

Law Enforcement and Criminal Justice Subcommittee Meeting

Tuesday, May 1, 2018

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AGENDA

South Carolina
House of Representatives



Legislative Oversight Committee

LAW ENFORCEMENT AND CRIMINAL JUSTICE SUBCOMMITTEE

Chairman Edward R. Tallon Sr.

The Honorable Katherine E. (Katie) Arrington

The Honorable William M. (Bill) Hixon

The Honorable Jeffrey E. (Jeff) Johnson

Tuesday, May 1, 2018

10:30am

Room 511 - 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 Meeting Minutes**
- II. Discussion of the study of the Commission on Indigent Defense**
- III. Adjournment**

MEETING MINUTES

Chair Wm. Weston J. Newton

*First Vice-Chair:
Laurie Slade Funderburk*

Legislative Oversight Committee

*Katherine E. (Katie) Arrington
William K. (Bill) Bowers
Neal A. Collins
MaryGail K. Douglas
William M. (Bill) Hixon
Jeffrey E. (Jeff) Johnson
Robert L. Ridgeway, III
Bill Taylor
John Taliaferro (Jay) West, IV*



*Bruce W. Bannister
Gary E. Clary
Chandra E. Dillard
Phyllis J. Henderson
Joseph H. Jefferson, Jr.
Mandy Powers Norrell
Tommy M. Stringer
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Law Enforcement and Criminal Justice Subcommittee

Tuesday, April 24, 2018

10:30 am

Blatt Room 511

Archived Video Available

- I. Pursuant to House Legislative Oversight Committee Rule 6.8, 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 Chairman Edward R. Tallon, Sr., on Tuesday, April 24, 2018, in Room 511 of the Blatt Building. The following members of the Subcommittee were present for either all or a portion of the meeting: Chairman Tallon, Representative Katherine E. Arrington, Representative William M. Hixon, and Representative Jeffrey E. Johnson.

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. It is the practice of the Legislative Oversight Committee to provide minutes for its subcommittee meetings.
- II. Representative Arrington makes a motion to approve the meeting minutes from the prior Subcommittee meetings.

Rep. Arrington's motion to approve the minutes from the February 12, 2018, meeting:	Yea	Nay	Not Voting
Rep. Arrington	✓		
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

Discussion of the Commission on Indigent Defense

- I. Chairman Tallon explains the purpose of the meeting today is for agency representatives to provide an overview of the agency as a whole, details regarding the Administration organization unit, and agency recommendations.
- II. Chairman Tallon swears in the following individuals from the agency:
 - a. Mr. J. Hugh Ryan, III, Executive Director;
 - b. Mr. Hervery B. O. Young, Assistant Executive Director/General Counsel;
 - c. Mr. Rodney Grizzle, Comptroller;
 - d. Ms. Laura Frost, Assistant Director/Human Resources Director;
 - e. Mr. W. Lawrence Brown, Deputy General Counsel and Training Director.
- III. Director Hugh Ryan provides information on the following topics related to the agency as a whole:
 - a. history;
 - b. legal directives;
 - c. mission and vision;
 - d. resources available, both funding and employees;
 - e. governing body;
 - f. organizational chart; and
 - g. organizational units.

Members ask questions related to the topics, including questions about filing fees and county funding, which Director Ryan answers.

- IV. Director Ryan provides details about the agency's administration organizational unit and details about the agency's recommendations for internal and law changes. Members ask questions related to the organizational unit and the agency's recommendations, which Director Ryan answers.
- V. There being no further business, the meeting is adjourned.

STUDY TIMELINE

The House Legislative Oversight Committee's (Committee) process for studying the Commission on Indigent Defense (agency, Commission, or SCCID) 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.

Legislative Oversight Committee Actions

- December 19, 2017 - Prioritizes the agency for study
- January 22, 2018 - Provides the agency notice about the oversight process
- January 23 - March 1, 2018 - Solicits input about the agency in the form of an online public survey
- April 26, 2018 - **Meeting #2** to obtain public input about the agency

Law Enforcement and Criminal Justice Subcommittee Actions

- April 24, 2018 - Holds **Meeting #1** to discuss the agency's history, legal directives, mission, vision, general information about employees and finances, details about the agency's administration unit, and agency recommendations for internal and law changes
- May 1, 2018 (TODAY) - Holds **Meeting #3** to discuss the agency's Death Penalty Trial Division

Commission on Indigent Defense Actions

- March 9, 2015 - Submits its **Annual Restructuring and Seven-Year Plan Report**
- January 20, 2016 - Submits its **2016 Annual Restructuring Report**
- September 2016 - Submits its **2015-16 Accountability Report**
- September 2017 - Submits its **2016-17 Accountability Report**
- March 16, 2018 - Submits its **Program Evaluation Report**

Public's Actions

- January 23 - March 1, 2018 - 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

Commission on Indigent Defense

Major Agency Organizational Units

Office of Circuit Public Defenders

Provides a statewide public defender system with standards and accountability for the delivery of legal representation to indigent defendants in state courts.

Division of Appellate Defense

Represents indigents in the majority of criminal appeals, including death penalty appeals before the SC Court of Appeals and the SC Supreme Court.

Administration

Provides leadership and direction for the agency to include administrative, financial, and support services.

Death Penalty Trial Division

Represents indigents in trials involving the death penalty (i.e., capital trials) statewide.

FY 17-18 Resources

Employees
Available FTE: 70.50
Filled FTE: 68.50
Temp/Grant: 1.00

Funding
\$45.06 million appropriated and authorized

SUCCESSES

- Implementing the statewide public defender system which enabled oversight by the Commission.

- Coordinating the Rule 608 contract system which allows the agency to take applications and select those attorneys qualified to handle specific types of cases to include criminal, post-conviction relief, sexual violent predator, and certain family court matters.

- Conducting focused seminars and workshops for public defenders with fewer than three years experience and continued annual training for other public defenders and contract attorneys.

CHALLENGES

- Addressing whether defendants are being adequately screened to assess their financial status for appointed counsel.
- Representing individuals in an efficiently functioning criminal justice system with a disparity in funding at the county level between prosecution and defense.
- Finding enough contract attorneys qualified to handle specific types of cases in the rural areas of the state where a county may have a very limited number of attorneys.

