Attorney General Opinion.
[160] October 9, 2018, meeting video.
[161] September 18, 2018, meeting minutes and video.
[162] July 24, 2018, meeting minutes and at 1:16:46 in the archived video.
[163] Letter from Prosecution Coordination to Oversight Subcommittee (August 15, 2018). See response to questions sixteen and seventeen.
[164] Ibid.
[165] Letter from Prosecution Coordination to Oversight Subcommittee (July 16, 2018). See question twelve. SCCPC is in the process of creating a request for proposal for the creation of a new website to assist the agency in providing information to the public (accessible by anyone) as well as solicitors and their staff (private or "password-protected" pages). The SCCPC hopes to accomplish several goals through the creation of a new website, including, but not limited to, the following:

- Trainings (password pages)
    - Training session descriptions, availability, registration, and materials will be available. In addition, it is anticipated that some educational videos may be uploaded for use by prosecution staff.
- Legal updates (password pages)
    - Summaries of appellate decisions, rule changes, and legislative enactments, which have historically been emailed to solicitors and deputy solicitors for dissemination in their respective offices, will be available on the restricted access portions of the website to ensure all prosecution staff has ready and immediate access to it.
- Clearinghouse of sample pleadings, research, and other information (password pages)
    - SCCPC anticipates posting sample pleadings (trial memoranda, briefs, motions, etc.), research, alerts, strategic advice, and other information that will enable prosecutors to better and more efficiently prosecute their cases.
- General criminal justice information (public pages)
    - General information on the state's criminal justice system and process, the different courts, frequently asked questions on the system and process, contact information, and links to other components in the system (S.C. Commission on Indigent Defense, Court Administration, S.C. Department of Corrections, S.C. Department of Juvenile Justice, S.C. Department of Probation, Parole, and Pardon, etc.).
- Commission and Solicitor information (public pages)
    - Current Commission members, SCCPC staff, and the solicitors' offices.
- John R. Justice Grant (public pages)
    - SCCPC administers the John R. Justice Loan Repayment grant for prosecutors and public defenders. SCCPC's responsibilities include distribution of information and application forms. These will be available online through the new website.
    - Also, information as to other student loan debt relief could be shared with prosecutors on the website.
- Publicly-available reports (public pages)
    - SCCPC collects statistical information on domestic violence cases, driving under the influence cases, and diversion programs. These reports are currently submitted by the 16 circuit solicitors via fax or email, but will be submitted electronically through the website. Additionally, it is hoped the electronic submission on the new website will allow for easier generation of statutorily-required reports that will be posted on the website to allow for easy access by the public and solicitors' offices.
- Non-public reports (password pages)
    - SCCPC hopes the new website will allow for submission of non-public information and statistical information that will be beneficial to SCCPC.

[166] September 18, 2018, meeting minutes and at 45:30 part one in the archived video.
[167] Ibid.
[168] S.C. Code of Laws § 1-7-940.
[169] September 18, 2018, meeting minutes and at 33:59 in part one of the archived video.
[170] Ibid. See at 29:00 and 31:15 in part one of the archived video.
[171] Ibid. See at 1:34:15 part one in the archived video.
[172] Ibid. See at 47:40, 48:50, and 49:05 in part one of the archived video.
[173] Ibid.
[174] Letter from Prosecution Coordination to Oversight Subcommittee (September 13, 2018). See question one.
[175] September 18, 2018, meeting minutes and at 1:45:13 part 1 in the archived video. The Commission on Indigent Defense (SCCID) utilizes its statewide case management system to obtain this information from each of the circuit public defenders.

