

Study of the Attorney General's Office 2022

SC House Legislative Oversight Committee



S.C. House Legislative Oversight Committee



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The purpose of the S.C. House Legislative Oversight Committee's (Committee) work is to determine if agency laws and programs are implemented and carried out in accordance with the intent of the General Assembly and whether they should be continued, curtailed, or eliminated. The Committee's member-driven process enhances the ability of Representatives to make informed decisions about state government and agency responsiveness to the needs of South Carolinians. The process is also a resource for public access to information about the performance of state agencies and their programs.

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Agency Overview: Attorney General's Office

Agency Mission

“

To serve the citizens of the State of South Carolina by providing legal representation of the highest quality to state government entities, by supporting the law enforcement communities and the legal and judicial branches through the legislative process, and by honorably and vigorously carrying out the constitutional and statutory responsibilities of the Attorney General.

”

History and Resources (FY 18-19)

History

1776 – The first State Constitution identifies the Attorney General (AG) and provides that the position is elected by the General Assembly

1868 – Revised State Constitution provides for a general election of the AG

1929 – State and US Supreme Courts affirm the authority of the AG as “the chief law enforcement officer”

1974 – Criminal Appeals section is formed

1978 – Post Conviction Relief actions primarily handled by the Office

1983 – Opinions section is created

1992 – AG statutorily responsible for litigation involving any state entity

1995 – Capital and Collateral Litigation section is formed

2004 – Consumer Protection and Antitrust Division is formed

2017 – South Carolina Crime Victim Services Division is created

Organizational Units

- Legal Services Division
- Opinions Division
- Criminal Division
- Victim Services Division
- Administration Division
- Executive

Employees



275.2
authorized FTEs

Funding



\$78,758,364
appropriated and authorized

Successes and Challenges

Identified by the agency

Successes

- Increasing efficiency and outreach of services to victims after separate state Crime Victim entities were merged into a single division of the AG
- Creating regularly occurring self-evaluation practices
- Upgrading technology hardware and desktop software

Challenges

Current:

- Providing competitive attorney salaries
- Retaining attorneys in the Post-Conviction Relief section
- Funding to implement the S.C. Anti-Money Laundering Act of 2016
- Obtaining a seat on the Commission on Prosecution Coordination

Emerging:

- Raising the salary of the AG which has been stagnant for over 28 years and is less than half that of a circuit solicitor
- Lacking office space to accommodate the current size of the agency
- Aging case management system that needs updating

Committee Overview

Subcommittee Membership

Law Enforcement and Criminal Justice Subcommittee

The Honorable Chris Wooten (chair)

The Honorable Josiah Magnuson

The Honorable Kimberly O. Johnson

The Honorable John R. McCravy, III

Oversight Purpose and Methods

Purpose

To determine if agency laws and programs:

- are being implemented and carried out in accordance with the intent of the General Assembly; and
- should be continued, curtailed, or eliminated.

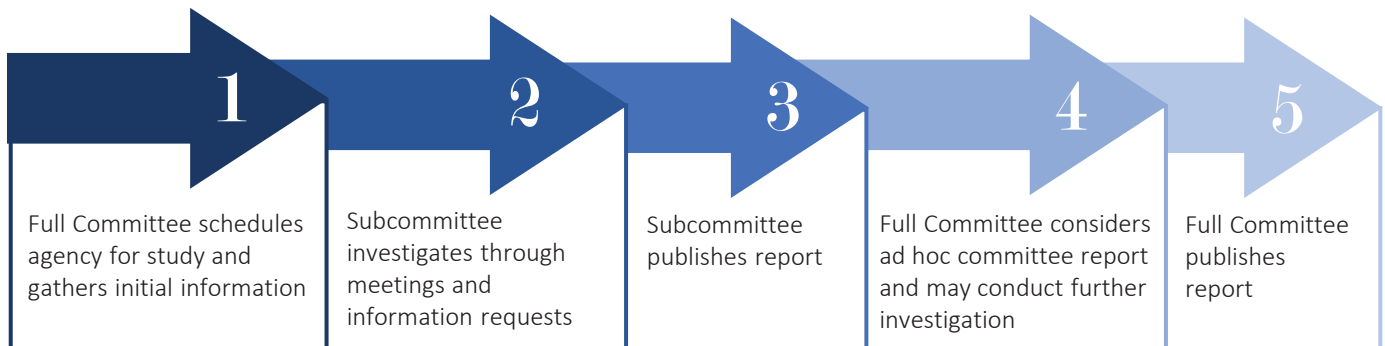
Methods

The Committee and Subcommittee evaluate:

- the application, administration, execution, and effectiveness of the agency's laws and programs;
- the organization and operation of the agency; and
- any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation pertaining to the agency.

S.C. Code Ann. § 2-2-20(B) and (C)

Study Process



Public Input



20

Responses to an online public survey



2

Online comments received



2

Constituents testified

Study Milestones

Meetings

Subcommittee Meetings

3/31/22 6/14/22
4/26/22 6/22/22
5/25/22 8/9/22
6/1/22
6/8/22

Full Meetings

12/9/19
4/8/21

Agency Reports

March 2015

Seven-Year Plan Report

March 2020

Program Evaluation Report

September 2021

FY 2020-2021 Accountability Report

FINDINGS

The House Legislative Oversight Committee’s (Committee) Law Enforcement and Criminal Justice **Subcommittee** (Subcommittee) reviewed the Attorney General’s Office (agency) and **has 17 findings**. The Subcommittee has recommendations to address some, but not all, of these findings. However, the Subcommittee made the findings to note information that a member of the public, or General Assembly, may seek to know or on which they may desire to act.

Understanding and Collaboration

The six findings relating to this topic are summarized in Table 1.

Table 1. Summary of findings relating to understanding and collaboration by stakeholders in the criminal justice system

UNDERSTANDING AND COLLABORATION BY STAKEHOLDERS IN THE CRIMINAL JUSTICE SYSTEM	1. Numerous entities in local and state government are involved in the complex criminal justice system, which may make understanding the system and working to improve its overall efficiency difficult. See Recommendations #1-#5 2. Numerous entities involved in the criminal justice system are striving to improve their internal storage and processes related to data and case management, but it is unclear the extent to which these entities are collaborating with all who are impacted by their data and actions, which may result in missed opportunities to gain efficiencies across the entire system. See Recommendations #1-#4 and #12-13 3. Currently, there is no single online landing page from which an individual can access and/or link to information related to the criminal justice system in the state (e.g., information available on the websites of the different agencies involved in the criminal justice system such as victim information, location of prisons, crime statistics, disposition of charges in multiple counties pertaining to a single defendant, etc.) See Recommendations #1-#5 and #15 4. Presently, there is no central system to confirm law enforcement entities are meeting the constitutional mandate to contact victims. See Recommendation #6 5. Attorney General employees, like employees with many other state agencies, perform numerous tasks requiring the manual re-entry of information, which diverts their time from other tasks. See Recommendations #12 and #13 6. During the study, agency personnel note lack of a clear definition of “unconscionable price” makes prosecution of the state price gouging statute difficult, thereby potentially defeating the intent of the statute.
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FINDING #1. Numerous entities in local and state government are involved in the complex criminal justice system, which may make understanding the system and working to improve its overall efficiency difficult.

The Attorney General's Office is one of the many state agencies and local entities comprising South Carolina's criminal justice system. Over the years, the House Legislative Oversight Committee, with the assistance of the personnel with various state agencies, has developed flow charts illustrating the complexity of the criminal justice system.² Appendix A includes examples of these flow charts. During the study of the Attorney General's Office, additional information (e.g., list of state agencies authorized to prosecute matters) was obtained about the complexities of the system.³

FINDING #2. Numerous entities involved in the criminal justice system are striving to improve their internal storage and processes related to data and case management, but it is unclear the extent to which these entities are collaborating with all who are impacted by their data and actions, which may result in missed opportunities to gain efficiencies across the entire system.

As noted in a data sharing grant application submitted jointly by personnel with three state agencies (i.e., Department of Probation, Parole and Pardon Services; the State Law Enforcement Division; and the Department of Corrections):

One impediment within South Carolina's justice system has been the method by which information is transferred or shared. There is not one coordinated system for sharing data with justice partners that does not involve entering or reentering information from paper copies. The South Carolina Legislature has appropriated funding for some forms of justice information to be automated but that project is expected to extend for years.⁴

Notably, the three agencies were awarded the grant and are working to increase their collaboration efforts.

As expressed in the grant application, the various state and local agencies comprising South Carolina's criminal justice system have individual case management systems with varying levels of interaction with one another. In recent years, funding has been provided by the General Assembly to update case management systems at some agencies (e.g., Commission on Prosecution Coordination, solicitors' offices, and Court Administration). Also, the Attorney General's Office is "seeking to develop a better case management system" that can connect with the different case management systems utilized by solicitors to electronically obtain information, when necessary (e.g., appeals and conflict case transfers).⁵

However, there is still no consensus among prosecutors, courts, and public defenders on (1) how cases will be counted (e.g., defendant, warrant, indictment) or (2) minimum ways in which information on cases will be stored. As noted in the House Legislative Oversight Committee's

2022 study of the Department of Probation, Parole and Pardon Services:

Agencies focus on their own individual operations when purchasing technology (e.g., case management and other data management systems). While understandable, this siloed focus facilitates duplication of efforts across multiple agencies using the same information. If the General Assembly desires increased efficiency across all of state government operations, it will need to create incentives or provide consequences to change current agency purchasing practices.⁶

FINDING #3. Currently, there is no single online landing page from which an individual can access and/or link to information related to the criminal justice system in the state (e.g., information available on the websites of the different agencies involved in the criminal justice system such as victim information, location of prisons, crime statistics, disposition of charges in multiple counties pertaining to a single defendant, etc.).

Currently, there is not a single landing page with an overview of the criminal justice system. For those who do not understand how the criminal justice process works, an overview (i.e., single landing page) may help them know which entity to contact for what information. See Figure 1 for examples of the many agencies that make up the criminal justice system. Examples of information that may be helpful on the landing page can be found in Recommendations #1-#5.

During the study, agency personnel were asked to provide pros and cons of having a single landing page for criminal justice matters.⁷ Pros listed centered on public convenience (e.g., “one-stop location for the public to understand

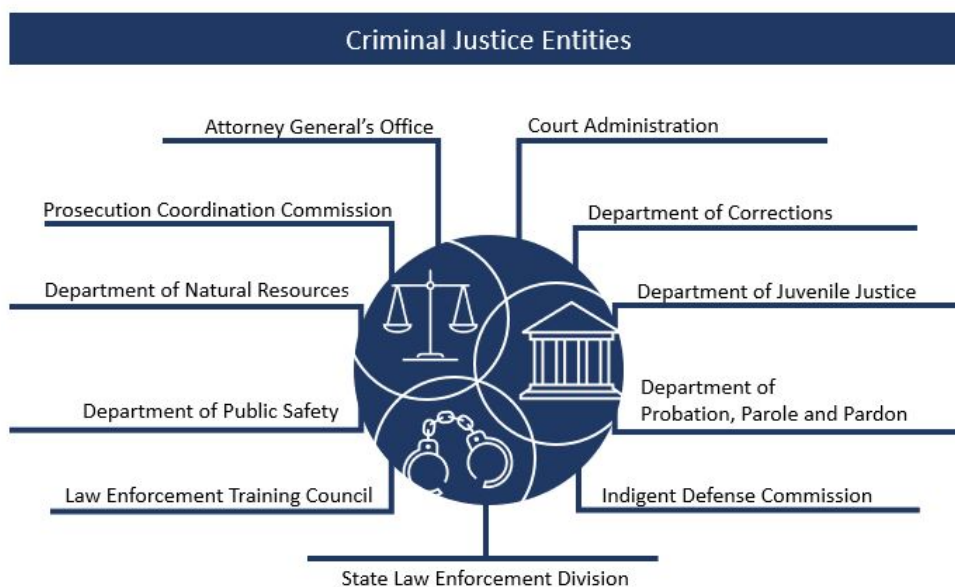


Figure 1. Examples of the many agencies that make up the criminal justice system

the criminal justice system” and “save time . . . in trying to find the proper entity”).⁸

Additionally, it may be helpful to have statistics from the various entities more easily available. For example, the Revenue and Fiscal Affairs Office provides statistics statewide on household, employment, and health, which can be seen at various lower levels (e.g., county), on their public dashboard.⁹ Cons listed pertained to details with execution (i.e., sustaining, funding, and central responsibility) rather than the concept itself.¹⁰

FINDING #4. Presently, there is no central system to confirm law enforcement entities are meeting the constitutional mandate to contact victims.

All states have provisions acknowledging victims' rights, and most states have included victims' rights into their state constitution.¹¹ When presented the issue in 1996, qualified electors in South Carolina overwhelmingly (i.e., more than 80%) supported inclusion of victims' rights in the State Constitution.¹² In 1998, the South Carolina Constitution was amended to include a Victims' Bill of Rights.¹³ The twelve enumerated rights are listed in Figure 2.

Opportunities exist to streamline and confirm appropriate contact of victims is occurring.¹⁴ Figure 3 illustrates examples of recommendations the House Legislative Oversight Committee has already approved.¹⁵

To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:			
01 be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional rights, provided by statute	02 be reasonably informed when the accused or convicted person is arrested, released from custody, or has escaped	03 be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present	04 be reasonably informed of and be allowed to submit either a written or oral statement at all hearings affecting bond or bail
05 be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing	06 be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process	07 confer with the prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition	08 have reasonable access after the conclusion of the criminal investigation to all documents relating to the crime against the victim before trial
09 receive prompt and full restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury, including both adult and juvenile offenders;	10 be informed of any proceeding when any post-conviction action is being considered, and be present at any post-conviction hearing involving a post-conviction release decision;	11 a reasonable disposition and prompt a final conclusion of the case;	12 have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and have these rules subject to amendment or repeal by the legislature to ensure protection of these rights.

Figure 2. Victims' Bill of Rights listed in South Carolina Constitution¹⁶

Probation, Parole, and Pardon Services Study		
Recommendation 8	Recommendation 9	Recommendation 10
Victim Notification: Collaborate with the Department of Corrections (SCDC), Board of Juvenile Parole, Attorney General's Office, victim groups, and any other applicable agencies or entities on utilization of a common system to offer an electronic notification option to victims. Within a year, report to the Committee on the discussion that occurred, decisions made, and how victims can expect more consistency in how they receive notifications from state agencies.	Victim Information Repository: Convene representatives from Department of Corrections, Attorney General's Office, Department of Juvenile Justice, Board of Juvenile Parole, Court Administration, Prosecution Coordination Commission, application developers in the Revenue and Fiscal Affairs Office, and any other applicable agencies or entities, to evaluate potential costs, benefits, and logistics of agreements to enable secure data sharing and/or creation of a centralized directory of information related to victims. Within a year, report to the Committee the steps taken, information gathered, results of analysis performed, and decision of the agencies.	Offender Restitution and Debt Collaboration: Convene applicable representatives from Department of Corrections, Attorney General's Office, Department of Juvenile Justice, Court Administration, Prosecution Coordination Commission, application developers in the Revenue and Fiscal Affairs Office, and any other applicable agencies or entities to evaluate potential costs, benefits, and logistics of agreements to enable secure data sharing and/or creation of a centralized directory of information related to restitution and debt owed by offenders. Within a year, report to the Committee the steps taken, information gathered, results of analysis performed, and decision of the agencies.

Figure 3. Examples of recommendations the House Legislative Oversight Committee has approved relating to victims¹⁷

FINDING #5. Attorney General employees, like employees with many other state agencies, perform numerous tasks requiring the manual re-entry of information, which diverts their time from other tasks.

Multiple examples of opportunities to improve efficiency and accuracy of the transmission of information have been observed during prior agency studies.¹⁸ Accordingly, the House Legislative Oversight Committee collaborated with the Executive Budget Office within the Department of Administration to collect information from agencies on the type of data they receive that they manually input into their own database/system, from whom the data is received, and the cost to manually enter the data into the agency's system.

According to an internal poll the Attorney General's Office conducted during the study, 137 of the 217 respondents (i.e., 63% of its agency personnel) indicated they manually enter data as part of their regular duties.¹⁹ Of the 137 respondents, 94 (69%) cited another state agency as the source of the data.²⁰ The total cost to the agency of manually entering data is \$3,164,983.²¹

FINDING #6. During the study, agency personnel note lack of a clear definition of "unconscionable price" makes prosecution of the state price gouging statute difficult, thereby potentially defeating the intent of the statute.

Two decades ago, after the tragic events of September 11, 2001, the General Assembly enacted the "South Carolina Homeland Security Act."²² Among other things, this legislation included provisions to prevent price gouging during an emergency.²³ Below is the current definition of the term "unconscionable price" as provided in state statute:

"Unconscionable price" means an amount charged which:

- (i) represents a gross disparity between the price of the commodity or rental or lease of a dwelling unit, including a motel or hotel unit, or other temporary lodging, or self-storage facility that is the subject of the offer or transaction and the average price at which that commodity or dwelling unit, including a motel or hotel unit, or other temporary lodging, or self-storage facility was rented, leased, sold, or offered for rent or sale in the usual course of business during the thirty days immediately before a declaration of a state of emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of the dwelling unit, including a motel or hotel unit, or other temporary lodging, or self-storage facility, or local, regional, national, or international market trends; or
- (ii) grossly exceeds the average price at which the same or similar commodity, dwelling unit, including a motel or hotel unit, or other temporary lodging, or self-storage facility was readily obtainable in the trade area during the thirty days immediately before a declaration of a state of emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of the dwelling unit, including a motel or hotel unit, or other temporary lodging, or self-storage facility, or local, regional, national, or international market trends.²⁴

During the study, agency personnel expressed concern that the existing definition is “vague and provides 12 jurors to each define unconscionable.”²⁵ Agency personnel noted that “percentages have been applied in other states to create an objective standard.”²⁶ Figure 4 highlights the states, noted by agency personnel, that have less ambiguity in statute.

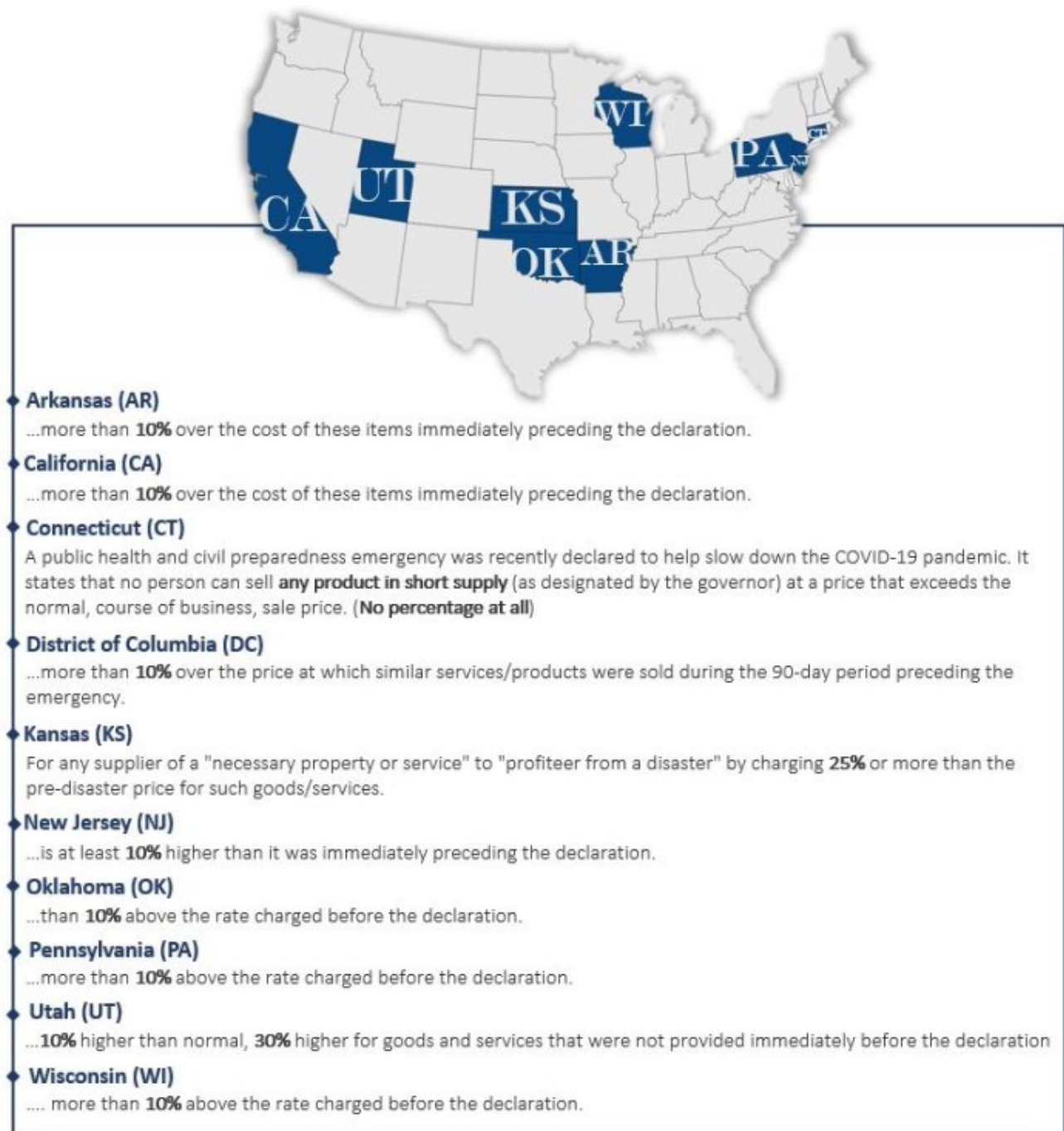


Figure 4. States identified by the Attorney General's Office personnel as having less ambiguity in their price gouging statutes²⁷

Operations

The six findings relating to agency operations are summarized in Table 2.

Table 2. Summary of findings relating to agency operations

OPERATIONS	7. Annual briefings conducted by the Attorney General’s Office may be a best practice all state agencies consider adopting.
	8. Recruitment and retention of employees is an issue with the Attorney General’s Office as it is with many other state agencies. Contributing factors may include working in traumatic areas of the criminal justice system (e.g., internet crimes against children, sexually violent predator, etc.); heavy workloads (e.g., post-conviction relief); frustration from lack of access to convenient parking; and limitations on how agencies can recognize employees (i.e., \$50 cap per award). ^{See Recommendations #16 and #22}
	9. The current Attorney General is the 23rd highest paid employee in his office. Over the last three decades the salary of the Attorney General, the state’s chief prosecutor, has only increased a total of two percent, while salaries of others in the criminal justice system have increased between 200% and 300% (e.g., Circuit Solicitors-237%; Circuit Judges-213%; Chief, State Law Enforcement Division-233%; Executive Director, Indigent Defense-362%; Executive Director, Prosecution Coordination Commission-193%).
	10. Lessons can be learned from the fraud committed through the federal COVID economic programs (i.e., Paycheck Protection Program, Small Business Administration loans, etc.) to apply in future financial situations.
	11. Presently, there is no uniform statewide process for certain reviews of officer involved misconduct, excessive force, discharge of firearms, or in-custody deaths. ^{See Recommendation #14}
	12. Many states have methods where law enforcement can apply to obtain search warrants electronically; however, S.C. still requires law enforcement physically appear before magistrates to obtain a warrant.

FINDING #7. Annual briefings conducted by the Attorney General’s Office may be a best practice all state agencies consider adopting.

Annually, in August, the Attorney General receives briefings about agency operations from each section leader.²⁸ When first implemented in 2011, agency personnel were wary about the burden of a new process.²⁹ However, agency personnel now acknowledge the benefits outweigh the burdens. The briefings provide “a mandated period for managers to self-assess” and seek information from managers about section successes and concerns. Results reported include, but are not limited to, “section personnel . . . aware[ness] of their key performance indicators.”³⁰

Over the past decade, this “method for managing resources” has evolved to have a set structure, which facilitates assessment of performance.³¹ The timing of the briefings (i.e., six weeks after the close of the fiscal year) helps inform leadership strategic planning “before beginning the accountability and budgeting cycles of the state government” (e.g., resource

needs noted in section briefings may be included in budget requests, etc.).³² Additionally, having support areas (i.e., information technology, human resources, and finance) personnel present during the briefings allows sections to identify any technical barriers (e.g., incompatible software, security threats, etc.) related to requests or provide for immediate resolutions to issues.³³

FINDING #8. Recruitment and retention of employees is an issue with the Attorney General's Office as it is with many other state agencies. Contributing factors may include working in traumatic areas of the criminal justice system (e.g., internet crimes against children, sexually violent predator, etc.); heavy workloads (e.g., post-conviction relief); frustration from lack of access to convenient parking; and limitations on how agencies can recognize employees (i.e., \$50 cap per award).

A benefit of the House Legislative Oversight Committee's process is the ability for members to observe issues that affect multiple state agencies. Overcoming barriers to employee recruitment and retention is a challenge expressed by many state agency leaders during the House's oversight review process.³⁴

A frequent barrier mentioned during reviews is competitive employee compensation. Notably, the 2022-2023 General Appropriations Act included a three percent raise for state employees, the largest pay raise in six years, a \$1,500 bonus; and fully covered state employee health and dental insurance increase.³⁵

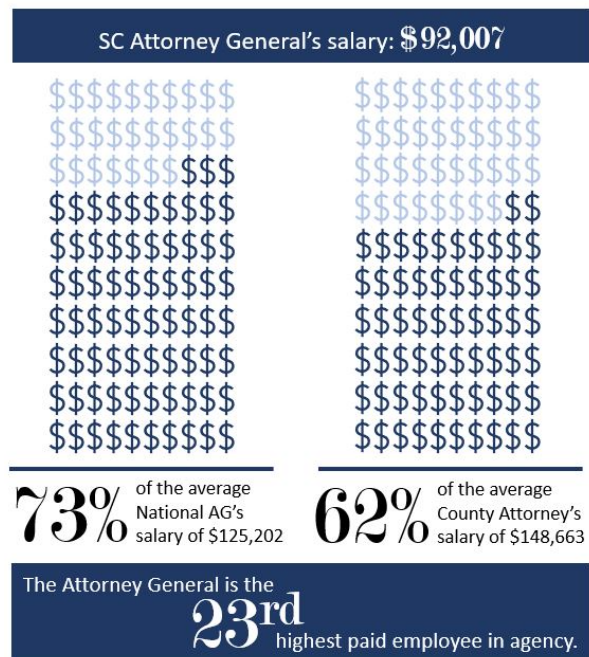
A barrier to recruitment and retention to the Attorney General's Office is the unique subject matter. For example, there is high turnover in the Internet Crimes Against Children (ICAC) Unit due to the traumatic nature of the material; during the study, the ICAC section manager noted it takes around 14 months to fill an attorney vacancy.³⁶ To help mitigate this barrier, the agency has an Employee Assistance Program that offers free short-term counseling.³⁷ As another example, the Post-Conviction Relief Unit personnel have high caseloads (e.g., 205 cases per attorney if fully staffed) that are increasing in complexity.³⁸ To help mitigate this barrier, the agency is no longer viewing this as an entry level position.

Another barrier to recruitment and retention at the Attorney General's Office is lack of convenient parking for all agency personnel that desire it.³⁹ The Attorney General's Office is located on the capitol complex grounds, which has an underground parking facility administered by the Department of Administration for executive state agencies.⁴⁰ Parking in this facility is assigned on a first come, first served basis (i.e., seniority at the agency), and allotments to the agency are limited. Multiple state entities, including the legislature, utilize this parking facility.⁴¹ Also, surface parking lots, without assigned parking (i.e., first come, first served), are available. Accordingly, an employee who arrives later in the morning may have to walk farther to work. To help mitigate this barrier of lack of convenient parking for all personnel, the agency leases additional parking spots.⁴² These are allotted on a seniority basis.

A specific barrier to retention noted by agency leadership is the limitations on how state agencies can recognize employees.⁴³ Recommendation 22 discusses this issue in more detail and recommends the General Assembly consider increasing the \$50 limitation on tokens of appreciation for employees.

FINDING #9. The current Attorney General is the 23rd highest paid employee in his office. Over the last three decades the salary of the Attorney General, the state’s chief prosecutor, has only increased a total of two percent, while salaries of others in the criminal justice system have increased between 200% and 300% (e.g., Circuit Solicitors-237%; Circuit Judges-213%; Chief, State Law Enforcement Division-233%; Executive Director, Indigent Defense-362%; Executive Director, Prosecution Coordination Commission-193%).

See Figure 5 for a visual comparison of the South Carolina’s Attorney General’s salary with his national counterparts, within the agency, and with attorneys representing large counties.⁴⁴



For nearly three decades, salaries of South Carolina constitutional officers have remained stagnant. With the passage of Act No. 76 of 2021, now salaries of certain constitutional officers, including the Attorney General, must be based on recommendations by the Agency Head Salary Commission to the General Assembly. Beginning with fiscal year 2022-2023, the Agency Head Salary Commission “shall authorize a study be conducted every four years to recommend a salary range for each state constitutional officer . . . based on their job duties and responsibilities as well as the pay of state constitutional officers in other states.”⁴⁵

Figure 5. Visual comparison of the South Carolina’s Attorney General’s salary with his national counterparts, within the agency, and with attorneys representing large counties in South Carolina⁴⁶

FINDING #10. Lessons can be learned from the fraud committed through the federal COVID economic programs (i.e., Paycheck Protection Program, Small Business Administration loans, etc.) to apply in future financial situations.

During the study, agency personnel shared the following:

Federal government estimates are that fraud totals related to the Paycheck Protection Program are as high as \$80 billion. Federal prosecutors are calling this theft of taxpayer money intended to help those harmed by the coronavirus pandemic “the largest fraud in U.S. history” as it

represents approximately 10 percent of the \$800 billion handed out to small businesses in low-interest uncollateralized loans from April 3, 2020, through May 31, 2021.⁴⁷

Also, agency personnel estimated inmate gang activity within the Department of Corrections has been funded for the next decade through misuse of the federal Paycheck Protection Act program.⁴⁸ It is agency personnel's understanding that between five to seven percent of the inmate population benefited from this program because they were able to apply for the funding directly from prison.⁴⁹ Fast-tracked processes with "little guidance about what verifications could or should be done" resulted in little applicant vetting and a relaxation of internal fraud controls institutions generally utilize⁵⁰

To help prevent fraud in future financial situations, agency personnel recommended requiring "approved financial institutions (i.e., those allowed to disburse funds) to verify the existence of the requesting company prior to disbursement, and to do other basic checking, just as the institutions would if an applicant came in to apply for a loan that was not going to be fully indemnified against risk of loss by the federal government."⁵¹

FINDING #11. Presently, there is no uniform statewide process for certain reviews of officer involved misconduct, excessive force, discharge of firearms, or in-custody deaths.

Figure 6 shows different processes used for review of officer involved shootings, crimes, or in-custody death.⁵² Figure 7 highlights counties in which the local solicitor has referred officer involved shootings matters to the Attorney General's Office for review.⁵³ Solicitors' opinions on this issue may vary. Some solicitors may prefer a completely independent review and resolution, and others may prefer local review and resolution.⁵⁴

Figure 6 (larger version is available in Appendix A). Agency presentation – excerpt - Different processes utilized for review of officer involved shootings, crimes, or in-custody death⁵⁵

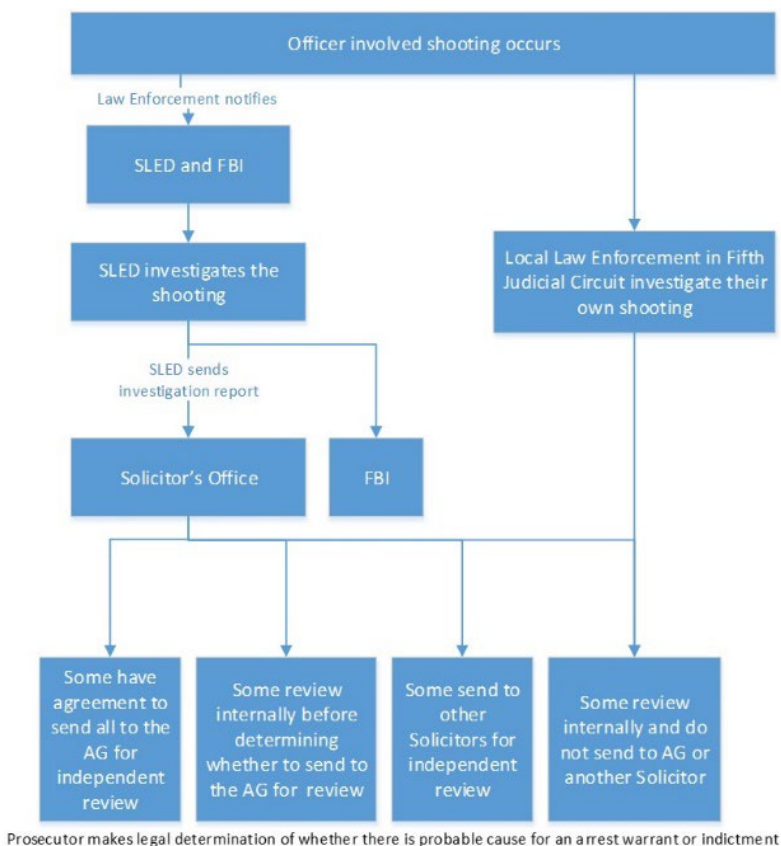


Table Note: Fifth judicial circuit is comprised of Kershaw and Richland Counties

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

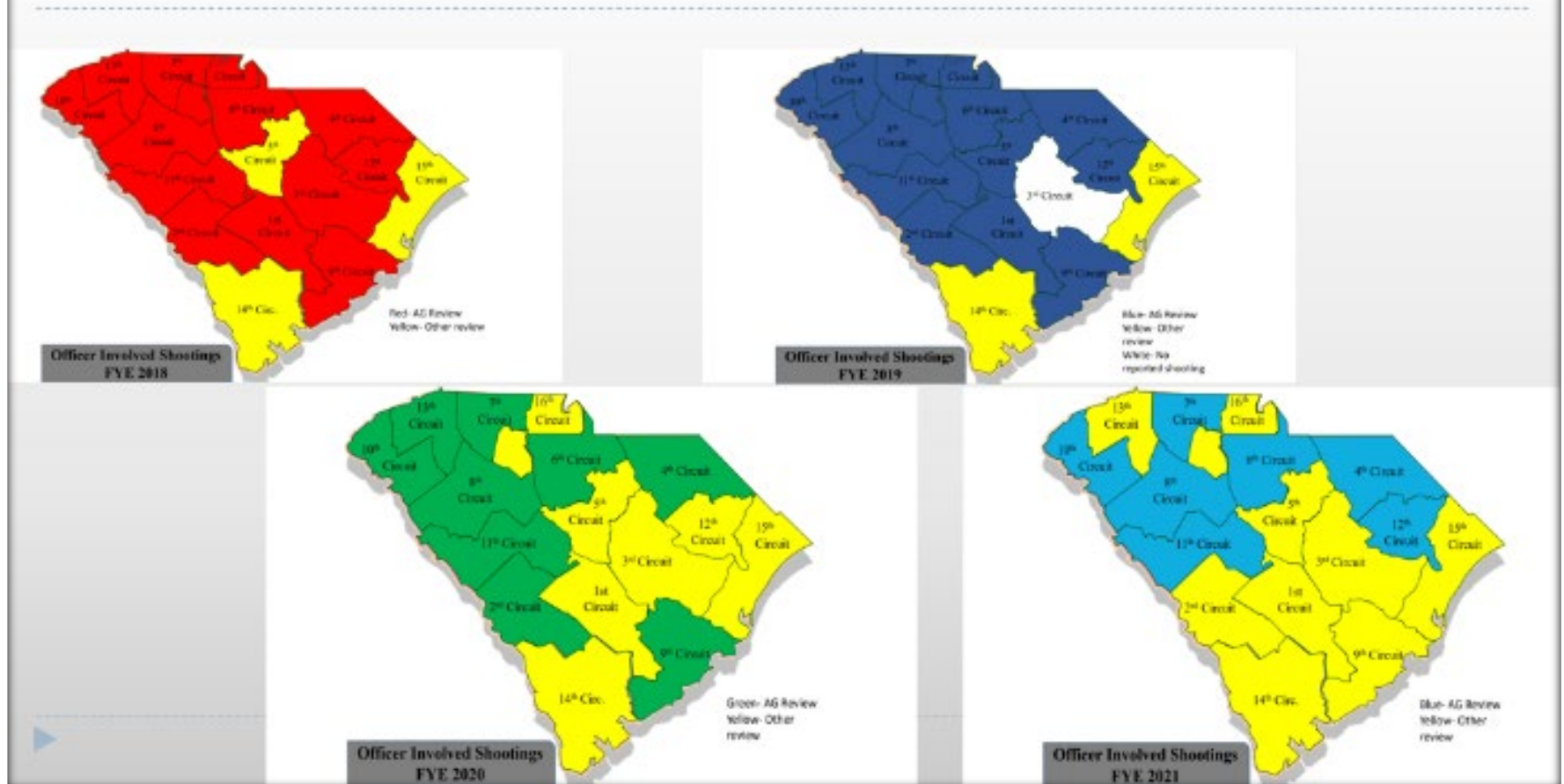


Figure 7. Agency presentation excerpt -counties in which officer involved shootings in which the local solicitor referred the matter to the Attorney General's Office for review⁵⁶

During the study, agency personnel noted two potential benefits of a uniform, statewide process. First, “[t]his would allow for record keeping as to what the trends are showing in these cases that could facilitate training,” and second this would create “the ability to create awareness among law enforcement and the community of what happens in these cases and how they are handled.”⁵⁷

“It is the position of the Attorney General’s Office that at a minimum, all officer involved shootings that result in injury or death should be reviewed by the Attorney General’s Office.”⁵⁸ Notably, the Attorney General’s Office personnel consult with a nationally recognized expert, and agency personnel testified that some states do have a requirement for an independent review by their respective Attorney Generals’ Offices.⁵⁹

FINDING #12. Many states have methods where law enforcement can apply to obtain search warrants electronically; however, S.C. still requires law enforcement physically appear before magistrates to obtain a warrant.

S.C. Code of Laws Section 17-13-140 provides that “[a] warrant issued hereunder shall be issued **only** (emphasis added) upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant.” During the study, agency personnel noted “other states have methods where law enforcement can apply to obtain search warrants via electronic means, and this would be more efficient for all parties⁶⁰.”

Resources

The five findings relating to agency resources are summarized in Table 3.

Table 3. Summary of findings relating to agency resources

AGENCY RESOURCES	13. Currently, there are not enough investigators to investigate all tips relating to internet crimes against children. Further, the number of tips related to child sexual assault material accessible on the internet is increasing with no expectation of slowing down. See Recommendation #28 14. The S.C. Code of Laws does not identify who represents the state in post-conviction relief (PCR) actions. More than half a century ago, the Attorney General’s Office voluntarily assumed the responsibility to handle PCR actions. However, the current PCR process is no longer efficient (e.g., increase in number of PCR actions) or economical (e.g., location of prisoners, travel cost and time) for AG personnel. 15. While the S.C. Constitution states the Attorney General is the chief prosecutor for the state, the Attorney General is not a member of the Commission on Prosecution Coordination. 16. Prosecutors assisting in the investigation of cases do not have absolute immunity because investigation is not considered by the U.S. Supreme Court as a normal prosecution function. 17. Previously solicitors were responsible for the general sessions court docket, but this practice was ruled unconstitutional by the S.C. Supreme Court. Now circuit court judges have this responsibility.
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FINDING #13. Currently, there are not enough investigators to investigate all tips relating to internet crimes against children. Further, the number of tips related to child sexual assault material accessible on the internet is increasing with no expectation of slowing down.

Figure 8 shows how the number of these cases have increased.⁶¹ Investigation of tips relating to internet crimes against children is “split amongst 100+ other agencies.”⁶² Agency personnel estimate that “approximately half of all cyber tips are being investigated,” and “[m]any of these investigations are not as thorough as desired.” To adequately investigate all cyber tips, agency personnel estimate a need of an additional 20 full-time investigators as well as proportional increases in additional prosecutors, forensic investigators, and support staff. During the study, agency personnel emphasized quality investigations over quantity and noted legislative changes (i.e., administrative subpoena power) would increase investigation efficiency.⁶³



Figure 8. Increasing number of cyber tips and task force investigations relating to internet crimes against children⁶⁴

FINDING #14. The S.C. Code of Laws does not identify who represents the state in post-conviction relief (PCR) actions. More than half a century ago, the Attorney General’s Office voluntarily assumed the responsibility to handle PCR actions. However, the current PCR process is no longer efficient (e.g., increase in number of PCR actions) or economical (e.g., location of prisoners, travel cost and time) for AG personnel.

“Today, the PCR section is among the largest sections in the [Attorney General’s Office], even though the mandate is unclear.”⁶⁵ While there may be historical reasons (e.g., all PCR cases were originally heard near the Attorney General’s Office in Richland County), during the study, agency personnel emphasized now “the taxpayer funds travel from the [Attorney General’s Office] to the courthouses across the state that are walking distance for the solicitor.”⁶⁶

FINDING #15. While the S.C. Constitution states the Attorney General is the chief prosecutor for the state, the Attorney General is not a member of the Commission on Prosecution Coordination.

