

Law Enforcement and Criminal Justice Subcommittee Meeting
Wednesday, June 8, 2022

Table of Contents

Contents

Agenda.....	2
Meeting Minutes	3
Study Timeline	6
Figure 1. Key dates in the study process.	6
Agency Snapshot	7
Figure 2. Snapshot of the agency’s major organizational units, fiscal year 2018-19 resources (employees and funding), successes, and challenges.	7
Agency Presentation – Criminal Appeals.....	8
Agency Presentation – Capital Litigation.....	36
Agency Presentation – Sexually Violent Predator	69
Agency Presentation – State Grand Jury	114
Committee Contact Information and Upcoming Meetings.....	161
End Notes	162

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

Wednesday, June 8, 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

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Josiah Magnuson
Timothy A. "Tim" McGinnis
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Russell L. Ott
Michael F. Rivers, Sr.
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Legal Counsel*

*Lewis Carter
Research Analyst/Auditor*

*Riley E. McCullough
Research Analyst*

Law Enforcement and Criminal Subcommittee

Wednesday, June 1, 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 1, 2022, in Room 321 of the Blatt Building. All members are present for all or a portion of the meeting.

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 Magnuson makes a motion to approve the meeting minutes from the May 25, 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. Harley Kirkland, Assistant Deputy Attorney General (Civil Litigation);
 - b. Pam Kirkland, Director of Registration (Securities Registration and Money Services);
 - c. Jonathon Williams, Assistant Deputy Director (Securities Enforcement);
 - d. Mary Frances Jowers, Assistant Deputy Attorney General (Consumer Protection and Antitrust); and
 - e. Jared Libet, Assistant Attorney General (Consumer Protection and Antitrust).

Discussion of Attorney General's Office

- I. Deputy Attorney General Barry Bernstein made brief remarks, including responses to member questions from the previous meeting about Crime Victim Compensation; Opinions; and Tobacco Sections.

- II. Assistant Deputy Attorney General BJ Nelson made remarks about the Crime Victim Grants Section. Subcommittee members ask questions, which agency personnel answer.
- III. Assistant Deputy Attorney General Harley Kirkland made remarks about the Civil Litigation Section. Subcommittee members ask questions, which agency personnel answer.
- IV. Director of Registration Pam Kirkland made remarks about Money Services Section. Subcommittee members ask questions, which agency personnel answer.
- V. Assistant Deputy Attorney General Jared Libet and Assistant Deputy Attorney General Mary Frances Jowers made remarks about the Consumer Protection and Antitrust Section. Subcommittee members ask questions, which agency personnel answer.
- VI. Director of Registration Pam Kirkland and Assistant Deputy Director Jonathon Williams made remarks about Securities Registration and Securities Enforcement. Subcommittee members ask questions, which agency personnel answer.

Adjournment

- I. 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 below 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 the 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 (TODAY)** to discuss the agency's Sexual Violent Predator Section, Criminal Appeals Section, Capital Litigation Section, and State Grand Jury Section.

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:

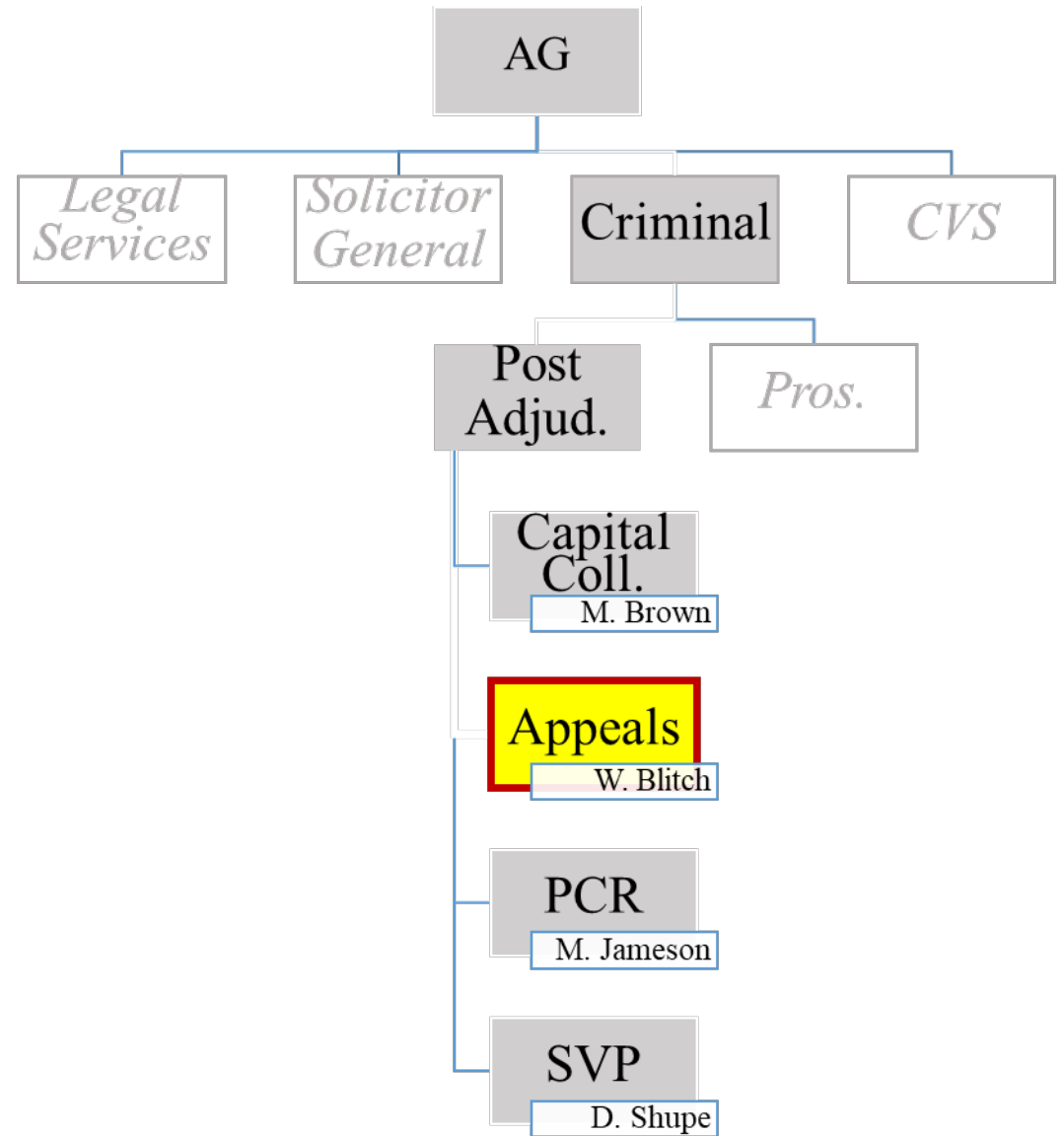
- Raising the salary of the Attorney General which has been stagnant for over 28 years and is less than half that of a circuit solicitor
- Lacking office space to accommodate the current size of the agency
- Aging case management system that needs updating

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

AGENCY PRESENTATION – CRIMINAL APPEALS



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



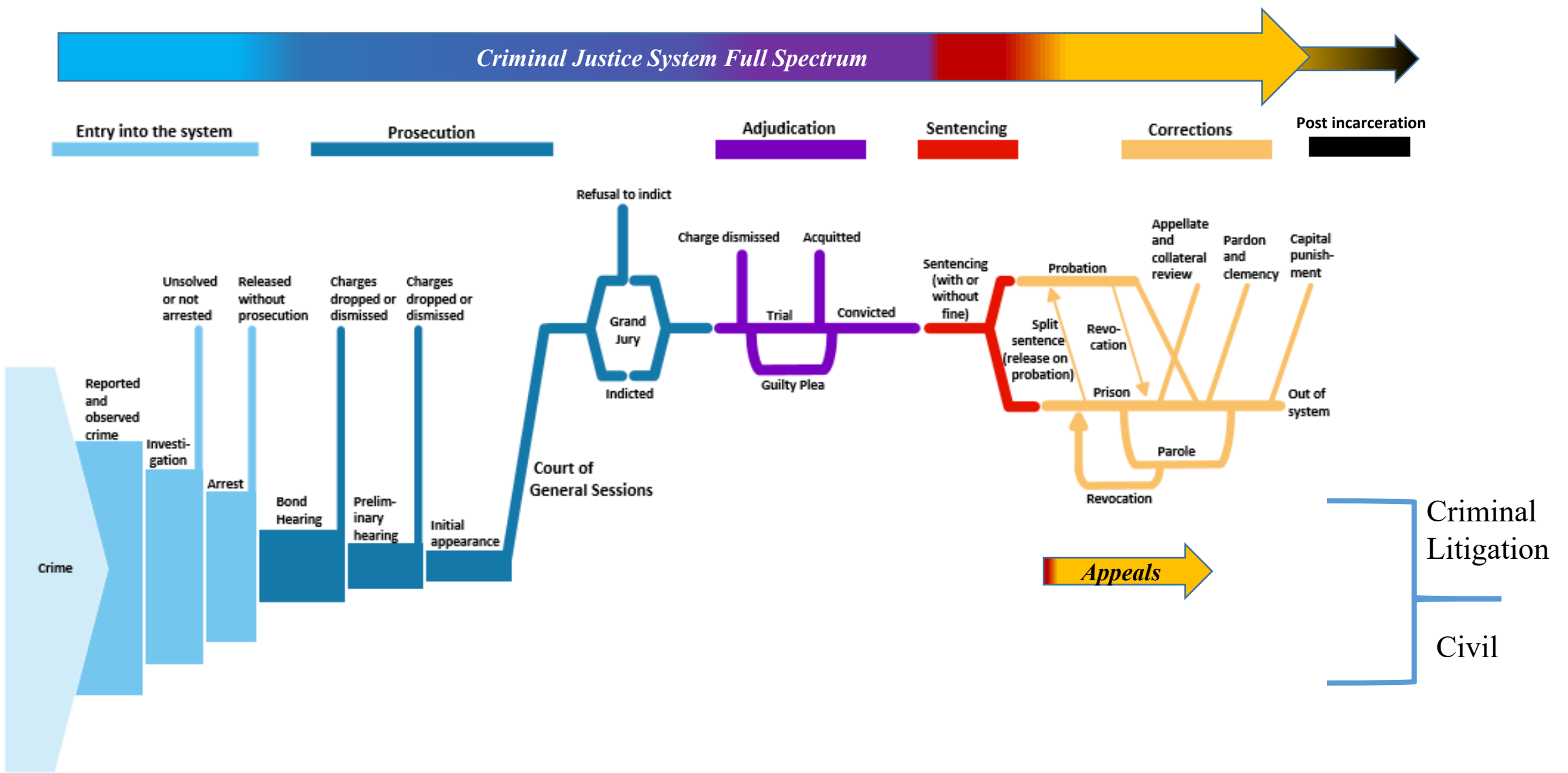
Alan Wilson
Attorney General

Don Zelenka
Deputy AG

Background and Services

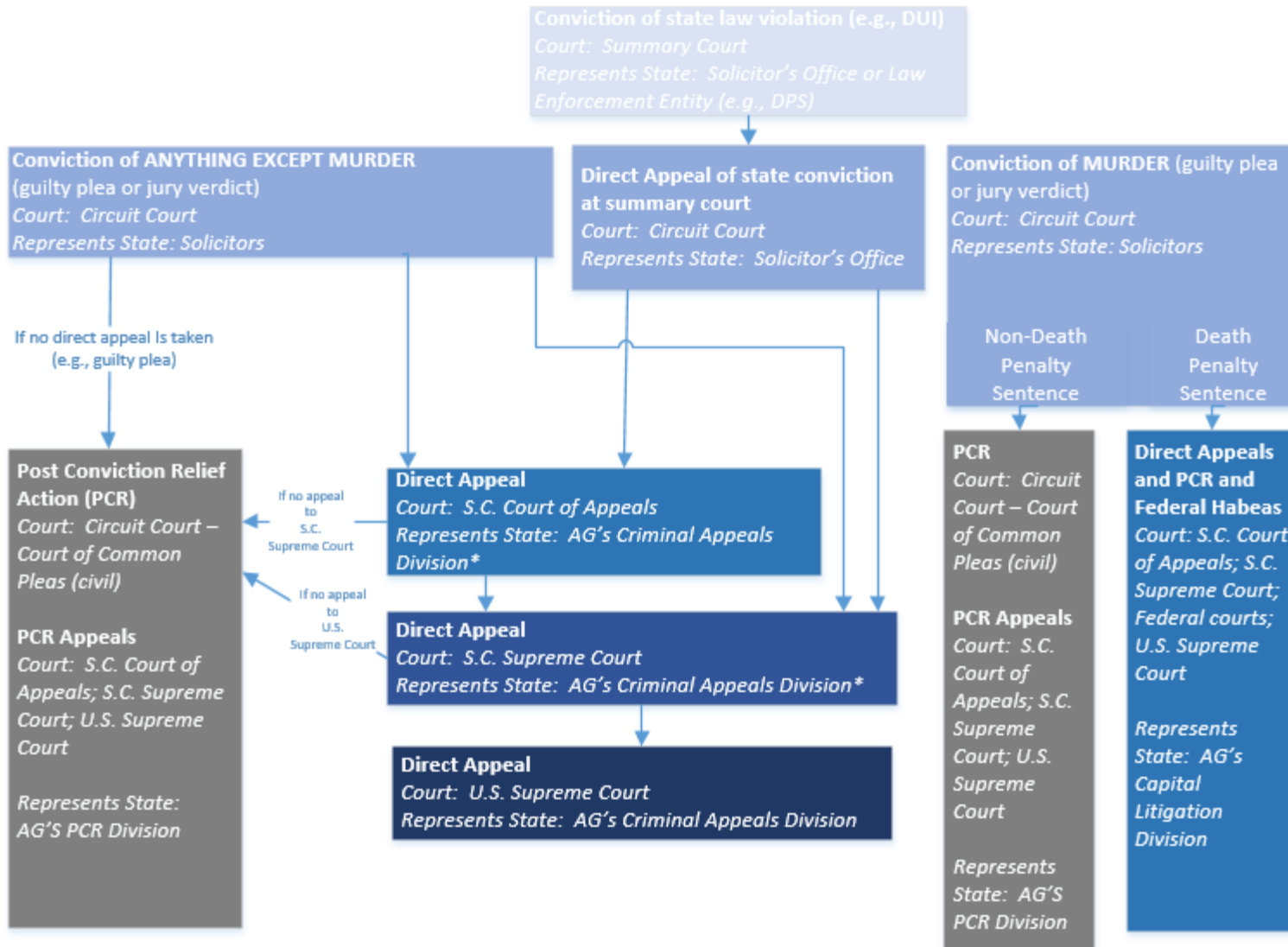
NOTE: The number of employees in the section is less than the total number of employee equivalents required to complete the deliverables of the Criminal Appeals Section. Most attorneys in the section reported more than 37.5 hours per week to complete the required tasks. Additional time is also spent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



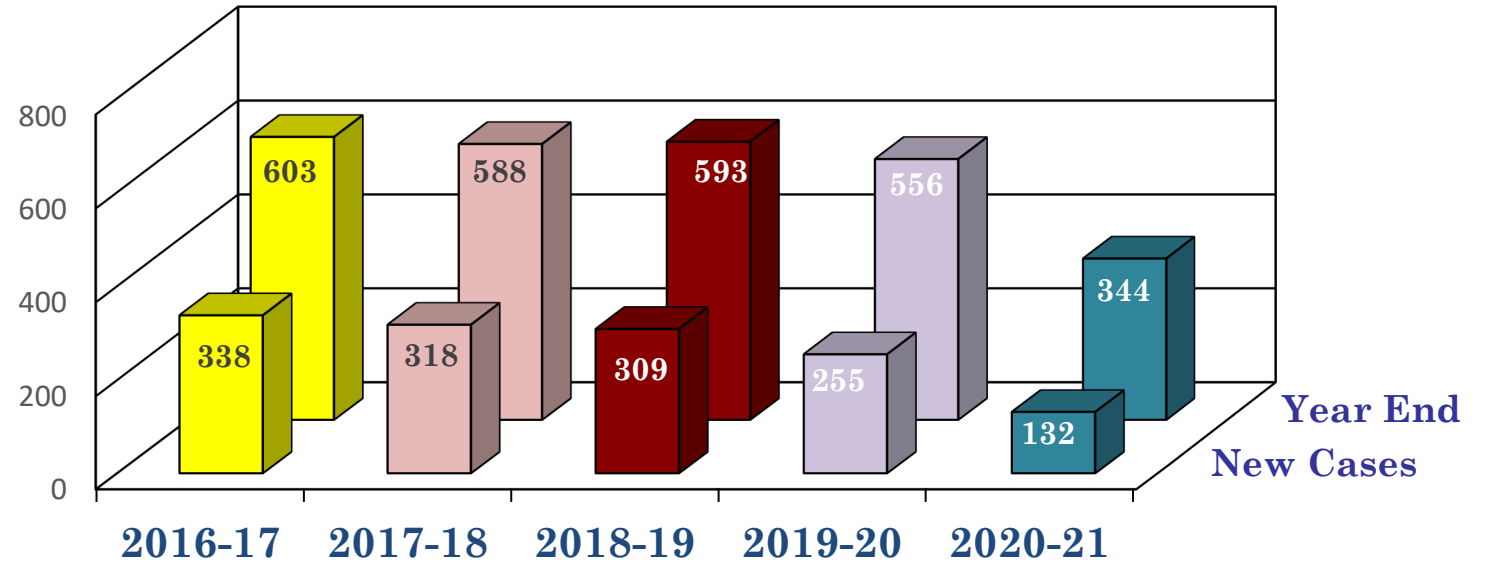
*On rare occasions the Attorney General will allow Circuit Solicitors to handle an appeal at this level (e.g., State v. John Doe). Municipal and county attorneys often handle appeals related to violations of their ordinances (e.g., Town of ABC v. John Doe)

	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

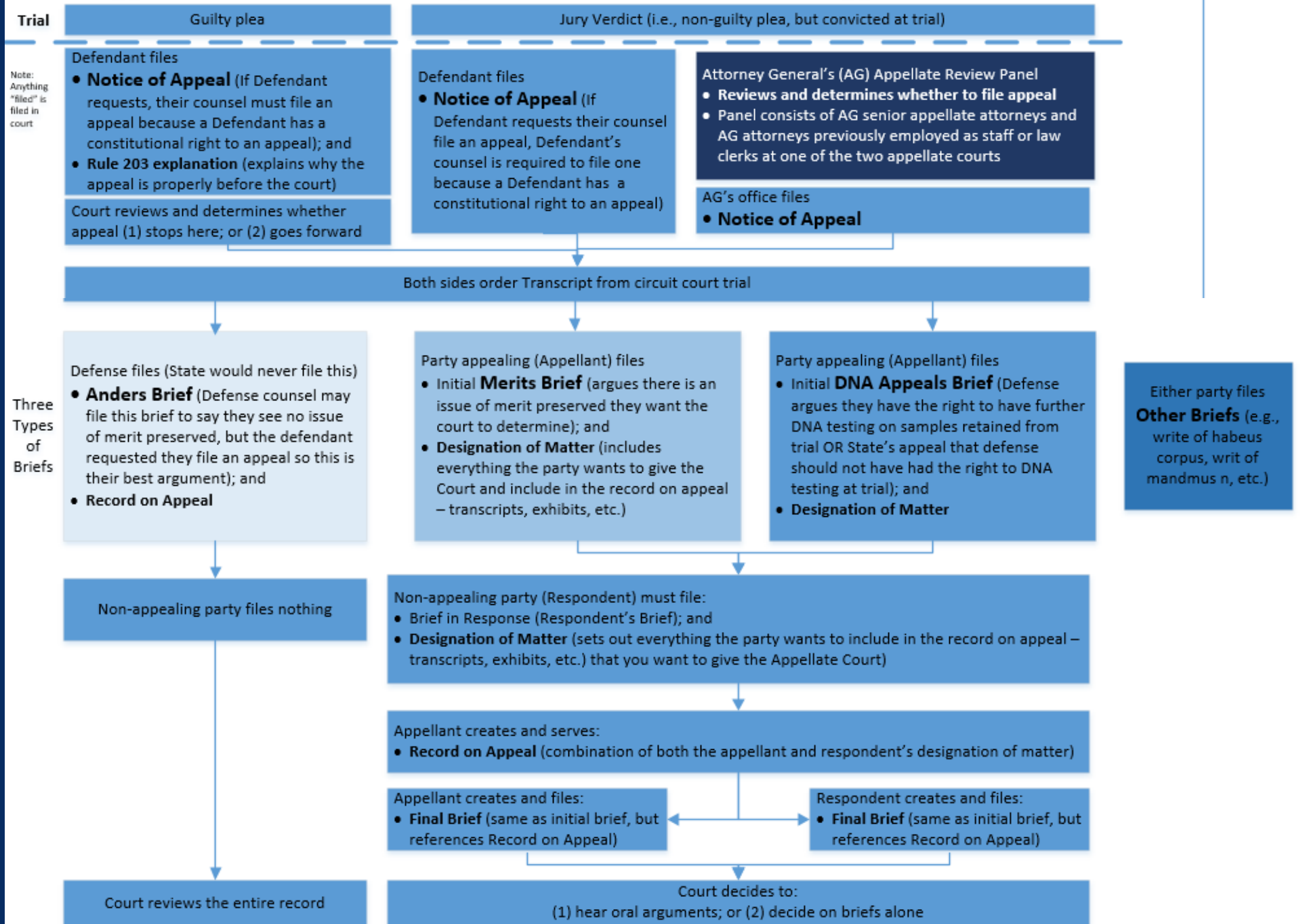
Does law require it:
Yes
Assoc. Law(s):
S.C. Code Section 1-7-40

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



Step 1:

Step 2:

Step 3:

Step 4:

Step 5:

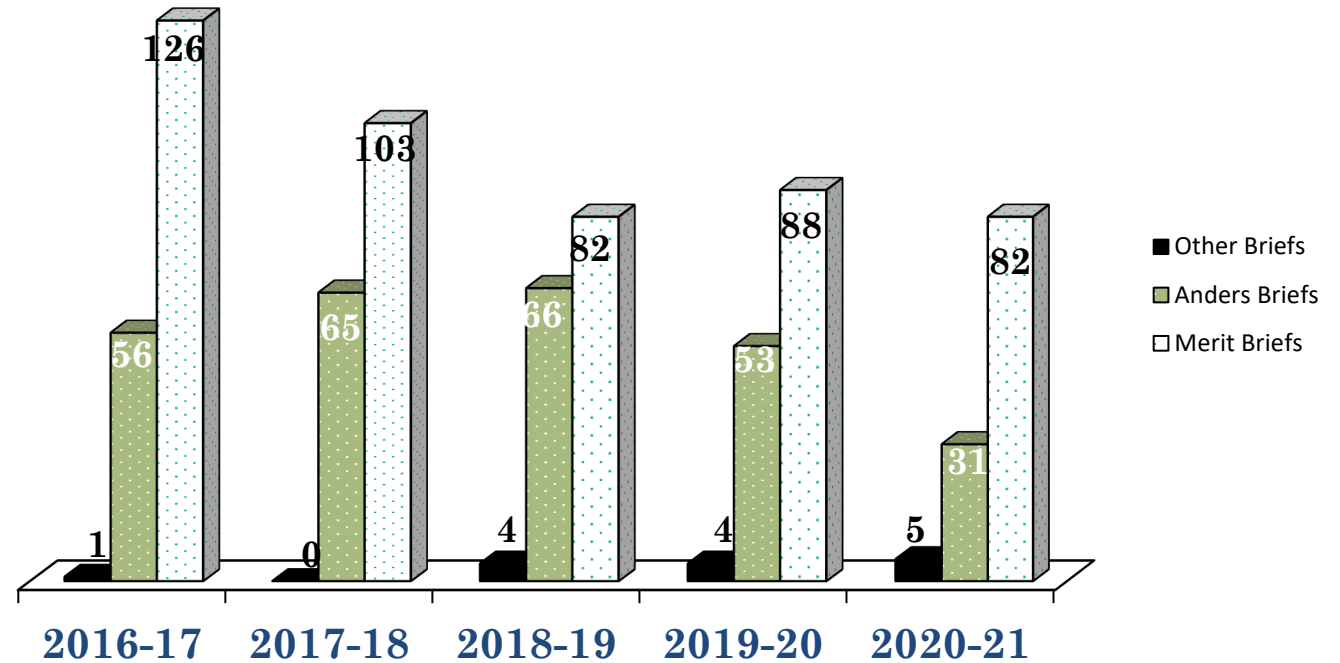
Step 6:

Step 7:

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)

	<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>	
	Filings with the appellate courts for briefs and other similar requirements of the Court	2016-17	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:

NOTE:

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

Single Unit

Number of appeals opened
each year

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

Units
provided

1.00
2.00
0.00
4.00

Cost
per unit

\$939.16
\$333.50
\$0.00
\$4,534.34

Employee
equivalents

0.00
0.00
0.00
0.14

Total Cost
of service

\$939.16
\$667.00
\$807.35
\$18,137.36

% of total agency
costs

0.00%
0.00%
0.00%
0.02%

Process (Part II)

Step 8:

Step 9:

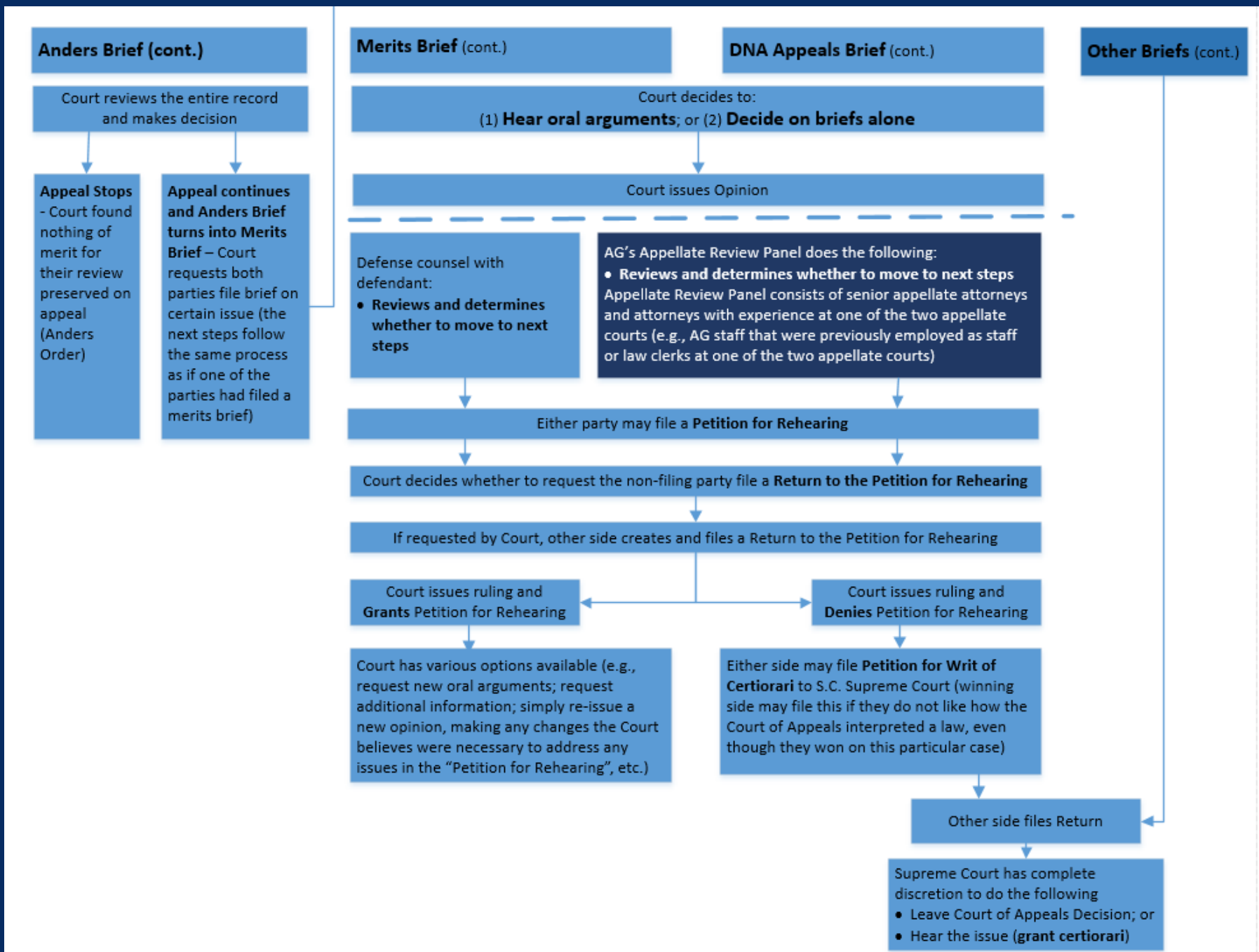
Step 10:

Step 11:

Step 12:

Step 13:

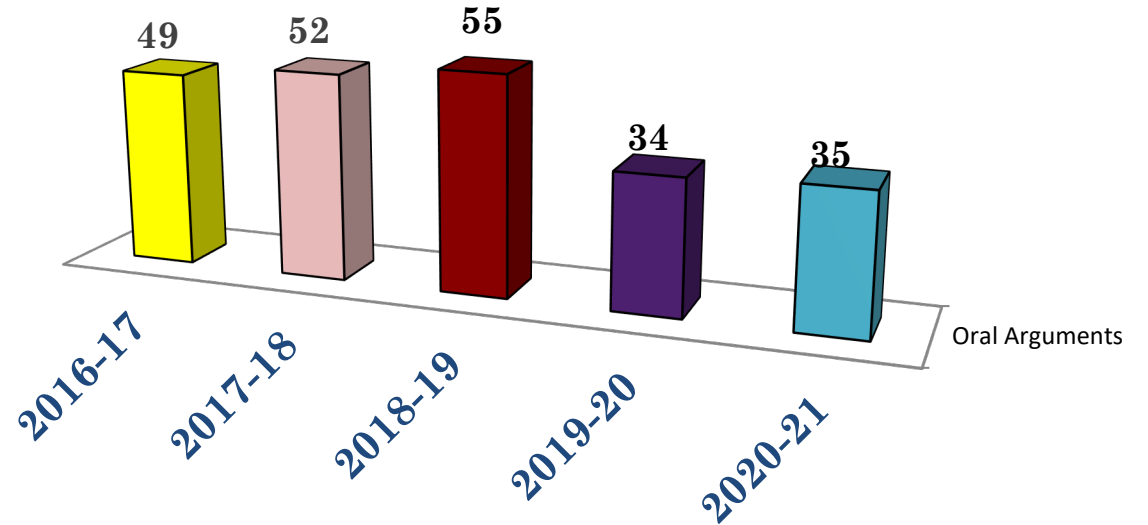
Step 14:



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:

NOTE:

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

Single Unit

Each oral argument and the preparation for that argument would be a deliverable unit.

