

Law Enforcement and Criminal Justice Subcommittee Meeting

Tuesday, August 9, 2022

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South Carolina
House of Representatives



Legislative Oversight Committee

LAW ENFORCEMENT AND CRIMINAL JUSTICE SUBCOMMITTEE

The Honorable Chris Wooten, Chairman

The Honorable Kimberly O. Johnson

The Honorable Josiah Magnuson

The Honorable John R. McCravy, III

Tuesday, August 9, 2022

10:30 a.m.

Room 321, Blatt Building

Pursuant to Committee Rule 6.8, S.C. ETV shall be allowed access for internet streaming whenever technologically feasible.

AGENDA

- I. Approval of Subcommittee Meeting Minutes**
- II. Discussion of the study of the Attorney General's Office**
- III. Adjournment**

Chair Wm. Weston J. Newton

*First Vice-Chair:
Joseph H. Jefferson, Jr.*

Legislative Oversight Committee

*Kambrell H. Garvin
Rosalyn D. Henderson-Myers
Max T. Hyde, Jr.
Kimberly O. Johnson
John R. McCravy, III
Travis A. Moore
Melissa Lackey Oremus
Marvin R. Pendarvis
John Taliaferro (Jay) West, IV*



South Carolina House of Representatives

*Gil Gatch
William M. "Bill" Hixon
Jeffrey E. "Jeff" Johnson
Josiah Magnuson
Timothy A. "Tim" McGinnis
Adam M. Morgan
Russell L. Ott
Michael F. Rivers, Sr.
Chris Wooten*

*Jennifer L. Dobson
Research Director*

*Cathy A. Greer
Administration Coordinator*

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*Charles L. Appleby, IV
Legal Counsel*

*Lewis Carter
Research Analyst/Auditor*

*Riley E. McCullough
Research Analyst*

Law Enforcement and Criminal Subcommittee

Tuesday, June 14, 2022

10:30 a.m.

Blatt Room 321

Archived Video Available

- I. Pursuant to House Legislative Oversight Committee Rule 6.7, South Carolina ETV was allowed access for streaming the meeting. You may access an archived video of this meeting by visiting the South Carolina General Assembly's website (<http://www.scstatehouse.gov>) and clicking on *Committee Postings and Reports*, then under *House Standing Committees* click on *Legislative Oversight*. Then, click on *Video Archives* for a listing of archived videos for the Committee.

Attendance

- I. The Law Enforcement and Criminal Justice Subcommittee meeting was called to order by Chair Chris Wooten on Wednesday, June 8, 2022, in Room 321 of the Blatt Building. The following other members were present for all or a portion of the meeting: Representative Kimberly O. Johnson and Representative John R. McCravy, III.

Approval of Minutes

- I. House Rule 4.5 requires standing committees to prepare and make available to the public the minutes of committee meetings, but the minutes do not have to be verbatim accounts of meetings.
- II. Representative McCravy makes a motion to approve the meeting minutes from the June 8, 2022, meeting. A roll call vote was held, and the motion passed.

Rep. McCravy's motion to approve the meeting minutes.	Yea	Nay	Not Voting
Rep. K. Johnson	✓		
Rep. McCravy	✓		
Rep. Magnuson			✓ (NP)
Rep. Wooten	✓		

Administration of Oath

- I. Chair Wooten reminds all others placed under oath at prior meetings that they remain under oath.
- II. Chair Wooten places the following agency personnel under oath:
 - a. Don Zelenka, Deputy Attorney General (Criminal Division);
 - b. Megan Jameson, Senior Assistant Deputy Attorney General (Post-Conviction Relief);
 - c. Megan Burchstead, Senior Assistant Deputy Attorney General (General Prosecution);
 - d. Tracy Myers, Senior Assistant Deputy Attorney General (General Prosecution);
 - e. Kyle Senn, Senior Assistant Deputy Attorney General (Internet Crimes Against Children);
 - f. Heather Weiss, Senior Assistant Deputy Attorney General (Special Prosecution); and
 - g. Joshua Underwood, Director of Insurance Fraud Division, Department of Insurance.

Discussion of Attorney General's Office

- I. Deputy Attorney General Barry Bernstein made brief remarks about the status of the study.

- II. Deputy Attorney General Don Zelenka made brief remarks pertaining to the history of the Criminal Division.
- III. Senior Assistant Attorney General Megan Jameson provided an overview of the Post-Conviction Relief Section.
- IV. Senior Assistant Attorney General Megan Burchstead, Deputy Attorney General Don Zelenka, and Senior Assistant Attorney General Tracy Myers provided an overview of the General Prosecution Section.
 - a. Department of Insurance, Insurance Fraud Division Director Joshua Underwood provided an explanation of insurance fraud prosecution since the Attorney General and Department of Insurance have entered an MOU for the Department of Insurance to prosecute these matters.
- V. Assistant Deputy Attorney General Kyle Senn provided an overview of the Internet Crimes Against Children Section.
- VI. Senior Deputy Attorney General Heather Weiss provided an overview of the Special Prosecution Section.
- VII. Subcommittee members ask questions relating to the following:
 - a. Employee compensation;
 - b. Caseloads;
 - c. Post conviction relief;
 - i. Statistics;
 - ii. Statute of limitations;
 - iii. Transcript retention;
 - iv. Impact of Covid-19;
 - v. Virtual hearings;
 - vi. Digitized records;
 - vii. Continuances;
 - viii. Recruitment and retention;
 - ix. Support staff;
 - d. General Prosecution;
 - i. Conflict referrals;
 - ii. Supplemental Nutrition Assistance Program fraud;
 - iii. Paycheck Protection Program fraud;
 - e. Internet Crimes Against Children;
 - i. Employee mental health assistance;
 - ii. Local task force participation;
 - iii. Type of cases;
 - iv. IP address;
 - v. Intent;
 - vi. Travel;
 - f. Special Prosecution;
 - i. Case management;

