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July 11, 2022

VIA EMAIL

Tonnya K. Kohn, Director
South Carolina Court Administration
1220 Senate Street, Suite 200
Columbia, South Carolina 29201-3739

Dear Director Kohn:

The House Legislative Oversight Law Enforcement and Criminal Justice Subcommittee is currently performing an oversight study of the Attorney General's Office. The purpose of legislative oversight is to determine if agency laws and programs are being implemented and carried out in accordance with the intent of the General Assembly and whether they should be continued, curtailed, or even eliminated. Any House Member may file legislation to implement the Committee's recommendations.

The purpose of this letter is to seek input from your office about the questions attached. If your office would like to provide input, which would be appreciated, please do so before Friday, July 29, 2022. Additionally, the subcommittee welcomes any other input or feedback your office would like to provide.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Wooten", is written over a light blue grid background.

Representative Chris Wooten
Subcommittee Chair

cc: The Honorable Wm. Weston J. Newton
Law Enforcement and Criminal Justice Subcommittee

Questions for Court Administration

Electronic Sentencing Sheet Project

1. Has Court Administration involved the Attorney General's Office State Grand Jury Clerk of Court in the electronic sentencing sheet project to help avoid the State Grand Jury Clerk of Court from scanning and emailing documents that multiple Agencies then manually re-enter into separate systems?

Documents and Digitizing Records

2. Please provide potential recommendations for maintenance of records of court proceedings within the judicial branch's discretion beyond five years.¹ It is our understanding transcripts previously held on physical tapes are now commonly held digitally and applicants can seek belated appellate review of his or her direct appeal pursuant to White v. State or belated appellate review of his or her initial post-conviction relief proceeding pursuant to Austin v. State, both of which are not barred by the one-year statute of limitations as set forth in the Uniform Post-Conviction Procedures Act.
3. Please state the cost for all Clerks of Courts to digitize records for cases newly filed and standardize the process across the state. If unknown, please state the information needed to make this determination.

Case Management System

4. What actions in review and implementation of the Judicial Branch's new case management system are being taken to encourage and simplify acceptance and use of the system by all counties and municipalities (e.g., making the system internet accessible to avoid the need to purchase unique software to utilize the system)?
5. Is Court Administration willing to work with the entities below to reach a consensus among prosecutors, courts, and public defenders on (1) how cases will be counted (e.g., defendant, warrant, indictment) and (2) certain data fields/formats that will exist across all entities, so agency and other data applications provide consistent information on caseloads and applicable information can be efficiently shared between the entities?
 - a. Solicitors' Offices (recently received \$9M for upgrade of case management systems; share information with the courts; send case information to other Solicitors and the Attorney General's Office when transferring cases)
 - b. Court Administration (e.g., Judges, Clerks of Court, etc.) (received \$22M for upgrade of case management system)
 - c. Commission on Indigent Defense (utilizes a single case management system for all public defenders and appellate work)
 - d. Attorney General's Office (in process of researching case management systems to purchase; receives files from solicitor's office to handle appeals; receives and sends files from multiple entities as part of Sexually Violent Predator Proceedings)
 - e. Other agencies the Attorney General's Office has authorized to prosecute (e.g., Department of Insurance, Department of Employment and Workforce, etc.)
6. Please see attached process flow charts created as part of agency studies which may be of interest to you.

¹ Rule 607(i), SCACR, "a court reporter shall retain the primary and backup tapes of a proceeding for a period of at least five (5) years after the date of the proceeding, and the court reporter may reuse or destroy the tapes after the expiration of that period."

Appendix A. Flow Charts

The below flow charts are attached.

General

- Attorney (at all agencies) hire and compensation approval process

Prosecution

- Transfer of Cases - Solicitors and Attorney General
- Officer Involved Shooting or Crime - Investigation and Prosecutor Review
- Internet Crimes Against Children - Background, Terminology, and Case Flow
- Medicaid Fraud - Recipient and Provider
- Insurance Fraud - Indictment Process
- State Grand Jury
 - State Grand Jury Process: Investigation through Trial
 - Grand Jury: County v. State Process
 - Jury Panel Selection Process
 - Pre-indictment Arrest Warrant and Bond Hearing

Post-Adjudication

- Appeal of non-death penalty conviction to S.C. Court of Appeals and S.C. Supreme Court
- Murder Convictions - Appeal and Post-Conviction Relief Process
- Post-Conviction Relief (PCR) Action
 - Non-Death Penalty PCR Action (Summary Dismissal Track)
 - Non-Death Penalty PCR Action (Hearing Track)
 - Appeal Decision from PCR Hearing
- Sexually Violent Predator Proceedings

Civil Litigation

- Unfair Trade Practice and Antitrust Cases
- S.C. Nonprofit Corporation Act Investigations
- Securities Enforcement Case - Life Cycle
- Money Services

Victims

- Individuals on whom victims rely
- Crime Victim Service Provider (individuals that serve crime victims)
 - Certifications Applicable to Those Who Serve Crime Victims
 - Crime Victim Service Provider Certification and Accreditation Process
- Crime Victim Assistance Grants (for entities that serve crime victims)
- Crime Victim Compensation (for victims)
- Crime Victim Ombudsman Processes

State Government Department/Agency Hiring Attorney* as Employee

*Applies to following agency attorney positions: (1) temporary; (2) classified; and (3) some unclassified if a statute other than 1-7-160 applies (e.g., 42-7-30)

Does not apply to attorneys hired by the General Assembly and Judicial Department; nor to unclassified agency attorney positions (e.g., most Indigent Defense counsel are unclassified attorneys)

Statute

Section 1-7-160. Hiring of attorneys.

A department or agency of state government may not hire a classified or temporary attorney as an employee except upon the written approval of the Attorney General and at compensation approved by him. All of these attorneys at all times are under the supervision and control of the Attorney General except as otherwise provided by law unless prior approval by the State Budget and Control Board is obtained. This section does not apply to an attorney hired by the General Assembly or the Judicial department.

HISTORY: 2008 Act No. 353, Section 2, Pt 10A, eff July 1, 2009.

Code Commissioner's Note: At the direction of the Code Commissioner, reference in this section to the former Budget and Control Board has not been changed pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), until further action by the General Assembly.

NOTE: If the attorney is an unclassified employee on an agency's executive team, the agency does not need approval from the Attorney General.

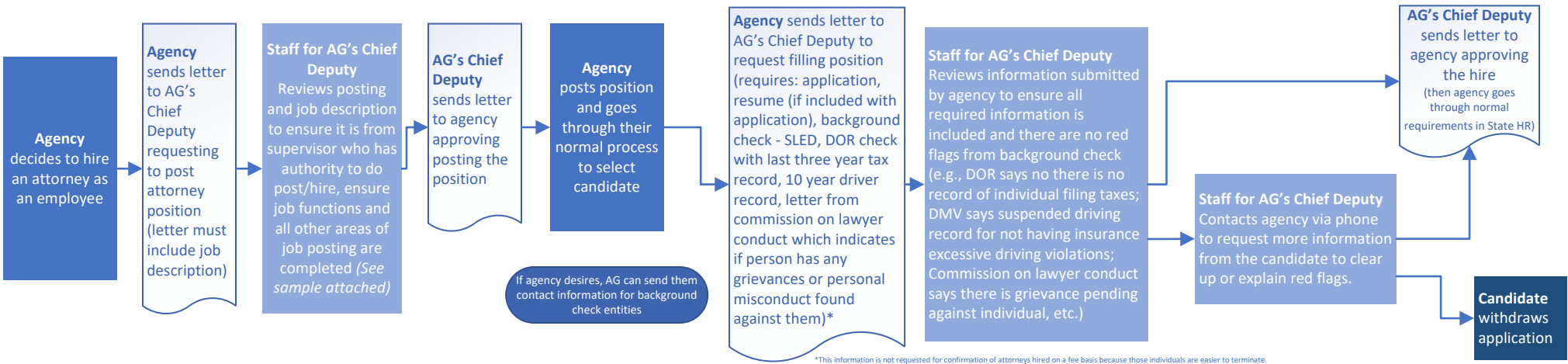
Data maintained by the Office of the Attorney General

Prior to May 2018: Agency requests and AG approval letters are available in archives, but there is no aggregated data in an Excel chart or other database.

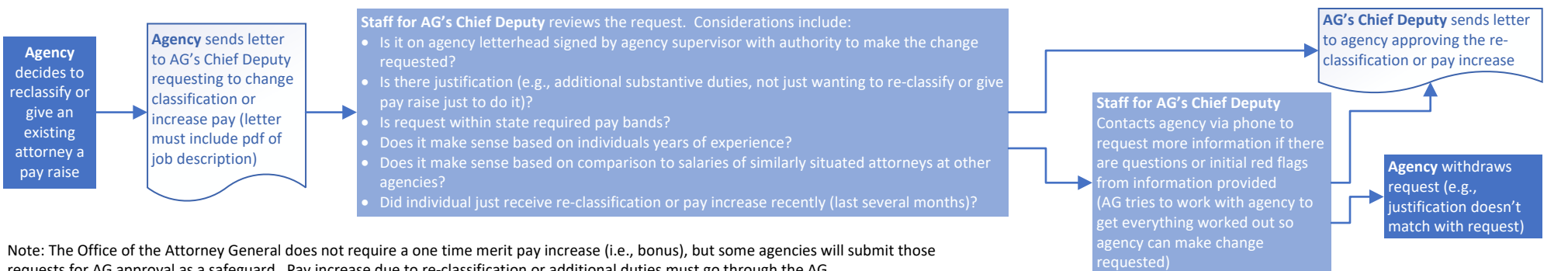
May 2018 to present: Agency requests and AG approval letters are available. Additionally, the following type of aggregated information is available in an Excel chart:

- Date Approved
- Attorney Name
- Agency/Type of Request (e.g., new hire, temp, salary increase, etc.)
- Class/Salary (e.g., Atty. II / \$45,000)
- Year graduated from law school

New Classified or Temporary Attorney Hire (Process outlined below has been utilized for over 10 years)



Attorney Classification Change or Pay Raise (Process outlined below has been utilized for over 10 years)



Note: The Office of the Attorney General does not require a one time merit pay increase (i.e., bonus), but some agencies will submit those requests for AG approval as a safeguard. Pay increase due to re-classification or additional duties must go through the AG.

Statute

Section 1-7-170. Engaging attorney on fee basis.

(A) A department or agency of state government may not engage on a fee basis an attorney at law except upon the written approval of the Attorney General and upon a fee as must be approved by him. This section does not apply to the employment of attorneys in special cases in inferior courts when the fee to be paid does not exceed two hundred fifty dollars or exceptions approved by the State Budget and Control Board. This section does not apply to an attorney hired by the General Assembly or the judicial department.

(B) A public institution of higher learning shall engage and compensate outside counsel in accordance with policies and procedures adopted by the State Fiscal Accountability Authority for matters of bonded indebtedness, public finance, borrowing, and related financial matters.

HISTORY: 2008 Act No. 353, Section 2, Pt 10B, eff July 1, 2009; 2011 Act No. 74, Pt VI, Section 9, eff August 1, 2011.

Code Commissioner's Note: At the direction of the Code Commissioner, reference in (A) to the former Budget and Control Board has not been changed pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), until further action by the General Assembly. Reference in (B) to the former Budget and Control Board was changed to the State Fiscal Accountability Authority pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Effect of Amendment: The 2011 amendment inserted subsection identifier (A) in the first paragraph and added subsection (B) relating to outside counsel. Notes: Attorney General Office personnel are not aware of the Budget and Control Board exceptions. Inferior courts refer to Magistrate and Municipal Courts.

History: (1) AG previously approved paralegals (\$70 for experience of 7 years or more), legal assistants and others rate, in addition to attorney rate and estimated max fees. Now, AG only approves attorney rate.

(2) AG previously utilized a database to track information on outside counsel approval requests until FY 2021. AG stopped using the database because it was outdated and unable to query.

Future Ideas: AG has considered having training seminar to teach agencies how to complete the forms.

Data Maintained by Office of the Attorney General

Civil Division

- FY 2016 and prior: Hard copy of Form 1 submissions and decisions in archives
- FY 2017 - FY 2022: Hard copy of Form 1 submissions and decisions in the office
- FY 2021 to present: Information below from Form 1 submissions and decisions in an Excel chart (see history for prior method of saving information). Asterisks indicates only information not entered directly from the agency's Form 1
 - Name of agency
 - Law firm name
 - Case Matter
 - Dates for which outside attorney service is requested
 - County in which matter is located
 - Service code* – Type of legal services (e.g., general litigation, real estate, etc.). Decided by AG's Office based on case matter and services description
 - Date approved
 - Requested maximum fees for dates of service
 - Rate Type (hourly or flat rate)
 - Status: Open (AG won't know if closed)
 - Name of attorneys approved

Note: The AG does not have a list of approved attorneys on file like the Insurance Reserve Fund

Retaining services of attorney on fee basis (Process outlined below has been utilized for at least 20 years) Note: AG uses same process if they need outside counsel (e.g., AG needs an employment attorney)

Agency determines...

- Need outside counsel (new hire)
- Matter is lasting past prior approval date (June 30 of each year is longest period) (Renewal)
- Change is needed in prior approval (amendment)

Agency completes and submits Form 1 to request approval (See sample attached)

AG's Deputy Director of Legal Services Division (DDLSD)

- **Reviews:** Information submitted by agency to ensure all required information is included and there are no red flags (e.g., accurate name of attorney; attorney years of experience; justification for amount requested if, for example, rate requested exceeds standard rate)
Does not review: Whether they think agency actually needs outside counsel (defer to agency); whether ethical violations exist unless outside information known that may raise flags (e.g., work for state government and be listed as private attorney). No background check is required.
- **Rates:** An agency can request, by providing justification, a rate higher than the standard. If a rate higher than standard is requested, Deputy AG of Legal Services and Chief Deputy for Attorney General discuss and decide. Considerations may include: (1) unique area of law and/or number of attorneys practicing in that area of the law (e.g., intellectual property; immigration; NCAA); (2) quick turnaround time; (3) amount attorney has reduced their normal rate to do the work for the state (e.g., reduced from \$500 to \$200)

What is approved?

- Only attorney fees [AG does not approve costs (copying, expert witness, etc.)]
- AG uses the same rates as the Insurance Reserve Fund (IRF). IRF increased their rates in 2021 for the first time in at least 10 years. AG is increasing their rates, effective July 2022 to match IRF's new rates. Below are rates in 2021 and effective July 2022
 - 0-3 years (\$80/hour)*
 - 3-5 years (\$90/hour, but \$120/hour starting July 2022)
 - 6-10 years (\$110/hour, but \$150 starting July 2022)
 - 10+ years (up to \$150/hour, but \$180 starting July 2022)

*Note: IRF only approves attorneys with 3+ years experience, unless an attorney with fewer years of experience is specifically requested by an agency, but AG approves rate for attorneys with 0-3 years experience. Also, agency can pay for an attorney to use a paralegal if the agency desires. The paralegal rates do not require AG approval.

Agency sends applicable information to Comptroller General including Form 1

AG's Deputy Director of Legal Services initials bottom of Form 1 to approve, saves information in Excel chart and hard copy file, then sends copy back to agency

AG's DDLSD calls agency with questions if clarification is needed

AG's DDLSD writes not approved on Form 1

Requests

- Approximately 1,200 approval requests submitted per year
- Matters relate to topics including but not limited to: immigration, intellectual property, employment, condemnation, and civil cases that are not covered by the Insurance Reserve Fund (AG will send matter to IRF if they think they would cover it to double check)
- Type of rate fees are typically hourly, some are flat fee, and a few are contingency based.

Transferring Criminal Cases

When can a Solicitor transfer a case?

A Solicitor is allowed to request the AG approve the transfer of any case. Reasons for which a Solicitor may request the transfer of a case include, but are not limited to, the following:

- Attorneys in the Solicitors Office do not have as much experience with a particular type of case as the AG's office or attorneys in another Solicitor's Office, or the ones that do already have full caseloads;
- All attorneys in the Solicitors office have full caseloads

When should a Solicitor transfer a case?

Attorneys, including Solicitors, should transfer cases when there is a conflict of interest. A Solicitor is responsible for determining if a conflict exists with a case in their office.