Figure 2. Snapshot of the agency's major organizational units, fiscal year 2017-18 resources (employees and funding), successes, and challenges.¹

S.C. JUDICIAL CIRCUITS

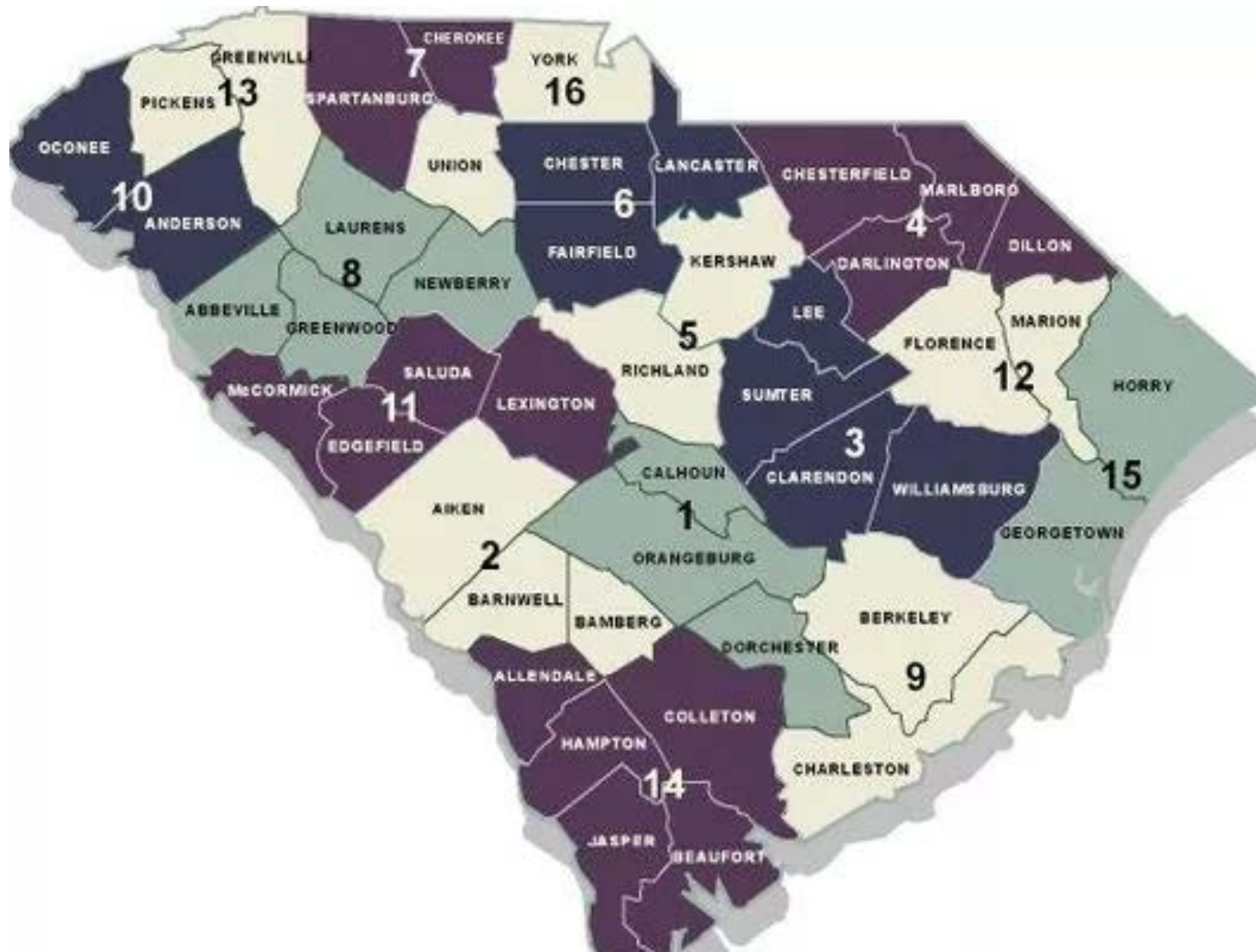


Figure 3. Map of S.C. judicial circuits and counties.²

AGENCY OVERVIEW

Legal Directives

The importance of guaranteeing a citizen the right to trial and providing equal protection under the law are outlined in the following sections of the United States Constitution:

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment XIV Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The South Carolina Commission on Indigent Defense, through S.C. Code Ann. 17-3-310, exists to develop rules, policies, procedures, regulations, and standards it considers necessary to comply with state law, regulations, and the rules of the Supreme Court, as it relates to the nature and scope of services, clientele to be served, and the establishment of criteria to be used in the determination of indigency and qualifications for services for indigent legal representation. Table 1 provides a comparison of the duties of the Commission, which is the governing body of the agency, and the Office of Indigent Defense, which operates under the jurisdiction of the Commission.

Table 1. Legal directives for the Commission compared to directives for the Office of Indigent Defense

Legal directives for the...	
Commission on Indigent Defense Applicable statutes: S.C. Code Ann. 17-3-310 ³ and 17-3-340 ⁴	Office of Indigent Defense (OID) Applicable statutes: S.C. Code Ann. 17-3-330 ⁵ and 17-3-360 ⁶
<u>Operations</u>	
<p>Commission shall...</p> <p><u>In General</u></p> <ul style="list-style-type: none"> • Establish divisions within the office to administer necessary services and programs.⁷ • Act in the best interest of indigent defendants who are receiving legal representation.⁸ <p><u>Meetings/Officers</u></p> <ul style="list-style-type: none"> • Meet at least quarterly and at other times and places as it deems necessary or convenient for the performance of its duties.⁹ • Elect such officers, other than the chairperson, from the members of the commission as it deems necessary.¹⁰ • Adopt rules for the transaction of its business as it desires.¹¹ <p><u>Clients and Services</u></p> <ul style="list-style-type: none"> • Develop rules, policies, procedures, regulations, and standards necessary to comply with state law or regulations and the rules of the Supreme Court including: (1) nature and scope of services to be provided; (2) clientele to be served; (3) establishment of criteria to be used in the determination of indigency; and (4) qualifications for services for indigent legal representation.¹² • Approve and implement programs, services, rules, policies, procedures, regulations, and standards for determining indigence and for assessing and collecting the costs of legal representation and related services.¹³ 	<p>OID shall...</p> <p><u>Office Operations</u></p> <ul style="list-style-type: none"> • Administer and coordinate the operations of the office and all divisions within the office.¹⁴ • Maintain proper records of all financial transactions related to the operation of the office.¹⁵ <p><u>Commission Operations</u></p> <ul style="list-style-type: none"> • Coordinate in the development and implementation of rules, policies, procedures, regulations, and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards.¹⁶ • Executive Director will attend all commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the director.¹⁷ • Maintain proper records of all financial transactions related to the operation of the commission.¹⁸ • Ensure the expenditures of the commission are not greater than the amounts budgeted or available from other revenue sources.¹⁹ <p><u>Statewide Indigent Defense Services</u></p> <ul style="list-style-type: none"> • Prepare and submit annually to the commission a proposed budget for the provision of statewide indigent defense services; and prepare and submit an annual report containing pertinent data on the operations, costs, and needs of the state's indigent defense system and other information as the commission may require.²⁰ • Distribute all funds appropriated by the General Assembly for the defense of indigents.²¹ • Apply for and accept on behalf of the commission funds that may become available from any source, including government, nonprofit, or private grants, gifts, or bequests.²² <p>Implement and perform other duties the commission may direct or assign.²³</p>

Legal directives for the...

Commission on Indigent Defense

Applicable statutes: S.C. Code Ann. 17-3-310³ and 17-3-340⁴

Office of Indigent Defense (OID)

Applicable statutes: S.C. Code Ann. 17-3-330⁵ and 17-3-360⁶

Circuit Public Defender Division

(operates under jurisdiction of the Commission)

Commission shall...

- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for maintaining and operating circuit public defender offices.²⁴
- Establish and administer the rules and procedures for selection of members to serve on the Circuit Public Defender Selection Panels.²⁵
- Establish the rules and procedures under which the selection panels shall operate.²⁶
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for the qualifications, employment, and compensation of public defenders and other circuit public defender office personnel.²⁷
- Assist the public defenders throughout the state in their efforts to provide adequate legal defense to the indigent.²⁸
- Negotiate and enter into contracts(not required to, but may), as appropriate, with independent counsel for the provision of indigent defense services in cases in which a conflict of interest exists in a public defender office and in other cases in which indigent representation by independent counsel is necessary or advisable.²⁹

OID shall...

