

Law Enforcement and Criminal Justice Subcommittee Meeting

Tuesday, June 14, 2022

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South Carolina
House of Representatives



Legislative Oversight Committee

LAW ENFORCEMENT AND CRIMINAL JUSTICE SUBCOMMITTEE

The Honorable Chris Wooten, Chairman

The Honorable Kimberly O. Johnson

The Honorable Josiah Magnuson

The Honorable John R. McCravy, III

Tuesday, June 14, 2022

10:30 a.m.

Room 321, Blatt Building

Pursuant to Committee Rule 6.8, S.C. ETV shall be allowed access for internet streaming whenever technologically feasible.

AGENDA

- I. Approval of Subcommittee Meeting Minutes
- II. Discussion of the study of the Attorney General's Office
- III. Adjournment

Chair Wm. Weston J. Newton

*First Vice-Chair:
Joseph H. Jefferson, Jr.*

*Kambrell H. Garvin
Rosalyne D. Henderson-Myers
Max T. Hyde, Jr.
Kimberly O. Johnson
John R. McCravy, III
Travis A. Moore
Melissa Lackey Oremus
Marvin R. Pendarvis
John Taliaferro (Jay) West, IV*

Legislative Oversight Committee



South Carolina House of Representatives

*Gil Gatch
William M. "Bill" Hixon
Jeffrey E. "Jeff" Johnson
Josiah Magnuson
Timothy A. "Tim" McGinnis
Adam M. Morgan
Russell L. Ott
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Research Analyst/Auditor*

*Riley E. McCullough
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Law Enforcement and Criminal Subcommittee

**Wednesday, June 1, 2022
10:30 a.m.
Blatt Room 321**

Archived Video Available

- I. Pursuant to House Legislative Oversight Committee Rule 6.7, South Carolina ETV was allowed access for streaming the meeting. You may access an archived video of this meeting by visiting the South Carolina General Assembly's website (<http://www.scstatehouse.gov>) and clicking on *Committee Postings and Reports*, then under *House Standing Committees* click on *Legislative Oversight*. Then, click on *Video Archives* for a listing of archived videos for the Committee.

Attendance

- I. The Law Enforcement and Criminal Justice Subcommittee meeting was called to order by Chair Chris Wooten on Wednesday, June 8, 2022, in Room 321 of the Blatt Building. The following members were present for all or a portion of the meeting: Representative Kimberly O. Johnson and Representative Josiah Magnuson.

Approval of Minutes

- I. House Rule 4.5 requires standing committees to prepare and make available to the public the minutes of committee meetings, but the minutes do not have to be verbatim accounts of meetings.
- II. Representative Magnuson makes a motion to approve the meeting minutes from the June 1, 2022, meeting. A roll call vote was held, and the motion passed.

Rep. Magnuson's motion to approve the meeting minutes.	Yea	Nay	Not Voting
Rep. K. Johnson	✓		
Rep. McCravy			✓ (NP)
Rep. Magnuson	✓		
Rep. Wooten	✓		

Administration of Oath

- I. Chair Wooten reminds all others placed under oath at prior meetings that they remain under oath.
- II. Chair Wooten places the following agency personnel under oath:
 - a. Don Zelenka, Deputy Attorney General (Criminal Division);
 - b. William Blitch, Senior Assistant Deputy Attorney General (Criminal Appeals);
 - c. Melody Brown, Senior Assistant Deputy Attorney General (Capital Litigation);
 - d. Deborah Shupe, Senior Assistant Deputy Attorney General (Sexual Violent Predator); and
 - e. Creighton Waters, Senior Assistant Deputy Attorney General (State Grand Jury).

Discussion of Attorney General's Office

- I. Deputy Attorney General Barry Bernstein made brief remarks, including responses to member questions from the previous meeting about Crime Victim Compensation; Opinions; and Tobacco Sections.
- II. Senior Assistant Deputy Attorney General William Blitch provided an overview of the Criminal Appeals Section.

- III. Senior Assistant Deputy Attorney General Melody Brown provided an overview of the Capital and Collateral Litigation Section.
- IV. Senior Assistant Deputy Attorney General Debra Shupe provided an overview of the Sexually Violent Predator Section.
- V. Deputy Attorney General Barry Bernstein and Senior Assistant Deputy Attorney General Creighton Waters provided an overview of the State Grand Jury Prosecution Section and Clerk of Court Section.
- VI. Subcommittee members ask questions relating to the following:
 - a. Post conviction relief;
 - b. Manslaughter appeals;
 - c. Examples of appeals filed for clarification of a point of law;
 - d. Defense at appellate level;
 - e. DNA testing;
 - f. Oral arguments;
 - g. Anders briefs;
 - h. Training;
 - i. Law recommendations;
 - j. Federal habeas corpus;
 - k. Factors that support a just result under state and federal law;
 - l. Definition of justice;
 - m. Pending appellate caseloads;
 - n. Agency acronyms;
 - o. Briefing lag trends;
 - p. Sexually violent treatment section;
 - q. Mental health support systems for the Attorney General's Office employees;
 - r. Offenses subject to sexually violent treatment section;
 - s. Sharing of records;
 - t. Standard of review by Multidisciplinary Team;
 - u. Staffing of Multidisciplinary Team;
 - v. Scheduling of cases;
 - w. Disqualifications for state grand jury;
 - x. Civil forfeiture;
 - y. Factors that determine appropriate pace for state grand jury;
 - z. Fentanyl trafficking; and
 - aa. DHEC support for law change recommendation affecting environmental cases.

Agency personnel respond to the questions.

Adjournment

- I. There being no further business, the meeting is adjourned.

STUDY TIMELINE

The House Legislative Oversight Committee's (Committee) process for studying the Attorney General's Office (agency) includes actions by the full Committee; Law Enforcement and Criminal Justice Subcommittee (Subcommittee); the agency; and the public. Key dates and actions are listed below in Figure 1.

Legislative Oversight Committee Actions

- December 9, 2019 – Holds **Meeting #1** and prioritizes the agency for study
- January 15, 2020 – Provides the agency notice about the oversight process
- February 28 – April 1, 2020 - Solicits input about the agency in the form of an online public survey
- April 8, 2021 – Holds **Meeting #2** to receive public testimony about the agency

Law Enforcement and Criminal Justice Subcommittee Actions

- March 8, 2022 - Holds **Meeting #3** to discuss the agency's vision; mission; director responsibilities; organizational structure; history; and general information about finances and employees
- March 31, 2022 - Holds **Meeting #4** with the Healthcare and Regulations Subcommittee to discuss the hiring of in-house counsel and outside counsel as it relates to the State Accident Fund and all state agencies.
- April 26, 2022 - Holds **Meeting #5** to discuss the agency's Crime Victim Services division.
- May 25, 2022 - Holds **Meeting #6** to discuss the agency's Crime Victim Compensation Section, Solicitor General and Opinions Section, and Tobacco Division.
- June 1, 2022 - Holds **Meeting #7** to discuss the agency's Crime Victim Grants Section, Civil Litigation Section, Consumer Protection and Antitrust Section, and Securities and Money Services Section.
- June 8, 2022 - Holds **Meeting #8** to discuss the agency's Sexual Violent Predator Section, Criminal Appeals Section, Capital Litigation Section, and State Grand Jury Section.
- June 14, 2022 - Holds **Meeting #9 (TODAY)** to discuss the agency's Post Conviction Relief Section, General Prosecution Division, and Special Prosecution Division.

Attorney General's Office

- March 31, 2015 - Submits its **Annual Restructuring and Seven-Year Plan Report**
- January 12, 2016 - Submits its **2016 Annual Restructuring Report**
- September 2016 - Submits its **2015-16 Accountability Report**
- September 2017 - Submits its **2016-17 Accountability Report**
- September 2018 - Submits its **2017-18 Accountability Report**
- September 2019 - Submits its **2018-19 Accountability Report**
- March 23, 2020 - Submits its **Program Evaluation Report**
- September 2020 - Submits its **2019-20 Accountability Report**
- April 2021 – Submits updated Program Evaluation Report

Public's Actions

- December 2019 - Present - Responds to Subcommittee's inquiries
- February 28 – April 1, 2020 - Provides input about the agency via an **online public survey**
- Ongoing - Submits written comments on the Committee's webpage on the General Assembly's website (www.scstatehouse.gov)

Figure 1. Key dates in the study process.

AGENCY SNAPSHOT

Office of the Attorney General

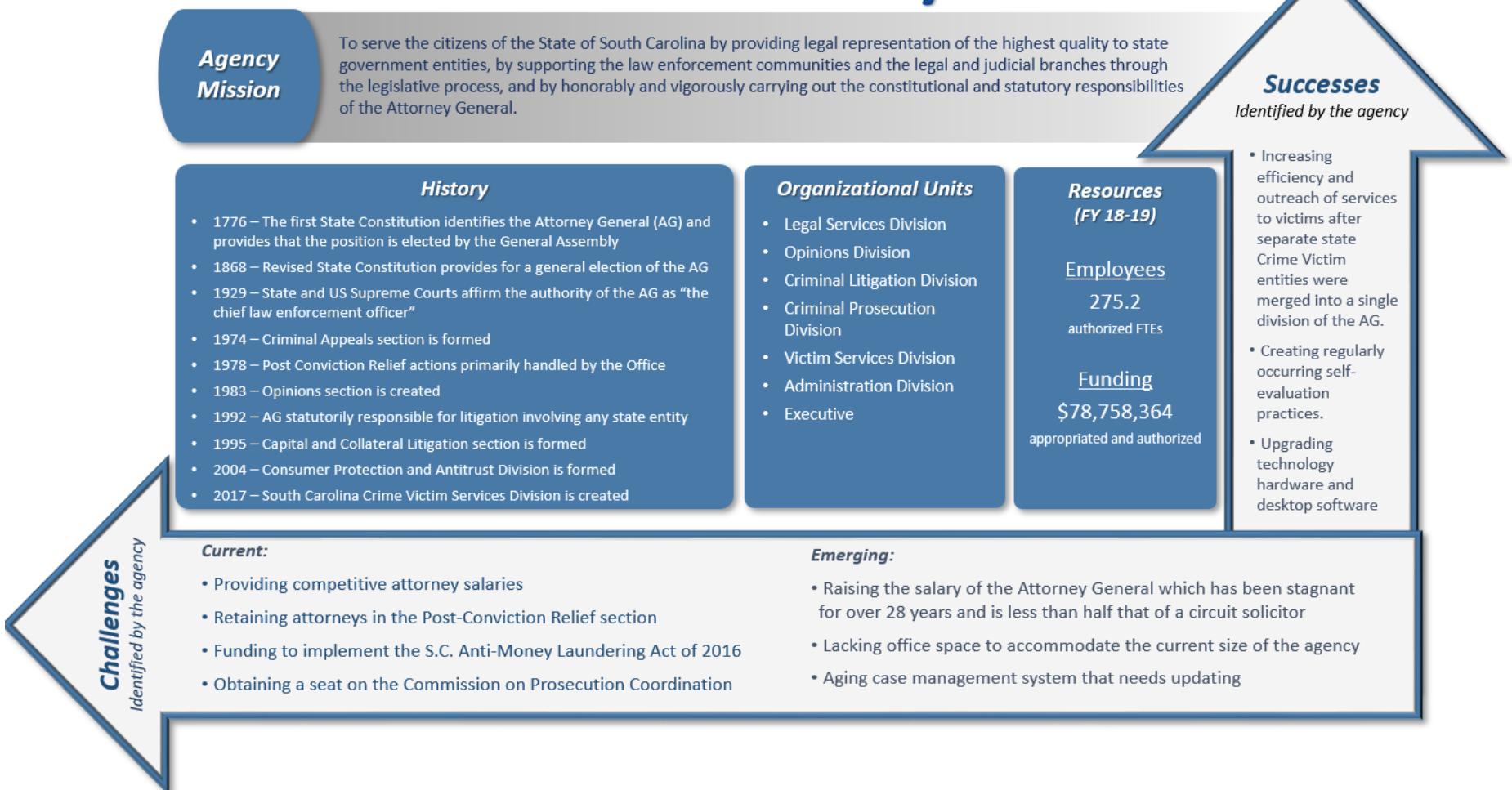
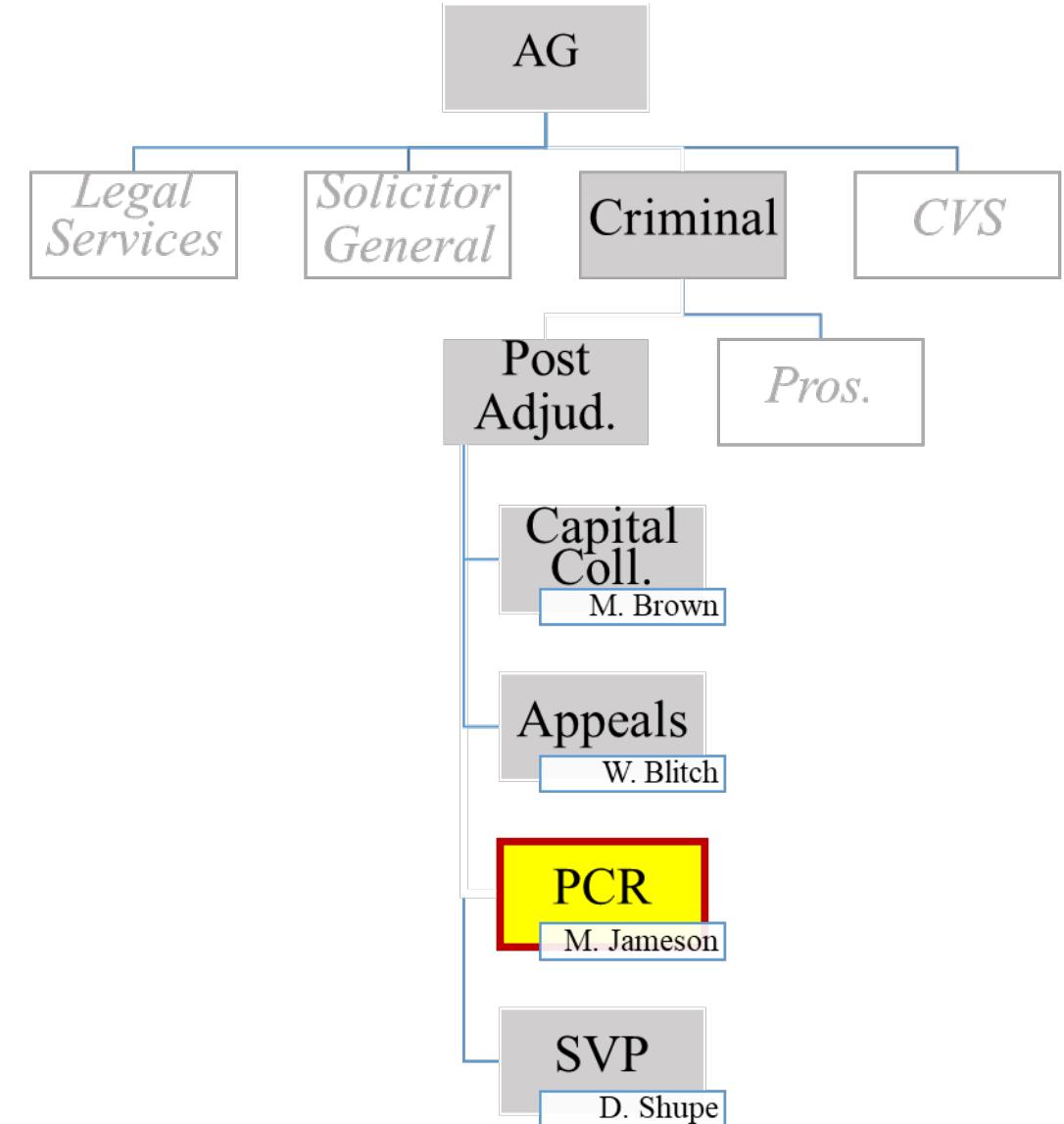


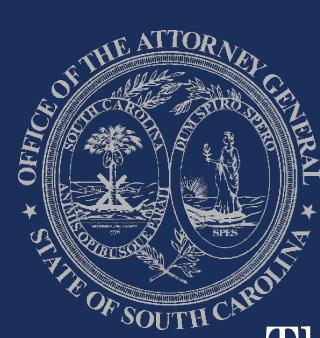
Figure 2. Snapshot of the agency's major organizational units, fiscal year 2018-19 resources (employees and funding), successes, and challenges.¹

AGENCY PRESENTATION – POST CONVICTION RELIEF



Post-Conviction Relief Section





Alan Wilson
Attorney General

Don Zelenka
Deputy AG

Overview

The Post-Conviction Relief Section handles all non-capital post-conviction relief proceedings, which are collateral attacks on a criminal conviction (guilty plea or trial conviction arising out of the court of general sessions, magistrate, or municipal convictions), and the appeals of these actions, on behalf of the State.

At this stage, the convicted person seeks to prove his plea or trial was unconstitutional based on ineffectiveness of his lawyer, prosecutorial misconduct, or another significant error that prejudicially impacted his trial.

The PCR Section is the last line of defense for criminal convictions in state court.

South Carolina has a more comprehensive collateral review process than most other states (i.e., other states enable the judge to summarily dismiss without involvement of the state prosecutor and/or do not allow attack of guilty plea).

See S.C. Code Section 17-27-10 ²et seq.

Post-Conviction Relief (PCR)

What is a PCR proceeding?

- Convicted person files an application in civil court that claims one or more of the following:
 - His trial or plea counsel was ineffective,
 - The prosecutor committed misconduct,
 - There is newly discovered evidence that requires a vacation of the conviction or sentence,
 - The Applicant is serving an illegal or expired sentence, or
 - Another ground listed in S.C. Code Ann. § 17-27-20.

- New counsel may be appointed to represent the applicant, generally if the case will require a hearing.
- Attorney General's Office represents the State.
- An evidentiary hearing is held before a new judge in the circuit where the original plea or trial occurred.
- Relief that can be granted is generally a new trial or re-sentencing in limited circumstances.
- Judge is required to issue a detailed, written order. (See, S.C. Code Ann. § 17-27-80).
- Non-prevailing party (including the State) can appeal the grant of relief.

Post-Conviction Relief (PCR)

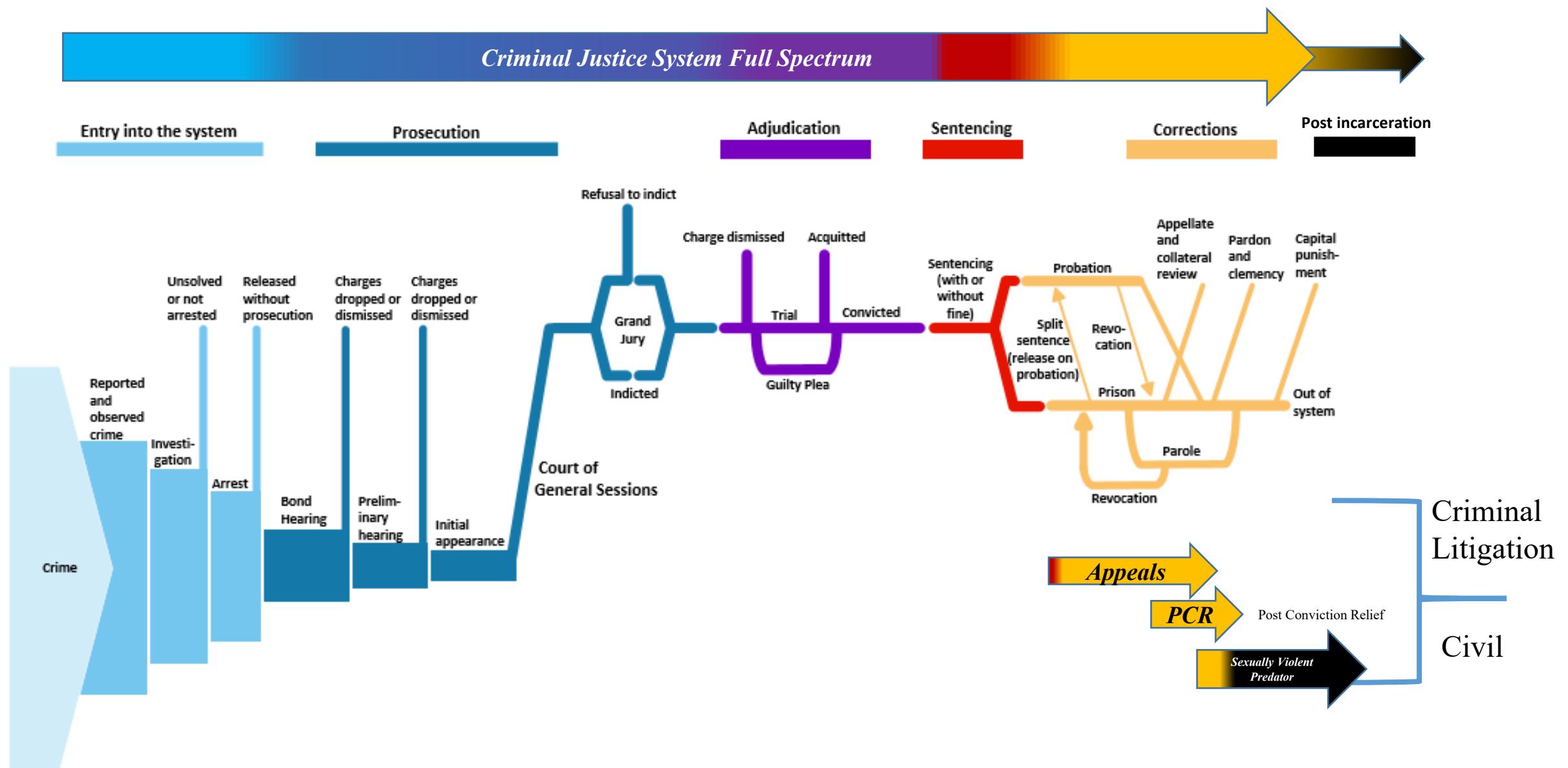
What is the PCR Section's role in the PCR process?

The PCR Section represents the State in:

- all non-capital PCR actions and appeals from those actions statewide, and
- other collateral challenges to convictions such as petitions for writs of habeas corpus and petitions for writs of mandamus filed in the circuit or appellate courts.

This involves producing a large volume of pleadings, representing the State in hundreds of bench trials in circuit court each year, drafting proposed orders from these trials, and handling subsequent appeals.

Criminal Justice System Full Spectrum



Note: This slide shows where the Attorney General's Office services fall in the criminal justice system flow chart utilized by prior state criminal justice entities under review. It only includes General Sessions because juvenile justice, summary courts, and diversion programs are not a primary function of the Attorney General's Office.

See Handout for a walkthrough of the PCR and PCR Appeal Process

Non-Death Penalty PCR Action

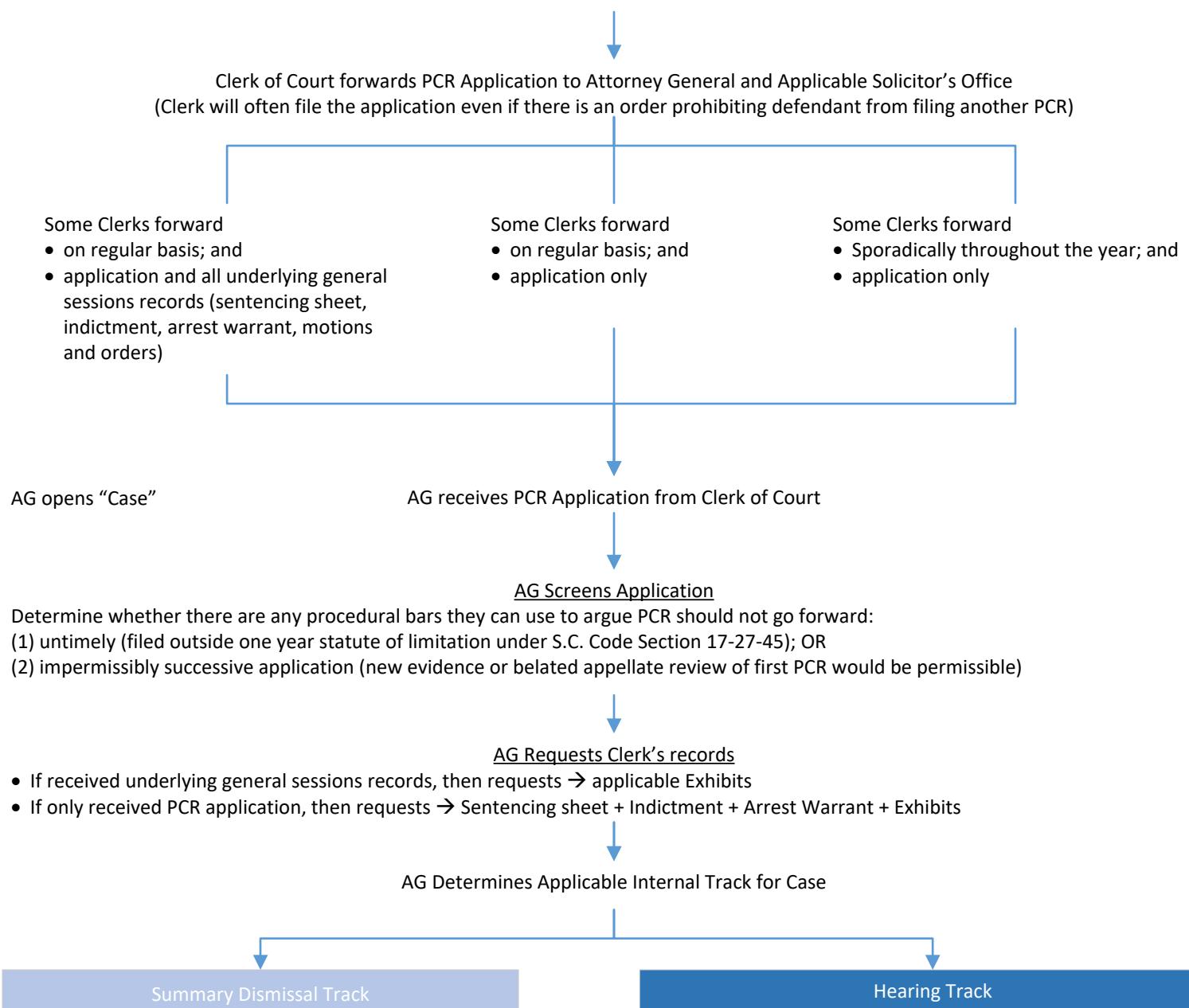
Overview

- 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)

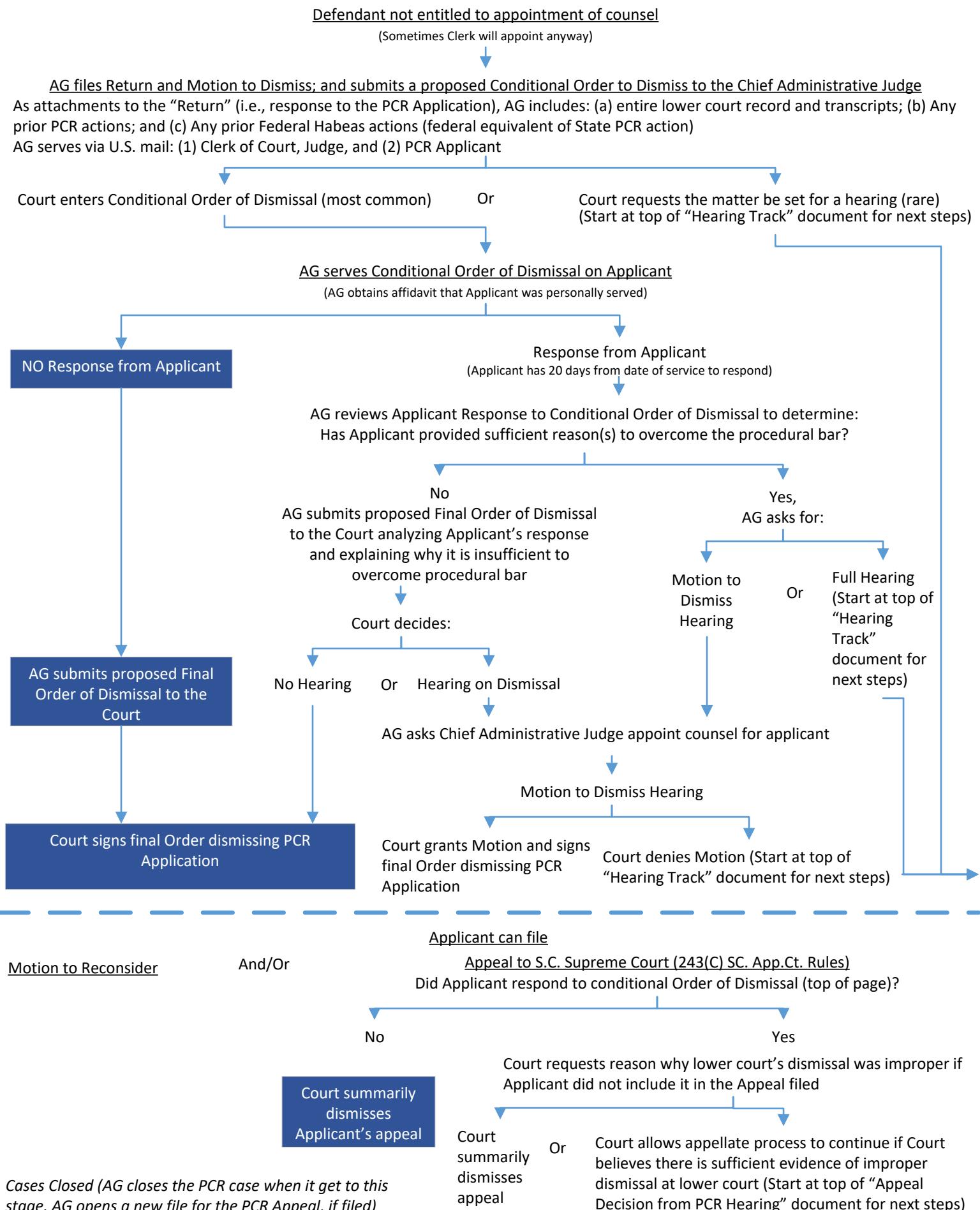
Defendant files PCR application in the county of conviction

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



Non-Death Penalty PCR Action

Summary Dismissal Track



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

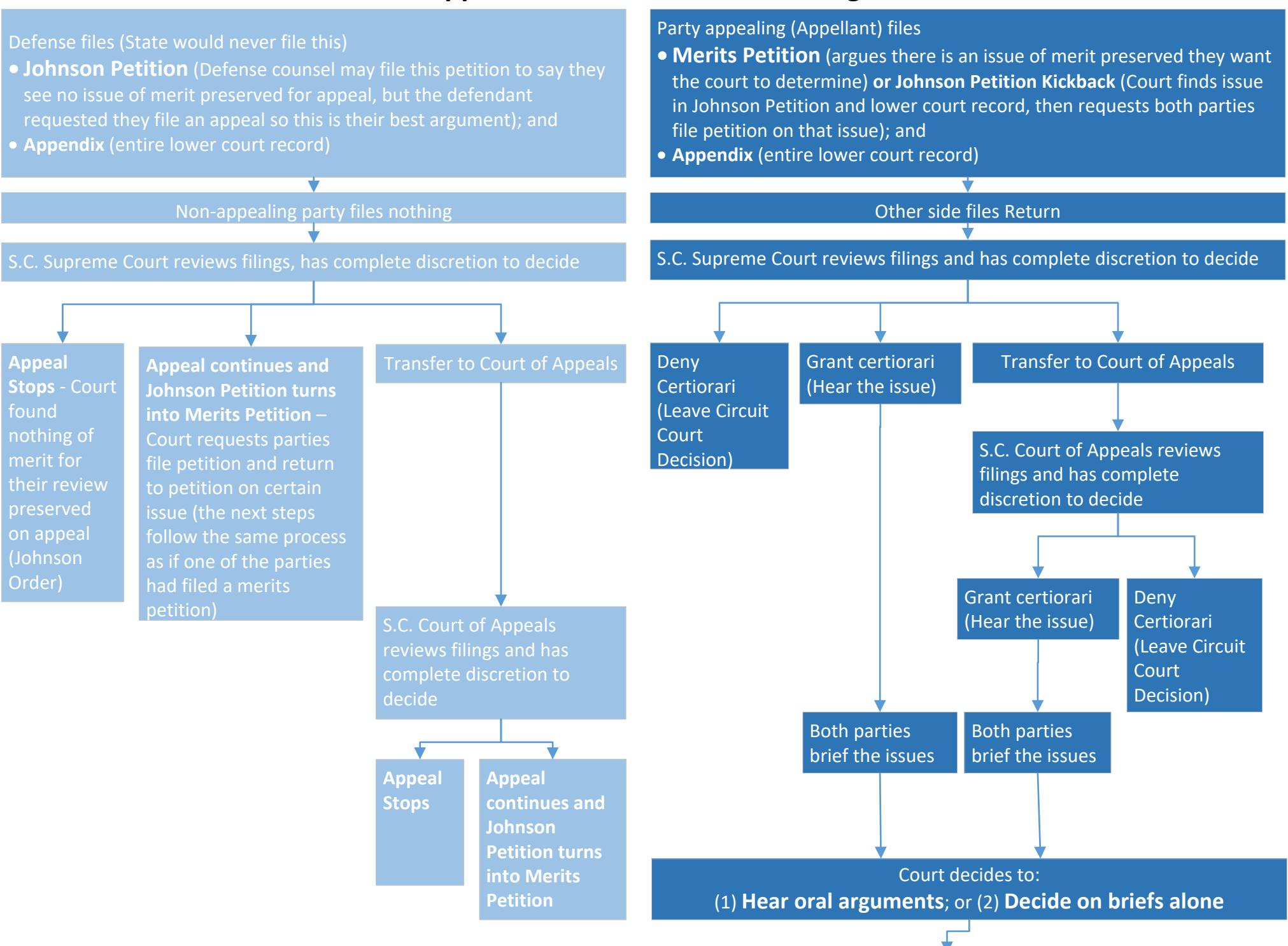
(Only have 10 days after Order entered to file. Generally the non-prevailing party files. Prevailing party may file if they have an issue with the wording of the Court’s Order)

Defense counsel with defendant reviews and determines whether to Appeal

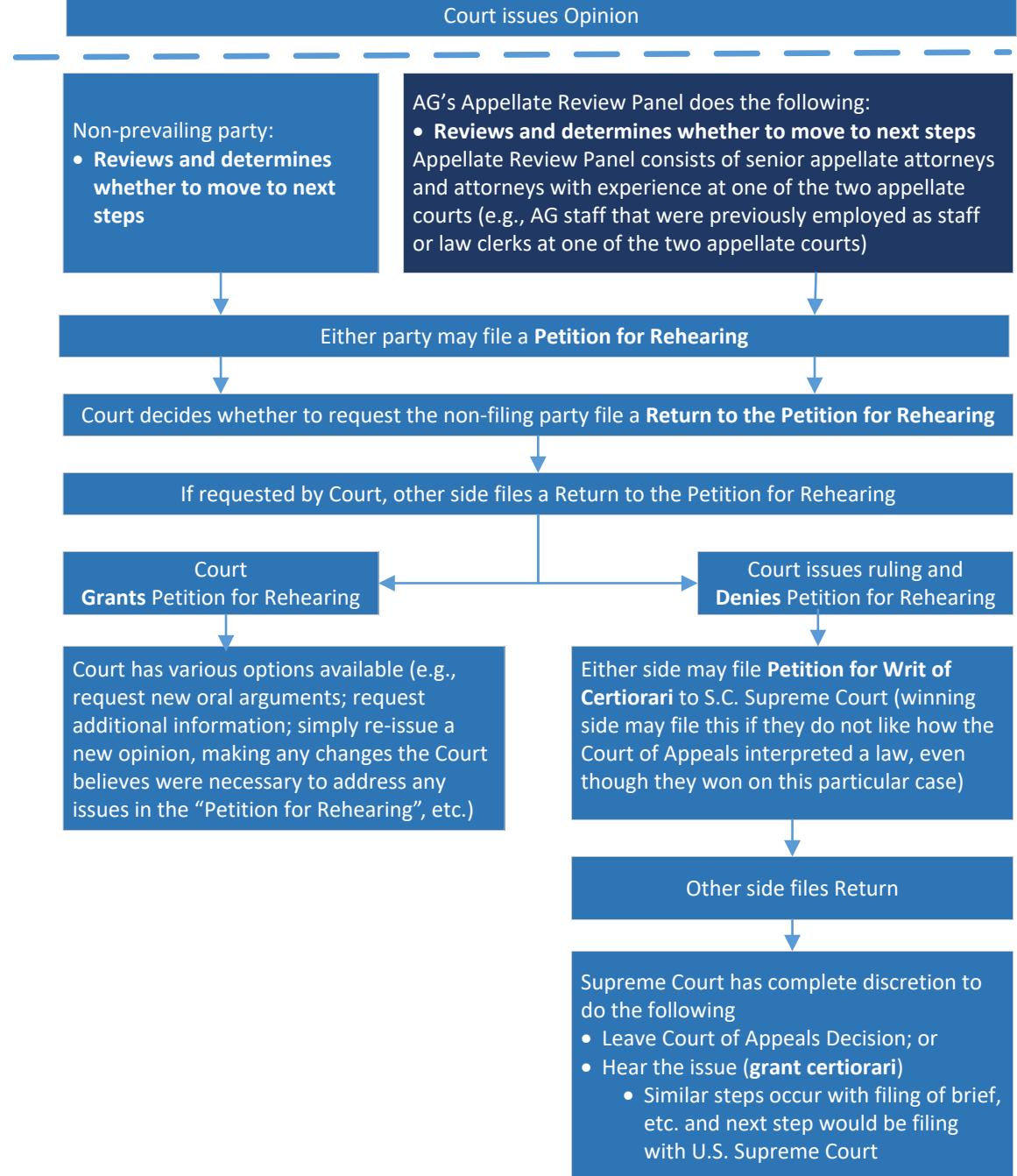
AG’s Appellate Review Panel reviews and determines whether to Appeal. Panel consists of senior appellate attorneys and attorneys with experience at one of the two appellate courts (e.g., staff previously employed at appellate courts)

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

Appeal Decision from PCR Hearing



Merits Petition or Johnson Petition Kickback (cont.)