During the 124th General Assembly, the House of Representatives approved and sent to the Senate legislation requiring the Attorney General or his designee to be included as a member of the Commission on Prosecution Coordination.⁶⁷ The legislation was approved unanimously in the House of Representatives, and it received a favorable report from the Senate Judiciary Committee.⁶⁸ While the legislation received second reading in the Senate on May 11, 2022, it did not receive the requisite third reading on May 12, 2022, (the last day of the second regular session of the 124th General Assembly).⁶⁹

During the study, agency personnel expressed support for the legislation that would add the Attorney General or his designee to the Commission on Prosecution Coordination.⁷⁰ Conversely, when asked for what reasons, if any, support the Attorney General not serving as a member of the Commission on Prosecution Coordination, the commission opined:

If the Attorney General is placed on the SCCPC as a commission member, he will immediately become the de facto chair of the commission. The responsibility of representing the sixteen solicitors will go to the Attorney General and away from a commission that has been representing the solicitors for thirty-two years. ***The Attorney General does not have the perspective nor the understanding of the unique challenges of the solicitors***; nevertheless, he would become the sole voice for the solicitors. (emphasis added)⁷¹

FINDING #16. Prosecutors assisting in the investigation of cases do not have absolute immunity because investigation is not considered by the U.S. Supreme Court as a normal prosecution function.

“Prosecutors have absolute immunity for all actions that fall within their normal prosecution function.”⁷² However, during the study, agency personnel note “the lack of absolute immunity causes prosecutors to hesitate to act in pre-arrest situations where absolute immunity does not exist.”⁷³

Figure 9 includes examples of when legal advice may be desired during an investigation.⁷⁴

Notably, prior inquiry by the House Legislative Oversight Committee indicates that some law enforcement entities employ in-house counsel which could assist with the examples included in Figure 9, but as agency personnel noted during the study “it may be impracticable to hire such an individual for periodic advice.”⁷⁵

Examples of when legal advice may be desired:	
	Advice on search warrant language and advice on whether probable cause to search exists
	The use of search warrants
	Subpoenas or court orders in certain investigative situations concerning digital evidence
	Arrest warrant language and applicability of particular crime to the factual situation or legal alternatives and whether probable cause to arrest exists
	Legal advice on types of entry without warrant due to exigent circumstances
	Legal advice on whether it is appropriate and the authority and procedure for seeking of wiretaps
	Decisions on whether to seek an arrest or directly indict through the county grand jury
	Decisions on whether or not to use the State Grand Jury to assist in investigation

Figure 9. Examples of when legal advice may be desired during an investigation⁷⁶

Agency personnel noted an advantage for seeking advice from the prosecuting attorney, rather than in house counsel, is the prosecutor decides if the case should proceed.⁷⁷

FINDING #17. Previously solicitors were responsible for the general sessions court docket, but this practice was ruled unconstitutional by the S.C. Supreme Court. Now circuit court judges have this responsibility.

S.C. Code of Laws Section 1-7-330 states:

The solicitors shall attend the courts of general sessions for their respective circuits. ***Preparation of the dockets for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial.*** Provided, however, that no later than seven days prior to the beginning of each term of general sessions court, the solicitor in each circuit shall prepare and publish a docket setting forth the cases to be called for trial during the term. (emphasis added)

In 2012, the S.C. Supreme Court held this statute unconstitutional and determined “setting the trial docket . . . is the prerogative of the court.”⁷⁸

RECOMMENDATIONS

The Subcommittee has 49 recommendations directed to multiple entities.

With any study, the Committee recognizes **these recommendations (e.g., continue, curtail, and/or eliminate agency programs, areas for potential improvement, etc.) will not satisfy everyone nor address every issue or potential area of improvement at the agency.** These recommendations are based on the agency's self-analysis requested by the Committee, discussions with agency personnel during multiple meetings, and analysis of the information obtained by the Committee. This information, including, but not limited to, the Program Evaluation Report, Accountability Report, Restructuring Report, and videos of meetings with agency personnel, is available on the Committee's website.

Criminal Justice Processes

Recommendations #1 - #3 seek collaboration among state agencies to continue to advance transparency about the criminal justice processes. These recommendations are summarized in Table 4.

Table 4. Summary of recommendations requesting collaboration among state agencies to continue to advance transparency about the criminal justice system

CRIMINAL JUSTICE SYSTEM PROCESS CHARTS	1. Law Enforcement Training Council -Approve process charts related to the criminal justice and collect a list of any IT projects that relate to storage or exchange of criminal justice information (e.g., court cases, offender data, victims) that are ongoing or funded for internal use by stakeholders (e.g., agency personnel, legislators, etc.). ^{Collaboration; See Findings #1 - #3}
CRIME VICTIM PROCESS CHARTS	2. Maintain accuracy of crime victim process charts. ^{Collaboration; See Findings #1 - #3}
PROSECUTION AND APPEALS PROCESS CHARTS	3. Maintain accuracy of prosecution and appeal process charts. ^{Collaboration; See Findings #1 - #3}

Table Note: Unless otherwise noted, all recommendations are to the Attorney General's Office.

As referenced in Finding #1, over the years, the House Legislative Oversight Committee, with the assistance of the personnel with various state agencies, has developed process flow charts illustrating the complexity of the criminal justice system.⁷⁹ Likewise, during the study of the Attorney General's Office, additional process flow charts were created. Publication of these flows charts is a way the Committee seeks to meet its mission to inform the public about state agencies.⁸⁰ Also, the Committee recognizes increased understanding about the criminal justice system may help inform stakeholder (e.g., agency personnel, legislators, etc.) decisions. The Committee has approved recommendations in prior studies requesting collaboration among various law enforcement agencies to maintain (i.e., update as appropriate) the accuracy of these process flow charts.⁸¹

These process charts should, going forward, be updated annually, reference, to the extent possible, applicable statutes, judicial rules, and statistics, and be available in a single interactive and/or printable online resource.

Criminal Justice System Process Charts

RECOMMENDATION #1. LAW ENFORCEMENT TRAINING COUNCIL- Approve process charts related to the criminal justice and collect a list of any IT projects that relate to storage or exchange of criminal justice information (e.g., court cases, offender data, victims) that are ongoing or funded for internal use by stakeholders (e.g., agency personnel, legislators, etc.).

This recommendation tasks the Law Enforcement Training Council, which consists of the leaders of various local and state law enforcement agencies, including the Attorney General as noted in Figure 10, to confirm and approve in an annual meeting the accuracy of these general, criminal justice system charts.⁸² To the extent possible, the charts should be combined into a single interactive and/or printable online resource, which includes pertinent authority (e.g., statutes, court rules, etc.) and statistics (e.g., number of death penalty direct appeals, etc.).



Figure 10. Law Enforcement Training Council membership⁸³

Crime Victim Process Charts

RECOMMENDATION #2. Maintain accuracy of crime victim process charts.

In 2017, the General Assembly implemented a recommendation from the House Legislative Oversight Committee and placed crime victim compensation responsibilities under the Attorney General's Office.⁸⁴

During the study of the Attorney General’s Office, agency personnel noted there are annual events (e.g., Victims’ Rights Week, Law Enforcement Victim Advocate Conference, and South Carolina Solicitors Conference) that bring together various personnel from across the state that interact with victims.⁸⁵ During these annual events, Recommendation #2 requests agency personnel seek input from the Victim Services Coordinating Council, victim advocates, and other applicable entities to maintain the accuracy of the crime victim process charts developed during the study. The version of the charts available for stakeholders, as opposed to victims, should reference, to the extent possible, applicable statutes, judicial rules, and statistics. Examples statistics may include victim to victim advocate ratios so the crime victim services division and victim coordinating council has reliable data on the supply (i.e., number of victim advocates) available to meet the demand (i.e., number of victims) in various entities and locations (e.g., detention centers, police departments, sheriff’s offices, solicitors’ offices, and state agencies) and may make recommendations on resources needed throughout the state to ensure victim rights are upheld. Another example statistic may be (a) percentage of victim notices provided via U.S. mail that are returned and undeliverable; (b) annual travel time for victim advocates by type of hearing and case; and (c) number of notices provided in total and by type (e.g., motion, hearing, etc.).⁸⁶ The charts should be available as an interactive and/or printable online resource.

Prosecution and Appeal Process Charts

RECOMMENDATION #3. Maintain accuracy of prosecution and appeal process charts.

This recommendation requests the Attorney General’s Office collaborate with Commission on Prosecution Coordination, Commission on Indigent Defense, and Court Administration to review and update process charts created during this study as well as create additional charts as needed, to illustrate the prosecution and appeal processes of the criminal justice system. See Figure 11 for a list of examples of process charts created during the study of the Attorney General’s Office; see also, Appendix A for the full charts.

Examples of Process Flow Charts:				
General	Post-Adjudication	Civil Litigation	Prosecution	Victim
Attorney (at all agencies) hire and compensation approval process	- Appeal of non-death penalty conviction to S.C. Court of Appeals and S.C. Supreme Court - Murder Convictions - Appeal and PCR Process - Post-Conviction Relief (PCR) Action - Sexually Violent Predator Proceedings	- Unfair Trade Practices Enforcement Action - Nonprofit Corporation Investigation - Securities Enforcement Case - Life Cycle - Money Services	- 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	- Individuals on whom victims rely - Crime Victim Service Provider (individuals that serve crime victims) - Crime Victim Assistance Grants (for entities that serve crime victims) - Crime Victim Compensation (for victims) - Crime Victim Ombudsman Processes

Figure 11. Examples of process flow charts

Victim Services

Recommendations #4 - #11 seeks to advance effectiveness, efficiency, and transparency in the provision of victim services. These recommendations are summarized in Table 5.

Table 5. Summary of recommendations to advance effectiveness, efficiency, and transparency in the provision of victim services

CREATE RESOURCE MATERIALS TO AID IN UNDERSTANDING THE CRIMINAL JUSTICE SYSTEM	4. Create interactive crime victim statistics dashboard. ^{Effectiveness; See Findings# 1 and #3}
	5. Create a publication to help victims understand the complex criminal justice system. ^{Collaboration; See Findings #1 and #3}
GAIN EFFICIENCIES IN THE PROVISION OF VICTIM SERVICES	6. Department of Probation, Parole and Pardon Services -Collaborate about victim information issues to support a centralized victim information repository. ^{Efficiency; See Finding #4}
	7. Streamline process for victims to obtain services (i.e., co-enrollment). ^{Efficiency}
	8. Create a victim service provider directory and track performance of the service providers. ^{Effectiveness}
	9. Annually publish information on crime victim grants issued and utilized. ^{Transparency}
	10. Determine a method to ensure less than \$1M in crime victim grants lapse to the federal government each year. ^{Efficiency}
	11. Establish a regular set-aside of victim grant funding for the purpose of collaborative requests by multiple entities. ^{Efficiency; See Finding #14}

Table Note: Unless otherwise noted, all recommendations are to the Attorney General's Office.

Create resource materials to aid in understanding the criminal justice system

RECOMMENDATION #4. Create interactive crime victim statistics dashboard.

This recommendation requests the Attorney General's Office collaborate with the State Law Enforcement Division (SLED), application developers in the Revenue and Fiscal Affairs Office, and any other applicable agencies or entities to evaluate potential costs, benefits, and logistics of agreements to create an interactive crime victim dashboard for other agencies, researchers, and the public to access. Within a year of publication of the Committee's study, personnel with the Attorney General's Office are asked to report to the Committee on the steps taken, information gathered, results of analysis performed, and any decisions made. This interactive dashboard may serve as a compliment to the over 150-page annual, comprehensive report on crime in South Carolina SLED has published for many years.⁸⁷

RECOMMENDATION #5. Create a publication to help victims understand the complex criminal justice system.

This recommendation requests the Attorney General’s Office create a publication (i.e., online reference materials) to help victim advocates explain South Carolina’s criminal justice system to crime victims. In creating this publication, the Attorney General’s Office is asked to collaborate with the Victim Services Coordinating Council, victim advocates, and other applicable entities. A similar recommendation (i.e., creation of an “Understanding Paroles” and “Understanding Pardons” document) was approved in the House Legislative Oversight Committee’s 2022 study of the Department of Probation, Parole and Pardon Services.⁸⁸ Notably, while the Attorney General’s Victim Advocacy Division personnel have materials explaining the post-adjudication process, they do not currently have any written materials to provide victims that explain the prosecution process.⁸⁹

Gain efficiencies in the provision of victim services

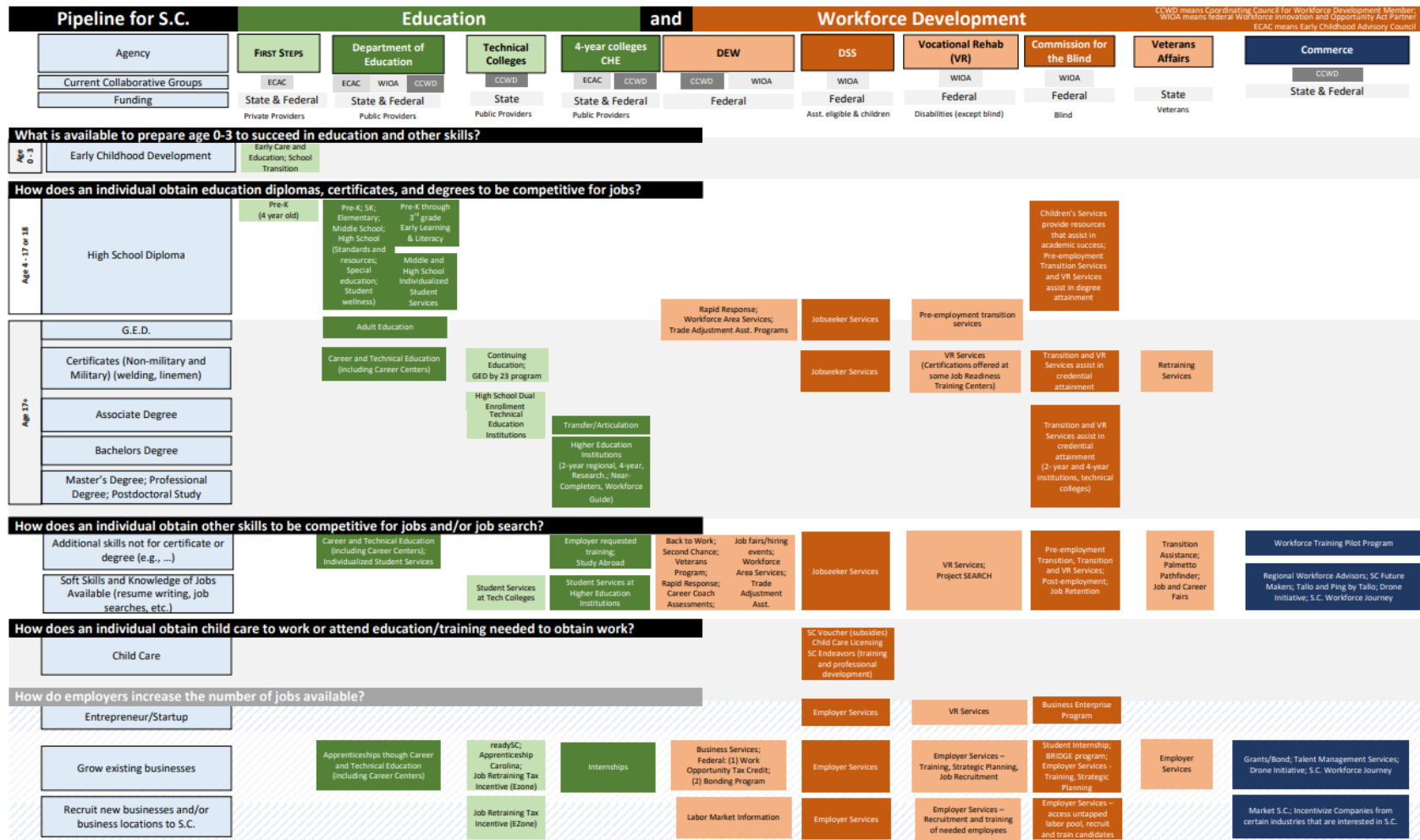
RECOMMENDATION #6. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES- Collaborate about victim information issues to support a centralized victim information repository.

As noted in Finding #4, opportunities exist to streamline and confirm appropriate contact of victims is occurring. Figure 3 includes examples of recommendations the House Legislative Oversight Committee has already approved in the 2022 study of the Department of Probation, Parole and Pardon Services (PPP) encouraging evaluation of a centralized victim information repository.

The purpose of this recommendation is to request inclusion of the Restitution Task Force in the collaboration efforts led by PPP personnel to evaluate a victim information repository (i.e., centralized directory of information related to victims) and offender restitution. While the Attorney General’s Office has no official role with the Restitution Task Force, some agency personnel do participate on it in an individual capacity.⁹⁰

RECOMMENDATION #7. Streamline process for victims to obtain services (i.e., co-enrollment).

This recommendation requests agency personnel collaborate with South Carolina’s Education and Workforce Pipeline, which is illustrated in Figure 12, and others to streamline the process for victims to obtain desired services. As part of this collaboration the feasibility of co-enrollment should be considered. Co-enrollment for purpose of this discussion is a secure data sharing system offering crime victims the opportunity to voluntarily input their information to learn about state services and enroll in programs without the need to re-enter common information (e.g., name, etc.).



Compiled as part of the House Legislative Oversight Process. Confirmed accurate by agencies listed herein as of February 2022.

Figure 12. South Carolina's Education and Workforce Pipeline

RECOMMENDATION #8. Create a victim service provider directory and track performance of the service providers.

As shown in Figure 13, there are a myriad of state agencies and applicable services to whom victims may be referred.⁹¹ Currently, the Attorney General's Office Crime Victim Services Division does not have a comprehensive directory of services and entities.⁹²

This recommendation requests agency personnel collaborate with personnel with other stakeholders (e.g., state agencies, nonprofits, etc.), including but not limited to, the Commission on

Prosecution Coordination, Commission for Minority Affairs, and application developers in the Revenue and Fiscal Affairs Office to evaluate the feasibility of a centralized directory of information related to victim service providers and how to measure the impact those providers services have on victims. A part of this collaboration, the feasibility of secure data sharing should be discussed. Within a year, agency personnel should report to the Committee on the steps taken, information gathered, results of analysis performed (e.g., potential costs, benefits, and logistics of agreements, etc.) and any decisions made.



ALL 16 CIRCUIT SOLICITORS – Victim Services Divisions
COMMISSION FOR THE BLIND – Resources for people with disabilities
COMMISSIONER OF BANKING – Complaints about banks in fraud cases
CONSUMER AFFAIRS – Identity theft and fraud investigation and assistance
CONTINUUM OF CARE – Victims whose children have serious emotional / behavioral problems
ALCOHOL AND OTHER DRUG ABUSE SERVICES – Assistance to locate information and treatment for addiction
DISABILITIES AND SPECIAL NEEDS – Disability referrals
HEALTH AND HUMAN SERVICES – Medicaid issues
INSURANCE – Fraud
CHILDREN'S ADVOCACY – Concerns regarding children involved in child welfare programs within state agencies
HEALTH AND ENVIRONMENTAL CONTROL – Complaints about hospitals and their employees
JUVENILE JUSTICE – Victim Services Division
PROBATION, PAROLE AND PARDON SERVICES – Victim Services Division
SOCIAL SERVICES – Child welfare concerns, vulnerable adults, programs to maintain financial stability
AGING – Long-Term Care Ombudsman
HUMAN AFFAIRS COMMISSION – Employment discrimination complaints
JUDICIAL DEPARTMENT – Complaints against attorneys and judges
LABOR LICENSING AND REGULATION – Complaints about licensed professionals acting improperly; attempts to "revoke a license"
OFFICE OF THE INSPECTOR GENERAL – Allegations of fraud, waste, mismanagement, misconduct, abuse
OFFICE OF OMBUDSMAN – Complaints related to local and state agencies
CORRECTIONS – Victim Services Division; Services for victims who have questions about an incarcerated offender
EMPLOYMENT AND WORKFORCE – Complaints that unemployment checks are improperly mailed
MENTAL HEALTH – Community Crisis Response and Intervention; information and treatment for mental health issues
HIGHWAY PATROL – Victim Services Division
OFFICE OF ECONOMIC OPPORTUNITY – Services to individuals with low income.
LAW ENFORCEMENT DIVISION – Victim Service Providers (VSPs)
ETHICS COMMISSION – Complaints about ethics violations by public officials
HOUSING FINANCE AND DEVELOPMENT AUTHORITY – Assistance with mortgage and rent
VOCATIONAL REHABILITATION – Victims who have been injured and need work training

Figure 13. Examples of state agencies and applicable services to whom victims may be referred⁹³

RECOMMENDATION #9. Annually publish information on crime victim grants issued and utilized.

During the study, agency personnel expressed they were not opposed to annually publishing information on crime victim grants issued and utilized.⁹⁴ Information published should include, but is not limited to, the items listed in Figure 14.

Publish annually information on crime victim grants issued and utilized including, but not limited to, the following:	
1 Grant number	6 Metrics that must be met to receive reimbursement
2 Funding source (e.g., VOCA, VAWA, SVAP)	7 Date of award
3 Recipient	8 Award amount
4 Scope of work	9 Amount of award remaining
5 Count(ies) in which work will be performed/victims served	10 Amount of prior awards recipient has allowed to lapse back to the federal government
Provide the information online in an Adobe (.pdf) and downloadable Excel document.	

Figure 14. Crime victim grants information for publication

RECOMMENDATION #10. Determine a method to ensure less than \$1M in crime victim grants lapse to the federal government each year.

During the study, agency personnel noted from 2018 – 2020 an average of \$4.14 million in allotted federal grant funding for crime victims annually lapsed to the federal government and cannot be reallocated due to the grant ending.⁹⁵ Figure 15 shows the specific amount of annual lapsed allocated grant funding from 2018 – 2020.



Figure 15. Amount of annual lapsed allocated crime victim grant funding from 2018 - 2020⁹⁶

Of interest, listed below is an explanation obtained from agency personnel about the reimbursable federal grant for crime victims.

All federal Department of Justice (“DOJ”), Victims of Crime Act (“VOCA”) and Violence Against Women Act (“VAWA”) awards are reimbursable grants. Funds are drawn (generally quarterly) for actual expenses incurred only. These reimbursements are for actual expenses incurred by the Office of the Attorney General Crime Victim Services Division (“SC-CVS”) through internal operations (salary/fringe/other for grant administration) and sub-grant reimbursements.

These DOJ awards are active for 3-4 years (dependent on ability to receive extensions). During this active period, we allocate this funding to sub-grantees throughout the state by competitive solicitation on a yearly (federal fiscal year [Oct 1-Sept 30]) basis. These sub-awards are also reimbursable and sub-grantees request reimbursement for actual expenses on a monthly or quarterly basis from the AG-CVS. Any sub-grant funding from awards that are not reimbursed by the end of the one-year award period are deemed “lapsed” and return into the AG-CVS funding pot for the next annual sub-award solicitation cycle.

On the last year of the federal award active period, any funds that have not been “drawn down” by the SC-CVS (for either AG internal operating expenses or sub-grant expenses) will be “lapsed” to DOJ. These lapsed funds will be returned to the Federal Government General Fund. Funds are generally lapsed to the Federal Government due to being unspent by the sub-grantee in the last year of award and cannot be reallocated due to the grant ending. All allowed grant extensions are pursued by the AG-CVS when available. Funds are also lapsed in some cases due to left over planning and administration “P&A” allocations (internal overhead). DOJ allows P&A costs of 5% of VOCA awards and 10% of VAWA.⁹⁷

RECOMMENDATION #11. Establish a regular set-aside of victim grant funding for the purpose of collaborative requests by multiple entities.

This recommendation requests agency personnel establish a regular set-aside of victim grant funding for the purpose of collaborative information and service sharing by multiple entities to further leverage the limited resources available to serve victims. According to agency personnel, it is possible to designate a certain amount of funds for joint grant proposals from multiple direct service agencies.⁹⁸ The availability of this type of funding may incentivize collaboration and innovation among entities serving victims to increase the efficiency in which they share information among one other and how they provide services.

Data

The Subcommittee makes two recommendations relating to data, and a summary is in Table 6.

Table 6. Summary of data recommendations

DATA	12. Attorney General’s Office, Commission on Prosecution Coordination, Commission on Indigent Defense, Department of Probation, Parole and Pardon Services, Department of Juvenile Justice, Department of Social Services, Department of Corrections, Department of Public Safety, State Law Enforcement Division, Department of Natural Resources, Department of Insurance, Department of Revenue, and Department of Employment and Workforce - Reach agreement on set data standards for criminal justice entities. Collaboration; See Findings #2 and #5
	13. Link Attorney General’s Office and circuit solicitor case management systems Collaboration; See Findings #2 and #5

Table Note: Unless otherwise noted, all recommendations are to the Attorney General’s Office

RECOMMENDATION #12. ATTORNEY GENERAL’S OFFICE, COMMISSION ON PROSECUTION COORDINATION, COMMISSION ON INDIGENT DEFENSE, DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, DEPARTMENT OF JUVENILE JUSTICE, DEPARTMENT OF SOCIAL SERVICES, DEPARTMENT OF CORRECTIONS, DEPARTMENT OF PUBLIC SAFETY, STATE LAW ENFORCEMENT DIVISION, DEPARTMENT OF NATURAL RESOURCES, DEPARTMENT OF INSURANCE, DEPARTMENT OF REVENUE, AND DEPARTMENT OF EMPLOYMENT AND WORKFORCE- Reach agreement on set data standards for criminal justice entities.

During the study, Court Administration personnel expressed a desire to “engage South Carolina’s state agencies on a set of data standards, such as those defined by the National Center for State Courts, that are comparable across state agencies and state courts.”⁹⁹ This may assist in the wholesale connection of data for efficient analysis and information sharing across the criminal justice system, as opposed to only within certain aspects of the system.

As the Attorney General serves as South Carolina’s chief prosecutor, this recommendation requests his office lead this collaboration effort among the various executive agencies.¹⁰⁰

RECOMMENDATION #13. Link Attorney General’s Office and circuit solicitor case management systems.

As discussed in Finding #2, the various state and local agencies comprising South Carolina’s criminal justice system have individual case management systems with varying levels of interaction with one another. For example, the sixteen solicitors’ offices do not all utilize the same type of case management system. Notably, the Prosecution Coordination Commission has “developed a long-range technology plan for the collection and reporting of information and data from” solicitors’ offices statewide.¹⁰¹ However, as discussed in Finding #15, the Attorney General is not a member of the Prosecution Coordination Commission.

During the study, agency personnel noted the Attorney General’s Office is “seeking to develop a better case management system” that can connect with the different case management systems utilized by solicitors to electronically obtain information when necessary (e.g., appeals and conflict case transfers).¹⁰² This recommendation reflects support for the agency personnel’s ongoing efforts to collaborate with solicitors’ offices to ensure the new case management system can improve efficiency in the transfer of the information.

Law Enforcement

The Subcommittee makes two recommendations relating to law enforcement issues, and a summary is in Table 7.

Table 7. Summary of law enforcement issues recommendations

REVIEWS	14. Discuss feasibility of a uniform statewide process for officer involved shooting reviews. ^{Accountability;}
TRAINING	15. Determine feasibility of a central learning portal. ^{Effectiveness; See Finding #3}

RECOMMENDATION #14. Discuss feasibility of a uniform statewide process for officer involved shooting reviews.

As discussed in Finding #11, presently there is no uniform process for certain reviews of officer involved misconduct, excessive force, discharge of firearms, or in-custody deaths. According to Attorney General personnel,

Currently, solicitors have the discretion to review officer involved shootings themselves, request transfer of review of the case to the Attorney General’s Office, or request transfer of review of the case to another solicitor. Some solicitors have adopted a policy that all officer involved shootings that occur in their jurisdiction will be reviewed by the Attorney General’s Office.¹⁰³

During the study, agency personnel noted two potential benefits of a uniform, statewide process. First, “[t]his would allow for record keeping as to what the trends are showing in these cases that could facilitate training,” and second this would create “the ability to create awareness among law enforcement and the community of what happens in these cases and how they are handled.”¹⁰⁴

Also, “[i]t is the position of the Attorney General’s Office that at a minimum, all officer involved shootings that result in injury or death should be reviewed by the Attorney General’s Office.”¹⁰⁵ According to agency personnel, benefits of this setup may include, review of all cases “using the same process by attorneys who have specialized training in the subject matter and who have reviewed hundreds of these cases,” as well as, “public perception of any bias in review would

be minimized since these attorneys would not be reviewing the actions of law enforcement officers with whom they work closely on a regular basis.”¹⁰⁶

Accordingly, this recommendation requests agency personnel discuss with personnel from the Law Enforcement Training Council and Commission on Prosecution Coordination the pros and cons of creating a statewide uniform system for review of officer involved shootings. Within a year, Attorney General Office personnel are asked to report to the Committee on the information gathered, discussion, and any decisions made.

RECOMMENDATION #15. Determine feasibility of a central learning portal.

Personnel with the Attorney General’s Office offer trainings on diverse topics (e.g., human trafficking, postconviction relief, victim services, prosecution, criminal appeals, capital litigation, securities, etc.).¹⁰⁷

This recommendation requests agency personnel collaborate with other stakeholder (e.g., Law Enforcement Training Council and Criminal Justice Academy, Department of Administration, etc.) personnel about the feasibility of having a central portal in which state employees may access applicable criminal justice related training videos. A part of this collaboration discussion topics may include, but are not limited to, creating a list of different trainings available from the various agencies and, for each, intended audience, frequency in which updates are necessary. Within a year, Attorney General Office personnel should report to the Committee on the information gathered, discussion, and any decisions made.

State Employees

The Subcommittee makes one recommendation to improve the state employee performance management system, and a summary is in Table 8.

Table 8. Summary of recommendation to improve the state employee performance management system

STATE EMPLOYEE PERFORMANCE MANAGEMENT SYSTEM	16. Department of Administration - Improve meaning and usability of Employee Performance Management System. ^{Effectiveness; See Finding #8}
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RECOMMENDATION #16. DEPARTMENT OF ADMINISTRATION - Improve meaning and usability of Employee Performance Management System.

The Employee Performance Management System (EPMS) is a “management tool used to formally document an employee’s performance.”¹⁰⁸ Generally, the system has three levels of performance: exceptional, successful, and unsuccessful. During the study, inquiry was made to the Department of Administration (DOA) about this process, and DOA personnel noted a

“successful by default” rating is generated “after an administrative period of 30 days has lapsed without a EMPS rating being entered for an employee.”¹⁰⁹ Figure 16 shows improvement and decline by some

agencies in providing annual employee reviews (i.e., “successful by default” percentage reflects employees not receiving reviews). DOA personnel noted the “successful by default” rating avoids penalizing [e.g., reduction in force plans include

“Successful by default” percentage for past 5 years					
	June 30 2018	June 30 2019	June 30 2020	June 30 2021	July 25 2022
Attorney General’s Office	1.7%	3.2%	0.0%	1.6%	1.2%
Improving:					
Adjutant General’s Office	25.2%	28.4%	20.2%	14.2%	6.1%
Department of Disabilities and Special Needs	38.3%	14.7%	11.5%	12.3%	10.4%
Declining:					
Commission of Minority Affairs	9.1%	16.7%	50.0%	80.0%	80.0%
Public Service Commission	7.1%	11.1%	53.9%	66.7%	61.5%

Figure 16. Improvement and decline by some agencies in providing annual employee reviews (i.e., “successful by default” percentage reflects employees not receiving reviews)

performance review ratings in the calculations] the employee for a situation beyond their control.”¹¹⁰ However, potentially, this may create an inaccurate perception that the employee’s performance was successful.

During the study, Attorney General Office personnel had recommendations for EPMS improvement. One of these related to technology updates to streamline the workflow process involved in the review (e.g., automatic uploads of the rating and updated review dates).¹¹¹

Notably, DOA personnel indicated “[t]he EPMS process is currently under review to make the process more meaningful and user friendly.”¹¹² This recommendation requests DOA personnel provide the Committee with the agency’s timeline for this continual improvement initiative.

Specialized Prosecutions

The Subcommittee makes three recommendations to encourage collaboration with other state agencies for specialized prosecutions, and a summary is in Table 9.

Table 9. Summary of collaborations with other state agencies for specialized prosecutions

DEPARTMENT OF SOCIAL SERVICES	17. Analyze effectiveness of the process for Supplemental Nutrition Program fraud prosecution. ^{Efficiency}
DEPARTMENT OF HEALTH AND HUMAN SERVICES	18. Analyze effectiveness of the process for Medicaid recipient fraud prosecution. ^{Efficiency}

RECOMMENDATION #17. Analyze effectiveness of the process for Supplemental Nutrition Program fraud prosecution.

This recommendation requests personnel with the Attorney General's Office meet with personnel from the Department of Social Services to discuss the potential benefits of the Department of Social Services referring Supplemental Nutrition Assistance Program (SNAP) fraud cases to the Attorney General's Office. There was a previous collaboration during the tenure of a prior Department of Social Services director.¹¹³ During the study, some potential benefits (e.g., expertise, focus, coordination with federal partners, creation of a task force, and generation of cases against retailers) to having a SNAP unit with the Attorney General's Office were identified.¹¹⁴ Within a year, personnel with the Attorney General's Office should provide the Oversight Committee a letter explaining the discussion and decisions made.

RECOMMENDATION #18. Analyze effectiveness of the process for Medicaid recipient fraud prosecution.

This recommendation requests personnel with the Attorney General's Office meet with personnel from the Department of Health and Human Services to analyze the effectiveness of the current process for Medicaid recipient fraud prosecution. During the study, it was noted that some difficulties (e.g., differing priorities and understandings) may be resolved through increased communication among personnel at both agencies.¹¹⁵ The purpose of the discussion is to determine if any changes may be warranted to improve the overall effectiveness of the investigation and prosecution. Within a year, personnel with the Attorney General's Office should provide the Oversight Committee a letter explaining the discussion and decisions made.

RECOMMENDATION #19. Determine appropriate parties for regulation versus prosecution of money services businesses.

This recommendation requests personnel with the Attorney General's Office collaborate with personnel from the State Board of Financial Institutions and State Treasurer's Office to determine the entity in which certain aspects of the state's Anti-Money Laundering Act is best suited (i.e., administration, as opposed to prosecution). During the study, Attorney General's Office personnel opined "[r]egulation under this act is more appropriately conducted by the state agency that currently regulates a similar industry"¹¹⁶ Within a year, personnel with the Attorney General's Office should provide the Oversight Committee a letter explaining the discussion, decisions, and any consensus recommendations to the General Assembly.¹¹⁷

Laws

General Recommendations

The Subcommittee makes several general recommendations for revisions to state law, and a summary is in Table 10. These are all to the General Assembly.

Table 10. Summary of general recommendations for revisions to state statutes

GENERAL	20. Consider eliminating bonds for positions or identify entity responsible for enforcement.
	21. Consider applying current taxes on cigarettes to vaping, e-cigarettes, and similar products.
	22. Consider increasing the limitation on tokens of recognition for state employees.
	23. Consider establishing a victim address confidentiality program.
	24. Consider updating statutes related to the Sexually Violent Predator Act.
	25. Consider establishing a federal Department of Health and Human Services Office of the Inspector General approved False Claims Act.
	26. Consider authorizing Internet Crimes Against Children investigators to subpoena subscriber information from internet and electronic service providers.
	27. Consider updating statutes to add a fentanyl trafficking provision.
	28. Consider reviewing S.C. Code Section 16-3-1050 and S.C. Code Section 43-35-85, which penalize the same behavior relating to abuse, neglect, or exploitation of vulnerable adults, but have different collateral consequences (e.g., one statute resulting in a designation of a violent most serious offense while the other is a serious non-violent) to determine if amendments are desired to make the collateral consequences the same.
	STATE GRAND JURY
	29. Consider updating statutes related to venue for State Grand Jury cases.
	30. Consider updating statutes to enable more potential State Grand Jury review of cases with possible health effects on the community.

Table Note: All of these recommendations are to the General Assembly.

RECOMMENDATION #20. GENERAL ASSEMBLY- Consider eliminating bonds for positions or identify entity responsible for enforcement.

The General Assembly may wish to consider eliminating bonds for positions or identify an entity responsible for enforcement.

Figure 17 illustrates the bond process for election winners and how three different agencies, including the Attorney General’s Office, are involved. S.C. Code Sections 8-3-60 and 8-3-70 provide penalties for assuming office without posting the required bonds which include “not entitled to receive any pay,” being “guilty of a misdemeanor,” and being “subject to a fine of five hundred dollars or imprisonment for not less than three months, in the discretion of the court.”

During the study, inquiry was made to the Secretary of State’s Office about reporting by the various positions required by state statute to post bond before assuming duties of office.¹¹⁸ Figure 18 reflects compliance with reporting is limited, and thus, actual compliance is questionable.

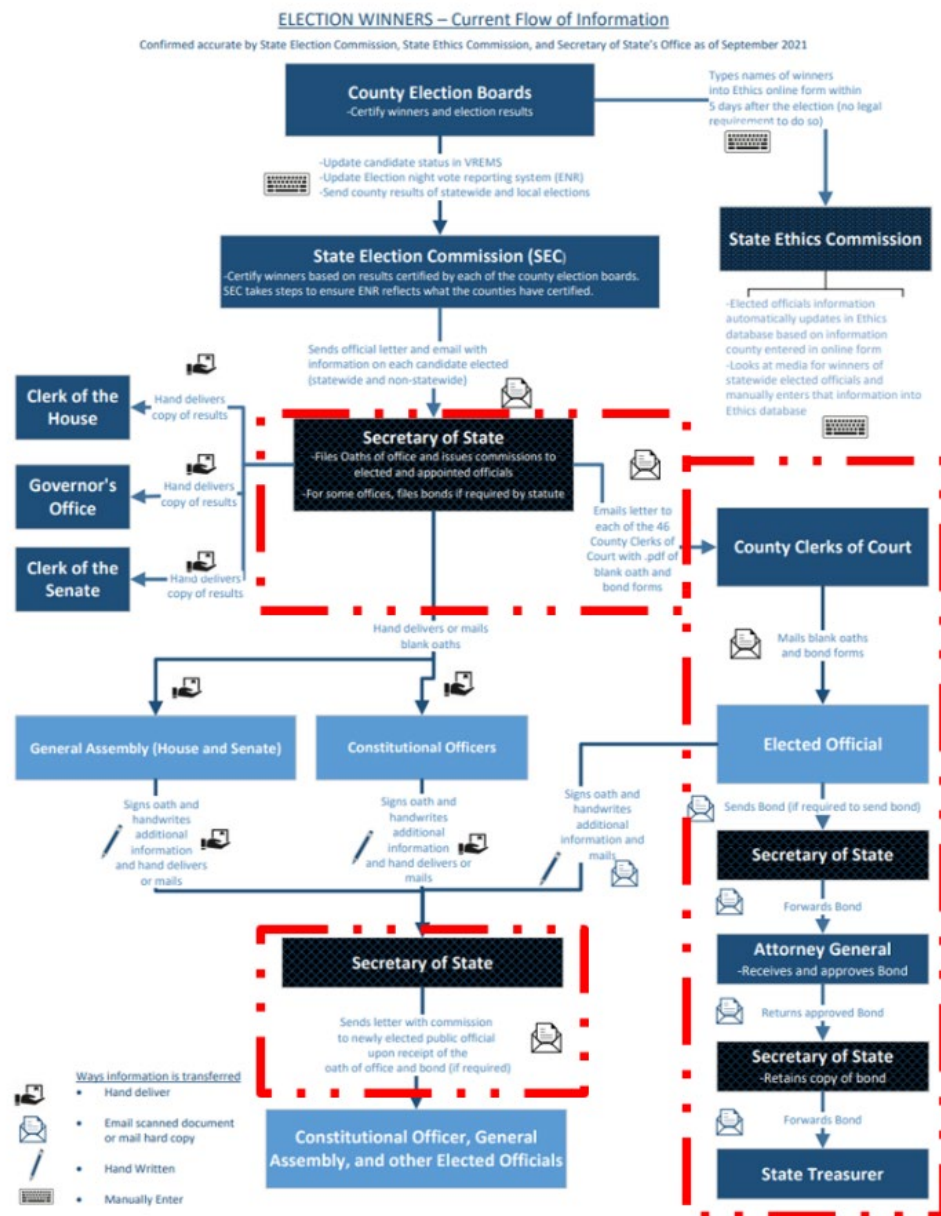


Figure 17. Bond process for election winners is noted in the red¹¹⁹

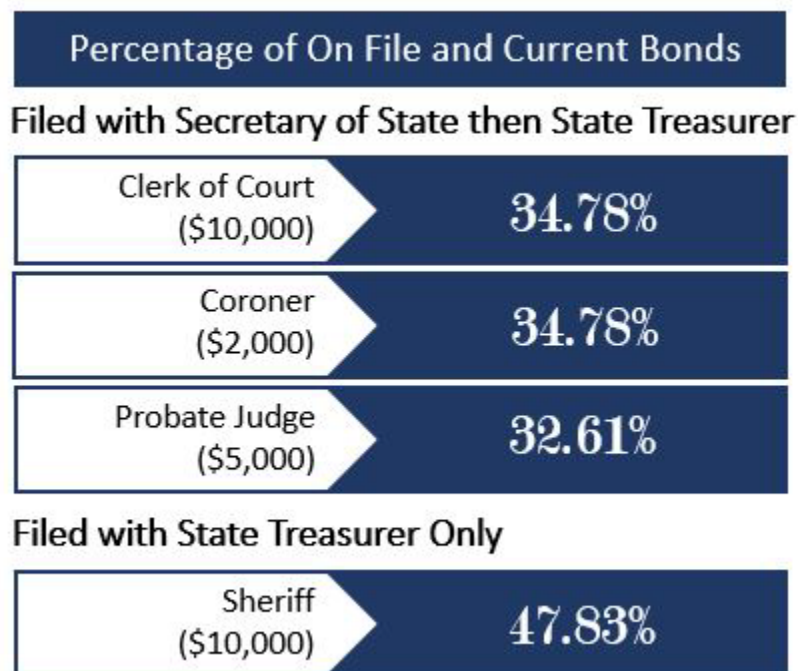


Figure 18. Aggregate data from the Secretary of State's Office pertaining to bond filings for county officials¹²⁰

Notably, records from the Secretary of State's Office indicate only one in every three clerks of court, coroners, and probate judges have the required bond current and on file. Additionally, less than 50% of sheriff's have their required bond current and on file.¹²¹

Identifying a specific entity responsible for enforcement may increase compliance. However, the requirement of posting a bond by an elected official is an old concept that may no longer be necessary as explained by Attorney General's Office personnel.

