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Commission on Prosecution Coordination

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September 13, 2018

The Honorable Edward R. Tallon, Sr., Chairman  
Law Enforcement and Criminal Justice Subcommittee  
S.C. House Legislative Oversight Committee  
Post Office Box 11867  
Columbia, South Carolina 29211

Dear Chairman Tallon:

Thank you for the opportunity to share information relating to the South Carolina Commission on Prosecution Coordination's mission, goals and activities with the Law Enforcement and Criminal Justice Subcommittee of the House of Representatives Legislative Oversight Committee. We truly appreciate the interest you have demonstrated in assisting the Commission, and the time you have committed to studying the work we do. Set out below are the Commission's responses to the subcommittee's requests for additional information dated August 27, 2018. We have included the subcommittee's headings and questions.

**Statistics and Costs**

**1. What would be required for solicitors to provide, on an annual basis, the total number of prosecutions statewide, and by county?**

Each circuit would need to procure and implement a cloud-based case management system that supports increased data storage demands; offers information sharing capabilities between other circuit solicitors' offices, as well as defense attorneys and law enforcement; enables online access to case files in court and at other locations outside the office; and interfaces with the Commission on Prosecution Coordination office. Efficient case management systems have the ability to distinguish between the number of cases prosecuted annually and the number of warrants issued. Solicitors define a "case" as an "event" so that multiple warrants can be grouped together as one case if they were issued in connection with the same stream of events. The interface of this data with the Commission's office would allow reports to be generated on a host of annual statistical information and performance measures, including the total number of active cases by county, circuit and statewide.

- 2. Please provide a breakdown of how much it costs to prosecute different types of cases, similar to the information the S.C. Commission on Indigent Defense provided the Committee, which is available on the Committee's webpage, under "Indigent Defense, Commission on," and "Products and Services of Agency."**

The average expenses incurred for the prosecution of different types of cases are not identifiable. This is primarily due to the differences in the manner public defenders and prosecutors are required to process such expenses. Public defenders must ask for the judge's approval to hire experts and incur other trial expenses and must obtain an order for the requested expenses to be paid by the Commission on Indigent Defense from available revenue sources. The Commission on Indigent Defense, then, is responsible for distributing the money associated with trial costs and must balance all court approved expenditures with actual costs. The Commission on Prosecution Coordination, however, does not pay for trial expenses or provide reimbursement to prosecutors. Rather, all expenses incurred by a prosecutor are paid from the Circuit Solicitor's budget. Additionally, an average of costs incurred for all of a particular case type is not a true measure of a typical case because costs such as expert testimony vary so widely from case to case, even for the same type of cases.

### **Evidence Data**

- 3. Please update the chart with each law enforcement department currently utilizing a cloud based evidence database, by listing each type of cost (e.g., storage of body camera video; user fees to upload electronic evidence; etc.) separately so an accurate comparison of costs may be made.**

While there is currently no update the Commission can offer to the referenced chart, only four circuit solicitors have paid for and are currently providing access to a cloud-based evidence server for transferring and storing discovery obtained by law enforcement: the Second, Fourteenth, Fifteenth, and Sixteenth Judicial Circuits. Some solicitor offices utilizing cloud-based evidence storage are in the initial phases of developing the capabilities to provide access to law enforcement agencies within their jurisdictions. Other solicitor offices do not own or have a license to a cloud-based evidence server; rather, they have permission to access specific evidence through an online link provided by law enforcement agencies who have purchased cloud-storage from their own budgets. The other solicitor offices that own or hold a license to a cloud-based evidence tool provide access to the law enforcement agencies within their jurisdictions at no cost to these law enforcement agencies, and all costs are inclusive with the ownership of or license to the cloud server; therefore, the cost of the server in these circuits are not tied to a law enforcement agency's usage. For the law enforcement agencies that have obtained a cloud-based evidence tool on their own, the Commission does not have access to the finances of these agencies but can request, through the Circuit Solicitorslaw enforcement entities with web-based storage any information they may have distinguishing each type of cost associated with their evidence storage.

