

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.

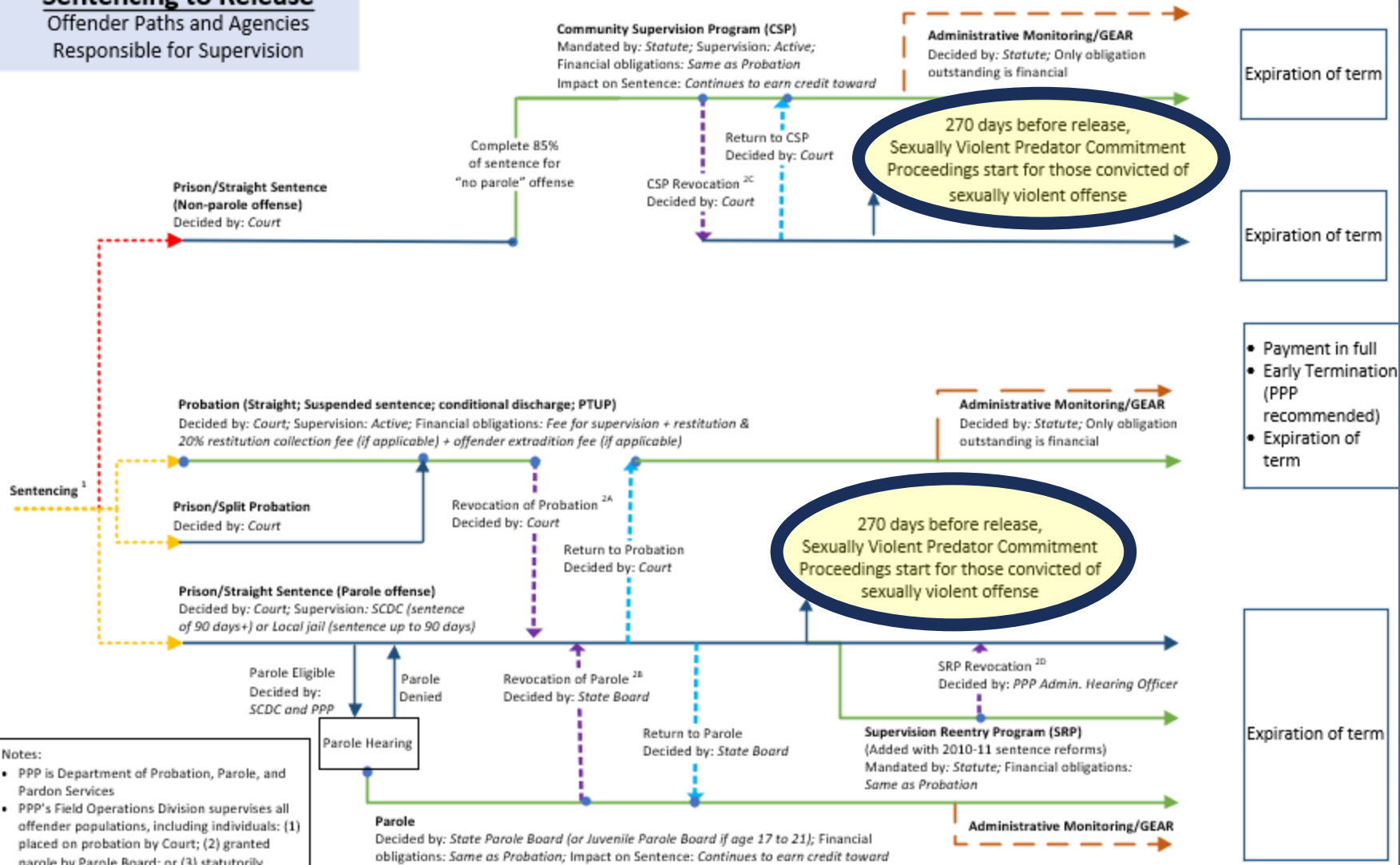
Person convicted of sexually violent offense AND
sentenced to incarceration/confinement
S.C. Code 44-48-30(1),(2)



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:

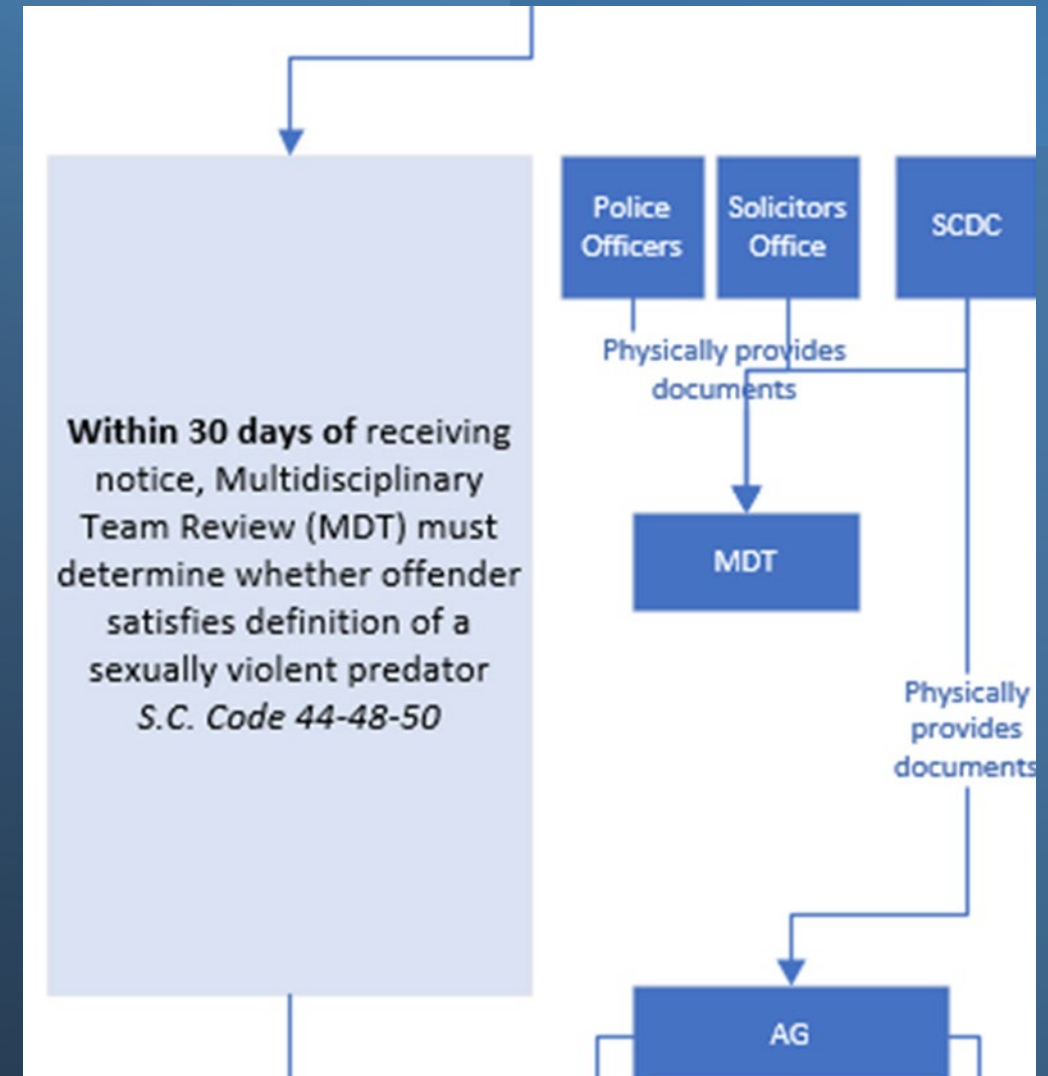
- SCDC (chair), PPP, DMH (trained, qualified mental health clinician with expertise in treating sexually violent offenders), retired judge appointed by Chief Justice, attorney with substantial experience in the practice of criminal defense law appointed by Chief Justice
- **Changes AG desires:** DMH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