	<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>
2016-17	49.00	\$2,064.97	1.10	\$101,183.48	0.52%
2017-18	52.00	\$1,735.72	1.30	\$90,257.39	0.15%
2018-19	55.00	\$1,711.63	1.04	\$94,139.86	0.14%
2019-20	34.00	\$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.



Alan Wilson
Attorney General

Don Zelenka
Deputy AG

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



Alan Wilson
Attorney General

Don Zelenka
Deputy AG

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.

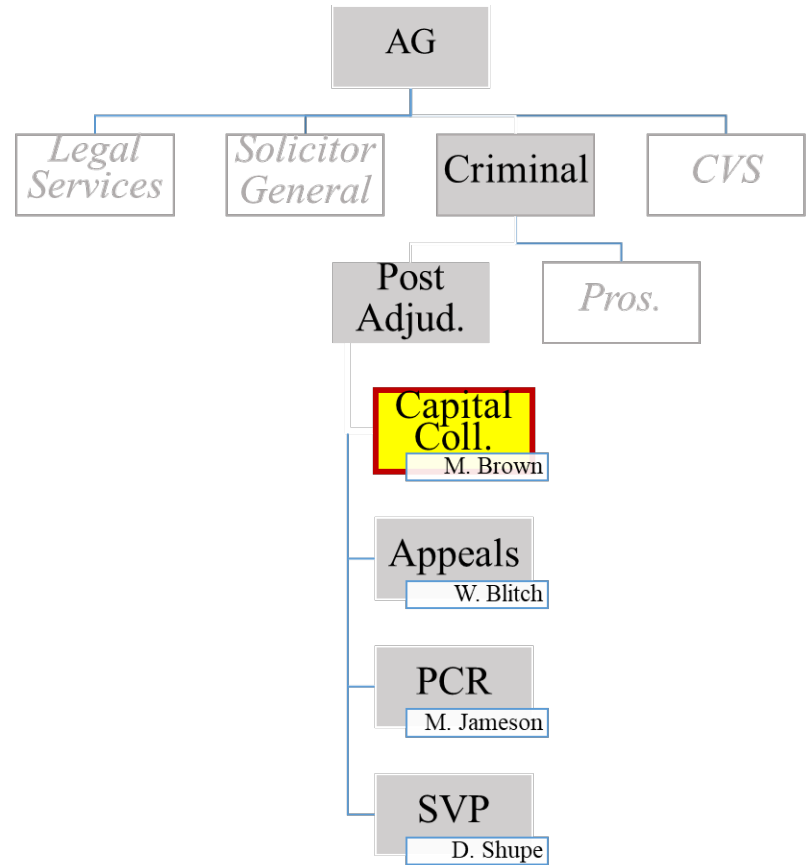
(g) Intentional violation of this section shall be punishable as contempt. However, a provider of electronic communication service or remote computing service is immune from any civil, criminal or other proceeding against a communications service provider or its directors, officers, employees, agents 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.

AGENCY PRESENTATION – CAPITAL LITIGATION



Capital and Collateral Litigation Section





Overview

Alan Wilson
Attorney General

Don Zelenka
Deputy AG

The Capital & Collateral Litigation Section coordinates

- all murder conviction direct appeals,
- all death penalty litigation after conviction and sentencing, and
- all federal habeas corpus litigation involving any S.C. state conviction (but not litigation involving conditions of confinement).

In death penalty cases, due to the complexity of the issues and process, the section retains the cases after direct appeal for post-conviction (PCR) proceedings in the circuit court; PCR appeals in the S.C. Supreme Court and U.S. Supreme Court; and federal habeas corpus litigation in the District Court, U.S. Court of Appeals, and United States Supreme Court; and any successive PCR actions or other actions challenging the conviction and sentence after exhaustion of ordinary remedies.

Mission

Our mission is to ensure just and accurate results in criminal litigation in state and federal courts in regard to South Carolina criminal convictions, including death penalty sentences, by fairly presenting the State's position in a cogent, efficient, and persuasive manner, addressing all relevant issues concerning the conviction and sentence. The mission coexists and is informed by our roles as ministers of justice to address the confidence of the judgment.

In carrying out our mission, each case is handled with the same level of care, be it a death penalty case, or a plea to a lesser charge with a sentence of time served. The primary focus in representation for all of the section's cases is to ensure a just result under state and federal law.

Personnel

Attorneys

- Melody Brown, SADAG
- Ed Salter, SAAG
- Anthony Mabry, SAAG
- Joe Maye, AAG
- Mike Ross, AAG (military leave)
- Tommy Evans, AAG
- Julianna Battenfield, AAG
- Vacancy

Support Staff

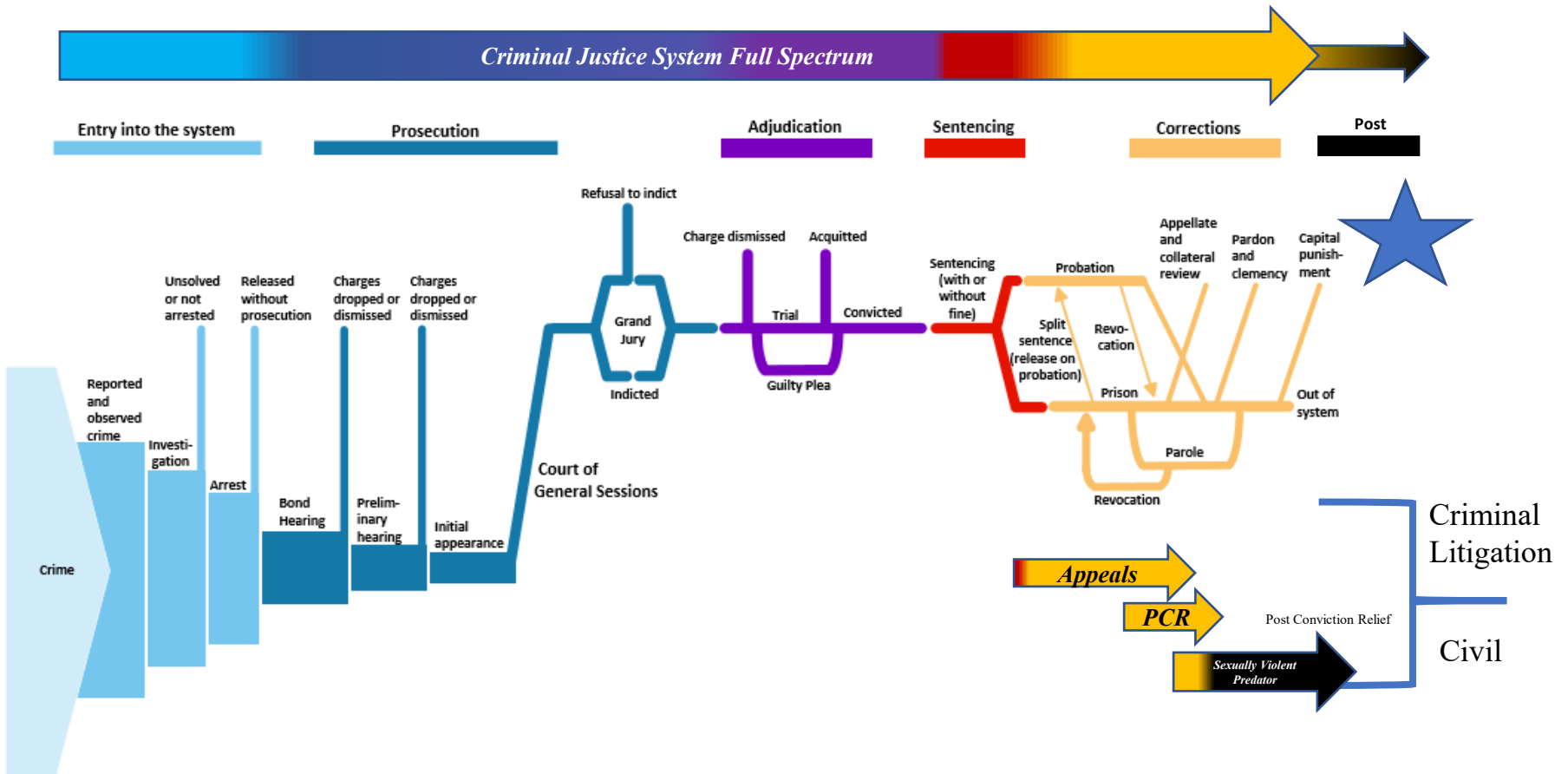
- Donna D'Alessio, LA
- Brandy Rankin, LA
- Nina Augustine, LC
- Adrienne Lowery, LC
- Sydney Grapp, Intern



Alan Wilson
Attorney General

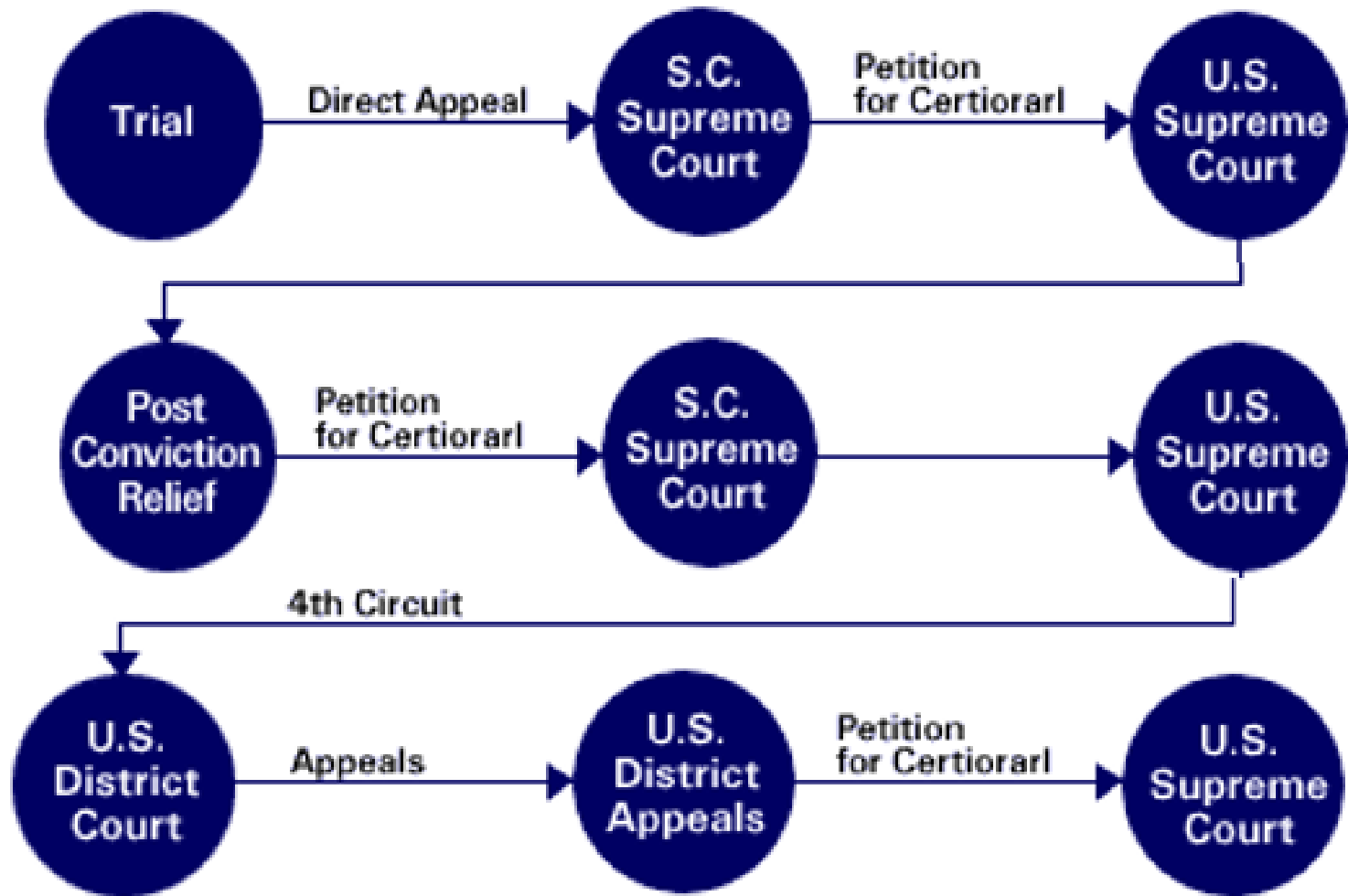
Don Zelenka
Deputy AG

Background



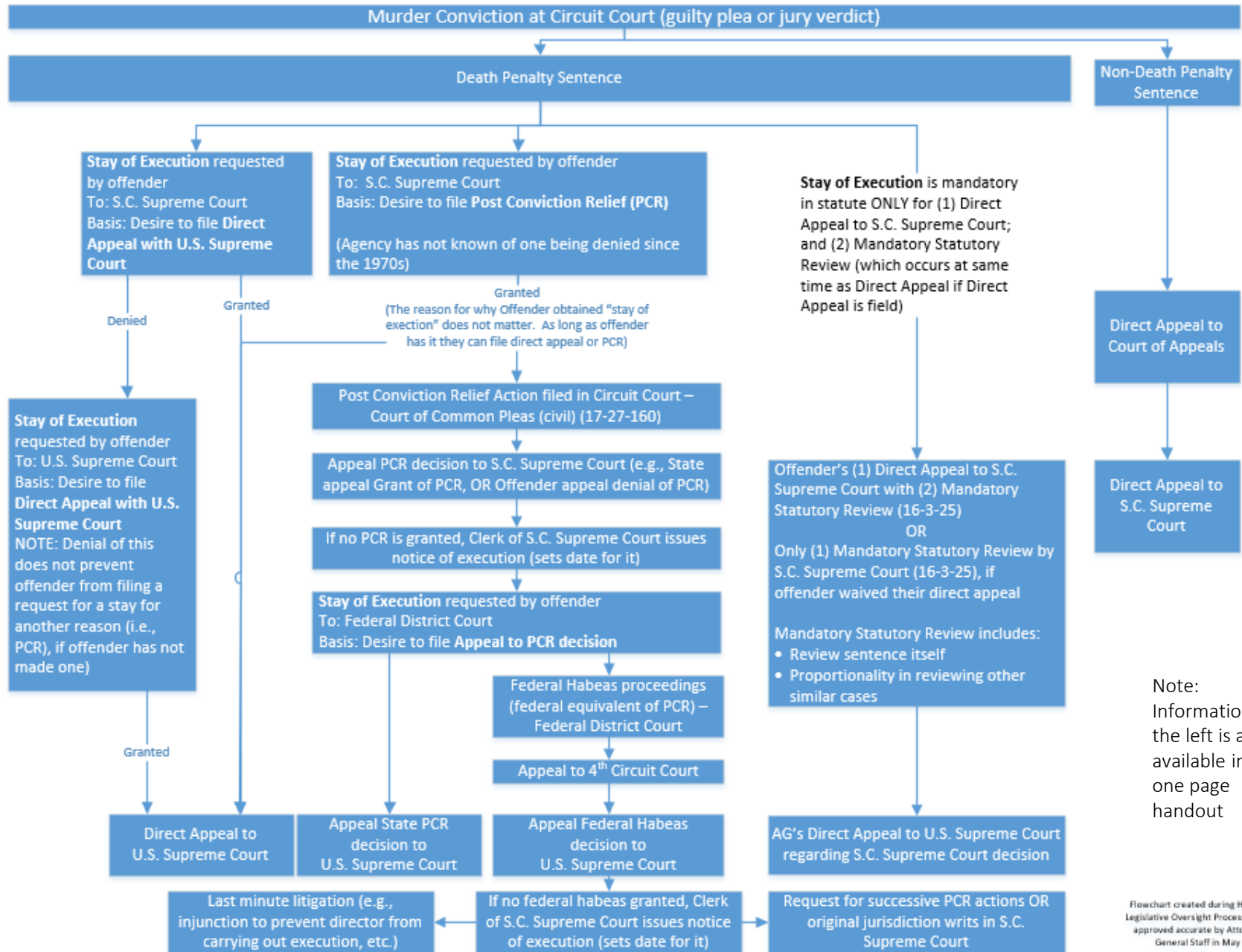
Note: This slide shows where the Attorney General's Office services fall in the criminal justice system flow chart utilized by prior state criminal justice entities under review. It only includes General Sessions because juvenile justice, summary courts, and diversion programs are not a primary function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

Assumed Process



Actual Process

Appeal and Post Conviction Relief Process for Murder Convictions



Note:
Information to the left is also available in one page handout



Alan Wilson
Attorney General

Don Zelenka
Deputy AG

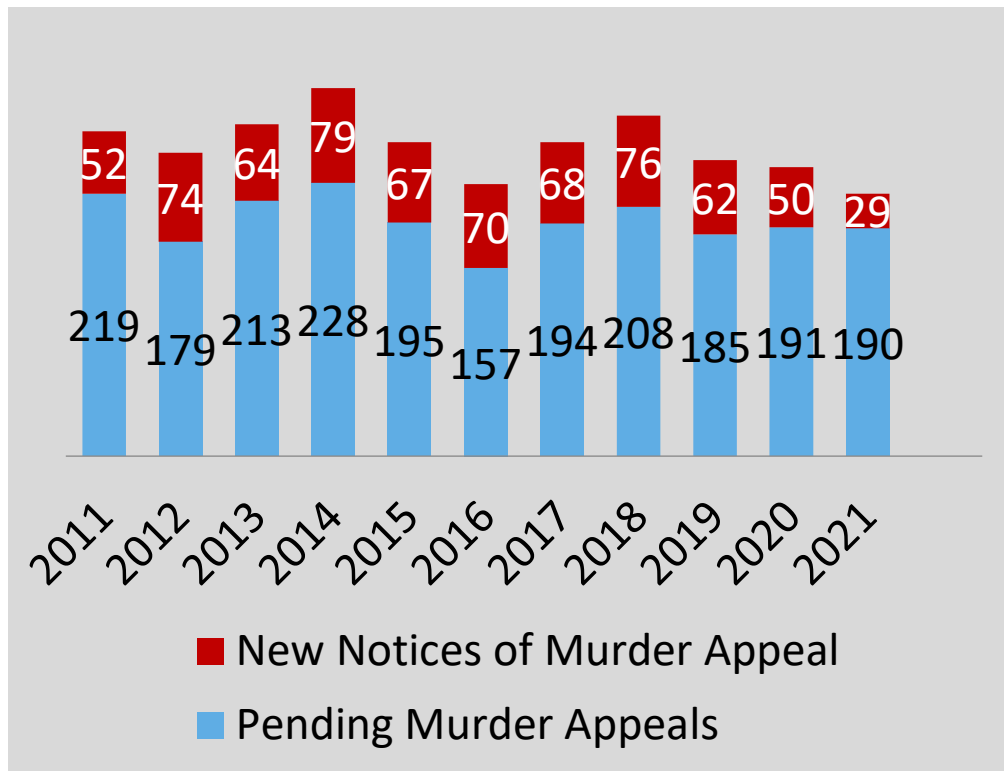
Associated Services

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

Direct Appeal of Non-Death Penalty Murder Conviction/Sentence

Agency Service #101 and #102

- Represents the State in direct appeal litigation resulting from challenges to non-capital murder convictions and sentences
- Note: Cases received are unlikely to be completed the same year due to the length of time that it takes to cycle through the appellate process. Consequently, the pending cases which are carried over from the prior year should be considered in addition to the number of new cases for a total of murder direct appeals handled within the relevant time frame.



Agency Service #101: Non-Capital Murder Convictions Briefing and Other Filings

Does law require it: Yes

Assoc. Law(s): S.C. Const. art. V, § 24; S.C. Code § 1-7-30; S.C. Code § 1-7-40

Single Unit:		Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Full representation after filing of a merits brief; extent of briefing and filing of other documents varies depending on progression of appeal	2016-17	68.00	\$5,571.31	3.37	\$378,849.14	1.93%
	2017-18	76.00	\$3,632.69	3.09	\$276,084.73	0.46%
	2018-19	62.00	\$4,074.74	4.00	\$252,633.79	0.38%
	2019-20	53.00	\$7,673.40	4.33	\$406,690.13	0.53%

Agency Service #102: Non-Capital Murder Convictions Oral Arguments

Does law require it: Yes

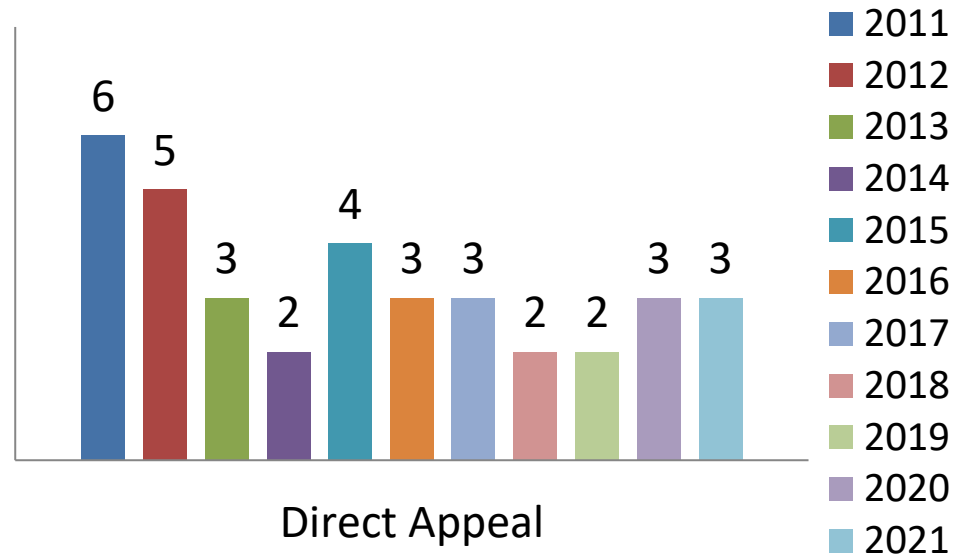
Assoc. Law(s): S.C. Const. art. V, § 24; S.C. Code § 1-7-30; S.C. Code § 1-7-40

Single Unit:		Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Argument made in the S.C. Supreme Court, or S.C. Court of Appeals. Note: Counsel is also provided should the case go to the Supreme Court of the United States on direct appeal	2016-17	25.00	\$1,332.49	0.35	\$33,312.28	0.17%
	2017-18	11.00	\$3,224.07	0.15	\$35,464.82	0.06%
	2018-19	14.00	\$2,246.86	0.13	\$31,455.99	0.05%
	2019-20	14.00	\$1,401.26	0.16	\$19,617.61	0.03%

Direct Appeal – Death Penalty

Agency Service #103 and #104

- Represents the State in direct appeal litigation resulting from challenges to capital murder convictions and sentences
- As with non-capital murder appeals, murder appeals from capital cases are not often completed within the same fiscal year as they are filed; therefore, the numbers reflected may be duplicative of cases pending and waiting decision after briefing and argument



Agency Service #103: Capital Murder Convictions Briefing and Other Filings		Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Single Unit: Full representation after filing of a merits brief; extent of briefing and filing of other documents varies depending on progression of appeal	2016-17	3.00	\$6,277.86	0.29	\$18,833.59	0.00%
	2017-18	2.00	\$0.00	0.00	\$0.00	0.00%
	2018-19	2.00	\$1,144.95	0.00	\$2,289.89	0.00%
	2019-20	3.00	\$906.59	0.27	\$2,719.78	0.00%

Agency Service #104: Capital Murder Convictions Oral Arguments		Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Single Unit: Argument made in the Supreme Court of South Carolina Note: Counsel is also provided should the case go to the Supreme Court of the United States on direct appeal	2016-17	1.00	\$1,557.61	0.03	\$1,557.61	0.00%
	2017-18	0.00	Insufficient	0.00	\$0.00	0.00%
	2018-19	0.00	Insufficient	0.00	\$3,235.86	0.00%
	2019-20	0.00	Insufficient data provided.	0.00	\$0.00	0.00%

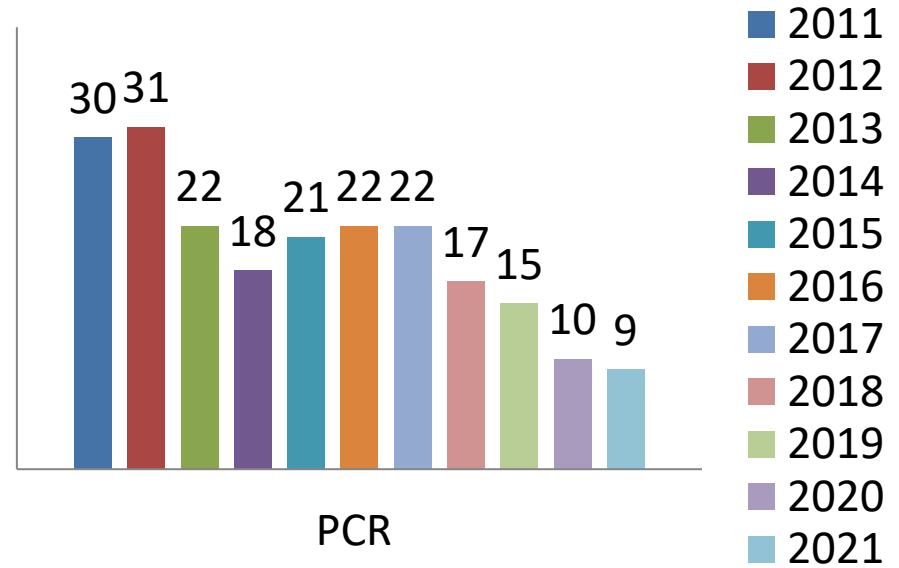
Does law require it: Yes

Assoc. Law(s): S.C. Const. art. V, §24; S.C. Code § 1-7-30; S.C. Code § 1-7-40; S.C. Code § 16-3-25

Post Conviction Relief – Death Penalty

Agency Service #105 and #106

- Represents the State in post-conviction relief actions challenging capital murder convictions and sentences
- Trend is the number of capital cases in state PCR review is dropping as state cases transition from state review to federal review.
- While nine cases are at the PCR level, five are successive PCRs



Agency Service #105: Capital Cases Pending; Returns, Discovery and Evidentiary hearing preparations

Does law require it: Yes

Assoc. Law(s): S.C. Const. art. V, § 24; S.C. Code § 1-7-30; S.C. Code § 1-7-40; S.C. Code § 17-27-160; S.C. Code § 17-27-150 (B)

	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	22.00	\$3,656.36	0.80	\$80,439.87	0.41%
2017-18	17.00	\$5,555.34	1.03	\$94,440.83	0.16%
2018-19	15.00	\$4,499.98	0.99	\$67,499.63	0.10%
2019-20	10.00	\$5,143.83	0.60	\$51,438.29	0.07%

Agency Service #106: Capital Case Evidentiary Hearings and Post-hearing Briefing and/or Proposed Orders

Does law require it: Yes

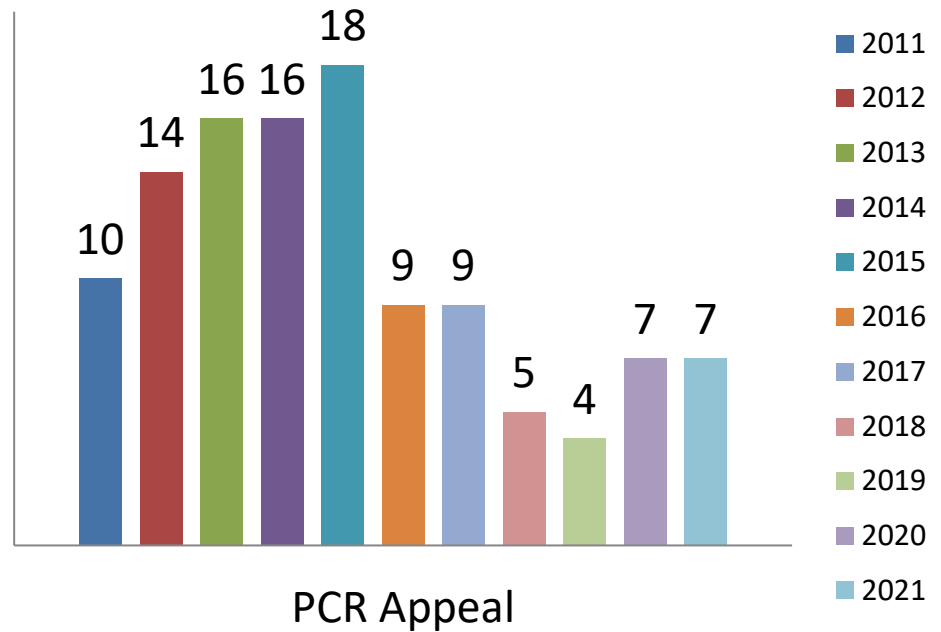
Assoc. Law(s): S.C. Const. art. V, § 24; S.C. Code § 1-7-30; S.C. Code § 1-7-40; S.C. Code § 17-27-160

	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	9.00	\$9,624.60	1.91	\$86,621.40	0.44%
2017-18	3.00	\$39,594.37	1.24	\$118,783.10	0.20%
2018-19	6.00	\$27,807.21	0.85	\$166,843.26	0.25%
2019-20	2.00	\$41,238.77	0.89	\$82,477.53	0.11%

Post Conviction Relief Appeals – Death Penalty

Agency Service #107 and #108

- Represents the State in post-conviction relief action appeals challenging the denial of relief in capital post-conviction actions; or, alternatively, challenging the grant of relief in capital post-conviction relief actions when appropriate
- The trend is that the number of capital cases in state PCR review is dropping as state cases transition from state review to federal review. Further, appellate review is only available by the discretionary process instituted by petition. Several cases have been presented by petition with the unit filing a return but no further briefing when the petition is denied. Where no formal briefing is required, no oral argument is generally required



Agency Service #107: Capital Cases; Return and further briefing

Does law require it: Yes

Assoc. Law(s): S.C. Const. art V, § 24; S.C. Code § 1-7-30; S.C. Code § 1-7-40; S.C. Code § 17-27-160; S.C. Code § 17-27-100

	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	9.00	\$5,916.21	0.73	\$53,245.91	0.27%
2017-18	5.00	\$14,754.51	0.91	\$73,772.53	0.17%
2018-19	4.00	\$15,869.17	0.51	\$63,476.66	0.09%
2019-20	7.00	\$0.00	0.59	\$0.00	0.00%

Agency Service #108: Capital Cases Oral Arguments

Does law require it: Yes

Assoc. Law(s): S.C. Const. art V, § 24; S.C. Code § 1-7-30; S.C. Code § 1-7-40; S.C. Code § 17-27-160; S.C. Code § 17-27-100

	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	1.00	\$1,137.55	0.00	\$1,137.55	0.10%
2017-18	0.00	Insufficient	0.00	\$0.00	0.00%
2018-19	0.00	Insufficient	0.00	\$1,003.31	0.00%
2019-20	0.00	Insufficient data provided.	0.00	\$59,069.07	0.08%