Alan Wilson
Attorney General

Don Zelenka
Deputy AG

Associated Services

The next slides only contain information on services that are associated with this section of the agency.

Collateral Challenges to Convictions in Circuit Court: Initial Representation of the State

(Agency Service #115)

1. Convicted individual, or attorney on their behalf, files a collateral action
 - Post Conviction Relief application; or
 - State habeas corpus petition
2. County Clerk of court forwards the application or petition to Attorney General's Office
3. AG processes application or petition and decides what actions are necessary
 - Background investigation and review of application and prior records
 - Determine whether to open a file
 - Determine whether to move for summary dismissal based on procedural bars or request an evidentiary hearing;
 - Prepare and request necessary transcripts, appellate pleadings, exhibits, court records, etc.;
 - Make initial contact with defense counsel and solicitors to notify them of the filing of the action if AG will be requesting an evidentiary hearing and discuss allegations raised;
 - Review all records, transcript, and pleadings relevant to the action;
 - Draft and file return to the application or petition (as well as the motion to dismiss and conditional order of dismissal if a procedural bar is raised);
 - Respond to any preliminary motions and/or file of any necessary preliminary motions.

The above takes approximately 10% of our attorney time and 40% of our support staff time

Since the 1970's, the AG has been the sole representative of the State for Post Conviction Relief actions, and as such it is the Agency's duty to uphold properly obtained convictions from collateral attack in civil actions

Does law require it: No

Assoc. Law(s): S.C. Code Section 17-27-10 et seq.; 17-17-50

Single Unit	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Circuit Cases Opened Per FY	2016-17	\$332.77	5.55	\$263,885.98	1.34%
	2017-18	\$463.12	5.55	\$328,355.33	0.55%
	2018-19	\$447.08	5.55	\$336,205.82	0.50%
	2019-20	\$456.11	5.69	\$294,648.34	0.38%

Collateral Challenges to Convictions in Circuit Court: Scheduling of and Appearance During Hearings

(Agency Service #116)

1. Process any motions, amendments, or other pleadings;
2. Handle any pre-hearing motions (including returns to motions, hearings on motions, and proposed orders);
3. Engage in any discovery as ordered by the court (including depositions if ordered, sending subpoenas, reviewing discovery materials, file review, etc.);
4. Coordinate with the Chief Administrative Judge to schedule the roster;
5. Schedule the transportation of inmates from SCDC;
6. Subpoena all necessary witnesses;
7. Make personal contact with prosecutors;
8. Interview all witnesses (including but not limited to defense counsel);
9. Prepare for the evidentiary hearing (reading all transcripts, reviewing necessary exhibits, conducting necessary witness interviews, conducting any investigation as needed);
10. Research all applicable case law;
11. Prepare outline and questions for hearing; and
12. Appear in court as counsel for the State for all scheduled hearings (including travel to circuit and possible overnight stays).

Each Post Conviction Relief term includes roughly 25-30 hearings, with each hearing lasting a few hours to several days.

The above takes approximately 40% of our attorney time and 25% of our support staff time

Since the 1970's, the AG has been the sole representative of the State for Post Conviction Relief actions, and as such it is the Agency's duty to uphold properly obtained convictions from collateral attack in civil actions	Single Unit	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Does law require it: No	Full week-long PCR Terms of Court As Assigned by Court Administration (This is NOT 52 weeks a year, but number of weeks in the 16 circuits for PCR hearings; meaning we have multiple weeks at the same time by being in multiple circuits)	2016-17	78.00	\$5,890.68	9.71	\$459,472.97
		2017-18	72.00	\$7,333.55	9.71	\$528,015.92
		2018-19	71.00	\$7,190.16	9.71	\$510,501.65
		2019-20	59.00	\$9,931.20	10.26	\$585,940.74

Collateral Challenges to Convictions in Circuit Court: Post-Hearing Representation

(Agency Service #117)

1. Draft and submit the following
 - all post-hearing memorandum or proposed orders as requested by the Court (requested in virtually all PCR cases),
 - proposed orders of dismissal for the cases that are summarily dismissed;
 - any post-order motions, responses to motions, hearings on motions, and proposed orders on motions;
2. Notify prosecutors, attorneys, and SCDC (and DPPPS if necessary) of results of cases;
3. File notice of appeal if State is pursuing an appeal (pending approval of AG's Appellate Review Committee).

The above takes approximately 30% of our attorney time and 10% of our support staff time

Since the 1970's, the AG has been the sole representative of the State for Post Conviction Relief actions, and as such it is the Agency's duty to uphold properly obtained convictions from collateral attack in civil actions

Does law require it: No

Assoc. Law(s): S.C. Code Section 17-27-10 et seq.; 17-17-50

<u>Single Unit</u>	<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
Cases Closed Per FY (closed after final order is issued)	2016-17	\$381.41	5.68	\$299,407.02	1.53%
	2017-18	\$265.00	5.68	\$329,129.94	0.55%
	2018-19	\$381.42	5.68	\$309,713.30	0.46%
	2019-20	\$1,477.00	60.07	\$358,910.45	0.47%

Collateral Challenges to Convictions: Representation in Appeals to Collateral Challenges

(Agency Service #118)

- Draft and submit all appellate pleadings on behalf of the State, including State's appeals following the grant of post-conviction relief if an appeal is pursued by the State;
- Represent the State in any oral arguments arising out of these cases.

The above takes approximately 20% of our attorney time and 15% of our support staff time

Since the 1970's, the AG has been the sole representative of the State for Post Conviction Relief actions, and as such it is the Agency's duty to uphold properly obtained convictions from collateral attack in civil actions

Does law require it: Yes

Assoc. Law(s): S.C. Code Section 1-7-40; 17-27-10 et seq., 17-17-140

<u>Single Unit</u>	<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
Appellate Cases Opened	2016-17	\$605.41	4.59	\$221,580.01	1.13%
Per FY (opened when notice of appeal is filed)	2017-18	\$512.14	4.59	\$247,362.36	0.42%
	2018-19	\$664.88	4.59	\$237,361.03	0.35%
	2019-20	\$1,196.72	4.86	\$277,640.07	0.36%

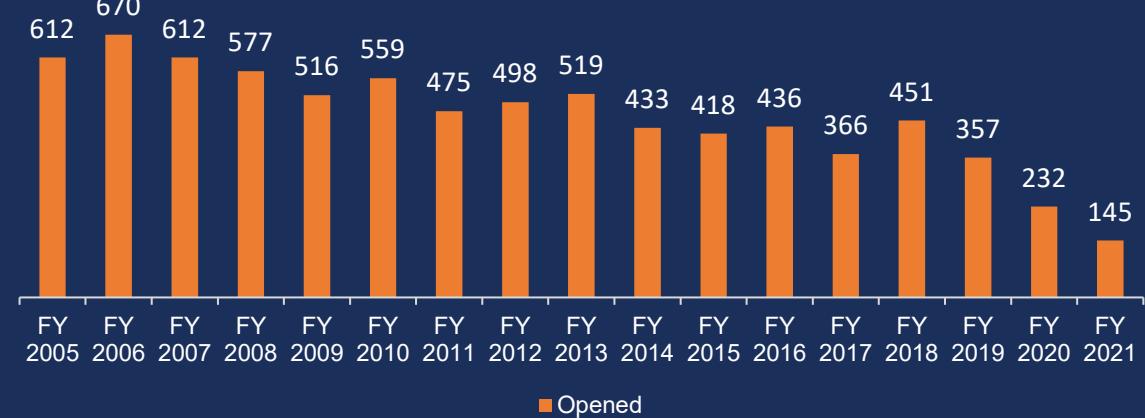
Post-Conviction Relief (PCR)

Annual Movement in Cases

Circuit Court Level



Appellate Level

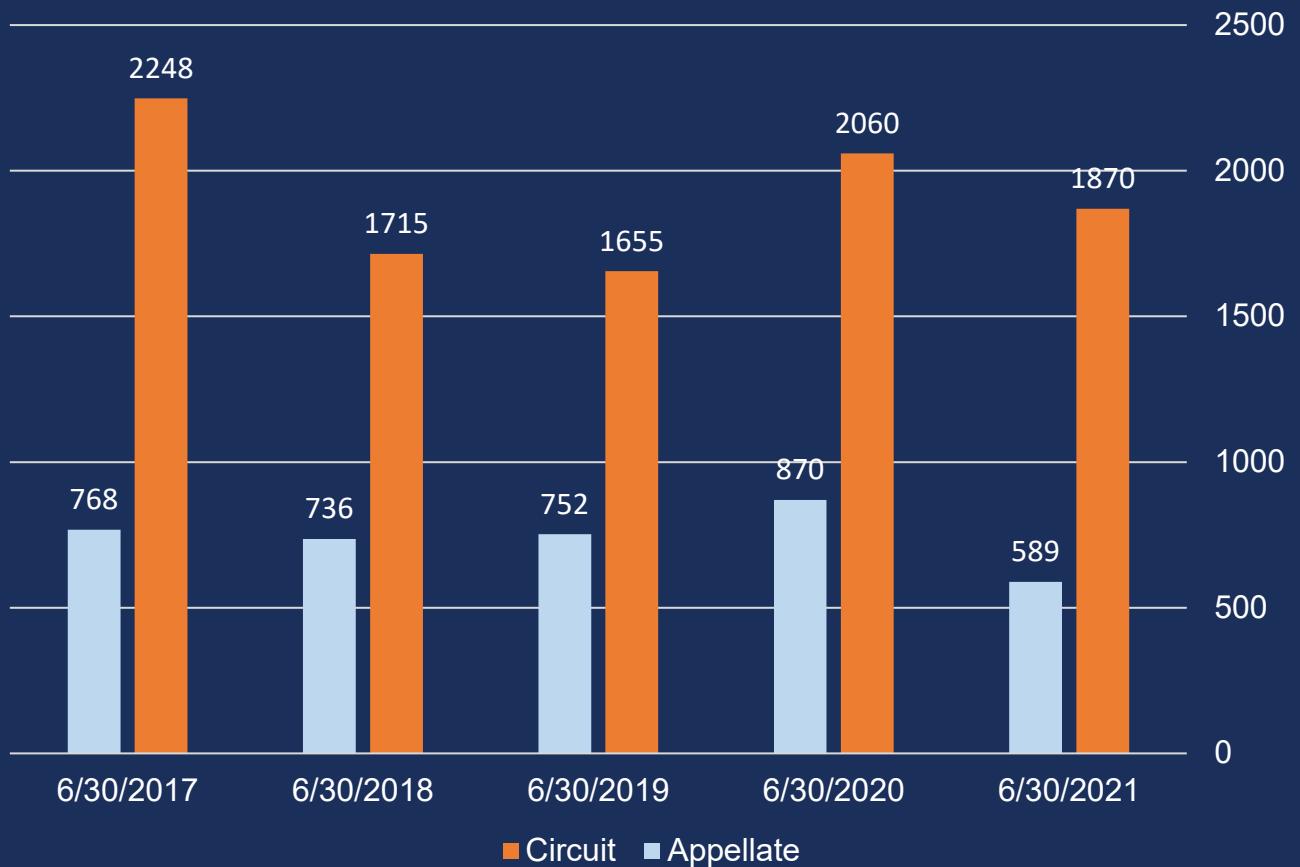


Note: Closed cases spike in FY18 due to a change in management of the PCR section which led to an increased push to resolve and close stagnant files.

Post-Conviction Relief (PCR)

Total Pending Cases
at Close of Fiscal Year
FY 2017 – FY 2021

- Number of PCR cases & appealed PCR cases still open at the close of each fiscal year





Alan Wilson
Attorney General

Don Zelenka
Deputy AG

Associated Successes and Concerns

The next slides only contain information on services that are associated with this section of the agency.

Post-Conviction Relief (PCR)

SUCCESSES

- Significant and sustained improvement in quality of work product
 - Positive feedback from circuit and appellate courts
 - Reduced negative opinions and commentary from appellate courts regarding PCR orders
- Reduction in backlog of summary dismissal cases
 - Pandemic allowed us to shift focus to resolving backlog of procedurally-barred cases
- Improved efforts to recruit and retain experienced staff has led to more efficiency and quality representation of the State in collateral review proceedings

Post-Conviction Relief (PCR)

CONCERNS

- Continuing struggle to recruit and retain experienced staff, although this is improving
- Continued burnout of attorneys tasked with a high caseload of increasingly complex cases without necessary experience to handle these cases

Post-Conviction Relief (PCR)

NEEDS

- **Experienced attorneys to handle increasingly complex cases**
 - Skills required to perform the job successfully are not entry level, but the position has been historically staffed as an entry-level position.
 - Increase recruitment and retention efforts to hire and encourage talented staff to stay beyond two-year commitment
- **More attorneys to further reduce the case load per attorney**
 - Current average case load is over 200 cases per attorney
 - Ideal attorney staffing would be 16 attorneys with current supervisory structure for training, support, and fill-in during vacancies
 - Stringent deadlines imposed by statute, rules, and courts are unmanageable based on current caseload per attorney
- **More training opportunities**

Personnel

	Turnover	Number of Employees	
		Leave unit during year	In unit at end of year
2016-17	46%	8	19
2017-18	46%	9	20
2018-19	39%	8	21
2019-20	34%	7	20

*Exit interviews or
surveys conducted?*

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

*Employee satisfaction
tracked?*

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

Reasons for Turnover				
Year	Employment outside state government	Employment with another state agency	Personal Reasons	Internal Transfers
2016-17	37.5%	37.5%	25%	
2017-18	55.6%		22.2%	22.2%
2018-19	75%			25%
2019-20	43%	14%		43%

Note:

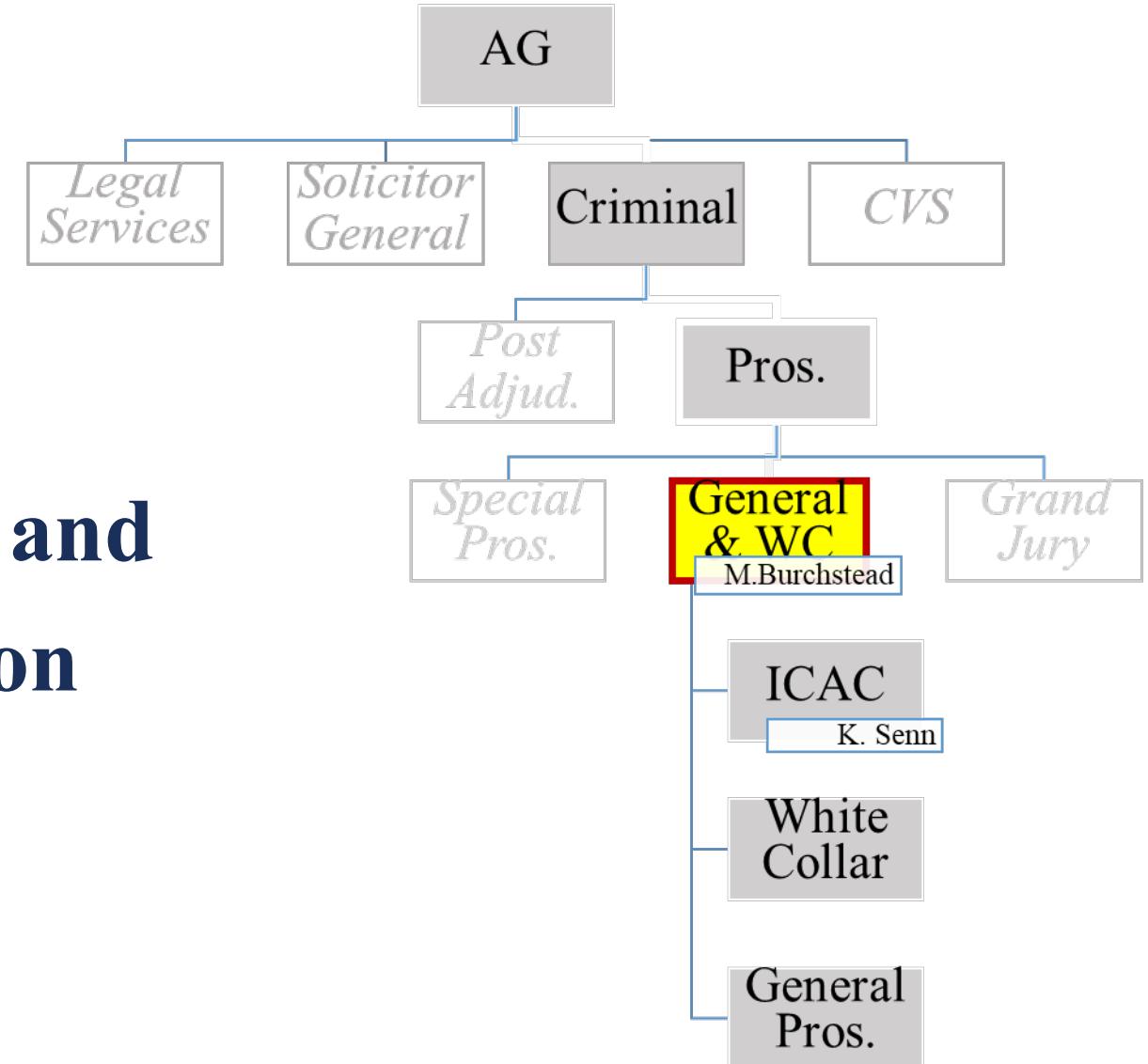
The Post-Conviction Relief Section has the highest case load of any section in the office and has been historically staffed as an entry-level position. The high volume of work contributes to frequent turnover in the section.

Costs due to training and high turnover will be discussed during Administration Presentation

AGENCY PRESENTATION – GENERAL PROSECUTION



General Prosecution and White Collar Section



Personnel

General Prosecution:

Megan Burchstead (SADAG)
Jason Anders (SAAG)
Joel Kozak (AAG)
Savanna Goude (AAG)
Vacant Attorney (as of 7/30/2021)

Insurance Fraud:

LaRone Washington (ADAG/Director)
Eric Guiamares (AAG)
Madison Marchant (AAG)
Jordan Grubbs (PC)
Melanie Cain (LA)

Support Staff:

Connor Roark (Paralegal)
Nancy Smith (LA)
Hunter Dunn (Law Clerk)
Molly Keegan (Law Clerk)
Erica Zippel (Intern)

Securities:

Tracy Meyers (SAAG)

Personnel

	Turnover	Leave unit during year	Exit Interviews or surveys conducted?	In unit at end of year	All Employee Performance Reviews Conducted (EMPS)?	Employee satisfaction tracked?
2016-17	48%	13	Yes	22	Yes	No
2017-18	36%	8	Yes	22	Yes	Yes
2018-19	23%	5	Yes	21	Yes	No
2019-20	5%	1	Yes	21	Yes	No

Prior to April 2, 2017 - Attorneys assigned to Prosecution Section handled both general prosecution and State Grand Jury

After April 2, 2017 - Separate State Grand Jury Section was formed.

FY 2017 turnover reflects a shift in organizational structure as employees transferred to the new State Grand Jury Section.

FY 2018 Turnover: 25% - employment outside of state government; 12.5% - employment with another state agency; 37.5% - personal reasons; 12.5% - retirement; 12.5% - internal transfer.

General Prosecution & White Collar

The AG is the Chief Prosecutor.

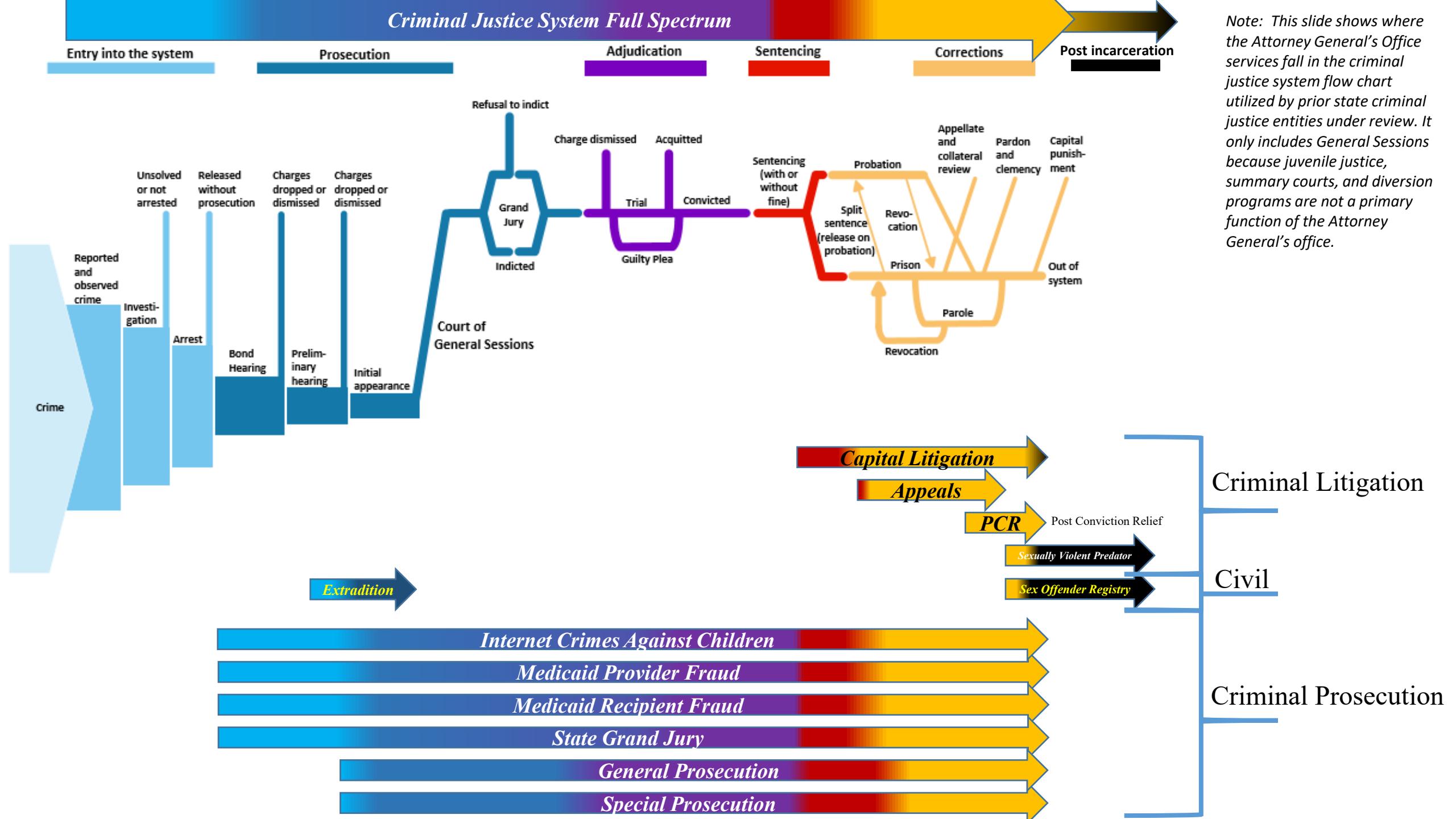
Along with the 16 Circuit Solicitors, the AG has concurrent prosecution authority of criminal matters within South Carolina.

The majority of the Section's cases are referred by Solicitors due to a conflict of interest.

The AG has authority to take any case, but AG Wilson has given great deference to local Solicitors and maintains a working relationship with all.

White collar crimes are highly intensive in documentation and require special expertise. Securities, insurance and financial fraud are examples.

Criminal Justice System Full Spectrum



Typical Actions in Adult Criminal Cases (except Capital Murder)

Where the AG takes over is different for each case and dependent upon when the Solicitor determines there is a conflict

NOTE: S.C. Supreme Court determined hearings should be scheduled in the way decided by a judge in furtherance of State v. Langford. Therefore, Solicitor/AG no longer schedule hearings, unless a particular judge has granted court time and instructed them to do it.

Step	Actions Required to Move Case Forward ²	Entity Responsible for the Action
1	Citation, Ticket, or Arrest Warrant	Citation – Citizen requests Ticket – Law Enforcement issues Arrest Warrant – (1) Law Enforcement requests, (2) County Magistrate issues (if probable cause exists); and (3) Law Enforcement serves and arrests defendant <i>Note: See additional comments in "Warrant Approval" section</i>
2	Bond - Initial (within 24 hours of arrest)	Magistrate sets if individual is flight risk or danger to community (amount is at magistrate's discretion) <i>Note: Magistrates cannot set bond for certain charges, including murder (for those, Circuit Court judge must set bond).</i>
3	Preliminary Hearing*	Defendant requests within ten days of arrest and Magistrate schedules (no requirement that a defendant request a hearing and if no request, no hearing). <i>Note: Once a case is indicted (which requires the grand jury to find that probable cause exists that the defendant committed the crime for which the indictment is sought), a defendant is not entitled to a preliminary hearing.</i>
4	Bond Hearing*	Defendant or Solicitor requests hearing Solicitor schedules hearing Circuit Court judge decides at hearing

Typical Actions in Adult Criminal Cases (except Capital Murder)

Where the AG takes over is different for each case and dependent upon when the Solicitor determines there is a conflict

NOTE: S.C. Supreme Court determined hearings should be scheduled in the way decided by a judge in furtherance of State v. Langford. Therefore, Solicitor/AG no longer schedule hearings, unless a particular judge has granted court time and instructed them to do it.

Step	Actions Required to Move Case Forward ²	Entity Responsible for the Action
5	Indictment	Solicitor schedules Grand Jury dates Solicitor submits indictments to Grand Jury <i>NOTE: Solicitor do not examine witnesses before the county Grand Juries and are not present during their deliberations or voting</i>
6	First Appearance*	Solicitor schedules <i>*Solicitor provides Defendant discovery, copy of indictment and learns who is serving as attorney for Defendant.</i>
7	Discovery/Pre-Trial Motions	Solicitor & Defense Attorney conduct discovery (prosecution is entitled to very little discovery) <i>* Discovery is an ongoing process, as is the conduct of pre-trial motion hearings</i> Motion hearings, if needed, set by Solicitor or Circuit Court
8	Appearance/Roll Calls	Solicitor schedules
9	Status Conference	Solicitor or Circuit Court judge schedules
10	Plea Negotiations <i>(if any)</i>	Solicitor & Defense Attorney conduct
11	Plea Hearing	Solicitor schedules hearing
12	Jury Trial	Process of scheduling trials varies from county to county <i>Note: In a few counties, the Chief Administrative Judge schedules trials, in some counties scheduling is a joint effort by the judges and the Solicitor, and in some counties the judge leaves the scheduling of trials to the Solicitors.</i>

Who determines if there is a conflict?

Solicitors are responsible for determining if a conflict exists.