- Supervise compliance among the circuit defender offices with rules, procedures, regulations, and standards adopted by the commission.³⁰
- Provide for the training of attorneys and other staff involved in the legal representation of persons subject to the provisions of this chapter.³¹

Contract/Appointed Counsel and Conflicts of Interest

Commission shall...

- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for compensation of attorneys appointed to represent indigent persons pursuant to this chapter.³²
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for accepting contractual indigent defense representation.³³
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for prescribing minimum experience, training, and other qualifications for appointed counsel where a conflict of interest arises between the public defender and an indigent person.³⁴

OID shall...

- Provide for the training of attorneys and other staff involved in the legal representation of persons subject to the provisions of this chapter.³⁵

Legal directives for the...

Commission on Indigent Defense

Applicable statutes: S.C. Code Ann. 17-3-310³ and 17-3-340⁴

Office of Indigent Defense (OID)

Applicable statutes: S.C. Code Ann. 17-3-330⁵ and 17-3-360⁶

Specialty Work

Commission shall...

Experts and Investigators

- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for providing and compensating experts, investigators, and other persons who provide services necessary for the effective representation of indigent persons.³⁶

Juveniles

- Approve the development and improvement of programs which provide legal representation to indigent persons and juveniles accused of violations of criminal law.³⁷

OID shall...

Appeals

- Provide defense to indigents who desire to appeal a conviction in a trial court, or decision of a proceeding in civil commitment or other voluntary placement in a state, county, or municipal facility.³⁸

Death Penalty

- Provide defense to indigents in death penalty cases.³⁹

Statistics/Performance

Commission shall...

- Cooperate and consult with state agencies, professional associations, and other groups concerning⁴⁰
 - Causes of criminal conduct,
 - Rehabilitation and correction of persons charged with and convicted of crimes,
 - Administration of criminal justice, and
 - Improvement and expansion of defender services.
- Collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in the State.⁴¹
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for delivery of indigent services. This includes, but is not limited to, standards for:
 - public defender and appointed counsel caseloads, including a uniform definition of a “case” for purposes of determining caseload statistics;
 - performance of public defenders and appointed counsel representing indigent persons;
 - procedures for prescribing qualifications and performance of independent counsel representing indigent persons in both trial and appellate courts, whether by contract or court appointment; and
 - removing a circuit public defender for cause.⁴²

OID shall...

- Coordinate the services of the office with any federal, county, private, or other programs established to provide assistance to indigent persons entitled to representation pursuant to the provisions of this chapter and consult with professional organizations concerning the implementation and improvement of programs for providing indigent services.⁴³
- Serve as a resource for the compilation of accurate statistical data covering the indigent defense system in this state.⁴⁴
 - Note: This directive only requires the agency to serve as a resource for others who may be compiling information; it does not require the agency to compile information.⁴⁵ Currently, the only law requiring the agency to compile information is a proviso which requires the agency to compile information on revenue streams and expenditures by circuit.⁴⁶
- Report annually to the General Assembly on the indigent defense system.⁴⁷

Mission and Vision

The agency provides Act 164 of 1993 and S.C. Code Ann. 17-3-310, et. seq., as the basis for its mission and vision.

SCCID's mission is as follows:

The Commission on Indigent Defense, through the Office of Indigent Defense and its divisions, and in cooperation and consultation with other state agencies, professional associations and other groups interested in the administration of criminal justice and the improvement and expansion of defender services, **establishes and monitors programs and services for legal representation to indigent defendants charged with criminal offenses in the courts of the state. The agency also manages the Rule 608 Contract program, contracting with attorneys across the state to provide representation in criminal and specific family court cases.** (emphasis added)

SCCID's vision is to

Ensure that individuals, determined to be indigent, are provided the highest quality legal defense representation.

DEATH PENALTY TRIAL DIVISION

Overview of the Death Penalty Trial Division

Death Penalty Trial Division is one of the agency's organizational units. This unit provides representation and resources for capital trials statewide.

Organizational Chart related to the Death Penalty Trial Division

Figure 4 includes an organizational chart, current as of March, 2018.