Advice and assistance to Circuit Solicitors;

Advice and consultation with other prosecuting or related entities;

Advice and assistance within Agency;

Training presentations;

Miscellaneous Agency assignments

- Difficult to quantify aid and advice generally; however, there is an in-house appellate review committee which meets weekly and requires two attorneys to expend multiple hours each week to prepare and attend.
- Further, the Capital Unit receives special project assignments to handle non-capital PCR terms to assist the AG's PCR division

Does law require it: Yes

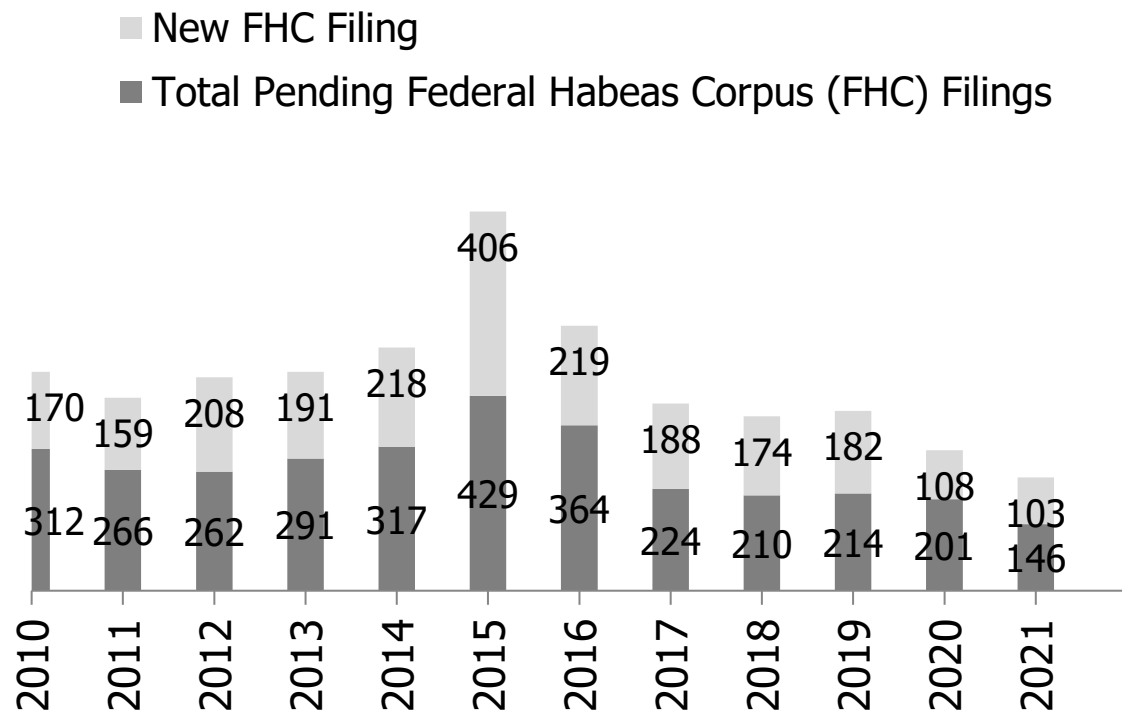
Assoc. Law(s): S.C. Const. art V, § 24; S.C. Code § 1-7-30; S.C. Code § 1-7-40; S.C. Code § 1-7-100

	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	Not provided	Insufficient	2.08	\$106,848.04	0.54%
2017-18	Not provided	Insufficient	2.26	\$217,805.53	0.37%
2018-19	Not provided	Insufficient	1.07	\$184,240.38	0.28%
2019-20	Not provided	Insufficient	0.59	\$151,757.40	0.20%

Represent the Warden/custodian in federal habeas actions - pre-trial detention issues or criminal convictions and sentences

Agency Service #110

- Habeas rules provide that either the warden or other custodial individual, or the attorney general, may be named as the respondent in a habeas action
- As with direct appeal and post-conviction relief actions, cases are not generally addressed and closed the same year they are filed. For federal habeas actions, the average pending number is 216. No separate files are opened for federal habeas appeals; however, most non-capital federal habeas appeals do not require additional briefing or argument. Counsel continues to provide representation on appeal where additional filings are necessary whether in the Fourth Circuit Court of Appeals and/or in the Supreme Court of the United States



Does law require it: Yes

Assoc. Law(s): S.C. Const. art V, § 24; S.C. Code § 1-7-30; S.C. Code § 1-7-40; S.C. Code § 1-7-80(1); 28 U.S.C. § 2241; 28 U.S.C. § 2254; Rule 2, Rules Governing Section 2254 Cases in United States District Courts

		Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Single Unit	2016-17	188.00	\$2,248.91	3.27	\$422,794.90	2.15%
New Federal Habeas	2017-18	174.00	\$1,603.45	2.79	\$278,999.60	0.47%
Corpus Filings	2018-19	182.00	\$1,386.63	4.65	\$252,367.36	0.38%
	2019-20	108.00	\$1,333.77	5.59	\$144,047.20	0.19%



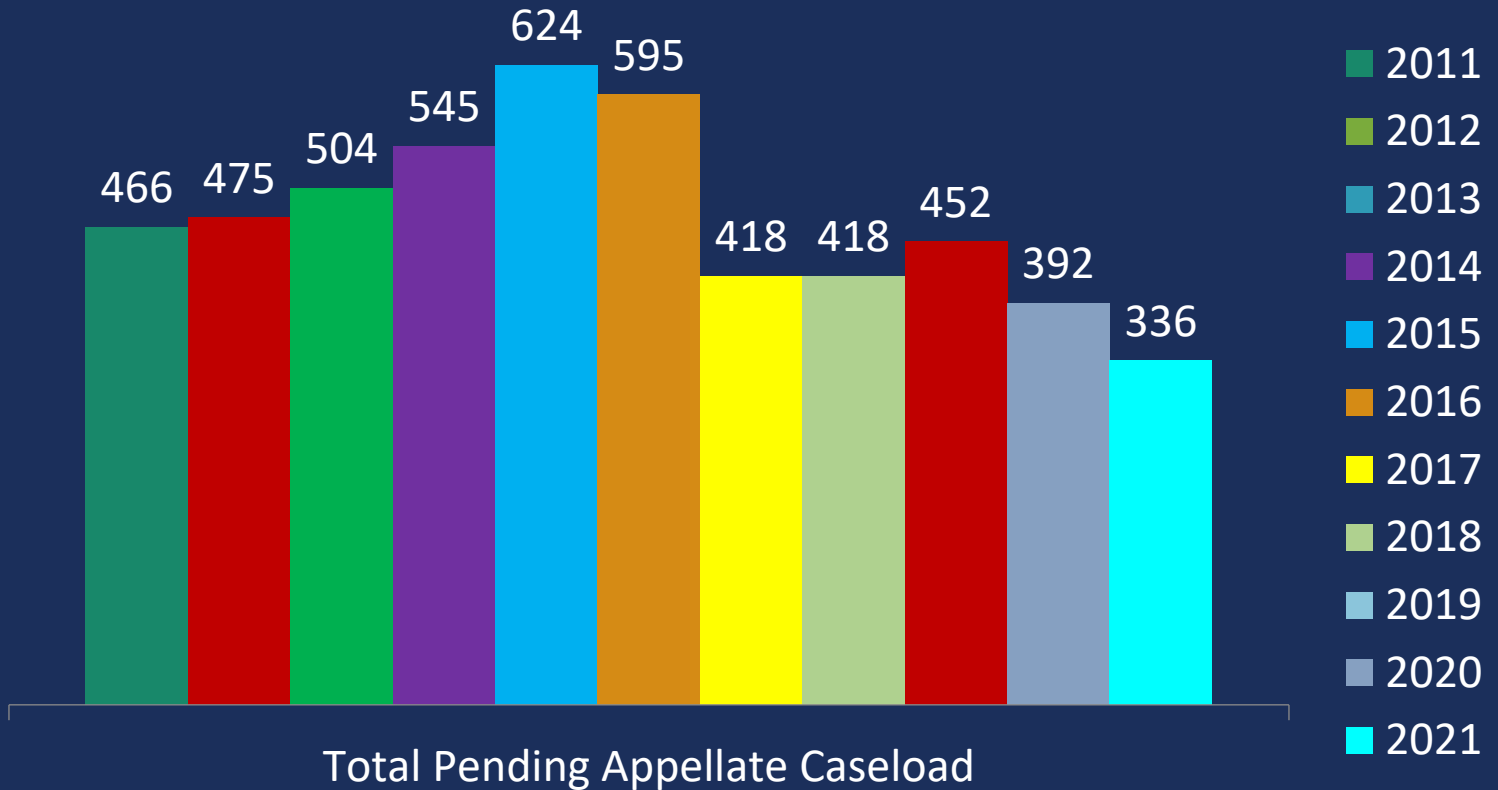
Alan Wilson
Attorney General

Don Zelenka
Deputy AG

Associated Performance Measures

The next slides only contain information on performance measures that are associated with services covered earlier in this presentation.

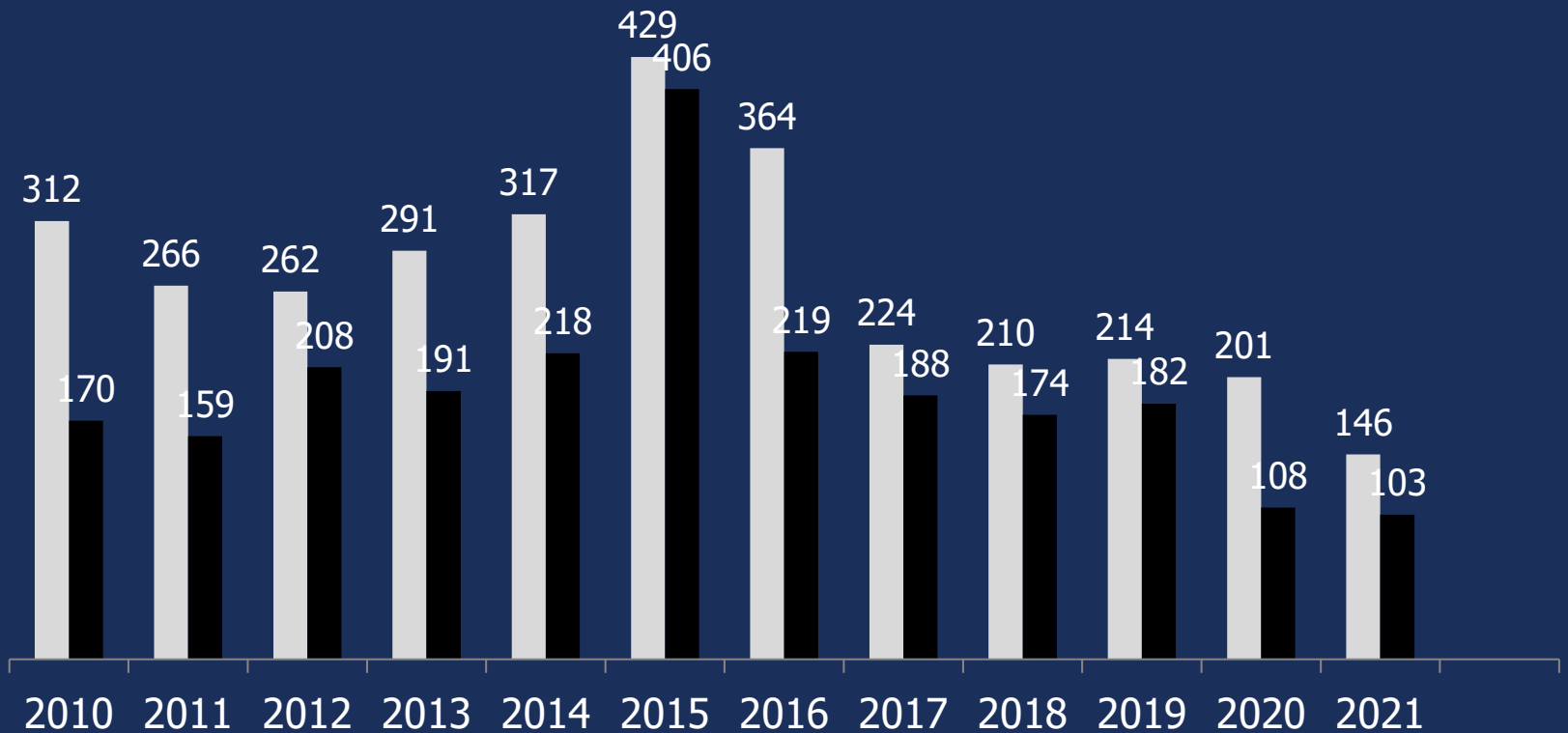
TOTAL PENDING APPELLATE CASELOAD



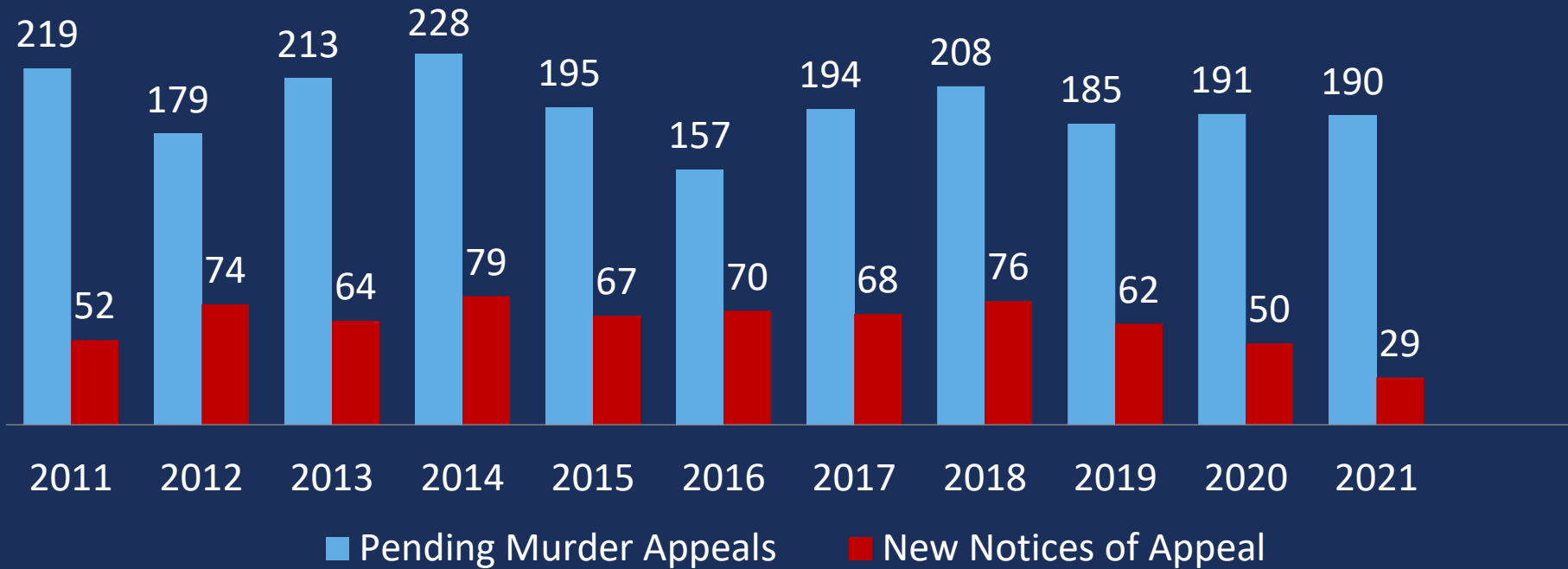
Federal Habeas Corpus Trends

■ Total Pending Federal Habeas Corpus (FHC) Filings

■ New FHC Filing



MURDER APPEALS



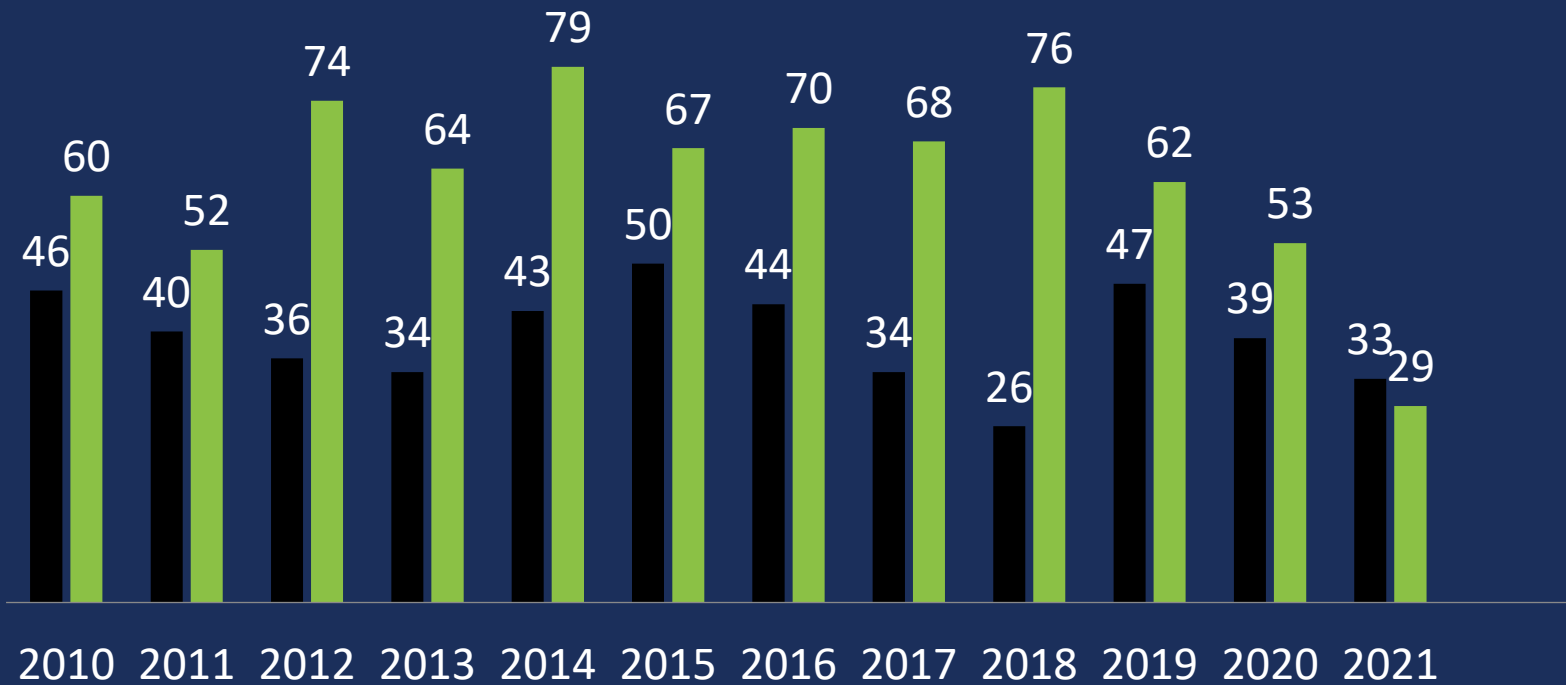
****2021 Note****

original jurisdiction petitions: 11
adjusted murder appeal new cases:
40

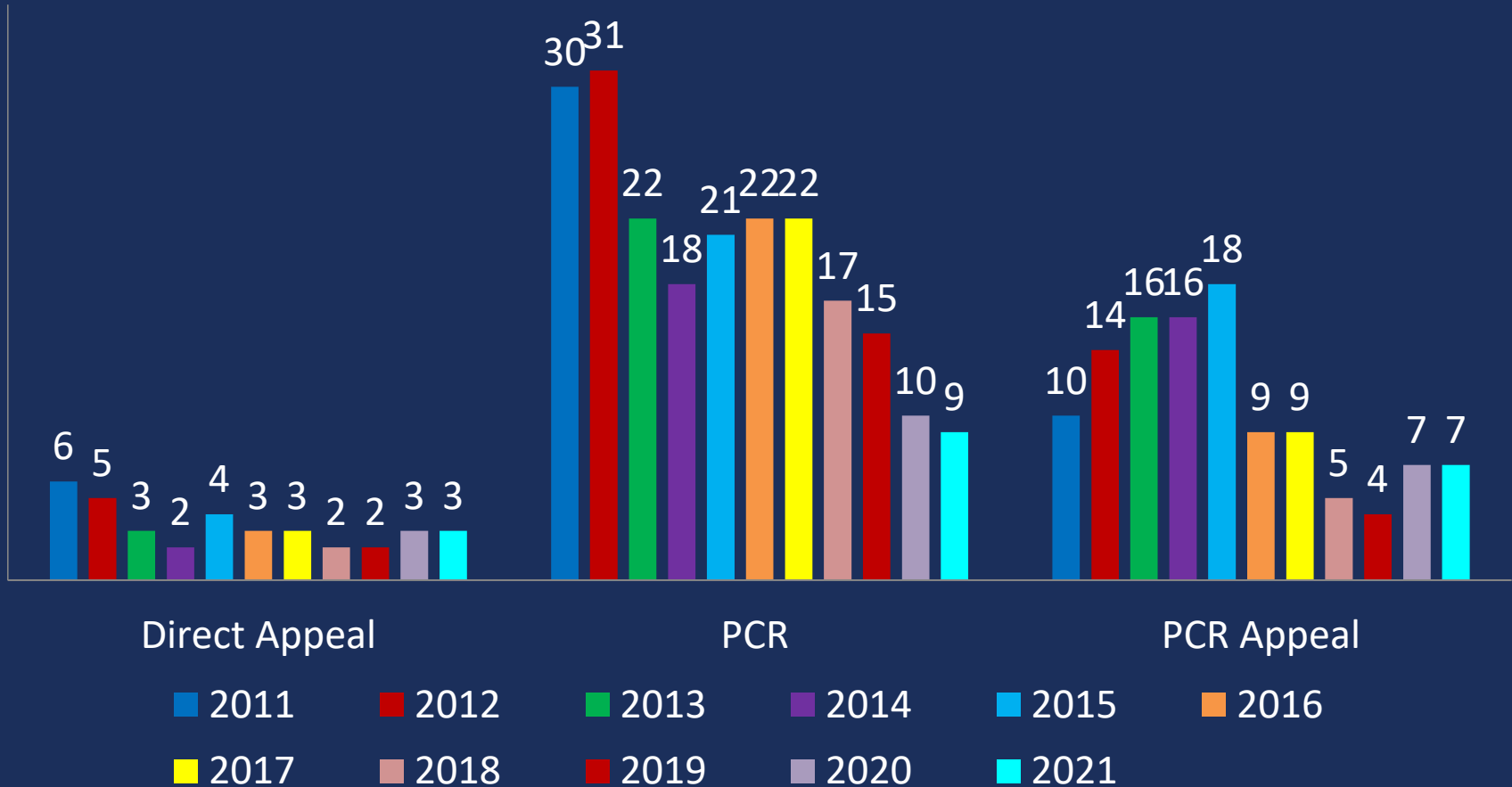
MURDER APPEALS

Briefing Lag Trends

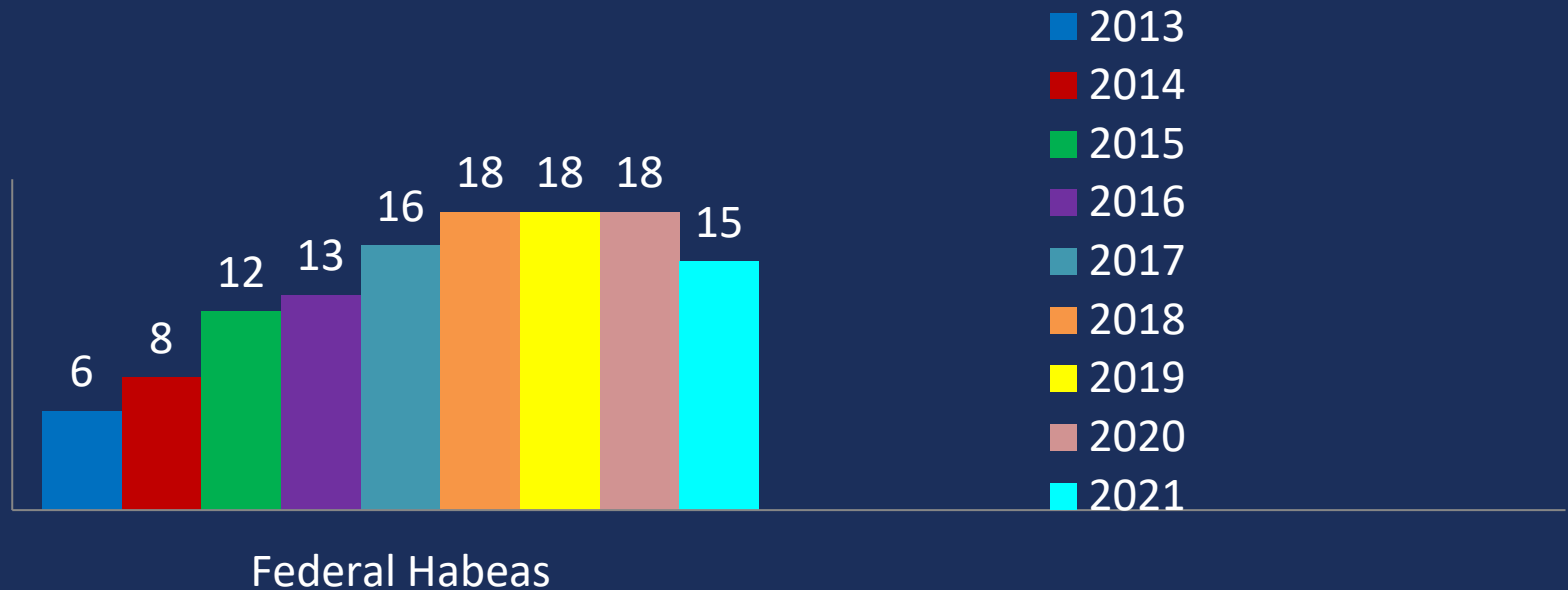
■ Merit Briefs - IBOA ■ New Appeals



DEATH PENALTY CASE STATUS



DEATH PENALTY CASE STATUS



Federal Habeas Corpus Death Penalty Case Status

District Court:

2019- 11

2020- 7

2021- 6

2021 DISTRICT COURT BREAKDOWN

Stayed: 4 (Aleksey; Robertson; Stone; Woods)

Briefing: 2 (Bryant (Sumter); Stanko (Horry))

COA4:

2019-7

2020-8*

[* ALSO THREE IN SUPREME COURT (MOORE, SIGMON, OWENS) – TOTAL 18 ON PRIOR GRAPH]

2021-9

2021 FOURTH CIRCUIT COURT OF APPEALS BREAKDOWN

Stayed:	1	(Alkebulanyahh)
Argued, Waiting Opinion:	2	(Mahdi, Stokes)
En Banc Argument ordered:	1	(Bryant)
Briefed, Set for Argument:	2	(Allen, Bowman)
Briefed, Waiting Argument:	1	(Wood)
Briefing:	1	(Bixby)
Opinion, Waiting SCOTUS:	1	(Terry)

** 2021 Note**

Concentration in Fourth Circuit - cases moving faster – one ready for SCOTUS (Terry);
Estimating 2-3 more in next term (Mahdi, Stokes, Bryant)



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.

Successes and Concerns

Successes

Capital Litigation

- Moving capital cases;
- Creating responses to end-stage litigation (expedited)

Direct Appeal, Federal Habeas, Non-capital PCR:

- Moving cases at consistent rate; adjustment of work flow; continued full work load;
- Sharing non-capital case load; excellent briefs by criminal appeals attorneys when non-capital murder cases shared among sections

Concerns

Capital Litigation

- Time for concentration in capital litigation

Direct Appeal, Federal Habeas, Non-capital PCR:

- COVID impact

Needs

Legislation

- Capital PCR Statute:
 - Expansion of PCR counsel qualifications (consistent with Federal Statute);
 - Provisions to encourage compliance with expedited provisions in statute;
 - Mandate consequences for Ineffective Assistance finding
- Kidnapping Statute:
 - Revisit sentencing provision;
 - Avoid unintended sentencing reduction;
 - Unnecessary appeals could be eliminated;
 - Avoid unnecessary resentencing if murder conviction vacated;
 - End avoidance of sentence for separate crime

Other

- Opt in to Expedited Procedures in Federal Habeas
 - (shorten district court time at least six months; provides additional defenses)



Capital Litigation - 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 #12

- Law: S.C. Code Section 16-3-910 Kidnapping
- Current Law: Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years unless sentenced for murder as provided in Section 16-3-20.
- Recommendation: Remove the final phrase: “unless sentenced for murder as provided in Section 16-3-20.”
- Basis for Recommendation: 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.
- Others Potentially Impacted: Crime Victims, Victim Services and Advocates

Section 16-3-910.

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years ~~unless sentenced for murder as provided in Section 16-3-20.~~

LAW CHANGE RECOMMENDATION #13

- Law: S.C. Code Section 17-27-160 (B)
- Current Law: Capital case post-conviction relief procedures
- Recommendation: To expand the pool of available, qualified attorneys; to place limits on the number of circuit court cases assigned to one attorney at a given time; and place additional qualification and training requirements on attorneys previously found ineffective in capital cases before that attorney is allowed to receive an appointment in a capital post-conviction relief case.
- Basis for Recommendation: To protect the goal of expedited proceedings under this section by **expanding the pool of attorneys that may be appointed to represent a death-sentenced inmate in post-conviction relief**; to promote the goal of expedited proceedings by **limiting the number of cases assigned to any one attorney while the cases are still in circuit court**; and, to promote qualified and fair appointments by **requiring an attorney who is found ineffective to meet additional requirements before that attorney may be appointed to another case pursuant to this section.**
- Others Potentially Impacted: None

Section 17-27-160.

(B) Upon receipt of the application for post-conviction relief, the counsel for the respondent shall file a return within thirty days after receipt of the application
S.C. Code Ann. § 17-27-160

If the applicant is indigent and desires representation by counsel, two counsel shall be immediately appointed to represent the petitioner in this action. At least one of the attorneys appointed to represent the applicant must have previously represented a death-sentenced inmate in state or federal post-conviction relief proceedings or (1) must meet the minimum qualifications set forth in Section 16-3-26(B) and Section 16-3-26(F) and (2) have successfully completed, within the previous two years, not less than twelve hours of South Carolina Bar approved continuing legal education and/or professional training primarily involving advocacy in the field of capital appellate and/or post-conviction defense. The Supreme Court may promulgate additional standards for qualifications of counsel in capital post-conviction proceedings.

The court may not appoint an attorney as counsel under this section if the attorney represented the applicant at trial or in a direct appeal unless the applicant and the attorney request appointment on the record or the court finds good cause to make the appointment.