Example conditions in which a conflict exists include:

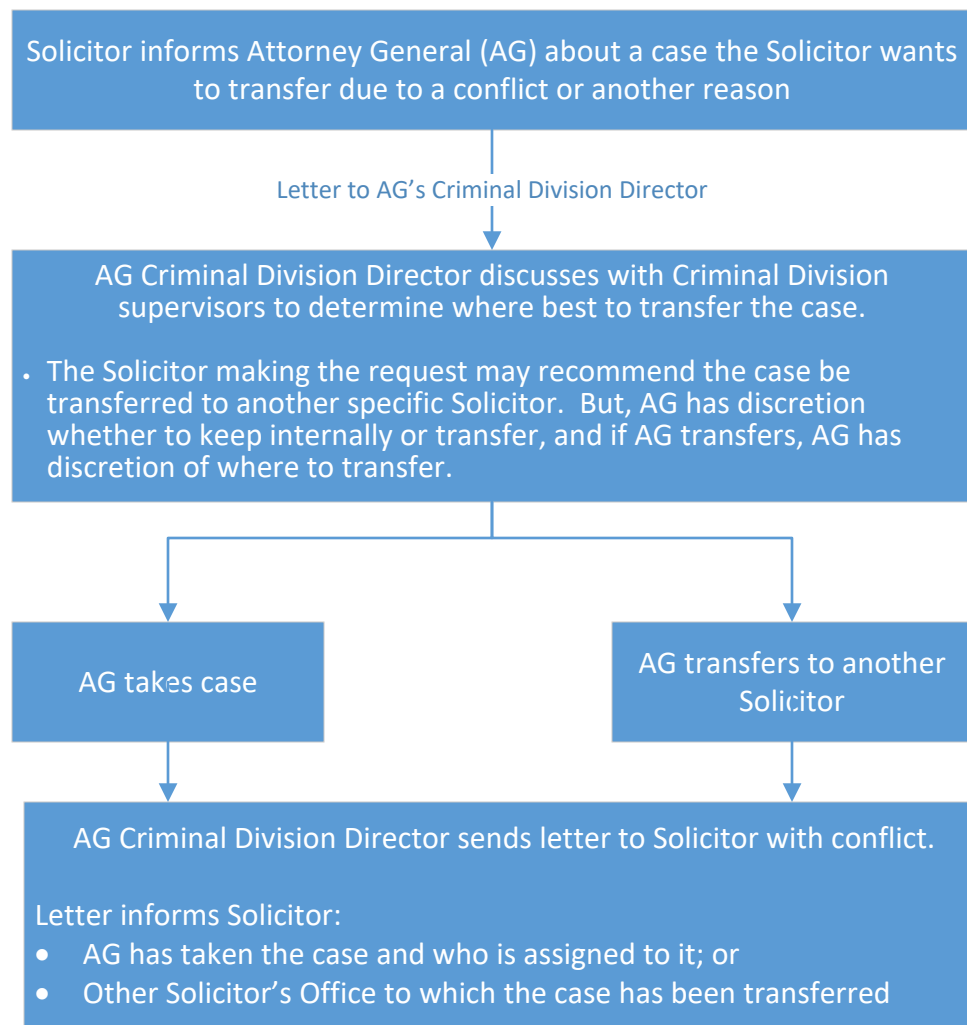
- Party Conflict: Solicitor prosecuting a defendant and representing a victim, then the victim later commits a crime. Solicitor cannot then prosecute the victim, unless they are large enough to Chinese wall.
- Law Enforcement or Asst. Solicitor: Charge against a law enforcement officer that regularly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

Can the Attorney General take any case?

Yes. The Attorney General has authority to take any case from a Solicitor, even if the Solicitor does not want to transfer the case. However, the current Attorney General states their office has given great deference to local Solicitors.

(S.C. Constitution, Article 5, Section 24)

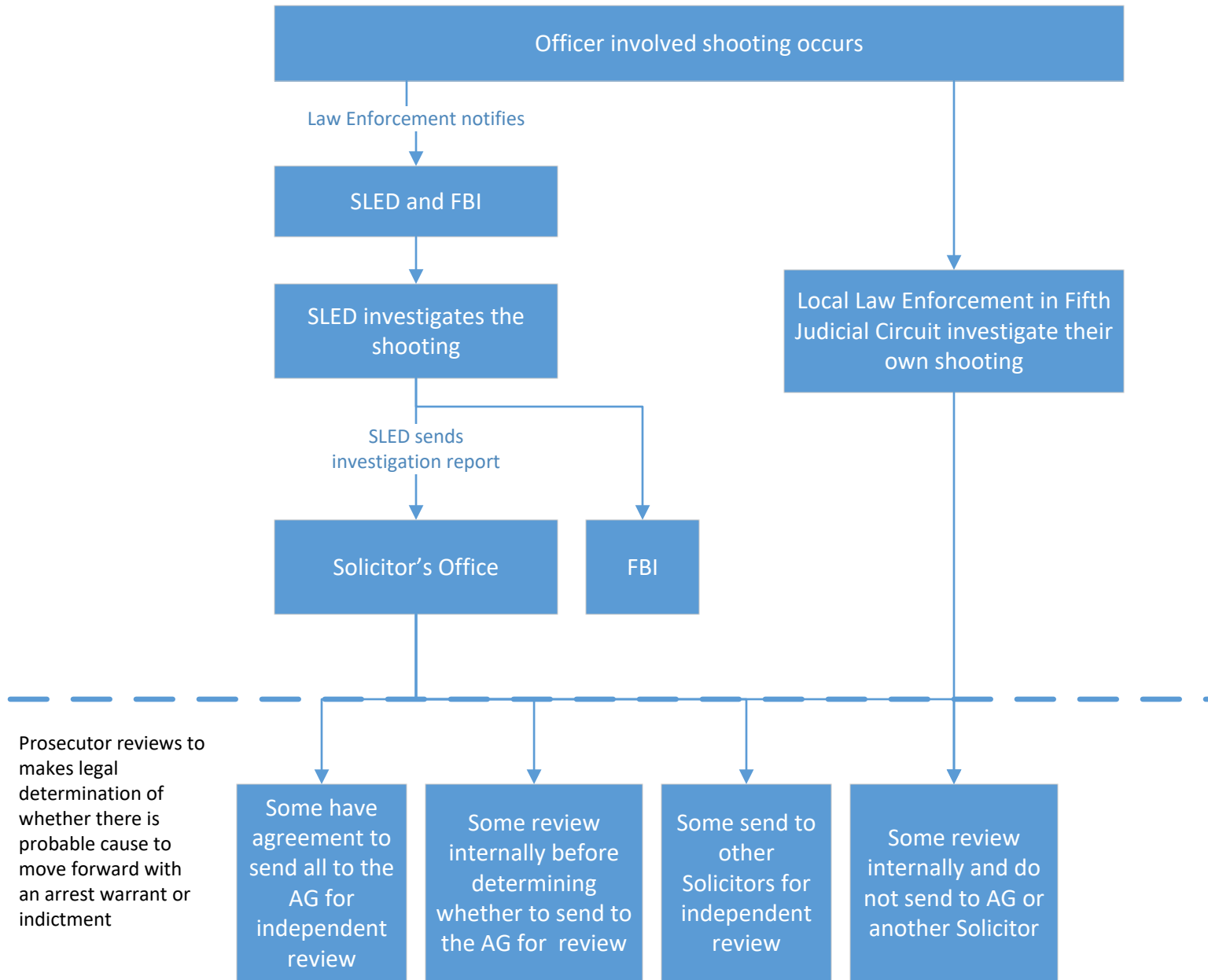
What is the process to transfer a case?



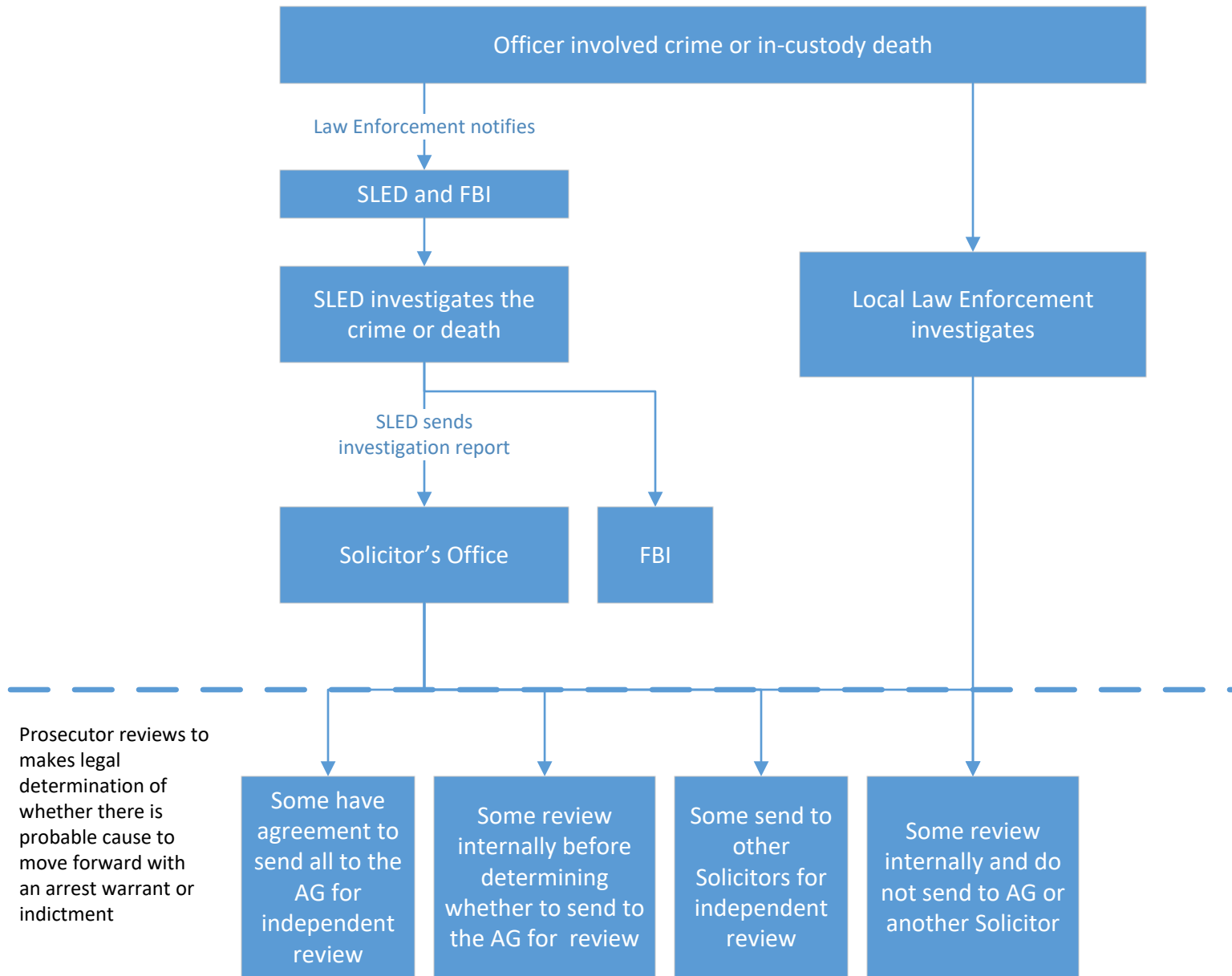
NOTE: Solicitor CANNOT transfer to another Solicitor without Attorney General approval (1-7-350)

- 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.

Officer Involved Shooting: Investigation and Prosecutor Review



Officer Involved Crime or In-Custody Death: Investigation and Prosecutor Review



Internet Crimes Against Children

Terminology

- AG: Attorney General
- CSAM: Child Sexual Assault Material
- ESP (Electronic Service Provider): What you use when on the internet (Examples-Facebook, Pinterest, TikTok, Google)
- D-Order (Federal statute under the Electronic Communications Privacy Act, 18 USC 2703(d)): Works similar to a subpoena
- ICAC (Internet Crimes Against Children Task Force): Every state required to have at least one, some have more (61 nationwide); AG's Office is head of the Task Force in S.C.
- IDS (ICAC Database): Location where NCMEC continually uploads information for state ICACs to access
- IP (Internet Protocol address): Associated with the internet service provider (ISP) [Examples: (1) If you have a wireless router at your house with several devices using the internet, all of them appear to use the same public IP address because they are all using internet on that router; (2) If you are using your cell phone and connect to the Wi-Fi at Starbucks, the IP address will be the Wi-Fi router at Starbucks; (3) If you are using a computer at a school or public library, the IP address will be for that location; (4) If you are using your cell phone and connecting to the internet through data, instead of Wi-Fi, the IP address will be the one assigned by your cell phone provide]
- ISP (Internet Service Provider): Who you use to access the internet (Examples-Spectrum, AT&T, Verizon)
- NCMEC (National Center of Missing and Exploited Children): Serve as clearinghouse for tips received from (1) ISPs and ESPs (required by federal law to report); and (2) Concerned citizens
- SLED: State Law Enforcement Division

Background

The Internet Crimes Against Children (ICAC) Task Force and internet services history.

1998

- AG starts taskforce
- CyberTipline created by Congress through NCMEC
 - SLED takes lead
- Internet/Electronic Service Providers
- AOL, CompuServe, Yahoo, GeoCities, MSN, Netscape

2010

- Cyber tips
 - SLED (under different leadership) prioritizes other crimes
 - AG takes lead

Major Tech Innovations/Platforms and year they began

- 2003 Myspace
- 2004 Facebook
- 2005 Reddit
- 2005 YouTube
- 2006 Twitter
- 2007 First Generation iPhone
- 2009 Pinterest
- 2010 Instagram
- 2010 First Generation iPad
- 2011 Snapchat
- 2015 Discord
- 2016 TikTok

Internet Crimes Against Children: Case Flow

Case Type #1: Undercover catch a predator/sting	Case Type #2: Undercover file sharing	Case Type #3: Cyber tips from National Center of Missing and Exploited Children (NCMEC)	Case Type #4: Other
<p>Initial Investigation</p> <ul style="list-style-type: none"> AG investigators go on social media to see if someone is willing to talk with child and bring up sex with a child 	<p>Initial Investigation</p> <ul style="list-style-type: none"> AG investigators go on file sharing networks to see who is providing child pornography to others who want it (ex. – some people put out bowls of candy on halloween to see who wants it, same thing happens on file sharing networks) AG investigator downloads/is sent CSAM 	<p>Initial Investigation</p> <p>Receipt of Cyber Tip</p> <ul style="list-style-type: none"> Concerned parent sees something online and sends to NCMEC ISP sends NCMEC following information (required in federal law to provide): <ul style="list-style-type: none"> Minimum - File; IP Address; Date/Time Potential additional – messages around the file when it was sent, etc. NCMEC adds: <ul style="list-style-type: none"> Minimum - Geolocation of the IP address of the user reported by the ISP Potential additional – messages around the file when it was sent, etc. NCMEC uploads: File; IP Address; Date/Time, geolocation of IP address of user + any other information ISP provided or NCMEC found <ul style="list-style-type: none"> NCMEC continually uploads information to a national ICAC taskforce database (IDS). NCMEC assigns a priority level and indicates the applicable state. NCMEC also sends email if it is a Priority 1 (e.g., immediate danger of sexual assault/kidnapping/suicide) Number of cybertips has continually increased each year as internet services continually grow (e.g., creation of instagram, tik tok, pininterest, etc.) AG’s office has multiple staff continually monitoring information uploaded by NCMEC that are assigned to S.C. AG investigator reviews the information to determine the county or city within S.C. <ul style="list-style-type: none"> Option 1 - AG sends cyber tip to applicable law enforcement agency in the area to investigate (Sheriff or Police Department) if the agency is capable of working up the case <ul style="list-style-type: none"> AG has agreement in which any law enforcement can ask AG to obtain a D-Order for them (see investigation below) Option 2 – AG will keep and investigate Option 3 – AG sends to SLED (ones involving non-SLED law enforcement) Investigators review cyber tip to determine applicable facts from it <ul style="list-style-type: none"> Individuals name may be in the email address (e.g., johndoe@gmail.com), facebook account, etc. 	<p>Initial Investigation</p> <ul style="list-style-type: none"> Spouses report other spouse is looking at CSAM on their phone, computer Investigation of unrelated crime finds CSAM Investigation is unique because of the different ways in which this type of case may arise
<ul style="list-style-type: none"> Someone violates law, then travels to try and meet with child 	<ul style="list-style-type: none"> Someone violates law (e.g., sent photo of genitals, solicit child for sexual encounter, etc.), but does not travel 		
<p>Identify IP address</p> <ul style="list-style-type: none"> AG sends one or more of the following to chat hosting company to obtain the IP address – see Cyber tip cases for more details on each) <ul style="list-style-type: none"> Search Warrant D-Order Subpoena through federal partner 	<p>Identify IP address</p> <ul style="list-style-type: none"> AG investigator can see IP address at time of download (publicly available) 		
<p>Obtain Additional Information based on IP Address</p> <ul style="list-style-type: none"> AG sends one or more of the following to ISP (e.g., Spectrum, AT&T) to obtain additional information about IP address (listed in order of providing most to least information) <ul style="list-style-type: none"> Search Warrant - Required to obtain “content” (emails, cloud storage, etc.) D-Order (federal statute under Electronic Communications Privacy Act, 18 USC 2703(d)) - Basic subscriber information, transactional info (e.g., number of times logged in, etc.) Subpoena through federal partner - Basic subscriber information (e.g., IP address was assigned to John Doe at 123 Doe Avenue during time period requested). 			

Perform additional investigation needed to determine residence of subject

- Detailed investigations are needed because the subscriber may not be the person who committed the act since someone else may be living in the house, friend visiting the house, neighbor using the house's internet, etc.
- Legal documents may also be sent to:
 - ESP (facebook, email company)
 - Other entities based on information discovered (e.g., phone company based on phone number associated with facebook account)

Transfers Case Back and Forth

- Option 1 - AG has worked up the case and sends information for the first time to applicable law enforcement in the area to investigate (Sheriff or Police Department)
- Option 2 – AG will keep and investigate
- Option 3 – AG sends to SLED (ones involving non-SLED law enforcement)
- Option 4 – AG will take over cases previously sent to applicable law enforcement based on resources available to pursue

Search Applicable Residence

- Once applicable residence(s) determined
 - Obtain search warrant for individual's residence (possibly business) and search for all electronic devices (devices seized go through forensic analysis)

Arrests, Bond Hearings, etc.