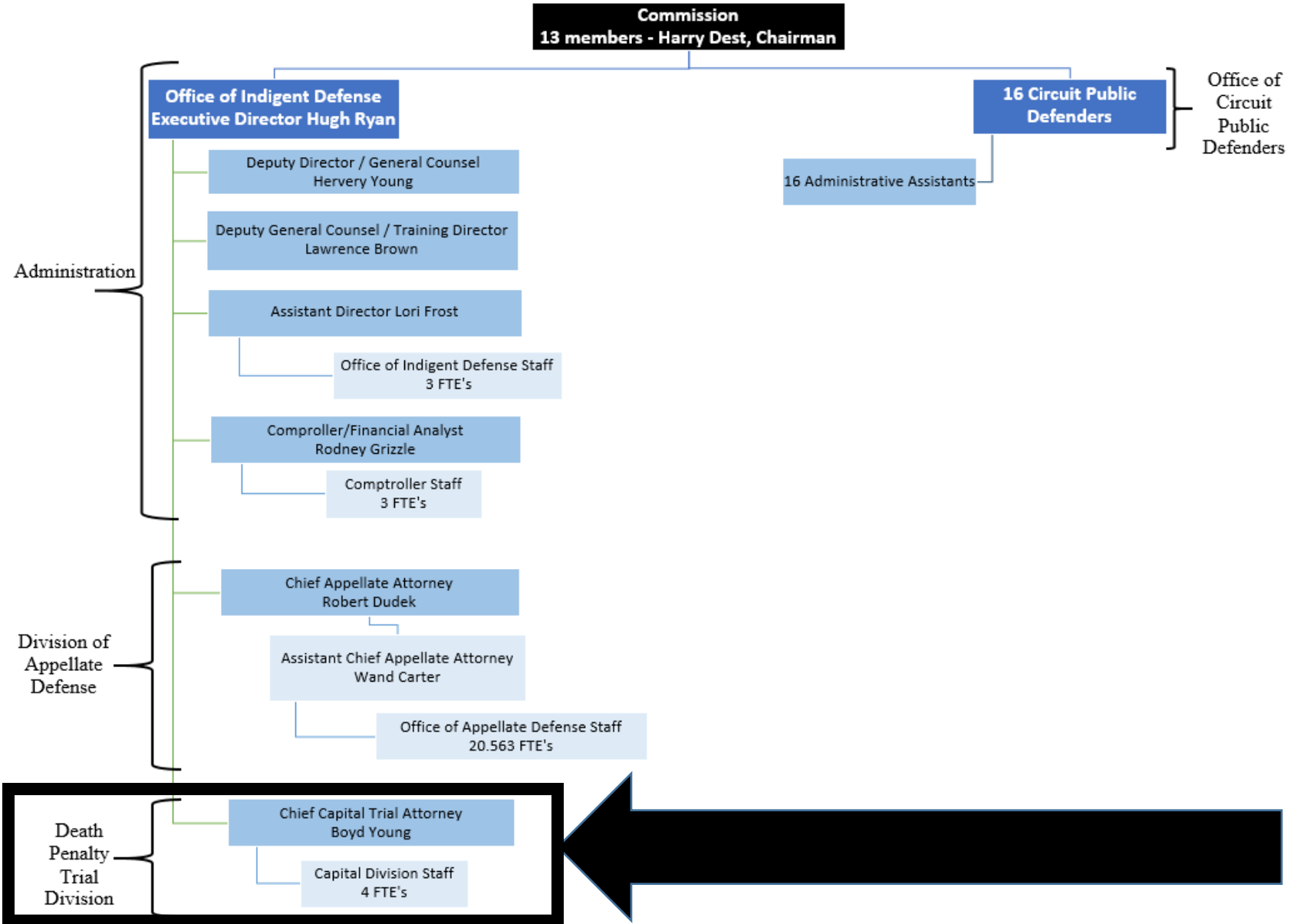


Figure 4. SCCID Organizational chart as of March 2018.⁴⁸

Products, Services, and Customers related to the Death Penalty Trial Division

In the Program Evaluation Report, the Committee asks an agency to **provide a list of its deliverables** (i.e., products and services) as well as additional information related to laws, customers, costs, and potential negatives impacts.

Table 2 includes an overview of the deliverable provided by the Death Penalty Trial Division and Table 3 includes additional information about the deliverable. Figure 5 provides a flow chart which summarizes steps in a death penalty case.

Table 2. List of the Death Penalty Trial Division's deliverables.

		Provides for appointment of legal counsel in capital murder cases*, criminal sexual conduct cases, and capital murder post-conviction relief cases	
		Does law require, allow, or not address it?	Require
Customers	}	Does the agency <ul style="list-style-type: none"> • evaluate the outcome obtained by customers / individuals who receive the service or product? 	✗
		Does the agency know the annual number of <ul style="list-style-type: none"> • potential customers? • customers served? 	✗ ✓
		Does the agency <ul style="list-style-type: none"> • evaluate customer satisfaction? 	✗
Costs	}	Does the agency know <ul style="list-style-type: none"> • cost it incurs, per unit, to provide the product or service? 	✓
		Does the law <ul style="list-style-type: none"> • allow the agency to charge for it to cover the agency's costs? 	✓

Table Note: An asterisk (*) indicates the Office of Circuit Public Defenders is also associated with deliverable.

Table 3. Additional details about the Death Penalty Trial Division’s deliverable.

Deliverable #1A⁴⁹	Legal representation of indigent S.C. citizens
-------------------------------------	---

Product/Service Component: Legal services in capital murder cases and criminal sexual conduct cases

Does law require, allow, or not address it? Require

Applicable law: S.C. Code Ann. 16-3-26, 16-3-655, and 17-3-90

Greatest potential harm to the public if deliverable is not provided:

- The indigent citizens of S.C. would be denied their constitutional rights under the sixth amendment, the right to counsel; and fourteenth amendment, the right to equal protection under the law.

1-3 recommendations to the General Assembly, other than \$, for how the General Assembly can help avoid the greatest potential harm

- Ensure only those citizens who are indigent, receive appointed counsel.
- Ensure indigency screening and appointment of counsel occurs as early as possible.

Other state agencies whose mission the deliverable may fit within: None

Does agency evaluate the outcome obtained by individuals who receive the service or product?	Does agency know the annual number of potential customers ?	Does agency know the annual number of customers served ?	Does the agency evaluate customer satisfaction ?	Does the agency know the cost it incurs, per unit, to provide the product or service ?	Does the law allow the agency to charge for it to cover the agency’s costs ?
×	×	✓	×	✓	✓

Product/Service Component: Legal services in capital murder post-conviction relief cases

Does law require, allow, or not address it? Require

Applicable law: S.C. Code Ann. 16-3-26, 16-3-655, and 17-3-90

Greatest potential harm to the public if deliverable is not provided:

- The indigent citizens of South Carolina would be denied their right to counsel under Sections, 17-27-60, 17-27-110 and 17-27-160 of the South Carolina Code of Laws.

1-3 recommendations to the General Assembly, other than \$, for how the General Assembly can help avoid the greatest potential harm

- Ensure only those citizens who are indigent, receive appointed counsel.
- Ensure indigency screening and appointment of counsel occurs as early as possible.

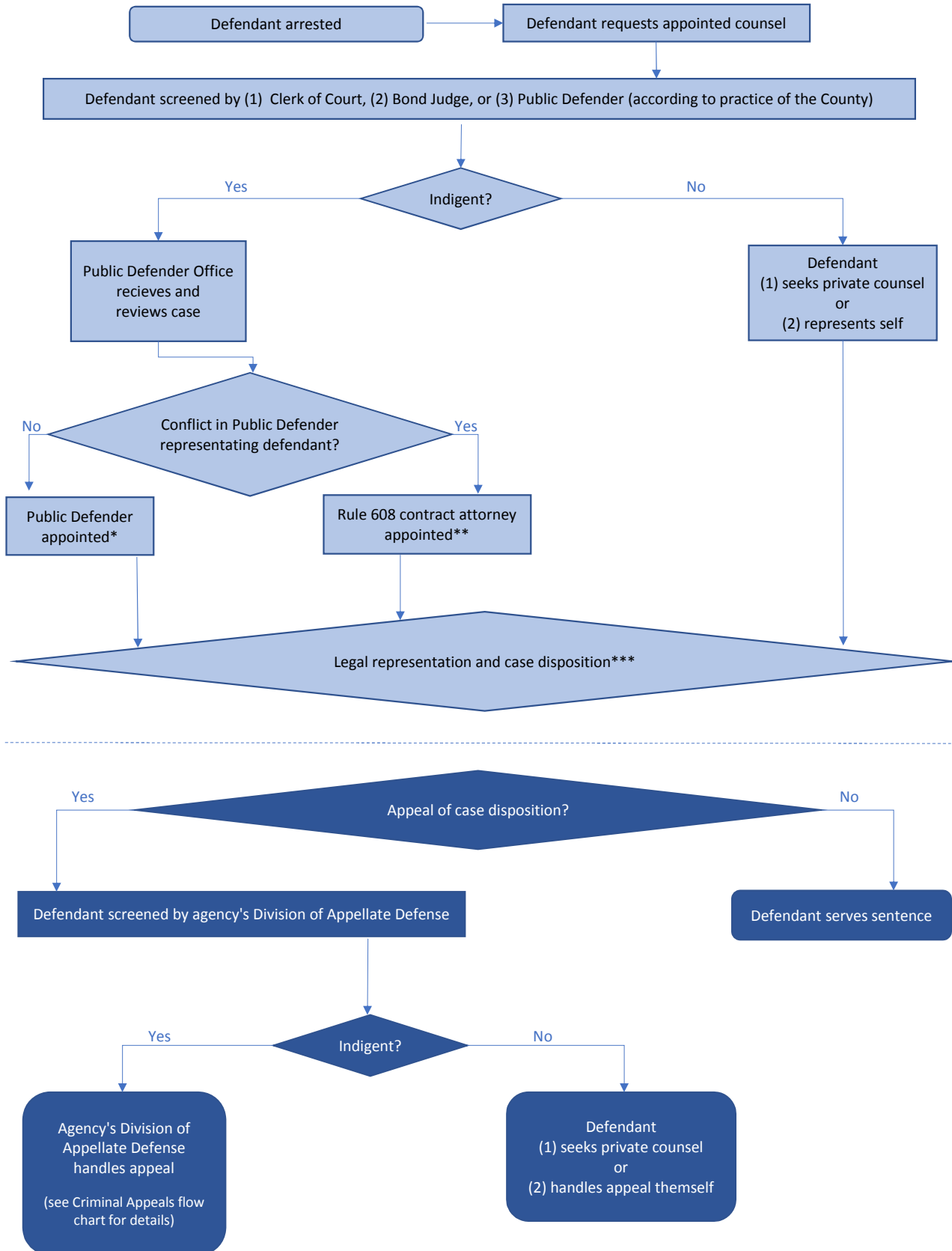
Other state agencies whose mission the deliverable may fit within: None

