

Study of the
Attorney General's Office
2022

SC House Legislative Oversight Committee
Law Enforcement and Criminal Justice Subcommittee

Executive Summary

Committee Overview

Subcommittee Membership

Law Enforcement and Criminal Justice Subcommittee

The Honorable Chris Wooten (chair)
The Honorable Josiah Magnuson

The Honorable Kimberly O. Johnson
The Honorable John R. McCravy, III

Oversight Purpose and Methods

Purpose

To determine if agency laws and programs:

- are being implemented and carried out in accordance with the intent of the General Assembly; and
- should be continued, curtailed, or eliminated.

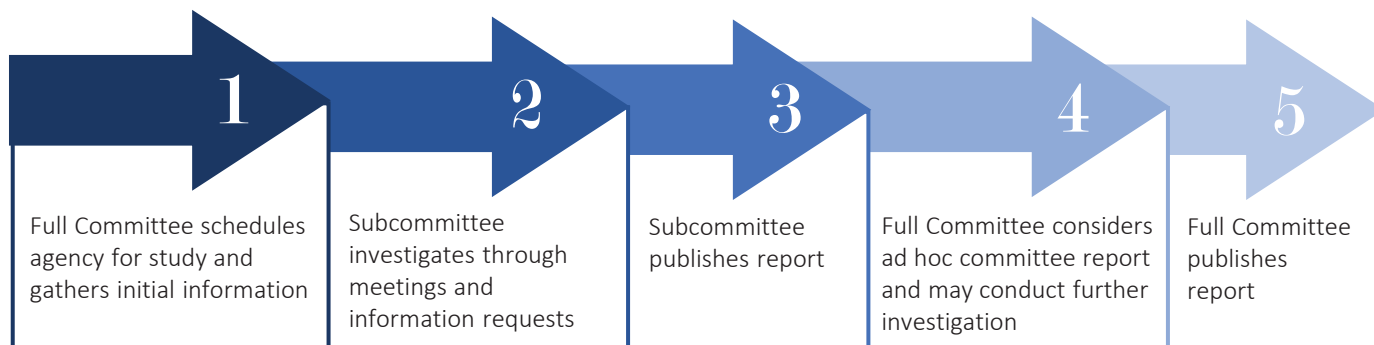
Methods

The Committee and Subcommittee evaluate:

- the application, administration, execution, and effectiveness of the agency's laws and programs;
- the organization and operation of the agency; and
- any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation pertaining to the agency.

S.C. Code Ann. § 2-2-20(B) and (C)

Study Process



Public Input



20

Responses to an online public survey



2

Online comments received



2

Constituents testified

Study Milestones

Meetings

Subcommittee Meetings

3/31/22 6/14/22
4/26/22 6/22/22
5/25/22 8/9/22
6/1/22
6/8/22

Full Meetings

12/9/19
4/8/21

Agency Reports

March 2015

Seven-Year Plan Report

March 2020

Program Evaluation Report

September 2021

FY 2020-2021
Accountability Report

Agency Overview: Attorney General's Office

Agency Mission

“

To serve the citizens of the State of South Carolina by providing legal representation of the highest quality to state government entities, by supporting the law enforcement communities and the legal and judicial branches through the legislative process, and by honorably and vigorously carrying out the constitutional and statutory responsibilities of the Attorney General.

”

History and Resources (FY 18-19)

History

1776 – The first State Constitution identifies the Attorney General (AG) and provides that the position is elected by the General Assembly

1868 – Revised State Constitution provides for a general election of the AG

1929 – State and US Supreme Courts affirm the authority of the AG as “the chief law enforcement officer”

1974 – Criminal Appeals section is formed

1978 – Post Conviction Relief actions primarily handled by the Office

1983 – Opinions section is created

1992 – AG statutorily responsible for litigation involving any state entity

1995 – Capital and Collateral Litigation section is formed

2004 – Consumer Protection and Antitrust Division is formed

2017 – South Carolina Crime Victim Services Division is created

Organizational Units

- Legal Services Division
- Opinions Division
- Criminal Division
- Victim Services Division
- Administration Division
- Executive

Employees



275.2

authorized FTEs

Funding



\$78,758,364

appropriated and authorized

Successes and Challenges

Identified by the agency

Successes

- Increasing efficiency and outreach of services to victims after separate state Crime Victim entities were merged into a single division of the AG
- Creating regularly occurring self-evaluation practices
- Upgrading technology hardware and desktop software

Challenges

Current:

- Providing competitive attorney salaries
- Retaining attorneys in the Post-Conviction Relief section
- Funding to implement the S.C. Anti-Money Laundering Act of 2016
- Obtaining a seat on the Commission on Prosecution Coordination

Emerging:

- Raising the salary of the AG which has been stagnant for over 28 years and is less than half that of a circuit solicitor
- Lacking office space to accommodate the current size of the agency
- Aging case management system that needs updating

Findings

The House Legislative Oversight Committee’s Law Enforcement and Criminal Justice **Subcommittee made 17 findings** in its review of the Attorney General’s Office. The Subcommittee recommendations address some, but not all, of these findings. However, the Subcommittee makes the findings to note information that a member of the public, or General Assembly, may seek to know or on which they may desire to act.