### **Distribution of Information**

- 4. In regards to the agency serving as a clearinghouse for distribution of information and publications to solicitors' offices the agency indicates in its Program Evaluation Report that the General Assembly can assist it by enacting legislation that would allow for the sharing of transcripts of court proceedings without additional payment to or permission from state-employed court reporters once an initial copy of the transcript has been purchased. Can you please further explain the issue this would solve? Also, please list potential pros and cons for all parties involved, including the court reporters.**

Initially, the issue raised was one of cost and potential savings that may be realized through information sharing between the parties involved in a court proceeding, specifically as to transcripts. After exploring this matter further with other prosecution entities, however, the Commission does not feel that the cost of courtroom transcripts is a primary concern and would focus, instead, on the challenges solicitors face regarding the retention period for retaining court recordings. The retention period for and, therefore, the availability of recordings of court proceedings is established by the Supreme Court of South Carolina in Rule 607(i), SCACR:

**Retention of Tapes.** Except as provided below, 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. If the proceeding was a hearing or trial which lasted for more than one day, the time shall be computed from the last day of the hearing or trial. In any proceeding which has been transcribed on or after March 1, 2017, the court reporter shall retain the primary and backup tapes which have been transcribed for a period of at least one (1) year after the original transcript is sent to the requesting party, to allow any party to challenge the accuracy of the transcription. If no challenge is received by the court reporter within the one (1) year period, the tapes may be reused or destroyed.

Challenges arise when the period within which defendants can pursue an appeal or a collateral attack upon a conviction exceeds the retention period for recordings of court proceedings. Some conviction challenges pursued by defendants have no time limitation. If such a challenge is made after the retention period for court proceeding recordings have ended, access is lost to court proceedings necessary to determine the relevancy of any new evidence or to review the actions made in court.

A court recording is as essential as a piece of evidence if a defendant pursues an action or makes a motion regarding a case after the expiration of the retention period for the recording. In this context, the General Assembly may wish to consider conforming the retention period for court recordings with the retention period for evidence as established in S.C. Code Section 17-28-320(C), the "Preservation of Evidence Act", which sets forth

a retention period for evidence related to twenty-four enumerated offenses that is sufficient in duration to cover the time period during which a defendant may challenge a conviction.

### **Legal Education, Training, and Assistance**

- 5. In regards to the agency developing, coordinating, and conducting legal education and other training for solicitors' offices, has the agency considered conducting any type of testing at the end of training sessions as a way to gauge the level of knowledge and understanding gained by those attending the training? If no, how does the agency objectively determine whether the training it offers is effective?**

In order for lawyers, law enforcement officers, and victim advocates to receive continuing education credits for attendance at a training, their respective accrediting agencies – the Supreme Court of South Carolina's Commission on CLE and Specialization for lawyers, the South Carolina Criminal Justice Academy for law enforcement officers, and the Office of the South Carolina Attorney General's Department of Crime Victim Services Training, Provider Certification, and Statistical Analysis for victim advocates – must approve the trainings; however, none of these entities require that testing be conducted.

The Commission does not conduct testing following its training sessions; however, the Commission routinely receives feedback from the elected solicitors and their staff on the quality and effectiveness of the training provided. The Commission also seeks to objectively analyze the effectiveness of the training offered by requiring class participants to complete a survey evaluating the speakers, content and material, and to offer comments or make suggestions for improvements or future speakers. The evaluation surveys utilized by the Commission are similar to the surveys utilized by South Carolina Bar CLE Division.

- 6. In the agency's July 16, 2018, letter, it states one of the non-profits established by the fourteenth judicial circuit (Justice Institute) was created to develop training programs for prosecutors and law enforcement. Does SCCPC approve the curriculum for any training provided at individual circuit solicitor offices?**

No. However, in order for lawyers and law enforcement officers to receive continuing education credits for attendance at a training, their respective accrediting agencies – the Supreme Court of South Carolina's Commission on CLE and Specialization for lawyers, and the South Carolina Criminal Justice Academy for law enforcement officers – must approve the training. If a solicitor asks the Commission to co-sponsor a training, co-sponsorship is conditioned upon the Commission's approval of the programming.