- ii. Conflicts;
- iii. Caseloads;
- iv. Human trafficking;
- v. Officer involved shooting;
- vi. Qualified immunity; and
- vii. Medicaid fraud referral from the Department of Health and Human Services.

Agency personnel respond to the questions.

Adjournment

- I. There being no further business, the meeting is adjourned.

Chair Wm. Weston J. Newton

*First Vice-Chair:
Joseph H. Jefferson, Jr.*

Legislative Oversight Committee

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Rosalyn D. Henderson-Myers
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Law Enforcement and Criminal Subcommittee

Wednesday, June 22, 2022

10:30 a.m.

Blatt Room 321

Archived Video Available

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Attendance

- I. The Law Enforcement and Criminal Justice Subcommittee meeting was called to order by Chair Chris Wooten on Tuesday, June 14, 2022, in Room 321 of the Blatt Building. Representative Josiah Magnuson was also present.

Approval of Minutes

- I. House Rule 4.5 requires standing committees to prepare and make available to the public the minutes of committee meetings, but the minutes do not have to be verbatim accounts of meetings.

Administration of Oath

- I. Chair Wooten reminds agency personnel placed under oath at prior meetings that they remain under oath.

- II. Chair Wooten places the following agency personnel under oath:
 - h. Trisha Allen, Director of Victim Advocacy Division;
 - i. Tammie Wilson, Director of Administration Division;
 - j. Dennis Yongue, Director of Information Technology; and
 - k. Tim Frisby, Veterans and Armed Forces Legal Outreach Coordinator.

Discussion of Attorney General's Office

- I. Deputy Attorney General Barry Bernstein made brief remarks about the status of the study.

- II. Deputy Attorney General Don Zelenka made brief remarks pertaining to the Criminal Division's law recommendations.

- III. Director Trisha Allen spoke about the Victim Advocacy Division.

- IV. Administration Division Director Tammie Wilson, HR Director Katie Elliot, Finance Director Kim Buckley, and Information Technology Director Dennis Yongue spoke about the Administration Division.

- V. Deputy Attorney General Barry Bernstein provided information about recent survey administered by third party about agency and Executive Program.

- VI. Subcommittee members ask questions relating to the following:
 - a. Search warrants;
 - b. Investigative subpoenas;
 - c. Absolute and qualified immunity;
 - d. False Claims Act;
 - e. Toll free number;
 - f. Provider referrals for victims;
 - g. Victims rights;

- h. Employees separations;
- i. Telecommuting;
- j. Trainings;
- k. Finance; and
- l. Information Technology.

Agency personnel respond to the questions.

Adjournment

- II. There being no further business, the meeting is adjourned.

STUDY TIMELINE

The House Legislative Oversight Committee's (Committee) process for studying the Attorney General's Office (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 in Figure 1.

Legislative Oversight Committee Actions

- December 9, 2019 – Holds **Meeting #1** and prioritizes the agency for study
- January 15, 2020 – Provides the agency notice about the oversight process
- February 28 – April 1, 2020 - Solicits input about the agency in the form of an online public survey
- April 8, 2021 – Holds **Meeting #2** to receive public testimony about the agency

Law Enforcement and Criminal Justice Subcommittee Actions

- March 8, 2022 - Holds **Meeting #3** to discuss the agency's vision; mission; director responsibilities; organizational structure; history; and general information about finances and employees
- March 31, 2022 - Holds **Meeting #4** with the Healthcare and Regulations Subcommittee to discuss hiring of in-house counsel and outside counsel as it relates to the State Accident Fund and all state agencies.
- April 26, 2022 - Holds **Meeting #5** to discuss the agency's Crime Victim Services division.
- May 25, 2022 - Holds **Meeting #6** to discuss the agency's Crime Victim Compensation Section, Solicitor General and Opinions Section, and Tobacco Division.
- June 1, 2022 - Holds **Meeting #7** to discuss the agency's Crime Victim Grants Section, Civil Litigation Section, Consumer Protection and Antitrust Section, and Securities and Money Services Section.
- June 8, 2022 - Holds **Meeting #8** to discuss the agency's Sexual Violent Predator Section, Criminal Appeals Section, Capital Litigation Section, and State Grand Jury Section.
- June 14, 2022 - Holds **Meeting #9** to discuss the agency's Post Conviction Relief Section, General Prosecution Division, and Special Prosecution Division.
- June 22, 2022 - Holds **Meeting #10** to discuss the agency's Victim Advocate and Administration Sections, as well as agency law recommendations.
- August 9, 2022 - Holds **Meeting #11 (TODAY)** to discuss member findings and recommendations.

