



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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September 7, 2018

The Honorable Edward R. Tallon Sr.
Subcommittee Chair, Legislative Oversight Committee
228 Blatt Building
Columbia, SC 29201

Re: Follow-up questions from the Subcommittee meetings in LOC letters dated August 17, 2018 and August 30, 2018

Dear Chairman Tallon:

Please find enclosed Indigent Defense's response to your follow-up questions from the August 14, 2018 and August 28, 2018 meetings. We look forward to continuing our partnership with the subcommittee in this oversight process.

Please do not hesitate to contact me if we can provide additional information or assist in any way.

Very truly yours,

J. Hugh Ryan, III
Executive Director
South Carolina Commission on Indigent Defense

**Agency's Response to
Oversight Subcommittee's
August 17, 2018 Letter**

Information by Court

Question 1 Is the agency aware of any studies or reports which identify the potential amount of increased costs a county may incur (e.g., housing individuals in its jails) which could be saved if there were additional attorneys available to represent indigent defendants?

The only study that SCCID is aware of is the York County Circuit Public Defender Office's 5-year study of cost savings associated with having a Public Defender assigned to address client cases in the county jail. **(PLEASE SEE ATTACHMENT 1)**

Laws

Question 2 Please analyze S.C. Code Section 17-3-40, which relates specifically to claims against assets of a person provided indigent counsel, and Section 17-3-45, which also relates, in part, to claims against assets of a person provided indigent counsel, to determine if these statutes are duplicative and provide your conclusions.

The text of Section 17-3-40 is duplicated in Section 17-3-45. Subsections A and B of 17-3-40 are combined and repeated in Section 17-3-45(E). Some of the wording was changed to make the section more understandable and clear. Subsection C of 17-3-40 is repeated verbatim in Section 17-3-45(F). Subsection D was deleted to relieve the Judicial Department from the duty of administering this section.

It is our conclusion that the sections are duplicative. Section 17-3-45 is the most recent section that appears to have been written at the time the Public Defender system changed to the statewide system. Section 17-3-40 should be deleted as the context of the section has been included in 17-3-45, and the deletion will not change or remove the law from the SC Code of Laws.

Commission Meetings

Question 3 During the meeting, the agency testified the minutes from its Commission Meetings were on the agency website. Please identify where these minutes are located on the website and the years for which they are available.

Minutes for all meetings from February 27, 2015 to the most recently-approved minutes of May 19, 2018 have now been posted. They can be accessed from the main scid.sc.gov page under "Commission Meetings" "See All".

Diversions Programs

Question 4 What is the agency and circuit public defender's offices involvement (e.g., input into structure of current programs or additional programs to offer in the future; etc.) in the diversion and pre-trial intervention programs, outside of plea negotiations to get their clients into the programs.

Circuit	Circuit Public Defender involvement in Diversion Programs in their Circuits
1 st	<p>1st Circuit has little direct involvement in the diversion programs. The exception may be that we do have a public defender on the Dorchester drug court review and recommendation committee. This group reviews persons enrolled in the program who have not followed all the requirements and recommends their retention or expulsion from the program. We also have a staff person in Orangeburg and Dorchester Counties who seeks alternative sentencing programs for persons with addiction, mental health and vocational issues. While not technically a diversion program it creates alternatives to traditional incarceration for clients by getting them into programs to help treat the underlying issues in their lives.</p>
2 nd	<p>2nd Circuit Public Defender Office has no input into the structure of the current Diversion Programs in their Circuit.</p> <p>Recently, the CPD Office has been asked to attend weekly Drug Court meetings, so we could advise participants who were being sanctioned or locked up. We have asked to start a Mental Health Court, but there has been no progress.</p>
3 rd	<p>3rd Circuit Public Defender Office has no input into the structure of the current Diversion Programs in their Circuit.</p>
4 th	<p>4th Circuit Public Defender Office has no input into the structure of the current Diversion Programs in their Circuit.</p>
5 th	<p>Other than homeless court, the 5th Circuit Public Defender Office does not have any input in this process at all. Our Solicitor runs all programs and does not request any input from the CPD.</p>
6 th	<p>6th Circuit Public Defender Office is involved in the Drug Court Multidisciplinary Team, who have input into who gets in the program and the treatment and sanctions imposed on the participant. Other than Drug Court the CPD had no input in any other Diversion Program in their circuit.</p>

Circuit	Circuit Public Defender involvement in Diversion Programs in their Circuits
7 th	<p>In Spartanburg County, the public defender had some input in the creation of the Drug Court program and, most recently, in the Juvenile Drug Court program. But in the Seventh Circuit, the public defender had no input in other solicitor-run diversion programs, other than negotiations to get our clients in the program.</p> <p>There was an attempt to create a Veteran's Court program, in which the CPD attempted to get involved. However, when the solicitor's office decided to make it a diversion program run by their office, the CPD had no input, and the solicitor's office has gotten one or two private attorneys to volunteer to represent the clients in the "Veteran's Court." The CPD Office is not involved in this program at all.</p>
8 th	<p>8th Circuit Public Defender Office has no input into the structure of the current Diversion Programs in their Circuit.</p>
9 th	<p>In Charleston County, the Public Defender's Office is involved in structure and teamwork supporting in Adult Drug Court, the Adult Mental Health Court, and the Juvenile Drug Court. The same is true in the Berkeley County Adult Drug Court.</p> <p>Charleston County has an active Criminal Justice Coordinating Council. The PD plays an active role. We have the MacArthur Safety and Justice Initiative funding that has fostered the local police looking for alternatives to arrest. This includes a Crisis Stabilization Center for police calls involving mentally ill persons who can safely be referred to this clinic and then back into the mental health system. We are adding sobering beds for police calls where an intoxicated person can safely be diverted from arrest for drunk calls to a place to sober up. We also are advocating for additional probate supervision with mental health for offenders who are mentally ill and incompetent and unable to be restored to competency.</p>
10 th	<p>10th Circuit Public Defender Office has no input into the structure of the current Diversion Programs in their Circuit.</p> <p>Anderson County has recently formed a Criminal Justice Coordinating Council (CJCC), so the CPD Office may be more involved if other diversion programs are created. There is discussion of a mental health court and veterans court presently.</p>
11 th	<p>11th Circuit Public Defender Office has no input into the structure of the current Diversion Programs in their Circuit.</p>

Circuit	Circuit Public Defender involvement in Diversion Programs in their Circuits
12 th	<p>12th Circuit Public Defender Office has no input in the PRI program. However, for the Juvenile Drug Court and Adult Drug/DUI Court our office has an attorney present at the weekly meetings of these Courts. As each of the participant's names are brought up and their progress is tracked, our attorney weighs in on discussions concerning the participants' promotion through the program. Alternatively, if a participant has violated the rules and is facing sanctions, our attorney participates in the decision about the appropriate sanction to be faced for the violation.</p>
13 th	<p>13th Circuit Public Defender Office has no input into the structure of the current Diversion Programs in their Circuit.</p>
14 th	<p>14th Circuit Public Defender Office has no input into the structure of the current Diversion Programs in their Circuit.</p>
15 th	<p>15th Circuit Public Defender Office has no input into the structure of the current Diversion Programs in their Circuit.</p> <p>Horry and Georgetown Counties have the following Programs: Mental Health Court, Drug Court, PTI, and Life Recovery. Only the Solicitor can admit a potential defendant even though there are defense attorneys on both the Mental Health and Drug Court "Boards".</p>
16 th	<p>16th Circuit Public Defender Office has no input into the structure of the current Diversion Programs in their Circuit.</p> <p>This is vastly different from the way we originally set up our Drug Court back in the mid-1990s. During the inception of Drug Court, we were very involved in the process and helped shape not only policy but had input in determining how to handle participants who were struggling in the program. Unfortunately, that is no longer the case. Over the years the Solicitor's office has gained more control over the process, and as a consequence our influence has diminished.</p>

Data and Reports

Question 5 What tools do the circuit public defenders utilize to provide the information the Commission compiles each year in the Human Resources and County Funding publication?

The Circuit Public Defenders use Defender Data and their annual budget appropriation information from their counties and municipalities to compile the data that is used in the Human Resources and County Funding Publication. All information entered in the HR Survey is reviewed and verified by SCCID staff prior to the publication being submitted for public consumption.

a. If the Commission requests information from each circuit public defender to compile the publication, do you know approximately how long it takes each of them to gather the information the Commission requests?

The Commission sends the HR Survey out to the Circuit Public Defender Offices around July 1st each year and requires the HR Survey be completed and submitted for review by SCCID staff by August 1st of each year. The information contained in the survey is based on the prior year's actual numbers since the close of the fiscal year is June 30.

Question 6 What data, if any, do personnel in the solicitor's office and public defender's offices both analyze?

We are not exactly sure what data the Solicitors analyze. However, by attending the annual budget hearings, we are sure that the Prosecution Coordination Commission uses Court Administration data such as total warrants filed as a baseline for caseloads per Assistant Solicitor. SCCID also uses Court Administration data to make similar analyses.

a. Is there any data the agency would like to see both utilize more efficiently?

SCCID is not aware of additional data which could be used more efficiently by both agencies. (SCCID and PCC)

Question 7 For data and reports the agency collects for the General Assembly, does the agency send this information to the Legislative Services Agency (LSA) for publication on the legislature website, pursuant to S.C. Code of Laws Section 2-1-230?

SCCID seeks to ensure that all data collected for the General Assembly is submitted to the Legislative Services Agency for publication on the Legislative website, and to the State Library for publication on their website.

Question 8 Please provide a copy of the report from which the agency was citing statistics during the August 14, 2018 Subcommittee meeting and identify the page numbers in the report on which the statistics are located.

Please see pages 194-199, 213-214 and 219-220 in the Cornell Report. **(PLEASE SEE ATTACHMENT 2)**

Question 9 Please provide the statistics the agency was citing based on review of its own records during the August 14, 2018 Subcommittee meeting.

Please see page 7 of the Division of Appellate Defense Year-End Caseload Report for FY17-18. (PLEASE SEE ATTACHMENT 3) Also see page 3 of the Capital Trial Division Year-End Report FY17-18. (PLEASE SEE ATTACHMENT 4)

Question 10 Should the definition of “case” be the same for all types of matters or should the definition be different for appellate matters?

Guilty pleas are not counted as “cases” for the Appellate Division except in those unusual circumstances where the guilty plea appeal is allowed to proceed by the Appellate Court. Probably 9 out of 10 guilty plea appeals are dismissed because the plea attorney and the client cannot show there is a “preserved appellate issue in the case” to the screening appellate court. If there was a motion to withdraw the plea or reconsider the sentence which was denied by the lower court, then there would very likely be a “preserved appellate issue” which would allow the guilty plea appeal to proceed as a normal case.

The Appellate Division only opens a file on a guilty plea case if the Appellate Court gives us notice that the appeal will proceed. We then order all transcripts, and exhibits involved just as we do in every appeal of a criminal trial. To count guilty plea appeals that were dismissed by the appellate court as cases was and is thought to be misleading, and “inflating” our “case” numbers. Starting this fiscal year, the Appellate Division is keeping a separate list of guilty plea appeals that are dismissed – while still not counting them as “cases” -- so that the Division can substantiate in the future what percentage of criminal appeals in this state are handled by the Appellate Division. The Appellate Division thinks that percentage is 90% or more of the criminal appeals in this state.

Conversely, guilty pleas for a Public Defender’s Office are correctly counted as “cases” because very often a substantial amount of work and skill are involved in investigating, negotiating, and consummating a favorable guilty plea for the client in the final analysis.

a. Utilizing the definition of case for appellate matters that the agency seeks to use, could data on the number of cases be pulled from the data currently tracked by Court Administration?

No. We understand that Court Administrative counts “warrants” as “cases.” Therefore, one Appellate Division client could have had warrants for attempted murder, kidnapping, and possession of a weapon during a violent crime at the trial level. The Division understands these would be three different cases (3 arrest warrants) for Court Administration “case” counting purposes. However, for the Appellate Division, these three charges -- “cases” – (almost always) would be handled together in a single appeal and would be counted as one case on appeal regardless of whether the client was convicted on one, two, or all three of the charges at the trial level.

Capital Trial Division

Question 11 During the last five years, what percentage of defendants in death penalty cases, not just trials, were represented by private attorneys not appointed by the agency?

Over the past 5 years, no privately-retained attorneys have represented clients in any Death Penalty Cases.

Technology and Equipment

Question 12 Does the circuit public defender case management systems interact with the court administration system and/or circuit solicitor systems (for ease in sharing discovery and statistics)?

SCCID's Case Management System, Defender Data, does not interact with Court Administration's system nor with the Circuit Solicitors' system. In the past, there has been discussion with Court Administration to develop an interface between our two systems, but SCCID was informed by Court Administration that they had other projects that would take several years to complete and that the interface between the two systems was not a priority for them at that time.

Question 13 What kind of technology upgrades, if any, are necessary to improve agency efficiency?

SCCID is always looking for upgrades in technology to ensure that the agency is operating as efficiently as possible, which is part of the reason that the agency migrated the management of our agency's workstations, network and servers to the Department of Administration's Division of Technology Office in 2017. SCCID's service agreement requires DTO to provide the services to all the agency workstations, network, e-mail and back up servers as well as the necessary recommendations of technology upgrades to keep the agency up to date with all the IT security and privacy requirements.

Question 14 Are any technological deficiencies hindering the performance of the agency?

At this time SCCID, with the assistance of Division of Technology Office, has not identified any technological deficiencies that affect the agency's performance of its duties or responsibilities.

Question 15 Does the agency have replacement plans for necessary computer and technology items? If yes, please send us a copy of those replacement plans.

Based upon the recommendation of the Division of Technology Office, SCCID is replacing all of the agency's computer workstations this fiscal year. The workstations that are being replaced run on the Windows 7 operating system, and the actual equipment is not capable of running the Windows 10 operating system. The workstations that are being replaced have been in operation for 6 years. The agency will adhere to the Division of Technology Office's recommendations as to any replacement plans necessary to maintain the agency's computer and technology upgrades.

Question 16 Are there any other types of equipment, besides computers and programs, the agency will always need for its staff? If yes, does the agency have replacement plans for that equipment?

SCCID has service agreements with Xerox for the two large production copiers that the agency needs to produce the necessary documents required by the SC Supreme Court and the SC Appellate Courts. These service contracts are for a 5-year period and are under the SC State Procurement contract for state agencies.

Indigency Screening

Question 17 During each of the last three years, how many total defendants were there, and total defendants assigned a public defender, for the following types of matters: (a) General Sessions and sexual violent predator; (b) Family Court; and (c) Magistrate Court.

SCCID is unable to determine how many total defendants there were in each of the past three years due to the fact that Court Administration and the Circuit Solicitors use warrants for the total “cases” handled by the Courts in a fiscal year rather than the actual number of defendants. SCCID is able to provide the total number of defendants that were represented by the Public Defender Offices for each of the past three years.

Question 18 If every defendant during each of the last three years was assigned a public defender, please estimate the following figures: (a) total additional funds (attorney and non-attorney staff, etc.) that would be needed by the agency to maintain the current public defender caseloads; (b) revenue that would be generated if the same percentage of indigent application fees that is currently received, were received; (c) revenue that would be generated if the same percentage of probations were obtained and same percentage of those fees were received, as are currently received.

Since SCCID is unable to ascertain the total number of defendants per year, we are unable to provide any estimates requested in this question. SEE ANSWER TO QUESTION 17.

Question 19 Please communicate with the Department of Social Services to determine if there is an efficient method of obtaining information on individuals who receive SNAP benefits that could be utilized during indigency screening as a presumption of indigency, along with any related costs.

The Department of Social Services provided information that because of the tight constraints on access to or disclosure of information, it would be highly unlikely that any outside entity could be given access to data as to who receives SNAP benefits to use for the purpose of indigency screening. The regulations that govern SNAP benefits are 7 CRF § 272.1(c). **(SEE BELOW)**

7 C.F.R § 272.1

(c) Disclosure.

(1) Use or disclosure of information obtained from SNAP applicant or recipient households shall be restricted to:

- (i) Persons directly connected with the administration or enforcement of the provisions of the Food and Nutrition Act of 2008 or regulations, other Federal assistance programs, federally-assisted State programs providing assistance on a means-tested basis to low income individuals, or general assistance programs which are subject to the joint processing requirements in § 273.2(j)(2).
 - (ii) Persons directly connected with the administration or enforcement of the programs which are required to participate in the State income and eligibility verification system (IEVS) as specified in § 272.8(a)(2), to the extent the SNAP information is useful in establishing or verifying eligibility or benefit amounts under those programs;
 - (iii) Persons directly connected with the verification of immigration status of aliens applying for SNAP benefits, through the Systematic Alien Verification for Entitlements (SAVE) Program, to the extent the information is necessary to identify the individual for verification purposes.
 - (iv) Persons directly connected with the administration of the Child Support Program under part D, title IV of the Social Security Act in order to assist in the administration of that program, and employees of the Secretary of Health and Human Services as necessary to assist in establishing or verifying eligibility or benefits under titles II and XVI of the Social Security Act;
 - (v) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and
 - (vi) Local, State, or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food and Nutrition Act of 2008 or regulation. The written request shall include the identity of the individual requesting the information and his authority to do so, violation being investigated, and the identity of the person on whom the information is requested.
 - (vii) Local, State, or Federal law enforcement officers acting in their official capacity, upon written request by such law enforcement officers that includes the name of the household member being sought, for the purpose of obtaining the address, social security number, and, if available, photograph of the household member, if the member is fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or a high misdemeanor in New Jersey), or is violating a condition of probation or parole imposed under a Federal or State law. The State agency shall provide information regarding a household member, upon written request of a law enforcement officer acting in his or her official capacity that includes the name of the person being sought, if the other household member has information necessary for the apprehension or investigation of the other household member who is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or
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parole imposed under Federal or State law. The State agency must accept any document that reasonably establishes the identity of the household member being sought by law enforcement authorities. If a law enforcement officer provides documentation indicating that a household member is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole, the State agency shall follow the procedures in § 273.11(n) to determine whether the member's eligibility in SNAP should be terminated. A determination and request for information that does not comply with the terms and procedures in § 273.11(n) would not be sufficient to terminate the member's participation. The State agency shall disclose only such information as is necessary to comply with a specific written request of a law enforcement agency authorized by this paragraph.

(viii) Local educational agencies administering the National School Lunch Program established under the Richard B. Russell National School Lunch Act or the School Breakfast Program established under the Child Nutrition Act of 1966, for the purpose of directly certifying the eligibility of school-aged children for receipt of free meals under the School Lunch and School Breakfast programs based on their receipt of Supplemental Nutrition Assistance Program benefits.

(2) Recipients of information released under paragraph (c)(1) of this section must adequately protect the information against unauthorized disclosure to persons or for purposes not specified in this section. In addition, information received through the IEVS must be protected from unauthorized disclosure as required by regulations established by the information provider. Information released to the State agency pursuant to section 6103(l) of the Internal Revenue Code of 1954 shall be subject to the safeguards established by the Secretary of the Treasury in section 6103(l) of the Internal Revenue Code and implemented by the Internal Revenue Service in its publication, Tax Information and Security Guidelines.

(3) If there is a written request by a responsible member of the household, its currently authorized representative, or a person acting on its behalf to review material and information contained in its casefile, the material and information contained in the casefile shall be made available for inspection during normal business hours. However, the State agency may withhold confidential information, such as the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.

Question 20 Please communicate with the Department of Employment and Workforce and the Department of Revenue to determine the following: (a) Information that may be utilized during indigency screening; (b) Methods by which the information may be accessed; and (c) Cost to access the information.

Contact was made with the Department of Employment and Workforce and the Department of Revenue to determine if they have data that can be made accessible for screening purposes. The Department of Revenue indicated that they only have State Tax Return information available if the person filed their State taxes. However, that information would be limited, because it would be only for the previous year and not current, and it would only be limited to their taxable federal income. If they need current information on a taxpayer, they use data from DEW. DEW indicated that they have data that can (1) verify employment, (2) verify reported wages and (3) verify application and receipt of unemployment benefits. This information is accessible as it is

web-based. The cost for access will basically be the technology cost on the screener end. No cost to or charge by them to access the data. The hurdle is they are a State Agency regulated by Federal Regs regarding confidentiality and disclosure of the information. Unless there is an appropriate exception, clearance must be obtained to access the information. There may be a way for the applicant to waive privacy or give consent to access to the information. It must be noted that DEW's database is current up to the previous quarter because employers report quarterly 30 days after the last day of the quarter.

Question 21 Please communicate with the Department of Insurance to determine if it utilizes any databases (e.g., Comprehensive Loss Underwriting Exchange (C.L.U.E.)) which have information that may be utilized during indigency screening, and if so, methods by which the information may be accessed; and cost to access the information.

The Department of Insurance does not utilize any type of database for checking any individual's financial information. The only thing that the Department of Insurance requires from the individual that they manage is a SLED and FBI background check when that individual applies to be an insurance agent.

Question 22 Please contact directly or through the state procurement office, if necessary, LexisNexis regarding the Comprehensive Loss Underwriting Exchange (C.L.U.E.) to determine the following: (a) Information that may be utilized during indigency screening; (b) Methods by which the information may be accessed; and (c) Cost to access the information.

According to LexisNexis Risk Solutions Representative, Tony Diehl, C. L. U. E. is consumer reporting agency product that helps provide quick and easy access to comprehensive information to insurance underwriters to help reduce risks and liability in predicting future claims. The reports in C.L.U.E provides a seven-year history of losses associated with an individual. There are 2 reports: C.L.U.E Auto Report and C.L.U.E. Personal Property Report. The report will identify each loss by the date, type, amount paid along with policy number, claim number and insurance company name. In order to access this product, an application must be submitted with an insurance carrier sponsoring the applicant. The product is not accessible through LexisNexis but only through the carrier's portal.

Question 23 Please provide the information below for the Greenville model for indigency screening:

a. What information and documentation is required from applicants?

Greenville screeners require "documentation" (Income/Assistance for entire household – per Federal Poverty Guidelines) – actual pay stubs, bank statements or benefit letters for any type of government benefits(social security, food stamps etc.), proof of child support payments (printouts from family court), letters from family members who provide support, if someone is living in a shelter, the shelter must provide proof, if the household is unusually large we may require each person's social security card, during "tax" season we require the defendant (if currently employed or employed the previous year) to provide proof of tax return amount. More documentation may be required if something raises a question that needs to be verified.

b. What methods are utilized to verify the information?

To verify information submitted, the screeners require actual documentation. They want to see proof on paper of what is being disclosed on the application. In rare instances, they will contact persons directly to verify.

c. What did Greenville seek to achieve through this model and what has been achieved?

Greenville sought to achieve a fair and thorough screening process that treats all defendants equally and ensure that only those meeting the State's guidelines were appointed counsel.

d. Has Greenville seen any cost savings as a result of its investment in this model? If so, please specify.

Greenville was not able to provide any specific cost savings information but stated they were able to achieve a screening process that is fair and holds people accountable for their requests. They further stated that not making unnecessary appointments upfront is the most cost-effective approach.

Question 24 Please provide a chart which outlines the current steps in how indigency screening is performed, with cites to the applicable authorities.

Please see the Indigency Screening Chart provided to the subcommittee in the meeting package for the 8-14-18 meeting. The chart is by county and shows who currently accepts the Indigency Screening application and who currently performs the review. Statutes 17-3-30 and 17-3-45 authorize the Screening process. (See **Indigency Screening Chart from the 8/14/18 LOC Meeting Package**)

Question 25 Please provide the following information:

a. Issue(s) a statewide indigency screening process seeks to address/remedy;

Issue(s) a statewide process seeks to address/remedy are (1) setting a uniform standard of what qualifies a person to be indigent; (2) establishing one specific entity to conduct the screening in a neutral but fair manner; (3) establishing a process for the determination of indigency – similar to the standard of determining child support obligation regardless of where a person is located in the state; (4) establishing a process that provides for a verification aspect of the provided information to assure that only those that are truly indigent are receiving appointed counsel;

b. Outcome sought from addressing the issue(s);

It is hoped that by addressing these issues, South Carolina can have (1) a screening process that will be centralized in each county and consistent throughout the state; (2) a screening process that will be fair and impartial and not deter those in need of counsel from applying to have counsel appointed, if they qualify; (3) a screening process that will deter those wanting

to abuse the system, intentionally and unintentionally, by not providing accurate information regarding their ability to employ counsel; and (4) a process that will ensure that indigent defense services are provided in appropriate cases in a timely manner.

c. Options considered in order of preference, including a list of the pros and cons for each which the agency explained during the August 14, 2018 subcommittee meeting;

The Agency, with input from other stakeholders, has looked at a couple of options regarding a screening process. These options focused on two things: (1) what entity should conduct the screening and (2) what process should the screener use to determine indigency. The options considered for the entity to conduct, in order of preference, are:

Greenville Model	
<p>Pros</p> <ul style="list-style-type: none"> ❖ Independence <ul style="list-style-type: none"> ○ Not elected officials ○ Not affected by increase or decrease of caseloads ○ Solely dedicated to the task (screening) 	<p>Cons</p> <ul style="list-style-type: none"> ❖ Cost State-wide – Approximately \$2.6 million+ ❖ Questions of State or County Funding

Clerk of Court	
<p>Pros</p> <ul style="list-style-type: none"> ❖ Maintains Court Records ❖ Set up to take payments (Application Fee) ❖ Ease of access ❖ Clerk has access to Public Records (County) 	<p>Cons</p> <ul style="list-style-type: none"> ❖ Not set up for jail screenings ❖ Potential shortage of personnel ❖ Elected Official (Lack of Independence)

Magistrate	
<p>Pros</p> <ul style="list-style-type: none"> ❖ Speed of appointment (1st contact with judicial system) ❖ Helps reduce jail population ❖ Quicker case resolution due to earlier appointment of counsel 	<p>Cons</p> <ul style="list-style-type: none"> ❖ Potential lack of personnel ❖ Lack of appropriate screening data ❖ Potentially slows down Bond Process

Department of Probation, Pardon and Parole Services*	
Pros <ul style="list-style-type: none"> ❖ Independence ❖ Office located in each county ❖ Potential access to screening data 	Cons <ul style="list-style-type: none"> ❖ No experience with pre-trial matters ❖ Cost – \$10 million annually ❖ Slows down application review process

Public Defender Offices*	
Pros <ul style="list-style-type: none"> ❖ Speed of appointment of counsel 	Cons <ul style="list-style-type: none"> ❖ Potential Conflict of Interest (Damage to attorney client relationship) ❖ Bias – (Public Defenders have been accused of both, accepting to many clients and also not accepting enough of clients) ❖ Not set up to accept payments ❖ Lack of appropriate screening data

***Not an option preference but listed because they are stakeholders and considered as a screening entity.**

The process that should be used, regardless of the screening entity, is the same. In general, an applicant will be required to submit an Affidavit/Application form with supporting documentation and a \$40 application fee. The application should be amended to provide information needed to make a determination. The supporting documents should be spelled out so that all applicants know what they must provide. The application fee will be either paid at time the application is submitted, paid during the course of the case, or paid at the conclusion of the case. Once the application is received, the screener will review the application using the following steps to determine if a person is indigent:

1. Determine the household income;
2. Determine if any presumptions of indigency apply;
3. Determine the value of the applicant's asset and if any assets are able to be liquidated; and
4. Determine if there are any exceptional circumstances that will qualify or disqualify the applicant

The process will also provide for a timely review process in the event an applicant is determined to not be indigent and wants a Circuit Court Judge to review the decision. Persons that are incarcerated for 10 or more consecutive days will be presumed indigent and their application will be taken and approved by the Independent Screener or by the Public Defender and then forwarded to the Clerk of Court or Chief Magistrate for approval.

- d. Details of the recommended model including who will perform the screening, standard operating procedures for how the screening will be performed, and how it will be enforced;**

(PLEASE SEE ATTACHMENT 5)

- e. Additional costs necessary to implement the recommended model and next preferred model on the agency’s list;**

In our previous report, in response to Proviso 117.142, we estimated a minimum cost of \$2.6 million based on 37 screeners (the minimum number believed necessary) across the State at a cost of \$35,000 salary and \$35,000 fringe. This did not include any overhead expenses. Likewise, we are unable to fairly estimate a cost to implement the next preferred model, screening by the Clerk of Court, without knowing factors such as the needed personnel and overhead of each county office. Because the Clerk of Court offices already have persons within their offices that can handle some of the responsibilities of screening, we will assume that the estimate should be less than that of the “Greenville Model”. **(PLEASE SEE ATTACHEMENT 6)**

- f. Areas to examine in pilot circuits, if model is implemented in pilot circuits first;**

Piloting the implementation of the model will allow for the examination of the Accept/Reject rates on applications, the effectiveness of a state-wide process in counties of different sizes, the time needed to conduct verified screening, and the additional costs necessary to implement the process state-wide. In essence, it will allow for a cost-benefit analysis to be performed. Piloting should occur in a mixture of counties instead of the entire circuits. The mixture should be of small, medium and large counties. We suggestion the following counties to be included in the pilot program:

Allendale	Chester	Clarendon	Marlboro	Laurens
Florence	Aiken	Spartanburg	Horry	Richland

- g. Input from potentially impacted parties; and**

We pulled together a workgroup that included representatives of the Clerks of Court, Public Defenders, PPP, and Magistrate Court Judges. Four meetings have been held to discuss the issues and possible options to address the issues. All members of the workgroup have attended the meetings and had the opportunity to provide feedback that was used to create the recommended process. It is noted that the Clerk of Court representative has made it clear that the Clerk of Courts do not want to be the entity to conduct the screening and noted that as an association they voted to oppose this task. However, this vote took place prior to the workgroup’s discussions and prior to the workgroup taking the position that the \$40 application fee should go to the screening entity to help fund the screening costs and that the \$40 application should not be waivable only deferred.

The Clerks recently expressed concern about a “one size fits all” approach for all 46 counties. They stated that a single approach that might work in a small county does not always work in

a large county, or vice versa. Differences in case load, staffing sizes and county budgets are major factors that will impact any solution, but there are other factors to consider that may not exist in every county. For example, Greenville has an indigent screening office that is under the Department of Public Safety. Another example is Charleston, where the Public Defender performs most of the screening, but the Charleston County Criminal Justice Coordinating Council has hired a number of employees that also perform screening at the jail. These positions were created and are currently funded out of a MacArthur Grant. If a “one size fits all” approach is adopted, it may eliminate the option for counties to tap into grant or other funding sources or to even explore better solutions. The “other appropriate official” language in §17-3-30 provides room for each county to implement a solution that will work for them.

h. Explanation of how the recommended model differs from the screening process in H.4830, which was filed during the last General Assembly.

1. H.4830 designates PPP as the screeners. The recommendation designates the Clerk of Court as the screener because the Clerks’ offices are better equipped to conduct the screening by having the court records located in the courthouse and being already set up to collect money and report it.
 2. H.4830 provides for 14 required questions on the Affidavit/Application form. This information is already included on the form however H.4830 requires 5 years of the information. This requirement is needless and does not go to the question of a person’s current financial condition. The recommended model revised the Affidavit/Application to request similar information in H.4830 without requiring unnecessary information.
 3. The recommended model spells out supporting documents that an applicant must provide as verification of the information in the application. The documents required in the recommended model are documents that are readily available and accessible to the applicant. The list of supporting documentation provided in H.4830 places an undue burden on the applicant and would create a delay in the screening process and drive up the cost of screening by requiring unnecessary documents. The list also imposes additional financial burdens and obligations on people that are applying for indigency status.
 4. The recommended model requires the applicant to acknowledge that the information in the application is true and honest and subject to perjury charges. H.4830 creates an unnecessary new crime that is already covered by the perjury statute.
 5. H.4830 requires the application to be notarized at the applicant's expense. The recommendation requires that the screener be a South Carolina notary public and administer the oath to the applicant at no charge.
 6. The recommended model provides a specific process for the review of the Affidavit/Application to determine if a person is indigent. H.4830 only provides general guidelines of what the review is to determine. The determination in H.4830 appears to be a determination of whether the information is accurate or not and not if the person is indigent.
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7. H.4830 would create a continuing duty for PPP to continuously monitor and review the financial condition of persons applying for counsel. This duty would be extremely onerous on PPP. The recommendation allows for continuous review and gives all parties the opportunity to request a review of the person's financial condition.
8. The recommendation provides for a process to allow a person to make a timely request for a review of a denial of his application by the Circuit Court. This was not provided in H.4830
9. The recommendation provides clarity to a) what income is considered and b) who is considered as a household member.
10. The recommendation provides for Presumptions. This will help streamline the screening process by allowing the finding of indigency by another State/Federal entity to be accepted for people receiving such benefits. Likewise, it will allow incarcerated persons to get appointed counsel without the need to submit documentation that they may not have access to while incarcerated. The recommended model provides that upon posting bond, the incarcerated person would be required to submit an application, supporting documentation and the application fee and be screened like all non-incarcerated persons.