SCCID sends the human resources survey to the circuit public defender offices around July first each year and requires they complete and submit it for review by August first 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.
[176] September 18, 2018, meeting minutes and at 19:38 part 1 in the archived video.
[177] June 18, 2018, meeting minutes and at 18:10 to 19:04 in part one of the archived video.
[178] Ibid. See also, from 20:48 to 21:16 in part one of the archived video.
[179] July 24, 2018, meeting minutes and at 01:20:15 in part two of the archived video [I have a question about the disbursing funds for the South Carolina Center for Fathers and Families… (Rep. Tallon)
We are a pass through agency, I can let Amie answer that question but that's what it is. It's a pass through. It comes to the commission and the commission sends it straight on to the Center for Fathers and Families and I couldn't tell you anything other than that about it. Can you tell me about Fathers and Families? No sir. Can you tell me why it's in the commission - why it's coming through the commission? I think they had to put it somewhere. It does not come to us. It does not come to the solicitors. So y'all have absolutely nothing to do with Fathers and Families? No sir. Do they make a report back to y'all on what they do with the money or what the money is spent for? I don't believe so, let me make sure I'm right about that. No sir. We don't have anything to do with that, we are a pass through. All that is is the money goes, I think it just has to go somewhere on the budget and it landed in ours. Does anybody know how much money that they were sent last year? $400,000. A quarterly distribution? Yes sir. Where is the South Carolina Center for Fathers and Families? I don't know. Tina tells me they're here in Columbia. But it's just a pass through? It has absolutely nothing to do with the commission at all? Yes sir. (Commission Chair Stone)]
[180] July 24, 2018, meeting minutes and at 01:20:15 in part two of the archived video.
[181] See 2018-19 General Appropriations Act, Part 1B, § 117.21.
[182] September 18, 2018, meeting minutes and at 45:05 part one in the archived video.
[183] Agency PER. See also, September 18, 2018, meeting minutes and at 37:46 and 40:10 in part one of the archived video.
[184] September 18, 2018, meeting minutes and at 37:46 and 40:10 in part one of the archived video.
[185] Ibid. See at 41:35 in part one of the archived video.
[186] Interview between Mr. Charles Appleby, House Legislative Oversight Committee, and Ms. Sally Foster, Department of Administration, and Ms. Ashlie Lancaster, Director of the Division of Facilities Management and Property Services with the Department of Administration, October 12, 2018.

Also, Department of Administrative representatives provide the following information:

The lease agreements between the state, as the building owner, and a state agency, as a tenant, are similar to that of the lease agreements in the private sector. However, because lease payments for state agencies are set (i.e., $11.29 per sq. foot which is much lower than the average in the Columbia business district of $22.95 in the first quarter of 2018), the state could not cover the costs and then amortize them over the remainder of the lease with higher monthly payments, like building owners in the private sector.

Therefore, when asbestos abatement is requested based on elective renovations an agency wants to perform, the state does not cover it. However, any construction for deferred maintenance in the building, which would require asbestos abatement, the state would cover.

There is nothing prohibiting the agency from working with the Department of Administration to locate a training space they could lease during the year, or utilize it at no cost. The Department of Administration worked with multiple state agencies to compile a comprehensive list of conference and meeting spaces available in various state-owned buildings for use by state agencies.

The comprehensive list is available here: https://www.admin.sc.gov/facilitiesmanagementandpropertyservices/state-conference-and-meeting-space-information-for-state-agencies The information contained in the spreadsheet was last updated in May 2018 and represents the information regarding available meeting spaces as provided by the respective agencies. Rental rates are included for some locations. However, if no rental rate information is provided, the Department of Administration recommends contacting that agency to determine if a rate is applied.

For all state buildings the Department of Administration controls, after maintenance, operations, and utility costs are paid, there is only approximately $3 million remaining to address capital projects. Currently, there is a backlog of capital needs (i.e. deferred maintenance) in excess of $100 million.
[187] Ibid.
[188] October 9, 2018, meeting video.
[189] Agency PER. See Organizational Units Chart.
[190] September 18, 2018, Subcommittee meeting minutes and at 16:30 part two in the archived video.

[191] Ibid.
[192] Ibid.
[193] October 9, 2018, meeting video.
[194] September 18, 2018, meeting minutes and at 8:00 part two in the archived video.
[195] Ibid. During the study process the Subcommittee invited representatives from numerous potentially impacted parties including the Law Enforcement Training Council, Sheriffs' Association, Police Chiefs' Association, Law Enforcement Officers' Association, Association of Counties, and Municipal Association to testify at a Subcommittee meeting, as well as provide input via letter, on this topic. According to the Chair of the Commission on Prosecution Coordination, "if you have time to discuss these things before the defendant is arrested, it makes the criminal justice system more credible."
Additionally, a representative from the Sheriff's Association stated, "[g]enerally speaking, South Carolina's Sheriffs welcome the opportunity to have greater, more meaningful communication with the circuit solicitor prior to arrest." While it appears there is at least an initial willingness to further discuss opportunities for increased communication between circuit solicitors and law enforcement prior to arrests, the Subcommittee understands additional discussions are needed prior to reaching an agreement on a specific plan for how to encourage this communication. Some of the issues which may require additional discussion among impacted parties include the following:

- Not a prerequisite to arrest - There are sometimes circumstances which need immediate response and law enforcement's ability to protect the public in those situations may be tremendously hindered, if not completely prohibited, by requiring communication with the prosecutor or warrant approval by the prosecutor.
- Circuit Solicitor liability - If a circuit solicitor is acting in the routine, formal process of the prosecutor's office (e.g., preparation of indictment, indictment to the grand jury, preliminary hearings, trial), the circuit solicitor has absolute immunity. However, if a circuit solicitor provides advice to law enforcement about what actions to take (e.g., arrest this person, don't arrest that person), the circuit solicitor's office is exposed to liability. While some circuit solicitors are willing to expose their office to this liability because they "believe it is the right thing to do," others will not.
- Inequity in liability - Law enforcement agencies face civil liability for their actions and sheriffs can even be held personally liable for the actions of their deputies. Therefore, law enforcement understands circuit solicitors' desire to have immunity in the event they provide advice prior to arrest, but wish the same immunity extended to them. Currently, this liability remains, even if the law enforcement agency seeks and follows advice from a circuit solicitor.
- Implementation and resources - How to ensure whatever plan for increased communication decided upon is properly implemented, resourced, and funded across the state is another issue.

[196] July 24, 2018, meeting minutes and at 58:20 in the archived video. ("It's my law license, it's the license of the assistant solicitors that are in that courtroom and the judges expect me to be accountable and if you read Kyle v. Whitley, the United States Supreme Court expects us to manage discovery. Discovery is not telling law enforcement what do from the standpoint of their day to day, it is the minute they arrest somebody that discovery becomes an interest of the judge, it becomes an interest of the defense attorney, and it becomes an interest of the prosecutor, and we're the ones responsible for making sure that discovery gets shared, we're the ones who come before the ethical boards if we don't do that. Our case is the one that gets overturned if that evidence is not transmitted, so it is our responsibility, as I think it should be, but we should have the authority to manage it." - Commission Chair Stone)
[197] Ibid.
[198] September 18, 2018, meeting minutes and at 14:45 part one in the archived video.
[199] Ibid.
[200] Ibid. See at 13:00 part one in archived video. See also individual circuit solicitor responses to agency's proposed law changes, under "Meetings" and under "Tuesday, September 18, 2018,"
https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Individual%20circuit%20solicitor%20responses%20to%20agency%E2%80%99s%20proposed%20law%20changes.pdf (accessed September 28, 2018).
[201] September 18, 2018, meeting minutes and at 16:50 part one in the archived video.
[202] Ibid. See at 16:28 in part one of the archived video.
[203] Ibid. See also, Letter from Prosecution Coordination to Oversight Subcommittee (September 13, 2018) at question 21.
[204] Agency PER. See Law Changes section.
[205] September 18, 2018, meeting minutes and at 18:00 part one in the archived video.
[206] Ibid. See at 17:25 and 18:00 in part one of the archived video. See also, Agency PER, Law Recommendations.
[207] Agency PER. See Law Changes section.
[208] June 18, 2018, meeting minutes and at 1:53:36 in the archived video.
[209] S.C. Code of Laws §1-7-730; examination of offices of county officers. "The Attorney General and solicitors shall annually, at such times as they may deem expedient, examine into the condition of the offices of the clerk of the court of common pleas and general sessions, of the sheriff and of the register of deeds in the counties of the respective solicitors and ascertain if such officers have discharged the duties which now are, or shall be, required of them; and they shall make a report of the condition of

said offices and of the manner in which said officers have discharged their duties to the circuit court in each county, respectively, at the fall term in each year, and also to the General Assembly at its annual session."
[210] June 18, 2018, meeting minutes and at 1:42:01 in part one of the archived video.
[211] Ibid. See at 1:47:40 in part one of the archived video.
[212] 1990 Act 485. See preamble, which is not codified. See also, S.C. Code of Laws Section 1-7-330. In *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012), the Supreme Court held that, because the setting of the trial docket is the prerogative of the court, the statute violated the separation of powers clause by giving the solicitors that authority.
[213] June 18, 2018, meeting minutes and at 1:04:55 in part one of the archived video.
[214] Ibid. See at 1:15:06 in the archived video. See also, September 18, 2018, meeting minutes and at 1:56:48 part one in the archived video. See also, Letter from Prosecution Coordination to Oversight Committee (July 16, 2018).
[215] September 18, 2018, Subcommittee meeting minutes and at 2:04:00 in part one of the archived video.
[216] Letter from Prosecution Coordination to Oversight Subcommittee (September 13, 2018). See question four.
[217] Ibid.
[218] Ibid.
[219] Ibid.
[220] Agency PER. See Law Changes section. The majority of evidence with which prosecutors work is digital. This evidence is initially gathered and organized by law enforcement. It is then transferred to circuit solicitors' offices, which may organize the evidence differently. Next, it must be made available to attorneys who represent defendants.