The term "bond" is very broad and encompasses a number of different types of bond. Generally, the bond is required of officers to provide a source of recovery for certain acts of the person being bonded. It may also be an old concept, whereby if a person of low moral or ethical background was elected or appointed to office, the inability to be bonded would preclude the individual from taking that seat and having the ability to act nefariously. In this context, we believe the bond is referred to as a "fidelity bond," or covering the government or others for the official's potential embezzlement, larceny, or gross negligence in the position of trust with the government. This may have been necessary when sovereign immunity protected government officials except for extreme circumstances. With a Tort Claims Act which is a relatively modern introduction, the Act allows limited circumstances and period to sue the government for a lesser threshold. Therefore, the underlying need for the bond may no longer exist.¹²²

The House Legislative Oversight Committee also recommended modernization of laws relating to the bond of an agency head in its 2017 study of the Department of Agriculture.¹²³

RECOMMENDATION #21. GENERAL ASSEMBLY- Consider applying current taxes on cigarettes to vaping, e-cigarettes, and similar products.

The General Assembly may wish to consider applying current taxes on cigarettes to vaping, e-cigarettes, and similar products. Figure 19 shows the other states that tax vaping, e-cigarettes, and similar products.¹²⁴

During the study, Attorney General Office personnel noted the existing taxes on cigarettes do not extend to these products.¹²⁵ Additionally, these products are not part of the tobacco settlement agreement with cigarette manufacturers, which provides annual payments in perpetuity to help reimburse South Carolina and the other participating states for healthcare costs and harm caused by tobacco use.¹²⁶



Figure 19. States that tax vaping, e-cigarettes, and similar products¹²⁷

Table Note: Blue indicates the states that tax vaping, e-cigarettes, and similar products

Inquiry was made to personnel with the Department of Health and Environmental Control about the health effects and costs of these products. Listed below is an excerpt from that correspondence about the cost:

As highlighted earlier, though many short-term impacts have been identified, e-cigarettes have not been around long enough to know the full risks of long-term use. There is a well-documented latency period for tobacco-related disease, and it will likely be at least two decades until definitive findings from long term studies on e-cigarette use are available. As such, very little information exists on the associated healthcare costs of vaping. However, in a May 2022 research article published in the peer reviewed journal *Tobacco Control*, a first study of its kind, examined the effects of e-cigarette use on healthcare utilization and expenditures among US adults. This study found that in 2018, **\$1.3 billion (\$1,796 per user) annual healthcare expenditures were attributable to current exclusive c-cigarette use, \$13.8 billion (\$2,050 per user) were attributable to current dual/poly e-cigarette users** (i.e. used both e-cigarettes and combustible tobacco), and \$15.1 billion (\$2,024 per user) were attributable to all current e-cigarette use. Again, further research in this area is needed. (emphasis added)¹²⁸

RECOMMENDATION #22. GENERAL ASSEMBLY- Consider increasing the limitation on tokens of recognition for state employees.

During this study, and in other studies, agency leadership identified employee retention and recruitment as an issue. Competitive wages are essential to building and maintaining a tenured staff. The Department of Administration's website includes examples of compensation options (e.g., additional skills/knowledge increases, etc.) available to state agencies.¹²⁹ Agency leadership should use the levers within their control to address and reduce turnover.

One of those levers is employee recognition efforts, which the Attorney General Office utilizes. To maximize the impact on agency retention efforts, the General Assembly may wish to consider amending S.C. Code Section 8-1-180 to increase the limitation on tokens of recognition and other rewards for state employees (e.g., increase \$50 to \$150).¹³⁰ The current "\$50 limit on the amount that can be spent on each employee per award" has not been increased in almost three decades.¹³¹ As noted in the 2022 studies of the Attorney General's Office and Department of Health and Human Services, a reasonable recognition program may help with employee retention efforts. However, as Attorney General's Office personnel noted the "actual amount limited by the state is not just modest, but trivial."¹³²

RECOMMENDATION #23. GENERAL ASSEMBLY- Consider establishing a victim address confidentiality program.

The General Assembly may wish to consider creating a victim address confidentiality program, which "[p]rotects the location of victims of domestic and sexual violence, stalking, and human trafficking forced to flee abusive and dangerous situations."¹³³ During the study, agency personnel noted South Carolina is one of only 12 states without a program that allows victims to receive mail at a confidential address and not disclose their actual address in public records.¹³⁴ Figure 20 shows the states that have enacted an address confidentiality program.

¹³⁵ During the study, inquiry was made about the potential fiscal impact of creation of a victim address confidentiality program, and agency personnel noted that North Carolina administers their program with one full time employee and associated administrative costs (e.g., postage, etc.).¹³⁶

States that have victim confidentiality laws

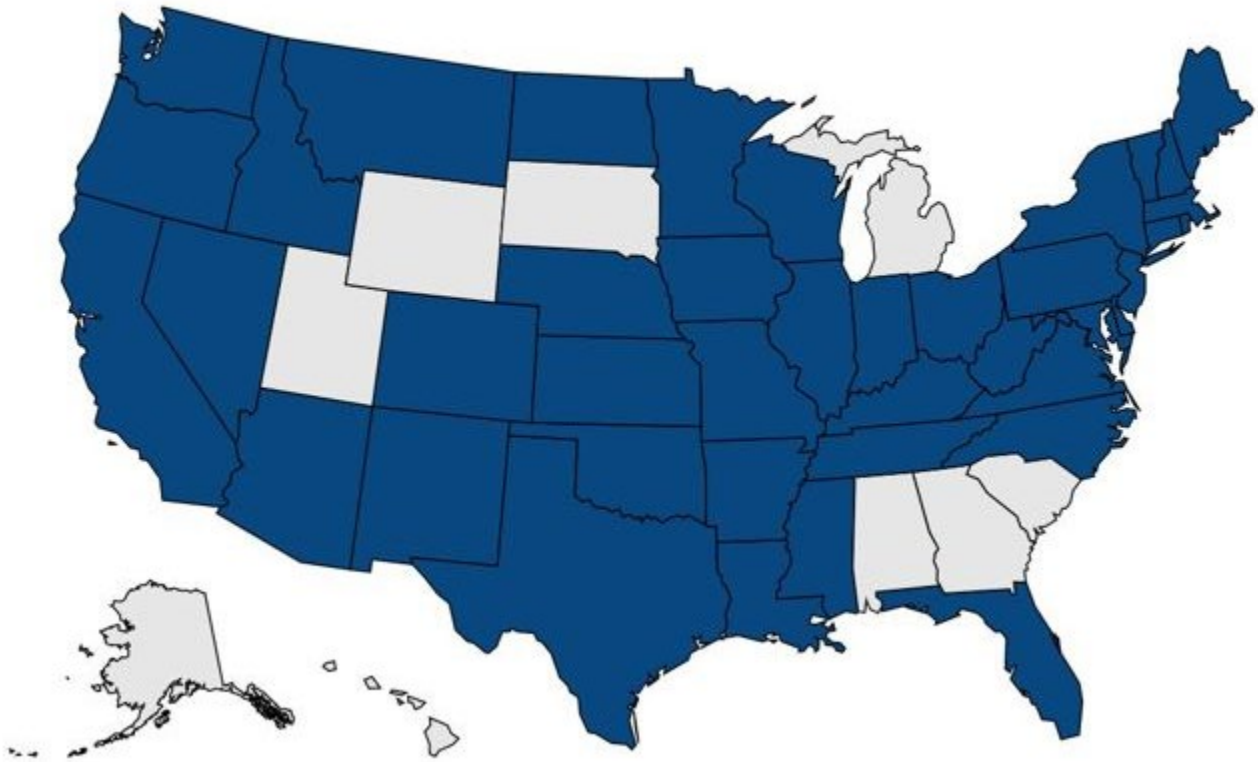


Figure 20. States that have victim confidentiality laws¹³⁷

Table Note: Blue indicates the state has enacted victim confidentiality laws

RECOMMENDATION #24. GENERAL ASSEMBLY- Consider updating statutes related to the Sexually Violent Predator Act.

The Sexually Violent Predator Act, which provides a civil commitment procedure for the long-term care and treatment of a person found to be a sexually violent predator, was enacted in 1998. On average, a person is under involuntary civil commitment prior to release for 6.7 years.¹³⁸ In the more than two decades since enactment, there have only been minor changes to these provisions. During the study, Attorney General's Office personnel noted issues have arisen with implementation (e.g., limited availability of specified mental health providers; lack of priority for court docketing of these civil cases; etc.).

Legislation, which the agency supported, was filed to address these issues in the 124th General Assembly. Specifically, agency personnel expressed support for S.659 and H.4086. While neither bill was enacted, S.659 was approved by the Senate. Table 11 includes agency personnel's suggested revisions to address their issues of concern with the Sexually Violent Predator Act.¹³⁹ The General Assembly may wish to consider their proposal.

Flow charts outlining the Sexually Violent Predator process are included in Appendix A.

Table 11. Attorney General Office personnel's proposed revisions to South Carolina's Sexually Violent Predator Act¹⁴⁰

Section 44-48-30 (new item)	“() ‘Resident’ means a person who has been committed as a sexually violent predator for the purposes of long-term control, care, and treatment.”
Section 44-48-30(9)	“(9) ‘Likely to engage in acts of sexual violence’ means <u>that a person is predisposed to engage in acts of sexual violence and more probably than not will engage in the</u> person’s propensity to commit acts of sexual violence is of to such a degree as to pose a menace to the health and safety of others.”
Section 44-48-40(B)	“(B) If a person has been convicted of a sexually violent offense and the Board of Probation, Parole and Pardon Services or the Board of Juvenile Parole intends to grant the person a parole or the South Carolina Department of Corrections or the Board of Juvenile Parole intends to grant the person a conditional release <u>or supervised re-entry</u> , <u>then</u> the parole, or the conditional release, <u>or the supervised re-entry</u> must be granted to be effective one hundred eighty days after the date of the order of parole, or conditional release, <u>or supervised re-entry</u> . The Board of Probation, Parole and Pardon Services, the Board of Juvenile Parole, or the South Carolina Department of Corrections immediately must send notice of the parole, or conditional release, <u>or supervised re-entry</u> of the person to the multidisciplinary team, the victim, and the Attorney General. If the person is determined to be a sexually violent predator pursuant to this chapter, <u>then</u> the person is subject to the provisions of this chapter even though the person has been released on parole, or conditional release, <u>or supervised re-entry</u> .”
Section 44-48-50	“Section 44-48-50. <u>(A)</u> The Director of the Department of Corrections must appoint a multidisciplinary team to review the records of each person referred to the team pursuant to Section 44-48-40. These records may include, but are not limited to, the person’s criminal offense record, any relevant medical and psychological records, treatment records, victim’s impact statement, and any disciplinary or other records formulated during confinement or supervision. The team, within thirty days of receiving notice as provided for in Section 44-48-40, must assess whether or not <u>there is probable cause to believe</u> the person satisfies the definition of a sexually violent predator. If it is determined <u>that probable cause does exist</u> that the person satisfies the definition of a sexually violent predator, <u>then</u> the multidisciplinary team must forward a report of the assessment to the prosecutor’s review committee and notify the victim. The assessment must be accompanied by all records relevant to the assessment. Membership of the team must include: (1) a representative from the Department of Corrections; (2) a representative from the Department of Probation, Parole and Pardon Services; (3) a representative from the Department of Mental Health who is a trained, qualified mental health clinician with <u>education, training, or experience in assessing, examining, or treating sex</u> expertise in treating sexually violent offenders; (4) a retired judge appointed by the Chief Justice who is eligible for continued judicial service pursuant to Section 2-19-100; and (5) an attorney with substantial experience in the practice of criminal defense law to be appointed by the Chief Justice to serve a term of one year.

	<u>(B)</u> The Director of the Department of Corrections or his designee appointed pursuant to item (1) <u>subsection (A)(1)</u> shall be the chairman of the team.”
Section 44-48-80(D)	“(D) If the probable cause determination is made, <u>then</u> the court must direct that, upon completion of the criminal sentence, the person must be transferred to a local or regional detention facility pending <u>the</u> conclusion of the proceedings under this chapter. The court must further direct that the person be transported to an appropriate facility of the South Carolina Department of Mental Health for an evaluation as to whether the person is a sexually violent predator <u>and must order the person to comply with all testing and assessments deemed necessary by a court-appointed evaluator. The evaluation must be conducted by a qualified expert appointed by the court at the probable cause hearing.</u> The expert <u>court-appointed evaluator</u> must complete the evaluation within sixty <u>ninety</u> days after the <u>Department of Mental Health provides written certification to the Attorney General’s Office and the person’s legal counsel that it has received all medical, psychological, criminal offense, and disciplinary records and reports concerning the person but not greater than one hundred eighty days after the probable cause order is filed completion of the probable cause hearing.</u> The court may grant one extension upon request of the <u>court-appointed evaluator</u> expert and a showing of <u>good cause.</u> Any further extensions only may be granted for extraordinary circumstances. After the evaluation by the court-appointed evaluator, if the person or the Attorney General seeks an independent evaluation by a qualified independent evaluator, pursuant to Section 44-48-90(C), then that evaluation must be completed within ninety days after receipt of the report by the court-appointed evaluator. The court may grant an extension upon request of the independent evaluator and a showing of extraordinary circumstances. Any evaluator who will be submitted as an expert at either a hearing or trial must submit a written report available to both parties.”
Section 44-48-90(B) and (C)	“(B) Within thirty days after the determination of probable cause by the court pursuant to Section 44-48-80, the person or the Attorney General may request, in writing, that the trial be before a jury. If no request is made, the trial must be before a judge in the county where the offense was committed within ninety days of the date the <u>qualified independent evaluator requested by the person or Attorney General pursuant to Section 44-48-90(C)</u> court appointed expert <u>issues a report the evaluation</u> as to whether the person is a sexually violent predator, pursuant to Section 44-48-80(D), or, if there is no term of court, the next available date thereafter, <u>and the case shall be treated as a priority case. If neither party seeks an independent evaluation a request is made, then the court trial must be schedule a trial before a judge, or a jury if a jury trial is requested,</u> in the county where the offense was committed within ninety days of the date the court appointed <u>evaluator</u> expert <u>issues the evaluation report</u> as to whether the person is a sexually violent predator, pursuant to Section 44-48-80(D), or, if there is no term of court, the next available date thereafter. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced. <u>All cases pursuant to this chapter shall be given priority status for the purposes of scheduling any hearings and trials.</u> The Attorney General must notify the victim, in a timely manner, of the time, date, and location of the trial. At all stages of the proceedings under this chapter, a person subject to this chapter is entitled to the assistance of counsel, and if the person is indigent, the court must appoint counsel <u>designated by the Office of Indigent Defense to handle sexual predator cases</u> to assist the person.

	(C) Upon receipt of the evaluation issued by the court appointed <u>evaluator expert</u> as to whether the person is a sexually violent predator pursuant to Section 44-48-80(D), the person or the Attorney General may retain a qualified <u>independent evaluator expert</u> to perform a subsequent examination. If the court-appointed evaluator determines that the person is not a sexually violent predator, then the Attorney General, with notice to the person, may seek an independent evaluation pursuant to this section. If the court-appointed evaluator determines that the person is a sexually violent predator, then the person, with notice to the Attorney General, may seek an opinion by a qualified independent evaluator pursuant to this section. All examiners are permitted to have reasonable access to the person for the purpose of the examination, as well as access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. In the case of an indigent person who <u>requests</u> would like an <u>independent evaluator expert of his own choosing</u>, the indigent person must file and serve upon the Attorney General a motion requesting payment and costs court must determine whether the services are necessary. The Attorney General shall have ten days from the date of service to file a response to the motion. If the court determines that the services are necessary and the expert's requested compensation for the <u>qualified independent evaluator services</u> is reasonable, <u>then</u> the court must assist the person in obtaining the <u>qualified independent evaluator expert</u> to perform an <u>evaluation examination</u> or participate in the trial on the person's behalf <u>and must approve all reasonable expenses associated with the evaluation</u>. All evaluators are permitted to have reasonable access to the person for the purpose of the examination, as well as reasonable access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. The court shall order must approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person to comply with any testing and assessments deemed necessary by the evaluator for a thorough evaluation, and compensation received in the case or for the same services from any other source."
Section 44-48-100(B)	"(B) If the person charged with a sexually violent offense has been found incompetent to stand trial and is about to be released and the person's commitment is sought pursuant to subsection (A), <u>then</u> the court first shall <u>conduct a non-jury hearing</u>, where it <u>will</u> hear evidence and determine whether the person committed the act or acts with which he is charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases apply, and all constitutional rights available to defendants at criminal <u>hearings trials, except other than</u> the right not to be tried while incompetent <u>and the right to a jury trial</u>, apply. After hearing evidence on this issue, the court must make specific findings on whether the person committed the act or acts with which he is charged; the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf; the extent to which the evidence could be reconstructed without the assistance of the person; and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the person committed the act or acts with which he is charged, <u>then</u> the court must enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter."
Section 44-48-110	"Section 44-48-110. <u>(A)(1)</u> A <u>person resident</u> committed pursuant to this chapter must have an <u>evaluation examination</u> of his mental condition performed <u>by a Department of</u>

Mental Health-designated evaluator within one ~~once every~~ year from the filing date of the initial commitment order. Thereafter, a Department of Mental Health-designated evaluator will evaluate the resident's mental condition within one year after a pending review is resolved by a filed court order indicating:

(a) a finding of no probable cause;

(b) a waiver by the resident; or

(c) an order of continued commitment after a periodic review trial.

(2) The designated evaluator's report is admissible as evidence at any hearing and must be provided to the clerk of the court in the jurisdiction that committed the resident pursuant to this chapter, the Attorney General, and the solicitor who prosecuted the resident.

(B) The ~~resident person~~ may retain or, if the ~~resident person~~ is indigent and so requests, the court may appoint a qualified ~~evaluator expert~~ to ~~evaluate~~ examine the ~~resident person~~, and the ~~resident's evaluator expert~~ must have reasonable access to all medical, psychological, criminal offense, ~~and~~ disciplinary, and treatment records and reports concerning the ~~resident person~~.

(C) The annual report must be provided to the court which committed the person pursuant to this chapter, the Attorney General, the solicitor who prosecuted the person, and the multidisciplinary team. The ~~After the designated evaluator's report is filed, the~~ court must conduct a an annual hearing to review the resident's status of the ~~committed person~~, unless the resident waives the hearing in writing. The committed person is not prohibited from petitioning the court for release at this hearing.

(D) The ~~Director of the~~ Department of Mental Health must provide the resident committed person with an annual written notice of the resident's person's right to petition the court for release without the Department of Mental Health's authorization and over the director's objection; the notice must contain a waiver of rights form, within one year of the last periodic review order or waiver of rights. The ~~department director~~ must forward the designated evaluator's report with the notice and waiver form to the clerk of court in the jurisdiction that committed the resident pursuant to this chapter, the Attorney General, and the solicitor who prosecuted the resident with the annual report.

(E) The ~~resident committed person~~ has a right to have an attorney represent him at the periodic review hearing, but the ~~resident committed person~~ is not entitled to be present at the hearing. The resident may only be present at the hearing upon issuance of a transport order received by the Department of Mental Health within not less than fifteen days of the hearing date. The Department of Mental Health-designated evaluator will only be required to be present at the hearing if subpoenaed by the resident's attorney in accordance with the South Carolina Rules of Civil Procedure.

(F) If the court determines that probable cause exists to believe that the resident's person's mental abnormality or personality disorder has so changed that the resident person is safe to be at large and, if released, is not likely to commit acts of sexual violence, the court must schedule a trial on the issue. At the trial, the resident committed person is ~~entitled to be present and~~ is entitled to the benefit of all constitutional protections that were afforded the resident person at the initial commitment proceeding. The Attorney General must notify the victim of all proceedings. The Attorney General must represent the State and has the right to have the resident committed person evaluated by a qualified evaluator experts chosen by the State. The trial must be before a jury if requested by either the resident person, the Attorney General, or the solicitor. The resident committed person also has the right to have a qualified evaluator experts evaluate the resident person on the resident's person's behalf, and the court must appoint an evaluator expert if the resident person is indigent and requests the appointment. The burden of proof at the trial is upon the State to prove beyond a reasonable doubt that the resident's committed person's mental abnormality or personality disorder remains such that the

	resident person is not safe to be at large and, if released, is likely to engage in acts of sexual violence.”
Chapter 48, Title 44	“Section 44-48-115. (A) A resident committed to the South Carolina Sexually Violent Predator Treatment Unit shall have the right to challenge the commitment and subsequent periodic reviews based on the ineffective assistance of counsel during the resident’s commitment trial or periodic review proceedings. (B) Petitions shall be filed in the original jurisdiction of the South Carolina Supreme Court under the South Carolina Appellate Court Rules within thirty days of the date that any appeals from the commitment or periodic review proceedings are final. Upon receipt of the petition, the Clerk of Court of the Supreme Court shall issue an order designating a circuit court or appellate court judge as a referee to make appropriate findings of fact and conclusions of law and shall report the findings and conclusions to the Supreme Court. The designated judge shall have the statewide authority to issue orders as necessary. (C) Except as provided in this chapter, the South Carolina Rules of Civil Procedure and the South Carolina Rules of Evidence apply to cases filed pursuant to this section, in evidentiary hearings before the designated hearing judge. (D) The named respondent shall be the Department of Mental Health. A copy of the petition shall be served on the Department of Mental Health and the South Carolina Attorney General’s Office. (E) Upon the filing of a petition alleging that the resident is indigent and desires appointed counsel, the designated judge shall appoint an attorney to represent the resident. Counsel shall be appointed from the contract attorney list of post-conviction counsel maintained by the South Carolina Commission on Indigent Defense, or such other list of attorneys as the Executive Director of the South Carolina Commission on Indigent Defense shall designate to the court. If no attorney is available from this list, then the designated circuit court judge shall appoint an attorney from the Appointment of Lawyers for Indigents. The designated judge shall not appoint an attorney who previously represented the resident in any prior criminal proceedings underlying the commitment or state post-conviction relief proceedings or appeals therefrom, in the original sexually violent predator civil commitment proceeding or appeal therefrom, or in any previous or present periodic reviews or appeals therefrom. (F) The designated judge shall authorize by court order to the particular county clerks of court the disclosure of any pleadings, evidence, transcript, or other document filed in any circuit court or appellate court clerk’s office of this State in any case in which the resident was a defendant, respondent, or party to a criminal action or an action under the Sexually Violent Predator Act that has been ordered sealed. These materials shall be unsealed for the limited purpose of providing items to appointed counsel for the resident, to the resident himself if he elects to proceed pro se, and the Department of Mental Health and its attorneys. (G) Regardless of whether the resident indicates that he has served the Department of Mental Health, the Clerk of Court of the South Carolina Supreme Court shall forward the filed petition and all accompanying papers to the Department of Mental Health’s Office of General Counsel as the agent for service of process for the Department of Mental Health, and a copy to the Attorney General’s office. The Department of Mental Health, through the Attorney General’s Office acting as its representative, shall file its responsive pleading within thirty days of receipt of the order appointing counsel, or within thirty days of the receipt of the petition if counsel is retained, or receipt of the petition if the resident is proceeding pro se without a request for counsel at the time of the filing. (H) In the event that a habeas petition alleging ineffective assistance of counsel claims relating to the resident’s commitment or periodic review is filed before the conclusion of

	the resident’s appeal therefrom, the Clerk of the Supreme Court shall dismiss the petition without prejudice and without requiring a response from the Department of Mental Health. (I) Within thirty days of assignment, the designated judge shall issue a scheduling order, including a discovery schedule and shall set a hearing within not more than one hundred eighty days from the filing of the petition. A final report to the Supreme Court shall be submitted within thirty days from the conclusion of the hearing, including findings of fact and conclusions of law pursuant to the standard set forth in <u>In the Matter of the Treatment and Care of Chapman</u>, 419 S.C. 172, 796 S.E.2d 843 (2017). This does not preclude the designated judge from recommending to the Supreme Court that the petition be denied on the basis of the pleadings without a hearing when appropriate upon motion by the Department of Mental Health. (J) Upon receipt of the findings and conclusions of the designated judge to the Supreme Court by the designated judge, the Clerk of the Supreme Court may set forth an appropriate briefing schedule. The clerk may consider expediting the matter to determine whether the writ of habeas corpus should be granted and the appropriate relief therefrom. The court may also issue, as appropriate, orders relating to whether intervening and on-going statutory status review proceedings or appeals therefrom are affected in any manner by the habeas corpus actions in its original jurisdiction.”
Section 44-48-120(B)	“(B) The court, upon receipt of the petition for release <u>filed pursuant to Section 44-48-120(A)</u>, must order a hearing within thirty days unless the Attorney General, <u>with notice to the resident</u>, requests an examination by a qualified <u>evaluator expert</u> as to whether the <u>resident’s petitioner’s</u> mental abnormality or personality disorder has so changed that the <u>resident petitioner</u> is safe to be at large and, if released, is not likely to commit acts of sexual violence, or the <u>resident petitioner</u> or the Attorney General requests a trial before a jury. The Attorney General must represent the State and has the right to have the <u>resident petitioner</u> examined by <u>a qualified evaluator experts</u> chosen by the State. If the <u>petition is filed with the authorization of the Department of Mental Health provided by this section</u>, then the <u>Department of Mental Health-designated evaluator shall appear as a witness at the hearing or trial</u>. If the Attorney General’s evaluator determines that the resident still meets the criteria for confinement as a sexually violent predator, then the resident may seek another evaluation at his own expense. All evaluators are permitted to have reasonable access to the person for the purpose of the examination, as well as reasonable access to all relevant medical, psychological, criminal offense, and disciplinary records and reports, and the court shall order the person to comply with any testing and assessments deemed necessary by an evaluator. <u>Attorney General retains a qualified expert who concludes that the petitioner’s mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and, if released, is likely to commit acts of sexual violence, the petitioner may retain a qualified expert of his own choosing to perform a subsequent examination. In the case of an indigent petitioner who would like an expert of his own choosing, the court must determine whether the services are necessary. If the court determines that the services are necessary and the expert’s requested compensation for the services is reasonable, the court must assist the petitioner in obtaining the expert to perform an examination or participate in the hearing or trial on the petitioner’s behalf. The court must approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the petitioner, and compensation received in the case or for the same services from any other source.</u> The burden of proof is upon the Attorney General to show beyond a reasonable doubt that the <u>resident’s petitioner’s</u> mental abnormality

	or personality disorder remains such that the <u>resident petitioner</u> is not safe to be at large and, that if released, is likely to commit acts of sexual violence. <u>All cases pursuant to this chapter shall be given priority status for the purposes of scheduling any hearings and trials.</u> ”
Section 44-48-150	“Section 44-48-150. Psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records, or victim impact statements which have been submitted to the court or admitted into evidence under this chapter must be part of the record, but must be sealed and opened only on order of the court. <u>Nothing in this section prohibits the release of records to the Attorney General and counsel of record for the person.</u> ”
Section 24-21-32(C)	“(C) The individual terms and conditions of reentry supervision shall be developed by the department using an evidence-based assessment of the inmate’s needs and risks. An inmate placed on reentry supervision must be supervised by a probation agent of the department. The department shall promulgate regulations for the terms and conditions of reentry supervision. Until such time as regulations are promulgated, the terms and conditions shall be based on guidelines developed by the director. <u>However, if, under the Sexually Violent Predator Act, the multidisciplinary team finds probable cause to believe that an inmate is a sexually violent predator pursuant to Section 44-48-50, then the inmate is not eligible for the supervised re-entry program until resolution of the proceedings pursuant to the Sexually Violent Predator Act.</u> ”

RECOMMENDATION #25. GENERAL ASSEMBLY – Consider establishing a federal Health and Human Services Office of the Inspector General approved False Claims Act.

The General Assembly may wish to consider establishing an HHS-OIG (i.e., federal Health and Human Services Office of the Inspector General) approved False Claims Act (FCA). During the study, agency personnel note that ratifying an HHS-OIG approved FCA would generate more cases and increase

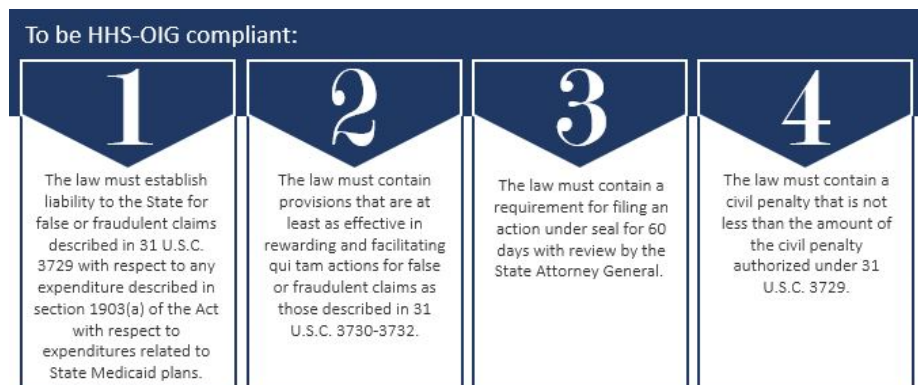


Figure 21: HHS-OIG compliant factors¹⁴¹

the opportunities to participate in national cases that are only open to states with FCA. This is a concept recommendation offered by Attorney General’s Office personnel for a “ ‘Medicaid Only’ False Claims Act that qualifies for the Section 1909 incentive, similar to that in Colorado, Georgia, Oklahoma, Texas, and Washington.”¹⁴² Also, agency personnel noted to be HHS-OIG

compliant the factors listed in Figure 21 must be present.¹⁴³ Other states with HHS-OIG approved laws include Florida, North Carolina, Tennessee, and Virginia.¹⁴⁴

RECOMMENDATION #26. GENERAL ASSEMBLY – Consider authorizing Internet Crimes Against Children investigators to subpoena subscriber information from internet and electronic service providers.

The General Assembly may wish to consider providing Internet Crimes Against Children (ICAC) investigators at the Attorney General’s Office the power to subpoena subscriber information from internet and electronic service providers. During the study ICAC personnel opined:

The current process of requiring orders and search warrants slows law enforcement down dramatically. With over 3,000 cyber tips alone in the 2018-2019 fiscal year, each case requires law enforcement obtain an order or a search warrant from a circuit court judge.¹⁴⁵

Figure 22 illustrates the current process ICAC personnel follow to obtain subscriber information (e.g., subscriber name, address, length of service, account number, etc.).¹⁴⁶



Figure 22. Current process Internet Crimes Against Children personnel follow to obtain subscriber information (e.g., subscriber name, address, length of service, account number, etc.) as described by agency personnel¹⁴⁷

RECOMMENDATION #27. GENERAL ASSEMBLY – Consider updating statute to add a fentanyl trafficking provision.

Currently, South Carolina does not have a fentanyl trafficking provision in statute.¹⁴⁸

During the study, agency personnel note the “availability of imported and cheap fentanyl is fueling the opiate epidemic.”¹⁴⁹ Accordingly, the General Assembly may wish to consider adding a specific subsection of the statute defining a fentanyl related substance, the penalty for each subsequent offense, and the weight for different charges. Table 12 includes agency personnel’s suggested revisions.

Table 12. Attorney General Office personnel’s proposed revisions to South Carolina Code Sections 44-53-190 and Section 44-53-370¹⁵⁰

Section 44-53-190(B) (new item)	<u>(). Fentanyl-related substance. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, that is structurally related to fentanyl by one or more of the following modifications:</u> <u>(A) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;</u> <u>(B) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxyl, halo, haloalkyl, amino or nitro groups;</u> <u>(C) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;</u> <u>(D) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or</u> <u>(E) Replacement of the N-propionyl group by another acyl group.</u> <u>This definition includes, but is not limited to, the following substances:</u> <u>Methylacetyl fentanyl, Alpha-methylfentanyl, Methylthiofentanyl, Benzylfentanyl, Beta-hydroxyfentanyl, Beta-hydroxy-3-methylfentanyl, 3-Methylfentanyl, Methylthiofentanyl, Fluorofentanyl, Thenylfentanyl or Thienyl fentanyl, Thiofentanyl, Acetylfentanyl, Butyrylfentanyl, Beta-Hydroxythiofentanyl, Lofentanil, Ocfentanil, Ohmfentanyl, Benzodioxolefentanyl, Furanyl fentanyl, Pentanoyl fentanyl, Cyclopentyl fentanyl, Isobutyryl fentanyl, Remifentanil, Crotonyl fentanyl, Cyclopropyl fentanyl, Valeryl fentanyl, Fluorobutyryl fentanyl, Fluoroisobutyryl fentanyl, Methoxybutyryl Fentanyl, Isobutyryl fentanyl, Chloroisobutyryl fentanyl, Acryl fentanyl, Tetrahydrofuran fentanyl, Methoxyacetyl fentanyl, Fluorocrotonyl fentanyl, Cyclopentenyl fentanyl, Phenyl fentanyl, Cyclobutyl fentanyl, Methylcyclopropyl fenantyl,</u>
Section 44-53-370(e)(3)	<u>“(3) four grams or more of any morphine, opium opiate, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210, or four grams or more of any fentanyl or fentanyl-related substance as described in Section 44-53-190 or 44-53-210, or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as “trafficking in illegal drugs” and, upon conviction, must be punished as follows if the quantity involved is:</u> <u>(a)for a first offense, a term of imprisonment of not more than twenty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;</u>

	(b) for a second or subsequent offense, a term of imprisonment of not more than thirty years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars; (c) for an offense that results in a fatal overdose, the term of imprisonment must be increased by an additional sentence of up to twenty years to run consecutively.”
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RECOMMENDATION #28. GENERAL ASSEMBLY- Consider reviewing S.C. Code Section 16-3-1050 and S.C. Code Section 43-35-85, which penalize the same behavior relating to abuse, neglect, or exploitation of vulnerable adults, but have different collateral consequences (e.g., one statute resulting in a designation of a violent most serious offense while the other is a serious non-violent) to determine if amendments are desired to make the collateral consequences the same.

As background, both code sections were originally enacted in the 1990s about seven years apart.¹⁵¹ S.C. Code Section 44-35-85 is the later enacted provision as amendments were last made in 2010.¹⁵² Listed below is a comparison of the two statutes as provided by agency personnel.¹⁵³

Ramifications/Similarities: The incarceration periods and fines provided in section 43-35-85 are identical to those in section 16-3-1050. Both section 16-3-1050(F) and section 43-35-85(F) are classified as serious offenses to qualify for life without parole under the two or three strikes statute of section 17-25-45(C)(2).

Ramifications/Differences: Sections 43-35-85(E) and (F) are both designated violent crimes under section 16-1-60 of the South Carolina Code. However, the corresponding crimes found in sections 16-3-1050(E) and (F) are not designated violent crimes. Section 43-35-85(E) is classified by statute as a serious offense, but the corresponding section 16-3-1050(E) is not specifically listed and so would not be considered a serious offense for calculation of strikes for life without parole under 17-25-45(C). The final difference, mentioned previously, is that section 16-3-1050(A) retains the provision allowing for disciplinary action while that provision was removed from section 43-35-85(A).¹⁵⁴

RECOMMENDATION #29. GENERAL ASSEMBLY- Consider updating statutes related to venue for State Grand Jury cases.

Current law states State Grand Jury (SGJ) charges should be venued (i.e., heard) in the county where appropriate. As noted by Attorney General’s Office personnel in the agency’s Program Evaluation Report submitted to the Committee, “crime often transcends county lines.”¹⁵⁵ The General Assembly may wish to consider amending state statute to allow related charges indicted by the SGJ to be tried together in one county where at least one of the related charges occurred (i.e., allow all related crimes of a multi-county criminal enterprise or spree to be tried together in one county). Table 13 includes agency personnel’s suggested revisions to update S.C. Code Section 14-7-1750.¹⁵⁶ The General Assembly may wish to consider their proposal.

Table 13. Attorney General Office personnel's proposed revisions to S.C. Code Section 14-7-1750¹⁵⁷

SECTION 14-7-1750	In order to return a "true bill" of indictment, twelve or more state grand jurors must find that probable cause exists for the indictment and vote in favor of it. Upon indictment by a state grand jury, the indictment must be returned to the presiding judge. If the presiding judge considers the indictment to be within the authority of the state grand jury and otherwise in accordance with the provisions of this article, he shall return the indictment by order to the county where venue is appropriate under South Carolina law for prosecution by the Attorney General or his designee; <u>provided, however, that related offenses indicted by the State Grand Jury which occurred in different counties may be tried together in one of the counties in which at least one of the related offenses occurred, and venue shall not be a basis for acquittal in such a circumstance as long as venue was appropriate for at least one of the related offenses in the county in which the trial occurred.</u> The presiding judge may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. Thereupon, the clerk of the state grand jury shall seal the indictment, and no person shall disclose the return of the indictment except when necessary for the issuance and execution of a warrant.
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RECOMMENDATION #30. GENERAL ASSEMBLY- Consider updating statute to enable more potential State Grand Jury review of cases with possible health effects on the community.

For the State Grand Jury to review cases with possible health effects on the community, current law requires a \$2M threshold as certified by an independent environmental engineer who must be contracted by the Department of Health and Environmental Control (DHEC).¹⁵⁸ During the study, agency personnel note lowering the threshold, but maintaining a significant amount (e.g., \$500,000), and providing that certification can be done by any "environmental engineer," may enable more cases for possible State Grand Jury review that have possible health effects on the community.¹⁵⁹ In particular, the agency noted it is difficult to find someone in state who meets the definition of "independent environmental engineer."¹⁶⁰ During the study, agency personnel testified that DHEC personnel agree with the recommended law change.¹⁶¹

Table 14 includes agency personnel's suggested revisions to update S.C. Code Section 14-7-1630(A)(12).¹⁶² The General Assembly may wish to consider their proposal.

Table 14. Attorney General Office personnel's proposed revisions to S.C. Code Section 14-7-1630(A)(12)¹⁶³

SECTION 14-7-1630(A)(12)	(12) a knowing and wilful crime involving actual and substantial harm to the water, ambient air, soil or land, or both soil and land. This crime includes a knowing and wilful violation of the Pollution Control Act, the Atomic Energy and Radiation Control Act, the State Underground Petroleum Environmental Response Bank Act, the State Safe Drinking Water Act, the Hazardous Waste Management Act, the Infectious Waste Management Act, the Solid Waste Policy and Management Act, the Erosion and Sediment Control Act, the South Carolina Mining Act, and the Coastal Zone Management Act, or a knowing and wilful crime arising out of or in connection with environmental laws, or any attempt, aiding, abetting, solicitation, or
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	conspiracy to commit a knowing and wilful crime involving the environment if the anticipated actual damages including, but not limited to, the cost of remediation, are one ^{two} -million dollars or more, as certified by an independent environmental engineer who must be contracted by the Department of Health and Environmental Control . If the knowing and wilful crime is a violation of federal law, then a conviction or an acquittal pursuant to federal law for the same act is a bar to the impaneling of a state grand jury pursuant to this section.
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Modernization – Repeal Recommendations

The Committee’s review process provided an opportunity for agency personnel to offer suggestions to streamline the agency’s statutory framework. See Appendix B for details (i.e., specific language and agency personnel’s reasoning for suggesting these changes). The Subcommittee recommends the General Assembly consider these statutory modernization requests made by Attorney General’s Office personnel, which are summarized in Table 15.

Table 15. Summary of modernization recommendations to repeal statutes, which were requested by the Attorney General’s Office

MODERNIZATION- REPEAL	31. Consider repealing S.C. Code Section 63-19-1430, which pertains to establishment of a Youth Mentor Program by the Attorney General’s Office.
	32. Consider repealing S.C. Code Section 1-7-117 as it inaccurately states a duty of the Attorney General’s Office devolved to another state agency.
	33. Consider repealing S.C. Code Section 44-11-110, which requires written approval from the Attorney General’s Office for any grant of easements, permits or rights of way on, over or under the grounds of the Department of Mental Health.
	34. Consider repealing S.C. Code Section 59-31-560, which requires approval of certain contracts and publishers’ bonds by the Attorney General.
	35. Consider repealing S.C. Code Section 59-63-350, which requires local law enforcement to contact the Attorney General’s “school safety phone line” when certain offenses are committed on school grounds or during school sponsored/sanctioned activities.

Table Note: All of these recommendations are to the General Assembly.

RECOMMENDATION #31. GENERAL ASSEMBLY- Consider repealing S.C. Code Section 63-19-1430, which pertains to establishment of a Youth Mentor Program by the Attorney General’s Office.

This is an inactive program. Additionally, agency personnel assert solicitors offer similar, local diversion programs for youthful offenders, and “[t]here is no incentive for the solicitor to use a statewide program when there are local programs available.”¹⁶⁴

RECOMMENDATION #32. GENERAL ASSEMBLY- Consider repealing S.C. Code Section 1-7-117 as it inaccurately states a duty of the Attorney General's Office devolved to another state agency.