Does agency evaluate the outcome obtained by individuals who receive the service or product?	Does agency know the annual number of potential customers ?	Does agency know the annual number of customers served ?	Does the agency evaluate customer satisfaction ?	Does the agency know the cost it incurs, per unit, to provide the product or service ?	Does the law allow the agency to charge for it to cover the agency's costs ?
✗	✗	✓	✗	✓	✓

Criminal Case (includes Death Penalty)

Flow Chart as of April 2018

Indigent defendants right to counsel in criminal cases is granted in the U.S. Constitution.



*If the case involves the Death Penalty, the Capital Litigation Unit can get involved as second counsel to assist the appointed attorney. §16-3-26

**If the Public Defender office is conflicted, the Capital Litigation Unit will be appointed and the court will appoint a Death Penalty Certified attorney to be second chair. §16-3-26

***Case disposition includes: (1) plea or nol proceed (not prosecuting) of some or all charges (i.e., warrants) before trial; (2) plea or nol proceed (not prosecuting) some or all charge (warrants) during trial; (3) judge or jury decision at end of trial.

Employee Information related to the Death Penalty Trial Division

In the Program Evaluation Report, the Committee asks the agency to provide information about the employees in each of the agency's organizational units. The division has a Chief Capital Trial Attorney, Mr. Boyd Young, and four staff members.⁵²

Table 4 includes additional employee information related to the division.

Table 4. Death Penalty Trial Division: Employee Information.

<u>Details</u>	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>
What is the turnover rate?	20%	0%	20%
Is employee satisfaction evaluated?	×	×	×
Is anonymous employee feedback allowed?	×	×	×
Do any positions require a certification (e.g., teaching, medical, accounting, etc.)	✓	✓	✓
Did the agency pay for, or provide classes/instruction needed to maintain all, some, or none of required certifications?	Some*	Some*	Some*

Table Note: An asterisk () indicates SCCID pays basic S.C. Bar dues for attorneys employed in this division, but does not pay for continuing legal education courses which are required for an attorney to maintain their license in S.C.*

Revenue and Funding Sources of the Death Penalty Trial Division

Revenue/Funding Received or Generated by the Death Penalty Trial Division

In the Program Evaluation Report, the Committee asks the agency to provide information about its revenue sources. The Death Penalty Trial Division does not **generate** funds from any sources⁵³

This division **receives** funds through the following sources⁵⁴:

- Public Defender Application Fee¹
- Court Fine 2²
- Conviction Surcharge 2³
- Investment Earnings 2

Table 5 includes the total amount received from each source. Note, these totals include amounts that were provided to the death penalty trial division, as well as the agency's office of circuit public defenders and administration unit.

Table 5. Funding sources for the Death Penalty Trial Division.⁵⁵

Revenue Source	Recurring or one-time?	State, Federal, or Other?	Does revenue remain with the agency or go to General Fund?	Total revenue received in 2015-16	Total revenue estimated to receive in 2016-17
Public Defender Application Fee ⁴	Recurring	Other	Agency	\$611,751	\$620,300
Court Fine 2 ⁵	Recurring	Other	Agency	\$7,351,747	\$7,175,473
Conviction Surcharge 2 ⁶	Recurring	Other	Agency	\$1,627,519	\$1,375,560
Investment Earnings 2	One-Time	Other	Agency	\$59,231	\$99,119
			TOTAL	\$9,650,248	\$9,270,452

¹ Office of Circuit Public Defenders organizational unit is also associated with this revenue source.

² This revenue source is associated with all agency organizational units.

³ Office of Circuit Public Defenders organizational unit is also associated with this revenue source.

⁴ Office of Circuit Public Defenders organizational unit is also associated with this revenue source.

⁵ This revenue source is associated with all agency organizational units.

⁶ Office of Circuit Public Defenders organizational unit is also associated with this revenue source.

Revenue/Funding Utilized by the Death Penalty Trial Division

Table 6 includes information on revenue sources utilized by the Death Penalty Trial Division to achieve the agency’s comprehensive strategic plan in fiscal years 2016-17 and 2017-18.

Table 6. Agency revenue sources utilized by the Death Penalty Trial Division to achieve the agency’s comprehensive strategic plan in FY 2016-17 and 2017-18.⁵⁶

Revenue Sources utilized	Recurring or one-time?	State, Federal, or Other?	Organizational Units utilizing the funds	Spent to achieve plan in 2016-17	Percent of total spent by agency	Budgeted to achieve plan in 2017-18	Percent of total spent by agency
Public Defender Application Fee	Recurring	Other	Administration, Division of Appellate Defense, Office of Circuit Public Defenders, Death Penalty Trial Division	\$7,483,424 ₅₇	19.25% ₅₈	\$10,717,272	23.78% ⁵⁹
Court Fine 2 ^{7^}	Recurring	Other					
Conviction Surcharge 2 ^{8*}	Recurring	Other					
Investment Earnings 2 ⁹	One-Time	Other					

Table Note: An asterisk (*) denotes filing fees, fines, or other fees are collected by the Clerk of Courts Office and submitted to the State Treasurer's Office on a monthly bases for disbursement to our agency. An ^ denotes fines are collected by the Clerk of Courts Office and submitted to the State Treasurer's Office on a monthly bases for disbursement to our agency, except for the Probation Fee which is submitted directly to SCCID.

⁷ Includes: (1) Fee for filing complaints or petitions in civil actions described in 8-21-310(11)(a) (See, Section 14-1-204(A)(4)), which is legal aid collection that flows through to SC Legal Services; (2) Court Fine Assessment for those who are convicted of, plead guilty or nolo contendere to, or forfeits bond for a criminal offense in General Sessions, Magistrate, and Municipal Courts (see Sections 14-1-206(C)(4), 14-1-207(C)(6) and 14-1-208(C)(6) and Section 14-1-218(4)); and (3) Application fee for public defender services in General Sessions, Magistrate, and Municipal Courts (See, Section 17-3-30(B)).

⁸ \$500 Probation Fee collected by the Clerks of Court and remitted to SCCID.