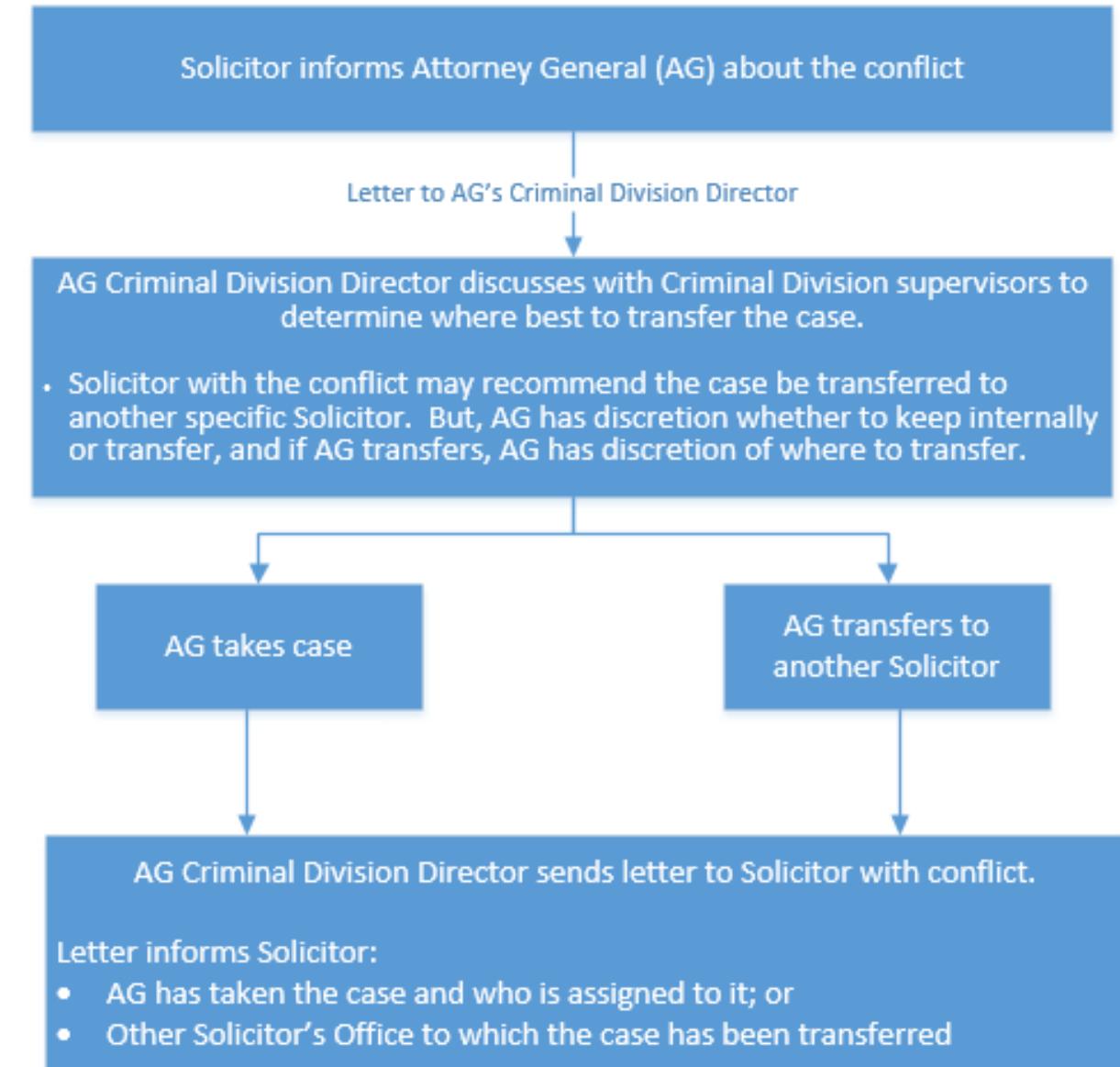
Examples of conditions in which a conflict exists include:

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

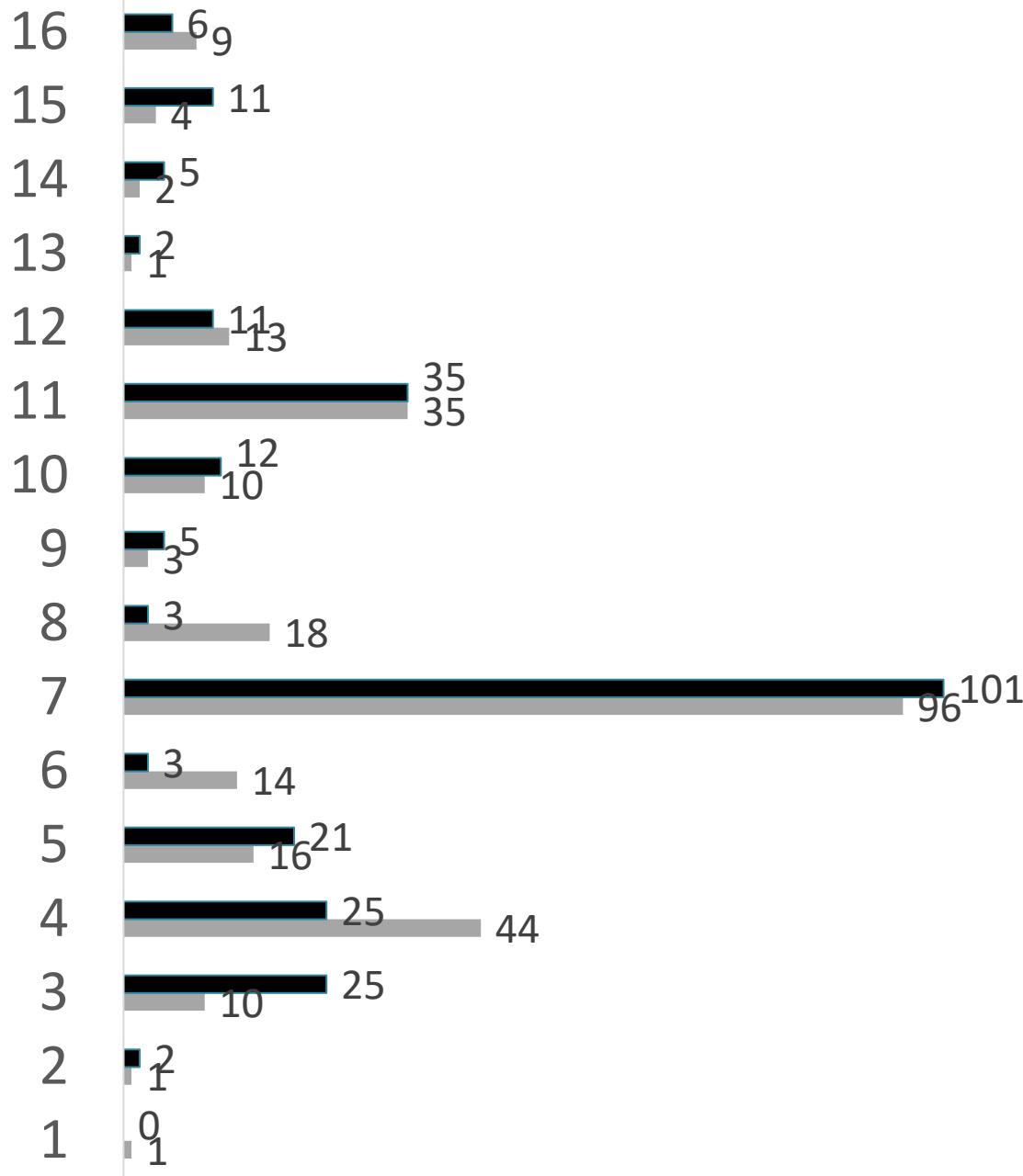
NOTE: Solicitor CANNOT transfer to another Solicitor without Attorney General approval (1-7-350)

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

What is the process when one exists?



Circuit (Black is 2020, Gray is 2021)



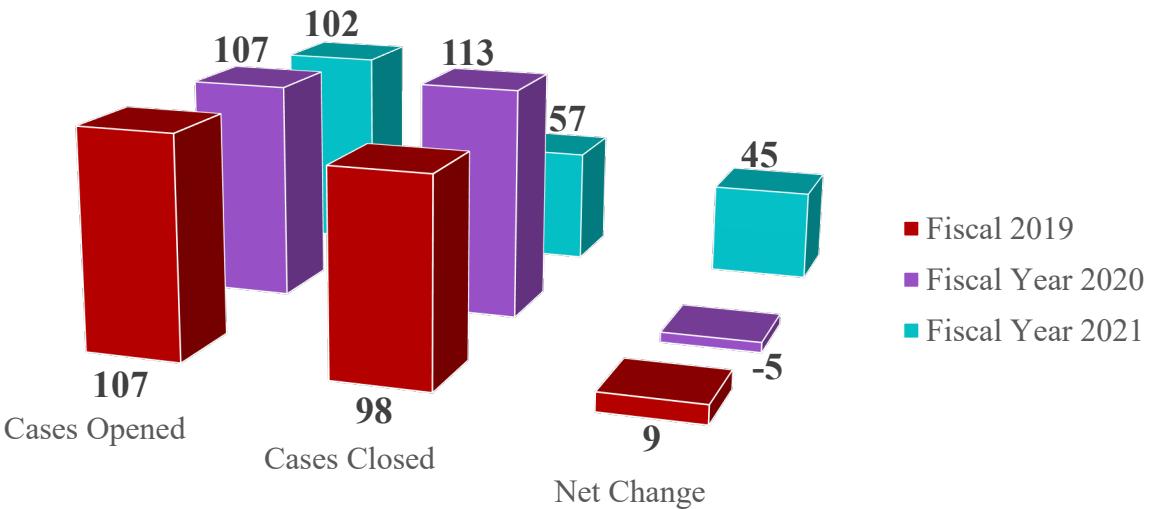
2020 and 2021 Referrals by Circuit



- 7th Circuit – 101 (96)
 - 197 referrals in last 2 years
- 11th Circuit – 35 (35)
 - 70 referrals in last 2 years
- 3rd and 4th Circuit
 - 25 (4th down from 44)
- 11th Circuit
 - 35

General Prosecution per request of Circuit Solicitors

- Prosecute/evaluate the prosecution of individuals charged or possibly charged with general crimes ranging to murder, as requested by Solicitors.
- Note: One case means one defendant (This differs from how the court defines the term “case”)



*Beginning FY 2021, cumulative net -21 (partial shutdown).
 End FY after COVID shutdown cumulative net +25.
 FY - May: +31 net cases, June +45

Agency Service #168: General prosecution per request of Circuit Solicitor

Does law require it: Yes

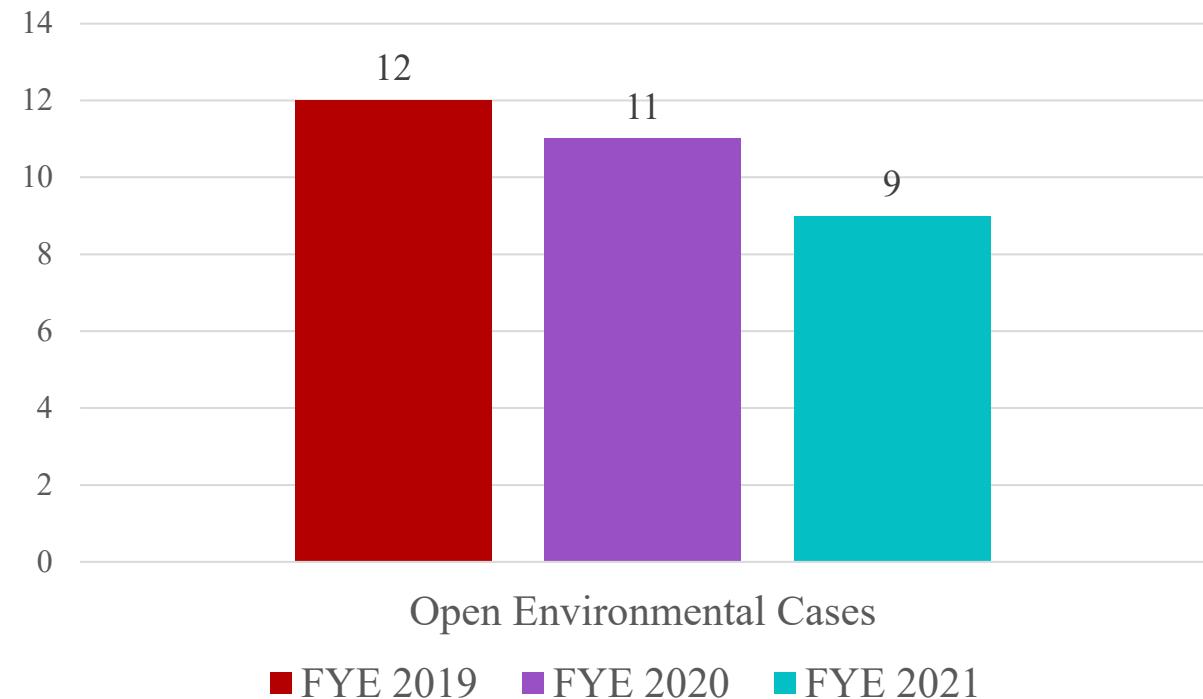
Assoc. Law(s): State Constitution, Art. V, Sec. 24- The Attorney General shall be the chief prosecuting officer of the State

Single Unit: Cases closed/prosecuted for general crimes	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	Not provided	\$2,326.03	6.70	\$981,059.91	5.00%
2017-18	Not provided	Insufficient data	6.70	\$737,265.50	1.24%
2018-19	98.00	\$7,251.36	6.70	\$710,633.59	1.06%
2019-20	113.00	\$6,815.84	5.95	\$770,189.69	1.00%

Note: Attorneys in this section rarely work 37.5 hours and often work more hours.

Prosecute Environmental Crimes

- Prosecute/evaluate prosecution of individuals charged or possibly charged with environmental crimes pursuant to a relationship by statute with the Department of Health and Environmental Control (DHEC).
 - Examples - Tire dumping; sewer/water contamination
 - Higher level crimes than DNR prosecutes (magistrate level), but lower than those that meet the state grand jury or federal threshold
- Continuing transition of a dedicated prosecutor (currently Megan Burchstead and Eric Guimaraes)
- Source of cases: DHEC and DNR



Agency Service #175: Prosecute Environmental Crimes

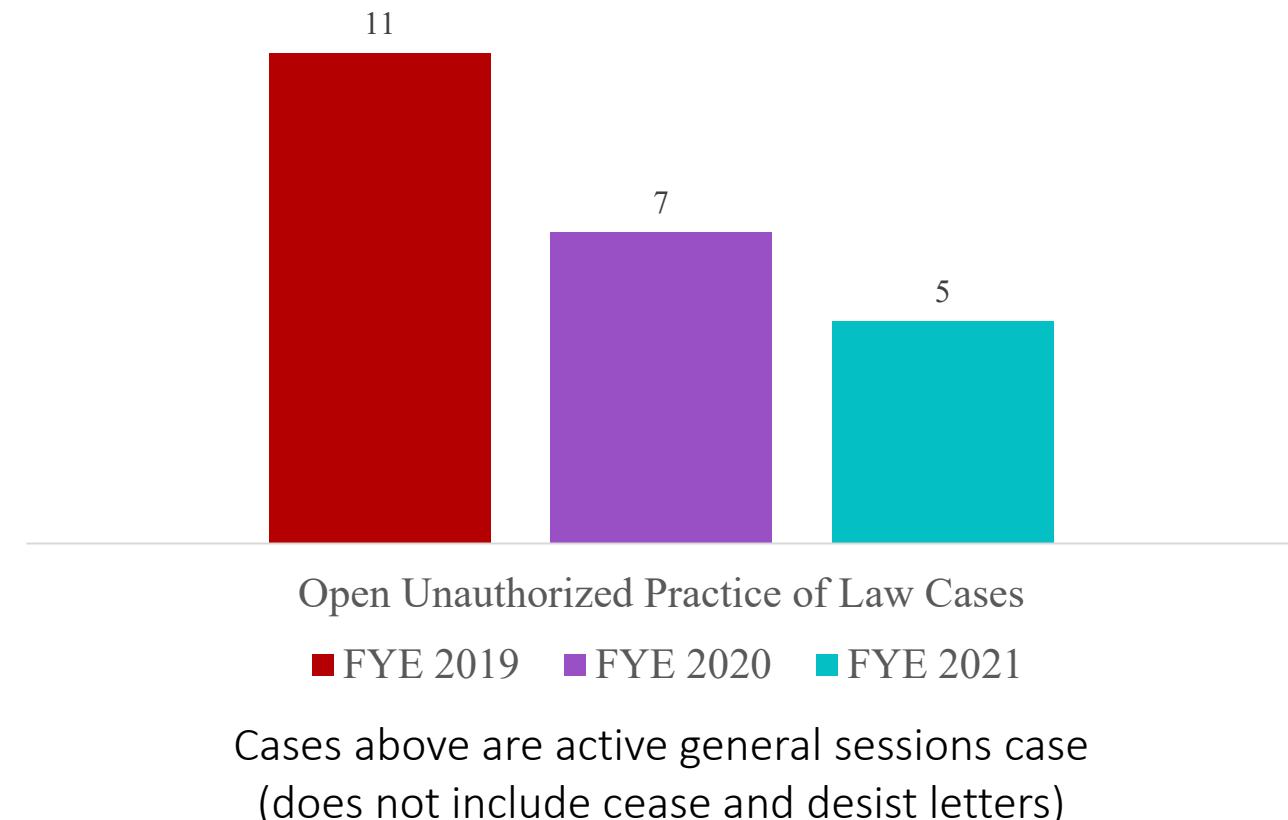
Does law require it: Yes

Assoc. Law(s): 48-1-210; SGJ 14-7-1630 A 12
(substantial harm to water, air, soil, land; 2M)

Customers:	Single Unit:	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
DHEC	Cases closed/prosecuted for Environmental crimes	2016-17	11.00	\$2,326.03	0.15	\$4,408.85
General Public		2017-18	17.00	\$1,741.50	0.15	\$29,605.58
		2018-19	3.00	\$9,868.63	0.15	\$29,605.88
		2019-20	2.00	\$4,262.41	0.15	\$8,524.81

Prosecute Unauthorized Practice of Law Cases

- Prosecute/evaluate prosecution of individuals charged or possibly charged with Unauthorized Practice of Law.
 - Example – Accountants providing legal advice; advice from non-attorney on real estate transaction or immigration matter
- Source of cases: Judiciary and S.C. Bar
- Working to clarify AG's role.
 - AG previously had funding from a federal grant to prosecute these cases, but no longer receives funding.
 - Currently handling if it is a conflict case or multi-county case



Agency Service #176: Prosecute Unauthorized Practice of Law Cases	
Does law require it: No	Customers: S.C. Bar
Assoc. Law(s): Agreement with SC Bar; SC Code 40-5-310	Single Unit: Cases closed/prosecuted for UPL (to include cease and desist letters)

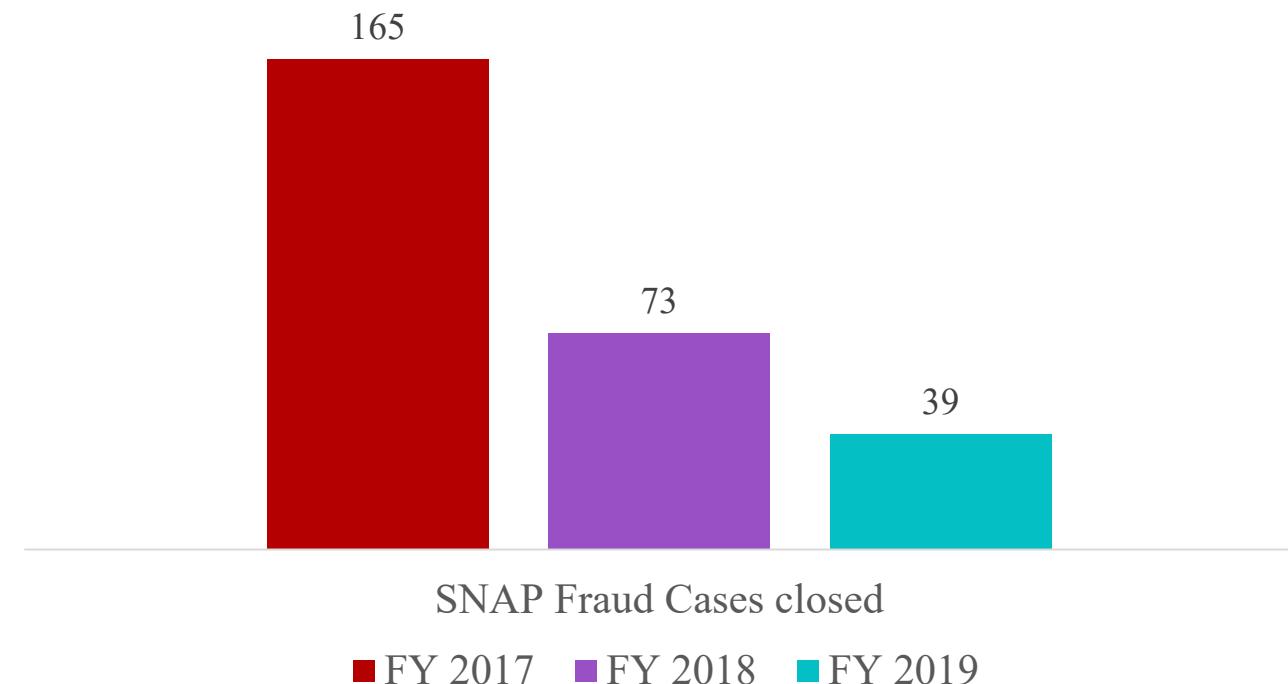
	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	2.00	\$2,326.03	0.15	\$10,169.25	0.05%
2017-18	0.00	Insufficient data	0.15	\$4,500.00	0.01%
2018-19	16.00	\$281.25	0.15	\$4,500.00	0.01%
2019-20	4.00	\$2,445.70	0.10	\$9,782.81	0.01%

Prosecute SNAP Fraud

- Prosecute Supplemental Nutrition Assistance Program (SNAP) Fraud
- Source of Cases: Department of Social Services and Solicitors

History:

- AG previously had MOU with DSS to prosecute
- AG sought to begin building cases against bad actor retailers/traffickers
- DSS and AG determined to no longer continue MOU



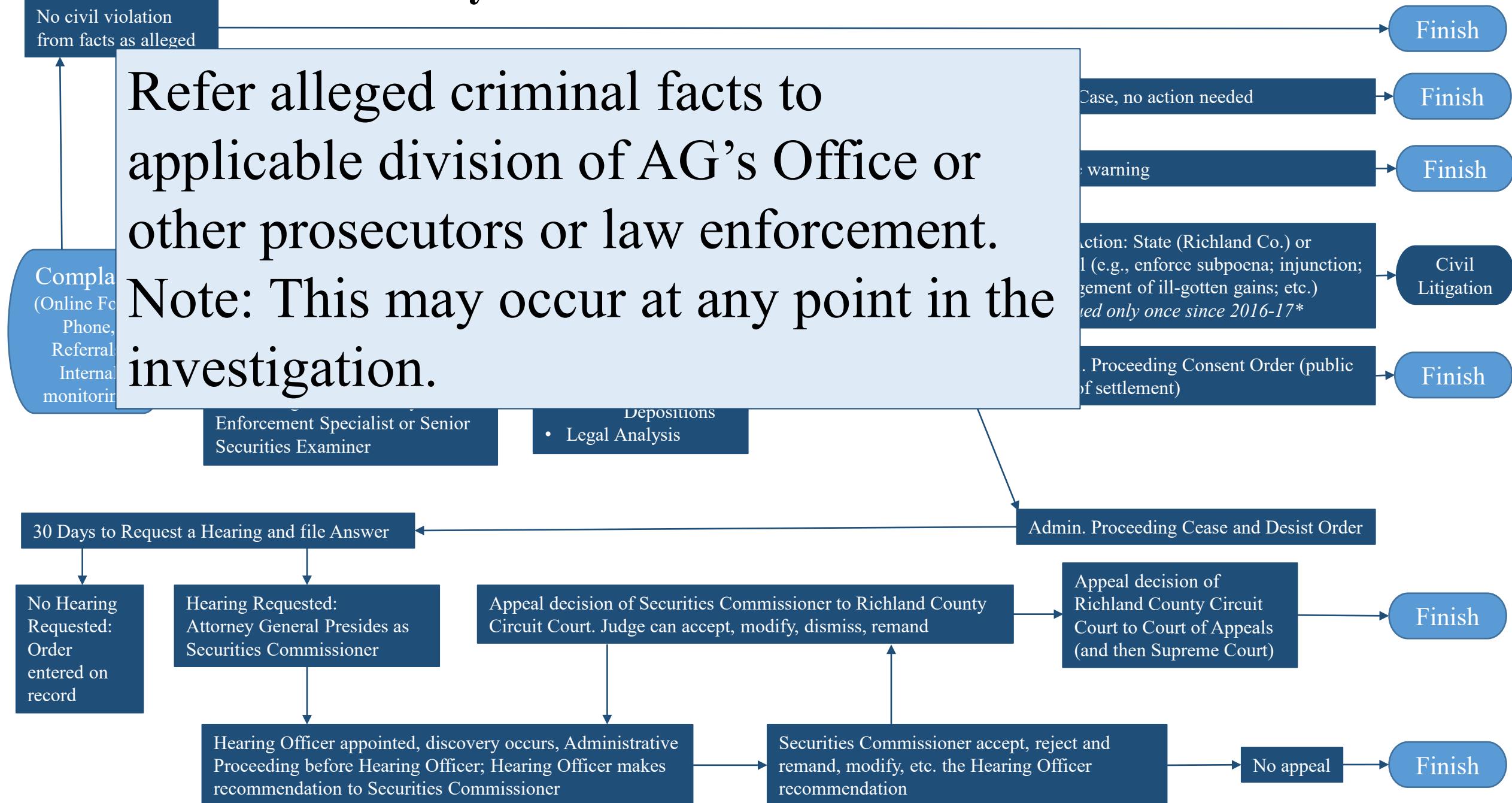
Currently

- DSS investigates, then takes to the Solicitor's Office
- AG only handles if it is a conflict case or multi-county case brought to AG by the Solicitor (none received through this method to date)

Agency Service #177: Prosecute SNAP Fraud

Does law require it: No	Customers: DSS General Public	Single Unit: Cases closed/prosecuted (and investigated) for SNAP fraud	2016-17	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
			2017-18	73.00	\$705.17	2.00	\$51,477.17	0.09%
Assoc. Law(s): 16-13-430; MOU with DSS			2018-19	39.00	\$804.95	1.05	\$31,392.90	0.05%

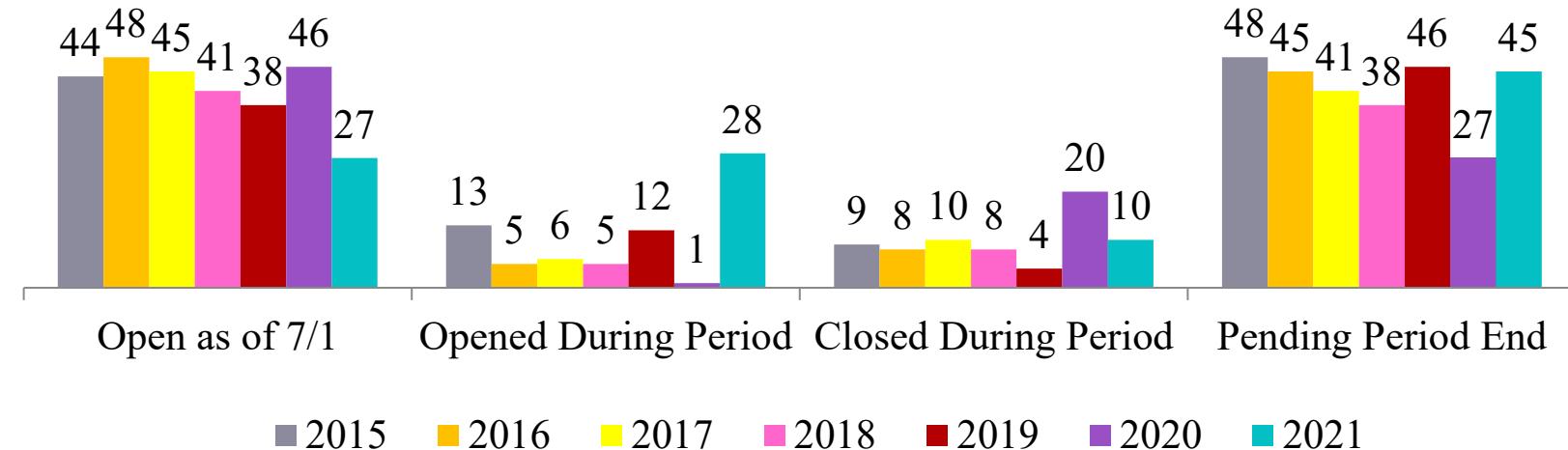
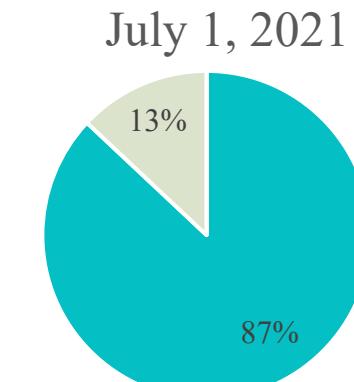
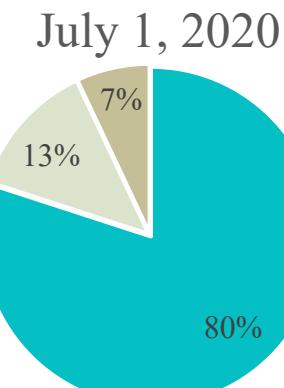
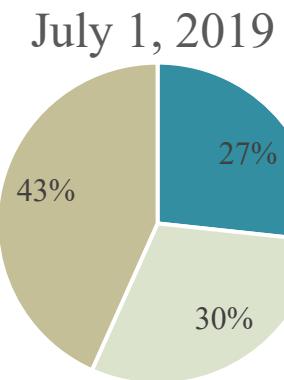
Life Cycle of a Securities Enforcement Case



Prosecute Securities Fraud, Special White Collar

- Prosecute/evaluate prosecution of individuals charged or possibly charged with Securities Fraud crimes.
- Types of Cases: Securities, computer crime, identity theft, embezzlement, breach of trust, false pretenses, economic pandemic, and similar. FYE 21 combines Securities with Special White Collar cases.
- Source: Referrals from AG's Securities Civil Enforcement Section

- Less than 5 years old
- 5-9 Years old
- Over 10 years old



Agency Service #174: Prosecute Securities Fraud

Does law require it: Yes

Assoc. Law(s): Uniform Securities Act Chapter 1, Title 35 b (Code 53-1-101 et. seq.)

Single Unit: Cases closed/prosecuted for securities crimes	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	10.00	\$2,326.03	1.30	\$89,138.14	0.45%
2017-18	8.00	\$8,545.18	1.30	\$68,361.47	0.11%
2018-19	9.00	\$7,595.72	1.30	\$68,361.47	0.10%
2019-20	20.00	\$8,460.32	1.30	\$169,206.39	0.22%

Insurance Fraud Prosecution: Types of Cases

- 1 Health/Medical
- 2 Workers' Compensation
- 3 Personal/Commercial property
- 4 Auto Insurance
- 5 Life Insurance
- 6 Premium Fraud
- 7 Disability Insurance
- 8 Unemployment Insurance
- 9 Other

Insurance Fraud Prosecution: History in S.C.

- S.C. was last in the nation in funding prosecution of insurance fraud prior to this funding
- It was unclear who was lead agency and how investigations and prosecutions would operate
- Attorney General's Office (AG), Department of Insurance (DOI), and State Law Enforcement Division (SLED) discussed how to more efficiently prosecute insurance fraud in the state
- In 2021-2022 budget, the General Assembly provided DOI funding to prosecute insurance fraud.

DOI, AG, and SLED enter a Memorandum of Understanding

- DOI responsibilities include:
 - Utilize existing internal investigators and SLED to investigate
 - Utilize their dedicated prosecutors to prosecute (4 previously worked at AG's office)
- AG responsibilities include:
 - Authorize DOI to prosecute
 - AG has done the same with Department of Natural Resources, Department of Public Safety, and Department of Revenue.
 - If anyone other than a solicitor is a prosecutor, the Attorney General must send a letter to the agency authorizing their attorneys to prosecute cases.
 - Cooperation (sharing historical information);
 - Reviewing and signing draft indictments so they can be presented to county grand jury for approval.

Indictment Process for Insurance Fraud Prosecution

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)*

AG = Attorney General's Office

DOI = Department of Insurance

SLED = State Law Enforcement Division

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)*

Receive and Process Insurance Fraud Complaints

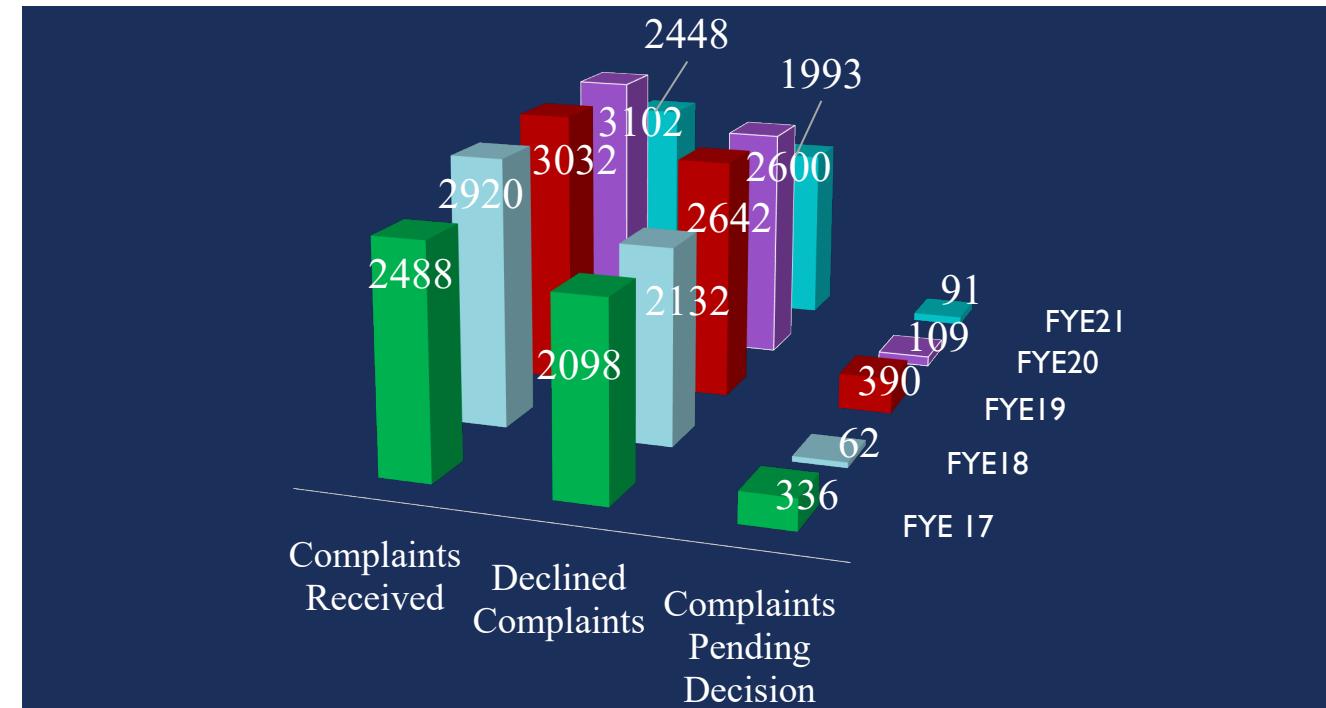
These slides discuss how the AG's office previously handled this matters.

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 now lead for the hotline



Agency Service #169: Receive and process insurance fraud complaints

Does law require it: Yes

Assoc. Law(s): SC Code 38-55-560 (A)(B)(1);
38-55-570 (A)

	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Single Unit: Referrals of possible fraud received	2016-17	\$2,326.03	2.35	\$128,405.06	0.65%
	2017-18	\$34.84	2.35	\$101,738.04	0.17%
	2018-19	\$33.55	2.35	\$101,738.04	0.15%
	2019-20	\$105.00	2.75	\$194,137.73	0.25%

Link on the
Attorney General
website...