S.C. Code Section 1-7-117 inaccurately states the Division of the Public Charities of the Office of the Secretary of State are devolved upon the Attorney General's Office. Two years after adoption of this provision, 1998 Act No. 368 returned these duties, functions, and responsibilities to the Secretary of State's Office, where they remain.

RECOMMENDATION #33. GENERAL ASSEMBLY- Consider repealing S.C. Code Section 44-11-110, which requires written approval from the Attorney General's Office for any grant of easements, permits or rights of way on, over or under the grounds of the Department of Mental Health.

RECOMMENDATION #34. GENERAL ASSEMBLY- Consider repealing S.C. Code Section 59-31-560, which requires approval of certain contracts and publishers' bonds by the Attorney General.

Historically, the Attorney General's Office was the only source of legal work for the state.¹⁶⁵ Recommendation #33 pertains to legal work for the Department of Mental Health. Likewise, Recommendation #34 relates to legal work for the Department of Education. Both the Department of Mental Health and the Department of Education employ attorneys.¹⁶⁶ Notably, the Attorney General approves the hiring of attorneys for executive branch agencies, and S.C. Code Section 1-7-160 provides that "[a]ll of these attorneys at all times are under the supervision and control of the Attorney General. . . ."

RECOMMENDATION #35. GENERAL ASSEMBLY- Consider repealing S.C. Code Section 59-63-350, which requires local law enforcement to contact the Attorney General's "school safety phone line" when certain offenses are committed on school grounds or during school sponsored/sanctioned activities.

This is a notification only statute (i.e., does not provide for any action by the Attorney General's Office once notice is received). During the study, agency personnel stated, "It is a requirement of law enforcement who already have enough requirements without sending us notification."¹⁶⁷

Modernization – Amend Recommendations

The Committee's review process provided an opportunity for agency personnel to offer suggestions to update the agency's statutory framework. See Appendix B for details (i.e., specific language and agency personnel's reasoning for suggesting these changes). The Subcommittee recommends the General Assembly consider these statutory modernization requests made by Attorney General's Office personnel, which are summarized in Table 16.

Table 16. Summary of modernization recommendations to amend statutes, which were requested by the Attorney General's Office

MODERNIZATION-AMEND	AGENCY OPERATIONS 36. Consider amending S.C. Code Section 35-1-604(f) to allow posting of certain final securities orders on the Attorney General's website to serve as notice to Department of Revenue and Secretary of State's Office. 37. Consider amending S.C. Code Section 16-3-1410(C)(2) to remove references to a "grandfather provision" exempting victim service providers employed prior to 2008 from taking a basic certification course. 38. Consider amending S.C. Code Section 17-13-140 to allow a circuit court judge to issue a search warrant, consistent with the federal Stored Communications Act, for access to digital or electronic data stored outside the state of South Carolina.
	STATUTE INCONSISTENCY 39. Consider amending S.C. Code Section 16-3-910 to delete the final phrase, "unless sentenced for murder as provided in Section 16-3-20." During the study, agency personnel opined this phrase may result in unintended reduction of time in implementation of the sentence.17-12 40. Consider amending S.C. Code Section 16-3-1510(3), which includes in the definition of the term "criminal offense" a threshold loss for the purposes of accessing certain services. Agency personnel assert the dollar amount conflicts with the State Constitution, which does not attribute any dollar amount to being a victim of a criminal offense.
	TECHNICAL UPDATES 41. Consider amending S.C. Code Section 17-25-45(C)(1) to delete the portion of the statute reading "except where evidence presented at the criminal proceeding and the court, after the conviction, makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct where the victim was younger than the actor, as contained in Section 16-3-655(3)". S.C. Code Section 16-3-655(3) no longer exists. 42. Consider amending S.C. Code Section 14-1-211.5 (A) and (B)to correct a reference (i.e., replace references to the "Department of Crime Victim Assistance Grants" with references to the "Department of Crime Victim Compensation"). 43. Consider amending S.C. Code Section 16-3-1200 to correct references to the intervenor (i.e., replace references to "S.C. Code Section 16-3-1110(8)" with references to "S.C. Code Section 16-3-1110(9)").
	S.C. Code Section 16-3-1420 44. Consider amending S.C. Code Section 16-3-1420(1)(b) by adding "mental health clinician licensed in South Carolina" to the list of exemptions of professionals that are not included in the definition of "victim service provider." 45. Consider amending S.C. Code Section 16-3-1420(2) to remove definition of witness, which agency personnel assert is not relevant to this section and included verbatim in another code section (i.e., S.C. Code Section 16-3-1510(4)).

	S.C. Code Section 16-3-1430 46. Consider amending S.C. Code Section 16-3-1430(A)(1) to modernize terminology agency personnel assert is outdated (e.g., change “spouse abuse” to “domestic violence”). 47. Consider amending S.C. Code Section 16-3-1430(B)(6) to correct an inaccurate reference to the number of departments. 48. Consider amending S.C. Code Section 16-3-1430(B)(14) to update who may appoint members to the Victim Services Coordinating Council to reflect the State Office of Victim Assistance was moved in 2017 to the Attorney General’s Office and renamed the Department of Crime Victim Compensation.
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Table Note: All of these recommendations are to the General Assembly.

Agency Operations

Recommendations #36 -38 are to the General Assembly requesting consideration of legislation to modernize statutes affecting agency operations. See Appendix B for details (i.e., specific language and agency personnel’s reasoning for suggesting these changes). The Subcommittee recommends the General Assembly consider these statutory modernization requests made by Attorney General’s Office personnel.

RECOMMENDATION #36. GENERAL ASSEMBLY- Consider amending S.C. Code Section 35-1-604(f) to allow posting of certain final securities orders on the Attorney General’s website to serve as notice to Department of Revenue and Secretary of State’s Office.

RECOMMENDATION #37. GENERAL ASSEMBLY- Consider amending S.C. Code Section 16-3-1410(C)(2) to remove references to a “grandfather provision” exempting victim service providers employed prior to 2008 from taking a basic certification course.

RECOMMENDATION #38. GENERAL ASSEMBLY- Consider amending S.C. Code Section 17-13-140 to allow a circuit court judge to issue a search warrant, consistent with the federal Stored Communications Act, for access to digital or electronic data stored outside the state of South Carolina.

Statute Inconsistency

Recommendations #39 and #40 request the General Assembly consider reviewing inconsistencies identified by agency personnel in statutes. See Appendix B for details (i.e., specific language and agency personnel’s reasoning for suggesting these changes). The Subcommittee recommends the General Assembly consider these statutory modernization requests made by Attorney General’s Office personnel.

RECOMMENDATION #39. GENERAL ASSEMBLY- Consider amending S.C. Code Section 16-3-910 to delete the final phrase, “unless sentenced for murder as provided in Section 16-3-20.” During the study, agency personnel opined this phrase may result in unintended reduction of time in implementation of the sentence.

RECOMMENDATION #40. GENERAL ASSEMBLY- Consider amending S.C. Code Section 16-3-1510(3), which includes in the definition of the term “criminal offense” a threshold loss for the purposes of accessing certain services. Agency personnel assert the dollar amount conflicts with the State Constitution, which does not attribute any dollar amount to being a victim of a criminal offense.

Technical Updates

Recommendations #41 - #48 request the General Assembly consider making technical updates identified by agency personnel. See Appendix B for details (i.e., specific language and agency personnel’s reasoning for suggesting these changes). The Subcommittee recommends the General Assembly consider these statutory modernization requests made by Attorney General’s Office personnel.

RECOMMENDATION #41. GENERAL ASSEMBLY- Consider amending S.C. Code Section 17-25-45(C)(1) to delete the portion of the statute reading “except where evidence presented at the criminal proceeding and the court, after the conviction, makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct where the victim was younger than the actor, as contained in Section 16-3-655(3)”. S.C. Code Section 16-3-655(3) no longer exists.

RECOMMENDATION #42. GENERAL ASSEMBLY- Consider amending S.C. Code Section 14-1-211.5 (A) and (B) to correct a reference (i.e., replace references to the “Department of Crime Victim Assistance Grants” with references to the “Department of Crime Victim Compensation”).

RECOMMENDATION #43. GENERAL ASSEMBLY- Consider amending S.C. Code Section 16-3-1200 to correct references to the intervenor (i.e., replace references to “S.C. Code Section 16-3-1110(8)” with references to “S.C. Code Section 16-3-1110(9)”).

S.C. Code Section 16-3-1420

RECOMMENDATION #44. GENERAL ASSEMBLY- Consider amending S.C. Code Section 16-3-1420(1)(b) by adding “mental health clinician licensed in South Carolina” to the list of exemptions of professionals that are not included in the definition of “victim service provider.”

RECOMMENDATION #45. GENERAL ASSEMBLY- Consider amending S.C. Code Section 16-3-1420(2) to remove definition of witness, which agency personnel assert is not relevant to this section and included verbatim in another code section (i.e., S.C. Code Section 16-3-1510(4)).

S.C. Code Section 16-3-1430

RECOMMENDATION #46. GENERAL ASSEMBLY- Consider amending S.C. Code Section 16-3-1430(A)(1) to modernize terminology agency personnel assert is outdated (e.g., change “spouse abuse” to “domestic violence”).

RECOMMENDATION #47. GENERAL ASSEMBLY- Consider amending S.C. Code Section 16-3-1430(B)(6) to correct an inaccurate reference to the number of departments.

RECOMMENDATION #48. GENERAL ASSEMBLY- Consider amending S.C. Code Section 16-3-1430(B)(14) to update who may appoint members to the Victim Services Coordinating Council to reflect the State Office of Victim Assistance was moved in 2017 to the Attorney General’s Office and renamed the Department of Crime Victim Compensation.

Regulations

As part of the House Legislative Oversight Committee’s process, inquiry is made about the various laws, including regulations, that impact agency operation.

Table 17. Summary regulations

MODERNIZATION - REGULATIONS	49. Provide the House Regulations and Administrative Procedures Committee information learned during the study about regulations, such as Chapter 19 of the S.C. Code of Regulations, which are still associated with entities no longer in existence.
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Table Note: This recommendation is to the House Legislative Oversight Committee.

RECOMMENDATION #49. HOUSE LEGISLATIVE OVERSIGHT COMMITTEE- Provide the House Regulations Committee information learned during the study about regulations, such as Chapter 19 of the S.C. Code of Regulations, which are still associated with entities no longer in existence.

During the study, the Committee was informed that regulations pertaining to the now defunct Budget and Control Board remain in the Code of Regulations.

STUDY RELATED INTERNAL CHANGES

During the study process, there are two internal changes implemented relating to participation in the study process. Those changes are listed below.

Internal Changes Made by Attorney General's Office

1. Updated process for agency's internal regulations review.¹⁶⁸
2. Clarified language in the agency's litigation retention agreements.¹⁶⁹

SELECTED AGENCY INFORMATION

Attorney General’s Office. “Program Evaluation Report (PER) – Complete Report (March 9, 2020)”

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/AG%20PER%20-%20Complete%20report.pdf>

Attorney General’s Office. “Restructuring and Seven-Year Plan Report, 2015.”

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/2015AgencyRestructuringandSevenYearPlanReports/2015%20Attorney%20General.pdf>

Attorney General’s Office. “Agency Accountability Report, 2020-2021.”

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/aar2021/E200.pdf>

S.C. House of Representatives, Legislative Oversight Committee. “Survey Results.”

https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ArtsCommission/Public_Survey_Responses_2020.PDF

REPORT ACTIONS

FULL COMMITTEE OPTIONS STANDARD PRACTICE 27.2.3	FULL COMMITTEE ACTION(S)	DATE(S) OF FULL COMMITTEE ACTION(S)
(1) Refer the study and investigation back to the Subcommittee or an ad hoc committee for further evaluation; (2) Approve the Subcommittee’s study; or (3) Further evaluate the agency as a full Committee, utilizing any of the available tools of legislative oversight.	Subcommittee study report available for consideration Subcommittee study presentation and discussion Approval of the Subcommittee’s study	

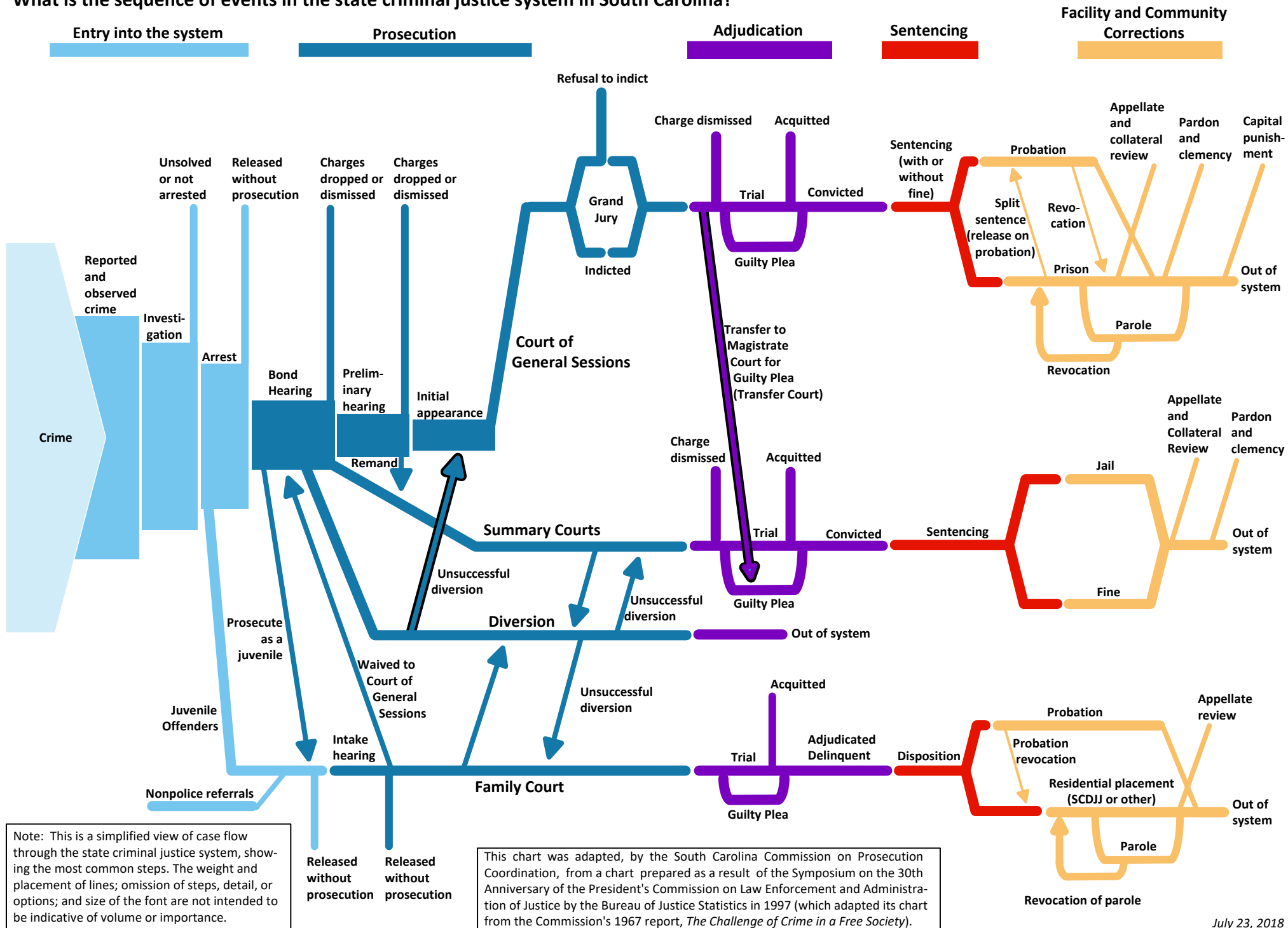
APPENDIX A – CRIMINAL JUSTICE SYSTEM FLOW CHARTS

Flow charts and other information on the next pages are from the study of the Attorney General’s Office and other law enforcement agencies.¹⁷⁰ The information includes the following:

Criminal Justice Process Overview 1. Crime to Release 2. Sentencing to Release Entities Involved and Representation 3. Entities Involved 4. Who does each entity represent? 5. Who represents the state and offender in each step of prosecution and post-adjudication? Prosecution 6. Entry into System 7. Authority to Prosecute (Other Agencies) 8. Transferring Criminal Case: Solicitors and Attorney General 9. Officer Involved Shooting or Crime: Investigation and Prosecutor Review 10. Internet Crimes Against Children: Background, Terminology, and Case Flow 11. Medicaid Fraud Prosecution a. Recipient, Provider, and Patient Abuse 12. Insurance Fraud Prosecution 13. State Grand Jury Process: a. Investigation through Trial b. Jury Panel Selection c. Pre-Indictment Warrant and Bond Hearing	Post-Adjudication 14. Criminal Appellate Process Overview 15. Murder Convictions a. Appeal and Post-Conviction Relief (PCR) Process 16. Non-death penalty conviction a. Appeal to S.C. Court of Appeals and S.C. Supreme Court a. PCR Action i. Overview, Summary Dismissal Track, Hearing Track ii. Appeal PCR Decision 17. Sexually Violent Predator Proceedings (Civil) Civil Litigation 18. Unfair Trade Practice and Antitrust: a. Sources and Stages of Case b. Private Action v. Enforcement Action 19. Nonprofit Corporation Investigation 20. Securities Enforcement Case 21. Money Services (e.g., Paypal, square, Coinbase crypto currency, etc.)	Victims 22. Who is a victim? 23. Individuals on whom victims rely 24. How government entities share victim information 25. Government entities that contact the victim of a crime 26. Certifications applicable to those who serve crime victims 27. Crime victim service provider certification and class accreditation processes 28. Crime victim assistance grants (for entities that serve crime victims) 29. Crime victim compensation claim process 30. Crime victim ombudsman processes (referral, assist, and formal complaints) State Government Hiring Attorneys 31. In-house attorney (full-time employee) approval process 32. Contract attorney approval process
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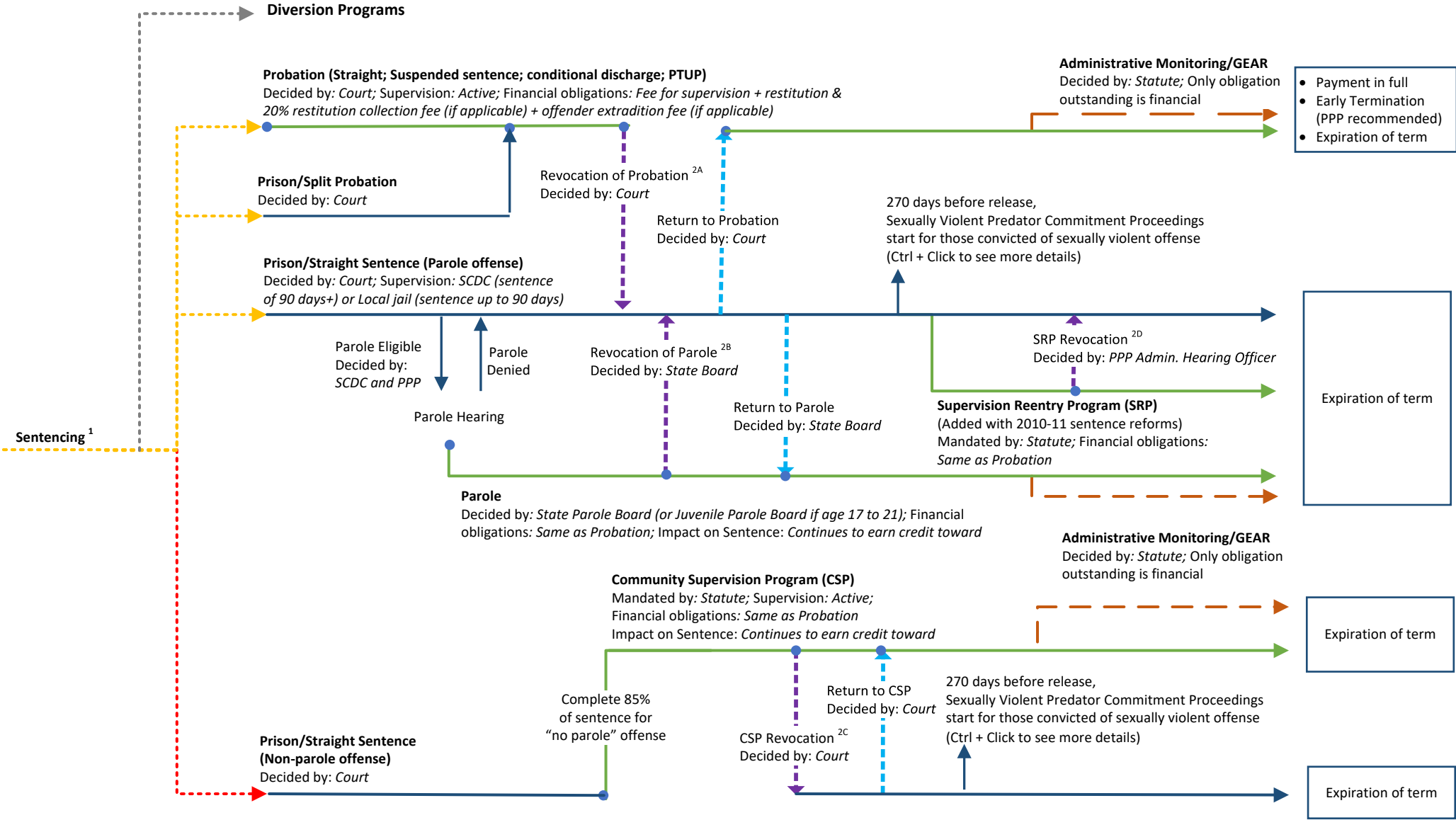
Crime to Release

What is the sequence of events in the state criminal justice system in South Carolina?

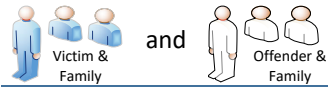


Sentencing to Release (aspect of “Crime to Release” flow chart)

What are potential sentences and paths to release? Which agencies are responsible for supervision?



Criminal Justice Process: Entities Involved



Involved in entire process

	Entry Into System/Investigation	Charges/Prosecution	Adjudication and Sentencing	Corrections	Appeal
State Entities	Investigate State Law Enforcement Division Department of Public Safety Entity with custody of Defendant Attorney General's Office: - Internet Crimes Against Children Prosecution + AG Investigators and Forensic - Medicaid Provider Fraud + AG Investigators - Medicaid Recipient Fraud + AG Investigators - State Grand Jury Prosecution + SLED, Locals, Federal law enforcement Agencies AG authorizes to prosecute (SCDC, DEW, DOI, DNR, DPS, DOR) Victim Services Attorney General's Office: - Victim Advocacy Division (AG prosecuted cases) - Crime Victim Services Division (all cases) Investigating Entity	Prosecute Attorney General's Office - General Prosecution; - SVU/Law Enforcement Issues Law Enforcement Agencies AG authorizes to prosecute (SCDC, DEW, DOI, DNR, DPS, DOR) Defend Circuit Public Defenders (work for SCCID) Rule 608 Attorney (contracted by SCCID) Private Attorney Defendant Represents Himself Defendant Custody Department of Juvenile Justice Department of Corrections PPP Victim Services Attorney General's Office Prosecuting Entity Entity with custody of Defendant	Prosecute Attorney General's Office - General Prosecution; - SVU/Law Enforcement Issues Law Enforcement Defend Circuit Public Defenders (work for SCCID) Rule 608 Attorney (contracted by SCCID) Private Attorney Defendant Represents Himself Defendant Custody Department of Juvenile Justice Department of Corrections PPP Victim Services Attorney General's Office Prosecuting Entity Entity with custody of Defendant	Review/Purse Attorney General's Office Sexually Violent Predator Division Offender Custody Department of Juvenile Justice Department of Corrections PPP Victim Services Entity with custody	Appeal Attorney General's Office: - Sexually Violent Predator Division - Sex Offender Registry - Post-Conviction Relief - Criminal Appeals - Capital Litigation Defend Commission on Indigent Defense: - Appellate Defense Division - Capital Trial Division Offender Custody Department of Juvenile Justice Department of Corrections PPP Victim Services Attorney General's Office Entity with custody of Defendant
Local Entities	Investigate County Sheriffs Local Police Departments Victim Services Attorney General's Office Investigating Entity	Prosecute Circuit Solicitors Prosecutor hired by municipality Law Enforcement Defendant Custody Local Detention Centers Victim Services Attorney General's Office Investigating Entity	Prosecute Circuit Solicitors Prosecutor hired by municipality Law Enforcement Defendant Custody Local Detention Centers Victim Services Attorney General's Office Investigating Entity		Direct Appeal to State Conviction from Municipal or Magistrate Court Circuit Solicitors
Judicial Branch	Warrants Summary Courts (Municipal and Magistrate) State Grand Jury	Hearings Summary Courts (Municipal and Magistrate) Circuit Court – General Sessions County Clerks of Court State Grand Jury State Grand Jury Clerk	Trial and Sentencing Summary Courts (Municipal and Magistrate) Circuit Court – General Sessions County Clerks of Court State Grand Jury Clerk		Appeals Circuit Court – Common Pleas County Clerks of Court Court of Appeals Supreme Court Parole Board – Pardon and Clemency Juvenile Parole Board

Criminal Justice Process: Who does each entity represent?

Entity	Who IS represented by the entity			Who is NOT represented
Victim Advocates	 City	 County	 State	 Victim
Law Enforcement as investigators, not prosecutors (e.g., Police Department, Sheriff's Office, SLED, DPS)	 City	 County	 State	 Victim
Holding Facility (e.g., detention center, jail, prison)	 Court Order	 County	 State	 Victim
Prosecutors (e.g., law enforcement, city prosecutor, Solicitor's Office, Attorney General's Office)	 City	 County	 State	 Victim
Defense Counsel (e.g., public defender; retained counsel; appointed counsel; Commission on Indigent Defense appellate counsel)	 Offender			 Victim
		 City	 County	 State
Court	 Judicial Department			 Victim
				 Offender

Criminal Justice Process: Who represents the state and offender at each step in the process?

Note: The same case may pass through all of these phases

	Entry Into System/ Investigation	Charges/ Prosecution	Municipal Court Adjudication /Sentencing	Magistrate or Circuit Court Adjudication /Sentencing		Municipal Court State Conviction - Direct Appeal to Circuit Court	Magistrate Court State Conviction - Direct Appeal to Circuit Court	Circuit Court - Direct Appeal to S.C. Court of Appeals	Circuit or Ct. of Appeals - Direct Appeal to S.C. Supreme	Post- Conviction Relief Action (PCR)	PCR Appeal
Represent the State	• Reported/ observed crime • Investigation • Arrest	• Bond Hearing • Preliminary Hearing • Initial Appearance • Indictment	• Plea • Trial • Sentencing	• Plea • Trial • Sentencing							
	Attorney General’s Office					Not Applicable	Not Applicable	Attorney General’s Office: • Capital Litigation Division			
	Others to whom AG has delegated prosecution authority (e.g., SCDC, DEW, DOI, DNR, DPS, DOR)							Attorney General’s Office: • Criminal Appeals Division			
	Law Enforcement (e.g., Police Department, Sheriff’s Office, SLED, DPS)							Attorney General’s Office: • PCR Division			
		Circuit Solicitors	Not Applicable	Circuit Solicitors			Circuit Solicitors	Attorney General’s Office: • Criminal Appeals Division			
	City Attorney				City Attorney (Municipal Court cases)						
Represent Offender	Commission on Indigent Defense • Circuit Public Defenders (work for SCCID) • Rule 608 Attorney (contracted by SCCID)							Commission on Indigent Defense: • Appellate Defense Division			
						Not Applicable	Commission on Indigent Defense: • Capital Trial Division				
	Private Attorney					Private Attorney					
	Defendant Represents Himself					Defendant Represents Himself					

Entry Into System (aspect of “Crime to Release” flow chart)

What are the different ways in which an individual may enter the criminal justice system in South Carolina?

“Regular” Attorney General and Solicitor Prosecution

State Grand Jury Prosecution

Law Enforcement directs investigation

State Grand Jury (SGJ) Jurors oversee investigation conducted by SGJ Legal Team in partnership with SLED and possibly local and federal law enforcement and prosecution

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

Law Enforcement requests arrest warrant from County Magistrate

SGJ Legal Team and Law Enforcement requests arrest warrant from the Fifth Judicial Circuit Chief Administrative Judge*

Law Enforcement makes arrest

Law Enforcement makes arrest

Law Enforcement provides information to prosecution (Solicitor, AG’s General Prosecution; AG’s Special Prosecution)

SGJ Legal Team discusses whether to request indictments with SGJ Jurors

Prosecution decides whether to request indictment and drafts indictment

SGJ Legal Team prepares draft indictments

Law Enforcement present draft indictment to County Grand Jury Jurors

SGJ Legal Team present draft indictment to State Grand Jury Jurors

Indictment Format

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

Indictment Format

- One Indictment may have multiple counts (i.e. crimes)
- Each count (crime) may have multiple charges (i.e., individuals)

County Grand Jury Jurors vote on whether to indict

SGJ Jurors vote on whether to indict

SGJ Legal Team and Law Enforcement requests arrest warrant from the Fifth Judicial Circuit Chief Administrative Judge*

Law Enforcement makes arrest

NOTES: (1) No prosecutor can bring charges alone; they can only seek charges, then take it to the state or county grand jury who brings charges. Once charges are brought, prosecutor determines how to dispose of them. (2) In State Grand Jury prosecution, the warrant and arrest could occur pre and/or post indictment.

Created as part of House Legislative Oversight Committee process. Confirmed accurate by Attorney General’s Office in September 2022

Authority to Prosecute

Attorney General

The South Carolina Constitution states the “Attorney General shall be the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record.” (Article V, Section 24)

Matters the AG prosecutes include but are not limited to the following:

- General Prosecution Matters
- White Collar Crimes
- State Grand Jury Matters
- Securities Enforcement
- Securities Regulation
- Capital Litigation
- Human Trafficking
- Medicaid Provider Fraud
- Medicaid Recipient Fraud
- Matters involving Law Enforcement Officers
- Internet Crimes Against Children

Circuit Solicitors

Citizens registered to vote in each judicial circuit elect a Circuit Solicitor. While Solicitors are full-time state employees and must assist the Attorney General when called upon, the Attorney General’s Office typically gives deference to each elected Solicitor in how they desire to prosecute matters within their individual judicial circuit.¹

Map of S.C. judicial circuits from the S.C. Judicial Department; list of circuit solicitors and public defenders (Current as of September 2022).²



Delegation of Prosecution Authority to Others

Also, the AG can give individuals at other state agencies the authority to prosecute matters on behalf of the state. The next page includes a list of other agencies that currently have authority to prosecute on behalf of the state, along with information on the matters on which they have been granted authority.³

Delegation of authority to prosecute has been very limited. Most entities in 2022 with delegated authority have had this authority delegated for many years. The most recent expansion of prosecution delegation was to the Department of Insurance (DOI) as part of an agreement with DOI to administer the Insurance Fraud program. The AG’s Office is unfamiliar with formal written requests for prosecutorial authority that have been made without prior identification/review of an issue and coordination with an agency.⁴

¹ Section 1-7-320 and 1-7-325

² S.C. Judicial Department, “Circuit Court Judges,” <https://www.sccourts.org/circuitCourt/circuitMap.cfm> (accessed September 2022).

³ Letter from Attorney General’s Office to House Legislative Oversight Subcommittee (7.29.22), Question # 15.

⁴ Letter from Attorney General’s Office to House Legislative Oversight Subcommittee (7.29.22), Question # 16.

Other Agencies with Authority to Prosecute

*Note: Authority to prosecute is given to an individual at the agency, not to the agency to use as it desires.
Once authority is given, it typically continues, provided the individual holding the office of Attorney General does not change.

Agency and Individual granted authority	Mechanism through which the authority is granted	Types of cases the entity has authority to prosecute	Reason the entity was given authority to prosecute those types of cases	Number of years the agency has had the authority and Frequency with which that authority is renewed
Department of Corrections Stephen Lunsford Margaret Boykin	Memorandum of Agreement	Prosecution of magistrate level cases specific to issues of prisoners within SCDC	Most incidents are unique to the correction system; chief among these are prosecutorial discretion, since they have other disciplinary means available	The first agreement was made in 2022. It is not time for renewal yet, but the AG's office anticipates it will be renewed.
Department of Employment and Workforce Steven Jordan	Letter from the AG's office that outlines the authority granted	Trial prosecution of Unemployment Compensation Fraud	Highly specialized area and direct control of specialty investigative resources	Since at least 2011 when AG Wilson came into office, as his authority only goes back that far. The appointing letter does not have a termination date*
Department of Insurance Joshua Underwood Larry Wedekind Moultrie Roberts	Letter from the AG's office that outlines the authority granted	Trial prosecution and related appeals of Criminal insurance activity	Coordination and transfer of insurance matters and direct control of specialty investigative resources	Since at least 2011 when AG Wilson came into office, as his authority only goes back that far. The appointing letter does not have a termination date*
Department of Natural Resources Shannon Bobertz Tony D'Elia Craig Jones Van Whitehead	Letter from the AG's office that outlines the authority granted	All trial and appellate matters related to cases arising from DNR arrests	Hunting and fishing primarily are specialty issues and control of specialty law enforcement and investigative resources	Since at least 2011 when AG Wilson came into office, as his authority only goes back that far. The appointing letter does not have a termination date*
Department of Public Safety Marcus Gore	Letter from the AG's office that outlines the authority granted	Summary Court cases and their appeals for arrest made by DPS officers	Same as law enforcement delegation in summary courts	The oldest appointment letter the AG's office has on file is in 2015, but the office believes original authority was provided further back than that year
Department of Revenue Alan Myrick	Letter from the AG's office that outlines the authority granted	Prosecution in Magistrate and General Sessions Court of tax related crimes	Highly specialized cases and control of specialty investigative resources	Since at least 2012. The original appointment was to Tom McDermott. Currently, the appointment is to Alan Myrick as the lead, the former supervisor of the AG's prosecution section*

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:

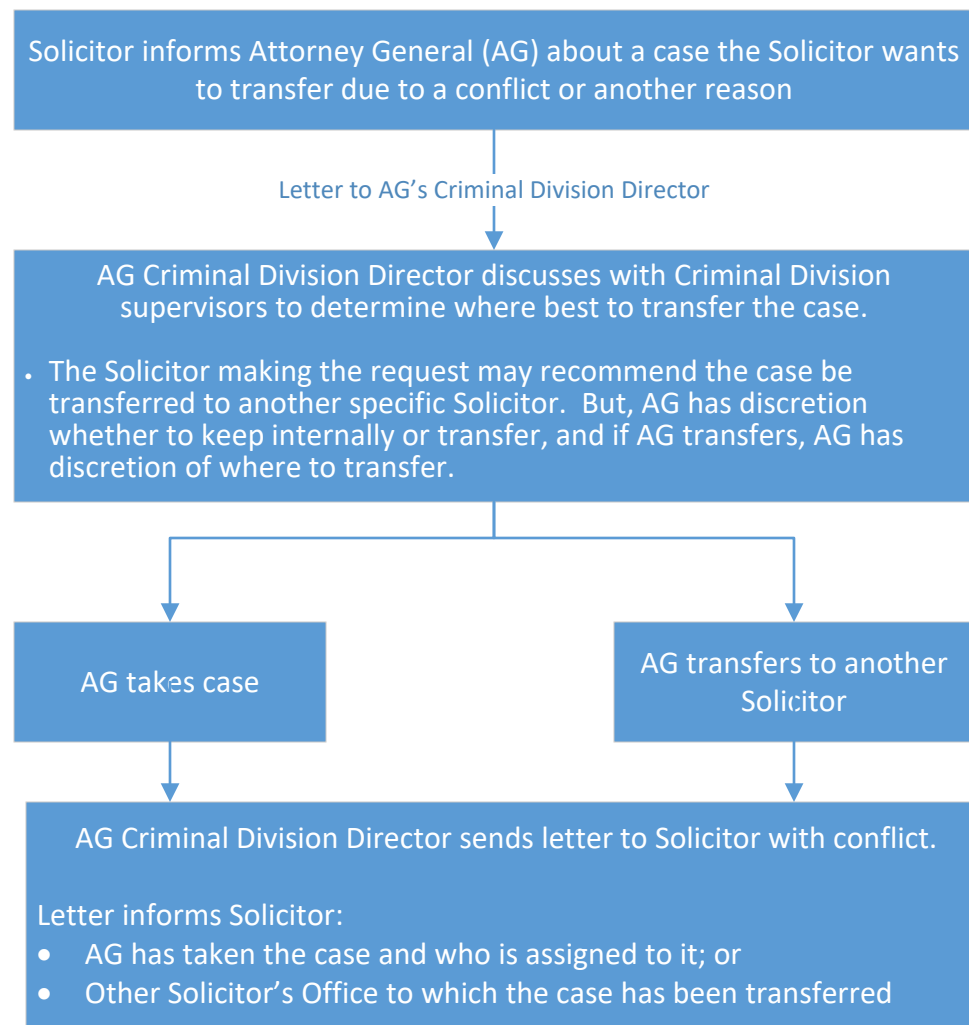
- Party Conflict: Solicitor prosecuting a defendant and representing a victim, then the victim later commits a crime. Solicitor cannot then prosecute the victim, unless they are large enough to Chinese wall.
- Law Enforcement or Asst. Solicitor: Charge against a law enforcement officer that regularly 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)

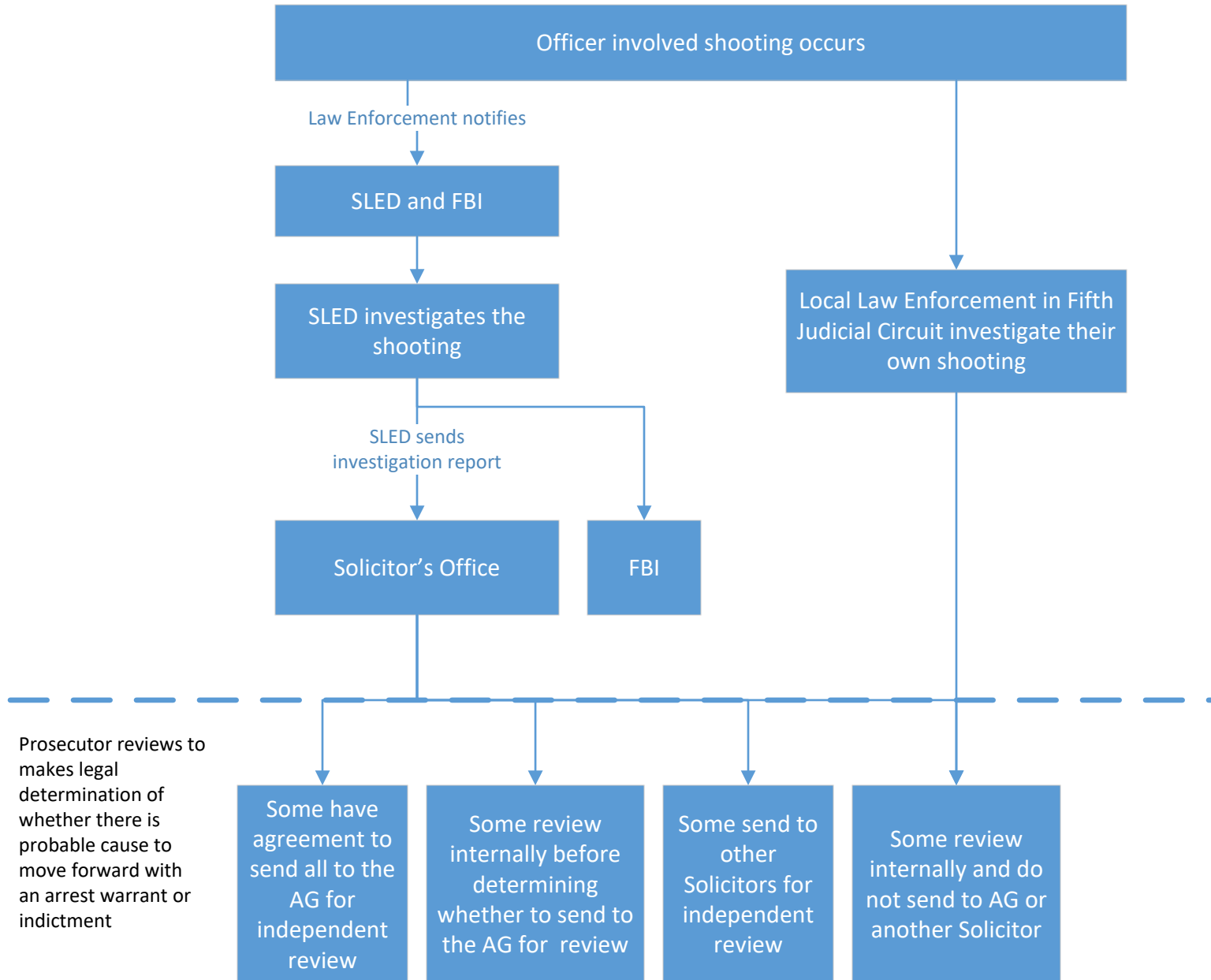
What is the process to transfer a case?