- 7. In regards to providing legal assistance and research, does the agency provide this assistance and research to any law enforcement entity, state, county, or local, that contacts the agency?**

The Commission often provides assistance to entities; however, neither the Commission nor its staff can provide legal advice.

- 8. When prosecutors contact the agency for legal assistance, are the questions recorded or aggregated to assist in training? (e.g., frequently asked questions section of a training book or on the agency's new website)**

No.

- a. Could tracking this type of information be more easily accomplished if there was a way for individuals to submit questions through an online form on the agency's website? If so, has the agency considered including a feature like this in its new website?**

The Commission plans to explore the ability to track (where appropriate) questions, information requests, and responses through the acquisition and implementation of its proposed interactive website, which the Commission will be seeking procurement approval for, contingent on the allocation of funding by the General Assembly.

### **Domestic Violence and Driving Under the Influence**

- 9. Please explain the purpose of the Domestic Violence Fatality Review Committees?**

As provided by the General Assembly, the purpose of the Committees is "to assist local agencies in identifying and reviewing domestic violence deaths, including homicides and suicides, and facilitating communication among the various agencies involved in domestic violence cases pursuant to the provisions of this chapter or any other relevant provision of law." S.C. Code Section 16-25-720(A).

- a. What data is the agency tracking to evaluate the outcomes obtained?**

The Commission is not tracking any data or evaluating outcomes, as that duty falls under the Domestic Violence Advisory Committee created pursuant to SC Code Section 16-25-310, over which the Commission does not have oversight authority.

- 10. The agency notes one of its successes is updating procedures and resources to improve the prosecution of domestic violence cases, including efforts to have all domestic violence cases prosecuted by attorneys rather than law enforcement officers. Does the agency have any data which shows better outcomes or efficiencies have been gained by having dedicated prosecutors for domestic violence?**

We do not. Gathering data that shows better outcomes and efficiencies may not be possible where the goal is justice rather than guilty verdicts. A prosecutor's duty is to ensure that the justice is achieved. Justice may require prosecuting an individual to the fullest extent of the law, dismissing charges, or something in between. Having prosecutors deal with these cases means that they are being handled in accordance with prosecutor standards and attorney rules of ethics, and further ensures greater consistency in the administration of

justice. Having dedicated prosecutors for these cases also reduces the number of court appearances law enforcement officers must make (which is often following a full shift while off-duty) and relieves officers from the burden of legal analysis and decision-making so they are able to focus their time and focus at work on matters within the scope of their expertise and training.

**11. What evidence, if any, suggests having attorneys prosecute all driving under the influence cases, instead of law enforcement officers, would achieve better outcomes or efficiencies?**

While data may not exist that reveals whether better outcomes and efficiencies are being achieved where the goal is justice rather than guilty verdicts, courtroom observations of DUI cases prosecuted by attorneys reveal an improvement in the fairness employed and the legal soundness of arguments made at trial. A prosecutor's duty is to ensure that justice is achieved, which is not always a guilty plea or verdict. Justice may require prosecuting an individual to the fullest extent of the law, dismissing charges or something in between. Having prosecutors deal with these cases means that they are being handled in accordance with prosecutor standards and attorney rules of ethics, and further ensures greater consistency in the administration of justice. Having dedicated prosecutors for these cases also reduces the number of court appearances law enforcement officers must make (which is often following a full shift while off-duty) and relieves officers from the burden of legal analysis and decision-making so they are able to focus their time and focus at work on matters within the scope of their expertise and training.

**12. Does the agency interact with the Law Enforcement Training Council to ensure best practices are taught to law enforcement officers regarding matters involving domestic violence and driving under the influence?**

No. The Commission does, however, interact with the South Carolina Criminal Justice Academy to ensure best practices are taught to law enforcement officers regarding matters such as domestic violence and driving under the influence.