- | | |
|--|---|
| <ul style="list-style-type: none">• Likely sufficient evidence to arrest if individual travels | <ul style="list-style-type: none">• If sufficient facts exist after search at individual's house<ul style="list-style-type: none">• Investigators obtain arrest warrant and make arrest• If sufficient facts do not exist after search at individual's house<ul style="list-style-type: none">• Request forensic analysis<ul style="list-style-type: none">• If sufficient facts exist after forensic analysis, investigators obtain arrest warrant and make arrest• If sufficient facts do not exist after forensic analysis, likely decline to make arrest and stop investigation |
|--|---|

Forensic analysis of electronic devicesNOTE: Large backlog of forensic analysis****

- If arrest was made prior to forensic analysis, law enforcement may still request forensic analysis to help prosecute the case
- Who does analysis depends on who is leading investigation. I. With local law enforcement investigations, some (1) local law enforcement are capable of conducting their own analysis; (2) some send analysis to AG; (3) some send to ICAC federal partners] II. AG investigators perform analysis for their investigations. III. SLED investigators perform analysis

Information learned from forensic analysis

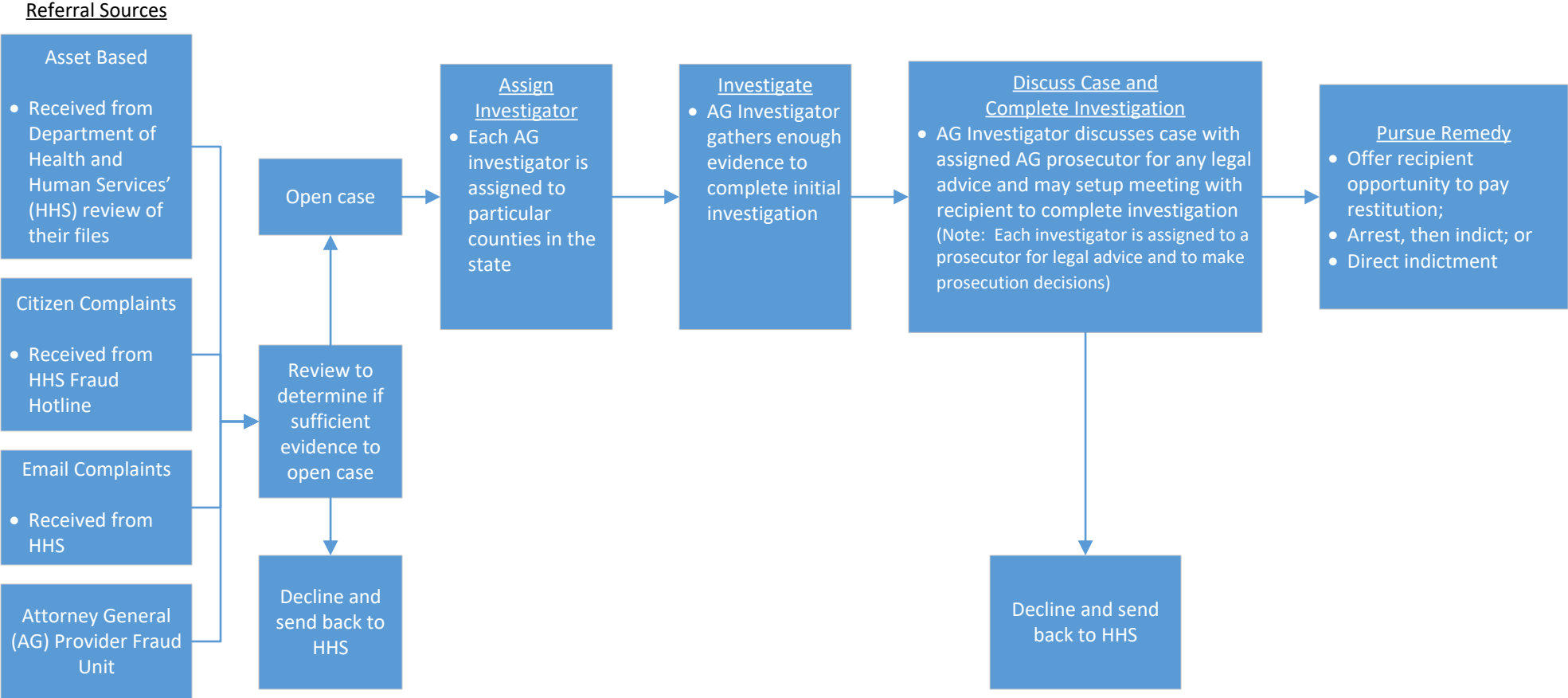
Searching for two major types of evidence:

- Child Sexual Abuse Matter (CSAM)
 - Of child that is subject of investigation (may find other children as part of the search, which results in opening of additional investigations)
- Knowledge and intent from internet search terms; browser history; types of files used and opened recently; user account names and websites visited is evidence of who was using the computer (e.g., CSAM accessed and someone's bank account accessed close in time is evidence of who was accessing CSAM)

Prosecution

- AG investigation
 - AG prosecutes (see previous slides related to general prosecution for steps)
- Outside agency investigation
 - AG has agreement with Circuit Solicitors that AG will prosecute, however, on occasion, local solicitors will prosecute. Note: Sometimes this occurs because law enforcement has not informed AG of the investigation results or local solicitors are unaware of opportunity to pass prosecution to AG, or have AG assist in their prosecution (e.g., assault case that has CSAM evidence uncovered during investigation)

Medicaid Recipient Fraud Unit: Investigation to Prosecution



Medicaid Provider Fraud Unit

Patient Abuse

Normal Jurisdiction

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

AND

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 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)

Individual is criminally abused, neglected, or exploited.

Conduct reported to Medicaid Fraud Control Unit at Attorney General's Office (MFCU) from any source (e.g., Mandatory reporter; Victim/friend/family; Facility where residing or its staff; Local law enforcement; DHEC and DSS)

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

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)

Conduct reported to MFCU by any source

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

If Yes

Opens formal investigation classified in AG system as a "case"

- See "Medicaid Provider Fraud Unit: Investigation to Prosecution" document for next steps

If No

Closes Matter

- May refer to another law enforcement agency or regulatory entity if appropriate

Medicaid Provider Fraud Unit

Provider Fraud & Fraud in Administration of Medicaid Program

Provider Fraud

Provider enrolls in S.C. medicaid program administered by S.C. Department of Health and Human Services (SCDHHS) and is permitted to treat S.C. Medicaid Beneficiaries. Claims billed to SCDHHS for payment of services rendered must be in compliance with policy set by SCDHHS.

Example providers include: Doctor; Dentist; Nurse; Chiropractor; Medical Transportation Company; Pharmacist; Pharmacy; DME Company (Durable Medical Equipment); Therapist (Speech, Physical, Occupational); Hospital; Lab

Provider intentionally submits claims for payment that are not in compliance with SCDHHS policy (Must prove it was intentional not accidental).

Example schemes include: (1) *Upcoding*: Providing a service but billing for a more expensive service; (2) *Phantom Billing*: Billing for services not provided; (3) *Double billing*: Billing for the same service twice; (4) *Medically Unnecessary Services*: Billing for unneeded services simply to make money; (5) *Unbundling*: Billing separately for individual services that should be grouped together into a single bill; (6) *Cost Report Fraud*: Knowingly inflating or mischaracterizing the nature of costs incurred by an entity (Nursing Home, Hospital, etc.) to receive a higher reimbursement; (7) *Kickbacks*: A payment or inducement given to get favorable or preferential treatment.

Improper claims detected. Potential detection sources include the following:

- 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 Medicaid Fraud Control Unit at Attorney General's Office (MFCU)
- Qui Tam (lawsuit filed by whistle blower) filed against provider
- May be referred to MFCU from any source

Improper claims with credible allegation of fraud reviewed by MFCU

- Classified in AG system as a "matter"

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 to correct admin issue)
 - If yes, opens formal investigation classified in AG system as a "case"
 - See "Medicaid Provider Fraud Unit: Investigation to Prosecution" document for next steps

Fraud in Administration of Medicaid Program

Individual or Company affiliated with SCDHHS
E.g. SCDHHS employee managed care organization

Individual uses position to conduct criminal activity (e.g., using beneficiary information for personal advantage - selling beneficiary information; altering cost reports)

Improper conduct detected

Conduct reported to MFCU

Medicaid Provider Fraud Unit: Criminal Investigation to Prosecution

(Provider Fraud, Fraud in Administration, Patient Abuse)

Path A

Path B

Investigator for Medicaid Fraud Control Unit at Attorney General's Office (MFCU) directs investigation

- Abuse – Document injury and determine its origins; speak to witnesses, care givers; request and review medical records.
- Neglect – Demonstrate victim did not receive care, goods, or services necessary to maintain health or safety; determine what was not provided and any resulting damages; speak to witnesses, staff, caregivers; request and review business and medical records.
- Exploitation – Determine if exploitation occurred and if so by whom. Review bank statements, follow victims funds. Speak to witnesses, family/friends

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

MFCU requests arrest warrant from County Magistrate

MFCU investigator makes arrest

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

MFCU investigator present draft indictment to County Grand Jury Jurors

County Grand Jury Jurors vote on whether to indict

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

MFCU investigator serves indictment and makes arrest

Note: Don't need separate arrest warrant if there is an indictment

Notes regarding next steps:

- MFCU attorney typically requests as a condition of bond that the accused have no contact with the victim or that access to the victim's funds be prohibited
- MFCU attorney proposes plea offer with Director's approval if no plea offer offered/accepted, jury trial
- During litigation, Department of Health and Human Services (SCDHHS) will likely implement a payment suspension where payment for claims submitted is held by SCDHHS until criminal proceedings conclude and if can be determined if the money is clean
- After litigation,
 - If found guilty, MFCU requests restitution (as appropriate). Depending on severity of offense, MFCU may request jail time. MFCU Misdemeanor 3 years, \$1,000 fine per offense and submits a conviction report to HHS-OIG, who will determine if the provider should be excluded from federal healthcare programs (Medicaid, Medicare, and Tricare). Exclusions last for five years.
 - If not found guilty, any payment suspension will be lifted unless there are pending charges in another jurisdiction.

Note: Highest offense is misdemeanor, regardless of amount fraudulently billed or harm resulting to beneficiaries.

Insurance Fraud Prosecution

Attorney General's Office (AG)
Department of Insurance (DOI)
State Law Enforcement Division (SLED)

Arrest Warrant, then Indictment

DOI, in conjunction with SLED, directs investigation

SLED requests arrest warrant from County Magistrate

SLED makes arrest

DOI prosecutor provides draft indictment to AG to review;
AG reviews and signs off

SLED present draft indictment
to County Grand Jury Jurors

County Grand Jury Jurors
vote on whether to indict

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

Sources of Cases:

- National Insurance Crime Bureau (NICB)
- Local complaints to law enforcement
 - S.C. has a mandatory reporting act that states
“...any person, insurer or authorized agency having
reason to believe that another has made a false
statement or misrepresentation... notify the
Insurance Fraud Division of the Office of the
Attorney General...”
- The Insurance Fraud Division, in conjunction with the
Professional Insurance Agents of S.C. and the S.C.
Insurance News Service, established the Insurance
Fraud Hotline, available 24 hours a day. Department
of Insurance is lead for the hotline

Direct Presentment/Indictment (skip arrest warrant)

DOI, in conjunction with SLED, directs investigation

DOI prosecutor provides draft indictment to AG to review;
AG reviews and signs off

SLED present draft indictment
to County Grand Jury Jurors

County Grand Jury Jurors
vote on whether to indict

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

SLED serves indictment and
makes arrest

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

State Grand Jury Process: Introduction

Occurs Continuously

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

Develop investigation

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

Determine if it could be a good case

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

Start of each SGJ Period (Periods last July – June)

SGJ Judge Selection

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

SGJ Juror Selection

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

NOTE: Who determines what?

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

State Grand Jury Process: Investigation through Trial

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

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

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

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

Coordinated by SGJ Legal Team and SGJ Clerk of Court

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

Attended by SGJ Panel and SGJ Legal Team

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

SGJ Secrecy Oath given to staff (not witnesses) by SGJ Clerk Throughout the year, as the SGJ Legal Team and SGJ Judge designate who is working with them, SGJ Clerk has them swear to the SGJ secrecy oath. Witnesses who testify before the grand jury are sworn in by the grand jury foreperson. As of June 2022 there have been no prosecutions for violation of confidentiality.

Motions or Objections decided by SGJ Judge

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

STEP #3: VOTE to Indict – SGJ Jurors

Indictment Drafting and Vote

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

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

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

Indictment and Venue Announcement

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

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

State Grand Jury Process: Investigation through Trial (cont.)

NOTE: AG's Office opens a "case" at this stage, prior to the indictment the AG's Office had an "investigation" open.

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

Processing the Indictments

- SGJ Clerk creates single folder for the indictment

Indictment Warrants and Bond Hearing

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

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

Assignment of Trial Judge

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

Discovery

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

Civil Forfeiture

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

Motions and Hearing dates

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

State Grand Jury Process: Investigation through Trial (cont.)

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

Plea

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

Trial occurs (if no plea agreement reached)

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

Sentencing

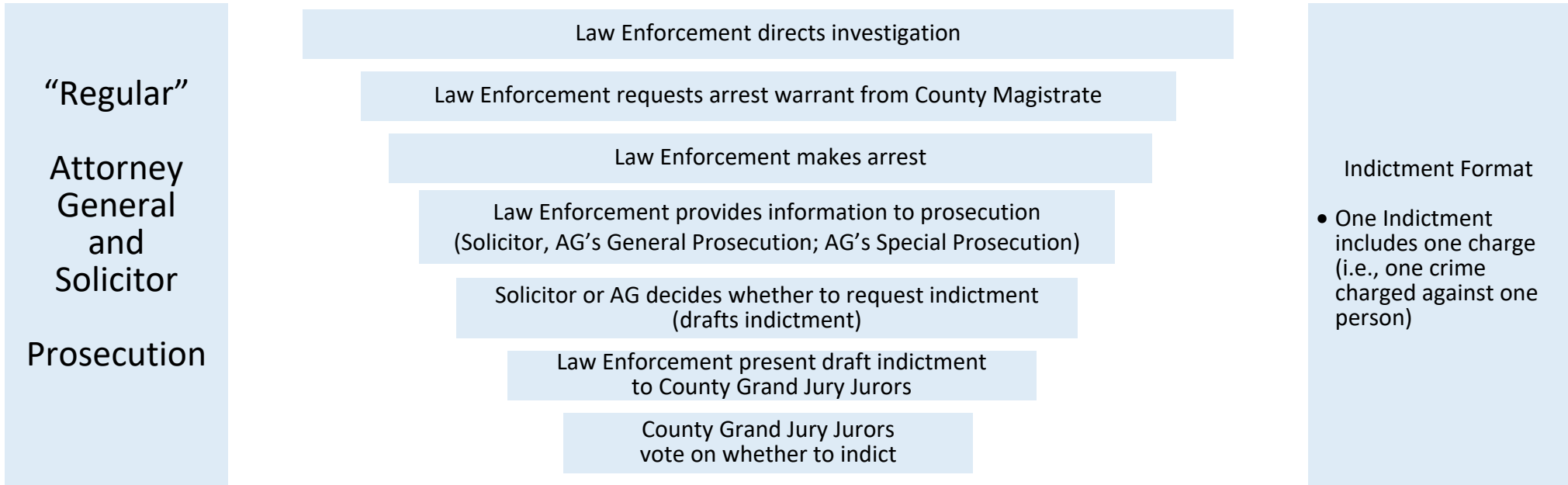
- SGJ Clerk follows same process as “Motions and Hearing dates” above to schedule any post trial sentencing hearings
- Trial Judge enters sentence

After Sentencing

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

Grand Jury: County v. State Process

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



Note: SGJ Legal Team can compel testimony and disclosure of documents, which often requires intensive analysis of voluminous documents, records, evidence, statements, and testimony.