The screenshot shows the 'Civil' link in the 'Legal Services Division' menu highlighted with a large blue arrow. The 'Civil' link is located in the 'Civil' section of the 'Legal Services Division' menu.

...goes directly to
the Department
of Insurance
website



The screenshot shows the SC DOI website with a large blue arrow pointing from the 'Civil' link on the previous page to the 'Insurance Fraud Division' page on this one. The 'Insurance Fraud Division' page features a large image of a horse statue and a building, with sections for 'CONSUMERS', 'LICENSING & CE', 'INSURERS', 'CAPTIVES', 'ABOUT US', and 'HOW DO I...?'.

Meet the Director
Administrative Services
Bulletins & Orders
Captives
Division Contacts
Government and Industry Resources
Insurance Fraud Division
Legal
Public Information & Media

Home > About Us > Insurance Fraud Division

Insurance Fraud Division

Stop Insurance Fraud!

If you suspect insurance fraud, you can help stop it. Insurance fraud is not a victimless crime. The average family pays up to an extra \$700 a year in premiums to cover the costs of fraud. In South Carolina, insurance fraud is a felony so do your part to learn what it is and how to spot it!

What Is Insurance Fraud?

Insurance fraud occurs when an insurance company, agent, adjuster, or consumer commits a deliberate deception to obtain an illegitimate gain. It can occur during the process of buying, using, selling, or underwriting insurance. Insurance fraud may fall into different categories from individuals committing fraud against consumers, to individuals committing fraud against insurance companies. Both have serious repercussions and consequences.

Need to Report Suspected Insurance Fraud?

Access the [Insurance Fraud Complaint Online Form](#) and submit your complaint today.



Report Fraud:
Click [here](#) to report suspected insurance fraud.

Or you can download and fill out the [Insurance Fraud Complaint form](#). Save the form and email it to FraudDivision@doi.sc.gov or print and mail to SCDOI P.O. Box 1000105 Columbia, SC 29202

Phone: 888-953-7283

Helpful Links:

- [Coalition Against Insurance Fraud](#)
- [National Insurance Crime Bureau](#)
- [2020 Insurance Fraud Report](#)

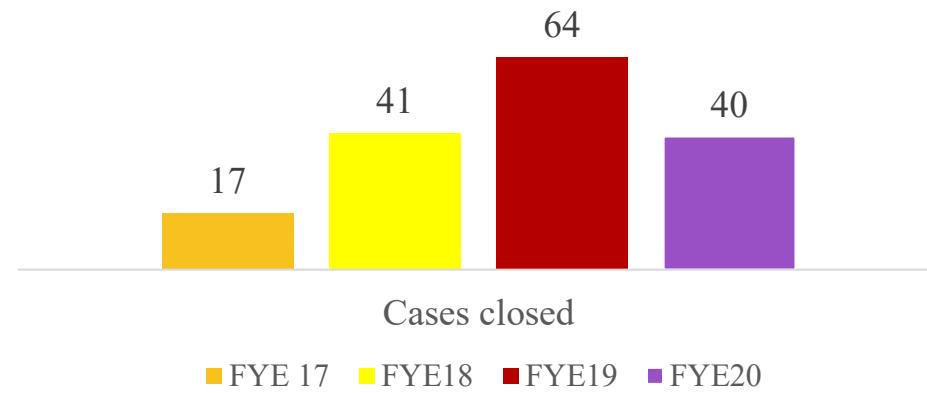
Latest News:

- Press Release: [SCDOI Brings Insurance Fraud Division to Department](#).

Prosecute Insurance Fraud

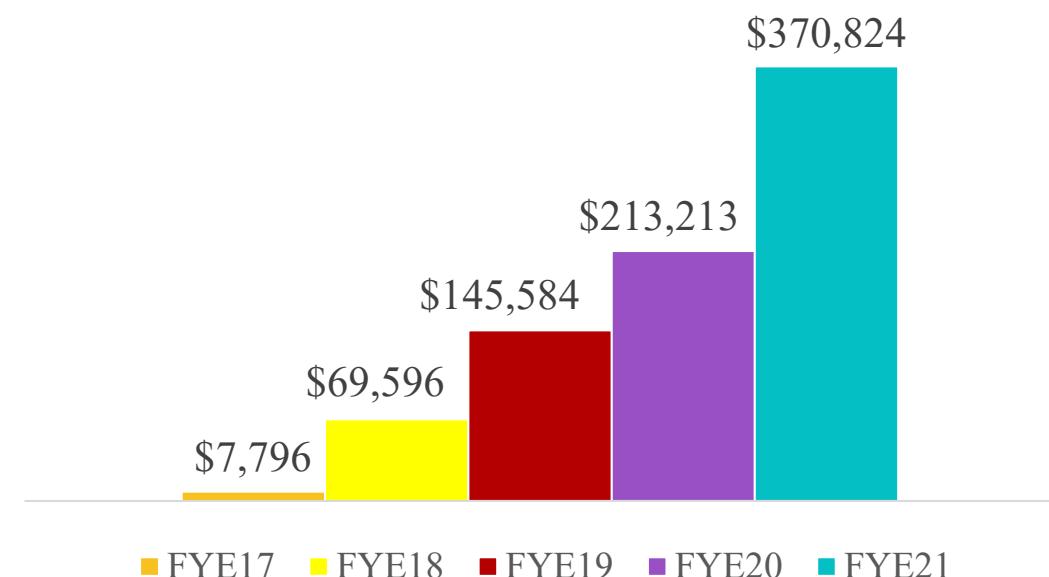
Prosecute/evaluate prosecution of individuals charged or possibly charged with Insurance Fraud crimes.

- DOI is now prosecuting



Fines, Fees, or Restitution

Restitution Ordered



Agency Service #170: Prosecute insurance fraud

Does law require it: Yes

Assoc. Law(s): SC Code 38-55-560(B)(2), (3); 38-55-570

Single Unit: Cases closed of Individuals prosecuted for Insurance Fraud	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	17.00	\$2,326.03	1.80	\$108,117.18	0.55%
2017-18	41.00	\$2,183.93	1.80	\$89,541.09	0.15%
2018-19	64.00	\$1,399.08	2.05	\$89,541.09	0.13%
2019-20	40.00	\$3,769.33	1.85	\$150,773.15	0.20%

Agency Service #171: Collection of insurance fraud fines/fees, restitution

Does law require it: Yes

Assoc. Law(s): SC Code 38-55-540

Single Unit: Fines collected in relation to prosecution of Insurance Fraud	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	7,796.00	\$2,326.03	0.05	\$24,304.57	0.12%
2017-18	69,596.42	\$0.15	0.05	\$10,432.01	0.02%
2018-19	145,583.59	\$0.07	0.25	\$10,432.01	0.02%
2019-20	223,783.50	\$0.10	0.30	\$22,050.73	0.03%

Annual Report

- Create and submit annual report on insurance fraud to the General Assembly.
 - Statute does not outline information that must be included. Currently, annual report includes statistics by calendar year,
- AG published the annual report from 2003 to 2020
 - DOI published the report with statistics from 2021 and will publish the report going forward

Insurance Fraud Training and Outreach

- Increase awareness and understanding related to insurance fraud and evidence of insurance fraud, with law enforcement and the community in general.
- Coordinating outreach activities and training with insurance companies and NICB
- Note: Department of Insurance took the lead on these activities starting in 2021

Agency Service #172: Create and submit annual insurance fraud report

Does law require it: Yes

Assoc. Law(s): SC Code 38-55-580 (Annual Report submitted to Legislature)

Single Unit: Annual Report of Insurance Fraud Delivered to Legislature (calendar year)	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	1.00	\$2,326.03	3.33	\$17,609.18	0.09%
2017-18	1.00	\$10,432.01	3.33	\$10,432.01	0.02%
2018-19	1.00	\$10,432.01	3.33	\$10,432.01	0.02%
2019-20	1.00	\$24,846.69	0.40	\$24,846.69	0.03%

Agency Service #173: Insurance fraud training and outreach

Does law require it: No

Assoc. Law(s): SC Code 38-55-560

Customers: Law Enforcement; public; insurance fraud community	Single Unit: Education/ presentations	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
	2016-17	3.00	\$2,326.03	0.55	\$29,510.24	0.15%
	2017-18	5.00	\$4,851.58	0.55	\$24,257.91	0.04%
	2018-19	3.00	\$8,085.97	0.55	\$24,257.91	0.04%
	2019-20	1.00	\$16,145.40	0.20	\$16,145.40	0.02%



Associated Successes and Concerns

The next slides only contain information on services that are associated with this section of the agency.



Successes

General Prosecution

Case Movement

- Backlog caused by Covid-19 complications, but still able to get some cases moved. (Court closed/limited and Grand July shutdown)
- Continuing into 2021, a greater increase with indictments, scheduled trials, and other hearings allowing the backlog to move.
- Since July 2021, significant case movement and trials set.

Securities Fraud

- 93.3% of cases are actively moving
 - Types of Cases: securities, computer crime, identity theft, embezzlement, breach of trust, false pretenses, economic pandemic, and similar
- The remaining 6.7% are waiting for decline memos
- All cases over 10 years old have been resolved
- Prosecutions were successful
- Defendants have received sentences totaling over 100 years
- SCAG has an excellent working relationships with law enforcement agencies that investigate economic crime.



Successes

Insurance Fraud

Prosecution of large Fraud Rings across the State

- Greenville, Sumter, Lee, Florence, Charleston, and Richland Counties
- All ringleaders have been convicted
- Almost \$400,000 in restitution ordered

Transition of Insurance Fraud Unit

- Memorandum of Understanding signed by AG, Department of Insurance (DOI), and SLED to move the unit to the DOI
- \$1.6 million in additional funding given to DOI specifically for Insurance Fraud
- Statewide Press Releases concerning the Insurance Fraud Partnership and Transition



Needs

- Better Case Tracking System for the office
- Facilitate Better Witness Travel and Lodging
- Retention Pay
- Attorney positions

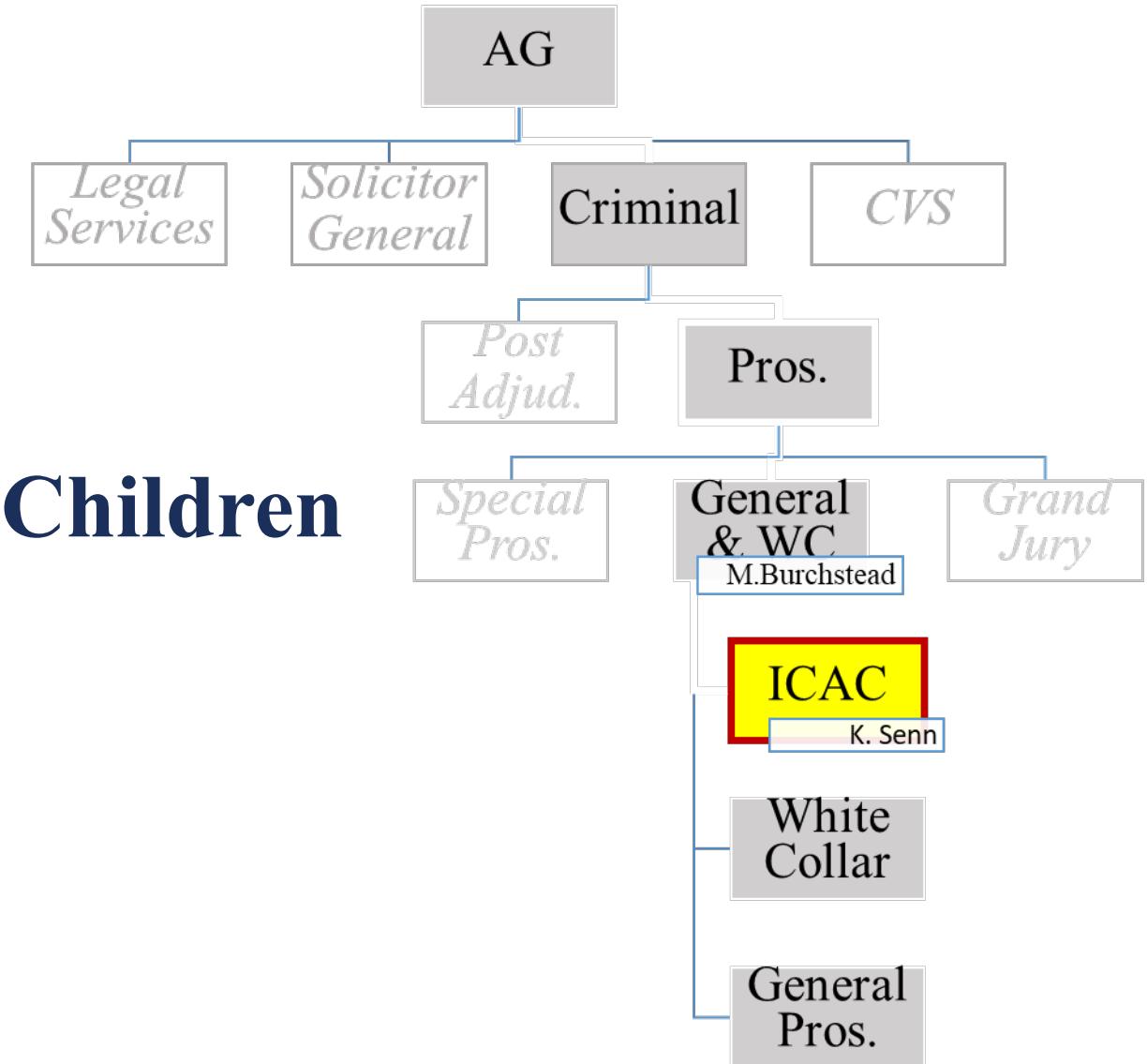
Concerns

Covid-19 Pandemic

- Working on the backlog created by the shutdowns.

Court Run Dockets

- Moving to court run dockets which presents challenges for scheduling pleas and trials and creates conflicting priorities.
- Fine tune internal case tracking to reconcile with Court Administration.



Internet Crimes Against Children Section

Internet Crimes Against Children (ICAC)

The Internet Crimes Against Children (ICAC) Task Force is a network of over 100 local, state and federal law enforcement agencies around South Carolina.

The ICAC section prosecutes crimes against children facilitated through the use of technology.

This includes possession and distribution of child pornography and criminal solicitation of a minor.

A continuing challenge is the intensive forensic investigation of seized computers, as well as keeping up with technology, often in the “Dark Web.”

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

- 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

Personnel

Turnover	Number of Employees		
	Leave unit during year	In unit at end of year	
2016-17	15%	2	14
2017-18	13%	2	16
2018-19	20%	3	14
2019-20	12%	2	20

2020 Update

Additions

- 2 Attorneys (Stephen Ryan, Elizabeth Major)
- 2 Forensic Examiners (Jamie Johnson, Frank Brennan)

Departure

- 1 Attorney (David Collier)
- 3 Forensic Examiners (Chris Bomar, Rich Fazio, Germaine Fowlis)

Open Positions

- 1 Forensic Examiner

Exit interviews or surveys conducted?

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

Employee satisfaction tracked?

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

Terms of Art

Child Sexual Abuse Material (CSAM)

- Term utilized instead of child pornography

Internet Service Provider (ISP)

- Who you use to access the internet
- Examples - Spectrum, AT&T, Verizon

Electronic Service Provider (ESP)

- What you use when on the internet
- Examples – Facebook, Instagram, Pinterest, TikTok, Google

Internet Protocol (IP) address

- Associated with the internet service provider (ISP)
- Examples:
 - 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
 - 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
 - If you are using a computer at a school or public library, the IP address will be for that location
 - 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 provider

Terms of Art

National Center of Missing and Exploited Children (NCMEC)

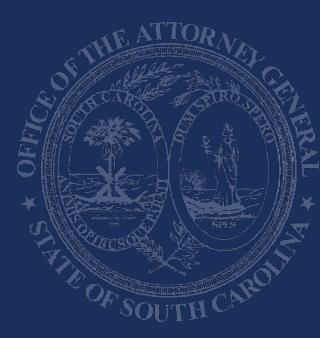
- Serve as clearinghouse for tips they receive from
 - ISPs and ESPs (required by federal law to report)
 - Concerned citizens

ICAC Database (IDS)

- Location where NCMEC continually uploads information for state ICACs to access

Internet Crimes Against Children Task Force (ICAC)

- Every state required to have at least one, some have more (61 nationwide)
- AG's Office is head of the Task Force in SC
 - Full membership on next slide



Internet Crimes Against Children Task Force

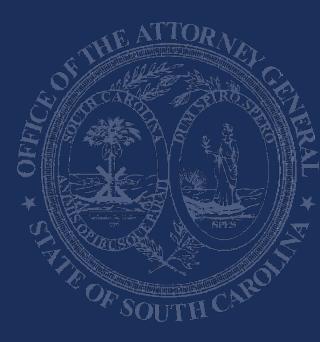


Task Force Principles

- **Protecting Children**
Making the internet a safer place
- **Arresting and Prosecuting**
Working together to stop future abuse
- **Public Awareness**
Educating our communities
- **Innovating**
Developing investigative tools and techniques
- **Training Law Enforcement**
Responding, investigating and prosecuting crime
- **Collaborating**
Partnering & building relationships

Task Force Membership

STATE: SC Attorney General • S.L.E.D. • SCLEAP • Department of Public Safety • Children's Law Center • **FEDERAL:** AFOSI - Charleston • AFOSI - Shaw AFB • FBI • Homeland Security Investigations • NCIS - Parris Island • NCIS - Goose Creek • US Marshal • US Postal Inspection Service • US Probation • US Secret Service • **LOCAL:** • 8th Circuit Solicitor • 15th Circuit Solicitor • Abbeville Police • Abbeville County Sheriff • Aiken DPS • Aiken County Sheriff • Allendale County Sheriff • Anderson Police • Anderson County Sheriff • Bamberg County Sheriff • Barnwell County Sheriff • Beaufort County Sheriff • Beaufort Police • Berkeley County Sheriff • Bennettsville Police • Bishopville Police • Bluffton Police • Burnettown Police • Calhoun County Sheriff • Cayce Police • Charleston Police • Charleston County Sheriff • Cheraw Police • Cherokee County Sheriff • Chester County Sheriff • Chesterfield Police • Chesterfield County Sheriff • Clarendon County Sheriff • Clinton Police • Colleton County Sheriff • Columbia Police • Conway Police • Darlington County Sheriff • Dillon County Sheriff • Dorchester County Sheriff • Easley Police • Edgefield County Sheriff • Ehrhardt Police • Fairfield County Sheriff • Florence Police • Florence County Sheriff • Georgetown County Sheriff • Georgetown Police • Goose Creek Police • Greenville County Sheriff • Greenville County Schools • Greenville Police • Greenwood County Sheriff • Greer Police • Hampton County Sheriff • Hanahan Police • Hartsville Police • Horry County Sheriff • Irmo Police • Jasper County Sheriff • Kershaw County Sheriff • Lancaster County Sheriff • Laurens Police • Laurens County Sheriff • Lee County Sheriff • Lexington Police • Lexington School District 1 • Lexington County Sheriff • Marion County Sheriff • Marlboro County Sheriff • Mauldin Police • McCormick County Sheriff • Moncks Corner Police • Mt. Pleasant Police • North Myrtle Beach DPS • Newberry County Sheriff • North Augusta DPS • North Charleston Police • Oconee County Sheriff • Orangeburg DPS • Orangeburg County Sheriff • Pickens County Sheriff • Prosperity Police • Richland County Sheriff • Rock Hill Police • St. George Police • Saluda County Sheriff • Seneca Police • Simpsonville Police • Spartanburg County Sheriff • Spartanburg DPS • Springdale Police • Summerville Police • Sumter Police • Sumter County Sheriff • Travelers Rest Police • Union County Sheriff • Walterboro Police • West Columbia Police • Westminster Police • Williamsburg County Sheriff • Woodruff Police • York Police • York County Sheriff



Internet Crimes Against Children Task Force



Task Force Activities

Perform investigations

(Discussed further on next slides)

Attend quarterly meetings

Attend local and national trainings

Present internet safety information to schools and other organizations

Internet Crimes Against Children: Case Flow

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

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” (email address, 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
 - Search Warrant at individual’s residence (possibly business)
 - Looking for all electronic devices
 - Devices seized go through forensic analysis

Arrests, Bond Hearings, etc.

- Likely sufficient evidence to arrest if individual travels

Arrests, Bond Hearings, etc.

- If sufficient facts exist after search at individual's house
 - Investigators obtain arrest warrant and make arrest
- If sufficient facts do not exist after search at individual's house
 - Request forensic analysis
 - 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 devices

****NOTE: Large backlog of forensic analysis****

- If arrest was made prior to forensic analysis, law enforcement may still request forensic analysis occur to help prosecute the case
- Who does analysis depends on who is leading investigation
 - Local Law enforcement investigations
 - Some local law enforcement are capable of conducting their own analysis
 - Some send analysis to AG
 - Some send to ICAC federal partners
 - AG investigators perform analysis for their investigations
 - 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
 - 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
 - Example - CSAM accessed and someone's bank account accessed close in time is evidence of who was accessing CSAM

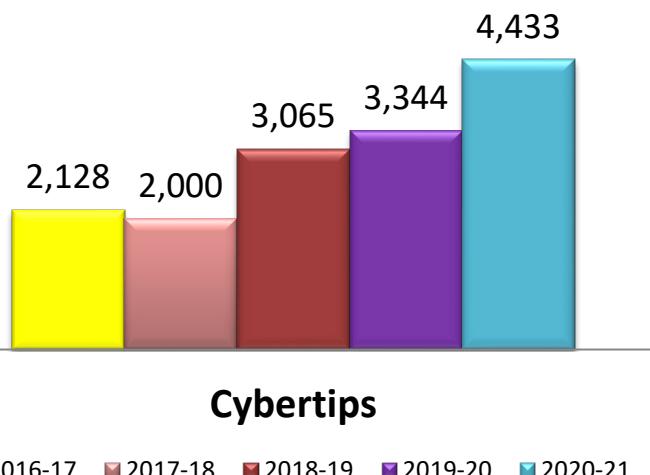
Prosecution

- 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)

Determine whether internet against children crimes have been committed

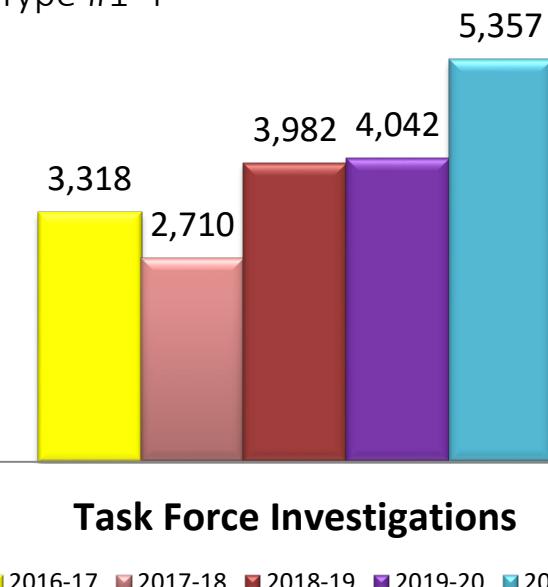
1. Review information in investigative leads

Below are leads for only Case Type #3 - Cybertips provided by the National Center for Missing and Exploited Children (NCMEC)



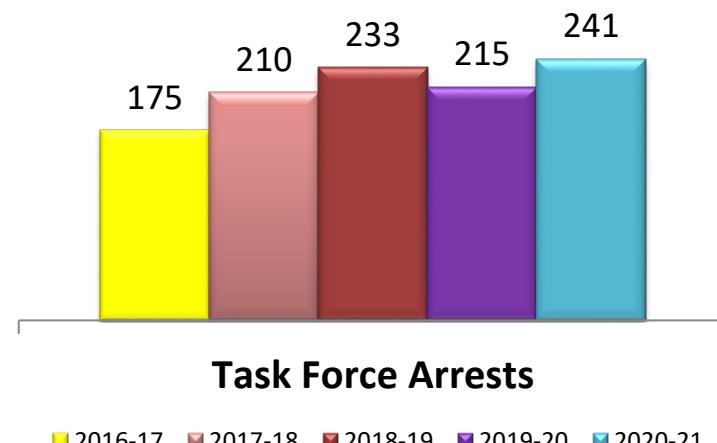
2. Conduct investigations to determine whether crimes have been committed

Below are investigations for Case Type #1-4



3. Find and arrest individuals committing technology-related child exploitation crimes

Below are investigations for Case Type #1-4



Agency Service #178: Determine whether internet against children crimes have been committed

Does law require it: Yes

Assoc. Law(s): PROTECT Act of 2008 (S.1738 (110th))

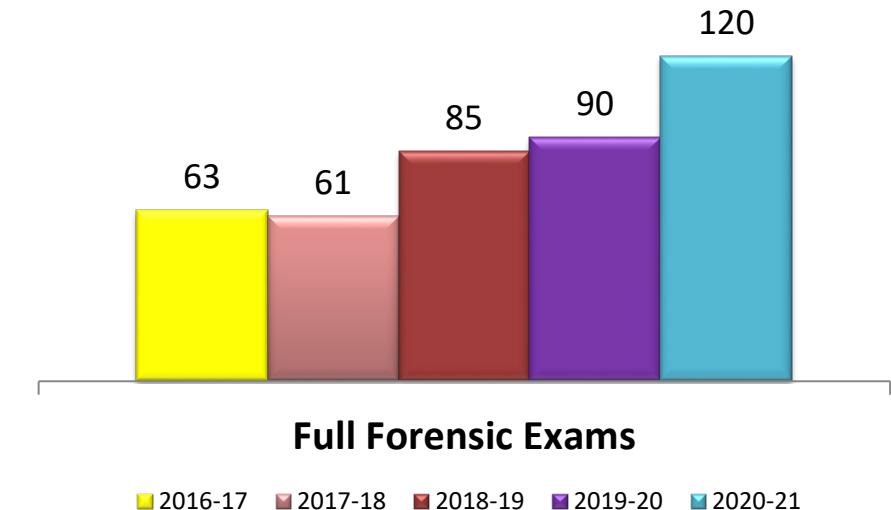
Single Unit	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Files Reviewed for Investigation	2016-17	\$2,326.03	3.65	\$334,322.46	1.70%
	2017-18	\$156.67	3.65	\$343,430.17	0.58%
	2018-19	\$110.33	3.65	\$353,837.68	0.53%
	2019-20	\$114.00	4.40	\$460,798.14	0.60%

Prepare Legal Documents to Aid Investigation and Forensically Examine Evidence

Types of legal documents necessary include:

- Search Warrant
- D-Order (federal statute under Electronic Communications Privacy Act, 18 USC 2703(d))
- Subpoena through federal partner

- Examine digital forensic items to obtain evidence in technology-related child exploitation crimes
- Types of evidence examined include:
 - Cell phones
 - Laptops/Towers
 - Tablets
 - External storage media



Agency Service #179: Prepare Legal Documents to Aid in the Investigation of internet crimes against children cases

Does law require it: Yes

Assoc. Law(s): PROTECT Act of 2008 (S.1738 (110th))

Single Unit	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Court Orders, Subpoenas and Search Warrants prepared in conjunction with ongoing cases	219.00	\$2,326.03	1.25	\$118,680.83	0.60%
	276.00	\$508.25	1.45	\$140,275.86	0.24%
	387.00	\$378.93	1.45	\$146,646.39	0.22%
	445.00	\$703.66	3.00	\$313,130.48	0.41%

Agency Service #180: Forensically examine digital evidence in internet crimes against children cases

Does law require it: Yes

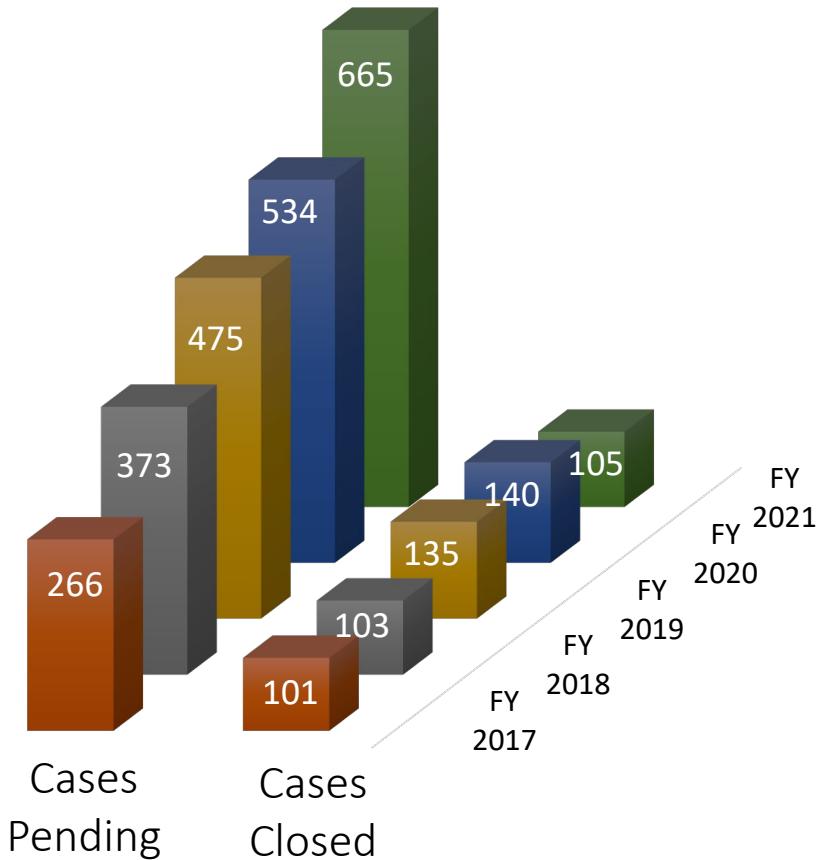
Assoc. Law(s): PROTECT Act of 2008 (S.1738 (110th))

Single Unit	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Total Number of Items Digitally Examined	1,204.00	\$2,326.03	3.25	\$283,127.71	1.44%
	1,268.00	\$308.92	4.15	\$391,706.08	0.66%
	1,656.00	\$249.55	4.40	\$413,256.61	0.62%
	2,116.00	\$244.82	5.35	\$518,043.31	0.67%

Prosecute Internet Crimes Against Children Cases

Prosecution Dispositions

	2017-18	2018-19	2019-20	2020-21
Other	0	0	0	4
Trials	0	1	1	0
Deaths	1	4	6	8
Insufficient Evidence	6	17	21	14
Federal/Other Adoption	6	8	5	12
Pleas	90	105	107	70



Agency Service #181: Prosecute Internet Crimes Against Children Cases

Does law require it: Yes

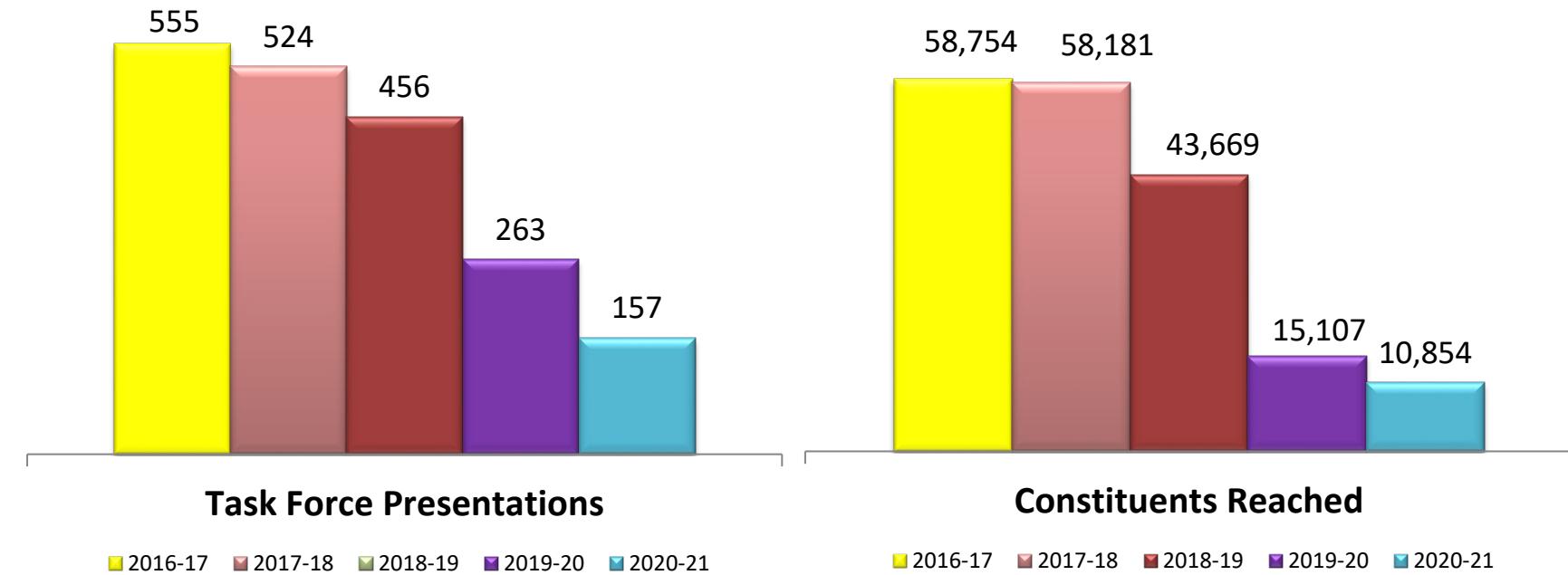
Assoc. Law(s): SC Constitution Article V, Section 24

Single Unit	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Cases Involving All Related Charges with a Single Defendant	2016-17	101.00	\$2,326.03	5.00	\$116,809.79
	2017-18	103.00	\$1,222.40	6.00	\$125,906.87
	2018-19	135.00	\$930.14	5.50	\$125,569.08
	2019-20	140.00	\$4,277.14	5.55	\$598,800.12

Provide Education to the Public and Technical Assistance to Law Enforcement

Presentations made to:

- Schools to speak to parents, students, staff
- Anyone who requests presentation: Rotary clubs, churches, etc.