Question 26 Does the agency have an opinion on whether the \$40 application fee should be increased? If yes, what amount is reasonable?

SCCID does not recommend that the \$40 application fee be increased at this time. Currently the application fee is only being collected approximately 25% of the time where there is an application for a Public Defender.

**Agency's Response to
Oversight Subcommittee's
August 30, 2018 Letter**

Turnover

Question 1 How often is a circuit public defender seeking to be re-appointed, not re-appointed?

Only 1 Circuit Public Defender seeking re-appointment was not re-appointed.

Question 2 What was the turnover rate, during each of the past three years, for attorneys in the circuit public defender offices, excluding the circuit public defender?

Circuit	Attorney Turnover rate FY15-16	Attorney Turnover rate FY16-17	Attorney Turnover rate FY17-18	Average Attorney Turnover rate for the 3 years
1 st	0.0%	6.6%	6.6%	4.4%
2 nd	0.0%	11.1%	0.0%	3.7%
3 rd	0.0%	47.1%	11.1%	19.4%
4 th	71.4%	12.5%	46.2%	43.4%
5 th	12.1%	10.5%	22.2%	14.9%
6 th	10.5%	42.1%	21.1%	24.6%
7 th	5.3%	5.3%	17.4%	9.3%
8 th	0.0%	31.6%	21.1%	17.6%
9 th	12.3%	8.0%	16.0%	12.1%
10 th	44.4%	27.3%	0.0%	23.9%
11 th	18.2%	0.0%	20.0%	12.7%
12 th	12.5%	0.0%	10.0%	7.5%
13 th	21.1%	4.5%	4.4%	10.0%
14 th	0.0%	17.6%	0.0%	5.9%
15 th	7.4%	13.8%	19.4%	13.5%
16 th	5.9%	17.4%	11.8%	11.7%

Case Management System

Question 3 Why was the decision made to purchase one case management system for every circuit public defender office instead of allowing each circuit public defender to choose their own system or from a list of approved systems?

In order for SCCID to collect good data on the number and types of cases that the Circuit Public Defenders handle, it was decided that there would be a state-wide case management system for the South Carolina Public Defender Offices. The decision was made to standardize the data collection process, so that each Circuit Defender Office would be providing the same case information on all the cases that each office handles. Having a state-wide system allows SCCID to collect case information from across the state without having to contact each Circuit Public Defender Offices to request information. Defender Data is the case management system that SCCID selected, and it was the agency that received the funding from the State for this project.

Question 4 When was the circuit public defender case management system purchased?

The Defender Data system, in its beginning phase, was used by several of the circuits prior to 2012. In 2012, after the creation of the Circuit Public Defender system to mirror the Circuit Solicitor system, SCCID decided to unify the Defender Data system so that all case information from all 16 Circuits would be standardized, and all the case information would be accessible to SCCID from the entire state. The Commission allowed the 5th Circuit Public Defender Office to retain their case management data collection system because it pre-dated the Defender Data system and the circuit could provide the case-related information required by the Commission. In 2018, the 5th Circuit Public Defender's data collection system is being migrated to Defender Data.

a. What was the upfront cost of the system and what did it include?

The original cost of the unification of the existing systems into the Defender Data system in 2012-13 was \$160,000.

b. What is the average annual cost and what does it include (e.g., total number of users, creation of reports, etc.)?

The Defender Data system is accessible to all Circuit Public Defender staff in all 16 Circuits, the Appellate Attorneys and Administrative Assistants from the Appellate Division of SCCID, and Ryan Cole, SCCID's Data Base Specialist. All reports or specialty requests for information are included in the annual fee. The annual cost of the Defender Data system is based upon a \$2.00 per new case charge. The cost for Defender Data was \$117,126 in FY15-16; \$123,790 in FY 16-17, and \$128,512 in FY17-18.

c. Who pays for the case management system every circuit public defender office utilizes?

SCCID pays the annual cost for Defender Data for the state-wide system.

Question 5 Does the case management system track the disposition of each case? If so, is this information entered for cases handled by public defenders and cases handled by contract attorneys?

The case management system, Defender Data, does track the disposition of each case handled by Public Defenders and Contract Public Defenders. The disposition of the case is entered into Defender Data by the public defender staff. Defender Data does not track the disposition of cases handled by the Rule 608 Conflict Attorneys (608 Contract Attorneys), because they do not have access to the case management system. However, the voucher system used by the Rule 608 Conflict Attorneys to register the court appointment does allow the disposition of the case to be entered when closing the case. However, the contract attorneys have not been diligent in completing the closing of cases in the database. In the current contract for the 608 Attorneys, it is a requirement that they close all cases that they handle in the database.

Question 6 Is there any information the agency has to obtain from Court Administration and then manually enter into the agency's case management system? If so, has the agency every requested Court Administration work with the agency's service provider on a way to obtain this information in a manner that would allow for automatic, instead of manual, input into the system (e.g., connecting the Court Administration and agency system directly; Court Administration providing data in an Excel chart the agency could then use to upload the applicable information into the appropriate data fields in the agency's system)?

Any information that is obtained from Court Administration's system must be manually entered into SCCID's Defender Data system. There is currently no interface between Court Administration's system and SCCID's Defender Data. In the past, SCCID has had many discussions with Court Administration concerning the need for a way to transfer court information from their system to the Circuit Public Defender Offices. Court Administration has other projects that ranked higher in priority for them than the interface connection, and those projects would take several years to complete. (See agency response to the LOC letter dated 8/18/18)

Question 7 Please provide the types of data the Ninth Judicial Circuit Public Defender was referencing during his testimony which he believes could be tracked through the agency's system to assist circuit public defenders in managing their offices, including ways in which the information could assist in management and potential costs, if any, of tracking the additional data.

The Ninth Circuit Public Defender cited that the best indicators of active and effective defense in a case by a lawyer in his opinion are regular client contact, active investigation (where needed), and written motion practice for the client. This is particularly true in complex cases and all those being prepared for trial.

The notes section of Defender Data is one way that managers could have lawyers and staff document their client contact, list their investigative requests and list their motions filed for a client. This would require seeing if there is a consensus on this idea with the other circuit defenders. The performance measure would have to be checked during periodic case reviews of complex cases by the circuit defenders and their managers. It would not be detectable by SCOID unless they also did case reviews.

If SCCID adopted this proposal, we would need to map out how to highlight these tasks to the CPD staff and to train the staff and managers to record this information as performance measures in this manner. There would be significant time and energy in this endeavor by managers and staff, but no monetary cost.

Alternately, SCCID could try to generate a check box by Justice Works for each activity. But a simple check box would not be as detailed and meaningful.

Records Management

Question 8 Please contact the Department of Archives and History to confirm the agency is current in its archiving and inform the committee of the response provided by the Department of Archives and History.

SCCID is in compliance with the Department of Archives and History guidelines concerning records retention and submission, with the exception of the electronic copy of the former Executive Director's e-mails. All SCCID Executive Directors have been attorneys licensed with the South Carolina Bar and have addressed issues for the agency in a legal capacity which would be an exclusion to any FOIA requests due to either the attorney-client discussions or attorney work product. SCCID is currently in discussion with the Department of Archives and History regarding how this issue can be handled. It is our understanding from our discussion that no other state agency has provided their Executive Director's e-mails to DAH, as those agencies share some of the same concerns as SCCID.

Question 9 Since the agency's law recommendation number three requests modification of a statute based on provisions in budget provisos 61.1 and 61.4, please state how many years those provisos have been included in the General Appropriations Act.

Proviso 61.1 has been in the General Appropriations Act since Fiscal Year 1996-97 but has been modified several times throughout the years.

Proviso 61.4 was first included in the General Appropriations Act in Fiscal Year 2000-2001 but has been modified several times throughout the years.

2013, 2014, 2015, 2016 & 2017 Fast Track Cases

Jeff Zuschke & Mindy Lipinski

Cost Savings: Difference in Days between Day of Guilty Plea from Bond Returnable x \$55.00

DEFENDANT NAME	CHARGE	DOA	DAY OF GUILTY PLEA	DAYS IN JAIL	BOND RETURNABLE	DATE DIFFERENCE	SENTENCE	COST SAVINGS
Johnathan Rutherford	RSG < \$2000	8/9/2013	8/27/2013	18	11/30/2013	95	TS	\$5,225
Roger Burris	Burg 2nd. NV	8/10/2013	8/27/2013	17	11/5/2013	70	TS	\$3,850
O'Koren Davis	CDVHAN	7/15/2013	8/27/2013	43	10/8/2013	42	Dismissed	\$2,310
Tiffany Knox	Shoplifting 3rd	6/30/2013	8/27/2013	58	10/8/2013	42	90 Days	\$2,310
Guillermo Hernandez	Poss. Cocaine	8/7/2013	8/28/2013	21	11/5/2013	69	Dismissed	\$3,795
Kendell Caldwell	Poss. MJ 2nd	8/5/2013	9/5/2013	31	10/22/2013	47	90 Days	\$2,585
Carrie Lynn	10X Enhancement	7/23/2013	9/9/2013	48	10/22/2013	43	Time Susp. On 6 Mths Prob	\$2,365
Michael Barnett	Burg 2nd. NV	8/18/2013	9/9/2013	22	11/9/2013	61	TS	\$3,355
Lucinda Scoggins	Jse W/O Permissior	8/19/2013	9/17/2013	29	11/19/2013	63	1 Year	\$3,465
James Robert Barnes	CDV 2nd	8/1/2013	9/19/2013	49	10/22/2013	33	Remanded	\$1,815
Robert Dover	DUI 2nd	7/11/2013	9/20/2013	71	10/28/2013	38	6 Months, cfts 72 days,	\$2,090
Suyen Purdie	Poss. Of Cocaine 1st	9/7/2013	10/1/2013	24	12/3/2013	63	P.R. Bond	\$3,465
William Littlejohn	P.L. Enhancement	8/15/2013	10/7/2013	53	10/29/2013	22	2 Years susp. On 2 Years Probation.	\$1,210
Kristen Allen	Shoplifting 3rd	8/22/2013	10/7/2013	46	11/19/2013	43	120 Days w/ 47 Days Credit.	\$2,365
Sarah Weaver	Grand Larceny	8/30/2013	10/7/2013	38	11/19/2013	43	3 years probation, SAC Counseling, a	\$2,365
Joseph Norman	CDV 2nd	7/27/2013	10/7/2013	72	10/22/2013	15	TS	\$825
Casey Perkins	Att. Veh. w/ Prop. l	8/4/2013	10/7/2013	64	10/22/2013	15	TS	\$825
Michael Tumblin	Property 3 - 2x	8/22/2013	10/7/2013	46	11/19/2013	43		\$2,365
Charles Hemphill	Shoplifting 3rd	10/3/2013	10/18/2013	15	1/14/2014	88	PR Bond	\$4,840
Juan Francisco	DUI 2nd	8/11/2013	10/21/2013	71	11/5/2013	15	TS	\$825
Glenn Mobley	B+E	9/21/2013	10/21/2013	30	1/14/2014	85	Probation	\$4,675
Kevin Estes	B+E	9/18/2013	10/21/2013	33	1/14/2014	85	90 Days	\$4,675
Jennica Millay	Controlled Substanc	10/6/2013	10/21/2013	15	1/14/2014	85	Probation	\$4,675
Bradley Thomas Martin	Unlawful Carry	10/3/2013	10/23/2013	20	1/14/2014	83	YOA susp. on Prob	\$4,565
Kevin Eugene Roseboro	RA(A)	10/1/2013	10/23/2013	22	1/14/2014	83	TS	\$4,565
Terry Gore	Shoplifting 3rd	9/26/2013	10/23/2013	27	1/14/2014	83	90 Days	\$4,565
Jonathan Adams	WID - Marijuana 1s	8/6/2013	10/24/2013	79	11/5/2013	12	YOA susp. on Prob	\$660
Javier Aguilar-Victorian	DUI 2nd	8/18/2013	10/25/2013	68	11/5/2013	11	30 Days	\$605
Jason Knight	CDV 2nd	9/15/2013	10/28/2013	43	12/3/2013	36	TS: 43 CFTS	\$1,980
Ashley Duzan	Poss. Of Morphine	9/27/2013	11/7/2013	41	1/14/2014	68	90 Days	\$3,740
Kevin Hoover	Burg 1st	10/15/2013	11/7/2013	23	1/14/2014	68	Burg 2nd (V) for 10 years.	\$3,740
Deneise Younger	Shoplifting 3rd	9/23/2013	11/7/2013	45	1/14/2014	68	2 Years	\$3,740
Taylor Robinson	Huffing	9/30/2013	11/19/2013	50	1/14/2014	56	Remanded	\$3,080

2013, 2014, 2015, 2016 & 2017 Fast Track Cases

Jeff Zuschke & Mindy Lipinski

Cost Savings: Difference in Days between Day of Guilty Plea from Bond Returnable x \$55.00

DEFENDANT NAME	CHARGE	DOA	DAY OF GUILTY PLEA	DAYS IN JAIL	BOND RETURNABLE	DATE DIFFERENCE	SENTENCE	COST SAVINGS
America Capers	Burg 1st	10/13/2013	11/21/2013	39	1/14/2014	54	inate Commitment in Juvenile Court c	\$2,970
Anthony Ferguson	Poss. Of Cocaine 1st	10/11/2013	11/21/2013	41	1/14/2014	54	90 Days	\$2,970
Wesley Kollock	RA(A)	10/4/2013	11/21/2013	48	1/14/2014	54	90 Days	\$2,970
Tyler Brooks	Poss. CS - 1st	11/1/2013	12/5/2013	34	2/11/2014	68	TS	\$3,740
Janis Brown	CDV 2nd	10/16/2013	12/5/2013	50	1/14/2014	40	usp. on 54 Days TS and 18 Months Pr	\$2,200
Cody Harahus	FTS 1st	10/4/2013	12/5/2013	62	1/14/2014	40	lonths Probation, D+A Testing, D+A Cc	\$2,200
Richard Young	DUI 2nd	11/14/2013	12/6/2013	22	2/25/2014	81	30 Days Conc. To YOA Revocation	\$4,455
William Whitten	orgery Less than 10	10/21/2013	12/13/2013	53	1/28/2014	46	6 Months	\$2,530
Charles Barnette	Shoplifting 3rd	11/17/2013	12/13/2013	26	2/25/2014	74	90 Days	\$4,070
Ronny Moore	x Forgery - Enhance	10/24/2013	12/13/2013	50	1/28/2014	46	2 years	\$2,530
Brein Roberts	Shoplifting 3rd	11/14/2013	12/18/2013	34	2/25/2014	69	90 Days	\$3,795
Michael Mason	orgery Less than 10	11/25/2013	12/18/2013	23	3/11/2014	83	90 Days	\$4,565
Joshua Freeman	5G < \$2000 Enhance	11/7/2013	12/19/2013	42	2/11/2014	54	ars susp. on 90 days and 5 years proba	\$2,970
Dustin Stacey	2x Shoplifting 3rd	11/21/2013	12/19/2013	28	2/25/2014	68	1 year	\$3,740
Tonya Davis	Poss. of Meth	11/18/2013	12/20/2013	32	2/25/2014	67	susp. on 2 years prob. With 33 days cl	\$3,685
Timothy Palmer	P.L. Enhancement	11/7/2013	12/20/2013	43	2/14/2014	56	90 days with 44 days cfts	\$3,080
Daniel Lee Funderburk	Kidnapping	11/30/2013	1/13/2014	44	3/11/2014	57	irs probation, no contact with victim: i	\$3,462
Jacob Hall	PWID - Ritalin 1st	11/11/2013	1/13/2014	63	2/25/2014	43	YOA NTE 3 susp. on Prob.	\$2,611
Lashawn Kuryla	olony FTC Fraud, Mis	11/21/2013	1/14/2014	54	2/25/2014	42	54 Days TS	\$2,551
Brandon Leach	l 2nd, DUS for DUI 2	12/22/2013	1/14/2014	23	4/1/2014	77	22 Days TS	\$4,676
Bobby Hinson	Poss. of Heroin 2nd	1/4/2014	1/30/2014	26	4/1/2014	61	28 days TS	\$3,705
Tiffany Knox	Shoplifting 3rd	12/12/2013	1/30/2014	49	4/1/2014	61	90 days with 50 days cfts.	\$3,705
Eric Lipscomb	BOT > \$2,000	1/4/2014	2/5/2014	32	4/1/2014	55	32 Days TS	\$3,340
Johnny Lee Whitley	aj. To County Prison	12/20/2014	2/6/2014	#NUM!	4/1/2014	54	90 days with 48 days cfts	\$3,279
Tarasha Denton	CDV	1/5/2014	2/6/2014	32	4/1/2014	54	Dismissed	\$3,279
Henry Johnson	Shoplifting 3rd	1/24/2014	2/10/2014	17	4/22/2014	71	0 days susp. on 17 days w/ 17 days cft	\$4,312
Joshua Peters	DUI 2nd	1/25/2014	2/10/2014	16	4/22/2014	71	n 5 days and 18 Months Probation ar	\$4,312
Mario Hill	in - Prop Damage - /	1/2/2014	2/19/2014	48	3/11/2014	20	47 Days TS	\$1,215
Billy Ray Whitlock	Shoplifting 3rd	1/25/2014	2/20/2014	26	4/22/2014	61	90 Days w/ 26 days cfts	\$3,705
Markeith Hatcher	orgery Less than 10	1/14/2014	2/24/2014	41	4/22/2014	57	TS	\$3,462
Valentina Gaffney	Unlawful Use	12/13/2013	2/25/2014	74	4/1/2014	35	6 Months	\$2,126
Michael Barnett	Burg 3rd	12/20/2013	2/25/2014	67	4/1/2014	35	YOA susp. on Prob	\$2,126
Micky Wayne Workman	Unlawful Use	1/20/2014	2/25/2014	36	4/22/2014	56	45 days with 34 days cfts	\$3,401
Paul Whited	oss. of Stolen Vehicl	2/2/2014	3/4/2014	30	5/13/2014	70	TS	\$4,251
Adam Cooper	orgery Less than 10	1/6/2014	3/4/2014	57	4/22/2014	49	80 days w/ cfts	\$2,976

2013, 2014, 2015, 2016 & 2017 Fast Track Cases

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Cost Savings: Difference in Days between Day of Guilty Plea from Bond Returnable x \$55.00

DEFENDANT NAME	CHARGE	DOA	DAY OF GUILTY PLEA	DAYS IN JAIL	BOND RETURNABLE	DATE DIFFERENCE	SENTENCE	COST SAVINGS
Trina Totherow	2x Shoplifting 3rd	1/13/2014	3/4/2014	50	4/22/2014	49	6 Months Conc.	\$2,976
Joshua Staton	Leaving Scene of Acci	2/15/2014	3/6/2014	19	5/13/2014	68	TS	\$4,130
Ryan Merchant	2: Minor Personal In	1/17/2014	3/12/2014	54	4/22/2014	41	TS	\$2,490
Thomas Williams	Ending Life of Public	2/9/2014	3/13/2014	32	5/13/2014	61	TS	\$3,705
Hissan McCoy	Shoplifting 3rd	1/15/2014	3/14/2014	58	4/22/2014	39	TS, Cont. on Prob.	\$2,368
Joshua Keene	Autobreaking	3/5/2014	3/31/2014	26	6/3/2014	64	TS	\$3,887
Marshall Hart	CDV 3rd	2/15/2014	3/31/2014	44	5/13/2014	43	6 Months	\$2,611
Kyle Lombardo	Unlawful Carry	2/10/2014	4/3/2014	52	5/13/2014	40	TS	\$2,429
Joseph Michael Eagle	Shoplifting 3rd	3/9/2014	4/3/2014	25	6/3/2014	61	6 Months	\$3,705
Jeremiah Currence	Escape	2/13/2014	4/3/2014	49	5/13/2014	40	TS	\$2,429
Ernest Fredrick Tucker	Theft, Misd. FTC Fr	2/5/2014	4/4/2014	58	5/13/2014	39	TS	\$2,368
Nathaniel Campbell	Aggery Less than 10k	3/10/2014	4/4/2014	25	6/3/2014	60	susp. on TS and 3 years probation, PTL	\$3,644
Omar Bey	Poss. of Crack	4/6/2014	4/24/2014	18	7/15/2014	82	90 Days	\$4,980
Javarius Rhinehart	WID MJ and Prox. N	3/28/2014	5/19/2014	52	6/24/2014	36	YOA susp. on Prob	\$2,186
Jackleen Mullen	Agg Robbery and Cons	4/30/2014	5/21/2014	21	8/12/2014	83	YOA susp. on Prob	\$5,041
Jeffery S. Rhyne	DUI 2nd	3/28/2014	5/21/2014	54	6/24/2014	34	TS	\$2,065
Travis Knight	FTSBL	3/23/2014	5/22/2014	60	6/24/2014	33	90 Days susp. on TS	\$2,004
Alfred Wright	A&B 2nd	3/23/2014	6/2/2014	71	6/24/2014	22	2 susp. on 1 year prob.	\$1,336
Jessie Nichols	Poss. Sched. 1-IV	5/2/2014	6/2/2014	31	8/12/2014	71	TS	\$4,312
Martez Williams	RA(A)	4/26/2014	6/2/2014	37	7/29/2014	57	TS	\$3,462
Travis Hutchison	4x RSG - Enhanced	4/8/2014	6/2/2014	55	7/15/2014	43	6 Months	\$2,611
Travis Downs	1x FTC Theft	4/17/2014	6/3/2014	47	7/29/2014	56	6 Months	\$3,401
Keith Ashford	2x Forgery	3/26/2014	6/3/2014	69	6/24/2014	21	33 Months	\$1,275
Johnny Ray Osborne	and FTC Theft and F	4/14/2014	6/4/2014	51	7/29/2014	55	1 year susp. on TS and 1 year prob.	\$3,340
Cecil Clifford	Poss. of Crack	4/11/2014	6/4/2014	54	7/15/2014	41	susp. on 2 years probation, DAC + SAC, PT	\$2,490
Christopher Pierce	CDV 2nd	4/19/2014	6/6/2014	48	7/29/2014	53	5 Months susp. on TS and 1 year prob	\$3,219
Mark Watkins	Shoplifting 3rd	5/27/2014	6/16/2014	20	8/5/2014	50	45 days with 20 days cfts	\$3,037
Melvin Dunlap	Poss. Crack 3rd	5/3/2014	6/23/2014	51	8/12/2014	50	TS	\$3,037
Julio-Saucedo-Rodrigue:	DUI 2nd	5/31/2014	6/23/2014	23	9/16/2014	85	TS	\$5,162
Larry Ellison	Poss. of Crack 3rd	6/1/2014	6/24/2014	23	9/16/2014	84	90 Days	\$5,101
Joshua Boulware	Aggult and Battery 2nd	5/15/2014	6/24/2014	40	8/26/2014	63	90 days cfts and 90 days prob. Rev. and ter	\$3,826
Kelly Lynn-Carter	P.L. Enhancement	5/13/2014	6/24/2014	42	8/26/2014	63	90 days	\$3,826
William Kory Meacham	Use W/O Permissior	5/31/2014	6/24/2014	24	9/16/2014	84	90 days	\$5,101
Aries Nelson	Shoplifting 3rd	5/4/2014	6/27/2014	54	8/12/2014	46	90 Days	\$2,794
Frankie Pickrell	FTSBL	5/3/2014	6/27/2014	55	8/12/2014	46	90 days	\$2,794

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DEFENDANT NAME	CHARGE	DOA	DAY OF GUILTY PLEA	DAYS IN JAIL	BOND RETURNABLE	DATE DIFFERENCE	SENTENCE	COST SAVINGS
Joshua Keene	RA(A)	6/18/2014	6/27/2014	9	9/30/2014	95	TS	\$5,769
Ronald Padgett	RSG 2k-10k	5/10/2014	7/10/2014	61	8/26/2014	47	3p. on 90 days followed by 2 yrs. Prob.	\$2,854
Ashley Helms	Grand Larceny	6/11/2014	7/14/2014	33	9/30/2014	78	TS	\$4,737
Matthew Nichols	Poss. Sched. 3	6/5/2014	7/14/2014	39	9/16/2014	64	TS	\$3,887
Creston Culp	A&B 2nd	5/31/2014	7/14/2014	44	9/16/2014	64	TS	\$3,887
Tommy Chambers	BOTWFI 2k-10k	4/24/2014	7/14/2014	81	7/29/2014	15	TS	\$911
Daniel Whisonant	Shoplifting 3rd	5/26/2014	7/15/2014	50	9/16/2014	63	3 years, 52 days cfts recommend atu	\$3,826
Michael Cook	Forgery 3x	5/24/2014	7/15/2014	52	8/26/2014	42	days and 3 years probation but hold 1	\$2,551
Carl Simpson	Shoplifting 3rd	6/15/2014	7/15/2014	30	9/30/2014	77	5 years	\$4,676
Amy Patty	Traff. Her.	6/8/2014	7/17/2014	39	9/30/2014	75	5 susp. on 3 years probation.	\$4,555
Ronnie Johnson	Burglary 1st Degree	7/2/2014	7/17/2014	15	10/14/2014	89	TS	\$5,405
William Watkins	Property Damage, D	6/18/2014	7/30/2014	42	9/30/2014	62	year susp. on TS and 2 years probatio	\$3,765
Jena Roberts	FTC Fraud >\$500	6/22/2014	7/30/2014	38	9/30/2014	62	Probation	\$3,765
Brandon Hutchinson	ish Contraband in P	7/17/2014	8/8/2014	22	10/28/2014	81	Remanded	\$4,919
Stevie McCall	Poss. Rx Drug	7/26/2014	8/14/2014	19	11/11/2014	89	TS	\$5,405
Debra Lynn Henry	Shoplifting 3rd	7/11/2014	8/14/2014	34	10/28/2014	75	yr. susp. on 90 days followed by prok	\$4,555
Sylvester Thrower	Burg. 1st	7/9/2014	8/14/2014	36	10/28/2014	75	YOA NTE 3 susp. on Prob.	\$4,555
Jennifer Tutterow	Unlawful Neglect	6/22/2014	8/14/2014	53	9/30/2014	47	TS	\$2,854
Samuel Chalk	CDV 3rd	6/15/2014	8/25/2014	71	9/30/2014	36	1 year susp. on prob.	\$2,186
James Mobley	CDV 3rd	6/19/2014	8/25/2014	67	9/30/2014	36	1 year susp. on prob.	\$2,186
Calvin Tate	Obt. Narc. By Fraud	7/17/2014	8/25/2014	39	10/28/2014	64	90 days with 40 days cfts	\$3,887
Donald Bowers	Common Law Escap	7/11/2014	8/25/2014	45	10/28/2014	64	on 9 Months followed by 5 years prol	\$3,887
Joel Stroud	OTOGUFP Enhance	7/9/2014	8/25/2014	47	10/28/2014	64	6 susp. on TS and 30 months prob.	\$3,887
Tito Clyburn	HTP	7/12/2014	8/25/2014	44	10/28/2014	64	TS	\$3,887
Berry Bennett	Escape	8/12/2014	8/26/2014	14	11/18/2014	84	TS	\$5,101
Demetrius Graham	UCAP	7/10/2014	8/26/2014	47	10/28/2014	63	TS	\$3,826
Michael Bledsoe	ening Life of Public	8/10/2014	8/27/2014	17	11/18/2014	83	TS	\$5,041
Sarah Ivery	CDVHAN	8/10/2014	8/27/2014	17	11/18/2014	83	TS	\$5,041
Tarasha Denton	CDVHAN	7/27/2014	8/27/2014	31	11/11/2014	76	TS	\$4,615
Dennis Armstrong	DUI 3rd	5/25/2014	8/27/2014	94	9/16/2014	20	6 Months	\$1,215
Anthony Bess	A&B 3rd by Mob	8/19/2014	9/15/2014	27	12/2/2014	78	TS	\$4,737
Daniel Reece	Shoplifting 3rd	7/27/2014	9/15/2014	50	11/11/2014	57	6 Months	\$3,462
Holly Geery	FTC Fraud <\$500	8/1/2014	9/15/2014	45	11/11/2014	57	6 Months	\$3,462
Danny Ray Thornhill	RSG Enhanced	7/23/2014	9/15/2014	54	11/11/2014	57	90 Days	\$3,462
Billy Ray Whitlock	Shoplifting 3rd	7/2/2014	9/15/2014	75	10/14/2014	29	1 year	\$1,761

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DEFENDANT NAME	CHARGE	DOA	DAY OF GUILTY PLEA	DAYS IN JAIL	BOND RETURNABLE	DATE DIFFERENCE	SENTENCE	COST SAVINGS
John Sugameli	Burg 2nd (V)	8/5/2014	9/15/2014	41	11/18/2014	64	Remanded	\$3,887
Tracy Bigham	HTO	7/28/2014	9/16/2014	50	11/11/2014	56	90 Days	\$3,401
Dawn Mullis	Poss. of Heroin 1st	8/26/2014	9/18/2014	23	12/2/2014	75	TS	\$4,555
Brandon Wilkes	PWID MJ 2nd	8/10/2014	9/18/2014	39	11/18/2014	61	YOA susp. on Prob	\$3,355
Tonya Maynor	2x Poss. of CS 1st	9/11/2014	9/18/2014	7	11/4/2014	47	TS	\$2,585
Justin Hill	ISG 2k-10k Enhance	7/21/2014	9/18/2014	59	11/11/2014	54	TS	\$2,970
Andrew Carpenter	DUI 3rd	8/31/2014	9/22/2014	22	12/2/2014	71	Dismissed	\$3,905
Yuri Chapman	Shoplifting 3rd	8/24/2014	9/26/2014	33	12/2/2014	67	Remanded	\$3,685
Charles Mobley	PWID MJ 1st	8/14/2014	10/1/2014	48	11/18/2014	48	YOA susp. on Prob	\$2,640
Kimberly Ann Morris	of Veh. W/o Permis	9/9/2014	10/3/2014	24	12/16/2014	74	3 years susp. on 2 years probation.	\$4,070
Demetrice Stubbs	Shoplifting 3rd	8/20/2014	10/13/2014	54	12/2/2014	50	TS	\$2,750
George Huskey	Unlawful Carry	8/8/2014	10/13/2014	66	11/18/2014	36	500 Fine susp. on 90 days and battere	\$1,980
Bobby Meaders	Forgery less than 10	8/25/2014	10/13/2014	49	12/2/2014	50	90 days	\$2,750
Travis Barber	CDV 3rd	8/21/2014	10/13/2014	53	12/2/2014	50	\$2,500 Fine susp. on TS and batterers	\$2,750
Charles Gwin	B&E Auto	8/3/2014	10/13/2014	71	12/2/2014	50	90 days	\$2,750
Brian Lagace	in - Prop Damage - /	9/13/2014	10/15/2014	32	12/16/2014	62	TS	\$3,410
Tracy Griffin	A&B 2nd	9/1/2014	10/15/2014	44	12/16/2014	62	TS	\$3,410
Shirley Scott	orgery less thank 1C	9/11/2014	10/15/2014	34	12/16/2014	62	2 Years susp. On 2 Years Probation.	\$3,410
Seth Mitchell Littleton	of Veh. W/o Permis	9/29/2014	10/17/2014	18	1/27/2015	102	TS	\$5,610
Timothy Varnadore	Tattooing	9/30/2014	10/27/2014	27	1/27/2015	92	TS	\$5,060
Ronald McLean	Indecent Exposure	9/23/2014	10/28/2014	35	1/13/2015	77	TS	\$4,235
Desmar Anderson	DUI 2nd	9/29/2014	11/10/2014	42	1/27/2015	78	TS	\$4,290
Brian Hood	Vehicle w/o Permis	10/9/2014	11/10/2014	32	1/27/2015	78	TS	\$4,290
Willie Holloway	CDV 2nd	8/15/2014	11/10/2014	87	11/18/2014	8	Probation	\$440
Aaron Doster	Grand Larceny	10/15/2014	11/10/2014	26	2/10/2015	92	TS	\$5,060
Randy Scott White	PWID MJ & Prox	10/20/2014	11/12/2014	23	1/27/2015	76	Probation	\$4,180
Troy Donnell Carter	FTC Fraud <\$500	10/30/2014	11/12/2014	13	2/18/2015	98	Probation	\$5,390
Rafael Feliciano	Poss. CS - 1st	10/9/2014	11/12/2014	34	1/27/2015	76	TS	\$4,180
Steven Duke	Shoplifting 3rd	10/20/2014	11/12/2014	23	2/10/2015	90	90 Days	\$4,950
Michael Latta	ailure to Register 2r	10/20/2014	11/12/2014	23	2/10/2015	90	9 Months	\$4,950
Daniel Langston	ailure to Register 2r	10/8/2014	11/12/2014	35	1/27/2015	76	6 Months	\$4,180
Shenita Hood	of Veh. W/o Permis	10/9/2014	11/13/2014	35	1/27/2015	75	TS	\$4,125
Juan Jackson	PMJ 2nd	10/8/2014	11/13/2014	36	1/27/2015	75	90 Days	\$4,125
Joshua Eddleman	Poss. Narc.	10/9/2014	11/13/2014	35	1/27/2015	75	60 Days	\$4,125
David Allen	CDV 2nd	9/16/2014	11/21/2014	66	1/13/2015	53	TS	\$2,915