State Grand Jury – Jury Panel Selection Process

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

Step 1

Jury List from Counties

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

Step 2

Jury Qualification

- SGJ Clerk mails jury qualification forms to the 700 randomly selected jurors
- SGJ Clerk receives completed copies mailed from jurors
- SGJ Clerk indicates whether each juror is qualified or excused based on information the juror provides on the forms
 - Excused if they meet the qualifications for excusal (e.g., over 65, cannot read or write English language, medical reason). Qualification for excusal from state grand jury is no different than those for excusal from regular trial jury.
 - SGJ Clerk selects applicable drop down for each juror in the court administration system (e.g., qualified, excused because over 65, etc.)
- SGJ Clerk mails letter to jurors excused to inform them they are excused
- Jury Wheel software randomly selects 60 jurors from the jurors the SGJ clerk indicated were qualified

Step 3

Summons of Appearance

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

Step 4

Jury Selection Day (June)

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

Pre-indictment Arrest Warrant and Bond Hearing

Arrest

1) Warrant request/creation (see sample warrant in presentation)

- SGJ Legal Team and Law Enforcement Officers (LEO) request a warrant number
- SGJ Clerk provides a warrant number
- SGJ Legal Team and LEO create a warrant document
 - Includes Defendant's information, charges for which defendant is being arrested, etc.
- SGJ Legal Team and LEO provide the Fifth Judicial Circuit Chief Administrative Judge directly, or through the SGJ Clerk's office, the warrant to review and sign
 - NOTE: Review and approval of the arrest warrant typically goes through the county magistrate; but, in this case, it goes through SGJ because the individual being arrested is the subject of an ongoing SGJ investigation
- Anything that is part of an ongoing investigation is considered sealed and not public record

2) LEO serve warrant and make arrest

If crime occurred while offender is in prison (e.g., coordinating drug sales), warrant is served on the individual in the prison

Bond Hearing

Step #1: Scheduling Hearing

- SGJ Clerk requests the Fifth Judicial Circuit Chief Administrative Judge set a date for the hearing
- Fifth Judicial Circuit Chief Administrative Judge does the following:
 - (1) sets the date for the hearing (strives to schedule within 48 hours of arrest)
 - (2) coordinates with court administration to obtain a court reporter for the hearing
- SGJ Clerk informs parties about the date/time of hearing, including:
 - SGJ Legal team (Note: Prosecution (i.e., SGJ Legal team) responsible for contacting victims since victims are entitled to appear at the hearing)
 - Defense attorney, if Defendant has one at the time (Public Defender, Rule 608, or privately retained)
 - If high profile case, coordinate with media (note, media typically only know about indictment warrants, because pre-indictment warrants
- SGJ Clerk coordinates with jails (SCDC or any detention facility across the state) for transport of offender or setting up resources for virtual hearing (most hearings occurring virtually still)

Bond Hearing (cont.)

Step #2: Hearing

- SGJ Legal Team requests bond amount (i.e., amount defendant must pay to get out of jail until trial)
- Fifth Judicial Circuit Chief Administrative Judge sets bond based on Defendant's (1) risk of flight and (2) danger to community. Options for bond include the following:
 - 10% option - Judge has discretion to allow 10% cash option or no 10% option. If the judge allows the option, the defendant can pay 10% of the bond value in cash and be released (i.e., Bond is \$100,000, Defendant pays \$10,000 in cash)
 - This is separate from any charges a bonding company may charge a defendant
 - PR Bond - Judge has discretion to make it a personal recognizance (PR) bond, which releases the Defendant on their word that they will show back up for trial.
 - Concurrent bond – If Defendant has a county charge that they are already out on bond for, and the SGJ is going to adopt that charge, the Judge may choose not to increase the amount of the bond on which the Defendant is already out. However, the surety bond company is still required to sign the documents for the new, concurrent bond.
 - if defendant does not show up for court, the state can go after them for the full bond amount.
- During the hearing, Fifth Judicial Circuit Chief Administrative Judge typically asks Defendant if they plan to hire an attorney or if they need to be screened for indigent representation
- Defense attorney can make motion to request bond be revisited and lowered (same process as above to schedule this hearing)

Step #3: Post Hearing Paperwork

- SGJ Clerk prepares the same bond paperwork, regardless of whether bond is set or denied. Paperwork includes: (1) Order setting Bond; and (2) Bail form (i.e. Standard General Sessions Court yellow form double sided)
- Fifth Judicial Circuit Chief Administrative Judge signs both documents (if defendant chooses to post bond, others must sign as well, see below)
- If hearing is in person, SGJ Clerk provides hard copy to defendant.
- If hearing is virtual, SGJ clerk sends it to the jail for jail personnel to provide to the defendant.

Bond Hearing (cont.)

Step #4: Defendant determines whether to post bond

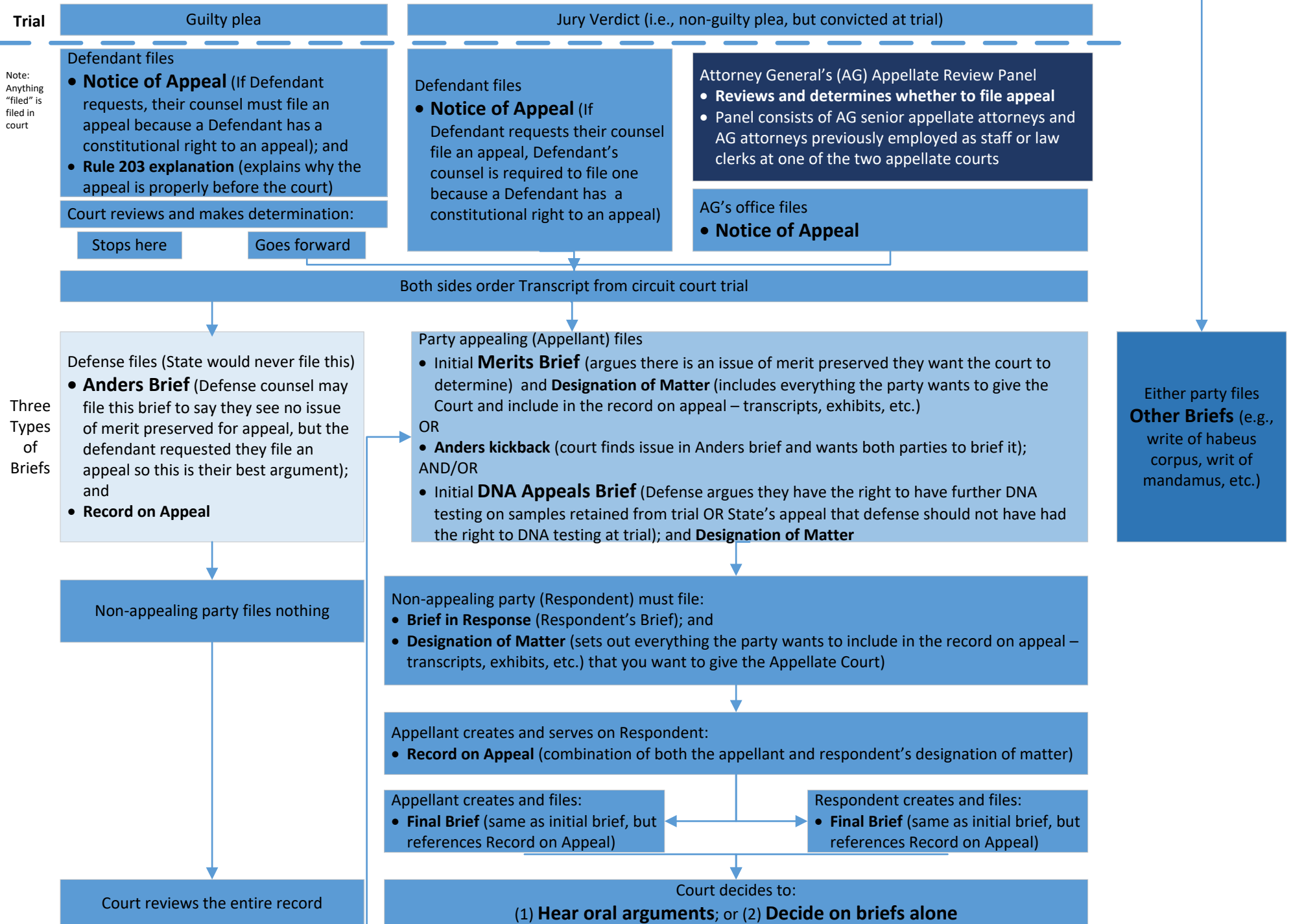
- No time limit on when defendant must decide to post bond
- If defendant does not post bond, Defendant remains in jail
- If defendant chooses to post bond:
 - SGJ Clerk obtains Defendant's information (i.e., name, address, telephone number, SS#, name of attorney, if they have one)
 - While the warrant will include some of this information, the defendant's address may change from the time the warrant is issued and the time of arrest and bond hearing. Also, the judge may instruct Defendant to reside at a family member's home until trial.
 - Bond is "posted" at the SGJ Clerk's Office
 - Defendant signs (1) Order setting Bond; and (2) Bail form (i.e. Standard General Sessions Court yellow form double sided)
 - Surety Company (i.e., bail bondsman) signs both documents and posts power (i.e., piece of paper from insurance company that says the amount the surety is posting – no money is ever provided, just a piece of paper that affirms if the defendant does not appear for court, the company has the money available to pay the full bond due). Note: Surety Companies (i.e., bail bondsmen) are regulated through the Department of Insurance.

Step #5: SGJ Clerk Screens Defendant for Indigent Defense Representation (defense attorney)

- As soon after the bond hearing as possible, SGJ Clerk's office screens Defendant to determine if they qualify for indigent representation.
 - To screen, SGJ Clerk has Defendant sign Court Administration's Affidavit of Indigency. SGJ Clerk does not require any additional documentation or proof of indigency (Note: Some counties perform additional research, require pay stubs, etc.)
- SGJ Clerk emails Commission on Indigent Defense (SCCID) to request an attorney for Defendant. If it is a larger case, SGJ Clerk tells SCCID attorneys have already been assigned to other defendants.
 - Pre-indictment situation – No other information is included in SGJ's email.
 - Post-indictment situation – SGJ Clerk includes a copy of the indictment in the email

Direct Appeal of Non-Death Penalty Conviction to S.C. Court of Appeals and...

..S.C. Supreme Court

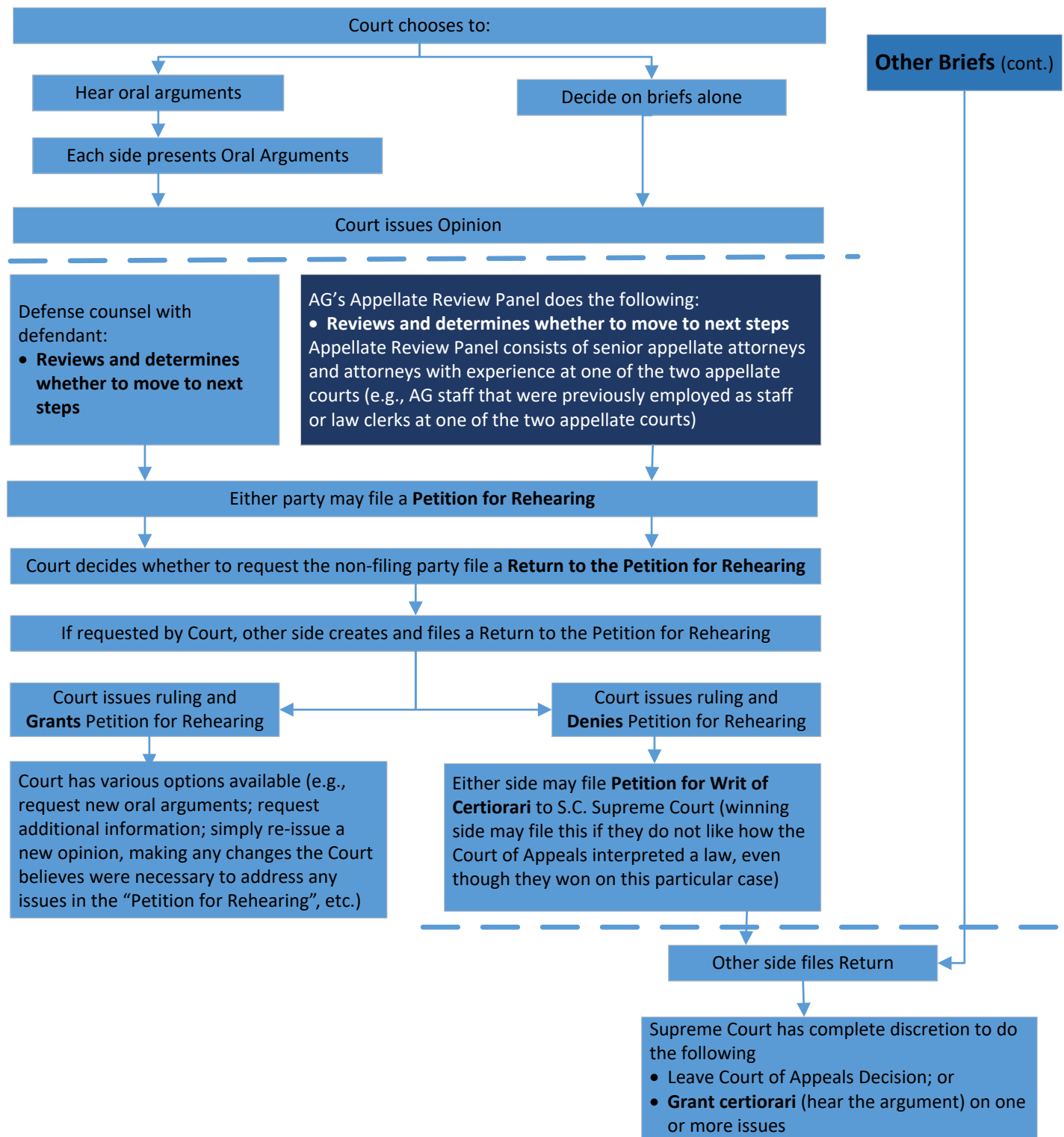


Anders Brief (cont.)

Court reviews the entire record and makes decision

Appeal Stops
- Court found nothing of merit for their review preserved on appeal (Anders Order)

Appeal continues and Anders Brief turns into Merits Brief – Court requests both parties file brief on certain issue (the next steps follow the same process as if one of the parties had filed a merits brief)

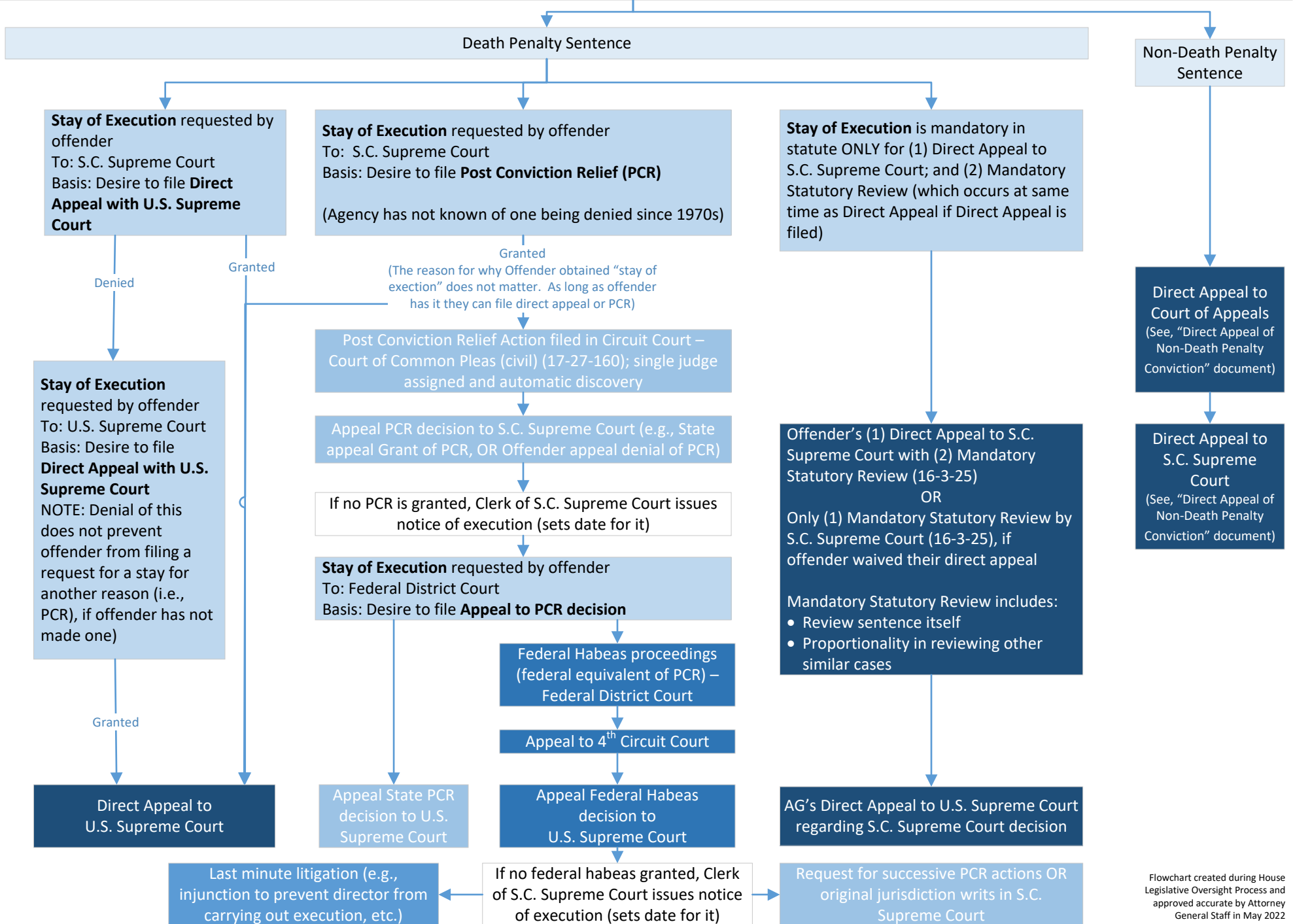


Other Briefs (cont.)