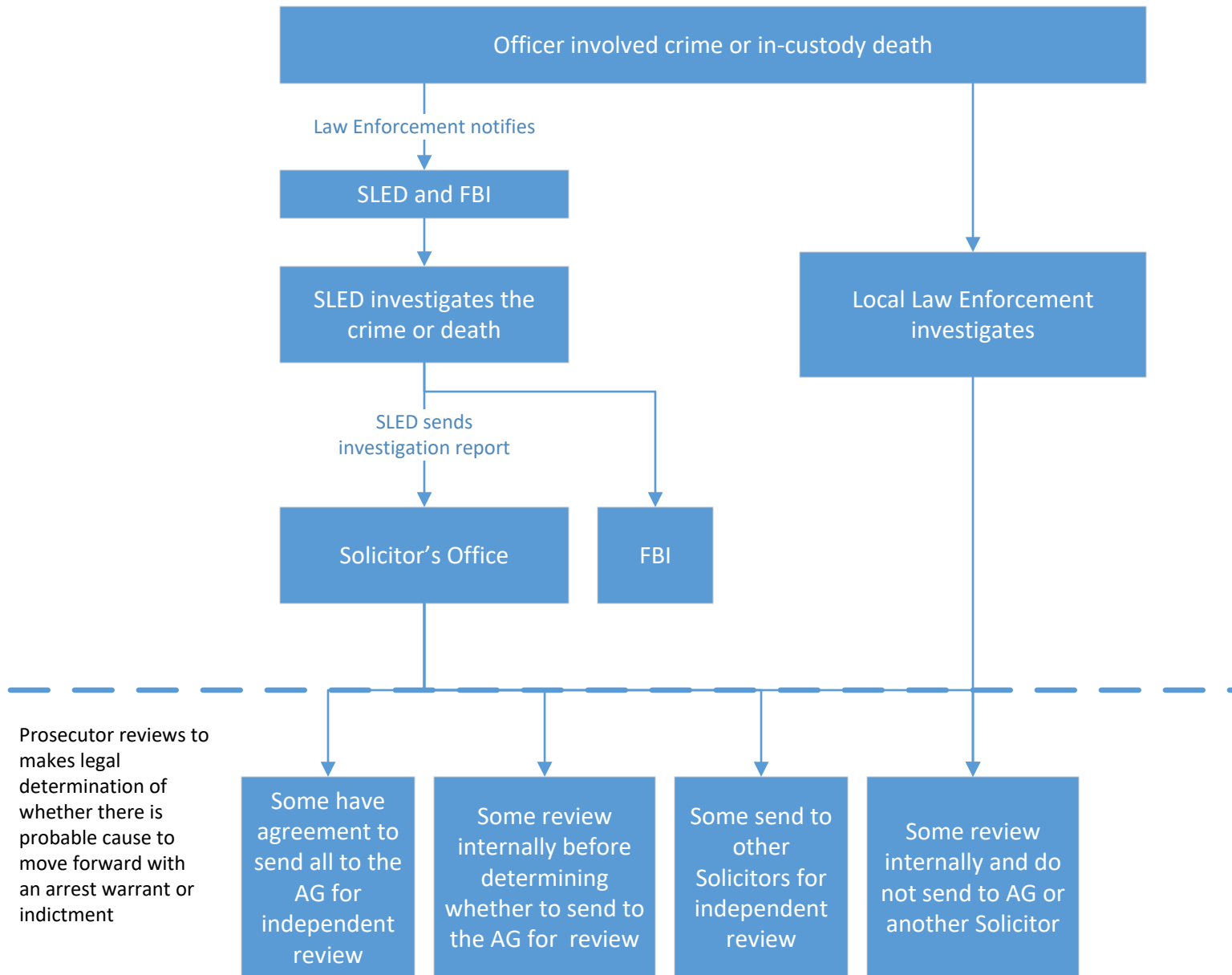
NOTE: Solicitor CANNOT transfer to another Solicitor without Attorney General approval (1-7-350)

- 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
<u>Initial Investigation</u> - AG investigators go on social media to see if someone is willing to talk with child and bring up sex with a child - Someone violates law, then travels to try and meet with child - Someone violates law (e.g., sent photo of genitals, solicit child for sexual encounter, etc.), but does not travel <u>Identify IP address</u> - 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) - Search Warrant - D-Order - Subpoena through federal partner	<u>Initial Investigation</u> - 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 <u>Identify IP address</u> - AG investigator can see IP address at time of download (publicly available)	<u>Initial Investigation</u> Receipt of Cyber Tip - Concerned parent sees something online and sends to NCMEC - ISP sends NCMEC following information (required in federal law to provide): - Minimum - File; IP Address; Date/Time - Potential additional – messages around the file when it was sent, etc. - NCMEC adds: - 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 - 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, pinterest, 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. - 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 - 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 - Individuals name may be in the email address (e.g., johndoe@gmail.com), facebook account, etc.	<u>Initial Investigation</u> - 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
Obtain Additional Information based on IP Address - 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) - 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 for their investigations

Information learned from forensic analysis

Searching for two major types of evidence:

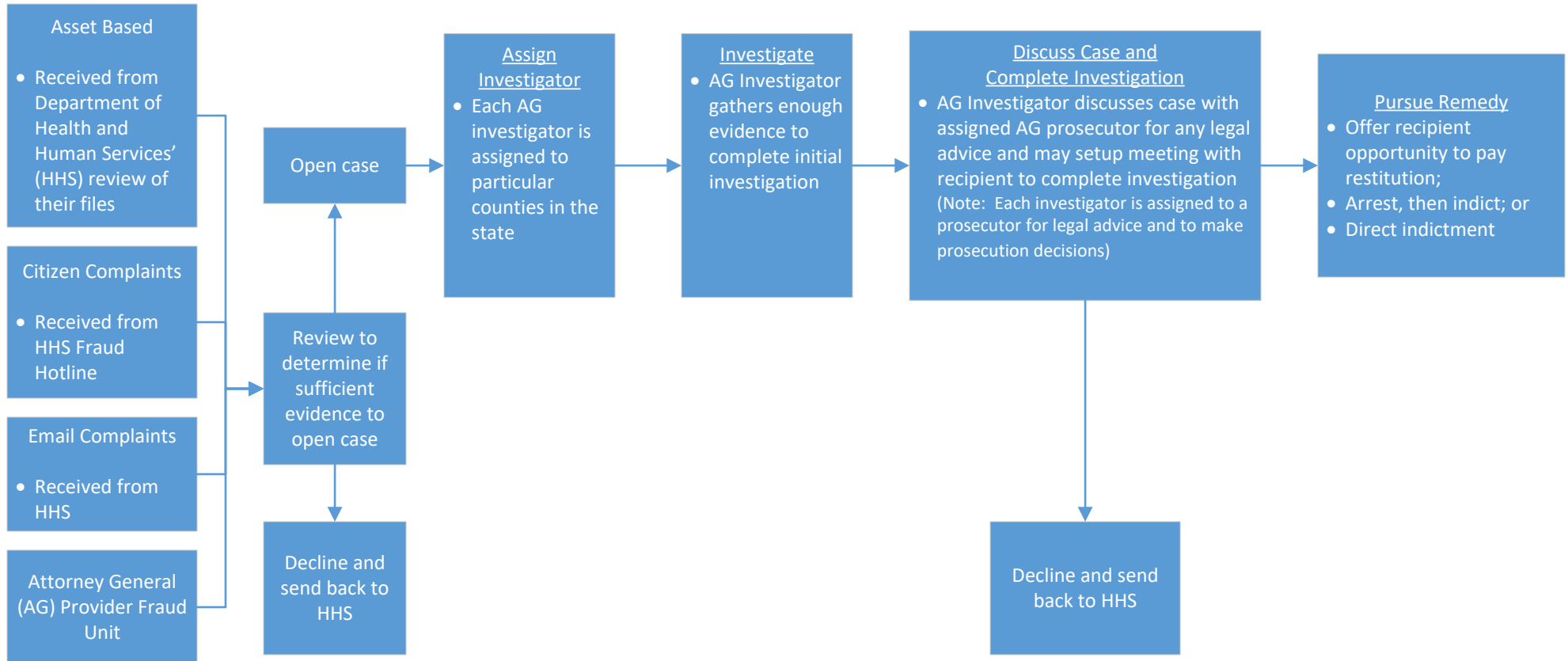
- Child Sexual Abuse Matter (CSAM)
 - Of child that is subject of investigation (may find other children as part of the search, which results in opening of additional investigations)
- Knowledge and intent from internet search terms; browser history; types of files used and opened recently; user account 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

Referral Sources



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

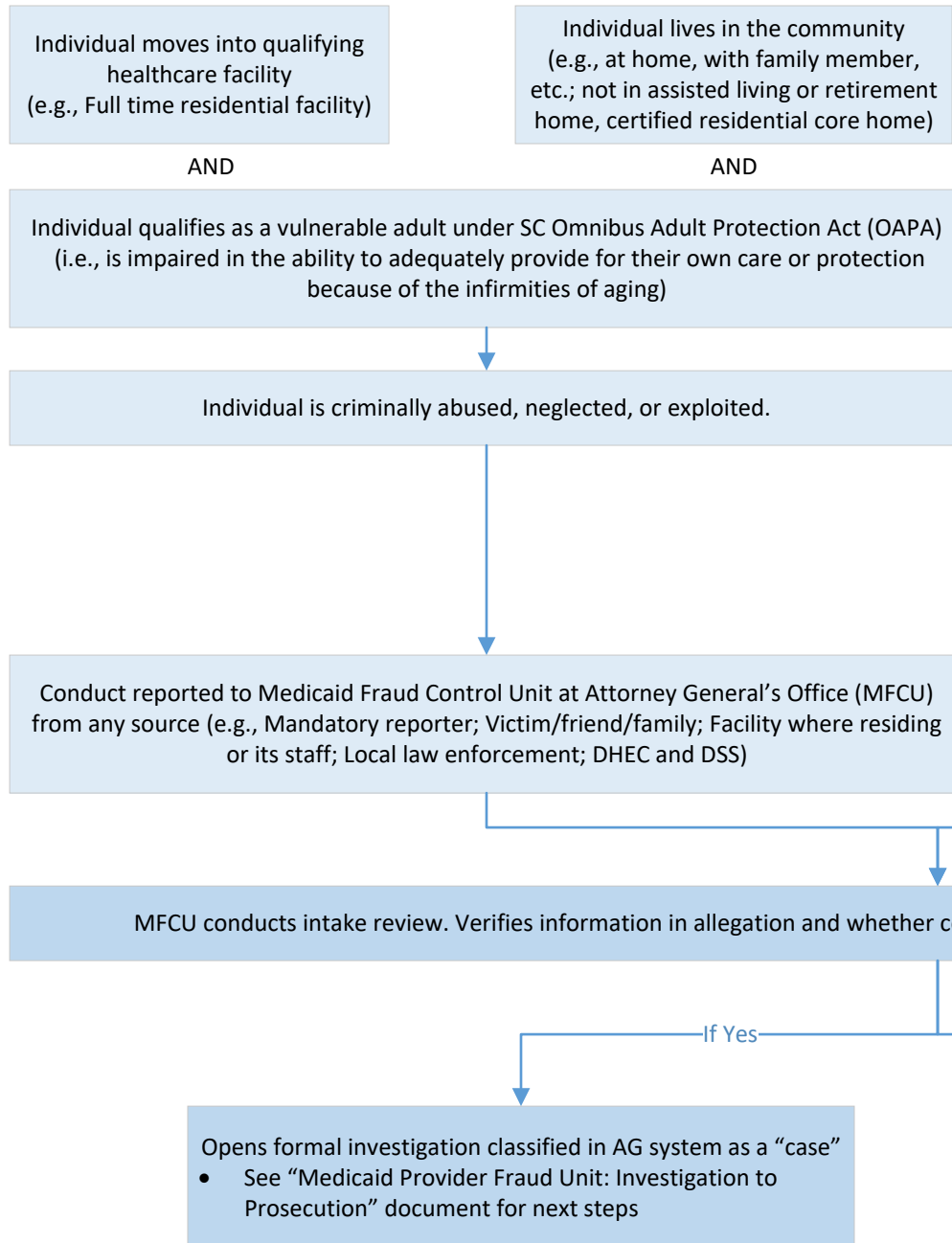
Individual or Company affiliated with SCDHHS
(e.g. SCDHHS employee managed care organization)

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

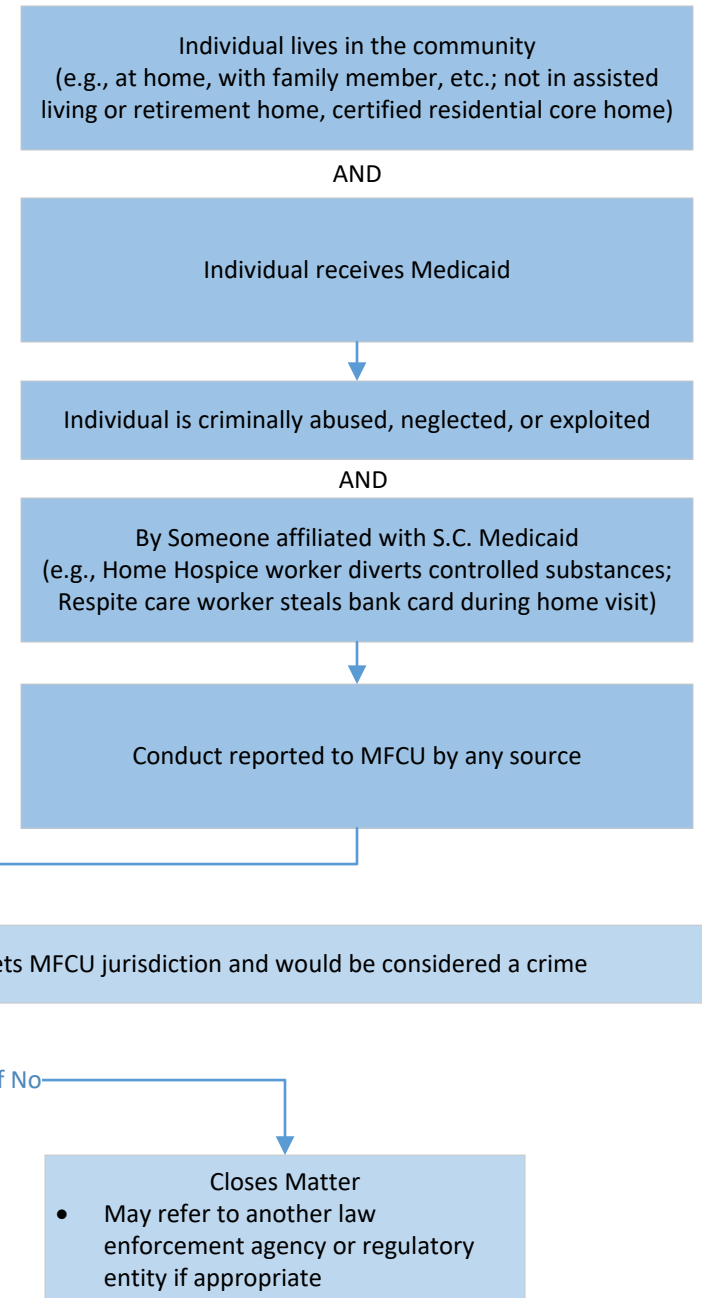
Improper conduct detected

Conduct reported to MFCU

Normal Jurisdiction



Expanded Jurisdiction (Effective Dec. 2021)



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)

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.)

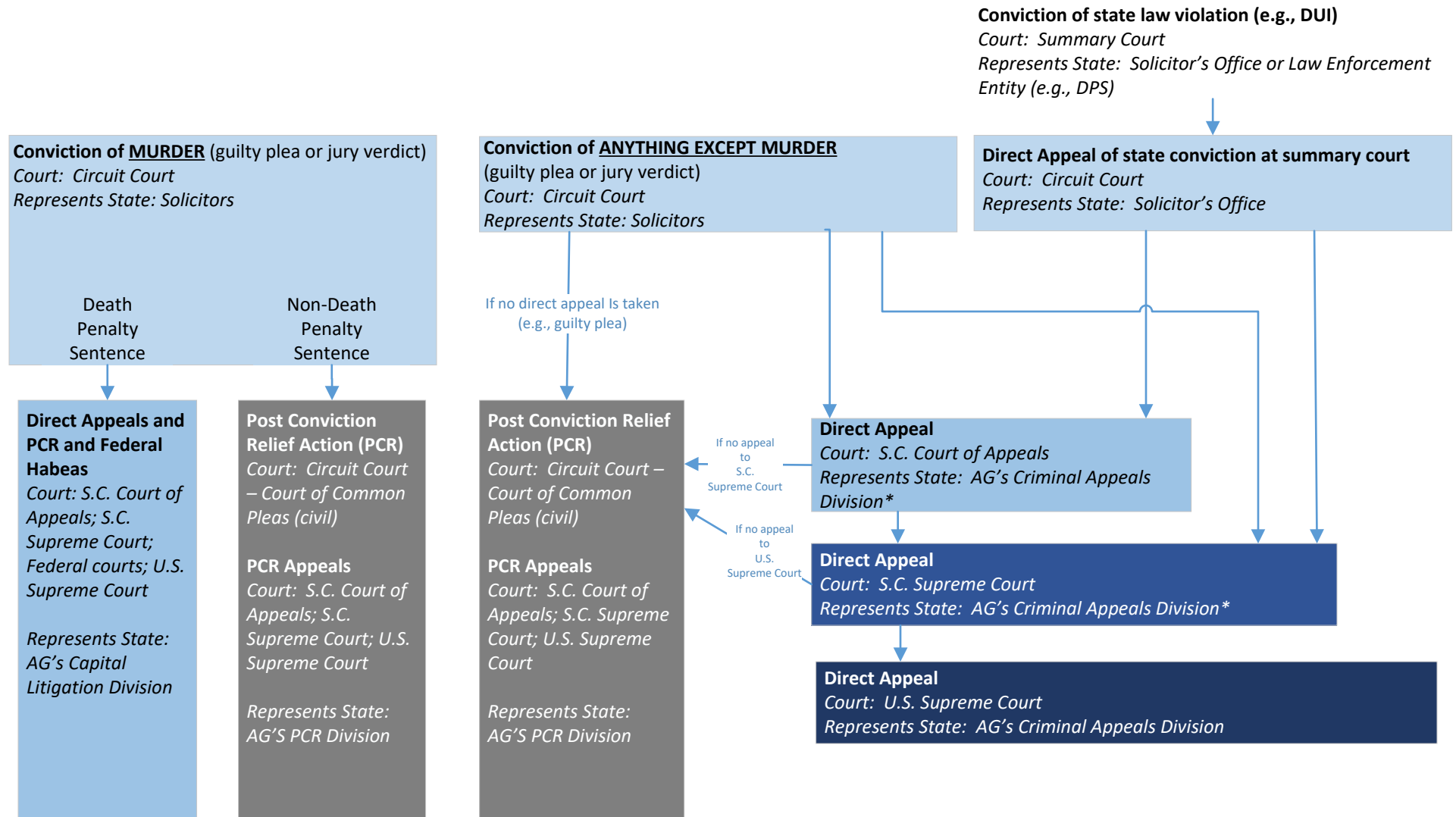
Step #4: Defendant determines whether to post bond

- 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

Criminal Appellate Process - Overview



*On rare occasions the Attorney General will allow Circuit Solicitors to handle an appeal at this level (e.g., State v. John Doe). Municipal and county attorneys often handle appeals related to violations of their ordinances (e.g., Town of ABC v. John Doe)

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)

Death Penalty Sentence

Stay of Execution requested by offender
To: S.C. Supreme Court
Basis: Desire to file **Direct Appeal with U.S. Supreme Court**

Denied

Stay of Execution requested by offender
To: U.S. Supreme Court
Basis: Desire to file **Direct Appeal with U.S. Supreme Court**

NOTE: Denial of this does not prevent offender from filing a request for a stay for another reason (i.e., PCR), if offender has not made one)

Granted

Direct Appeal to U.S. Supreme Court

Stay of Execution requested by offender
To: S.C. Supreme Court
Basis: Desire to file **Post Conviction Relief (PCR)**
(Agency has not known of one being denied since 1970s)

Granted

(The reason for why Offender obtained "stay of execution" does not matter. As long as offender has it they can file direct appeal or PCR)

Post Conviction Relief Action filed in Circuit Court – Court of Common Pleas (civil) (17-27-160); single judge assigned and automatic discovery

Appeal PCR decision to S.C. Supreme Court (e.g., State appeal Grant of PCR, OR Offender appeal denial of PCR)

If no PCR is granted, Clerk of S.C. Supreme Court issues notice of execution (sets date for it)

Stay of Execution requested by offender
To: Federal District Court
Basis: Desire to file **Appeal to PCR decision**

Federal Habeas proceedings (federal equivalent of PCR) – Federal District Court

Appeal to 4th Circuit Court

Appeal Federal Habeas decision to U.S. Supreme Court

Appeal State PCR decision to U.S. Supreme Court

Last minute litigation (e.g., injunction to prevent director from carrying out execution, etc.)

If no federal habeas granted, Clerk of S.C. Supreme Court issues notice of execution (sets date for it)

Stay of Execution is mandatory in statute ONLY for (1) Direct Appeal to S.C. Supreme Court; and (2) Mandatory Statutory Review (which occurs at same time as Direct Appeal if Direct Appeal is filed)

Offender's (1) Direct Appeal to S.C. Supreme Court with (2) Mandatory Statutory Review (16-3-25)
OR
Only (1) Mandatory Statutory Review by S.C. Supreme Court (16-3-25), if offender waived their direct appeal

Mandatory Statutory Review includes:

- Review sentence itself
- Proportionality in reviewing other similar cases

AG's Direct Appeal to U.S. Supreme Court regarding S.C. Supreme Court decision

Request for successive PCR actions OR original jurisdiction writs in S.C. Supreme Court

Non-Death Penalty Sentence

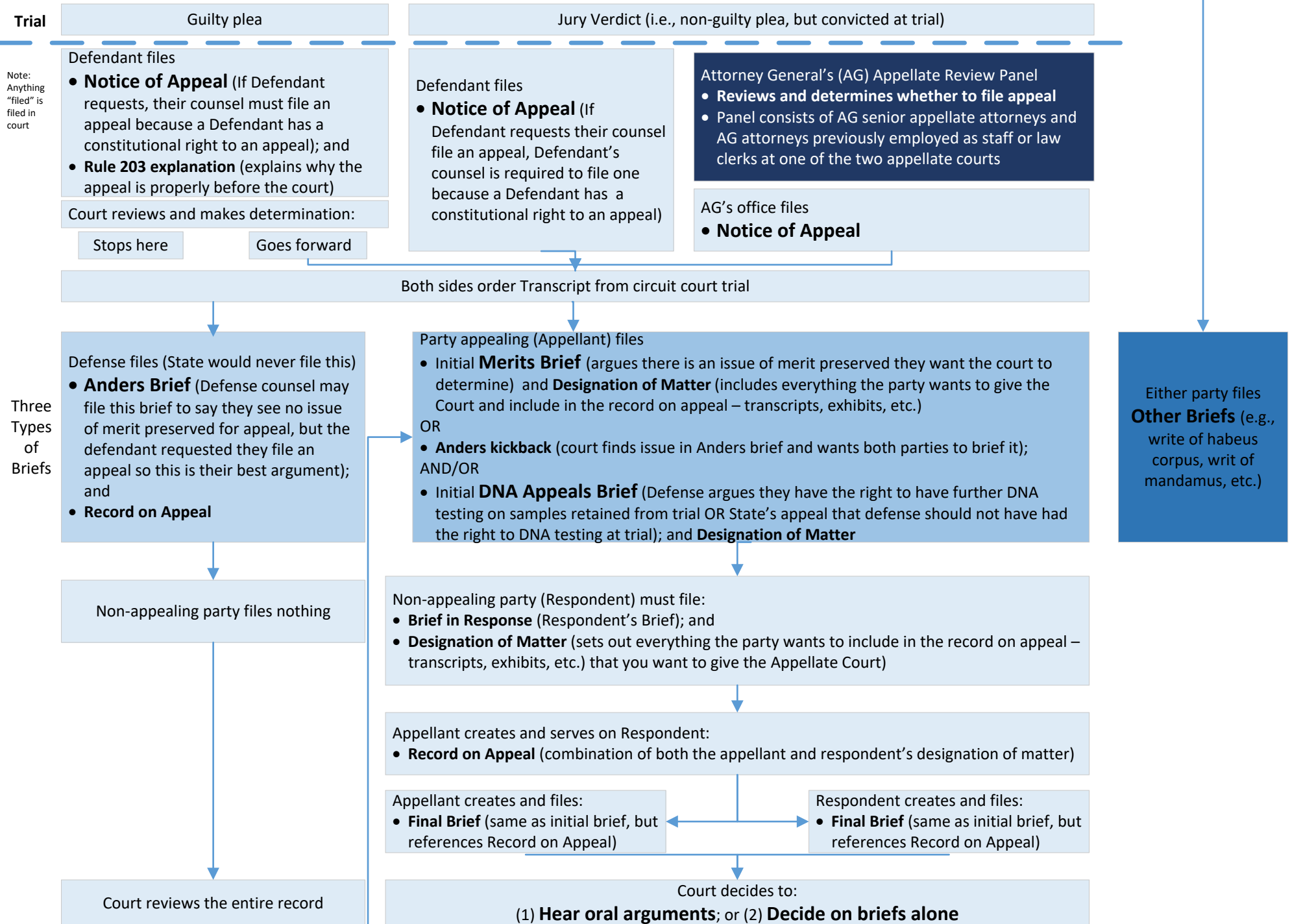
Direct Appeal to Court of Appeals
(See, "Direct Appeal of Non-Death Penalty Conviction" document)

Direct Appeal to S.C. Supreme Court
(See, "Direct Appeal of Non-Death Penalty Conviction" document)

Flowchart created during House Legislative Oversight Process and approved accurate by Attorney General Staff in May 2022

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

..S.C. Supreme Court



Anders Brief (cont.)

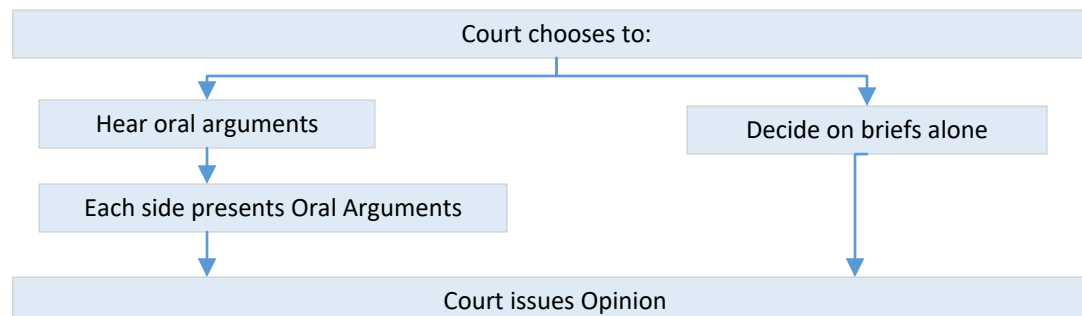
Court reviews the entire record and makes decision

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)



Defense counsel with defendant:
• **Reviews and determines whether to move to next steps**

AG's Appellate Review Panel does the following:
• **Reviews and determines whether to move to next steps**
Appellate Review Panel consists of senior appellate attorneys and attorneys with experience at one of the two appellate courts (e.g., AG staff that were previously employed as staff or law clerks at one of the two appellate courts)

Either party may file a **Petition for Rehearing**

Court decides whether to request the non-filing party file a **Return to the Petition for Rehearing**

If requested by Court, other side creates and files a Return to the Petition for Rehearing

Court issues ruling and **Grants** Petition for Rehearing

Court has various options available (e.g., request new oral arguments; request additional information; simply re-issue a new opinion, making any changes the Court believes were necessary to address any issues in the "Petition for Rehearing", etc.)

Court issues ruling and **Denies** Petition for Rehearing

Either side may file **Petition for Writ of Certiorari** to S.C. Supreme Court (winning side may file this if they do not like how the Court of Appeals interpreted a law, even though they won on this particular case)

Other Briefs (cont.)

Other side files Return

Supreme Court has complete discretion to do the following

- Leave Court of Appeals Decision; or
- **Grant certiorari** (hear the argument) on one or more issues

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

Court signs final Order dismissing PCR Application

AG asks Chief Administrative Judge appoint counsel for applicant

Motion to Dismiss Hearing

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)

Non-appealing party files nothing

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

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

Appeal continues and Johnson Petition turns into Merits Petition – Court requests parties file petition and return to petition on certain issue (the next steps follow the same process as if one of the parties had filed a merits petition)

Transfer to Court of Appeals

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

Appeal Stops

Appeal continues and Johnson Petition turns into Merits Petition

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)

Other side files Return

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

Deny Certiorari (Leave Circuit Court Decision)

Grant certiorari (Hear the issue)

Transfer to Court of Appeals

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

Grant certiorari (Hear the issue)

Deny Certiorari (Leave Circuit Court Decision)

Both parties brief the issues

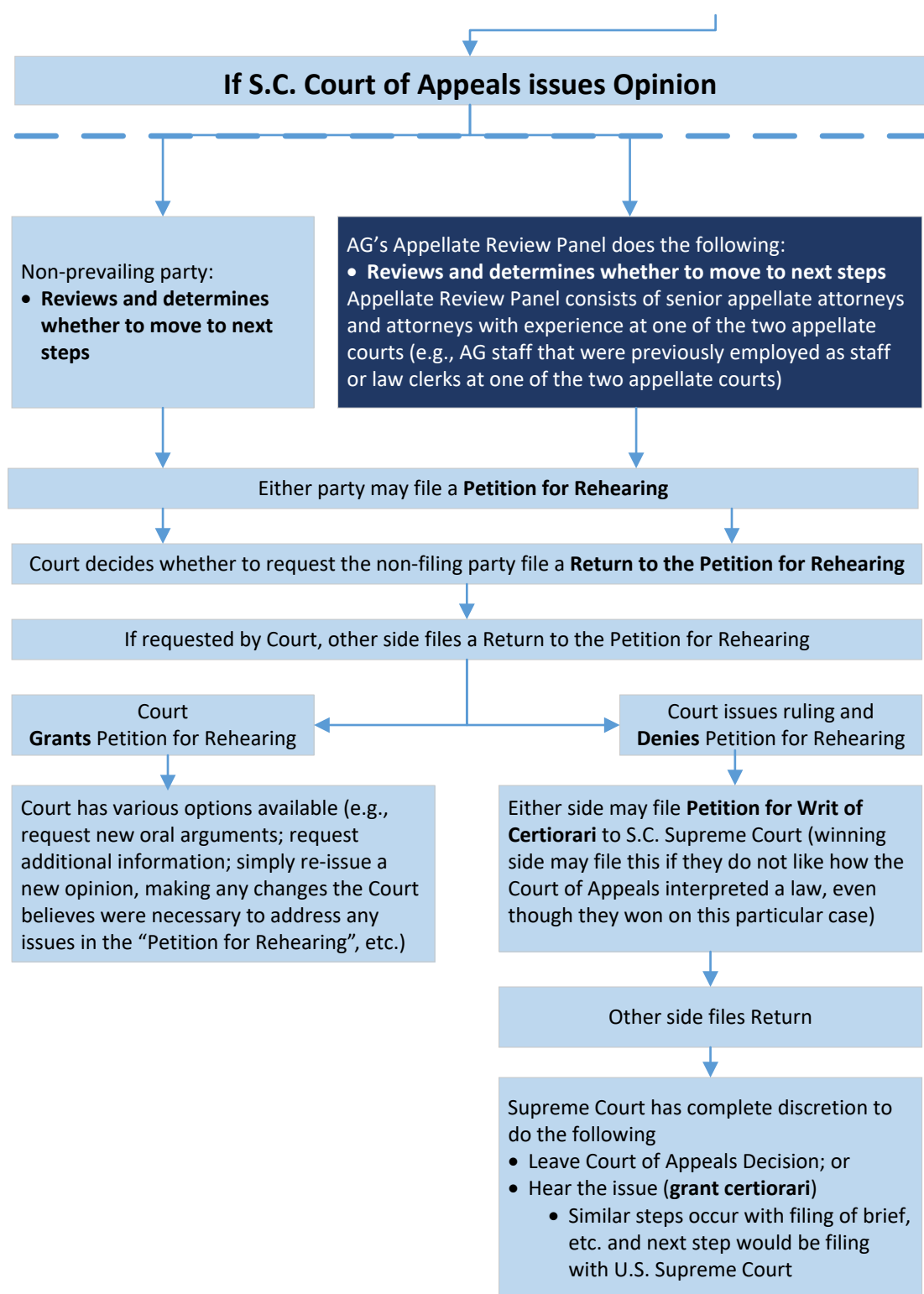
Both parties brief the issues

Court decides to:
(1) **Hear oral arguments**; or (2) **Decide on briefs alone**

Court decides to:
(1) **Hear oral arguments**; or (2) **Decide on briefs alone**

S.C. Supreme Court issues Opinion

S.C. Court of Appeals issues Opinion





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.

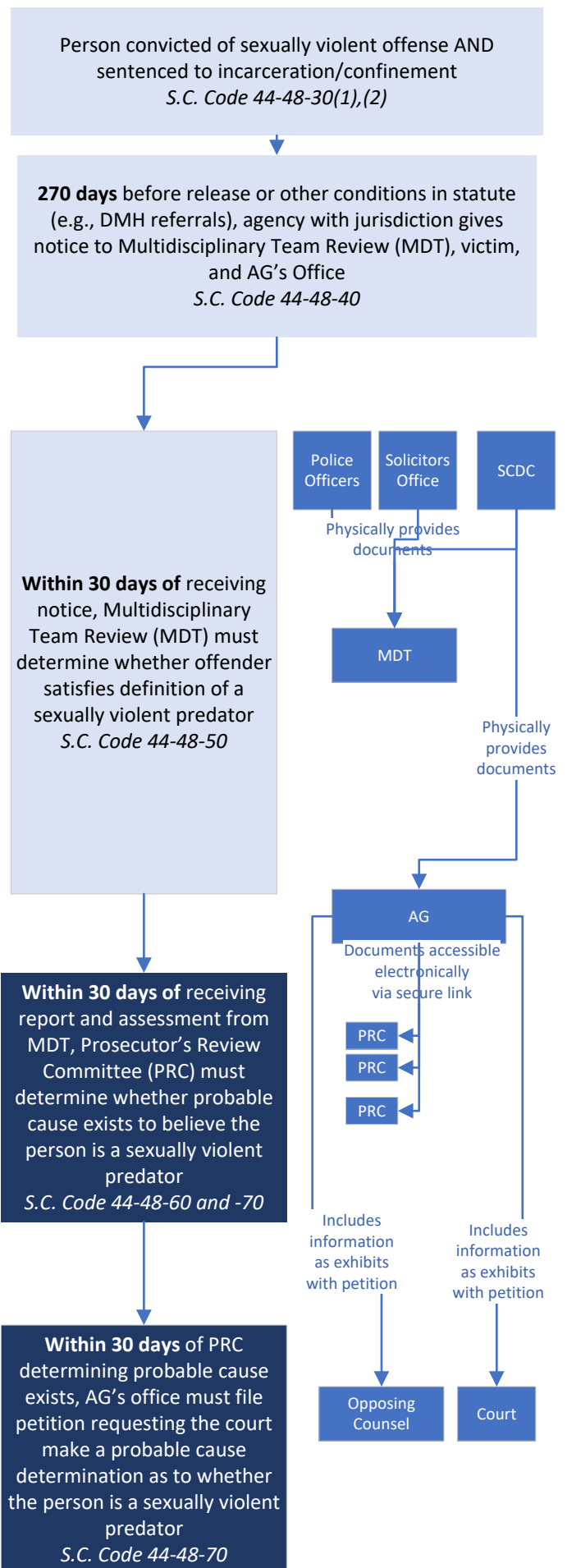
If PRC determines probable cause exists to believe person is a SVP

- 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





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

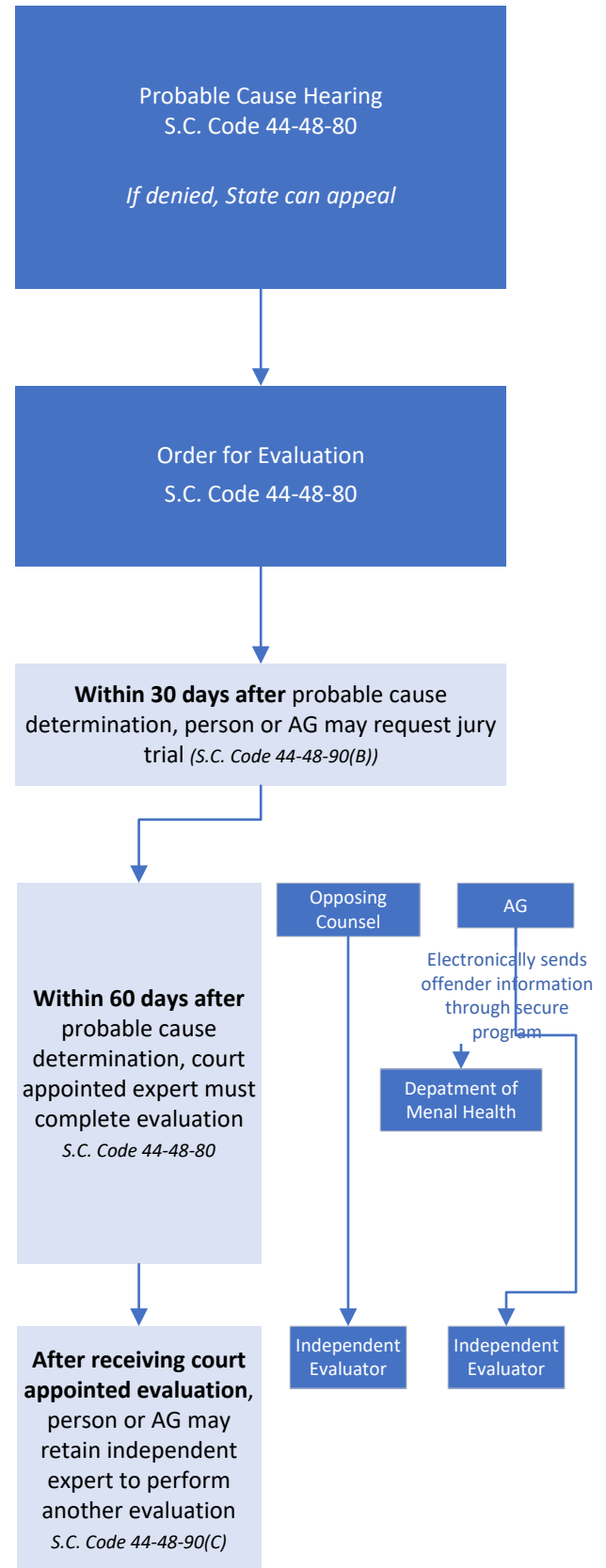
CONCERN: DMH's work product continues to rely on the Static 99-R and Static 2002-R (actuarial risk assessment tools) as the sole measure of risk assessment, with subjective reliance on statements in interview. There are other tests DMH has available, but does not utilize, that are less subjective.

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.