Attorney General's Office

- March 31, 2015 - Submits its **Annual Restructuring and Seven-Year Plan Report**
- January 12, 2016 - Submits its **2016 Annual Restructuring Report**
- September 2016 - Submits its **2015-16 Accountability Report**
- September 2017 - Submits its **2016-17 Accountability Report**
- September 2018 - Submits its **2017-18 Accountability Report**
- September 2019 - Submits its **2018-19 Accountability Report**
- March 23, 2020 - Submits its **Program Evaluation Report**
- September 2020 - Submits its **2019-20 Accountability Report**
- April 2021 – Submits updated Program Evaluation Report

Public's Actions

- December 2019 - Present - Responds to Subcommittee's inquiries
- February 28 – April 1, 2020 - Provides input about the agency via an **online public survey**
- Ongoing - Submits written comments on the Committee's webpage on the General Assembly's website (www.scstatehouse.gov)

Figure 1. Key dates in the study process.

AGENCY SNAPSHOT

Office of the Attorney General

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.

Successes

Identified by the agency

- 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

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 Litigation Division
- Criminal Prosecution Division
- Victim Services Division
- Administration Division
- Executive

Resources (FY 18-19)

Employees

275.2
authorized FTEs

Funding

\$78,758,364
appropriated and authorized

Challenges

Identified by the agency

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 Attorney General 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

Figure 2. Snapshot of the agency's major organizational units, fiscal year 2018-19 resources (employees and funding), successes, and challenges.¹

DRAFT POTENTIAL FINDINGS AND
RECOMMENDATIONS

Findings

The **Subcommittee has 16 findings**. The Subcommittee has recommendations to 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.

Efficiency in Achieving Justice Requires Understanding and Collaboration by Stakeholders

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.
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.
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.)
4. Presently, there is no central system to confirm law enforcement entities are meeting the constitutional mandate to contact victims.
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.
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).
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 seen 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 statewide standard for certain reviews of officer involved misconduct, excessive force, discharge of firearms, or in-custody deaths. Consistency may improve public confidence in such reviews.
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.
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 S.C. Prosecution Coordination Commission.
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 31 recommendations** to various entities including the Attorney General's Office; General Assembly; Department of Probation, Parole, and Pardon Services; and Law Enforcement Training Council that continue, curtail, and/or eliminate agency programs, and include areas for potential improvement. The Subcommittee recognizes these recommendations will not satisfy everyone nor address every issue or potential area of improvement at the agency.

Advance Effectiveness, Efficiency, and Transparency in the Criminal Justice Process

Improve processes to serve victims and utilize state resources more effectively and efficiently

1. Approve process charts related to the Criminal Justice System for internal use by stakeholders (e.g., agency personnel, legislators, etc.)
To: Law Enforcement Training Council
Type: Collaboration
Confirm and approve², in the annual meeting with entities from the criminal justice system³, the accuracy of various charts illustrating the processes involved in the state's criminal justice system, which should reference, to the extent possible, applicable statutes and judicial rules, and combine this information into a single interactive and/or printable online resource. (See, SCDC Recommendation #43⁴, PPP Study Recommendation #5⁵, #34⁶, #36⁷, and #38.⁸)
2. Maintain accuracy of crime victim process charts
To: Attorney General's Office
Type: Collaboration
Include the Victim Services Coordinating Council⁹, victim advocates, and other applicable entities in annual collaborations to update flow charts¹⁰ (a) illustrating how victim information flows through the criminal justice system¹¹ and (b) those created during the House Oversight Committee's study of the Attorney General's Office referencing, to the extent possible, applicable statutes and statistics within the charts.
3. Maintain accuracy of prosecution and appeal process charts
To: Attorney General's Office
Type: Transparency
Collaborate with Commission on Prosecution Coordination, Commission on Indigent Defense, and Court Administration to review and update process charts created during the House Oversight Committee's study of the Attorney General's Office¹² as well as create additional charts as needed, to illustrate the prosecution and appeal processes of the criminal justice system, referencing, to the extent possible, applicable statutes and statistics within the charts (e.g., number of death penalty direct appeals, etc.)
4. Create interactive crime victim statistics dashboard
To: Attorney General's Office
Type: Effectiveness
Collaborate with State Law Enforcement Division, application developers in the Revenue and Fiscal Affairs Office, and any other applicable agencies or entities to evaluate potential costs, benefits, and logistics of agreements to create an interactive crime victim dashboard for other agencies, researchers, and the public to access. Within a year, report to the Committee on the steps taken, information gathered, results of analysis performed, and any decisions made.

