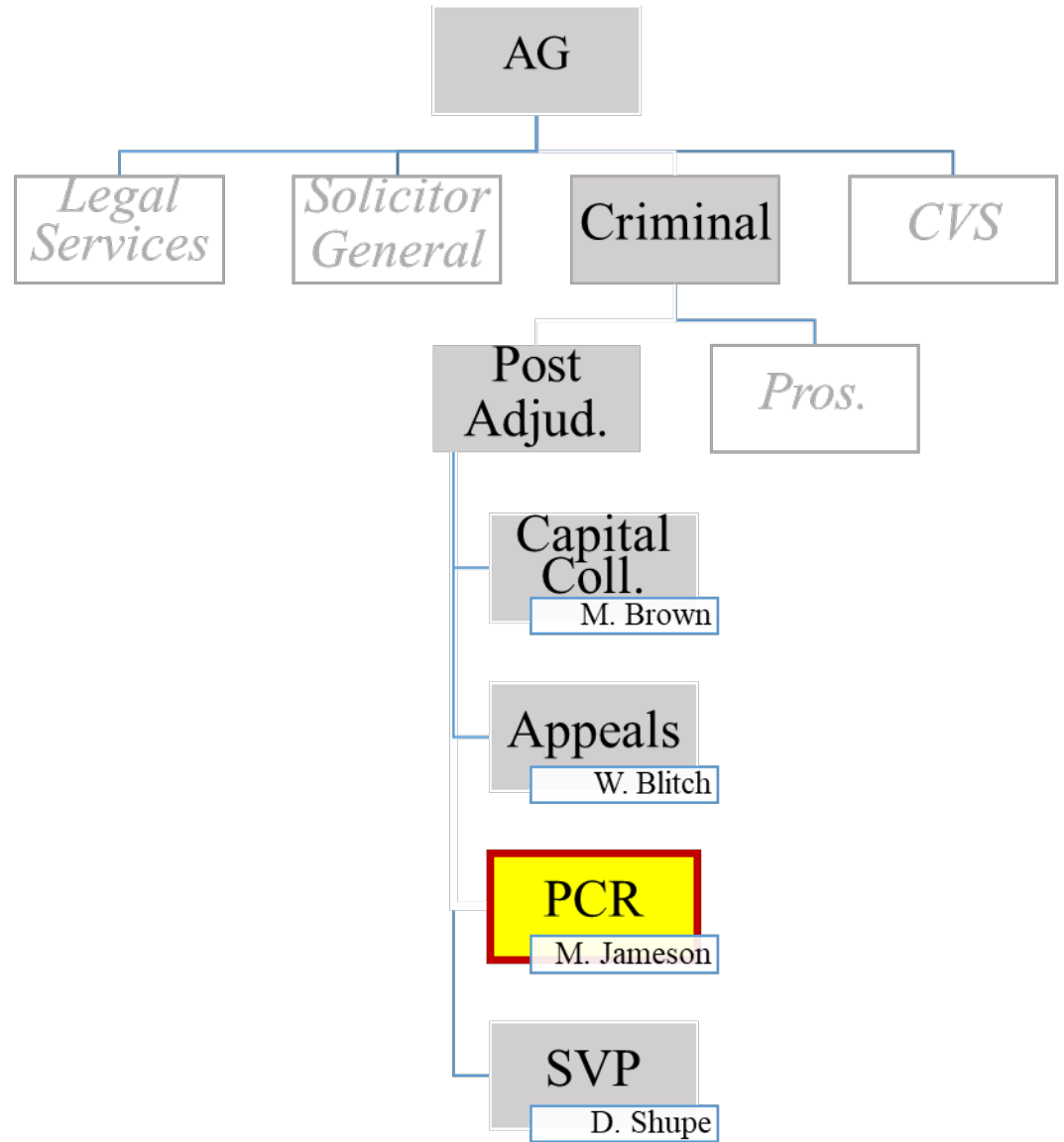
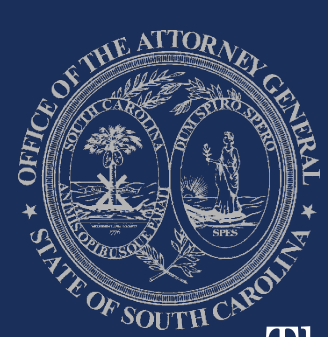