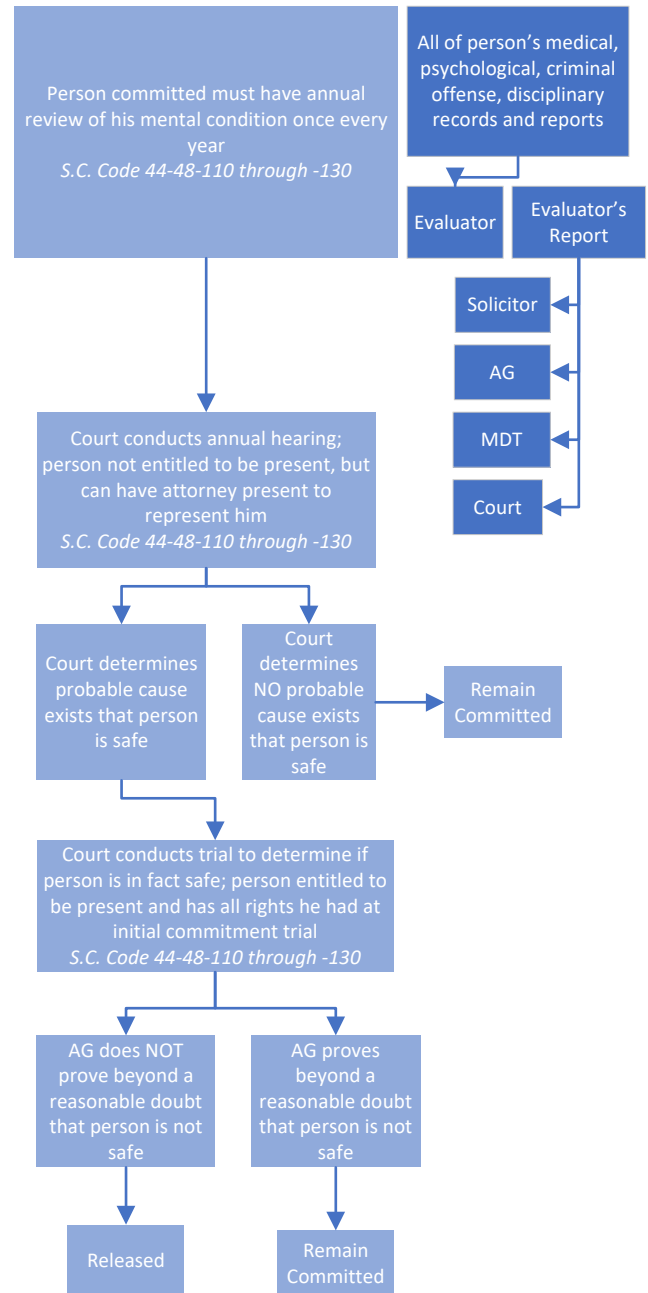
Committed



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

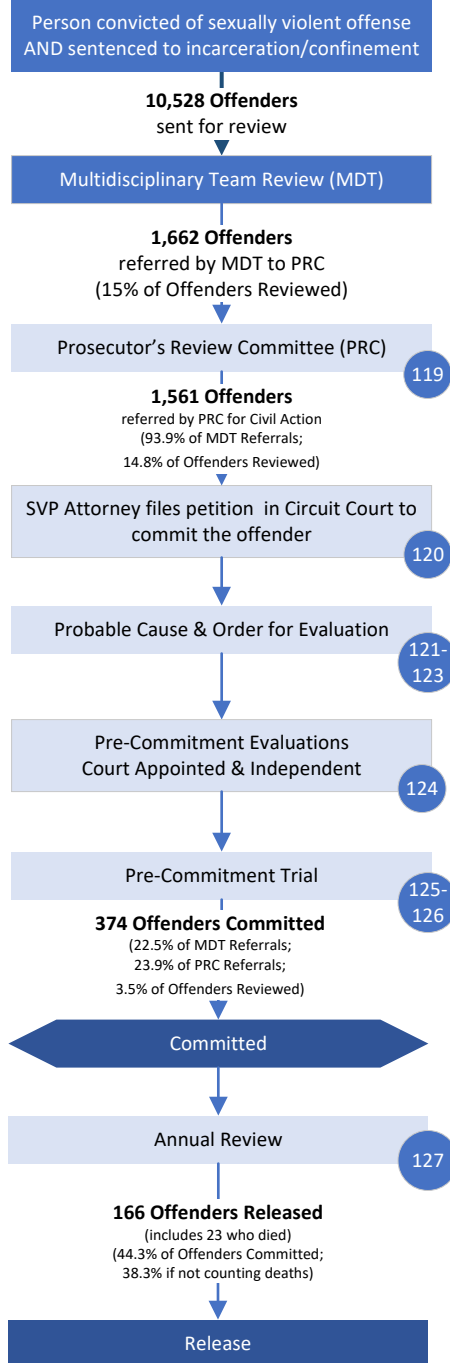
Habeas Petition claiming ineffective assistance of counsel



Sexually Violent Predator (SVP) Section

Proceedings

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



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

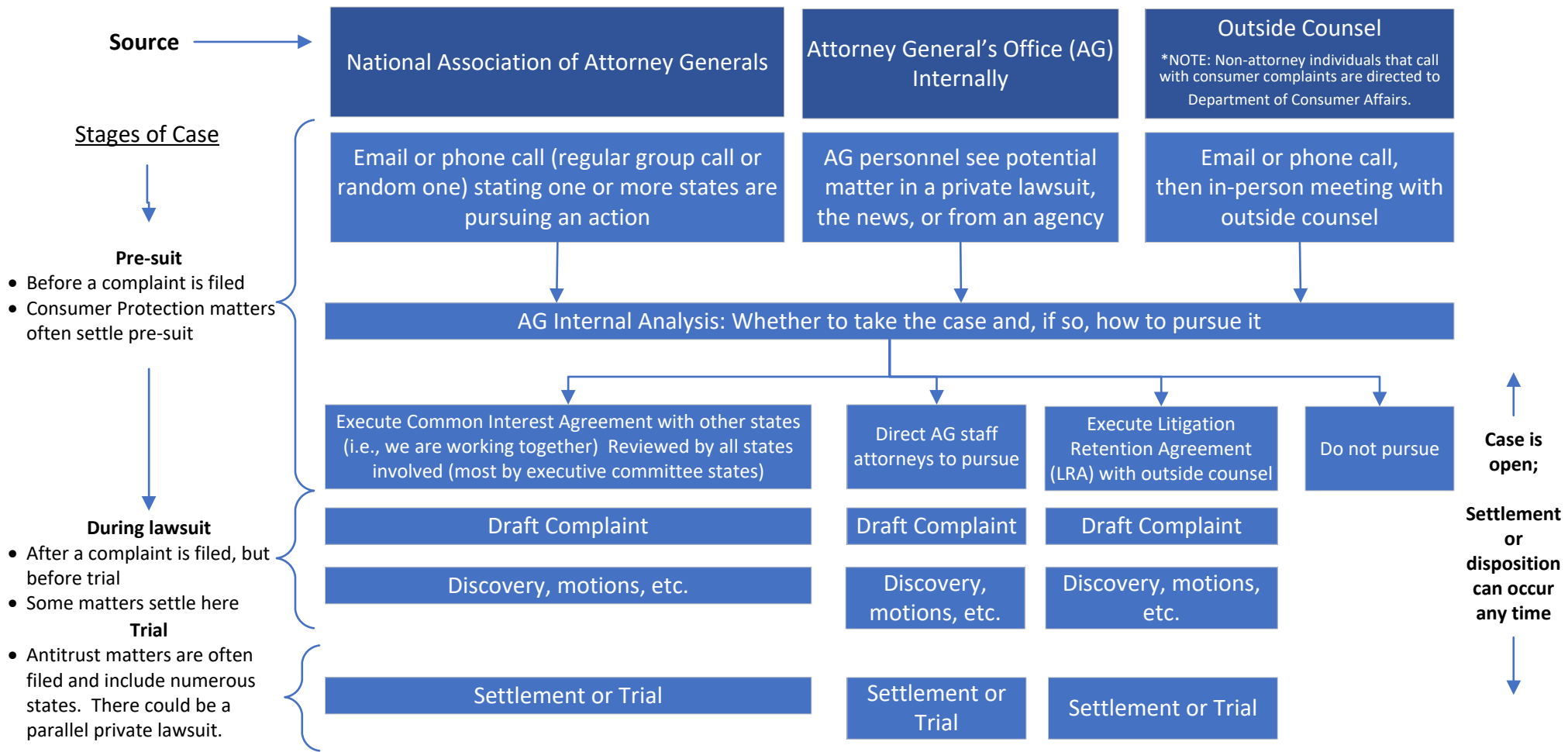
Notes: The Supreme Court held in *Chapman* that sexually violent predators have a constitutional right to effective assistance of counsel, and that the appropriate forum to assert this right is through habeas relief. Bill S.659 (in House Judiciary) would codify the Supreme Court's holding. The number 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:

1. Do not take the case
2. Take the case, serve as supervising attorney, and...
 - A. have in-house attorneys do all the work, or
 - B. 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.

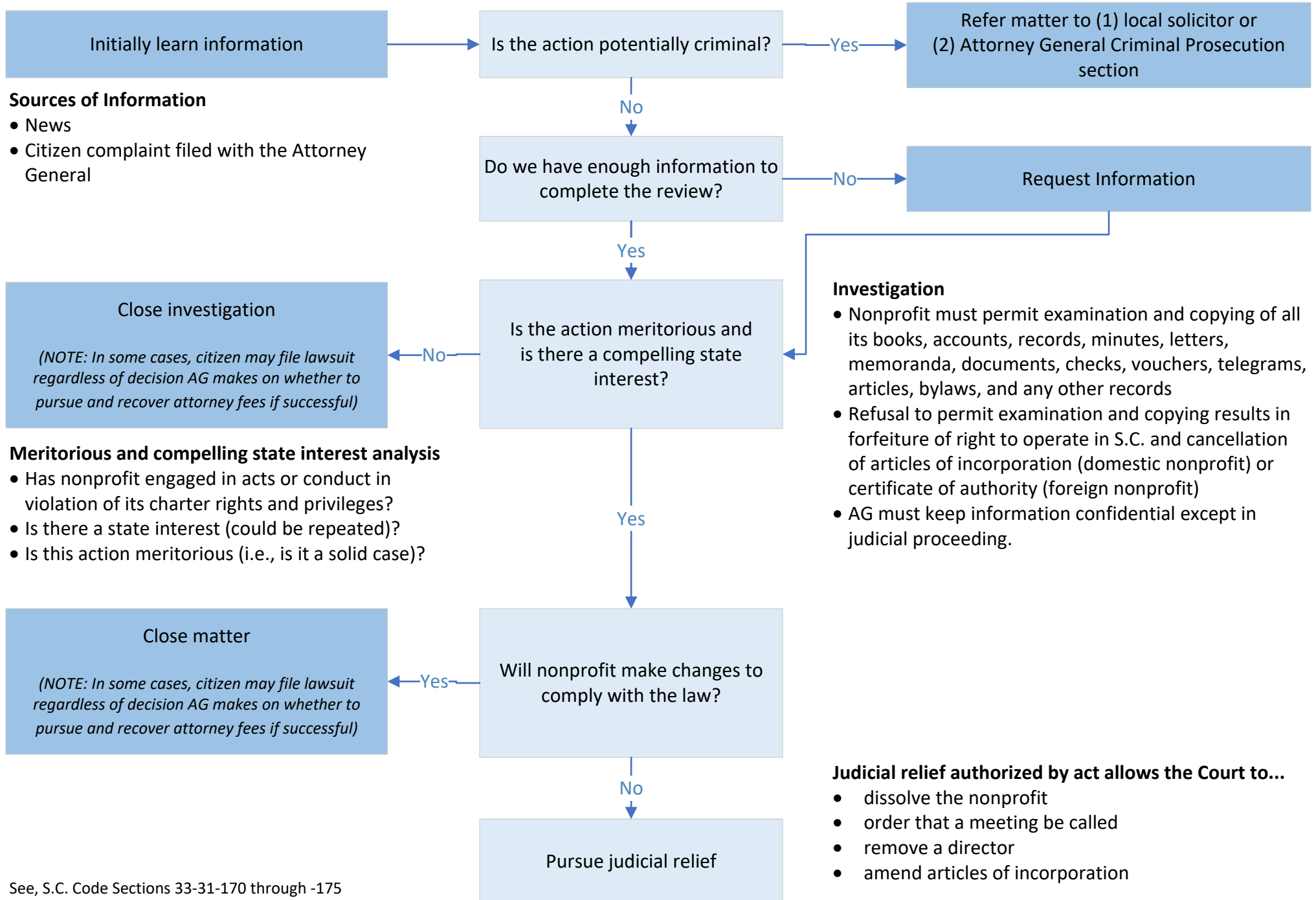
- Public interest be involved, and
- Showing of a “tendency to deceive”
 - Requisite capacity to deceive can be found without evidence that anyone was actually deceived

Example:

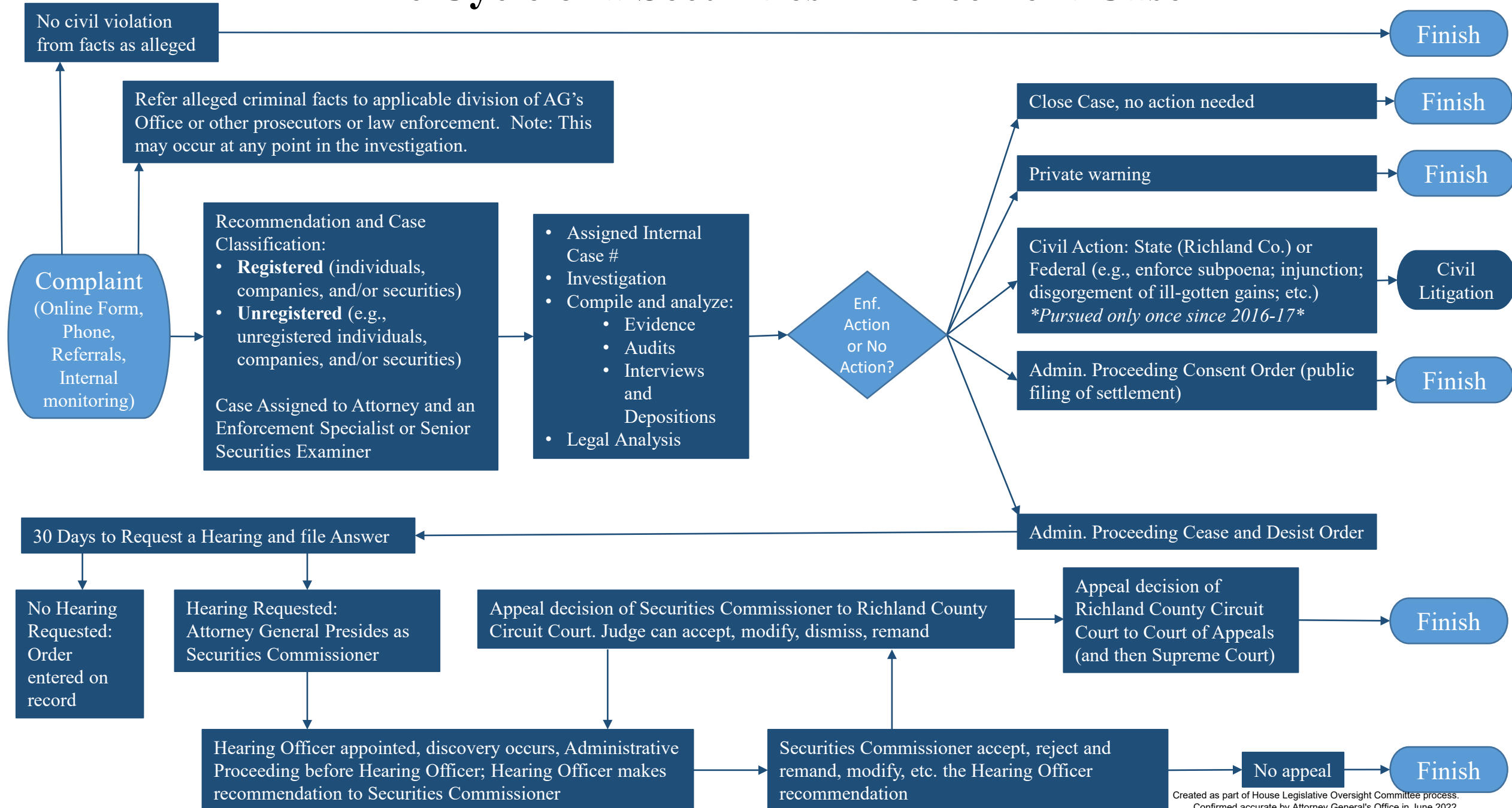
It is in the public interest to prevent the use of false and misleading statements in the conduct of business ... [and] actual deception need not be shown; a finding of a tendency to deceive and mislead will suffice.”

S.C. Nonprofit Corporation Act Investigations

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



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.

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.

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.

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

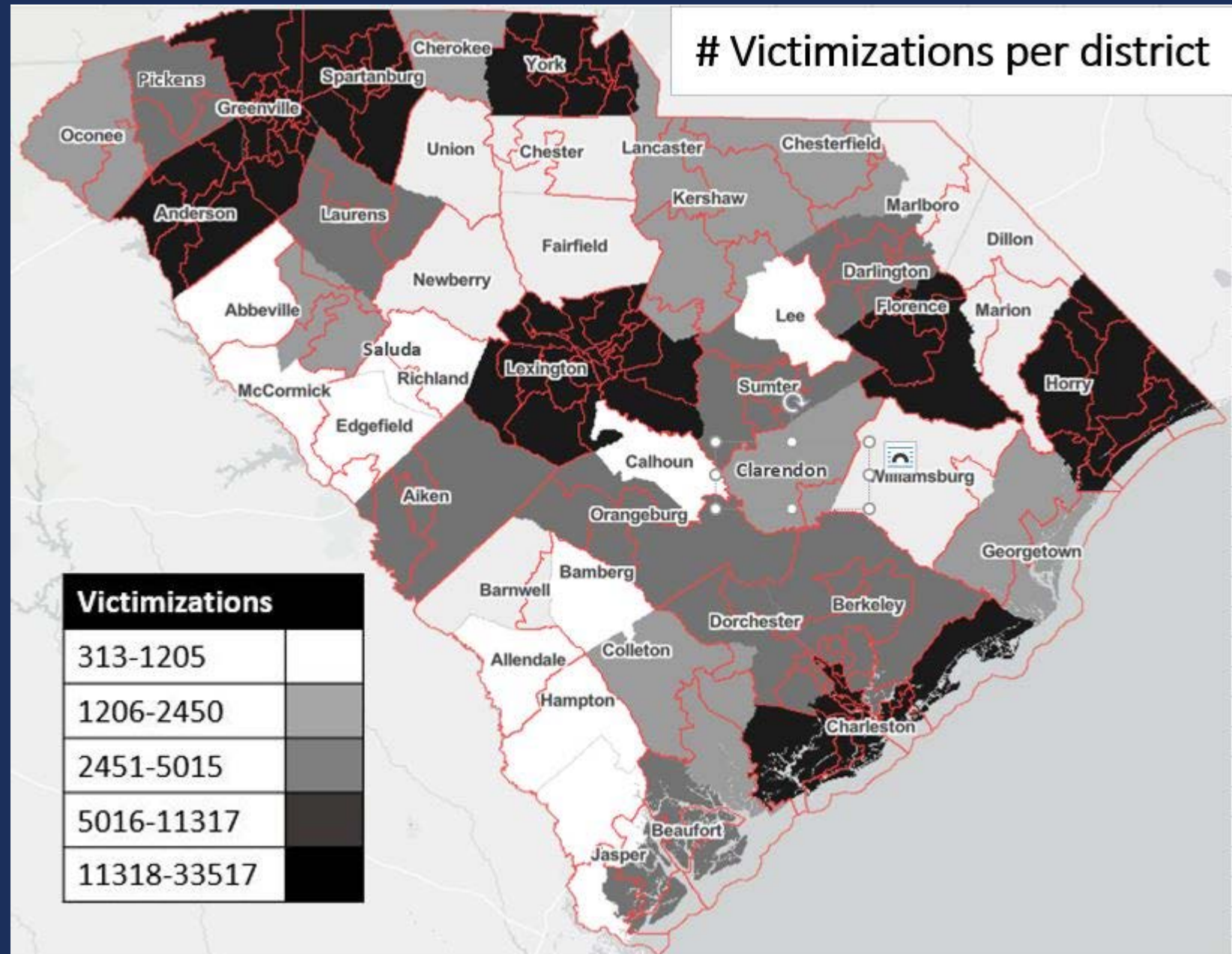
Who is a victim?

An individual who

- suffers **direct** or **threatened**
- ***physical, psychological or financial harm***
- as a result of the commission or attempted commission of a crime.

Victim also includes:

- victim's spouse, parent or child or
- the lawful representative of a victim who is
 - Deceased
 - a minor
 - Incompetent
 - physically or psychologically incapacitated



Individuals on whom victims rely

Included in Attorney General's Office presentation during House Legislative Oversight Subcommittee meetings in 2022

Law Enforcement:

All Sheriffs' Departments
All City and Town Police Departments
State Law Enforcement Division
SC Highway Patrol
Public college and university law enforcement agencies

Solicitor:

All Solicitors and their staff
All City Prosecutors and their staff

Courts:

All Circuit, Magistrate and Municipal Judges, their clerks and staff

Detention Center / Jail:

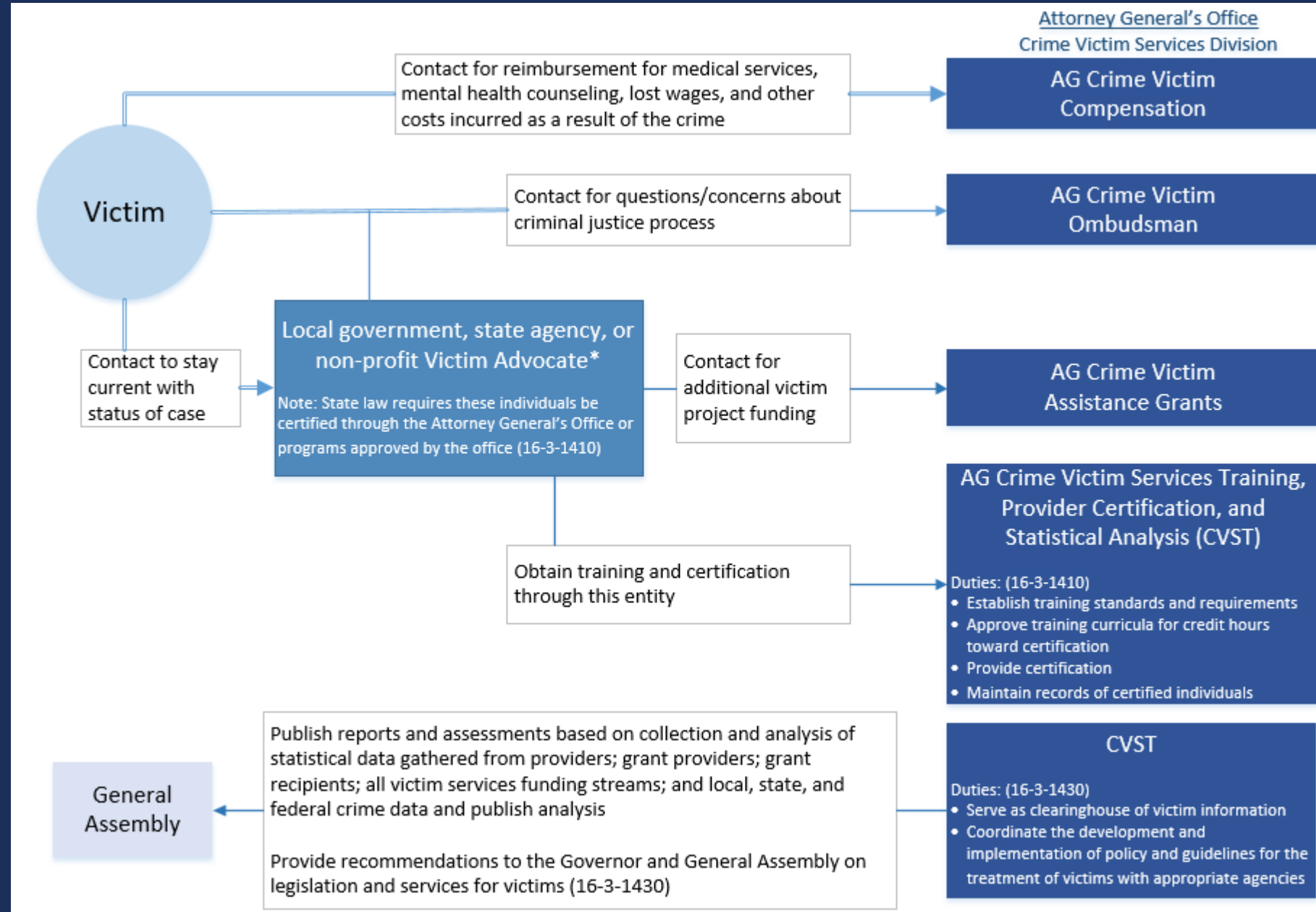
All Detention Center/Jail staff charged with notifying crime victims about offenders' releases/transfers/escapes

State Agency:

Any state agency mandated by law to provide victim services, i.e., Attorney General's Office, SCDC, SCDPPPS, DJJ, and Juvenile Parole Board.

Other:

All non-profit agencies that provide victim services; therapists, attorneys, etc.



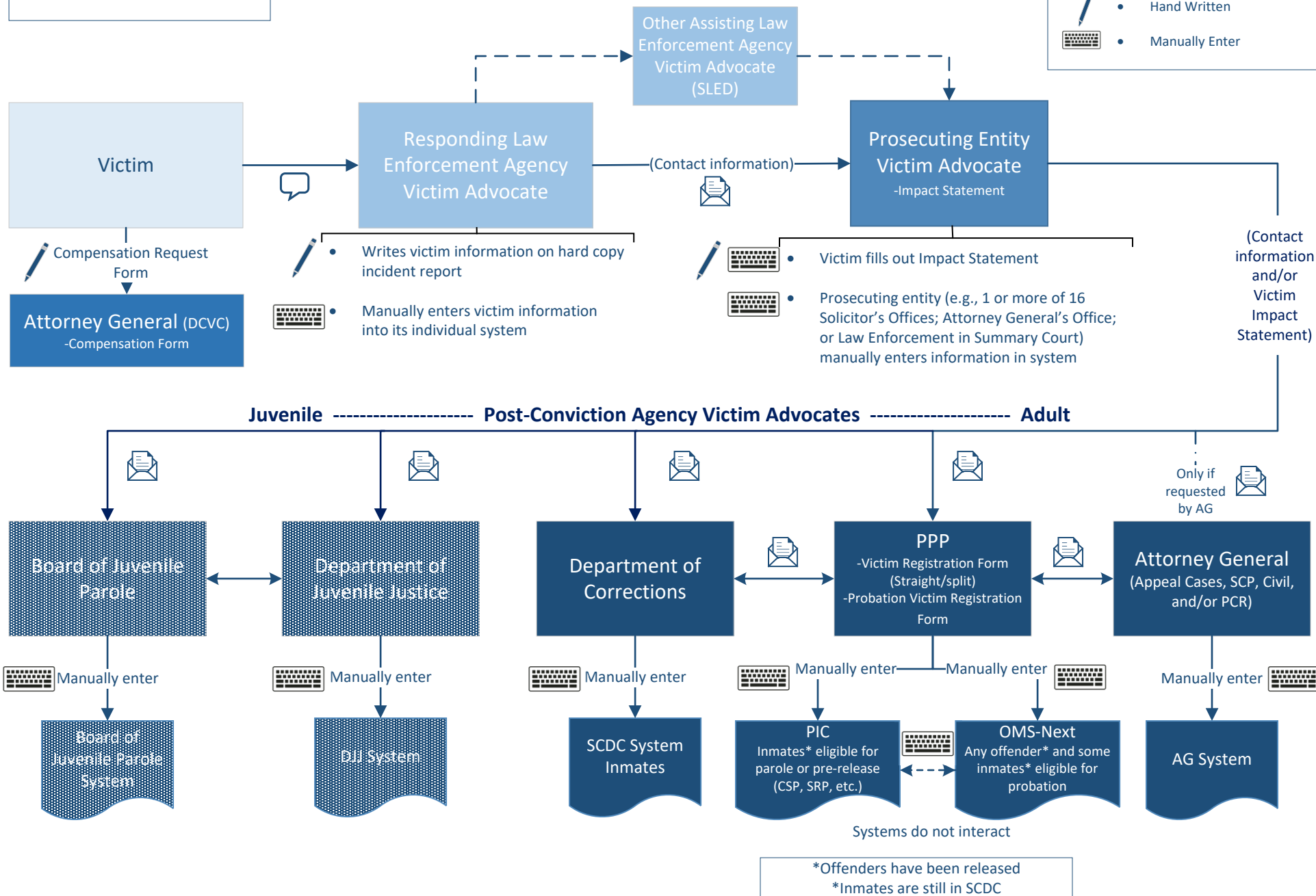
Victim Information Shared

- Name
- Mailing Address
- Telephone Number
- Email Address

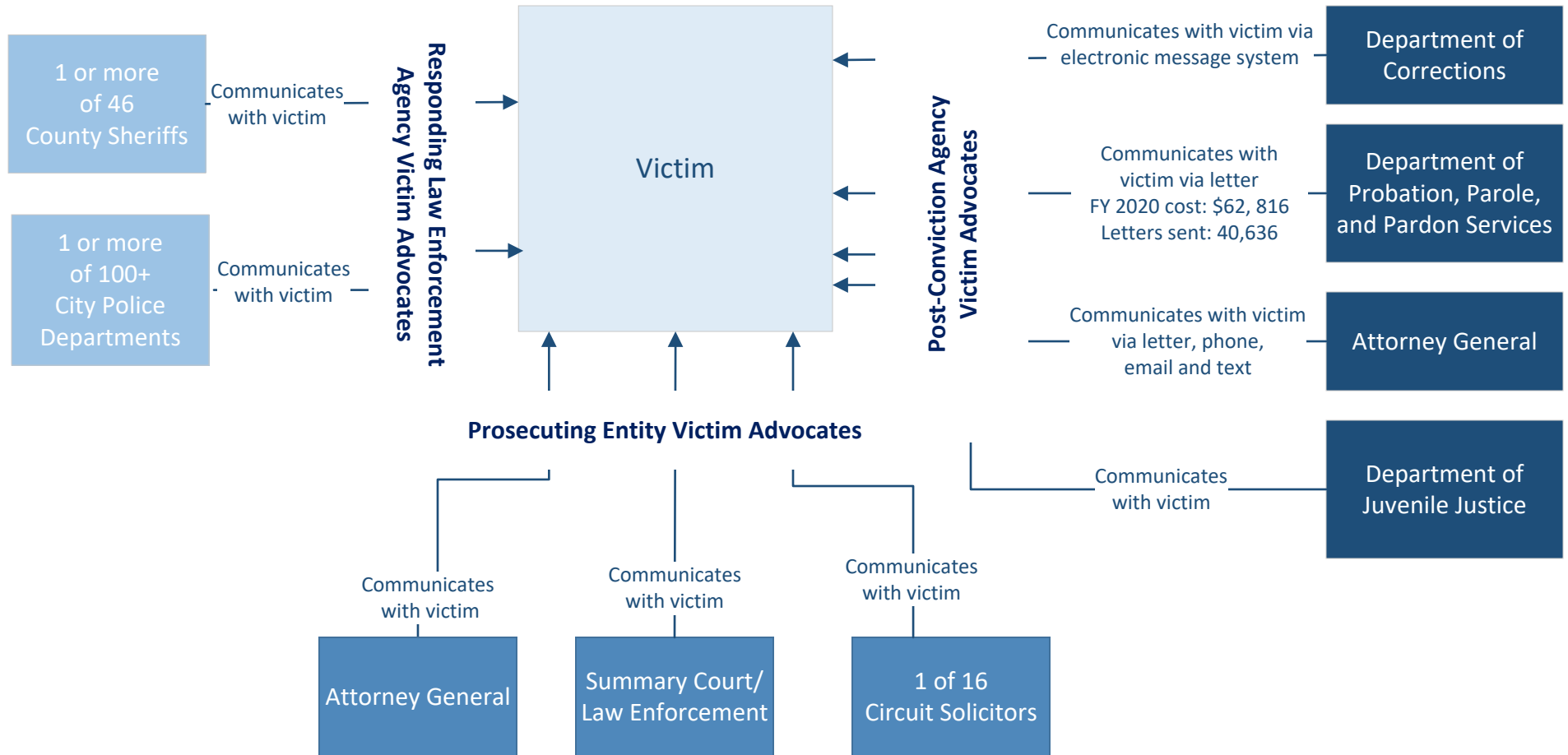
Process by which Government Entities Share Victim Information

(To ensure victims receive notifications required in state constitution)

- Ways information is transferred**
- Verbally
 - Email scanned document or mail hard copy
 - Hand Written
 - Manually Enter



Government Entities that Contact the Victim of a Crime

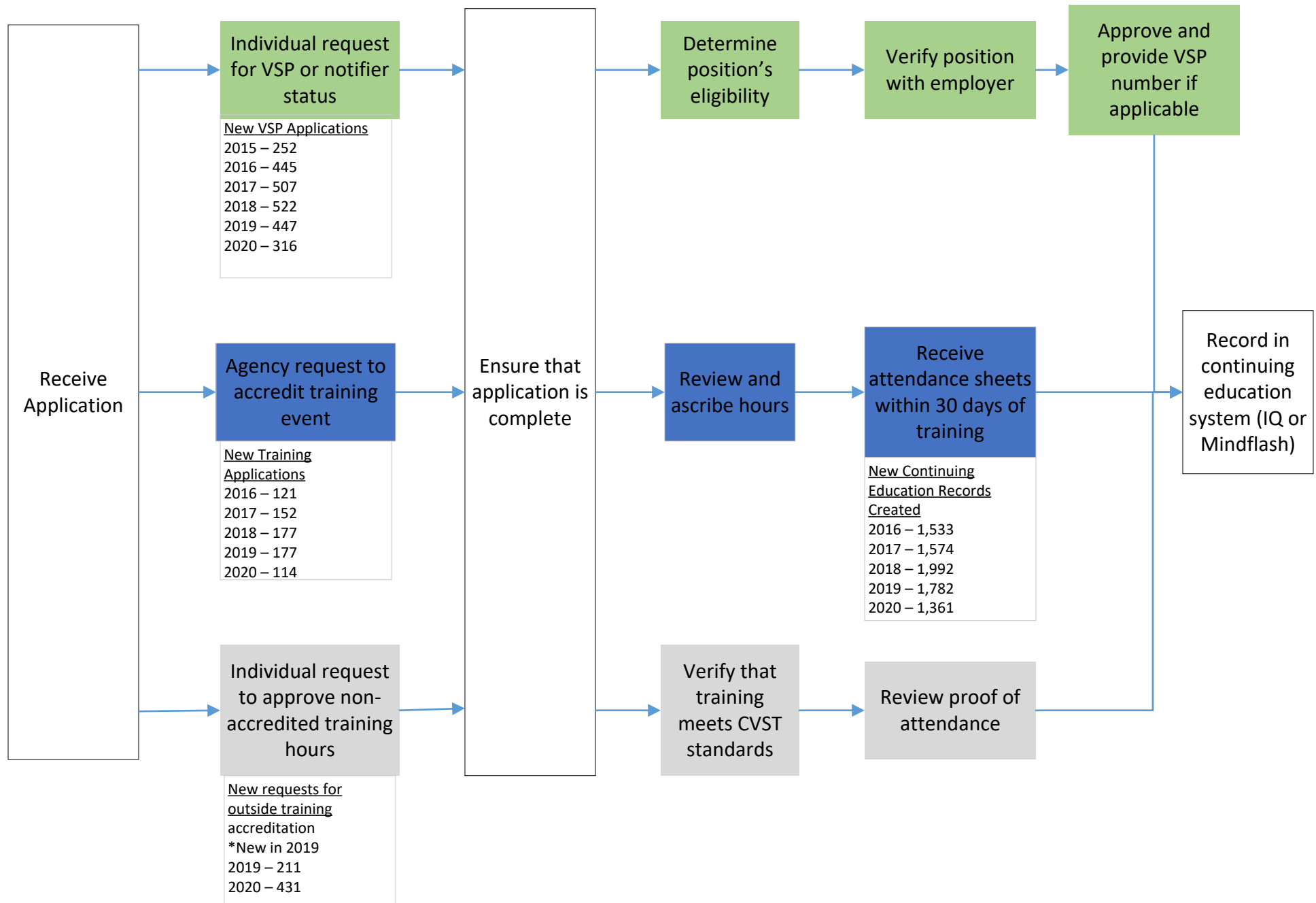


Certifications Applicable to Those Who Serve Crime Victims

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)	•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

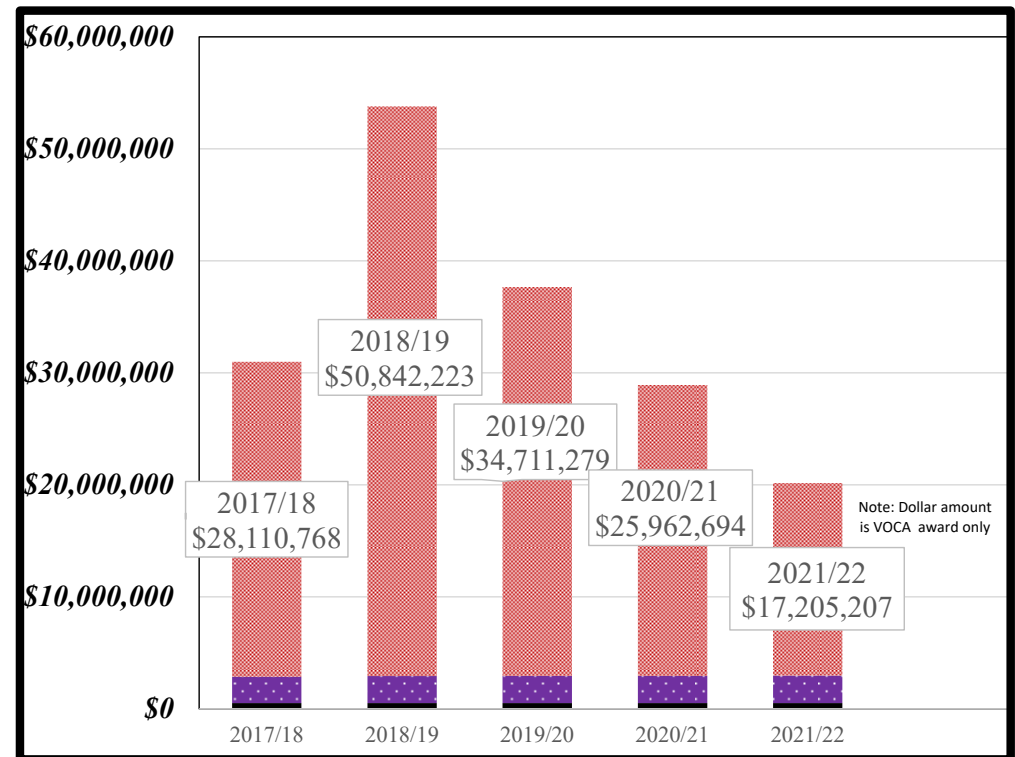
Note: There are 20 priority purpose areas Pursuant to 34 U.S.C. 10441(b)

State Victim Assistance Program (SVAP)

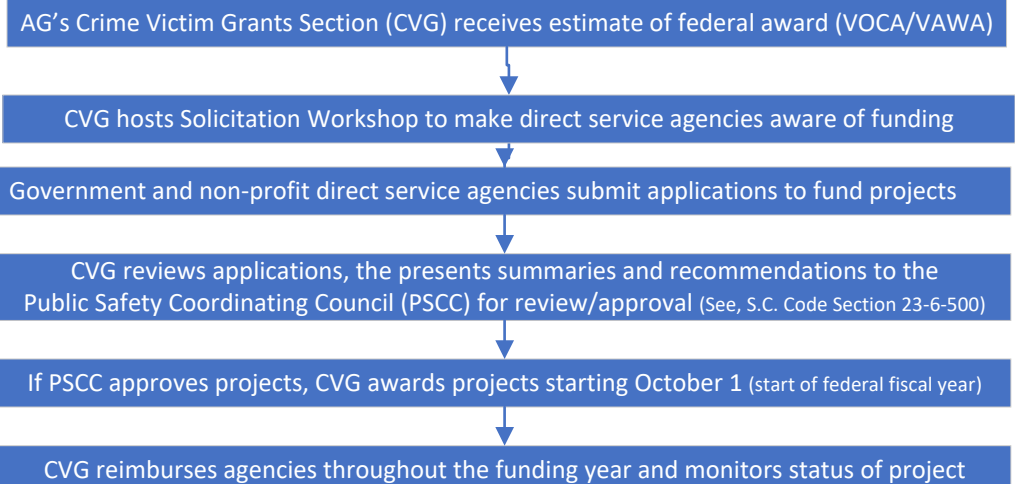
- *Source:* Other funds from SCDC inmate work release pay; and solicitation of grant funding from governmental entities and non-profits
- *Stability:* Stable and consistent
- *Law:* 1986, Omnibus Criminal Justice Improvements Act; 2017, S.C. Crime Victim Services Act
- Avg. number of projects per year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

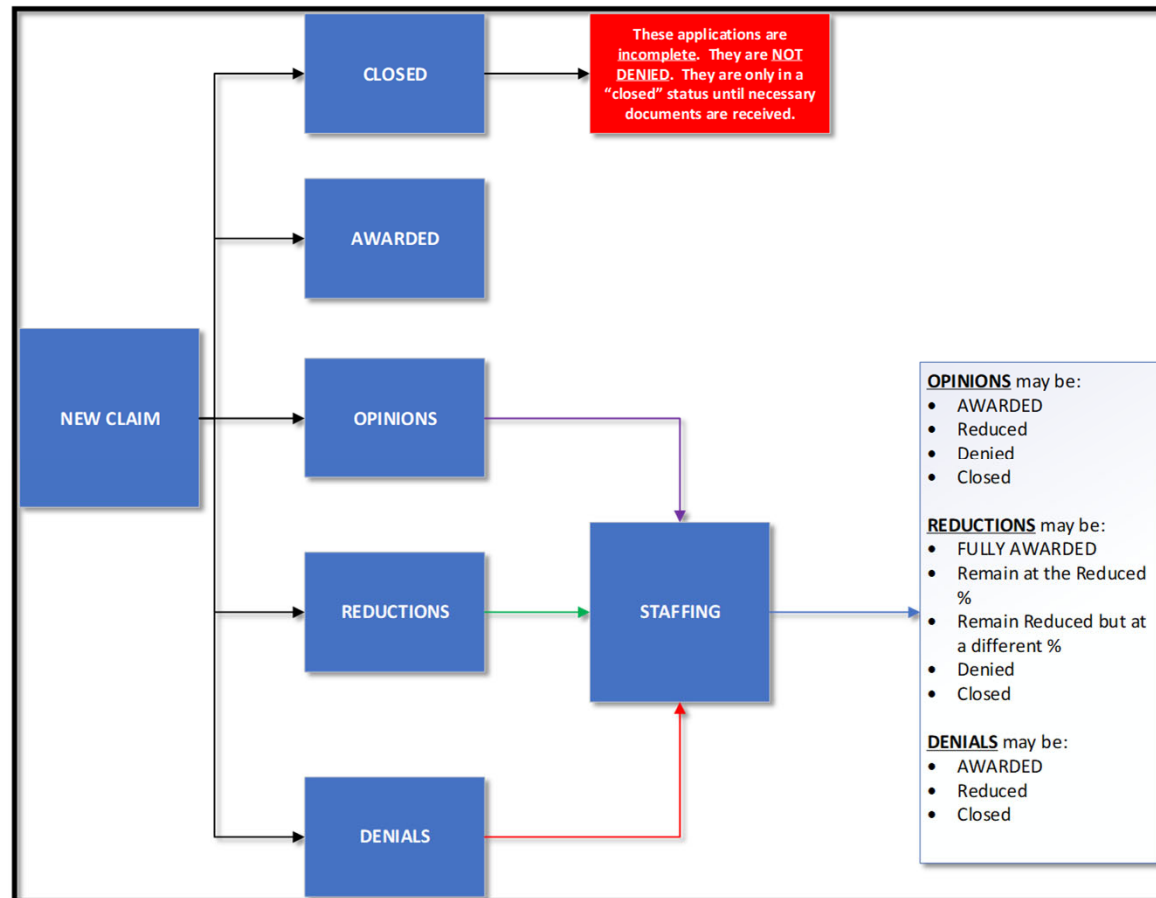
Step 3 Restitution/Subrogation Process (Compensation Recovery)