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Brandon Morgan	Poss. Heroin	11/16/2014	12/3/2014	17	2/24/2015	83	Probation	\$4,565
Aundrea Rollins	H&R	10/27/2014	12/4/2014	38	2/18/2015	76	YOA susp. on Prob	\$4,180
Soel Aguilar-Reyes	DUI 2nd	10/25/2014	12/4/2014	40	2/10/2015	68	TS	\$3,740
Marc Allen Coyer	Burg. 3rd	10/19/2014	12/15/2014	57	2/10/2015	57	TS	\$3,135
Mark Watkins	PMJ 2nd	11/19/2014	12/15/2014	26	2/24/2015	71	90 Days	\$3,905
Dontavious Brice	Dist. W Prox	10/23/2014	12/15/2014	53	2/10/2015	57	YOA susp. on Prob	\$3,135
Kayla Ingram	Obstruction	11/25/2014	12/16/2014	21	3/17/2015	91	TS	\$5,005
James Thompson	Poss. MJ 2nd	11/20/2014	12/17/2014	27	2/24/2015	69	60 days	\$3,795
Phillip Husky	Petit Larceny 3rd	11/25/2014	12/17/2014	22	3/17/2015	90	TS	\$4,950
Michael Gower	Burg. 1st	11/25/2014	12/18/2014	23	3/17/2015	89	irs probation, remain incarcerated for	\$4,895
Norman Hutchins	Burg 1st	11/6/2014	12/18/2014	42	2/18/2015	62	Probation	\$3,410
Larry Brevard	FTSBL	11/8/2014	12/19/2014	41	2/18/2015	61	Probation	\$3,355
Gerald Stanley	Forgery	11/13/2014	1/6/2015	54	2/24/2015	49	Probation	\$2,695
Aries Nelson	Shoplifting 3rd	12/2/2014	1/12/2015	41	3/17/2015	64	6 Months	\$3,520
Twana Thompson	Burglary 2nd (NV)	12/4/2014	1/22/2015	49	3/17/2015	54	TS	\$2,970
James Bigham	Poss. Heroin	12/11/2014	2/9/2015	60	3/31/2015	50	TS	\$2,750
Markis Leaks	Poss. MJ 2nd	12/24/2014	2/9/2015	47	4/7/2015	57	TS	\$3,135
Timothy Harbison	CDV 2nd	12/6/2014	2/9/2015	65	3/17/2015	36	TS	\$1,980
Elaine Warren	Shoplifting 3rd	1/13/2015	2/9/2015	27	4/21/2015	71	90 days	\$3,905
Colton Shackelford	Poss. Sched. I-V	1/12/2015	2/10/2015	29	4/21/2015	70	TS	\$4,251
Shirley Scott	FTC Theft	1/6/2015	2/10/2015	35	4/21/2015	70	Probation	\$3,850
Kenneth Barnes	Poss. Heroin 2nd	1/16/2015	2/11/2015	26	4/21/2015	69	Probation	\$3,795
Jonathan Dowdy	Burg 1st	1/10/2015	2/12/2015	33	4/21/2015	68	Probation	\$3,740
D'Nique Gregory	Attempted Murder	1/1/2015	2/18/2015	48	4/7/2015	48	Remanded	\$2,640
Kimberly Ann Page	Contraband	1/17/2015	2/19/2015	33	4/21/2015	61	6 Months Conc.	\$3,355
Christopher Self	in - Prop Damage - /	12/21/2014	2/23/2015	64	3/31/2015	36	1 year susp. on TS	\$1,980
Jake Lee Powell	Dist. W Prox	11/30/2015	2/25/2015	38	3/17/2015	20	Probation	\$1,100
Damon Patterson	Poss. of Meth	2/10/2015	3/20/2015	38	5/19/2015	60	TS	\$3,644
Joshua Keene	Shoplifting 3rd	2/5/2015	3/20/2015	43	5/19/2015	60	TS	\$3,300
Richard Allman	hrowing Bodily Fluic	1/13/2015	3/20/2015	66	4/21/2015	32	90 days and Probation	\$1,760
Charles Daniel Flippen	Kidnapping	1/16/2015	3/26/2015	69	4/21/2015	26	30 days susp. on DAC	\$1,430
Sidney Strong	Shoplifting 3rd	2/14/2015	3/30/2015	44	5/19/2015	50	TS	\$2,750
Kelly Lynn-Carter	Prostitution 3rd	2/18/2015	3/30/2015	40	5/27/2015	58	TS	\$3,190
Anthony Mark Vernon	Forgery <10k	2/21/2015	3/30/2015	37	5/27/2015	58	90 Days	\$3,190
Jimmie Lee Banks	Shoplifting 3rd	2/10/2015	3/30/2015	48	5/19/2015	50	TS	\$2,750

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Tori Wilkes	PMJ 2nd	2/21/2015	4/1/2015	39	5/27/2015	56	90 Days	\$3,080
Cisca Ellis	Identity Fraud	3/17/2015	4/2/2015	16	6/23/2015	82	Dismissed Per Plea Agreement	\$4,510
Paul West	Burglary	3/9/2015	4/3/2015	25	6/9/2015	67	Dismissed Per Plea Agreement	\$3,685
Shiann Johnson	Shoplifting 3rd	3/16/2015	4/6/2015	21	6/23/2015	78	TS	\$4,290
Johnathon Rhinehart	A&B 1st	1/21/2015	4/20/2015	89	5/5/2015	15	1 yr s/u 2 prob	\$825
Zachary Scyphers	Poss, Meth, etc.	2/10/2015	4/20/2015	69	5/19/2015	29	2 s/u 2 prob	\$1,595
Lauren Donald	Shoplifting	3/4/2015	4/20/2015	47	6/9/2015	50	TS	\$2,750
Taylor McAfee	of Veh. W/o Permis	2/28/2015	4/20/2015	51	4/28/2015	8	TS	\$440
Stephen Nunn	Poss Oxy	3/31/2015	4/20/2015	20	6/23/2015	64	TS	\$3,520
James E Dunn	Petit Larceny	3/27/2015	4/24/2015	28	6/23/2015	60	TS	\$3,300
Brandi Eades	Shoplift 3rd, VOP	3/26/2015	4/24/2015	29	6/23/2015	60	90 days	\$3,300
Michael D Stevens	A&B 3rd	2/14/2015	5/4/2015	79	5/19/2015	15	TS	\$825
Kenneth Gregory	A&B 3rd	2/20/2015	5/4/2015	73	5/27/2015	23	TS	\$1,265
Darie Feaster	2 Fraud Check	4/8/2015	5/4/2015	26	6/23/2015	50	1 s/u 2 prob	\$2,750
Dustin Stacey	Shoplifting 3rd	3/23/2015	5/18/2015	56	6/23/2015	36	5 s/u 1 prob	\$1,980
Ronald Brice	2x Shoplifting 3rd	3/17/2015	5/18/2015	62	6/23/2015	36	90 days CFTS 65	\$1,980
Roydriguez Feaster	t Pistol, Poss Shotgu	3/7/2015	5/18/2015	72	6/9/2015	22	Susp. YOA	\$1,210
Larry Horton	RSG, Tools, Consp	3/11/2015	5/18/2015	68	6/9/2015	22	5 s/ 1y +1 prob	\$1,210
James Stewart	SL, Forgery, Cons	3/8/2015	5/29/2015	82	6/9/2015	11	3y / 9m + prob	\$605
Steven Hinton	HTO	5/6/2015	6/8/2015	33	7/14/2015	36	90 days	\$1,980
Joseph Eagle	Shoplifting	4/22/2015	6/8/2015	47	7/14/2015	36	90 days	\$1,980
Jalen Williams	CDV 2nd	5/24/2015	6/8/2015	15	8/11/2015	64	30d w/ prob	\$3,520
Demetrius Robinson	Poss MJ 2nd	4/26/2015	6/8/2015	43	9/1/2015	85	90 days	\$4,675
Wesley Keefe	Att Poss CS	4/8/2015	6/11/2015	64	6/23/2015	12	TS	\$660
Patricia Littlejohn	SL	4/22/2015	6/12/2015	51	7/14/2015	32	90	\$1,760
Mario Moise	Fail to Reg 3rd	4/1/2015	6/22/2015	82	6/23/2015	1	366 days	\$55
Jerry Proctor	SL Enhance	5/3/2015	6/23/2015	51	7/14/2015	21	TS	\$1,155
Joseph Stevenson	PWID, Poss, Gun	6/11/2015	6/25/2015	14	8/25/2015	61	10 s/u 3 prob	\$3,355
Daniel Nettles	SPM	5/22/2015	6/26/2015	35	8/11/2015	46	1 s/u 6m prob	\$2,530
Rhyshawd Rutledge	FTC 3x	4/5/2015	6/16/2015	72	6/23/2015	7	NP at Prelim	\$385
Mark Watkins	RSG	4/14/2015	6/24/2015	71	7/14/2015	20	TS	\$1,100
Evelyn Rose Cole	MIPP Obt Non-Ferr	4/16/2015	7/13/2015	88	7/14/2015	1	TS	\$55
John Calcutt	Poss Oxy, Poss Rx	5/27/2015	7/13/2015	47	8/11/2015	29	2 s/o 3 prob	\$1,595
Antonio Anderson	Burg 3rd	4/21/2015	7/13/2015	83	7/14/2015	1	2 s/o 2 prob	\$55
Aaron Vickers	SL	5/13/2015	7/13/2015	61	8/11/2015	29	90 d	\$1,595

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Destiney Wilson	Poss CS 2nd	6/22/2015	7/13/2015	21	9/15/2015	64	90 days	\$3,520
Nicole Bailey	Poss Rx	5/7/2015	7/13/2015	67	7/14/2015	1	TS	\$55
Melani Norman	Poss Crack, FTC Frau	4/19/2015	7/13/2015	85	7/14/2015	1	3 s/u 1 prob	\$55
Andy Lott	DUI	7/4/2015	8/10/2015	37	9/15/2015	36	TS	\$1,980
Demetric Houze	Unlaw Carry	7/12/2015	8/10/2015	29	9/29/2015	50	TS	\$2,750
Suyen Purdie	SL	7/25/2015	8/10/2015	16	10/13/2015	64	5 s/u 90 + 2 prob	\$3,520
Stephon Johnson	Nonferr. Metals	5/15/2015	8/10/2015	87	8/11/2015	1	TS	\$55
Christopher Hester	Dist Hydrocodone	6/10/2015	8/10/2015	61	8/25/2015	15	YOA s/o 3 prob	\$825
Peter Stevens	Poss Heroin 1	7/11/2015	8/10/2015	30	9/29/2015	50	60 days	\$2,750
Jeffrey Craine	FTR 1st	5/22/2015	8/10/2015	80	8/11/2015	1	TS	\$55
Lamar Floyd	Poss Crack, PWID M	6/17/2015	8/24/2015	68	8/25/2015	1	5 s/o 3	\$55
Mickey Workman	SL 2x	7/18/2015	8/24/2015	37	9/29/2015	36	90d	\$1,980
Daniel Harrison	Reckless	6/26/2015	8/24/2015	59	9/15/2015	22	TS	\$1,210
Ashley Davis	FTC Fraud	6/16/2015	8/24/2015	69	8/25/2015	1	TS	\$55
Bianca Isom	A&B 3rd	7/18/2015	8/24/2015	37	9/29/2015	36	TS	\$1,980
Christopher Miller	Unlaw Carry	7/16/2015	8/24/2015	39	9/29/2015	36	1 s/o 3	\$1,980
Roxanne Haggins	Poss Coke 1st	7/25/2015	8/24/2015	30	10/13/2015	50	90d	\$2,750
Bennet McCoy	SL, HTO	7/5/2015	8/27/2015	53	9/15/2015	19	1 yr	\$1,045
Jamie Sturdivant	ing, Larceny/Petit o	6/25/2015	9/14/2015	81	9/15/2015	1	ys, random drug testing, 1 yr susp 3 y	\$55
Dontavious Gordon	g 2nd, Crim conspir	7/18/2015	9/14/2015	58	9/25/2015	11	urg 3rd, 2 yrs; crim consp 2 yrs; CFTS 5	\$605
Detrick Whitney-Taylor	FTSBL	7/22/2015	9/14/2015	54	9/15/2015	1	val counseling, follow up if recommen	\$55
Detrick Whitney-Taylor	A&B 2nd	7/22/2015	9/14/2015	54	10/13/2015	29	: eval counseling, follow up if recomm	\$1,595
Michael Hudson	Burg 2nd	7/17/2015	9/14/2015	59	9/29/2015	15	MIRP; CFTS 59 days	\$825
Damien Bigham	PWID Heroin 1st	8/10/2015	9/14/2015	35	10/27/2015	43	Poss Heroin 1st; 90 days	\$2,365
Stephen Rodriguez	Poss of Prescriptioi	7/29/2015	9/16/2015	49	10/13/2015	27	TS	\$1,485
William Littlejohn	eti Larceny Enhance	7/16/2015	9/16/2015	62	9/29/2015	13	90d CFTS 90d; 1 yr s/o 90 CFTS 63d	\$715
Justin Bradley	Burg 2nd	7/17/2015	9/28/2015	73	9/29/2015	1	TS; Malic Injury to Prop	\$55
Renee Lafranca	HTO	9/19/2015	9/30/2015	11	12/1/2015	62	HTO - 60 days CFTS 11 days	\$3,410
Paul Branch	DV 2nd degree	8/6/2015	10/2/2015	57	10/27/2015	25	attered counseling prob terminated uj	\$1,375
Jesse Drury	Poss CS 1st (3X)	9/20/2015	10/14/2015	24	12/1/2015	48	Poss CS 1st (3X)	\$2,640
Brian Vangelder	Poss CS 1st	9/4/2015	10/14/2015	40	11/17/2015	34	Poss CS 1st	\$1,870
Khambreal Cumberbatc	Poss of stolen vehicl	8/8/2015	10/14/2015	67	10/27/2015	13	Poss of stolen vehicle	\$715
Darren Means	S 1st & Poss MJ/Ha:	9/23/2015	10/14/2015	21	12/1/2015	48	Poss CS 1st & Poss MJ/Hash 2nd	\$2,640
Kassidy Outen	Poss Meth/Crack 1s	9/24/2015	10/16/2015	22	12/1/2015	46	Poss Meth/Crack 1st	\$2,530
Jeffrey Coleman	hrowing Bodily Fluic	9/20/2015	10/16/2015	26	12/1/2015	46	A&B 2nd Degree	\$2,530

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Robert McMurray	Threatening Life of Public Official	9/26/2015	10/16/2015	20	12/1/2015	46	Threatening Life of Public Official	\$2,530
Michael Moore	RA	9/17/2015	10/26/2015	39	12/1/2015	36	RA; 60 days (40 days credit)	\$1,980
Carlton Tomlinson	Use of Veh. w/o Permis	9/19/2015	10/26/2015	37	12/1/2015	36	Veh. w/o Permission; 45 days (37 days credit)	\$1,980
Anthony Masters	SL (enhanced)	9/25/2015	10/26/2015	31	12/1/2015	36	SL; T/S (30 days)	\$1,980
Nathan Cochran	DV 2nd degree	9/2/2015	10/26/2015	54	11/17/2015	22	DV 2nd degree; Probation 3 yrs s/o 2 yrs	\$1,210
Courtney Repass	Poss 1st (2X) & Poss MJ	9/24/2015	10/26/2015	32	12/1/2015	36	) & Poss MJ/Hash 2nd; 90 days CFTS	\$1,980
Linda Dessaint	Poss 4g but < 14 g 2nd	9/4/2015	10/26/2015	52	11/17/2015	22	Poss 4g < 14 g 2nd; dismissed Poss CS 1st	\$1,210
Joshua Miller	Poss Meth/Crack 1st	9/9/2015	10/26/2015	47	11/17/2015	22	Poss Meth/Crack 1st; 90 days (Credit 48 d)	\$1,210
Wendy Sexton	possession of prescription drugs &	9/20/2015	10/26/2015	36	12/1/2015	36	possession of drugs & poss coke 1st; 90 days (credit)	\$1,980
Naco Harrison	HTO	8/25/2015	10/26/2015	62	11/17/2015	22	- 90 days CFTS 7 days w/ sent now set	\$1,210
Emily Wall	Perjury & Filing a False	10/5/2015	10/27/2015	22	12/15/2015	49	DC & Unlawful use of 911; CFTS 23 da	\$2,695
Conner Weisner	Poss Coke 1st	10/16/2015	10/30/2015	14	1/12/2016	74	Poss Coke 1st	\$4,070
Dona Simpson	Unlawful poss of prescrip	9/30/2015	11/16/2015	47	12/15/2015	29	Unlawful poss of prescription drug; 1 yr. s/o	\$1,595
Eric Hall	Probation less than .10, 2nd	9/26/2015	11/16/2015	51	12/1/2015	15	Probation less than .10, 2nd; \$ 1,100 s/o probation PTUP (CFTS 59)	\$825
James Brindle	FTC Fraud (4x) & FTC The	10/27/2015	11/16/2015	20	1/26/2016	71	FTC Fraud (4x) & FTC Theatrical; 2 yrs s/o 2 yrs prob w/ inpatient rehab (	\$3,905
John Moore	PL, 3rd	9/4/2015	11/16/2015	73	11/17/2015	1	T/S (73 days)	\$55
Zachary Miller	Aggravated Assault with a Weapon	9/19/2015	11/16/2015	58	12/1/2015	15	3 months & 18 months prob CFTS PTU	\$825
William Hamright	SL (enhanced)	10/13/2015	11/17/2015	35	12/15/2015	28	SL (enhanced) T/S (36 days)	\$1,540
Javon Dickson	SL (enhanced); MIPF	10/16/2015	11/17/2015	32	1/12/2016	56	1 yr cc (CFTS 33 days)	\$3,080
John Miller	SL (enhanced)	9/25/2015	11/17/2015	53	12/1/2015	14	90 days (CFTS 54 days)	\$770
Tina McCumbee	Poss CS 1st	10/31/2015	11/17/2015	17	1/26/2016	70	T/S (17 days)	\$3,850
Clyde Chappell	Poss Meth 1st	11/4/2015	12/4/2015	30	1/26/2016	53	T/S (CFTS 32 days)	\$2,915
Travis Talley	Burg 3rd	10/6/2015	12/4/2015	59	12/15/2015	11	T/S (CFTS 59 days)	\$605
Marcus Jennings	HTO	10/12/2015	12/4/2015	53	12/15/2015	11	2 yrs s/o 2 yrs prob (CFTS 52 days)	\$605
Jeffrey Fielding	A&B 2nd	11/5/2015	12/14/2015	39	1/26/2016	43	CFTS 39 days) followed by 1 yr prob w/	\$2,365
Benjamin Thomas	Poss CS Sch I-IV st	11/19/2015	12/14/2015	25	2/9/2016	57	T/S (CFTS 25 days)	\$3,135
Justin Hayes	A&B 2nd (2x)	11/29/2015	12/18/2015	19	2/23/2016	67	1 yr s/o 1 yr prob PTUP all money owe	\$3,685
James Walker	SL (enhanced)	11/17/2015	12/18/2015	31	2/9/2016	53	6 months (CFTS 150 days)	\$2,915
Jonathan Shillinglaw	SL (enhanced)	11/7/2015	12/18/2015	41	1/26/2016	39	90 days (CFTS 42 days)	\$2,145
Sarah Morris	Use of Force - Prop	12/7/2015	1/6/2016	30	3/15/2016	69	T/S (CFTS 31 days)	\$3,795
Brandi Wilks	Poss CS 1st (2x)	11/9/2015	1/6/2016	58	2/9/2016	34	T/S (CFTS 58 days)	\$1,870
Alexander Gilliam	Use of Force in Courthouse or Ja	12/19/2015	1/25/2016	37	3/15/2016	50	T/S (CFTS 38 days)	\$2,750
Crystal Anderson	FTC Fraud, FTC T	11/1/2015	1/25/2016	85	1/26/2016	1	T/S (CFTS 85 days)	\$55
Aaron McClure	Forgery less than \$100	12/26/2015	1/27/2016	32	3/29/2016	62	Forgery (no \$ amt); T/S (CFTS 32 days)	\$3,410
Robert Pitts	DV 1st degree	11/29/2015	1/26/2016	58	2/23/2016	28	59 days) & 18 months prob; SA & Ba	\$1,540

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Donte Woodley	port (felony); R.A. (E	12/1/2015	1/28/2016	58	2/23/2016	26); Unlawful use of 911; 1 year s/o 1 ye	\$1,430
Jody Nicholson	SL (enhanced)	12/28/2015	1/28/2016	31	3/29/2016	61	1 yr s/o 1 yr prob (CFTS 31 days)	\$3,355
Terry Street	DV 1st degree	12/27/2015	1/28/2016	32	3/29/2016	61	yr. prob w/ batterer's counseling (CFT	\$3,355
Gabriel Rhodes	th/Crack 1st; Poss I-	1/8/2016	2/8/2016	31	4/12/2016	64	T/S (CFTS 31 days)	\$3,520
Melanie Phillips	th/Crack 1st; Poss I-	1/6/2016	2/8/2016	33	4/12/2016	64	T/S (CFTS 35 days)	\$3,520
Cody Gwin	iss I-II Narc/Heroin 1	1/21/2016	2/8/2016	18	4/26/2016	78	T/S (CFTS 18 days)	\$4,290
Timothy Younce	DV 2nd degree	1/8/2016	2/8/2016	31	4/12/2016	64	DV 3rd degree; 90 days (CFTS 31 days)	\$3,520
Odarius Massey	Poss Crack 1st	12/29/2015	2/8/2016	41	3/29/2016	50	90 days (CFTS 42 days)	\$2,750
Jarmel Thomas	DV 2nd degree	1/13/2016	2/8/2016	26	4/12/2016	64	rs. s/o 90 days & 1 yr. prob w/ conditi	\$3,520
John Zoller	ery, less than \$10K	1/10/2016	2/22/2016	43	4/12/2016	50	18 months prob PTUP & Restitution \$.	\$2,750
Michael Gerray Sylveste	tor Vehicle & Poss	1/6/2016	2/22/2016	47	4/12/2016	50	90 days (CFTS 46 days)	\$2,750
Lauren Rene Jackson	Poss CS, 1st	2/12/2016	2/22/2016	10	5/17/2016	85	T/S (CFTS 10 days)	\$4,675
Amy Bellflower	DV, 3rd	1/9/2016	2/22/2016	44	3/8/2016	15	l&B, 3rd; 30 days s/o TS (CFTS 43 days	\$825
Seneca Lavernege	GL > \$2K < \$10K	1/29/2016	2/26/2016	28	4/26/2016	60	prive; 3 yrs s/o T/S (CFTS 28 days) witr	\$3,300
Jason Kendrick, Jr.	MITP	1/27/2016	3/14/2016	47	4/26/2016	43	rob PTUP after 2 yrs upon payment of	\$2,365
Nathan Oliver	FTSBL	1/21/2016	3/14/2016	53	4/26/2016	43	YOA NTE 3 s/o 1 yr. prob (CFTS 53)	\$2,365
Patrick Bunker	Unlawful Carry Pisto	2/13/2016	3/14/2016	30	5/17/2016	64	T/S (CFTS 31 days)	\$3,520
Jason Cope	ID I-II Narc/Heroin :	12/22/2015	3/14/2016	83	3/29/2016	15	arc/Heroin 1st, Poss Meth/Crack 1st, !	\$825
Michael Mullins	Oxycod Schedule II	1/31/2016	3/17/2016	46	4/26/2016	40	tion, 2 yrs s/o 18 montsh prob w/ SA i	\$2,200
Justin Medford	DV, 3rd & DV, 2nd	1/7/2016	3/28/2016	81	4/12/2016	15	DV, 3rd (2x) (CFTS 82 days)	\$825
Kristen Harris	im Consp & FTC Fra	1/8/2016	3/31/2016	83	4/16/2016	16	8 months prob PTUP rest \$1,200 (CFT	\$880
Shannon Moss	ss Meth 2nd (2x), Pi	2/29/2016	3/31/2016	31	6/7/2016	68	ox, 12 months s/o 90 days & 2 yrs. Prc	\$3,740
Keyshawn Pressley	, Burg 2nd, Crim Co	2/1/2016	4/11/2016	70	5/17/2016	36	NTE 3 yrs s/o 3 yrs prob \$200 restitut	\$1,980
Frederick Barnes	je \$500 or less in 6	2/1/2016	4/25/2016	84	5/17/2016	22	; 10 years s/o 3 yrs (CFTS 85 days); prt	\$1,210
Timothy Smith	n .10, 3rd; DUS not	2/6/2016	4/25/2016	79	5/17/2016	22	i was 6 m s/o 3 y probation concurren	\$1,210
Ryan Holian	Heroin, 1st; PWID H	4/13/2016	4/25/2016	12	7/26/2016	92	Dismissed with right to restore if D c	\$5,060
Allen Patterson	SL < \$2K	2/23/2016	4/25/2016	62	5/24/2016	29	1 yr. (CFTS 64 days)	\$1,595
Anthony Giglio	MIPP, PL, & Burg 3rc	2/23/2016	4/25/2016	62	5/24/2016	29	T/S 62 days) for MIPP & PL; dismiss Bl	\$1,595
Jason Bowers	SL (enhanced)	3/21/2016	5/16/2016	56	6/21/2016	36	90 days (CFTS 58 days)	\$1,980
Antwain Carter	FTSBL	3/2/2016	5/16/2016	75	6/7/2016	22	rs. s/o T/S w/ 2 yrs. Prob. (CFTS 75 da	\$1,210
Jimmie Lee Banks	PO & Poss CS IV (1s	4/10/2016	5/17/2016	37	7/12/2016	56	90 days (CFTS 39 days)	\$3,080
Javier Ruiz-Ramos	Poss Coke 1st	4/4/2016	5/16/2016	42	7/12/2016	57	Time Served (CFTS 42 days)	\$3,135
Joshua Cuddy	SA Robbery	4/13/2016	5/17/2016	34	7/26/2016	70	Dismissed per plea agreement	\$3,850
Avery Latta	DV 2nd degree	4/3/2016	5/23/2016	50	7/12/2016	50	include batterer's counseling, no con	\$2,750
Michael Bailey	DV 1st degree	4/7/2016	5/23/2016	46	7/12/2016	50	s/o T/S & 1 yr. prob w/ batterer's cou	\$2,750

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Darrien Smith	SL (enhanced)	4/13/2016	5/26/2016	43	7/26/2016	61	T/S (CFTS 43 days)	\$3,355
James Johnson	s MJ 2nd; Poss CS; N	5/16/2016	5/26/2016	10	8/23/2016	89	11 days); MIJP 2 yrs. s/o 30 days & 2	\$4,895
Jacob Blackwell	PL; GL >\$2K < \$10K	4/27/2016	6/6/2016	40	8/9/2016	64	PL (2x); T/S (CFTS 40 days)	\$3,520
Kevin Hagins	Poss Meth 1st	3/27/2016	6/7/2016	72	6/21/2016	14	T/S (CFTS 72 days)	\$770
Ashley Hahn	Poss Heroin 1st	4/21/2016	6/7/2016	47	7/26/2016	49	T/S (CFTS 48 days)	\$2,695
Michael Watkins	Indecent Exposure	4/21/2016	6/7/2016	47	7/26/2016	49	BOP HAN; 90 days (CFTS 48 days)	\$2,695
Michael Stillwell	raud intent > \$10K;	4/13/2016	6/7/2016	55	7/26/2016	49	o 1 yr prob rest \$564.43 PTUP (CFTS 5	\$2,695
Otis Moore	Poss Coke 3rd	4/22/2016	6/9/2016	48	7/26/2016	47	T/S (CFTS 48 days)	\$2,585
Tracy Thomas	fraud (2x); Obtain d	5/4/2016	6/10/2016	37	8/9/2016	60	3 years concurrent & rec ATU	\$3,300
Timothy Calkins	Poss CS 1st (2x)	5/27/2016	6/20/2016	24	8/30/2016	71	T/S (CFTS 25 days)	\$3,905
Sinuhe Gonzolez	, Leaving the scene	5/8/2016	6/20/2016	43	8/9/2016	50	T/S (CFTS 43 days)	\$2,750
Mark Hoyt	Poss Crack 2nd	5/24/2016	6/20/2016	27	8/30/2016	71	90 days (CFTS 28 days)	\$3,905
Joe Maddox	D/Manf MJ & RSG \$	3/23/2016	6/20/2016	89	6/21/2016	1	1 yr (CFTS 91 days)	\$55
William Stobaugh	Poss Coke 1st	5/27/2016	6/20/2016	24	8/30/2016	71	T/S (CFTS 25 days)	\$3,905
Shericka Hamilton	1st, Threatening Pt	6/4/2016	6/22/2016	18	8/30/2016	69	mployee, dismiss contraband, 1 yr. s/c	\$3,795
Robert Melton	of Veh. w/o Permis	5/22/2016	6/22/2016	31	8/23/2016	62	T/S (CFTS 30 days)	\$3,410
Joshua Eddleman	Forgery < \$10K	5/20/2016	6/22/2016	33	8/23/2016	62	goods under false pretenses T/S (CFT	\$3,410
Robert Paige Neely	Crack/Cocaine < 1 g	6/6/2016	6/30/2016	24	9/20/2016	82	T/S (CFTS 24 days)	\$4,510
Sameal Johnson	RA (A)	4/27/2016	6/30/2016	64	8/9/2016	40	T/S (CFTS 64 days)	\$2,200
Jovi Drake	Poss Heroin, 1st	5/21/2016	6/30/2016	40	8/23/2016	54	T/S (CFTS 40 days)	\$2,970
Christopher Leon Jones				0		0		\$0
Jonathon Morgan	RA	5/26/2016	7/11/2016	46	8/30/2016	50	T/S (CFTS 45 days)	\$2,750
Randy Lee Johnson	10K or >; Breach / O	6/9/2016	7/14/2016	35	9/20/2016	68	< \$10K; 4 years (CFTS 47 days); other	\$3,740
David Bridges	< \$2K (enhancemen	6/2/2016	7/14/2016	42	10/4/2016	82	PL < \$2K (3x); MIPP < \$2K; Breaking in	\$4,510
Stephen Max Green	Poss Meth/Crack 1s	6/1/2016	7/14/2016	43	8/30/2016	47	s/o T/S balance s/o 1 yr prob (CFTS 45	\$2,585
Joshua Duncan	Poss MJ 2nd	6/10/2016	7/25/2016	45	9/20/2016	57	Poss MJ 1st (T/S CFTS 46 days)	\$3,135
Howard Anderson	DVHAN	6/20/2016	7/25/2016	35	10/4/2016	71	alcohol (don't hold in jail) & DV protc	\$3,905
William Knight	rd degree (DI for DV	6/12/2016	7/25/2016	43	9/20/2016	57	S 44] & 18 months prob w/ DV protoc	\$3,135
Brandon Cunnup	arc/Heroin 1st; Poss	5/19/2016	7/25/2016	67	8/23/2016	29	rc/Heroin (2x); 2 yrs s/o 2 yrs prob (CF	\$1,595
William Tatum	Poss I-V CS 2nd	6/23/2016	7/26/2016	33	10/4/2016	70	T/S (CFTS 34 days)	\$3,850
Kristi Sherer	Poss CS 1st (2x)	6/27/2016	7/27/2016	30	10/4/2016	69	s CS 1st; Poss Narc 1st; T/S (CFTS 30 d	\$3,795
Frank Porter	iss CS 1st; Contraba	7/2/2016	7/27/2016	25	10/4/2016	69	1st; Contraband dismissed; T/S (CFTS	\$3,795
Lori Parker	UI .16 or higher, 2n	6/18/2016	7/27/2016	39	9/20/2016	55	UI .16 or higher, 1st; T/S (CFTS 40 day	\$3,025
Kristy Speer	0 or less in 6 month	6/10/2016	7/27/2016	47	9/20/2016	55	3 months prob w/ \$260 rest PTUP (CFT	\$3,025
Arthur Heyward	GL > \$10K	7/7/2016	7/29/2016	22	10/18/2016	81	\$2K but less than \$10K, T/S (CFTS 26 c	\$4,455