5. Create a publication to help victims understand the complex criminal justice system
To: Attorney General's Office
Type: Collaboration
Collaborate with Victim Services Coordinating Council¹³, victim advocates, and other applicable entities to create online reference materials that include criminal justice process charts and other materials approved during the annual Law Enforcement Training Council criminal justice system meeting. The online reference materials should serve as a resource to help victim advocates explain the criminal justice process to crime victims. [Related Recommendation in Another Study - SEE PPP RECOMMENDATION #6 "UNDERSTANDING PAROLES" AND "UNDERSTANDING PARDONS" 14](#)
6. Collaborate about victim information issues to support a centralized victim information repository
To: Department of Probation, Parole, and Pardon Services (PPP)
Type: Efficiency
Collaborate with the Restitution Task Force in evaluation of a victim information repository (i.e., centralized directory of information related to victims) and offender restitution (see Recommendation #9¹⁵ and #10¹⁶ from the Oversight Committee's Study of PPP).
PPP feedback: Agency has no concerns regarding the recommendation
7. Streamline process for victims to obtain services (i.e., co-enrollment)
To: Attorney General's Office
Type: Efficiency
Collaborate with South Carolina's workforce and education pipeline (e.g., Coordinating Council for Workforce Development entities, Department of Veterans Affairs, etc.) and others to investigate the feasibility of a system offering crime victims the opportunity to input their information to learn about services state agencies offer and, if desired, enroll in programs without the need to re-enter common information (e.g., auto-fill victim compensation forms, etc.).
8. Create a victim service provider directory and track performance of the service providers
To: Attorney General's Office
Type: Effectiveness
Collaborate with Prosecution Coordination Commission, Commission for Minority Affairs, application developers in the Revenue and Fiscal Affairs Office, and any other applicable agencies or entities to evaluate potential costs, benefits, and logistics of agreements to enable secure data sharing and/or creation of a centralized directory of information related to victim service providers and impact those providers services have on victims. Within a year, report to the Committee on the steps taken, information gathered, results of analysis performed, and any decisions made.
9. Annually publish information on crime victim grants issued and utilized
To: Attorney General's Office
Type: Transparency
Attorney General's Office Annually publish information on crime victim grants issued and utilized
Annually publish information on crime victim grants issued and utilized including, but not limited to, the following:
 - Grant Number
 - Funding Source (e.g. VOCA, VAWA, SVAP)
 - Recipient

- Scope of Work
- Count(ies) in which work will be performed/victims served
- Metrics that must be met to receive reimbursement
- Date of Award
- Award Amount
- Amount of Award remaining
- Amount of prior awards recipient has allowed to lapse back to the federal government

Provide the information online in a pdf and downloadable Excel document.

10. Determine a method to ensure less than \$1M in crime victim grants is returned to the federal government each year

To: Attorney General's Office

Type: Efficiency

Collaborate with applicable entities to study the current process for utilizing federal government grants for victim services, implement procedures, analyze the results, and continue improving processes until the state consistently (three years or more) returns less than \$1M to the federal government in lapsed funds.

11. Establish a regular set-aside of victim grant funding for the purpose of collaborative requests by multiple entities

To: Attorney General's Office

Type: Efficiency

Establish a regular set-aside of victim grant funding for the purpose of collaborative information and service sharing by multiple entities to further leverage the limited resources available to serve victims. This funding may provide an incentive for entities serving victims to think outside the box in how they may continually increase the efficiency in which they share information among each other and provide services. Establishing this funding on a regular basis may help foster a culture of increased collaboration and openness to new processes or tools.

Data

12. Reach agreement on set data standards for criminal justice entities

To: Attorney General's Office, SCCPC, Indigent Defense, PPP, DJJ, DSS, SCDC, DPS, SLED, DNR, DOI, DOR, DEW

Type: Collaboration

Collaborate with Court Administration to agree upon set data standards, such as those defined by the National Center for State Courts, that are comparable across state agencies and state courts.

13. Link Attorney General's Office and circuit solicitor case management systems

To: Attorney General's Office

Type: Collaboration

Collaborate with solicitor's offices to ensure the new case management system the Attorney General's Office acquires can electronically access all files in solicitors' systems to improve efficiency in conflict case transfers, appeals, etc.

Law Enforcement Issues

14. Discuss officer involved shooting reviews

To: Attorney General's Office

Type: Accountability

Discuss with the Law Enforcement Training Council and Commission on Prosecution Coordination the pros and cons of creating a statewide uniform system for review of officer involved shootings. Within a year, report to the Committee on the information gathered, discussion, and any decisions made.

Increase Access to Training

15. Determine feasibility of a central learning portal

To: Attorney General's Office

Type: Effectiveness

Discuss with the Criminal Justice Academy and Law Enforcement Training Council, Department of Administration, and others the feasibility of having a central portal in which state employees may access applicable criminal justice related training videos (e.g., victim services, prosecution, criminal appeals, capital litigation, securities, etc.) like LinkedIn Learning. Discussion topics may include, but are not limited to, creating a list of different trainings available from the various agencies and, for each, intended audience, frequency in which updates are necessary. Within a year, report to the Committee on the information gathered, discussion, and any decisions made.

Improve State Employee Recruitment and Retention

16. Improve meaning and usability of Employee Performance Management System

To: State Human Resources Division of the Department of Administration

Type: Effectiveness

Provide the Committee with the agency's timeline to make the Employee Performance Management System (EPMS) process more meaningful and user friendly.

Bonds

17. Eliminate employee bonds or identify entity responsible for enforcement

To: General Assembly

Type: Efficiency

Eliminate employee bonds or identify entity responsible for enforcement because, even though statute states it is unlawful to assume the duties of an office without posting the bonds, current records from the Secretary of State's Office indicate only one in every three clerks of court, coroners, and probate judges have the required bond current and on file. Additionally, less than 50% of sheriff's have their required bond current and on file.