Since this recommendation primarily addresses the transferring and accessing of evidence, an explanation of the difference between a case management system and cloud based electronic discovery, as well as the entities who need access to evidence in a case and methods of providing that access, is provided for clarity.

Case management systems provide "an efficiency in the management process," by allowing an office to effectively organize all information related to a case including files, emails, and notes. Additionally, these systems can capture other information to assist individual employees, and office management, track the progress of a specific case and analyze trends based on aggregating data from all cases in the office, or just certain types of cases.

Cloud based electronic discovery includes two aspects, (1) electronic discovery; and (2) cloud computing.

Electronic discovery refers to discovery in legal proceedings where the information sought is in electronic format. Information in electronic format includes, but is not limited to, emails, documents, presentations, databases, voicemail, audio and video files, social media, and web sites. Examples of electronic discovery in a criminal case may include photographs from the crime scene, emails from a suspect, and video files from a dash camera or body camera. While the law enforcement entity will maintain the original copies, law enforcement officers must transfer evidence they obtain during their investigation to the circuit solicitors' offices for use in prosecuting the case in court. Also, circuit solicitors' offices' must make this information available to the attorneys for the defendant, when requested in the legal proceedings.

Thus, there are three entities who need to access evidence in a case: (1) law enforcement; (2) prosecutors; and (3) defense counsel.

There are different methods for a law enforcement entity to transfer these electronic files to a circuit solicitor's office. One method is to save the information on compact discs or flash drives, as seen in the picture below, document what is on the discs, then drive the discs to the circuit solicitor's office where staff for the circuit solicitor uploads or scans it into a case management system, or whatever the circuit solicitor utilizes to organize its cases.

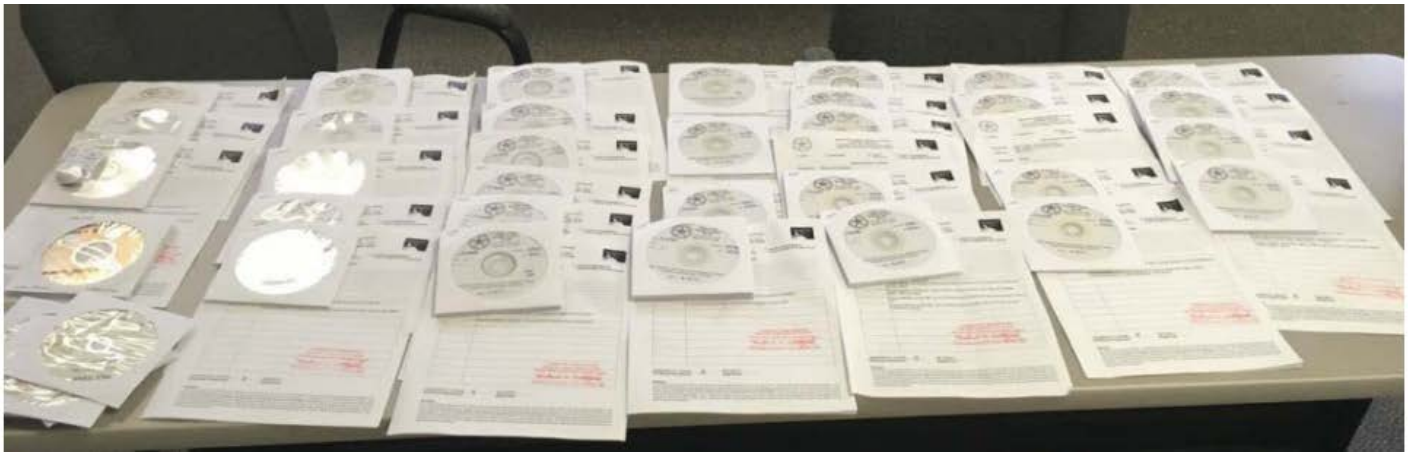

Photo illustrating how some law enforcement agencies provide evidence to circuit solicitors' offices.