⁹ Interest earned from the collection of Sources #12 Public Defender Application Fee, #13 Court Fine 2 based upon Section 14-1-204(A)(4), which is flow through to SC Legal Services; Court Fine Assessment based upon Section 14-1-218(4); Fees generated based upon Sections 14-1-206(C)(4), 14-1-207(C)(6) and 14-1-208(C)(6) and the application fee provided in Section 17-3-30(B) in General Sessions, Magistrate and Municipal Courts; and Source #14 Conviction Surcharge 2. The Treasurer’s Office remits the interest payments to SCCID on a monthly basis.

Agency strategic plan and performance related to the Death Penalty Trial Division

In the Program Evaluation Report, the **Committee asks an agency how it allocates its human and financial resources to accomplish its goals** (i.e., broad expression of a long-term priority) **and objectives** (i.e., specific, measurable and achievable description of an effort the agency is implementing to achieve a goal) in the agency's strategic plan.⁶⁰ The Committee also asks the agency to list any funds the agency spent or transferred not toward the agency's comprehensive strategic plan.

Funds Spent/Transferred not toward the agency's comprehensive strategic plan

The Death Penalty Trial Division spends all of its funding toward the agency's comprehensive strategic plan.

Funds Spent toward the agency's comprehensive strategic plan

Table 7.1 includes an overview of how the agency allocated its resources to Strategy 1.3, the strategy with which the Death Penalty Trial Division is associated. Table 7.2 includes detailed information regarding the related performance measures.

Strategic Plan associated with the Death Penalty Division

Table 7.1. Part of agency's strategic plan related to the Death Penalty Trial Division, Strategy 1.3: Ensure quality representation in capital death cases.

GOAL 1 Ensure the effective legal representation of S.C. citizens eligible for indigent defense services

Strategy 1.3 Ensure quality representation in capital death cases

Objective 1.3.1 Provide effective administration of the capital defense system for all indigent defendants in S.C. trial courts

Objective 1.3.2 Require all Capital Trial Division attorneys be certified as S.C. Supreme Court Death Penalty Qualified

Responsible Employee(s): Mr. Boyd Young (responsible for less than three years)
Employee have input in budget? Yes, Mr. Young has input into the budget for Strategy 1.3

External Partner(s): Federal government, state government, and individuals

	# of FTE equivalents utilized	Amount Spent (including employee salaries/wages and benefits)	% of Total Available to Spend	Associated Performance Measures
2016-17*	7.25	\$ 848,615	1.92%	<ul style="list-style-type: none"> Continued training of the death penalty trial attorneys to ensure indigent clients receive professional and effective legal representation.
2017-18*	7.25	\$ 931,235	2.07%	

*Table Note: Data above relates to Strategy 1.3 which includes the Death Penalty Trial Division and a portion of the agency's administration organizational unit.

Performance measures associated with the Death Penalty Division

The agency provided its performance measures in its Program Evaluation Report (PER). The agency was asked to categorize each measure based on the definitions below:⁶¹

Types of Performance Measures:

Outcome Measure - A quantifiable indicator of the public and customer benefits from an agency's actions. Outcome measures are used to assess an agency's effectiveness in serving its key customers and in achieving its mission, goals and objectives. They are also used to direct resources to strategies with the greatest effect on the most valued outcomes. Outcome measures should be the first priority. Example - % of licensees with no violations.

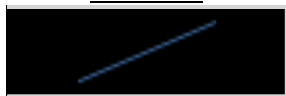
Efficiency Measure - A quantifiable indicator of productivity expressed in unit costs, units of time, or other ratio-based units. Efficiency measures are used to assess the cost-efficiency, productivity, and timeliness of agency operations. Efficiency measures measure the efficient use of available resources and should be the second priority. Example - cost per inspection

Output Measure - A quantifiable indicator of the number of goods or services an agency produces. Output measures are used to assess workload and the agency's efforts to address demands. Output measures measure workload and efforts and should be the third priority. Example - # of business license applications processed.

Input/Activity Measure - Resources that contribute to the production and delivery of a service. Inputs are "what we use to do the work." They measure the factors or requests received that explain performance (i.e. explanatory). These measures should be the last priority. Example - # of license applications received.

The agency indicates the performance measures associated with the portion of the strategic plan applicable to the Death Penalty Division is "Continued training of the death penalty trial attorneys to ensure indigent clients receive professional and effective legal representation." The agency does not specifically list this measure in its PER. However, the agency does include data on the number of continuing education hours provided to public defenders, which is seen in Table 13.2 below.

Table 7.2. Performance measure associated with continued education.

Performance Measure	Type of Measure	2013-14	2014-15	2015-16	2016-17	2017-18	
Increase the number of Continuing Education Hours provided to PD's (Continuing Legal Education) <u>Required by:</u> Agency selected (not required by state or federal government)	Output	<u>Target:</u>	DNE	DNE	60	60	60
		<u>Actual:</u>	DNE	DNE	48.50	59	<u>Trend Line</u> 

*Table Note: "DNE" means did not exist.

COMMITTEE CONTACT INFORMATION



- Website - <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php>
- Phone Number - 803-212-6810
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¹ Visual Summary Figure 1 is compiled from information in the Commission on Indigent Defense study materials available online under "Citizens' Interest," under "House Legislative Oversight Committee Postings and Reports," and then under "Indigent Defense, Commission on"

<http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyPHPFiles/IndigentDefense.php> (accessed April 17, 2018).

² Greenville Online, <https://www.greenvilleonline.com/story/news/crime/2015/03/09/citizens-group-court-backlog-making-streets-unsafe/24524199/> (Accessed April 19, 2018)

³ S.C. Code Ann. 17-3-310. Commission created; appointment of members; terms; powers and duties.

(A) There is created the Commission on Indigent Defense consisting of thirteen members.

(B) Nine members shall be appointed by the Governor as follows: (1) One member from each of the four judicial regions of the State appointed upon recommendation of the South Carolina Public Defender Association. Members shall serve for terms of four years and until their successors are appointed and qualify. Vacancies must be filled in the manner of original appointment for the unexpired portion of the term. A person may not be appointed to the commission pursuant to the provisions of this item or, once appointed pursuant to the provisions of this item, may not continue to serve on the commission unless the person is a public defender. (2) A member of the South Carolina Bar whose practice is principally in family law, appointed upon recommendation by the South Carolina Bar membership for a term of two years and who may be reappointed. (3) Two members of the South Carolina Bar whose practice is principally in criminal defense law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for a term of two years and may be reappointed. (4) Two members of the South Carolina Bar whose practice is principally neither criminal defense nor family law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for two-year terms and who may be reappointed.

(C) The remaining four members must be appointed as follows: (1) two members appointed by the Chief Justice of the South Carolina Supreme Court, one of whom must be a retired circuit court judge and one of whom must be either a retired family court judge or a retired appellate court judge, each of whom shall serve for a term of four years and until a successor is appointed and qualifies; and (2) the Chairmen of the Senate and House Judiciary Committees, or their legislative designees, for the terms for which they are elected.

(D) The chairman must be elected by the commission from its membership and shall serve for a term of two years. A chairman may be re-elected.

(E) Members currently serving as of July 1, 2005, shall continue to serve until the expiration of their term and may be reappointed as provided in subsection (B)(1).

(F) The commission may adopt an appropriate seal and promulgate regulations consistent with the provisions of this article to govern its operations and procedures and shall supervise the operations of the Office of Indigent Defense including all the divisions of the office.