Collaborations

18. Analyze effectiveness of the process for Supplemental Nutrition Program fraud prosecution

To: Attorney General's Office

Type: Efficiency

Meet with the Department of Social Services to discuss the potential of the Department of Social Services referring Supplemental Nutrition Assistance Program fraud cases to the Attorney General's Office. Within a year, provide the Oversight Committee a letter explaining the discussion and decisions made.

19. Analyze effectiveness of the process for Medicaid fraud prosecution

To: Attorney General's Office

Type: Efficiency

Meet with the Department of Health and Human Services to analyze the current process for Medicaid fraud prosecution¹⁷ to ensure both agencies are aware of the other's methods, then determine any changes that may improve the overall effectiveness of the investigation and prosecution. Within a year, provide the Oversight Committee a letter explaining the discussion and decisions made.

20. Determine appropriate parties for regulation versus prosecution of money services businesses

To: Attorney General's Office

Type: Effectiveness

Collaborate with the State Board of Financial Institutions and State Treasurer's Office to determine the entity in which administration of aspects of the state's Anti-Money Laundering Act is suited (i.e., agency personnel subject area expertise) and recommend necessary updates to these statutes.

Laws

21. Consider taxing E-Cigarette and vaping products

To: General Assembly

Type: Other

Consider taxing vaping, e-cigarette, and similar products in the same manner as cigarettes.

22. Increase limitation on tokens of recognition for state employees

To: General Assembly

Type: Other

Consider amending S.C. Code Section 8-1-180 to increase the limitation on tokens of recognition and other rewards for state employees. The current amount has not been increased in almost three decades. This issue was noted in the AG and HHS studies.

23. Consider establishing a victim address confidentiality program

To: General Assembly

Type: Other

Consider creating a victim address confidentiality program as South Carolina is one of only 12 states without one.¹⁸

24. Consider updating statutes related to the Sexually Violent Predator Act

To: General Assembly

Type: Other

The Sexually Violent Predator Act took effect, and in more than 20 years has only had minor changes. In that time, many issues have arisen that have added inefficiencies and not served the ends of justice for the intent of the Act.

25. Consider updating statutes related to the State Grand Jury

To: General Assembly

Type: Other

Current law states State Grand Jury (SGJ) charges should be venued in the county where appropriate.

Consider amending statute to allow related charges indicted by the SGJ to be tried together in one county where at least one of the related charges occurred. This would allow all related crimes of a multi-county criminal enterprise or spree to be tried together in one county.

26. Consider modernizing statutes

To: General Assembly

Type: Other

Consider modernizing numerous laws related to the agency.

Agency Law Recommendation #	Code Section	Action	Description
1	63-19-1430	Repeal	Since its inception, this has been duplicative of existing programs. Other programs are grant based and have appropriate staff for such activities. It is better suited to local entities. There is no funding or separate FTEs, and it is ineffective at present and not suited for existing AG staff. At present, this program is dormant.
2	35-1-604(f)	Amend	Subsection (f) requires that the Securities Commissioner forward final orders issued under §35-1-604 of the SC Uniform Securities Act of 2005 to the SC Department of Revenue and the SC Secretary of State. We request to delete the final sentence in this section requiring forwarding of final orders to the Department of Revenue and Secretary of State. Both have agreed posting to our website fulfills their notice requirement
6	1-7-117	Repeal	1998 Act No. 368 devolved the duties, functions, and responsibilities of the Public Charities Section of the Attorney General’s Office upon the Secretary of State’s Office on July 1, 1998. The Public Charities Division has remained with the Secretary of State’s Office since that time, and Section 1-7-117 is no longer accurate.
7	44-11-110	Repeal	Current law requires written approval from the Attorney General for any grant of easements, permits or rights of way on, over or under the grounds of Department of Mental Health facilities. The Department of Mental Health has its own attorneys who are in a position to review and evaluate easements, permits, or rights of way.
9	59-31-560	Repeal	This statute was written over a century ago when the AG office was the only source of legal work for the state. It is an anachronistic formality in the modern era where the Department of Ed. employs attorneys.
12	16-3-910	Amend	Remove the final phrase: “unless sentenced for murder as provided in Section 16-3-20.” The same result may be reached by designating concurrent service. Deleting the language leaves discretion with the sentencing judge to impose sentence as the crime demands. Proposed change would avoid unintended time cuts; unnecessary appeals; additional sentencing proceedings where murder conviction vacated; and would end the ability to avoid a penalty for the crime.

