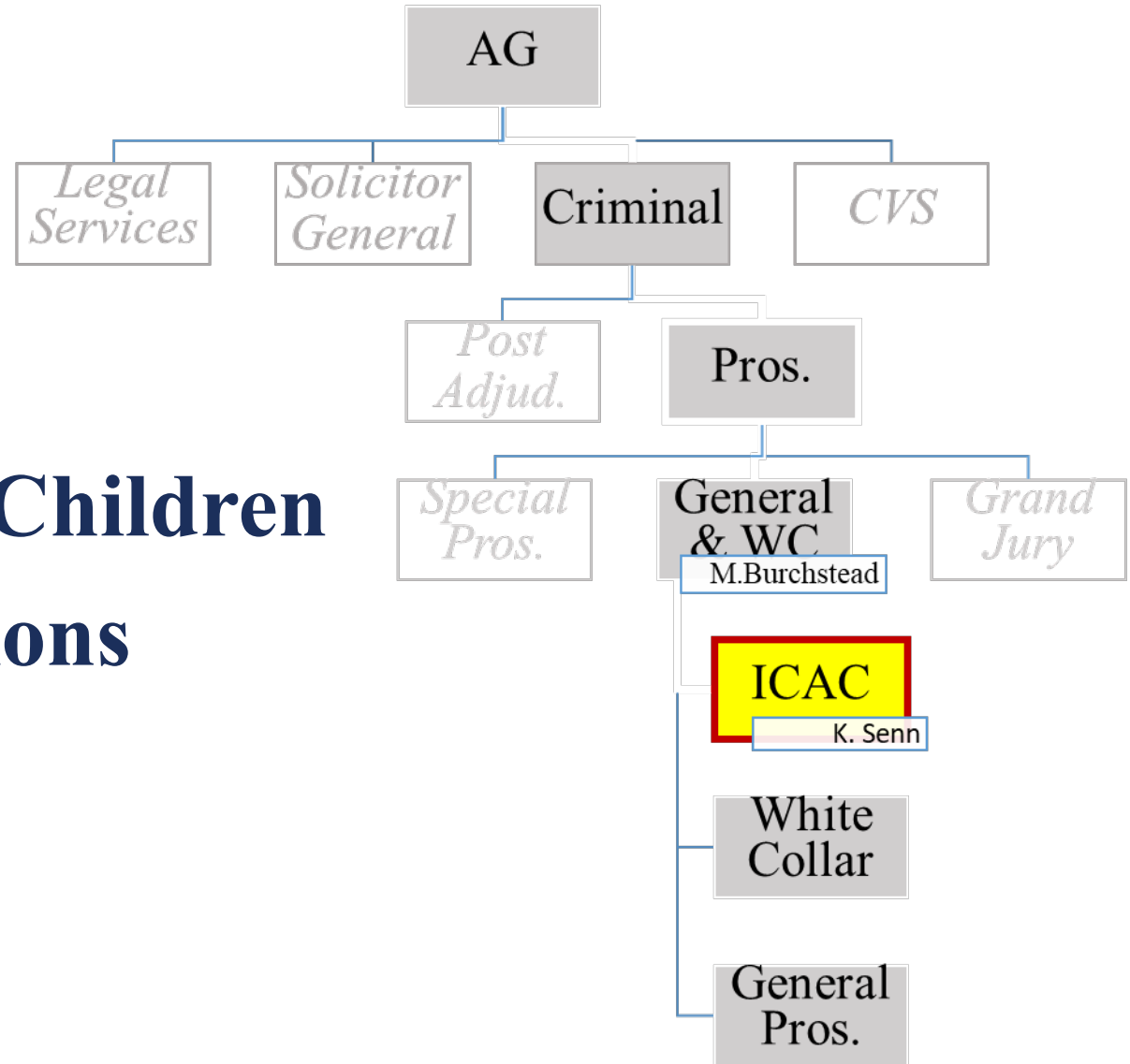




# Internet Crimes Against Children Law Recommendations



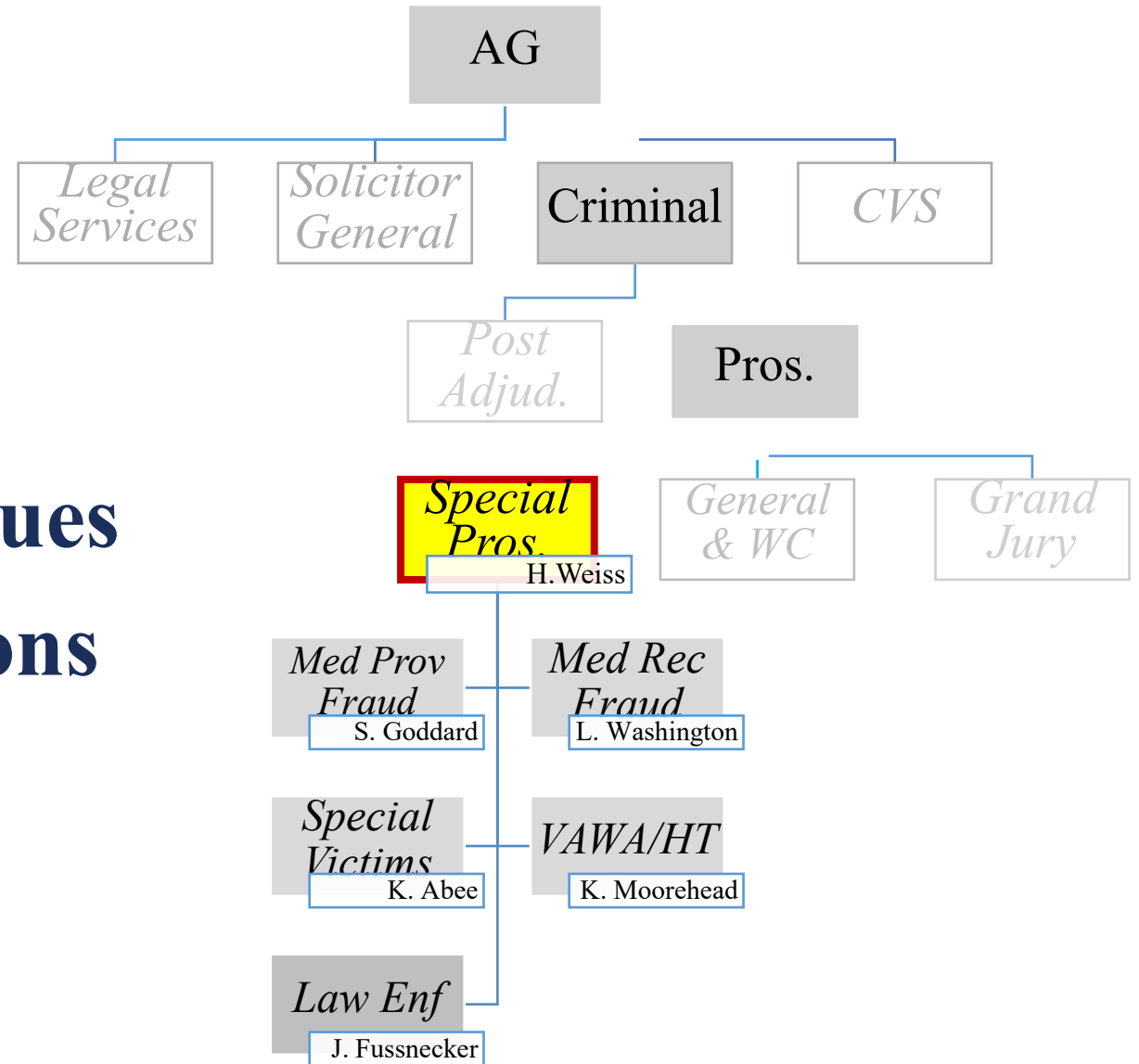
# LAW CHANGE RECOMMENDATION #28

- Law: No current law applicable
- Current Law: No current law applicable
- Recommendation: Provide ICAC investigators at the Attorney General's Office the power to subpoena subscriber information from internet and electronic service providers.
- Basis for Recommendation: The current process of requiring orders and search warrants slows law enforcement down dramatically. With over 3000 cyber tips alone in the 2018-2019 fiscal year, each case requires law enforcement obtain an order or a search warrant from a circuit court judge
- Proposed Wording:

In addition, any judge of any court of record of the State may issue a search warrant to search for and seize electronic or digital data or information from any provider of electronic communication services or remote computing services as defined in the Stored Communications Act at 18 U.S.C. §2701 et seq., even if such data or information is not located in South Carolina to the same extent allowed under federal law pursuant to section 18 U.S.C. § 2703. This authority extends to any data or information stored in the United States and its Territories, and any data or information stored by any business located in the United States and its Territories.