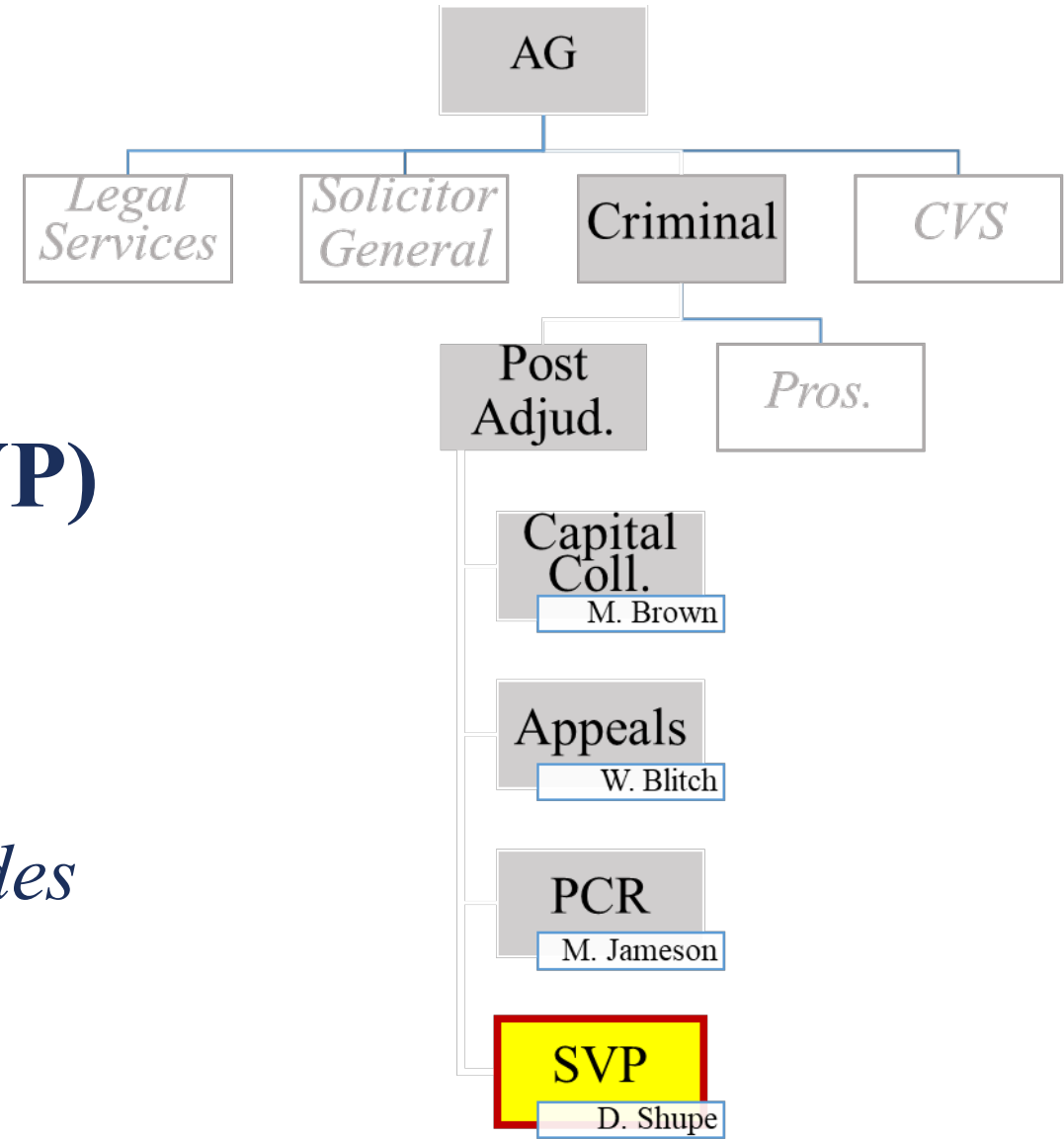
Section 17-27-160. (B) (cont.)

The court may not appoint an attorney as counsel under this section if the attorney has two or more appointments in capital PCR actions currently pending in the circuit court at the time the appointment of counsel is being made pursuant to S.C. Code § 17-27-160 (B);

The court may not appoint an attorney as counsel under this section if the attorney was found ineffective in a separate proceeding, in any court, for a period of five years from the finding, and may be considered for appointment at the conclusion of the period of five years only after qualification by additional training in capital trial and/or post-conviction relief of no less than twelve hours in the two years prior to appointment, and be appointed along with another attorney who must satisfy the requirement of having previously represented a death-sentenced in state or federal post-conviction relief proceedings.

Counsel appointed in these cases shall be compensated from the funding provided in Section 16-3-26 in the same manner and rate as appointed trial counsel, provided that Section 16-3-26(I) shall not apply to counsel appointed in post-conviction relief proceedings. Appointed counsel on appeal from state post-conviction relief cases shall be funded and compensated from the funds established for representation of indigents on appeal by the Office of Appellate Defense pursuant to Chapter 4, Title 17. Nothing in this section shall preclude an out-of-state attorney from appearing pro hac vice.

AGENCY PRESENTATION – SEXUALLY VIOLENT PREDATOR



Sexually Violent Predator (SVP) Section

See handout along with following slides

Mission

Provide timely, efficient and effective litigation of civil commitment proceedings, annual reviews, and releases of sexually violent predators.

Background

General Assembly found...

- Mentally abnormal and extremely dangerous group of sexually violent predators exists who require involuntary civil commitment in a secure facility for long term control, care, and treatment.
- Likelihood these predators will engage in repeated acts of sexual violence if not treated for their mental conditions is significant.

General Assembly determined...

- Existing civil commitment process is inadequate to address the special needs of these predators and risks they present to society
- Involuntary civil commitment process for the long term control, care, and treatment of these predators, separate from those committed under traditional civil commitment statutes, is necessary.
- Civil commitment of these predators is not intended to stigmatize the mentally ill community.

Staffing

Terminology

SADAG – Senior Asst. Deputy Attorney General

AAG – Asst. Attorney General

LA – Legal Asst.

Current Staff

Deb Shupe, SADAG Misty Alewine, LA (8/17/21)
 Chris Runyan, AAG Law Clerk
 Suzanne Shaw, AAG Intern (SVP/Criminal
 Sally Ellison, LA Appeals)

Notes

- Lost SVP attorneys in June 2020(FY20) and Sept. 2020 (FY21) (retirement and resignation)
- Senior law clerk became AAG in 11/20
- New AAG came on board in 12/20.

Fiscal Year	Turnover Percentage			Turnover Reasons			Employee satisfaction tracked?	Exit interviews conducted?
	Turnover	Leave unit	In unit at end of year	Personal	Employment outside state government	Retirement		
2017	29%	1	4	100%	0%	0%	No	Yes
2018	0%	0	4	0%	0%	0%	Yes	No
2019	33%	1	3	0%	100%	0%	No	Yes
2020	40%	1	3	0%	0%	100%	No	Yes



Sexually Violent Predator (SVP) Proceeding Details

Sexually Violent Offense

- Examples include: Criminal sexual conduct in 1st, 2nd, or 3rd degree; Criminal sexual conduct with minors in 1st, 2nd, or 3rd degree; Producing, directing, or promoting sexual performance by a child; Assault with intent to commit criminal sexual conduct; Incest

Notice Before Release, etc.

Potential agencies involved: SCDC, PPP, Victim, AG's Office

Notice must include:

- person's name, identifying factors, anticipated future residence, and offense history; and
- documentation of institutional adjustment and any treatment received.

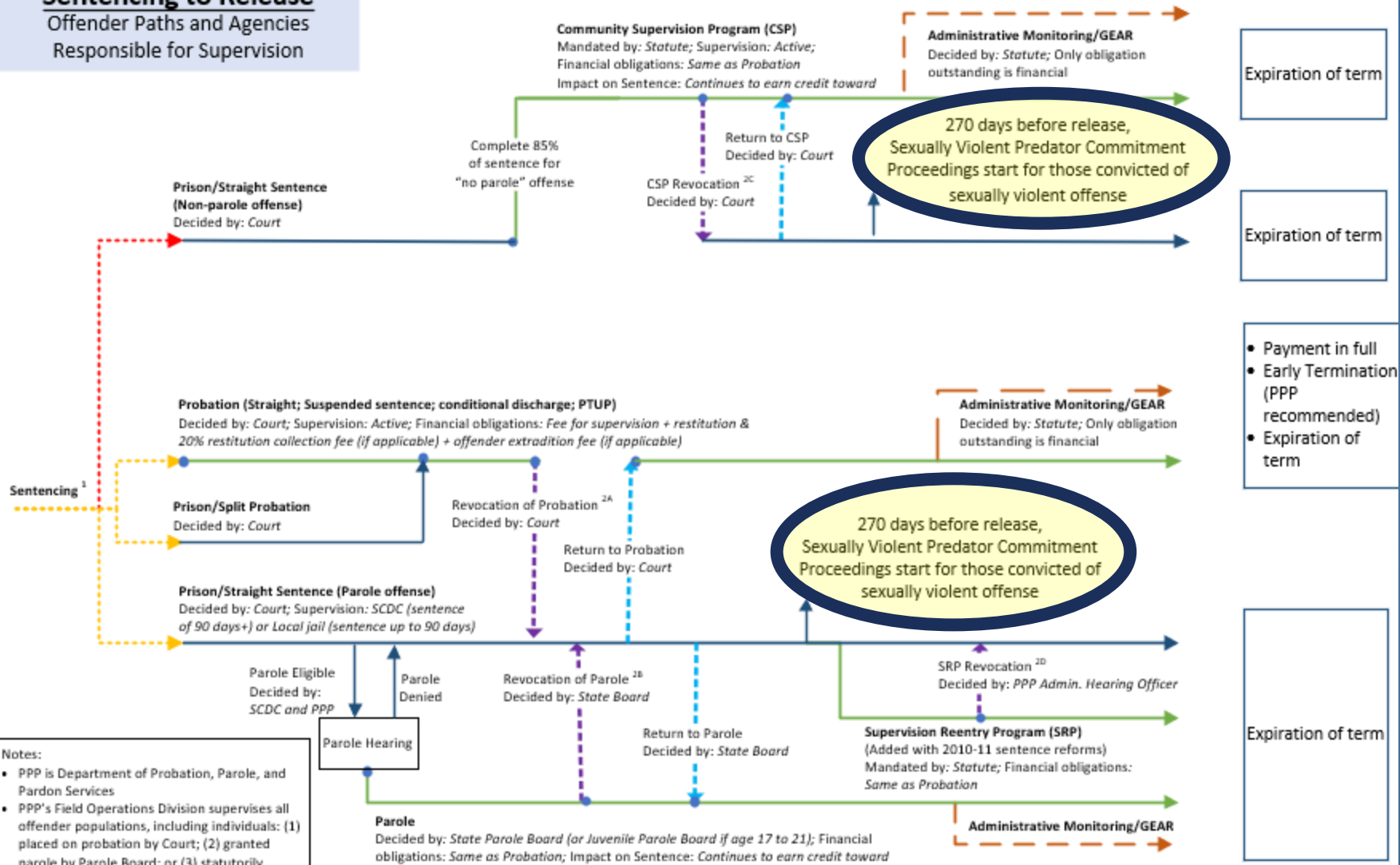
Person convicted of sexually violent offense AND
sentenced to incarceration/confinement
S.C. Code 44-48-30(1),(2)



270 days before release (or other conditions in statute),
agency with jurisdiction gives notice to Multidisciplinary
Team Review (MDT), victim, and AG's Office
(S.C. Code 44-48-40)

Sentencing to Release

Offender Paths and Agencies Responsible for Supervision



- Notes:
- PPP is Department of Probation, Parole, and Pardon Services
 - PPP's Field Operations Division supervises all offender populations, including individuals: (1) placed on probation by Court; (2) granted parole by Parole Board; or (3) statutorily released to one of PPP's supervision programs that include: CSP, SRP, and Shock Incarceration Program parole.
 - Youthful Offender Act and Shock Incarceration Programs are not shown in the chart
 - PTUP means a court orders a probation term end upon payment of fines, court costs, assessments and restitution.

Important forms: 1. Sentencing Sheet; 2. Revocation Orders: A. Probation (Form 9); B. Parole (Form 1160); C. CSP (Form 1152); D. SRP (Form 1455)

Key:

■ Non-Parole Offenses	■ Incarceration	■ PPP Inactive Supervision	■ Return to PPP Jurisdiction	● Offender entering or leaving PPP jurisdiction
■ Parole Offenses	■ PPP Active Supervision	■ Revocation (leaving PPP jurisdiction)	 Out of System	



Sexually Violent Predator (SVP) Proceeding Details

Review by Multidisciplinary Team (MDT)

Team includes representative from:

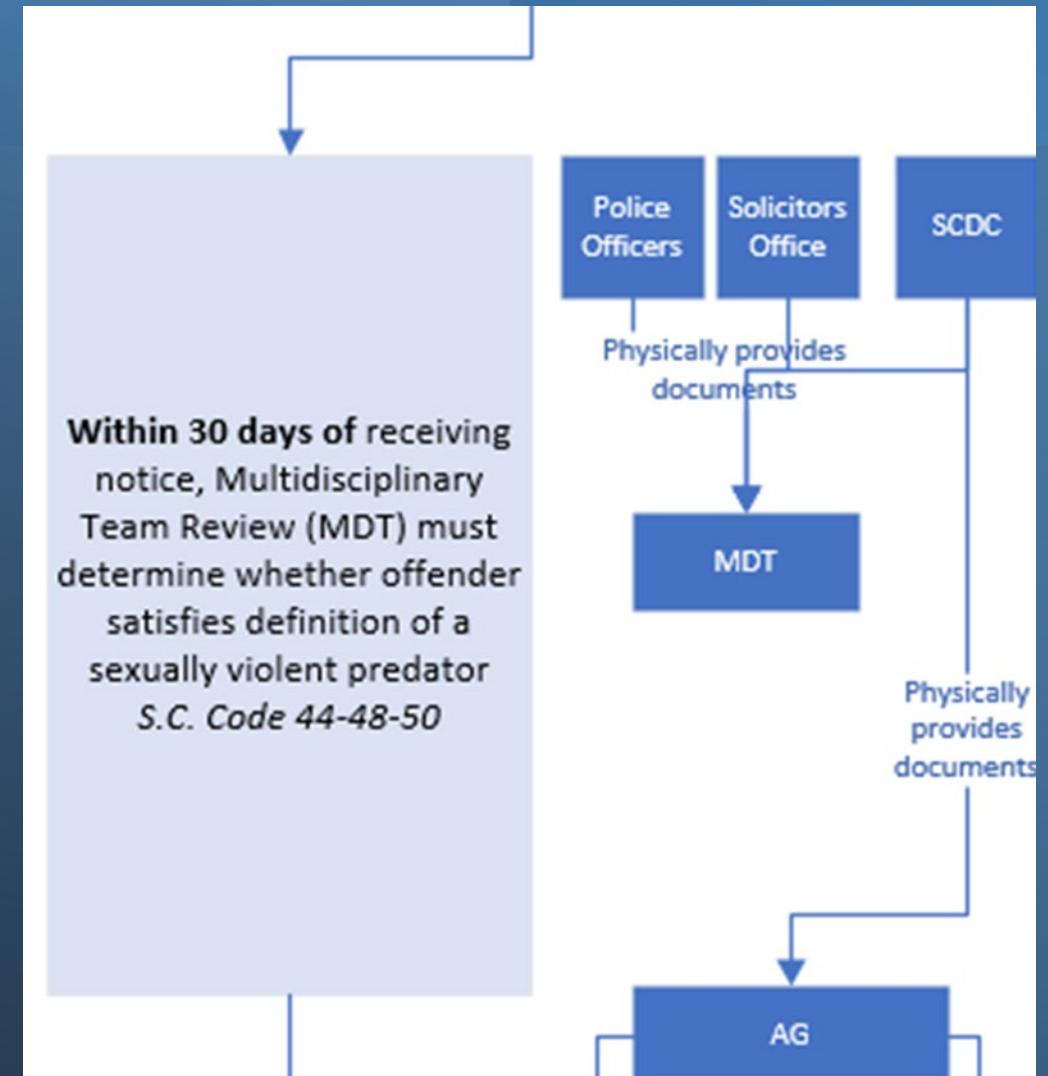
- SCDC (chair), PPP, DMH (trained, qualified mental health clinician with expertise in treating sexually violent offenders), retired judge appointed by Chief Justice, attorney with substantial experience in the practice of criminal defense law appointed by Chief Justice
- **Changes AG desires:** DMH representative have education, training or experience in assessing, examining, and/or treating sex offenders.

Review may include, but is not limited to, the offender's

- criminal offense record, medical and psychological records, treatment records, victim's impact statement, and any disciplinary or other records from confinement or supervision.
- Source of information reviewed: Police officers, Solicitors Office, SCDC

If MDT determines person satisfies definition of sexually violent predator

- MDT must forward a report of the assessment to the prosecutor's review committee (PRC) and notify the victim.
- **Changes AG desires:** If MDT finds probable cause exists to believe person is a SVP, ensure an individual may not be released to the supervised re-entry program until resolution of the SVP proceedings to ensure the MDT has adequate time to make a probable cause determination. If the person was eligible for supervised re-entry before the review by the MDT, and the MDT finds no probable cause, the person would then immediately be eligible for supervised re-entry.





Sexually Violent Predator (SVP) Proceeding Details

Review by Prosecutor's Review Committee (PRC)

AG responsible and meets

- AG appoints PRC to review the report and records
- PRC must include, but is not limited to the following:
 - 1 AG staff (chair), 1 elected circuit solicitor, 1 victim's representative.

Review must include:

- records and reports from MDT, and information from circuit solicitor who prosecuted the person.

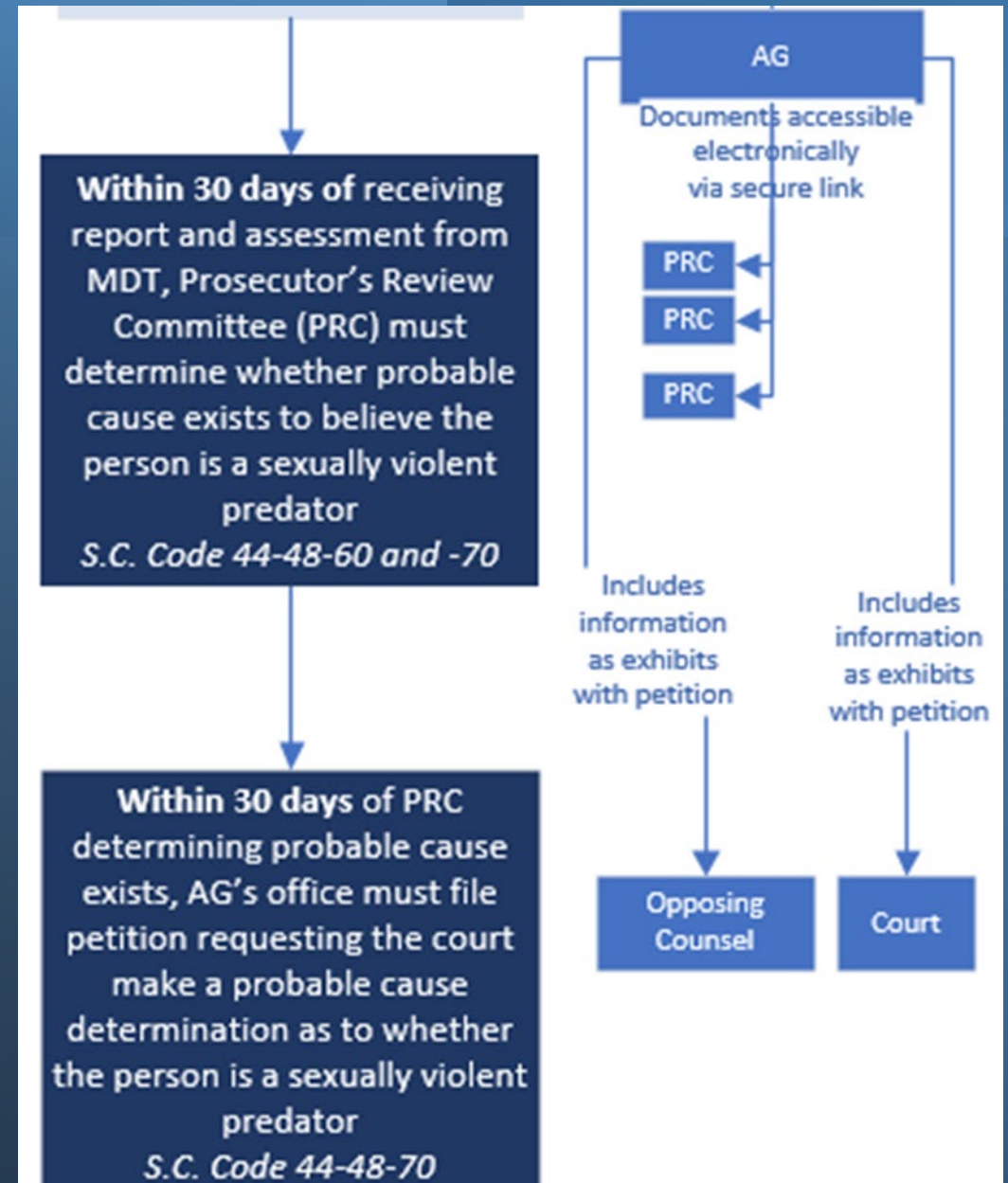
If PRC determines probable cause exists to believe person is a SVP

- AG must notify the victim PRC found probable cause exists
- AG must file petition for probable cause determination with the court

Petition requesting Court make probable cause determination

AG responsible and meets

- Filed in jurisdiction where person committed the offense
- Must allege person is a SVP and state sufficient facts that would support a probable cause allegation





Sexually Violent Predator (SVP) Proceeding Details

Trial (Court and Opposing Counsel schedules impact date)

- AG must notify the victim of time, date, and location of trial.
- Indigent persons have right to appointed counsel
- Trial may be continued upon request of either party and showing of good cause, or by the court on its own motion if respondent will not be substantially prejudiced.
- Trial must occur in county where offense was committed
- Jury must decide by unanimous verdict (if jury trial was requested)
- Upon a mistrial, the court must
 - direct that the person be held at a local or regional detention facility until another trial is conducted.
 - A subsequent trial following a mistrial must be held within ninety days of the previous trial, unless the subsequent trial is continued.

Within 90 days of court appointed expert issuing evaluation (or next available term of court or opposing counsel schedule), trial must occur to determine whether, beyond a reasonable doubt, the person is an SVP

S.C. Code 44-48-90(B) and -100

374 Offenders Committed

(22.5% of MDT Referrals;

23.9% of PRC Referrals;

3.5% of Offenders Reviewed)

(Statistics are from SVP creation to March 31, 2022)



Sexually Violent Predator (SVP) Proceeding Details

Commitment

If the court or jury...

- Determines person is an SVP, the person must be
 - committed to the custody of DMH for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and has been released pursuant to this chapter. The control, care, and treatment must be provided at a facility operated by DMH. person must be segregated at all times from other patients under the supervision of DMH. DMH may enter into an interagency agreement with SCDC for the control, care, and treatment of these persons.
 - If determination is appealed
 - person must be committed to the custody of the Department of Mental Health pending his appeal.
- Is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court must direct the person's release.

SUCCESS - Private treatment program (DMH contracts out the treatment) continues to work smoothly and is much more respected by courts.

374 Offenders Committed

(22.5% of MDT Referrals;

23.9% of PRC Referrals;

3.5% of Offenders Reviewed)

(Statistics are from SVP creation to March 31, 2022)

Committed



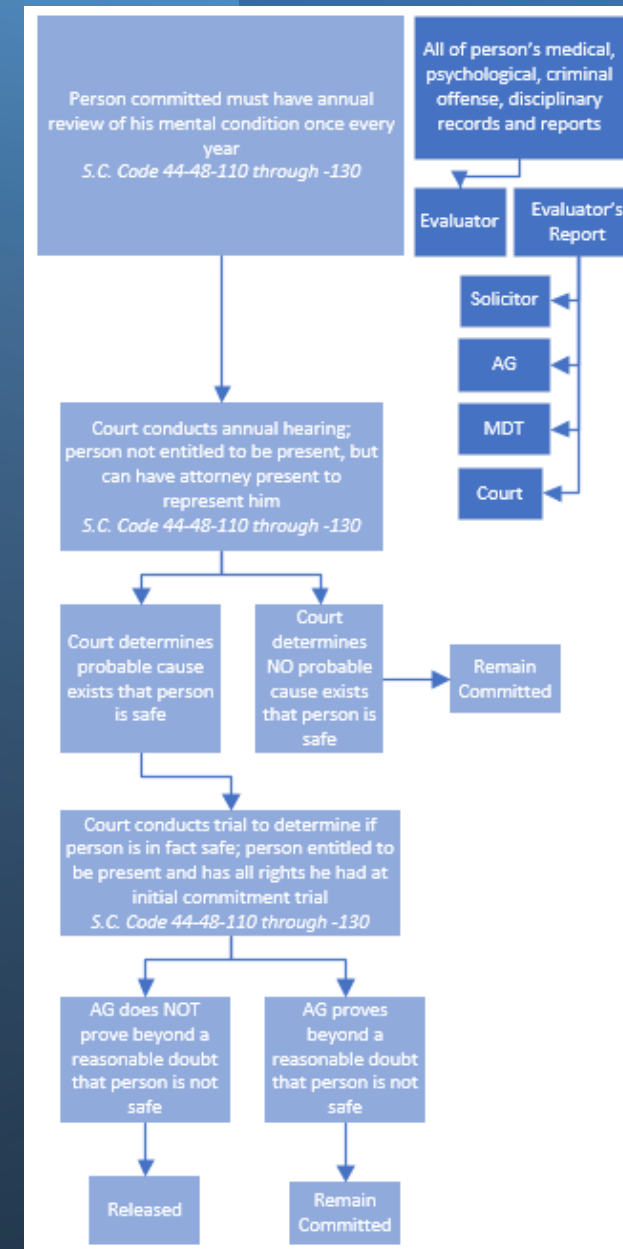
Sexually Violent Predator (SVP) Proceeding Details

Annual Review and Hearing

- Must occur (calendar year)
- **Changes AG desires:** Annual review period doesn't start until a previous one resolves to ensure if there is a delay in one, it doesn't mean two are due in the next 6 months
- Delays in annual review caused by: Opposing counsel and court schedule
 - Remote hearings are making it easier to schedule
- Person may waive their right to an annual review

- DMH reviews and determines...
 - If safe to be at large and authorizes petition, DMH tells person they can petition. Person petitions court for release
 - AG requests hearing on person's petition. If AG doesn't oppose, person gets released at the hearing. If AG opposes, AG will get an independent evaluation to use at hearing/trial.

 - If not safe to be at large, AG requests probable cause hearing to keep the individual committed (individual can waive the hearing). Judge reviews information from DMH and says
 - No probable cause to release the person (person can appeal) – if no appeal, person stays committed
 - Probable cause to release person (AG cannot appeal PC determination) – Release trial (right to jury trial) occurs and AG can get an independent evaluation





Sexually Violent Predator (SVP) Proceeding Details

Petition for Release (anytime individual desires)

- Person can petition for release at anytime, without DMH authorization
- AG can make summary dismissal motion (44-48-130)
- AG requests hearing on person's petition. If AG doesn't oppose, person gets released at the hearing. If AG opposes, AG will have DMH perform an evaluation to use at hearing/trial.

Person may petition for release at anytime
S.C. Code 44-48-110 through -130

Appeals

- Can appeal from trials (AG or person),
- Annual reviews (person from denial of probable cause),
- Annual review trials (AG or person),
- Release petitions (AG or person), and
- Habeas denial (person) or granting (AG) of relief

Appeal

Habeas Petition claiming
ineffective assistance of
counsel

Proceedings

(Statistics are from SVP creation to March 31, 2022)

Person convicted of sexually violent offense
AND sentenced to incarceration/confinement

10,528 Offenders
sent for review

Multidisciplinary Team Review (MDT)

1,662 Offenders
referred by MDT to PRC
(15% of Offenders Reviewed)

Prosecutor's Review Committee (PRC)

1,561 Offenders
referred by PRC for Civil Action
(93.9% of MDT Referrals;
14.8% of Offenders Reviewed)

119

SVP Attorney files petition in Circuit Court to
commit the offender

120

Probable Cause & Order for Evaluation

121-
123

Services

Indicates where service falls within the proceedings

Service #119: Timely review and summarize MDT's records for PRC to ensure scheduling of PRC meeting within statutorily mandated timeframes. *Single unit:* PRC referrals
Notes: Completed by 1 FTE with 90% time allocated to SVP unit/10% to Criminal Appeals, and 1 FTE with 95% allocated to SVP/5% to Criminal and PCR appeals.

Service #120: File of SVP petition within 30 days of PRC referral.
Single unit: Filing SVP petition (33 to 38 filed/year in FY17 - FY20.)
Notes: FY19: Hourly workload did not change, but for 58.3% of the year, the SVP unit completed this deliverable with one FTE staff attorney and one FTE legal assistant.

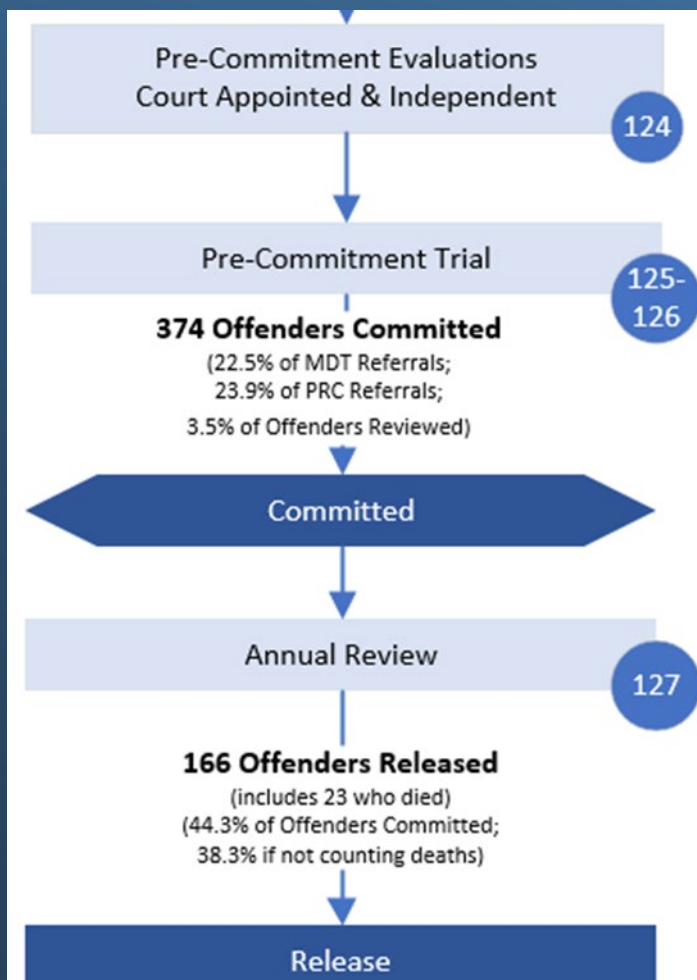
Service #121: Upon determination by the court that probable cause exists, schedule and conduct probable cause hearing within statutorily mandated timeframes.
Single unit: Determination of probable cause

Service #122: Conduct probable cause hearing, and upon court ordered mental evaluation, provide all case documents to the Department of Mental Health.
Single unit: Probable Cause Hearing

Service #123: Within 30 days after the determination of probable cause, submit a request for jury trial in the county where offense was committed. *Single unit:* Jury Trial Request

Proceedings

(Statistics are from SVP creation to March 31, 2022)



Services

Indicates where service falls within the proceedings

Service #124: Upon receipt of DMH evaluator's report: forward to opposing counsel and advise if seeking independent evaluation. If appropriate; request continuance or advise opposing counsel to file motion for summary judgment. *Single unit:* DMH Evaluation

CONCERN: Timeliness of DMH (routinely obtaining extensions to complete evaluation) S.659 would address this concern by providing DMH more initial time.