14	17-25-45(C)(1)	Amend	Remove 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)”. Section 16-3-655(3) no longer exists after amendments to section 16-3-655 and the State Constitution was amended to remove the age of consent at 14, so the provision is no longer applicable and should be removed in its entirety.
15	16-3-1050 and 43-35-85	Amend	A review of sections 16-3-1050 and 43-35-85 showed they penalized the same behaviors. However, they have different collateral consequences with one statute resulting in a designation of a violent most serious offense while the other is a serious non-violent among other differences. We request a review of the two statutes, as well as the ramifications under sections 16-1-60, 17-25- 45, 17-22-50, and 63-7-2350 to determine whether one statute needs to be amended or removed and to make the collateral consequences the same.
16	17-13-140	Amend	The statute needs to be expanded to address today’s digital age and allow a circuit court judge to issue a search warrant which would allow for access to digital or electronic data stored outside the state of South Carolina and be consistent with section 18 USC 2703 of the Stored Communications Act. the holders of this information comply with others states with laws similar to that proposed. This statute has not been updated in over 50 years, and can be limited to basic subscriber information to ensure privacy for most content.
27	59-63-350	Repeal	Current Law: Local law enforcement must call Attorney General’s Office to tell about certain crimes occurring at school or at a school-sanctioned event. This statute does not provide any action for the AG office. It is a requirement of law enforcement who already have enough requirements without sending us a notification. Other agencies get these reports and keep up with them.
34	14-1-211.5	Amend	Section 14.1.211.5 (A) & (B) incorrectly attributes duties to the Department of Crime Victim Assistance Grants when those duties should be conferred upon the Department of Crime Victim Compensation. References to the Department of Crime Victim Assistance Grants should be replaced with the Department of Crime Victim Compensation.
35	16-3-1200	Amend	Section 16-3-1200 the statute refers to the intervenor and references Section (8) of Section 16-3-1110 which is the definitions section. The statute should refer to Section (9), which provides the definition for an “intervenor.”
36	16-3-1410(C)(2)	Amend	Recommendation is to remove the first sentence of 16-3-1410(C)(2). This was language from 2008 when VSP certification was first codified. VSPs employed prior to 2009 were “grandfathered” meaning they did not have to take the basic certification course. However, the law is not clear that this was for those employed as

			VSPs prior to 2009, and over a decade later the “grandfathering” process is no longer relevant.
37	16-3-1420 (1)(b);	Amend	The current law includes a listing of professionals that are not included in the definition of “Victim service provider” (VSP), we recommended adding “mental health clinician licensed in South Carolina” to this list of exemptions.
37	16-3-1420(2)	Amend	The current law provides definitions for Victim Service Provider and Witness. The definition for Victim Service Provider is relevant to this section and the definition for Witness is not relevant to this section. The definition is actually verbatim in another code section where it is relevant (16-3-1510(4)).
38	16-3-1430(A)(1)	Amend	Some of the language is worded in a redundant and outdated manner. Recommended to remove redundant language and change “spouse abuse” to “domestic violence” to reflect current technical language.
39	SECTION 16-3-1430 (B)(6)	Amend	(6) lists three departments and the Ombudsman, when actually Act 96 of 2017 established four departments, one of which was the Department of the Crime Victim Ombudsman (Section 1-7-1110 (A)(1). It is recommended that (6) be amended to read: the deputy directors of the four departments under the Office of the Attorney General, South Carolina Crime Victim Services Division.
40	16-3-1430 (B)(14)	Amend	Section 16-3-1430 (14) has the State Office of Victim Assistance listed as appointing three members to the Victim Services Coordinating Council. SOVA was the agency previously under the SCDOA until it was moved into the SCAG, Crime Victim Services Division, in July 2017 and renamed the Department of Crime Victim Compensation. It is recommended that the Chair of the Victim Services Coordinating Council, or the Attorney General, make these appointments.
41	16-3-1510 (3)	Amend	Current Law: The definition of “criminal offense” involving victim’s stolen or destroyed property includes a minimum dollar amount for losses. Criminal offense also excludes fraudulent checks or other offenses contained in Title 56 that do not involve personal injury or death. However, the SC Constitution supersedes this and does not set a dollar amount to being a victim of a criminal offense. We recommend removing the dollar amount

27. Establish a Health and Human Services Office of the Inspector General approved False Claims Act

To: General Assembly

Type: Other

Establish an HHS-OIG (federal Health & Human Services Office of the Inspector General) approved False Claims Act (FCA). Ratifying an HHS-OIG approved FCA would generate more cases and increase the opportunities to participate in national cases that are only open to states with FCA.

28. Provide Internet Crimes Against Children (ICAC) investigators power to subpoena subscriber information from internet and electronic service providers

To: General Assembly

Type: Other

Provide ICAC investigators at the Attorney General's Office the power to subpoena subscriber information from internet and electronic service providers. The current process of requiring orders and search warrants slows law enforcement down dramatically. With over 3000 cyber tips alone in the 2018-2019 fiscal year, each case requires law enforcement obtain an order or a search warrant from a circuit court judge.

29. Update statute to enable more potential State Grand Jury review of cases with possible health effects on the community

To: General Assembly

Type: Other

Current law requires a \$2M threshold and it be certified by an independent environmental engineer who must be contracted by the Department of Health and Environmental Control. Lowering the threshold, but maintaining a significant amount (\$500,000), and providing the certification can be done by any "environmental engineer," may enable more cases for possible State Grand Jury review that have possible health effects on the community.

30. Update statute to add a Fentanyl trafficking provision

To: General Assembly

Type: Other

Agency personnel note the availability of imported and cheap fentanyl is fueling the opiate epidemic. As a result, the General Assembly may wish to consider adding a specific subsection of the statute defining a Fentanyl related substance, the penalty for each subsequent offense, and the weight for different charges.

