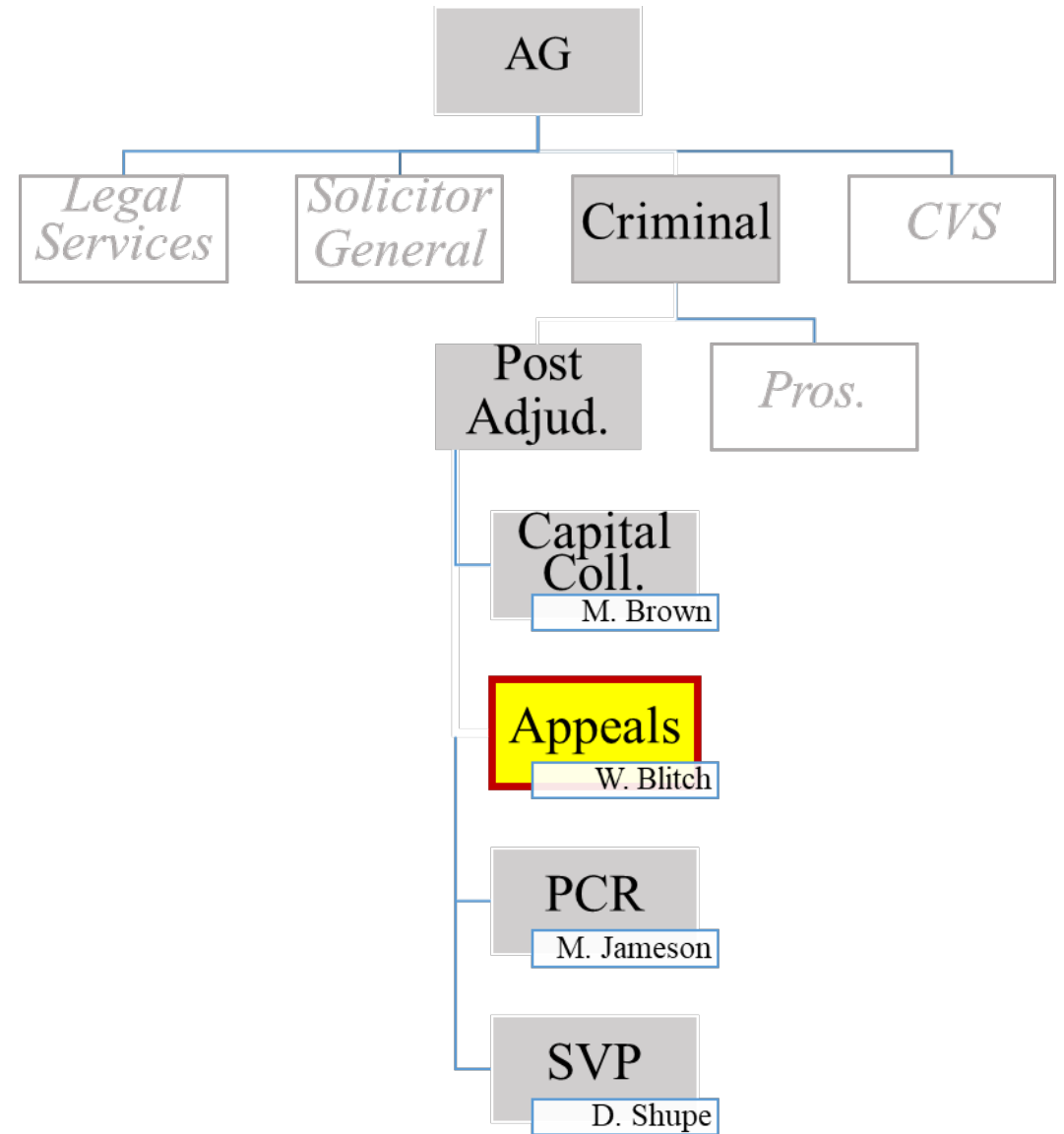




Criminal Appeals Section





Alan Wilson
Attorney General

Don Zelenka
Deputy AG

Mission

- We provide effective representation in all appeals of non-murder convictions to ensure lawfully obtained convictions are upheld.
- Our work product is persuasive and accurate to instill confidence and to pursue the State's interest in shaping criminal case law while establishing a positive relationship between the Attorney General's Office and the Judicial Department.
- The considerable experience of our appellate attorneys is leveraged to provide guidance, assistance, and training to prosecutors and law enforcement throughout the State.

Personnel

	Turnover	Number of Employees	
		Leave unit during year	In unit at end of year
2016-17	13%	2	15
2017-18	30%	4	13
2018-19	25%	3	12
2019-20	17%	2	12

Note:

FY 2018 Turnover

- 25% - Higher paying employment outside of state government
- 25% - Employment with another state agency
- 25% - Personal educational opportunities
- 25% - Internal promotional opportunity.

Exit interviews or surveys conducted?

2016-17	Yes
2017-18	Yes
2018-19	Yes
2019-20	Yes

Employee satisfaction tracked?

