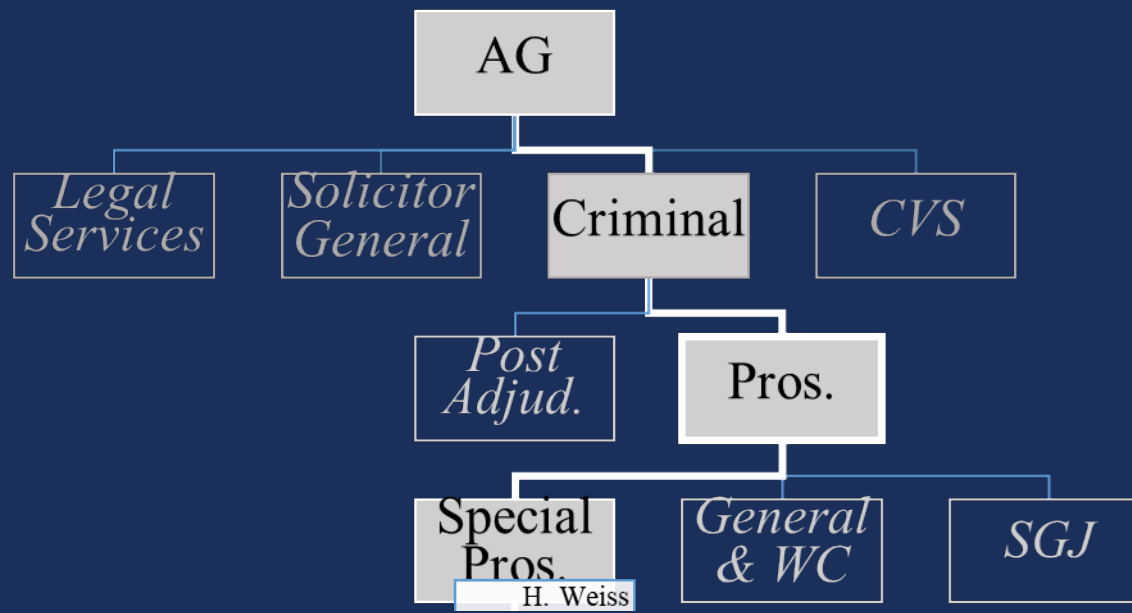




PROSECUTION SECTION

SPECIAL PROSECUTION



Special Prosecution Units

Special Prosecution Division

- Legal Prosecution (1 Supervising Prosecutor)
 - Special Victims Unit
 - (2 prosecutors)
 - Law Enforcement Related Issues
 - (1-2 prosecutors)
 - Medicaid Fraud Control Unit
 - (4 prosecutors)
 - Medicaid Recipient Fraud
 - (2 prosecutors)
- Programming Units
 - S.T.O.P. Violence Against Women Act Programming
 - Human Trafficking Programming
 - Responsible for statewide task force

Structure Changes

- Previously, mainly younger attorneys doing programming and learning about prosecution
- Now, attorneys primarily focused on prosecution with additional specialized employees primarily responsible for programming and trainings

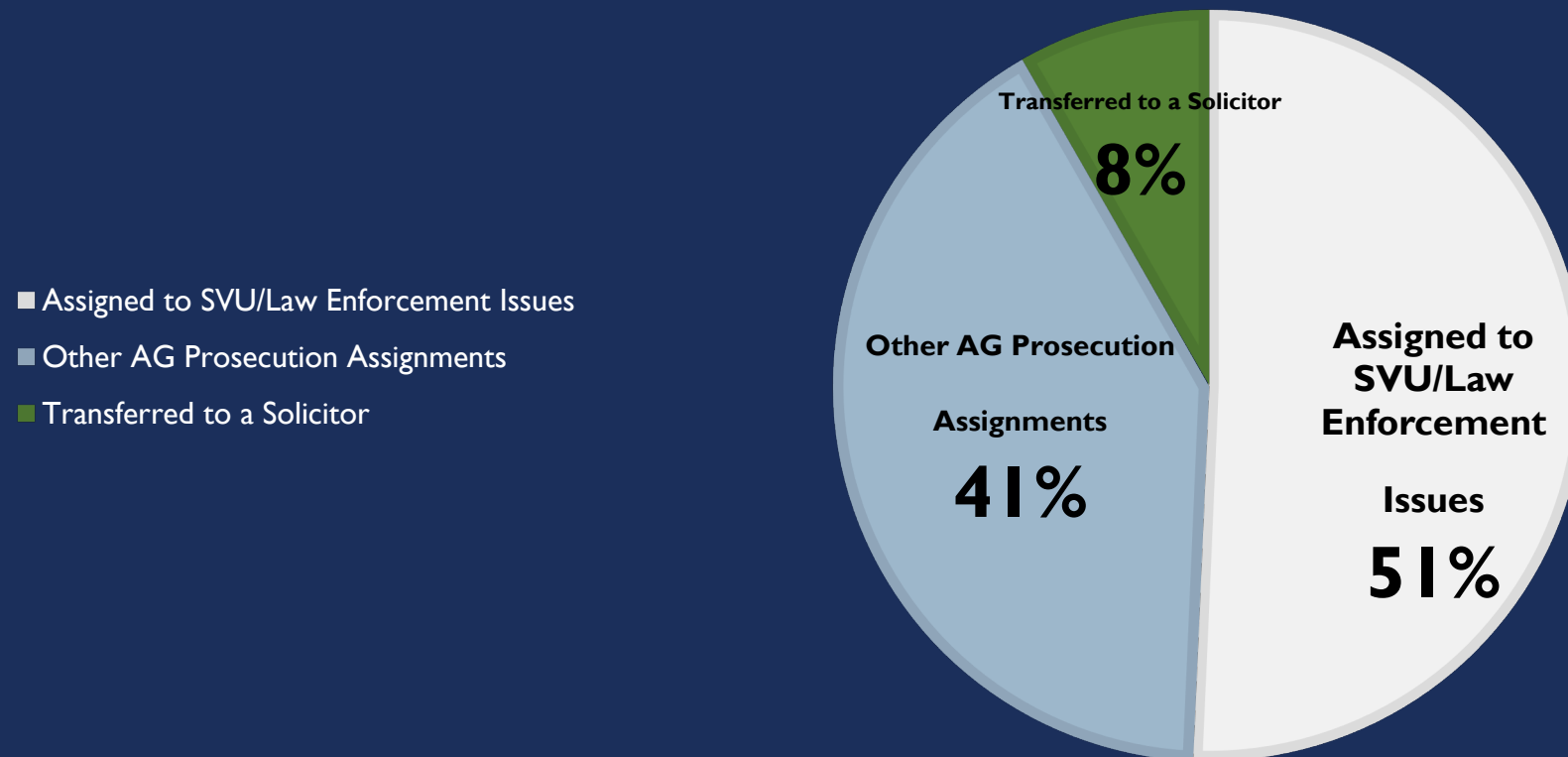
Needs

Technology

- Case management system that:
 - Automates federal reporting data
 - Able to track multiple charges per case
 - Easy for all Team members to access and update
 - Assists with establishing and tracking deadlines

Conflicts Assignments FY 2020-21

- Total Conflict cases that come into the AG's Office - 277
- Assigned to SVU/Law Enforcement Issues - 138
- Other AG Prosecution Assignments - 118
- Transferred to a Solicitor – 24



Criminal Justice System Full Spectrum

Entry into the system

Prosecution

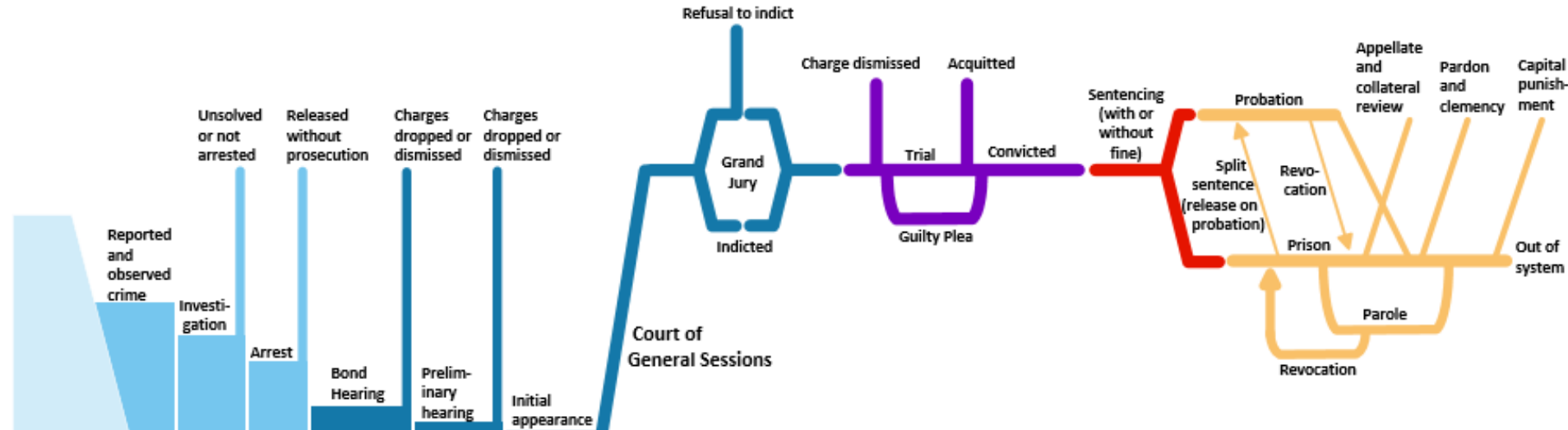
Adjudication

Sentencing

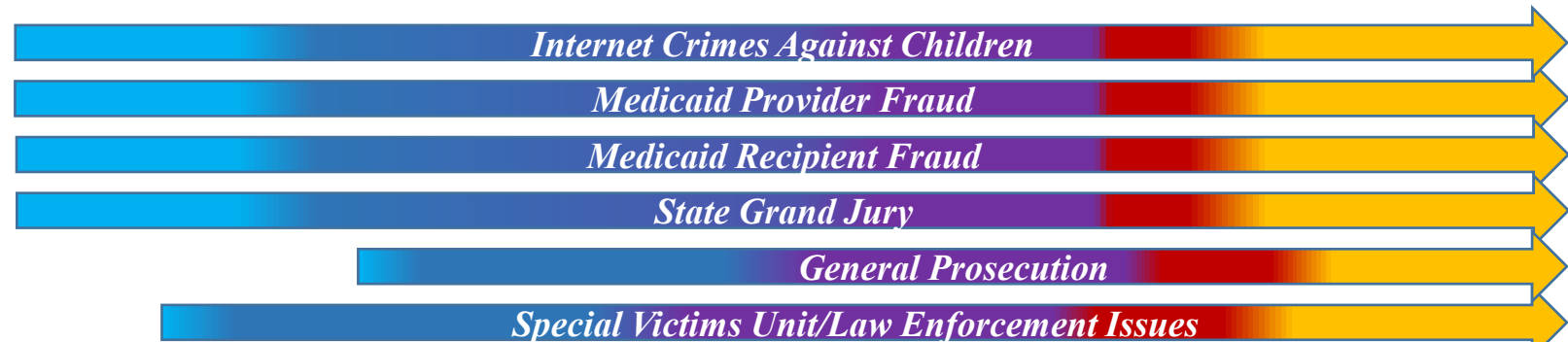
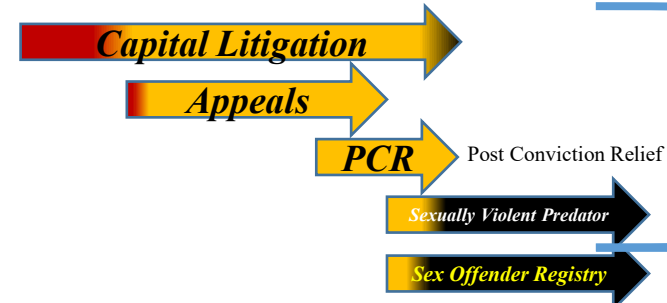
Corrections

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



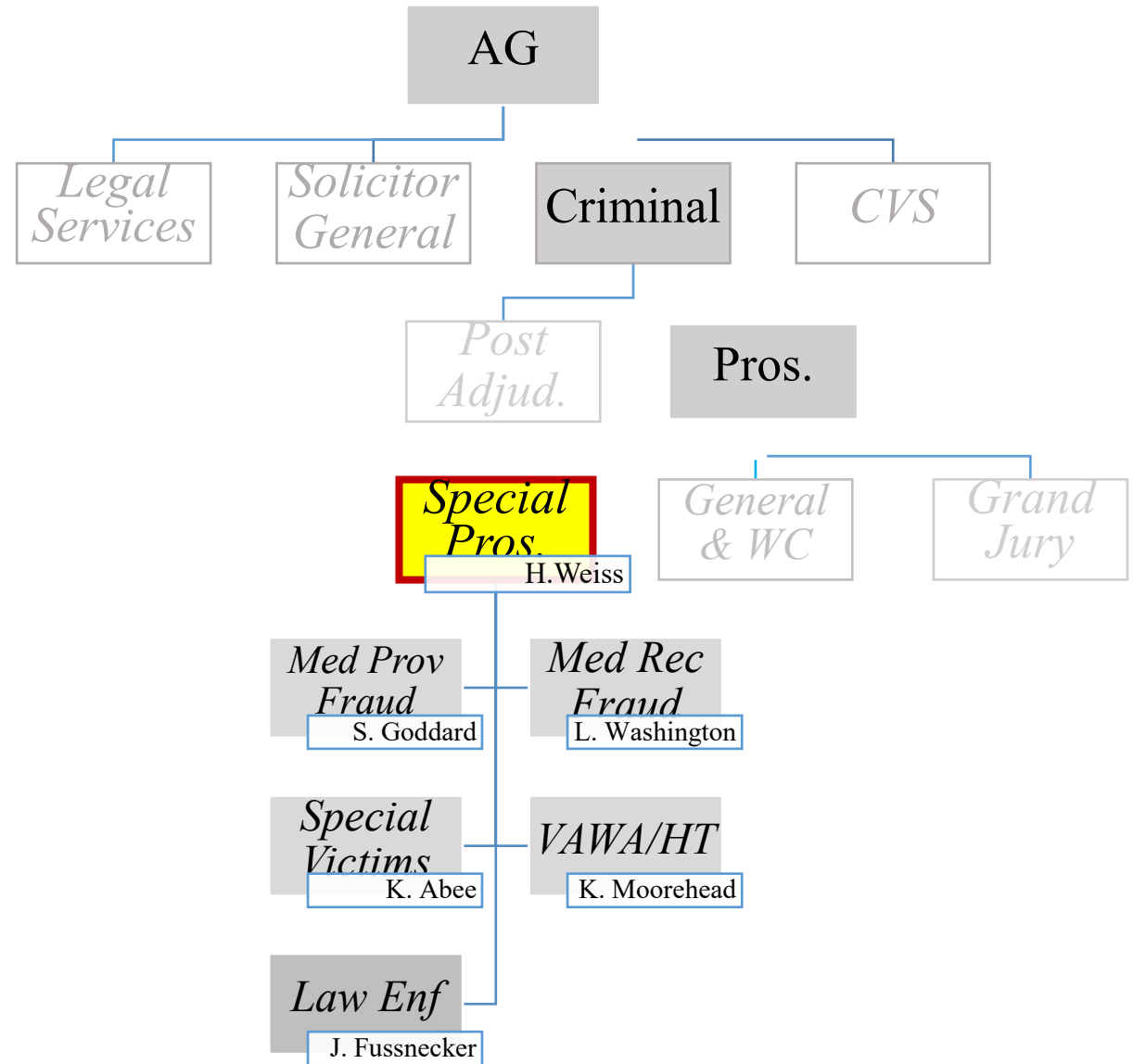
Criminal Litigation

Civil

Criminal Prosecution



Special Victims Unit



Overview

Handles conflict cases from circuits that involve victims of a special classification:

- sexual assault,
- child abuse,
- domestic violence,
- human trafficking, and
- juvenile matters.

This unit also prosecutes similar crimes that may have occurred in multiple jurisdictions.

Contains prosecutors that have received advanced training in interviewing victims of sexual assault.

Frequently, they consult with other circuits on their cases to lend guidance and facilitate trainings statewide on the issues of sexual assault, human trafficking, and domestic violence.

Who determines if there is a conflict?

Solicitors are responsible for determining if a conflict exists.