Agency Service #182: Provide Internet Safety Information to S.C. Citizens

Does law require it: No

Assoc. Law(s):

	<u>Single Unit</u>	<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
Presentations conducted	2016-17	318.00	\$2,326.03	1.40	\$426,095.30	2.17%
	2017-18	315.00	\$1,513.51	1.40	\$476,755.23	0.80%
	2018-19	363.00	\$1,418.97	1.40	\$515,087.76	0.77%
	2019-20	155.00	\$691.92	1.20	\$107,248.04	0.14%

Agency Service #183: Provide Technical Assistance To Law Enforcement Across S.C.

Does law require it: No

Assoc. Law(s):

	<u>Single Unit</u>	<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
Communication and assistance with investigators during the investigation process	2016-17	685.00	\$2,326.03	2.25	\$210,764.39	1.07%
	2017-18	717.00	\$391.58	2.90	\$280,761.75	0.47%
	2018-19	938.00	\$298.22	2.90	\$279,728.11	0.42%
	2019-20	1,539.00	\$113.21	1.40	\$174,228.29	0.23%



Associated Successes and Concerns

The next slides only contain information on services that are associated with this section of the agency.



Successes and Concerns

Successes

- Increased cases forensically examined
- Increased arrests task-force wide, especially during pandemic

Concerns

- Hiring, training, and turnover for
 - Forensic examiner positions
 - Attorney positions
- Cases pending, and judicial-run dockets



Needs

Legislation

Long Arm Statute

- More Circuit Court judges around the state are denying search warrants to out-of-state internet and electronic service providers
- Law change recommendation #16 was previously presented by Criminal Appeals division

Administrative Subpoena Power

- The ability for limited subpoena authority to obtain subscriber information improves efficiency and expediency
- See law change recommendation #28

Positions

- Attorneys

Increased technology

- Ability to handle status conferences and other applicable non-witness hearings virtually



ICAC - Law Recommendations

The next slides only contain information on recommendations for law changes that are associated with this section of the agency.

LAW CHANGE RECOMMENDATION #28

- Law: No current law applicable
- Current Law: No current law applicable
- Recommendation: Provide ICAC investigators at the Attorney General's Office the power to subpoena subscriber information from internet and electronic service providers.
- Basis for Recommendation: The current process of requiring orders and search warrants slows law enforcement down dramatically. With over 3000 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
- Proposed Wording:

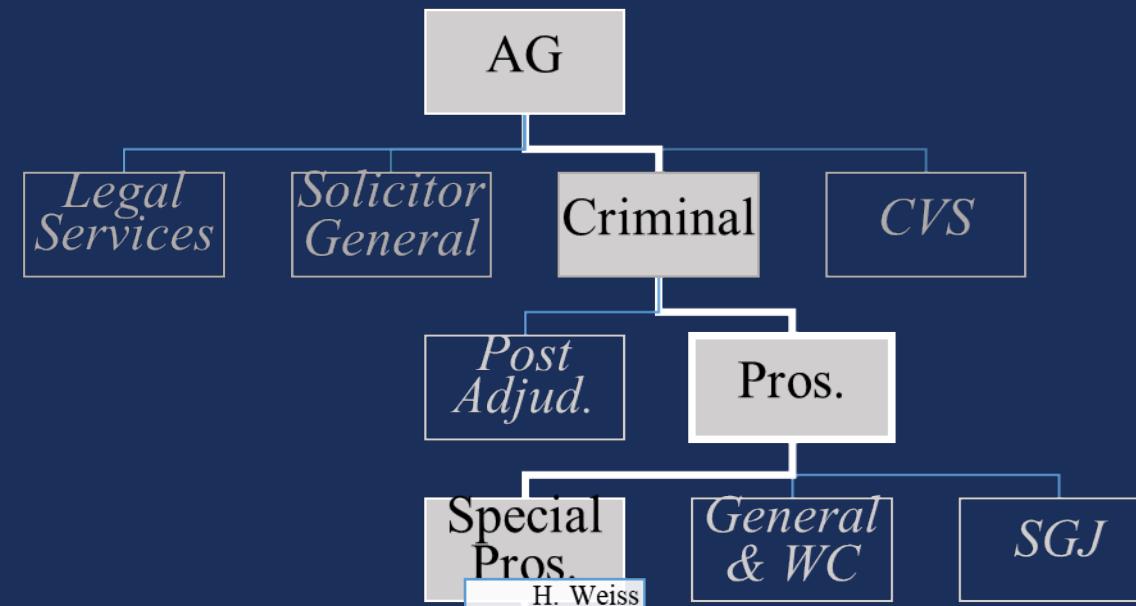
In addition, any judge of any court of record of the State may issue a search warrant to search for and seize electronic or digital data or information from any provider of electronic communication services or remote computing services as defined in the Stored Communications Act at 18 U.S.C. §2701 et 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.

AGENCY PRESENTATION – SPECIAL PROSECUTION



PROSECUTION SECTION

SPECIAL PROSECUTION



Special Prosecution Units

Special Prosecution Division

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

Structure Changes

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

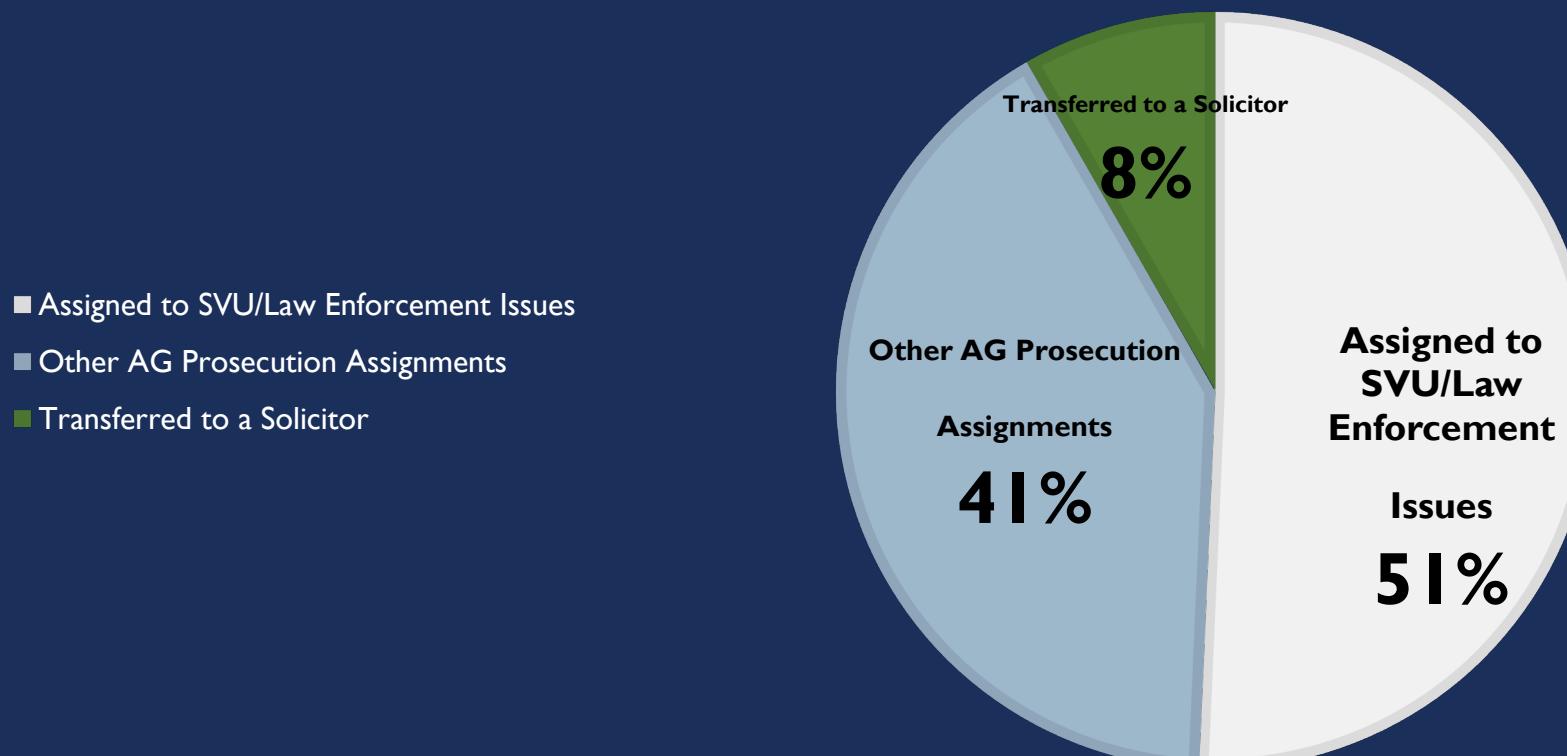
Needs

Technology

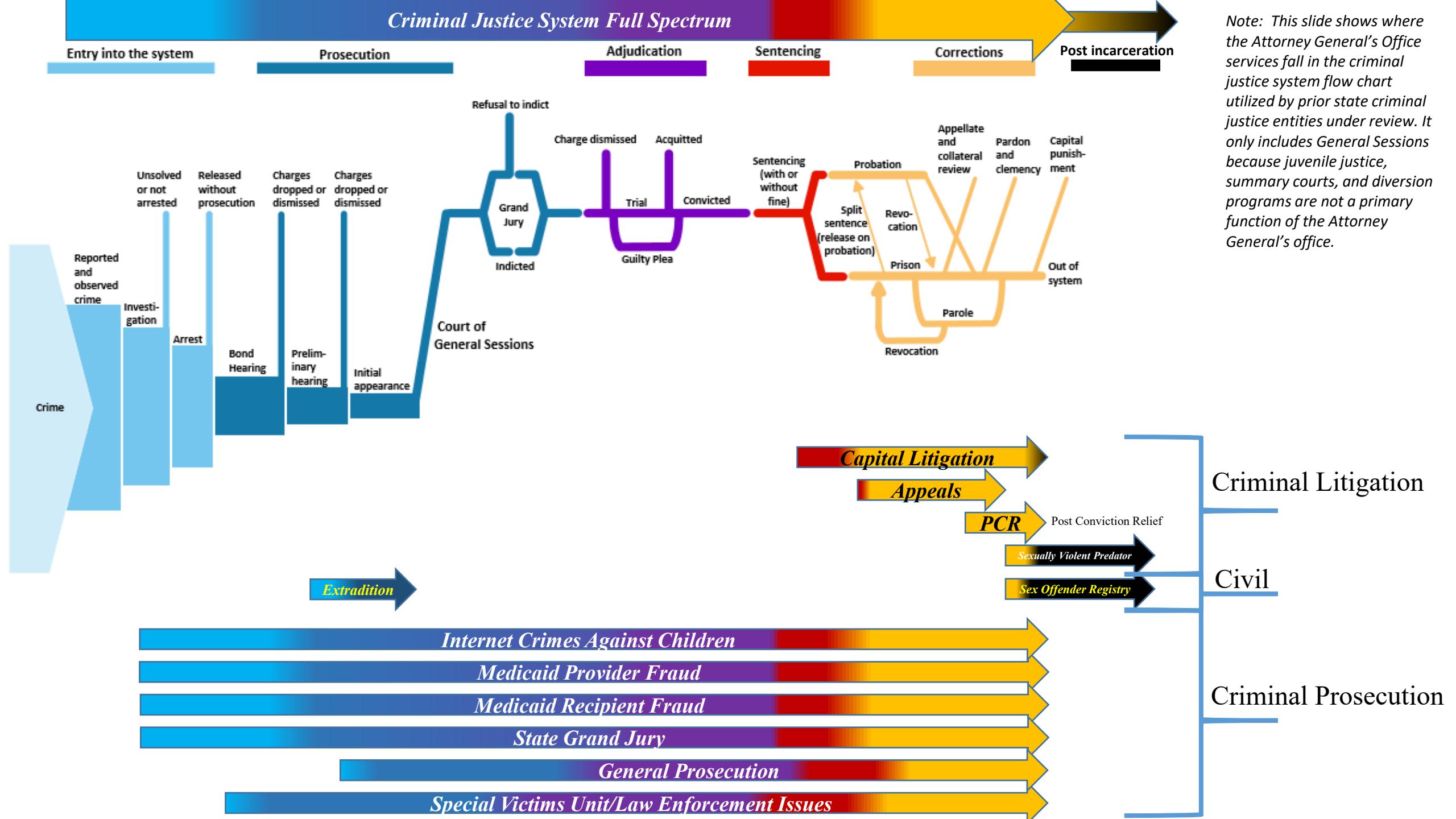
- Case management system that:
 - Automates federal reporting data
 - Able to track multiple charges per case
 - Easy for all Team members to access and update
 - Assists with establishing and tracking deadlines

Conflicts Assignments FY 2020-21

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

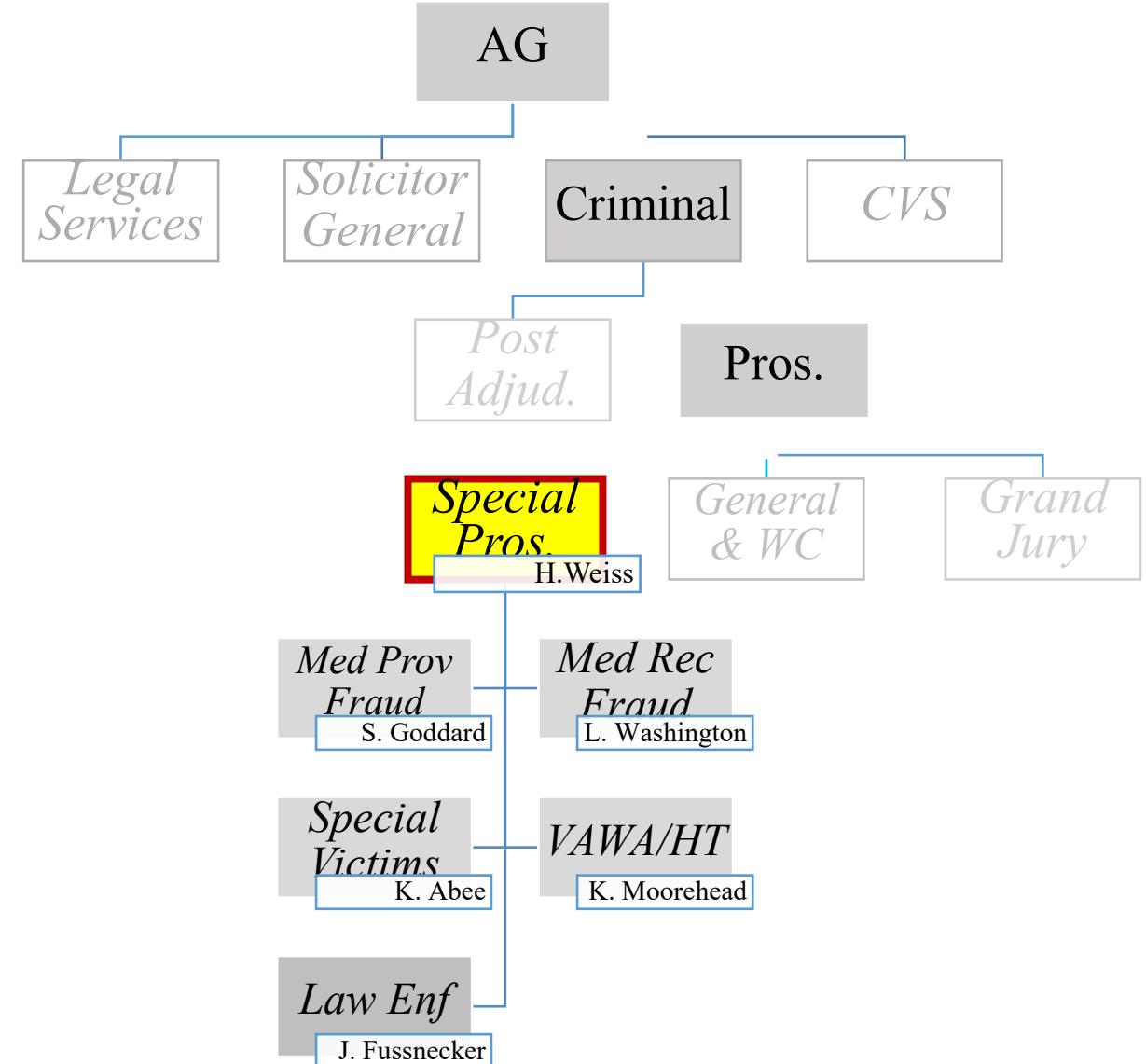


Criminal Justice System Full Spectrum





Special Victims Unit



Overview

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

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

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

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

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

Who determines if there is a conflict?

Solicitors are responsible for determining if a conflict exists.

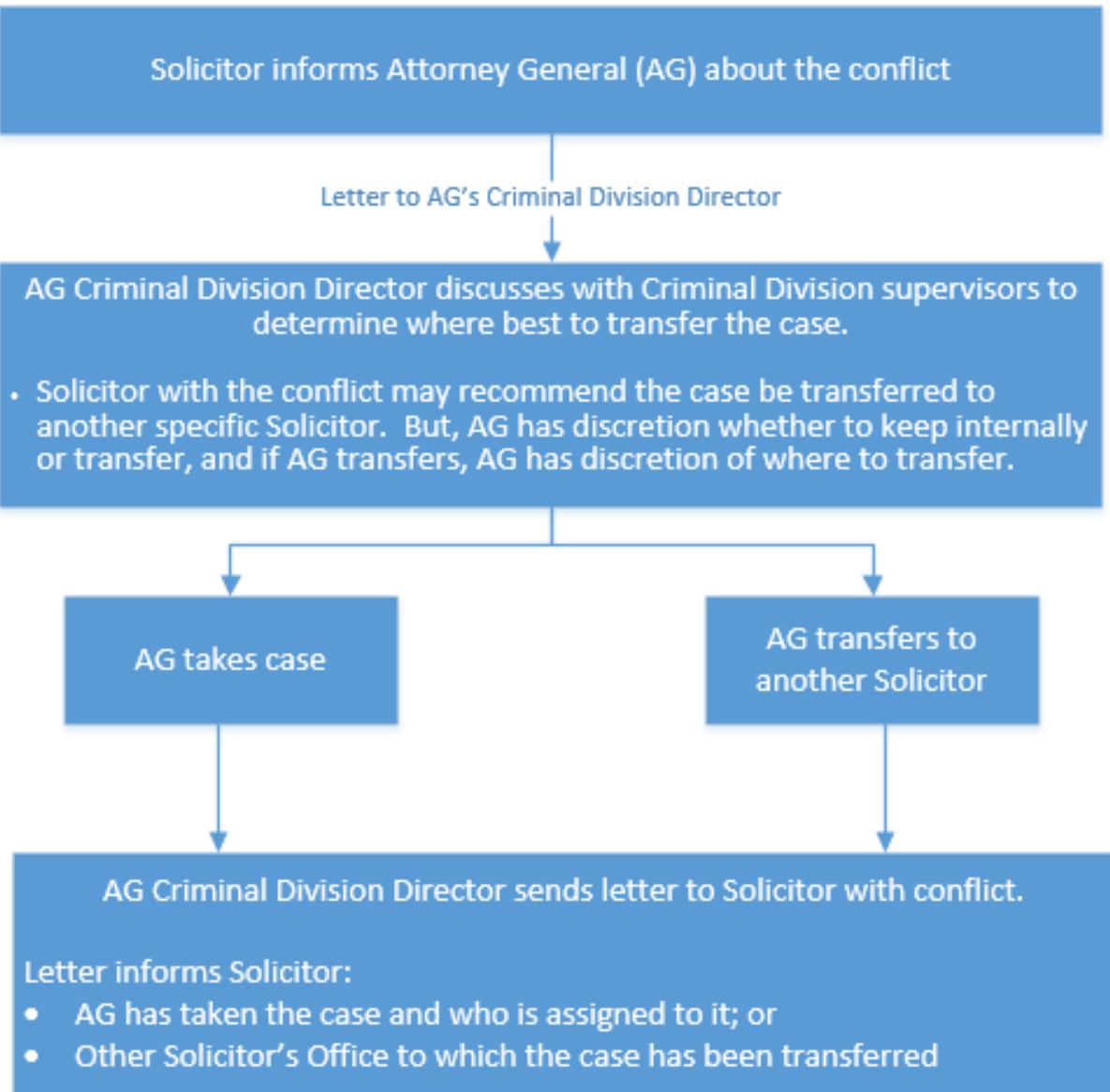
Examples of conditions in which a conflict exists include:

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

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

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

What is the process when one exists?



Prosecute Special Victim Cases when Solicitor asserts conflict/makes requests

Why?

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

Types of cases prosecuted

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

Steps taken once case is accepted

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

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

Use State Grand Jury
as needed



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

Agency Service #131: When Solicitor has conflict, prosecute violent crime cases	Customers: Circuit Solicitors	Single Unit: Closed Cases	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs	
	Note: Attorneys in this section rarely work 37.5 hours and often work 40-50 hours.	2016-17	1.00	\$2,326.03	22.50	\$11,440.45	0.06%	
Does law require it: No		2017-18	2.00	\$16,234.79	24.75	\$32,469.57	0.05%	
Assoc. Law(s): State Constitution, Art. V, Sec. 24		2018-19	6.00	\$10,548.66	28.88	\$63,291.97	0.09%	
		2019-20	8.00	\$4,688.25	14.50	\$37,506.01	0.05%	
Agency Service #132: Prosecute State Grand Jury Public Corruption and Human Trafficking cases	Single Unit: Closed Case		Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs	
Does law require it: Yes	Note: Attorneys in this section rarely work 37.5 hours and often work 40-50 hours.	2016-17	1.00	\$2,326.03	15.00	\$24,651.08	0.13%	
Assoc. Law(s): State Constitution Art. V, Sec. 24	2017-18	0.00	Insufficient data	11.25	\$29,287.50	0.05%		
	2018-19	0.00	Insufficient data	9.75	\$23,871.73	0.04%		
	2019-20	1.00	\$62,176.45	22.50	\$62,176.45	0.08%		
Agency Service #133: Prosecute Human Trafficking Cases When Requested	Single Unit: Closed Case	Customer satisfaction evaluated	Number of Customers Served	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Does law require it: No	Note: Attorneys in this section rarely work 37.5 hours and often work 40-50 hours.	2016-17	unknown	6.00	\$2,326.03	36.75	\$57,957.42	0.30%
Assoc. Law(s): §16-3-2050; State Constitution Art. V, Sec. 24	2017-18	unknown	5.00	\$14,203.79	37.50	\$71,018.93	0.12%	
	2018-19	No	11	7.00	\$9,114.46	37.50	\$63,801.21	0.10%
	2019-20	No	10	1.00	\$79,040.03	45.50	\$79,040.03	0.10%
Agency Service #134: Prosecute Violence Against Women related crimes when requested	Single Unit: Closed Case	Customer satisfaction evaluated	Number of Customers Served	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Assoc. Law(s): VAWA Federal Grant and State Constitution Art. V, Sec. 24	Note: Attorneys in this section rarely work 37.5 hours and often work 40-50 hours.	2016-17	unknown	15.00	\$2,326.03	63.75	\$86,705.38	0.44%
	2017-18	unknown	24.00	\$4,847.38	62.25	\$116,337.05	0.20%	
	2018-19	No	205	28.00	\$4,024.55	63.00	\$112,687.49	0.17%
	2019-20	No	397	42.00	\$4,185.78	74.88	\$175,802.62	0.23%
Agency Service #135: When Solicitor has conflict, prosecute child sexual assault and child abuse cases	Customers: Circuit Solicitors	Single Unit: Closed Cases	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs	
Does law require it: No	Note: Attorneys in this section rarely work 37.5 hours and often work 40-50 hours.	2016-17	28.00	\$2,326.03	44.63	\$54,771.52	0.28%	
Assoc. Law(s): State Constitution, Art. V, Sec. 24	2017-18	17.00	\$5,440.88	49.13	\$92,494.96	0.16%		
	2018-19	26.00	\$4,551.33	51.00	\$118,334.50	0.18%		
	2019-20	36.00	\$2,538.96	38.25	\$91,402.39	0.12%		

Domestic Violence

*2019 added DV 3rd

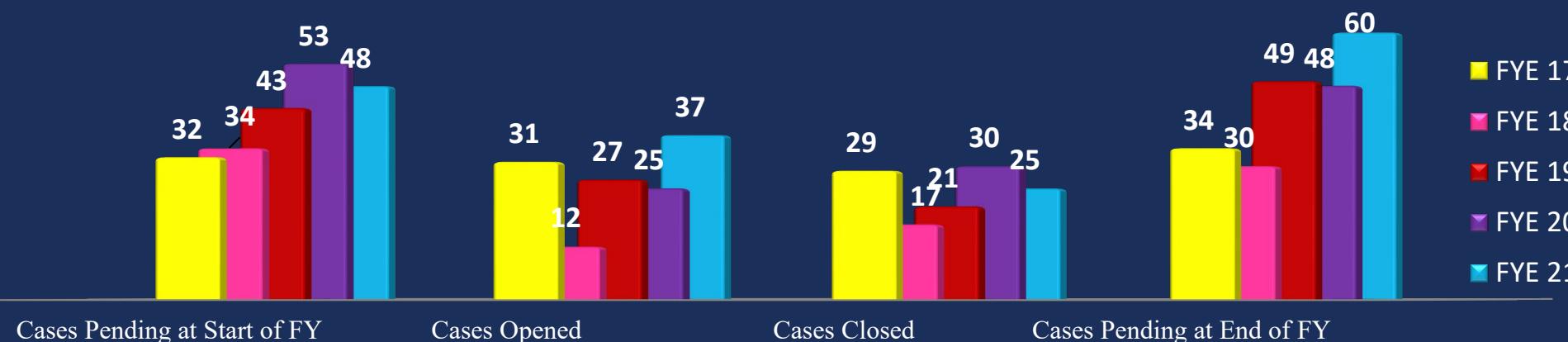
General Sessions Court



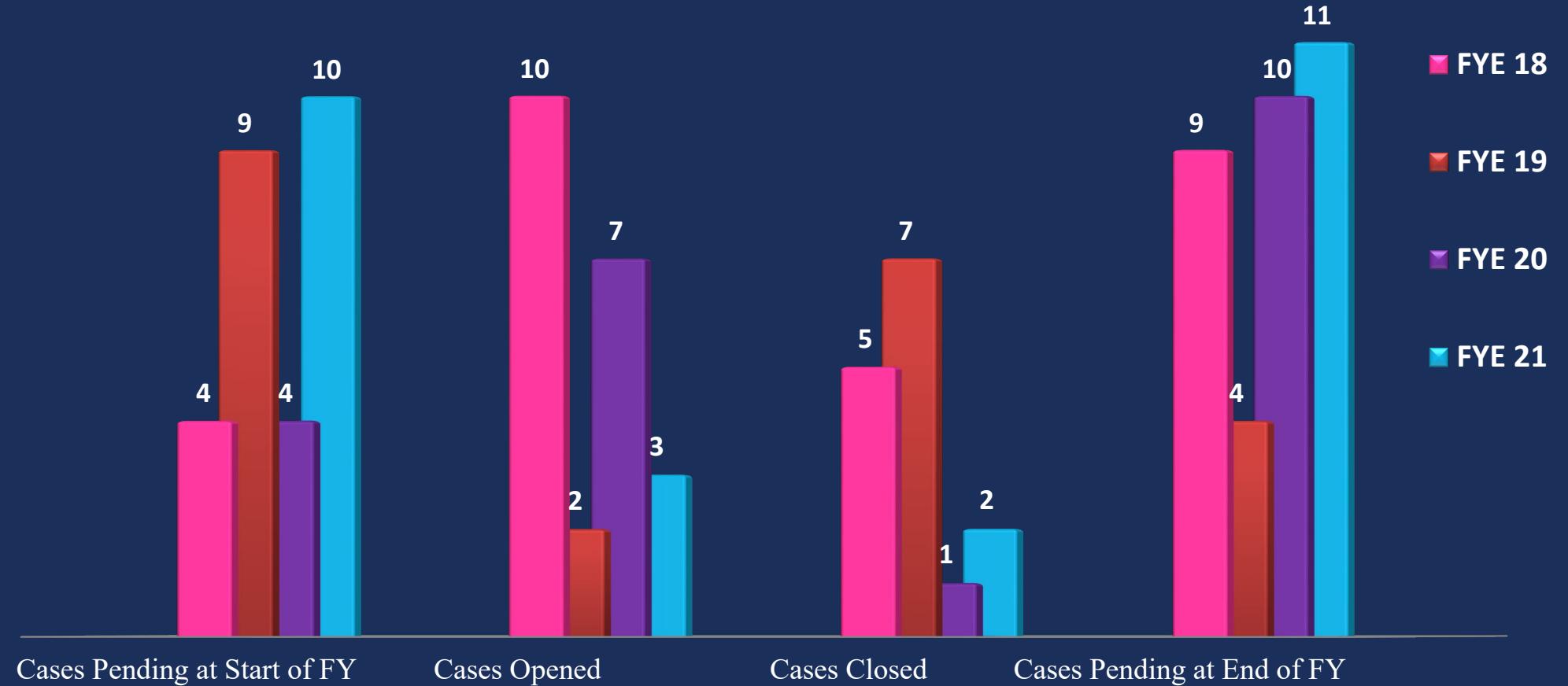
Child Abuse and Neglect



Sexual Assault

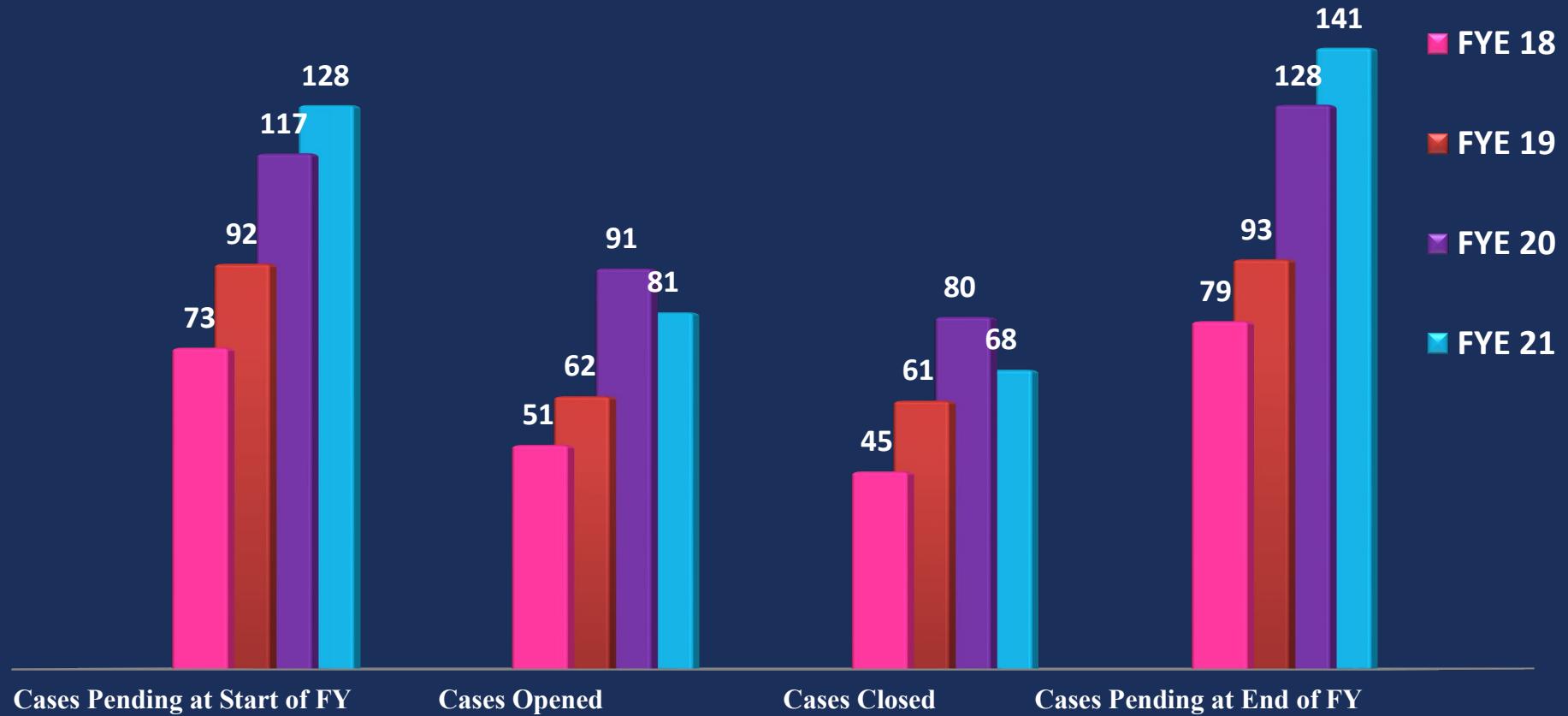


Human Trafficking



Special Victim Cases Total

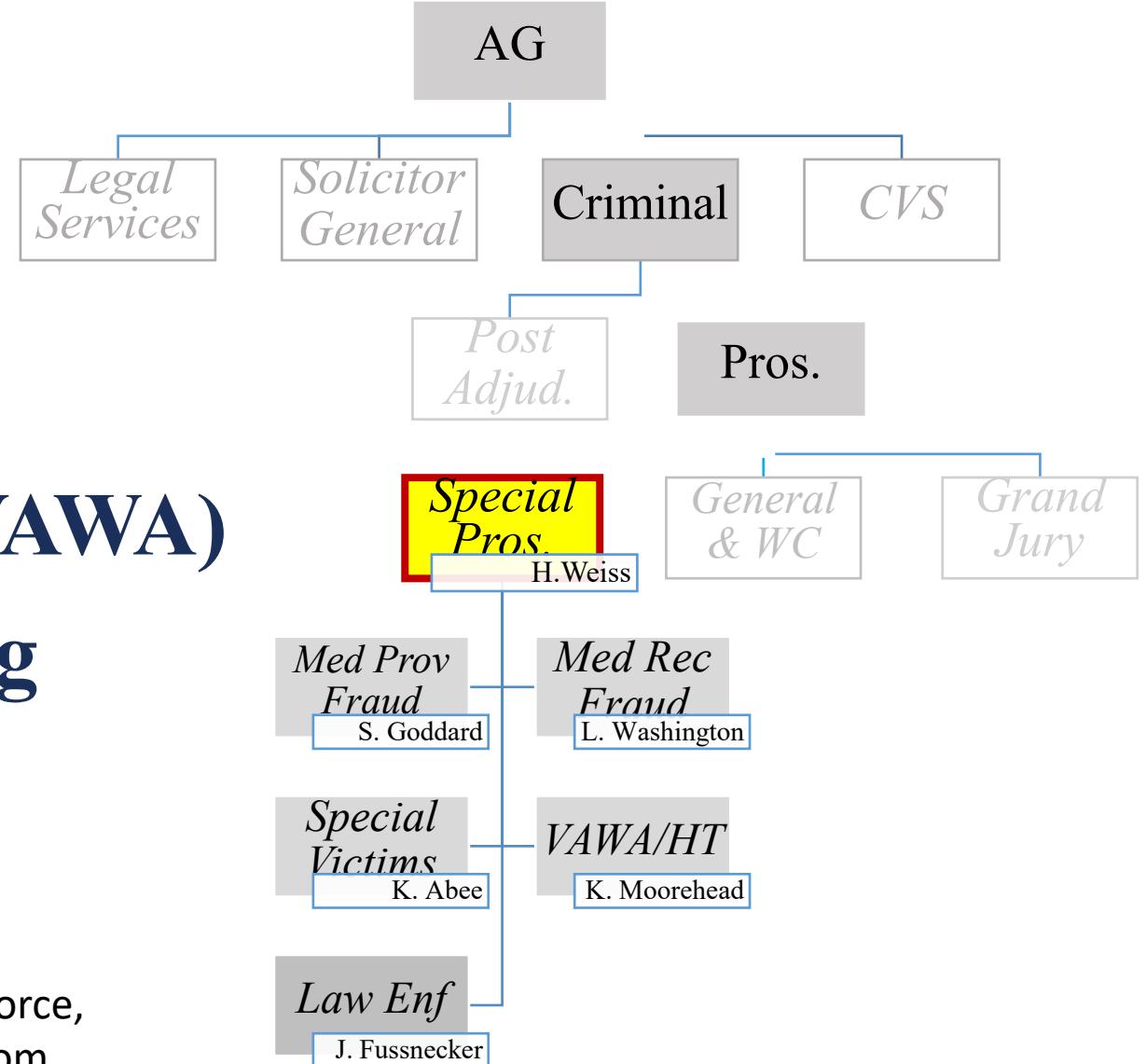
Combines information on previous slides





Violence Against Women (VAWA) and Human Trafficking Programming

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



VAWA/HT Personnel

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

Note:

2016-17 the special prosecution section was re-structured

FY 2017 Turnover

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

Exit interviews or surveys conducted?