2016-17	No
2017-18	Yes
2018-19	No
2019-20	No



Personnel

Alan Wilson
Attorney General

Don Zelenka
Deputy AG

Current Staff

William Blich, SADAG

Caroline Collins, AC

Anne Mueller, LA

Leigh Ann Stone, LA

Dave Spencer, SAAG

Mark Farthing, SAAG

Josh Edwards, AAG

Ambree Muller, AAG

2 Vacancies

- Occurred November 2021 and June 2022
- Positions posted for both



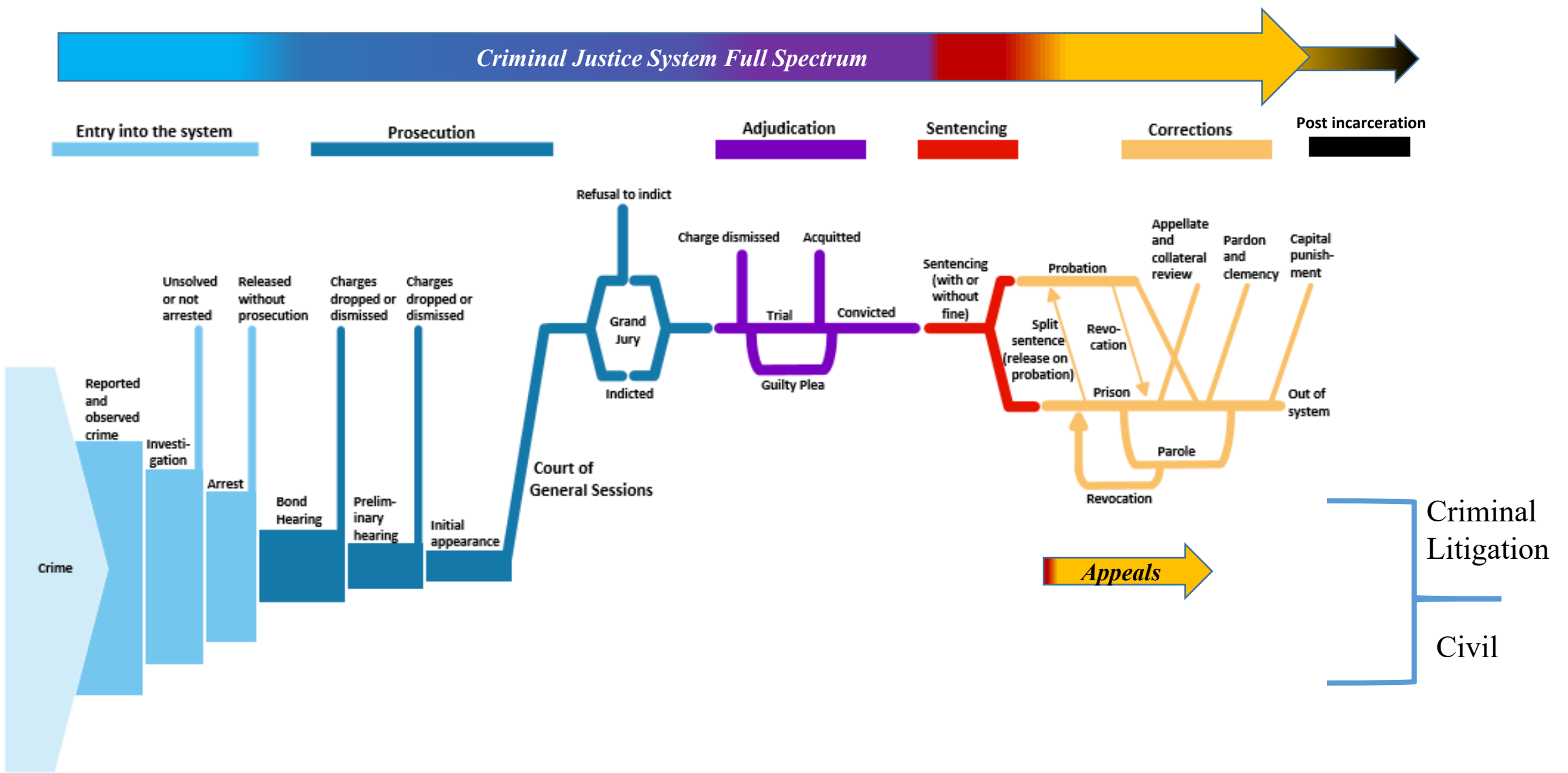
Alan Wilson
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Deputy AG