# Law Enforcement Issues Law Recommendations



# LAW CHANGE RECOMMENDATION #25

- Law: New
- Current Law: Does not include advising law enforcement on legal issues during criminal investigation as a duty of a prosecutor
- Recommendation: Add language allowing prosecutors to give legal advice as part of their official duties for civil liability purposes.
- Basis for Recommendation: Prosecutors have absolute immunity for all actions that fall within their normal prosecution function. However, prosecutors assisting in the investigation of criminal matters do not have this immunity because investigation is not considered by the US Supreme Court as a normal prosecution function. If prosecutors are going to be expected either by law or policy to assist in the investigation of officer involved shootings or allegations of criminal activity on the part of law enforcement officers or any other criminal investigation then the absolute immunity should be extended to these actions.
- Others Potentially Impacted: Circuit Solicitors, Law enforcement

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 15-78-60 of the 1976 Code is amended by adding:

“(41) counsel or advisory opinion of the Attorney General, Circuit Solicitor or authorized prosecutor of a Circuit Solicitor or Attorney General where the counsel or advisory opinion is requested by and provided to a law enforcement officer as defined in Section 23-23-10(E)(1) regarding and prior to the issuance of a warrant against or arrest of a person.”

SECTION 2. Section 15-78-70 of the 1976 Code is amended by adding:

“(f) For purposes of this chapter, any counsel or advisory opinion of the Attorney General, Circuit Solicitor or authorized prosecutor of a Circuit Solicitor or Attorney General requested by and provided to a law enforcement officer as defined in Section 23-23-10(E)(1) regarding and prior to the issuance of a warrant against or arrest of a person is conduct within the scope the official duties of the Attorney General, Circuit Solicitor or authorized prosecutor of a Circuit Solicitor or Attorney General, who is absolutely immune from suit for any tort claim arising out of such conduct. The provisions of this section shall not be construed to limit, modify or reduce the protections, immunities from suit or exemptions from liability of a Circuit Solicitor or authorized prosecutor of a Circuit Solicitor.”

SECTION 3. This act takes effect upon approval by the Governor.

# LAW CHANGE RECOMMENDATION #27

- Law: S.C. Code Section 59-63-350
- Current Law: Local law enforcement must call Attorney General's Office to tell about certain crimes occurring at school or at a school-sanctioned event
- Recommendation: Repeal the statute
- Basis for Recommendation: This statute does not provide any action for the AG office. It is a requirement of law enforcement who already have enough requirements without sending us a notification. Other agencies get these reports and keep up with them.
- Others Potentially Impacted: none

~~SECTION 59-63-350. Local law enforcement.~~

~~Local law enforcement officials are required to contact the Attorney General's "school safety phone line" when any felony, assault and battery of a high and aggravated nature, crime involving a weapon, or drug offense is committed on school property or at a school sanctioned or school sponsored activity or any crime reported pursuant to Section 59-24-60.~~

HISTORY: 1996 Act No. 324, Section 1.