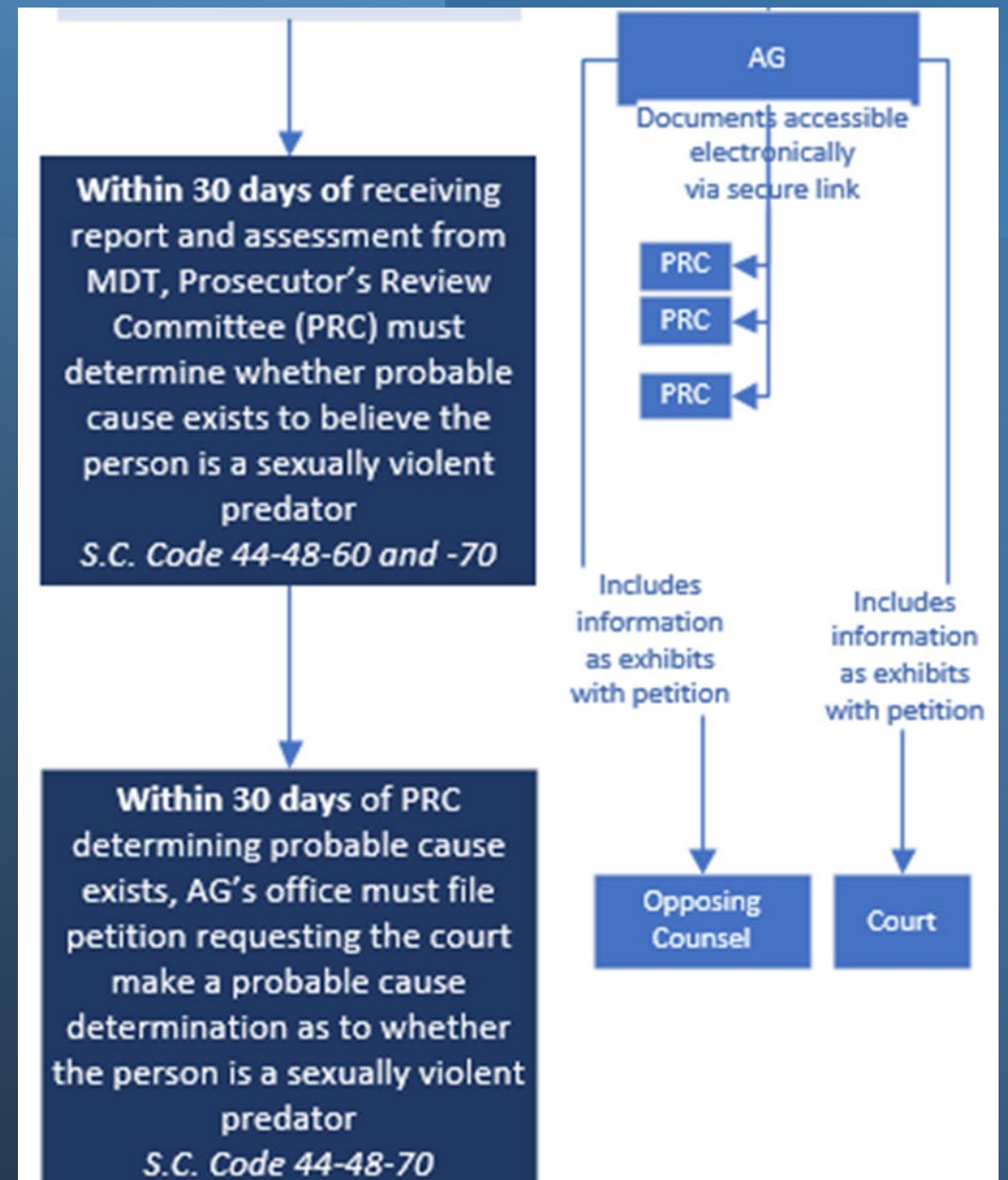
If PRC determines probable cause exists to believe person is a SVP