Background and Services

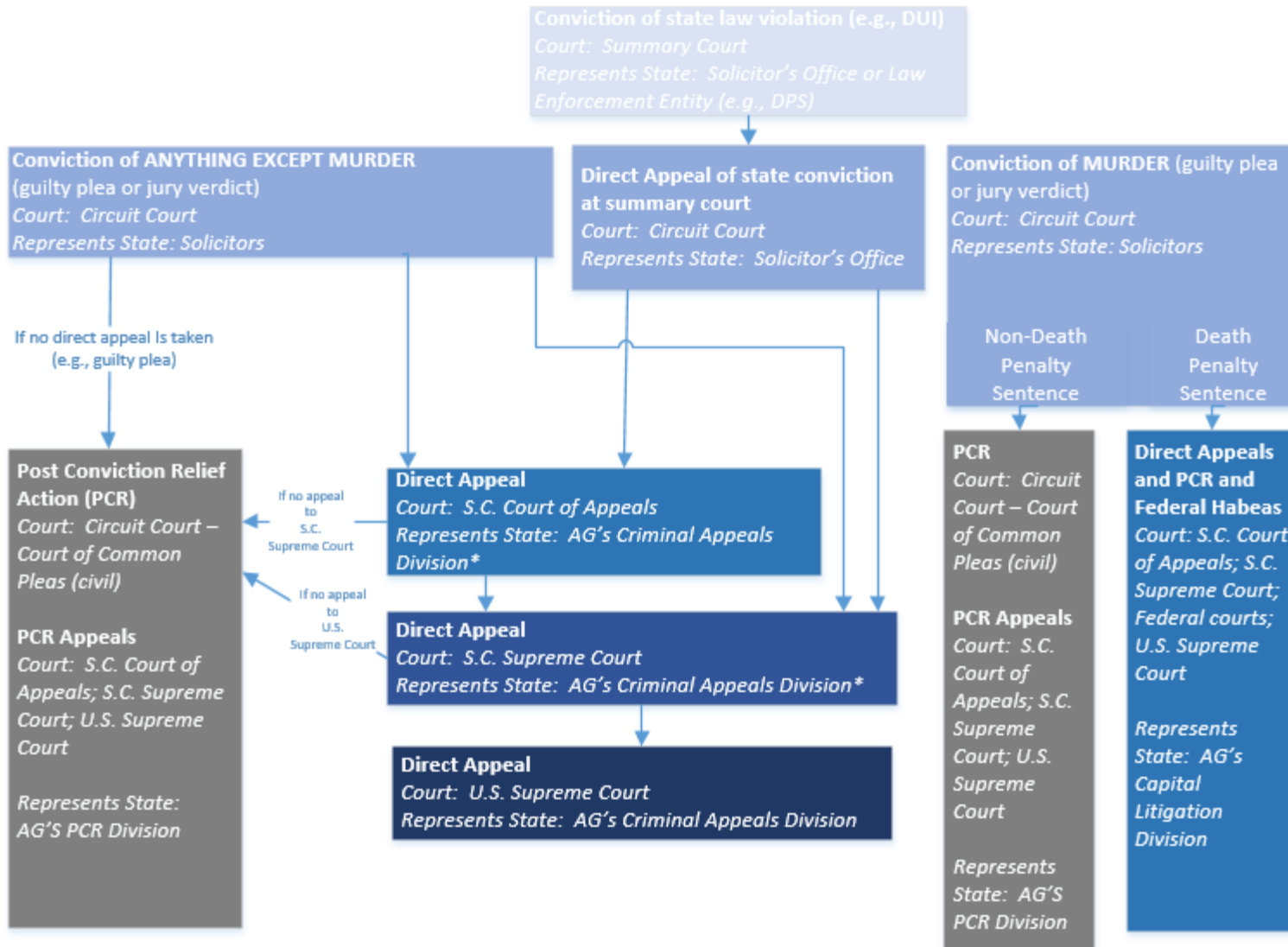
NOTE: The number of employees in the section is less than the total number of employee equivalents required to complete the deliverables of the Criminal Appeals Section. Most attorneys in the section reported more than 37.5 hours per week to complete the required tasks. Additional time is also spent on administrative and other non-deliverable tasks.

Criminal Justice System Full Spectrum



Note: This slide shows where the Attorney General's Office services fall in the criminal justice system flow chart utilized by prior state criminal justice entities under review. It only includes General Sessions because juvenile justice, summary courts, and diversion programs are not a primary function of the Attorney General's office.

Criminal Appellate Process - Overview



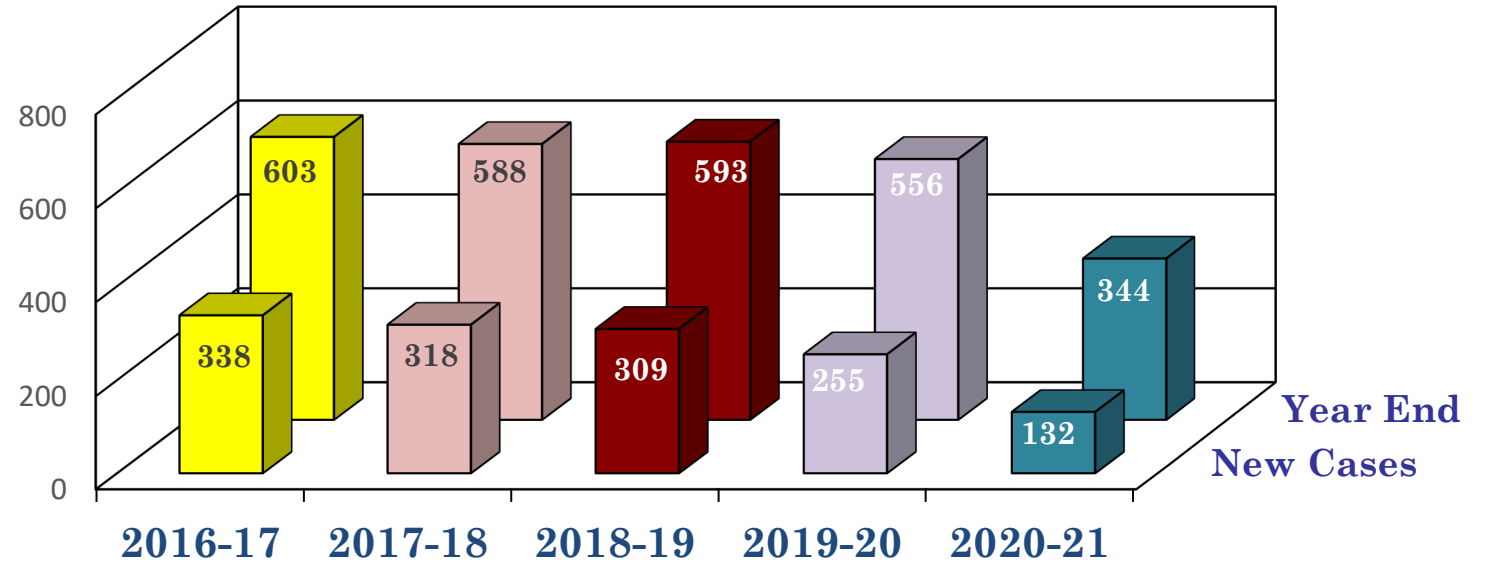
*On rare occasions the Attorney General will allow Circuit Solicitors to handle an appeal at this level (e.g., State v. John Doe). Municipal and county attorneys often handle appeals related to violations of their ordinances (e.g., Town of ABC v. John Doe)