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

Employee satisfaction tracked?

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

Violence Against Women (VAWA)

VAWA program has two main focuses:

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

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

Provide Victim Advocate

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

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

Create/Update Domestic Violence and Sexual Assault Protocols

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

Provide Training

- Respond to requests for training, coordinating speakers, and educational materials from:

law enforcement	prosecutors
health care professionals	victim advocates
government agency staff	educators
others as requested	
- Provide training on topics including:

law enforcement	sexual assault
domestic violence	relationship violence
stalking	the justice system
community response	

Agency Service #148: Create/Update Domestic Violence and Sexual Assault Protocols for Prosecutors and Law Enforcement

Does law require it: Yes

Assoc. Law(s): VAWA Federal Grant

		<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
	Single Unit: Protocols Created					
	2016-17	2.00	\$2,326.03	17.25	\$28,047.98	0.14%
	2017-18	2.00	\$12,812.90	13.13	\$25,625.79	0.04%
	2018-19	2.00	\$15,574.71	16.88	\$31,149.42	0.05%
	2019-20	2.00	\$14,487.67	13.63	\$28,975.33	0.04%

Agency Service #144: Provide training

Does law require it: Yes

Assoc. Law(s): VAWA Federal Grant

		<u>Number of Customers Served</u>	<u>Customer satisfaction evaluated</u>	<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
	Single Unit: Number of trainings							
	2016-17	662		12.00	\$2,326.03	22.50	\$44,889.22	0.23%
	2017-18	587		33.00	\$1,741.74	27.00	\$57,477.45	0.10%
	2018-19	464	Yes	25.00	\$1,805.62	21.38	\$45,140.55	0.07%
	2019-20	594	Yes	19.00	\$2,478.61	20.00	\$47,093.55	0.06%

Provide Technical Assistance for Community Response Activities

Agency Service #145

Assist committees with coordinated community response activities to include

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

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

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

	<u>Single Unit</u>	<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
<u>Does law require it:</u> Yes	Number of committees supported	2016-17	24.00	\$2,326.03	13.50	\$23,106.03
		2017-18	14.00	\$1,789.93	13.13	\$25,058.97
		2018-19	27.00	\$885.99	12.38	\$23,921.79
<u>Assoc. Law(s):</u> VAWA Federal Grant		2019-20	26.00	\$1,079.60	14.13	\$28,069.49

Silent Witness Ceremony

Agency Service #146

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

Coordinate with statewide law enforcement agencies to do the following:

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



Does law require it: Yes

Assoc. Law(s): VAWA Federal Grant

	<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
2016-17	1.00	\$2,326.03	12.00	\$20,817.91	0.11%
2017-18	1.00	\$21,229.45	10.88	\$21,229.45	0.04%
2018-19	1.00	\$22,757.92	10.88	\$22,757.92	0.03%
2019-20	1.00	\$25,375.21	10.88	\$25,375.21	0.03%

Create/Distribute Awareness Posters

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

Administer Grant(s)

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

Agency Service #149: Create/Distribute Awareness Posters

Does law require it: Yes

Assoc. Law(s): VAWA Federal Grant

		<u>Number of Customers Served</u>	<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
Single Unit: New posters/publications developed	2016-17	3449	7.00	\$2,326.03	3.38	\$7,186.68	0.04%
	2017-18	793	6.00	\$1,237.89	3.00	\$7,427.35	0.01%
	2018-19	89	8.00	\$866.51	3.00	\$6,932.05	0.01%
	2019-20	157	7.00	\$1,368.83	3.13	\$9,581.78	0.01%

Agency Service #150: Administer STOP Violence Against Women Grant and other grants for human trafficking and relationship crimes

Does law require it: Yes

Assoc. Law(s): VAWA Federal Grant

		<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
Single Unit: Grant reported and applied for next year	2016-17	2.00	\$2,326.03	4.13	\$8,531.92	0.04%
	2017-18	2.00	\$4,455.15	3.75	\$8,910.30	0.01%
	2018-19	1.00	\$7,986.74	3.38	\$7,986.74	0.01%
	2019-20	1.00	\$12,899.04	4.13	\$12,899.04	0.02%

Human Trafficking (HT)

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

Human Trafficking Task Force



Human Trafficking Task Force Membership

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

Mandated Members

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

Federal Invitees

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

Partner Agencies & Associations

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

Thorn

Legal Assistance for Survivors of Trafficking

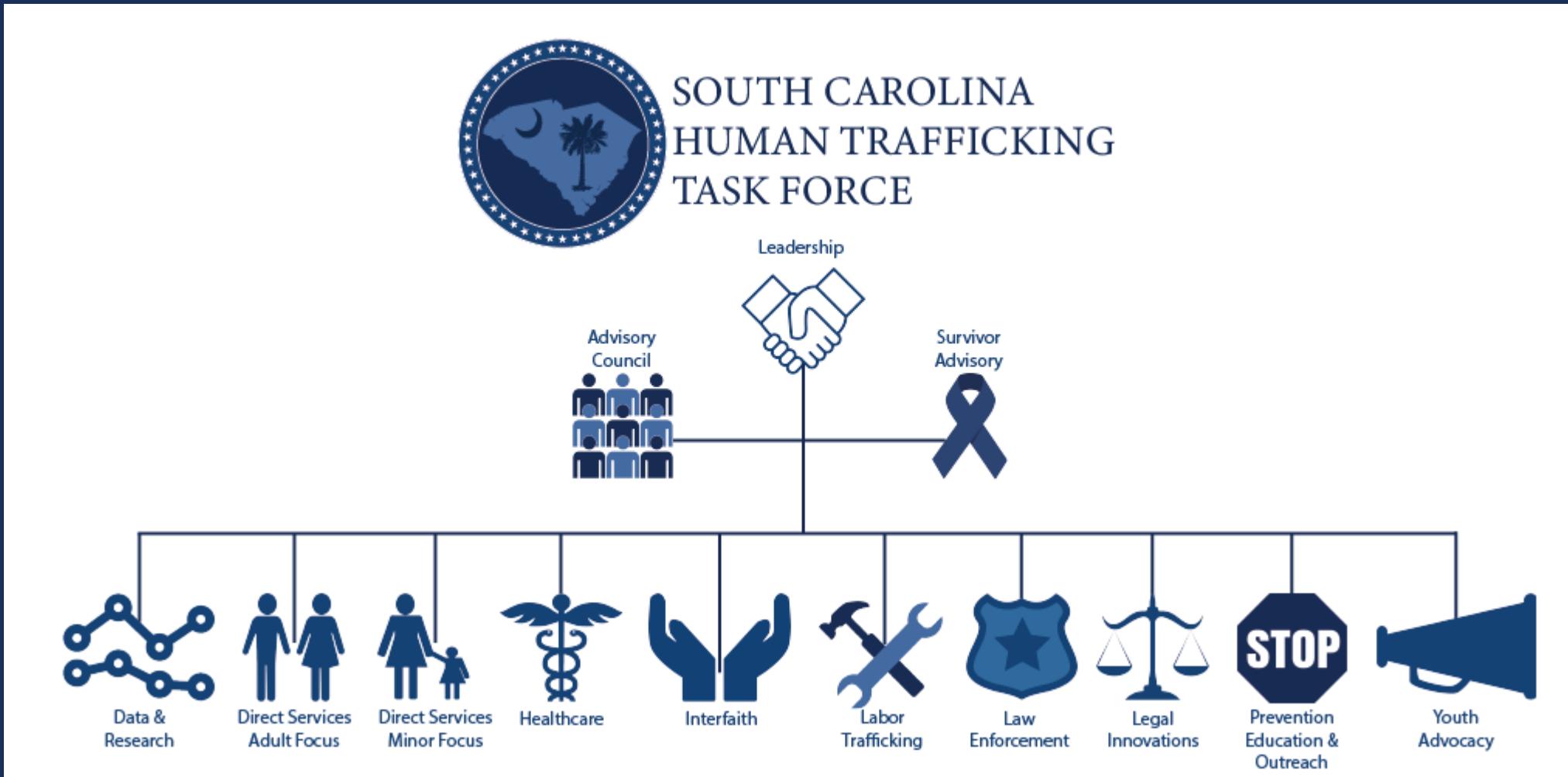
SC Trucking Association

SC Hospital Association

SC Restaurant & Lodging Assoc.

SC Beer Wholesalers Assoc.

Human Trafficking Task Force Organization



Organize and facilitate the Human Trafficking (HT) Task Force

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

Collect/Publish Human Trafficking Statistics

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

Agency Service #137: Organize and facilitate the Human Trafficking Task Force

Does law require it: Yes

Assoc. Law(s): §16-3-2050

Single Unit: Subcommittees created to meet outside of the required 4 times per year of the Statewide task force (2016 only had one subcommittee)	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	10.00	\$2,326.03	4.50	\$10,172.15	0.05%
2017-18	11.00	\$1,478.17	6.38	\$16,259.91	0.03%
2018-19	12.00	\$1,412.53	6.00	\$16,950.37	0.03%
2019-20	12.00	\$477.11	7.13	\$5,725.36	0.01%

Agency Service #139: Collect/Publish Human Trafficking Statistics

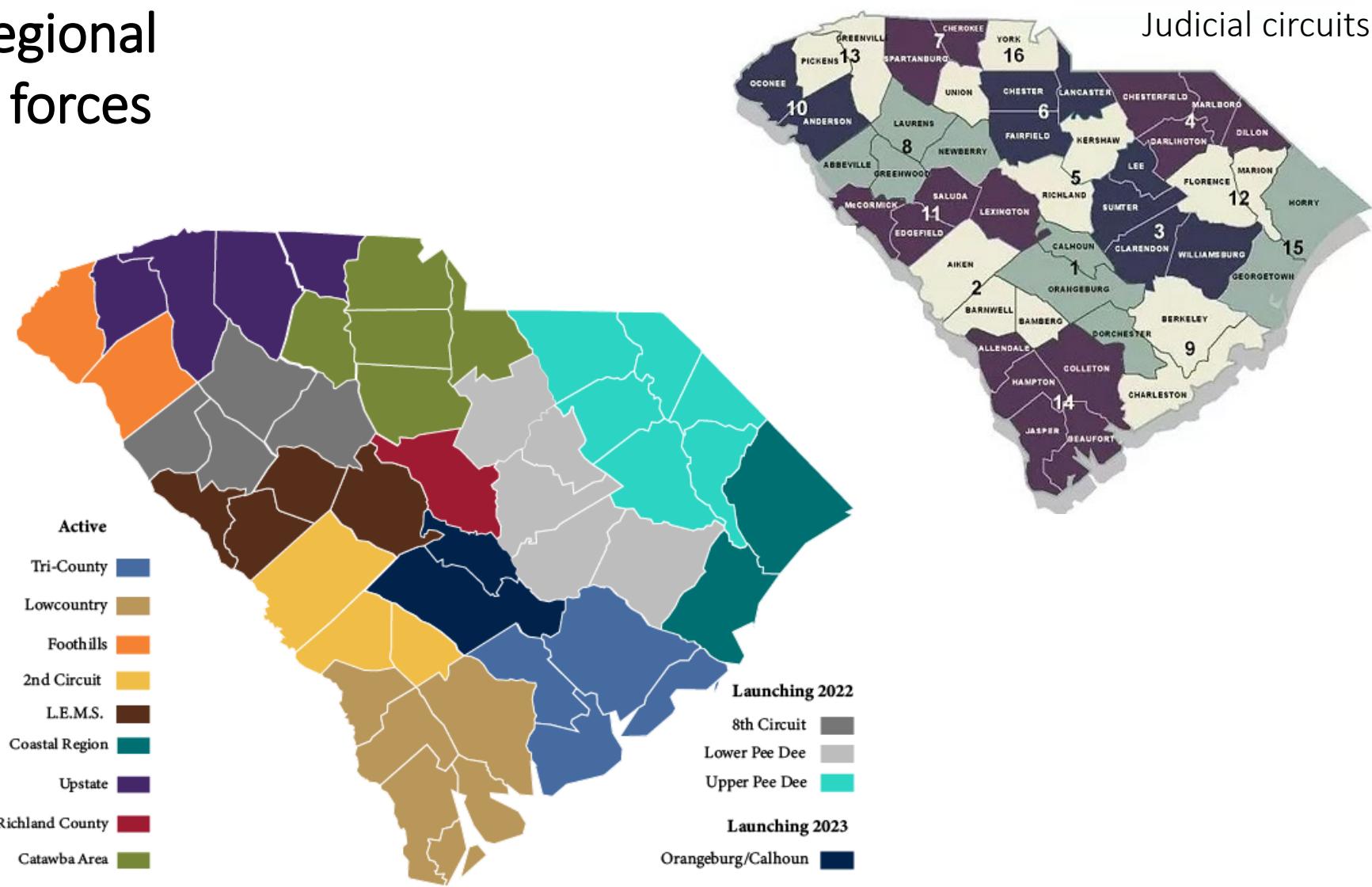
Does law require it: Yes

Assoc. Law(s): §16-3-2050

Single Unit: Annual Report	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	1.00	\$2,326.03	7.50	\$14,490.97	0.07%
2017-18	1.00	\$15,289.82	4.88	\$15,289.82	0.03%
2018-19	1.00	\$10,622.16	3.75	\$10,622.16	0.02%
2019-20	1.00	\$19,929.79	5.25	\$19,929.79	0.03%

Provide guidance for regional human trafficking task forces

- Provide guidance for regional task forces. Promote the creation and development of additional task forces to cover all of South Carolina's regions.
- Note: Regional coalitions match one or multiple judicial circuits combined with two exceptions.



Agency Service #142: Provide guidance for regional Human Trafficking task forces

Does law require it: Yes

Assoc. Law(s): §16-3-2050

Single Unit: Number of new regional task forces developed (reported calendar years of 2019, 2018, 2017)	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	3.00	\$2,326.03	3.75	\$6,554.01	0.03%
2017-18	7.00	\$1,471.30	7.50	\$10,299.09	0.02%
2018-19	8.00	\$1,977.57	7.50	\$15,820.52	0.02%
2019-20	8.00	\$1,576.34	5.00	\$12,610.71	0.02%

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

Prepare/Coordinate Human Trafficking Awareness Programs

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

Coordinate information sharing between agencies to detect human trafficking

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

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

Does law require it: Yes

Assoc. Law(s): §16-3-2050

Single Unit: Public awareness programs and publications	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
2016-17	32.00	\$2,326.03	3.75	\$13,145.74	0.07%
2017-18	38.00	\$447.83	5.63	\$17,017.70	0.03%
2018-19	39.00	\$326.45	4.50	\$12,731.56	0.02%
2019-20	28.00	\$434.00	6.25	\$12,151.98	0.02%

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

Does law require it: Yes

Assoc. Law(s): §16-3-2050

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

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

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

Provide Human Trafficking Training

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

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

Does law require it: Yes

Assoc. Law(s): §16-3-2050

Single Unit: Training classes provided (15 hours each)	2016-17	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
	2017-18	Not	\$2,326.03	3.75	\$3,277.00	0.02%
	2018-19	1.00	\$12,656.42	4.50	\$12,656.42	0.02%
	2019-20	1.00	\$14,363.49	5.00	\$14,363.49	0.02%

Agency Service #138: Provide HT training

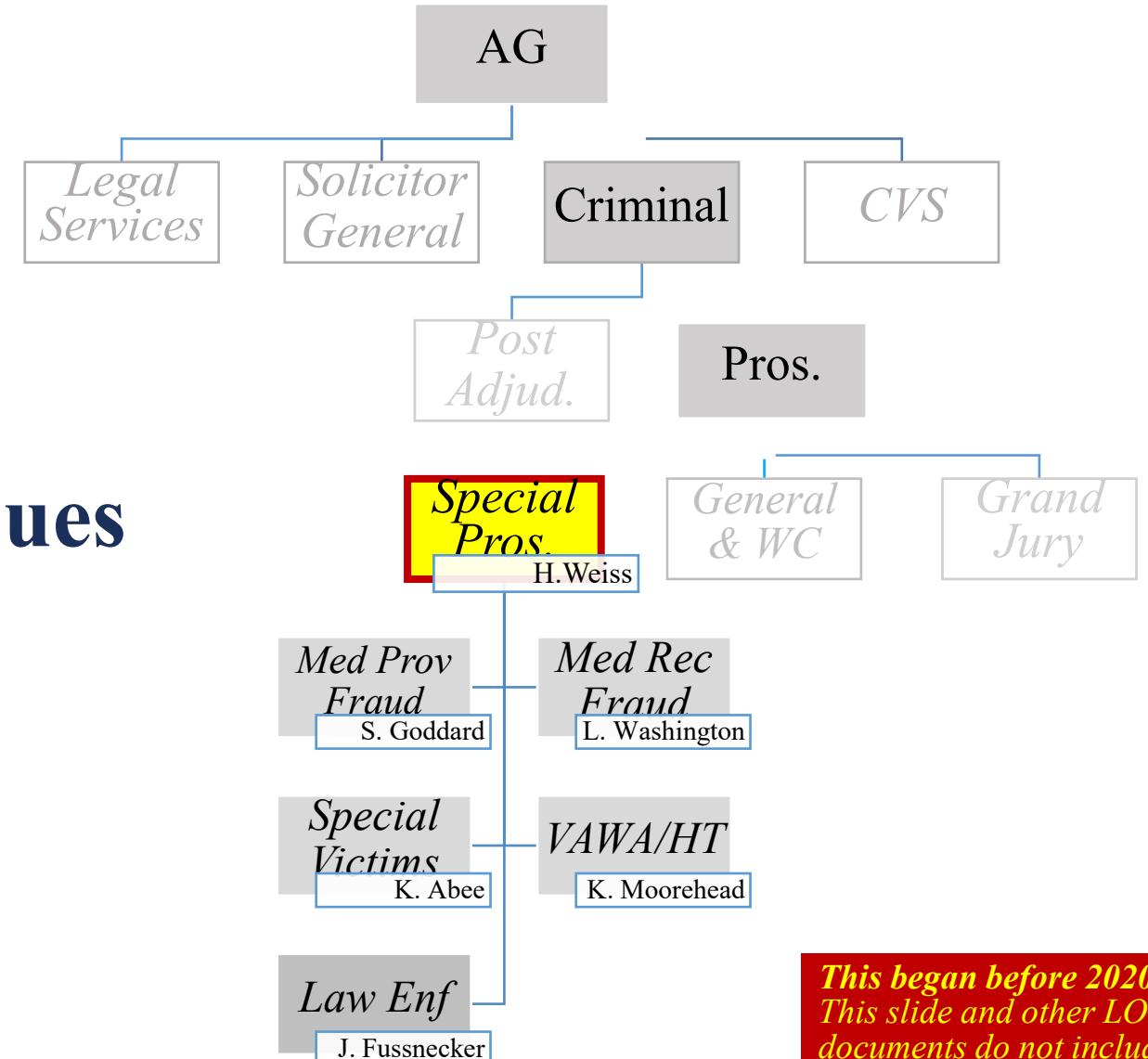
Does law require it: Yes

Assoc. Law(s): §16-3-2050

Single Unit: Number of trainings	Number of Customers Served	Customer satisfaction evaluated	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
	1850		31.00	\$2,326.03	18.75	\$41,642.32	0.21%
Note: Attorneys and director in this section rarely work 37.5 hours and often work 40-50 hours.	2475		37.00	\$955.53	13.13	\$35,354.60	0.06%
	2925	Yes	38.00	\$1,006.48	13.88	\$38,246.39	0.06%
	2563	No	42.00	\$1,089.07	14.25	\$45,741.13	0.06%



Law Enforcement Issues Section



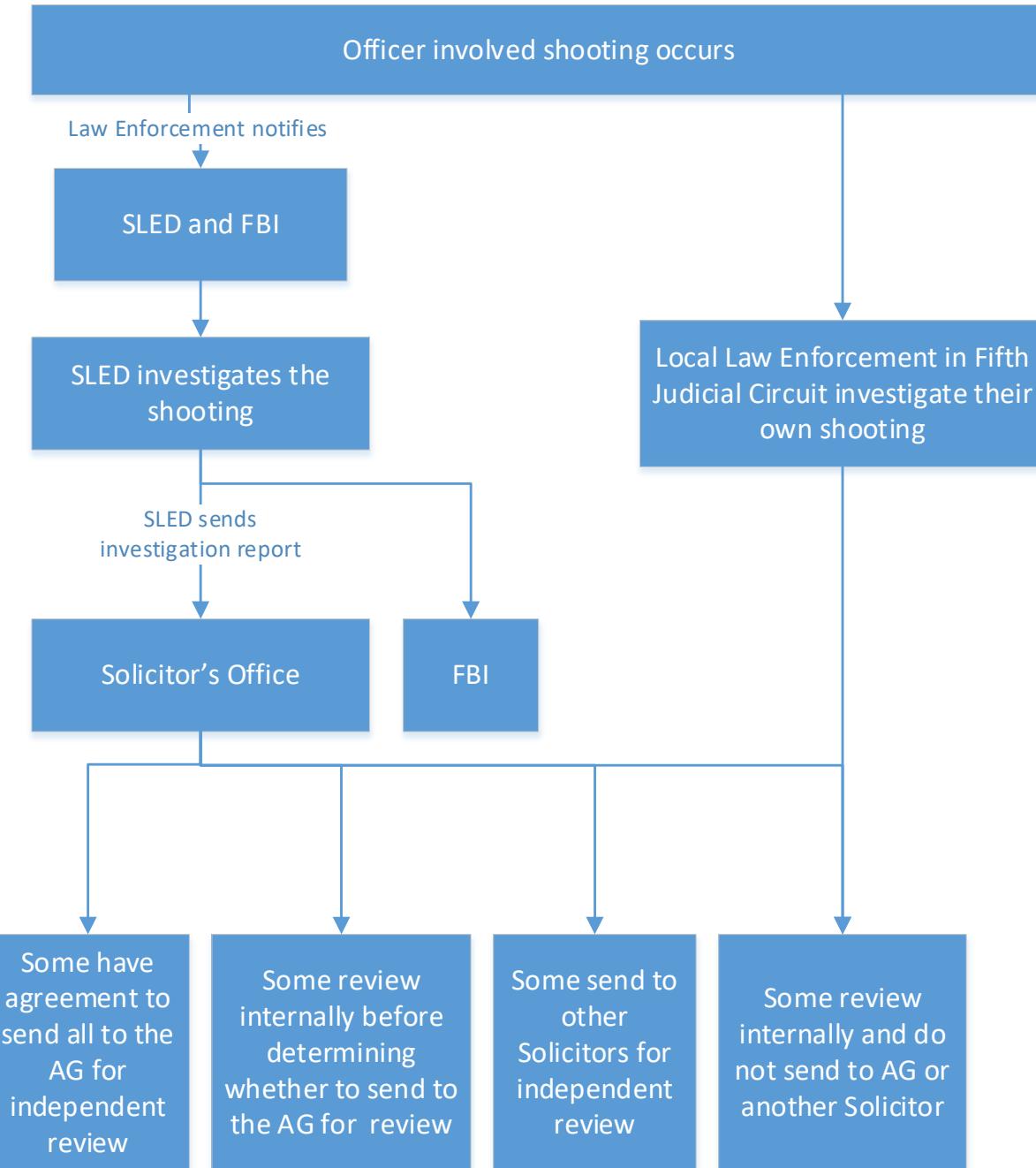
***This began before 2020.
This slide and other LOC
documents do not include
initiatives under review
since the Spring of 2020.***

Overview

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

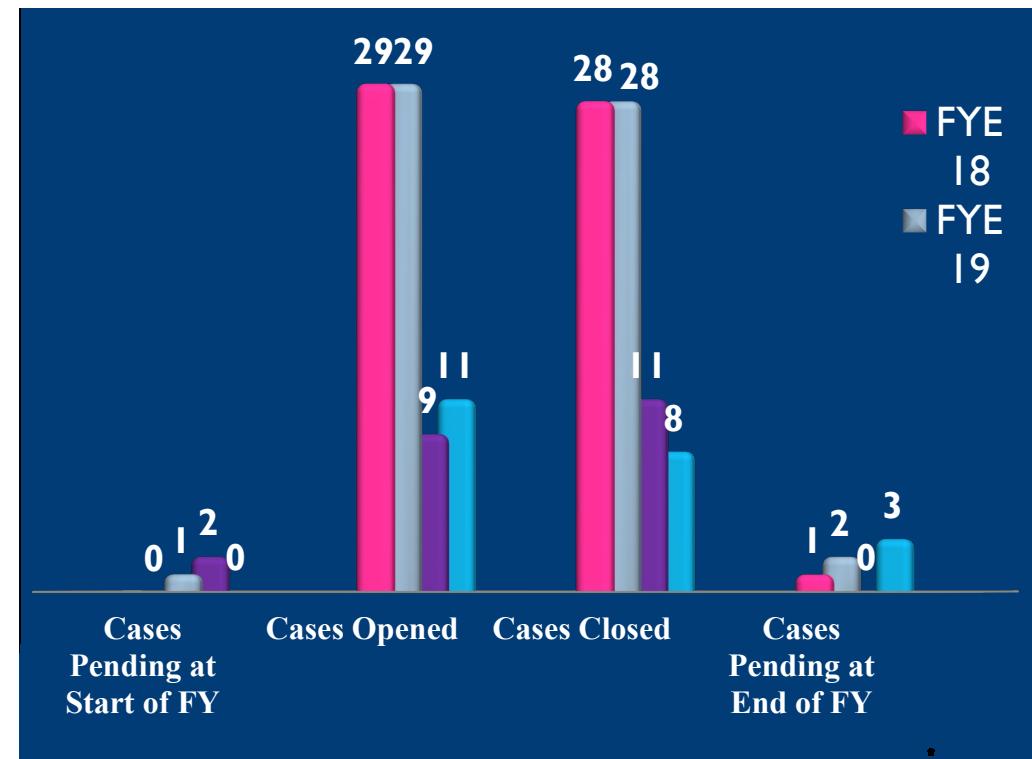
By providing a separate review from interested entities, the AG provides an independent analysis. Assigned Assistant Attorney Generals receive specialized training and experience. Also, providing a centralized review brings statewide standards for thoroughness, timeliness, and consistency. This is intended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

Review of Officer Involved Shooting



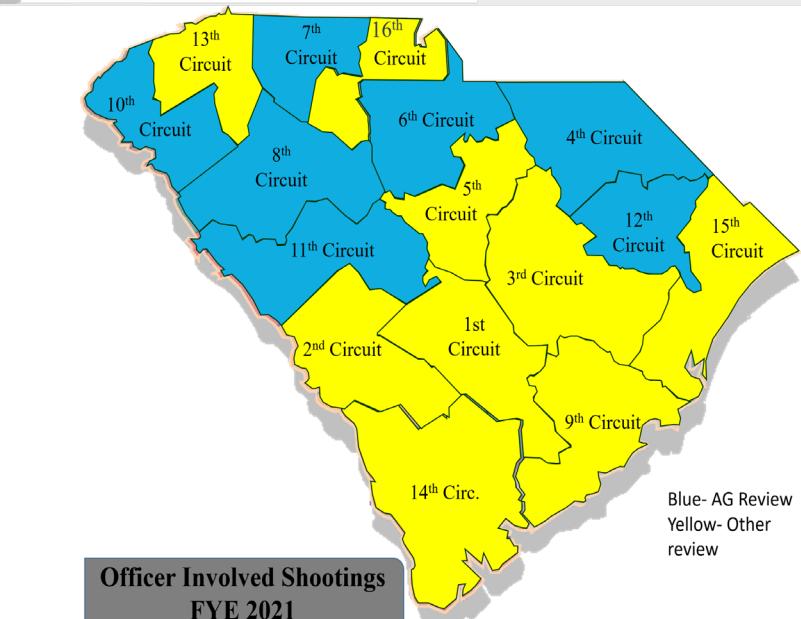
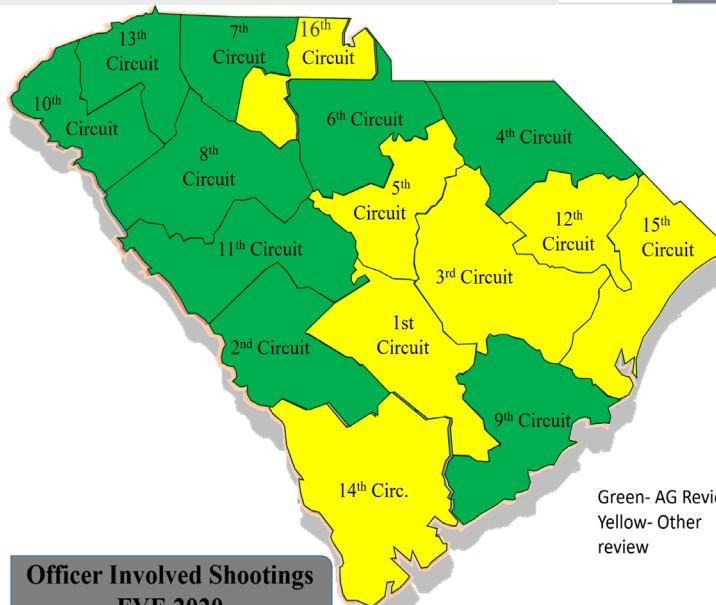
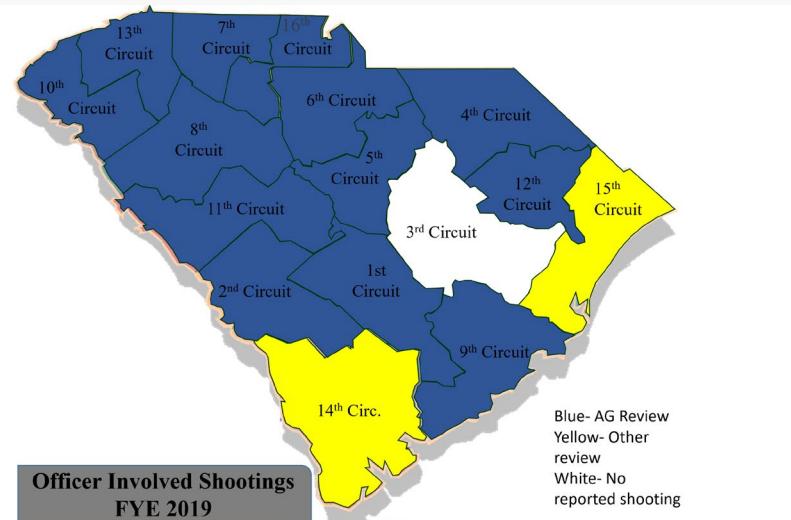
Review officer involved shooting investigations
upon request due to conflict and/or subject matter expertise