- 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



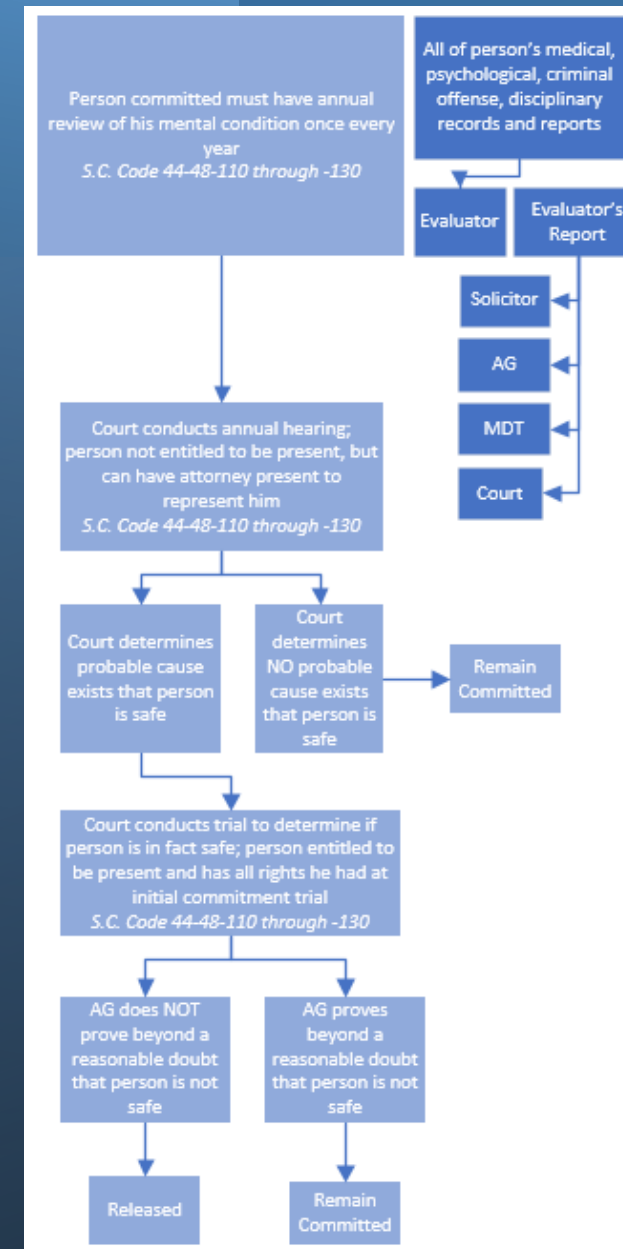
Sexually Violent Predator (SVP) Proceeding Details

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)

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SVP Attorney files petition in Circuit Court to
commit the offender

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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.

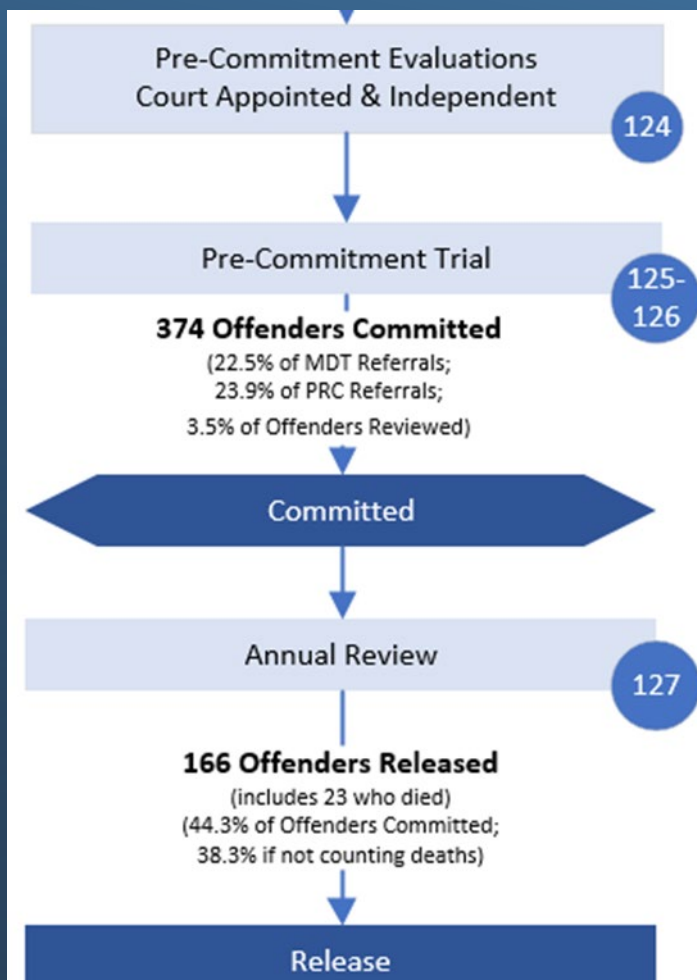
Service #121: Upon determination by the court that probable cause exists, schedule and conduct probable cause hearing within statutorily mandated timeframes.
Single unit: Determination of probable cause

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

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Habeas Petition
claiming ineffective
assistance of counsel

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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)