Murder Conviction: Appeal and Post Conviction Relief Process

(Note: Includes murder only. Does not include voluntary or involuntary manslaughter, etc.)

Murder Conviction at Circuit Court (guilty plea or jury verdict)



Non-Death Penalty PCR Action

Overview

- Convictions applicable: (1) State Court General Sessions; (2) Magistrate Court; (3) Municipal Court
 - Magistrate and Municipal Court present unique challenges based on lack of records, etc.
- PCR Applicant does not have to be incarcerated or show negative impact from conviction to pursue PCR
 - Majority are filed by individuals convicted in state court that are currently incarcerated

- PCR Act (17-27-20) outlines basis on which PCR can be argued. Most frequent include:
 - Ineffective assistance of defense counsel
 - Prosecutorial misconduct
 - Newly discovered evidence
 - Illegal sentence
 - Unlawful detainment past expiration of term and offender entitled to immediate release (if just arguing projected date of release is wrong, it must be argued to SCDC)

Defendant files PCR application in the county of conviction

- If State grand jury conviction, application filed in County where venue was established (where guilty plea or trial occurred)

Clerk of Court forwards PCR Application to Attorney General and Applicable Solicitor's Office
(Clerk will often file the application even if there is an order prohibiting defendant from filing another PCR)

Some Clerks forward

- on regular basis; and

- application and all underlying general sessions records (sentencing sheet, indictment, arrest warrant, motions and orders)

Some Clerks forward

- on regular basis; and
- application only

Some Clerks forward

- Sporadically throughout the year; and
- application only

AG opens "Case"

AG receives PCR Application from Clerk of Court

AG Screens Application

Determine whether there are any procedural bars they can use to argue PCR should not go forward:

- (1) untimely (filed outside one year statute of limitation under S.C. Code Section 17-27-45); OR
- (2) impermissibly successive application (new evidence or belated appellate review of first PCR would be permissible)

AG Requests Clerk's records

- If received underlying general sessions records, then requests → applicable Exhibits
- If only received PCR application, then requests → Sentencing sheet + Indictment + Arrest Warrant + Exhibits

AG Determines Applicable Internal Track for Case

Summary Dismissal Track

Hearing Track

Non-Death Penalty PCR Action

Summary Dismissal Track

Defendant not entitled to appointment of counsel

(Sometimes Clerk will appoint anyway)

AG files Return and Motion to Dismiss; and submits a proposed Conditional Order to Dismiss to the Chief Administrative Judge
 As attachments to the "Return" (i.e., response to the PCR Application), AG includes: (a) entire lower court record and transcripts; (b) Any prior PCR actions; and (c) Any prior Federal Habeas actions (federal equivalent of State PCR action)
 AG serves via U.S. mail: (1) Clerk of Court, Judge, and (2) PCR Applicant

Court enters Conditional Order of Dismissal (most common)

Or

Court requests the matter be set for a hearing (rare)
 (Start at top of "Hearing Track" document for next steps)

AG serves Conditional Order of Dismissal on Applicant

(AG obtains affidavit that Applicant was personally served)

NO Response from Applicant

Response from Applicant

(Applicant has 20 days from date of service to respond)

AG reviews Applicant Response to Conditional Order of Dismissal to determine:
 Has Applicant provided sufficient reason(s) to overcome the procedural bar?

No

AG submits proposed Final Order of Dismissal to the Court analyzing Applicant's response and explaining why it is insufficient to overcome procedural bar

Yes,
 AG asks for:

Motion to Dismiss Hearing

Or
 Full Hearing (Start at top of "Hearing Track" document for next steps)

Court decides:

No Hearing

Or Hearing on Dismissal

AG submits proposed Final Order of Dismissal to the Court

AG asks Chief Administrative Judge appoint counsel for applicant

Motion to Dismiss Hearing

Court signs final Order dismissing PCR Application

Court grants Motion and signs final Order dismissing PCR Application

Court denies Motion (Start at top of "Hearing Track" document for next steps)

Motion to Reconsider

And/Or

Applicant can file

Appeal to S.C. Supreme Court (243(C) SC. App.Ct. Rules)

Did Applicant respond to conditional Order of Dismissal (top of page)?

No

Court summarily dismisses Applicant's appeal

Yes

Court requests reason why lower court's dismissal was improper if Applicant did not include it in the Appeal filed

Court summarily dismisses appeal

Or

Court allows appellate process to continue if Court believes there is sufficient evidence of improper dismissal at lower court (Start at top of "Appeal Decision from PCR Hearing" document for next steps)

Cases Closed (AG PCR Division closes the PCR case at this stage and opens a new PCR Appeal file, if there is appeal)

AG Requests Appointment of Attorney for Defendant

AG sends form letter to Clerk of Court requesting they appoint attorney for the defendant (sometimes Clerk will appoint w/o AG request)

AG Requests Applicable Documents, Contact Witnesses, Calendar due date

- Requests from Court Administration (court reporters) - Transcripts from applicable pre-trial, trial, guilty plea, or post-trial hearings. Court reporters have 60 days to provide, but can request extension.
 - *Issue exists with court reporters not having to keep transcripts more than 5 years.
- Contact applicable witnesses depending on claim made in PCR application (e.g., defense counsel, prosecutor, SCDC, etc.)
- Calendar "return" due date (if arises from guilty plea, 60 days to respond, if arising from trial, 90 days to respond S.C. Civ. Pro. 12(a))

AG files "return" with the Clerk of Court (Response to PCR Application)

Requests (1) Hearing

OR

Requests (1) Hearing, and (2) if needed, more definitive statement

Applicant's Attorney Files Amended PCR Application

AG files Amended Return

(*As long as AG receives Amended Application within time before the hearing)

Pre-Hearing Activities

- AG must (1) coordinate with the Chief Administrative Judge to create the docket; (2) subpoena all witnesses to attend; (3) coordinate with SCDC for transport of Defendant to hearing (or scheduling virtual hearing*)
 - *SCDC's lack of quality technology turned some judges off from holding virtual hearings. Inmates in other states/federal prisons with better technology reap benefits of efficiencies gained from virtual hearings.

Full Evidentiary Hearing

(Includes AG; Defendant, Defense Counsel, Witnesses, Court Personnel)

Relief Granted

(1) New Trial; (2) Resentencing (uncommon); or (3) Dismissal of charges (rare - if violation of the interstate agreement detainer act)

Relief Denied

Court Enters Final Order

(Court signs order it drafted, or in most cases, proposed order from AG)

- Court notifies parties of result and enters formal written order outlining facts, specific findings of fact, and conclusions of law (17-27-80)
NOTE: Majority of the time the court requests AG staff draft the Order; on some occasions, court will request AG and defense counsel both draft orders for the court to decide between (or to use pieces of each)

Either Party May File Motion to Reconsider, Alter, or Amend Court's Order

(Only have 10 days after Order entered to file. Generally the non-prevailing party files. Prevailing party may file if they have an issue with the wording of the Court's Order)

Defense counsel, with defendant, reviews and determines whether to Appeal

AG's Appellate Review Panel reviews and determines whether to Appeal. Panel consists of senior appellate attorneys and attorneys with experience at one of the two appellate courts (e.g., staff previously employed at appellate courts)

Start at top of "Appeal Decision from PCR Hearing" document for next steps

Appeal Decision from PCR Hearing

Defense files (State would never file this)

- **Johnson Petition** (Defense counsel may file this petition to say they see no issue of merit preserved for appeal, but the defendant requested they file an appeal so this is their best argument); and
- **Appendix** (entire lower court record)

Party appealing (Appellant) files (State or Defense may file) (S.C. Ct. App. Rule 243)

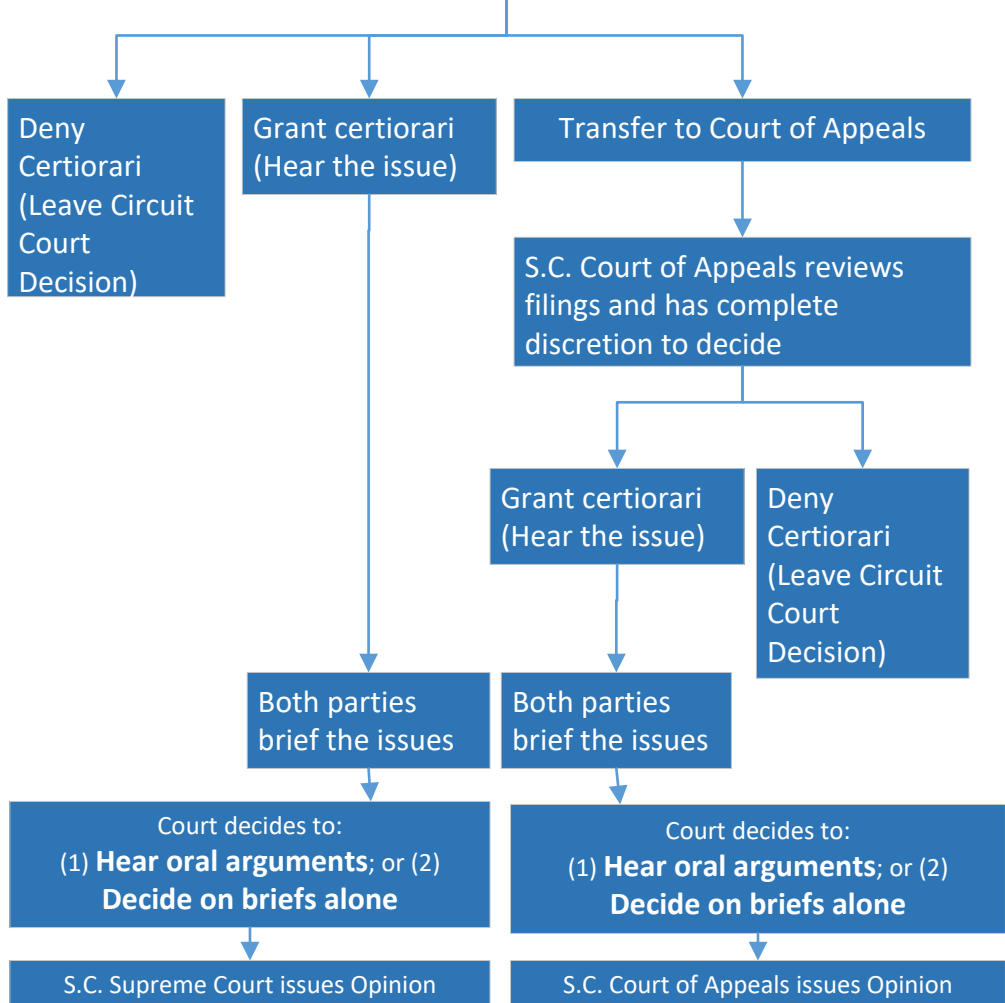
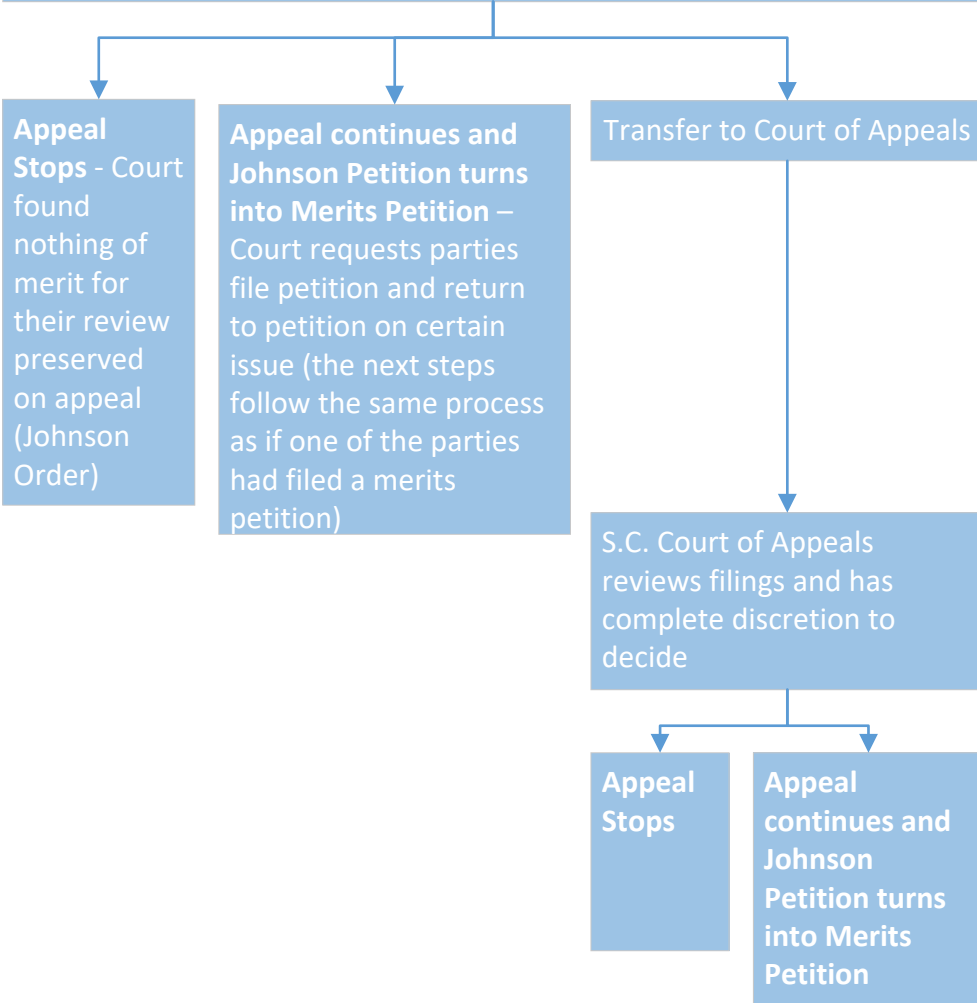
- **Merits Petition** (argues there is an issue of merit preserved they want the court to determine) or **Johnson Petition Kickback** (Court finds issue in Johnson Petition and lower court record, then requests both parties file petition on that issue); and
- **Appendix** (entire lower court record)

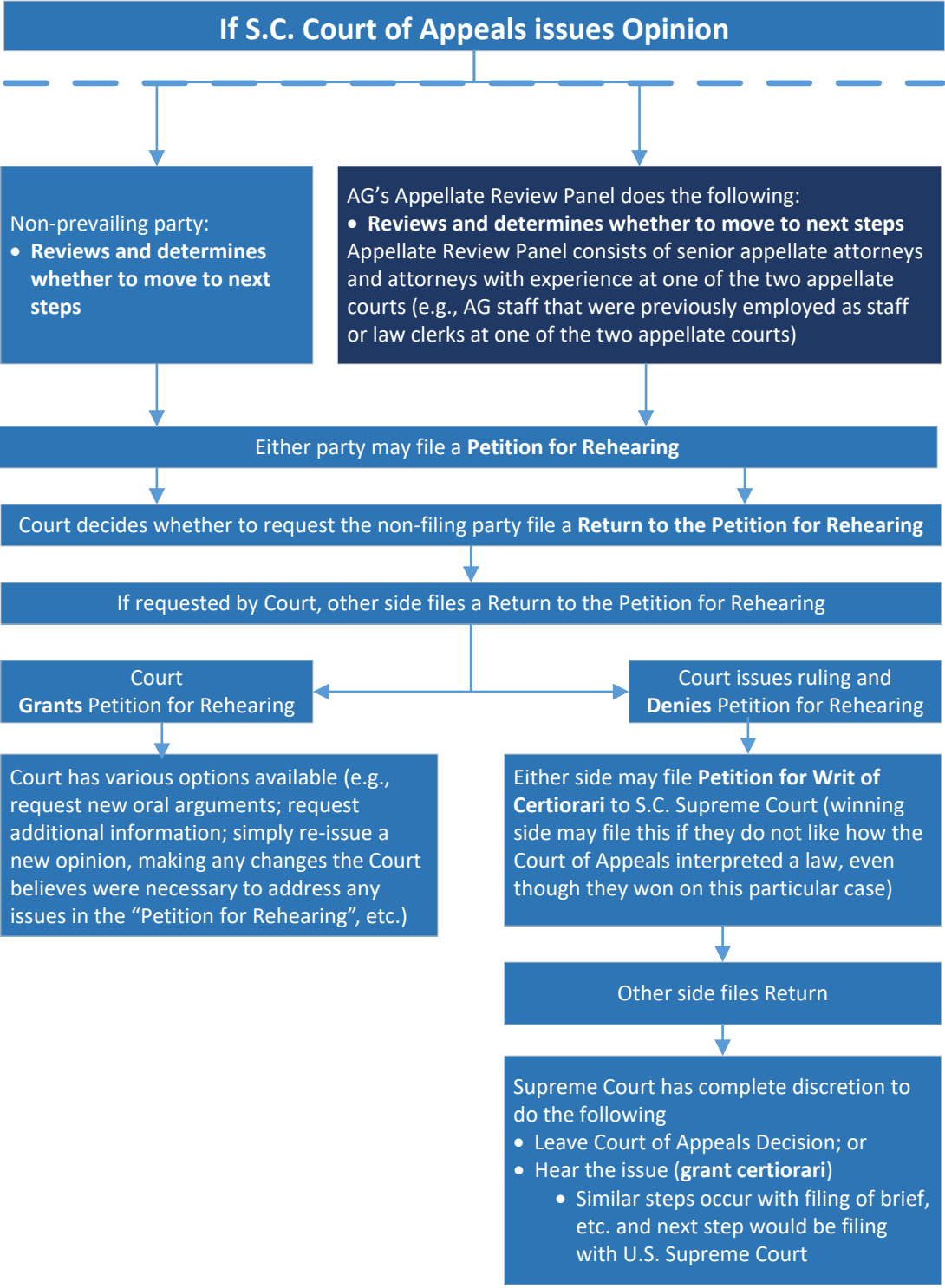
Non-appealing party files nothing

Other side files Return

S.C. Supreme Court reviews filings, has complete discretion to decide

S.C. Supreme Court reviews filings and has complete discretion to decide







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
- **Note:** The offense may not necessarily be one considered “violent” for sentencing purposes

Notice Before Release (could occur sooner than 270 days before release)

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.