(G) The commission: (1) may establish divisions within the office to administer the services and programs as it considers necessary to fulfill the purposes of this article; (2) shall develop rules, policies, procedures, regulations, and standards as it considers necessary to carry out the provisions of the article and comply with state law or regulations and the rules of the Supreme Court, including the nature and scope of services to be provided, the clientele to be served, and the establishment of criteria to be used in the determination of indigency and qualifications for services for indigent legal representation; (3) shall cooperate and consult with state agencies, professional associations, and other groups concerning the causes of criminal conduct, the rehabilitation and correction of persons charged with and convicted of crimes, the administration of criminal justice, and the improvement and expansion of defender services; (4) shall assist the public defenders throughout the State in their efforts to provide adequate legal defense to the indigent. This assistance includes, but is not limited to: (a) the preparation and distribution of a basic defense manual and other educational materials; (b) the preparation and

distribution of model forms and documents employed in indigent defense; (c) the promotion of and assistance in the training of indigent defense attorneys; (d) the provision of legal research assistance to public defenders; and (e) the provision of other assistance to public defenders as may be authorized by law; (5) shall collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in the State; and (6) shall have the authority to negotiate and enter into contracts, as appropriate, with independent counsel for the provision of indigent defense services in cases in which a conflict of interest exists in a public defender office and in other cases in which indigent representation by independent counsel is necessary or advisable. This authority may be delegated by the commission to a circuit public defender, but is at all times subject to standards established by the commission. (7) The commission shall establish and administer the rules and procedures for selection of members to serve on the Circuit Public Defender Selection Panels, and shall establish the rules and procedures under which the selection panels shall operate.

⁴ S.C. Code Ann. 17-3-340. Duties of commission.

(A) All members of the commission shall at all times act in the best interest of indigent defendants who are receiving legal representation pursuant to the provisions of this chapter.

(B) All members of the commission are entitled to vote on all matters before the commission unless otherwise provided by law or by rules adopted by the commission concerning conflicts of interest.

(C) Each member of the commission shall serve until a successor has been appointed. Removal of commission members is for cause and must be in accordance with policies and procedures adopted by the commission.

(D) Unless otherwise provided in this article, a quorum is a majority of the members of the commission who are currently serving in office, and decisions of the commission are determined by majority vote of the members present, except that a majority of the entire commission must approve the appointment or removal of a circuit public defender or the executive director for cause.

(E) The commission shall meet at least quarterly and at other times and places as it deems necessary or convenient for the performance of its duties and shall keep and maintain minutes of all commission meetings.

(F) The commission shall elect such officers, other than the chairperson, from the members of the commission as it deems necessary and shall adopt rules for the transaction of its business as it desires. Elected officers shall serve for a term of one year and may be removed without cause by a vote of two-thirds of the members of the entire commission and for cause by a majority vote of the entire commission. The chairperson shall retain a vote on all matters except those in which the chairperson has a conflict of interest.

(G) The members of the commission shall receive no compensation for their services but will be reimbursed for their actual expenses incurred in the performance of their duties as members of the commission. Expenses incurred by the commission must be paid from the general operating budget of the commission.

(H) The commission shall approve the development and improvement of programs which provide legal representation to indigent persons and juveniles accused of violations of criminal law.

(I) The commission shall approve and implement programs, services, rules, policies, procedures, regulations, and standards as may be necessary or advisable to fulfill the purposes and provisions of this article in the delivery of indigent services. This includes, but is not limited to, standards for: (1) maintaining and operating circuit public defender offices, including requirements regarding qualifications, training, and size of the legal and support staff of the offices and access to data and records, including business records, in each circuit public defender office; (2) prescribing minimum experience, training, and other qualifications for appointed counsel where a conflict of interest arises between the public defender and an indigent person; (3) public defender and appointed counsel caseloads; (4) the qualifications, employment, and compensation of public defenders and other circuit public defender office personnel, based on job description, education, training, and experience; (5) the performance of public defenders and appointed counsel representing indigent persons; (6) procedures for prescribing qualifications and performance of independent counsel representing indigent persons in both trial and appellate

courts, whether by contract or court appointment; (7) providing and compensating experts, investigators, and other persons who provide services necessary for the effective representation of indigent persons; (8) determining indigence and for assessing and collecting the costs of legal representation and related services; (9) compensation of attorneys appointed to represent indigent persons pursuant to this chapter; (10) removing a circuit public defender for cause; (11) a uniform definition of a "case" for purposes of determining caseload statistics; and (12) accepting contractual indigent defense representation.

⁵ S.C. Code Ann. 17-3-330. Duties of Office of Indigent Defense.

(A) The Office of Indigent Defense shall: (1) serve as the entity which distributes all funds appropriated by the General Assembly for the defense of indigents, including funds allocated to public defender offices pursuant to the formula, funds for the defense of capital cases, funds for attorney's fees and expenses in non-capital cases, and other funds appropriated for these purposes; (2) perform those functions provided pursuant to Section 17-3-360; (3) serve as a resource for the compilation of accurate statistical data covering the indigent defense system in this State; (4) implement other duties the commission may direct; and (5) report annually to the General Assembly on the indigent defense system.

(B) On or about June thirtieth of each year, if the Office of Indigent Defense determines, after taking into consideration all outstanding obligations against the fund for payment of attorney fees and expenses in non-capital cases, that unexpended funds remain, these funds shall be rolled over into the fund for payment of attorney's fees and expenses in capital cases; provided, however, this shall occur only in the event the funds in the capital fund have been exhausted at that time. This fund shall at no time exceed three million dollars.

(C) Notwithstanding another provision of law, only attorneys who are licensed to practice in this State and residents of this State may be appointed by the court and compensated with funds appropriated to the Death Penalty Trial Fund in the Office of Indigent Defense.

⁶ S.C. Code Ann. 17-3-360. Division of Appellate Defense created; administration and staffing; duties and responsibilities.

(A) There is created within the Office of Indigent Defense, the Division of Appellate Defense. All of the allied, advisory, affiliated, or related entities as well as the employees, funds, property, and all contractual rights and obligations associated with the commission and Office of Appellate Defense formerly provided in Chapter 4, Title 17 are transferred to and incorporated in and must be administered as part of the Office of Indigent Defense.

(B) The division must be administered by a chief attorney. The staff of the division shall consist of additional attorneys and administrative, investigative, secretarial, and clerical employees necessary to discharge the duties of the division. No person may be hired to serve as an attorney who is not licensed to practice law in this State. Attorneys employed by the division shall devote full time to their duties and may not engage in the private practice of law.

(C) The division shall carry out the following duties and responsibilities: (1) It shall represent a person who the office determines, subject to court review, falls within the guidelines promulgated pursuant to Section 17-3-310(G)(2) who files Notice of Intention to Appeal or desires to appeal a conviction in a trial court, or decision of a proceeding in civil commitment or other voluntary placement in a state, county, or municipal facility. A person desiring representation by the division shall request a determination of his indigency status in writing from the Supreme Court, the court of appeals, the circuit or family court, or the division. A court receiving a request for indigent appellate representation shall forward the request to the office who, within ten days of the receipt of the request for representation, shall notify the person requesting representation and the court in which the appeal will be effected of its decision. (2) Upon a finding that a person requesting representation qualifies as an indigent and after being appointed as counsel for this person by the court in which the appeal will be effected, the division shall represent this person in his appeal of a conviction in a trial court, or decision of a proceeding in civil commitment or other involuntary placement in a state, county, or municipal facility, provided nothing in this article requires the division to pursue an appeal unless the chief attorney of the division is first satisfied that there is arguable merit to the appeal. (3) It shall represent indigents, other than at trial or commitment proceedings when appointed by the court. (4) It shall represent indigents in appeals of convictions in trial courts of this State, or decisions of civil commitment proceedings or other involuntary placement only in courts of this State.