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

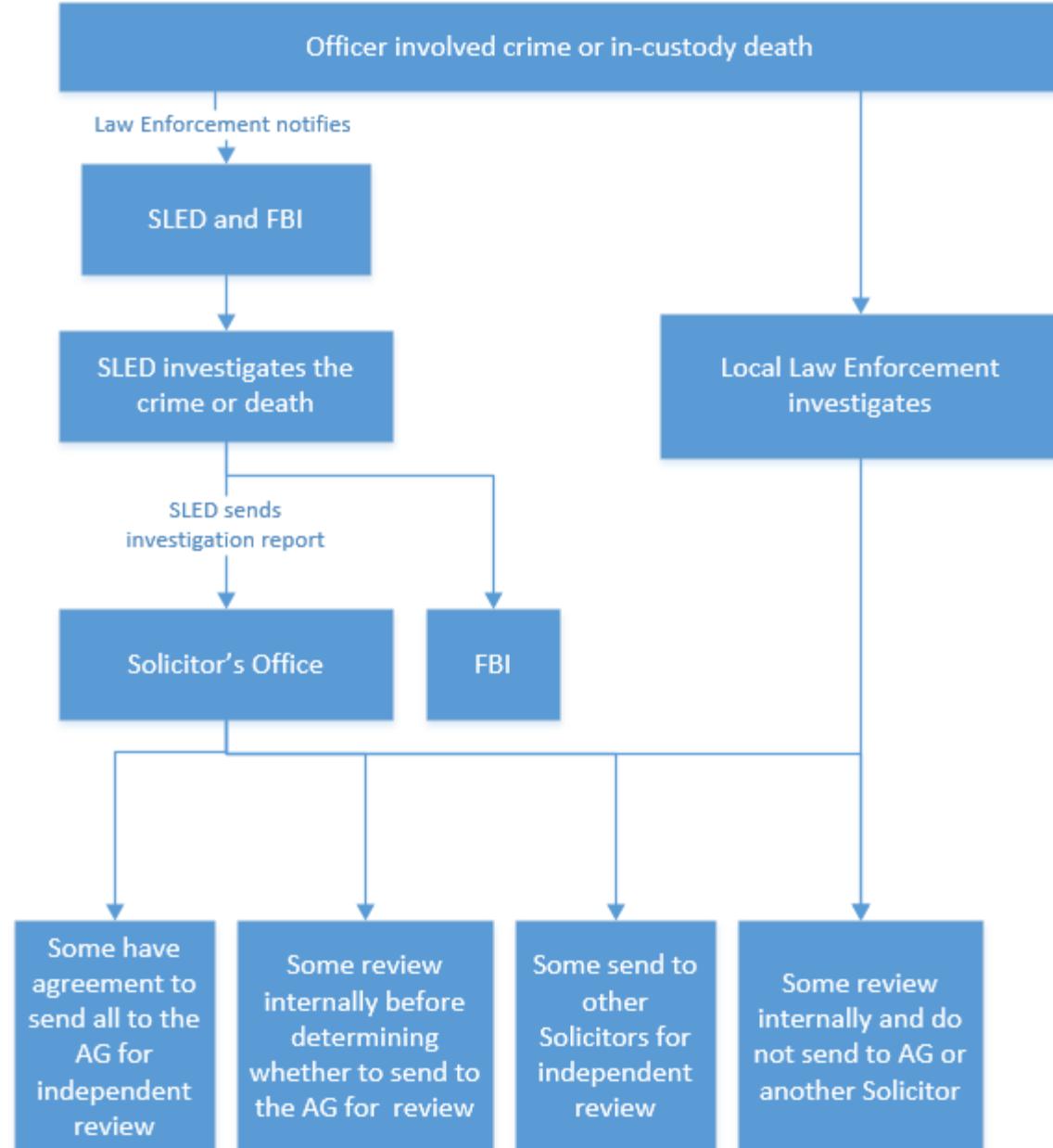


Agency Service #136: Review officer involved shootings upon request	Single Unit: Closed Investigations	Customer satisfaction evaluated	Number of Customers Served	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Does law require it: No	Note: Attorneys in this section rarely work 37.5 hours and often work 40-50 hours.	2016-17	Unknown	Not	\$2,326.03	11.63	\$7,936.95	0.04%
Assoc. Law(s): State Constitution Art. V, Sec. 24		2017-18	Unknown	28.00	\$634.87	11.63	\$17,776.29	0.03%
		2018-19	No	30	\$1,044.05	11.63	\$29,233.35	0.04%
		2019-20	No	11	\$3,413.27	13.75	\$37,545.93	0.05%

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

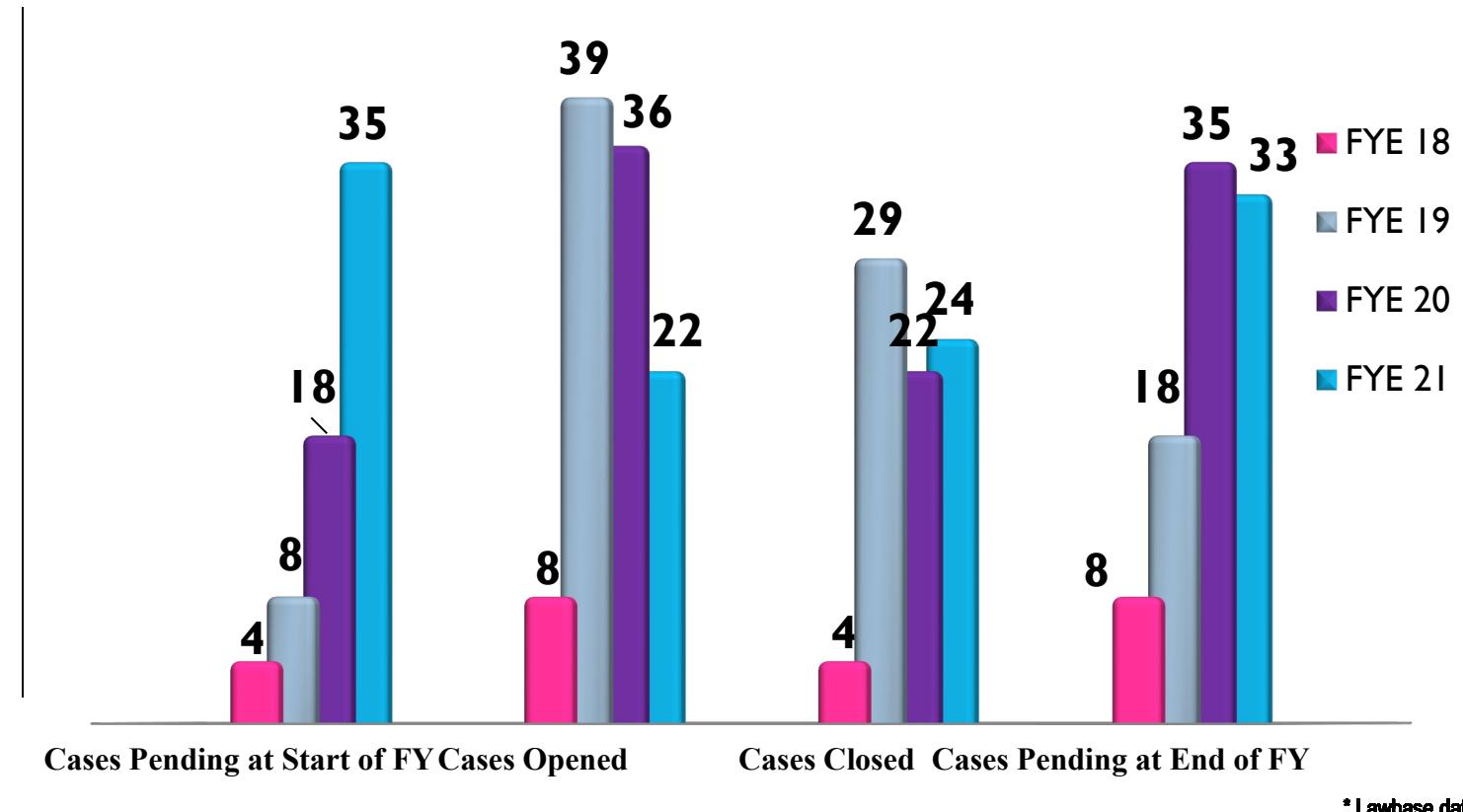


Review of Officer Involved Crime or In-Custody Death



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

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



* Lawbase data

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

Does law require it: No

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

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

Single Unit:
Closed
Investigations

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

Units
provided

Cost
per unit

Employee
equivalents

Total Cost
of service

% of total agency
costs

Not

\$2,326.03

18.75

\$15,816.53

0.08%

4.00

\$8,888.13

19.50

\$35,552.52

0.06%

29.00

\$1,695.06

17.63

\$49,156.84

0.07%

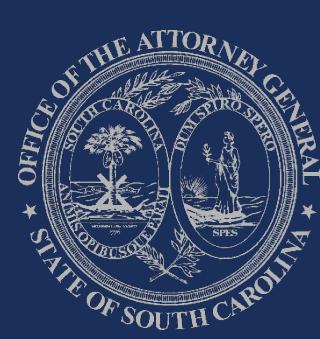
22.00

\$52.31

27.28

\$1,150.76

0.00%



Law Enforcement Issues – Law Recommendations

The next slides only contain information on recommendations for law changes that are associated with this section of the agency.

LAW CHANGE RECOMMENDATION #25

- Law: New
- Current Law: Does not include advising law enforcement on legal issues during criminal investigation as a duty of a prosecutor
- Recommendation: Add language allowing prosecutors to give legal advice as part of their official duties for civil liability purposes.
- Basis for Recommendation: Prosecutors have absolute immunity for all actions that fall within their normal prosecution function. However, prosecutors assisting in the investigation of criminal matters do not have this immunity because investigation is not considered by the US Supreme Court as a normal prosecution function. If prosecutors are going to be expected either by law or policy to assist in the investigation of officer involved shootings or allegations of criminal activity on the part of law enforcement officers or any other criminal investigation then the absolute immunity should be extended to these actions.
- Others Potentially Impacted: Circuit Solicitors, Law enforcement

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 15-78-60 of the 1976 Code is amended by adding:

“(41) counsel or advisory opinion of the Attorney General, Circuit Solicitor or authorized prosecutor of a Circuit Solicitor or Attorney General where the counsel or advisory opinion is requested by and provided to a law enforcement officer as defined in Section 23-23-10(E)(1) regarding and prior to the issuance of a warrant against or arrest of a person.”

SECTION 2. Section 15-78-70 of the 1976 Code is amended by adding:

“(f) For purposes of this chapter, any counsel or advisory opinion of the Attorney General, Circuit Solicitor or authorized prosecutor of a Circuit Solicitor or Attorney General requested by and provided to a law enforcement officer as defined in Section 23-23-10(E)(1) regarding and prior to the issuance of a warrant against or arrest of a person is conduct within the scope the official duties of the Attorney General, Circuit Solicitor or authorized prosecutor of a Circuit Solicitor or Attorney General, who is absolutely immune from suit for any tort claim arising out of such conduct. The provisions of this section shall not be construed to limit, modify or reduce the protections, immunities from suit or exemptions from liability of a Circuit Solicitor or authorized prosecutor of a Circuit Solicitor.”

SECTION 3. This act takes effect upon approval by the Governor.

LAW CHANGE RECOMMENDATION #27

- Law: S.C. Code Section 59-63-350
- Current Law: Local law enforcement must call Attorney General's Office to tell about certain crimes occurring at school or at a school-sanctioned event
- Recommendation: Repeal the statute
- Basis for Recommendation: This statute does not provide any action for the AG office. It is a requirement of law enforcement who already have enough requirements without sending us a notification. Other agencies get these reports and keep up with them.
- Others Potentially Impacted: none

SECTION 59-63-350. Local law enforcement.

~~Local law enforcement officials are required to contact the Attorney General's "school safety phone line" when any felony, assault and battery of a high and aggravated nature, crime involving a weapon, or drug offense is committed on school property or at a school sanctioned or school sponsored activity or any crime reported pursuant to Section 59-24-60.~~

HISTORY: 1996 Act No. 324, Section 1.

Editor's Note

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

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



Medicaid Provider

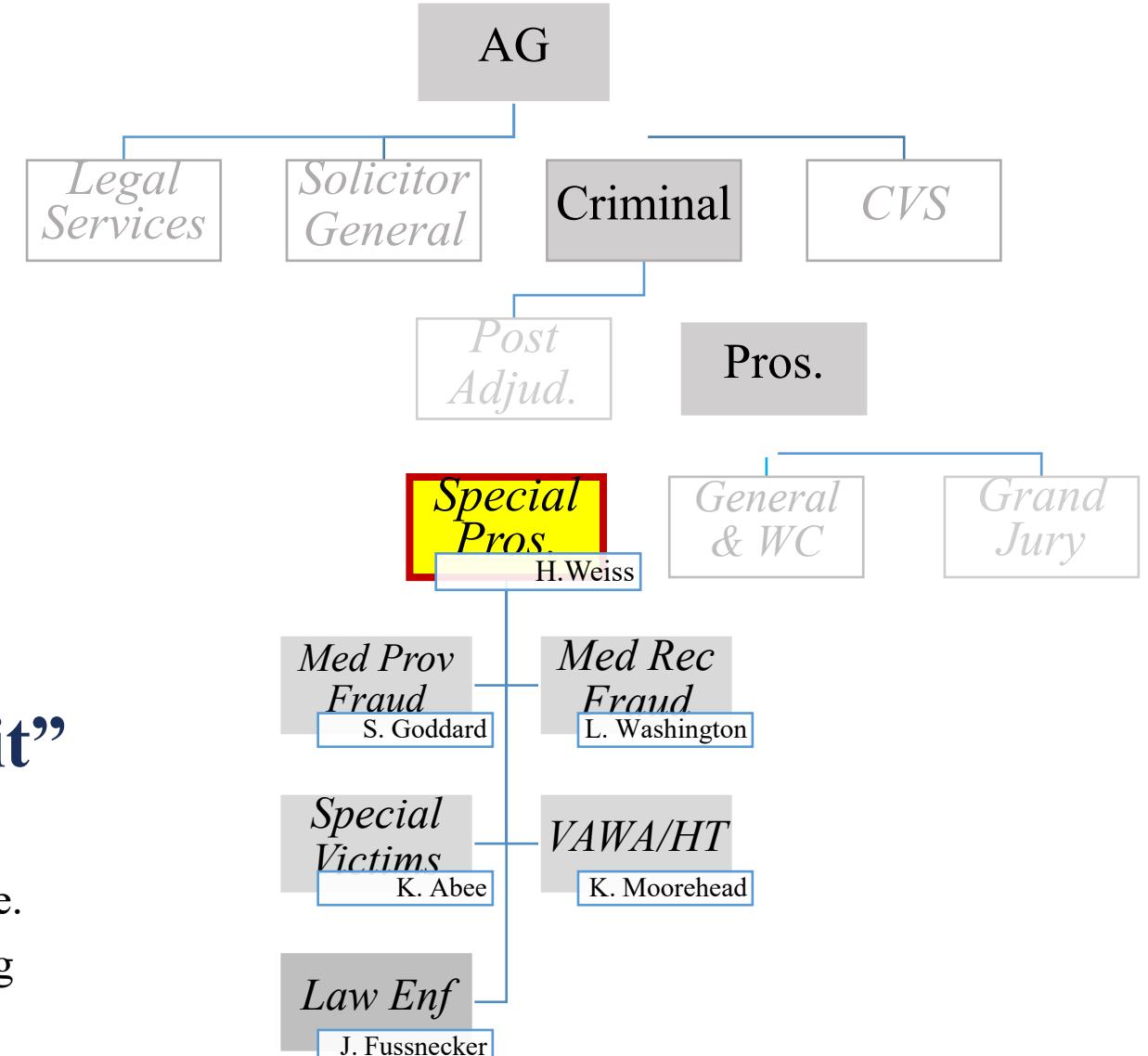
Fraud Section

aka

“Medicaid Fraud Control Unit”

Note: This only includes provider fraud and patient abuse.

Recipient fraud is separate because federal law governing medicaid fraud does not cover recipient fraud.



Why Investigate Medicaid Provider Fraud?

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

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

What is a Medicaid Fraud Control Unit?

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

MFCU Jurisdiction

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

Personnel History

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

Note:

FY 2017 Turnover
16.6% - Retirement
16.7% - Personal reasons
16.7% - Employment outside
state government
50% - Internal transfers

FY 2018 Turnover
50% - Retirement
25% - Employment with
another state agency
25% - Employment
outside state government

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

Exit interviews or surveys conducted?

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

Employee satisfaction tracked?

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

MFCU Customer

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

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

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

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

Provider Fraud

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

A “Provider” is any person who provides goods, services or assistance and who is entitled or claims to be entitled to receive reimbursement, payment or benefits under the state’s Medicaid program. S.C. Code Ann. Section 43-7-60

Examples of Providers:

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

Examples of Provider Fraud Schemes

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

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

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

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

DOUBLE BILLING - Billing for the same service twice

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

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

- Typically a battle of the experts!

Examples of Provider Fraud Schemes

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

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

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

KICKBACKS

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

Initial Steps

Provider Fraud

Step 1

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

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

Step 2

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

- Must prove intent not accidental

Step 3

Improper claims detected

Potential detection sources:

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

Step 4

Improper claims with credible allegation of fraud reviewed by MFCU

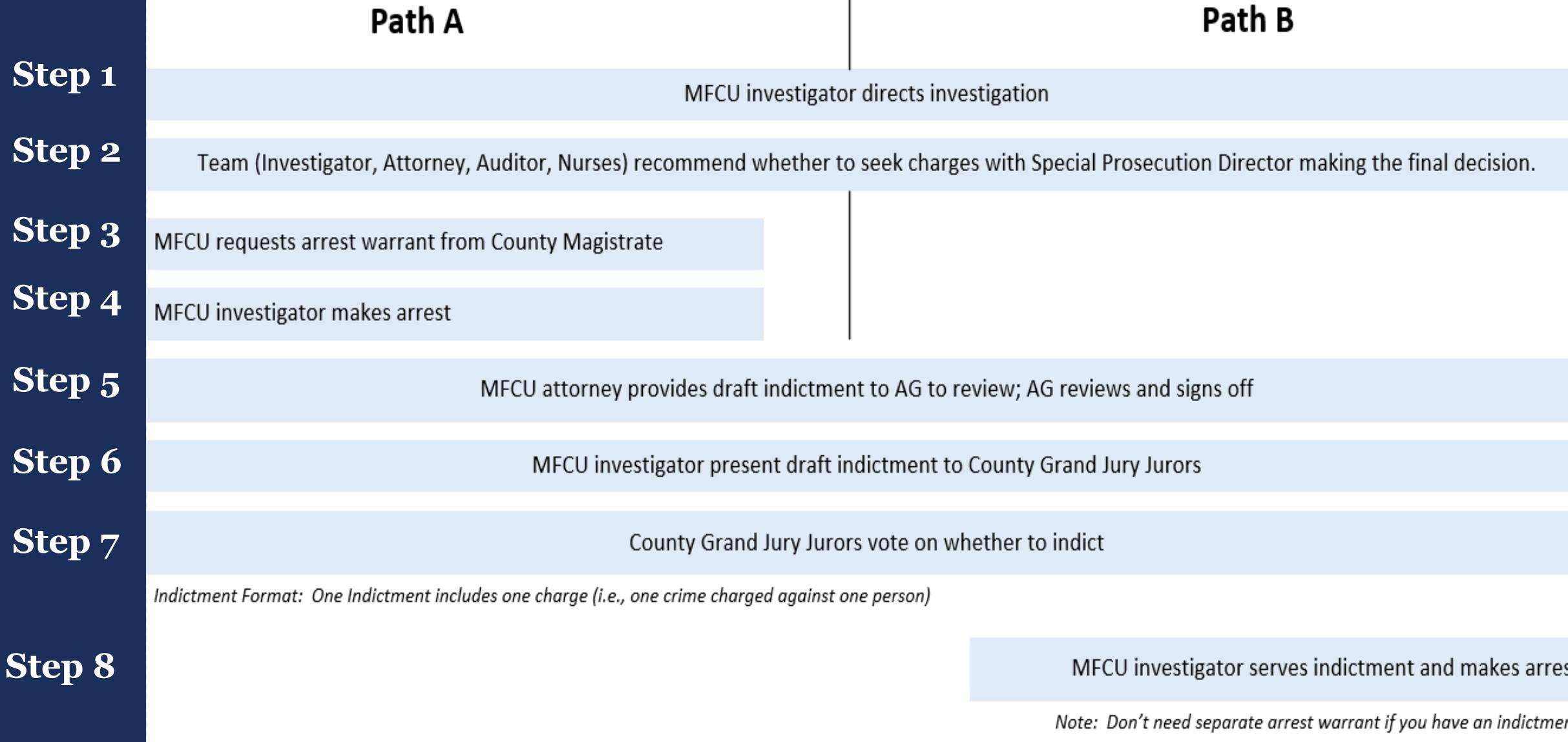
- Classified in AG system as a "matter."

Step 5

MFCU conducts intake review

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

Medicaid Fraud Control Unit: Criminal Investigation to Prosecution



Investigate and Prosecute Provider Fraud

(Civil and Criminal)

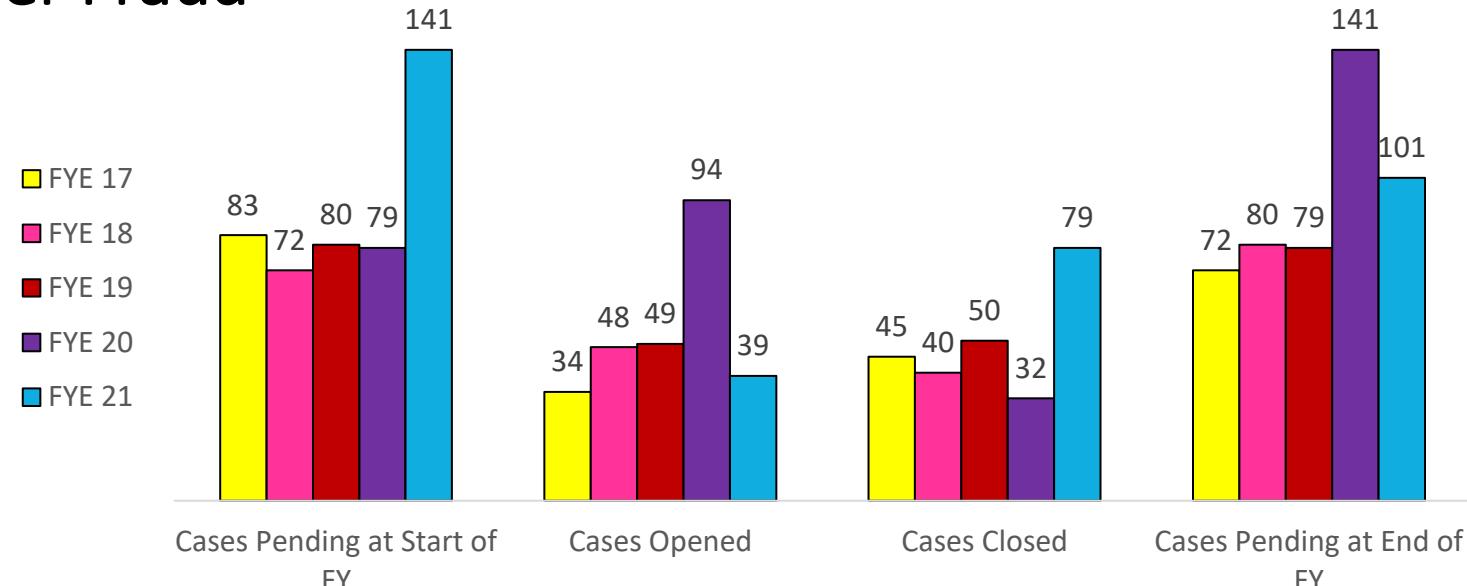
Agency costs to investigate and prosecute

25% provided by State; funded exclusively from state match fund

75% provided by Federal grant

Judgment and Restitution

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



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

Agency Service #156: Investigate Medicaid Provider Fraud

Does law require it: Yes

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

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

Agency Service #157: Prosecute Medicaid Provider Fraud

Does law require it: Yes

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

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

Patient Abuse

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

Investigate and Prosecute

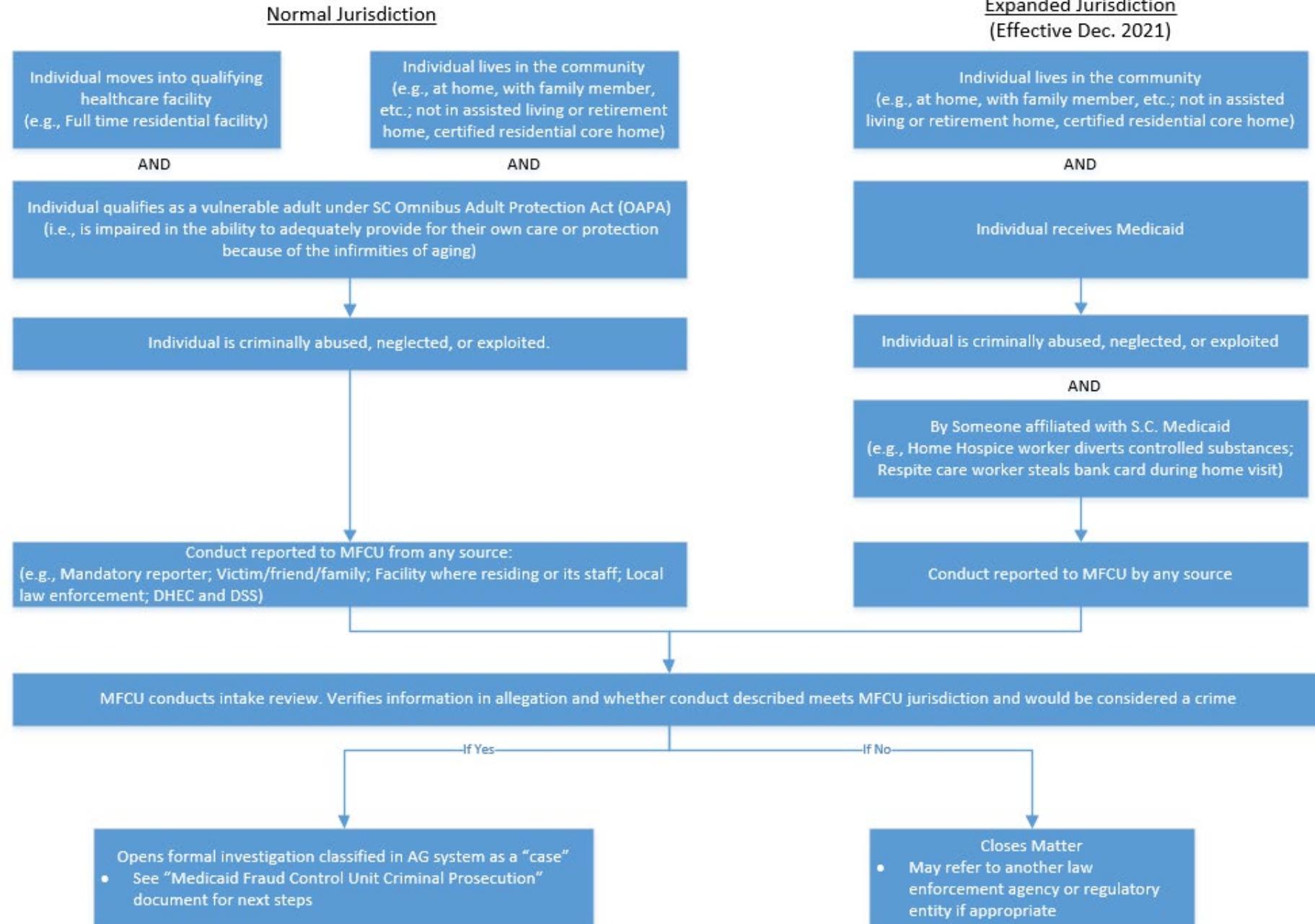
- Physical/Sexual Abuse
- Psychological Abuse
- Neglect
- Financial Exploitation
- Drug Diversion

Initial Steps

Medicaid Fraud Control Unit

Patient Abuse

Step 1



Patient Abuse Cases

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

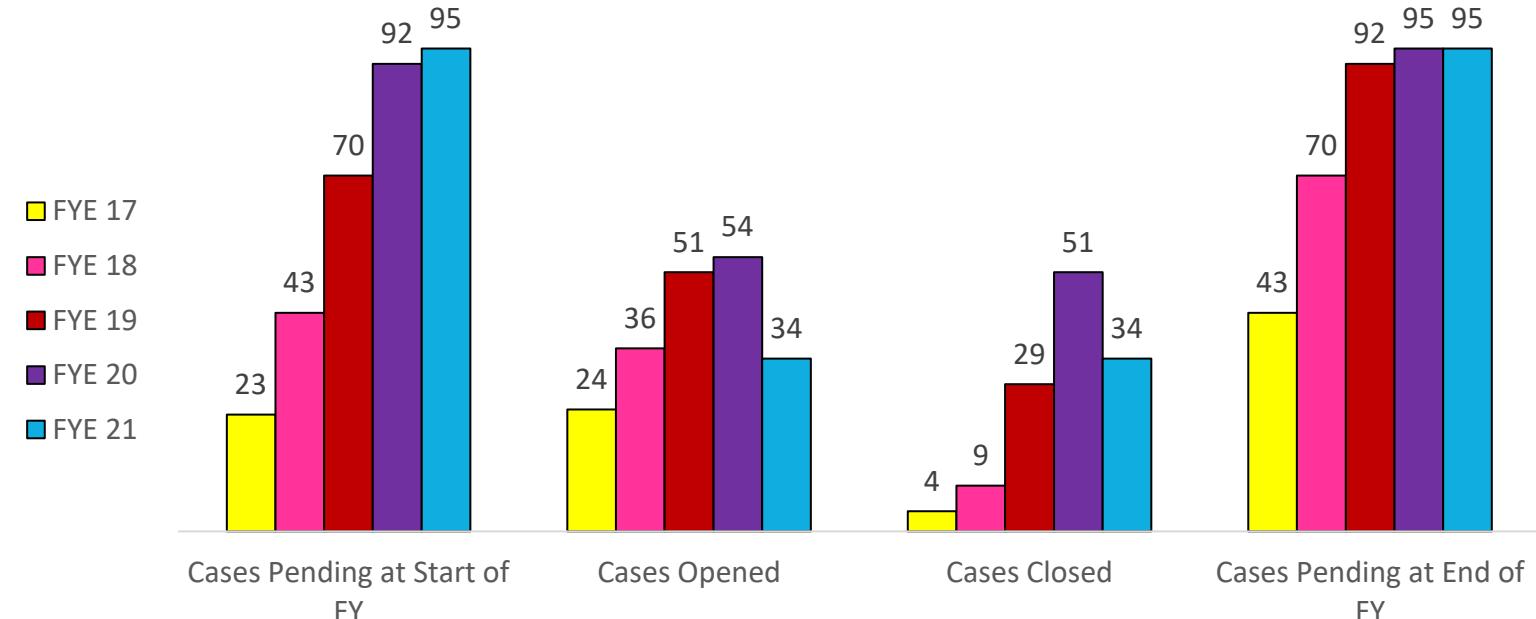
Costs to agency

25% provided by State

75% provided by Federal grant

Restitution ordered by the court

- 100% back to victim



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

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

Does law require it: Yes

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

	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Single Unit: Patient abuse cases open at the end of the Federal FY	2016-17	49.00	\$2,326.03	107.00	\$319,483.63
	2017-18	71.00	\$4,432.88	134.00	\$314,734.33
	2018-19	94.00	\$4,089.31	159.00	\$384,395.60
	2019-20	100.00	\$3,979.86	166.28	\$397,986.38

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

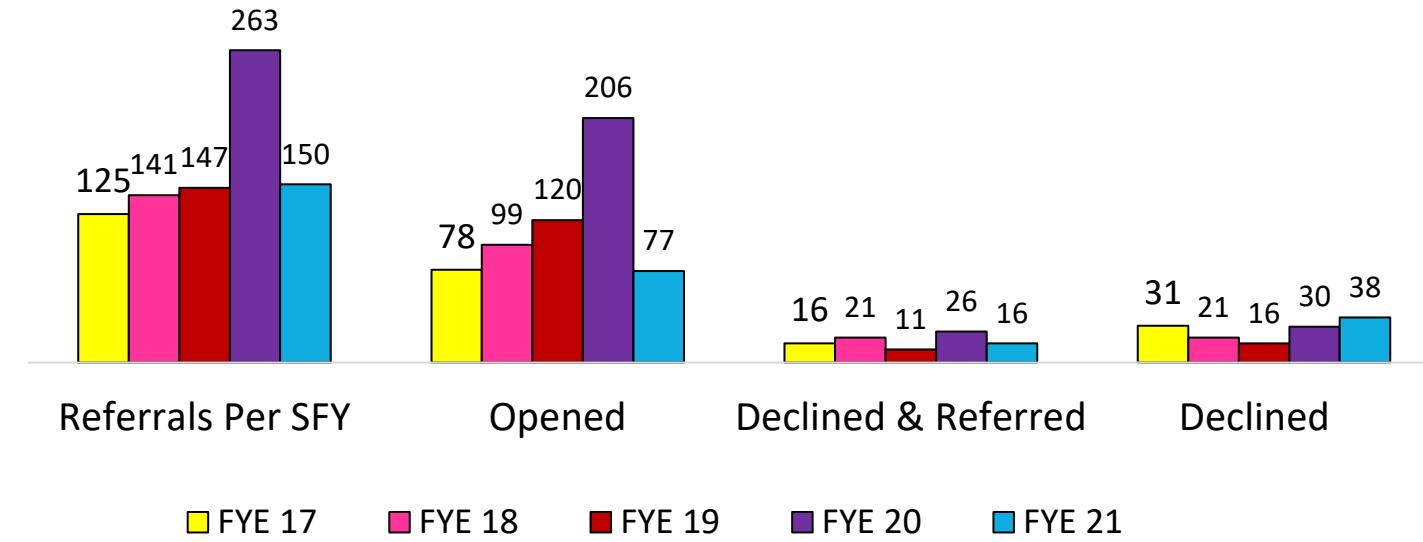
Does law require it: Yes

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

	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Single Unit: Number of arrests made during the Federal FY for patient abuse cases	2016-17	5.00	\$2,326.03	82.31	\$391,760.96
	2017-18	6.00	\$46,510.42	77.56	\$279,062.52
	2018-19	28.00	\$10,911.52	89.25	\$305,522.66
	2019-20	12.00	\$19,792.63	71.83	\$237,511.60

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

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



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

Does law require it: Yes

Assoc. Law(s): 42 C.F.R. § 1007.9(g); S.C.