	Criminal Defendant	State
Can they appeal?	Yes	Yes
What is appealed?	Conviction or Sentence	Pre-trial Ruling
What is claimed?	Error occurred at trial	Error occurred at trial
What relief is sought?	Conviction overturned; Remand for a retrial or resentencing; or Sentence be vacated	Overturn pre-trial ruling (e.g., court did not allow certain evidence at trial)

New Notice of Appeal/Other filings for S.C. Court of Appeals and S.C. Supreme Court

(Agency Service #111)

- Represent the 16 Circuit Solicitors in the following:
 - sustaining conviction under appeal, and
 - appealing adverse ruling where a conviction was not found.
- The outcome is not only upholding convictions but defining issues for clarification by the appellate courts in a manner that provides case law for the betterment of prosecutors and criminal justice system.



New Cases includes notice of appeals to Court of Appeals; briefs filed with original jurisdiction in Supreme Court, etc. – Anything the AG receives and has to open a file on, even if they do no work afterward

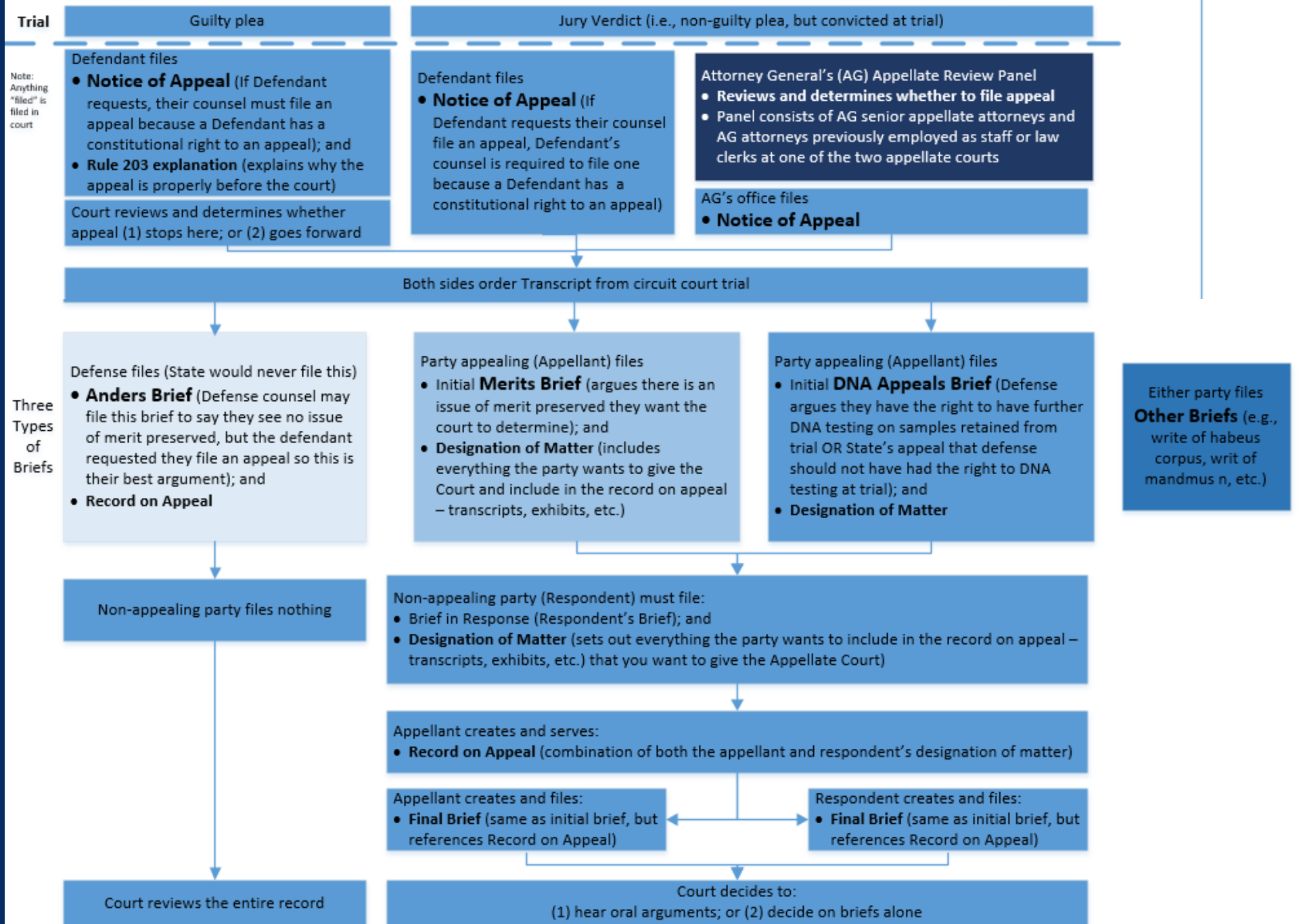
Does law require it:
Yes
Assoc. Law(s):
S.C. Code Section 1-7-40

Units Provided & Costs to Provide:	Single Unit	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
<i>NOTE: Employee equivalents means number of employees required (37.5 hour per week units)</i>	Filings with the appellate courts for briefs and other similar requirements of the Court	2016-17	\$8,206.68	11.70	\$1,034,042.15	5.27%
		2017-18	\$9,021.54	13.53	\$929,218.76	1.56%
		2018-19	\$11,131.30	11.67	\$912,766.31	1.36%
		2019-20	\$9,563.16	10.34	\$841,558.36	1.09%

Process (Part I)

Direct Appeal of Non-Death Penalty Conviction to S.C. Court of Appeals and...