Post-Conviction Relief Section





Alan Wilson
Attorney General

Overview

Don Zelenka
Deputy AG

The Post-Conviction Relief Section handles all non-capital post-conviction relief proceedings, which are collateral attacks on a criminal conviction (guilty plea or trial conviction arising out of the court of general sessions, magistrate, or municipal convictions), and the appeals of these actions, on behalf of the State.

At this stage, the convicted person seeks to prove his plea or trial was unconstitutional based on ineffectiveness of his lawyer, prosecutorial misconduct, or another significant error that prejudicially impacted his trial.

The PCR Section is the last line of defense for criminal convictions in state court.

South Carolina has a more comprehensive collateral review process than most other states (i.e., other states enable the judge to summarily dismiss without involvement of the state prosecutor and/or do not allow attack of guilty plea).

See S.C. Code Section 17-27-10² et seq.

Post-Conviction Relief (PCR)

What is a PCR proceeding?

- Convicted person files an application in civil court that claims one or more of the following:
 - His trial or plea counsel was ineffective,
 - The prosecutor committed misconduct,
 - There is newly discovered evidence that requires a vacation of the conviction or sentence,
 - The Applicant is serving an illegal or expired sentence, or
 - Another ground listed in S.C. Code Ann. § 17-27-20.
- New counsel may be appointed to represent the applicant, generally if the case will require a hearing.
- Attorney General's Office represents the State.
- An evidentiary hearing is held before a new judge in the circuit where the original plea or trial occurred.
- Relief that can be granted is generally a new trial or re-sentencing in limited circumstances.
- Judge is required to issue a detailed, written order. (See, S.C. Code Ann. § 17-27-80).
- Non-prevailing party (including the State) can appeal the grant of relief.

Post-Conviction Relief (PCR)