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Latwanyept Stover	wful Poss of Stolen I	6/19/2016	8/8/2016	50	9/20/2016	43	T/S (CFTS 51 days)	\$2,365
Mark Johnson	ire to return rental |	7/9/2016	8/8/2016	30	10/18/2016	71	T/S (CFTS 30 days)	\$3,905
Jenna McFarland	DUI < .10 2nd	7/11/2016	8/8/2016	28	10/18/2016	71	DUI < .10 1st; T/S (CFTS 28 days)	\$3,905
Franklin Barnes	hrowing Bodily Fluic	7/12/2016	8/8/2016	27	10/18/2016	71	T/S (CFTS 27 days)	\$3,905
James Rainer	PL 3rd or sub	6/16/2016	8/8/2016	53	9/20/2016	43	90 days (CFTS 54 days)	\$2,365
Juan East	A&B 2nd degree	7/21/2016	8/8/2016	18	11/1/2016	85	A&B 3rd degree; T/S (CFTS 18 days)	\$4,675
Deion'ta Crosby	ening Life of Public |	6/4/2016	8/8/2016	65	8/30/2016	22	YOA 5 yrs s/o TS (CFTS 65 days)	\$1,210
Hatim Muhammad	. (enhanced) & RA (.	7/16/2016	8/8/2016	23	10/18/2016	71	T/S (CFTS 23 days)	\$3,905
James Caughron	rful Neglect of a Chi	6/13/2016	8/8/2016	56	9/20/2016	43	ruelty to a Child (2x); T/S (CFTS 57 day	\$2,365
Kelly McCall	rful Neglect of a Chi	6/13/2016	8/8/2016	56	9/20/2016	43	ruelty to a Child (2x); T/S (CFTS 57 day	\$2,365
Ronnie Dawson	g Firearm & Unlawf	6/11/2016	8/8/2016	58	9/20/2016	43	T/S (CFTS 58 days)	\$2,365
Robert Ray	e of Accident - Attel	7/20/2016	8/11/2016	22	11/1/2016	82	60 days (CFTS 21 days)	\$4,510
LaWillie Durham	more than \$500 ir	5/11/2016	8/12/2016	93	8/23/2016	11	y Fraud; 2 yrs. s/o 2 yrs. Prob PTUP re	\$605
Reginald Rutledge	DV 3rd deg.	6/25/2016	8/22/2016	58	10/4/2016	43	T/S (CFTS 58 days)	\$2,365
Craig Slaughter	wful Carrying of a P	8/4/2016	8/22/2016	18	11/15/2016	85	T/S (CFTS 18 days)	\$4,675
Jonathan Hinson	Heroin 1st; DV 2nd	6/17/2016	8/22/2016	66	9/20/2016	29	3 yrs. s/o 2 yrs prob SAC (CFTS 68 days	\$1,595
Robert Workman	SL (enhancement)	8/9/2016	8/22/2016	13	11/15/2016	85	90 days (CFTS 13 days)	\$4,675
Johnathan Welch	2K < \$10K; Poss Her	6/30/2016	8/24/2016	55	10/4/2016	41	prob; 2 yrs. s/o 18 months prob; concu	\$2,255
Ashley Parish	ath 1st (2x); Poss He	7/22/2016	8/25/2016	34	11/1/2016	68	3 yrs. Prob; 3 yrs. s/o 3 yrs. Prob (CFT	\$3,740
Jesse Parkins	rmed Roberty, Poss	7/27/2016	8/25/2016	29	11/1/2016	68	YOA NTE 5 years s/o 3 yrs prob & inp	\$3,740
Melvin Dunlap	SL (enhancement)	8/8/2016	8/29/2016	21	11/15/2016	78	T/S (CFTS 21 days)	\$4,290
Lexus Robinson	2K < \$10K, Crim Co	8/8/2016	8/29/2016	21	11/15/2016	78	18 months prob w/ \$1,800 rest PTUP |	\$4,290
Earl Smith, Jr.	DV 2nd degree	6/25/2016	8/30/2016	66	10/4/2016	35	: & DV protocols PTUP after counselin;	\$1,925
Travis Adkins	pted Murder, DV 2r	7/19/2016	8/30/2016	42	11/1/2016	63	TS 44 days); DV 2nd deg, 3 yrs s/o 3 yr	\$3,465
Jeffrey Cumberledge	ening Life of Public |	7/30/2016	8/31/2016	32	11/1/2016	62	T/S (CFTS 32 days)	\$3,410
David Earney	; CS 1st, Poss Heroir	6/30/2016	9/1/2016	63	10/4/2016	33	onths prob); Poss Heroin (2 yrs s/o T/!	\$1,815
Christopher Givens	rack 1st, Breaking ir	7/3/2016	9/1/2016	60	10/4/2016	33	T/S (CFTS 61 days)	\$1,815
Travis McCleave	DV 2nd degree	6/15/2016	9/2/2016	79	9/20/2016	18	r run concurrent w/ VOP (CFTS 80 da'	\$990
Clara Alford	SL (enhancement)	8/11/2016	9/19/2016	39	11/15/2016	57	90 days (CFTS 40 days)	\$3,135
Tara Lumpkin	DV 3rd degree	8/13/2016	9/19/2016	37	11/15/2016	57	T/S (CFTS 36 days)	\$3,135
Danielle Moore	FTC Fraud	7/14/2016	9/19/2016	67	10/18/2016	29	T/S (CFTS 66 days)	\$1,595
William Threatt	Poss Meth 1st	7/9/2016	9/19/2016	72	10/18/2016	29	T/S (CFTS 72 days)	\$1,595
Timothy Hinson	wful Poss of Prescrij	8/10/2016	9/19/2016	40	11/15/2016	57	T/S (CFTS 42 days)	\$3,135
Rita Sutton	GL	8/11/2016	9/21/2016	41	11/15/2016	55	T/S (CFTS 41 days)	\$3,025
Russell Roberts	. (enhanced); Forge	8/8/2016	9/21/2016	44	11/15/2016	55	CFTS 46 days); dismissing forgery per	\$3,025

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Cost Savings: Difference in Days between Day of Guilty Plea from Bond Returnable x \$55.00

DEFENDANT NAME	CHARGE	DOA	DAY OF GUILTY PLEA	DAYS IN JAIL	BOND RETURNABLE	DATE DIFFERENCE	SENTENCE	COST SAVINGS
Geramy Ashe	peny--breaking into	7/24/2016	9/22/2016	60	11/1/2016	40	Trespassing, T/S (CFTS 46 days)	\$2,200
Cameron Bunkley	SL (enhancement)	9/8/2016	9/22/2016	14	12/13/2016	82	T/S (CFTS 16 days)	\$4,510
Mark Dorko	WID Sch IV 2nd; Ma	9/1/2016	10/4/2016	33	12/13/2016	70	s/o 90 days then 24 months prob with	\$3,850
Dorothea Lacey	oke 2nd; Poss CS 2r	9/8/2016	10/4/2016	26	12/13/2016	70	(2x) (T/S); Poss Coke 2nd, 90 days (C	\$3,850
Xavid Rivera	is stolen vehicle > \$:	8/7/2016	10/6/2016	60	11/15/2016	40	PDC, T/S (CFTS 60 days)	\$2,200
Saul Zamora	Identity Fraud	7/22/2016	10/7/2016	77	11/1/2016	25	alse information to police; T/S (CFTS 7	\$1,375
Haterius Massey	Poss MJ 2nd & UCAF	8/9/2016	10/7/2016	59	11/15/2016	39	T/S (CFTS 59 days)	\$2,145
Crystal Wallace	PWID Meth 1st	9/14/2016	10/12/2016	28	1/10/2017	90	T/S balance s/o 18 months prob (CFTS	\$4,950
Joseph Zoller	SL (enhanced)	8/28/2016	10/12/2016	45	12/13/2016	62	SL 1st (CFTS 45 days)	\$3,410
Leroy Allen	DV, 3rd	8/6/2016	10/12/2016	67	11/15/2016	34	T/S (CFTS 67 days)	\$1,870
Ace Carter	FTSBL	8/18/2016	10/17/2016	60	11/29/2016	43	90 days (CFTS 62 days)	\$2,365
Christopher Milligan	A&B 1st degree	8/26/2016	10/17/2016	52	11/29/2016	43	A&B 3rd degree; T/S (CFTS 54 days)	\$2,365
Orlando Brown	iking into Motor Vel	8/23/2016	10/17/2016	55	11/29/2016	43	T/S (CFTS 75 days)	\$2,365
Jason Talley	Poss Crack 3rd	7/12/2016	10/17/2016	97	10/18/2016	1	Poss Crack 2nd; T/S (CFTS 98 days)	\$55
David Lacount	A&B 1st degree	8/22/2016	10/17/2016	56	11/29/2016	43	A&B 3rd degree; T/S (CFTS 56 days)	\$2,365
Krisondra Brooks	Poss Meth 1st	9/22/2016	10/19/2016	27	1/10/2017	83	90 days (CFTS 28 days)	\$4,565
Charles Peele	g goods under false	9/15/2016	10/20/2016	35	1/10/2017	82	\$10K (3rd or sub) 1x, others dismiss	\$4,510
John Wurdemann, Jr.	GL \$10K or more	9/7/2016	10/21/2016	44	12/13/2016	53	1, 3 yrs s/o T/S s/o 4 yrs prob PTUP aft	\$2,915
Lynne Skye-Robinson	RSG \$2K < \$10K	9/23/2016	10/21/2016	28	1/10/2017	81	T/S (CFTS 28 days)	\$4,455
Samantha Leclair-Brady	SL (enhanced)	10/10/2016	10/31/2016	21	2/7/2017	99	T/S (CFTS 433 days)	\$5,445
Michael Curry	of Veh. w/o Permis	8/14/2016	10/31/2016	78	11/29/2016	29	T/S (CFTS 76 days)	\$1,595
Alexa Ashcraft	PWID I-II Narc/Hero	8/30/2016	10/31/2016	62	12/13/2016	43	T/S (CFTS 60 days)	\$2,365
Patrick Trulove	omb Threat conspir	10/14/2016	10/31/2016	17	2/7/2017	99	omb Hoax device; 60 days (CFTS 49 da	\$5,445
Jimmie Lee Banks	JI 2nd < .08; DUS 2r	9/23/2016	11/3/2016	41	1/10/2017	68	T/S CFTS 42 days) & DUS 2nd 60 days	\$3,740
Elizabeth Parton	SL (enhanced)	10/4/2016	11/4/2016	31	1/24/2017	81	SL (T/S CFTS 32 days)	\$4,455
Joshua Love	DUI , .10, 4th or sub	8/4/2016	11/14/2016	102	11/15/2016	1	2 yrs (CFTS 133 days)	\$55
James Bou	LTSA	10/14/2016	11/14/2016	31	2/7/2017	85	T/S (CFTS 31 days)	\$4,675
Anthony Fulmer	MI Courthouse or Ja	10/15/2016	11/14/2016	30	2/7/2017	85	T/S (CFTS 31 days)	\$4,675
Orlando Poe	SL	10/12/2016	11/14/2016	33	2/7/2017	85	T/S (CFTS 31 days)	\$4,675
Rebecca Steele	il (enhanced); CTDN	10/27/2016	11/15/2016	19	2/7/2017	84	75 days (CFTS 20 days); dismiss CTDN	\$4,620
Janelle Roberts	RSG \$2K < \$10K	9/20/2016	11/15/2016	56	1/10/2017	56	90 days (CFTS 56 days)	\$3,080
Christopher Blackmon	TBF	10/13/2016	11/16/2016	34	2/7/2017	83	90 days (CFTS 35 days)	\$4,565
Bobby Tharpe	SL (enhanced)	10/16/2016	11/16/2016	31	2/7/2017	83	90 days (CFTS 31 days)	\$4,565
Daniel Dietrich	Poss Meth 1st	10/18/2016	11/17/2016	30	2/7/2017	82	T/S (CFTS 31 days)	\$4,510
Christian Walker	Poss Meth/Crack 1s	10/14/2016	11/28/2016	45	2/7/2017	71	T/S (CFTS 44 days)	\$3,905

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DEFENDANT NAME	CHARGE	DOA	DAY OF GUILTY PLEA	DAYS IN JAIL	BOND RETURNABLE	DATE DIFFERENCE	SENTENCE	COST SAVINGS
Jonathan Morgan	A&B 2nd degree	11/8/2016	11/29/2016	21	2/28/2017	91	A&B 3rd degree; T/S (CFTS 21 days)	\$5,005
Timothy Brooks	Poss Meth 1st	11/9/2016	11/30/2016	21	2/28/2017	90	T/S (CFTS 22 days)	\$4,950
James Bigham	FTC Theft	11/19/2016	11/30/2016	11	2/28/2017	90	90 days (CFTS 12 days)	\$4,950
Crystal Williams	Poss MJ 2nd	10/25/2016	12/1/2016	37	2/7/2017	68	T/S (CFTS 38 days)	\$3,740
Aaron McClure	rapon, A&B 1st, Pos	9/19/2016	12/5/2016	77	1/10/2017	36	Poss MJ > 1 ounce; (CFTS 77 days)	\$1,980
Gerald Holt	SL (enhanced) 3x	10/24/2016	12/5/2016	42	2/7/2017	64	SL (3x); T/S (CFTS 42 days)	\$3,520
Jason Waller	Use of Vehicle w/o P	10/9/2016	12/5/2016	57	1/24/2017	50	90 days (CFTS 57 days)	\$2,750
Darius Hyatt	d or sub; Manuf cok	9/30/2016	12/12/2016	73	1/24/2017	43	); other charges except trafficking (dis	\$2,365
Paris Mills	burg 2nd degree (nv	10/13/2016	12/12/2016	60	2/7/2017	57	PL, T/S (CFTS 61 days)	\$3,135
Rita Sutton	of Veh. w/o Permis	9/30/2016	12/12/2016	73	1/24/2017	43	T/S (CFTS 74 days)	\$2,365
Steven Vanderburg	SL (enhanced) 3x	10/5/2016	12/12/2016	68	1/24/2017	43	T/S (CFTS 87 days)	\$2,365
David Welch	ss I-II Narc/Heroin	10/20/2016	12/12/2016	53	2/7/2017	57	T/S (CFTS 60 days)	\$3,135
Robert Workman	SL (enhanced)	10/18/2016	12/12/2016	55	2/7/2017	57	90 days (CFTS 56 days)	\$3,135
Robert Crenshaw	DV 3rd deg	11/20/2016	1/10/2017	51	2/28/2017	49	T/S (CFTS 53 days)	\$2,695
Carey Sheppard	DV 2nd degree	11/17/2016	1/10/2017	54	2/28/2017	49	T/S (CFTS 56 days)	\$2,695
Kaitlan Garrick	; Heroin 1st; Poss C	12/4/2016	1/11/2017	38	2/28/2017	48	T/S (CFTS 39 days)	\$2,640
Lillie Moore	RSG > \$10K	12/9/2016	1/12/2017	34	3/14/2017	61	10K, 1 yr s/o 24 months prob PTUP re:	\$3,355
James Bigham	Escape	12/2/2016	1/23/2017	52	2/28/2017	36	L Escape; 1 yr consecutive (CFTS 6 day	\$1,980
Anthony Sullivan	LTSA	12/6/2016	1/23/2017	48	3/14/2017	50	18 months prob w/ \$600 rest (CFTS 4	\$2,750
Anthony Sullivan	MI Courthouse or Ja	12/20/2016	1/23/2017	34	3/28/2017	64	18 months prob w/ \$600 rest (CFTS	\$3,520
Matthew Toole	DV 2nd degree	11/21/2016	1/23/2017	63	2/28/2017	36	1 yr s/o 1 yr prob w/SAC (CFTS 76 days	\$1,980
Corey Vines	< \$10K, Use of vehic	12/3/2016	1/23/2017	51	2/28/2017	36	prmission, T/S (CFTS 51 days); GL & Bu	\$1,980
Tremain Watson	D MJ 3rd or sub, Po	11/4/2016	1/23/2017	80	2/7/2017	15	T/S (CFTS 83 days)	\$825
Jason Falls	Meth 1st, contraban	12/21/2016	1/23/2017	33	3/14/2017	50	T/S (CFTS 41 days)	\$2,750
Robert Paige	DV 3rd deg.	11/27/2016	1/23/2017	57	2/28/2017	36	T/S (CFTS 58 days)	\$1,980
Ty'Vashaia Byrd	FTC Fraud, FTC Thef	12/4/2016	1/24/2017	51	2/28/2017	35	(T/S CFTS 51 days); FTC Theft dismiss	\$1,925
Emma Adams	1st, Poss MJ 1st, R	12/12/2016	1/25/2017	44	3/14/2017	48	1 yrs s/o 12 months prob (CFTS 44 days)	\$2,640
Gary Hallman	s CS 1st, Poss Meth	1/6/2017	1/26/2017	20	4/11/2017	75	T/S (CFTS 20 days); Poss Meth 1st, 90	\$4,125
Jason Binnall	FTSBL	12/19/2016	2/6/2017	49	3/28/2017	50	T/S (CFTS 49 days)	\$2,750
Micah Styles	anced); Criminal Coi	10/28/2016	2/6/2017	101	2/7/2017	1	.01 days); criminal conspiracy dismiss	\$55
Micah Styles	RSG	11/23/2016	2/6/2017	75	2/28/2017	22	T/S (CFTS 101 days)	\$1,210
Donald Moss	rg 2nd degree (viole	10/15/2016	2/6/2017	114	2/7/2017	1	4 yrs (CFTS 115 days)	\$55
Ronnie Hooks	FTSBL	12/21/2016	2/6/2017	47	3/28/2017	50	9 months (CFTS 88 days)	\$2,750
D'Nique Gregory	D MJ 1st; Poss Cracl	11/18/2016	2/6/2017	80	2/28/2017	22	1 yr s/o 6 months prob (CFTS 80 days)	\$1,210
Christopher Combs	DUI < 0.10, 3rd	11/16/2016	2/7/2017	83	2/28/2017	21	18 months (CFTS 83 days)	\$1,155

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Leonard Dover	PWID MJ 1st	1/8/2017	2/8/2017	31	4/11/2017	62	T/S (CFTS 31 days)	\$3,410
Evan Gault	GL > \$2K	1/23/2017	2/10/2017	18	4/25/2017	74	Vehicle w/o permission, T/S (CFTS 19 days)	\$4,070
Charles Barber	False Police Report	1/30/2017	2/23/2017	24	5/16/2017	82	T/S (CFTS 25 days)	\$4,510
Adam Bartley	> \$10K; Poss Heroin	2/12/2017	2/23/2017	11	5/16/2017	82	12 months s/o 18 months prob (CFTS 11 days)	\$4,510
Derik Patton	PWID Cocaine 3rd	1/5/2017	2/23/2017	49	4/11/2017	47	12 months s/o 90 days & 2 yrs prob (CF)	\$2,585
Rodrigues Firms	RA(A)	2/5/2017	2/23/2017	18	5/16/2017	82	1 yr s/o 12 months prob (CFTS 18 days)	\$4,510
Latavious Williams	SL (enhanced)	1/1/2017	2/23/2017	53	4/11/2017	47	T/S (CFTS 53 days)	\$2,585
Alyssa Dingley	DV 3rd degree	2/1/2017	2/27/2017	26	5/16/2017	78	in treatment facility followed by 6 mo	\$4,290
Michael Buckson	Loss of Stolen Vehicle	2/11/2017	3/13/2017	30	5/16/2017	64	TS	\$3,520
Juan East	SL (enhanced)	1/5/2017	3/13/2017	67	4/11/2017	29	90 days (CFTS 67 days)	\$1,595
Luis A Perez	GL >2k	2/8/2017	3/14/2017	34	5/16/2017	63	TS	\$3,465
Christopher Burgess	1st; RA; Poss. Meth	2/23/2017	3/16/2017	21	5/23/2017	68	1 yr (CFTS 22 days)	\$3,740
Shannon Moss	Loss of Sched. 2nd and	2/20/2017	3/16/2017	24	5/23/2017	68	TS and 1 yr (CFTS 149 days)	\$3,740
Walter McDonald	Child Support	3/8/2017	3/20/2017	12	6/6/2017	78	Nolle Prossed	\$4,290
Misty Patterson	Burg 2nd; MIPP; PL	1/12/2017	3/27/2017	74	4/11/2017	15	18 mo active (CFTS 76 days)	\$825
Shiela Marshall	Loss of Veh. w/o Permis	2/20/2017	3/27/2017	35	4/18/2017	22	TS	\$1,210
Jaqueline Pepper	Resisting Arrest	1/18/2017	3/27/2017	68	4/25/2017	29	TS	\$1,595
LaWillie Durham	Loss of Veh. w/o Permis	1/31/2017	3/29/2017	57	5/16/2017	48	TS restore probation	\$2,640
Kristy Speer	Contraband and VOI	3/11/2017	3/30/2017	19	6/6/2017	68	TS; Revoke 6 mo and terminate	\$3,740
James Collins	Identity Fraud; Crack pos	3/2/2017	3/30/2017	28	6/6/2017	68	TS; Revoke 90 days and terminate (CFTS 28 days)	\$3,740
Keith Nelson	UI 2nd; DUS 1; UCA	1/27/2017	3/30/2017	62	4/25/2017	26	1 yr susp on 2 yr PTUP \$1100; TS; TS	\$1,430
Erica Smith	SPMJ; PWID 1	3/17/2017	4/10/2017	24	6/6/2017	57	TS; YOA susp on TS	\$3,135
Loni Lilly	Burg 2nd; pos meth 3	3/23/2017	4/10/2017	18	6/20/2017	71	2 yr s/o 90 active and 2 yr probation	\$3,905
Allison Moss	pos pill; pos pill 1st	3/17/2017	4/10/2017	24	6/6/2017	57	TS	\$3,135
Tommy Nichols	GL 2-10	3/2/2017	4/11/2017	40	6/6/2017	56	1 yr susp on 6 mo and 2 yr probation PTI	\$3,080
Jesus Rodriguez	FTSFBL 1st	2/24/2017	4/12/2017	47	5/23/2017	41	90 day CFTS 46	\$2,255
Cornelle Adkins	FTSFBL 1st	3/25/2017	4/12/2017	18	6/20/2017	69	TS	\$3,795
Keith Morton	SL Enhance	3/25/2017	4/24/2017	30	6/20/2017	57	90 s/o 6 mo	\$3,135
William Ayers	felon; pos meth 1st	3/9/2017	4/12/2017	34	6/6/2017	55	18 mo concurrent cfts 35 days	\$3,025
Aldona Szczawinska	Shoplifting above	3/19/2017	4/27/2017	39	6/6/2017	40	ts	\$2,200
Ronald Brice	SL enhanced	2/26/2017	4/27/2017	60	5/23/2017	26	ts	\$1,430
Kimberly Biggers	SL Enhance	4/7/2017	4/27/2017	20	6/20/2017	54	18 mo	\$2,970
Reginald Brown	Failure to return rental	3/29/2017	4/27/2017	29	6/20/2017	54	ts	\$2,970
Connell Crawford	Forgery	3/25/2017	4/21/2017	27	6/20/2017	60	NP	\$3,300
Rebecca Welch	pos meth 2nd	3/24/2017	5/11/2017	48	6/20/2017	40	ts in tc	\$2,200

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Kristophher Huffman	pos meth 2nd	3/24/2017	5/11/2017	48	6/20/2017	40	ts in tc	\$2,200
Jeffrey Hannon	PL enhanced	4/1/2017	5/15/2017	44	6/20/2017	36	60 days	\$1,980
Juan East	urg 3rd; pl enhance	3/28/2017	5/15/2017	48	6/20/2017	36	90 days	\$1,980
Scott Graham	pos 2nd	2/23/2017	5/15/2017	81	5/23/2017	8	TS	\$440
Shannon Caldwell	SL enhanced	4/4/2017	5/15/2017	41	6/20/2017	36	ts	\$1,980
Charles Cochran	PL enhanced	4/4/2017	5/15/2017	41	6/20/2017	36	6 mo	\$1,980
Adam Cooper	PWID 2nd	3/27/2017	5/15/2017	49	6/20/2017	36	2 susp on 18 mo	\$1,980
Cody Stadler	Pos 1st	3/30/2017	5/15/2017	46	6/20/2017	36	yoa susp on TS	\$1,980
Reginald Rutledge	pos 1st	4/1/2017	5/15/2017	44	6/20/2017	36	TS	\$1,980
Sammy Barnette	Harrassment 2nd	4/25/2017	5/15/2017	20	7/25/2017	71	30 days	\$3,905
Caroline Fielder	burg tools	2/2/2017	5/15/2017	102	5/16/2017	1	TS	\$55
Kimberly Tilley	of Veh. w/o Permis	4/6/2017	5/15/2017	39	6/20/2017	36	TS	\$1,980
Eddie Speed	vil of prot order	3/24/2017	5/18/2017	55	6/20/2017	33	on 90 day and 2 yr probation PTUP af	\$1,815
Derisha Meeks	MIPP; pos meth 1st	4/4/2017	5/18/2017	44	7/11/2017	54	6 mo susp on 18 mo PTUP	\$2,970
Sammy Barnette	Harrassment 2nd	4/25/2017	5/15/2017	20	7/25/2017	71	30 days CFTS 21 days	\$3,905
Christopher Eicke	pos of LSD	4/17/2017	5/24/2017	37	7/11/2017	48	TS	\$2,640
William Worley	pos of meth	4/17/2017	5/24/2017	37	7/11/2017	48	TS	\$2,640
Tonya Reneee Hinson	forgery under; ftc	3/30/2017	5/24/2017	55	6/20/2017	27	2 s/o 3 years	\$1,485
Deangelo Hensley	urg 1st and conspira	3/3/2017	5/24/2017	82	6/6/2017	13	RSG for TS	\$715
Jerrod Bailey	th x2; prox; forgeer	3/1/2017	5/25/2017	85	6/6/2017	12	5 s/o 5y	\$660
Christian Walker	PWID MJ; pos con s	4/7/2017	5/25/2017	48	6/20/2017	26	3 s/o 18 mo	\$1,430
Christopher McNeely	SL enhanced	3/28/2017	5/25/2017	58	6/20/2017	26	TS	\$1,430
Hope Baker	pos meth 1	5/7/2017	5/25/2017	18	7/25/2017	61	TS	\$3,355
Michael Brown	vil Courthouse or Ja	5/13/2017	5/25/2017	12	8/17/2017	84	1 s/o 18 mo PTUP after \$600	\$4,620
Clinton Young	DUI 3rd	5/12/2017	5/30/2017	18	8/8/2017	70	NP	\$3,850
Terry Wright	charging firearm int	4/23/2017	6/1/2017	39	7/11/2017	40	2 s/o 18 mo	\$2,200
Marcus McKinney	SL enhanced	5/10/2017	6/1/2017	22	8/8/2017	68	1 s/o 18 mo PTUP after \$500	\$3,740
Lindsey Plyler	IS METH 2nd; resisti	5/8/2017	6/1/2017	24	8/8/2017	68	2 s/o 1y	\$3,740
Damien Simmons	retenses enhanced	3/30/2017	6/1/2017	63	6/20/2017	19	TS cfts 65	\$1,045
Franklin Barnes	DV 3rd	5/6/2017	6/2/2017	27	7/25/2017	53	TS	\$2,915
Kevin Hill	DV 3rd	3/20/2017	6/2/2017	74	6/21/2017	19	TS	\$1,045
Patricia Bryant	DUI 2nd	4/11/2017	6/5/2017	55	7/11/2017	36	90 days CFTS 56	\$1,980
Danyelle Derose	l vio; Burg 2nd; Pos	3/14/2017	6/5/2017	83	6/20/2017	15	3 s/o 3 y	\$825
Anne Rainey	uction; food stamp	5/26/2017	6/6/2017	11	8/22/2017	77	2y s/ o 2y PTUP after \$3500 restitutior	\$4,235
Shawntavious Hendersc	Support Obligation	5/3/2017	6/6/2017	34	7/25/2017	49	NP	\$2,695

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James Owen	FTSFBL 1st	5/11/2017	6/6/2017	26	8/8/2017	63	TS	\$3,465
Jeffery Gilbert	enhanced x2; Resisti	5/17/2017	6/6/2017	20	8/12/2017	67	1 y s/o 1y 2o day cfts	\$3,685
Gary Blackwell	Resisting Arrest	5/13/2017	6/6/2017	24	8/8/2017	63	TS	\$3,465
James Starnes	enhanced x2; Resisti	5/22/2017	6/9/2017	18	8/22/2017	74	2y s/o 2y PTUP \$727 restitution	\$4,070
Kenneth Huffstetler	ening Life of Public	5/28/2017	6/20/2017	23	8/22/2017	63	2y cfts 61	\$3,465
Kimberly Caldwell	of Veh. w/o Permis	5/28/2017	6/20/2017	23	8/22/2017	63	TS	\$3,465
Deyonta Evans	DV2nd	5/21/2017	6/19/2017	29	8/8/2017	50	90d s/o 1y	\$2,750
Jessica Hinson	DV 2nd	4/18/2017	6/19/2017	62	7/11/2017	22	1y s/o 1y cfts 63	\$1,210
Marcus Morning	sl enhanced	5/17/2017	6/19/2017	33	8/8/2017	50	TS	\$2,750
Mandy McCarver	ios meth 1; pos 1-5	5/30/2017	6/21/2017	22	8/22/2017	62	2 s/o 1y	\$3,410
John Sanderson	pos crack 1st	6/3/2017	6/21/2017	18	8/22/2017	62	90 days cfts 18	\$3,410
Kelly Robinson	ntrolled; pos contrc	5/3/2017	6/23/2017	51	9/6/2017	75	2y s/o 18m	\$4,125
Stephanie Freeman	HTO	5/28/2017	6/23/2017	26	8/22/2017	60	lays concurrent w/ family court. CFTS	\$3,300
Allison Moss	raud x3; ftc theft x3	5/25/2017	6/23/2017	29	8/22/2017	60	1y s/o 18mo	\$3,300
Robert Dover	AB 2nd	5/25/2017	7/10/2017	46	8/22/2017	43	6m s/o 6m	\$2,365
Trenton Fondren	MIPP	5/29/2017	7/24/2017	56	10/23/2017	91	TS	\$5,005
Madelyne Shackelford	Shoplifting above	5/23/2017	7/10/2017	48	8/22/2017	43	TS	\$2,365
Howard Wilson	Poss. Meth	6/11/2017	7/10/2017	29	9/6/2017	58	TS	\$3,190
Carlos Mullinax	Poss. Meth	6/1/2017	7/10/2017	39	9/6/2017	58	TS	\$3,190
Elizabeth Banty	Shoplifting	7/11/2017	7/28/2017	17	10/23/2017	87	Probation	\$4,785
David Kurht	MIPP	7/15/2017	7/24/2017	9	10/23/2017	91	Probation	\$5,005
Jacob Porter	Shoplifting	7/12/2017	7/27/2017	15	10/23/2017	88	ts	\$4,840
Lance Harrington	SPM	6/8/2017	7/24/2017	46	9/6/2017	44	ts	\$2,420
Scotty Brown	Child Support	7/7/2017	7/24/2017	17	10/3/2017	71	dismissal	\$3,905
Jonathan Morgan	Autobreaking	6/6/2017	7/24/2017	48	9/6/2017	44	ts	\$2,420
Jeffrey Hannon	Grand Larceny	7/6/2017	7/24/2017	18	10/3/2017	71	ts	\$3,905
William Michels	Poss. Meth	6/17/2017	7/24/2017	37	9/6/2017	44	ts	\$2,420
Joshua Starck	Poss. Heroin	7/4/2017	7/24/2017	20	10/23/2017	91	YOA susp on probation	\$5,005
Corey Anderson	Poss. Stolen Vehicle	6/14/2017	8/22/2017	69	9/6/2017	15	ts	\$825
Charles Barrett	Poss. Meth	5/6/2017	7/11/2017	66	7/25/2017	14	Probation	\$770
Trevor Baucom	Burglary	6/11/2017	8/21/2017	71	9/6/2017	16	dismissal	\$880
Dianna Bean	Forgery	7/31/2017	8/25/2017	25	10/17/2017	53	Probation	\$2,915
Christopher Blackmon	R/A	7/14/2017	7/26/2017	12	10/3/2017	69	ts	\$3,795
Kaila Chavis	cceny--breaking into	6/21/2017	8/24/2017	64	9/19/2017	26	Probation	\$1,430
Broadus Crump	UCAP	7/2/2017	8/24/2017	53	9/19/2017	26	dismissal	\$1,430

2013, 2014, 2015, 2016 & 2017 Fast Track Cases

Jeff Zuschke & Mindy Lipinski

Cost Savings: Difference in Days between Day of Guilty Plea from Bond Returnable x \$55.00

DEFENDANT NAME	CHARGE	DOA	DAY OF GUILTY PLEA	DAYS IN JAIL	BOND RETURNABLE	DATE DIFFERENCE	SENTENCE	COST SAVINGS
Armand Douglas	Poss Crack	6/11/2017	8/7/2017	57	9/6/2017	30	Probation	\$1,650
Eric Espinoza	Poss. Crack	6/11/2017	8/7/2017	57	9/6/2017	30	ts	\$1,650
Michael Etters	Poss. Meth	7/24/2017	8/21/2017	28	10/17/2017	57	TS	\$3,135
Trenton Fondren	MIPP	7/5/2017	7/24/2017	19	10/3/2017	71	TS	\$3,905
Glenn Foreman	RA	6/22/2017	8/24/2017	63	9/19/2017	26	ts	\$1,430
Jonathan Gibson	Drugs	6/27/2017	8/21/2017	55	9/19/2017	29	dismissal	\$1,595
Tracy Griffin	RA	7/9/2017	8/21/2017	43	10/3/2017	43	Probation	\$2,365
Branden Gurnick	Poss. meth	7/29/2017	8/23/2017	25	10/17/2017	55	TS	\$3,025
Jeffrey Hannon	Grand Larceny	7/5/2017	7/24/2017	19	10/3/2017	71	TS	\$3,905
Otha Hemphill	HTO	7/15/2017	8/7/2017	23	10/3/2017	57	90 Days	\$3,135
Michelle Hill	Poss. Meth	8/5/2017	8/21/2017	16	10/31/2017	71	TS	\$3,905
Robert Dale Hughes	Shoplifting	6/8/2017	7/12/2017	34	9/6/2017	56	90 Days	\$3,080
Travis Hunter	Drugs	8/7/2017	9/5/2017	29	10/31/2017	56	TS	\$3,080
Rayford Jones	Poss. Of Meth	7/15/2017	8/23/2017	39	10/3/2017	41	TS	\$2,255
Chelsea Land	Poss. Cont. Sub	7/22/2017	8/11/2017	20	10/17/2017	67	Probation	\$3,685
Franklin Neely	Burglary	7/20/2017	8/10/2017	21	10/3/2017	54	dismissal	\$2,970
David Nester	Utilities Theft	6/13/2017	8/15/2017	63	9/6/2017	22	dismissal	\$1,210
Joshua Parrish	Poss. Cont. Sub	6/8/2017	7/13/2017	35	9/6/2017	55	Probation	\$3,025
William Michels	Poss. Cont. Sub	6/18/2017	7/24/2017	36	9/6/2017	44	TS	\$2,420
Christopher Pawloski	Shoplifting	7/3/2017	7/27/2017	24	10/3/2017	68	90 Days	\$3,740
Christopher Peele	DV	6/4/2017	7/28/2017	54	9/6/2017	40	Probation	\$2,200
William Pendegrass	MIJ	7/19/2017	9/6/2017	49	10/17/2017	41	TS	\$2,255
Jacob Porter	Shoplifting	7/11/2017	7/27/2017	16	10/3/2017	68	ts	\$3,740
Brenton Rhyne	Drugs	6/11/2017	7/11/2017	30	9/6/2017	57	Dismissal	\$3,135
Jequita Roseboro	FTC	7/7/2017	8/7/2017	31	10/3/2017	57	TS	\$3,135
Wendy Sexton	Poss. Cont. Sub	7/2/2017	8/21/2017	50	9/19/2017	29	TS	\$1,595
Randy Skelton	Child Support	6/9/2017	7/12/2017	33	9/6/2017	56	TS	\$3,080
Vincent Stone	R/a	8/1/2017	9/5/2017	35	10/31/2017	56	Probation	\$3,080
Danny Wyatt	Grand Larceny	6/19/2017	8/25/2017	67	9/19/2017	25	TS	\$1,375
Howard Wilson	Poss. Cont. Sub	6/11/2017	7/10/2017	29	9/6/2017	58	TS	\$3,190
Jeffrey Wooten	RHPSG	7/7/2017	7/27/2017	20	10/3/2017	68	TS	\$3,740
TOTAL COST SAVINGS								\$1,791,070

FORTY YEARS OF DEATH: THE PAST, PRESENT, AND FUTURE OF THE DEATH PENALTY IN SOUTH CAROLINA (STILL ARBITRARY AFTER ALL THESE YEARS)

JOHN H. BLUME* & LINDSEY S. VANN**

INTRODUCTION

We now have forty years of experience under the “death belt” in South Carolina. The Supreme Court of the United States approved new death sentencing schemes in 1976¹ and the death penalty has been in business more or less full time in the Palmetto State since then.² Last year, two Justices of the Supreme Court called for full briefing on the constitutionality of the death penalty in light of forty years of data that demonstrate the death penalty statutes enacted in the 1970s have not lived up to constitutional demands.³ In this Article, we will report and comment on the results of four decades of—in Justice Blackmun’s words—“tinker[ing] with the machinery of death”⁴ in South Carolina.