If Applicable:

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

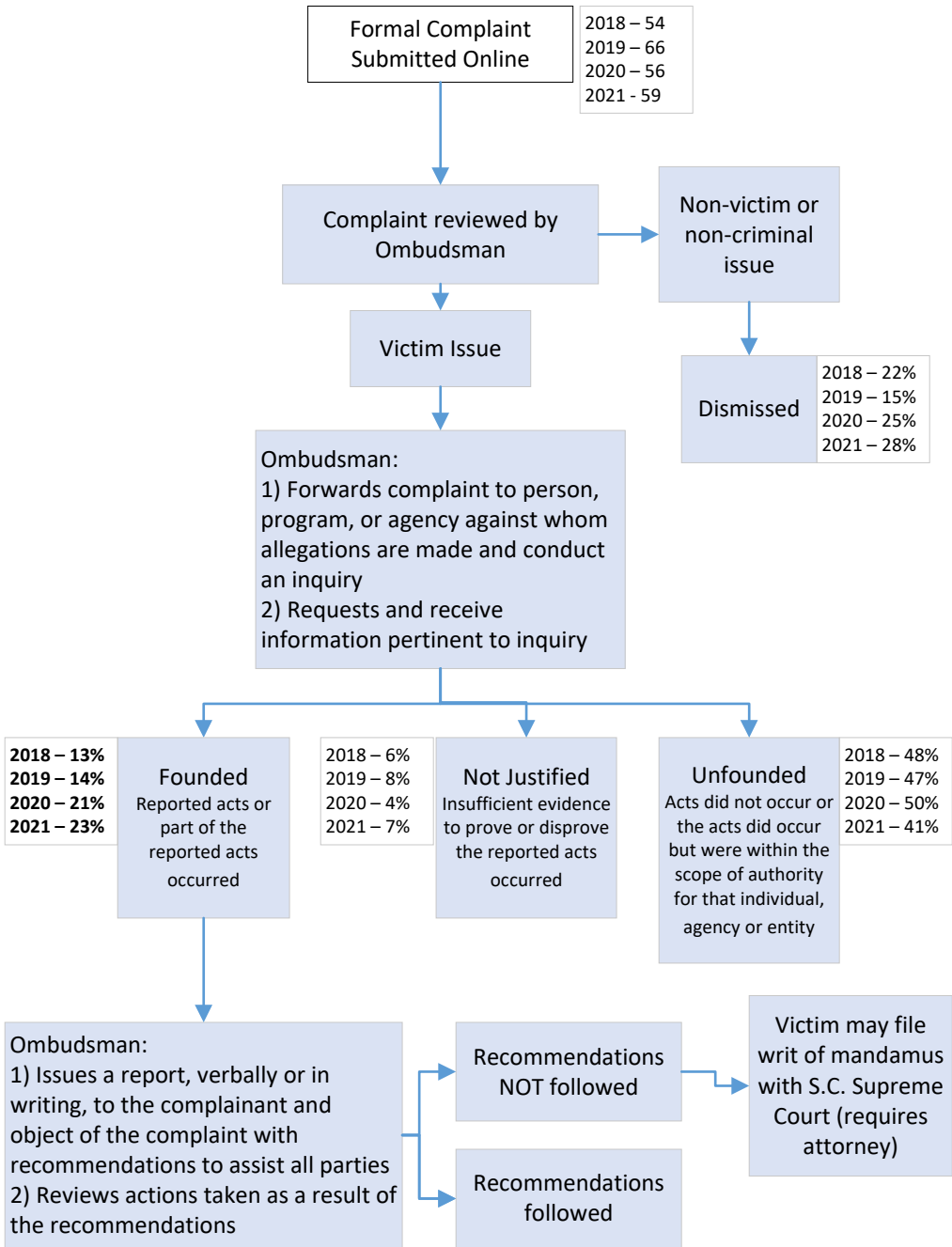
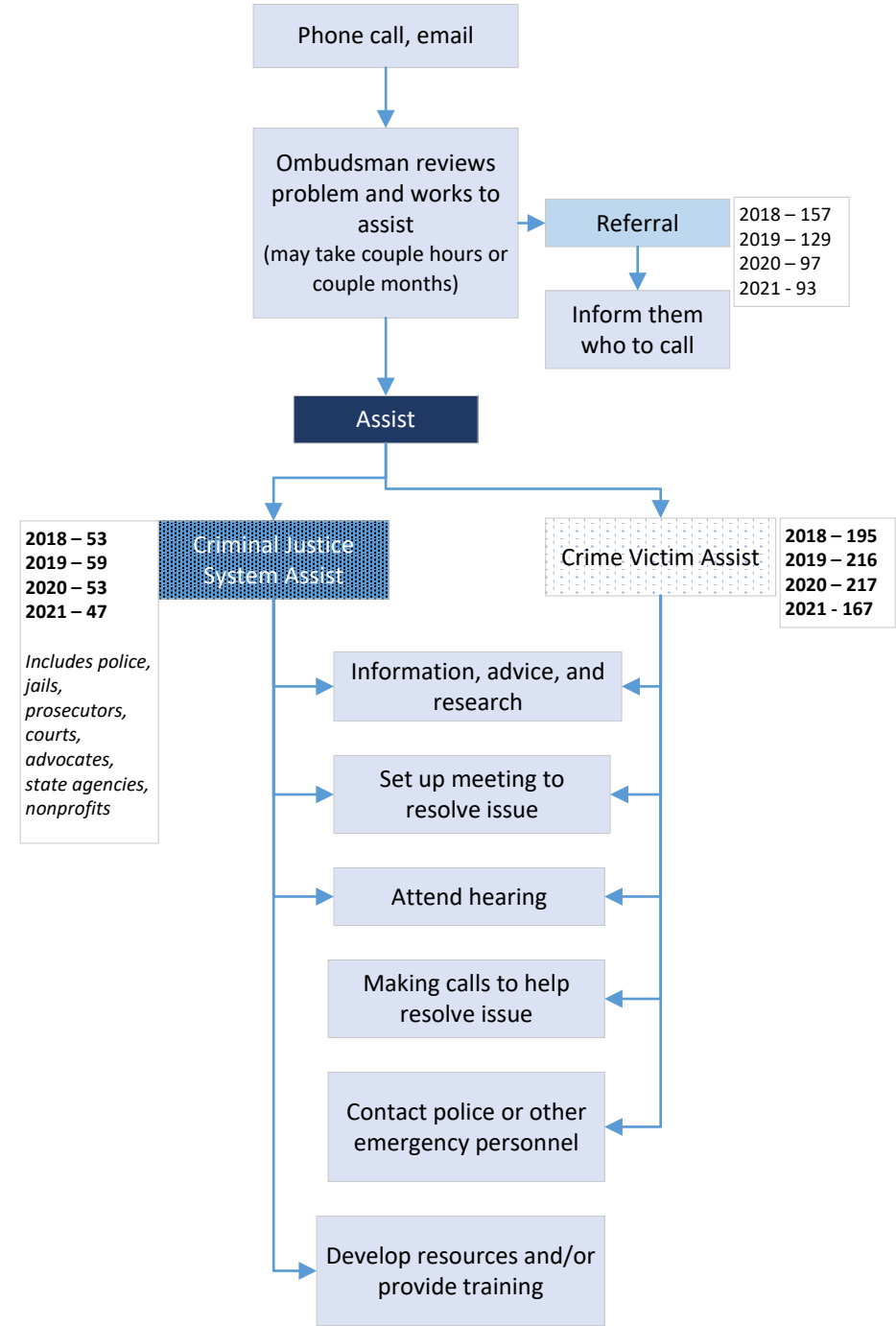
Step 4 Payment Process

- 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



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.

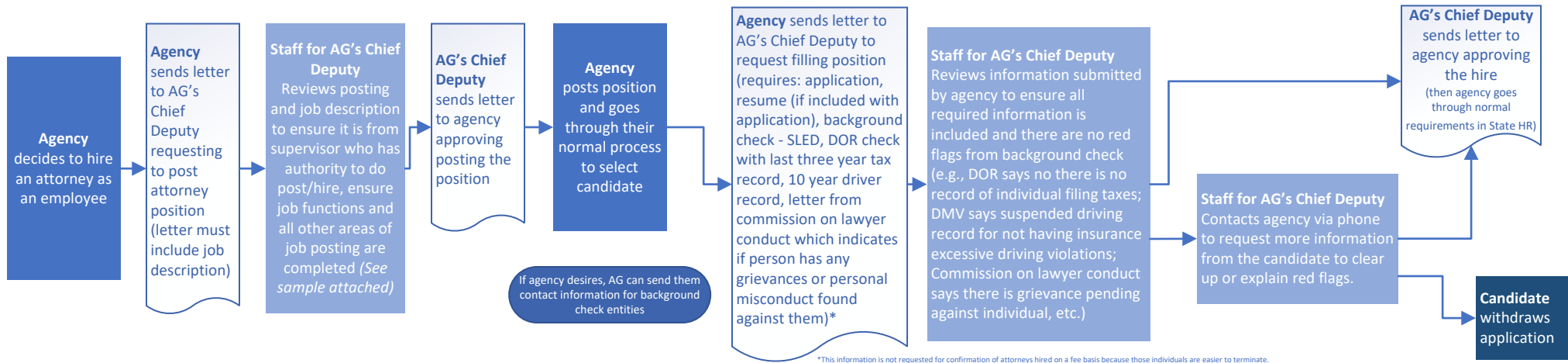
Data maintained by the Office of the Attorney General

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.

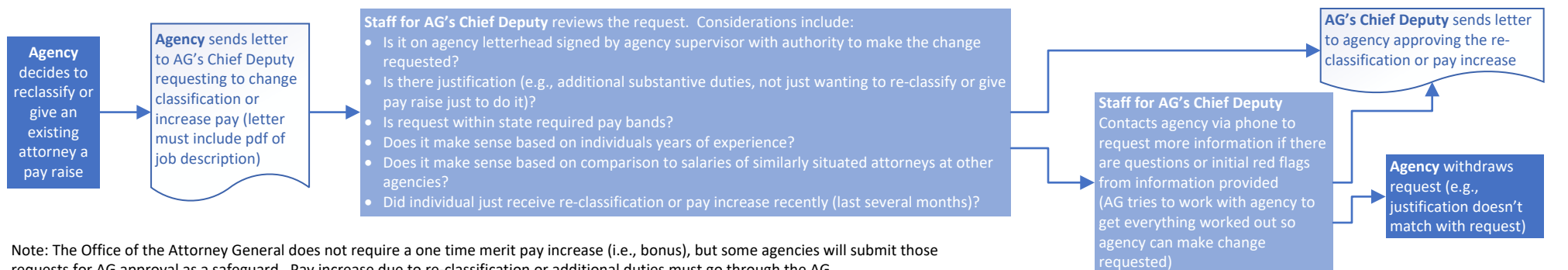
May 2018 to present: Agency requests and AG approval letters are available. Additionally, the following type of aggregated information is available in an Excel chart:

- 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.

State Government Department/Agency* Contracting with Outside Attorney on Fee Basis

*Applies to attorneys hired for a department or agency of state government except the following: (1) attorneys hired by the General Assembly and Judicial Department;

(2) attorneys hired for special cases in Municipal Court and Magistrate Court when the fee to be paid does not exceed \$250; and (3) exceptions approved by the State Budget and Control Board

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.

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

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.

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)

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.

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.

Report Recommendation #31 - (Agency Law Change Recommendation #1)

LAW CHANGE #1 (Executive)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
SECTION 63-19-1430. Youth Mentor Act.	<u>Current Law:</u> This was a small program established several administrations ago, and became formalized as part of an omnibus bill establishing the Children's Code (Title 63). <u>Recommendation:</u> Delete this code section.	Since its inception, it has become duplicative of existing programs. Other programs are grant based and have appropriate staff for such activities. It is better suited to local entities. There is no funding or separate FTEs, and it is ineffective at present and not suited for existing AG staff. At present the program is dormant.	N/A
Current Law Wording:			
SECTION 63-19-1430. Youth Mentor Act.			
(A) This section may be cited as the "Youth Mentor Act". (B) The Attorney General's Office shall establish a Youth Mentor Program to serve juvenile offenders under the jurisdiction of the family court. The program shall consist of a church mentor program and a community mentor program. Participation in the program may be required as a pretrial diversion option by a solicitor or as an optional, alternative disposition by a family court judge. The circuit solicitor may charge a juvenile offender who participates in the Youth Mentor Program a fee to offset the actual cost of administering the program; however, no juvenile offender is barred from the program because of indigence. This program must be available for juveniles who commit nonviolent offenses. For purposes of this subsection, nonviolent offenses mean all offenses not listed in Section 16-1-60. (C) When a child is charged with a nonviolent offense which places him under the jurisdiction of the family court and the solicitor is of the opinion that justice would be better served if the child completed a church mentor program, the solicitor may divert the child to such a program. Upon completion of the program, the proceedings in family court must be dismissed. Participation in the church mentor program is voluntary, and the child or his parents or guardians may refuse to participate based upon their religious beliefs or for any other reason. The Attorney General must establish guidelines for the program, the mentors, and the churches, mosques, masjids, synagogues, and other religious organizations that participate in the church mentor program. (D) When a child is adjudicated delinquent for a nonviolent offense in family court, the family court judge may order the child to participate in the community mentor program. When a child is ordered to participate in the community mentor program, he must be assigned to a community organization which shall assign a mentor to the child. The mentor shall monitor the academic and personal development of the child for a minimum period of six months and a maximum period not exceeding one year as ordered by the court. Failure to complete the program shall result in the child being brought before the family court for appropriate sanctions or revocation of suspended commitment. The Attorney General must establish guidelines for the program, the mentors, and the community organizations that participate in the community mentor program. HISTORY: 2008 Act No. 361, Section 2.			

Report Recommendation #32 - (Agency Law Change Recommendation #6)

LAW CHANGE # 6 (CPAT)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
Section 1-7-117 - Duties of Division of Public Charities devolved upon Attorney General.	<u>Current Law:</u> Devolved duties, functions, and responsibilities of the Public Charities Division to the Attorney General's Office in 1996. <u>Recommendation:</u> Repeal entire statute	1998 Act No. 368 devolved the duties, functions, and responsibilities of the Public Charities Section of the Attorney General's Office upon the Secretary of State's Office on July 1, 1998. The Public Charities Division has remained with the Secretary of State's Office since that time, and Section 1-7-117 is no longer accurate.	Other entities potentially impacted: Secretary of State NOTE: This issue was previously addressed in the Secretary of State's Legislative Oversight review. There is pending legislation for this correction
Current Law Wording		Proposed Revisions to Law Wording	
SECTION 1-7-117. Duties of Division of Public Charities devolved upon Attorney General. (A) The duties, functions, and responsibilities of the Division of Public Charities of the office of the Secretary of State are devolved upon the Attorney General's office on July 1, 1996. All personnel, appropriations, and full-time equivalent positions of the Division of Public Charities also are transferred to the Attorney General's office on July 1, 1996. (B) The Attorney General shall administer the "South Carolina Solicitation of Charitable Funds Act" as contained in Chapter 56 of Title 33 of the 1976 Code. HISTORY: 1996 Act No. 458, Part II, Section 28A, B.		SECTION 1-7-117. Duties of Division of Public Charities devolved upon Attorney General. (A) The duties, functions, and responsibilities of the Division of Public Charities of the office of the Secretary of State are devolved upon the Attorney General's office on July 1, 1996. All personnel, appropriations, and full-time equivalent positions of the Division of Public Charities also are transferred to the Attorney General's office on July 1, 1996. (B) The Attorney General shall administer the "South Carolina Solicitation of Charitable Funds Act" as contained in Chapter 56 of Title 33 of the 1976 Code. HISTORY: 1996 Act No. 458, Part II, Section 28A, B.	

Report Recommendation #33 - (Agency Law Change Recommendation #7)

LAW CHANGE #7 (CPAT)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
Section 44-11-110. Easements and rights of way on grounds of facilities.	<u>Current Law:</u> Requires written approval from the Attorney General for any grant of easements, permits or rights of way on, over or under the grounds of Department of Mental Health facilities. <u>Recommendation:</u> Repeal entire statute	The Department of Mental Health has its own attorneys who are in a position to review and evaluate easements, permits, or rights of way	Other entities potentially impacted: Department of Mental Health
Current Law Wording		Proposed Revisions to Law Wording	
Section 44-11-110. Easements and rights of way on grounds of facilities. Universal Citation: SC Code § 44-11-110 (2012) The Mental Health Commission may, by resolution recorded on the minutes of its meetings, grant easements, permits or rights of way on, over or under the grounds of the facilities, but none may be granted unless approved in writing by the Attorney General before delivery. HISTORY: 1962 Code Section 32-941; 1952 Code Sections 32-981, 32-982; 1942 Code Section 6245; 1932 Code Section 6245; Civ. C. '22 Section 5107; Civ. C. '12 Section 3372; Civ. C. '02 Section 2261; 1894 (21) 835; 1920 (31) 704; 1941 (42) 188; 1942 (42) 1685; 1952 (47) 2042.		Section 44-11-110. Easements and rights of way on grounds of facilities. Universal Citation: SC Code § 44-11-110 (2012) The Mental Health Commission may, by resolution recorded on the minutes of its meetings, grant easements, permits or rights of way on, over or under the grounds of the facilities, but none may be granted unless approved in writing by the Attorney General before delivery. HISTORY: 1962 Code Section 32-941; 1952 Code Sections 32-981, 32-982; 1942 Code Section 6245; 1932 Code Section 6245; Civ. C. '22 Section 5107; Civ. C. '12 Section 3372; Civ. C. '02 Section 2261; 1894 (21) 835; 1920 (31) 704; 1941 (42) 188; 1942 (42) 1685; 1952 (47) 2042.	

LAW CHANGE # 9 (Opinions)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
S.C. Code Ann. § 59-31-560	Current Law: "The Attorney General of the State shall approve all contracts to be entered into between the State and publishers and shall approve the bond to be filed by each contract publisher. Such bond shall be placed in the custody of the State Treasurer." Recommendation: Remove requirement for Attorney General approval.	This statute was written over a century ago when the AG office was the only source of legal work for the state. It is an anachronistic formality in the modern era where the Dep't of Ed. employs attorneys.	Presented and approved by agency's governing body: Other entities potentially impacted: Department of Education If the law is a regulation, where agency is in the process of finalizing it and providing it to the General Assembly: N/A
Current Law Wording		Proposed Revisions to Law Wording	
"The Attorney General of the State shall approve all contracts to be entered into between the State and publishers and shall approve the bond to be filed by each contract publisher. Such bond shall be placed in the custody of the State Treasurer."		"The State Board of Education or its designee shall place in the custody of the State Treasurer any bond that is entered by the State and the publisher pursuant to S.C. Code Ann. §59-31-550(5)."	

Report Recommendation #35 - (Agency Law Change Recommendation #27)

LAW CHANGE #27 (Sp Pros)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
Section 59-63-350	Current Law: Local law enforcement must call Attorney General's Office to tell about certain crimes occurring at school or at a school-sanctioned event Recommendation: Remove the statute	This statute does not provide any action for the AG office. It is a requirement of law enforcement who already have enough requirements without sending us a notification. Other agencies get these reports and keep up with them.	N/A
Current Law Wording		Proposed Revisions to Law Wording	
Local law enforcement officials are required to contact the Attorney General's "school safety phone line" when any felony, assault and battery of a high and aggravated nature, crime involving a weapon, or drug offense is committed on school property or at a school-sanctioned or school-sponsored activity or any crime reported pursuant to Section 59-24-60.		Delete	

Report Recommendation #36 - (Agency Law Change Recommendation #2)

LAW CHANGE # 2 (Legal Services)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
Section 35-1-604(f). Administrative Enforcement.	<u>Current Law:</u> In part, Subsection (f) requires that the Securities Commissioner forward final orders issued under §35-1-604 of the SC Uniform Securities Act of 2005 to the SC Department of Revenue and the SC Secretary of State. <u>Recommendation:</u> Modify to delete the final sentence in this section requiring forwarding of final orders to the Department of Revenue and Secretary of State.	The Department of Revenue and Secretary of State have indicated that they believe publication of final orders on our website sufficiently puts them on notice of an action. They do not object to this change.	Other entities potentially impacted: SC Department of Revenue, SC Secretary of State
Current Law Wording		Proposed Revisions to Law Wording	
SECTION 35-1-604. Administrative Enforcement. (f) If a petition for judicial review of a final order is not filed in accordance with Section 35-1-609, the Securities Commissioner may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court. A copy of a final order must be forwarded to the South Carolina Department of Revenue and the South Carolina Office of the Secretary of State.		SECTION 35-1-604. Administrative Enforcement. (f) If a petition for judicial review of a final order is not filed in accordance with Section 35-1-609, the Securities Commissioner may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court. A copy of a final order must be forwarded to the South Carolina Department of Revenue and the South Carolina Office of the Secretary of State.	

Report Recommendation #37 - (Agency Law Change Recommendations #15 and 36)

LAW CHANGE #15 (Appeals)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
S.C. Code Ann. § 16-3-1050 S.C. Code Ann. § 43-35-85	Current Law: Both of these statutes appear to criminalize the same acts. However, there are very different ramifications for violations based on which statute is used for charging. Recommendation: Review the two statutes, as well as the ramifications under sections 16-1-60, 17-25-45, 17-22-50, and 63-7-2350 to determine whether one statute needs to be amended or removed and to make the collateral consequences the same.	A review of sections 16-3-1050 and 43-35-85 showed they penalized the same behaviors. However, they have different collateral consequences with one statute resulting in a designation of a violent most serious offense while the other is a serious non-violent among other differences.	N/A
Current Law Wording		Proposed Revisions to Law Wording	
S.C. Code Ann. § 16-3-1050 (A) A person required to report abuse, neglect, or exploitation of a vulnerable adult under Chapter 35 of Title 43 who has actual knowledge that abuse, neglect, or exploitation has occurred and who knowingly and wilfully fails to report the abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five hundred dollars or imprisoned not more than one year. A person required to report abuse, neglect, or exploitation of a vulnerable adult under Chapter 35 of Title 43 who has reason to believe that abuse, neglect, or exploitation has occurred or is likely to occur and who knowingly and wilfully fails to report the abuse, neglect, or exploitation is subject to disciplinary action as may be determined necessary by the appropriate licensing board. (B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years. (C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.		S.C. Code Ann. § 16-3-1050 Repealed (We ask that the Act repealing the statute contain a standard savings clause: The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.) (A) A person required to report abuse, neglect, or exploitation of a vulnerable adult under Chapter 35 of Title 43 who has actual knowledge that abuse, neglect, or exploitation has occurred and who knowingly and wilfully fails to report the abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five hundred dollars or imprisoned not more than one year. A person required to report abuse, neglect, or exploitation of a vulnerable adult under Chapter 35 of Title 43 who has reason to believe that abuse, neglect, or exploitation has occurred or is likely to occur and who knowingly and wilfully fails to report the abuse, neglect, or exploitation is subject to disciplinary action as may be determined necessary by the appropriate licensing board.	

(D) A person who knowingly and wilfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.

(E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

(F) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years.

(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to Chapter 35 of Title 43, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned not more than three years.

As used in this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Section 43-35-85

Penalties

(A) A person required to report under this chapter who knowingly and wilfully fails to report abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five hundred dollars or imprisoned not more than one year.

(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a

~~(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.~~

~~(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.~~

~~(D) A person who knowingly and wilfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.~~

~~(E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.~~

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~~(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years.~~

~~(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to Chapter 35 of Title 43, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned not more than three years.~~

~~As used in this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.~~

Section 43-35-85

To amend the caption of the section to read:

Failure to report, perpetrating or interfering with an investigation of abuse, neglect or exploitation of a vulnerable adult; penalties.

(A) A person required to report under this chapter who knowingly and wilfully fails to report abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five hundred dollars or imprisoned not more than one year.

felony and, upon conviction, must be imprisoned not more than five years.

(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(D) A person who knowingly and wilfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.

(E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

(F) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to this chapter, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned for not more than three years.

(I) As used in this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(D) A person who knowingly and wilfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.

(E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

(F) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

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(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to this chapter, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned for not more than three years.

(I) As used in this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

LAW CHANGE #36 (CVS)

Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
SECTION 16-3-1410(C)(2)	<u>Current Law:</u> Victim Service Providers (VSP) employed on the effective date of this article are exempt from basic certification requirements, but must meet annual continuing education requirements. <u>Recommendation:</u> Remove the first sentence of 16-3-1410(C)(2)	This was language from 2008 when VSP certification was first codified. VSPs employed prior to 2009 were "grandfathered" meaning they did not have to take the basic certification course. However, the law is not clear that this was for those employed as VSPs prior to 2009, and over a decade later the "grandfathering" process is no longer relevant.	N/A
Current Law Wording		Proposed Revisions to Law Wording	
(2) Crime victim service providers, serving in public or private nonprofit programs and employed on the effective date of this article, are exempt from basic certification requirements but must meet annual continuing education requirements to maintain certification. Crime victim service providers, serving in public or private nonprofit programs and employed after the effective date of this article, are required to complete the basic certification requirements within one year from the date of employment and to meet annual continuing education requirements to maintain certification throughout their employment.		(2) Crime victim service providers, serving in public or private nonprofit programs and employed on the effective date of this article, are exempt from basic certification requirements but must meet annual continuing education requirements to maintain certification. Crime victim service providers, serving in public or private nonprofit programs and employed after the effective date of this article, are required to complete the basic certification requirements within one year from the date of employment and to meet annual continuing education requirements to maintain certification throughout their employment.	

LAW CHANGE #16 (Appeals)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
S.C. Code Ann. § 17-13-140	Current Law: Allows for law enforcement to obtain search warrants and allows for judges to issue search warrants for property within their jurisdiction, which would limit a magistrate to a county and a circuit court judge to statewide jurisdiction. Recommendation: The statute needs to be expanded to address today's digital age and allow a circuit court judge to issue a search warrant which would allow for access to digital or electronic data stored outside the state of South Carolina and be consistent with section 18 USC 2703 of the Stored Communications Act.	Currently, it is questionable whether law enforcement has a means to obtain digital and electronic data stored outside the state of South Carolina by an entity such as Google or Facebook. It is possible law enforcement could obtain that information pursuant to the Federal Stored Communications Act, but it would be preferable to allow access under state law and section 17-13-140.	N/A
Current Law Wording:		Proposed Revisions to Law Wording:	
Any magistrate or recorder or city judge having the powers of magistrates, or any judge of any court of record of the State having jurisdiction over the area where the property sought is located, may issue a search warrant to search for and seize (1) stolen or embezzled property; (2) property, the possession of which is unlawful; (3) property which is being used or has been used in the commission of a criminal offense or is possessed with the intent to be used as the means for committing a criminal offense or is concealed to prevent a criminal offense from being discovered; (4) property constituting evidence of crime or tending to show that a particular person committed a criminal offense; (5) any narcotic drugs, barbiturates, amphetamines or other drugs restricted to sale, possession, or use on prescription only, which are manufactured, possessed, controlled, sold, prescribed, administered, dispensed or compounded in violation of any of the laws of this State or of the United States.		Add a section to the current law allowing for circuit court judges to have jurisdiction to issue a warrant for digital or electronic evidence to the same extent and in the same manner as allowed under federal law pursuant to section 18 USC 2703. One possible reading which would be added as the second paragraph of the statute could be: In addition, any judge of any court of record of the State may issue a search warrant to search for and seize electronic or digital data or information from any provider of electronic communication services or remote computing services as defined in the Stored Communications Act at 18 U.S.C. §2701 et seq., even if such data or information is not located in South Carolina to the same extent allowed under federal law pursuant to section 18 U.S.C. § 2703. This authority extends to any data or information stored in the United States and its Territories, and any data or information stored by any business located in the United States and its Territories.	

LAW CHANGE #12 (Cap Lit & Appeals)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
S.C. § 16-3-910 Kidnapping	<u>Current Law:</u> Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years unless sentenced for murder as provided in Section 16-3-20. <u>Recommendation:</u> Remove the final phrase: "unless sentenced for murder as provided in Section 16-3-20."	The same result may be reached by designating concurrent service. Deleting the language leaves discretion with the sentencing judge to impose sentence as the crime demands.	Other entities potentially impacted: Crime Victims, Victim Services and Advocates
Current Law Wording		Proposed Revisions to Law Wording	
Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years unless sentenced for murder as provided in Section 16-3-20.		Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years unless sentenced for murder as provided in Section 16-3-20.	

LAW CHANGE #41 (CVS)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
<u>§16-3-1510 (3)</u>	<u>Current Law:</u> The definition of “criminal offense” involving victim’s stolen or destroyed property includes a minimum dollar amount for losses. Criminal offense also excludes fraudulent checks or other offenses contained in Title 56 that do not involve personal injury or death. <u>Recommendation:</u> Remove references to dollar amount, and the last sentences of both paragraphs in this section.	When the state amended the South Carolina Constitution to ratify legal rights for crime victims in 1998 (Act No. 343, “Victims’ Bill of Rights”), it superseded sections of <u>SC Code Ann. 16-3-1510(3)</u> , which had been enacted in 1997 (Act No. 141). Legislative amendments must be made to correct the statute to align with the Constitution, which is silent on any monetary amount to be lost, or type of crime to endure, to be legally identified as a crime victim in South Carolina.	<u>Other entities potentially impacted:</u> Most agencies ignore this outdated statute. However, law enforcement and Solicitors’ Offices will likely support this clarification.
Current Law Wording		Proposed Revisions to Law Wording	
(3) "Criminal offense" means an offense against the person of an individual when physical or psychological harm occurs, or the property of an individual when the value of the property stolen or destroyed, or the cost of the damage to the property is in excess of one thousand dollars. This includes both common law and statutory offenses, the offenses contained in Sections 16-25-20, 16-25-30, 16-25-50, 56-5-1210, 56-5-2910, 56-5-2920, 56-5-2930, 56-5-2945, and the common law offense of attempt, punishable pursuant to Section 16-1-80. However, "criminal offense" specifically excludes the drawing or uttering of a fraudulent check or an offense contained in Title 56 that does not involve personal injury or death. For purposes of this article, a victim of any misdemeanor or felony under state law must be notified of or provided with the information required by this section. The terms "crime", "criminal conduct", "charge", or any variation of these terms as used in this article mean all misdemeanors and felonies under state law except the crimes the General Assembly specifically excludes from the notification provisions contained in this article.		3) "Criminal offense" means an offense against the person of an individual when physical or psychological harm occurs, or <u>against</u> the property of an individual when the value of the property is <u>is</u> stolen, <u>damaged</u> or destroyed. , or the cost of the damage to the property is in excess of one thousand dollars. This includes both common law and statutory offenses, the offenses contained in Sections 16-25-20, 16-25-30, 16-25-50, 56-5-1210, 56-5-2910, 56-5-2920, 56-5-2930, 56-5-2945, and the common law offense of attempt, punishable pursuant to Section 16-1-80. However, "criminal offense" specifically excludes the drawing or uttering of a fraudulent check or an offense contained in Title 56 that does not involve personal injury or death. For purposes of this article, a victim of any misdemeanor or felony under state law must be notified of or provided with the information required by this section. The terms "crime", "criminal conduct", "charge", or any variation of these terms as used in this article mean all misdemeanors and felonies under state law. <u>except the crimes the General Assembly specifically excludes from the notification provisions contained in this article.</u>	

LAW CHANGE #14 (Appeals)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
S.C. Code § 17-25-45(C)(1)	<u>Current Law:</u> Includes as a most serious offense criminal sexual conduct with minors, except where evidence presented at the criminal proceeding and the court, after the conviction, makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct where the victim was younger than the actor, as contained in Section 16-3-655(3) <u>Recommendation:</u> Remove the portion of the statute reading "except where evidence presented at the criminal proceeding and the court, after the conviction, makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct where the victim was younger than the actor, as contained in Section 16-3-655(3)"	Section 16-3-655(3) no longer exists after amendments to section 16-3-655 and the State Constitution was amended to remove the age of consent at 14, so the provision is no longer applicable and should be removed in its entirety.	N/A
Current Law Wording		Proposed Revisions to Law Wording	
"Most serious offense" means: . . . 16-3-655 Criminal sexual conduct with minors, except where evidence presented at the criminal proceeding and the court, after the conviction, makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct where the victim was younger than the actor, as contained in Section 16-3-655(3)		"Most serious offense" means: . . . 16-3-655 Criminal sexual conduct with minors	

Report Recommendation #42 - (Agency Law Change Recommendation #34)

LAW CHANGE #34 (CVS)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
SECTION 14-1-211.5 Training and technical assistance.	<u>Current Law:</u> Assigns training and technical assistance for priority one and priority two funds to the Department of Crime Victim Assistance Grants <u>Recommendation:</u> Attribute training and technical assistance for priority one and priority two funds to the Department of Crime Victim Compensation	Section 14.1.211.5 (A) & (B) incorrectly attributes duties to the Department of Crime Victim Assistance Grants when those duties should be conferred upon the Department of Crime Victim Compensation. References to the Department of Crime Victim Assistance Grants should be replaced with the Department of Crime Victim Compensation.	N/A
Current Law Wording:		Proposed Revisions to Law Wording:	
SECTION 14-1-211.5. Training and technical assistance. The Department of Crime Victim Assistance Grants shall offer training and technical assistance to each municipality and county annually on the acceptable use of both priority one and priority two funds and funds available for competitive bid. HISTORY: 2017 Act No. 96 (S.289), Pt. IV, Section 13.A, eff July 1, 2017.		SECTION 14-1-211.5. Training and technical assistance. The Department of Crime Victim Assistance Grants <u>Department of Crime Victim Compensation</u> shall offer training and technical assistance to each municipality and county annually on the acceptable use of both priority one and priority two funds and funds available for competitive bid. HISTORY: 2017 Act No. 96 (S.289), Pt. IV, Section 13.A, eff July 1, 2017.	

Report Recommendation #43 - (Agency Law Change Recommendation #35)

LAW CHANGE #35 (CVS)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
SECTION 16-3-1200	<u>Current Law:</u> References "victim" definition <u>Recommendation:</u> Update to reference "intervenor" definition	Section 16-3-1200 the statute refers to the intervenor and references Section (8) of Section 16-3-1110 which is the definitions section. The statute should refer to Section (9), which provides the definition for an "intervenor."	N/A
Current Law Wording		Proposed Revisions to Law Wording	
SECTION 16-3-1200. Conduct of victim or intervenor contributing to infliction of injury; reduction of award; rejection of claim. In determining the amount of an award, the Deputy Director, the Board, or its panel shall determine whether because of his conduct the victim or intervenor of such crime contributed to the infliction of his injury, and the Deputy Director, the Board, or its panel may reduce the amount of the award or reject the claim altogether in accordance with such determination; provided, however, the Deputy Director, the Board, or its panel may disregard for this purpose the contribution of an intervenor for his own injury or death where the record shows that the contribution was attributable to efforts by the intervenor as set forth in subsection (8) of Section 16-3-1110. HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1.		SECTION 16-3-1200. Conduct of victim or intervenor contributing to infliction of injury; reduction of award; rejection of claim. In determining the amount of an award, the Deputy Director, the Board, or its panel shall determine whether because of his conduct the victim or intervenor of such crime contributed to the infliction of his injury, and the Deputy Director, the Board, or its panel may reduce the amount of the award or reject the claim altogether in accordance with such determination; provided, however, the Deputy Director, the Board, or its panel may disregard for this purpose the contribution of an intervenor for his own injury or death where the record shows that the contribution was attributable to efforts by the intervenor as set forth in subsection (8) (9) of Section 16-3-1110. HISTORY: 1982 Act No. 455, Section 2; 1984 Act No. 489, Section 1.	

Report Recommendations #44 and #45 - (Agency Law Change Recommendation #37)

LAW CHANGE #37 (CVS)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
SECTION 16-3-1420(1)(b) SECTION 16-3-1420(2)	Current Law: - The current law includes a listing of professionals that are not included in the definition of "Victim service provider" (VSP), we recommended adding "mental health clinician licensed in South Carolina" to this list of exemptions. - The current law provides definitions for Victim Service Provider and Witness. The definition for Victim Service Provider is relevant to this section and the definition for Witness is not relevant to this section. The definition is actually verbatim in another code section where it is relevant (16-3-1510(4)). Recommendation: - Add "mental health clinician licensed in South Carolina" to the existing list of exceptions in 16-3-1420(1)(b) - Remove 16-3-1420(2) regarding the definition of witness	- There is precedent for adding exceptions to the definition of VSP through an amendment in 2010 which states that judges are not considered VSPs under this section (16-3-1420 (1)(B). Implementation over the past 10+ years leads us to recommend that licensed mental health clinicians should be added to this listing. Licensed mental health clinicians receive specialized training in their field of practice which does not always align with VSP training intended for advocates. We do not want the law to unintentionally put unnecessary requirements on unintended professions. This change would only be in reference to the definition of victim services provider in terms of certification. 16-3-1420(2) is out of place and likely was mistakenly placed in this section. The same language is referenced in 16-3-1510(4). There is no reference for "witness" in this 16-3-1420, so there is no need to define "witness" for the purposes of the article. It is recommended to remove this section from 16-3-1420.	Other entities potentially impacted: Agencies falling under (16-3-1420 (1)(B) that employ mental health clinicians licensed in South Carolina
Current Law Wording		Proposed Revisions to Law Wording	
SECTION 16-3-1420. Definitions.		SECTION 16-3-1420. Definitions.	
For purposes of this article:		For purposes of this article:	
(1) "Victim service provider" means a person:		(1) "Victim service provider" means a person:	
(a) who is employed by a local government or state agency and whose job duties involve providing victim assistance as mandated by South Carolina law; or		(a) who is employed by a local government or state agency and whose job duties involve providing victim assistance as mandated by South Carolina law; or	
(b) whose job duties involve providing direct services to victims and who is employed by an organization that is incorporated in South Carolina, holds a		(b) whose job duties involve providing direct services to victims and who is employed by an organization that is incorporated in South Carolina, holds a certificate of authority in South Carolina, or is registered as a charitable	

certificate of authority in South Carolina, or is registered as a charitable organization in South Carolina, and the organization's mission is victim assistance or advocacy and the organization is privately funded or receives funds from federal, state, or local governments to provide services to victims.

"Victim service provider" does not include a municipal court judge, magistrates court judge, circuit court judge, special circuit court judge, or family court judge.

(2) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not an action or proceeding is commenced.

HISTORY: 1984 Act No. 489, Section 2; 1988 Act No. 405, Section 3; 2008 Act No. 271, Section 3, eff January 1, 2009; 2010 Act No. 293, Section 1, eff August 27, 2010. Formerly Section 16-3-1400, renumbered by 2017 Act No. 96 (S.289), Section 6, eff July 1, 2017.

Editor's Note

Prior Laws: Former Section 16-3-1420 was titled Director, and had the following history: 1984 Act No. 489, Section 2; 2008 Act No. 271, Section 3, eff January 1, 2009.

organization in South Carolina, and the organization's mission is victim assistance or advocacy and the organization is privately funded or receives funds from federal, state, or local governments to provide services to victims.

"Victim service provider" does not include a mental health clinician licensed in South Carolina, a municipal court judge, magistrates court judge, circuit court judge, special circuit court judge, or family court judge.

~~(2) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not an action or proceeding is commenced.~~

HISTORY: 1984 Act No. 489, Section 2; 1988 Act No. 405, Section 3; 2008 Act No. 271, Section 3, eff January 1, 2009; 2010 Act No. 293, Section 1, eff August 27, 2010. Formerly Section 16-3-1400, renumbered by 2017 Act No. 96 (S.289), Section 6, eff July 1, 2017.

Editor's Note

Prior Laws: Former Section 16-3-1420 was titled Director, and had the following history: 1984 Act No. 489, Section 2; 2008 Act No. 271, Section 3, eff January 1, 2009.