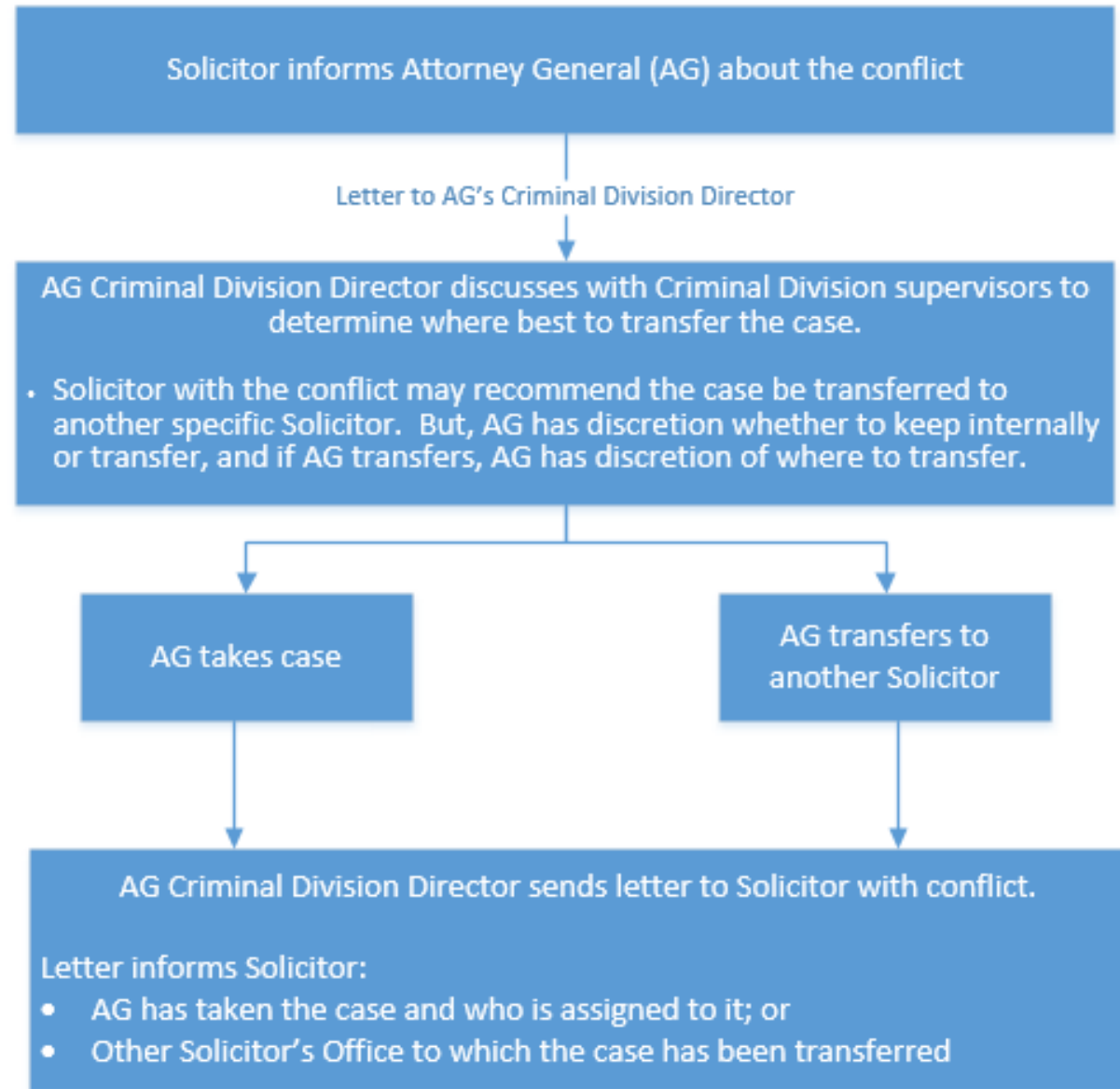
Examples of conditions in which a conflict exists include:

- Party Conflict: Solicitor prosecuting a defendant and representing a victim, then the victim later commits a crime. Solicitor cannot then prosecute the victim, unless they are large enough to Chinese wall.
- Law Enforcement or Asst. Solicitor: Charge against a law enforcement officer that regularly works with the Solicitor's Office or assistant solicitor that works in the office.

NOTE: Solicitor CANNOT transfer to another Solicitor without Attorney General approval (1-7-350)

- If this occurs, a defense attorney could argue the Solicitor to whom the case was transferred did not have authority to prosecute. It is unclear how a court would rule as the issue has never been argued to a court.

What is the process when one exists?



Prosecute Special Victim Cases when Solicitor asserts conflict/makes requests

Why?

- Provides experienced support for local prosecutors who have a conflict or not enough experienced staff to handle the caseload at the current time due to various reasons
- Examples of potential conflict includes when (1) victim/defendant is employed by or related to an employee in the Solicitor's Office; (2) defendant is an elected official

Types of cases prosecuted

- violent crime
- child abuse and family court,
- domestic violence,
- sexual assault,
- human trafficking,
- stalking,
- harassment,
- other relationship crimes, and
- complex cases where AG has subject matter expertise

Steps taken once case is accepted

- Meet with victims and witnesses,
- Evaluate case,
- Meet with investigators, and
- Work through proper disposition of plea, trial, other

*Note: 1 prosecutor is paid via a VAWA federal grant and the cases she can prosecute are limited by the grant terms

**Use State Grand Jury
as needed**



- As needed, the Special Victims Unit and law enforcement can utilize the state grand jury to prosecute special victim crimes and public corruption
- Work through initiation and investigation of case with investigators, prepare presentation to grand jury, prepare case for trial or plea if indicted by SGJ

Agency Service #131: When Solicitor has conflict, prosecute violent crime cases

Does law require it: No

Assoc. Law(s): State Constitution, Art. V, Sec. 24

Customers: Circuit Solicitors	Single Unit: Closed Cases	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Note: Attorneys in this section rarely work 37.5 hours and often work 40-50 hours.	2016-17	1.00	\$2,326.03	22.50	\$11,440.45	0.06%
	2017-18	2.00	\$16,234.79	24.75	\$32,469.57	0.05%
	2018-19	6.00	\$10,548.66	28.88	\$63,291.97	0.09%
	2019-20	8.00	\$4,688.25	14.50	\$37,506.01	0.05%

Agency Service #132: Prosecute State Grand Jury Public Corruption and Human Trafficking cases

Does law require it: Yes

Assoc. Law(s): State Constitution Art. V, Sec. 24

Single Unit: Closed Case	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs	
Note: Attorneys in this section rarely work 37.5 hours and often work 40-50 hours.	2016-17	1.00	\$2,326.03	15.00	\$24,651.08	0.13%
	2017-18	0.00	Insufficient data	11.25	\$29,287.50	0.05%
	2018-19	0.00	Insufficient data	9.75	\$23,871.73	0.04%
	2019-20	1.00	\$62,176.45	22.50	\$62,176.45	0.08%

Agency Service #133: Prosecute Human Trafficking Cases When Requested

Does law require it: No

Assoc. Law(s): §16-3-2050; State Constitution Art. V, Sec. 24

Single Unit: Closed Case	Customer satisfaction evaluated	Number of Customers Serve	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs	
Note: Attorneys in this section rarely work 37.5 hours and often work 40-50 hours.	2016-17	unknown	6.00	\$2,326.03	36.75	\$57,957.42	0.30%	
	2017-18	unknown	5.00	\$14,203.79	37.50	\$71,018.93	0.12%	
	2018-19	No	11	7.00	\$9,114.46	37.50	\$63,801.21	0.10%
	2019-20	No	10	1.00	\$79,040.03	45.50	\$79,040.03	0.10%

Agency Service #134: Prosecute Violence Against Women related crimes when requested

Assoc. Law(s): VAWA Federal Grant and State Constitution Art. V, Sec. 24

Single Unit: Closed Case	Customer satisfaction evaluated	Number of Customers Served	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs	
Note: Attorneys in this section rarely work 37.5 hours and often work 40-50 hours.	2016-17	unknown	15.00	\$2,326.03	63.75	\$86,705.38	0.44%	
	2017-18	unknown	24.00	\$4,847.38	62.25	\$116,337.05	0.20%	
	2018-19	No	205	28.00	\$4,024.55	63.00	\$112,687.49	0.17%
	2019-20	No	397	42.00	\$4,185.78	74.88	\$175,802.62	0.23%

Agency Service #135: When Solicitor has conflict, prosecute child sexual assault and child abuse cases

Does law require it: No

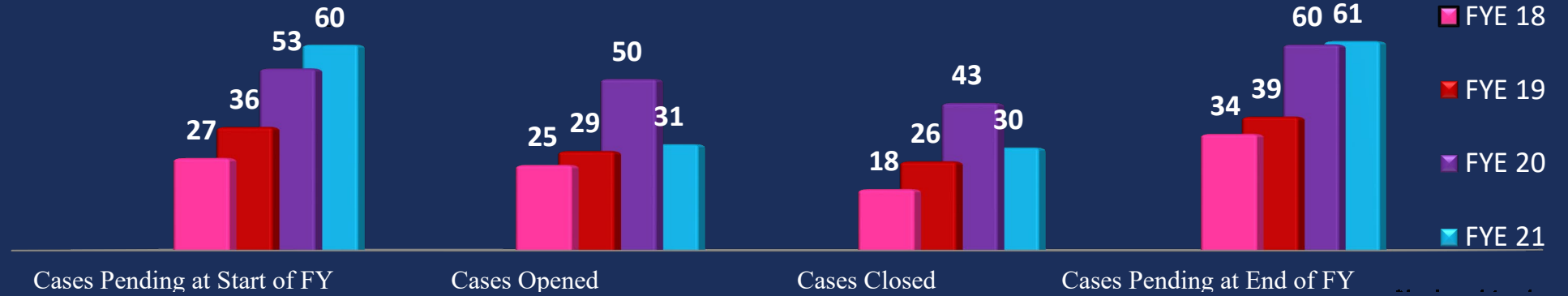
Assoc. Law(s): State Constitution, Art. V, Sec. 24

Customers: Circuit Solicitors	Single Unit: Closed Cases	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Note: Attorneys in this section rarely work 37.5 hours and often work 40-50 hours.	2016-17	28.00	\$2,326.03	44.63	\$54,771.52	0.28%
	2017-18	17.00	\$5,440.88	49.13	\$92,494.96	0.16%
	2018-19	26.00	\$4,551.33	51.00	\$118,334.50	0.18%
	2019-20	36.00	\$2,538.96	38.25	\$91,402.39	0.12%