Review by Multidisciplinary Team (MDT) (must complete in 30 days)

Team, staffed by SCDC, 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.

Review by Prosecutor’s Review Committee (PRC) (must complete in 30 days)

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

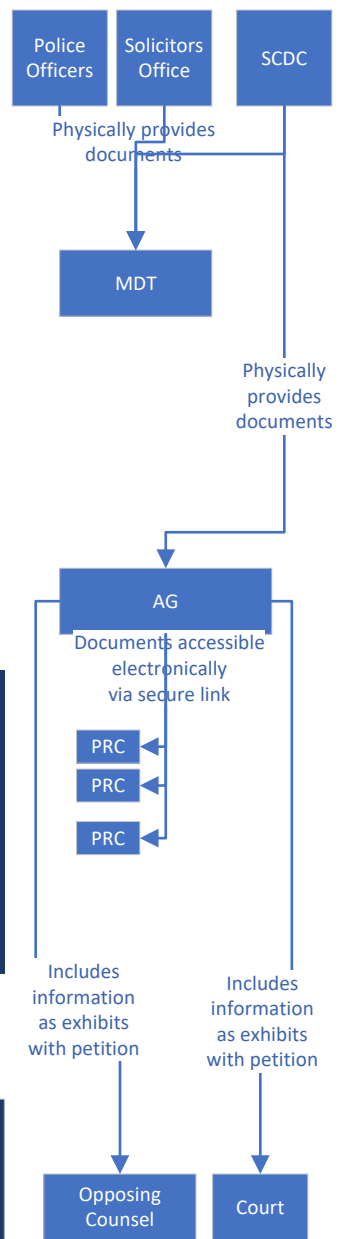
Person convicted of sexually violent offense AND sentenced to incarceration/confinement
S.C. Code 44-48-30(1),(2)

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

Within 30 days of receiving notice, Multidisciplinary Team Review (MDT) must determine whether offender satisfies definition of a sexually violent predator
S.C. Code 44-48-50

Within 30 days of receiving report and assessment from MDT, Prosecutor’s Review Committee (PRC) must determine whether probable cause exists to believe the person is a sexually violent predator
S.C. Code 44-48-60 and -70

Within 30 days of PRC determining probable cause exists, AG’s office must file petition requesting the court make a probable cause determination as to whether the person is a sexually violent predator
S.C. Code 44-48-70





Sexually Violent Predator (SVP) Proceeding Details

Probable Cause Hearing

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

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

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

Order for Evaluation

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

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

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

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

Court Appointed Evaluation

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

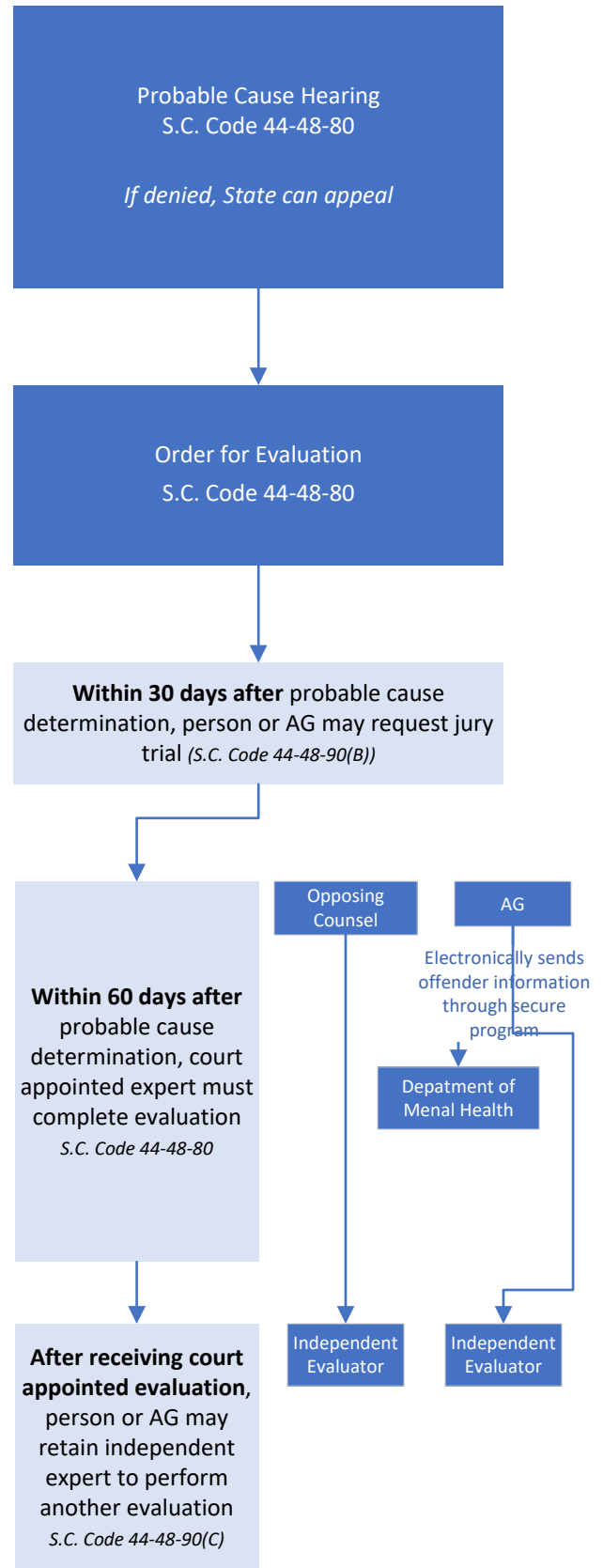
CONCERN: DMH's work product continues to rely on the Static 99-R and Static 2002-R (actuarial risk assessment tools) as the sole measure of risk assessment, with subjective reliance on statements in interview. There are other tests DMH has available, but does not utilize, that are less subjective.

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

Independent Evaluation

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

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





Sexually Violent Predator (SVP) Proceeding Details

Trial (Court and Opposing Counsel schedules impact date)

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

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)

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.

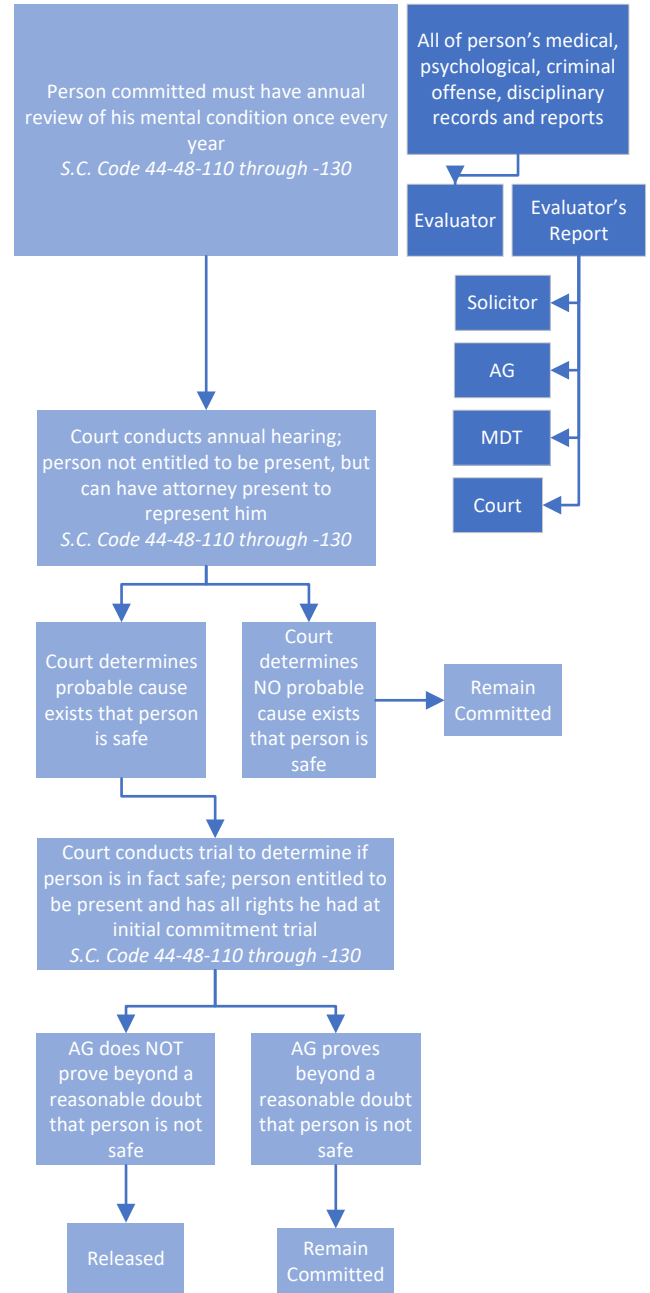
Committed



Sexually Violent Predator (SVP) Proceeding Details

Annual Review and Hearing

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



Petition for Release (anytime individual desires)

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

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

Appeals

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

Appeal

Habeas Petition claiming ineffective assistance of counsel



Sexually Violent Predator (SVP) Section

Proceedings

(Statistics are from SVP creation in 1998 to March 31, 2022)

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

10,528 Offenders sent for review

Multidisciplinary Team Review (MDT)

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

Prosecutor's Review Committee (PRC)

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

119

SVP Attorney files petition in Circuit Court to commit the offender

120

Probable Cause & Order for Evaluation

121-123

Pre-Commitment Evaluations Court Appointed & Independent

124

Pre-Commitment Trial

125-126

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

Committed

Annual Review

127

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

Release

Appeal

128

Habeas Petition claiming ineffective assistance of counsel

129

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

- Pre-Commitment Trial
- Annual Review/Release

*Habeas Petition only allowed after direct appeal

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

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

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.

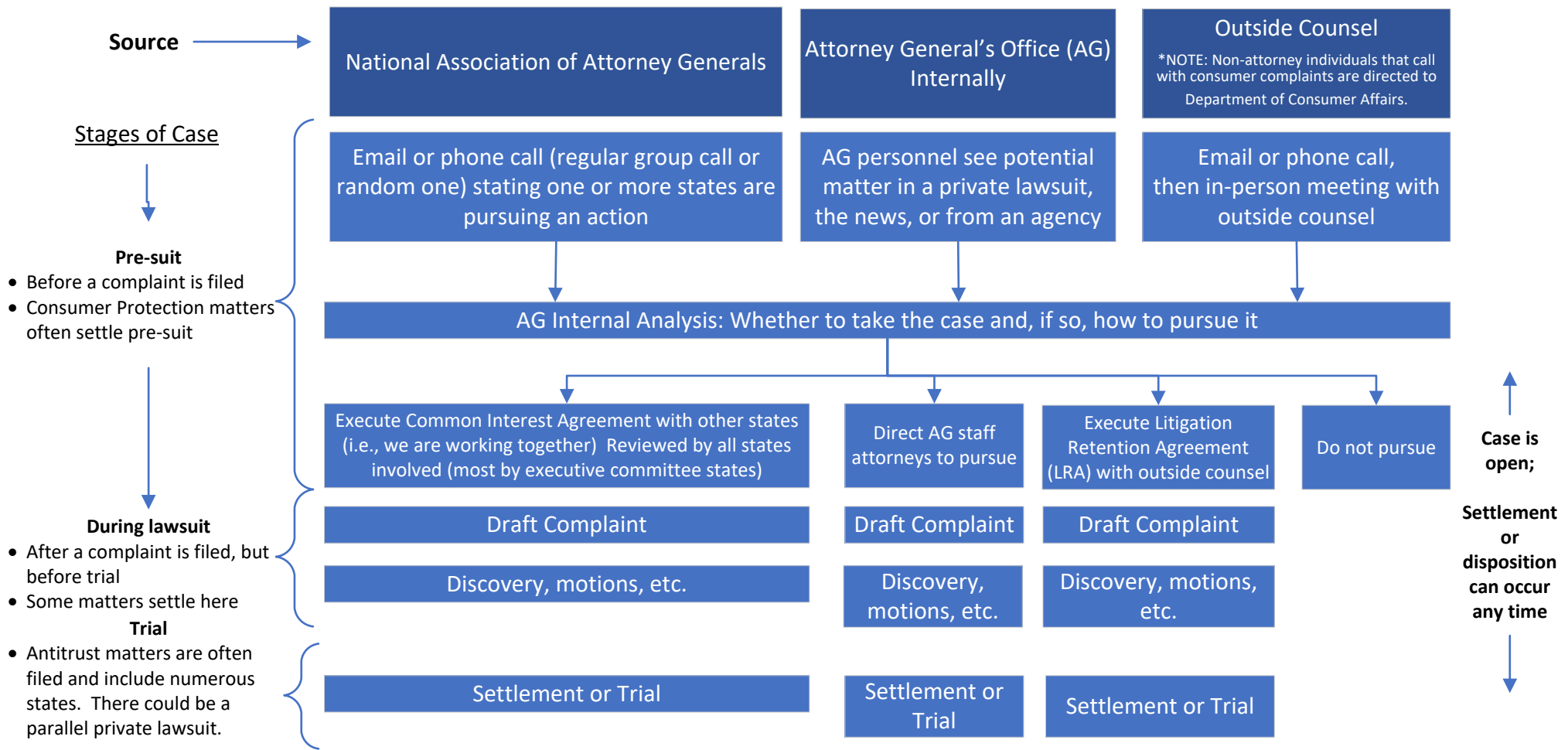
Service #129: Represent the State in habeas corpus hearings in which committed offenders assert ineffective assistance of counsel. *Single unit:* Habeas proceedings
Notes: The Supreme Court held in *Chapman* that sexually violent predators have a constitutional right to effective assistance of counsel, 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

Unfair Trade Practice and Antitrust Cases

Protect S.C. consumers from businesses' using false and misleading statements, participating in anticompetitive practices, and other antitrust violations

Sources and Stages of Case



Internal Analysis Conducted by Attorney General's Office: Whether to take the Case?

Factors considered

- Resources needed to investigate and litigate the case fully.
- Whether particular expertise in certain areas of law (e.g., bankruptcy, environmental) is needed.
- Potential outside counsel's familiarity with a large, complicated matter (such as opioids).
- Whether State's interests are best served by reallocating the risk of no recovery to outside counsel (and spreading that risk among multiple law firms). *Every case is a "wager" because there are resources involved and no guarantee of the result desired*
- Information learned from presentations from potential defendants.

Options Include:

- Do not take the case
- Take the case, serve as supervising attorney, and...
 - have in-house attorneys do all the work, or
 - hire outside attorneys to do all the work

Unfair Trade Practice and Antitrust Cases

Private Action

v.

Enforcement Action

Brought by:

- Private Citizen
- State or Local Entity
 - Agency can be represented by AG

- Attorney General's Office

Requires:

- Citizen suffer an actual loss, injury, or damage, and
- Causal connection between the injury-in-fact and the complained of unfair or deceptive acts or practices.

Class actions are not permitted.