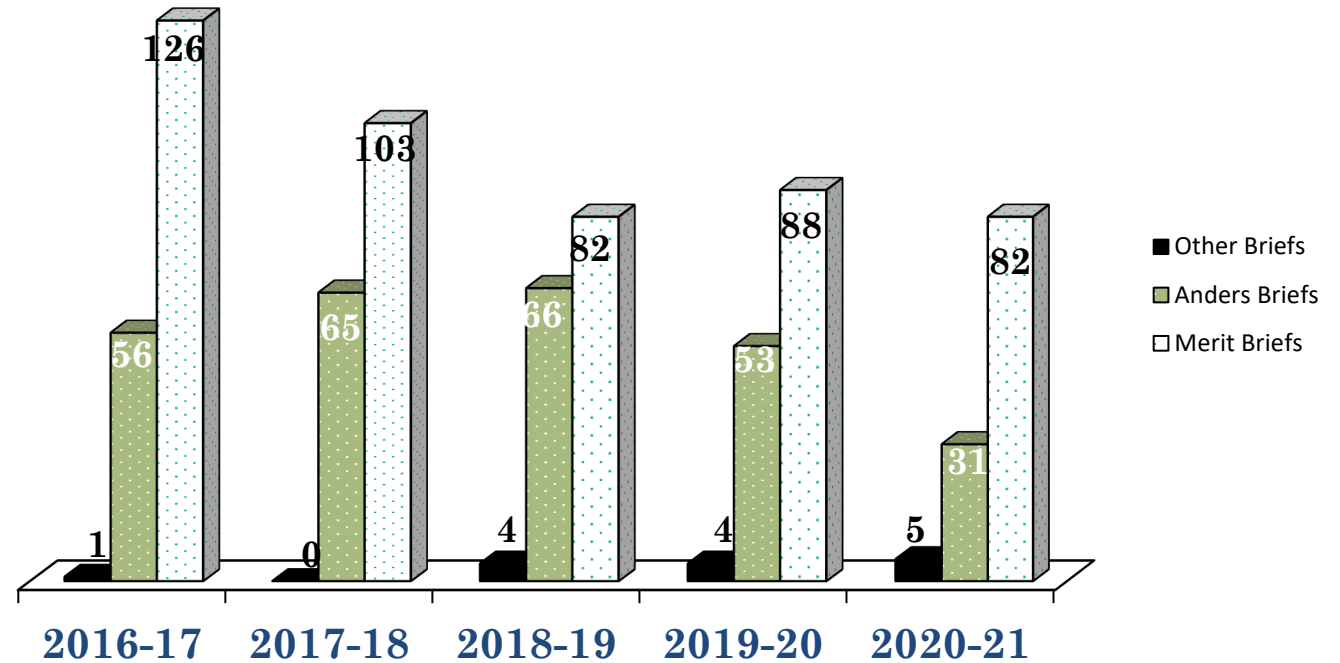
..S.C. Supreme Court



Briefs/other filings for S.C. Court of Appeals, Supreme Court, and U.S. Supreme Court

(Agency Service #111)

- AG only tracts the number of initial briefs filed with the Court and not all individual types of filings, so the number for overall deliverables units would be significantly higher when considering all filings.
- Number of briefs and other filings are directly related to factors beyond the AG's control, including the number of trials handled by the sixteen Solicitor's Offices as well as the number of merit-based filings by opposing counsel.
- Anders briefs may turn into a merit brief if the Court determines there is an issue of merit present



All merit cases require the AG's office following through the steps in the attached handout.

Does law require it:

Yes
Assoc. Law(s):
S.C. Code Section 1-7-40

Units Provided & Costs to Provide:

NOTE: Employee equivalents means number of employees required (37.5 hour per week units)

	Single Unit	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	Filings with the appellate courts for briefs and other similar requirements of the Court	126.00	\$8,206.68	11.70	\$1,034,042.15	5.27%
2017-18		103.00	\$9,021.54	13.53	\$929,218.76	1.56%
2018-19		82.00	\$11,131.30	11.67	\$912,766.31	1.36%
2019-20		88.00	\$9,563.16	10.34	\$841,558.36	1.09%

DNA Testing Appeals

(Agency Service #113)

The applicant and the solicitor or Attorney General, as applicable, have the right to appeal a final order denying or granting DNA testing by a writ of certiorari to the Court of Appeals or the Supreme Court.

State generally seeks to appeal adverse rulings that may be overly burdensome.

- Represent the state in appellate actions stemming from the grant or denial of post-conviction DNA testing.
- Filings including briefs, motions, petitions, and others for DNA Act appeals.