Service #125: If court ordered evaluation determines that offender meets the criteria to be found a sexually violent predator, as defined by § 44-48-30(1), then schedule a commitment trial. *Single unit:* Commitment Trial Scheduling

Service #126: Conduct commitment trial and attempt to obtain jury verdict within 90 days of receiving DMH evaluation. *Single unit:* Commitment Trial

CONCERN: Admissibility of PPG evidence. Opposing counsel arguing Chapman IAC opinion encompasses incompetent individuals. Admissibility of non-convicted charges/offenses

Service #127: Timely completion of annual review proceedings as required.
Single unit: Annual review case

Notes: Remote hearings dramatically increased efficiency and reduced backlog. Presently, it still remains an option if offender consents. Any existing backlog due to opposing counsel requesting continuances

Proceedings

(Statistics are from SVP creation to March 31, 2022)

Release

Appeal

128

Habeas Petition
claiming ineffective
assistance of counsel

129

An Appeal or Habeas Petition can be filed at any (or all) of the following stages in the proceedings:

- Pre-Commitment Trial
- Annual Review
- Release

Services

Indicates where service falls within the proceedings

Service #128: Represent the State in SVP appeals. *Single unit:* Appellate case
Notes: This deliverable is served by 1 FTE with 90% time allocated to SVP/10% to Criminal Appeals, and 1 FTE with 95% allocated to SVP/5% allocated to Criminal and PCR appeals.

CONCERN: Admissibility of PPG evidence. Opposing counsel arguing Chapman IAC opinion encompasses incompetent individuals. Admissibility of non-convicted charges/offenses.

Service #129: Represent the State in habeas corpus hearings in which committed offenders assert ineffective assistance of counsel. *Single unit:* Habeas proceedings
Notes: The Supreme Court held in *Chapman* that sexually violent predators have a constitutional right to effective assistance of counsel, and that the appropriate forum to assert this right is through habeas relief. Bill S.659 (in House Judiciary) would codify the Supreme Court's holding. The number of filed petitions since the Chapman decision in Feb. 2017, is 27. Continued increases in future years is anticipated.

CONCERN: Potential influx of ineffective assistance of counsel habeas petitions

Successes, Concerns, and Needs

Successes

- Maintained movement of pre-commitment cases & annual reviews
- Independent evaluation requests increased

Concerns

- Admissibility of PPG evidence
- Potential influx of petitions from offenders regarding ineffective assistance of counsel (i.e., habeas petitions)
- Admissibility of non-convicted charges/offenses

Needs

- Specific budget allocation for SVP experts
- Funding for new attorney position (included in AG budget request)
- Amendments to make process more efficient, reflect actual practice and deal with issues raised by opposing counsel and faced in court (i.e., PPG issue) and codification of S.C. Supreme Court decision in *In re Chapman* related to ineffective assistance of counsel procedures (See S. 659, in House Judiciary)



Sexually Violent Predator (SVP) Section

Proceedings

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SVP Atty. files petition in
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offender

Probable Cause &
Order for Evaluation

Pre-Commitment
Evaluations, Court Appointed
& Independent

Pre-Commitment Trial

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Committed

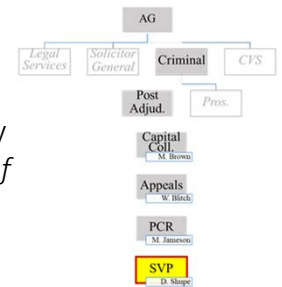
Annual Review

166 Offenders Released
(includes 23 who died)
(44.3% of Offenders Committed;
38.3% if not counting deaths)

Release

Mission

Provide timely, efficient and effective litigation of civil commitment proceedings, and annual reviews of sexually violent predators. *This section is involved in each stage of the proceedings to the left that are in light blue.*



Background

General Assembly found...

- Mentally abnormal and extremely dangerous group of sexually violent predators exists who require involuntary civil commitment in a secure facility for long term control, care, and treatment.
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S.C. Code Ann. § 44-48-20

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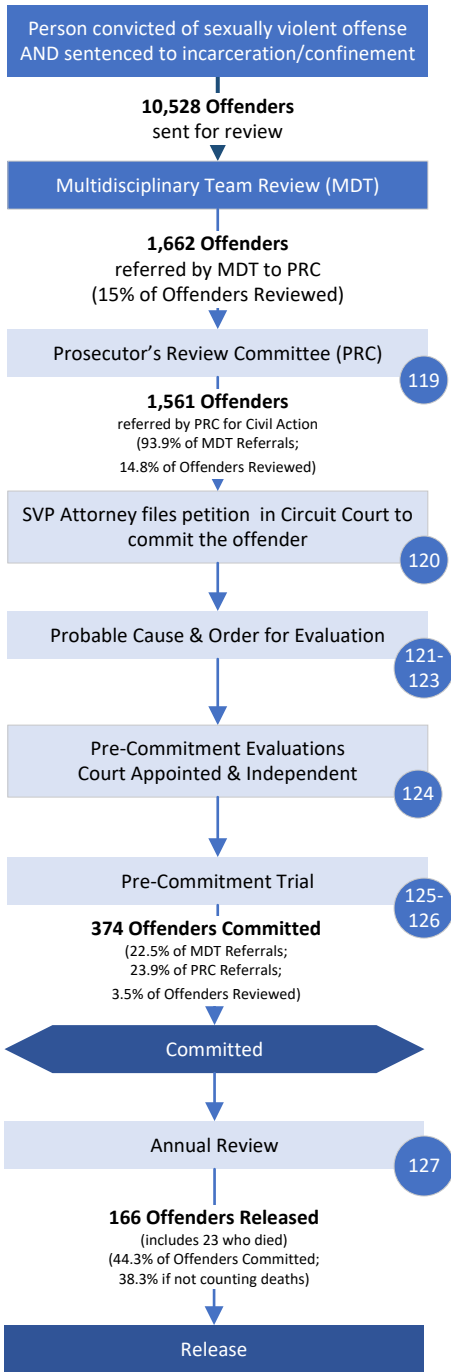
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Sexually Violent Predator (SVP) Section

Proceedings

(Statistics are from SVP creation to March 31, 2022)



Appeal 128

Habeas Petition claiming ineffective assistance of counsel 129

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Sexually Violent Predator (SVP) Proceeding Details

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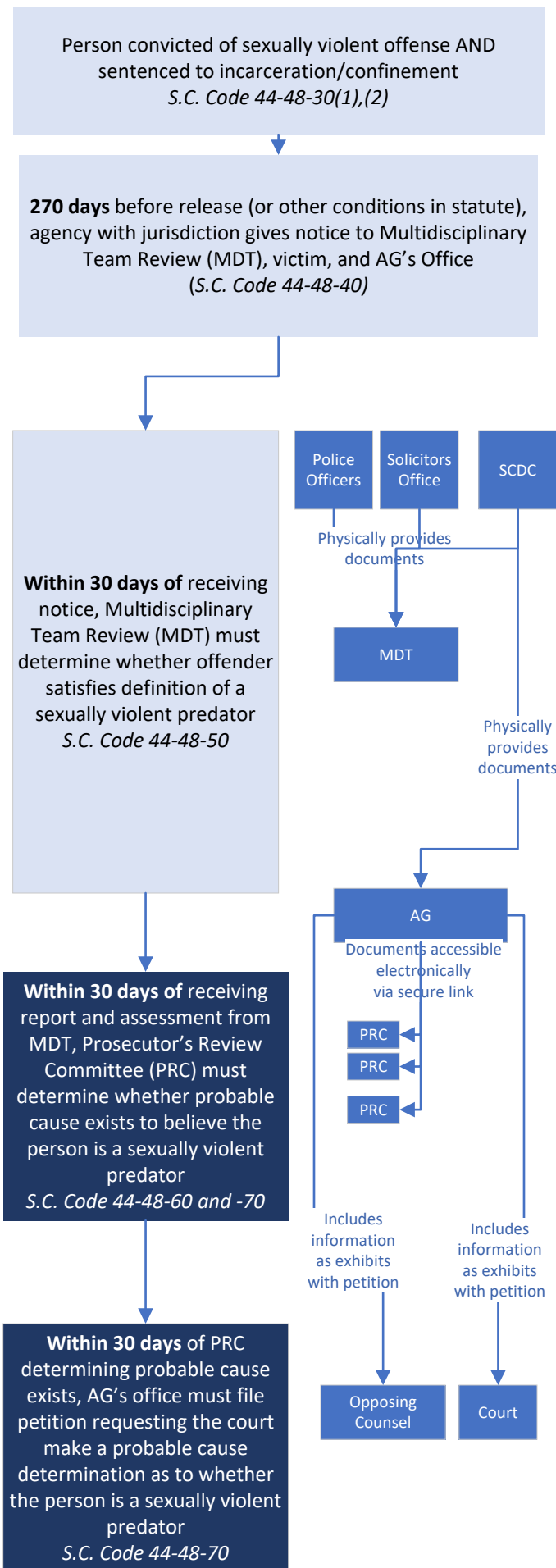
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- Filed in jurisdiction where person committed the offense
- Must allege person is a SVP and state sufficient facts that would support a probable cause allegation





Sexually Violent Predator (SVP) Proceeding Details

Probable Cause Hearing

Court must: (1) verify the detainee's identity; (2) receive evidence and hear arguments from the person and the Attorney General; and (3) determine whether probable cause exists to believe person is an SVP

State may: rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

Person has following rights: (1) to be represented by counsel; (2) to present evidence on the person's behalf; (3) to cross-examine witnesses who testify against the person; and (4) to view and copy all petitions and reports in the court file.

Order for Evaluation

If court determines probable cause exists, court must do the following:

- Select qualified expert to conduct evaluation of whether person is an SVP.
- Direct person be transported to a DMH facility for the evaluation
- Direct person be transferred to local or regional detention facility (if person finishes criminal sentence before completion of SVP determination)

Request that Trial to determine if person is SVP be Jury Trial

- person or AG may request, in writing, the trial be before a jury.
- If no request is made, the trial must be before a judge

Court Appointed Evaluation

- Court appointed expert must complete evaluation within 60 days
- Court may grant 1 extension if expert requests and shows good cause
- Any further extensions only allowed for extraordinary circumstances.
- **Changes AG desires:** Extend time to 90 days and allows 60 day extension

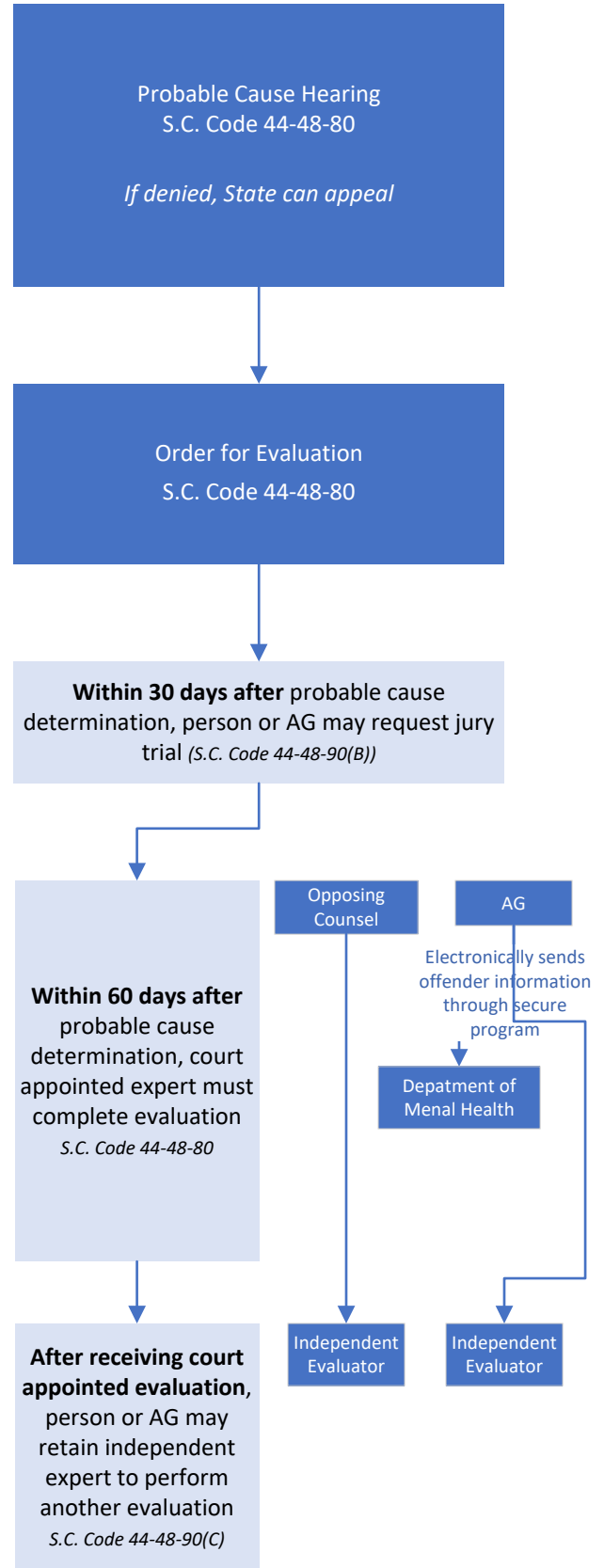
CONCERN: DMH's work product continues to rely on the Static 99-R and Static 2002-R (actuarial risk assessment tools) as the sole measure of risk assessment, with subjective reliance on statements in interview. There are other tests DMH has available, but does not utilize, that are less subjective.

Voluntary Commitment: Sometimes person will voluntarily commit to the Sexually Violent Predator Treatment Program based on DMH evaluation and waive trial.

Independent Evaluation

- All examiners have reasonable access to the person and all relevant medical, psychological, criminal offense, and disciplinary records/reports.
- If indigent person desires expert of their own choosing, court must determine whether the services are necessary and expert's requested compensation is reasonable. If court determines so, court must assist person in obtaining the expert

Voluntary Commitment: Sometimes person will voluntarily commit to Sexually Violent Predator Treatment Program based on independent evaluation and waive trial.





Sexually Violent Predator (SVP) Proceeding Details

Trial (Court and Opposing Counsel schedules impact date)

- AG must notify the victim of time, date, and location of trial.
- Indigent persons have right to appointed counsel
- Trial may be continued upon request of either party and showing of good cause, or by the court on its own motion if respondent will not be substantially prejudiced.
- Trial must occur in county where offense was committed
- Jury must decide by unanimous verdict (if jury trial was requested)
- Upon a mistrial, the court must
 - direct that the person be held at a local or regional detention facility until another trial is conducted.
 - A subsequent trial following a mistrial must be held within ninety days of the previous trial, unless the subsequent trial is continued.

Commitment

If the court or jury...

- Determines person is an SVP, the person must be
 - committed to the custody of DMH for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and has been released pursuant to this chapter. The control, care, and treatment must be provided at a facility operated by DMH. person must be segregated at all times from other patients under the supervision of DMH. DMH may enter into an interagency agreement with SCDC for the control, care, and treatment of these persons.
 - If determination is appealed
 - person must be committed to the custody of the Department of Mental Health pending his appeal.
- Is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court must direct the person's release.

SUCCESS - Private treatment program (DMH contracts out the treatment) continues to work smoothly and is much more respected by courts.

Within 90 days of court appointed expert issuing evaluation (or next available term of court or opposing counsel schedule), trial must occur to determine whether, beyond a reasonable doubt, the person is an SVP

S.C. Code 44-48-90(B) and -100

374 Offenders Committed

(22.5% of MDT Referrals;
23.9% of PRC Referrals;
3.5% of Offenders Reviewed)

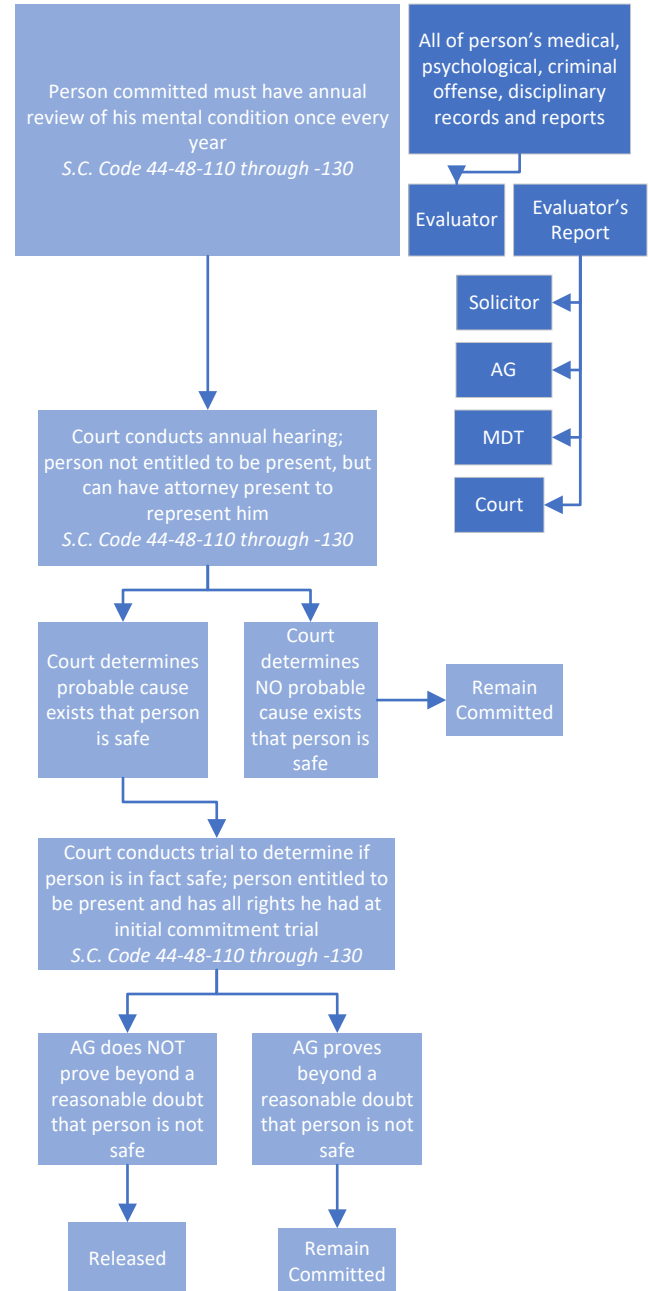
Committed



Sexually Violent Predator (SVP) Proceeding Details

Annual Review and Hearing

- Must occur (calendar year)
- **Changes AG desires:** Annual review period doesn't start until a previous one resolves to ensure if there is a delay in one, it doesn't mean two are due in the next 6 months
- Delays in annual review caused by: Opposing counsel and court schedule
 - Remote hearings are making it easier to schedule
- Person may waive their right to an annual review
- DMH reviews and determines...
 - If safe to be at large and authorizes petition, DMH tells person they can petition. Person petitions court for release
 - AG requests hearing on person's petition. If AG doesn't oppose, person gets released at the hearing. If AG opposes, AG will get an independent evaluation to use at hearing/trial.
 - If not safe to be at large, AG requests probable cause hearing to keep the individual committed (individual can waive the hearing). Judge reviews information from DMH and says
 - No probable cause to release the person (person can appeal) – if no appeal, person stays committed
 - Probable cause to release person (AG cannot appeal PC determination) – Release trial (right to jury trial) occurs and AG can get an independent evaluation



Petition for Release (anytime individual desires)

- Person can petition for release at anytime, without DMH authorization
- AG can make summary dismissal motion (44-48-130)
- AG requests hearing on person's petition. If AG doesn't oppose, person gets released at the hearing. If AG opposes, AG will have DMH perform an evaluation to use at hearing/trial.

Person may petition for release at anytime
S.C. Code 44-48-110 through -130

Appeals

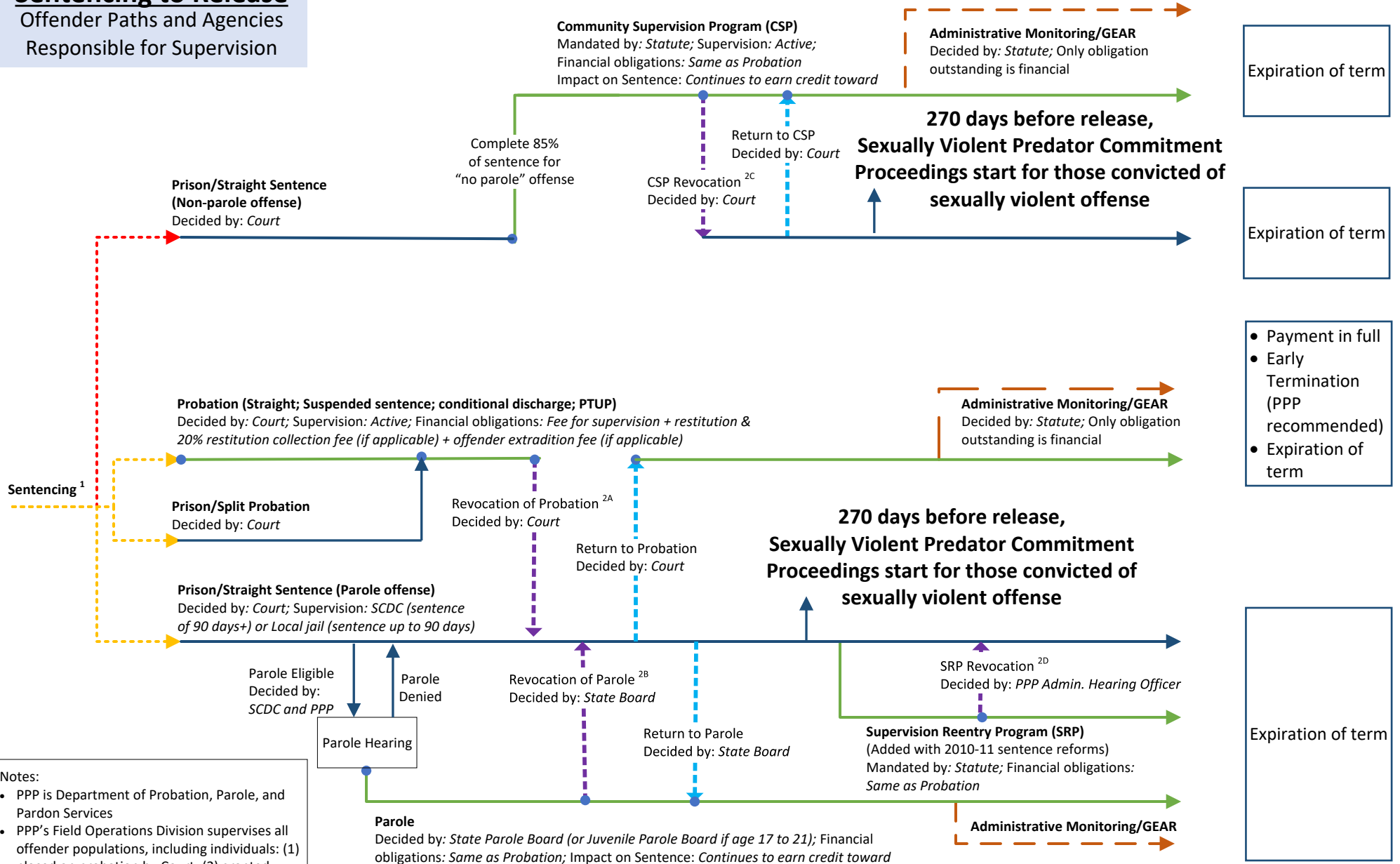
- Can appeal from trials (AG or person),
- Annual reviews (person from denial of probable cause),
- Annual review trials (AG or person),
- Release petitions (AG or person), and
- Habeas denial (person) or granting (AG) of relief

Appeal

Habeas Petition claiming ineffective assistance of counsel

Sentencing to Release

Offender Paths and Agencies Responsible for Supervision



Notes:

- PPP is Department of Probation, Parole, and Pardon Services
- PPP's Field Operations Division supervises all offender populations, including individuals: (1) placed on probation by Court; (2) granted parole by Parole Board; or (3) statutorily released to one of PPP's supervision programs that include: CSP, SRP, and Shock Incarceration Program parole.
- Youthful Offender Act and Shock Incarceration Programs are not shown in the chart
- PTUP means a court orders a probation term end upon payment of fines, court costs, assessments and restitution.

Important forms: 1. Sentencing Sheet; 2. Revocation Orders: A. Probation (Form 9); B. Parole (Form 1160); C. CSP (Form 1152); D. SRP (Form 1455)

Key:

- Non-Parole Offenses
- Parole Offenses
- Incarceration
- PPP Active Supervision
- PPP Inactive Supervision
- Revocation (leaving PPP jurisdiction)
- Return to PPP Jurisdiction
- Out of System
- Offender entering or leaving PPP jurisdiction

Sexually Violent Predator Act Proposed Legislative Changes

I. 44-48-30. Definitions.

44-48-30(13)	Define “Resident”
Does not exist	“Resident” means a person who has been committed as a Sexually Violent Predator for purposes of long term control, care, and treatment.

Purpose: Defense attorney’s sometimes use the term “defendant” to describe their client in Annual Review proceedings. We believe this confuses the jury and in some cases is a deliberate attempt to attack the statute as “criminal” or “penal” in nature. This language creates an accurate description of Residents of the SVP Treatment Program without the inflammatory language.

44-48-30(9)	Amend Definition
Current Language	Proposed Language
“Likely to engage in acts of sexual violence” means the person’s propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.	“Likely to engage in acts of sexual violence” means the person is predisposed to engage in acts of sexual violence and more probably than not will engage in such acts of sexual violence to such a degree as to pose a menace to the health and safety of others.

Purpose: To provide court-appointed and independent experts with a consistent standard of evaluation.

II. §44-48-40. Notification to team, victim and attorney general regarding release, hearing or parole; effective date of parole or release; immunity.

§44-48-40(B)	Adding supervised re-entry to lists in SVP Act
Current Language	Proposed Language
If a person has been convicted of a sexually violent offense and the Board of Probation, Parole and Pardon Services or the Board of Juvenile Parole intends to grant the person a parole or the South Carolina Department of Corrections or the Board of Juvenile	If a person has been convicted of a sexually violent offense and the Board of Probation, Parole and Pardon Services or the Board of Juvenile Parole intends to grant the person a parole or the South Carolina Department of Corrections or the Board of Juvenile

<p>Parole intends to grant the person a conditional release, the parole or the conditional release must be granted to be effective one hundred eighty days after the date of the order of parole or conditional release. The Board of Probation, Parole and Pardon Services, the Board of Juvenile Parole, or the South Carolina Department of Corrections immediately must send notice of the parole or conditional release of the person to the multidisciplinary team, the victim, and the Attorney General. If the person is determined to be a sexually violent predator pursuant to this chapter, the person is subject to the provisions of this chapter even though the person has been released on parole or conditional release.</p>	<p>Parole intends to grant the person a conditional release, or supervised re-entry, the parole, the conditional release or supervised re-entry must be granted to be effective one hundred eighty days after the date of the order of parole, conditional release, or supervised re-entry. The Board of Probation, Parole and Pardon Services, the Board of Juvenile Parole, or the South Carolina Department of Corrections must immediately send notice of the parole. conditional release or supervised re-entry of the person to the multidisciplinary team, the victim, and the Attorney General. If the person is determined to be a sexually violent predator pursuant to this chapter, the person is subject to the provisions of this chapter even though the person has been released on parole, conditional release or supervised re-entry.</p>
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Purpose: Simply adding the terms “supervised re-entry” after the mention of parole or conditional release.

§24-21-32¹

<p>§24-21-32(C)</p>	<p>The role of the supervised re-entry program</p>
<p>Current Language</p>	<p>Proposed Language</p>
<p>The individual terms and conditions of reentry supervision shall be developed by the department using an evidence-based assessment of the inmate's needs and risks. An inmate placed on reentry supervision must be supervised by a probation agent of the department. The department shall promulgate regulations for the terms and conditions of reentry</p>	<p>The individual terms and conditions of reentry supervision shall be developed by the department using an evidence-based assessment of the inmate's needs and risks. An inmate placed on reentry supervision must be supervised by a probation agent of the department. The department shall promulgate regulations for the terms and conditions of reentry</p>

¹ Not the SVP Act specifically, but a provision that directly affects the SVP Act.

<p>supervision. Until such time as regulations are promulgated, the terms and conditions shall be based on guidelines developed by the director.</p>	<p>supervision. Until such time as regulations are promulgated, the terms and conditions shall be based on guidelines developed by the director. However, if, under the Sexually Violent Predator Act, the Multi-Disciplinary Team finds probable cause to believe an inmate is a sexually violent predator pursuant to §44-48-50, the inmate is not eligible for the supervised re-entry program until resolution of the Sexually Violent Predator Act Proceedings.</p>
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Purpose: In order to ensure the MDT has adequate time to make a probable cause determination before the person is released and to streamline the SVP Process. If the person was eligible for supervised re-entry before the review by the MDT, and the MDT finds no probable cause, the person would then immediately be eligible for supervised re-entry.

III. §44-48-50. Multidisciplinary team; appointments; review of records; membership.

<p>§44-48-50</p>	<p>To clarify the role of the MDT</p>
<p>Current Language</p>	<p>Proposed Language</p>
<p>The Director of the Department of Corrections must appoint a multidisciplinary team to review the records of each person referred to the team pursuant to Section 44-48-40. These records may include, but are not limited to, the person's criminal offense record, any relevant medical and psychological records, treatment records, victim's impact statement, and any disciplinary or other records formulated during confinement or supervision. The team, within thirty days of receiving notice as provided for in Section 44-48-40, must assess whether or not the person satisfies the definition of a sexually violent predator. If it is determined that the person</p>	<p>The Director of the Department of Corrections must appoint a multidisciplinary team to review the records of each person referred to the team pursuant to Section 44-48-40. These records may include, but are not limited to, the person's criminal offense record, any relevant medical and psychological records, treatment records, victim's impact statement, and any disciplinary or other records formulated during confinement or supervision. The team, within thirty days of receiving notice as provided for in Section 44-48-40, must assess whether or not there is probable cause to believe the person satisfies the definition of a sexually violent predator.</p>

<p>satisfies the definition of a sexually violent predator, the multidisciplinary team must forward a report of the assessment to the prosecutor's review committee and notify the victim. The assessment must be accompanied by all records relevant to the assessment.</p>	<p>If it is determined probable cause does exist, the multidisciplinary team must forward a report of the assessment to the prosecutor's review committee and notify the victim. The assessment must be accompanied by all records relevant to the assessment.</p>
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Purpose: The similar provision for the Prosecutor’s Review Committee (PRC) requires a determination of probable cause, and adding the probable cause requirement to the MDT as well clarifies the role of the MDT.