LAW CHANGE #38 (CVS)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
16-3-1430(A)(1)	<u>Current Law:</u> The Department of Crime Victim Services Training, Provider Certification and Statistical Analysis (CVST), in collaboration with the Department of Crime Victim Compensation (DCVC) is authorized contingent upon availability of funds from DCVC to provide various services. <u>Recommendation:</u> Amend language for accuracy.	Some of the language is worded in a redundant and outdated manner. Recommended to remove redundant language and change "spouse abuse" to "domestic violence" to reflect current technical language.	N/A
Current Law Wording		Proposed Revisions to Law Wording	
(A) The Department of Crime Victim Services Training, Provider Certification, and Statistical Analysis, in collaboration with the Department of Crime Victim Compensation, is authorized to provide the following victim assistance services, contingent upon the availability of funds in the Victim Compensation Fund: (1) provide information, training, and technical assistance to state and local agencies and groups involved in victim and domestic violence assistance, such as the Attorney General's Office, the solicitors' offices, law enforcement agencies, judges, hospital staff, rape crisis centers, and spouse abuse shelters; (2) provide recommendations to the Governor and General Assembly on needed legislation and services for victims; (3) serve as a clearinghouse of victim information; (4) develop ongoing public awareness and programs to assist victims, such as newsletters, brochures, television and radio spots and programs, and news articles; (5) provide staff support for a Victim Services Coordinating Council representative of all agencies and groups involved in victim and domestic violence services to improve coordination efforts, suggest policy and procedural improvements to those agencies and groups as needed, and recommend needed statutory changes to the General Assembly; and (6) coordinate the development and implementation of policy and guidelines for the treatment of victims with appropriate agencies.		(A) The Department of Crime Victim Services Training, Provider Certification, and Statistical Analysis, in collaboration with the Department of Crime Victim Compensation, is authorized to provide the following victim assistance services, contingent upon the availability of funds in the Victim Compensation Fund: (1) provide information, training, and technical assistance to state and local agencies and groups involved in victim and domestic violence assistance, such as the Attorney General's Office, the solicitors' offices, law enforcement agencies, judges, hospital staff, rape crisis centers, and spouse abuse <u>domestic violence</u> shelters; (2) provide recommendations to the Governor and General Assembly on needed legislation and services for victims; (3) serve as a clearinghouse of victim information; (4) develop ongoing public awareness and programs to assist victims, such as newsletters, brochures, television and radio spots and programs, and news articles; (5) provide staff support for a Victim Services Coordinating Council representative of all agencies and groups involved in victim and domestic violence services to improve coordination efforts, suggest policy and procedural improvements to those agencies and groups as needed, and recommend needed statutory changes to the General Assembly; and (6) coordinate the development and implementation of policy and guidelines for the treatment of victims with appropriate agencies.	

Report Recommendation #47 - (Agency Law Change Recommendation #39)

LAW CHANGE #39 (CVS)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
SECTION 16-3-1430 (B)(6)	<u>Current Law:</u> Lists three departments of the Crime Victim Services Division separately from the Ombudsman <u>Recommendation:</u> Update the law to reflect the four departments of the Crime Victim Services Division	(6) lists three departments and the Ombudsman, when actually Act 96 of 2017 established four departments, one of which was the Department of the Crime Victim Ombudsman (Section 1-7-1110 (A)(1). It is recommended that (6) be amended to read: the deputy directors of the four departments under the Office of the Attorney General, South Carolina Crime Victim Services Division.	N/A
Current Law Wording		Proposed Revisions to Law Wording	
(6) the deputy directors of the three departments and the ombudsman under the Office of the Attorney General, South Carolina Crime Victim Services Division;		(6) the deputy directors of the three departments and the ombudsman <u>departments</u> under the Office of the Attorney General, South Carolina Crime Victim Services Division;	

Report Recommendation #48 - (Agency Law Change Recommendation #40)

LAW CHANGE #40(CVS)			
Law	Summary of Current Law(s) and Recommended Change(s)	Basis for Recommendation	Approval and Others Impacted
SECTION 16-3-1430 (B)(14)	<u>Current Law:</u> References the State Office of Victim Assistance <u>Recommendation:</u> Move responsibility to the chair of the Victim Services Coordinating Council, who is also the Director of the Crime Victim Services Division	Section 16-3-1430 (14) has the State Office of Victim Assistance listed as appointing three members to the Victim Services Coordinating Council. SOVA was the agency previously under the SCDOA until it was moved into the SCAG, Crime Victim Services Division, in July 2017 and renamed the Department of Crime Victim Compensation. It is recommended that the Chair of the Victim Services Coordinating Council, or the Attorney General, make these appointments.	<u>Other entities potentially impacted:</u> Victim Services Coordinating Council
Current Law Wording		Proposed Revisions to Law Wording	
(14) three representatives appointed by the State Office of Victim Assistance for a term of two years and until their successors are appointed and qualified for each of the following categories:		(14) three representatives appointed by the State Office of Victim Assistance <u>chair of the Victim Services Coordinating Council</u> for a term of two years and until their successors are appointed and qualified for each of the following categories:	
(a) one representative of university or campus services;		(a) one representative of university or campus services;	
(b) one representative of a statewide child advocacy organization; and		(b) one representative of a statewide child advocacy organization; and	
(c) one crime victim; and		(c) one crime victim; and	

¹ Figure 1 is compiled from information in the Department of Commerce study materials available online under “Citizens’ Interest,” under “House Legislative Oversight Committee Postings and Reports,” and then under “Attorney General, Office of” <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyPHPFiles/AttorneyGeneral.php> (accessed September 21, 2022). Hereinafter, “Study Materials – Attorney General’s Office.”

² S.C. House of Representatives, House Legislative Oversight Committee, “Crime to Sentencing (Flow Chart),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Committee Studies of Agencies and Issues,” under “Flow Charts,” and under “Criminal Justice,” [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ElectionCommission/CJ%201%20-%20Crime%20to%20Sentencing%20Flow%20Chart%20\(7.23.18\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ElectionCommission/CJ%201%20-%20Crime%20to%20Sentencing%20Flow%20Chart%20(7.23.18).pdf) (accessed August 17, 2022). Hereinafter “Crime to Sentencing (Flow Chart).”

S.C. House of Representatives, House Legislative Oversight Committee, “Sentencing to Supervision to Release (Flow Chart),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Committee Studies of Agencies and Issues,” under “Flow Charts,” and under “Criminal Justice,” [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProbationParoleandPardon/PPP%20Letter%20to%20Subcommittee%20with%20attachments%20\(9.27.21\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProbationParoleandPardon/PPP%20Letter%20to%20Subcommittee%20with%20attachments%20(9.27.21).pdf) (accessed August 17, 2022). Hereinafter “Sentencing to Supervision to Release (Flow Chart).”

³ S.C. House of Representatives, House Legislative Oversight Committee, “Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Attorney General, Office of the,” and under “Correspondence,” [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/AG%20Letter%20to%20Subcommittee%20\(8.5.22\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/AG%20Letter%20to%20Subcommittee%20(8.5.22).pdf) (accessed September 13, 2022). See responses to questions #12 and #15. Hereinafter “Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022).”

⁴ S.C. House of Representatives, House Legislative Oversight Committee, “Correspondence from Department of Probation, Parole and Pardon Services to Subcommittee (September 27, 2021),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Probation, Parole and Pardon, Department of,” and under “Correspondence,” [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProbationParoleandPardon/PPP%20Letter%20to%20Subcommittee%20with%20attachments%20\(9.27.21\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProbationParoleandPardon/PPP%20Letter%20to%20Subcommittee%20with%20attachments%20(9.27.21).pdf) (accessed September 21, 2022). See responses to question #76 and Attachment Question 76-JRI Data sharing Grant Narrative.

⁵ Correspondence from Attorney General’s Office to Subcommittee (August 8, 2022). See response to question #17.

⁶ S.C. House of Representatives, House Legislative Oversight Committee, “Department of Probation, Parole and Pardon Services 2022 Study (Full Report),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” and under “Reports, Recommendations, and Implementation” <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProbationParoleandPardon/4.27.22%20-%20PPP%20Full%20Committee%20Report.pdf> (accessed September 13, 2022). See finding #11. Hereinafter, “Department of Probation, Parole and Pardon Services 2022 Study (Full Report).”

⁷ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #67.

⁸ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #67.

⁹ South Carolina Revenue and Fiscal Affairs Office, “RFA Public Dashboard,” https://public.tableau.com/views/RFAPublicDashboard/Household?%3Adisplay_count=no&%3AshowVizHome=no#1 (accessed September 13, 2022).

¹⁰ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #67.

¹¹ National Conference of State Legislatures, “Enhancing Victims’ Rights After Conviction (LegisBrief, June 2019, Vol. 27, No. 20) by Victor Palace, https://www.ncsl.org/Portals/1/Documents/legisbriefs/2019/JuneLBs/Victims-Rights_20.pdf (accessed September 13, 2022).

¹² South Carolina State Election Commission, “South Carolina Election Report, 1995-1996 (May, 1997),” https://scvotes.gov/wp-content/uploads/2022/08/Election_Report_1995-1996.pdf (accessed September 13, 2022). See page 70.

¹³ S.C. Const. art. 1, §24.

¹⁴ Department of Probation, Parole and Pardon Services 2022 Study (Full Report). See recommendations #8-#10.

¹⁵ Department of Probation, Parole and Pardon Services 2022 Study (Full Report). See recommendations #8-#10.

¹⁶ S.C. Const. art. 1, §24.

¹⁷ Department of Probation, Parole and Pardon Services 2022 Study (Full Report). See recommendations #8-#10.

¹⁸ Note: For example, it costs the Commission on Indigent Defense almost \$2 million annually in employee time manually entering information, that may be available directly from Court Administration, into the statewide public defender case management system (i.e., Defender Data). This occurs at two points in the criminal process: (1) when the file is opened (i.e., when defendant and charge identifiers are entered into Defender Data) and (2) when the case is closed (i.e., when information from the sentencing sheet is entered into Defender Data). If a defendant receives additional charges during the case, the information regarding those new charges is also manually entered into Defender Data. Two, information from a handwritten, sometimes difficult to read, form is transcribed manually by several agencies (e.g., solicitors’ offices, public defenders, SCDC, Department of Probation, Pardon, and Parole, and Department of Motor Vehicles) into different databases.

As another example, the Department of Probation, Parole and Pardon Services spends \$2.2 million annually for manual data reentry.

¹⁹ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #8.

²⁰ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #8.

²¹ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #8.

²² 2002 Act No. 339.

²³ 2002 Act No. 339, Section 21.

²⁴ S.C. Code Section 39-5-145(5)(a).

²⁵Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #125.

²⁶ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #125.

²⁷ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #125.

²⁸ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #3.

²⁹ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #3.

³⁰ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #3.

³¹ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #3.

³² Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #3.

³³ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #3.

³⁴ Note: Discussion about issues with employee retention and recruitment and occurred with agency personnel with the Department of Corrections; Department of Disabilities and Special Needs; Human Affairs Commission; Department of Health and Human Services; Department of Mental Health; Department of Motor Vehicles; Department of Public Safety; Department of Social Services; and State Housing Finance and Development Authority.

³⁵ 2022 Act No. 239.

See also, S.C. House of Representatives, House Ways and Means Committee, "FY22-23 Budget Briefing," [https://www.scstatehouse.gov/CommitteeInfo/Ways&MeansBudgetDocuments/FY2022-23/FY%202022-23%20Budget%20Briefing%20\(WM%20Version\).pdf](https://www.scstatehouse.gov/CommitteeInfo/Ways&MeansBudgetDocuments/FY2022-23/FY%202022-23%20Budget%20Briefing%20(WM%20Version).pdf) (accessed September 13, 2022).

³⁶ S.C. House of Representatives, House Legislative Oversight Committee, "Meeting Minutes (June 14, 2022)", under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Attorney General, Office of the," and under "Meetings and Agency Presentations," <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/AG%20-%20June%2014,%202022%20-%20Meeting%20Minutes.pdf> (accessed September 21, 2022). A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=12410>. See video beginning at 04:37:49. Hereinafter, "Meeting Minutes and Video (June 14, 2022)."

³⁷ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #29.

³⁸ Meeting Minutes and Video (June 14, 2022). See video beginning at 01:10:58.

³⁹ S.C. House of Representatives, House Legislative Oversight Committee, "Meeting Minutes (June 22, 2022)", under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Attorney General, Office of the," and under "Meetings and Agency Presentations," <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/AG%20-%20June%2022,%202022%20-%20Meeting%20Minutes.pdf>

%20June%2022,%202022%20-%20Meeting%20Minutes.pdf (accessed September 21, 2022). A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=11331>. See video beginning at 02:28:08. Hereinafter, “Meeting Minutes and Video (June 22, 2022).”

⁴⁰ Note: The Attorney General’s Office is in the Rembert Dennis Building on the capitol complex, and the Furman E. McEachern Jr. Parking Facility is the underground parking garage for the capitol complex.

⁴¹ S.C. House of Representatives, House Legislative Oversight Committee, “Correspondence from Department of Administration to Subcommittee (July 29, 2022),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Attorney General, Office of the,” and under “Correspondence,” [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/Dept.%20of%20Administration%20Letter%20to%20Subcommittee%20\(7.29.22\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/Dept.%20of%20Administration%20Letter%20to%20Subcommittee%20(7.29.22).pdf) (accessed September 13, 2022). See responses to question # 1 under the “Facilities Management Heading.”

See also, Meeting Minutes and Video (June 22, 2022). See video beginning at 02:39:59.

⁴² Meeting Minutes and Video (June 22, 2022). See video beginning at 02:39:59.

⁴³ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #5.

⁴⁴ S.C. House of Representatives, House Legislative Oversight Committee, “Agency Overview (March 8, 2022),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Attorney General, Office of the,” and under “Meetings and Agency Presentations,” [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/AG%20Presentation%20-%20Overview%20\(3.8.22\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/AG%20Presentation%20-%20Overview%20(3.8.22).pdf) (accessed September 13, 2022). See slides 92 – 105. Hereinafter “Agency Presentation - Overview (March 8, 2022).”

⁴⁵ S.C. Code Ann. Section 8-11-160(C).

⁴⁶ “Agency Presentation - Overview (March 8, 2022). See slides 92 -105.

⁴⁷ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #21.

⁴⁸ Meeting Minutes and Video (June 14, 2022). See video beginning at 02:02:29.

Note: Attorney General Office personnel met with Department of Corrections personnel on December 8, 2021, to discuss this issue.

⁴⁹ Meeting Minutes and Video (June 14, 2022). See video beginning at 02:02:29.

Note: Attorney General Office personnel met with Department of Corrections personnel on December 8, 2021, to discuss this issue.

⁵⁰ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #21.

⁵¹ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #21.

⁵² S.C. House of Representatives, House Legislative Oversight Committee, “Agency Presentation – Special Prosecution” (June 14, 2022), under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Attorney General, Office of the,” and under “Meetings and Agency Presentations,” <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/Special%20Prosecution.pdf> (accessed September 18, 2022). Hereinafter, “Agency Presentation – Special Prosecution (June 14, 2022).”

⁵³ Agency Presentation – Special Prosecution (June 14, 2022). See slide #34.

⁵⁴ Meeting Minutes and Video (June 14, 2022). See video beginning at 05:28:09.

⁵⁵ Agency Presentation – Special Prosecution (June 14, 2022).

⁵⁶ Agency Presentation – Special Prosecution (June 14, 2022). See slide #34.

⁵⁷ S.C. House of Representatives, House Legislative Oversight Committee, “South Carolina Sheriffs’ Association Correspondence to Subcommittee (September 13, 2018),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Prosecution Coordination, Commission on,” and under “Correspondence,” [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Letter%20from%20Sheriff's%20Association%20to%20Oversight%20Subcommittee%20\(Sept.%2017,%202018\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Letter%20from%20Sheriff's%20Association%20to%20Oversight%20Subcommittee%20(Sept.%2017,%202018).pdf) (accessed September 14, 2022). See response to question 3. Hereinafter, “South Carolina Sheriffs’ Association Correspondence to Subcommittee (September 13, 2018).”

Note: In 2018, according to this correspondence less than a dozen attorneys worked directly for the elected sheriff in South Carolina.

See also, S.C. House of Representatives, House Legislative Oversight Committee, “Attorney General’s Office Program Evaluation Report (March 9, 2020),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Attorney General, Office of the,” and under “Reports, Recommendations, and Implementation” <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/AG%20PER%20-%20Complete%20report.pdf> (accessed September 13, 2022). See Agency Law Recommendation #24. Hereinafter “Attorney General’s Office Program Evaluation Report (March 9, 2020).”

⁵⁸ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #25.

⁵⁹ Meeting Minutes and Video (June 14, 2022). See video beginning at 05:32:18.

⁶⁰ Attorney General’s Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #29.

⁶¹ S.C. House of Representatives, House Legislative Oversight Committee, “Agency Presentation – Internet Crimes Against Children (June 14, 2022),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Attorney General, Office of the,” and under “Meetings and Agency Presentations,” <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/Internet%20Crimes%20Against%20Children.pdf> (accessed September 13, 2022). See slide 12. Hereinafter “Agency Presentation – Internet Crimes Against Children (June 14, 2022).”

⁶² Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #30.

See also, Meeting Minutes and Video (June 14, 2022). See video at beginning at 04:11:20.

⁶³ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See responses to question #31 and #35.

⁶⁴ Agency Presentation – Internet Crimes Against Children (June 14, 2022). See slide 12.

⁶⁵ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #45.

⁶⁶ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #45.

⁶⁷ Note: The primary sponsor of H.3788, filed in the 124th General Assembly was Speaker G.M. Smith. The legislation, including history of legislative actions, may be accessed on the General Assembly's website, www.scstatehouse.gov, by bill number and session number.

⁶⁸ Note: The primary sponsor of H.3788, filed in the 124th General Assembly was Speaker G.M. Smith. The legislation, including history of legislative actions, may be accessed on the General Assembly's website, www.scstatehouse.gov, by bill number and session number.

⁶⁹ Note: The primary sponsor of H.3788, filed in the 124th General Assembly was Speaker G.M. Smith. The legislation, including history of legislative actions, may be accessed on the General Assembly's website, www.scstatehouse.gov, by bill number and session number.

⁷⁰ Meeting Minutes and Video (June 22, 2022). See video beginning at 03:02:06.

⁷¹ S.C. House of Representatives, House Legislative Oversight Committee, "Correspondence from South Carolina Commission on Prosecution Coordination to Subcommittee (July 28, 2022)," under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Attorney General, Office of the," and under "Correspondence," [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/SCCPC%20Letter%20to%20Subcommittee%20\(7.28.22\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/SCCPC%20Letter%20to%20Subcommittee%20(7.28.22).pdf) (accessed September 13, 2022). See responses to question #1.

⁷² Attorney General's Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #25.

⁷³ Barry Bernstein, Deputy Attorney General email message to House Legislative Oversight Committee Legal Counsel Charles Appleby, August 23, 2022.

⁷⁴ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #120.

⁷⁵ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #120.

See also, S.C. House of Representatives, South Carolina Sheriffs' Association Correspondence to Subcommittee (September 13, 2018). See response to question 3.

⁷⁶ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #120.

⁷⁷ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #120.

⁷⁸ State v. Langford, 400 S.C. 421, 435, 735 S.E.2d 471, 478 (2012).

⁷⁹ Crime to Sentencing (Flow Chart).

See also, Sentencing to Supervision to Release (Flow Chart).

⁸⁰ Note: The House Legislative Oversight Committee’s mission is to “[d]etermine 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 eliminated. Inform the public about state agencies.”

⁸¹ Department of Probation, Parole and Pardon Services 2022 Study (Full Report). See recommendations #5, #34, #36, and #38.

See also, S.C. House of Representatives, House Legislative Oversight Committee, “Department of Corrections 2020 Study (Full Report),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Reports, Recommendations, and Implementation” and under “Correspondence,”
<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/Corrections/SCDC%20Full%20Committee%20Report%20-%20Full%20Version.pdf> (accessed September 13, 2022). See recommendation #43.

⁸² S.C. Code Section 22-23-30.

Note: All entities collaborate to create process charts that explain their areas, then present and have them approved at Law Enforcement Training Council annual meeting, so that when they are disseminated thereafter for use during the year, everyone in the criminal justice system is utilizing the same information. This understanding may enable future efficiencies as entities see how others are involved in the system. Also, entities and individuals may include state agencies and/or elected officials and staff.

⁸³ S.C. Code Section 23-23-30.

⁸⁴ 2017 Act No. 96.

See also, S.C. House of Representatives, House Legislative Oversight Committee, “Legislative Oversight Committee 122nd General Assembly Transparency Report to Citizens,” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “How the Committee Serves You” and under “Transparency reports to citizens,”
[https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/LOC%20-%20122nd%20General%20Assembly%20Transparency%20Report%20to%20Citizens%20\(PDF\).PDF](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/LOC%20-%20122nd%20General%20Assembly%20Transparency%20Report%20to%20Citizens%20(PDF).PDF) (accessed September 13, 2022). See slide #4.

⁸⁵ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #84.

⁸⁶ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #53.

⁸⁷ South Carolina State Law Enforcement Division, “Crime Statistics,” <https://www.sled.sc.gov/crimestatistics> (accessed September 14, 2022).

⁸⁸ Department of Probation, Parole and Pardon Services 2022 Study (Full Report). See recommendation #6.

⁸⁹ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #50.

⁹⁰ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #63.

⁹¹ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #70.

⁹² Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #69.

⁹³ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #70.

⁹⁴ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #92.

⁹⁵ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to questions #88 and #89.

⁹⁶ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #89.

⁹⁷ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #88.

⁹⁸ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #93.

⁹⁹ S.C. House of Representatives, House Legislative Oversight Committee, “Correspondence from Court Administration to Subcommittee (August 5, 2022),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Attorney General, Office of the,” and under “Correspondence,” [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/Ct.%20Administration%20Letter%20to%20Subcommittee%20\(8.5.22\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/Ct.%20Administration%20Letter%20to%20Subcommittee%20(8.5.22).pdf) (accessed September 15, 2022). See response to question #5. Hereinafter “Correspondence from Court Administration to Subcommittee (August 5, 2022).”

¹⁰⁰ S.C. Const. art. 1, §24.

¹⁰¹ South Carolina Commission on Prosecution Coordination, “FY 22 Budget Requests – House Ways & Means Law Enforcement and Criminal Justice Subcommittee Budget Hearing January 6, 2021,” [https://www.scstatehouse.gov/CommitteeInfo/Ways&MeansMeetingHandouts/Law%20Enforcement/SC%20Commission%20on%20Prosecution%20Coordination%20\(SCCPC\)%20FY%2021-22.pdf](https://www.scstatehouse.gov/CommitteeInfo/Ways&MeansMeetingHandouts/Law%20Enforcement/SC%20Commission%20on%20Prosecution%20Coordination%20(SCCPC)%20FY%2021-22.pdf) (accessed September 15, 2022). See page 18.

¹⁰² Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #17.

¹⁰³ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #26.

¹⁰⁴ Attorney General’s Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #24.

¹⁰⁵ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #25.

¹⁰⁶ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #28.

¹⁰⁷ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #10 and accompanying attachment, “Trainings Offered.”

¹⁰⁸ University of South Carolina, “A Step-by-Step Guide to the Employee Performance Management System (EPMS),” https://www.sc.edu/study/colleges_schools/artsandsciences/internal/documents/faculty_staff/epms_stepbystepguide.pdf (accessed September 15, 2022).

¹⁰⁹ Correspondence from Court Administration to Subcommittee (August 5, 2022). See response to question #2 under “State Human Resources Division” heading.

¹¹⁰ Correspondence from Court Administration to Subcommittee (August 5, 2022). See feedback to Recommendation #18.

¹¹¹ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #7.

¹¹² Correspondence from Court Administration to Subcommittee (August 5, 2022). See feedback to Recommendation #18.

¹¹³ S.C. House of Representatives, House Legislative Oversight Committee, “Correspondence from Department of Social Services to Subcommittee (August 5, 2022),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Attorney General, Office of the,” and under “Correspondence,” [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/DSS%20Letter%20to%20Subcommittee%20\(8.5.22\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/DSS%20Letter%20to%20Subcommittee%20(8.5.22).pdf) (accessed September 16, 2022).

¹¹⁴ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #20.

¹¹⁵ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #37.

¹¹⁶ Attorney General’s Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #5.

See also, S.C. House of Representatives, House Legislative Oversight Committee, “Meeting Minutes (June 1, 2022),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Attorney General, Office of the,” and under “Meetings and Agency Presentations,” <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/June%201,%202022%20-%20Meeting%20Minutes.pdf> (accessed September 18, 2022). A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=12406> (accessed September 18, 2022). See video beginning at 01:45:40. Hereinafter, “Meeting Minutes and Video (June 1, 2022).”

¹¹⁷ Note: During the study, Attorney General’s Office personnel testified as to concerns legislation regulating the industry was outdated when enacted. See Meeting Minutes and Video (June 1, 2022). See video beginning at 01:45:40.

¹¹⁸ S.C. House of Representatives, House Legislative Oversight Committee, “Secretary of State’s Office Correspondence to Subcommittee (July 28, 2022),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Attorney General, Office of,” and under “Correspondence,” [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/Secretary%20of%20State%20letter%20to%20Subcommittee%20\(7.28.22\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/Secretary%20of%20State%20letter%20to%20Subcommittee%20(7.28.22).pdf) (accessed September 18, 2022). Hereinafter, “Secretary of State’s Office Correspondence to Subcommittee (July 28, 2022).”

¹¹⁹ Note: This process flow chart was prepared by House Legislative Oversight Committee as part of the 2020 study of the Secretary of State’s Office.

¹²⁰ Secretary of State’s Office Correspondence to Subcommittee (July 28, 2022).

¹²¹ Secretary of State’s Office Correspondence to Subcommittee (July 28, 2022).

¹²² Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #115.

Note: The legislative history for S.C. Code Section 8-3-60 dates to 1901. During the study, Attorney General’s Office personnel noted the present-day nonsensical nature of the \$10,000 bond requirement for the Attorney General “when he oversees a \$100,000,000 budget with grants included.”

¹²³ S.C. House of Representatives, House Legislative Oversight Committee, “Department of Agriculture 2017 Study (Full Report),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” and under “Full and Subcommittee Reports” (accessed September 18, 2022). See recommendation #1.

Note: The bond requirement for the Commissioner of Agriculture has not been updated in more than 60 years. During the study process, the Commissioner of Agriculture testified this provision in law is no longer necessary as other statutes address liability and property insurance for the agency (e.g., S.C. Code of Laws, section 1-11-140 relating to the Insurance Reserve Fund, a Division of the State Fiscal Accountability Authority and S.C. Code of Laws, section 46-40- 10 et seq. relating to the South Carolina Grain Dealers Guaranty Fund).

¹²⁴ Tax Foundation, “Vapor Taxes by State, 2022,” by Adam Hoffer, July 5, 2022, <https://taxfoundation.org/vapor-taxes-2022/> (accessed September 18, 2022).

¹²⁵ S.C. House of Representatives, House Legislative Oversight Committee, “Meeting Minutes (May 25, 2022),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Attorney General, Office of the,” and under “Meetings and Agency Presentations”
<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/May%2025,%202022%20-%20Meeting%20Minutes.pdf> (accessed September 18, 2022). A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=12405> (accessed September 18, 2022). See video at 03:51:40 – 03:53:34.

¹²⁶ S.C. House of Representatives, House Legislative Oversight Committee, “Agency Presentation – Tobacco Division” (May 25, 2022),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Attorney General, Office of the,” and under “Meetings and Agency Presentations”
<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/Tobacco.pdf> (accessed September 18, 2022). See slide #5.

¹²⁷ Tax Foundation, “Vapor Taxes by State, 2022,” by Adam Hoffer, July 5, 2022, <https://taxfoundation.org/vapor-taxes-2022/> (accessed September 18, 2022).

¹²⁸ S.C. House of Representatives, House Legislative Oversight Committee, “Department of Health and Environmental Control’s Correspondence to Subcommittee (July 29, 2022),” under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Attorney General, Office of,” and under “Correspondence,”
[https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/DHEC Letter to Subcommittee \(7.29.22\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/DHEC Letter to Subcommittee (7.29.22).pdf) (accessed September 18, 2022).

¹²⁹ Department of Administration, “Types of Pay,” https://www.admin.sc.gov/sites/default/files/state_hr/Types%20of%20Pay.pdf (accessed September 16, 2022).

¹³⁰ Note: Agency personnel note an option that may offer the ability to monitor this type of spending may include allowing agencies to develop a separate fund to create an agency in-house employee development/enhancement program which allows meals or other types of recognition.

¹³¹ Department of Administration, "Employee Reward and Recognition," https://admin.sc.gov/dshr/employee_reward_and_recognition (accessed September 16, 2022).

¹³² Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #5.

¹³³ S.C. House of Representatives, House Legislative Oversight Committee, "Agency Presentation – Crime Victim Services" (April 26, 2022)", under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Attorney General, Office of the ," and under "Meetings and Agency Presentations" [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/Crime%20Victim%20Services%20\(4.22.22\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/Crime%20Victim%20Services%20(4.22.22).pdf) (accessed September 18, 2022). See slide #36. Hereinafter, "Agency Presentation – Crime Victim Services" (April 26, 2022)."

¹³⁴ Agency Presentation – Crime Victim Services" (April 26, 2022). See slide #36.

See also, Barry Bernstein, Deputy Attorney General email message to House Legislative Oversight Committee Legal Counsel Charles Appleby, September 8, 2022.

¹³⁵ Agency Presentation – Crime Victim Services" (April 26, 2022). See slide #36.

See also, Barry Bernstein, Deputy Attorney General email message to House Legislative Oversight Committee Legal Counsel Charles Appleby, September 8, 2022.

¹³⁶ Agency Presentation – Crime Victim Services" (April 26, 2022). See slide #36.

¹³⁷ Agency Presentation – Crime Victim Services" (April 26, 2022). See slide #36.

See also, Barry Bernstein, Deputy Attorney General email message to House Legislative Oversight Committee Legal Counsel Charles Appleby, September 8, 2022.

¹³⁸ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #49.

¹³⁹ Attorney General's Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #17.

¹⁴⁰ Attorney General's Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #17.

¹⁴¹ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #121.

¹⁴² Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #121.

¹⁴³ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #121.

¹⁴⁴ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #121.

¹⁴⁵ Attorney General's Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #28.

¹⁴⁶ Attorney General's Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #28.

¹⁴⁷ Attorney General's Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #28.

¹⁴⁸ Attorney General's Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #30.

¹⁴⁹ Attorney General's Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #30.

¹⁵⁰ Attorney General's Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #30.

¹⁵¹ Note: 1999 Act No. 56 created S.C. Code Section 16-3-1050 and amended provisions in S.C. Code Section 43-35-85. 1993 Act No. 110 created S.C. Code Section 43-35-85.

¹⁵² 2010 Act No. 223.

¹⁵³ Note: For ease of comparison the full text of the referenced statutes are listed below.

SECTION 16-3-1050. Failure to report, perpetrating or interfering with an investigation of abuse, neglect or exploitation of a vulnerable adult; penalties.

(A) A person required to report abuse, neglect, or exploitation of a vulnerable adult under Chapter 35 of Title 43 who has actual knowledge that abuse, neglect, or exploitation has occurred and who knowingly and wilfully fails to report the abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five hundred dollars or imprisoned not more than one year. A person required to report abuse, neglect, or exploitation of a vulnerable adult under Chapter 35 of Title 43 who has reason to believe that abuse, neglect, or exploitation has occurred or is likely to occur and who knowingly and wilfully fails to report the abuse, neglect, or exploitation is subject to disciplinary action as may be determined necessary by the appropriate licensing board.

(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(D) A person who knowingly and wilfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.

(E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

(F) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person

cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years.

(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to Chapter 35 of Title 43, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned not more than three years.

As used in this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

HISTORY: 1999 Act No. 56, Section 5.

SECTION 43-35-85.. Penalties.

(A) A person required to report under this chapter who knowingly and wilfully fails to report abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five hundred dollars or imprisoned not more than one year.

(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(D) A person who knowingly and wilfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.

(E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

(F) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to this chapter, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned for not more than three years.

(I) As used in this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

HISTORY: 1993 Act No. 110, Section 1, eff three months after June 11, 1993; 1999 Act No. 56, Section 1, eff June 1, 1999; 2010 Act No. 223, Section 7, eff June 7, 2010.

SECTION 17-25-45. Life sentence for person convicted for certain crimes.

(A) Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has either:

(1) one or more prior convictions for:

(a) a most serious offense; or

(b) a federal or out-of-state conviction for an offense that would be classified as a most serious offense under this section; or

(2) two or more prior convictions for:

(a) a serious offense; or

(b) a federal or out-of-state conviction for an offense that would be classified as a serious offense under this section.

(B) Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for a serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has two or more prior convictions for:

(1) a serious offense;

(2) a most serious offense;

(3) a federal or out-of-state offense that would be classified as a serious offense or most serious offense under this section; or

(4) any combination of the offenses listed in items (1), (2), and (3) above.

(C) As used in this section:

(1) "Most serious offense" means:

16-1-40 Accessory, for any offense enumerated in this item 16-1-80 Attempt, for any offense enumerated in this item 16-3-10 Murder 16-3-29 Attempted Murder 16-3-50 Voluntary manslaughter 16-3-85(A)(1) Homicide by child abuse 16-3-85(A)(2) Aiding and abetting homicide by child abuse 16-3-210 Lynching, First degree 16-3-210(B) Assault and battery by mob, First degree 16-3-620 Assault and battery with intent to kill 16-3-652 Criminal sexual conduct, First degree 16-3-653 Criminal sexual conduct, Second degree 16-3-655 Criminal sexual conduct with minors, except where evidence presented at the criminal proceeding and the court, after the conviction, makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct where the victim was younger than the actor, as contained in Section 16-3-655(3) 16-3-656 Assault with intent to commit criminal sexual conduct, First and Second degree 16-3-910 Kidnapping 16-3-920 Conspiracy to commit kidnapping 16-3-1075 Carjacking 16-3-2020 Trafficking in persons 16-11-110(A) Arson, First degree 16-11-311 Burglary, First degree 16-11-330(A) Armed robbery 16-11-330(B) Attempted armed robbery 16-11-540 Damaging or destroying building, vehicle, or other property by means of explosive incendiary, death results 24-13-450 Taking of a hostage by an inmate 25-7-30 Giving information respecting national or state defense to foreign contacts during war 25-7-40 Gathering information for an enemy 43-35-85(F) Abuse or neglect of a vulnerable adult resulting in death 55-1-30(3) Unlawful removing or damaging of airport facility or

equipment when death results 56-5-1030(B)(3) Interference with traffic-control devices or railroad signs or signals prohibited when death results from violation 58-17-4090 Obstruction of railroad, death results.

(2) "Serious offense" means:

(a) any offense which is punishable by a maximum term of imprisonment for thirty years or more which is not referenced in subsection (C)(1);

(b) those felonies enumerated as follows:

16-3-220 Lynching, Second degree 16-3-210(C) Assault and battery by mob, Second degree 16-3-600(B) Assault and battery of a high and aggravated nature 16-3-810 Engaging child for sexual performance 16-9-220 Acceptance of bribes by officers 16-9-290 Accepting bribes for purpose of procuring public office 16-11-110(B) Arson, Second degree 16-11-312(B) Burglary, Second degree 16-11-380(B) Theft of a person using an automated teller machine 16-13-210(1) Embezzlement of public funds 16-13-230(B)(3) Breach of trust with fraudulent intent 16-13-240(1) Obtaining signature or property by false pretenses 16-25-20(B) Domestic violence, First degree 16-25-65 Domestic violence of a high and aggravated nature 38-55-540(3) Insurance fraud 44-53-370(e) Trafficking in controlled substances 44-53-375(C) Trafficking in ice, crank, or crack cocaine 44-53-445(B)(1)&(2) Distribute, sell, manufacture, or possess with intent to distribute controlled substances within proximity of school 56-5-2945 Causing death by operating vehicle while under influence of drugs or alcohol; and

(c) the offenses enumerated below:

16-1-40 Accessory before the fact for any of the offenses listed in subitems (a) and (b) 16-1-80 Attempt to commit any of the offenses listed in subitems (a) and (b) 43-35-85(E) Abuse or neglect of a vulnerable adult resulting in great bodily injury.

(3) "Conviction" means any conviction, guilty plea, or plea of nolo contendere.

(D) Except as provided in this subsection or subsection (E), no person sentenced pursuant to this section shall be eligible for early release or discharge in any form, whether by parole, work release, release to ameliorate prison overcrowding, or any other early release program, nor shall they be eligible for earned work credits, education credits, good conduct credits, or any similar program for early release. A person is eligible for work release if the person is sentenced for voluntary manslaughter (Section 16-3-50), kidnapping (Section 16-3-910), carjacking (Section 16-3-1075), burglary in the second degree (Section 16-11-312(B)), armed robbery (Section 16-11-330(A)), or attempted armed robbery (Section 16-11-330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16-1-60, and the person is within three years of release from imprisonment.

(E) For the purpose of this section only, a person sentenced pursuant to this section may be paroled if:

(1) the Department of Corrections requests the Department of Probation, Parole and Pardon Services to consider the person for parole; and

(2) the Department of Probation, Parole and Pardon Services determines that due to the person's health or age he is no longer a threat to society; and

(a) the person has served at least thirty years of the sentence imposed pursuant to this section and has reached at least sixty-five years of age; or

(b) the person has served at least twenty years of the sentence imposed pursuant to this section and has reached at least seventy years of age; or

(c) the person is afflicted with a terminal illness where life expectancy is one year or less; or

(d) the person can produce evidence comprising the most extraordinary circumstances.

(F) For the purpose of determining a prior or previous conviction under this section and Section 17-25-50, a prior or previous conviction shall mean the defendant has been convicted of a most serious or serious offense, as may be applicable, on a separate occasion, prior to the instant adjudication. There is no requirement that the sentence for the prior or previous conviction must have been served or completed before a sentence of life without parole can be imposed under this section.

(G) The decision to invoke sentencing under this section is in the discretion of the solicitor.

(H) Where the solicitor is required to seek or determines to seek sentencing of a defendant under this section, written notice must be given by the solicitor to the defendant and defendant's counsel not less than ten days before trial.

HISTORY: 1982 Act No. 358, Sections 1, 2; 1986 Act No. 462, Section 37; 1995 Act No. 83, Section 18; 1997 Act No. 113, Section 4; 1997 Act No. 136, Section 4; 1998 Act No. 402, Section 3; 2002 Act No. 176, Sections 1, 2, eff March 5, 2002; 2006 Act No. 342, Section 9, eff July 1, 2006; 2007 Act No. 72, Section 3, eff June 13, 2007; 2010 Act No. 273, Section 20, eff June 2, 2010; 2010 Act No. 289, Section 7, eff June 11, 2010; 2015 Act No. 7 (S.196), Section 6.C, eff April 2, 2015; 2015 Act No. 58 (S.3), Pt II, Section 7, eff June 4, 2015.

Code Commissioner's Note

Section 16-11-540, referenced in subsection (C)(1), was repealed by 2000 Act No. 237. Section 16-3-220, referenced in subsection (C)(2)(b), and Section 16-3-620, referenced in subsection (C)(1), were repealed by 2010 Act No. 273.

Editor's Note

2010 Act No. 273, Section 7.C, provides:

"Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16-3-620, and, except for references in Section 16-1-60 and Section 17-25-45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16-3-29."

Effect of Amendment

2015 Act No. 7, Section 6.C, in (C)(1), substituted "16-3-2020" for 16-3-930".

2015 Act No. 58, Section 7, in (C)(2)(b), added 16-25-20(B), domestic violence, first degree, and 16-25-65, domestic violence of a high and aggravated nature.

¹⁵⁴ Correspondence from Attorney General's Office to Subcommittee (August 5, 2022). See response to question #119.

¹⁵⁵ Attorney General's Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #32.

¹⁵⁶ Attorney General's Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #32.

¹⁵⁷ Attorney General’s Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #32.

¹⁵⁸ S.C. Code Section 14-7-1630(A)(12).

¹⁵⁹ S.C. House of Representatives, House Legislative Oversight Committee, “Meeting Minutes (June 8, 2022)”, under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Attorney General, Office of the,” and under “Meetings and Agency Presentations,”
<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/June%208,%202022%20-%20Meeting%20Minutes.pdf> (accessed September 21, 2022). A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=12407>. See video beginning at 05:50:32. Hereinafter, “Meeting Minutes and Video (June 8, 2022).”

¹⁶⁰ Meeting Minutes and Video (June 8, 2022). See video beginning at 05:50:32.

¹⁶¹ Meeting Minutes and Video (June 8, 2022). See video beginning at 05:52:04.

¹⁶² Attorney General’s Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #33.

¹⁶³ Attorney General’s Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #33.

¹⁶⁴ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #124.

¹⁶⁵ Attorney General’s Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #9.

¹⁶⁶ Attorney General’s Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendations #7 and #9.

¹⁶⁷ Attorney General’s Office Program Evaluation Report (March 9, 2020). See Agency Law Recommendation #27.

¹⁶⁸ Correspondence from Attorney General’s Office to Subcommittee (August 5, 2022). See response to question #130.

¹⁶⁹ S.C. House of Representatives, House Legislative Oversight Committee, “Agency Presentation – Consumer Protection and Antitrust Section (June 1, 2022)”, under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Attorney General, Office of the,” and under “Meetings and Agency Presentations”
<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/AttorneyGeneral/Consumer%20Protection%20and%20Antitrust.pdf> (accessed September 21, 2022). See slide #12. Hereinafter, “Agency Presentation – Consumer Protection and Antitrust Section (June 1, 2022).”

Additional Evolution Occurring

In the event the Attorney General terminates this Agreement without cause, Special Counsel shall be reimbursed only from the litigation's gross recovery for all properly documented expenses and costs, as defined in Article V of this Agreement rendered prior to termination, and Special Counsel shall be awarded appropriate attorneys' fees as determined by the Attorney General.

- In the event the AG fires outside counsel without cause, those lawyers are still legally entitled to attorney's fees and costs on a *quantum meruit* basis.
- The AG would then determine a fair fee based on the work performed and pay that to former outside counsel.
 - No fees would be paid at all unless there is a monetary recovery.
- While the AG would never pay more under this paragraph than the contract rates, our Office will amend this language to clarify that.

Endnote Figure 1. Excerpt (Slide 12) from Agency Presentation – Consumer Protection and Antitrust Section (June 1, 2022)

¹⁷⁰ Study Materials – Attorney General's Office.

Note: Some of the materials were produced solely by personnel with the Attorney General's Office and others were created during the House Legislative Oversight Committee's reviews of other law enforcement agencies (e.g., Department of Probation, Parole and Pardon Services; Commission on Prosecution Coordination, etc.)