**Diversions Programs**

Juvenile

**13. The Office of the Adjutant General has a program called Youth Challenge which could be utilized as a diversion program for juveniles. Would the agency be willing to share information about this option with solicitors during the agency's annual training sessions?**

Yes. The Commission would welcome the opportunity to have the Adjutant General's office present information about this program to prosecutors.

Traffic Education

**14. Why is the agency, instead of the S.C. Department of Motor Vehicles or Highway Patrol, creating and overseeing the traffic education programs?**

Solicitors are responsible for all diversion programs, and traffic education programs are diversion programs.

**a. Are the programs taught by state employees or is there a list of approved programs that are provided by private vendors? If there is a list of approved programs, how does the agency determine which programs to approve?**

Programs are selected by each circuit solicitor based on regional needs utilizing a variety of public and private resources.

**15. What outcomes does the agency hope to achieve through the traffic education programs, and how is it evaluating whether those outcomes are being obtained?**

As with other diversion programs, the Commission hopes that the Traffic Education Programs offered will allow eligible offenders to avoid criminal convictions and protect the public by educating participants on traffic safety laws.

S.C. Code Section 17-23-360 requires that the Commission collect and include in a report the following data:

- the total number of participants by original traffic-related offenses;
- the total number of participants that successfully completed the traffic education program;
- the total amount of fees collected; and
- the total revenue remitted to the municipalities, counties, and Office of the State Treasurer for the state's fiscal year.

Additionally, S.C. Code Section 17-22-1120(C) requires that the Commission collect and include in a report the following data on all diversion programs:

- the number of persons who apply for a program;
- the number accepted;
- the number of those accepted who successfully complete within a 12-month period;
- the number of those accepted who fail to successfully complete within a 12-month period but are still continuing in the program;
- the number of those accepted who unsuccessfully complete within a 12-month period and who have been prosecuted on the referring charge(s); and

- the number of participants whose program fees were partially or fully waived for indigence.

Data is collected and reported to comply with the statutory requirements of S.C. Code Section 17-23-360 and Section 17-22-1120(C), but this data does not provide evidence that can be used to evaluate the success of Traffic Education Programs or the effectiveness of diversion programs in reducing recidivism rates.

#### Alcohol Education

**16. Since the agency indicated in the Program Evaluation Report that it is not evaluating the outcomes for alcohol education programs, how does the agency, or General Assembly, know if the time and resources being invested in the programs are effective?**

S.C. Code Section 17-22-1120(C) requires that the Commission collect and include in a report the following data on all diversion programs, including alcohol education programs:

- the number of persons who apply for a program;
- the number accepted;
- the number of those accepted who successfully complete within a 12-month period;
- the number of those accepted who fail to successfully complete within a 12-month period but are still continuing in the program;
- the number of those accepted who unsuccessfully complete within a 12-month period and who have been prosecuted on the referring charge(s); and
- the number of participants whose program fees were partially or fully waived for indigence.

Data is collected and reported to comply with the statutory requirements of S.C. Code Section 17-22-1120(C), but this data does not provide evidence that can be used to evaluate the effectiveness of the programs in reducing recidivism rates.

**a. What outcomes does the agency hope to achieve through the alcohol education programs?**

As with other diversion programs, the Commission hopes that the alcohol education programs offered will allow eligible offenders to avoid a criminal conviction and record, while protecting the public by addressing the underlying causes of substance abuse.

**17. While the alcohol education programs must be created in consultation with the S.C. Department of Alcohol and Other Drug Abuse Services (DAODAS), why is DAODAS not creating and overseeing the entire program, then just sending your agency whatever data it needs?**



Solicitors are responsible for all diversion programs, and alcohol education programs are diversion programs.

- a. Are the programs taught by state employees or is there a list of approved programs that are provided by private vendors? If there is a list of approved programs, how does the agency determine which programs to approve?**

Programs are selected by the circuit solicitor based on regional needs and are taught within each circuit by state, local or municipal employees or by other qualified individuals recommended by DAODAS.