Does law require it:

Yes

Assoc. Law(s):

S.C. Code Sections 17-28-90; 1-7-40

Units Provided
&
Costs to Provide:

		<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
<i>NOTE:</i>						
<i>Employee equivalents means</i>	<u>Single Unit</u>					
<i>number of employees required</i>	Number of appeals opened each year					
<i>(37.5 hour per week units)</i>						
	2016-17	1.00	\$939.16	0.00	\$939.16	0.00%
	2017-18	2.00	\$333.50	0.00	\$667.00	0.00%
	2018-19	0.00	\$0.00	0.00	\$807.35	0.00%
	2019-20	4.00	\$4,534.34	0.14	\$18,137.36	0.02%

Process (Part II)

Step 8:

Step 9:

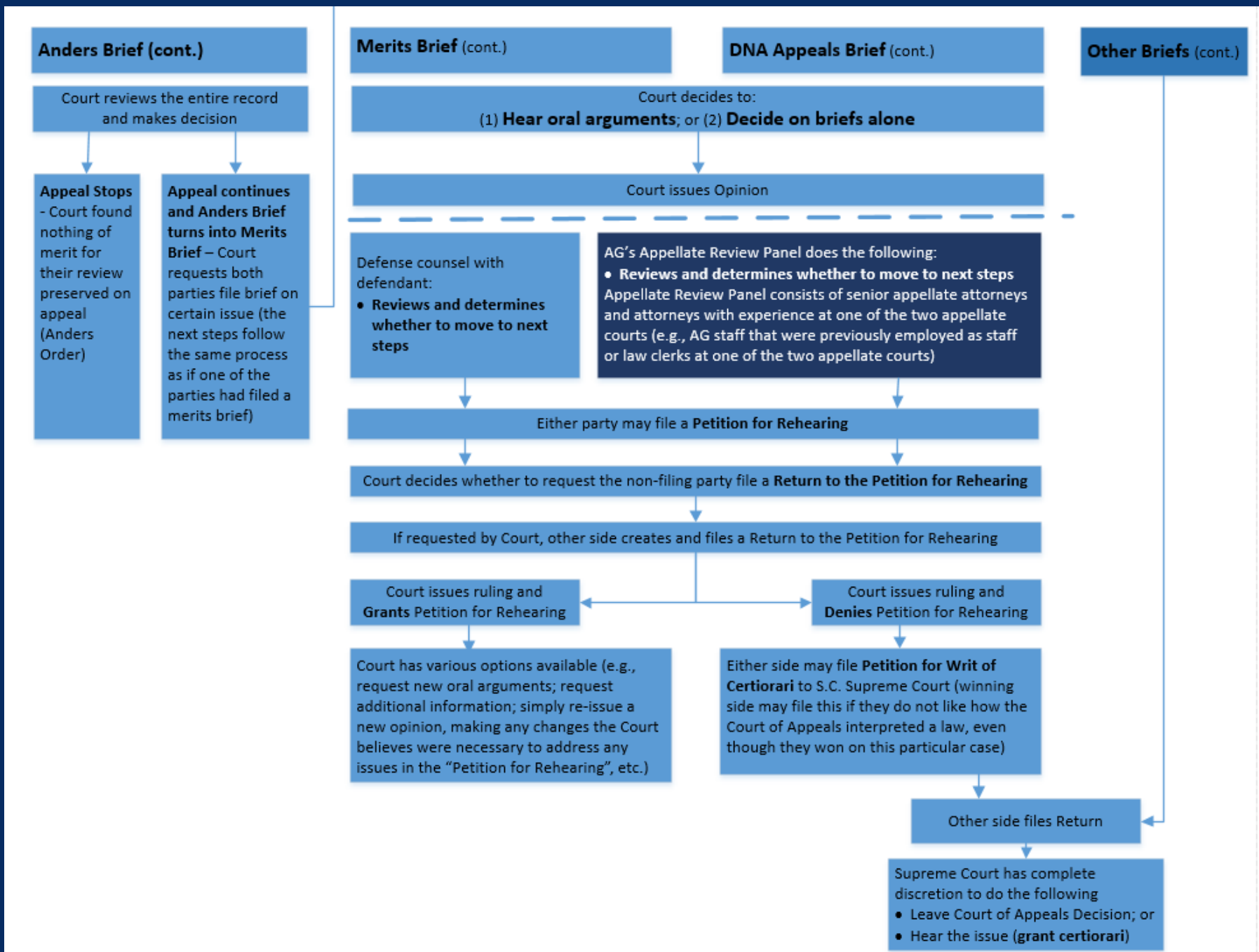
Step 10:

Step 11:

Step 12:

Step 13:

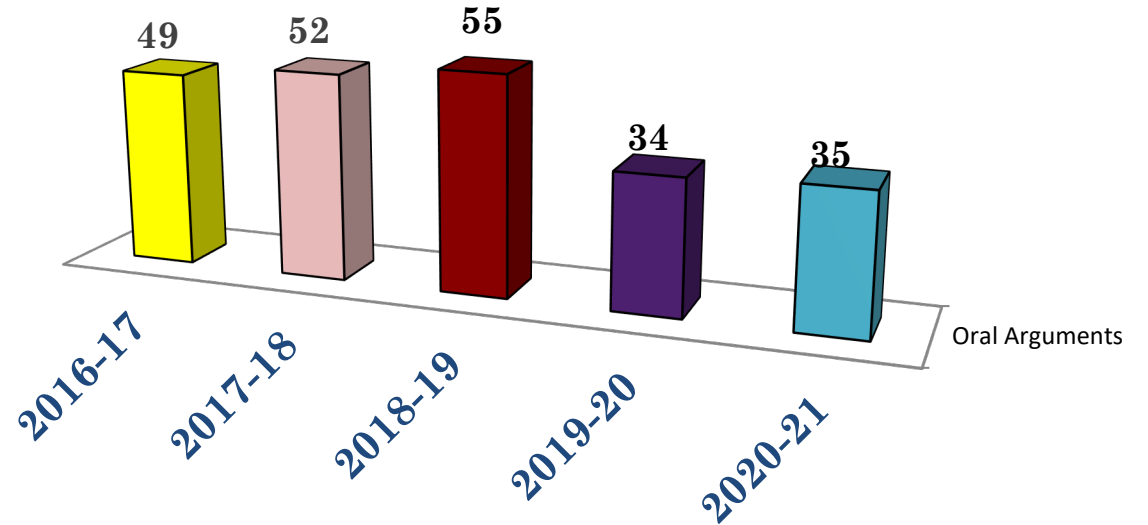
Step 14:



Oral Arguments before the S.C. Court of Appeals, Supreme Court, and U.S. Supreme Court

(Agency Service #112)

- Participates in oral arguments before the following:
 - South Carolina Court of Appeals,
 - South Carolina Supreme Court, and
 - United States Supreme Court.
- The numbers of oral arguments in the three years of the audit are significantly lower than the numbers of oral arguments in the years preceding the 2016-2017 fiscal year.
- AG does not have control over the number of oral arguments, as that is determined entirely by the appellate courts and can be affected by the number of merits briefs as discussed under the previous deliverable.