<p>§44-48-50</p>	<p>Membership on the MDT</p>
<p>Current Language</p>	<p>Proposed Language</p>
<p>Membership of the team must include:</p> <p>(1) a representative from the Department of Corrections;</p> <p>(2) a representative from the Department of Probation, Parole and Pardon Services;</p> <p>(3) a representative from the Department of Mental Health who is a trained, qualified mental health clinician with expertise in treating sexually violent offenders;</p> <p>(4) a retired judge appointed by the Chief Justice who is eligible for continued judicial service pursuant to Section 2-19-100; and</p> <p>(5) an attorney with substantial experience in the practice of criminal defense law to be appointed by the Chief Justice to serve a term of one year.</p> <p>The Director of the Department of</p>	<p>Membership of the team must include:</p> <p>(1) a representative from the Department of Corrections;</p> <p>(2) a representative from the Department of Probation, Parole and Pardon Services;</p> <p>(3) a representative from the Department of Mental Health who is a trained, qualified mental health clinician with education, training or experience in assessing, examining and/or treating sex offenders; (DMH)</p> <p>(4) a retired judge appointed by the Chief Justice who is eligible for continued judicial service pursuant to Section 2-19-100; and</p> <p>(5) an attorney with substantial experience in the practice of criminal defense law to be appointed by the Chief Justice to serve a term of one year.</p>

Corrections or his designee appointed pursuant to item (1) shall be the chairman of the team.	The Director of the Department of Corrections or his designee appointed pursuant to item (1) shall be the chairman of the team.
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Purpose: While the role of the DMH mental health clinician is very important on the MDT, it is equally as important that they have at least 2 years of direct experience in treating sex offenders. In this highly specialized field, it is important to have an experienced representative to be able to properly identify the indicators and signs of a person who there may be probable cause to believe they have a high likelihood of re-offense.

IV. §44-48-80. Determination of probable cause; taking person into custody; hearing; evaluation.

§44-48-80(D)	Timeline for expert evaluations
Current Language	Proposed Language
<p>If the probable cause determination is made, the court must direct that upon completion of the criminal sentence, the person must be transferred to a local or regional detention facility pending conclusion of the proceedings under this chapter. The court must further direct that the person be transported to an appropriate facility of the South Carolina Department of Mental Health for an evaluation as to whether the person is a sexually violent predator. The evaluation must be conducted by a qualified expert appointed by the court at the probable cause hearing. The expert must complete the evaluation within sixty days after the completion of the probable cause hearing. The court may grant one extension upon request of the expert and a showing of good cause. Any further extensions only may be granted for extraordinary circumstances.</p>	<p>If the probable cause determination is made, the court must direct that upon completion of the criminal sentence, the person must be transferred to a local or regional detention facility pending conclusion of the proceedings under this chapter. The court must further direct that the person be transported to an appropriate facility of the South Carolina Department of Mental Health for an evaluation as to whether the person is a sexually violent predator, and shall order the person to comply with all testing and assessments deemed necessary by an evaluator. The evaluation must be conducted by a qualified evaluator appointed by the court at the probable cause hearing. The evaluator must complete the evaluation within ninety days after the Department of Mental Health provides written certification to the Attorney General's Office and the person's legal counsel that it has received all medical, psychological, criminal offense and</p>

	<p>disciplinary records and reports concerning the person, but not greater than 180 days after the probable cause order is filed. The court may grant one extension upon request of the court-appointed evaluator and a showing of extraordinary circumstances. After the evaluation by the court-appointed evaluator, if the person or the Attorney General seeks an independent evaluation by a qualified evaluator, pursuant to Section 44-48-90(C), that evaluation must be completed within 90 days after receipt of the report by the court-appointed evaluator. The court may grant an extension upon request of the independent evaluator and a showing of extraordinary circumstances. Any evaluator who will be submitted as an expert at either a hearing or trial must submit a written report available to both parties.</p>
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Purpose: This change allows the court-appointed, as well as the independent evaluator, requested by either the Attorney General or the person, adequate time to complete their evaluation, and requires the court to order compliance with any testing deemed necessary by an evaluator.

V. §44-48-90. Trial; trier of fact; continuation of trial; assistance of counsel; access of examiners to person; payment of expenses.

§44-48-90(B)	To clarify the timeline for trial
Current Language	Proposed Language
<p>Within thirty days after the determination of probable cause by the court pursuant to Section 44-48-80, the person or the Attorney General may request, in writing, that the trial be before a jury. If no request is made, the trial must be before a judge in the county where the offense was committed within ninety days of the</p>	<p>Within thirty days after the determination of probable cause by the court pursuant to Section 44-48-80, the person or the Attorney General may request, in writing, that the trial be before a jury. If no request is made, the trial must be before a judge in the county where the offense was committed within ninety days of the</p>

<p>date the court appointed expert issues the evaluation as to whether the person is a sexually violent predator, pursuant to Section 44-48-80(D), or, if there is no term of court, the next available date thereafter. If a request is made, the court must schedule a trial before a jury in the county where the offense was committed within ninety days of the date the court appointed expert issues the evaluation as to whether the person is a sexually violent predator, pursuant to Section 44-48-80(D), or, if there is no term of court, the next available date thereafter. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced. The Attorney General must notify the victim, in a timely manner, of the time, date, and location of the trial. At all stages of the proceedings under this chapter, a person subject to this chapter is entitled to the assistance of counsel, and if the person is indigent, the court must appoint counsel to assist the person.</p>	<p>date the independent qualified evaluator requested by the person or Attorney General pursuant to Section 44-48-90(C), issues a report as to whether the person is a sexually violent predator, pursuant to Section 44-48-80(D) or, if there is no term of court, the next available date thereafter, and the case shall be treated as a priority case. If neither party seeks an independent evaluation, the trial must be before a judge, or a jury if a jury trial is requested, in the county where the offense was committed within ninety days of the date the court appointed evaluator issues the evaluation report as to whether the person is a sexually violent predator, pursuant to Section 44-48-80(D), or, if there is no term of court, the next available date thereafter. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced. All cases pursuant to this chapter shall be given priority status for purposes of scheduling any hearings and trial. The Attorney General must notify the victim, in a timely manner, of the time, date, and location of the trial. At all stages of the proceedings under this chapter, a person subject to this chapter is entitled to the assistance of counsel, and if the person is indigent, the court must appoint counsel designated by the Office of Indigent Defense to handle sexual predator cases to assist the person.</p>
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Purpose: First, this change clarifies the timeline for the evaluations by the court-appointed and independent evaluators before the trial clock begins, and is intended to give them adequate time to complete their report. Finally, the addition of the language giving these cases “priority” status makes the scheduling of SVP cases consistent throughout the state. Because involuntary confinement may be involved, it is important to have the matter resolved quickly, and ensure the clerks in all courts across the state schedule SVP cases consistently. Further, the addition of language regarding appointment of counsel provides clarity for judges and the clerks of each county in assigning counsel in SVP cases.

§44-48-90(C)	Process for requesting an independent evaluation
Current Language	Proposed Language
<p>Upon receipt of the evaluation issued by the court appointed expert as to whether the person is a sexually violent predator pursuant to Section 44-48-80(D), the person or the Attorney General may retain a qualified expert to perform a subsequent examination. All examiners are permitted to have reasonable access to the person for the purpose of the examination, as well as access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. In the case of an indigent person who would like an expert of his own choosing, the court must determine whether the services are necessary. If the court determines that the services are necessary and the expert's requested compensation for the services is reasonable, the court must assist the person in obtaining the expert to perform an examination or participate in the trial on the person's behalf. The court must approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses</p>	<p>Upon receipt of the evaluation issued by the court appointed expert as to whether the person is a sexually violent predator pursuant to Section 44-48-80(D), the person or the Attorney General may retain a qualified expert to perform a subsequent examination. If the court-appointed expert determines the person is not a sexually violent predator, the Attorney General, with notice to the person, may seek an independent evaluation pursuant to this section. If the court-appointed evaluator determines the person is a sexually violent predator, the person, with notice to the Attorney General, may seek an opinion by an independent evaluator pursuant to this section. In the case of an indigent person who requests an independent evaluator, the indigent person must file and serve upon the Attorney General, a motion requesting payment and costs. The Attorney General shall have ten days from the date of service to file a response to the motion. If the court determines the compensation for the independent qualified evaluator is reasonable, the court must assist the</p>

<p>incurred on behalf of the person, and compensation received in the case or for the same services from any other source.</p>	<p>person in obtaining the evaluator to perform an evaluation or participate in the trial on the person's behalf, and approve all reasonable expenses associated with such evaluation. All evaluators are permitted to have reasonable access to the person for the purpose of the examination, as well as reasonable access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. The court shall order the person to comply with any testing and assessments deemed necessary by the evaluator for a thorough evaluation.</p>
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Purpose: Removed the language “of his own choosing” in order to ensure the Court has more ability to exercise their discretion over the process for independent evaluations. Additionally, because the state will be paying for independent evaluations for indigent persons, it is important the person serve the Attorney General with the request for funding so the Attorney General has a reasonable amount of time to object to any unreasonable requests for funding. The last sentence gives the mental health professionals many different tools to obtain data points to determine whether or not the person is a sexually violent predator.

VI. §44-48-100. Standard for determining predator status; control, care and treatment of person; release; mistrial procedures; person incompetent to stand trial.

<p>§44-48-100(B)</p>	<p>For persons found incompetent to stand trial</p>
<p>Current Language</p>	<p>Proposed Language</p>
<p>If the person charged with a sexually violent offense has been found incompetent to stand trial and is about to be released and the person's commitment is sought pursuant to subsection (A), the court first shall hear evidence and determine whether the person committed the act or acts with which he is charged. The hearing on this issue must comply with all the</p>	<p>If the person charged with a sexually violent offense has been found incompetent to stand trial and is about to be released and the person's commitment is sought pursuant to subsection (A), the court first shall conduct a non-jury hearing, where it will hear evidence and determine whether the person committed the act or acts with which he is charged. The</p>

<p>procedures specified in this section. In addition, the rules of evidence applicable in criminal cases apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, apply. After hearing evidence on this issue, the court must make specific findings on whether the person committed the act or acts with which he is charged; the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf; the extent to which the evidence could be reconstructed without the assistance of the person; and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the person committed the act or acts with which he is charged, the court must enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.</p>	<p>hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases apply, and all constitutional rights available to defendants at criminal hearings, except the right not to be tried while incompetent, and the right to a jury trial, apply. After hearing evidence on this issue, the court must make specific findings on whether the person committed the act or acts with which he is charged; the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf; the extent to which the evidence could be reconstructed without the assistance of the person; and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the person committed the act or acts with which he is charged, the court must enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.</p>
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Purpose: To specifically provide for a non-jury hearing regarding guilt or innocence, rather than a jury trial.

VII. §44-48-110. Periodic mental examination of committed persons: report; petition for release; hearing; trial to consider release

44-48-110(A)	Periodic Mental Evaluations
Current Language	Proposed Language

<p>Does not yet exist. Language contained in 44-48-110 without subsections.</p> <p>A person committed pursuant to this chapter must have an examination of his mental condition performed once every year.</p>	<p>A Resident committed pursuant to the chapter must have an evaluation of his mental condition performed by a Department of Mental Health designated evaluator within one year from the filing date of the initial commitment order. Thereafter, a Department of Mental Health designated evaluator will evaluate the Resident's mental condition within one year after a pending review is resolved by a filed court order indicating: (1) a finding of no probable cause, (2) a waiver by the Resident, or (3) an order of continued commitment after a periodic review trial. The designated evaluator's report is admissible as evidence at any hearing, and must be provided to the clerk of the court in the jurisdiction that committed the Resident pursuant to this chapter, the Attorney General, and the solicitor who prosecuted the Resident.</p>
<p>44-48-110(B)</p>	<p>Independent Evaluation</p>
<p>Does not yet exist. Language currently in 44-48-110 without subsections. Only proposed change is reference to "Resident" rather than "committed person."</p>	<p>The Resident may retain, or if the Resident is indigent and so requests, the court may appoint a qualified evaluator to evaluate the Resident, and the Resident's expert must have reasonable access to all medical, psychological, criminal offense, disciplinary and treatment records and reports concerning the Resident.</p>
<p>44-48-110(C)</p>	<p>Review Hearing</p>
<p>Does not yet exist. Language currently in 44-48-110 without subsections.</p>	<p>After the designated evaluator's report is filed, the court must conduct a hearing to review the Resident's status, unless the Resident waives the hearing in writing.</p>

<p>The court must conduct an annual review hearing to review the status of the committed person.</p>	
<p>44-48-110(D)</p>	<p>Petition for Release</p>
<p>Does not yet exist. Language currently in 44-48-110 without subsections.</p> <p>The Director of the Department of Mental Health must provide the committed person with an annual written notice of the person’s right to petition the court for release over the Director’s objection. The notice must contain a waiver of rights. The director must forward the notice and waiver form to the court with the annual report.</p>	<p>The Department of Mental Health must provide the Resident with written notice of the Resident’s right to petition the court for release without the Department’s authorization and a waiver of rights form, within one year of the last periodic review order or waiver of rights. The Department must forward the designated evaluator’s report with the notice and waiver form to the clerk of court in the jurisdiction that committed the Resident pursuant to the chapter, the Attorney General, and the solicitor who prosecuted the Resident.</p>
<p>44-48-110(E)</p>	<p>Right to Attorney at Hearing</p>
<p>Does not yet exist. Language currently in 44-48-110 without subsections.</p> <p>The committed person has a right to have an attorney represent him at the hearing, but the committed person is not entitled to be present at the hearing.</p>	<p>The Resident has a right to have an attorney represent him at the periodic review hearing, but the Resident is not entitled to be present at the hearing. The Resident may only be present at the hearing upon issuance of a transport order received by the Department of Mental Health not less than 15 days of the hearing date. The Department of Mental Health designated evaluator will only be required to be present at the hearing if subpoenaed by the Resident’s attorney in accordance with the South Carolina Rules of Civil Procedure.</p>
<p>44-48-110(F)</p>	<p>Release Trial</p>
<p>Does not yet exist. Language currently in 44-48-110 without subsections. Only cosmetic proposed changes.</p>	<p>If the court determines probable cause exists to believe the Resident’s mental abnormality or personality disorder has so changed the Resident is safe to be at large and, if released, is not likely to</p>

	<p>commit acts of sexual violence, the court must schedule a trial on the issue. At the trial, the Resident is entitled to be present and is entitled to the benefit of all constitutional protections afforded the Resident at the initial commitment proceeding. The Attorney General must notify the victim of all proceedings. The Attorney General must represent the State and has the right to have the Resident evaluated by a qualified evaluator chosen by the State. The trial must be before a jury if requested by either the Resident, the Attorney General, or the solicitor. The Resident also has the right to have a qualified evaluator evaluate the Resident on the Resident's behalf, and the court must appoint an expert if the Resident is indigent and requests the appointment. The burden of proof at the trial is upon the State to prove beyond a reasonable doubt the Resident's mental abnormality or personality disorder remains such that the Resident is not safe to be at large and, if released, is likely to engage in acts of sexual violence.</p>
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Purpose: To clarify periodic review requirements and procedures.

VIII. §44-48-115. Claims of Ineffective Assistance of Counsel

44-48-115	Ineffective Assistance of Counsel Claims
Current Language	Proposed Language
Does not yet exist.	(a) A person committed to the South Carolina Sexually Violent Predator Treatment Unit (hereafter “Resident”) shall have the right to challenge the commitment and subsequent periodic reviews based on

	<p>ineffective assistance of counsel during the Resident's commitment trial or periodic review proceedings.</p> <p>(b) Petitions shall be filed in the original jurisdiction of the South Carolina Supreme Court under SCACR Rule 245(b) within thirty days of the date any appeals from the commitment or periodic review proceedings are final. Upon receipt of the petition, the Clerk of Court of the Supreme Court shall issue an Order designating a circuit court or appellate court judge as a referee to make appropriate findings of fact and conclusions of law, and report the findings and conclusions to the Supreme Court. The designated judge shall have statewide authority to issue orders as necessary.</p> <p>(c) Except as provided in this Act, the South Carolina Rules of Civil Procedure and the South Carolina Rules of Evidence apply to cases filed pursuant to this section, in evidentiary hearings before the designated hearing judge.</p> <p>(d) The named Respondent shall be the Department of Mental Health (the "Department"). A copy of the petition shall be served on the Department and the South Carolina Attorney General's Office.</p>
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(e) Upon the filing of a petition alleging that the Resident is indigent and desires appointed counsel, the designated judge shall appoint an attorney to represent Resident. Counsel shall be appointed from the contract attorney list of post-conviction counsel maintained by the South Carolina Commission on Indigent Defense, or such other list of attorneys as the Executive Director of the South Carolina Commission on Indigent Defense shall designate to the court. If no attorney is available from this list, the designated circuit court judge shall appoint an attorney from the Rule 608, SCACR list. The designated judge shall not appoint an attorney who previously represented the Resident in any prior criminal proceedings underlying the commitment or state PCR proceedings or appeals therefrom, the original Sexually Violent Predator civil commitment proceeding or appeal therefrom, or in any previous or present periodic reviews or appeals therefrom.

(f) The designated judge shall authorize by court order to the particular County Clerks of Court the disclosure of any pleadings, evidence, transcript, or other document filed in any circuit

	<p>court or appellate court clerk's office of this State in any case where the Resident was a defendant, respondent, or party to a criminal action or an action under the Sexually Violent Predator Act that has been ordered sealed. These materials shall be unsealed for the limited purpose of providing such items to appointed counsel for the Resident, to the Resident himself if he elects to proceed <i>pro se</i>, and the Department and its attorneys.</p> <p>(g) Regardless of whether the Resident indicates he has served the Department, the Clerk of Court of the South Carolina Supreme Court shall forward the filed petition and all accompanying papers to the Department's Office of General Counsel as the agent for service of process for the Department, and a copy to the Attorney General's Office. The Department, through the Attorney General's Office acting as its representative, shall file its responsive pleading within thirty days of receipt of the order appointing counsel, or within thirty days of the receipt of the petition if counsel is retained, or receipt of the petition if the Resident is proceeding <i>pro se</i> without a request for counsel at the time of the filing.</p>
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	<p>(h) In the event a habeas petition alleging ineffective assistance of counsel claims relating to the Resident's commitment or periodic review is filed before the conclusion of Resident's appeal therefrom, the Clerk of the Supreme Court shall dismiss the petition without prejudice and without requiring a response from the Department.</p> <p>(i) Within thirty (30) days of assignment, the designated judge shall issue a scheduling order, including a discovery schedule, and setting a hearing within not more than 180 days from the filing of the petition. A final report to the Supreme Court shall be submitted within thirty days from the conclusion of the hearing, including findings of fact and conclusions of law pursuant to the standard set forth in <u>In the Matter of the Treatment and Care of Chapman</u>, 419 S.C. 172, 796 S.E.2d 843 (2017). This does not preclude the designated judge from recommending to the Supreme Court that the Petition be denied on the basis of the pleadings without a hearing when appropriate upon motion by the Department.</p> <p>(j) Upon receipt of the findings and conclusions of the designated</p>
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	<p>judge to the Supreme Court by the designated judge, the Clerk of the Supreme Court may set forth an appropriate briefing schedule. The Clerk may consider expediting the matter to determine whether the writ of habeas corpus should be granted and the appropriate relief therefrom. The Court may also issue, as appropriate, orders relating to whether intervening and on-going statutory status review proceedings or appeals therefrom are affected in any manner by the habeas corpus actions in its original jurisdiction.</p>
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Purpose: Codifying the Chapman Decision

IX. §44-48-120. Petition for release; hearing ordered by court; examination by qualified expert; burden of proof.

§44-48-120(B)	Petition for Release
Current Language	Proposed Language
<p>The court, upon receipt of the petition for release, must order a hearing within thirty days unless the Attorney General requests an examination by a qualified expert as to whether the Resident’s mental abnormality or personality disorder has so changed that the Resident is safe to be at large and, if released, is not likely to commit acts of sexual violence, or the Resident or the Attorney General requests a trial before a jury. The Attorney General must represent the State and has the right to have the Resident examined by qualified</p>	<p>The court, upon receipt of the petition for release filed pursuant to §44-48-120(A), must order a hearing within thirty days unless the Attorney General, with notice to the Resident, requests an examination by a qualified evaluator as to whether the Resident’s mental abnormality or personality disorder has so changed the Resident is safe to be at large and, if released, is not likely to commit acts of sexual violence, or the Resident or the Attorney General requests a trial before a jury. The Attorney General must represent the</p>

<p>experts chosen by the State. If the Attorney General retains a qualified expert who concludes that the Resident's mental abnormality or personality disorder remains such that the Resident is not safe to be at large and, if released, is likely to commit acts of sexual violence, the Resident may retain a qualified expert of his own choosing to perform a subsequent examination. In the case of an indigent Resident who would like an expert of his own choosing, the court must determine whether the services are necessary. If the court determines that the services are necessary and the expert's requested compensation for the services is reasonable, the court must assist the Resident in obtaining the expert to perform an examination or participate in the hearing or trial on the Resident's behalf. The court must approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the Resident, and compensation received in the case or for the same services from any other source. The burden of proof is upon the Attorney General to show beyond a reasonable doubt that the Resident's mental abnormality or personality disorder remains such that the Resident is not safe to be at large and, that if released, is likely to commit acts of sexual violence.</p>	<p>State and has the right to have the Resident examined by a qualified evaluator chosen by the State. If the petition is filed with the authorization of the Department of Mental Health provided by this section, the Department's evaluator shall appear as a witness at the hearing and/or trial. If the Attorney General's evaluator determines the Resident still meets the criteria for confinement as a sexually violent predator, the Resident may seek another evaluation at his own expense. All evaluators are permitted to have reasonable access to the person for the purpose of the examination, as well as reasonable access to all relevant medical, psychological, criminal offense, and disciplinary records and reports, and the court shall order the person to comply with any testing and assessments deemed necessary by an evaluator. The burden of proof is upon the Attorney General to show beyond a reasonable doubt that the Resident's mental abnormality or personality disorder remains such that the Resident is not safe to be at large and, that if released, is likely to commit acts of sexual violence. All cases pursuant to this chapter shall be given priority status for purposes of scheduling any hearings and trial.</p>
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Purpose: To provide that the Department of Mental Health evaluator will testify at any hearing or trial if the petition is authorized by the Department. If the Attorney General's evaluator recommends continued confinement, any further evaluations of the Resident will be at the Resident's expense.

Revised February 25, 2019

X. §44-48-150. Evidentiary records; court order to open sealed records.

§44-48-150	
Current Language	Proposed Language
Psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records, or victim impact statements which have been submitted to the court or admitted into evidence under this chapter must be part of the record, but must be sealed and opened only on order of the court.	Psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records, or victim impact statements which have been submitted to the court or admitted into evidence under this chapter must be part of the record, but must be sealed and opened only on order of the court. Nothing in this section prohibits the release of all such records to the Attorney General and counsel of record for the person.

Purpose: To ensure both parties are being given access to the relevant documents for the SVP cases.

AGENCY PRESENTATION – STATE GRAND JURY



STATE GRAND JURY

PROSECUTION DIVISION

STATE GRAND JURY

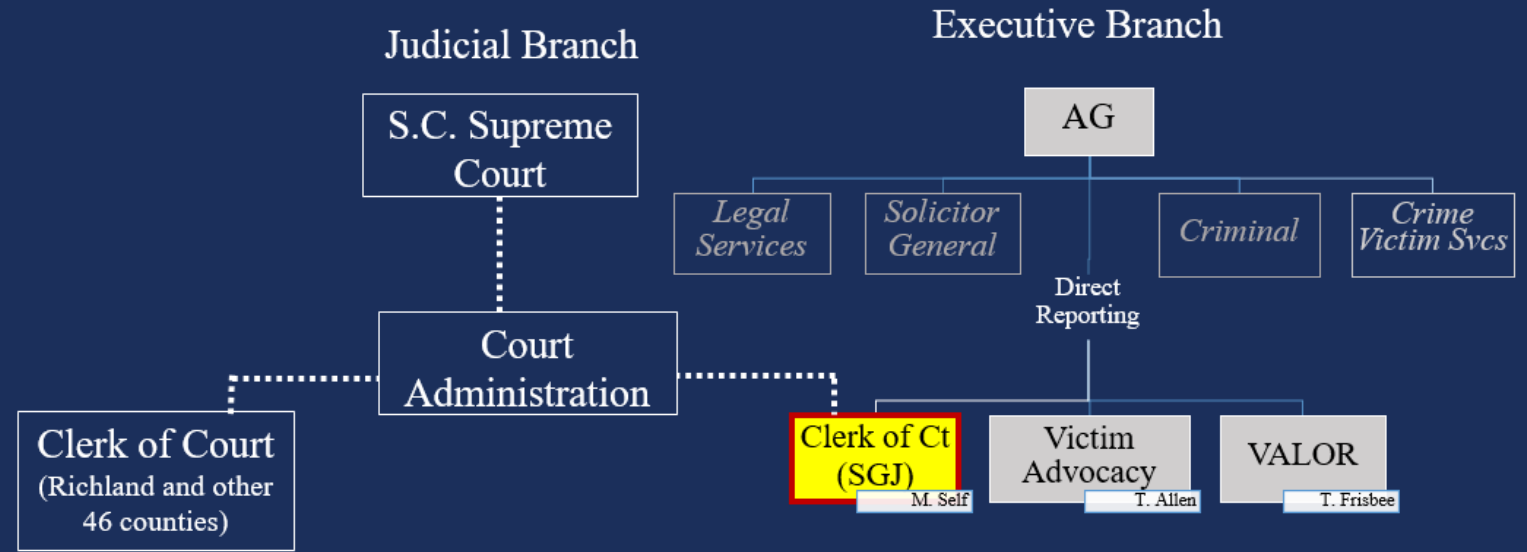
SECTION

DIRECT REPORTS

STATE GRAND JURY

CLERK OF COURT

STATE GRAND JURY CLERK OF COURT



Certain sections of the office report directly to the Attorney General and not through a division. It is with special emphasis of the AG, or to provide independence to those sections for mission security.

SGJ Clerk of Court is specifically independent of the prosecution section.

While the Clerk's budget and support comes from the AG, the Clerk is responsive to the judge assigned. Extreme coordination is required for each action with the judge, SGJ, and the AG's office.

SGJ Clerk of Court Personnel

	Turnover	Number of Employees	
		Leave unit during year	In unit at end of year
2016-17	0%	0	3
2017-18	80%	2	2
2018-19	0%	0	3
2019-20	0%	0	3

Note: During FY 2018, the same position turned over twice, once for a position in the private sector, and once for a higher paying position with the county. The section has maintained the same staff since then. Due to the section's small staff size, the loss of two employees resulted in a significant turnover rate.

Exit interviews or surveys conducted?

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

Employee satisfaction tracked?

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

Clerk of Courts: **State Grand Jury v. County**

State Grand Jury Clerk of Court

Personnel

- Selection: Selected by Attorney General and S.C. Supreme Court Chief Justice

Crimes

- Jurisdiction: Statewide

Indictments

- Indictments: Single or multiple defendant
- Judge: Same assigned throughout the investigation

Trial

- Venue: Any county
- Judge: Assigned and will be the same, regardless of the term of court

County Clerk's of Court

Personnel

- Selection: Elected by voters in the county

Crimes

- Jurisdiction: Only matters in the county

Indictments

- Indictments: Single defendant
- Judge: May vary depending on week/month in which indictment requested

Trial

- Venue: Only one county
- Judge: May vary depending on week/month in which trial begins

SGJ Period July-June

SGJ: Judge Selection

- S.C. Supreme Court, through administrative order, has assigned the Fifth Judicial Circuit General Sessions Administrative Judge for this role.
- S.C. statute states there will be a judge and the S.C. Supreme Court can make determination through orders and policies

SGJ: Juror Selection

- 18 Jurors and 4 alternates selected
- See "State Grand Jury – Jury Selection Process" document for additional details

NOTE: Who determines what?

- *State Grand Jury Jurors:*
 - Whether case/charges should be brought
- *Trial Jury Jurors:*
 - Whether an individual is guilty of a crime

State Grand Jury: Jury Selection

The process below occurs annually with jury selection day in June of each year. Each juror serves a one-year period, which may be extended in six month increments for up to one additional year. The process from step one to step four typically takes six months to complete.

Step 1:

Jury List from Counties (700 selected across the state)

- SGJ Clerk requests random selection of jurors based on population from the clerks of court in all 46 counties
- County clerks randomly select jurors from their county using Court Administration's jury management system, then send the list to the SGJ clerk
- Jury wheel, a software within Court Administration's jury management system, compiles the county lists and randomly pulls 700 jurors for the SGJ clerk to qualify

Step 2:

Jury Qualification (700 narrowed to 60)

- SGJ Clerk mails jury qualification forms to the 700 randomly selected jurors
- SGJ Clerk receives completed copies mailed from jurors
- SGJ Clerk indicates whether each juror is qualified or excused based on information the juror provides on the forms
 - Excused if they meet the qualifications for excusal (e.g., over 65, cannot read or write English language, medical reason)
 - SGJ Clerk selects applicable drop down for each juror in the court administration system (e.g., qualified, excused because over 65, etc.)
- SGJ Clerk mails letter to jurors excused to inform them they are excused
- Jury Wheel software randomly selects 60 jurors from the jurors the SGJ clerk indicated were qualified

State Grand Jury: Jury Selection

Step 3:

Summons of Appearance

- SGJ Clerk creates summons for the 60 randomly selected jurors to appear
- SGJ Clerk mails summons to the sheriff's office in the counties in which the 60 jurors reside
- Sheriff's Office personnel personally serves the jurors in their county

Step 4:

Jury Selection Day (June)

- SGJ Clerk schedules Jury Selection Day

During Jury Selection Day

- SGJ Judge qualifies the juror panel by asking them the same questions from the qualification form to ensure the answers are still the same
 - SGJ Clerk selects applicable drop down for each juror in the court administration system (e.g., qualified, excused because over 65, etc.)
- Once there is a panel of only qualified jurors, the Jury Wheel software randomly selects 18 regular and 4 alternate jurors
- SGJ Judge has the regular and alternate jurors swear by the state grand jury secrecy oath
- SGJ Jurors are given instructions about monthly meetings, etc.