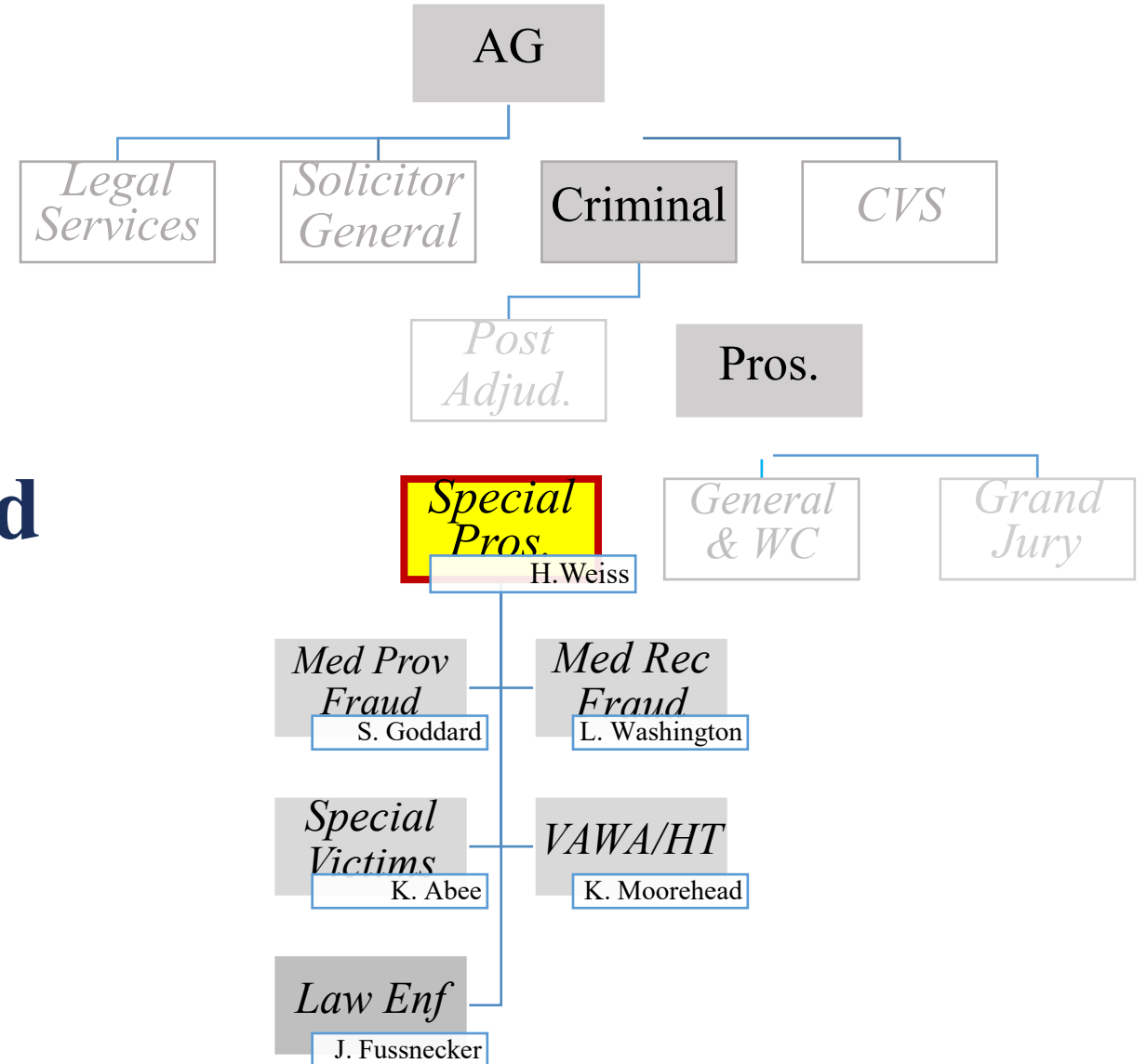
Editor's Note

2010 Act No. 273, Section 7.C, provides:

"Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16-3-620, and, except for references in Section 16-1-60 and Section 17-25-45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16-3-29."



# Medicaid Provider Fraud Law Recommendations





# MFCU - Law Recommendations

## **Updated criminal health care fraud statute**

- Tiered, similar to other property crimes
- Statute was enacted in 1994-needs to be updated to reflect current trends
- Only a misdemeanor for any \$\$ amount
- Investigative subpoena power (pre-indictment) – Request records from Medicaid providers to streamline investigations

## **State False Claims Act**

- Increased need to generate our own cases
- No way of knowing when FCA cases filed in our own state

## **Addendum to Omnibus Adult Protection Act needed**

- Nothing adequately addresses unauthorized recording of vulnerable adults
- Potential of posting/sharing these recordings to social media

# LAW CHANGE RECOMMENDATION #18

- Law: No current law is applicable
- Current Law: No current law is applicable
- Recommendation: Concept recommendation. Establish a HHS-OIG (federal Health & Human Services-Office of the Inspector General) approved False Claims Act.
- Basis for Recommendation: Ratifying an HHS-OIG approved FCA would generate more cases and increase the opportunities to participate in national cases that are only open to states with FCA.
  - Increase the amount of state recoupment as states with FCA can participate in more global cases, receive a 10-percentage-point increase in their share of any amounts recovered, and help fund MFCU without further state investment.
- Others Potentially Impacted: Private/public Healthcare providers; Dept. of Health & Human Services/Managed Care Organization; Law enforcement; Private businesses with government contracts

Limited recommendation for specific wording, but to be HHS-OIG compliant:

1. The law must establish liability to the State for false or fraudulent claims described in 31 U.S.C. 3729 with respect to any expenditure described in section 1903(a) of the Act with respect to expenditures related to State Medicaid plans.
2. The law must contain provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described in 31 U.S.C. 3730-3732.
3. The law must contain a requirement for filing an action under seal for 60 days with review by the State Attorney General.
4. The law must contain a civil penalty that is not less than the amount of the civil penalty authorized under 31 U.S.C. 3729.