⁷ S.C. Code Ann. 17-3-310.

⁸ S.C. Code Ann. 17-3-340.

⁹ S.C. Code Ann. 17-3-340.

¹⁰ S.C. Code Ann. 17-3-340.

¹¹ S.C. Code Ann. 17-3-340.

¹² S.C. Code Ann. 17-3-310.

¹³ S.C. Code Ann. 17-3-340.

¹⁴ S.C. Code Ann. 17-3-320.

¹⁵ S.C. Code Ann. 17-3-320.

¹⁶ S.C. Code Ann. 17-3-320.

¹⁷ S.C. Code Ann. 17-3-320. Office of Indigent Defense; executive director; appointment; duties.

(A) There is created the Office of Indigent Defense under the jurisdiction of the commission. The office must be administered by an executive director appointed by the commission. The executive director may hire other administrative, clerical, and legal staff and is authorized to contract with outside consultants on behalf of the office as he considers necessary to provide the services as required pursuant to the provisions of this article.

(B) The executive director shall: (1) administer and coordinate the operations of the office and all divisions within the office and supervise compliance among the circuit defender offices with rules, procedures, regulations, and standards adopted by the commission; (2) maintain proper records of all financial transactions related to the operation of the office; (3) coordinate the services of the office with any federal, county, private, or other programs established to provide assistance to indigent persons entitled to representation pursuant to the provisions of this chapter and consult with professional organizations concerning the implementation and improvement of programs for providing indigent services; (4) prepare and submit annually to the commission a proposed budget for the provision of statewide indigent defense services; and prepare and submit an annual report containing pertinent data on the operations, costs, and needs of the state's indigent defense system and other information as the commission may require; (5) coordinate in the development and implementation of rules, policies, procedures, regulations, and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards; (6) maintain proper records of all financial transactions related to the operation of the commission; (7) apply for and accept on behalf of the commission funds that may become available from any source, including government, nonprofit, or private grants, gifts, or bequests; (8) provide for the training of attorneys and other staff involved in the legal representation of persons subject to the provisions of this chapter; (9) attend all commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the director; (10) ensure that the expenditures of the commission are not greater than the amounts budgeted or available from other revenue sources; and (11) perform other duties as the commission assigns.

¹⁸ S.C. Code Ann. 17-3-320.

¹⁹ S.C. Code Ann. 17-3-320.

²⁰ S.C. Code Ann. 17-3-320.

²¹ S.C. Code Ann. 17-3-330. including funds allocated to public defender offices pursuant to the formula, funds for the defense of capital cases, funds for attorney's fees and expenses in non-capital cases, and other funds appropriated for these purposes

²² S.C. Code Ann. 17-3-320.

²³ S.C. Code Ann. 17-3-330.

²⁴ S.C. Code Ann. 17-3-340.

²⁵ S.C. Code Ann. 17-3-310.

²⁶ S.C. Code Ann. 17-3-310.

²⁷ S.C. Code Ann. 17-3-340.

²⁸ S.C. Code Ann. 17-3-310.

²⁹ S.C. Code Ann. 17-3-310.

³⁰ S.C. Code Ann. 17-3-320.

³¹ S.C. Code Ann. 17-3-320.

³² S.C. Code Ann. 17-3-340.

³³ S.C. Code Ann. 17-3-340.

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- ³⁴ S.C. Code Ann. 17-3-340.
- ³⁵ S.C. Code Ann. 17-3-320.
- ³⁶ S.C. Code Ann. 17-3-340.
- ³⁷ S.C. Code Ann. 17-3-340.
- ³⁸ S.C. Code Ann. 17-3-330. See also, S.C. Code Ann. 17-3-360.
- ³⁹ S.C. Code Ann. 17-3-330(B)-(C)
- ⁴⁰ S.C. Code Ann. 17-3-310.
- ⁴¹ S.C. Code Ann. 17-3-310.
- ⁴² S.C. Code Ann. 17-3-340.
- ⁴³ S.C. Code Ann. 17-3-320.
- ⁴⁴ S.C. Code Ann. 17-3-330.
- ⁴⁵ Phone conversation between Mr. Hugh Ryan, SCCID, Mr. Rodney Grizzle, SCCID, and Mr. Charles Appleby, House Legislative Oversight Committee staff, on April 20, 2018.
- ⁴⁶ Phone conversation between Mr. Hugh Ryan, SCCID, Mr. Rodney Grizzle, SCCID, and Mr. Charles Appleby, House Legislative Oversight Committee staff, on April 20, 2018. See also, Proviso 117.110, General Appropriations Bill for Fiscal Year 2016-17 and Proviso 117.109, General Appropriations Bill for Fiscal Year 2017-18 (The Prosecution Coordination Commission and the Commission on Indigent Defense shall provide detailed expenditure reports and associated revenue streams for each individual circuit, revenue streams shall include, but not be limited to, state funds, local funds, Federal funds, and also nongovernmental sources of funds, by no later than September first, on the prior fiscal year, to the appropriate commission. The commissions shall than provide the Chairman of the House Ways and Means Committee and Chairman of the Senate Finance Committee with a combined report by September fifteenth of the current fiscal year.)
- ⁴⁷ S.C. Code Ann. 17-3-330.
- ⁴⁸ Agency PER.
- ⁴⁹ Item numbers are the ones utilized in agency's program evaluation report.
- ⁵⁰ Item numbers are the ones utilized in agency's program evaluation report.
- ⁵¹ Mr. Rodney Grizzle, SCCID email to Mr. Charles Appleby, House Legislative Oversight Committee, in April 2018.
- ⁵² Agency PER, Organizational Chart as of July 1, 2017.
- ⁵³ Agency's PER, Comprehensive Strategic Finances Chart
- ⁵⁴ Agency's PER, Comprehensive Strategic Finances Chart
- ⁵⁵ Agency's PER, Comprehensive Strategic Finances Chart
- ⁵⁶ Agency's PER, Comprehensive Strategic Plan Chart and Strategic Plan Summary Chart.
- ⁵⁷ These amounts are grouped together because that is how they appear in the S.C. Enterprise Information System.
- ⁵⁸ Total spent by agency to achieve its plan in 2016-17 was \$37,560,944.
- ⁵⁹ Total budget by agency to achieve its plan in 2017-18 was \$43,361,737.
- ⁶⁰ Department of Administration, Executive Budget Office, "2016-17 Accountability Report Technical Assistance Guide," under Agency Accountability Reports <http://www.admin.sc.gov/files/FY%202016-17%20Accountability%20Report%20Technical%20Assistance.pdf> (accessed July 21, 2017). See also, Agency PER.
- ⁶¹ [CMA Program Evaluation Report](#), pp. 32-34.