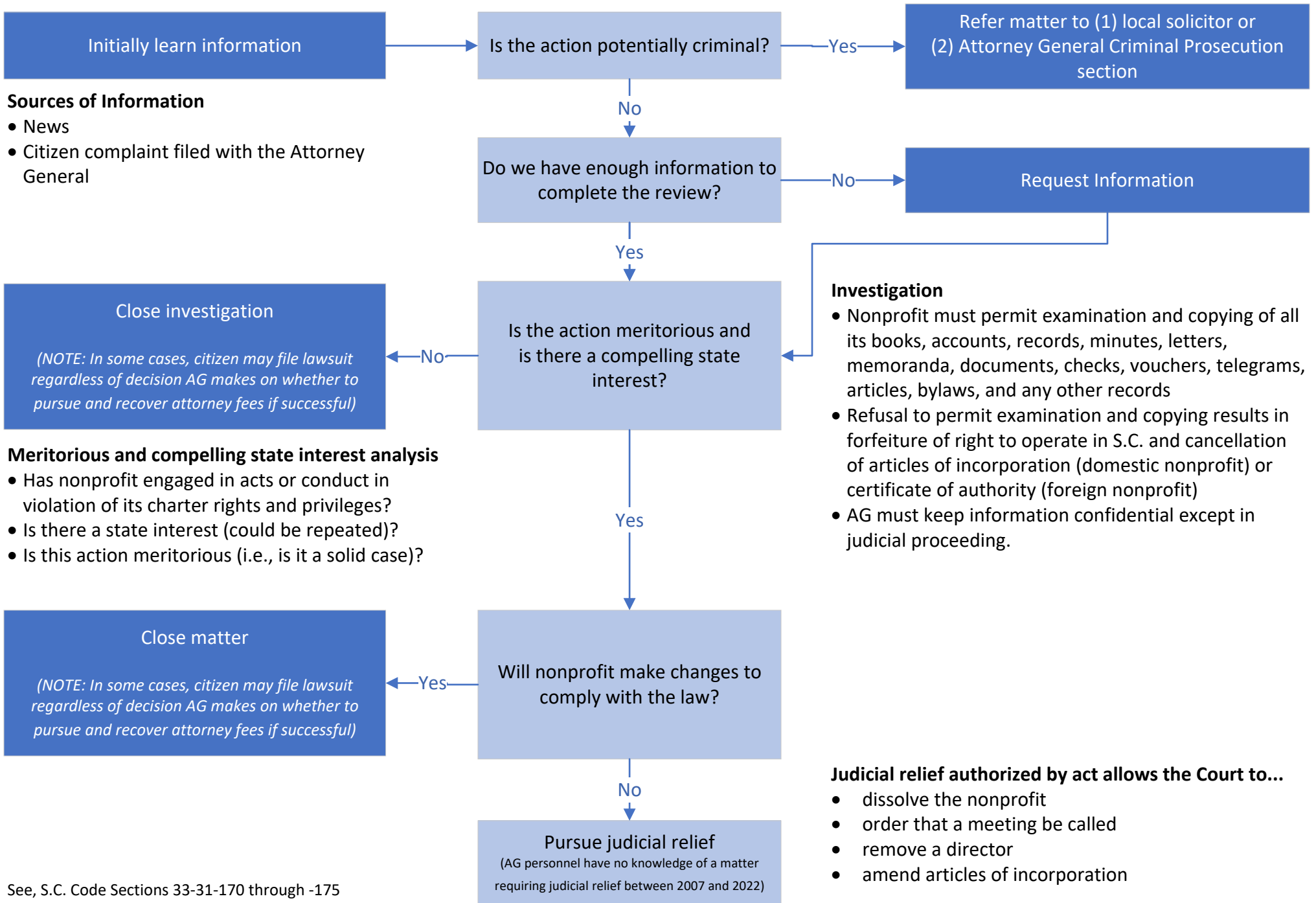
- Public interest be involved, and
- Showing of a “tendency to deceive”
 - Requisite capacity to deceive can be found without evidence that anyone was actually deceived

Example:

It is in the public interest to prevent the use of false and misleading statements in the conduct of business ... [and] actual deception need not be shown; a finding of a tendency to deceive and mislead will suffice.”

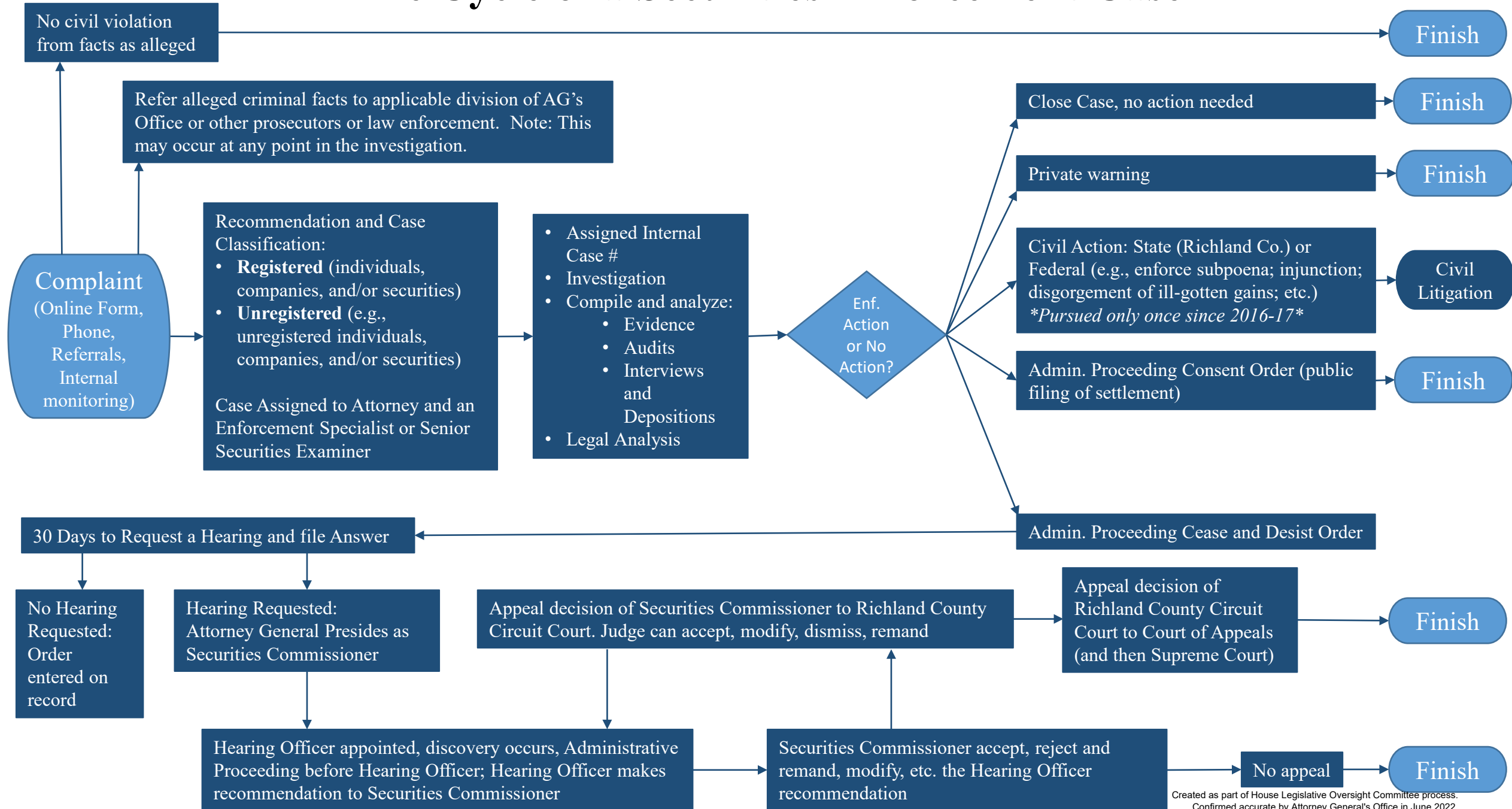
S.C. Nonprofit Corporation Act Investigations

Attorney General's Office analysis of whether to move forward with investigation



See, S.C. Code Sections 33-31-170 through -175

Life Cycle of a Securities Enforcement Case





Securities Enforcement

The Life Cycle of a Securities Enforcement Case:

1. Opening a Case

- Division receives
 - referral from Securities Registration, SEC, another state, or FINRA; or
 - tip or complaint from the general public or media.
- Division determines that a case is warranted and creates a case file.
- A “case” includes investigations where no formal action occurs.
- Division generally categorizes a case as one of the following:
 - i. “private placement” case (a case involving an unregistered securities offering to limited pool of investors);
 - ii. “unregistered” case (a case involving unregistered individuals and/or securities); or
 - iii. case involving a registered respondent – an IA or IAR, BD or BD Agent.
- A primary Attorney and an Enforcement Specialist or Senior Securities Examiner are assigned to the case.



Securities Enforcement

The Life Cycle of a Case:

2. Conducting Investigation / Audit

- The Division gathers documents, conducts interviews, processes data, etc.

3. Next Steps

- The Division determines whether to close a case or whether the case warrants further action – either public or private action.
- If warranted, the Division issues a public Order, which is published on OAG's website.
- Public Orders include Orders to Cease and Desist, Administrative Orders, and Consent Orders.
- Orders can impose licensing sanctions, penalties, fees and costs associated with the Division's action, etc.



Securities Enforcement

The Life Cycle of a Case:

4. Hearing Process

- A Respondent can resolve a case by entering into a Consent Order—a settlement—which waives the right to a hearing.
- If a Cease and Desist or Administrative Order is issued, a Respondent has 30 days to answer the Order and request a hearing.
- If a hearing is not requested, the Order is final by operation of law.
- If a hearing is requested, the Attorney General as Securities Commissioner will hear the action or will assign a hearing officer to oversee the litigation and make a recommendation to the Securities Commissioner.
- The Securities Commissioner will make a final determination and issue a final order. The final Order can impose licensing sanctions, penalties, fees and costs associated with the Division's action, etc.
- The final Order can be appealed.

Money Services Division

Purpose of Services Outlined in Law

- Protect the interests of South Carolina consumers who use a money service business, including money transmitters and currency exchangers (“MSB”) by ensuring the overall financial condition of the MSB is sound and the MSB is properly monitoring transactions in an effort to deter the occurrence of money laundering, terrorist funding, and/or other financial crimes.
- The Anti-Money Laundering Act, S.C. Code Ann. §35-11-100 et seq. (the “Act”) also includes certain provisions related to criminal money laundering-related activities that, along with revisions to Section 14-7-1630 (A) of the Code, expand the jurisdiction of the state grand jury to include a crime related to a violation of the Act.

The Attorney General is the Commissioner over certain money services businesses, as provided in the Act.

Types of Licenses

Money Transmission Licenses, see S.C. Code Sections 35-11-200 thru -225; Regulation 13-2201 and -2202

Currency Exchange Licenses, see S.C. Code Sections 35-11-300 thru -315; Regulation 13-2301

Money Transmission License (good for 1 year)

The OAG began accepting applications in FYE 6/30/18. Application and licensing fees collected are transferred to the General Fund. Money transmission began over 150 years ago as a way of sending money across the country via telegraph network.

Western Union offices still exist, but people use on-line money transmitter apps to pay bills, purchase items, and send funds domestically or abroad. Examples of money transmitters include **MoneyGram, PayPal (which also owns Venmo) and Square**, as well as digital currency (**crypto currency**) companies such as **Coinbase and Bittrex**.

Initial application in S.C. (Service #53) - Review the application for persons wishing to register in S.C. and issue registration approval.

Year	Businesses Served	Registration Approvals	Cost to Agency per unit
2017-18	46	0	0
2018-19	68	99	\$657.57
2019-20	26	26	\$1,235.83

Accept license from another state (Service #54) - Review the application for persons licensed in at least one other state which has enacted the Uniform Money Services Act and wishing to engage in money transmission in S.C. Issue approval, if appropriate.

Year	Businesses Served	Approvals	Cost to Agency per unit
2017-18	11	0	0
2018-19	9	19	\$722.25
2019-20	0	0	0

Renewal (Service #55) - Review the renewal application and issue approval.

Year	Businesses Served	Renewals	Cost to Agency per unit
2017-18	0	0	0
2018-19	0	0	0
2019-20	105	105	\$95.11

Currency Exchange License (good for 2 years)

Purpose is to provide the ability for a person to apply for a currency exchange license if they do not also conduct money transmission. Fees collected are transferred to the General Fund. Since the OAG began accepting applications in FYE 6/30/18, two businesses have applied for this license. One was approved; one was withdrawn. No renewals were processed in FYE 6/30/19.

The licensed currency exchanger is **Dartmouth Capital LLC**.

Initial application in S.C. (Service #56) - Review the application for persons wishing to register in S.C. and issue registration approval.

Renewal (Service #57) - Review the renewal application and issue approval.

Changes required to report

See, S.C. Code Sections 35-11-510 and -515

Material change in licensee application (Service #60) - Review material changes in information provided in a licensee's application.

Change in control (Service #61) - Review notices of proposed changes in control filed by a licensee; issue comments, as necessary; and approve if comments are satisfied. It is important for safety and soundness reasons for the Commissioner to properly assess the background of the persons who wish to acquire control.

Exams

Annual and Joint Exams (Service #58 and #59) – Section 35-11-500 and -505

Commissioner has authority to conduct an annual exam of a licensee or its authorized delegates, or at any time an unsafe or unsound practice or violation of the law is suspected. Also, regulators may conduct joint exams and coordinate other actions for efficiency.

The AG annually reviews the licensee's compliance with financial statement reporting requirements, minimum net worth standards, and surety bond requirements. The AG also works with MSB on behalf of their S.C. customers to resolve customer complaints. The AG plans to examine the sole S.C. based MSB in the 4th quarter of 2022. Given resource restrictions, the office is not currently performing examinations of MSBs headquartered in other states.

Disciplinary actions permitted against licensees

See, S.C. Code Sections 35-11-700 thru -720, -735, -800 and -805

Suspension or Revocation of a License (Service #62) - Suspend or revoke a license or order a licensee to revoke the designation of an authorized delegate.

Suspension or Revocation of Authorized Delegate (Service #63) - Issue an order suspending or revoking the designation of an authorized delegate.

Cease and Desist Orders (Service #64) - Issue an order requiring a licensee or authorized delegate to cease and desist from violating the law. The Commissioner has limited authority to issue orders to cease and desist without prior notice and hearing procedures.

Civil Penalties (Service #66) - Assess civil penalties against a person who violates the money services laws.

Appointing a Receiver (Service #69) - Apply to the Richland County Circuit Court for the appointment of a receiver when the licensee is unable to pay its obligations generally as they become due.

Enforcement Hearings (Service #70) - Provide notice and opportunity to be heard and hold such hearings when the Commissioner suspends or revokes a license; issues an order to cease and desist; suspends or revokes the designation of an authorized delegate; or assesses a civil penalty. Generally, the Commissioner is required to provide notice and have a hearing before taking or making final certain disciplinary or enforcement actions against a licensee or its authorized delegates.

Consent Orders (Service #65) - Negotiate and enter into a consent order to resolve an ongoing matter. This allows the Commissioner a flexible means of achieving enforcement goals while minimizing the administrative and fiscal burden of lengthy administrative proceedings and hearings.

Disciplinary actions permitted against NON licensed individuals

See, S.C. Code Section 35-11-730

Order to show cause prior to cease-and-desist order (Service #67) - Issue an order to show cause as to why an order to cease and desist should not be issued. The cause shown in a reply may provide circumstances that preclude issuing such an order.

Restraining Orders (Service #68) - Petition the Richland County Circuit Court for a temporary restraining order.

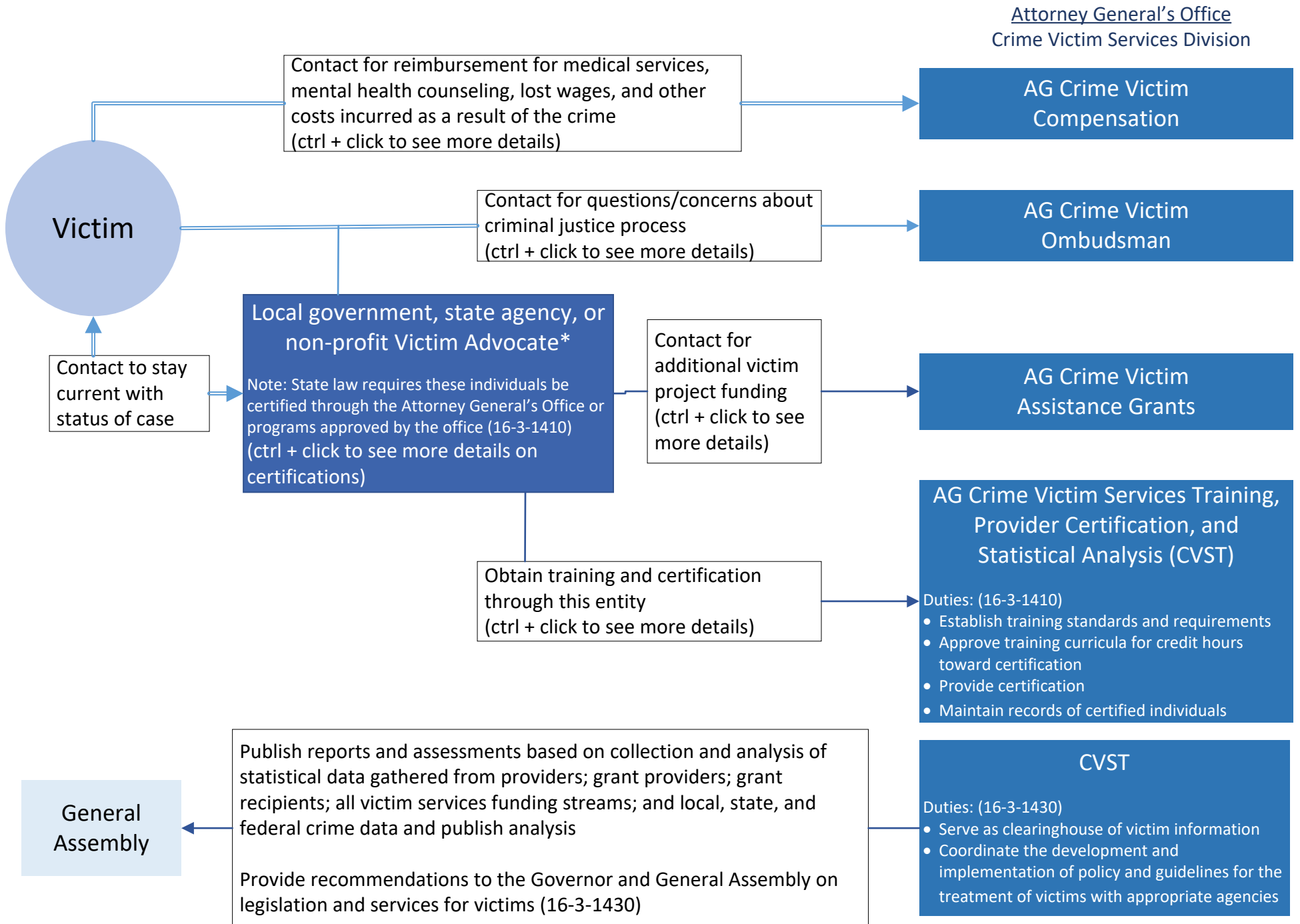
Guidance

See, S.C. Code Section 35-11-815; Regulation 13-2801

Interpretive Orders (Service #71) - Issue interpretive orders to assist licensees in interpreting and complying with the South Carolina Anti-Money Laundering Act.