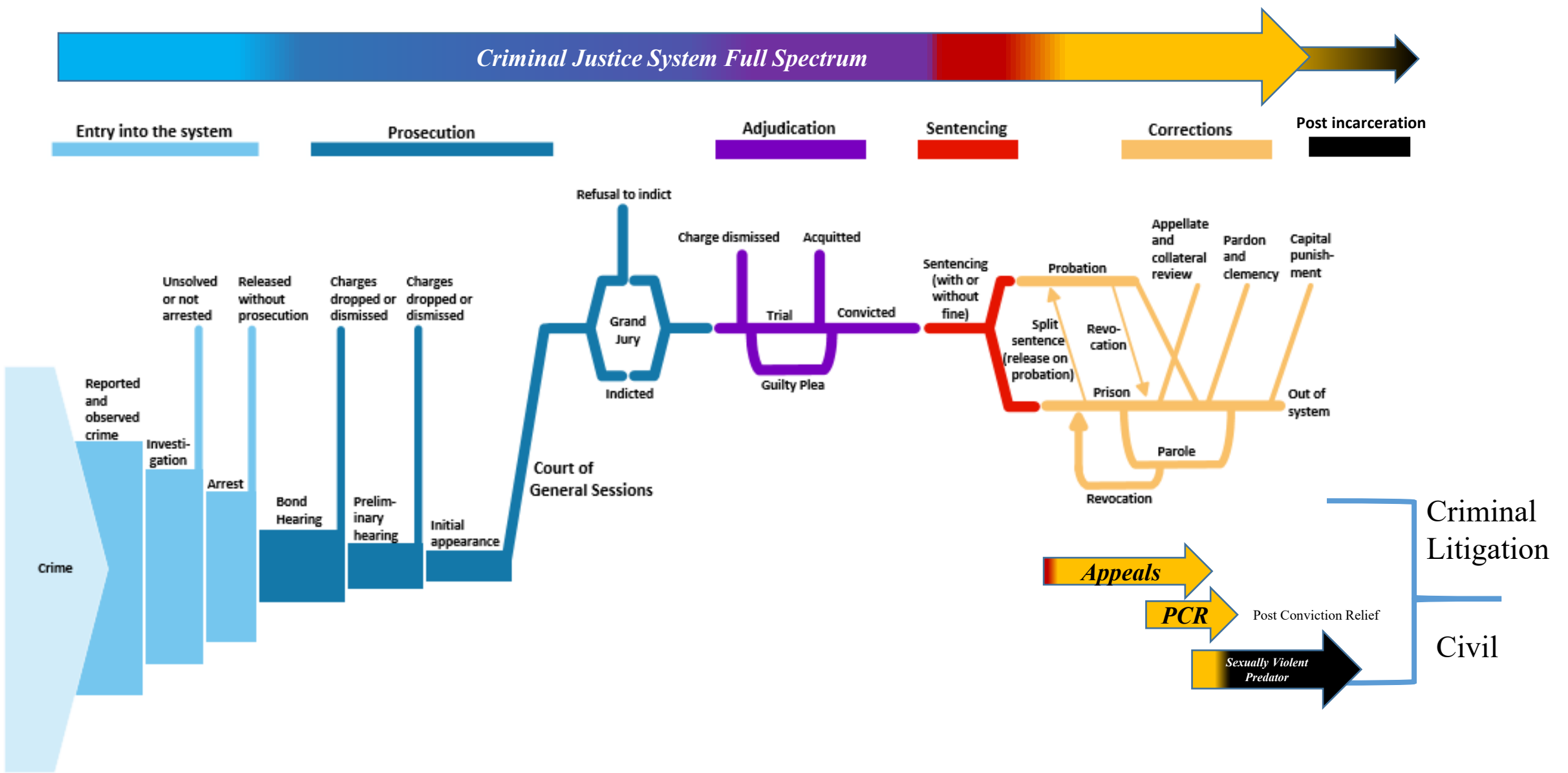
What is the PCR Section's role in the PCR process?

The PCR Section represents the State in:

- all non-capital PCR actions and appeals from those actions statewide, and
- other collateral challenges to convictions such as petitions for writs of habeas corpus and petitions for writs of mandamus filed in the circuit or appellate courts.

This involves producing a large volume of pleadings, representing the State in hundreds of bench trials in circuit court each year, drafting proposed orders from these trials, and handling subsequent appeals.

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.

See Handout for a walkthrough of the PCR and PCR Appeal Process



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.

Collateral Challenges to Convictions in Circuit Court: Initial Representation of the State

(Agency Service #115)

1. Convicted individual, or attorney on their behalf, files a collateral action
 - Post Conviction Relief application; or
 - State habeas corpus petition

2. County Clerk of court forwards the application or petition to Attorney General's Office

3. AG processes application or petition and decides what actions are necessary
 - Background investigation and review of application and prior records
 - Determine whether to open a file
 - Determine whether to move for summary dismissal based on procedural bars or request an evidentiary hearing;
 - Prepare and request necessary transcripts, appellate pleadings, exhibits, court records, etc.;
 - Make initial contact with defense counsel and solicitors to notify them of the filing of the action if AG will be requesting an evidentiary hearing and discuss allegations raised;
 - Review all records, transcript, and pleadings relevant to the action;
 - Draft and file return to the application or petition (as well as the motion to dismiss and conditional order of dismissal if a procedural bar is raised);
 - Respond to any preliminary motions and/or file of any necessary preliminary motions.