Confidentiality Required in Statute

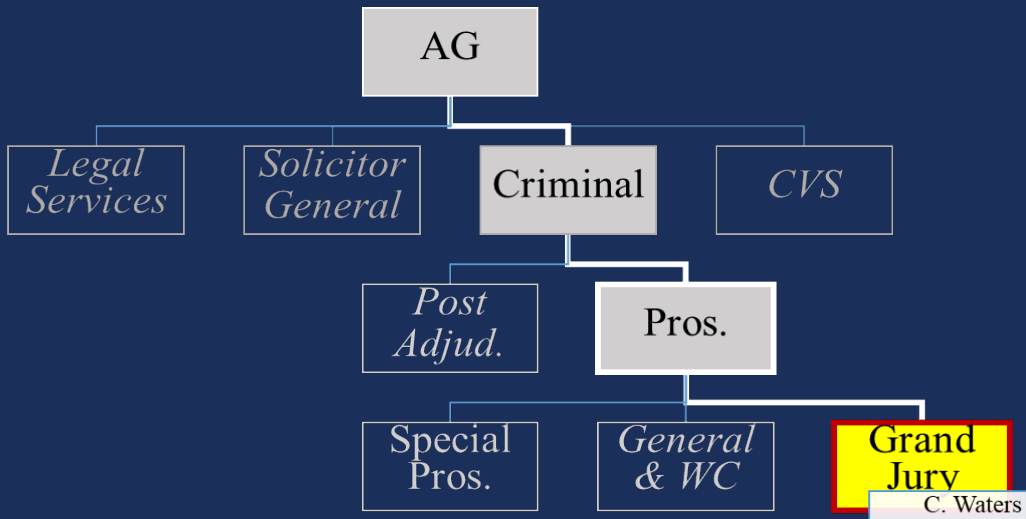
Section 14-7-1720. Proceedings to be secret; juror not to disclose; persons entitled to attend grand jury session; persons attending not to disclose; exceptions; penalties.

(A) **State grand jury proceedings are secret, and a state grand juror shall not disclose the nature or substance of the deliberations or vote of the state grand jury.** The only persons who may be present in the state grand jury room when a state grand jury is in session, except for deliberations and voting, are the state grand jurors, the Attorney General or his designee, the court reporter, an interpreter if necessary, and the witness testifying. A state grand juror, the Attorney General or his designee, any interpreter used, the court reporter, and any person to whom disclosure is made pursuant to subsection (B)(2) of this section may not disclose the testimony of a witness examined before a state grand jury or other evidence received by it except when directed by a court for the purpose of:

- (1) ascertaining whether it is consistent with the testimony given by the witness before the court in any subsequent criminal proceeding;
- (2) determining whether the witness is guilty of perjury;
- (3) assisting local, state, other state or federal law enforcement or investigating agencies, including another grand jury, in investigating crimes under their investigative jurisdiction;
- (4) providing the defendant the materials to which he is entitled pursuant to Section 14-7-1700;
- (5) complying with constitutional, statutory, or other legal requirements or to further justice.

...

(D) **Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding five thousand dollars or by a term of imprisonment not exceeding one year, or both.**



SGJ Section Personnel

4 Attorneys; 1 For. Acc't., 2 Paralegals, 1 Enf. Specialist
Jan. '20 – 1 Attorney added.

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

	Turnover	Number of Employees	
		Leave unit during year	In unit at end of year
2016-17	0%	0	8
2017-18	40%	3	7
2018-19	13%	1	8
2019-20	22%	2	9

Note: FY 2018 Turnover

- 33.3% - Employment outside of state government
- 33.3% - Employment with another state agency
- 33.4% - Internal promotion opportunity

State Grand Jury Terms of Art

White Collar Crime

- Financial and/or public corruption crime
- Any criminal enterprise whose goal is to make money (e.g., drug trafficking, human trafficking, gangs)
- Individuals at higher levels of trafficking and gangs often have one or more legitimate businesses through which they seek to facilitate the crimes (e.g., money laundering, etc.)

State Grand Jury Types of Cases

State Grand Jury (SGJ) Prosecution Section prosecutes 14 different types of cases

Majority of Investigations

- Public corruption
- Multicounty drug trafficking organizations
- Criminal gangs
- Money laundering
- Human trafficking
 - SGJ cases are typically found as part of drug trafficking and gang investigation. Most human trafficking cases go through AG's Special Prosecution Division.
- Securities fraud
 - AG's Securities Division handles civil regulatory matters. If the securities issue is possibly criminal, Securities Division will refer it to Prosecution. SGJ will handle the more complex securities matters (e.g., SCANA scandal, HomeGold; as opposed to a smaller localized Ponzi scheme).

Allowed in statute, but rarely, if ever used

- Election fraud
- Environmental crimes
- Obscenity offenses

Prosecution: Regular AG and Solicitor

v.

State Grand Jury



NOTE: No prosecutor can bring charges alone. They can only seek charges and then take it to the state or county grand jury who brings the charges. Once the charges are brought, the prosecutor determines how to dispose of them.

Criminal Justice System Full Spectrum

Entry into the system

Prosecution

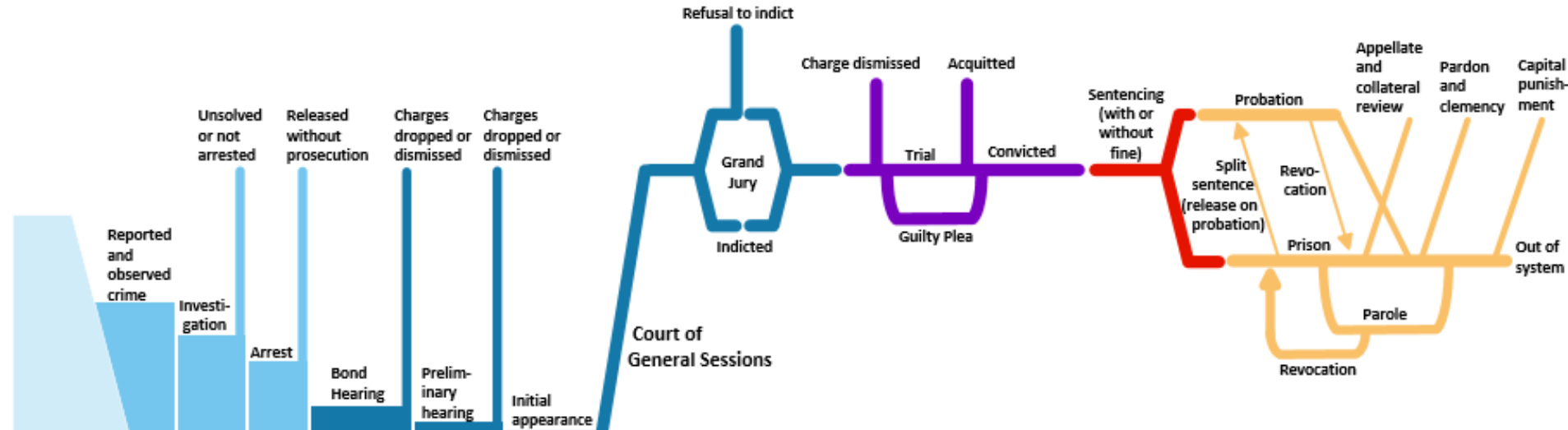
Adjudication

Sentencing

Corrections

Post incarceration

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.



Extradition

Capital Litigation

Appeals

PCR

Post Conviction Relief

Sexually Violent Predator

Sex Offender Registry

Criminal Litigation

Civil

Criminal Prosecution



General Process

SGJ “Investigation”

- May result in one or hundreds of cases against multiple defendants
- Each SGJ investigation is assigned a “code name” and “number” which is how the AG’s office and LE refer to the investigation



State Grand Jurors (Charge with crime or not = Indictment)

- Listens to information and determines whether charges should be brought
- SGJ Jurors: Hear in depth information for an extended period (possibly years), from the inception of investigation (information presented by SGJ attorneys, fact witnesses, expert witnesses, etc.). Rules on **Indictments** - Similar format to Federal Grand Jury
- Different in operation from a County Grand Jury, which typically only hears information for a few minutes after an investigation is complete (information presented by law enforcement)

*ALL charges



Case/Charge (Alleged Crimes set forth in Indictments)

- Charge against an individual defendant within an investigation



Trial Jury (Guilty of charge or Not)

- Listens to information and determines whether individual is guilty

State Grand Jury Process Introduction

Occurs Continuously

State Grand Jury (SGJ) Legal Team and Law Enforcement Develop Investigation

Develop investigation

- Attempt to tie the following information together to identify/locate the bigger criminal organization:
 - Local Arrests or Indictments;
 - Uncharged conduct;
 - Historical and confidential informant information;
 - Citizen complaints/information;
 - Internal information;
 - Press;
 - Local/federal/agency help requests;
 - Prior SGJ cases

Determine if it could be a good case

- Complex multi-county narcotics trafficking organization case:
 - (1) Determine cause by figuring out how individual cases (symptoms) are related;
 - (2) Take out organization as whole, especially the leadership;
 - (3) Appropriate forfeiture
- Gang activity case:
 - Same strategy as narcotics (and often overlaps with narcotics)
- Public Corruption case:
 - (1) Significant or complex;
 - (2) Effect beyond just the case itself
- Complex White Collar case:
 - (1) Securities;
 - (2) Money Laundering;
 - (3) Computer Crime;
 - (4) Narcotics
- Human Trafficking case:
 - Relationship to narcotics, gangs, and white collar

State Grand Jury: Investigation

Step 1: *Initiate*

STEP #1: **INITIATE** Official “Investigation” - SGJ Legal Team and Law Enforcement Officers (LEO)

- (1) SGJ Legal team bring the Chief of State Law Enforcement Division and the Attorney General a proposed investigation
- (2) Chief of SLED and AG sign off on investigation initiation
- (3) SGJ Legal team consult with circuit solicitors in applicable circuits
- (4) SGJ Legal team provides notification to the SGJ judge that states an SGJ investigation is being initiated and the jurisdictional basis for the investigation

STEP #2: **CONDUCT** Investigation - SGJ Legal Team and LEO under oversight of SGJ Jurors

Monthly State Grand Jury Meetings (3 days of meetings each month, which is called the SGJ Monthly Term of Court)

Coordinated by SGJ Legal Team and SGJ Clerk of Court

- SGJ Legal team tells SGJ Clerk number of days they need the jurors (in total) (typically 1-3 consecutive days per month)
- SGJ Clerk informs the jurors of meeting dates BUT SGJ Clerk does not attend the meetings

Attended by SGJ Panel and SGJ Legal Team

- SGJ Jurors serves as representatives of people to oversee investigation conducted by SGJ attorneys and LEO
- Investigation plan decided by SGJ Jurors, with advice from SGJ Legal Team and Law Enforcement, during the meetings
 - *Investigative techniques include:* (1) Witness statements; (2) Search warrants; (3) Subpoena evidence [bank and financial records; business records; travel records; emails and digital evidence; utility records]; (4) Subpoena witness testimony [cooperators; as well as reluctant and difficult or noncooperative witnesses - Witness testimony to SGJ is under oath and it is illegal to lie to SGJ]; (5) State Authorized Wiretaps (must meet high standards and be approved by 5th circuit General Sessions administrative judge)
 - **Pre-indictment arrest warrants and bond hearing involve SGJ clerk, SGJ judge, SGJ legal team, and Law enforcement** - See “Pre-indictment warrants and hearing” document
 - Legal materials prepared by SGJ Legal Team may include: (1) Preparation of Subpoenas; (2) Questioning of Witnesses; (3) Legal Instruction

Motions or Objections decided by SGJ Judge

- SGJ Judge decides any motions or objections that arise during the investigation (e.g., motions to quash subpoenas, other objections similar to those during discovery in civil cases)

STEP #3: **VOTE** to Indict – SGJ Jurors

Indictment Drafting and Vote

- SGJ Legal Team discusses options for different indictments and/or issue State Grand Jury Report with SGJ Panel
- SGJ Legal Team prepares and presents to SGJ Panel (typically numerous indictments presented at the same time).
- SGJ Jurors may discuss indictments more with SGJ Legal Team

- After all discussion, SGJ Legal Team leaves the room and SGJ Jurors vote to true bill (indict) or no bill (not indict). After vote, SGJ Juror foreperson provides SGJ clerk a signed envelope with jurors’ vote (Indictments have been “returned”)
 - SGJ Legal Team is unaware of how SGJ Jurors voted until the end of the SGJ Term of Court that month (i.e. end of three days)
 - Note: Statute authorizes SGJ to investigate issues that are less than crimes, but that they see as problems in the community or operation of government. Therefore, if SGJ jurors determines there is not sufficient information for an indictment, they can issue a State Grand Jury Report with findings.
- SGJ Clerk schedules a time for SGJ Judge to “take the returns” (i.e., judge announces the SGJ Jurors’ decision)

Indictment and Venue Announcement

At the end of a three day SGJ monthly term of court, when SGJ Clerk schedules SGJ Judge to “take the returns,” SGJ Judge does the following:

- Opens envelopes with SGJ Jurors’ vote and announces which indictments are true bill (i.e., indicted) and no bill (i.e., not indicted).
- Assigns appropriate venue (i.e., county) for prosecuting indictments that are true billed. Note: Conspiracy can be venued in any county conspiracy touched

SGJ Secrecy Oath given to staff (not witnesses) by SGJ Clerk
Throughout the year, as the SGJ Legal Team and SGJ Judge designate who is working with them, SGJ Clerk has them swear to the SGJ secrecy oath.
Witnesses who testify before the grand jury are sworn in by the grand jury foreperson

Note: See “State v. County Grand Jury” document for difference in typical prosecution at county level versus state grand jury

Step 2: *Conduct*

Step 3: *Vote*

Sample Indictment

FILED

JUN 20 2019

STATE GRAND JURY OF SOUTH CAROLINA

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA)

v.)

BENJAMIN JAMAL JOHNSON,)
(A/K/A "SLIM");)
SHIV BALVANT TAILOR;)
SAVANNAH LYNN STROUD;)

DEFENDANTS.)

CASE NO. 2019-GS-47-07

**SUPERSEDING
INDICTMENT FOR UNLAWFUL
DRUGS**

Trafficking in Illegal Drugs (Heroin),
14 – 28 Grams (Conspiracy)
S.C. Code Ann. §
44-53-370(e)(3)(b)

Distribution of Heroin
S.C. Code Ann. § 44-53-370(b)(1)
(4 Counts)

Distribution within Proximity of a
School
S.C. Code Ann. § 44-53-445(A)
(1 Count)

Distribution of Cocaine
S.C. Code Ann. § 44-53-370(b)(1)
(1 Count)

At a session of the State Grand Jury of South Carolina, convened in Columbia,
South Carolina, on June 20, 2019, the State Grand Jurors present upon their oath:

**COUNT ONE
TRAFFICKING IN ILLEGAL DRUGS (HEROIN), 14 – 28 GRAMS (CONSPIRACY)**
S.C. Code Ann. § 44-53-370(e)(3)(b)

That BENJAMIN JAMAL JOHNSON (A/K/A "SLIM"), SHIV BALVANT TAILOR,
SAVANNAH LYNN STROUD, and other persons whose names are both known and
unknown to the State Grand Jury, did in Lexington County, South Carolina, from June of

Page 1 of 7

quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code
of Laws South Carolina (1976), as amended, to wit: TAILOR and STROUD did distribute
a quantity of pills containing heroin.

All in violation of Section 44-53-370 of the South Carolina Code, and such conduct
not having been authorized by law; and such conduct involving and arising out of and in
connection with a crime involving narcotics, dangerous drugs, or controlled substances,
and such crime being of a multi-county nature and having transpired and having
significance in more than one county of this State.

Against the peace and dignity of this State and contrary to the law in such case
made and provided.

**COUNT SEVEN
DISTRIBUTION OF COCAINE**
S.C. Code Ann. § 44-53-370(b)(1)

That SAVANNAH LYNN STROUD did in Lexington County, on or about January
11, 2019, knowingly and intentionally distribute, dispense, and deliver a quantity of
cocaine, a controlled substance under the provisions of § 44-53-110, *et. seq.*, Code of
Laws of South Carolina (1976), as amended, to wit: STROUD did distribute a quantity of
cocaine.

All in violation of Section 44-53-370 of the South Carolina Code, and such conduct
not having been authorized by law; and such conduct involving and arising out of and in
connection with a crime involving narcotics, dangerous drugs, or controlled substances,
and such crime being of a multi-county nature and having transpired and having

Page 6 of 7

significance in more than one county of this State.

Against the peace and dignity of this State and contrary to the law in such case
made and provided.

A TRUE Bill


FOREMAN


ALAN WILSON (SCW)
ATTORNEY GENERAL

Page 7 of 7

Step 4: Warrant and Bond Hearing

STEP #4: WARRANT and BOND HEARING for Indictment – SGJ Legal Team and LEO; SGJ Clerk; SGJ Judge

Processing the Indictments

- SGJ Clerk creates single folder for the indictment

Indictment Warrants and Bond Hearing

- SGJ Legal Team and LEO provide SGJ Clerk information for drafting indictment warrant (i.e., Defendant's information and charges for which defendant is being arrested)
- SGJ Clerk creates a warrant document
- Clerk provides provide the Fifth Judicial Circuit Chief Administrative Judge the warrant to review and sign
- SGJ Clerk provides signed indictment warrant to LEO to serve
- LEO serves warrant and makes arrest
 - If offender is already in custody, warrant is served on offender and offender remains in custody; If not, offender is brought into custody
- Indictment warrant bond hearing process is the same as a pre-indictment warrant bond hearings, see "Pre-indictment warrants and hearing" document
 - If it is a high profile case, the clerk coordinates with media (note, media typically only know about indictment warrants, because pre-indictment warrants are sealed)
- SGJ Clerk creates individual folders for each defendant

Example Warrant

ARREST WARRANT

STATE OF SOUTH CAROLINA

County of Kershaw
2021A470010015

THE STATE

Against

Jeremy Akeen McCray
(Defendant)

Address: 107 Railroad Ave., Camden, SC 29020

Phone: _____

SSN: 243-87-6731

Sex: M Race: Blk Height: 5'3" Weight: 145

DL State: SC DL# _____

DOB: 5/1/1990 Agency ORI#: SCLED0001

Prosecuting Agency: SLED

Prosecuting Officer: S/A Jamie Shaw

Offense: Criminal Conspiracy

Offense Code: 16-17-410

Code/Ordinance Section: 49

This warrant is **CERTIFIED FOR SERVICE** in the County of Kershaw.

The accused is to be arrested and brought before me to be dealt with according to law.

Alfred Lee (L.S.)
Signature of Judge

Date: October 20, 2020

RETURN

A copy of this arrest warrant was delivered to defendant Jeremy Akeen McCray on 10/20/2021.

Ji [Signature]
Signature of Constable/Law Enforcement Officer

AFFIDAVIT

STATE OF SOUTH CAROLINA)
County of Kershaw)

Special Agent Daniel Coulter
Special Agent Jamie Shaw

Personally appeared before me the affiant Special Agent Jamie Shaw who being duly sworn deposes and says that defendant Jeremy Akeen McCray did within this County and State on October 20, 2021 violate the criminal laws of the State of South Carolina (or ordinance) of the County of Kershaw in the following particulars: **DESCRIPTION OF OFFENSE: Criminal Conspiracy**

I, further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about October 17, 2021, Jeremy Akeen MCCRAY did commit the offense of Criminal Conspiracy in Kershaw county, South Carolina. It was determined by law enforcement that Jeremy McCray obtained a gasoline fuel with the intention to start a fire at the residence of 1012 Queen Street, Camden, located in Kershaw County, South Carolina. On October 17, 2021, Jeremy McCray learned a narcotics package was possibly stolen from him by Dwight Ali McCray. Upon information and belief, Jeremy McCray contacted Jake McCray and conspired to retaliate against Dwight Ali McCray. Jeremy McCray conspired with Jake McCray to obtain a gasoline fuel in order to set fire to the residence of Dwight Ali McCray, which is known to be 1012 Queen Street, Camden. Jake McCray agreed to wait until early morning hours before attempting to set fire to the residence. On October 19, 2021, Jeremy McCray contacted an unwitting third party, who is also a source of information for law enforcement and has provided accurate and reliable information in the past, and asked them to purchase a small amount of gasoline. Upon information and belief, the unwitting third party did not have knowledge of the intended criminal purpose for which the gasoline was to be used. Jeremy McCray instructed the unwitting third party to place the container of gasoline on an unknown residence porch for him to later retrieve, adding that he would pay them back at a later time. Electronic cellular telephone monitoring showed Jeremy McCray to be located in the Camden area during the time the structure fire was reported to law enforcement. The SLED Arson Unit conducted an Origin and Cause Investigation which revealed that an accelerant was utilized in the attempt to set fire to the rear of the residence. The origin of the structure fire was located on the outside of the residence against an exterior wall of a residence bedroom. Present in the residence at the time of the arson was Dwight Ali McCray, another adult and four (4) minor children.

Sworn to and subscribed before me on)
October 20, 2021)

Alfred Lee (L.S.)
Signature of Judge

Signature of Affiant SLED
Affiant's Address P.O. Box 21398
Columbia SC 29221
Affiant's Telephone 803-737-9000

STATE OF SOUTH CAROLINA)
County of Kershaw)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MINICIPALITY OR ANY CONSTABLE OF THIS COUNTY: It appearing from the above affidavit that there are reasonable grounds to believe that on October 20, 2021 defendant Jeremy Akeen McCray did violate the criminal laws of the State of South Carolina (or ordinance of the County of Kershaw) as set forth below:

DESCRIPTION OF OFFENSE: Criminal Conspiracy

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Alfred Lee)
Signature of Issuing Judge

Defendant's Information

Prosecuting Agency and Officer

Offense Code = State Statute

Code/Ordinance Section =
Criminal offense code created by
the General Assembly and
common law and court opinions

FILED

NOV 03 2021

MARGARET J. SELF
CLERK, SC STATE GRAND JURY

Example Warrant for Post-SGJ Direct Indictment

Defendant's
Information

Offenses in SGJ Indictment(s)

Code/Ordinance Section =
Criminal offense code created by
the General Assembly and
common law and court opinions

SGJ Presiding Judge

STATE OF SOUTH CAROLINA		
STATE OF SOUTH CAROLINA	WARRANT FOR ARREST	
vs.		
BILAL SHAHEED HARRIS A/K/A "YOSHI"	CASE NUMBER: 2020-GS-47-20 (Superseding)	
TO: Any Law Enforcement Officer of this State, or Any County or Municipal Officer Within his Jurisdiction		
YOU ARE HEREBY COMMANDED to arrest BILAL SHAHEED HARRIS A/K/A "YOSHI" and bring him or her forthwith before me to answer an Indictment of the State Grand Jury of South Carolina charging him or her with:		
CONSPIRACY; ASSAULT AND BATTERY 2 ND DEGREE (SERIOUS BODILY INJURY RESULTS) PRISONER CARRYING OR CONCEALING A WEAPON		
in violation of 1976 Code of Laws of South Carolina, as amended, Section(s) 16-17-0410; 16-3-0210(C); 24-13-0440. A copy of this Warrant for Arrest shall be delivered to the defendant at the time of its execution, or as soon thereafter as practicable.		
<u>August 27</u> , 2021 Date	Alison Renee Lee Name of Presiding Judge	
Columbia, SC Location	<u>Alison Renee Lee</u> Signature of Presiding Judge	
RETURN		
This warrant was received and executed with the arrest of the above-named defendant at _____. A copy of this warrant was delivered to the defendant on _____, 2021.		
Date Received: _____	Name and Title of Arresting Officer	Signature of Arresting Officer
Date of Arrest: _____		

Step 5: Trial

STEP #5: TRIAL for Indictment – SGJ Legal Team, SGJ Clerk, Trial Judge, Trial Jurors

Assignment of Trial Judge

- SGJ Clerk contacts Court Administration to request a trial judge be assigned to the case in the jurisdiction and county venue
- Court Administration emails SGJ Clerk an order assigning a judge. The assignment is based on the SGJ investigation number, because there may be numerous indictments all connected with the same investigation. The same trial judge will hear all matters related to the investigation.

Discovery

- Trial Judge issues protective order to allow Defendant's attorney (privately obtained or assigned) access to SGJ Legal Team evidence and transcripts from SGJ Investigation
 - Protective order states Defendant's attorney is only permitted to use/disclose the information as needed for defense at trial
 - All SGJ Monthly Meetings are recorded so Defendant's attorney has access to the information if an indictment and trial occur
- SGJ Legal Team provides all evidence collected during investigation to Defendant's attorney

Civil Forfeiture

- Where appropriate, SGJ utilizes the Attorney General's Civil Litigation division to assist in forfeiture proceedings (i.e. taking ill-gotten gains of criminal organizations)

Motions and Hearing dates

- SGJ Clerk receives any motions filed by either party and provides to assigned Trial Judge
- Trial Judge decides whether to have a hearing. If Trial Judge wants a hearing, Judge will tell the SGJ Clerk the date and time of the hearing
- SGJ Clerk informs parties and their attorneys of date/time and if attorneys are unavailable, SGJ Clerk goes back to Trial Judge for another date. This continues until available date for everyone is reached.

Step 5 (cont.) *Trial*

STEP #5 (cont.): TRIAL for Indictment – SGJ Legal Team, SGJ Clerk, Trial Judge, Trial Jurors

Plea

- SGJ ranks defendants in tiers based on prior record, involvement in crime, etc. and sends plea offers to Defendants attorneys. Most cases end as pleas
 - Cooperation of Defendant as a result of a plea may expand information available about the criminal organization and lead to expanded SGJ investigation and new indictments as well as superseding indictments (i.e., new defendants added to a count on an existing indictment)
 - Defendant can choose to have the plea address any civil forfeiture as well
- SGJ Clerk follows same process as “Motions and Hearing dates” above to schedule plea.
- Trial Judge enters sentence based on plea agreement

Trial occurs (if no plea agreement reached)

- SGJ Clerk follows same process as “Motions and Hearing dates” above to schedule trial
- Trial Jurors selected from county in which trial is venued, using same process as prosecution of non-state jury indictments (Note: This jury is different than the SGJ Jurors)
- Trial Judge presides and trial proceeds using same process as prosecution of non-state jury indictments
- Trial Jurors determine Defendant’s guilt or innocence

Sentencing

- SGJ Clerk follows same process as “Motions and Hearing dates” above to schedule any post trial sentencing hearings
- Trial Judge enters sentence

After Sentencing

- SGJ Clerk emails scanned copies of documents to the following:
 - Detention centers: Sentencing Sheets
 - SGJ Legal Team (Prosecutors): Sentencing Sheets and Plea Agreements
 - Defendant’s Attorney: Sentencing Sheets and Plea Agreements
- For Defendant’s sentenced to probation, SGJ Clerk emails scanned copies of documents to the following:
Department of Probation, Parole, and Pardon Services: Sentencing Sheets and Indictments
- SGJ Clerk manually reenters information from each individual sentencing sheet into an online form and uploads it to Court Administration through a County Stats Portal (SGJ is the 47th county)

State Grand Jury

Clerk of Court

Services and Performance Measures

Pre-Empanelment Process of Juror Selection

- Compile lists of jurors from each county based on population, approximately 4500 potential jurors.
- A random selection of 700 jurors statewide takes place electronically and forms are sent to those jurors.
- Once forms are received, jurors are qualified.
- Another random selection occurs and the juror pool is narrowed to 60 jurors who are summoned to Columbia for jury selection for service on the State Grand Jury.

Selection of State Grand Jury

- Work with the State Grand Jury prosecution team within the Attorney General's Office and the Chief Administrative Judge for the 5th Circuit Court to qualify jurors to serve in this capacity for two six-month terms per year. By statute, juries can be held over for extended jury service.
- A random jury selection of 22 jurors, 18 regular jurors and 4 alternate, to serve on the Statewide Grand Jury.

Please note that due to case volume and investigation length, some years require juries to be held over for additional six month periods of service.

Agency Service #197: Pre-Empanelment Process of juror selection

Does law require it: Yes

Assoc. Law(s): Section 14-7-1600, 14-7-1970 (State Grand Jury Act)

Single Unit: One jury empaneled	<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>
2016-17	226.00	\$2,326.03	3.26	\$139,896.30	0.71%
2017-18	184.00	\$1,098.36	3.26	\$202,099.00	0.34%
2018-19	171.00	\$1,380.70	3.26	\$236,099.00	0.35%
2019-20	Not provided	Insufficient data	3.26	\$136,085.61	0.18%

Agency Service #198: Selection of State Grand Jury

Does law require it: Yes

Assoc. Law(s): Section 14-7-1600, 14-7-1630(B), 14-7-1970 (State Grand Jury Act)

Single Unit: One juror	<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>
2016-17	22.00	\$2,326.03	3.26	\$206,761.14	1.05%
2017-18	22.00	\$9,859.77	3.26	\$216,915.00	0.36%
2018-19	22.00	\$11,441.91	3.26	\$251,722.00	0.38%
2019-20	22.00	\$5,108.98	3.26	\$112,397.57	0.15%

Juror Service

- Jurors typically service 1-3 day terms each month
- Terms are scheduled by the State Grand Jury Section of the Attorney General's Office.

Notes: In the past few years, there has been the rare occasion to have two State Grand Juries seated on the same month. This is due to extending investigations and pending indictments on State Grand Jury investigations and special designated prosecutors.

State Grand Jury Secrecy Oath

- Individuals are sworn in by the Clerk of the State Grand Jury in person and take the Oath of secrecy.
 - On jury selection day, large groups of individuals are sworn in as a group.
 - Throughout the year, individuals are sworn in as they are employed with the Attorney General's Office and other individuals as designated by the Chief
- Statute requires any person working with the State Grand Jury be sworn to keep the confidentiality of the State Grand Jury and not disclose information that is confidential in nature.

*Does not include witnesses who testify before the SGJ. Those witnesses are sworn in by the SGJ foreperson)

Agency Service #199: Juror Service

Does law require it: Yes

Assoc. Law(s): Section 14-7-1600, 14-7-1970 (State Grand Jury Act)

Single Unit: One juror		<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>
	2016-17	22.00	\$2,326.03	3.26	\$21,492.05	0.11%
	2017-18	22.00	\$1,103.00	3.26	\$24,266.00	0.04%
	2018-19	22.00	\$1,103.00	3.26	\$24,266.00	0.04%
	2019-20	22.00	\$5,302.96	3.26	\$116,665.22	0.15%

Agency Service #200: State Grand Jury Secrecy Oath

Does law require it: Yes

Assoc. Law(s): Section 14-7-1600, 14-7-1970 (State Grand Jury Act)

Single Unit: One individual sworn in		<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>
	2016-17	251.00	\$2,326.03	3.26	\$6,441.42	0.03%
	2017-18	305.00	\$28.34	3.26	\$8,644.00	0.01%
	2018-19	321.00	\$26.93	3.26	\$8,644.00	0.01%
	2019-20	Not provided	Insufficient data	3.26	\$236,614.32	0.31%

Performance Measures

Prior to the House Legislative Oversight Process the State Grand Jury Clerk of Court did not track any performance measures.