Regulations

31. Consider bill to address regulations by entity that is later eliminated or revised in statute

To: House Legislative Oversight Committee

Type: Other

Provide the House Regulations Committee information learned regarding regulations, such as Chapter 19 of the S.C. Code of Regulations, which are still associated with entities no longer in existence.

Legislative Oversight Committee



South Carolina House of Representatives

Committee Mission

Determine if agency laws and programs are being implemented and carried out in accordance with the intent of the General Assembly and whether they should be continued, curtailed or eliminated. Inform the public about state agencies.

Website: <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php>

Phone Number: 803-212-6810

Email Address: HCommLegOv@schouse.gov

Location: Blatt Building, Room 228

UPCOMING MEETINGS

Law Enforcement and Criminal Justice Subcommittee

None currently scheduled

Full Committee

Tuesday, August 9, 2022

12:00pm

Blatt 110

END NOTES

¹ Visual Summary Figure 2 is compiled from information in the Attorney General's Office study materials available online under "Citizens' Interest," under "House Legislative Oversight Committee Postings and Reports," and then under "Attorney General's Office"

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyPHPFiles/AttorneyGeneral.php> (accessed March 3, 2022).

² All entities collaborate to create process charts that explain their areas, then present and have them approved at LETC annual meeting, so that when they are disseminated thereafter for use during the year, everyone in the criminal justice system is utilizing the same information. This understanding may enable future efficiencies as entities see how others are involved in the system.

³ Entities and individuals may include state agencies and/or elected officials and staff.

⁴ SCDC Recommendation #43 - The Committee recommends the Law Enforcement Training Council (LETC) invite other entities from the criminal justice process (e.g., Court Administration, Prosecution Coordination Commission, Commission on Indigent Defense, Jail Administrator's Association, etc.) to meet on a regular basis (e.g., annual meeting or more frequent topic specific meetings) to provide opportunities for collaboration on criminal justice issues. During the study, a variety of issues are raised (e.g., availability of purchasing inmate uniforms from SCDC, local facilities providing all forms to SCDC when transporting inmates, electronic transmission of information, etc.) that may benefit from more communication among law enforcement and criminal justice entities. Inviting entities outside members of the training council (e.g., Jail Administrator's Association; Prosecution Coordination Commission; Commission on Indigent Defense; Court Administration; etc.) to attend an annual meeting in which the groups may provide updates and seek advice, assistance, or collaboration, may benefit all those involved in the criminal justice process.

⁵ PPP Recommendation #5 - Department of Probation, Parole, and Pardon Services post online and submit to the Committee, after annually collaborating with the Department of Corrections and any other applicable agencies or entities, an updated flow chart illustrating the incarceration and supervision to release process (available here), which was first created as part of this oversight study process.

⁶ PPP Recommendation #34 - Criminal Justice Academy and Law Enforcement Training Council work with applicable entities to create, and implement a policy to annually update, post online, and submit to the Committee (or as part of the Accountability Report), a flow chart showing how each aspect of offender information flows through the criminal justice system from investigation through post-conviction and release, including, but not limited to, the different forms and systems to which it is handwritten or typed, and methods of transfer between various entities. SEE FINDINGS #5 AND #11

⁷ PPP Recommendation #36 - Attorney General's Office post online and submit to the Committee, after annually collaborating with other applicable agencies, updated flow charts (available here) illustrating how victim information flows through the criminal justice system and the different points of contact entities have with victims, which was first created as part of the oversight study process with PPP

⁸ PPP Recommendation #38 - Commission on Prosecution Coordination post online and submit to the Committee, after annually collaborating with Court Administration and other applicable agencies, an updated crime to sentencing flow chart (available here), including addition of applicable forms utilized in the process, which the agency first created as part of its oversight study process

⁹ CVS Presentation, Slide 6; Created in 2013, SC Code § 16-3-1410; Required to meet at least 4 times per year; Receive suggested policy and procedural improvements from the Attorney General's Department of Crime Victim Services Training, Provider Certification, and Statistical Analysis and Department of Crime Victim Compensation; Staffed by Crime Victim Services Division (e.g., agendas and minutes for quarterly meetings and coordinating council activities)

¹⁰ Examples of victim flow charts include, but are not limited to, the following: (a) Individuals on whom victims rely; (b) Crime Victim Service Provider (individuals that serve crime victims); (c) Crime Victim Assistance Grants (for entities that serve crime victims); (d) Crime Victim Compensation (for victims); and (e) Crime Victim Ombudsman Processes

¹¹ See, PPP Study Recommendation #36 - Attorney General's Office post online and submit to the Committee, after annually collaborating with other applicable agencies, updated flow charts (available here) illustrating how victim information flows through the criminal justice system and the different points of contact entities have with victims, which was first created as part of the oversight study process with PPP

¹² Examples of flow charts include, but are not limited to, the following:

General: Attorney (at all agencies) hire and compensation approval process

Prosecution: (a) Transfer of Cases - Solicitors and Attorney General; (b) Officer Involved Shooting or Crime - Investigation and Prosecutor Review; (c) Internet Crimes Against Children - Background, Terminology, and Case Flow; (d) Medicaid Fraud - Recipient and Provider; (e) Insurance Fraud - Indictment Process; and (f) State Grand Jury