Code Ann. § 43-35-25; 77 FR 32645

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

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

Does law require it: Yes

Assoc. Law(s): 42 C.F.R. 1007.11(b)(4); 44 C.F.R. § 1007.11(c);

44 C.F.R. § 1007.11(e)(4); 42 C.F.R. § 1007.9(e); 42 C.F.R. §

1007.9(f); S.C. Code Ann. § 43-35-70

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

Services Necessary to Maintain Federal Funding

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

(Required by federal regulations, Agency Service #161)

Satisfy HHS OIG staffing requirements and training for professional employees.

(Required by federal regulations, Agency Service #162)

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

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

(Required by federal regulations, Agency Service #163)

Single Unit: Number of conviction reports submitted to HHS OIG	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Does law require it: Yes	2016-17	12.00	\$2,326.03	7.90	\$17,676.16
Assoc. Law(s): 42 C.F.R. § 1007.11(g); 77 FR 32645	2017-18	15.00	\$976.46	7.90	\$14,646.90
	2018-19	19.00	\$792.64	7.88	\$15,060.22
	2019-20	14.00	\$1,037.85	7.70	\$14,529.85

Single Unit: Total trainings attended for all Unit employees as reported in HHS OIG Recertification application	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Does law require it: Yes	2016-17	162.00	\$2,326.03	21.70	\$67,607.17
Assoc. Law(s): 42 C.F.R. § 1007.5; 42 C.F.R. 1007.13; 77 FR 32645	2017-18	151.00	\$475.33	27.18	\$71,775.17
	2018-19	168.00	\$378.13	25.31	\$63,526.27
	2019-20	170.00	\$373.85	25.80	\$63,554.70

Single Unit: Number of recertification's, audit reports, etc. received	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Does law require it: Yes	2016-17	1.00	\$2,326.03	29.80	\$80,880.95
Assoc. Law(s): 42 C.F.R. 1007.17; 42 C.F.R. § 1007.9(a)-(b); 77 FR 32645; 44 C.F.R. § 1007.11(f)	2017-18	1.00	\$50,301.94	16.68	\$50,301.94
	2018-19	1.00	\$28,025.93	12.38	\$28,025.93
	2019-20	1.00	\$65,093.16	26.45	\$65,093.16

Services Necessary to Maintain Federal Funding

Maintain written policies and procedures of operations consistent with 42 C.F.R. 1007.11(e) (1)
 (Required by federal regulations, Agency Service #164)

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

Exercise proper fiscal control over MFCU resources including operating a budget that is separate from the parent agency (i.e., AG) and comply with grant reporting requirements.
 (Required by federal regulations, Agency Service #165)

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

Maintain a written agreement with the state's Medicaid agency, S.C. Dept. of Health and Human Resources, hold regular meetings with the agency, coordinate efforts and share information as permitted
 (Required by federal regulations, Agency Service #166)

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

Make statutory or programmatic recommendations to State government to improve the operation of the Unit
 (Required by federal regulations, Agency Service #167)

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

Services Necessary to Maintain Federal Funding

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

(Required by federal regulations, Agency Service #160)

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

MFCU - Law Recommendations

Updated criminal health care fraud statute

- Tiered, similar to other property crimes
- Statute was enacted in 1994-needs to be updated to reflect current trends
- Only a misdemeanor for any \$\$ amount
- Investigative subpoena power (pre-indictment) – Request records from Medicaid providers to streamline investigations

State False Claims Act

- Increased need to generate our own cases
- No way of knowing when FCA cases filed in our own state

Addendum to Omnibus Adult Protection Act needed

- Nothing adequately addresses unauthorized recording of vulnerable adults
- Potential of posting/sharing these recordings to social media

LAW CHANGE RECOMMENDATION #18

- Law: No current law is applicable
- Current Law: No current law is applicable
- Recommendation: Concept recommendation. Establish a HHS-OIG (federal Health & Human Services-Office of the Inspector General) approved False Claims Act.
- Basis for Recommendation: Ratifying an HHS-OIG approved FCA would generate more cases and increase the opportunities to participate in national cases that are only open to states with FCA.
 - Increase the amount of state recoupment as states with FCA can participate in more global cases, receive a 10-percentage-point increase in their share of any amounts recovered, and help fund MFCU without further state investment.
- Others Potentially Impacted: Private/public Healthcare providers; Dept. of Health & Human Services/Managed Care Organization; Law enforcement; Private businesses with government contracts

Limited recommendation for specific wording, but to be HHS-OIG compliant:

1. The law must establish liability to the State for false or fraudulent claims described in 31 U.S.C. 3729 with respect to any expenditure described in section 1903(a) of the Act with respect to expenditures related to State Medicaid plans.
2. The law must contain provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described in 31 U.S.C. 3730-3732.
3. The law must contain a requirement for filing an action under seal for 60 days with review by the State Attorney General.
4. The law must contain a civil penalty that is not less than the amount of the civil penalty authorized under 31 U.S.C. 3729.

LAW CHANGE RECOMMENDATION #19

- Law: S.C. Code Section 43-7-60(A). False claim, statement, or representation by medical provider prohibited; violation is a misdemeanor; penalties.
- Current Law: Defines prohibited medical provider conduct and penalties.
- Recommendation: Modify to update (A)(1) to expand the definition of “provider”, update (A)(2) to expand the definition of “false claim, statement, or representation” to include attempts, and remove “For purposes of this subsection, each false claim, representation, or statement constitutes a separate offense.”
- Basis for Recommendation: To allow the MFCU to accurately protect against providers who commit or attempt to commit fraud. Each claim constitutes a separate offense (ex. \$40 lab test); many defendants submit multiple fraudulent claims (ex. 1,000 fraudulent lab tests, totaling \$40,000)
- Others Potentially Impacted: Private/public providers; SCDHHS/MCO

SECTION 43-7-60. False claim, statement, or representation by medical provider prohibited; violation is a misdemeanor; penalties.

(A) For purposes of this section:

(1) "provider" includes a person who provides goods, services, or assistance and who is entitled or claims to be entitled to receive reimbursement, payment, or benefits under the state's Medicaid program. "Provider" also includes a person acting as an employee, representative, or agent of the provider. "Provider" also includes any person that provides goods, services, or assistance to Medicaid beneficiaries on behalf of any Managed Care or similar entity.

(2) "false claim, statement, or representation" means a claim, statement, or representation made or presented, or attempted to be made or presented, in any form including, but not limited to, a claim, statement, or representation which is computer generated or transmitted or made, produced, or transmitted by an electronic means or device.

~~For purposes of this subsection, each false claim, representation, or statement constitutes a separate offense.~~

LAW CHANGE RECOMMENDATION #20

- Law: S.C. Code Section 43-35-10 – Omnibus Adult Protection Act Definitions
- Current Law: Gives the definitions of terms used under the duties and procedures of Investigative Entities for Adult protection.
- Recommendation: Modify the definition of exploitation to include unauthorized video or photo recordation and add the definition of “Unauthorized video or photographic recordation” to the end of 43-35-10.
- Basis for Recommendation: To combat the increase of unauthorized video or photographic recordings of vulnerable adults in order to protect the privacy and dignity of all vulnerable adults.
- Others Potentially Impacted: Crime Victim Ombudsman, DSS, SLED, Local Law Enforcement

SECTION 43-35-10. Definitions.

(3) "Exploitation" means:

- (a) causing or requiring a vulnerable adult to engage in activity or labor which is improper, unlawful, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient;
- (b) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person; or
- (c) causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: (i) undue influence, (ii) harassment, (iii) duress, (iv) force, (v) coercion, or (vi) swindling by overreaching, cheating, or defrauding the vulnerable adult through cunning arts or devices that delude the vulnerable adult and cause him to lose money or other property.
- (d) Exploitation also includes any unauthorized video or photographic recordation of any vulnerable adult, regardless of whether or not the vulnerable adult is aware of such recordation.

(4) "Facility" means a nursing care facility, community residential care facility, a psychiatric hospital, or any residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.

...

(14) 'Unauthorized video or photographic recordation' means the recording of any vulnerable adult without their consent, or in the event the vulnerable adult cannot give consent, without the consent of the agent in charge of the vulnerable adult. Those employed in the care of a vulnerable adult are never authorized to record a vulnerable adult unless required so in the duty of their employment, to assist with the medical care of the vulnerable adult, or to comply with law enforcement.

LAW CHANGE RECOMMENDATION #21

- Law: S.C. Code Section 43-35-85. Penalties. Under the Adult Omnibus Protection Act.
- Current Law: Gives the criminal penalties for failing to report adult abuse when required to report and penalties for committing abuse.
- Recommendation: Modify so as to add provisions criminally penalizing the video or photographic recordation of vulnerable adults and to add provisions criminally penalizing the distribution, publication, or dissemination by any means of any photographic or video recordation of a vulnerable adult.
- Basis for Recommendation: To prevent the unauthorized video or photographic recordation of vulnerable adults in order to protect the privacy and dignity of all vulnerable adults.
- Others Potentially Impacted: Crime Victim Ombudsman, DSS, SLED, Local Law Enforcement

SECTION 43-35-85. Penalties.

- (A) A person required to report under this chapter who knowingly and wilfully fails to report abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five hundred dollars or imprisoned not more than one year.
- (B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.
- (C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.
- (D) A person who knowingly and wilfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.
- (E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.
- (F) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

SECTION 43-35-85. Penalties. (cont.)

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

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

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

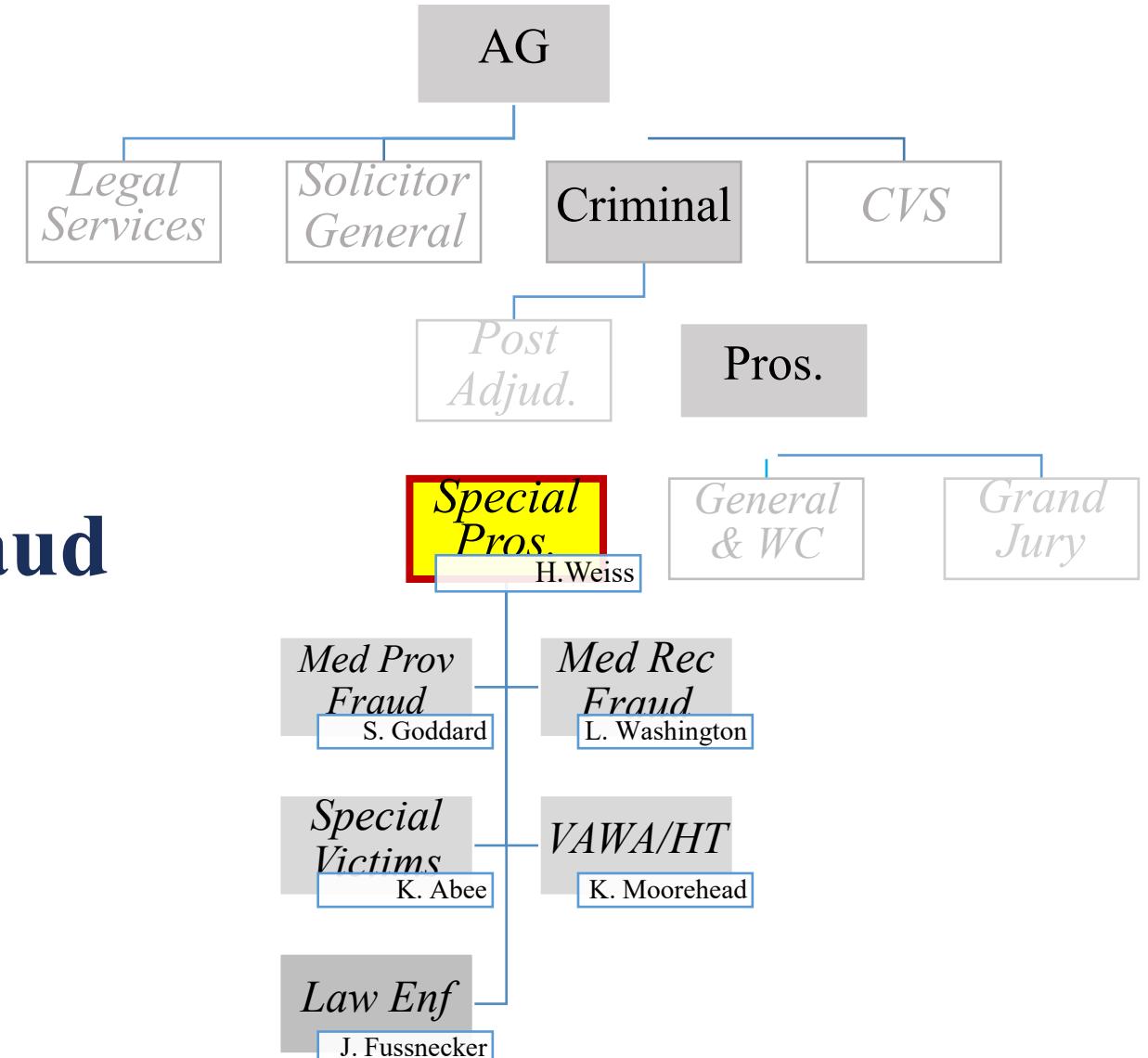
(J) Notwithstanding section (D), any person who, without authorization, knowingly and willfully records by video or photographic means a vulnerable adult in violation of 43-35-10(3)(d), is guilty of a misdemeanor, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not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

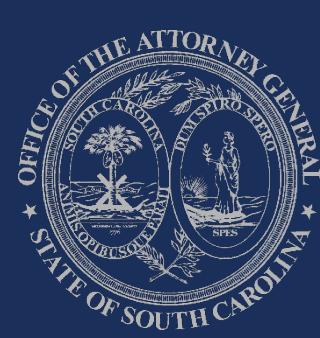
(1) This is a lesser included offense to section (K).

(K) Any person who, without authorization, knowingly and willfully distributes, publishes, or disseminates by any means any photographic or video recordation of a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years.



Medicaid Recipient Fraud Section





Alan Wilson
Attorney General

Don Zelenka
Deputy AG

Medicaid Recipient Fraud

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

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

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

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

Personnel

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

FY 2017 and FY 2018 Turnover

67% - Internal transfers

33% - Retirement

FY 2019 Turnover

50% - Retirement

50% - Employment outside of state government

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

Exit interviews or surveys conducted?

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

Employee satisfaction tracked?

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

Medicaid Recipient Fraud: Investigation to Prosecution

Referral Sources

Asset Based

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

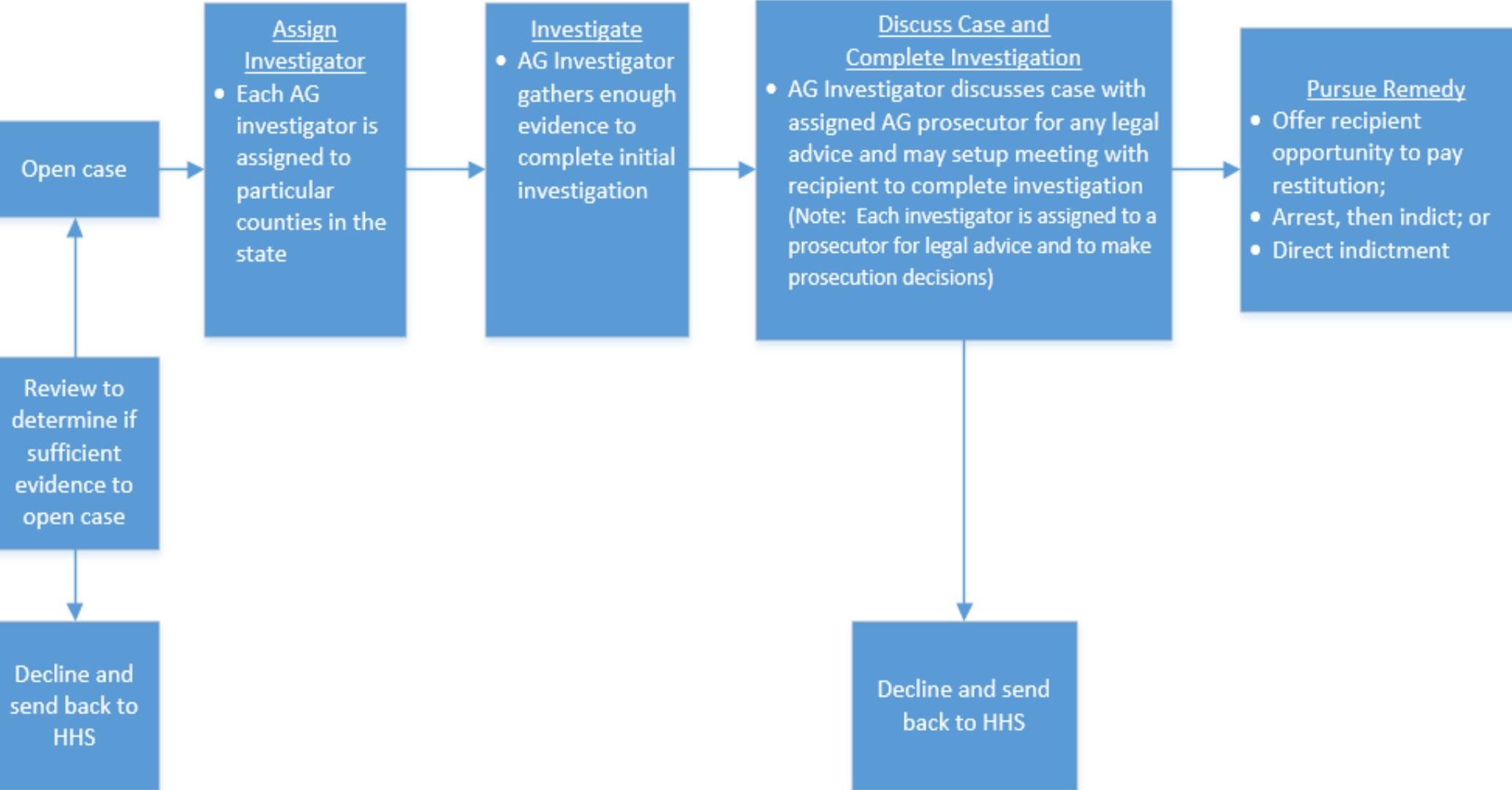
Citizen Complaints

- Received from HHS Fraud Hotline

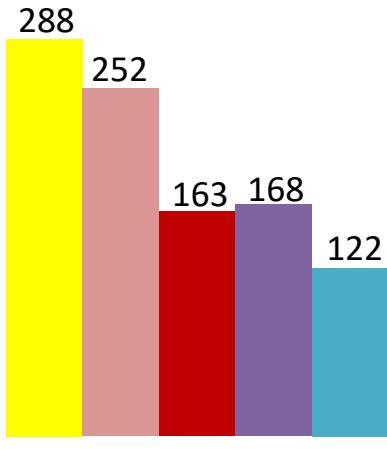
Email Complaints

- Received from HHS

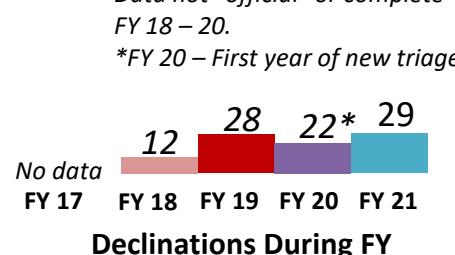
Attorney General (AG) Provider Fraud Unit



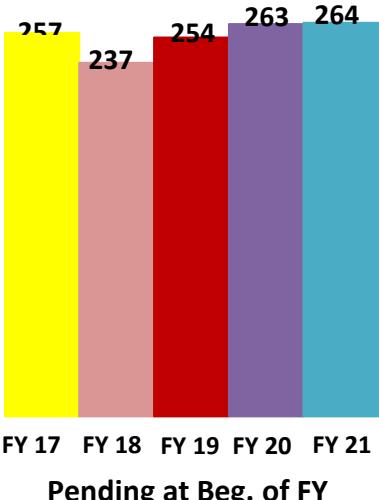
CASES OPEN, CLOSED AND PENDING



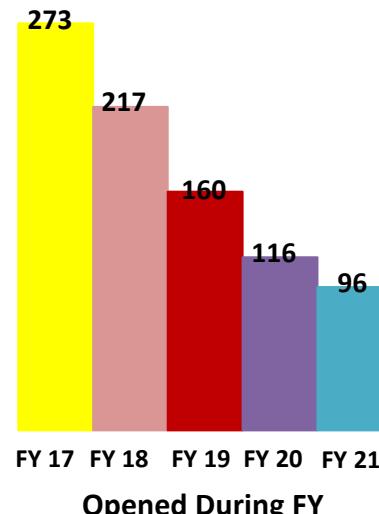
Referrals During FY



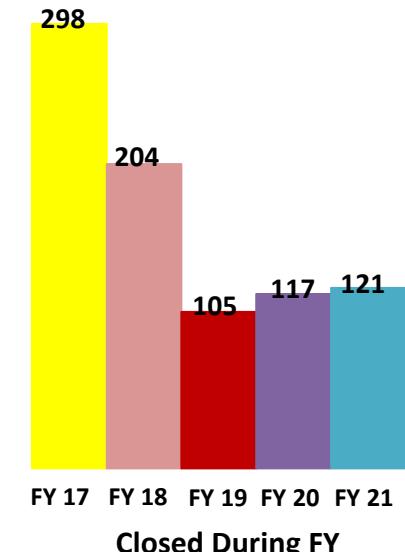
Declinations During FY



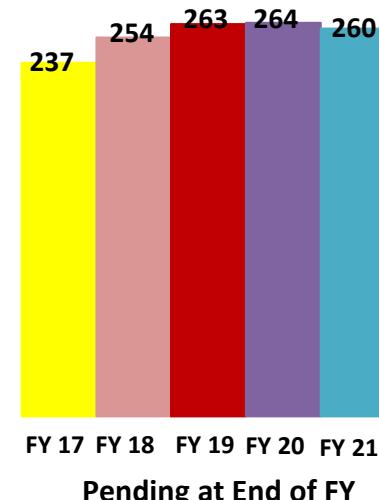
Pending at Beg. of FY



Opened During FY



Closed During FY



Pending at End of FY 75

*Data not "official" or complete
FY 18 – 20.
FY 20 – First year of new triage



Enforcement of Medicaid Recipient Fraud

Agency Service #152

Does law require it:

Yes

Assoc. Law(s):

Section 43-7-90

Purpose (as understood by agency):

The purpose as understood by the agency is to investigate allegations of Medicaid recipient fraud and prosecute recipients who fraudulently obtain Medicaid benefits by fraudulent means (Deliverable 2), deter future Medicaid recipient fraud and recover lost benefits for the victim agency, the South Carolina Department of Health and Human Services, so that the funds can be used to provide Medicaid to those who truly need and qualify for the benefits.

Customers:

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

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

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

(2) initiate proper action when fraud is detected by

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

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

Single Unit	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Case referrals from victim agency (customer) in which the unit was involved	2016-17	Not provided	Insufficient data	272.50	\$636,341.04
	2017-18	Not provided	Insufficient data	272.50	\$605,779.79
	2018-19	Not provided	Insufficient data	275.50	\$568,749.72
	2019-20	Not provided	Insufficient data	275.50	\$609,591.83



Does law require it:

No

Assoc. Law(s):

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

Purpose (as understood by agency):

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

Customers:

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

Prosecute Medicaid Recipient Fraud

Agency Service #153

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

- Unit spends 10% of its time on this service (prosecution).

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

Single Unit	Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Number of prosecutions pending during the fiscal year in which the unit was involved	2016-17	40.00	\$2,326.03	32.50	\$78,622.88
	2017-18	30.00	\$2,505.98	32.50	\$75,179.47
	2018-19	14.00	\$4,639.42	29.00	\$64,951.84
	2019-20	10.00	\$7,007.33	29.00	\$70,073.31

RETURN ON INVESTMENT

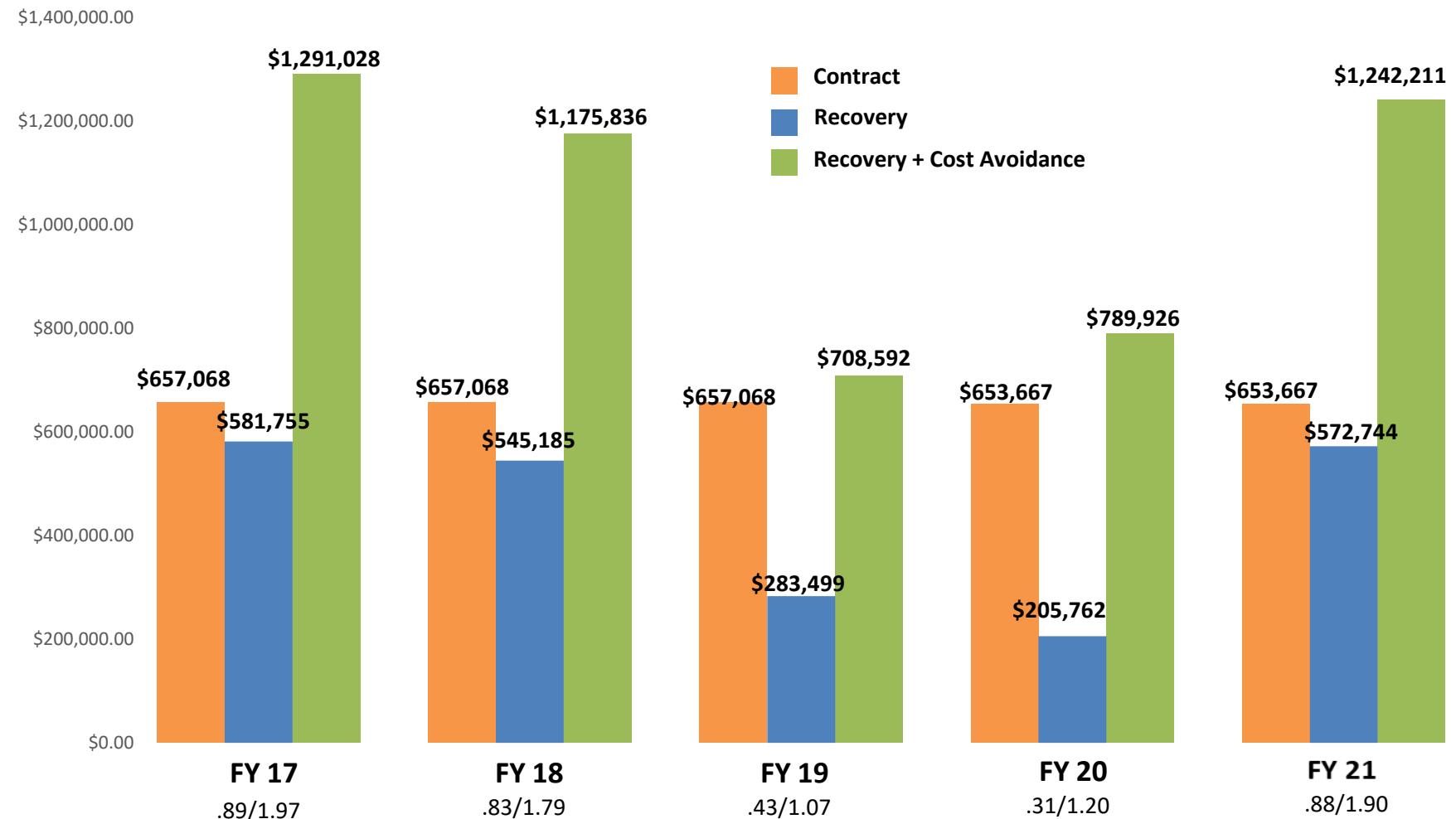
Funding

- 100% by HHS

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

- 100% back to HHS

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



MRF - Law Recommendations

Amend False Statement (43-7-70) statute to make Medicaid fraud a property crime

- Gives it teeth with felony if appropriate
- Gives less egregious cases chance for expungement

Investigative Subpoena authority (43-7-90)

- Most custodians of evidence expect subpoena and subpoena is perceived to be less intimidating
- Financial cases – would speed up process of obtaining evidence

LAW CHANGE RECOMMENDATION #22

- Law: S.C. Code Section 43-7-70. False statement or representation on application for assistance prohibited; violation is a misdemeanor; penalties.
- Current Law: Criminalizes Medicaid recipient fraud; sets penalty as a misdemeanor with a maximum sentence of 3 years and/or \$1,000 fine
- Recommendation: Keep the intent as is; re-write the section to base penalties on the amount of loss to the state
- Basis for Recommendation: Would strengthen the penalty in cases with significant loss to the state; would enable prosecutors to negotiate charges to lowest amount when reasonable, thereby possibly rendering the conviction subject to expungement; would make the crime a property crime pursuant to § 16-1-57; would expand subsection (3) to clarify criminalization of using another person's Medicaid card
- Others Potentially Impacted: SCDHHS (victim agency)

SECTION 43-7-70. False statement or representation on application for assistance prohibited; violation is a misdemeanor; penalties.

(A)(1) It is unlawful for a person to knowingly and wilfully to make or cause to be made a false statement or representation of material fact on an application for assistance, goods, or services under the state's Medicaid program when the false statement or representation is made for the purpose of determining the person's entitlement to assistance, goods, or services.

(2) It is unlawful for any applicant, recipient, or other person acting on behalf of the applicant or recipient knowingly and wilfully to conceal or fail to disclose any material fact affecting the applicant's or recipient's initial or continued entitlement to receive assistance, goods, or services under the state's Medicaid program.

(3) It is unlawful for a person, regardless of the person's eligibility to receive benefits, services, or goods under the Medicaid program, to sell, lease, lend, or otherwise exchange rights, privileges, or benefits to another person, or to use the rights, privileges or benefits of another under the Medicaid program.

(B) A person who violates the provisions of this section is guilty of a:

(1) felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than ten years, or both, if the value of the property or benefit is ten thousand dollars or more;

(2) misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the value of the property or benefit is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor if the value of the property or benefit is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.

(C) A criminal action brought under this section may be filed in any county where the criminal act(s) occurred or in the county in which the agency of the State responsible for administering the state's Medicaid program is located.

LAW CHANGE RECOMMENDATION #23

- Law: S.C. Code Section 43-7-90. Enforcement of Sections 43-7-60 to 43-7-80.
- Current Law: Provides the Attorney General authority and responsibility to investigate Medicaid fraud and enforce Medicaid fraud criminal statutes
- Recommendation: Modify the code section to provide Attorney General with authority to issue investigative subpoenas.
- Basis for Recommendation: The revision would assist the investigation of Medicaid fraud by removing certain investigative procedures used to obtain documentary and other evidence thereby rendering investigations more time and resource efficient
- Others Potentially Impacted: SCDHHS (victim agency); Local Magistrate Courts

SECTION 43-7-90. Enforcement of Sections 43-7-60 to 43-7-80.

The Attorney General has the authority and responsibility to investigate and initiate appropriate action for alleged or suspected violations of Sections 43-7-60 through 43-7-80. In conducting investigations pursuant to this Article, the Attorney General or his designee shall have the authority to issue subpoenas to any person or business compelling the production of records in any form, including electronic records or data, in the possession, custody, or control of the person to whom the subpoena is issued. In the event of noncompliance of a subpoena issued under this section, the Attorney General may petition the Circuit Court for an order compelling compliance with the subpoena.

HISTORY: 1994 Act No. 468, Section 1, eff July 14, 1994.

Legislative Oversight Committee



South Carolina House of Representatives

Committee Mission

Determine if agency laws and programs are being implemented and carried out in accordance with the intent of the General Assembly and whether they should be continued, curtailed or eliminated. Inform the public about state agencies.

Website: <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php>

Phone Number: 803-212-6810

Email Address: HCommLegOv@schouse.gov

Location: Blatt Building, Room 228

UPCOMING MEETINGS

Law Enforcement and Criminal Justice Subcommittee

**All meetings below begin at 10:30am in Blatt Room 321*

Wednesday, June 22, 2022

Wednesday, June 29, 2022

END NOTES

¹ Visual Summary Figure 2 is compiled from information in the Attorney General's Office study materials available online under "Citizens' Interest," under "House Legislative Oversight Committee Postings and Reports," and then under "Attorney General's Office"

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyPHPFiles/AttorneyGeneral.php>
(accessed March 3, 2022).