The section is currently in the process of determining appropriate measures and credible means of tracking those measures.

Summary

State Grand Jury Clerk's Office:

- administers procedures for jury selection,
- supervises bond hearing arrangements,
- manages filing system for court records, and
- coordinates logistical needs for the monthly State Grand Jury meetings

Successes

- Ability to utilize virtual court room

Concerns

- Need for case management system and additional technology capabilities

State Grand Jury

Legal Team

Services and Performance Measures

Investigate and prosecute the following:

Multi-County Narcotics Cases and Recover Drug Forfeiture Funds

(Agency Service #184)

Ultimately, multiple people may end up being indicted in one investigation, so this number is distinct from the number of actual charges brought, as set forth collectively for all jurisdictional subject matter

** = numbers updated since PER*

Primary Jurisdiction Single Unit: Open Investigations Narcotics (Historical Average 86 cases/inv)		<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>
	2016-17	15.00	\$2,326.03	2.62	\$367,241.50	1.87%
	2017-18	19.00	\$17,344.09	2.62	\$329,537.66	0.55%
<u>Does law require it:</u> Yes	2018-19	16.00	\$23,836.24	2.62	\$381,379.82	0.57%
<u>Assoc. Law(s):</u> S.C. Code 14-7-1630(A)(1)	2019-20	13.00	\$22,178.62	3.00	\$288,322.10	0.37%

Criminal Gangs and a pattern of criminal gang activity

(Agency Service #185)

Primary Jurisdiction Single Unit: Open Investigations Criminal Gangs (Historical Average 95 cases/inv)		<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>
	2016-17	3.00	\$2,326.03	1.25	\$310,580.57	1.58%
	2017-18	4.00	\$70,172.26	1.25	\$280,689.04	0.47%
<u>Does law require it:</u> Yes	2018-19	3.00	\$60,374.27	1.25	\$181,122.82	0.27%
<u>Assoc. Law(s):</u> S.C. Code 14-7-1630(A)(2)	2019-20	3.00*	\$48,793.10*	1.60	\$146,379.30	0.19%

Public Corruption Cases

(Agency Service #186)

Primary Jurisdiction Single Unit: Open Inv. Public Corruption (Historical Average 17 cases/inv)		<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>
	2016-17	6.00*	\$2,326.03	2.43	\$310,580.57	1.58%
	2017-18	10.00	\$28,068.90	2.43	\$280,689.04	0.47%
<u>Does law require it:</u> Yes	2018-19	10.00*	\$32,316.37*	2.43	\$323,163.71	0.48%
<u>Assoc. Law(s):</u> S.C. Code 14-7-1630(A)(3)	2019-20	14.00*	\$23,726.09*	3.60	\$332,165.29	0.43%

Investigate and prosecute the following:

Securities Fraud Cases

(Agency Service #187)

Ultimately, multiple people may end up being indicted in one investigation, so this number is distinct from the number of actual charges brought, as set forth collectively for all jurisdictional subject matter

** = numbers updated since PER*

Primary Jurisdiction Single Unit: Securities Fraud Open Investigations (<u>Historical Average 18 cases/inv</u>)	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs	
	2016-17	0.00*	\$2,326.03	1.61	\$191,809.62	0.98%
<u>Does law require it:</u> Yes	2017-18	2.00	\$89,176.18	1.61	\$178,352.35	0.30%
<u>Assoc. Law(s):</u> S.C. Code 14-7-1630(A)(7)	2018-19	2.00	\$99,882.17	1.61	\$199,764.34	0.30%
	2019-20	1.00	\$64,307.09	0.80	\$64,307.09	0.08%

Human Trafficking Cases

(Agency Service #188)

Primary Jurisdiction Single Unit: Human Trafficking Open Investigations	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs	
	2016-17	1.00	\$2,326.03	2.00	\$20,043.24	0.10%
<u>Does law require it:</u> Yes	2017-18	0.00	Insufficient data	0.00	\$19,867.91	0.03%
<u>Assoc. Law(s):</u> S.C. Code 14-7-1630(A)(13)	2018-19	0.00*	Insufficient data	2.00	\$23,040.53	0.03%
	2019-20	1.00	\$0.00	0.00	\$0.00	0.00%

Other Areas of State Grand Jury Jurisdiction

(Agency Service #189)

Recently and historically, cases on these subject matters have not been initiated or have rarely been initiated.

Primary Jurisdiction Single Unit: Other SGJ jurisdiction open investigations	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs	
	2016-17	1.00	\$2,326.03	2.00	\$26,831.83	0.14%
<u>Does law require it:</u> Yes	2017-18	0.00	Insufficient data	0.00	\$25,112.31	0.04%
<u>Assoc. Law(s):</u> S.C. Code 14-7-1630(A)(4), (5), (6), (8), (9), (10), (11), and (12)	2018-19	0.00	Insufficient data	0.00	\$12,269.62	0.02%
	2019-20	0.00	Insufficient data	0.00	\$0.00	0.00%

- Election laws
- Computer crimes
- Terrorism
- Obscenity
- Money Laundering (usually subsumed)
- False statement on alien's lawful presence
- Immigration
- Environmental

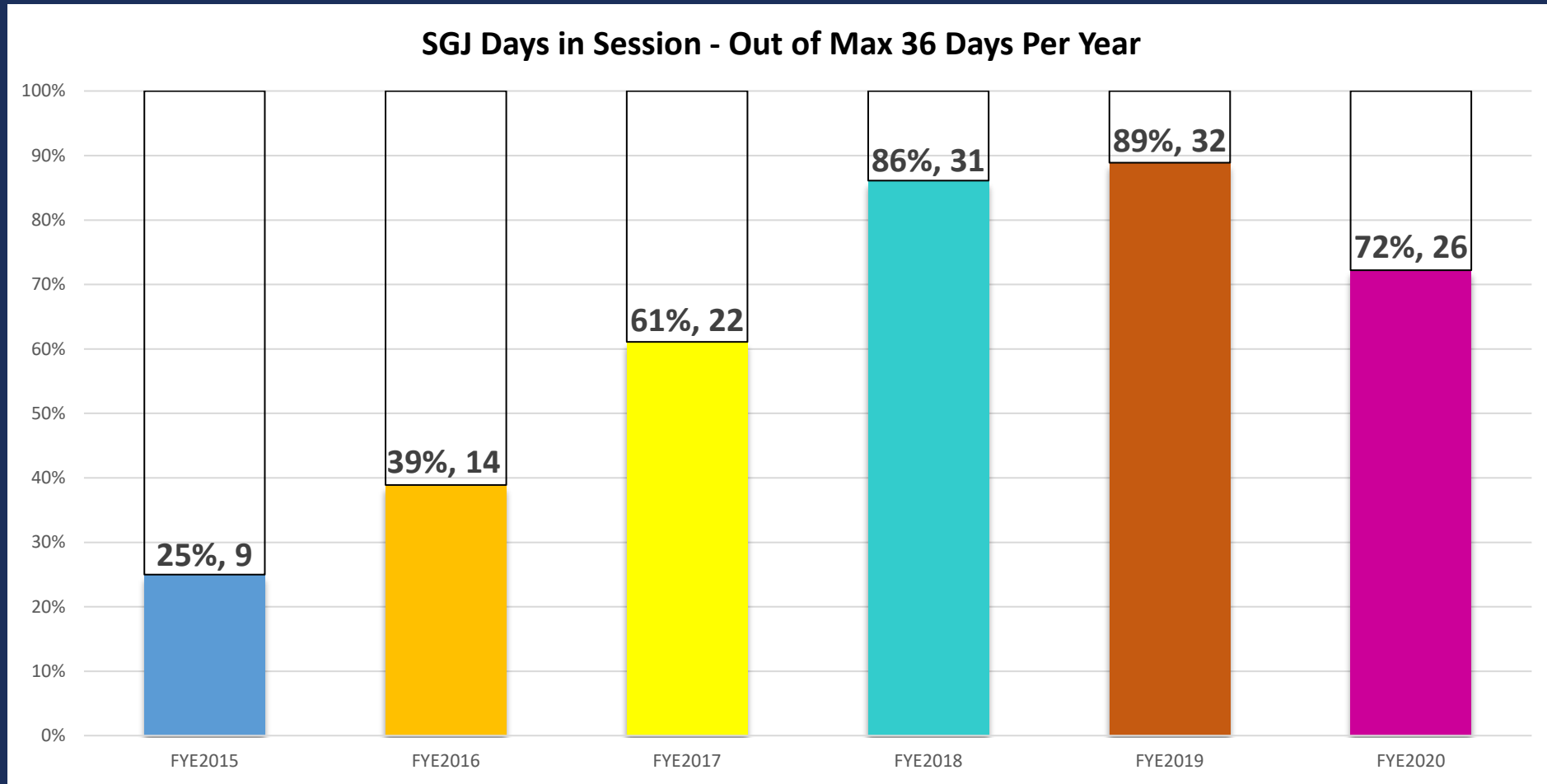
Performance Measures

Current SGJ Legal Team began in March 2017.

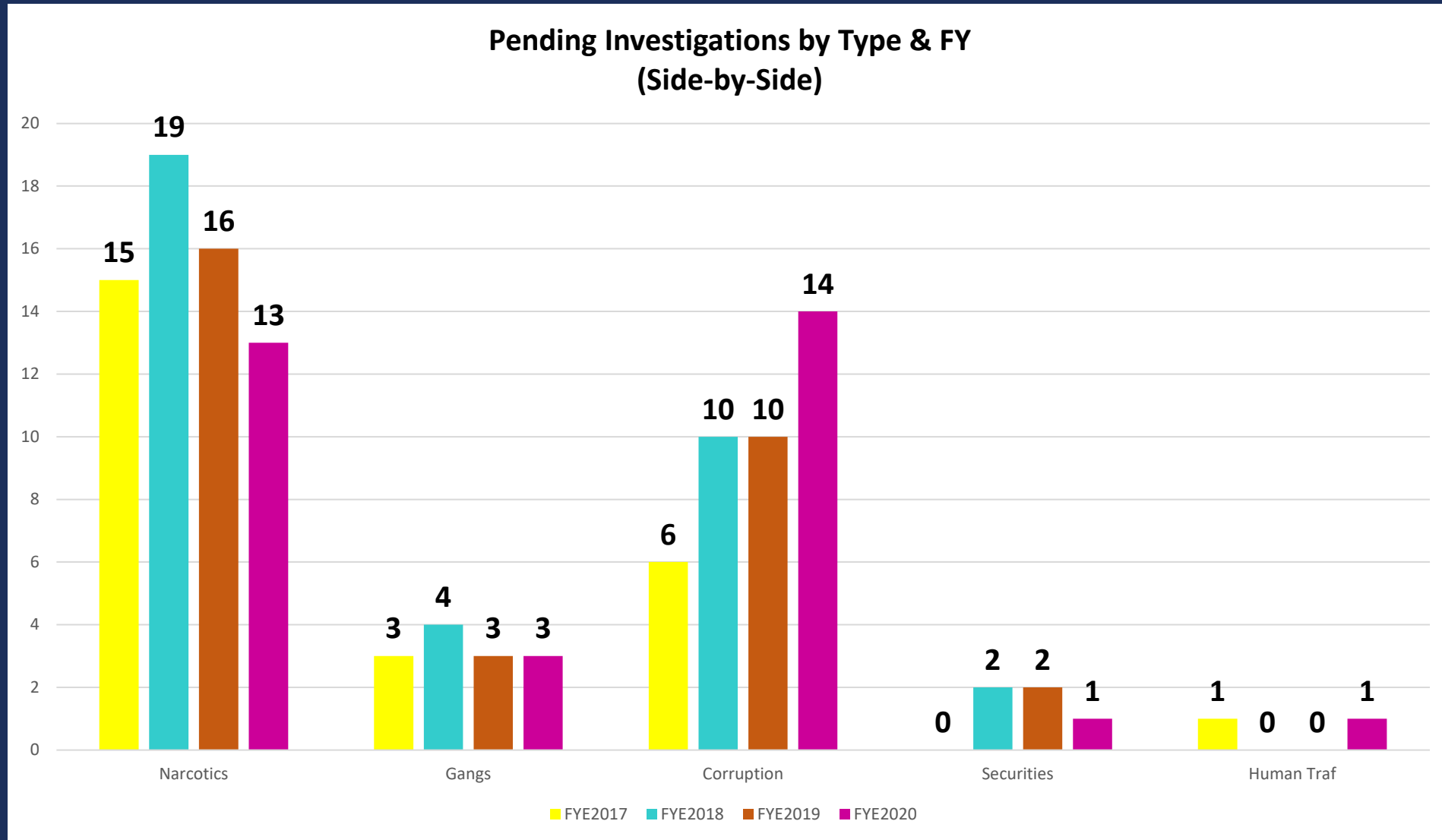
Increased Pace.

The section is currently in the process of determining appropriate performance measures and credible means of tracking those measures.

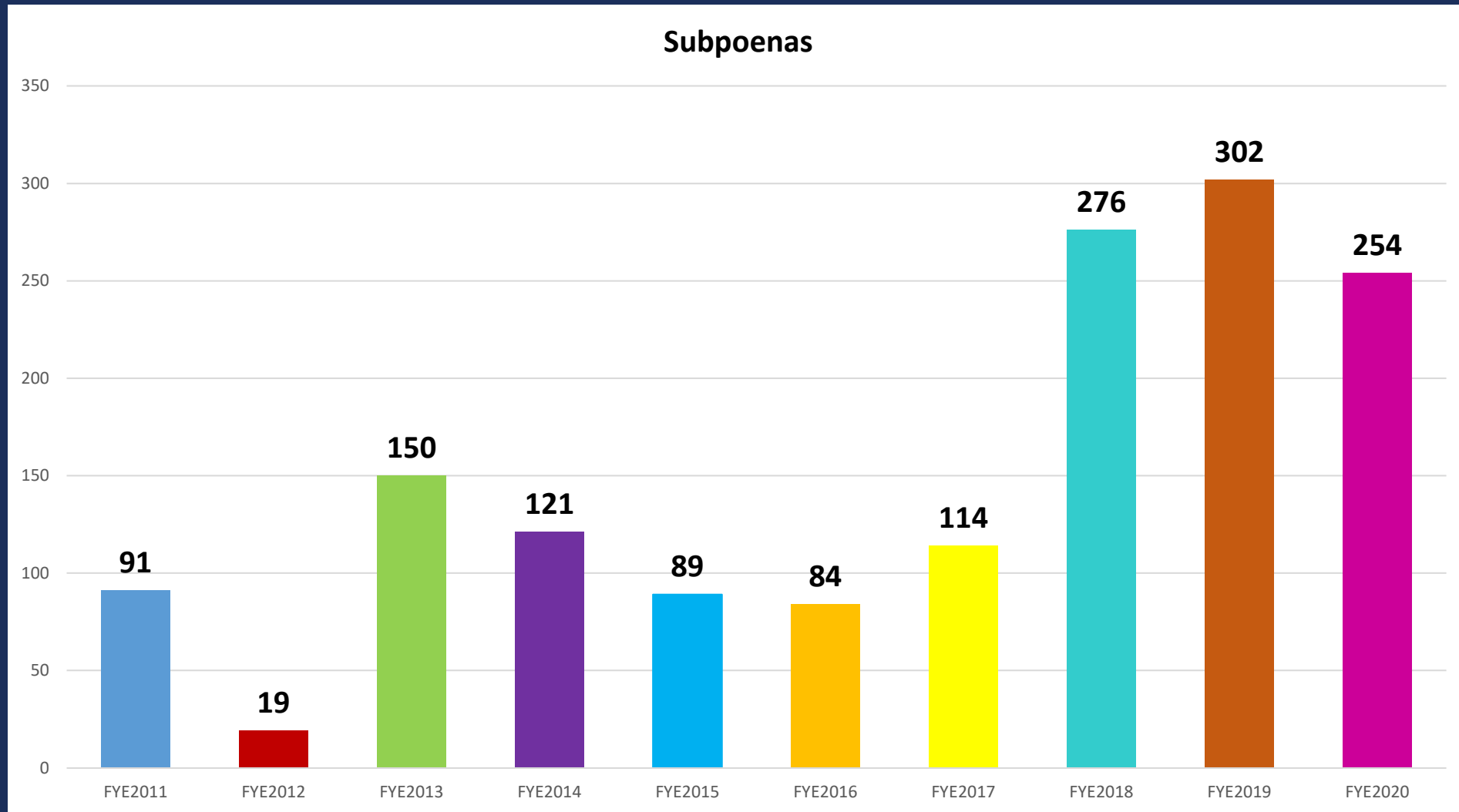
Performance Measures



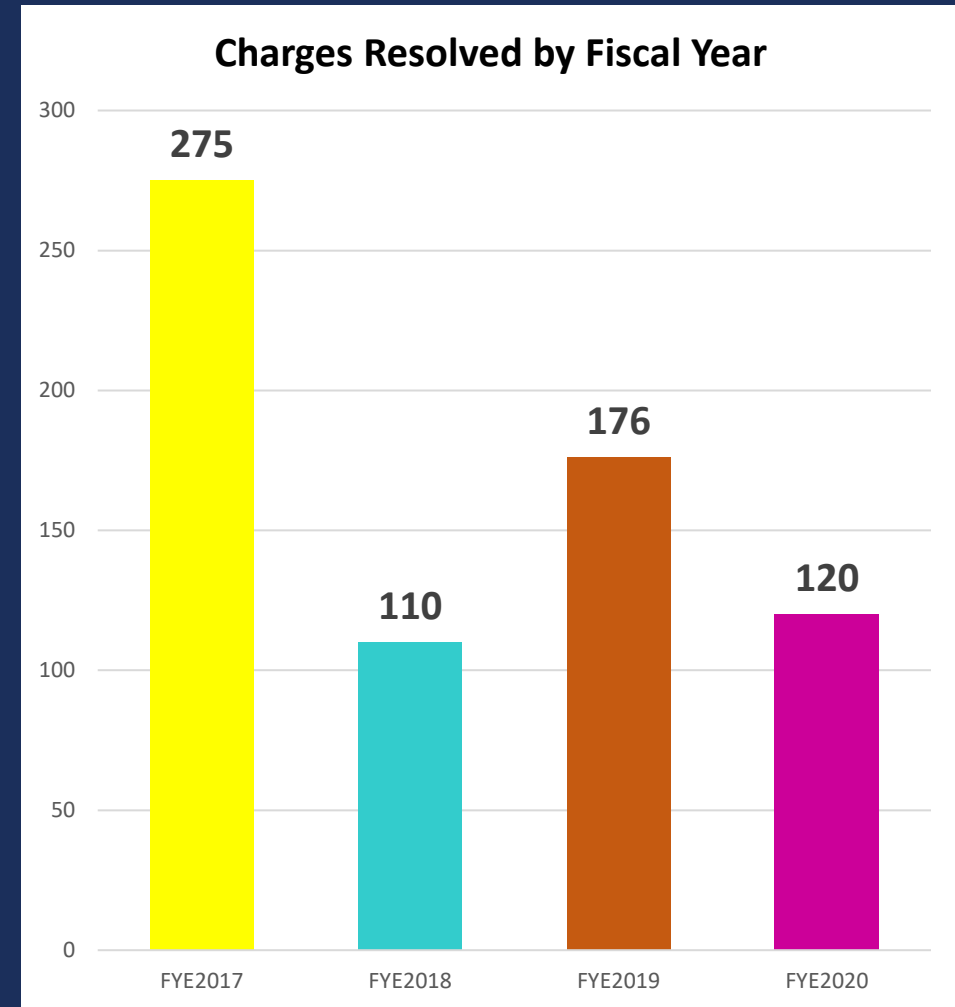
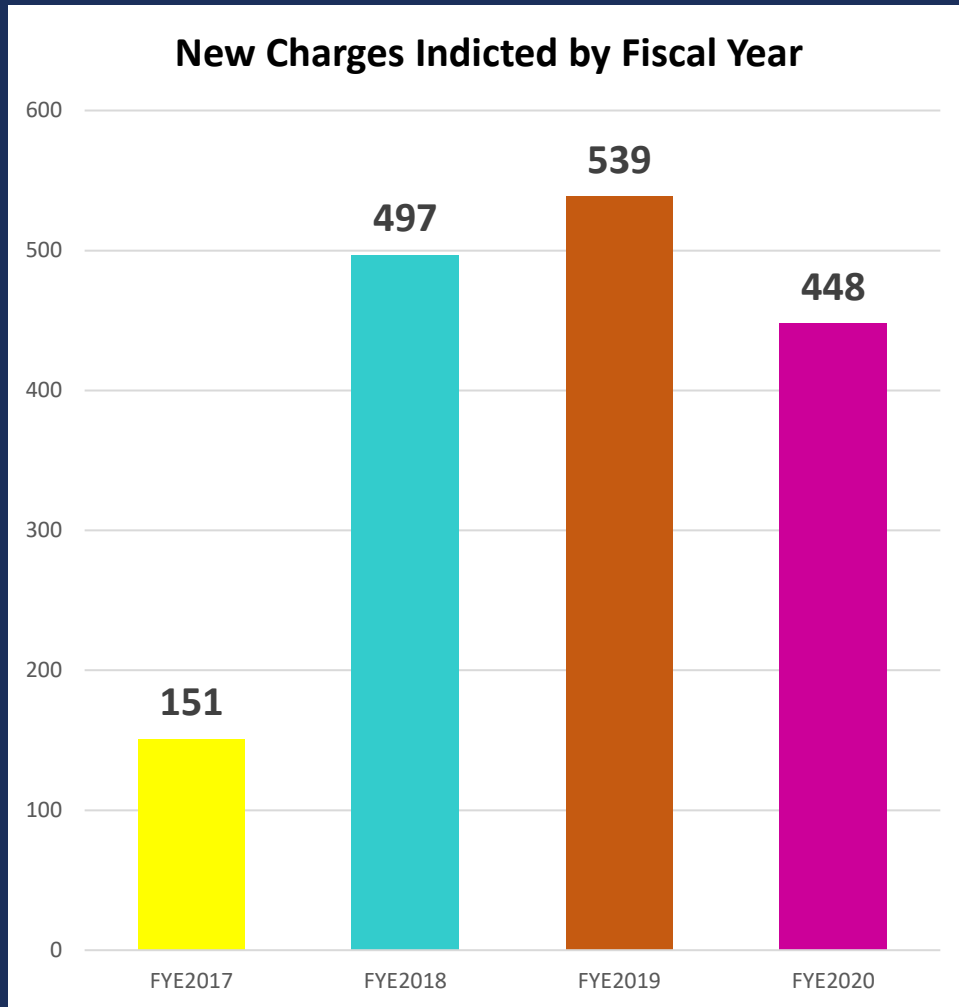
Performance Measures



Performance Measures



Performance Measures



Concerns

Case Management System and other technology capabilities

Many technology capabilities, even basic software, is going to the cloud

Statute currently requires secrecy, without consideration of the above



SGJ - 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 #30

- Law: S.C. Code Section 44-53-190(B) Define Fentanyl and add a Fentanyl Trafficking Provision
- Current Law: Does not have a Fentanyl Trafficking provision
- Recommendation: Given the opiate crisis, add a Fentanyl trafficking provision.
- Basis for Recommendation: The availability of imported and cheap fentanyl is fueling the opiate epidemic.
- Others Potentially Impacted: Law enforcement, solicitors, DHEC, SCDC

SECTION 44-53-190. Schedule I.

(A) The controlled substances listed in this section are included in Schedule I.

(B) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

...

(). Fentanyl-related substance. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, that is structurally related to fentanyl by one or more of the following modifications:

(A) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(B) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxyl, halo, haloalkyl, amino or nitro groups;

(C) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

(D) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

(E) Replacement of the N-propionyl group by another acyl group.

This definition includes, but is not limited to, the following substances:

Methylacetyl fentanyl, Alpha-methylfentanyl, Methylthiofentanyl, Benzylfentanyl, Beta-hydroxyfentanyl, Beta-hydroxy-3-methylfentanyl, 3-Methylfentanyl, Methylthiofentanyl, Fluorofentanyl, Thenylfentanyl or Thienyl fentanyl, Thiofentanyl, Acetylfentanyl, Butyrylfentanyl, Beta-Hydroxythiofentanyl, Lofentanil, Ocfentanil, Ohmfentanyl, Benzodioxolefentanyl, Furanyl fentanyl, Pentanoyl fentanyl, Cyclopentyl fentanyl, Isobutyryl fentanyl, Remifentanil, Crotonyl fentanyl, Cyclopropyl fentanyl, Valeryl fentanyl, Fluorobutyryl fentanyl, Fluoroisobutyryl fentanyl, Methoxybutyryl Fentanyl, Isobutyryl fentanyl, Chloroisobutyryl fentanyl, Acryl fentanyl, Tetrahydrofuran fentanyl, Methoxyacetyl fentanyl, Fluorocrotonyl fentanyl, Cyclopentenyl fentanyl, Phenyl fentanyl, Cyclobutyl fentanyl, Methylcyclopropyl fenantyl

SECTION 44-53-370. Prohibited acts A; penalties.

...

(e) Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of:

...

(3) four grams or more of any morphine, ~~opium~~ opiate, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44 53 190 or 44 53 210, or four grams or more of any fentanyl or fentanyl-related substance as described in Section 44-53-190 or 44-53-210, or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as “trafficking in illegal drugs” and, upon conviction, must be punished as follows if the quantity involved is:

- (a) for a first offense, a term of imprisonment of not more than twenty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;
- (b) for a second or subsequent offense, a term of imprisonment of not more than thirty years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;
- (c) for an offense that results in a fatal overdose, the term of imprisonment must be increased by an additional sentence of up to twenty years to run consecutively.”

LAW CHANGE RECOMMENDATION #31

- Law: S.C. Code Section 16-3-60. Involuntary manslaughter; "criminal negligence" defined.
- Current Law: Involuntary Manslaughter is defined as criminal negligence, but the case law defines it as an unlawful act not amounting to a felony and not naturally tending to cause death or serious bodily harm. The penalty is only 5 years.
- Recommendation: Define Involuntary Manslaughter as including the sale of drugs, particularly opiates, where death results, and increase the penalty to 15 years.
- Basis for Recommendation: Given the opiate and meth crisis, some sort of justice for dealers who sell deadly drugs is necessary. This also gives voice to the victims who were sold drugs with deadly concentrations. This bill is currently proposed and is in the House.
- Others Potentially Impacted: Law enforcement, Solicitors, DHEC, SCDC

SECTION 16-3-60. Involuntary manslaughter; "criminal negligence" defined.

With regard to the crime of involuntary manslaughter, criminal negligence is defined as the reckless disregard of the safety of others. A person charged with the crime of involuntary manslaughter may be convicted only upon a showing of criminal negligence as defined in this section. Involuntary manslaughter may include, but is not limited to, the knowing and unlawful sale or delivery of a controlled substance, controlled substance analogue, or other unlawful substance when the ingestion of such substance caused the death of the user. A person convicted of involuntary manslaughter must be imprisoned not more than five years, except that a person convicted of involuntary manslaughter for the unlawful sale or delivery of a controlled substance, controlled substance analogue, or other unlawful substance when the ingestion of such substance caused the death of the user is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

LAW CHANGE RECOMMENDATION #32

- Law: S.C. Code Section 14-7-1750. Indictment by state grand jury; sealed indictment.
- Current Law: Current law just says SGJ charges should be venued in the county where appropriate.
- Recommendation: Allow related charges indicted by the SGJ to be tried together in one county where at least one of the related charges occurred.
- Basis for Recommendation: SGJ was in many instances created to address multi-county crime, because crime often transcends county lines. This would allow all related crimes of a multi-county criminal enterprise or spree to be tried together in one county, even if individual substantive crimes related to that enterprise occurred in a different county.
- Others Potentially Impacted: None

SECTION 14-7-1750. Indictment by state grand jury; sealed indictment.

In order to return a "true bill" of indictment, twelve or more state grand jurors must find that probable cause exists for the indictment and vote in favor of it. Upon indictment by a state grand jury, the indictment must be returned to the presiding judge. If the presiding judge considers the indictment to be within the authority of the state grand jury and otherwise in accordance with the provisions of this article, he shall return the indictment by order to the county where venue is appropriate under South Carolina law for prosecution by the Attorney General or his designee; provided, however, that related offenses indicted by the State Grand Jury which occurred in different counties may be tried together in one of the counties in which at least one of the related offenses occurred, and venue shall not be a basis for acquittal in such a circumstance as long as venue was appropriate for at least one of the related offenses in the county in which the trial occurred. The presiding judge may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. Thereupon, the clerk of the state grand jury shall seal the indictment, and no person shall disclose the return of the indictment except when necessary for the issuance and execution of a warrant.

LAW CHANGE RECOMMENDATION #33

- Law: S.C. Code Section 14-7-1630(A) (12)
- Current Law: Current law requires a \$2M threshold and also that it be certified by an independent environmental engineer who must be contracted by the Department of Health and Environmental Control.
- Recommendation: Lower the threshold and provide the certification can be done by any “environmental engineer”.
- Basis for Recommendation: \$500,000 is still very significant but would open up more cases for possible SGJ review that have possible health effects on the community. Finding an “independent environmental engineer who must be contracted by DHEC” is difficult; “professional engineers” are still certified.
- Others Potentially Impacted: DHEC

SECTION 14-7-1630. Jurisdiction of juries; notification to impanel juries; powers and duties of impaneling and presiding judges; transfer of incomplete investigations; effective date and notice requirements with respect to orders of judge; appeals.

(A) The jurisdiction of a state grand jury impaneled pursuant to this article extends throughout the State.

The subject matter jurisdiction of a state grand jury in all cases is limited to the following offenses:

...

(12) a knowing and wilful crime involving actual and substantial harm to the water, ambient air, soil or land, or both soil and land. This crime includes a knowing and wilful violation of the Pollution Control Act, the Atomic Energy and Radiation Control Act, the State Underground Petroleum Environmental Response Bank Act, the State Safe Drinking Water Act, the Hazardous Waste Management Act, the Infectious Waste Management Act, the Solid Waste Policy and Management Act, the Erosion and Sediment Control Act, the South Carolina Mining Act, and the Coastal Zone Management Act, or a knowing and wilful crime arising out of or in connection with environmental laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a knowing and wilful crime involving the environment if the anticipated actual damages including, but not limited to, the cost of remediation, are five hundred thousand ~~two million~~ dollars or more, as certified by an independent professional environmental engineer ~~who must be contracted by the Department of Health and Environmental Control~~. If the knowing and wilful crime is a violation of federal law, then a conviction or an acquittal pursuant to federal law for the same act is a bar to the impaneling of a state grand jury pursuant to this section.

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

**All meetings below begin at
10:30am in Blatt Room 321*

Tuesday, June 14, 2022

Wednesday, June 22, 2022

Wednesday, June 29, 2022

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).