Does law require it:

Yes

Assoc. Law(s):

S.C. Code Section 1-7-40

Units Provided & Costs to Provide:

<i>NOTE: Employee equivalents means number of employees required (37.5 hour per week units)</i>	<u>Single Unit</u>	<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
	Each oral argument and the preparation for that argument would be a deliverable unit.	2016-17	\$2,064.97	1.10	\$101,183.48	0.52%
		2017-18	\$1,735.72	1.30	\$90,257.39	0.15%
		2018-19	\$1,711.63	1.04	\$94,139.86	0.14%
		2019-20	\$1,994.36	0.67	\$67,808.38	0.09%

Provide Advice and Training to Outside Agencies

(Agency Service #114)

- Provides ongoing training and assistance to the following:
 - Solicitor's Offices,
 - Prosecution Coordination Commission,
 - Law enforcement and other agencies around the state
- Training is designed to preclude errors in the trial court that might lead to a reversal of conviction or new trial.
- Topics of training and assistance include:
 - Fourth Amendment search and seizure
 - Sexual abuse case law
 - General evidence case law
- Methods of training and assistance include:
 - Numerous CLE programs, judicial trainings, and Solicitor's Conference.
 - Number of agencies receiving training, advice, or assistance was not recorded prior to FY 18-19.

Does law require it:

Yes

Assoc. Law(s):

Article V Section 24 of State Constitution;
S.C. Code Section 1-7-100

Units Provided
&
Costs to Provide:

NOTE:

Employee equivalents means number of employees required (37.5 hour per week units)

Single Unit:

Each outside agency to which they provide training, assistance, or advice (whether by phone or in person)

	<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
2018-19	19.00	\$2,061.77	0.44	\$39,173.67	0.06%
2019-20	22.00	\$1,332.55	0.30	\$29,316.04	0.04%



Alan Wilson
Attorney General

Don Zelenka
Deputy AG

Associated Successes and Concerns

The next slides only contain information on services that are associated with this section of the agency.



Criminal Appeals

SUCCESSSES

COVID Response

Trainings

COVID-19

- Did not significantly interfere with section operations
 - Maintained work load and quality
 - **Successfully** telecommuted once technical issues resolved
- Assisted other sections complete work due to decrease in appellate briefs resulting from COVID



Criminal Appeals

CONCERNS

Briefs and Opinions

- Increasingly complex briefs (type and number of issues)
 - Numbers may go down but workload is not following
 - Continuing with the evolving climate and focus of the Courts and opposing counsel
- From 2019 to current the number of S.C. Court of Appeal and S.C. Supreme Court opinions which reverse prior case law and thus convictions, has been increasing
- Number of Notice of Appeals filed has increased since 2021 and is expected to continue as trial courts have opened back up. This will ultimately mean an increase in merits briefs and oral arguments.



Appeals - Law Recommendations

The next slides only contain information on recommendations for law changes that are associated with this section of the agency.

LAW CHANGE RECOMMENDATION #14

- Law: S.C. Code Section 17-25-45(C)(1)
- Current Law: Includes as a most serious offense criminal sexual conduct with minors, 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)
- Recommendation: 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)”
- Basis for Recommendation: 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.
- Others Potentially Impacted: None

SECTION 17-25-45(C)(1). Life sentence for person convicted for certain crimes.

(C) As used in this section:

(1) "Most serious offense" means:

16-1-40 Accessory, for any offense enumerated in this item 16-1-80 Attempt, for any offense enumerated in this item 16-3-10 Murder 16-3-29 Attempted Murder 16-3-50 Voluntary manslaughter 16-3-85(A)(1) Homicide by child abuse 16-3-85(A)(2) Aiding and abetting homicide by child abuse 16-3-210 Lynching, First degree 16-3-210(B) Assault and battery by mob, First degree 16-3-620 Assault and battery with intent to kill 16-3-652 Criminal sexual conduct, First degree 16-3-653 Criminal sexual conduct, Second degree 16-3-655 Criminal sexual conduct with minors, ~~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)~~ 16-3-656 Assault with intent to commit criminal sexual conduct, First and Second degree 16-3-910 Kidnapping 16-3-920 Conspiracy to commit kidnapping 16-3-1075 Carjacking 16-3-2020 Trafficking in persons 16-11-110(A) Arson, First degree 16-11-311 Burglary, First degree 16-11-330(A) Armed robbery 16-11-330(B) Attempted armed robbery 16-11-540 Damaging or destroying building, vehicle, or other property by means of explosive incendiary, death results 24-13-450 Taking of a hostage by an inmate 25-7-30 Giving information respecting national or state defense to foreign contacts during war 25-7-40 Gathering information for an enemy 43-35-85(F) Abuse or neglect of a vulnerable adult resulting in death 55-1-30(3) Unlawful removing or damaging of airport facility or equipment when death results 56-5-1030(B)(3) Interference with traffic-control devices or railroad signs or signals prohibited when death results from violation 58-17-4090 Obstruction of railroad, death results.