# LAW CHANGE RECOMMENDATION #19

- Law: S.C. Code Section 43-7-60(A). False claim, statement, or representation by medical provider prohibited; violation is a misdemeanor; penalties.
- Current Law: Defines prohibited medical provider conduct and penalties.
- Recommendation: Modify to update (A)(1) to expand the definition of “provider”, update (A)(2) to expand the definition of “false claim, statement, or representation” to include attempts, and remove “For purposes of this subsection, each false claim, representation, or statement constitutes a separate offense.”
- Basis for Recommendation: To allow the MFCU to accurately protect against providers who commit or attempt to commit fraud. Each claim constitutes a separate offense (ex. \$40 lab test); many defendants submit multiple fraudulent claims (ex. 1,000 fraudulent lab tests, totaling \$40,000)
- Others Potentially Impacted: Private/public providers; SCDHHS/MCO

**SECTION 43-7-60.** False claim, statement, or representation by medical provider prohibited; violation is a misdemeanor; penalties.

(A) For purposes of this section:

(1) "provider" includes a person who provides goods, services, or assistance and who is entitled or claims to be entitled to receive reimbursement, payment, or benefits under the state's Medicaid program. "Provider" also includes a person acting as an employee, representative, or agent of the provider. "Provider" also includes any person that provides goods, services, or assistance to Medicaid beneficiaries on behalf of any Managed Care or similar entity.

(2) "false claim, statement, or representation" means a claim, statement, or representation made or presented, or attempted to be made or presented, in any form including, but not limited to, a claim, statement, or representation which is computer generated or transmitted or made, produced, or transmitted by an electronic means or device.

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~~For purposes of this subsection, each false claim, representation, or statement constitutes a separate offense.~~

# LAW CHANGE RECOMMENDATION #20

- Law: S.C. Code Section 43-35-10 – Omnibus Adult Protection Act Definitions
- Current Law: Gives the definitions of terms used under the duties and procedures of Investigative Entities for Adult protection.
- Recommendation: Modify the definition of exploitation to include unauthorized video or photo recordation and add the definition of “Unauthorized video or photographic recordation” to the end of 43-35-10.
- Basis for Recommendation: To combat the increase of unauthorized video or photographic recordings of vulnerable adults in order to protect the privacy and dignity of all vulnerable adults.
- Others Potentially Impacted: Crime Victim Ombudsman, DSS, SLED, Local Law Enforcement

## SECTION 43-35-10. Definitions.

(3) "Exploitation" means:

(a) causing or requiring a vulnerable adult to engage in activity or labor which is improper, unlawful, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient;

(b) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person; or

(c) causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: (i) undue influence, (ii) harassment, (iii) duress, (iv) force, (v) coercion, or (vi) swindling by overreaching, cheating, or defrauding the vulnerable adult through cunning arts or devices that delude the vulnerable adult and cause him to lose money or other property.

(d) Exploitation also includes any unauthorized video or photographic recordation of any vulnerable adult, regardless of whether or not the vulnerable adult is aware of such recordation.

(4) "Facility" means a nursing care facility, community residential care facility, a psychiatric hospital, or any residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.

...

(14) 'Unauthorized video or photographic recordation' means the recording of any vulnerable adult without their consent, or in the event the vulnerable adult cannot give consent, without the consent of the agent in charge of the vulnerable adult. Those employed in the care of a vulnerable adult are never authorized to record a vulnerable adult unless required so in the duty of their employment, to assist with the medical care of the vulnerable adult, or to comply with law enforcement.