Year	Businesses Served	Approvals	Cost to Agency per unit
2017-18	0	0	0
2018-19	Unknown	4	\$5,154.14
2019-20	Unknown	2	\$0

Individuals on whom victims rely

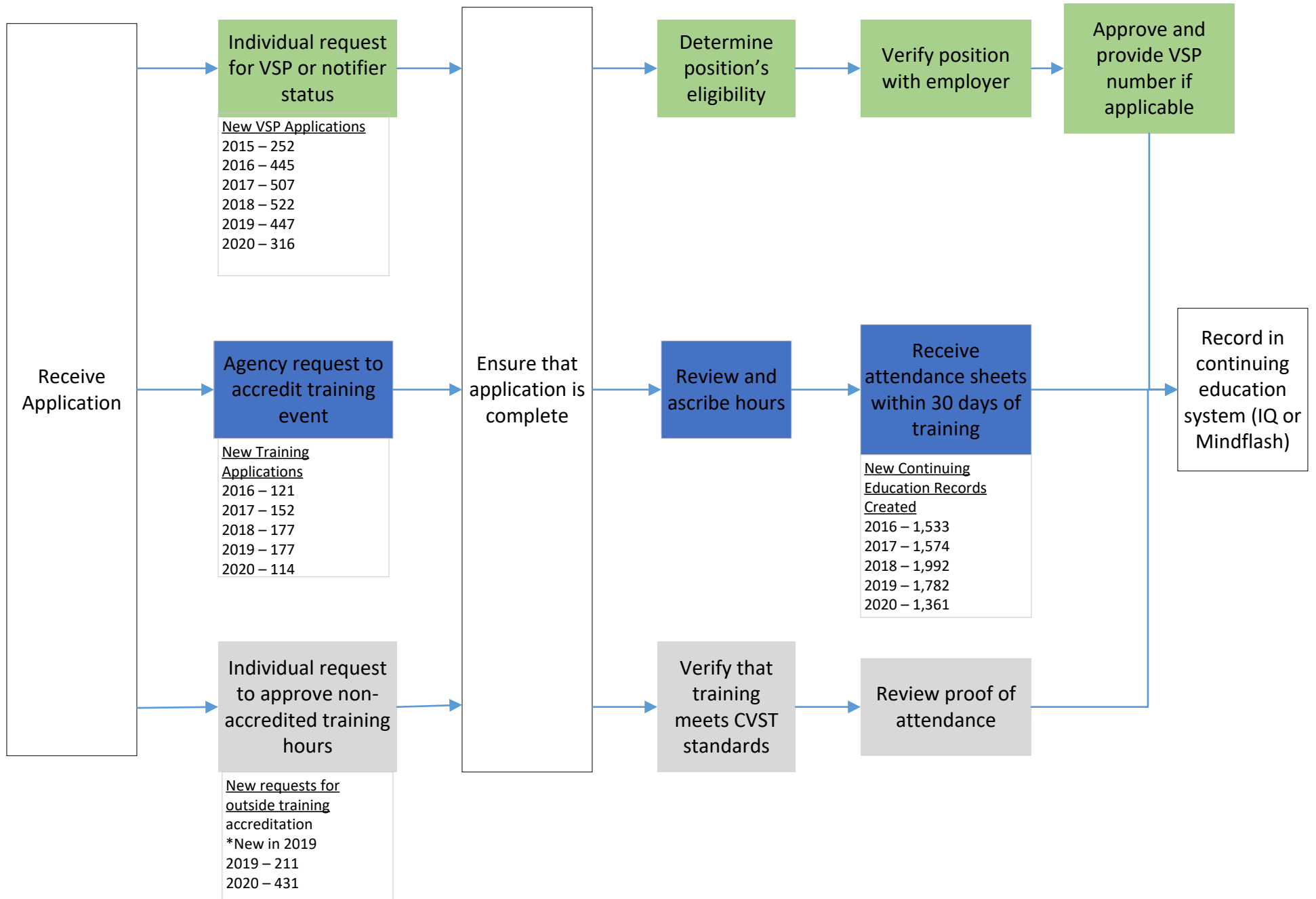


Certifications Applicable to Those Who Serve Crime Victims

Category	Where employed	Description	Job duties include	Training Requirements
Government Notifier / Support Staff (VSPN)	Summary Court or Detention Center	Any S.C. Summary Court (i.e., Municipal Court or Magistrate’s Court) or Detention Center (i.e., City or County Jail)	Positions that provide notifications to crime victims as mandated by law	Continuing: 2-hour approved training every other calendar year
Victim Service Provider (VSP)	Local Government or State Agency (other than summary court or detention center)	Any Local government (Police Departments, Sheriff’s Offices) Any State agency (Solicitors, SC Department of Corrections, SC Probation, Parole and Pardon Services, SC Department of Juvenile Justice)	Any position that provides victim assistance as mandated by S.C. law	Initial: 15 hrs. of core training in first year employed Continuing: 12 hrs. of approved education every calendar year (VSPs can carry forward up to 12 hours of continuing education each calendar year)
Victim Service Provider (VSP)	Non-Profit (State recognized Non-Governmental Organization (NGO) whose mission is in victim services)	<ul style="list-style-type: none"> •Mission is victim assistance or advocacy •Incorporated in, holds a certificate of authority in, or is registered as a charitable organization in, S.C. •Privately funded or receives funds from federal, state, or local governments to provide services to victims 	VSP: Provide victim assistance VSP-HT: Provide direct services to victims of human trafficking and recognized member of regional human trafficking taskforce or otherwise approved	VSP Initial: 15 hrs. of core training in first year employed VSP-HT Initial: 15 hrs. of specialized core training in human trafficking in first year employed Continuing: 12 hrs. of approved continuing education required each calendar year (VSPs can carry forward up to 12 hours of continuing education each calendar year)

Note: A Victim Service Provider is an individual, not an entity or organization.

Crime Victim Service Provider Certification and Accreditation Process



Crime Victim Assistance Grants

(Available to those who serve victims, not directly to victims)

Administered through the
Attorney General's Office's
Division of Crime Victim Services

Federal Victims of Crime Act (VOCA)

- *Source:* Federal Fines, Fees, and Assessments
- *Stability:* Fluctuates greatly
- *Law:* 1984, Public Law 98-473
- Avg. number of projects per year FY 2018-2022: 110

Program Priority Areas

- Sexual Assault
- Spousal Abuse
- Child Abuse and Neglect
- Underserved Victims of Violent Crime (e.g., homicide survivors, elder abuse)

Federal Violence Against Women Act (VAWA)

- *Source:* Federal Appropriation
- *Stability:* Stable and consistent
- *Law:* 1994, Title IV of the Violent Crime Control and Law Enforcement Act, Public Law 103-322
- Avg. number of projects per year FY 2018-2022: 28

Program Priority Areas

Projects that primarily focus on female victims of

- Domestic Violence
- Sexual Assault
- Dating Violence
- Stalking over the age of 11

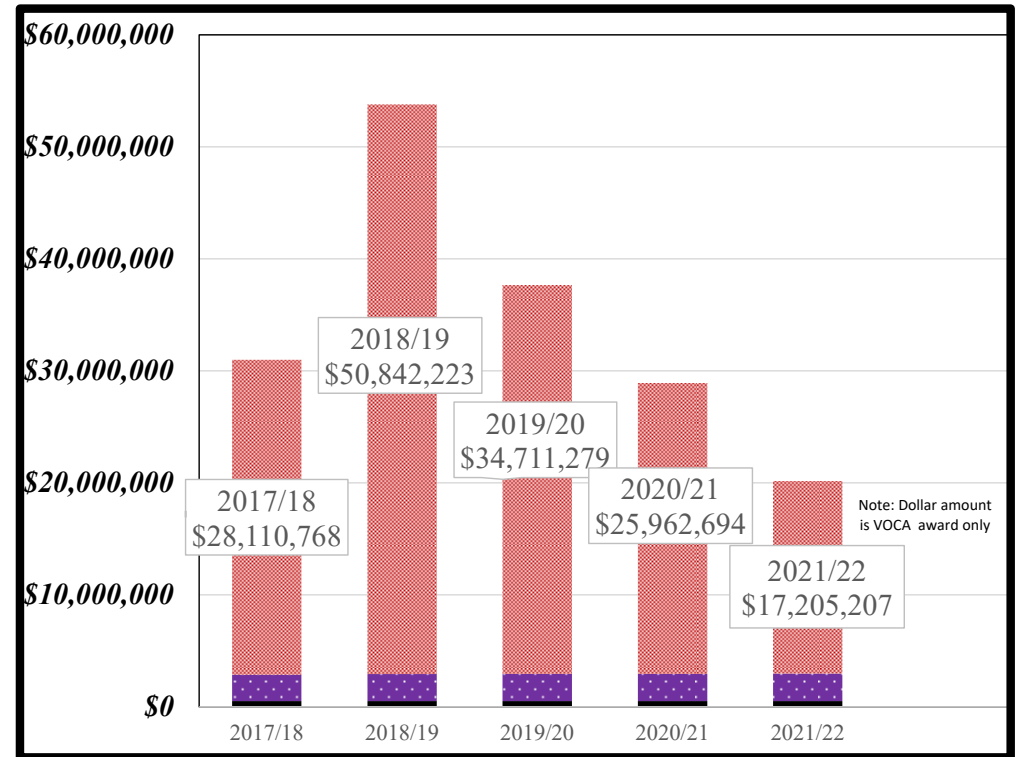
Note: There are 20 priority purpose areas Pursuant to 34 U.S.C. 10441(b)

State Victim Assistance Program (SVAP)

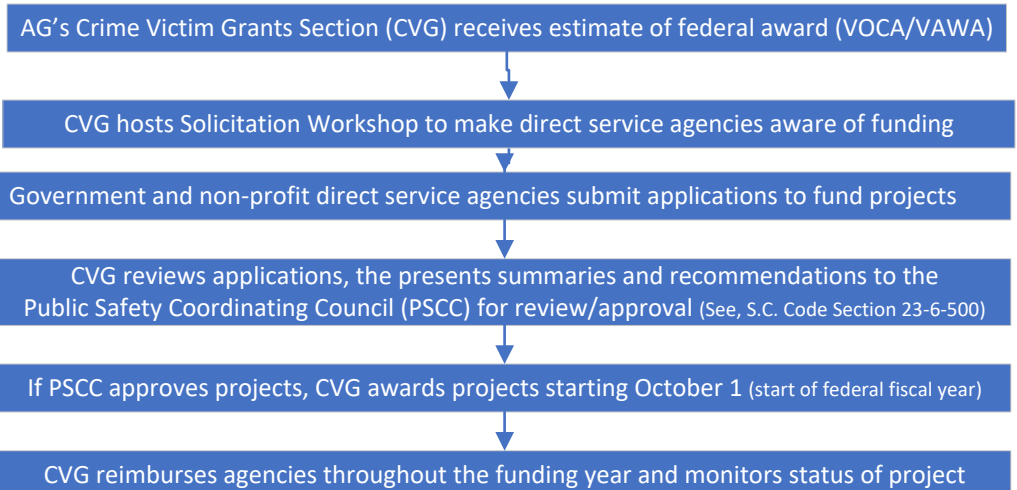
- *Source:* Other funds from SCDC inmate work release pay; and solicitation of grant funding from governmental entities and non-profits
- *Stability:* Stable and consistent
- *Law:* 1986, Omnibus Criminal Justice Improvements Act; 2017, S.C. Crime Victim Services Act
- Avg. number of projects per year FY 2018-2022: 7

Program Priority Areas

- Sexual Assault
- Spousal Abuse
- Child Abuse and Neglect
- Underserved Victims of Violent Crime
- Training



Steps in Grant Process



Process for Crime Victim to Claim Compensation

(Receipt of application to first payment)

Step 1 Intake Process

- Review/Screen Application
- Create Claim
- Obtain Documents

Step 2 Eligibility Process

- Eligibility Review
- Follow-up
- Contact Victims/Claimants
- Make Eligibility Recommendation

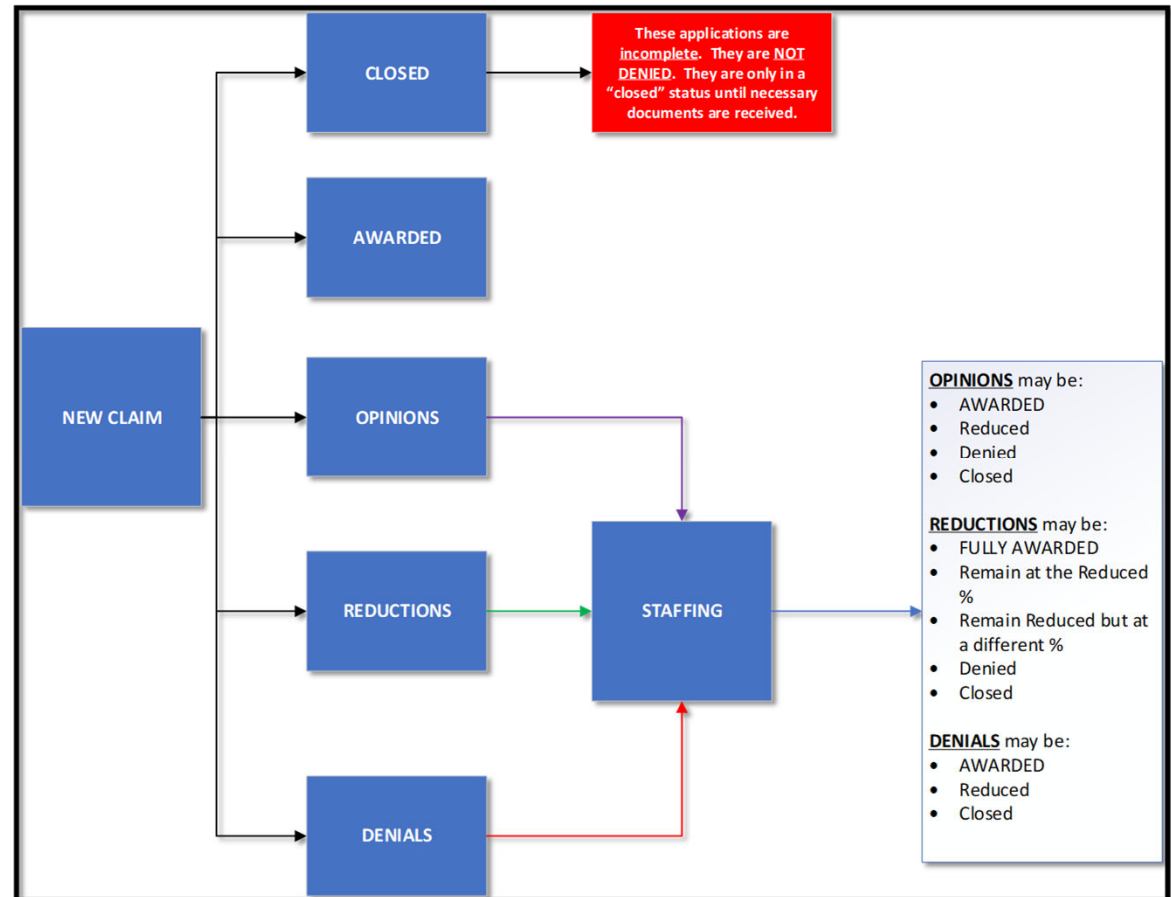
Step 3 Restitution/Subrogation Process (Compensation Recovery)

If Applicable:

- Contact Attorneys
- Follow-up
- Contact Victims/Claimants

Step 4 Payment Process

- Obtain Health Insurance Information
- Obtain Proper Medical and Lost Wages Document(s)
- Contact Providers/Victims/Claimants
- Process Payments for Eligible Claims



Crime Victim Ombudsman Processes

Referral, Assist, and Formal Complaints