The above takes approximately 10% of our attorney time and 40% of our support staff time

Since the 1970's, the AG has been the sole representative of the State for Post Conviction Relief actions, and as such it is the Agency's duty to uphold properly obtained convictions from collateral attack in civil actions

Does law require it: No

Assoc. Law(s): S.C. Code Section 17-27-10 et seq.; 17-17-50

		<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>
Circuit Cases Opened Per FY	2016-17	793.00	\$332.77	5.55	\$263,885.98	1.34%
	2017-18	709.00	\$463.12	5.55	\$328,355.33	0.55%
	2018-19	752.00	\$447.08	5.55	\$336,205.82	0.50%
	2019-20	646.00	\$456.11	5.69	\$294,648.34	0.38%

Collateral Challenges to Convictions in Circuit Court: Scheduling of and Appearance During Hearings

(Agency Service #116)

1. Process any motions, amendments, or other pleadings;
2. Handle any pre-hearing motions (including returns to motions, hearings on motions, and proposed orders;
3. Engage in any discovery as ordered by the court (including depositions if ordered, sending subpoenas, reviewing discovery materials, file review, etc.);
4. Coordinate with the Chief Administrative Judge to schedule the roster;
5. Schedule the transportation of inmates from SCDC;
6. Subpoena all necessary witnesses;
7. Make personal contact with prosecutors;
8. Interview all witnesses (including but not limited to defense counsel);
9. Prepare for the evidentiary hearing (reading all transcripts, reviewing necessary exhibits, conducting necessary witness interviews, conducting any investigation as needed);
10. Research all applicable case law;
11. Prepare outline and questions for hearing; and
12. Appear in court as counsel for the State for all scheduled hearings (including travel to circuit and possible overnight stays).

Each Post Conviction Relief term includes roughly 25-30 hearings, with each hearing lasting a few hours to several days.

The above takes approximately 40% of our attorney time and 25% of our support staff time

Since the 1970's, the AG has been the sole representative of the State for Post Conviction Relief actions, and as such it is the Agency's duty to uphold properly obtained convictions from collateral attack in civil actions

Single Unit

Full week-long PCR Terms of Court As Assigned by Court Administration (This is NOT 52 weeks a year, but number of weeks in the 16 circuits for PCR hearings; meaning we have multiple weeks at the same time by being in multiple circuits)

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

Units provided

Cost per unit

Employee equivalents

Total Cost of service

% of total agency costs

78.00	\$5,890.68	9.71	\$459,472.97	2.34%
72.00	\$7,333.55	9.71	\$528,015.92	0.89%
71.00	\$7,190.16	9.71	\$510,501.65	0.76%
59.00	\$9,931.20	10.26	\$585,940.74	0.76%

Does law require it: No

Assoc. Law(s): S.C. Code Section 17-27-10 et seq.; 17-17-50

Collateral Challenges to Convictions in Circuit Court: Post-Hearing Representation

(Agency Service #117)

1. Draft and submit the following
 - all post-hearing memorandum or proposed orders as requested by the Court (requested in virtually all PCR cases),
 - proposed orders of dismissal for the cases that are summarily dismissed;
 - any post-order motions, responses to motions, hearings on motions, and proposed orders on motions;

2. Notify prosecutors, attorneys, and SCDC (and DPPPS if necessary) of results of cases;

3. File notice of appeal if State is pursuing an appeal (pending approval of AG’s Appellate Review Committee).

The above takes approximately 30% of our attorney time and 10% of our support staff time

	<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>
Since the 1970's, the AG has been the sole representative of the State for Post Conviction Relief actions, and as such it is the Agency's duty to uphold properly obtained convictions from collateral attack in civil actions Does law require it: No Assoc. Law(s): S.C. Code Section 17-27-10 et seq.; 17-17-50	Cases Closed Per FY (closed after final order is issued)	2016-17	785.00	\$381.41	5.68	\$299,407.02	1.53%
		2017-18	1,242.00	\$265.00	5.68	\$329,129.94	0.55%
		2018-19	812.00	\$381.42	5.68	\$309,713.30	0.46%
		2019-20	243.00	\$1,477.00	60.07	\$358,910.45	0.47%

Collateral Challenges to Convictions: Representation in Appeals to Collateral Challenges

(Agency Service #118)

- Draft and submit all appellate pleadings on behalf of the State, including State's appeals following the grant of post-conviction relief if an appeal is pursued by the State;
- Represent the State in any oral arguments arising out of these cases.