Domestic Violence

*2019 added DV 3rd

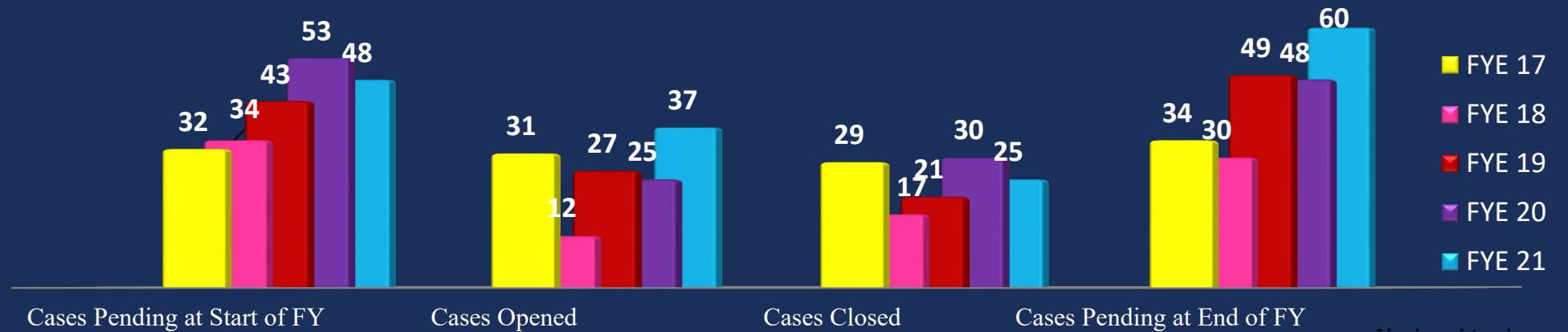
General Sessions Court



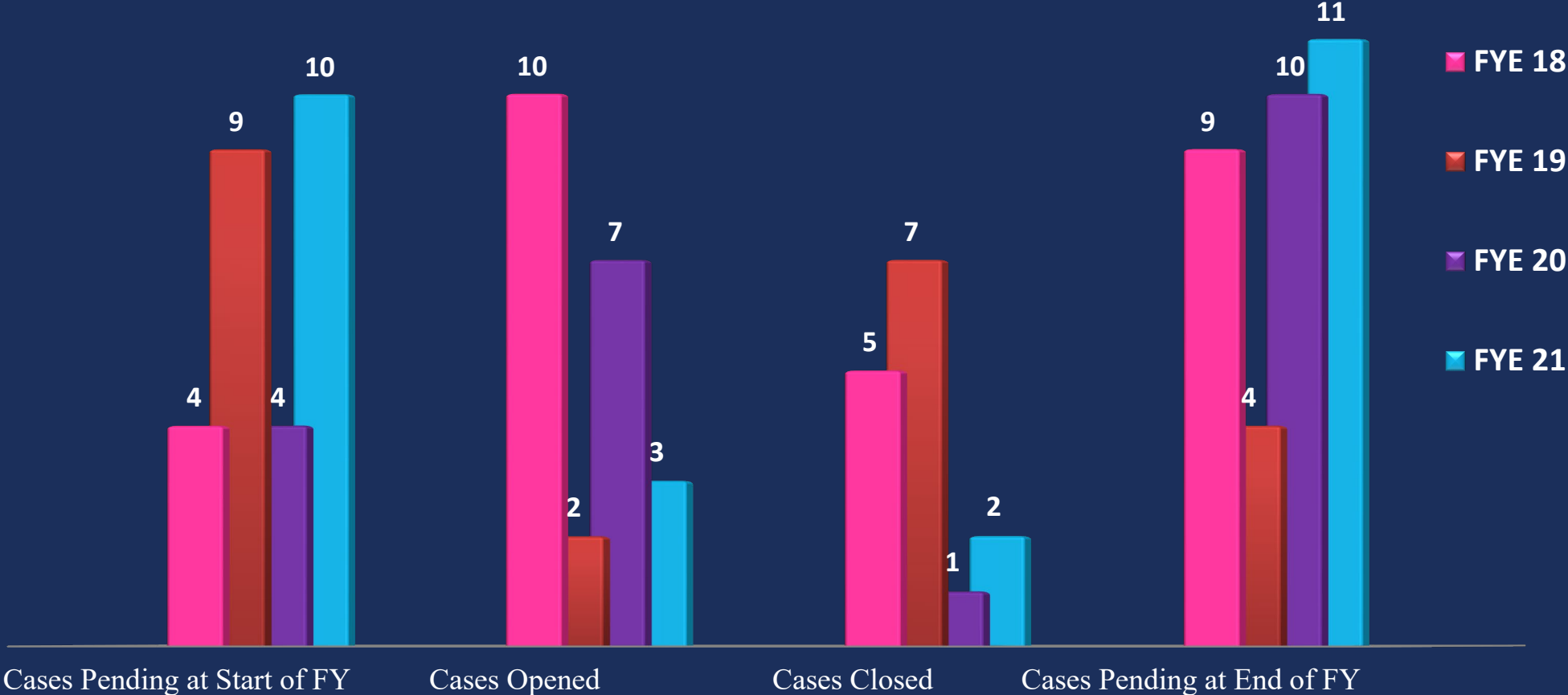
Child Abuse and Neglect



Sexual Assault

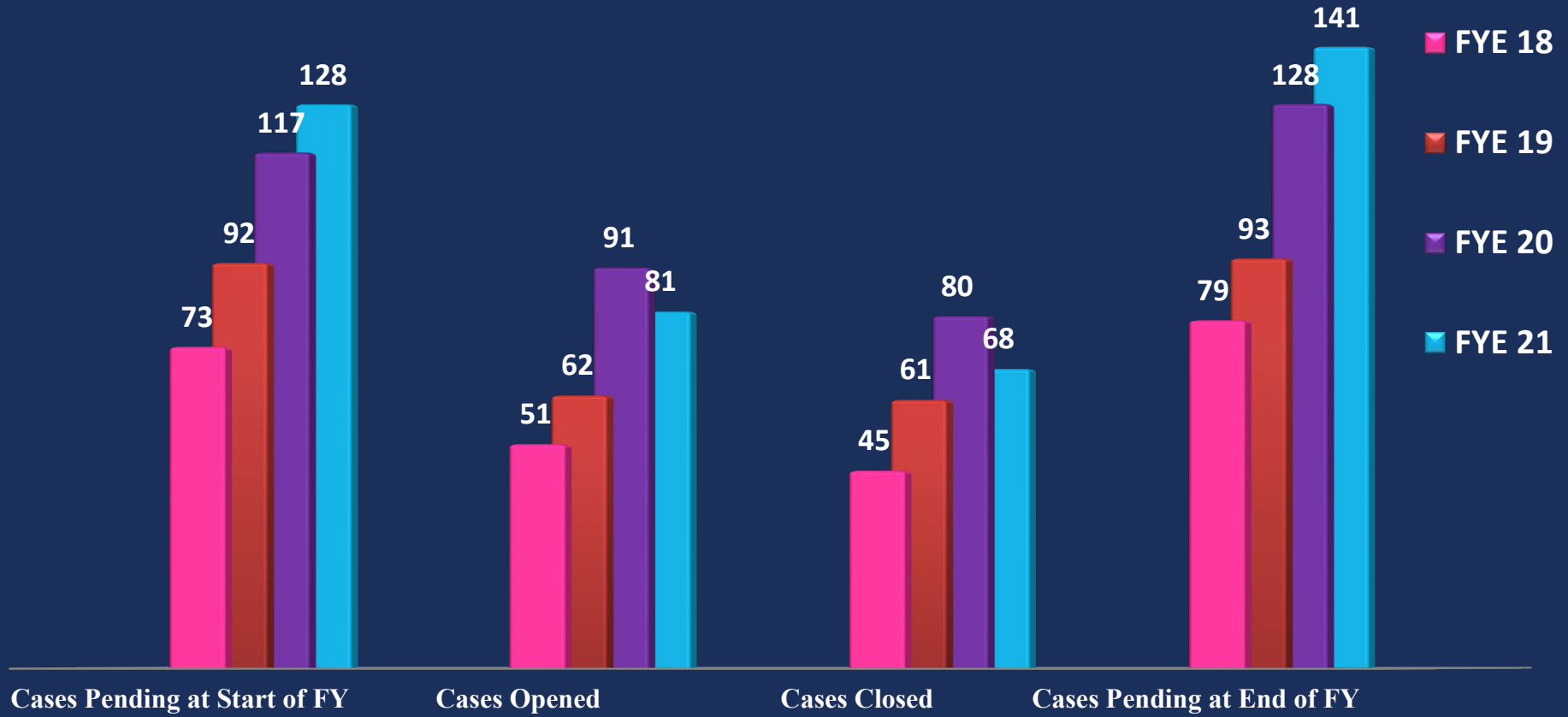


Human Trafficking



Special Victim Cases Total

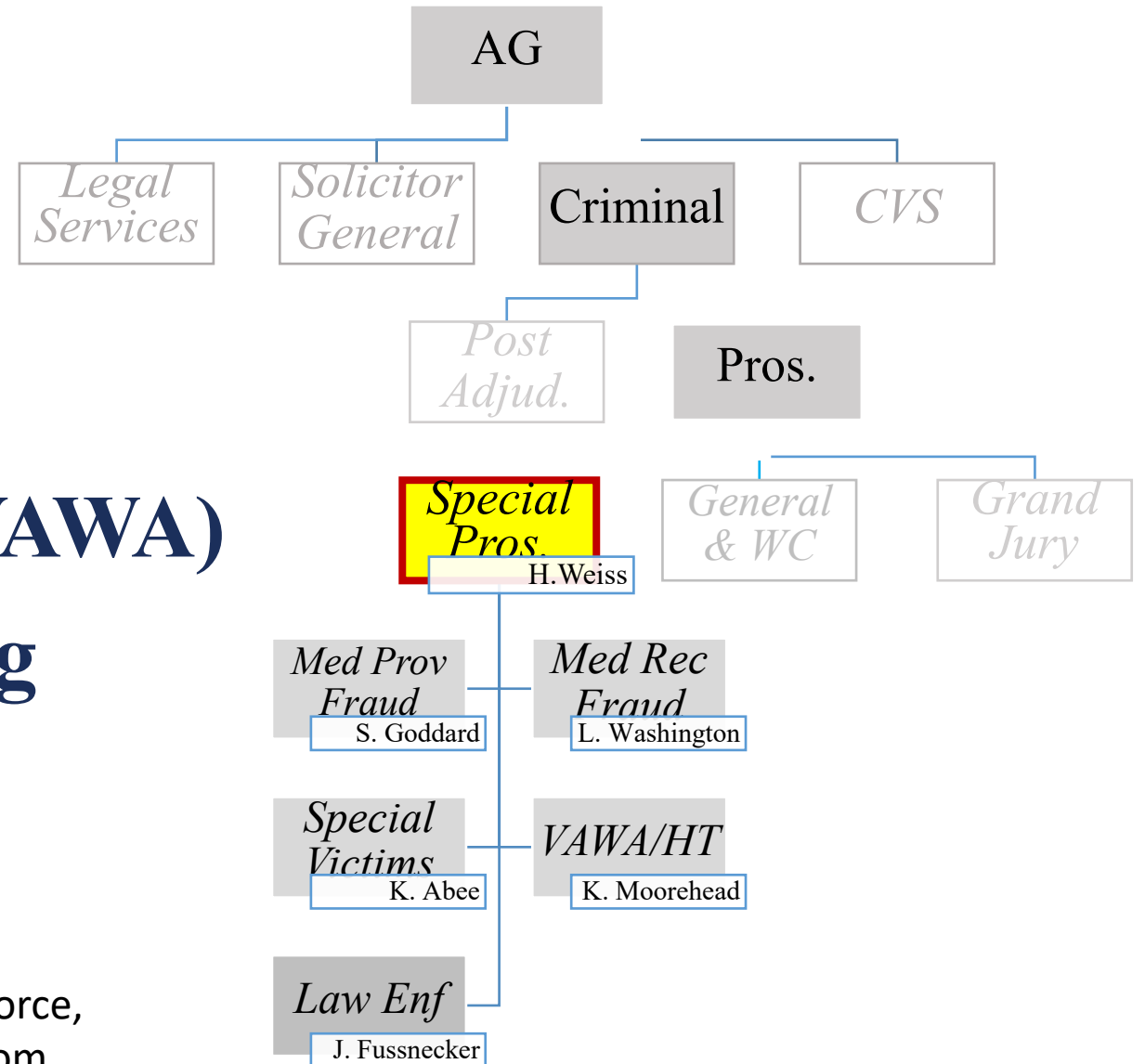
Combines information on previous slides





Violence Against Women (VAWA) and Human Trafficking Programming

Note: While everyone in Special Prosecution supports one another, this section is focused on programming and task force, which is separate from criminal prosecution in the courtroom



VAWA/HT Personnel

	Turnover	Number of Employees	
		Leave unit during year	In unit at end of year
2016-17	60%	3	5
2017-18	0%	0	5
2018-19	20%	1	5
2019-20	18%	1	6

Note:

2016-17 the special prosecution section was re-structured

FY 2017 Turnover

- 33.3% - Employment with another state agency
- 33.3% - Personal reasons
- 33.4% - Internal transfer

Exit interviews or surveys conducted?

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

Employee satisfaction tracked?

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

Violence Against Women (VAWA)

VAWA program has two main focuses:

- (1) prosecuting domestic violence and sexual assault cases (*discussed on previous slides*) and
- (2) training law enforcement, judges, prosecutors, and victim advocates on the cause, consequences, intersectionality, and laws pertaining to domestic violence and sexual assault.

Section is federally funded by the S.T.O.P. (Services, Training, Officers, and Prosecutors) Violence Against Women Act (1994). In 1996, AG's office established the S.T.O.P. Violence Against Women program. A special prosecutor, program coordinator, and program assistant collaborate to implement the statewide program.

Provide Victim Advocate

Provide support to victims of VAWA related crimes to ensure they understand the entirety of the judicial process, what the expectations are in court, and help identify resources to support them in other areas of their lives as a result of the crime that was perpetrated against them.

Agency Service #147: Provide Victim Advocate			<u>Customer satisfaction evaluated</u>	<u>Number of Customers Served</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>
<u>Does law require it:</u> Yes	Single Unit:	2016-17		152	1.00	\$2,326.03	33.00	\$55,492.42	0.28%
	Dedicated	2017-18		51	1.00	\$65,434.42	32.63	\$65,434.42	0.11%
	Victim	2018-19	No	46	1.00	\$64,950.10	32.63	\$64,950.10	0.10%
	Advocate	2019-20	No	56	1.00	\$69,777.55	33.13	\$69,777.55	0.09%
<u>Assoc. Law(s):</u> VAWA Federal Grant provides direction, but not funding									

Create/Update Domestic Violence and Sexual Assault Protocols

- Develop statewide protocols to ensure a consistent coordinated, trauma-informed response to victims of sexual assault and domestic violence.
- Develop in collaboration with local non-profits, peer-reviewed journals, and state statute
- Provide guidelines to prosecutors, victim advocates, law enforcement officers and judges

Provide Training

- Respond to requests for training, coordinating speakers, and educational materials from:
 - law enforcement
 - health care professionals
 - government agency staff
 - others as requested
 - prosecutors
 - victim advocates
 - educators
- Provide training on topics including:
 - law enforcement
 - domestic violence
 - stalking
 - community response
 - sexual assault
 - relationship violence
 - the justice system

Agency Service #148: Create/Update Domestic Violence and Sexual Assault Protocols for Prosecutors and Law Enforcement		<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>
Does law require it: Yes Assoc. Law(s): VAWA Federal Grant	Single Unit: 2016-17	2.00	\$2,326.03	17.25	\$28,047.98	0.14%
	Protocols Created 2017-18	2.00	\$12,812.90	13.13	\$25,625.79	0.04%
	2018-19	2.00	\$15,574.71	16.88	\$31,149.42	0.05%
	2019-20	2.00	\$14,487.67	13.63	\$28,975.33	0.04%

Agency Service #144: Provide training		<u>Number of Customers Served</u>	<u>Customer satisfaction evaluated</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>
Does law require it: Yes Assoc. Law(s): VAWA Federal Grant	Single Unit: 2016-17	662		12.00	\$2,326.03	22.50	\$44,889.22	0.23%
	Number of trainings 2017-18	587		33.00	\$1,741.74	27.00	\$57,477.45	0.10%
	2018-19	464	Yes	25.00	\$1,805.62	21.38	\$45,140.55	0.07%
	2019-20	594	Yes	19.00	\$2,478.61	20.00	\$47,093.55	0.06%

Provide Technical Assistance for Community Response Activities

Agency Service #145

Assist committees with coordinated community response activities to include

- **Domestic Violence Coordinating Councils** (10 statewide),
- **Sexual Assault Response Teams** (16 statewide),
- domestic violence fatality review meetings that occur within judicial circuits, and
- **State Domestic Violence Advisory Committee.**

Provide technical assistance to **Coordinated Community Response Teams**, formed by Solicitor’s Office and overseen by AG’s office, through

- program evaluation,
- trainings,
- strategic planning, and
- protocol development to promote capacity building in each respective circuit consistent with the purpose and goals outlined in Article 5 of the SC Domestic Violence statute.

<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>
Number of committees supported	2016-17	24.00	\$2,326.03	13.50	\$23,106.03	0.12%
	2017-18	14.00	\$1,789.93	13.13	\$25,058.97	0.04%
	2018-19	27.00	\$885.99	12.38	\$23,921.79	0.04%
	2019-20	26.00	\$1,079.60	14.13	\$28,069.49	0.04%

Does law require it: Yes

Assoc. Law(s): VAWA Federal Grant

Silent Witness Ceremony

Agency Service #146

Produce Silent Witness Ceremony to remember and bring awareness to victims of domestic homicide in South Carolina.

Coordinate with statewide law enforcement agencies to do the following:

- collect domestic violence homicide data,
- report findings, and
- interface with family members to execute Silent Witness on the Statehouse grounds.



	<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	1.00	\$2,326.03	12.00	\$20,817.91	0.11%
2017-18	1.00	\$21,229.45	10.88	\$21,229.45	0.04%
2018-19	1.00	\$22,757.92	10.88	\$22,757.92	0.03%
2019-20	1.00	\$25,375.21	10.88	\$25,375.21	0.03%

Does law require it: Yes

Assoc. Law(s): VAWA Federal Grant

Create/Distribute Awareness Posters

- Create and distribute awareness posters and publications regarding S.T.O.P. Violence Against Women Act.
- Provide stakeholders and community members with posters, brochures, and other items to help bring awareness to VAWA crimes and knowledge of how to access support services.

Administer Grant(s)

- Collect, synthesize, and report data throughout the grant year to meet S.T.O.P. Violence Against Women Grant requirements to ensure the continuity of funding and services of the S.T.O.P. VAWA Program

Agency Service #149: Create/Distribute Awareness Posters			<u>Number of Customers Served</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>
Single Unit:	2016-17		3449	7.00	\$2,326.03	3.38	\$7,186.68	0.04%
New posters/publications developed	2017-18		793	6.00	\$1,237.89	3.00	\$7,427.35	0.01%
	2018-19		89	8.00	\$866.51	3.00	\$6,932.05	0.01%
	2019-20		157	7.00	\$1,368.83	3.13	\$9,581.78	0.01%
<u>Does law require it:</u> Yes								
<u>Assoc. Law(s):</u> VAWA Federal Grant								

Agency Service #150: Administer STOP Violence Against Women Grant and other grants for human trafficking and relationship crimes				<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>
Single Unit:	2016-17			2.00	\$2,326.03	4.13	\$8,531.92	0.04%
Grant reported and applied for next year	2017-18			2.00	\$4,455.15	3.75	\$8,910.30	0.01%
	2018-19			1.00	\$7,986.74	3.38	\$7,986.74	0.01%
	2019-20			1.00	\$12,899.04	4.13	\$12,899.04	0.02%
<u>Does law require it:</u> Yes								
<u>Assoc. Law(s):</u> VAWA Federal Grant								

Human Trafficking (HT)

- 2012 - General Assembly enacted comprehensive legislation to combat Human Trafficking and established the Statewide Human Trafficking Task Force led by the Attorney General.
- S.C. is ranked among the best states for effective laws.
- §16-3-2010 includes higher penalties than the prior statute, criminal liability for business owners engaging in HT, restitution for victims, civil action for victims, and asset forfeiture by convicted traffickers.
- Attorney General is the central office for effecting the legislative intent on combatting Human Trafficking in the State.
- A subcommittee is established to provide a network of law enforcement agencies and prosecutors statewide since the nature of the crime crosses jurisdictional lines.
- Much of the prosecution remains local, but the statewide task force and AG coordination allows for communication, pooling of resources, and the ability to bring federal resources to the State to combat Human Trafficking.
- AG also provides prosecution expertise in such cases.

Human Trafficking Task Force



Human Trafficking Task Force Membership

701 individual members representing law enforcement, health care, non-profits, child advocacy centers, independent advocates, survivors, and the interfaith community make up the task force

Mandated Members

SC Attorney General (Chair)
Dept. of Labor, Licensing and Regulation
State Law Enforcement Division
Dept. of Health and Environmental Control
SC Office of Victim Services
Dept. of Social Services
Office of the Governor
SC Commission on Prosecution Coordination
SC Police Chiefs Association
SC Sheriffs Association

Federal Invitees

Department of Labor
U.S. Attorney's Office
Immigration and Customs Enforcement
Federal Bureau of Investigation

Partner Agencies & Associations

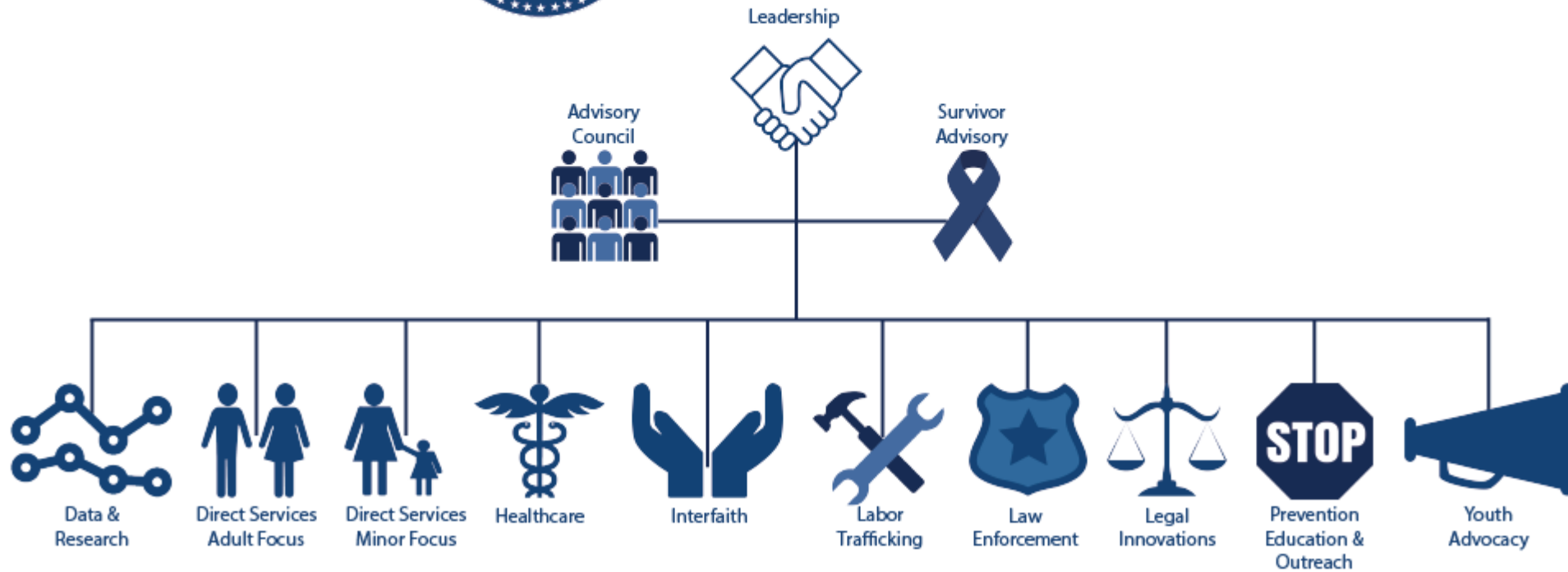
DHS Blue Campaign
National Compendium of State-Run Anti-Human Trafficking Initiatives
National Human Trafficking & Disabilities Work Group
NAAG
U.S. Committee for Refugees & Immigrants
Shared Hope International
DHHS/ACF Region IV-Southeast Advisory Group

Thorn
Legal Assistance for Survivors of Trafficking
SC Trucking Association
SC Hospital Association
SC Restaurant & Lodging Assoc.
SC Beer Wholesalers Assoc.