Understanding and Collaboration

1. Numerous entities in local and state government are involved in the complex criminal justice system, which may make understanding the system and working to improve its overall efficiency difficult.^{See Recommendations #1-#5}
2. Numerous entities involved in the criminal justice system are striving to improve their internal storage and processes related to data and case management, but it is unclear the extent to which these entities are collaborating with all who are impacted by their data and actions, which may result in missed opportunities to gain efficiencies across the entire system.^{See Recommendations #1-#4 and #12-13}
3. Currently, there is no single online landing page from which an individual can access and/or link to information related to the criminal justice system in the state (e.g., information available on the websites of the different agencies involved in the criminal justice system such as victim information, location of prisons, crime statistics, disposition of charges in multiple counties pertaining to a single defendant, etc.)^{See Recommendations #1-#5 and #15}
4. Presently, there is no central system to confirm law enforcement entities are meeting the constitutional mandate to contact victims.^{See Recommendation #6}
5. Attorney General employees, like employees with many other state agencies, perform numerous tasks requiring the manual re-entry of information, which diverts their time from other tasks.^{See Recommendations #12 and #13}
6. During the study, agency personnel note lack of a clear definition of “unconscionable price” makes prosecution of the state price gouging statute difficult, thereby potentially defeating the intent of the statute.

Operations

7. Annual briefings conducted by the Attorney General’s Office may be a best practice all state agencies consider adopting.
8. Recruitment and retention of employees is an issue with the Attorney General’s Office as it is with many other state agencies. Contributing factors may include working in traumatic areas of the criminal justice system (e.g., internet crimes against children, sexually violent predator, etc.); heavy workloads (e.g., post-conviction relief); frustration from lack of access to convenient parking; and limitations on how agencies can recognize employees (i.e., \$50 cap per award).^{See Recommendations #16 and #22}
9. The current Attorney General is the 23rd highest paid employee in his office. Over the last three decades the salary of the Attorney General, the state’s chief prosecutor, has only increased a total of two percent, while salaries of others in the criminal justice system have increased between 200% and 300% (e.g., Circuit Solicitors-237%; Circuit Judges-213%; Chief, State Law Enforcement Division-233%; Executive Director, Indigent Defense-362%; Executive Director, Prosecution Coordination Commission-193%).
10. Lessons can be learned from the fraud committed through the federal COVID economic programs (i.e., Paycheck Protection Program, Small Business Administration loans, etc.) to apply in future financial situations.
11. Presently, there is no uniform statewide process for certain reviews of officer involved misconduct, excessive force, discharge of firearms, or in-custody deaths.^{See Recommendation #14}
12. Many states have methods where law enforcement can apply to obtain search warrants electronically; however, S.C. still requires law enforcement physically appear before magistrates to obtain a warrant.

Resources

13. Currently, there are not enough investigators to investigate all tips relating to internet crimes against children. Further, the number of tips related to child sexual assault material accessible on the internet is increasing with no expectation of slowing down.^{See Recommendation #28}
14. The S.C. Code of Laws does not identify who represents the state in post-conviction relief (PCR) actions. More than half a century ago, the Attorney General's Office voluntarily assumed the responsibility to handle PCR actions. However, the current PCR process is no longer efficient (e.g., increase in number of PCR actions) or economical (e.g., location of prisoners, travel cost and time) for AG personnel.
15. While the S.C. Constitution states the Attorney General is the chief prosecutor for the state, the Attorney General is not a member of the Commission on Prosecution Coordination.
16. Prosecutors assisting in the investigation of cases do not have absolute immunity because investigation is not considered by the U.S. Supreme Court as a normal prosecution function.
17. Previously solicitors were responsible for the general sessions court docket, but this practice was ruled unconstitutional by the S.C. Supreme Court. Now circuit court judges have this responsibility.

Recommendations

The Subcommittee has 49 recommendations to various entities that continue, curtail, and/or eliminate agency programs, and include areas for potential improvement. Unless otherwise noted, recommendations are to the Attorney General's Office. The Subcommittee recognizes these recommendations will not satisfy everyone nor address every issue or potential area of improvement at the agency.