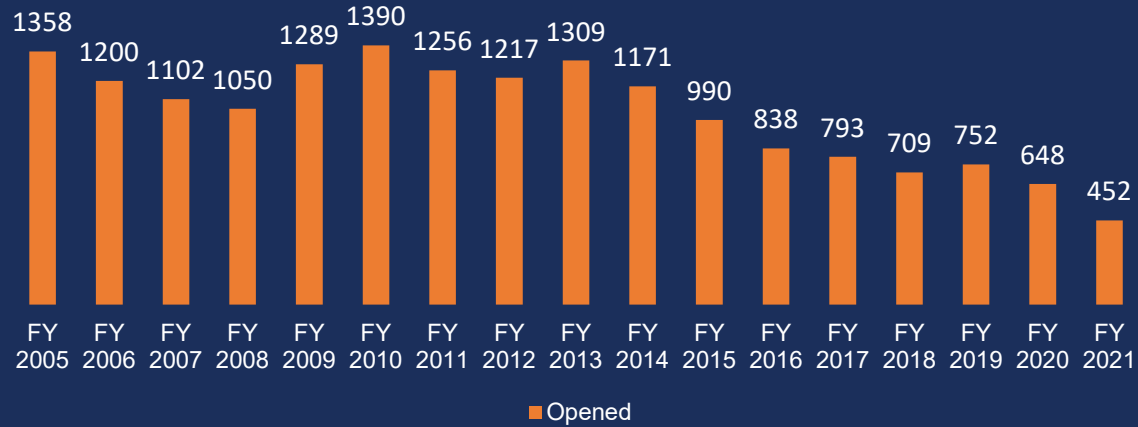
The above takes approximately 20% of our attorney time and 15% of our support staff time

	<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>
Since the 1970's, the AG has been the sole representative of the State for Post Conviction Relief actions, and as such it is the Agency's duty to uphold properly obtained convictions from collateral attack in civil actions	Appellate Cases Opened	2016-17	366.00	\$605.41	4.59	\$221,580.01	1.13%
<u>Does law require it:</u> Yes	Per FY (opened when notice of appeal is filed)	2017-18	483.00	\$512.14	4.59	\$247,362.36	0.42%
		2018-19	357.00	\$664.88	4.59	\$237,361.03	0.35%
		2019-20	232.00	\$1,196.72	4.86	\$277,640.07	0.36%
<u>Assoc. Law(s):</u> S.C. Code Section 1-7-40; 17-27-10 et seq., 17-17-140							

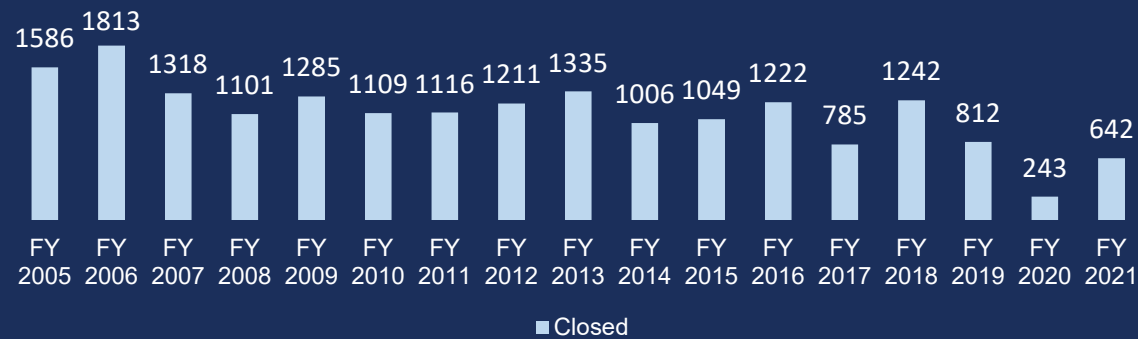
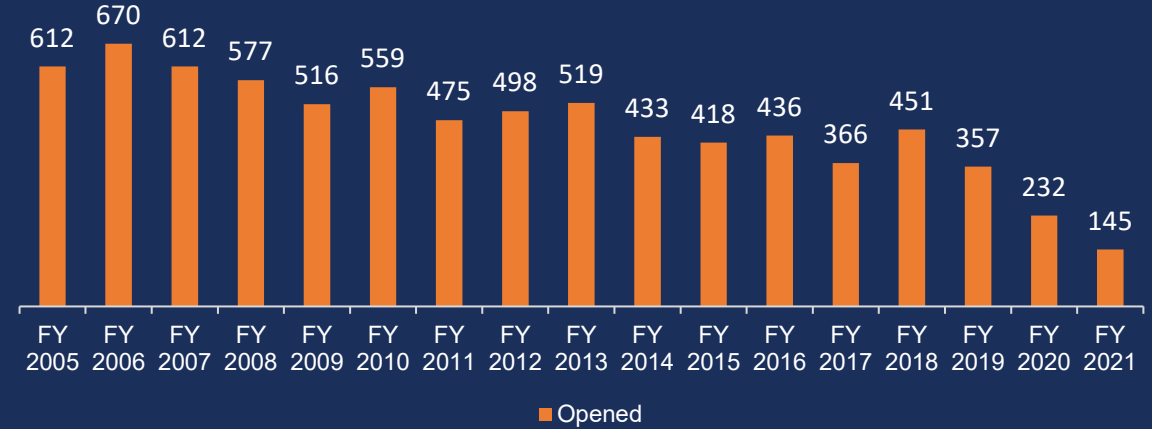
Post-Conviction Relief (PCR)