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1. *Gregg v. Georgia*, 428 U.S. 153 (1976).

2. As will be described in more detail in the next section of this Article, in 1974, South Carolina enacted a mandatory death penalty statute that was deemed unconstitutional in 1976, but a new statute was almost immediately enacted by the legislature and signed by the Governor. *See infra* notes 13, 23–24 and accompanying text.

3. *Glossip v. Gross*, 135 S. Ct. 2726, 2755 (2015) (Breyer, J., dissenting) (joined by Justice Ginsburg).

4. *Callins v. Collins*, 510 U.S. 1141, 1145 (1994) (Blackmun, J., dissenting from the denial of certiorari). In 2002, after twenty-five years with the current death penalty statute, one of the authors published a similar report of the status of South Carolina’s death penalty. John H. Blume, *Twenty-Five Years of Death: A Report of the Cornell Death Penalty Project on the “Modern” Era of Capital Punishment in South Carolina*, 54 S.C. L. REV. 285 (2002).

It is not a pretty picture, and our bottom line is that the arbitrariness that led the Supreme Court to invalidate the death penalty in 1972 is still very much alive today. We will begin with a brief history of South Carolina's "modern" death penalty system.

I. THE BEGINNING OF THE MODERN ERA

In *Furman v. Georgia*, a bare 5-4 majority of the Supreme Court invalidated all then-existing death penalty statutes.⁵ Each of the Justices in the majority wrote separately, and no clear consensus emerged as to why the death penalty, which had been upheld against constitutional attack just the year before,⁶ was now unconstitutional. At the risk of oversimplification, the constitutional rub arose from the fact that the death penalty was imposed in only a fraction of cases in which it was legally available and the Justices could divine no rational basis explaining why some offenders were sentenced to death while others were spared.⁷ For this reason, the Court found that all state systems of capital punishment allowed for arbitrary and capricious imposition of capital punishment.⁸ Justice Brennan's concurring opinion captures this sentiment: "When the punishment of death is inflicted in a trivial number of the cases in which it is legally available, the conclusion is virtually inescapable that it is being inflicted arbitrarily. Indeed, it smacks of little more than a lottery system."⁹ There was, in short, no "rational basis that could differentiate in those terms the few who die from the many who go to prison."¹⁰ The fear that racial discrimination

5. 408 U.S. 238, 239-40 (1972).

6. See *McGautha v. California*, 402 U.S. 183, 193 (1971) (rejecting the argument that the absence of standards to guide jury's discretion in death penalty sentencing was "fundamentally lawless" and violated the Fourteenth Amendment).

7. In most pre-*Furman* schemes, including South Carolina's, the jury decided the issue of the defendant's guilt and the appropriateness of the death penalty in the same unitary proceeding. See S.C. CODE § 16-52 (Michie 1962), *invalidated by Furman v. Georgia*, 408 U.S. 238 (1972) (current version at S.C. CODE ANN. § 16-3-20 (2010)). If the jury found the defendant guilty of murder, it would recommend mercy if it thought a life sentence was appropriate and would not recommend mercy if it favored death. *Id.*

8. See *Gregg v. Georgia*, 428 U.S. 153, 188 (1976) ("Because of the uniqueness of the death penalty, *Furman* held that it could not be imposed under sentencing procedures that created a substantial risk that it would be inflicted in an arbitrary and capricious manner.").

9. *Furman*, 408 U.S. at 293 (Brennan, J., concurring).

10. *Id.* at 294. Justice Stewart echoed Justice Brennan's concerns: "These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. . . . I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and freakishly imposed." *Id.* at 310 (Stewart, J., concurring). Justice White voiced similar objections to imposing capital punishment, stating, "the death penalty is exacted with great infrequency even for the most atrocious crimes and that there is no meaningful basis for distinguishing the few cases

played a significant role in the death selection process was also of grave concern to several members of the Court.¹¹ The primary flaw in the statutes before the Court creating the intolerable arbitrariness was that jurors had complete and unguided discretion in deciding whether a capital defendant should receive the death penalty or life in prison.¹²

Many states, including South Carolina, rushed to create capital sentencing schemes that would satisfy the new constitutional standard.¹³ The post-*Furman* statutes fell into two broad categories: mandatory death penalty statutes and guided discretion statutes. Both types of new death penalty laws were intended to reduce the role of jury discretion. The mandatory statutes did so by eliminating it; if a defendant was found guilty of a capital offense, then the death penalty was imposed—no ifs, ands, or buts. The guided discretion statutes attempted to reduce arbitrariness by creating new procedures. The central features of most guided discretion schemes included bifurcated trial (separating the issues of guilt-or-innocence and punishment), the creation of statutory aggravating circumstances limiting eligibility for capital punishment, permitting consideration of mitigating circumstances, and mandatory appellate review (including proportionality review). By 1976, the new laws made their way back to the U.S. Supreme Court. The Court upheld the guided discretion statutes, but concluded that the mandatory statutes violated the Eighth Amendment.¹⁴

in which it is imposed from the many cases in which it is not.” *Id.* at 313 (White, J., concurring).

11. See, e.g., *id.* at 242 (Douglas, J., concurring) (opining it was “incontestable that the death penalty inflicted on one defendant is ‘unusual’ if it discriminates against him by reason of his race, religion, wealth, social position, or class, or if it is imposed under a procedure that gives room for the play of such prejudices”). Justice Marshall agreed, stating “It is immediately apparent that Negroes were executed far more often than whites in proportion to their percentage of the population.” *Id.* at 364–65 (Marshall, J., concurring).

12. See *Gregg v. Georgia*, 428 U.S. 153, 189 (1976) (“*Furman* mandates that where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited as to minimize the risk of wholly arbitrary and capricious action.”). The South Carolina Supreme Court, following *Furman*, struck down the South Carolina statute in *State v. Gibson*, 259 S.C. 459, 462 (1972).

13. See *State v. Rogers*, 270 S.C. 285, 288, 242 S.E.2d 215, 216 (1978)

14. The Court granted certiorari in five cases. *Gregg v. Georgia*, 428 U.S. 153 (1976), *Proffitt v. Florida*, 428 U.S. 242 (1976), and *Jurek v. Texas*, 428 U.S. 262 (1976), involved guided discretion statutes of various types that were deemed constitutional. *Woodson v. North Carolina*, 428 U.S. 280 (1976), and *Roberts v. Louisiana*, 428 U.S. 325 (1976), involved mandatory statutes that were invalidated. While beyond the scope of this article, the Texas statute was (and is) a “hybrid” falling somewhere between guided discretion and mandatory in classification and most commentators assert, and we agree, if the Supreme Court had it to do over again they would have invalidated the Texas statute in 1976 as well. See, e.g., Jordan Steiker, Penry v. Lynaugh: *The*

Gregg v. Georgia was the lead case. Justice Stewart's opinion stated, "[d]espite the continuing debate, dating back to the 19th century, over the morality and utility of capital punishment, it is now evident that a large proportion of American society continues to regard it as an appropriate and necessary criminal sanction."¹⁵ Thus, the Court concluded the death penalty was not per se violative of the Eighth Amendment. The Georgia statute passed constitutional muster even though "some jury discretion still exists" because "the discretion to be exercised is controlled by clear and objective standards so as to produce non-discriminatory application."¹⁶ The Court concluded:

In summary, the concerns expressed in *Furman* that the penalty of death not be imposed in an arbitrary or capricious manner can be met by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance. As a general proposition these concerns are best met by a system that provides for a bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposition of sentence and provided with standards to guide its use of the information.¹⁷

The Court also emphasized the importance of appellate review:

As an important additional safeguard against arbitrariness and caprice, the Georgia statutory scheme provides for automatic appeal of all death sentences to the State's Supreme Court. That court is required by statute to review each sentence of death and determine whether it was imposed under the influence of passion or prejudice, whether the evidence supports the jury's finding of a statutory aggravating circumstance, and whether the sentence is disproportionate compared to those sentences imposed in similar cases.¹⁸

The mandatory statutes, on the other hand, did not fare so well. In *Woodson v. North Carolina*,¹⁹ the Court reasoned that such statutes were out of step with "contemporary" standards of decency because

Hazards of Predicting the Future, in DEATH PENALTY STORIES (John H. Blume & Jordan M. Steiker eds., 2010). In 2011, after his retirement from the Court, Justice John Paul Stevens said that he would change only one vote from his tenure, his vote in *Jurek*: "I think upon reflection, we should have held the Texas statute . . . to fit under the mandatory category and be unconstitutional. In my judgment we made a mistake in that case." EVAN J. MANDERY, *A WILD JUSTICE: THE DEATH AND RESURRECTION OF CAPITAL PUNISHMENT IN AMERICA* 439–40 (2013)

15. *Gregg*, 428 U.S. at 179.

16. *Id.* at 198 (quoting *Coley v. State*, 204 S.E.2d 612, 615 (Ga. 1974)).

17. *Id.* at 195.

18. *Id.* at 198.

19. 428 U.S. 280 (1976).

they eliminated the jury's essential role in maintaining a "link" between "community values" and the capital punishment system.²⁰ The Court also believed that the mandatory statutes only "papered over" the problem of unguided and unchecked discretion because juries would refuse to convict many defendants of murder if forced with such a Draconian choice.²¹ Due to the uniqueness of the death penalty, the Court held the Constitution required that the sentencer could not be precluded from considering the "character and record of the individual offender and the circumstances of the particular offense."²²

Since South Carolina had initially bet on the wrong constitutional horse by enacting a mandatory capital punishment scheme,²³ the South Carolina Supreme Court was forced to find the mandatory statute invalid.²⁴ In 1977, the General Assembly passed the current death penalty statute,²⁵ which closely modeled the Georgia law approved by the High Court in *Gregg*.²⁶

The South Carolina Supreme Court upheld the new statute in *State v. Shaw*.²⁷ The court concluded that the "statutory death penalty complex adopted by the General Assembly . . . is constitutionally indistinguishable from the statutory complex approved by the United States Supreme Court in *Gregg*."²⁸ In the state court's opinion, the new procedures "focus the sentencing authorities' attention on the particularized nature of the crime and the particularized characteristics of the individual defendant."²⁹ This guidance sufficiently reduced the likelihood of the death penalty being imposed capriciously.³⁰ The court also noted that the statutorily mandated appellate review, including the

20. *Id.* at 295.

21. *Id.* at 302.

22. *Id.* at 304.

23. See S.C. CODE § 16-52 (Michie 1962), *invalidated by* *Furman v. Georgia*, 408 U.S. 238 (1972) (current version at S.C. CODE § 16-3-20 (2010)).

24. *State v. Rumsey*, 267 S.C. 236, 239, 226 S.E.2d 894, 895 (1976) ("As our statute does not permit the exercise of controlled discretion in imposing the death penalty required by the recent decision . . . it too is constitutionally defective.").

25. See 1977 Act No. 177 § 1 (effective June 8, 1977).

26. See *Gregg*, 428 U.S. at 162–68 (describing Georgia's death penalty sentencing scheme). There have been no substantial changes to the South Carolina death penalty statute in the last forty years; however, the number of statutory aggravating circumstances has grown significantly, see *infra* text accompanying notes 173–74, and a capital defendant's parole eligibility (if the sentencer chooses the life option) has been extended from twenty years to thirty years and then eliminated. S.C. CODE ANN. § 16-3-20 (2010).

27. 273 S.C. 194, 205, 255 S.E.2d 799, 804 (1979).

28. *Id.* at 203, 255 S.E.2d at 803–04.

29. *Id.*, 255 S.E.2d at 804.

30. *Id.*

requirement that the court determine whether the death sentence was disproportionate or excessive, served “[as] an additional check against the random imposition of the death penalty.”³¹

II. POST-*FURMAN* AND *GREGG* DOCTRINAL DEVELOPMENTS

In the forty years since it approved the new death penalty schemes, the Supreme Court has enacted new limitations on the death penalty in an attempt to ensure the states impose death sentences in a manner consistent with the constitutional demands set out in *Furman* and *Gregg*. A theme in *Furman* and *Gregg*, reaffirmed repeatedly over the last forty years, is that capital punishment should be reserved for the most culpable offenders who commit the most heinous crimes. Justice Kennedy recently stated “the death penalty is reserved for a narrow category of crimes and offenders”³²—for the “worst of the worst.”³³ This “worst of the worst” principle influenced the Court in *Gregg* to conclude that the death penalty was not disproportionate in all cases because while “[i]t is an extreme sanction, [it is] suitable to the most extreme of crimes.”³⁴ Since *Gregg*, the Court has made clear that capital punishment should be “reserved for those crimes that are ‘so grievous an affront to humanity that the only adequate response may be the penalty of death.’”³⁵

The commitment to reserve capital punishment for the “worst of the worst” and conversely to prevent “average murderers” from being sentenced to death manifests itself in two discrete areas of the Court’s capital punishment jurisprudence. First, the Court “has consistently confined the imposition of the death penalty to a narrow category of the most serious crimes.”³⁶ Thus the death penalty may not be imposed

31. *Id.* at 211, 255 S.E. 2d at 807.

32. *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

33. In *Furman*, Justice Brennan found that the low levels of infliction of capital punishment made it “highly implausible that only the worst criminals or the criminals who commit the worst crimes are selected for this punishment.” 408 U.S. 238, 293–94 (Brennan, J., concurring). In fact, he noted that if “Furman or his crime illustrates the ‘extreme,’ then nearly all murderers and their murders are also ‘extreme.’” *Id.* at 294.

34. 428 U.S. at 187. The Court further found the death penalty served the penological goal, or social purpose, of retribution when imposed for the worst crimes:

Indeed, the decision that capital punishment may be the appropriate sanction in extreme cases is an expression of the community’s belief that certain crimes are themselves so grievous an affront to humanity that the only adequate response may be the penalty of death.

Id. at 184.

35. *Kennedy v. Louisiana*, 554 U.S. 407, 437 (2008) (quoting *Gregg*, 428 U.S. at 184, 187).

36. *Atkins v. Virginia*, 536 U.S. 304, 319 (2002).

for non-homicide offenses.³⁷ Even for those found guilty of murder, the requirement that a state prove an aggravating circumstance before a defendant is eligible to be sentenced to death is intended to provide the required narrowing and reserve the sentence for only the worst or most extreme murders. Thus states are required to “give narrow and precise definition to the aggravating factors that can result in a capital sentence.”³⁸ Furthermore, it is not enough that an aggravating circumstance “genuinely narrow the class of persons eligible for the death penalty,” it must also “reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder.”³⁹ Where the state fails to narrowly and precisely define an aggravating circumstance, it “fail[s] adequately to channel the sentencing decision” as required by *Gregg*.⁴⁰ As a result, the Court has invalidated aggravating circumstances broadly defined to allow the imposition of the death penalty upon a defendant whose “crimes cannot be said to have reflected a consciousness materially more ‘depraved’ than that of any person guilty of murder.”⁴¹

The Court has also prohibited the imposition of the death penalty on those deemed less culpable than the worst offender, holding that its “narrowing jurisprudence . . . seeks to ensure that only the most deserving of execution are put to death.”⁴² In order to do so, the Court requires that “[i]n any capital case a defendant has wide latitude to raise as a mitigating factor ‘any aspect of [his or her] character or record . . . as a basis for a sentence less than death.’”⁴³ The Court has also barred the imposition of the death penalty on certain individuals deemed categorically undeserving of the death penalty. In *Enmund v. Florida*⁴⁴ and *Tison v. Arizona*,⁴⁵ for example, the Court held that persons guilty

37. *Kennedy*, 554 U.S. at 437 (prohibiting the imposition of the death penalty for the rape of a child); *Enmund v. Florida*, 458 U.S. 782, 797 (1982) (prohibiting the imposition of the death penalty for felony murder where the defendant did not kill, attempt to kill, or intend to kill); *Coker v. Georgia*, 433 U.S. 584 (1977) (prohibiting the imposition of the death penalty for the rape of an adult woman).

38. *Roper*, 543 U.S. at 568.

39. *Zant v. Stephens*, 462 U.S. 862, 877 (1983).

40. See *Godfrey v. Georgia*, 446 U.S. 420, 428, 433 (1980).

41. *Id.* at 433. In *Godfrey*, the Court considered the Georgia aggravating circumstance that made a murder found to be “outrageously or wantonly vile, horrible and inhuman” death eligible. The Court found “[a] person of ordinary sensibility could fairly characterize almost every murder as ‘outrageously or wantonly vile, horrible and inhuman.’” *Id.* at 428–29.

42. *Atkins*, 536 U.S. at 319.

43. *Roper*, 543 U.S. at 568 (quoting *Lockett v. Ohio*, 438 U.S. 586, 604 (1978)).

44. 458 U.S. 782, 797 (1982).

45. 481 U.S. 137, 157 (1987).

of murder as an accessory but who did not actually kill could only be sentenced to death if they were major participants in the criminal offense and showed deliberate indifference to human life. Then, in *Atkins v. Virginia*, the Court created a categorical bar to execution for persons with intellectual disability (formerly classified as mental retardation), finding, “[i]f the culpability of the average murderer is insufficient to justify the most extreme sanction available to the State, the lesser culpability of the mentally retarded offender surely does not merit that form of retribution.”⁴⁶ Several years later, the Court similarly found that juvenile offenders “cannot with reliability be classified among the worst offenders” and barred the execution of offenders who committed a crime before turning eighteen in *Roper v. Simmons*.⁴⁷

In a similar vein, the Court has attempted to eliminate other forms of arbitrariness in the imposition of the death penalty, particularly arbitrariness resulting from racial discrimination. Multiple justices in *Furman* based their decision, at least in part, on the fact that the death penalty was disproportionately imposed on African Americans.⁴⁸ Since then, the Court has “engaged in ‘unceasing efforts’ to eradicate racial prejudice” in the administration of capital punishment and the criminal justice system as a whole.⁴⁹ For example, the Court has prohibited the exercise of prosecutorial discretion to seek the death penalty on the basis of race,⁵⁰ prohibited racially biased prosecutorial arguments,⁵¹ prohibited prosecutors from exercising peremptory challenges to potential jurors on the basis of race,⁵² and allowed defendants in capital cases to ask potential jurors about any racial biases they might harbor.⁵³

The attempts of the Court to make the death penalty’s administration more reliable and less arbitrary have been largely unsuccessful. These failures have led former and current members of the Court who once supported capital punishment to question whether its attempts to regulate death were worth the candle. Justice Lewis

46. *Atkins*, 536 U.S. at 319.

47. 543 U.S. at 569.

48. *See supra* note 11.

49. *McCleskey v. Kemp*, 481 U.S. 279, 309 (1987).

50. *Id.* at 309 n.30 (citing *Wayte v. United States*, 470 U.S. 598, 608 (1985)).

51. *Id.* (citing *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974)).

52. *Id.* (citing *Batson v. Kentucky*, 476 U.S. 79 (1986)).

53. *Turner v. Murray*, 476 U.S. 28, 36–37 (1986). Recognizing that the modern statutes continue to leave death sentences to the jury, the Court found capital sentencing proceedings are particularly susceptible to racial discrimination: “Because of the range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate but remain undetected.” *Id.* at 35.

Powell, for example, said after his retirement that if he could change one vote during his 15-year career as a Supreme Court Justice it would be his decision to uphold the Georgia death penalty in the face of strong evidence of racial discrimination.⁵⁴ Justice Powell later expressed that he had “come to think that capital punishment should be abolished” and it “serves no useful purpose.”⁵⁵ Justice Harry Blackmun concluded late in his career that the Court’s efforts to curb capital punishment’s flaws had been an abject failure and, as noted previously in this article, stated he would no longer “tinker with the machinery of death.”⁵⁶ Justice John Paul Stevens has made clear that he finds the death penalty is an irreparably flawed government program.⁵⁷ And most recently, Justice Stephen Breyer, called for full briefing on the constitutionality of the death penalty as a whole.⁵⁸ In his dissenting opinion in a recent case involving lethal injection protocols, Justice Breyer, joined by Justice Ruth Bader Ginsburg, stated:

In 1976, the Court thought that the constitutional infirmities in the death penalty could be healed; the Court in effect delegated significant responsibility to the States to develop procedures that would protect against those constitutional problems. Almost 40 years of studies, surveys, and experience strongly indicate, however, that this effort has failed. Today’s administration of the death penalty involves three fundamental constitutional defects: (1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty’s penological purpose. Perhaps as a result, (4) most places within the United States have abandoned its use.⁵⁹

According to Justice Breyer, the first three considerations—unreliability, arbitrariness, and delays—make the punishment cruel; the abandonment of the practice makes it unusual.⁶⁰ Justice Breyer found that these unresolved and unresolvable issues make it “highly likely that the death penalty violates the Eighth Amendment” and tasked

54. John Jeffries, *JUSTICE LEWIS F. POWELL: A BIOGRAPHY* 451–53 (2001) (reporting that Justice Powell said in 1991 that he would change his vote in *McCleskey*, 481 U.S. 279).

55. *MANDERY*, *supra* note 14, at 438.

56. *Callins v. Collins*, 510 U.S. 1141 (1994) (Blackmun, J., dissenting from the denial of certiorari).

57. *See Baze v. Rees*, 553 U.S. 35, 71 (2008) (Stevens, J., dissenting) (finding that though it did not “justify a refusal to respect precedents,” based on his own experience, “the imposition of the death penalty represents ‘the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes’”).

58. *Glossip v. Gross*, 135 S. Ct. 2726, 2755 (2015) (Breyer, J., dissenting).

59. *Id.* at 2755–56.

60. *Id.* at 2756–73.

litigators to raise these issues with the Court.⁶¹ Given Justice Breyer's directive, the next section of this Article assesses South Carolina's death penalty in light of his constitutional concerns.

III. THE SOUTH CAROLINA DEATH PENALTY BY THE NUMBERS

A. *An Overview of Forty Years of Death Sentences and Executions*

Before directly addressing Justice Breyer's reasons questioning the constitutional legitimacy of capital punishment, we will "set the table" by providing an overview of what forty years of death in South Carolina has "produced." As of December 31, 2015, forty-four men, and no women, wait to die on South Carolina's death row.⁶² Despite the fact that African Americans comprise only 28% of the state's population,⁶³ twenty-six of the death row inmates (59%) are black.⁶⁴ One death row inmate is Hispanic (2%) and seventeen are white (39%).⁶⁵ Seventeen of the twenty-six African American inmates (65%), the Hispanic inmate (100%), and fifteen of the seventeen white inmates (88%) were convicted of murdering one or more white victims.⁶⁶ The men currently on death row have been there for an average of 14.5 years, and no executions are expected for at least the next several years. As of the publication date of this Article, nine of the individuals currently on death row have been granted relief, either in the form of a complete retrial or a new sentencing hearing, and are currently awaiting that new proceeding or the grant of relief has been appealed by the State.⁶⁷

In the "modern era" of capital punishment, 180 men and 1 woman have been sentenced to death.⁶⁸ Ninety-three (51%) of the 181 people

61. *Id.* at 2776–77. Justice Breyer's call to arms is not unprecedented. In 1963, Justice Arthur Goldberg filed an opinion dissenting from the denial of certiorari in *Rudolph v. Alabama*, 375 U.S. 889 (1963), stating he thought the Court should consider whether the death penalty for the crime of rape violated the Eighth and Fourteenth Amendments. Goldberg's dissent fueled the litigation that resulted in *Furman*.

62. Appendix B to this Article lists the forty-four inmates on South Carolina's death row as of December 31, 2015.

63. Calculated using population as of 2010. *South Carolina Population by Race and Hispanic Origin (1980-2010)*, SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE, <http://abstract.sc.gov/chapter14/pop12.html> (last visited Apr. 9, 2016).

64. *See infra* Appendix B.

65. *Id.*

66. *Id.*

67. *See infra* Appendix B. For more on the errors found in these and other cases, *see infra* Section IV.B.

68. Appendix A to this Article lists all individuals sentenced to death in South Carolina from 1977 through 2015 with information about their race, the victim(s)'s race, and the county of conviction. Though this Article analyzes the forty years of South Carolina's post-*Furman* modern

to receive a death sentence were white, eighty-six (48%) were African American, one (.55%) was Hispanic, and one (.55%) was Native American.⁶⁹ Our statistical calculations based on the total number of death sentences use 187 death sentences because we have counted six of the 181 individuals as receiving two death sentences, either for murders committed in two different counties or individual sentences for multiple victims within the same county.⁷⁰

There have been forty-three executions in South Carolina since 1976,⁷¹ the most recent of which occurred on May 6, 2011 when Jeffrey Motts waived his future appeals and was executed by lethal injection.⁷² Only eight states have executed more death-sentenced inmates.⁷³ All those executed were men; twenty-six (60%) were white, sixteen (37%) were black, and one (2%) was Native American.⁷⁴ Ten of the executions were carried out on “volunteers” who, like Motts, waived their available appeals in order to be executed.⁷⁵

death penalty, the sentencing data do not include death sentences under the 1974 death penalty statute, which was ultimately deemed unconstitutional and would skew the statistics drawn from the sentencing data.

69. See *infra* Appendix A.

70. See *id.* (indicating Ronald Woomer, Larry Gene Bell, Richard Longworth, James Tucker, Thomas Ivey, and Stephen Stanko received two death sentences each). In practice, most defendants convicted of murdering multiple victims receive a death sentence for each victim; however, it is not always readily apparent whether a defendant received a death sentence for each murder victim. Therefore, the authors have only counted multiple death sentences only where court records explicitly indicate the defendant received multiple death sentences.

71. Appendix C to this Article lists those individuals executed in South Carolina since the state reinstated the death penalty in 1974. The last execution in South Carolina prior to the Supreme Court’s decision in *Furman* was in 1962. From 1912 to 1962, South Carolina executed 241 persons. Bruce L. Pearson, *Why the Death Penalty is at Issue*, in *THE DEATH PENALTY IN SOUTH CAROLINA: OUTLOOK FOR THE 1980S* 9 (Bruce L. Pearson ed., 1981).

72. See *infra* Appendix C. As South Carolina law currently stands, the condemned inmate is allowed to choose the method of execution, either lethal injection or electrocution. See S.C. Code § 24-3-530. If the inmate does not make an election, the execution method will default to lethal injection if he was sentenced after 1995 or to electrocution if he was sentenced before 1995. *Id.* § 24-3-530(B), (C).

73. Those states are Texas (524), Oklahoma (112), Virginia (110), Florida (90), Missouri (83), Alabama (56), Georgia (57), and Ohio (53). *Number of Executions by State and Region Since 1976*, DEATH PENALTY INFORMATION CENTER, <http://www.deathpenaltyinfo.org/number-executions-state-and-region-1976> (last visited Apr. 9, 2016). North Carolina has executed the same number of death-sentenced inmates as South Carolina in the modern era. *Id.*

74. See *infra* Appendix D.

75. See *infra* Appendix D. Eight of the ten volunteers were white males. See *id.* For a more detailed discussion of “volunteers,” see John H. Blume, *Killing the Willing: “Volunteers,” Suicide and Competency*, 103 MICH. L. REV. 939 (2005).

B. *Cruel—Lack of Reliability*

Justice Breyer found a lack of reliability evidenced by exonerations, studies showing convincing evidence that innocent people have been executed, and in the overall error rates in capital cases.⁷⁶ Error plagues the administration of the death penalty in South Carolina. Most people sentenced to death in South Carolina are ultimately removed from death row for reasons other than their execution.