# LAW CHANGE RECOMMENDATION #21

- Law: S.C. Code Section 43-35-85. Penalties. Under the Adult Omnibus Protection Act.
- Current Law: Gives the criminal penalties for failing to report adult abuse when required to report and penalties for committing abuse.
- Recommendation: Modify so as to add provisions criminally penalizing the video or photographic recordation of vulnerable adults and to add provisions criminally penalizing the distribution, publication, or dissemination by any means of any photographic or video recordation of a vulnerable adult.
- Basis for Recommendation: To prevent the unauthorized video or photographic recordation of vulnerable adults in order to protect the privacy and dignity of all vulnerable adults.
- Others Potentially Impacted: Crime Victim Ombudsman, DSS, SLED, Local Law Enforcement



**SECTION 43-35-85. 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.

**SECTION 43-35-85. Penalties. (cont.)**

(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.

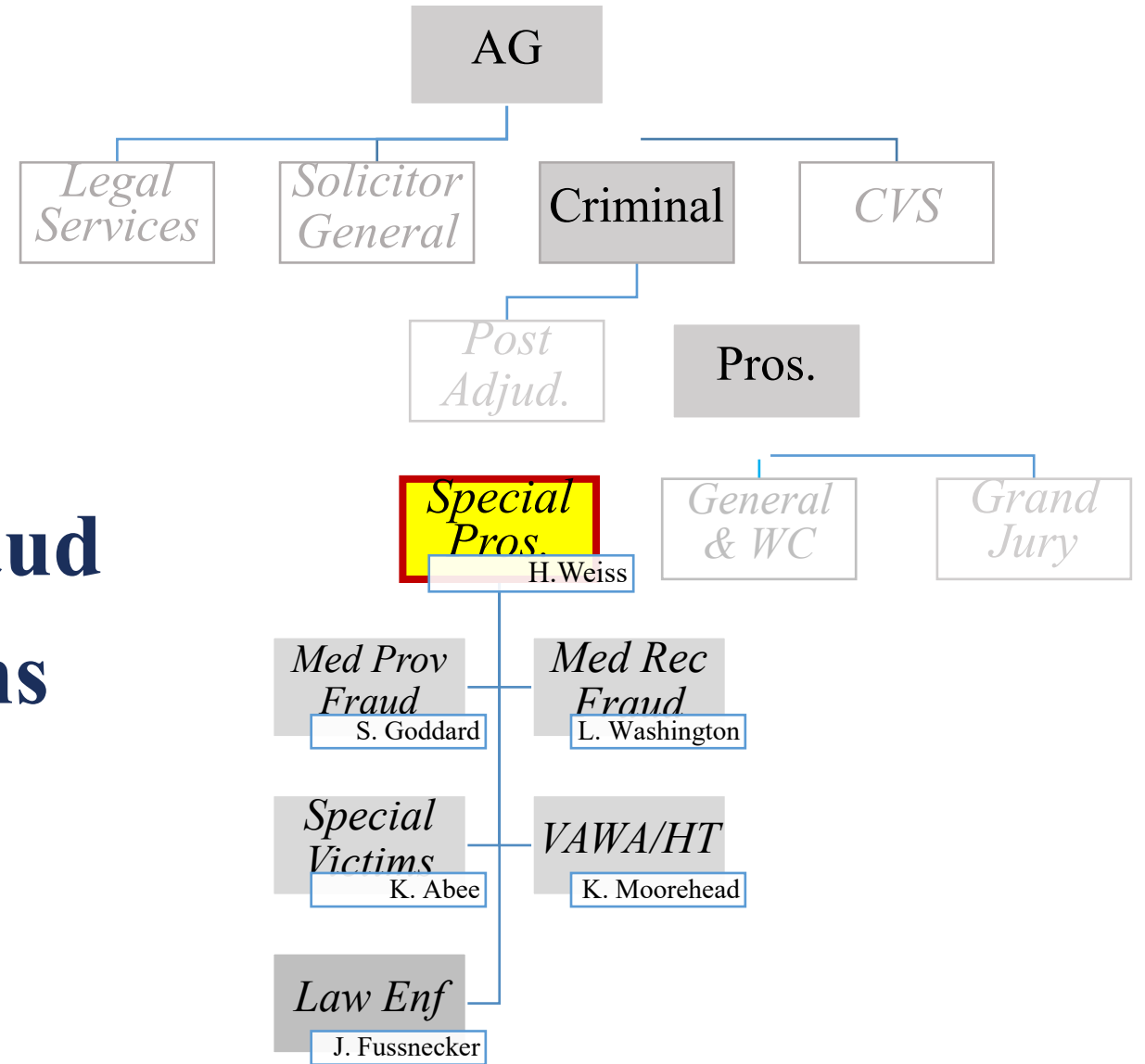
(J) Notwithstanding section (D), any person who, without authorization, knowingly and willfully records by video or photographic means a vulnerable adult in violation of 43-35-10(3)(d), is guilty of a misdemeanor, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years."