Annual Movement in Cases

Circuit Court Level



Appellate Level

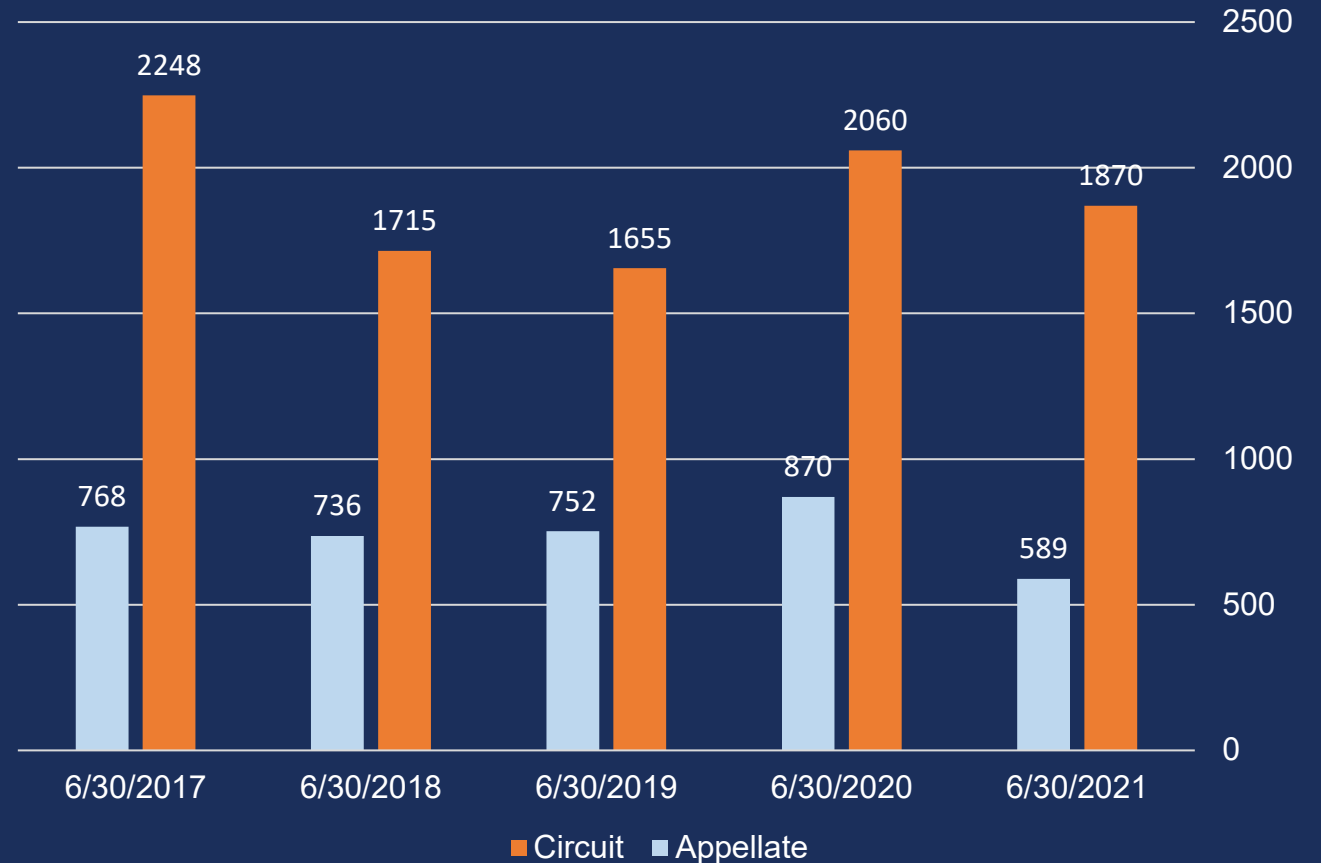


Note: Closed cases spike in FY18 due to a change in management of the PCR section which led to an increased push to resolve and close stagnant files.

Post-Conviction Relief (PCR)

Total Pending Cases at Close of Fiscal Year FY 2017 – FY 2021

- Number of PCR cases & appealed PCR cases still open at the close of each fiscal year





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.

Post-Conviction Relief (PCR)

SUCSESSES

- Significant and sustained improvement in quality of work product
 - Positive feedback from circuit and appellate courts
 - Reduced negative opinions and commentary from appellate courts regarding PCR orders
- Reduction in backlog of summary dismissal cases
 - Pandemic allowed us to shift focus to resolving backlog of procedurally-barred cases
- Improved efforts to recruit and retain experienced staff has led to more efficiency and quality representation of the State in collateral review proceedings

Post-Conviction Relief (PCR)

CONCERNS

- Continuing struggle to recruit and retain experienced staff, although this is improving
- Continued burnout of attorneys tasked with a high caseload of increasingly complex cases without necessary experience to handle these cases

Post-Conviction Relief (PCR)

NEEDS

- **Experienced attorneys to handle increasingly complex cases**
 - Skills required to perform the job successfully are not entry level, but the position has been historically staffed as an entry-level position.