Human Trafficking Task Force Organization



SOUTH CAROLINA
HUMAN TRAFFICKING
TASK FORCE



Organize and facilitate the Human Trafficking (HT) Task Force

- Coordinate quarterly meetings for updates on anti-human trafficking initiatives across S.C. AG chairs task force to address the crime of human trafficking in S.C.
- June 2014 – Taskforce released “The S.C. State Plan to Address Human Trafficking.” State Plan focus areas include:
 - Determining the Magnitude of HT in S.C.
 - Protecting, Supporting and Serving victims of HT
 - Investigating and Prosecuting HT
 - Preventing HT in S.C.

Collect/Publish Human Trafficking Statistics

- Collect and publish statistical data on trafficking in persons and provide an annual report
- Publish information to task force webpage administered by the Attorney General's website.
- Collaborate with the Data Management & Research subcommittee to expand data collection efforts statewide.

Agency Service #137: Organize and facilitate the Human Trafficking Task Force		Single Unit: Subcommittees created to meet outside of the required 4 times per year of the Statewide task force (2016 only had one subcommittee)	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Does law require it: Yes		2016-17	10.00	\$2,326.03	4.50	\$10,172.15	0.05%
Assoc. Law(s): §16-3-2050		2017-18	11.00	\$1,478.17	6.38	\$16,259.91	0.03%
		2018-19	12.00	\$1,412.53	6.00	\$16,950.37	0.03%
		2019-20	12.00	\$477.11	7.13	\$5,725.36	0.01%

Agency Service #139: Collect/Publish Human Trafficking Statistics		Single Unit: Annual Report	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Does law require it: Yes		2016-17	1.00	\$2,326.03	7.50	\$14,490.97	0.07%
Assoc. Law(s): §16-3-2050		2017-18	1.00	\$15,289.82	4.88	\$15,289.82	0.03%
		2018-19	1.00	\$10,622.16	3.75	\$10,622.16	0.02%
		2019-20	1.00	\$19,929.79	5.25	\$19,929.79	0.03%

Prepare/Coordinate Human Trafficking Awareness Programs

- Prepare and coordinate public awareness programs and publications to address the impact and risks of human trafficking, the hotline and awareness.
- Formalize partnerships with leaders representing a variety of industries to deliver sector-specific awareness campaigns.

Coordinate information sharing between agencies to detect human trafficking

- Coordinate information sharing to detect trafficking and identify victims of trafficking
- Review existing services and facilities to meet needs of victims and recommend and facilitate a system to coordinate services.
- Coordinate with the National Human Trafficking Hotline to streamline communication between service providers and improve case coordination.

Agency Service #140: Prepare/Coordinate Human Trafficking Awareness Programs

Does law require it: Yes
Assoc. Law(s): §16-3-2050

		<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>
Single Unit: Public awareness programs and publications	2016-17	32.00	\$2,326.03	3.75	\$13,145.74	0.07%
	2017-18	38.00	\$447.83	5.63	\$17,017.70	0.03%
	2018-19	39.00	\$326.45	4.50	\$12,731.56	0.02%
	2019-20	28.00	\$434.00	6.25	\$12,151.98	0.02%

Agency Service #141: Coordinate information sharing between agencies to detect human trafficking

Does law require it: Yes
Assoc. Law(s): §16-3-2050

		<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>
Single Unit: S.C. National Human Trafficking Hotline reports by calendar years (2018, 2017, 2016) reflects need for each agency and service provider to work together and the community becoming aware of what is happening.	2016-17	78.00	\$2,326.03	7.50	\$14,490.97	0.07%
	2017-18	127.00	\$120.39	4.88	\$15,289.84	0.03%
	2018-19	156.00	\$68.09	3.75	\$10,622.15	0.02%
	2019-20	139.00	\$146.83	5.25	\$20,408.68	0.03%

Provide requirements, training and certification for human trafficking victim service providers (VSP-HT)

- Coordinate with Attorney General’s Crime Victim Services training and certification division, Department of Social Services, other certifying groups, and groups needing special education for the trafficking victim population.
- Develop a training and certification to help judges and other referring groups know who is utilizing best practices in this field.

Provide Human Trafficking Training

- Provide training to law enforcement agencies, prosecutors, other relevant officials and agencies involved in addressing trafficking in persons.
- Assist with training implementation by responding to requests for training, coordinating speakers, and providing educational materials.

Agency Service #143: Provide requirements, training and certification of HT victim service providers

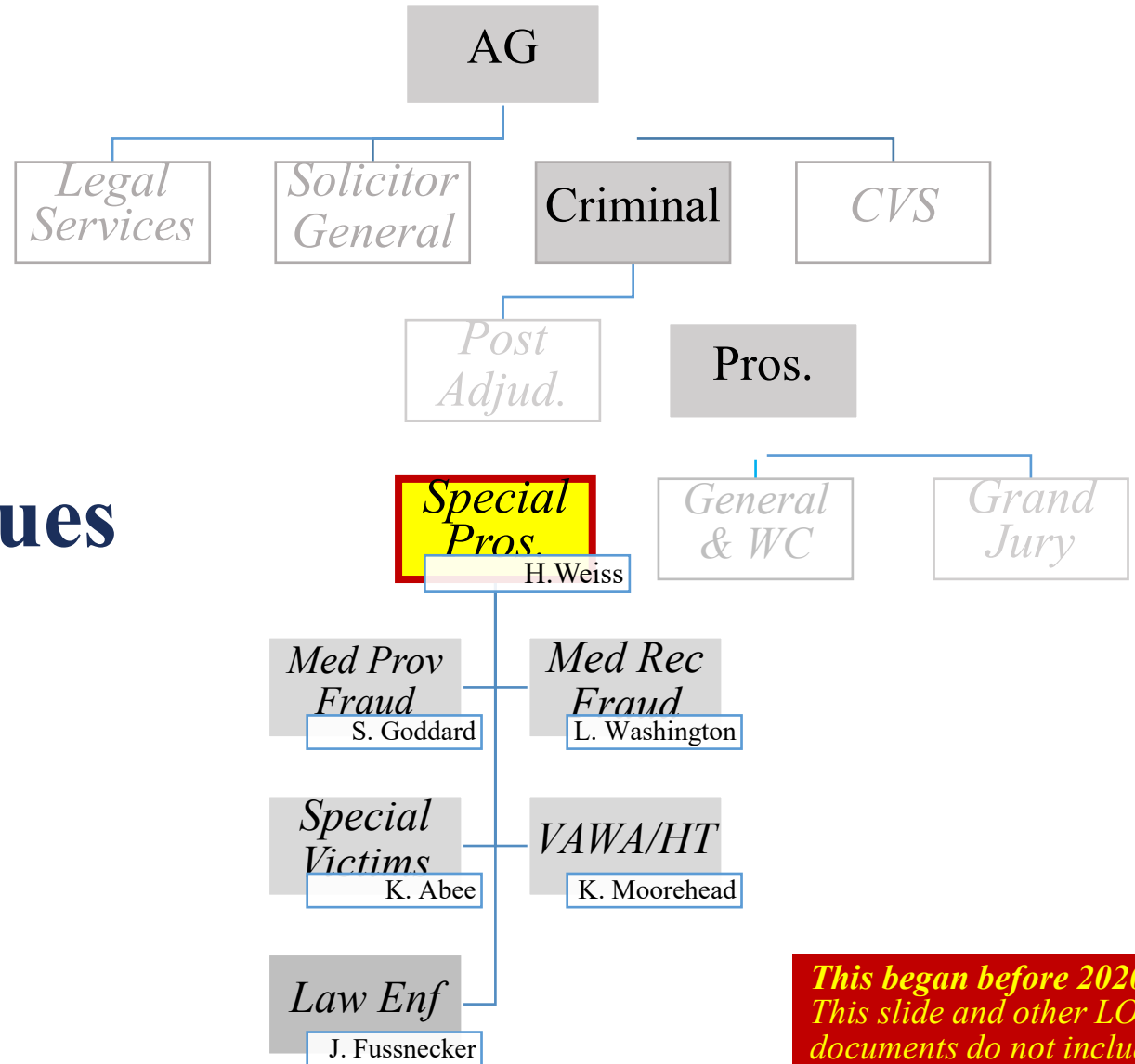
Does law require it: Yes
Assoc. Law(s): §16-3-2050

		<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>
Single Unit: Training classes provided (15 hours each)	2016-17	Not	\$2,326.03	3.75	\$3,277.00	0.02%
	2017-18	Not	Insufficient data	5.63	\$11,390.92	0.02%
	2018-19	1.00	\$12,656.42	4.50	\$12,656.42	0.02%
	2019-20	1.00	\$14,363.49	5.00	\$14,363.49	0.02%

Agency Service #138: Provide HT training

Does law require it: Yes
Assoc. Law(s): §16-3-2050

	Single Unit: Number of trainings	<u>Number of Customers Served</u>	<u>Customer satisfaction evaluated</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>	
Note: Attorneys and director in this section rarely work 37.5 hours and often work 40-50 hours.		2016-17	1850						
		2017-18	2475						
		2018-19	2925	Yes	38.00	\$1,006.48	13.88	\$38,246.39	0.06%
		2019-20	2563	No	42.00	\$1,089.07	14.25	\$45,741.13	0.06%



Law Enforcement Issues Section

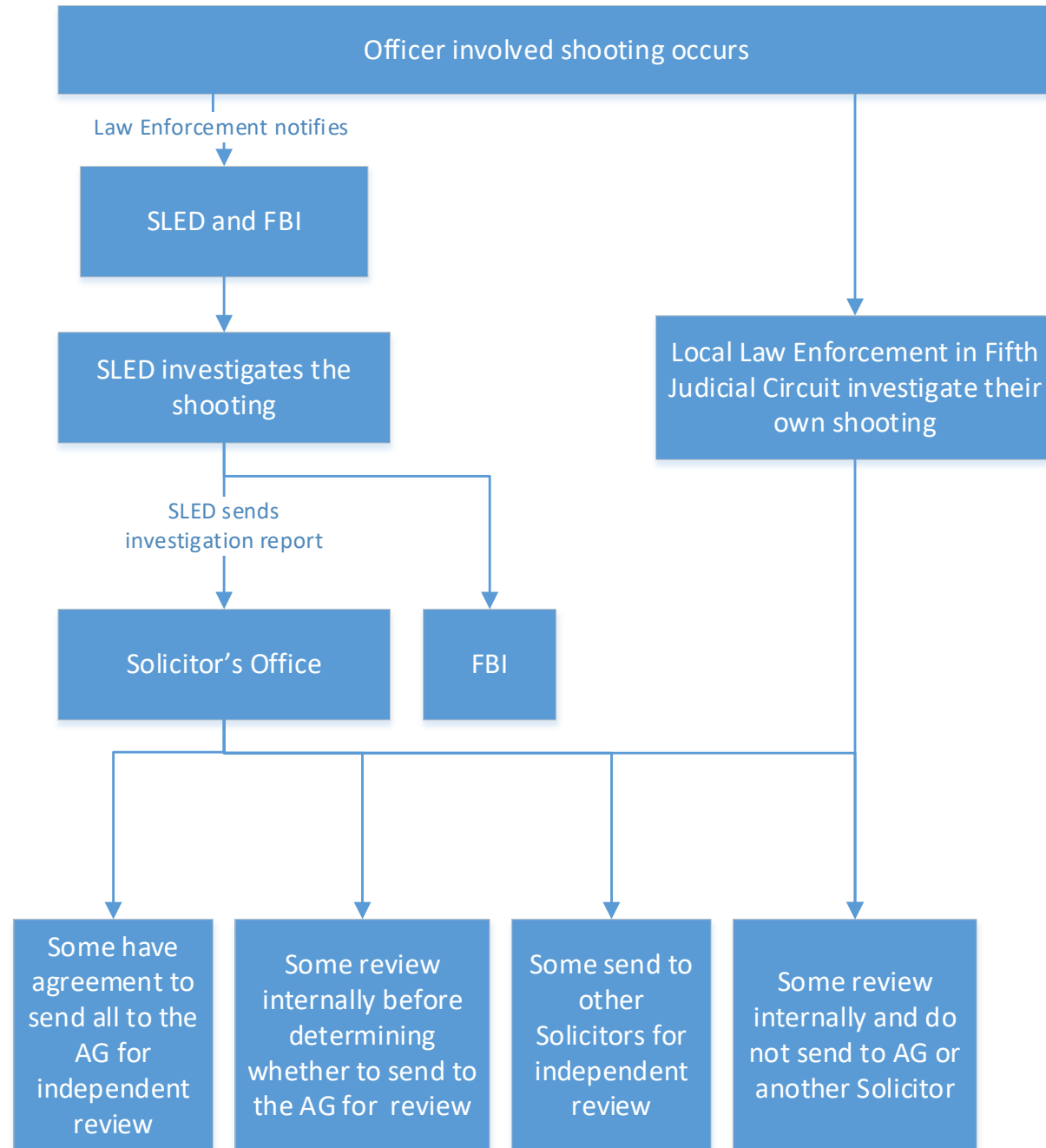
This began before 2020. This slide and other LOC documents do not include initiatives under review since the Spring of 2020.

Overview

This is a developing area under AG Wilson. High profile cases in recent years identified a need for centralized review. Allegations against an officer may create issues where criminal cases are pending with that officer as a party with the circuit solicitor.

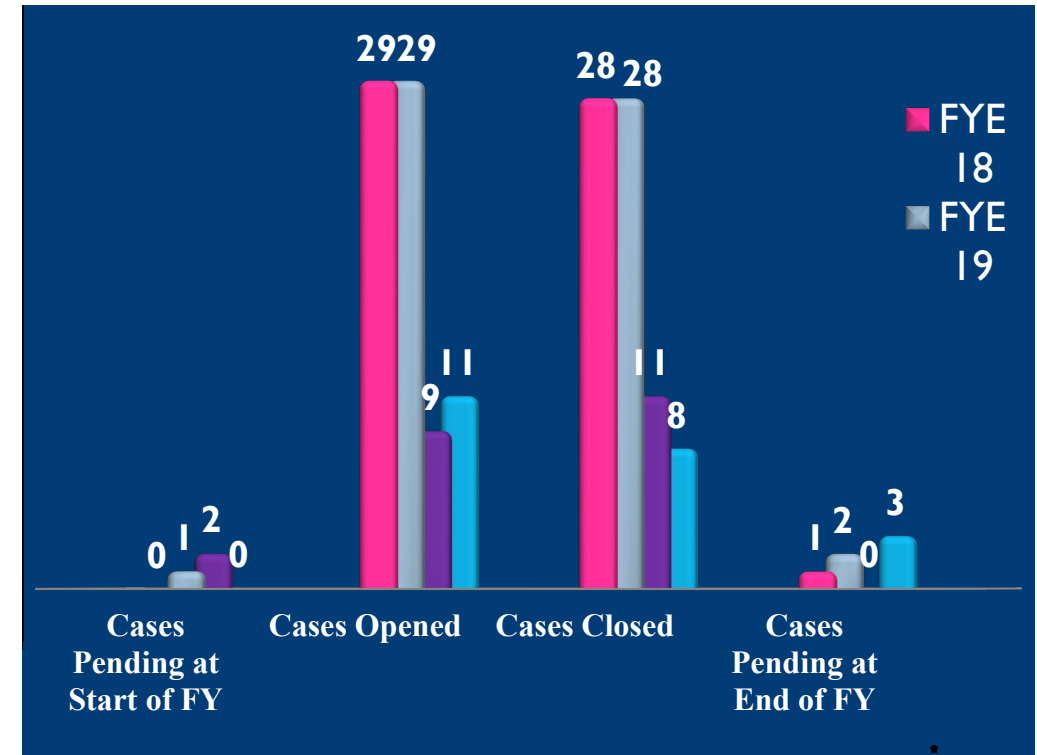
By providing a separate review from interested entities, the AG provides an independent analysis. Assigned Assistant Attorney Generals receive specialized training and experience. Also, providing a centralized review brings statewide standards for thoroughness, timeliness, and consistency. This is intended to increase public faith in law enforcement conduct review.