Criminal Justice Processes

1. **LAW ENFORCEMENT TRAINING COUNCIL** -Approve process charts related to the criminal justice system for internal use by stakeholders (e.g., agency personnel, legislators, etc.).^{Collaboration; See Findings #1 - #3}
2. Maintain accuracy of crime victim process charts.^{Collaboration; See Findings #1 - #3}
3. Maintain accuracy of prosecution and appeal process charts.^{Collaboration; See Findings #1 - #3}
4. Create interactive crime victim statistics dashboard.^{Effectiveness; See Findings# 1 and #3}
5. Create a publication to help victims understand the complex criminal justice system.^{Collaboration; See Findings #1 and #3}
6. **DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES** -Collaborate about victim information issues to support a centralized victim information repository.^{Efficiency; See Finding #4}
7. Streamline process for victims to obtain services (i.e., co-enrollment).^{Efficiency}
8. Create a victim service provider directory and track performance of the service providers.^{Effectiveness}
9. Annually publish information on crime victim grants issued and utilized.^{Transparency}
10. Determine a method to ensure less than \$1M in crime victim grants lapse to the federal government each year.^{Efficiency}
11. Establish a regular set-aside of victim grant funding for the purpose of collaborative requests by multiple entities.^{Efficiency; See Finding #14}
12. **ATTORNEY GENERAL'S OFFICE, COMMISSION ON PROSECUTION COORDINATION, COMMISSION ON INDIGENT DEFENSE, DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, DEPARTMENT OF JUVENILE JUSTICE, DEPARTMENT OF SOCIAL SERVICES, DEPARTMENT OF CORRECTIONS, DEPARTMENT OF PUBLIC SAFETY, STATE LAW ENFORCEMENT DIVISION, DEPARTMENT OF NATURAL RESOURCES, DEPARTMENT OF INSURANCE, DEPARTMENT OF REVENUE, AND DEPARTMENT OF EMPLOYMENT AND WORKFORCE** - Reach agreement on set data standards for criminal justice entities.^{Collaboration; See Findings #2 and 5}
13. Link Attorney General's Office and circuit solicitor case management systems.^{Collaboration; See Findings #2 and #5}

Law Enforcement

14. Discuss feasibility of a uniform statewide process for officer involved shooting reviews.^{Accountability}
15. Determine feasibility of a central learning portal.^{Effectiveness; See Finding #3}

State Employees

16. **DEPARTMENT OF ADMINISTRATION** - Improve meaning and usability of Employee Performance Management System.^{Effectiveness; See Finding #8}

Specialized Prosecutions

17. Analyze effectiveness of the process for Supplemental Nutrition Program fraud prosecution.^{Efficiency}
18. Analyze effectiveness of the process for Medicaid recipient fraud prosecution.^{Efficiency}
19. Determine appropriate parties for regulation versus prosecution of money services businesses.^{Effectiveness}

Laws

General

20. **GENERAL ASSEMBLY** - Consider eliminating bonds for positions or identify entity responsible for enforcement.
21. **GENERAL ASSEMBLY** - Consider applying current taxes on cigarettes to vaping, e-cigarettes, and similar products.
22. **GENERAL ASSEMBLY** - Consider increasing the limitation on tokens of recognition for state employees.
23. **GENERAL ASSEMBLY** - Consider establishing a victim address confidentiality program.
24. **GENERAL ASSEMBLY** - Consider updating statutes related to the Sexually Violent Predator Act.
25. **GENERAL ASSEMBLY** - Consider establishing a federal Department of Health and Human Services Office of the Inspector General approved False Claims Act.
26. **GENERAL ASSEMBLY** - Consider authorizing Internet Crimes Against Children investigators to subpoena subscriber information from internet and electronic service providers.
27. **GENERAL ASSEMBLY** - Consider updating statutes to add a fentanyl trafficking provision.
28. **GENERAL ASSEMBLY** - Consider reviewing S.C. Code Section 16-3-1050 and S.C. Code Section 43-35-85, which penalize the same behavior relating to abuse, neglect, or exploitation of vulnerable adults, but have different collateral consequences (e.g., one statute resulting in a designation of a violent most serious offense while the other is a serious non-violent) to determine if amendments are desired to make the collateral consequences the same.
29. **GENERAL ASSEMBLY** - Consider updating statutes related to venue for State Grand Jury cases.
30. **GENERAL ASSEMBLY** - Consider updating statutes to enable more potential State Grand Jury review of

cases with possible health effects on the community.