Post-Adjudication: (a) Appeal of non-death penalty conviction to S.C. Court of Appeals and S.C. Supreme Court; (b) Murder Convictions - Appeal and PCR Process; (c) Post-Conviction Relief (PCR) Action; and (d) Sexually Violent Predator Proceedings

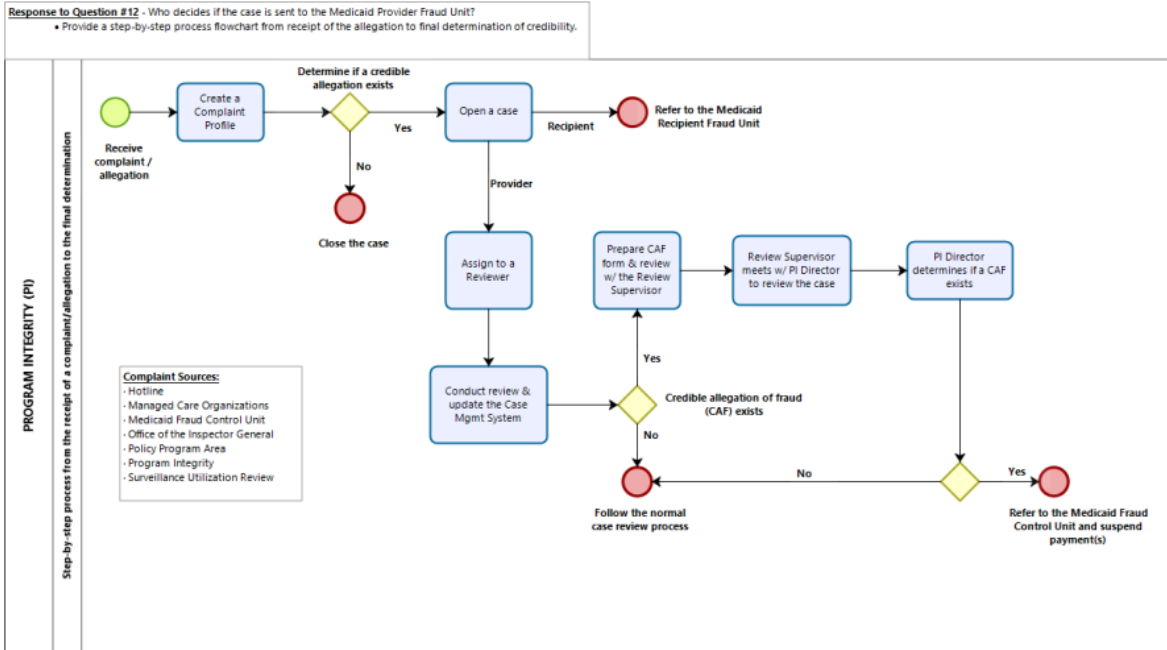
Civil Litigation: (a) Unfair Trade Practices Enforcement Litigation; (b) Nonprofit Corporation Investigation; (c) Securities Enforcement Case - Life Cycle; (d) Money Services

¹³ CVS Presentation, Slide 6; Created in 2013, SC Code § 16-3-1410; Required to meet at least 4 times per year; Receive suggested policy and procedural improvements from the Attorney General's Department of Crime Victim Services Training, Provider Certification, and Statistical Analysis and Department of Crime Victim Compensation; Staffed by Crime Victim Services Division (e.g., agendas and minutes for quarterly meetings and coordinating council activities)

¹⁴ PPP Recommendation #6 - Department of Probation, Paroles, and Pardon Services create and post online (i.e., in an easily accessible place for the public) an "Understanding Paroles" and "Understanding Pardons" document that provides a basic overview of related information and processes (e.g., explanation of what is required in law and what is discretionary; criteria for granting parole; timeline of events between being granted parole and released on parole; why all offenders granted parole may not be released on parole; reasons for rejecting parole; sample documents, etc.).

¹⁵ PPP Recommendation #9 - Victim Information Repository – Department of Probation, Parole, and Pardon Services convene representatives from Department of Corrections, Attorney General's Office, Department of Juvenile Justice, Board of Juvenile Parole, Court Administration, Prosecution Coordination Commission, application developers in the Revenue and Fiscal Affairs Office, and any other applicable agencies or entities, to evaluate potential costs, benefits, and logistics of agreements to enable secure data sharing and/or creation of a centralized directory of information related to victims. Within a year, report to the Committee the steps taken, information gathered, results of analysis performed, and decision of the agencies.

¹⁶ PPP Recommendation #10 - Offender Restitution and Debt Collaboration – Department of Probation, Parole, and Pardon Services convene applicable representatives from Department of Corrections, Attorney General's Office, Department of Juvenile Justice, Court Administration, Prosecution Coordination Commission, application developers in the Revenue and Fiscal Affairs Office, and any other applicable agencies or entities to evaluate potential costs, benefits, and logistics of agreements to enable secure data sharing and/or creation of a centralized directory of information related to restitution and debt owed by offenders. Within a year, report to the Committee the steps taken, information gathered, results of analysis performed, and decision of the agencies



¹⁸ (See Crime Victim Services presentation slide 36)