Review of Officer Involved Shooting



Review officer involved shooting investigations upon request due to conflict and/or subject matter expertise

- Provides a single location for review of Officer Involved Shooting cases by prosecutors who do not know the local law enforcement or community and can review the cases under a lens that is the same for each case.
- Provides consistency in the evaluation of these cases and a chance to review the cases by prosecutors who have received specialized training and experience.
- Once investigation is accepted for review, meet with law enforcement and review evidence to ensure investigation is complete and evaluate next appropriate steps.
- Attend training and meet with Federal prosecutors to be able to fully evaluate the investigation for most effective and appropriate resolution.



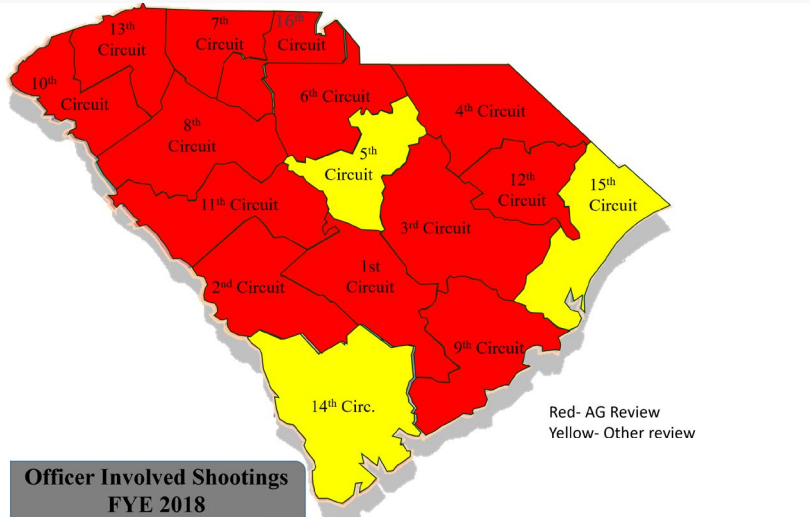
Agency Service #136: Review officer involved shootings upon request

Does law require it: No

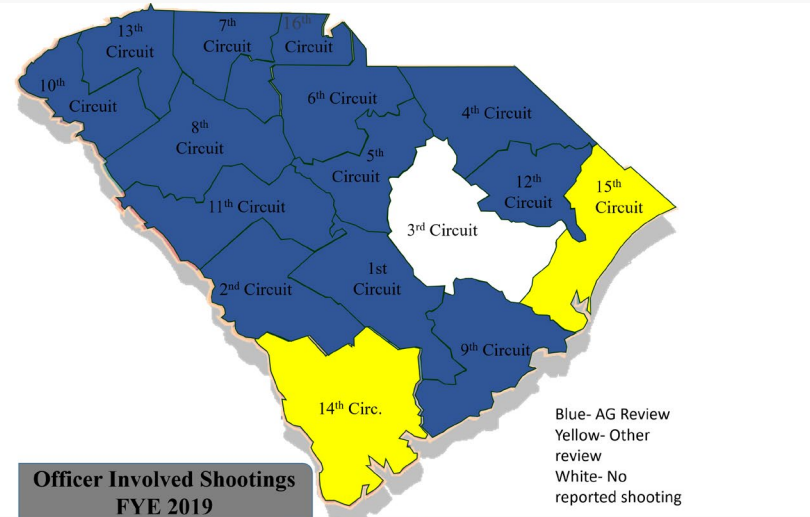
Assoc. Law(s): State Constitution Art. V, Sec. 24

Single Unit: Closed Investigations	Customer satisfaction evaluated	Number of Customers Served	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17		Unknown	Not	\$2,326.03	11.63	\$7,936.95	0.04%
Note: Attorneys in this section rarely work 37.5 hours and often work 40-50 hours.	2017-18	Unknown	28.00	\$634.87	11.63	\$17,776.29	0.03%
	2018-19	No	30	\$1,044.05	11.63	\$29,233.35	0.04%
	2019-20	No	11	\$3,413.27	13.75	\$37,545.93	0.05%

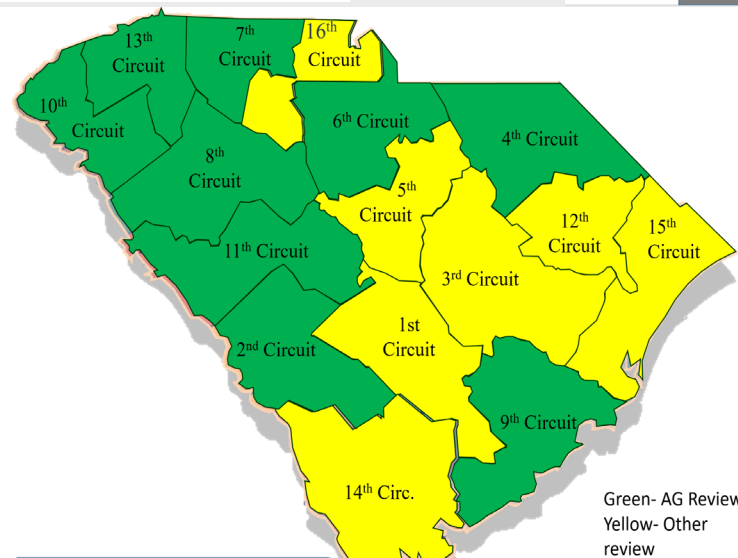
Officer Involved Shooting Cases in which Solicitor Sent Cases to AG for Review



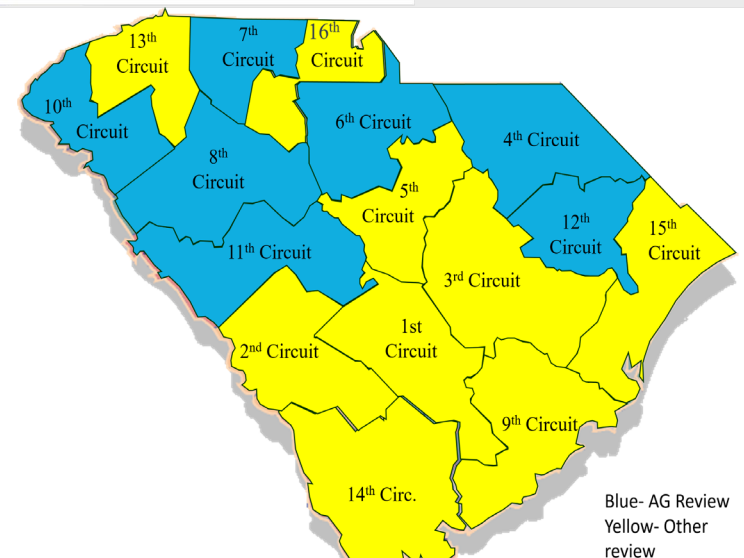
**Officer Involved Shootings
FYE 2018**



**Officer Involved Shootings
FYE 2019**



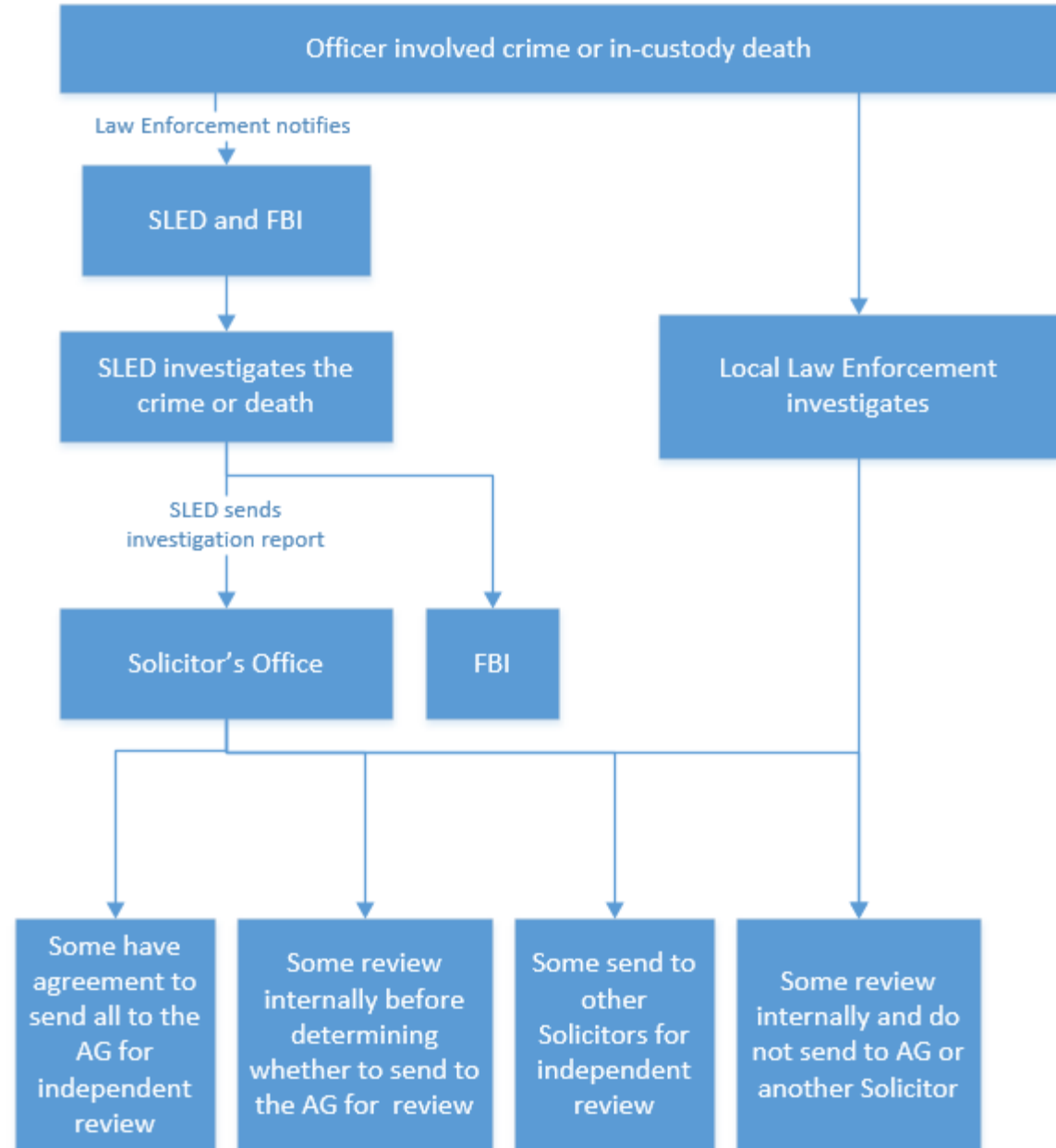
**Officer Involved Shootings
FYE 2020**



**Officer Involved Shootings
FYE 2021**

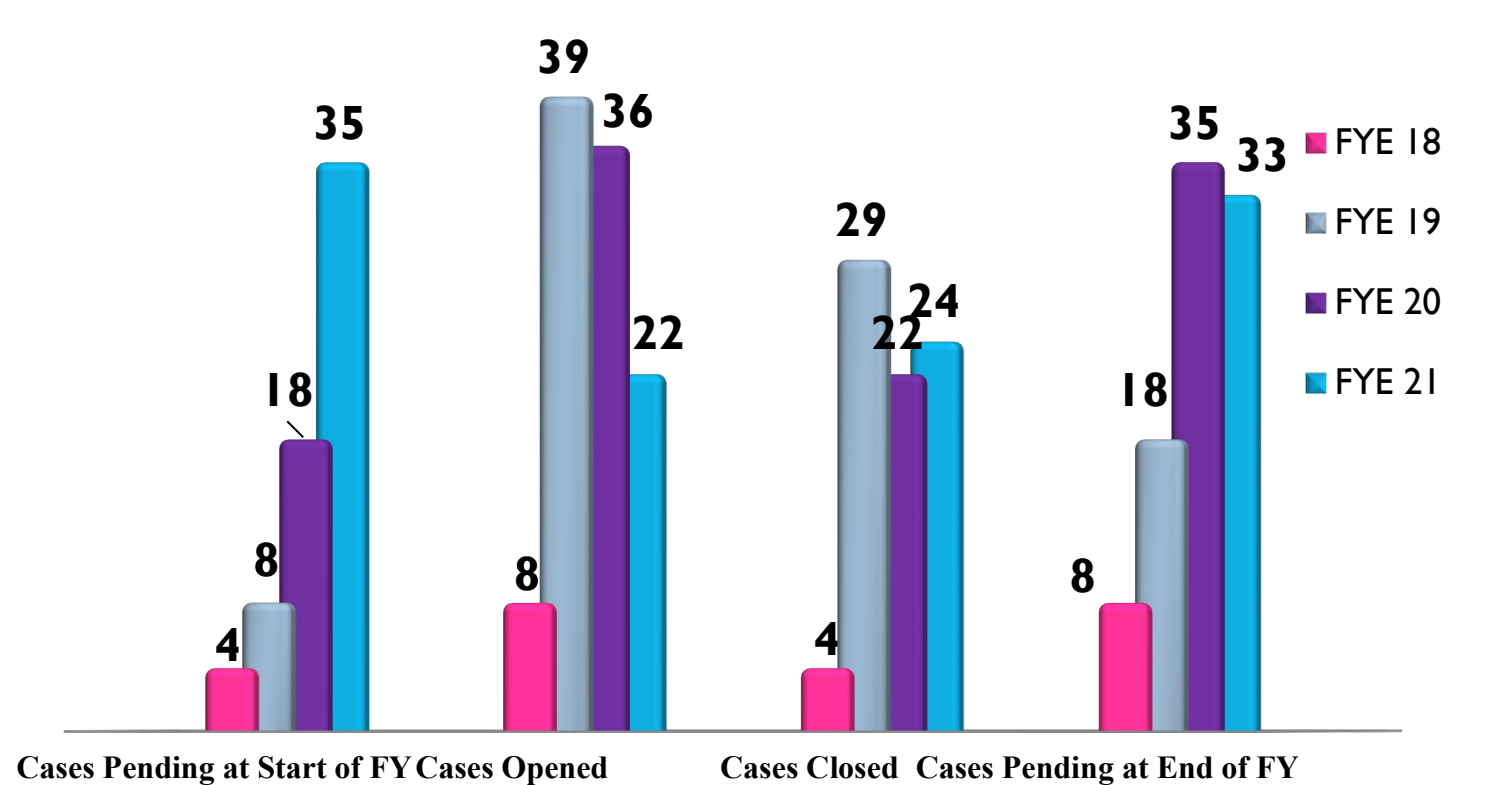
Review of Officer Involved Crime or In-Custody Death

Officer Involved Crime or In-custody Death



Prosecute (1) officer involved crimes and (2) in-custody deaths when Solicitor asserts conflict/makes requests

- Provides experienced support for local prosecutors who have a conflict or not enough experienced staff to handle the caseload at the current time due to various reasons
- Officer involved crime examples – Officer pointing gun at someone in the community; embezzlement; domestic violence; etc.
- As needed, the Special Victims Unit and law enforcement can utilize the state grand jury to prosecute public corruption



*Lawbase data

Agency Service #151: Prosecute conflict officer involved crimes and in-custody deaths.

Does law require it: No

Assoc. Law(s): State Constitution Art. V, Sec. 24

Note: Attorneys in this section rarely work 37.5 hours and often work 40-50 hours.

Single Unit:
Closed
Investigations

	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	Not	\$2,326.03	18.75	\$15,816.53	0.08%
2017-18	4.00	\$8,888.13	19.50	\$35,552.52	0.06%
2018-19	29.00	\$1,695.06	17.63	\$49,156.84	0.07%
2019-20	22.00	\$52.31	27.28	\$1,150.76	0.00%



Law Enforcement Issues – 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 #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."