LAW CHANGE RECOMMENDATION #15

- Law: S.C. Code Section 16-3-1050 and 43-35-85
- Current Law: Both of these statutes appear to criminalize the same acts. However, there are very different ramifications for violations based on which statute is used for charging.
- Recommendation: Review 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.
- Basis for Recommendation: 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.
- Others Potentially Impacted: None

Section 16-3-1050

Repealed (We ask that the Act repealing the statute contain a standard savings clause: The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.)

~~(A) A person required to report abuse, neglect, or exploitation of a vulnerable adult under Chapter 35 of Title 43 who has actual knowledge that abuse, neglect, or exploitation has occurred and who knowingly and wilfully fails to report the abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty five hundred dollars or imprisoned not more than one year. A person required to report abuse, neglect, or exploitation of a vulnerable adult under Chapter 35 of Title 43 who has reason to believe that abuse, neglect, or exploitation has occurred or is likely to occur and who knowingly and wilfully fails to report the abuse, neglect, or exploitation is subject to disciplinary action as may be determined necessary by the appropriate licensing board.~~

~~(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.~~

Section 16-3-1050 (cont.)

~~(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.~~

~~(D) A person who knowingly and wilfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.~~

~~(E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.~~

~~(F) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.~~

~~(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years.~~

~~(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to Chapter 35 of Title 43, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned not more than three years.~~

~~As used in this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.~~

Section 43-35-85. Failure to report, perpetrating or interfering with an investigation of abuse, neglect or exploitation of a vulnerable adult; penalties.

(A) A person required to report under this chapter who knowingly and wilfully fails to report abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five hundred dollars or imprisoned not more than one year.

(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(D) A person who knowingly and wilfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.

(E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

(F) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to this chapter, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned for not more than three years.

(I) As used in this section, “great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

LAW CHANGE RECOMMENDATION #16

Law: S.C. Code Section 17-13-140 (Search Warrant)

- Current Law: Allows for law enforcement to obtain search warrants and allows for judges to issue search warrants for property within their jurisdiction, which would limit a magistrate to a county and a circuit court judge to statewide jurisdiction.
- Recommendation: 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.
- Basis for Recommendation: Currently, it is questionable whether law enforcement has a means to obtain digital and electronic data stored outside the state of South Carolina by an entity such as Google or Facebook. It is possible law enforcement could obtain that information pursuant to the Federal Stored Communications Act, but it would be preferable to allow access under state law and section 17-13-140.
- Others Potentially Impacted: None
- Not updated in over 50 years
 - Only gives Court power to issue search warrant for property located in jurisdiction
 - Fails to account for today's digital world
- Failure to update may seriously harm Internet Crimes Against Children and other investigations and prosecutions
 - Applicable to any warrant sent to phone companies for cell site location data used in a wide variety of crimes
 - Applicable to anything requested from Facebook, Google, Apple or other internet companies
 - Several murder cases even involve this issue
- Considering limited subpoena power for basic subscriber information may be beneficial

Proposed S.C. Code Ann. 17-13-142:

(a) A law enforcement officer, any Solicitor, or the Attorney General may require the disclosure of stored wire, digital, or electronic communications, as well as transactional records and subscriber information pertaining thereto, to the extent and under the procedures and conditions provided for by the laws of the United States.

(b) A provider of electronic communication service or remote computing service shall provide subscriber information as well as the contents of, and transactional records pertaining to, wire, digital, or electronic communications in its possession or reasonably accessible thereto when a requesting law enforcement officer, any Solicitor, or the Attorney General complies with the provisions for access thereto set forth by the laws of the United States.

(c) This section specifically authorizes a court of competent jurisdiction in South Carolina, as defined by 18 U.S.C. § 2711, to issue appropriate orders pursuant to the requirements and procedures of 18 U.S.C. § 2703(d) for production of stored wire, digital, or electronic transactional records or subscriber information. These orders shall have statewide application or application to the extent provided by the laws of the United States.

(d) This section specifically authorizes a court of competent jurisdiction in South Carolina, as defined by 18 U.S.C. § 2711, to issue search warrants pursuant to the procedures established by section 17-13-140 of the South Carolina Code, notwithstanding any jurisdictional limitations contained in that section, for production of stored wire, digital, or electronic communications and transactional records pertaining thereto. Search warrants shall have statewide application or application to the extent provided by the laws of the United States.

Proposed S.C. Code Ann. 17-13-142 continued:

(e) This section specifically authorizes the Attorney General, any Solicitor, or the State Law Enforcement Division to issue a subpoena to compel disclosure or production of any stored electronic records or other information pertaining to a subscriber or customer as allowed and governed by 18 U.S.C. § 2703(c)(2) et seq., and any successor statute. The subpoena shall only issue upon a showing that the requested material is relevant to an ongoing criminal investigation.

(f) A South Carolina corporation or business entity that provides electronic communication services or remote computing services to the general public, when served with a warrant issued by another state to produce records that could reveal the identity of the customers using those services, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications, shall produce those records as if that warrant had been issued by an South Carolina court.

(g) Intentional violation of this section shall be punishable as contempt. However, a provider of electronic communication service or remote computing service is immune from any civil, criminal or other proceeding against a communications service provider or its directors, officers, employees, agents or vendors for providing information in good faith in response to a warrant, order or subpoena issued under this section.

(h) All terms used in this section shall be defined consistent with 18 U.S.C. § 2510, 18 U.S.C. § 2711, and section 17-30-15 of the South Carolina Code.