 - Increase recruitment and retention efforts to hire and encourage talented staff to stay beyond two-year commitment
- **More attorneys to further reduce the case load per attorney**
 - Current average case load is over 200 cases per attorney
 - Ideal attorney staffing would be 16 attorneys with current supervisory structure for training, support, and fill-in during vacancies
 - Stringent deadlines imposed by statute, rules, and courts are unmanageable based on current caseload per attorney
- **More training opportunities**

Personnel

	Turnover	Number of Employees	
		Leave unit during year	In unit at end of year
2016-17	46%	8	19
2017-18	46%	9	20
2018-19	39%	8	21
2019-20	34%	7	20

Reasons for Turnover				
Year	Employment outside state government	Employment with another state agency	Personal Reasons	Internal Transfers
2016-17	37.5%	37.5%	25%	
2017-18	55.6%		22.2%	22.2%
2018-19	75%			25%
2019-20	43%	14%		43%

<i>Exit interviews or surveys conducted?</i>		<i>Employee satisfaction tracked?</i>	
2016-17	Yes	2016-17	No
2017-18	Yes	2017-18	Yes
2018-19	Yes	2018-19	No
2019-20	Yes	2019-20	No

Note:

The Post-Conviction Relief Section has the highest case load of any section in the office and has been historically staffed as an entry-level position. The high volume of work contributes to frequent turnover in the section.

Costs due to training and high turnover will be discussed during Administration Presentation