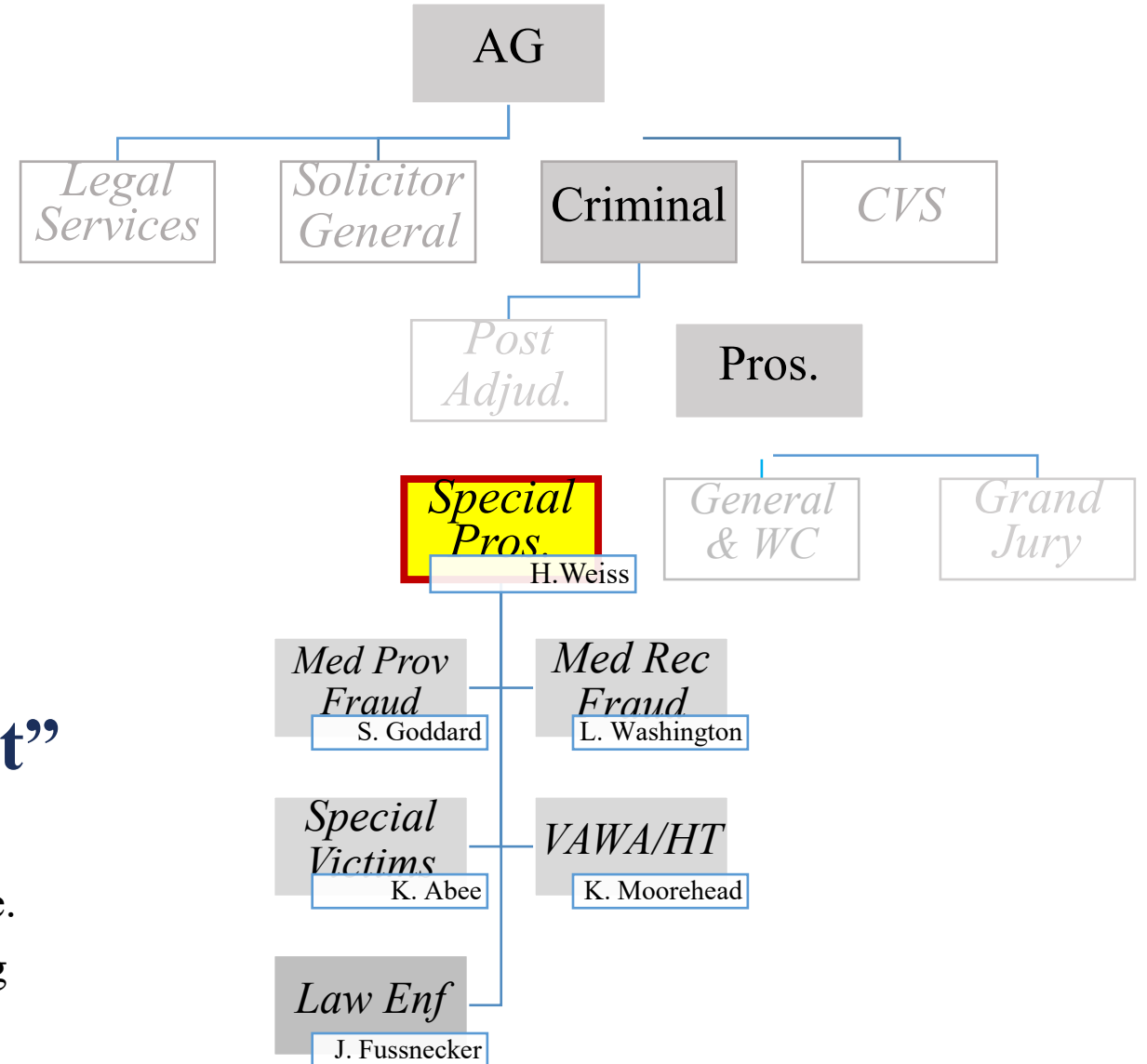


Medicaid Provider Fraud Section

aka

“Medicaid Fraud Control Unit”

Note: This only includes provider fraud and patient abuse.
Recipient fraud is separate because federal law governing
medicaid fraud does not cover recipient fraud.



Why Investigate Medicaid Provider Fraud?

According to the State Expenditure Report published by NASBO for fiscal year 2020:

- S.C. Medicaid budget was approximately \$7 billion
 - Medicaid budget was 26.4% of the total SC budget.
- 3% to 10% of all health care expenditures are attributed to fraud
 - NHCAA, 2018
- Translates to **\$210 million to \$700 million lost to fraud in S.C. Medicaid**

What is a Medicaid Fraud Control Unit?

- Authority to conduct a statewide investigation and prosecution of health care providers who defraud the Medicaid program
- Must be a single identifiable entity of state government, annually certified by the U.S. Department of Health and Human Services
- Federal law requires each state to have a MFCU
- South Carolina's MFCU is housed in the Office of the Attorney General

MFCU Jurisdiction

- Investigate and prosecute healthcare provider fraud in the Medicaid program
- Review complaints of resident abuse, neglect, and/or exploitation in residential healthcare facilities receiving Medicaid funds (e.g. Nursing homes); optional expanded jurisdiction includes
 - board and care facilities regardless of payment source (e.g., assisted living facility); and
 - Medicaid beneficiaries in a residential setting when target is connected to Medicaid (i.e., home health care provider)
- Investigate fraud in the administration of the Medicaid program

Personnel History

	Turnover	Number of Employees	
		Leave unit during year	In unit at end of year
2016-17	39%	6	15
2017-18	29%	4	13
2018-19	20%	3	17
2019-20	13%	2	15

Exit interviews or surveys conducted?

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

Note:

FY 2017 Turnover

16.6% - Retirement

16.7% - Personal reasons

16.7% - Employment outside state government

50% - Internal transfers

FY 2018 Turnover

50% - Retirement

25% - Employment with another state agency

25% - Employment outside state government

The diversity of practice areas in the office allow employees an opportunity to gain a wide exposure to the legal system. The office gives preference to internal transfers when possible.

Employee satisfaction tracked?

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

MFCU Customer

Customer is the grant-funder and administrator, the Department of Health and Human Services Office of Inspector General (HHS-OIG).

MFCU must submit a request for Recertification and an Annual Statistical Report annually to HHS-OIG.

If HHS-OIG is not satisfied with performance or information submitted, it may withhold recertification; uncertified Units do not receive federal funding

Note: 75% of MFCU's total funding is federal

Provider Fraud

“Provider Fraud” is lying, cheating and stealing by a Provider involving the Medicaid Program.

A “Provider” is any 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. S.C. Code Ann. Section 43-7-60

Examples of Providers:

- Doctor
- Dentist
- Nurse
- Chiropractor
- Medical Transportation Co.
- Pharmacist
- Pharmacy
- DME Co. (Durable Medical Equipment)
- Therapist (Speech, Physical, Occupational)
- Hospital
- Lab

Examples of Provider Fraud Schemes

UPCODING - Providing a service but billing for a more expensive service

- A doctor gives a patient a \$25 shot but bills for a \$100 shot
- A dentist provides a filling (\$40) but bills for a crown (\$150)

PHANTOM BILLING - A Provider bills for services that he did not provide

- A Chiropractor uses a former patient's Medicaid information to bill for services even though the patient was not seen for this visit

DOUBLE BILLING - Billing for the same service twice

- A Psychiatrist bills for the same session - once using a group number and the second time using his individual number

MEDICALLY UNNECESSARY SERVICES - Billing for unneeded services simply to make money

- Typically a battle of the experts!

Examples of Provider Fraud Schemes

UNBUNDLING - Billing separately for individual services that should be grouped together into a single bill

- A lab tests for 12 different substances and bills for 12 separate tests (screens) when the Medicaid rule requires a “bundled” (one charge) bill.

COST REPORT FRAUD - Knowingly inflating or mischaracterizing the nature of costs incurred by an entity (Nursing Home, Hospital, etc.) to receive a higher reimbursement.

KICKBACKS

A payment or inducement given to get favorable or preferential treatment.

Initial Steps

Provider Fraud

Step 1

Provider enrolls in S.C. medicaid program administered by S.C. Department of Health and Human Services

- Is permitted to treat S.C. Medicaid Beneficiaries
- Bills claims to SCDHHS for payment if services rendered are in compliance with policy set by SCDHHS.

Step 2

Provider intentionally submits claims for payment that are not in compliance with SCDHHS policy

- Must prove intent not accidental

Step 3

Improper claims detected

Potential detection sources:

- HHS claims team audit rejects claim (ex. Date of service occurred after beneficiary death)
- Billing anomalies detected by SCDHHS program integrity unit that uses statistical tests
- Allegation of fraud reported to SCDHHS or MFCU
- Qui Tam (lawsuit filed by whistle blower) filed against provider
- May be referred to MFCU from any source.

Step 4

Improper claims with credible allegation of fraud reviewed by MFCU

- Classified in AG system as a "matter."

Step 5

MFCU conducts intake review

- Is information in allegation verified?
 - If yes, does conduct described meet MFCU jurisdiction and be considered a crime?
 - If no, may refer to another law enforcement agency or regulatory entity if appropriate (e.g., HHS)
 - If yes, opens formal investigation classified in AG system as a "case"
 - See "Medicaid Fraud Control Unit Criminal Prosecution" document for next steps

Medicaid Fraud Control Unit: Criminal Investigation to Prosecution

Path A

Path B

Step 1

MFCU investigator directs investigation

Step 2

Team (Investigator, Attorney, Auditor, Nurses) recommend whether to seek charges with Special Prosecution Director making the final decision.

Step 3

MFCU requests arrest warrant from County Magistrate

Step 4

MFCU investigator makes arrest

Step 5

MFCU attorney provides draft indictment to AG to review; AG reviews and signs off

Step 6

MFCU investigator present draft indictment to County Grand Jury Jurors

Step 7

County Grand Jury Jurors vote on whether to indict

Indictment Format: One Indictment includes one charge (i.e., one crime charged against one person)

Step 8

MFCU investigator serves indictment and makes arrest

Note: Don't need separate arrest warrant if you have an indictment

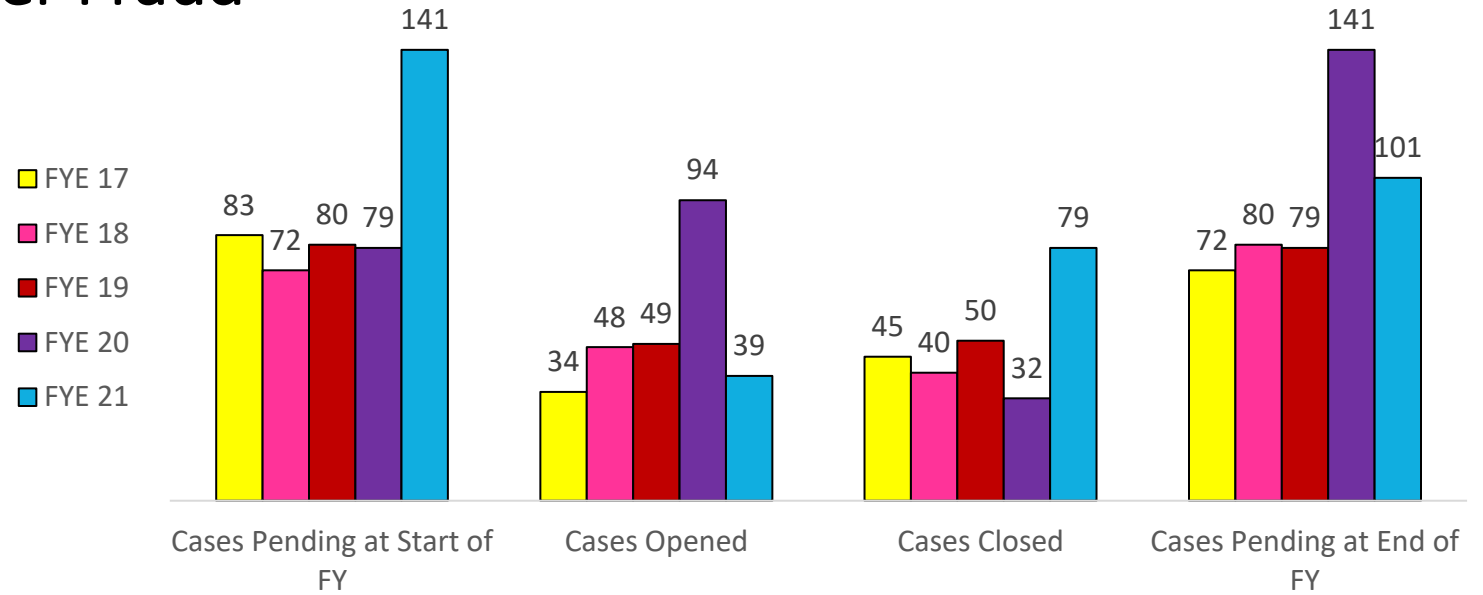
Investigate and Prosecute Provider Fraud

(Civil and Criminal)

Agency costs to investigate and prosecute
 25% provided by State; funded exclusively from state match fund
 75% provided by Federal grant

Judgment and Restitution

- Funds fraudulently paid returned to original funding source (e.g., FMAP of approx. 70% returned to federal government, state portion returned to SCDHHS)
- MFCU statutorily permitted to withhold funds to cover its fees and costs



Note: More detailed reporting criteria developed post-completion of 2020 LOC Report

Agency Service #156: Investigate Medicaid Provider Fraud

Does law require it: Yes

Assoc. Law(s): 42 C.F.R. 1007.11(a)(1); 42 C.F.R. § 1007.11(a)(2); 44 C.F.R. § 1007.11(d); 77 FR 32645; S.C. Code Ann § 43-7-60; S.C. Code Ann § 44-113-60

Single Unit: Provider fraud cases open at the end of the Federal FY	Number of Customers Served	Customer satisfaction evaluated	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	1		130.00	\$2,326.03	167.78	\$380,215.98	1.94%
2017-18	1		124.00	\$2,694.93	126.13	\$334,171.74	0.56%
2018-19	1	Yes*	158.00	\$1,690.48	114.38	\$267,095.63	0.40%
2019-20	1	Yes	237.00	\$1,209.95	122.74	\$286,759.28	0.37%

Agency Service #157: Prosecute Medicaid Provider Fraud

Does law require it: Yes

Assoc. Law(s): 42 C.F.R. § 1007.7(a); 42 C.F.R. 1007.11(a); 44 C.F.R. § 1007.11(c); 44 C.F.R. § 1007.11(d); 77 FR 32645; S.C. Code Ann § 43-7-60; S.C. Code Ann § 44-113-60

Single Unit: Number of arrests made during the Federal FY for Medicaid provider fraud	Number of Customers Served	Customer satisfaction evaluated	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	1		12.00	\$2,326.03	40.71	\$122,288.11	0.62%
2017-18	1		11.00	\$10,748.48	71.09	\$118,233.28	0.20%
2018-19	1	Yes*	17.00	\$8,543.23	63.75	\$145,234.83	0.22%
2019-20	1	Yes	9.00	\$24,918.30	47.64	\$224,264.66	0.29%

Patient Abuse

- Investigates and prosecutes instances of abuse, neglect & financial exploitation of those who reside in Nursing Homes; Residential Care Facilities; and Medicaid beneficiaries at home.
- Essentially the MFCU pursues Elder Abuse which occurs in health care facilities or against Medicaid beneficiaries receiving similar care at home

Investigate and Prosecute

- Physical/Sexual Abuse
- Psychological Abuse
- Neglect
- Financial Exploitation
- Drug Diversion

Initial Steps

Medicaid Fraud Control Unit

Patient Abuse

Step 1

Normal Jurisdiction

Individual moves into qualifying healthcare facility (e.g., Full time residential facility)

Individual lives in the community (e.g., at home, with family member, etc.; not in assisted living or retirement home, certified residential core home)

AND

AND

Individual qualifies as a vulnerable adult under SC Omnibus Adult Protection Act (OAPA) (i.e., is impaired in the ability to adequately provide for their own care or protection because of the infirmities of aging)

Expanded Jurisdiction (Effective Dec. 2021)

Individual lives in the community (e.g., at home, with family member, etc.; not in assisted living or retirement home, certified residential core home)

AND

Individual receives Medicaid

Step 2

Individual is criminally abused, neglected, or exploited.