(1) This is a lesser included offense to section (K).

(K) Any person who, without authorization, knowingly and willfully distributes, publishes, or disseminates by any means any photographic or video recordation of a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years.



# Medicaid Recipient Fraud Law Recommendations



# MRF - Law Recommendations

## **Amend False Statement (43-7-70) statute to make Medicaid fraud a property crime**

- Gives it teeth with felony if appropriate
- Gives less egregious cases chance for expungement

## **Investigative Subpoena authority (43-7-90)**

- Most custodians of evidence expect subpoena and subpoena is perceived to be less intimidating
- Financial cases – would speed up process of obtaining evidence

# LAW CHANGE RECOMMENDATION #22

- Law: S.C. Code Section 43-7-70. False statement or representation on application for assistance prohibited; violation is a misdemeanor; penalties.
- Current Law: Criminalizes Medicaid recipient fraud; sets penalty as a misdemeanor with a maximum sentence of 3 years and/or \$1,000 fine
- Recommendation: Keep the intent as is; re-write the section to base penalties on the amount of loss to the state
- Basis for Recommendation: Would strengthen the penalty in cases with significant loss to the state; would enable prosecutors to negotiate charges to lowest amount when reasonable, thereby possibly rendering the conviction subject to expungement; would make the crime a property crime pursuant to § 16-1-57; would expand subsection (3) to clarify criminalization of using another person's Medicaid card
- Others Potentially Impacted: SCDHHS (victim agency)

**SECTION 43-7-70.** False statement or representation on application for assistance prohibited; violation is a misdemeanor; penalties.

(A)(1) It is unlawful for a person to knowingly and wilfully to make or cause to be made a false statement or representation of material fact on an application for assistance, goods, or services under the state's Medicaid program when the false statement or representation is made for the purpose of determining the person's entitlement to assistance, goods, or services.

(2) It is unlawful for any applicant, recipient, or other person acting on behalf of the applicant or recipient knowingly and wilfully to conceal or fail to disclose any material fact affecting the applicant's or recipient's initial or continued entitlement to receive assistance, goods, or services under the state's Medicaid program.

(3) It is unlawful for a person, regardless of the person's eligibility to receive benefits, services, or goods under the Medicaid program, to sell, lease, lend, or otherwise exchange rights, privileges, or benefits to another person, or to use the rights, privileges or benefits of another under the Medicaid program.

(B) A person who violates the provisions of this section is guilty of a:

(1) felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than ten years, or both, if the value of the property or benefit is ten thousand dollars or more;

(2) misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the value of the property or benefit is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor if the value of the property or benefit is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.

(C) A criminal action brought under this section may be filed in any county where the criminal act(s) occurred or in the county in which the agency of the State responsible for administering the state's Medicaid program is located.

# LAW CHANGE RECOMMENDATION #23

- Law: S.C. Code Section 43-7-90. Enforcement of Sections 43-7-60 to 43-7-80.
- Current Law: Provides the Attorney General authority and responsibility to investigate Medicaid fraud and enforce Medicaid fraud criminal statutes
- Recommendation: Modify the code section to provide Attorney General with authority to issue investigative subpoenas.
- Basis for Recommendation: The revision would assist the investigation of Medicaid fraud by removing certain investigative procedures used to obtain documentary and other evidence thereby rendering investigations more time and resource efficient
- Others Potentially Impacted: SCDHHS (victim agency); Local Magistrate Courts

**SECTION 43-7-90.** Enforcement of Sections 43-7-60 to 43-7-80.

The Attorney General has the authority and responsibility to investigate and initiate appropriate action for alleged or suspected violations of Sections 43-7-60 through 43-7-80. In conducting investigations pursuant to this Article, the Attorney General or his designee shall have the authority to issue subpoenas to any person or business compelling the production of records in any form, including electronic records or data, in the possession, custody, or control of the person to whom the subpoena is issued. In the event of noncompliance of a subpoena issued under this section, the Attorney General may petition the Circuit Court for an order compelling compliance with the subpoena.

HISTORY: 1994 Act No. 468, Section 1, eff July 14, 1994.