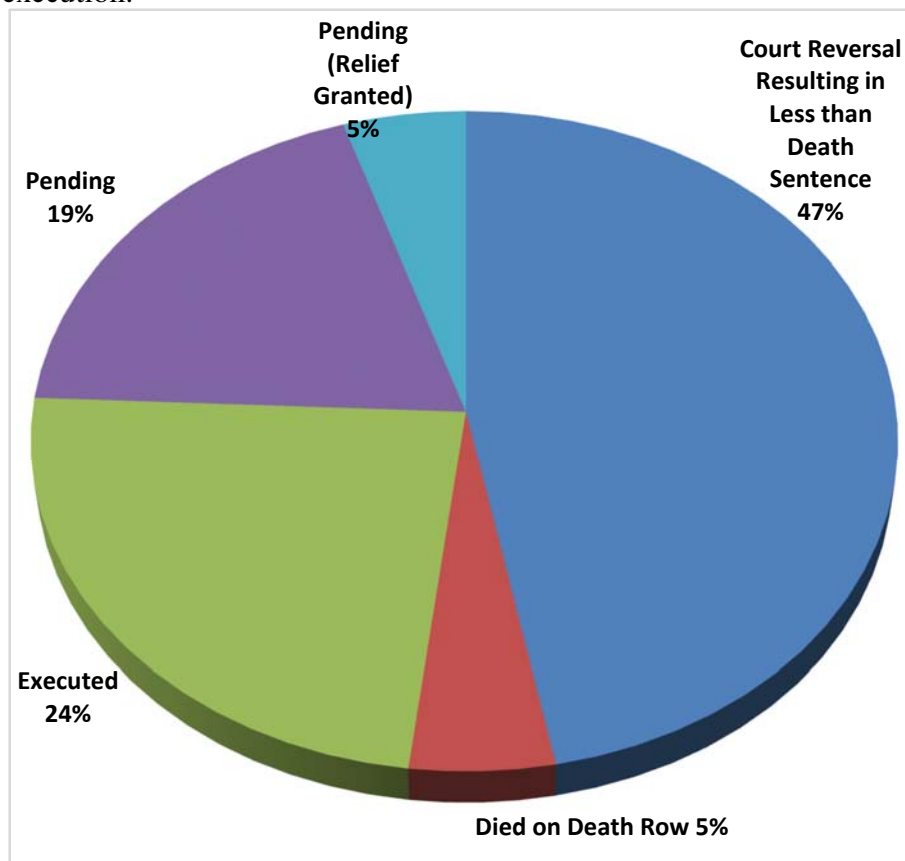


Figure 1: Outcome of death sentences

Eighty-four men and one woman who were sentenced to death are no longer on death row because their conviction and/or sentence were subsequently overturned during the capital appeals process.⁷⁷ Three

76. *Glossip v. Gross*, 135 S. Ct. 2726, 2756–59 (2015) (Breyer, J., dissenting).

77. See *infra* Appendix A.

were acquitted at retrials.⁷⁸ Eighty-two were sentenced to life imprisonment or a term of years after a new trial or a plea bargain.⁷⁹ Thus, approximately 47% of those individuals who were sentenced to death in the modern era of capital punishment were subsequently determined to be either not guilty, guilty of a lesser offense, or deserving of a sentence less than death. By contrast, only 24% of those sentenced to death have been executed.

During the modern era of the death penalty, three South Carolina men sentenced to death had their convictions overturned and were subsequently acquitted of murder charges at their retrials⁸⁰—Michael Linder,⁸¹ Jessie Keith Brown,⁸² and Warren D. Manning.⁸³ Joseph Ard was also released from prison after a jury found he did not intentionally kill his girlfriend and their unborn child, and thus, was guilty only of manslaughter.⁸⁴ Another former death row inmate, Edward Lee Elmore, was released after strong evidence of his innocence emerged resulting in his conviction being vacated.⁸⁵ Other former death row inmates who have subsequently been released from prison, e.g. Sterling

78. *Id.*

79. *Id.*

80. *Id.*

81. Linder was convicted and sentenced to death in 1979 for the killing of a police officer. After his conviction was overturned, new ballistics evidence confirmed Linder's self-defense theory and he was acquitted. *State v. Linder*, 276 S.C. 304, 278 S.E.2d 335 (1981); DEATH PENALTY INFORMATION CENTER, INNOCENCE CASES, <http://www.deathpenaltyinfo.org/innocence-cases> (last visited Apr. 9, 2016).

82. After his convictions for armed robbery and murder were twice overturned, evidence was presented that Brown's half-brother actually committed the murder and the jury acquitted Brown of murder charges. *State v. Brown*, 289 S.C. 581, 347 S.E.2d 882 (1986); *State v. Brown*, 296 S.C. 191, 371 S.E.2d 523 (1988); '*Devastated*' by *Verdict, Victim's Family Rips Jury*, SPARTANBURG HERALD J. Jan. 16, 1989, at A1, available at <http://www.goupstate.com/article/19890116/NEWS/901160312>.

83. On the state's fifth attempt to obtain a conviction against Manning (Manning's conviction was overturned twice and two mistrials were declared before the state prosecuted Manning for a fifth time), the jury acquitted Manning of the 1989 slaying of a police officer. *State v. Manning*, 329 S.C. 1, 495 S.E.2d 191 (1997); *State v. Manning*, 305 S.C. 413, 409 S.E.2d 372 (1991); DEATH PENALTY INFORMATION CENTER, INNOCENCE CASES, <http://www.deathpenaltyinfo.org/innocence-cases>.

84. John Monk, *Inmate Goes from Death Row to Freedom*, POST & COURIER, Jul. 31, 2012, available at <http://www.postandcourier.com/article/20120731/PC16/120739886/1005/inmate-goes-from-death-row-to-freedom>; see also *Ard v. Catoe*, 372 S.C. 318, 336, 642 S.E.2d 590, 599 (2007).

85. *Elmore v. Ozmint*, 661 F.3d 783 (4th Cir. 2011); see also RAYMOND BONNER, ANATOMY OF INJUSTICE: A MURDER CASE GONE WRONG (2012).

Spann⁸⁶ and Ernest Riddle,⁸⁷ had their sentences reduced due to their likely innocence.

Unreliability also occurs when individuals are erroneously sentenced to death, i.e. when the “courts failed to follow legally required procedures” in capital cases.⁸⁸ Over the last forty years, error has been found in more than sixty percent of all South Carolina death penalty trials in the course of the appellate and post-conviction review process mandated by the South Carolina death penalty scheme, including: (1) direct appeal,⁸⁹ (2) state post-conviction relief proceedings,⁹⁰ (3) federal habeas corpus,⁹¹ and, (4) state habeas corpus.⁹² For the purposes of this Article, “error” is defined as “an error occurring at trial serious enough to warrant a new trial either as to the defendant’s guilt or as to the appropriate punishment.” We have not counted cases in which a reviewing court found trial error but nevertheless concluded that the error was harmless.⁹³

The South Carolina Supreme Court has reviewed 227 death judgments⁹⁴ in connection with the first mandatory, or “direct,” appeal and has granted new trials or resentencing proceedings in eighty-one cases, for an error rate of 36%.⁹⁵ The Supreme Court of the United

86. After seventeen years on death row, Spann accepted an Alford plea when his conviction was overturned based on newly discovered evidence of innocence. He was paroled in 2006. *See* State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999); Keith Morrison, *A 20-Year Quest for Freedom*, NBC NEWS, http://www.nbcnews.com/id/19161103/ns/dateline_nbc-crime_reports/t/-year-quest-freedom/#.VrojglrKHs.

87. After twenty-one years on death row, Riddle pled no contest after his conviction was overturned based on the fact that the State failed to turn over evidence calling into question the credibility of the main witness against Riddle. Riddle v. Ozmint, 369 S.C. 28, 631 S.E.2d 70 (2006); Tim Gulla, *Ernest Riddle of Death Row*, GAFFNEY LEDGER, Sept. 19, 2011, at 1, available at http://www.gaffneyledger.com/news/2011-09-19/Front_Page/Ernest_Riddle_off_death_row.html. Riddle was sentenced to thirty years in prison and was released in 2015.

88. *See* Glossip v. Gross, 135 S. Ct. 2726, 2758–59 (2015).

89. S.C. Code § 16-2-25(A) (“Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Supreme Court of South Carolina.”).

90. S.C. Code § 17-27-160 (setting forth the procedures for post-conviction review in capital cases).

91. 28 U.S.C. § 2254 (providing for federal court review of state criminal convictions).

92. *Butler v. State*, 302 S.C. 466, 467–68, 397 S.E.2d 87, 88 (1990).

93. *See, e.g.*, State v. Stanko, 402 S.C. 252, 265, 741 S.E.2d 708, 715 (2013) (finding improper jury instruction harmless); State v. Gaskins, 284 S.C. 105, 123, 326 S.E.2d 132, 143 (1985) (finding improper malice jury instruction was harmless error beyond a reasonable doubt).

94. The number of cases reviewed is greater than the total number of individuals sentenced to death because some individuals were again sentenced to death after their original sentence was overturned, requiring the appellate review process to begin anew. Two death sentences have not yet been reviewed on direct appeal. Appendix E to this Article lists all cases reviewed on direct appeal by the South Carolina Supreme Court.

95. *See infra* Appendix E. In forty-one cases, the court granted an entire new trial. In thirty-

States found error in nine cases affirmed by the state supreme court,⁹⁶ for an overall error rate on direct appeal of 39%.⁹⁷

The types of error detected in the direct appeal cases can be broadly categorized.⁹⁸ The three largest categories of error are instructional error, prosecutorial misconduct, and evidentiary error.⁹⁹ In twenty-nine cases (13% of all cases decided on direct appeal), prosecutorial misconduct was a reason, if not the sole reason, for reversal.¹⁰⁰ In forty-five cases (21%), there was prejudicial error in the

nine cases, the court ordered a new sentencing trial. In one case, the court vacated the death sentence because the defendant was a juvenile at the time of the crime, resulting in an unconstitutional death sentence under *Roper v. Simmons*, 543 U.S. 551 (2005). The direct appeal affirmance rate in capital cases in South Carolina increased significantly after the 1994 election of Attorney General Charles Condon, due in part to his making death penalty appeals a political issue. Part of Condon's campaign involved criticizing the South Carolina Supreme Court for its record in capital cases. See John Blume & Theodore Eisenberg, *Judicial Politics, Death Penalty Appeals, and Case Selection: An Empirical Study*, 72 S. CAL. L. REV. 465, 474–75 (1999). Between 1977 and 1994, the affirmance rate on direct appeal was only 50%. Between 1994 and 2014, the affirmance rate increased to 78%. See *infra* Appendix E. The national error rate on direct appeal as found by a study of all death sentences between 1973 and 1995 was 41%. James S. Liebman, et al., *Capital Attrition: Error Rates in Capital Cases, 1973-1995*, 78 TEX. L. REV. 1839, 1847 (2000). A more recent study determined that approximately 38% of all death sentences between 1973 and 2003, nationally, have been overturned at some point during the appellate process. Frank R. Baumgartner & Anna W. Dietrich, *Most Death Penalty Sentences are Overturned. Here's Why That Matters*, WASH. POST (Mar. 17, 2015), <http://www.washingtonpost.com/blogs/monkey-cage/wp/2015/03/17/most-death-penalty-sentences-are-overturned-heres-why-that-matters/>.

96. See *Holmes v. South Carolina*, 547 U.S. 319 (2006); *Kelly v. South Carolina*, 534 U.S. 246 (2002); *Shafer v. South Carolina*, 532 U.S. 36 (2001); *Simmons v. South Carolina*, 512 U.S. 154 (1994); *Patterson v. South Carolina*, 493 U.S. 1013 (1990) (order); *Jones v. South Carolina*, 476 U.S. 1102 (1986) (order); *Plemmons v. South Carolina*, 476 U.S. 1102 (order); *Elmore v. South Carolina*, 476 U.S. 1101 (1986) (order); *Skipper v. South Carolina*, 476 U.S. 1 (1986).

97. The error rate would likely be substantially higher if the South Carolina Supreme Court had not jettisoned *in favorem vitae* (in favor of life) review. For two hundred years, errors could be raised on direct appeal in capital cases even if there was no objection at trial. However, in *State v. Torrence*, 305 S.C. 45, 60–69, 406 S.E.2d 315, 324–28 (1991) (plurality opinion) (Toal, J., concurring), the court determined that the *in favorem vitae* rule was outdated and, despite the absence of evidence to support the assertion, it encouraged “sandbagging” by defense counsel. The reversal rate on direct appeal prior to *Torrence* was 51% (in fifty of ninety-nine cases, the state supreme court granted either an entire new trial or a new sentencing trial). After *Torrence*, the reversal rate fell to 24% (error was found in 31 of 127 cases). See *infra* Appendix E.

98. Appendix F to this Article sets forth the errors found by category.

99. Some cases had more than one error, and error of more than one type.

100. Most of these cases involved improper prosecutorial argument. See, e.g., *State v. Northcutt*, 372 S.C. 207, 222–23, 641 S.E.2d 873, 881–82 (2007) (reversing based on the prosecution's improper statements during closing argument that he “expects” a death sentence and failure to return a death sentence would declare an “open season on babies in Lexington County”); *State v. Cockerham*, 294 S.C. 380, 381, 365, S.E.2d 22, 22–23 (1998) (reversing based on the prosecution's improper reference to the defendant's refusal to testify). However, other types of misconduct occurred as well. See, e.g., *State v. Bryant*, 354 S.C. 390, 396, 581 S.E.2d 157, 161 (2003) (reversing based on improper law enforcement contact with qualified juror family members).

trial court's instructions to the jury.¹⁰¹ In forty-two cases (19%), there was evidentiary error, which for the purposes of this Article, refers to situations where the trial judge either admitted improper prejudicial evidence or excluded relevant admissible evidence.¹⁰² Most, but not all, detected errors fit into these categories.¹⁰³ It is also important to note a type of error that has *never* been found. The South Carolina Supreme Court has never determined that any death sentence was disproportionate to the offense.¹⁰⁴

Error was found in an additional fifty cases in the post-direct appeal capital collateral appeals process.¹⁰⁵ Overall, when factoring in state post-conviction appeals, motions for new trial due to newly discovered evidence, federal habeas corpus, and state habeas corpus 140 of the 233 death sentences imposed in South Carolina have been

101. See, e.g., *State v. Cottrell*, 376 S.C. 260, 265, 657 S.E.2d 451, 453–54 (2008) (reversing based on failure to give voluntary manslaughter instruction). Other cases involved the trial court giving the jury a legally incorrect instruction. See, e.g., *State v. Manning*, 305 S.C. 413, 417, 409 S.E.2d 372, 374–75 (1991) (reversing based on incorrect reasonable doubt instruction).

102. See, e.g., *State v. Jones*, 383 S.C. 535, 550, 681 S.E.2d 580, 588 (2009) (reversing because the trial court improperly admitted barefoot insole impression evidence); *State v. Burkhart*, 371 S.C. 482, 488, 640 S.E.2d 450, 453 (2007) (reversing based on admission of improper prison condition evidence).

103. See, e.g., *State v. Barnes*, 407 S.C. 27, 37, 753 S.E.2d 545, 550 (2014) (reversing based on the trial judge's use of an improper standard in determining whether the defendant was competent to waive his right to counsel); *State v. Rivera*, 402 S.C. 225, 249, 741 S.E.2d 694, 707 (2013) (reversing based on a violation of the defendant's right to testify at trial); *State v. Crisp*, 362 S.C. 412, 417, 608 S.E.2d 429, 432 (2005) (reversing based on improper comments made by the trial judge during a guilty plea).

104. See *infra* notes 254–56 and accompanying text.

105. Appendix G to this Article lists the forty-two post-conviction relief cases where error was found in the South Carolina courts. In four other cases the Supreme Court of the United States found prejudicial error following the state court's post-conviction review. See *Yates v. Aiken*, 500 U.S. 391, 393 (1991); *Truesdale v. Aiken*, 480 U.S. 527, 527 (1987) (per curiam); *Koon v. Aiken*, 480 U.S. 943, 943 (1987) (order); *Patterson v. Aiken*, 480 U.S. 943, 943 (1987) (order). In one case a motion for new trial was granted due to newly discovered evidence of actual innocence. See *State v. Spann*, 334 S.C. 618, 621–22, 513 S.E.2d 98, 100 (1999). In *State v. South*, 310 S.C. 504, 509, 427 S.E.2d 666, 670 (1993), the trial judge granted a new sentencing trial based on newly discovered evidence that the defendant had a brain tumor at the time of the offense. On appeal, the South Carolina Supreme Court concluded that the judge applied the wrong standard and remanded the case for reconsideration. *Id.* Before the court could act on the case, South waived his appeals and was voluntarily executed. See *infra* Appendix D. In another case, a new trial was ordered in federal habeas corpus proceedings. *Hyman v. Aiken*, 824 F.2d 1405, 1410 (4th Cir. 1987). In two cases, the South Carolina Supreme Court granted a new trial after a petition for writ of habeas corpus was filed in the court's original jurisdiction. *Tucker v. Catoe*, 346 S.C. 483, 485, 552 S.E.2d 712, 713 (2001); *Butler v. State*, 302 S.C. 466, 467–68, 397 S.E.2d 87, 88 (1990). In two other cases, error was found in post-conviction proceedings, but the cases remain pending on appeal and have not been included in our reversal count. We also excluded one case in which a death-sentenced inmate was found incompetent to be executed. See *Singleton v. State*, 313 S.C. 75, 84, 437 S.E.2d 53, 58 (1993).

reversed—an overall reversal rate of 60%.¹⁰⁶ The error rate would certainly be higher if South Carolina capital cases were not reviewed in federal habeas corpus proceedings by the United States Court of Appeals for the Fourth Circuit.¹⁰⁷ The Fourth Circuit has historically been the stingiest federal court of appeals when it comes to granting relief in capital cases.¹⁰⁸ Capital habeas petitioners within the Fourth Circuit have prevailed in only 6.2% of cases.¹⁰⁹ The overall success rate in other federal circuits over the same time period was 40%.¹¹⁰ Only one South Carolina capital federal habeas petitioner has ever obtained relief in the Fourth Circuit, and that was in 1987.¹¹¹

The most common type of error detected in post-conviction proceedings, not surprisingly, is the denial of the right to effective assistance of counsel.¹¹² Twenty-six of the fifty post-conviction reversals were due to various failings by counsel.¹¹³ Post-conviction relief has also been granted due to prosecutorial misconduct,¹¹⁴ instructional error,¹¹⁵ evidentiary error,¹¹⁶ newly discovered evidence of

106. Of the 187 original death sentences, 119 have resulted in at least one reversal prior to either the individual's execution or a subsequent sentence of less than death—an error rate of 65%. Nationally, error is found in 68% of all capital cases. Liebman, *supra* note 96, at 1850.

107. The Fourth Circuit is the federal court of appeals for South Carolina as well as North Carolina, Virginia, Maryland, and West Virginia.

108. John H. Blume, *The Dance of Death or (Almost) "No One Here Gets Out Alive": The Fourth Circuit's Capital Punishment Jurisprudence*, 61 S.C. L. REV. 465, 470–71 (2010).

109. *Id.* at 469 n.27.

110. *Id.* at 469 (citing James S. Liebman et al., *A Broken System, Part II: Why There Is So Much Error in Capital Cases, and What Can Be Done About It* 9 (2002), <http://www2.law.columbia.edu/brokensystem2/report.pdf>).

111. See *Hyman v. Aiken*, 824 F.2d 1405 (4th Cir. 1987). In 2011, the Fourth Circuit granted habeas relief in the case of former South Carolina death row inmate Edward Lee Elmore, whose death sentence had previously been vacated based on a finding he is intellectually disabled. *Elmore v. Ozmint*, 661 F.3d 783, 786, 872 (4th Cir. 2011). The Fourth Circuit found Elmore received ineffective assistance of counsel and reversed his conviction. *Id.* at 872. Elmore has since been released from prison. See *infra* Appendix A. For more information about Elmore's case, conviction, and the errors that occurred in his case, see BONNER, *supra* note 85.

112. See *infra* Appendix F.

113. See, e.g., *Vasquez v. State*, 388 S.C. 447, 698 S.E.2d 561 (2010) (reversing based on a finding that trial counsel was ineffective for failing to object to improper remarks during the solicitor's sentencing phase closing argument); *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007) (reversing based on a finding that trial counsel failed to adequately investigate and challenge gunshot residue evidence). The most common failing of counsel is the failure to adequately develop and present evidence in mitigation at the sentencing phase of trial. See, e.g., *Weik v. State*, 409 S.C. 214, 761 S.E.2d 757 (2014); *Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009); *Council v. State*, 380 S.C. 159, 690 S.E.2d 356 (2009).

114. See, e.g., *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006) (reversing based on the prosecution's failure to disclose impeachment evidence and failure to correct false testimony).

115. See, e.g., *Yates v. Evatt*, 500 U.S. 391, 393 (1991) (reversing because of improper burden-shifting instruction regarding implied malice).

116. See, e.g., *Chaffee v. State*, 294 S.C. 88, 91, 362 S.E.2d 875, 877 (1987) (reversing because

actual innocence,¹¹⁷ and a death sentenced inmate's mental incompetency to be executed.¹¹⁸ Additionally, though not considered error at the time of trial, many individuals have been removed from South Carolina's death row because the Supreme Court later found they were categorically ineligible for the death penalty as a result of their age or intellectual capacity. Eight inmates were removed from South Carolina's death row as a result of the Supreme Court decisions categorically barring the execution of juveniles¹¹⁹ and the intellectually disabled¹²⁰—four as a result of each case.

Finally, while executive clemency is not technically part of the judicial capital appeals process, it has traditionally been deemed to be an important failsafe in any capital punishment scheme.¹²¹ No South Carolina death row inmate has been granted clemency since the new death penalty statute has been in effect.¹²² This was not true prior to

the judge did not allow evidence of adaptability to confinement).

117. *State v. Spann*, 334 S.C. 618, 621–22, 513 S.E.2d 98, 100 (1999) (reversing based on the trial judge's rejection of exculpatory expert testimony at a new trial hearing).

118. *Singleton v. State*, 313 S.C. 75, 84, 437 S.E.2d 53, 58 (1993) (finding incompetency based on the inmate's complete inability to communicate).

119. *Roper v. Simmons*, 543 U.S. 551 (2005). Eric Dale Morgan, Ted Power, Herman Hughes, and Robert Conyers' sentences were vacated pursuant to *Roper*. See *State v. Morgan*, 367 S.C. 615, 626 S.E.2d 888 (2006); *infra* Appendix G. Prior to *Roper v. Simmons* in 2005, barring the execution of juveniles under the age of eighteen, South Carolina executed James Terry Roach in 1986 who was seventeen at the time of his crime. See *infra* Appendix G.; see also INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Resolution No. 3/87, Case 9647 (1987), <http://www.cidh.org/annualrep/86.87eng/EUU9647.htm>.

120. *Atkins*, 536 U.S. 304. Ricky George, Elis Franklin, Edward Lee Elmore, and Tommy Lee Davis' sentences were vacated pursuant to *Atkins*. See *infra* Appendix G. Kenneth Simmons's sentence was also vacated pursuant to *Atkins*; the state appealed. See *Simmons v. State*, No. 05-CP-18-1368 (S.C. 1st Cir. C.P. Oct. 21, 2013). Simmons also appealed the court's denial of a DNA-based false evidence claim. The South Carolina Supreme Court denied certiorari on the *Atkins* claim, but is currently considering whether Simmons's DNA claim warrants a new trial to determine his guilt or innocence. See Order, *Simmons v. State*, No. 2014.000387 (S.C. July 27, 2015). In addition, two post-conviction relief courts have granted relief based on a finding that trial counsel was ineffective in failing to investigate and present evidence of intellectual disability. See *Evins v. State*, No. 07-CP-42-2849 (S.C. 7th Cir. C.P. June 27, 2014); *Mercer v. State*, No. 09-CP-32-5465 (S.C. 11th Cir. C.P. June 27, 2011). One has been resentenced to life without parole (Evins) and one is pending on resentencing (Mercer). Prior to *Atkins*, South Carolina executed at least two intellectually disabled persons—it was undisputed that both Sylvester Adams and Frank Middleton were intellectually disabled. There was also very strong evidence that Larry Gilbert was intellectually disabled.

121. *Herrera v. Collins*, 506 U.S. 390, 415 (1993) (stating “[e]xecutive clemency has provided the ‘fail safe’” in the capital punishment system) (citations omitted); see also Michael Heise, *Mercy By the Numbers: An Empirical Analysis of Clemency and Its Structure*, 89 VA. L. REV. 239 (2003) (exploring and criticizing interaction between executive clemency and capital punishment).

122. Not all of the forty-three inmates who have been executed have requested clemency. In addition to the ten “volunteers,” at least three other inmates (Donald H. Gaskins, Ronnie Howard, and Anthony Green) elected not to ask the governor for a commutation.

Furman: we have identified at least twenty-seven death-sentenced individuals whose sentences were commuted through gubernatorial clemency in the forty years prior to *Furman*.¹²³ No other state has executed so many inmates in the modern era without a single commutation.¹²⁴

C. Cruel–Arbitrariness

Forty years ago, the Supreme Court upheld new death penalty statutes only after finding they would prohibit the death penalty from being “inflicted in an arbitrary and capricious manner.”¹²⁵ Justice Breyer found that “40 years of further experience make it increasingly clear that the death penalty is imposed arbitrarily, *i.e.*, without the ‘reasonable consistency’ legally necessary to reconcile its use with the Constitution’s commands.”¹²⁶ Arbitrariness, according to Justice Breyer, is demonstrated by the fact that “the factors that most clearly ought to affect application of the death penalty—namely, comparative egregiousness of the crime—often do not.”¹²⁷ Instead, “circumstances that ought *not* to affect application of the death penalty, such as race, gender, or geography, often *do*.”¹²⁸ Our research demonstrates the same is true in South Carolina—factors such as race, gender, and geography are greater determining factors in who receives the State’s ultimate penalty than factors such as the egregiousness of the crime.

1. Race and Gender Effects

Of South Carolina’s 187 death sentences in the modern era, 151 (81%) were imposed for the killing of a white victim.¹²⁹ 33 (18%) were imposed for the killing of an African American victim.¹³⁰ Three (1%) death sentences were imposed for the killing of an Asian victim.¹³¹

123. A list of the twenty-seven pre-*Furman* commutations is on file with the authors and was compiled by searching records maintained at the South Carolina Department of Archives & History.

124. DEATH PENALTY INFORMATION CENTER, CLEMENCY, <http://www.deathpenaltyinfo.org/clemency>; *see also supra* note 73 (listing the states that have carried out the highest number of executions).

125. *Gregg v. Georgia*, 428 U.S. 153, 188 (1976).

126. *Glossip v. Gross*, 135 S. Ct. 2726, 2760 (2015) (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982)).

127. *Id.*

128. *Id.*

129. One hundred fifty-one of the 187 death sentences were imposed for the killing of one or more white victims; some were also charged with killing minority victims. *See infra* Appendix A.

130. *Id.*

131. *Id.*

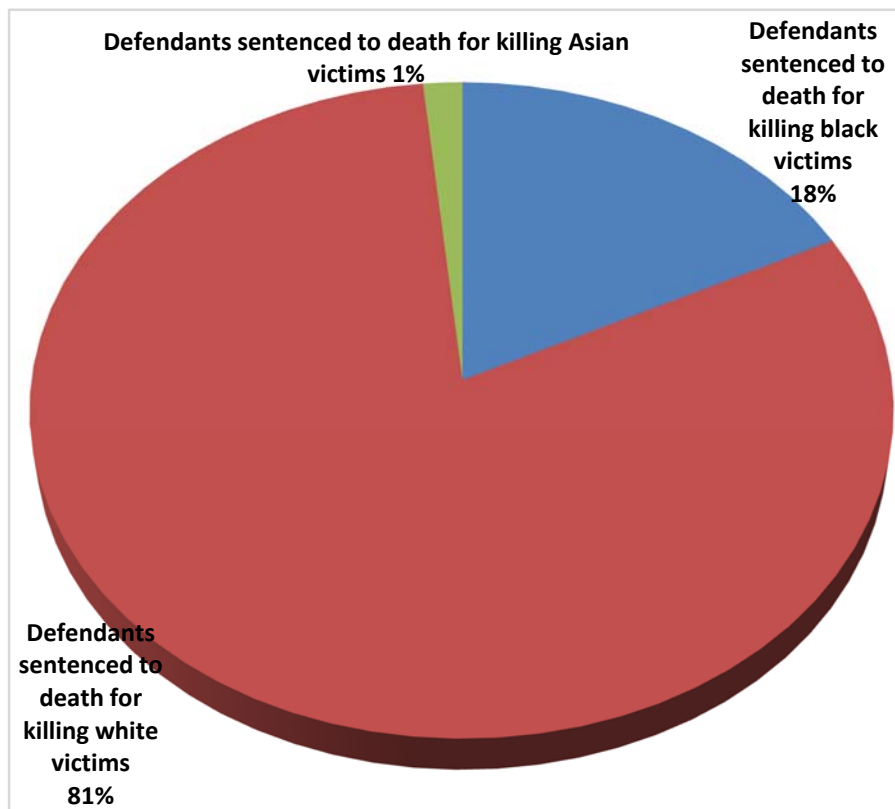


Figure 2: Death sentences by victim race

Sixty-three (34%) of the sentences were imposed on an African American defendant convicted of killing a white victim.¹³² This is so despite the fact that it is far less common for a homicide to occur with a white victim/black defendant combination.¹³³ Death sentencing rates show the disparity cannot be explained by the demographics of murder victims. For a black male¹³⁴ defendant convicted of killing a white victim, the death sentencing rate is 8.56 per 100 murders as opposed to only 0.46 for black victims.¹³⁵ White males are also sentenced to death

132. *Id.*

133. John Blume, Theodore Eisenberg & Martin T. Wells, *Explaining Death Row's Population and Racial Composition*, 1 J. EMPIRICAL LEGAL STUD. 192 (2004).

134. Only male defendants were considered in calculating the following sentencing rates because only one female defendant was sentenced to death after *Furman*.

135. Death sentencing rates were calculated by comparing the number of arrests for murder with the number of death sentences imposed, based on the demographics of the defendants and

at a higher rate for the killing of white victims (5.26 death sentences per 100 murders) compared to black victims (3.17 death sentences per 100 murders).¹³⁶

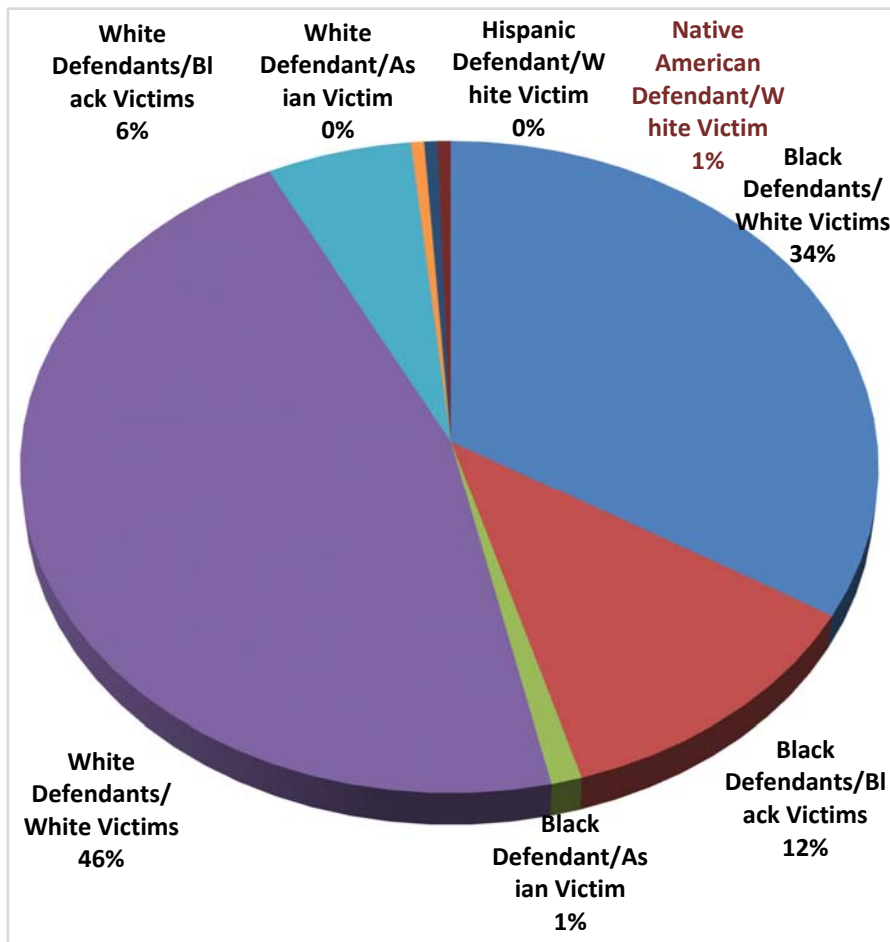


Figure 3: Death sentences by race of defendant and victim

the victims. Murder arrest data was obtained using the Supplementary Homicide Reports compiled by the National Archive of Criminal Justice Data. Fox, James A., and Marc L. Swatt. Uniform Crime Reports [United States]: Supplementary Homicide Reports With Multiple Imputation, Cumulative Files 1976-2007. ICPSR24801-v1. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2009-02-24, available at <http://doi.org/10.3886/ICPSR24801.v1>. Sentencing data can be found in Appendix A.