Individual is criminally abused, neglected, or exploited

AND

By Someone affiliated with S.C. Medicaid (e.g., Home Hospice worker diverts controlled substances; Respite care worker steals bank card during home visit)

Step 3

Conduct reported to MFCU from any source: (e.g., Mandatory reporter; Victim/friend/family; Facility where residing or its staff; Local law enforcement; DHEC and DSS)

Conduct reported to MFCU by any source

Step 4

MFCU conducts intake review. Verifies information in allegation and whether conduct described meets MFCU jurisdiction and would be considered a crime

Step 5

Opens formal investigation classified in AG system as a "case"
• See "Medicaid Fraud Control Unit Criminal Prosecution" document for next steps

Closes Matter
• May refer to another law enforcement agency or regulatory entity if appropriate

Patient Abuse Cases

("case" means anywhere between investigation, arrest, and prosecution)

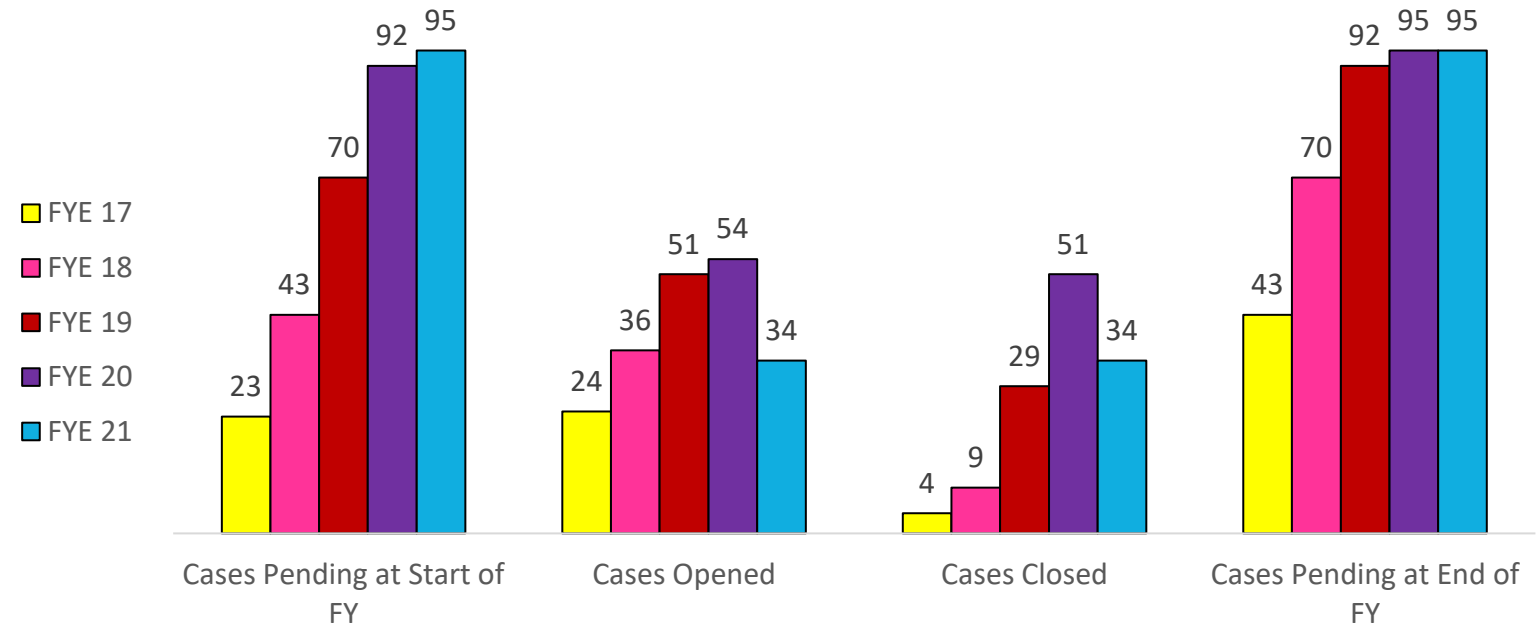
Costs to agency

25% provided by State

75% provided by Federal grant

Restitution ordered by the court

- 100% back to victim



Note: More detailed reporting criteria developed post completion of 2020 LOC Report

Agency Service #158: Investigate patient abuse in residential health care facilities

Does law require it: Yes

Assoc. Law(s): 44 C.F.R. § 1007.11(b)(1)-(3); 44 C.F.R. § 1007.11(d); S.C. Code Ann § 43-35-5; S.C. Code Ann. § 43-35-45; S.C. Code Ann. § 43-35-60; 77 FR 32645

		<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>
Single Unit:	2016-17	49.00	\$2,326.03	107.00	\$319,483.63	1.63%
Patient abuse cases open at the end of the Federal FY	2017-18	71.00	\$4,432.88	134.00	\$314,734.33	0.53%
	2018-19	94.00	\$4,089.31	159.00	\$384,395.60	0.57%
	2019-20	100.00	\$3,979.86	166.28	\$397,986.38	0.52%

Agency Service #159: Prosecute patient abuse in residential health care facilities

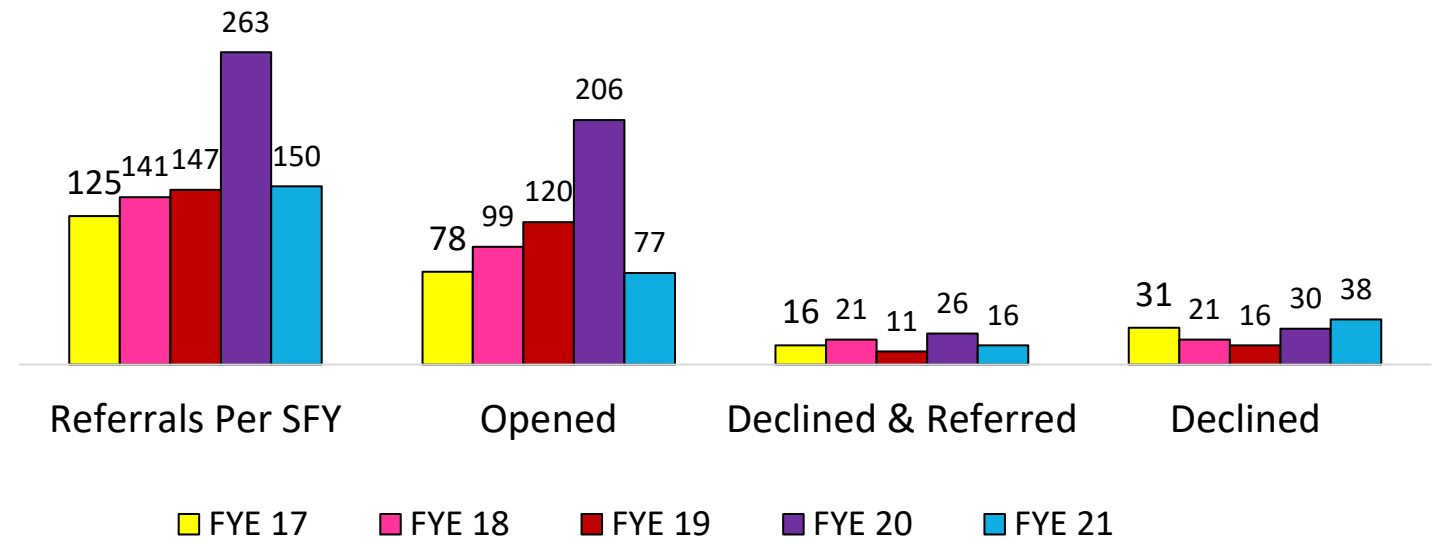
Does law require it: Yes

Assoc. Law(s): 42 C.F.R. § 1007.7(a); 44 C.F.R. § 1007.11(d); S.C. Code Ann § 43-35-85; S.C. Code Ann. § 43-35-80; 77 FR 32645

		<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>
Single Unit:	2016-17	5.00	\$2,326.03	82.31	\$391,760.96	2.00%
Number of arrests made during the Federal FY for patient abuse cases	2017-18	6.00	\$46,510.42	77.56	\$279,062.52	0.47%
	2018-19	28.00	\$10,911.52	89.25	\$305,522.66	0.46%
	2019-20	12.00	\$19,792.63	71.83	\$237,511.60	0.31%

Receive and review referrals of Provider Fraud (PF) and Patient Abuse (PA)

- The purpose is to meet the parameters of the federal regulation to accept referrals from any source related to matters within the MFCU's jurisdiction
- When a case does not indicate a substantial potential for criminal prosecution or the AG lacks authority or resources to pursue it:
 - AG is to refer it to the proper Federal, State, or local agency



Agency Service #154: Receive and review referrals of Provider Fraud (PF) and Patient Abuse (PA)

Does law require it: Yes

Assoc. Law(s): 42 C.F.R. § 1007.9(g); S.C. Code Ann. § 43-35-25; 77 FR 32645

		Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Single Unit: Matters opened (matters are opened on all qualifying referrals received) Numbers are based on federal fiscal years.	2016-17	129.00	\$2,326.03	39.95	\$117,310.92	0.60%
	2017-18	137.00	\$838.26	59.45	\$114,842.01	0.19%
	2018-19	128.00	\$1,292.25	76.13	\$165,408.35	0.25%
	2019-20	179.00	\$901.40	65.87	\$161,350.50	0.21%

Agency Service #155: Refer to proper Federal, State, or local agencies as needed

Does law require it: Yes

Assoc. Law(s): 42 C.F.R. 1007.11(b)(4); 44 C.F.R. § 1007.11(c); 44 C.F.R. § 1007.11(e)(4); 42 C.F.R. § 1007.9(e); 42 C.F.R. § 1007.9(f); S.C. Code Ann. § 43-35-70

		Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Single Unit: Referral to another state or federal agency regarding a matter received by MFCU. Numbers are based on federal fiscal years.	2016-17	129.00	\$2,326.03	39.95	\$117,310.92	0.60%
	2017-18	137.00	\$838.26	59.45	\$114,842.01	0.19%
	2018-19	128.00	\$1,292.25	76.13	\$165,408.35	0.25%
	2019-20	179.00	\$901.40	65.87	\$161,350.50	0.21%

Services Necessary to Maintain Federal Funding

Report to HHS OIG pertinent information on all convictions, including charging documents, plea agreements, and sentencing orders, for purposes of program exclusion under section 1128 of the Act.

(Required by federal regulations, Agency Service #161)

Single Unit: Number of conviction reports submitted to HHS OIG		<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>
<u>Does law require it:</u> Yes	2016-17	12.00	\$2,326.03	7.90	\$17,676.16	0.09%
<u>Assoc. Law(s):</u> 42 C.F.R. § 1007.11(g); 77 FR 32645	2017-18	15.00	\$976.46	7.90	\$14,646.90	0.02%
	2018-19	19.00	\$792.64	7.88	\$15,060.22	0.02%
	2019-20	14.00	\$1,037.85	7.70	\$14,529.85	0.02%

Satisfy HHS OIG staffing requirements and training for professional employees.

(Required by federal regulations, Agency Service #162)

Single Unit: Total trainings attended for all Unit employees as reported in HHS OIG Recertification application		<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>
<u>Does law require it:</u> Yes	2016-17	162.00	\$2,326.03	21.70	\$67,607.17	0.34%
<u>Assoc. Law(s):</u> 42 C.F.R. § 1007.5; 42 C.F.R. 1007.13; 77 FR 32645	2017-18	151.00	\$475.33	27.18	\$71,775.17	0.12%
	2018-19	168.00	\$378.13	25.31	\$63,526.27	0.09%
	2019-20	170.00	\$373.85	25.80	\$63,554.70	0.08%

(1) Maintain compliance with grant operation requirements, including obtaining annual recertification from HHS OIG and complying with audit requests.

(2) HHS-OIG will conduct any audit of the MFCU it deems necessary, including at a minimum a periodic routine audit.

(Required by federal regulations, Agency Service #163)

Single Unit: Number of recertification's, audit reports, etc. received		<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>
<u>Does law require it:</u> Yes	2016-17	1.00	\$2,326.03	29.80	\$80,880.95	0.41%
<u>Assoc. Law(s):</u> 42 C.F.R. 1007.17; 42 C.F.R. § 1007.9(a)-(b); 77 FR 32645; 44 C.F.R. § 1007.11(f)	2017-18	1.00	\$50,301.94	16.68	\$50,301.94	0.08%
	2018-19	1.00	\$28,025.93	12.38	\$28,025.93	0.04%
	2019-20	1.00	\$65,093.16	26.45	\$65,093.16	0.08%

Services Necessary to Maintain Federal Funding

Maintain written policies and procedures of operations consistent with 42 C.F.R. 1007.11(e) (1)

(Required by federal regulations, Agency Service #164)

Single Unit: Number of Unit policies updated.		Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
<u>Does law require it:</u> Yes	2016-17	0.00	\$2,326.03	0.00	\$19,043.25	0.10%
<u>Assoc. Law(s):</u> 42 C.F.R. § 1007.11(e)(5); 77 FR 32645	2017-18	0.00	Insufficient data	0.00	\$21,628.12	0.04%
	2018-19	2.00	\$2,028.20	1.13	\$4,056.40	0.01%
	2019-20	36.00	\$888.59	12.40	\$31,989.17	0.04%

Exercise proper fiscal control over MFCU resources including operating a budget that is separate from the parent agency (i.e., AG) and comply with grant reporting requirements.

(Required by federal regulations, Agency Service #165)

Single Unit: Number of budget proposals approved by HHS OIG.		Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
<u>Does law require it:</u> Yes	2016-17	1.00	\$2,326.03	2.80	\$19,968.98	0.10%
<u>Assoc. Law(s):</u> 42 C.F.R. § 1007.5; 42 C.F.R. § 1007.9(c); 45 C.F.R. 75.307; 77 FR 32645	2017-18	1.00	\$9,674.36	4.68	\$9,674.36	0.02%
	2018-19	1.00	\$12,625.88	4.50	\$12,625.88	0.02%
	2019-20	1.00	\$11,217.01	4.50	\$11,217.01	0.01%

Maintain a written agreement with the state's Medicaid agency, S.C. Dept. of Health and Human Resources, hold regular meetings with the agency, coordinate efforts and share information as permitted

(Required by federal regulations, Agency Service #166)

Single Unit: Number of Memorandums of Agreement with SCDHHS in effect.		Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
<u>Does law require it:</u> Yes	2016-17	1.00	\$2,326.03	18.13	\$47,158.46	0.24%
<u>Assoc. Law(s):</u> 42 C.F.R. § 1007.9(d); 77 FR 32645; 42 C.F.R. § 1007.9(h)	2017-18	1.00	\$54,061.78	29.23	\$54,061.78	0.09%
	2018-19	1.00	\$65,630.68	29.25	\$65,630.68	0.10%
	2019-20	1.00	\$13,690.26	35.15	\$13,690.26	0.02%

Make statutory or programmatic recommendations to State government to improve the operation of the Unit

(Required by federal regulations, Agency Service #167)

Single Unit: Number of acts/statutes with proposed changes		Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
<u>Does law require it:</u> Yes	2016-17	3.00	\$2,326.03	0.90	\$6,309.16	0.03%
<u>Assoc. Law(s):</u> 77 FR 32645	2017-18	3.00	\$1,690.03	1.00	\$5,070.08	0.01%
	2018-19	3.00	\$1,062.90	0.84	\$3,188.69	0.00%
	2019-20	3.00	\$3,246.97	3.00	\$9,740.90	0.01%

Services Necessary to Maintain Federal Funding

Coordinate and share information with federal partners (OIG or other federal investigators and prosecutors) where cases involve the same suspects, allegations, investigations and/or prosecutions

(Required by federal regulations, Agency Service #160)

Single Unit: Number of cases opened based on referral from federal partners		<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>
<u>Does law require it:</u> Yes	2016-17	3.00	\$2,326.03	27.83	\$49,057.51	0.25%
<u>Assoc. Law(s):</u> 42 C.F.R. § 1007.11(e); 77 FR 32645	2017-18	10.00	\$7,895.05	32.30	\$78,950.45	0.13%
	2018-19	21.00	\$3,673.55	32.34	\$77,144.47	0.12%
	2019-20	18.00	\$2,054.31	17.72	\$36,977.65	0.05%

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.

~~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.