Modernization

31. **GENERAL ASSEMBLY** - Consider repealing S.C. Code Section 63-19-1430, which pertains to establishment of a Youth Mentor Program by the Attorney General's Office.
32. **GENERAL ASSEMBLY** - Consider repealing S.C. Code Section 1-7-117 as it inaccurately states a duty of the Attorney General's Office devolved to another state agency.
33. **GENERAL ASSEMBLY** - Consider repealing S.C. Code Section 44-11-110, which requires written approval from the Attorney General's Office for any grant of easements, permits or rights of way on, over or under the grounds of the Department of Mental Health.
34. **GENERAL ASSEMBLY** - Consider repealing S.C. Code Section 59-31-560, which requires approval of certain contracts and publishers' bonds by the Attorney General.
35. **GENERAL ASSEMBLY** - Consider repealing S.C. Code Section 59-63-350, which requires local law enforcement to contact the Attorney General's "school safety phone line" when certain offenses are committed on school grounds or during school sponsored/sanctioned activities.
36. **GENERAL ASSEMBLY** - Consider amending S.C. Code Section 35-1-604(f) to allow posting of certain final securities orders on the Attorney General's website to serve as notice to Department of Revenue and Secretary of State's Office.
37. **GENERAL ASSEMBLY** - Consider amending S.C. Code Section 16-3-1410(C)(2) to remove references to a "grandfather provision" exempting victim service providers employed prior to 2008 from taking a basic certification course.
38. **GENERAL ASSEMBLY** - Consider amending S.C. Code Section 17-13-140 to allow a circuit court judge to issue a search warrant, consistent with the federal Stored Communications Act, for access to digital or electronic data stored outside the state of South Carolina.

39. **GENERAL ASSEMBLY** - Consider amending S.C. Code Section 16-3-910 to delete the final phrase, “unless sentenced for murder as provided in Section 16-3-20.” During the study, agency personnel opined this phrase may result in unintended reduction of time in implementation of the sentence.
40. **GENERAL ASSEMBLY** - Consider amending S.C. Code Section 16-3-1510(3), which includes in the definition of the term “criminal offense” a threshold loss for the purposes of accessing certain services. Agency personnel assert the dollar amount conflicts with the State Constitution, which does not attribute any dollar amount to being a victim of a criminal offense.
41. **GENERAL ASSEMBLY** - Consider amending S.C. Code Section 17-25-45(C)(1) to delete the portion of the statute reading “except where evidence presented at the criminal proceeding and the court, after the conviction, makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct where the victim was younger than the actor, as contained in Section 16-3-655(3)”. S.C. Code Section 16-3-655(3) no longer exists.
42. **GENERAL ASSEMBLY** - Consider amending S.C. Code Section 14-1-211.5 (A) and (B) to correct a reference (i.e., replace references to the “Department of Crime Victim Assistance Grants” with references to the “Department of Crime Victim Compensation”).
43. **GENERAL ASSEMBLY** - Consider amending S.C. Code Section 16-3-1200 to correct references to the intervenor (i.e., replace references to “S.C. Code Section 16-3-1110(8)” with references to “S.C. Code Section 16-3-1110(9)”).
44. **GENERAL ASSEMBLY** - Consider amending S.C. Code Section 16-3-1420(1)(b) by adding “mental health clinician licensed in South Carolina” to the list of exemptions of professionals that are not included in the definition of “victim service provider.”
45. **GENERAL ASSEMBLY** - Consider amending S.C. Code Section 16-3-1420(2) to remove definition of witness, which agency personnel assert is not relevant to this section and included verbatim in another code section (i.e., S.C. Code Section 16-3-1510(4)).
46. **GENERAL ASSEMBLY** - Consider amending S.C. Code Section 16-3-1430(A)(1) to modernize terminology agency personnel assert is outdated (e.g., change “spouse abuse” to “domestic violence”).
47. **GENERAL ASSEMBLY** - Consider amending S.C. Code Section 16-3-1430(B)(6) to correct an inaccurate reference to the number of departments.
48. **GENERAL ASSEMBLY** - Consider amending S.C. Code Section 16-3-1430(B)(14) to update who may appoint members to the Victim Services Coordinating Council to reflect the State Office of Victim Assistance was moved in 2017 to the Attorney General’s Office and renamed the Department of Crime Victim Compensation.

Regulations

49. **HOUSE LEGISLATIVE OVERSIGHT COMMITTEE** - Provide House Regulations and Administrative Procedures Committee information learned during the study about regulations, such as Chapter 19 of the S.C. Code of Regulations, which are still associated with entities no longer in existence.

Study Related Internal Changes

During the study process, there are **two internal changes** implemented by the Attorney General's Office directly related to participation in the study process. Those changes are listed below.

1. Updated process for agency's internal regulations review.
2. Clarified language in the agency's litigation retention agreements.



Legislative Oversight Committee

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