136. See Fox, *supra* note 136; *infra* Appendix A.

The gender of the victim also has a noticeable effect on the ultimate outcome of a murder case in South Carolina. Ninety-eight (53%) of all death sentences were imposed for the killing of a female victim; the lone female defendant received a death sentence for killing a male victim.¹³⁷ Though only 22% of all South Carolina murders involved a female victim,¹³⁸ 53% of the death sentences imposed, and 58% of the executions carried out, were female victim cases.¹³⁹ Death sentencing rates are higher when the victim is female regardless of the defendant's race. White male defendants convicted of killing female victims are sentenced to death at a rate of 4.89 per 100 murders, as opposed to only 2.43 per 100 when the victim is male.¹⁴⁰ The sentencing rate for black males convicted of killing female victims is 3.28 per 100 murders, as opposed to 0.98 per 100 for male victims.¹⁴¹ Considering both race and gender of the defendant and victim demonstrates that the most likely (by far) combination to result in a death sentence is a black male convicted of killing a white female, which results in a breath-taking death sentencing rate of 15.02 per 100 murders, a rate that is statistically significant by any measure.¹⁴²

Figure 4 below graphically demonstrates the effect the combined race and gender of the victim has on sentencing and executions. Though forty-eight percent of all murders in South Carolina involve an African American male victim,¹⁴³ only 8% of death sentences and 9% of executions involve African American male victim cases. To the contrary, only 11% of murders involve a white female victim,¹⁴⁴ but 42% of all death sentences and executions derive from white female victim cases.¹⁴⁵

137. See *infra* Appendix A.

138. See Fox, *supra* note 136.

139. See *infra* Appendix A and Appendix C.

140. See Fox, *supra* note 136; *infra* Appendix A.

141. See Fox, *supra* note 136; *infra* Appendix A.

142. See Fox, *supra* note 136; *infra* Appendix A.

143. See Fox, *supra* note 136.

144. See Fox, *supra* note 136.

145. See *infra* Appendix A; Appendix C.

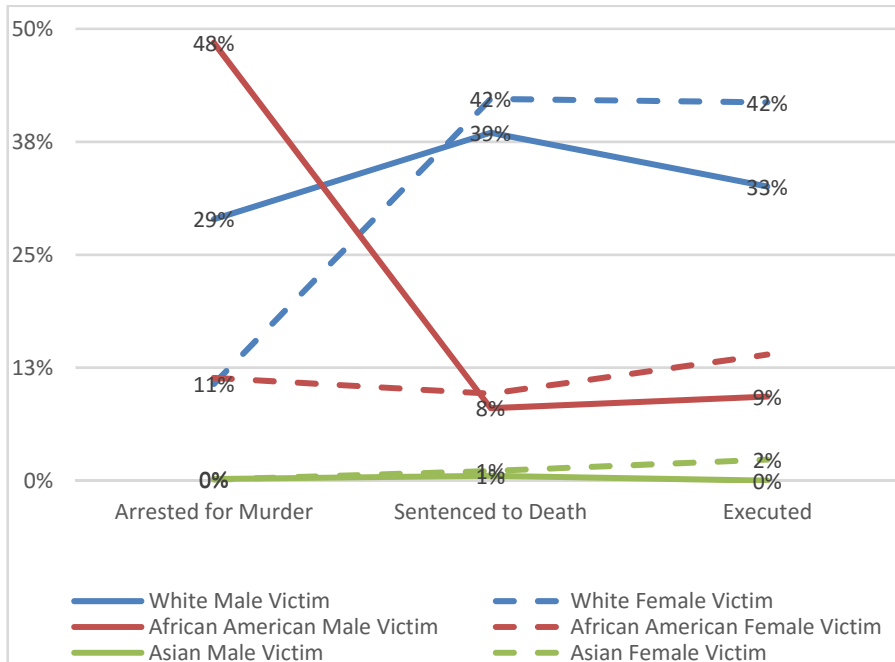


Figure 4

2. Locale

Whether a defendant receives a death sentence for a murder also largely depends on the location of the crime. As such, discussion of the “South Carolina death penalty” is a bit of a misnomer. Review of the available statistical information reveals there is wide variation from county to county and from judicial circuit to judicial circuit, in whether the death penalty will be sought, or obtained. Ten of South Carolina’s forty-six (22%) counties have never produced a death sentence.¹⁴⁶ Other counties, even though they are relatively large and have, at least comparatively speaking, significantly more murders, produce very few death sentences.¹⁴⁷ By contrast, one quarter of all death sentences imposed in South Carolina arose from just two of the state’s forty-six counties. Fifty-eight of the 233 death sentences¹⁴⁸ came from either

146. These counties are: Allendale, Bamberg, Fairfield, Hampton, Kershaw, Laurens, Lee, Marion, Marlboro, and McCormick. See *infra* Appendix A.

147. For example, Richland county (which includes the Columbia, the state capital) is the third largest county by population, with the tenth highest murder rate, but Richland county has only obtained seven death sentences and four executions.

148. This number includes death sentences obtained after the reversal of an original death sentence.

Lexington or Horry County.¹⁴⁹ Lexington County has produced thirty-five death sentences and Horry County twenty-three.¹⁵⁰ These counties also have high reversal rates; error was found in twenty-three of Lexington County's thirty-five death sentences (66%),¹⁵¹ and in seventeen of Horry County's twenty-three death sentences (74%).¹⁵² Murder rates in these, and other counties, demonstrate that the murder rate (number of murders relative to the population within a county) does not explain the high number of death sentences in those counties. Lexington County has the twenty-seventh highest murder rate and Horry County has the tenth highest murder rate while they account for the first and second highest number of death sentences, respectively.¹⁵³

On the contrary, the likelihood of a county seeking and obtaining a death sentence depends largely on the individual solicitor in charge of criminal prosecutions for the Judicial Circuit in which the county lies.¹⁵⁴ Four solicitors since 1976 have been responsible for obtaining more than one-third of all modern era death sentences in South Carolina.¹⁵⁵ Walter Bailey's term as the First Judicial Circuit Solicitor

149. See *infra* Appendix A.

150. *Id.*

151. *Id.* In Lexington County, thirty-five death sentences have been imposed on twenty-five individuals. *Id.* Nineteen of the twenty-five individuals had their death sentence reversed at least once. See *id.* Eleven of the individuals received sentences of life imprisonment after reversal and one person was found guilty of involuntary manslaughter and released after reversal. *Id.* Six individuals currently remain on death row, one of whom has had his sentence overturned and is currently awaiting resentencing. See *infra* Appendix B. Despite having the highest number of death sentences in the state, only four individuals from Lexington County have been executed, two of whom were volunteers. See *infra* Appendix C. One individual, Larry Eugene Bell, received a death sentence in Lexington County but was executed for a Saluda County crime prior to the completion of the appellate review of the Lexington County death sentence. See *id.* Two cases were never reviewed by any court because the inmate died prior to any judicial review. See *infra* Appendix A.

152. See *infra* Appendix A. In Horry County, twenty-three death sentences have been imposed on eighteen individuals. See *id.* Sixteen of the eighteen individuals had their death sentence reversed at least once. *Id.* Eleven of those reversals resulted in a sentence of life imprisonment. *Id.* Four individuals remain on death row, one of whom had his sentence overturned in post-conviction proceedings and is awaiting the outcome of the State's appeal of that decision. See *infra* Appendix B. Only two individuals from Horry County have been executed, one of whom was a volunteer. See *infra* Appendix C. One case was never reviewed by any court because the inmate died prior to judicial review of his resentencing. See *infra* Appendix A.

153. These rates are based on the number of solved homicides and the population within the counties from 1976 through 2007 (the last year for which the data are available). See Fox, *supra* note 136; UNITED STATES CENSUS BUREAU, <http://www.census.gov/en.html>.

154. Each judicial circuit within South Carolina elects a solicitor for a term of four years. S.C. Code § 1-7-310. There are no term limits for solicitors in South Carolina.

155. See *infra* Appendix A. Walter Bailey served as the First Judicial Circuit Solicitor from 1992–2003 and obtained sixteen death sentences (80% of all death sentences obtained within the First Judicial Circuit). Charles Condon served as the Ninth Judicial Circuit Solicitor from 1980–

(Calhoun, Dorchester, and Orangeburg Counties) is especially informative. Bailey was elected solicitor in 1992. Prior to his election, only two death sentences had been obtained in the circuit since 1977—one in 1981 and one in 1984.¹⁵⁶ Bailey served as solicitor for eleven years, until 2003, and obtained sixteen death sentences.¹⁵⁷ Since Bailey's retirement in 2003, only two death sentences have been imposed in the First Judicial Circuit—one in 2006 and one in 2008.¹⁵⁸ Thus, Bailey's decisions as Circuit Solicitor account for 80% of the death sentences in the First Judicial Circuit. Former Ninth Judicial Circuit (Charleston and Berkeley Counties) Solicitor Charles Condon similarly accounts for 80% of the death sentences imposed in that circuit. Condon served as solicitor for thirteen years, from 1980 to 1993, and obtained sixteen death sentences.¹⁵⁹ Prior to his term as solicitor, only one death sentence had been obtained, and after his tenure only three death sentences have been imposed in the circuit.¹⁶⁰

Also notable is Eleventh Judicial Circuit (Edgefield, Lexington, McCormick, and Saluda Counties) Solicitor Donald Myers, who has not only accounted for all death sentences within the judicial circuit, but has obtained 17% of all death sentences within the state in the modern era.¹⁶¹ Myers was elected solicitor in 1977¹⁶² and prosecuted the first modern era death penalty case in the state, obtaining death sentences against co-defendants J.D. Gleaton and Larry Gilbert on October 7, 1977.¹⁶³ Myers was reelected every four years since that time (although he has announced that he will not run for reelection in 2016 and will retire when his successor takes office in January of 2017) and has obtained a total of thirty-nine death sentences.¹⁶⁴ As a result, the

1993 and obtained sixteen death sentences (80% of all death sentences obtained within the Ninth Judicial Circuit). Donald Myers has served as the Eleventh Judicial Circuit Solicitor for the entire modern era of the death penalty (1977–present) obtained all thirty-nine of the death sentences within the Eleventh Judicial Circuit. Robert Arial served as the Thirteenth Judicial Circuit Solicitor from 1997–2011 and obtained ten death sentences (59% of all death sentences obtained within the Thirteenth Judicial Circuit). *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *See id.*

160. *See infra* Appendix A.

161. *Id.*

162. Adam Beam, *Emotional Life Raft for Donnie Myers*, THE STATE (Nov. 26, 2006), <http://www.thestate.com/incoming/article14405219.html>.

163. *See infra* Appendix A.

164. *See infra* Appendix A; Beam, *supra* note 163; Andy Shain & Tim Flach, *Veteran Lexington Prosecutor Myers Retiring*, THE STATE, Mar. 15, 2016, <http://www.thestate.com/news/local/article66304792.html>.

Eleventh Judicial Circuit has produced the most death sentences of any of South Carolina's sixteen Judicial Circuits, with the next highest circuit producing only twenty-five death sentences during the same time.¹⁶⁵

Just as murder rates cannot explain the high number of death sentences in various counties, neither can they explain the high number of death sentences by these solicitors. From 1977 to 2007, the average death-sentencing rate in South Carolina was 1.96 death sentences per 100 murders.¹⁶⁶ Solicitor Myers has the highest death-sentencing rate with a rate of 6.80 death sentences per 100 murders.¹⁶⁷ Solicitors Bailey and Condon have similarly high death-sentencing rates of 4.79 and 2.52, respectively, death sentences per 100 murders.¹⁶⁸

3. Aggravating Circumstances and “Narrowing”

Though Justice Breyer did not specifically address the constitutionally required narrowing function of statutory aggravating circumstances, *Furman* mandates that a valid capital punishment scheme must genuinely narrow the pool of death eligible defendants. Unfortunately, the South Carolina death penalty fails to do so and thus permits the type of arbitrary imposition of the death penalty condemned by the Supreme Court.

In order to sentence an individual to death, the jury or judge (depending on the fact finder) must first determine that the State proved the existence of at least one statutory aggravating circumstance

165. See *infra* Appendix A. The Fifteenth Circuit (Horry and Georgetown Counties) has imposed twenty-five death sentences on twenty individuals since 1977. See *id.*

166. These rates are based on the number of solved homicides and the death sentences imposed within the circuits from 1976 through 2007 (the last year for which the data are available). See Fox, *supra* note 136; *infra* Appendix A.

167. See Fox, *supra* note 136; *infra* Appendix A. This difference in sentencing rates has practical implications. For example, Raymond Patterson was charged with murder and armed robbery committed in a parking lot in Lexington County, which is in Solicitor Myers' judicial circuit. Had Patterson committed the crime three or four parking spots away, he would have been in Richland County, within the Fifth Judicial Circuit. The sentencing rate in the Fifth Judicial Circuit is a mere 0.53 per 100 murders as compared to the Eleventh Judicial Circuit's rate of 6.80 under Solicitor Myers. See Michael J. Songer & Isaac Unah, *The Effect of Race, Gender, and Location on Prosecutorial Decisions to Seek the Death Penalty in South Carolina*, 58 S.C. L. REV. 161, 206 (2006); Fox, *supra* note 136; *infra* Appendix A.

168. See Fox, *supra* note 136; *infra* Appendix A. The fourth highest producing solicitor, Robert Arial of the Thirteenth Judicial Circuit (Greenville and Pickens Counties), served as solicitor from 1997 to 2011 and had a slightly lower death-sentencing rate of 1.97; however, he served as solicitor in more recent years when the use of the death penalty declined throughout the state. See *infra* Section IV.E. During the time Arial was solicitor, the state average death-sentencing rate was only 1.28 death sentences per 100 murders. See Fox, *supra* note 136; *infra* Appendix A.

beyond a reasonable doubt.¹⁶⁹ In the four decades since the statute was enacted, the number of aggravating circumstances has increased from seven, with one aggravating factor including a list of eight offenses that could make a murder death eligible if it occurred during the commission of the offense,¹⁷⁰ to twelve aggravating circumstances with one including eleven subparts, for a total of twenty-two circumstances that make a murder “death eligible.”¹⁷¹ A 2010 study found the

169. S.C. Code § 16-3-20(B).

170. The original statute contained seven statutory aggravating factors. 1977 S.C. Acts 177. The first of these aggravating factors included a list of subparts making a murder death-eligible if it occurred during the commission of any one of eight different offenses: rape, assault with intent to ravish, kidnapping, burglary, robbery while armed with a deadly weapon, larceny with use of a deadly weapon, housebreaking, and killing by poison. The remaining six statutory aggravating factors were: the murder was committed by a person with a prior conviction for murder; the offender “knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person”; the murder was committed for the purpose of receiving money or a thing of monetary value; the murder of a judicial officer, solicitor, or other officer of the court (current or former) during or because of the conduct of his or her official duties; the offender either committed or caused to be committed murder-for-hire; and, the murder of a peace officer, corrections officer, or fireman while engaged in the performance of his or her official duties.

171. The legislature expanded the list of aggravating circumstances on numerous occasions:

- In 1978, physical torture was added to the list of concomitant crimes that made a murder death-eligible. 1978 S.C. Acts 555 § 1.
- In 1986, the Legislature added two more aggravating factors: “[m]urder wherein two or more persons are murdered by the defendant by one act or pursuant to one scheme or course of conduct,” and murder of a child eleven years old or younger. 1986 S.C. Acts 462 § 27.
- In 1990, the list was again expanded to include murder during the commission of drug trafficking, and murder of a family member of a judicial officer, a peace officer, a corrections officer, or a fireman with “intent to impede or retaliate against the official.” 1990 S.C. Acts 604 § 15.
- In 1995, dismemberment of a person was added as an aggravating factor. 1995 S.C. Acts 83 § 10.
- In 1996, the Legislature added an entirely new aggravating factor: “[t]he murder of a witness or potential witness committed at any time during the criminal process for the purpose of impeding or deterring prosecution of any crime.” 1996 S.C. Acts 317 § 1.
- In 2002, the factor covering peace and correction officers was expanded to include “[t]he murder of a federal, state, or local law enforcement officer or former federal, state, or local law enforcement officer, peace officer or former peace officer, corrections officer or former corrections officer, including a county or municipal corrections officer or a former county or municipal corrections officer, a county or municipal detention facility employee or former county or municipal detention facility employee, or fireman or former fireman during or because of the performance of his official duties.” 2002 S.C. Acts 224 § 1.
- In 2006, as part of the “Sex Offender Accountability and Protection of Minors Act of 2006,” the Legislature expanded the list again to make sexually violent predators who commit murder death penalty eligible. 2006 S.C. Acts 342 § 2.
- In 2007, the Legislature added arson in the first degree to the list of concomitant crimes that make a murder death eligible. 2007 S.C. Acts 101 § 1.

increased number of aggravating circumstances, coupled with the expansive judicial interpretation of several of the aggravating factors,¹⁷² resulted in a system where a vast majority of all murders are death eligible.¹⁷³ Specifically, the study found that 76% of the homicides that occurred in Charleston County between 2002 and 2007, and 77% of the homicides that occurred in Richland County between 2000 and 2008 were death eligible.¹⁷⁴

Since South Carolina began requiring proof of an aggravating circumstance as a prerequisite to a death sentence in 1977, sentencers—either juries or judges—have found an average of two aggravating circumstances per case.¹⁷⁵ In eighty-three of 233 cases, a defendant has been sentenced to death upon the finding of a single aggravating factor.¹⁷⁶ The single most prevalent aggravating factor in cases where the death penalty has been imposed is murder during the commission of armed robbery.¹⁷⁷ The armed robbery aggravating factor was found in 115 cases; in 39 of those cases, armed robbery was the only aggravating factor found.¹⁷⁸ Murder during the commission of kidnapping has been found in seventy-one cases.¹⁷⁹ The aggravating circumstance of murder during the commission of armed larceny (an offense which does not exist under South Carolina law) was found in forty-seven cases.¹⁸⁰ The next most found aggravating circumstances are murder during the commission of burglary (46), rape (or criminal sexual conduct) (46), and physical torture (38).¹⁸¹ Murder during the

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- And in 2010, the Legislature acted again, adding trafficking in persons to the list of concomitant crimes that make a murder death eligible. 2010 S.C. Acts 289 § 4.

172. See John H. Blume, et al., *When Lightning Strikes Back: South Carolina's Return to the Unconstitutional, Standardless Capital Sentencing Regime of the Pre-Furman Era*, 4 CHARLESTON L. REV. 479, 495–98 (2010) (describing the expansive judicial interpretation of the aggravating factors of physical torture, kidnapping, attempted robbery, and prior conviction of murder).

173. *Id.* at 498–500.

174. *Id.* at 499–500.

175. Appendix D to this Article reports the aggravating circumstances found in all death penalty trials resulting in a death sentence, including cases in which an individual was retried after reviewing courts reversed the original death sentence.

176. See *infra* Appendix D.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.* Rounding out the list of aggravating circumstances found are: murder of two or more persons (30), murder of a law enforcement officer (21), prior murder conviction (12), risk of harm to more than one person in a public place (11), murder for the purpose of receiving monetary value (11), murder of a child under eleven (11), murder as an agent for another person (4), murder by poison (1), murder during commission of arson (1), murder of a judicial officer (1), and murder

commission of trafficking in persons, drug trafficking, and dismemberment, murder of a law enforcement or judicial officer's family member, and murder by a sexually violent predator have never been found as aggravating circumstances.¹⁸²

D. Cruel–Excessive Delays

Justice Breyer found that “problems of reliability and unfairness almost inevitably lead to a third independent constitutional problem: excessively long periods of time that individuals typically spend on death row, alive but under sentence of death.”¹⁸³ Delays are created by the constitutional requirements surrounding the imposition of the death penalty, which require implementation of safeguards that must be observed when a person's life is at stake, but “[t]hese procedural necessities take time to implement.”¹⁸⁴ The constitutional problem with lengthy delays are twofold: (1) the delay itself “subjects death row inmates to decades of especially severe, dehumanizing conditions of confinement,” and (2) “lengthy delay undermines the death penalty's penological rational.”¹⁸⁵

Lengthy delays are common in South Carolina death penalty cases. The men currently on death row have been there for an average of 14.5 years.¹⁸⁶ The two longest serving death row inmates were originally sentenced to death more than thirty years ago in 1983 and 1984.¹⁸⁷ The average time an inmate served on death row between his original sentence and his execution was 11.8 years—13.1 years if the “volunteers” are not included in the calculation.¹⁸⁸ Two men served more than twenty years on death row prior to their executions (J.D. Gleaton and Larry Gilbert) and twenty-one of the forty-three men executed served more than a dozen years between their original sentence and ultimate execution.¹⁸⁹ As a result of lengthy delays, nine death row inmates, 5% of all those sentenced to death, died while on

of a witness (1). *Id.* Two aggravating circumstances that are no longer part of the statute, murder during the commission of housebreaking and murder during the commission of assault with intent to ravish were found in nine and three cases, respectively. *Id.*

182. *Id.*

183. *Glossip v. Gross*, 135 S. Ct. 2726, 2764 (2015).

184. *Id.*

185. *Id.* at 2765.

186. Calculated as of December 31, 2015. *See id.*

187. *Id.*

188. *See Appendix C, infra.*

189. *See id.*

death row awaiting execution: six died of natural causes, one was killed by another inmate, and two committed suicide.¹⁹⁰

Delays in carrying out an execution inevitably result from the complex review process constitutionally mandated in death penalty cases.¹⁹¹ As noted above, more than 60% of all death sentences are overturned on appeal. In many cases, an inmate granted a new trial is once again sentenced to death, beginning the appellate process anew. In South Carolina, five individuals have been sentenced to death three times because their initial two trials were found to contain errors warranting reversal.¹⁹² Of those five men, three had their third death sentences overturned and received sentences of less than death,¹⁹³ but not before each of them spent two or three decades on death row.¹⁹⁴ These delays, as Justice Breyer noted, undermine the penological goals of the death penalty—namely the deterrent and retribution justifications for the death penalty because an offender is more likely to have his sentence overturned or die of natural causes than to be executed after receiving a death sentence.¹⁹⁵

Justice Breyer also noted that the severe conditions of confinement make the delays especially cruel on the individual offender.¹⁹⁶ The same is true in South Carolina where all death row inmates are kept in isolation for twenty-three hours a day. This long-term solitary confinement is well documented to “produce[] numerous deleterious harms.”¹⁹⁷ As a result, at least in part, of solitary confinement, severe mental illness is widespread on South Carolina’s death row.¹⁹⁸ A recent study by the Death Penalty Resource & Defense Center¹⁹⁹ found that

190. *Id.* Two were African American and seven were white. *See id.*

191. *See* *Glossip v. Gross*, 135 S. Ct. 2726, 2764 (2015) (“[D]elay is in part a problem that the Constitution’s own demands create.”).

192. *See* Appendix A, *infra* (showing Louis Truesdale, Edward Lee Elmore, Raymond Patterson, Jr., Ernest Riddle, and Freddie Owens were sentenced to death three times each).

193. Edward Lee Elmore, Raymond Patterson, Jr., and Ernest Riddle. *See id.*

194. Edward Lee Elmore served twenty-nine years on death row and was ultimately release after serving thirty-one years in prison despite strong evidence of his innocence. *See supra* note 85 and accompanying text. Raymond Patterson, Jr. served more than seventeen years before being sentenced to life imprisonment upon the third reversal of his death sentence. *See infra* Appendix A. Ernest Riddle spent twenty-one years on death row before receiving a thirty-year sentence upon the third reversal of his death sentence. *See supra* note 87 and accompanying text.

195. *See Glossip*, 135 S. Ct. at 2767–69.

196. *Id.* at 2765.

197. *Id.*

198. Despite constitutional protections against executing juveniles or the intellectually disabled, and despite suffering from similar mental impairments, the severely mentally ill are still eligible for execution in South Carolina.

199. The Death Penalty Resource & Defense Center has since been renamed Justice 360. The organization’s mission is to promote equality in capital cases in South Carolina. It tracks data

of the forty-eight death row inmates at the time of the study, thirty-four (70%) were severely mentally disabled.²⁰⁰ Mental illness—including schizophrenia, post-traumatic stress disorder, major depressive disorder, and bipolar disorder—was the most common mental disability, followed by brain trauma/organic brain damage and intellectual disability.²⁰¹ Twelve inmates suffered from multiple types of these three conditions.²⁰²

E. Unusual—Decline in Use of the Death Penalty

Finally, Justice Breyer found that the death penalty is made unusual by the decline in usage of the death penalty.²⁰³ Justice Breyer specifically found that “30 States have either formally abolished the death penalty or have not conducted an execution in more than eight years” and “9 have conducted fewer than five [executions] in that time,” leaving “11 States in which it is fair to say that capital punishment is not ‘unusual.’”²⁰⁴ Justice Breyer counted South Carolina as one of the states in which capital punishment is not unusual based on the fact that there had been more than five executions in the past eight years. However, if Justice Breyer took a closer look at South Carolina, he would see that the use of the death penalty within South Carolina has declined significantly and is becoming “unusual” in practice.

The number and rate of death sentences in South Carolina has decreased dramatically in recent years. Death sentences per year in the 1970s were low as the state’s prosecutors began working with the new death penalty statute.²⁰⁵ By 1981, the new machinery of death was up and running at full speed and the state had ten death sentences that year.²⁰⁶ From 1981 through 1996, the state averaged nine death sentences each year, with a high in 1986 of fifteen death sentences.²⁰⁷ The number of death sentences per year declined between 1997 and

related to all facets of the South Carolina death penalty and has done so since the 1980s.

200. The Death Penalty Resource & Defense Center, *Mental Disability and the Death Penalty: Why South Carolina Should Ban the Execution of the Severely Mentally Disabled* (Aug. 2014), on file with the authors.

201. *Id.* at 6.

202. *Id.*

203. *Glossip v. Gross*, 135 S. Ct. 2726, 2773 (2015).

204. *Id.*

205. *See infra* Appendix A. From 1977 to 1980, the state had between one and seven death sentences per year. *Id.*

206. *Id.*

207. *Id.*

2007, averaging only six death sentences per year with a high of eight death sentences in 1998 and 2001.²⁰⁸ Since 2008, however, the decrease has been even more dramatic with an average of fewer than two death sentences per year.²⁰⁹ Indeed, the state went four of the last five years (2011, 2012, 2013, and 2015) without a single death sentence imposed.²¹⁰

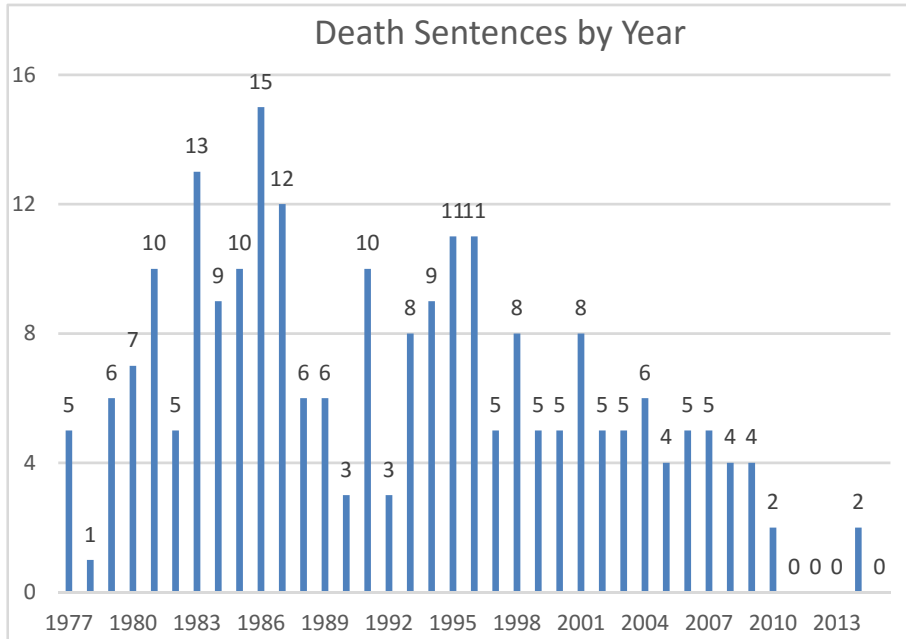


Figure 5

The decrease in death sentences cannot be explained by a decreasing number of murders during the same time period—though the number of murders per year has decreased slightly since the 1990s.²¹¹ As the graph below demonstrates, the number of death

208. *Id.*

209. *Id.*

210. *Id.* Notably, during the three consecutive years with no death sentences, thirty-one cases where the State originally sought the death penalty were resolved with sentences of less than death. *See infra* Appendix H.

211. South Carolina's murder rate in 2013 was 6.2 murders for every 100,000 people. FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.2013/tables/4tabledatadecoverviewpdf/table_4_crime_in_the_united_states_by_region_geographic_division_and_state_2012-2013.xls. This number includes non-negligent manslaughter. *Id.* This placed South Carolina as the state with the sixth highest murder rate nationally; the national average was 4.5 per 100,000. *Id.* Like most states, the South Carolina murder rate has decreased since the mid-1990s, though the decrease in the murder rate has been less consistent in South

sentences per murder has decreased significantly from its peak in 1986, when the state saw 4.5 death sentences per 100 murders.²¹² Since 2008, South Carolina has only imposed .45 death sentences per 100 murders.²¹³

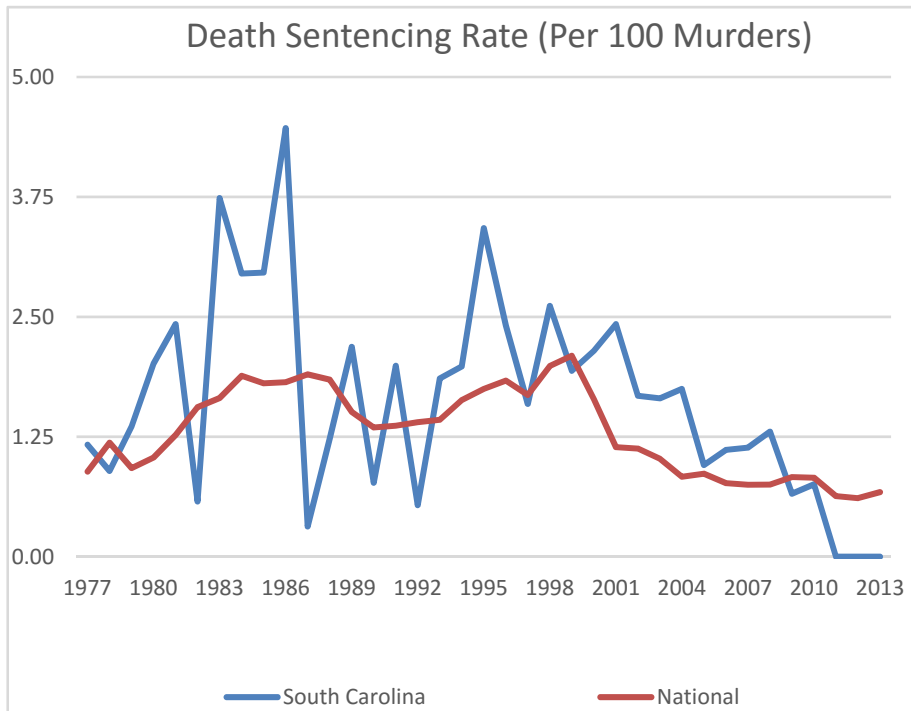


Figure 6

South Carolina's death sentencing rate has historically been about average compared to other death penalty jurisdictions. About 1.6 death sentences have been imposed per 100 murders in South Carolina since 1977.²¹⁴ The average for all death penalty jurisdictions is 1.5 per 100 murders.²¹⁵ However, there have been only two death sentences in

Carolina than the national trend. In 1996, South Carolina's murder rate was 9 per 100,000. The lowest murder rate in South Carolina since 1996 was in 2010 when the murder rate was 5.4 per 100,000. *See id.*

212. Death sentencing rates were calculated by comparing the number of death sentences from *infra* Appendix A and the number of murders in South Carolina and other death penalty jurisdictions as reported in the FBI Uniform Crime Reporting Annual Crime Reports. DISASTERCENTER.COM, *United States Crime Rates 1960-2013*, <http://www.disastercenter.com/crime/uscrime.htm> [hereinafter FBI Crime Report].

213. *See* FBI Crime Report, *supra* note 212; Appendix A.

214. *See* FBI Crime Report, *supra* note 212; Appendix A.

215. *See* FBI Crime Report, *supra* note 212; Appendix A.

the last five years. Murder statistics are not available for the most recent years, but with such a low number of death sentences, South Carolina's recent death sentencing rate is surely lower than the average in other death penalty jurisdictions.