Another method of transferring the electronic files is through cloud computing. Cloud computing is the practice of using a network of remote servers hosted on the internet to store, manage, and process data, rather than a local server or a personal computer. An aspect of cloud computing is cloud storage, the provisioning of storage space through the internet, accessible from anywhere and scalable to any size. Dropbox, Google Drive, and Box are examples of services that are built primarily around this aspect of cloud computing.

With this method, the electronic files are uploaded to the cloud, where other applicable parties (e.g., circuit solicitors and defense counsel) can access them. Cloud computing software will require some type of single or double authentication before allowing someone to access the files saved in the cloud. The parties can download the files to their personal computers, or leave it in the cloud, where they can access it from any computer.

There is no indication of situations in which law enforcement personnel may not desire to provide all electronic evidence to prosecutors. Additionally, there is testimony law enforcement would support a better and more efficient tracking system. However, money and resources are not unlimited. Therefore, the question becomes, what method of transferring evidence is the most cost efficient and effective for all involved.

Representatives from the agency support utilizing cloud based electronic discovery statewide. Appendix C includes a chart the agency created of pros and cons related to this method. Appendix C also includes a chart the agency created with a listing of law enforcement entities in each judicial circuit currently using a cloud-based electronic discovery, along with the year they began using it, related costs, and comments on whether the entity believes it has improved efficiency. While this chart provides some information regarding current costs of systems being utilized, the agency is unable to separate out these costs so an accurate comparison can be made.

The largest expenses seem to be the amount of storage and the number of licenses needed. These needs may vary widely based on what particular law enforcement entities and circuit solicitors' offices deem are the most appropriate and efficient systems based on their office's resources and knowledge.

A representative of a law enforcement association points out the following about record management systems, which is another term for case management systems that are explained above:

> Overall, it is important to remember that a lot of money and effort has already been spent on the local level on Record Management Systems (RMS). Most, if not all, RMS have an evidence module that agencies utilize to record evidence. Many agencies have spent tremendous amounts of local and state money on collection and storage of electronic evidence. With the proliferation of body worn cameras and in car video, storage of electronic evidence has quickly become a large part of law enforcement's RMS needs. We cannot ignore the amount of money that has already been invested in pursuit of this objective. Therefore, it may be more prudent to determine how and if solicitors can gain access to law enforcement agencies' current record management systems instead of creating a completely new system or forcing law enforcement agencies to duplicate their efforts.

Additionally, one of the county offices of a circuit public defender is having issues with a cloud based system being utilized by her circuit solicitor. The office can access the evidence easily, but it takes a long time to download it. While the circuit solicitor believes the issue will be resolved if the office upgrades its equipment, it is the county office's understanding that other public defender offices are echoing the same concerns.

Technology will continue to advance and as electronic banking took over, it is possible cloud based electronic discovery and/or other technology will take over how evidence is transferred in the coming years. Therefore, having the impacted parties determine and collect applicable data regarding current methods utilized and potential methods to utilize in the future, which can be accurately compared, may place the state in the best position to make decisions about these issues in the future.

[221] The report is provided pursuant to provisions in the annual general appropriations act. See 2018-2019 Annual General Appropriations Act, Part 1B,§ 117.109 and § 117.110.

[222] S.C. House of Representatives, House Legislative Oversight Committee, "Letter from Prosecution Coordination to Oversight Subcommittee (July 16, 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%20SCCPC%20to%20Oversight%20Subcommittee%20with%20attachments%20(July%2016,%202018).pdf (accessed October 12, 2018). See question thirteen. Hereinafter, "Letter from Prosecution Coordination to Oversight Subcommittee (July 16, 2018)."

[223] 1990 Act 485. See preamble, which is not codified.

[224] Letter from Prosecution Coordination to Oversight Committee (July 16, 2018). See questions six and eight.

[225] Ibid.

[226] Ibid. See also, July 24, 2018, meeting minutes and video.

[227] Ibid. See question seven.

[228] Pre-trial intervention is mandated by S.C. Code of Laws § 17-22-30. Alcohol education program is mandated by S.C. Code of Laws § 17-22-510. Traffic education program is mandated by S.C. Code of Laws § 17-22-310.

[229] Letter from Prosecution Coordination to Oversight Subcommittee (August 15, 2018). See Attachment C.

[230] Ibid.

[231] Letter from Prosecution Coordination to Oversight Subcommittee (July 16, 2018). See question fifteen.