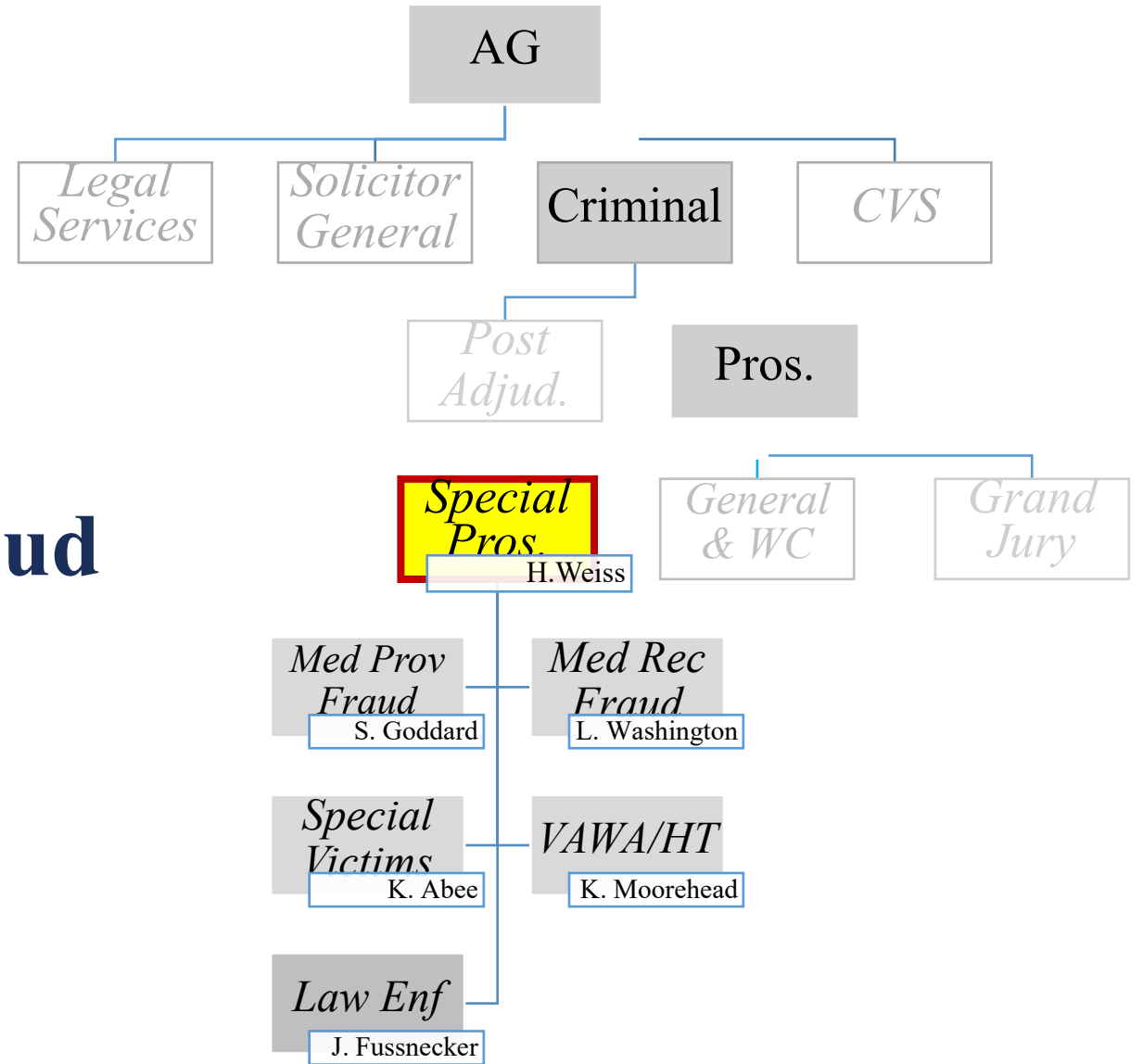
(J) Notwithstanding section (D), any person who, without authorization, knowingly and willfully records by video or photographic means a vulnerable adult in violation of 43-35-10(3)(d), is guilty of a misdemeanor, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not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





Alan Wilson
Attorney General

Don Zelenka
Deputy AG

Medicaid Recipient Fraud

The section works with the South Carolina Department of Health and Human Services (DHHS) to enforce the laws against fraudulent use of Medicaid benefits.

Their mission is to combat Medicaid fraud through in-depth investigations that result in deterrence, recovery of funds owed the state and criminal prosecution.

They actively investigate and prosecute Medicaid beneficiaries suspected of fraud and abuse. Specifically, the section tackles cases where Medicaid recipients:

- Submit false applications
- Falsify income, assets, or resources
- Share a benefit with another not entitled
- Sell or buy a Medicaid card
- Divert/sell supplies or other benefits
- Participated in doctor/pharmacy shopping
- Obtain un-entitled benefits through fraud

Personnel

	Turnover	Number of Employees	
		Leave unit during year	In unit at end of year
2016-17	35%	3	8
2017-18	43%	3	6
2018-19	29%	2	8
2019-20	13%	1	8

FY 2017 and FY 2018 Turnover

67% - Internal transfers

33% - Retirement

FY 2019 Turnover

50% - Retirement

50% - Employment outside of state government

The diversity of practice areas in the office allow employees an opportunity to gain a wide exposure to the legal system. The office gives preference to internal transfers when possible.

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

Medicaid Recipient Fraud: Investigation to Prosecution

Referral Sources

Asset Based

- Received from Department of Health and Human Services' (HHS) review of their files

Citizen Complaints

- Received from HHS Fraud Hotline

Email Complaints

- Received from HHS

Attorney General (AG) Provider Fraud Unit

Open case

Review to determine if sufficient evidence to open case

Decline and send back to HHS

Assign Investigator

- Each AG investigator is assigned to particular counties in the state

Investigate

- AG Investigator gathers enough evidence to complete initial investigation

Discuss Case and Complete Investigation

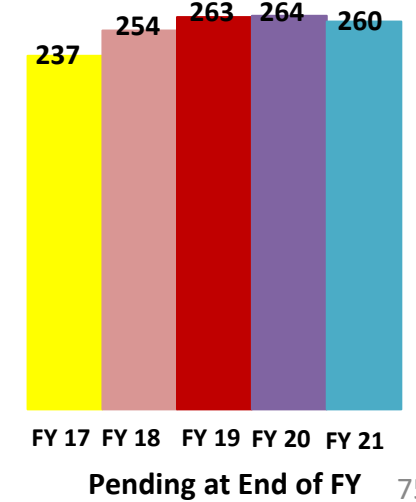
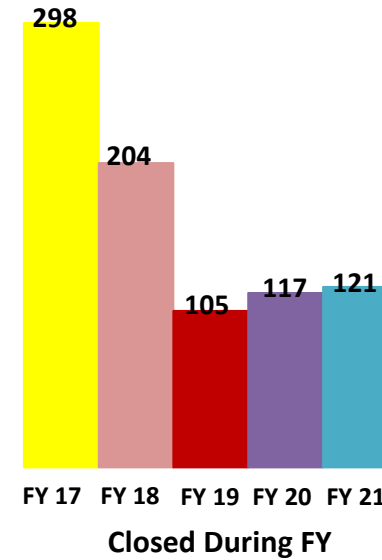
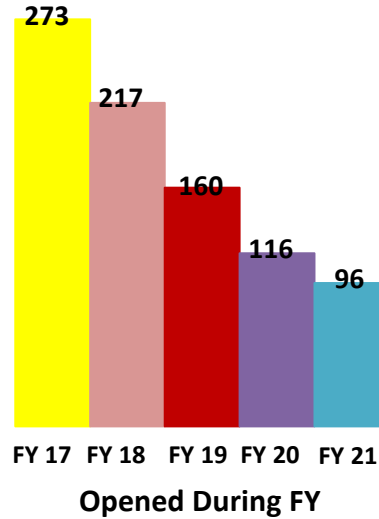
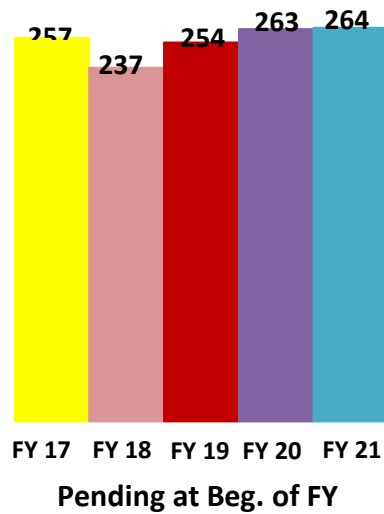
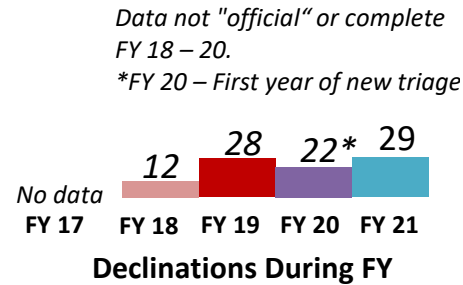
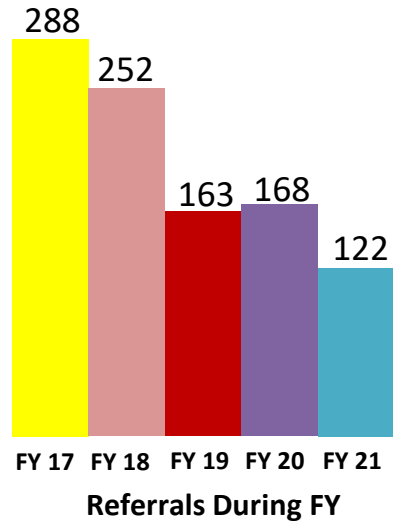
- AG Investigator discusses case with assigned AG prosecutor for any legal advice and may setup meeting with recipient to complete investigation (Note: Each investigator is assigned to a prosecutor for legal advice and to make prosecution decisions)

Pursue Remedy

- Offer recipient opportunity to pay restitution;
- Arrest, then indict; or
- Direct indictment

Decline and send back to HHS

CASES OPEN, CLOSED AND PENDING



Enforcement of Medicaid Recipient Fraud

Agency Service #152

<u>Does law require it:</u>
Yes
<u>Assoc. Law(s):</u>
Section 43-7-90
<u>Purpose (as understood by agency):</u>
The purpose as understood by the agency is to investigate allegations of Medicaid recipient fraud and prosecute recipients who fraudulently obtain Medicaid benefits by fraudulent means (Deliverable 2), deter future Medicaid recipient fraud and recover lost benefits for the victim agency, the South Carolina Department of Health and Human Services, so that the funds can be used to provide Medicaid to those who truly need and qualify for the benefits.
<u>Customers:</u>
Victim state agency (Dept. of Health and Human Services)

(1) Investigate allegations of fraudulently obtained Medicaid benefits by recipients and/or applicants, including

- submitting a false application for Medicaid,
- providing false representations about their household, income, assets or resources,
- sharing or lending their Medicaid card to other individuals,
- selling or buying a Medicaid card,
- diverting for resale prescription drugs, medical equipment or benefits,
- obtaining Medicaid benefits for themselves or others to which they are not legally entitled by fraudulent means

(2) initiate proper action when fraud is detected by

- recovering benefits lost as a result of fraud, and/or
- criminally prosecuting any person who fraudulently receives, or causes a person fraudulently to receive, Medicaid benefits.

Unit spends 90% of its time on this service (administrative, investigative and other pre-arrest case work)

Single 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>
Case referrals from victim agency (customer) in which the unit was involved	2016-17	Not provided	Insufficient data	272.50	\$636,341.04	3.24%
	2017-18	Not provided	Insufficient data	272.50	\$605,779.79	1.02%
	2018-19	Not provided	Insufficient data	275.50	\$568,749.72	0.85%
	2019-20	Not provided	Insufficient data	275.50	\$609,591.83	0.79%

Prosecute Medicaid Recipient Fraud

Agency Service #153

Does law require it:

No

Assoc. Law(s):

Sections 43-7-70, 16-13-240, 16-13-10, 16-17-410

Purpose (as understood by agency):

The purpose as understood by the agency is to punish recipients who fraudulently obtain Medicaid benefits by fraudulent means, deter future Medicaid recipient fraud and recover lost benefits for the victim agency, the South Carolina Department of Health and Human Services, that the funds can be used to provide Medicaid to those who truly need and qualify for the benefits.

Customers:

Victim state agency (Dept. of Health and Human Services)

- (1) Obtain and serve arrest warrants on recipients who have fraudulently obtained Medicaid benefits;
 - (2) Present recipient fraud charges to the Grand Jury of the county wherein the alleged fraud occurred for indictment; and
 - (3) Dispose of the charges by pre-trial diversion program, plea, trial or other means within the state criminal justice system.
- Unit spends 10% of its time on this service (prosecution).

Note: 75% percent of the unit's current staff was not employed in the unit in FY 18 and FY 19 or in their current position (one employee advanced from administrative assistant to investigator in FY 18-19).

<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>
Number of prosecutions	2016-17	40.00	\$2,326.03	32.50	\$78,622.88	0.40%
pending during the fiscal year	2017-18	30.00	\$2,505.98	32.50	\$75,179.47	0.13%
in which the unit was	2018-19	14.00	\$4,639.42	29.00	\$64,951.84	0.10%
involved	2019-20	10.00	\$7,007.33	29.00	\$70,073.31	0.09%

RETURN ON INVESTMENT

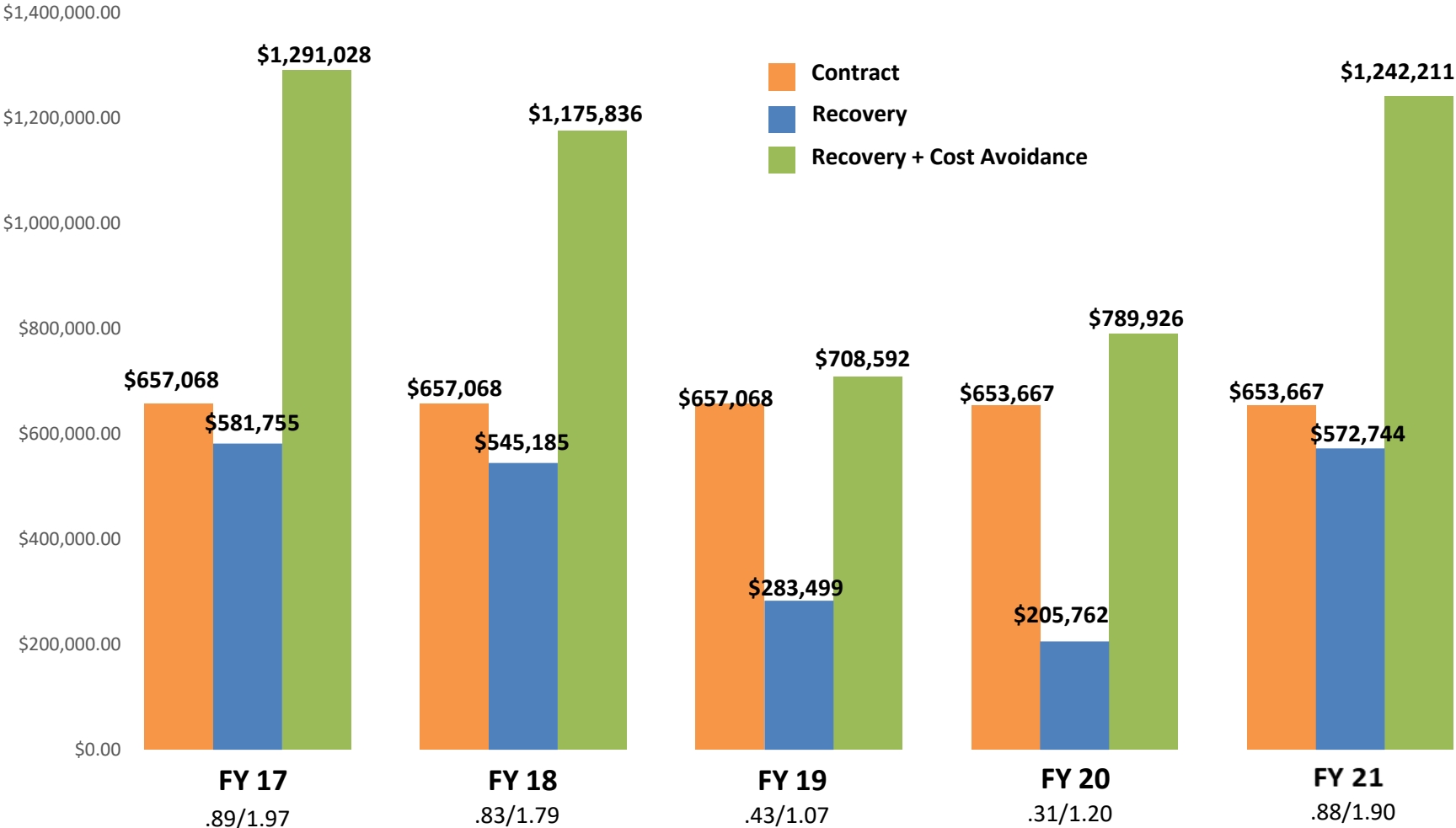
Funding

- 100% by HHS

Recovery is restitution ordered by the court or agreed to be paid by the recipient

- 100% back to HHS

Cost avoidance = Amount HHS calculates it would have lost over next 2.5 years in monthly premiums or fees for service had the fraudulent recipient activity not been caught



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.