- 18. How does the information required for the annual report on statewide diversion programs show whether or not the diversion programs are helping to reduce recidivism, the purpose for which the applicable statutes were created?**

S.C. Code Section 17-22-1120(C) requires that the Commission collect and include in a report the following data on all diversion programs:

- the number of persons who apply for a program;
- the number accepted;
- the number of those accepted who successfully complete within a 12-month period;
- the number of those accepted who fail to successfully complete within a 12-month period but are still continuing in the program;
- the number of those accepted who unsuccessfully complete within a 12-month period and who have been prosecuted on the referring charge(s); and
- the number of participants whose program fees were partially or fully waived for indigence.

Data is collected and reported to comply with the statutory requirements of S.C. Code Section 17-22-1120(C), but this data does not provide evidence that can be used to evaluate the effectiveness of diversion programs in reducing recidivism rates.

- a. Is there any additional information about diversion programs the agency believes may assist lawmakers in determining whether the programs are helping accomplish the purpose for which they were created?**

Information on the actual recidivism rate for participants that successfully complete diversion programs would be an indicator of the success of these programs.

- b. Who is the report provided to each year?**

The report is provided to the Sentencing Reform Oversight Committee, and it is available for public inspection.

### **Essential Resources**

**19. The agency's Objective 3.1.3 is to "provide sufficient resources for staff." What resources for staff does the agency consider essential?**

Technological resources (including computers, productivity software, printers/scanners/copiers, website access and support, Internet research resources such as Westlaw™, remote network accessibility, and tech support); educational resources to ensure that staff is current on issues and trends related to the law and practice (including digital or print publications and in-person and online training opportunities); adequate staff support; sufficient physical workspace; appropriate delegation of authority; and appropriate managerial guidance and oversight.

**a. Does the agency have any regular replacement plans for these resources?**

No. These resources are currently being replaced on an as-needed basis.

**b. Would the agency be open to requesting a specific line item in the budget which addressed only these essential resources?**

The Commission will comply with the directions provided by the General Assembly when allocating state funds for the Commission's use.

### **Agency Recommendations for Law Changes**

**20. Since each of the statutes the agency recommends eliminating in the agency's law recommendations number one through fourteen from the Program Evaluation Report seem slightly different, has the agency reached out to the respective circuit solicitors to confirm the solicitors agree the statutes are no longer needed? If not, please do this before the next meeting.**

The Commission has approved the repeal of the identified statutes and is in the process of confirming with the respective circuit solicitors that these statutes are no longer needed. The Commission will report its findings at the next meeting.

**21. In the agency's law recommendation number fifteen, the agency recommends the General Assembly remove the statutory requirement that the agency provide blank indictments to solicitors' offices because the forms are now generated on the solicitors' computers. Who is responsible for providing the standardized form the solicitors' offices print from their computers?**

Forms are no longer used. Instead, each indictment is created based on the unique elements of the particular crime.

- a. **Upon further consideration, would the agency recommend completely deleting the statute, or revising it to say the agency is responsible for providing the “format” of the standardized indictment form, instead of providing the actual forms?**

The Commission recommends amending S.C. Code Section 1-7-940 to strike subsection (A)(4).

**Responsibilities of Circuit Solicitors**

- 22. Does the Commission, or any individual circuit solicitor, oppose the outlining of circuit solicitor responsibilities in statute, similar to how circuit public defender responsibilities are outlined in S.C. Code Section 17-3-520(B)? (See copy of statute attached) If so, why?**

The nature, extent and number of the responsibilities associated with solicitors, as both elected officials and constitutional officers, differ significantly from those of the public defenders, who are each appointed by the Circuit Public Defender Selection Panel for the judicial circuit being served. Based on the will of the General Assembly, the Commission would work with the legislature to understand the different roles of the Circuit Public Defenders and the Circuit Solicitors.

Please let us know if you, any other member of the Subcommittee or Committee, or legislative staff have any questions or need further information.

Sincerely,



Lisa H. Catalanotto  
Executive Director