Death Sentencing Rates by State, 1977-2013			
State	Death Sentence		
	Rate (per 100 murders)	Death Sentences 1977-2013	Murders 1977-2013
Delaware	3.914	49	1,252
Oklahoma	3.552	309	8,700
Idaho	3.440	42	1,221
Alabama	3.090	456	14,756
Nevada	2.716	149	5,487
Arizona	2.442	306	12,531
Florida	2.256	939	41,617
North Carolina	2.091	447	21,377
Oregon (1978-present)	1.891	75	3,966
Mississippi	1.685	174	10,326
Arkansas	1.624	118	7,265
South Carolina	1.623	194	11,955
Ohio	1.512	333	22,026
Texas	1.484	958	64,573
Pennsylvania	1.480	374	25,269
Nebraska	1.432	28	1,955
Missouri	1.236	197	15,935
Tennessee	1.067	174	16,313
Utah	0.976	19	1,946
Kentucky	0.957	85	8,878
Georgia	0.945	233	24,646
Virginia	0.938	151	16,096
California	0.923	923	99,999
Illinois (1977-2011)	0.850	304	35,755
Louisiana	0.721	162	22,471
Indiana	0.718	98	13,657
New Jersey (1982-2007)	0.571	57	9,984
Washington	0.516	40	7,755
Maryland	0.305	53	17,388
New Mexico (1979-2009)	0.297	14	4,718
Colorado	0.227	15	6,620

Figure 7²¹⁶

216. See *Death Sentences in the United States from 1977 By State By Year*, DEATH PENALTY INFORMATION CENTER, <http://deathpenaltyinfo.org/death-sentences-united-states-1977-2008>;

The recent decrease in death sentences can be attributed, at least in part, to the creation of the Capital Trial Division of the South Carolina Commission on Indigent Defense. The Capital Trial Division was created in 2008 with a staff of two lawyers and two mitigation specialists and today is staffed by three attorneys and one investigator.²¹⁷ The mission of the office is to provide representation to capital defendants at less cost to the State than through the appointment of private attorneys and to provide consultation and training for other lawyers representing South Carolina defendants facing the death penalty.²¹⁸ In practice, an attorney from the Capital Trial Division has been involved, either by formal appointment or informally prior to the issuance of a death notice, in many—43% since 2008—of the potential capital cases along with either a local public defender or a private attorney.

Since 2008, the Capital Trial Division has worked on thirty potential capital cases in which the defendant has since been sentenced.²¹⁹ Of those thirty cases, only three resulted in death sentences, one of which was overturned on direct appeal and the defendant subsequently accepted a plea to life without parole.²²⁰ More than three-quarters of the cases handled by the Capital Trial Division (77%) have been resolved prior to trial either through a plea agreement to a sentence of life or less, withdrawal of the death penalty as a sentencing option prior to trial, or the solicitor's decision not to seek the death penalty in a death eligible case.²²¹ Overall, since 2008, cases in which the State was likely to seek the death penalty have been resolved prior to trial without a death sentence 80% of the time.²²² The Capital Trial Division credits its early defense involvement in potential death penalty cases with the ability to resolve so many cases pretrial. In many instances, the Division or other lawyers trained by the Division become involved in homicide cases well before the State officially indicates its intention to seek the death penalty, allowing the lawyers to conduct factual and mitigation investigation early on for use in negotiations with the solicitors. This often allows solicitors to decide

FBI Crime Report, *supra* note 212.

217. See SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE, CAPITAL TRIAL DIVISION, <https://www.sccid.sc.gov/about-us/capital-defenders>.

218. *Id.*

219. Appendix H to this Article lists all of the pretrial death penalty case outcomes since the Capital Trial Division began tracking death penalty cases in 2008.

220. See *infra* Appendix H.

221. See *id.*

222. See *id.*

a case is not “death-worthy” before ever making a public commitment to seek death, making it easier to decide not to seek the penalty. Even when solicitors formally announce that they intend to seek death, early involvement by defense counsel provides both sides with more information to use in plea negotiations, the majority of the time resulting in a plea to less than death.²²³

The number of executions per year has also decreased in recent years. Similar to the national trend, South Carolina carried out the highest number of executions in the mid to late 1990s.²²⁴ The highest number of executions per year occurred in 1996, with six executions, and 1998, with seven executions. Since the late 1990s, the execution rate in South Carolina has declined.²²⁵ Since 2010, South Carolina has carried out only one execution and that individual waived his pending appeals in order to be executed in 2011.²²⁶ This trend can be explained, in significant part, by the reduced number of death sentences over the last fifteen years, the number of reversals resulting from prejudicial error, and the Supreme Court’s creation of categorical bars to execution for juveniles and persons with intellectual disability.²²⁷

223. Capital trial units in other states have produced similar results. *See, e.g.*, Larry O’Dell, *Study: Better Legal Defense Leads to Fewer Death Penalties*, AP, Oct. 19, 2015, available at <http://bigstory.ap.org/article/e44f4c549b6b4b5297191386abc0c399/study-better-legal-defense-leads-fewer-death-penalties> (Virginia); Greg Land, ‘*Life Without Parole*’ Leads to Shrinking Death Penalty Pipeline, DAILY REPORT, Dec. 16, 2015, <http://www.dailyreportonline.com/id=1202744912371/Life-Without-Parole-Leads-to-Shrinking-Death-Penalty-Pipeline?mcode=0&curindex=0&curpage=ALL> (Georgia).

224. *See infra* Appendix C; DEATH PENALTY INFORMATION CENTER, EXECUTIONS BY YEAR SINCE 1976, <http://www.deathpenaltyinfo.org/executions-year>.

225. *See infra* Appendix C.

226. *Id.*

227. *See supra* notes 120–21, and accompanying text.

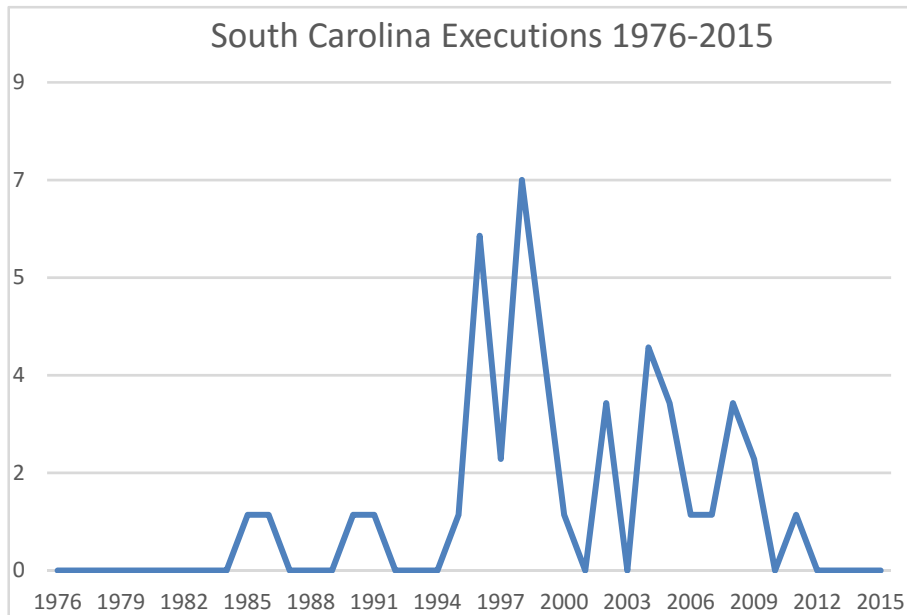


Figure 8

The death penalty in South Carolina, like the rest of the country, has become increasingly concentrated geographically.²²⁸ Only fourteen of South Carolina's forty-six counties have sentenced a defendant to death in the last decade.²²⁹ Only four counties (Lexington, Horry, Spartanburg, and Greenville) have imposed more than one death sentence in the last ten years.²³⁰ Indeed, ten South Carolina counties have not imposed a death sentence since 1976.²³¹ Thus, for most of South Carolina, use of the death penalty has become unusual.

228. See *Glossip v. Gross*, 135 S. Ct. 2726, 2774 (2015) (noting that "66 of America's 3,143 counties accounted for approximately 50% of all death sentences imposed").

229. See *infra* Appendix A.

230. See *id.*

231. See *id.*

County	Sentences 2006-2015
Lexington	5
Horry	3
Spartanburg	2
Greenville	2
Charleston	1
Anderson	1
Dorchester	1
Greenwood	1
Calhoun	1
Sumter	1
Clarendon	1
Georgetown	1
Pickens	1
Edgefield	1

V. OBSERVATIONS BASED ON THE DATA

Despite forty years of legislative and judicial regulation, by all of Justice Breyer's measures of constitutional validity—unreliability, arbitrariness, delay and infrequency—the South Carolina death penalty is an abysmal failure. The “safeguards” put in place at trial for the purpose of improving the quality of representation (e.g., appointment of two qualified attorneys, special funding procedures, etc.),²³² and a number of decisions attempting to regulate the conduct of prosecutors and make jury decision-making more reliable have not reduced the amount of error in the system; appellate courts overturn

232. See S.C. Code § 16-3-26.

death sentences in approximately two out of three cases. Even after an initial reversal, death penalty cases remain error-prone, resulting in (sometimes) three or four death penalty trials of the same person. Most people sentenced to death eventually end up with life sentences (or less); however, even when a death sentenced inmate runs the entire appellate gauntlet, there is no guarantee the case is error-free, the system worked properly or even that we are executing the person who committed the crime.²³³ Race, gender, and geography—more than the heinousness of the offense—determine who is sentenced to death, and innocent defendants have spent years on death row before obtaining their freedom. The South Carolina death penalty—in sum—is still arbitrary after all these years.

In *Gregg v. Georgia*, the Supreme Court allowed states to resume the use of the death penalty on the assumption that it would be imposed only in appropriate cases (i.e., not on your “average murderers”) in a non-arbitrary and non-discriminatory manner. As we believe we have demonstrated in this article that is by no means the case. It is clear, after decades of trying in vain, that the South Carolina death penalty system is (literally) fatally flawed. And, given both the pre-*Furman* and post-*Gregg* capital punishment experience, it is equally clear that there is no fix or cure for its ailments. Now is the time for the United States Supreme Court, the South Carolina Supreme Court or the General Assembly to bring the experiment with capital punishment to an end.

If, instead (as is more likely), the South Carolina death penalty continues to limp along before meeting its inevitable demise, the appropriate stakeholders should at a minimum attempt to “fix” the major systemic flaws: (1) the failure to meaningfully narrow the pool of individuals eligible for the death penalty; (2) the failure to eliminate significant race and gender effects in the imposition of the penalty; and (3) the lack of meaningful appellate proportionality review. First, as discussed above, virtually all murders are “death eligible;” i.e., a prosecutor could seek the death penalty—should she choose to do so—in more than 75% of murder cases given both the expansion of the

233. See, e.g., *Johnson v. Catoe*, 345 S.C. 389, 548 S.E.2d 587 (2001) (denying a motion for a new trial based on newly discovered evidence of actual innocence). Johnson was executed in 2002 despite calls for clemency, including from members of the victim’s family, based on evidence of his innocence. See Application for Executive Clemency Submitted on Behalf of Richard Charles Johnson, http://deathpenaltyusa.org/usa/images/clemency/johnson_richardcharles.pdf; Rick Brundrett & Cliff Leblanc, *Lethal Injection Ends Life of Convicted Killer*, THE STATE (May 4, 2002).

number of aggravating circumstances and the broad interpretation of several commonly utilized aggravating circumstances (e.g., murder in the commission of kidnapping and murder during the commission of physical torture). Aggravating circumstances—in theory—play a “constitutionally necessary function” in defining capital murder in a way that both “genuinely narrow[s] the class of persons eligible for the death penalty” and “reasonably justif[ies] the imposition of a more severe sentence on the defendant compared to others found guilty of murder.”²³⁴ In South Carolina they clearly do not. Capital punishment is not reserved for the “worst of the worst” but all too often is imposed on the “average murderer.”

One possible solution that would at least reduce arbitrariness would be to reduce the number of aggravating circumstances to capture only the worst crimes.²³⁵ For example, the legislature could limit the application of the death penalty to persons with prior murder convictions who kill a prison guard or to serial killers.²³⁶ Doing so would limit opportunities for race and gender bias and prosecutorial excess to infect the determination of who should live or die as *Furman* and *Gregg* originally intended.²³⁷ In addition to restricting the number of death eligible offenses, the number of death eligible offenders should also be limited. The category of offenders most in need of a new exclusion from capital punishment given existing Eighth Amendment precedent and their intuitive lack of “death-worthiness” are persons with severe mental illness.²³⁸ Such a limitation is a natural extension of the bans on executing juveniles and the intellectually disabled.²³⁹ The

234. *Zant v. Stephens*, 462 U.S. 862, 877 (1983).

235. See Alex Kozinski & Sean Gallagher, *Death: The Ultimate Run-On Sentence*, 46 CASE W. RES. L. REV. 1, 29–32 (1995) (proposing to limit the number of aggravating circumstances to “ensure that the worst members of our society . . . are put to death” as a way to remove some of the objections to capital punishment, such as racial biases effecting sentencing decisions).

236. As currently practiced, remember that the high number of persons sentenced to death and executed for “garden variety” crimes such as murder during the commission of armed robbery. See *supra* notes 181–82 and accompanying text. We do not mean to minimize the significance of this type of homicide, or any homicide for that matter, but it is hardly subject to debate that this is not one of the more culpable categories of murder.

237. See *Gregg v. Georgia*, 428 U.S. 153, 193 (1976) (holding that aggravating factors “provide guidance to the sentencing authority and thereby reduce the likelihood that it will impose a sentence that fairly can be called capricious or arbitrary”).

238. See AMERICAN BAR ASSOCIATION, *Resolution 122A* (Aug. 2006) (recommending that “defendants should not be executed or sentenced to death if, at the time of their offense, they had a severe mental disorder or disability that significantly impaired their capacity (a) to appreciate the nature, consequences or wrongfulness of their conduct, (b) to exercise rational judgment in relation to conduct, or (c) to conform their conduct to the requirements of the law”), <http://www.deathpenaltyinfo.org/documents/122AReport.pdf>.

239. See, e.g., Christopher Slobogin, *What Atkins Could Mean for People With Mental Illness*,

juvenile and intellectual disability categorical bars were grounded in the Court's determination that their group characteristics rendered them less culpable than the average murderer and because, sometimes, their youth or intellectual disability would actually be held against them at a capital sentencing proceeding.²⁴⁰ The same is true for the severely mentally ill—those individuals have similar or even greater reduced culpability and their illness has been empirically proven to be viewed by jurors as an aggravating rather than mitigating factor.²⁴¹

In early 2015, a bill was proposed in the South Carolina legislature that would prohibit the execution of a person who had a severe mental disability at the time of the commission of the crime.²⁴² The bill defines severe mental disability as “a severe mental illness that significantly impairs a person's capacity to do any of the following: (i) appreciate the nature, consequences, or wrongfulness of the person's conduct; (ii) exercise rational judgment in relation to conduct; or (iii) conform the person's conduct to the requirements of the law. . .” or as “dementia or traumatic brain injury that results in significantly sub-average intellectual functioning, existing concurrently with significant limitations in adaptive functioning.”²⁴³ Adopting a ban on executing the severely mentally ill would be another step towards ensuring the worst (most culpable) offenders receive the death penalty, as opposed to a random selection of the most vulnerable offenders.

Another necessary next step is to attempt to minimize the significant race effects driving death sentencing in South Carolina. The General Assembly could accomplish this by amending the state post-conviction relief statute²⁴⁴ to allow courts to consider whether race was a significant factor in the decision to seek death against the defendant.

33 N.M. L. REV. 293, 293 (2003).

240. See *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Atkins v. Virginia*, 536 U.S. 304, 319 (2002).

241. South Carolina law defines the presence of a mental disability as mitigating evidence; S.C. Code § 16-3-20(b)(7) (listing “[t]he age or mentality of the defendant at the time of the crime” as a statutory mitigating circumstance), however, empirical studies have conclusively demonstrated that juries tend to view mental illness and disability as *aggravating* factors rather than reasons to spare the defendant from death. See e.g., Kevin M. Doyle, *Lethal Crapshoot: The Fatal Unreliability of the Penalty Phase*, 11 U. PA. J. L. & SOC. CHANGE 275 (2008); Steven Garvey, *Aggravation And Mitigation In Capital Cases: What Do Jurors Think?*, 98 COLUM. L. REV. 1538 (1998); Joshua N. Sondheimer, Note, *A Continuing Source of Aggravation: The Improper Consideration Of Mitigating Factors In Death Penalty Sentencing*, 41 HASTINGS L. J. 409 (1990); Ellen Fells Berkman, *Mental Illness As An Aggravating Circumstance In Capital Sentencing*, 89 COLUM. L. REV. 291 (1989).

242. H. 3535, 121 Gen. Assemb., Reg. Sess. (S.C. 2015).

243. *Id.*

244. S.C. Code § 17-27-160.

Existing law allows a court to order a new trial or sentencing hearing when there has been racial bias in jury selection,²⁴⁵ or racially charged arguments made to the jury,²⁴⁶ but makes it virtually impossible for a defendant to prove that the decision to seek death was based on race by using statistics to prove racial bias in a solicitor's decision on the death penalty.²⁴⁷ A Racial Justice Act enacted in North Carolina in 2009 outlined specific evidence and procedures a defendant could use to prove his death sentence was the result of racial bias.²⁴⁸ If a defendant is able to meet his burden of proof, then the death sentence is vacated and a life sentence imposed.²⁴⁹ South Carolina should adopt a similar provision to ensure that race is not a determining factor in who receives the death penalty.

Finally, the South Carolina Supreme Court could remove some of the arbitrariness from the current death penalty regime by taking seriously its statutorily required proportionality review. Under current practice, the court, in considering whether a death sentence is

245. See *Batson v. Kentucky*, 476 U.S. 79 (1986). This, of course, is all in theory. In reality, solicitors use their peremptory challenges in capital cases overwhelmingly against jurors of color and thus a not-insignificant number of African American South Carolina death row inmates were sentenced to death by all-white juries. See Ann Eisenberg, *The Conscience of the Community: Pre-Trial Removal of Women and African-American Jurors in South Carolina Capital Punishment Cases, 1998-2012* (unpublished manuscript), on file with authors. Through their work on South Carolina death penalty cases, the authors have identified at least three African Americans currently on death row as a result of a sentence imposed by an all-white jury: Johnny Bennett, Richard Moore, and Kevin Mercer.

246. See *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974). Again, this protection is largely theoretical; in fact, solicitors use explicit or implicit appeals to race in many cases and the courts turn a blind eye to it. The authors currently represent an individual on South Carolina's death row whose capital trial (before an all-white jury) included remarks by the Solicitor referring to the large African American defendant as "King Kong," a "caveman," a "big old bear," and a "beast of burden." The South Carolina Supreme Court refused to reverse the defendant's death sentence based on these comments, even though counsel uncovered evidence that one of the jurors was racially biased and referred to the defendant as a "Nigger." See *State v. Bennett*, 369 S.C. 219, 231–33, 632 S.E.2d 281, 288–89 (2006); Petition for Writ of Certiorari, *Bennett v. State*, No. 2009-145366 (Oct. 7, 2010); Order Denying Certiorari, *Bennett v. State*, No. 2009-145366 (Nov. 7, 2013).

247. See *McCleskey v. Kemp*, 481 U.S. 279 (1987). In fact, only one South Carolina case has been successful in proving racial bias in the decision to see the death penalty and that was only because the assistant solicitor admitted that the decision to seek death in a black victim case was made in order because "I felt like the black community would be upset if we did not seek the death penalty because there were two black victims in this case." *Kelly v. State*, No. 99-CP-42-1174 (Oct. 6, 2003) (Trial Court Order Granting Post-Conviction Relief).

248. N.C. S.L. 2009-464.

249. See *id.* The North Carolina Racial Justice Act was repealed in 2013 out of a "fear of too much justice," *McCleskey v. Kemp*, 481 U.S. 279, 399 (1987) (Brennan, J. dissenting), after three African-American death row inmates established race played a role in their capital trials. See N.C. S.L. 2013-154; Kim Severson, *North Carolina Repeals Law Allowing Racial Bias Claim in Death Penalty Challenges*, N.Y. TIMES (June 5, 2013), at A13.

disproportionate, reviews “similar cases” which it defines as other cases “with an actual conviction and sentence of death rendered by a trier of fact.”²⁵⁰ But defining “similar cases” as those in which a death sentence was imposed is tautological; the court is always able to find a case with similar aggravating circumstances and thus the death sentence is always proportionate to the crime, regardless of how many similar cases resulted in life sentences.²⁵¹ The court has recognized as much noting that reviewing only other cases in which a death sentence was obtained “is largely a self-fulfilling prophecy as simply examining similar cases where the defendant was sentenced to death will almost always lead to the conclusion that the death sentence under review is proportional.”²⁵² But, to date, it has taken no action to engage in a more robust and meaningful review of whether death sentences are in fact proportionate to the offense and offender. It would be easy to do so; the South Carolina Office of Court Administration, the Circuit Solicitors and Circuit Public Defenders and the Department of Corrections have—collectively—the data needed to create the pool of relevant death and life cases. The only thing lacking is the commitment to monitor the system for disproportionate death sentences.

250. *State v. Copeland*, 278 S.C. 572, 591, 300 S.E.2d 63, 74 (1982).

251. The court generally uses standard language in its opinion to find a death sentence is not disproportionate:

[Appellant’s] convictions and sentences are affirmed. The death sentence was not the result of passion, prejudice, or any other arbitrary factor, and the jury’s finding of aggravating circumstances is supported by the evidence. Further, the death penalty is not excessive or disproportionate to the penalty imposed in similar capital cases.

See, e.g., State v. Moore, 357 S.C. 458, 593 S.E.2d 608 (2004). The court then goes on to list other death penalty cases in which the same aggravating circumstances were found as support for the conclusion that the death sentence was not disproportionate.

252. *State v. Dickerson*, 395 S.C. 101, 125 n.8 716 S.E.2d 895, 908 n.8 (2011). Because the issue was not raised on appeal in *Dickerson*, the court declined to overrule *Copeland*. Despite noting its concern with reviewing only cases resulting in a death sentence in its proportionality review, the Court has continued to do so since *Dickerson* and, arguably proving the “self-fulfilling prophecy,” has never found a death sentence disproportionate. *See, e.g., State v. Inman*, 395 S.C. 539, 567–68, 720 S.E.2d 31, 46 (2011).

CONCLUSION

We end where we began. The arbitrary imposition of the death penalty led a majority of the Supreme Court in *Furman* to conclude that the death penalty was a cruel and unusual punishment that violated the Eighth Amendment. In *Gregg*, the Court allowed capital punishment to resume based on its confidence that post-*Furman* improvements to state death penalty systems had eliminated that arbitrariness. That confidence, however, was misplaced. The death penalty in South Carolina is still arbitrary after all these years.

Publisher's Note: A separate PDF of the appendices below is available for download from the Duke Law Scholarship Repository, accessible through: djclpp.law.duke.edu.

APPENDIX A*								
South Carolina Death Sentences - List of Those Sentenced to Death 1977-2015								
Name	Defendant Race	Victim Race	County of Conviction	Circuit of Conviction	Original Sentence Date	Sentence Date After Reversal	Final Result	
1	Gleaton, J.D.	B/M	W/M	Lexington	11	10/7/1977	2/26/1980	Executed
2	Gilbert, Larry	B/M	W/M	Lexington	11	10/7/1977	2/26/1980	Executed
3	Gill, Eric Andre	B/M	W/M	York	16	1977		Life Imprisonment
4	Shaw, Joseph Carl	W/M	W/F W/M	Richland	5	12/16/1977		Executed
5	Roach, James Terry	W/M	W/F W/M	Richland	5	12/16/1977		Executed
6	Tyner, Rudolph	B/M	W/F W/M	Horry	15	8/11/1978	10/11/1980	Died on Death Row
7	Plath, John	W/M	B/F	Beaufort	14	2/9/1979	5/14/1982	Executed
8	Arnold, John	W/M	B/F	Beaufort	14	2/9/1979	5/14/1982	Executed
9	Goolsby, Sidney Ross	W/M	W/F	Greenwood	8	1979		Life Imprisonment
10	Woomer, Ronald	W/M	W/F W/M	Horry Colleton	15 14	7/20/1979 6/7/1981	7/23/1981	Executed (Horry County)
11	Linder, Michael	W/M	B/M	Colleton	14	1979		Acquitted
12	Hyman, William Gibbs	W/M	W/M	Charleston	9	10/12/1979		Life Imprisonment
13	Adams, Sylvester	B/M	B/M	York	16	3/3/1980	1/30/1982	Executed
14	Thompson, Albert "Bo"	B/M	W/M	Greenville	13	9/27/1980		Life Imprisonment
15	Truesdale, Louis	B/M	W/F	Lancaster	6	12/11/1980	5/17/1983 ¹ 9/25/1987	Executed
16	Roberts, Sammy David	W/M	2 W/M B/M	Berkeley	9	1/19/1981		Executed
17	Copeland, Henry Wesley	W/M	2 W/M B/M	Berkeley	9	1/19/1981		Died on Death Row
18	Butler, Horace	B/M	W/F	Charleston	9	1/26/1981		Life Imprisonment
19	Smart, Ronald Francis	W/M	W/M	Lexington	11	3/11/1981		Life Imprisonment
20	Yates, Dale Roberts	W/M	W/F	Greenville	13	5/2/1981		Life Imprisonment
21	Butler, James Anthony	W/M	Asian/M	Orangeburg	1	3/21/1981		Life Imprisonment
22	Patterson, Wardell	B/M	W/M	York	16	10/29/1980	6/20/1983	Life Imprisonment
23	Koon, Paul Finley	W/M	W/F	Aiken	2	6/12/1981	2/18/1983	Life Imprisonment
24	Sloan, Michael A.	W/M	W/F	Lexington	11	10/2/1981		Life Imprisonment
25	Elmore, Edward Lee	B/M	W/F	Greenwood	8	4/19/1982	4/2/1984 2/28/1987 ²	Released
26	Spann, Sterling Barnett	B/M	W/F	York	16	4/26/1982		Life Imprisonment
27	Woods, Stanley Eugene	B/M	W/M	Greenville	13	1983		Life Imprisonment
28	Stewart, Richard	B/M	W/F	Anderson	10	3/14/1983 ³	1/25/1985 ³	Life Imprisonment
29	Gaskins, Donald Henry	W/M	B/M	Richland	5	3/26/1983		Executed
30	Chaffee, Jonathan	W/M	W/F	Florence	12	4/2/1983 ⁴		Life Imprisonment
31	Ferrell, Dallas Clarence	W/M	W/F	Florence	12	4/2/1983 ⁴		Life Imprisonment
32	Norris, John Foster	B/M	B/F	Anderson	10	6/10/1983		Life Imprisonment
33	Damon, Shellee	B/M	B/F B/	Orangeburg	1	1/16/1984		Life Imprisonment
34	Skipper, Ronald DeRay	W/M	W/F	Horry	15	6/28/1983		Life Imprisonment
35	Lucas, Cecil Doyle	W/M	W/F W/M	York	16	7/27/1983		Executed
36	Singleton, Fred	B/M	W/F	Newberry	8	9/17/1983 ⁵		Found Incompetent
37	South, Robert	W/M	W/M	Lexington	11	11/17/1983		Executed
38	Smith, Andrew Lavern	B/M	B/F B/	Anderson	10	1/17/1984	10/31/1987	Executed
39	Jones, Donald Allen	B/M	W/F	Lancaster	6	2/7/1984	5/1/1987	Pending
40	Plemmons, Jerry	W/M	W/F	Union	16	2/26/1984	5/8/1987	Life Imprisonment
41	Peterson, Mose, III	B/M	W/M	Florence	12	8/6/1984		Life Imprisonment
42	Stubbs, Craig Anthony	B/M	W/M	Florence	12	8/6/1984		Life Imprisonment

APPENDIX A*								
South Carolina Death Sentences - List of Those Sentenced to Death 1977-2015								
Name	Defendant Race	Victim Race	County of Conviction	Circuit of Conviction	Original Sentence Date	Sentence Date After Reversal	Final Result	
43	Drayton, Leroy	B/M	W/F	Charleston	9	10/8/1984	4/12/1986	Executed
44	Pierce, Marcellus, Jr.	B/M	W/F	Richland	5	12/7/1984		Life Imprisonment
45	Brown, Jessie Keith	W/M	W/M	Spartanburg	7	1/28/1985	3/24/1987	Acquitted of Murder
46	Middleton, Frank	B/M	W/F	Charleston	9	2/4/1985	11/24/1986	Executed (for black victim only)
47	Patrick, Gary Lee	W/M	W/M	Oconee	10	4/15/1985		Life Imprisonment
48	Matthews, Earl	B/M	W/F	Charleston	9	5/13/1985	4/24/1987	Executed
49	Arthur, Limmie	B/M	B/M	Horry	15	8/8/1985	5/13/1987	Life Imprisonment
50	Patterson, Raymond, Jr.	B/M	W/M	Lexington	11	9/7/1985	1/7/1987 2/14/1995	Life Imprisonment
51	Cooper, Kamathene	B/M	W/M	Florence	12	10/4/1985		Life Imprisonment
52	Kornahrens, Fred	W/M	W/F 2W/M	Charleston	9	11/19/1985		Executed
53	Riddle, Ernest	W/M	W/F	Cherokee	7	2/1/1986	10/1/1987 11/15/1991 ²	30 Year Sentence
54	Hawkins, Catvil	B/M	W/M	Darlington	4	11/17/1985		Life Imprisonment
55	Johnson, Richard	W/M	B/M	Jasper	14	2/15/1986	3/13/1988	Executed
56	Howard, Ronnie	B/M	Asian/F	Greenville	13	6/15/1986		Executed
57	Weldon, Dana	B/M	Asian/F	Greenville	13	6/15/1986		Life Imprisonment
58	Bell, Larry Gene	W/M	W/F W/F	Saluda Lexington	11 11	2/27/1986 ⁴ 4/2/1987		Executed (Saluda County)
59	Bellamy, Lee Grant	B/M	B/M	Horry	15	6/28/1986		Life Imprisonment
60	Atkins, Joseph	NA/M	B/F W/M	Charleston	9	6/28/1986	6/25/1988	Executed
61	Reed, Jerry Lee	B/M	W/M	Abbeville	8	7/22/1986		Life Imprisonment
62	Diddlemeyer, Gerald	W/M	B/M	Horry	15	9/13/1986		Life Imprisonment
63	West, Floyd	W/M	W/M	Lexington	11	10/21/1986		Died on Death Row
64	Cockerham, Harold	W/M	W/F	Horry	15	10/11/1986		Life Imprisonment
65	Owens, Alvin	W/M	W/M	Horry	15	5/19/1986		Life Imprisonment
66	Cain, James Russell	W/M	2W/M	Chesterfield	4	11/25/1986		Life Imprisonment
67	Gathers, Demetrius	B/M	B/M	Charleston	9	3/21/1987		Life Imprisonment
68	Caldwell, Rickie Tim	W/M	W/M	York	16	5/23/1988		Life Imprisonment
69	Torrence, Michael	W/M	W/M	Lexington	11	5/28/1988	9/26/1992	Executed
70	Victor, William Keith	W/M	W/M	Edgefield	11	10/1/1988		Life Imprisonment
71	Green, Anthony	B/M	W/F	Charleston	9	10/1/1988		Executed
72	Bell, William Henry, Jr.	B/M	W/M	Anderson	10	3/14/1989		Pending
73	Manning, Warren D.	B/M	W/M	Dillon	4	4/15/1989 ⁵	4/3/1995 ⁵	Acquitted
74	Wilson, James William	W/M	2B/F	Greenwood	8	5/9/1989		Pending
75	Sims, Mitchell	W/M	2W/M	Berkeley	9	5/13/1989 ⁶		Pending
76	Young, Kevin Dean	B/M	W/M	Anderson	10	5/22/1989	6/12/1993	Executed
77	Orr, Ronald John	W/M	W/F W/M	Chester	6	11/14/1989		Life Imprisonment
78	Davis, Wilbert Ray	B/M	W/M	Florence	12	3/23/1990		Life Imprisonment
79	Davis, Tommy Lee	B/M	W/F	Greenwood	8	5/14/1990 ¹¹		Life Imprisonment
80	Smith, Rebecca	W/F	W/M	Horry	15	12/10/1990		Life Imprisonment
81	Simmons, Jonathan Dale	B/M	W/F	Richland	5	6/30/1991		Life Imprisonment
82	Cooper, Gene Tony	W/M	W/F	Lexington	11	2/22/1991		Life Imprisonment
83	Elkins, Michael	W/M	W/F	Jasper	14	3/30/1991		Executed
84	Charping, Michael	W/M	W/F	Lexington	11	4/29/1991	9/23/1996	Life Imprisonment
85	Ray, Johnny, Jr.	W/M	W/F	Spartanburg	7	5/1/1991	1/20/1994	Life Imprisonment
86	Von Dohlen, Herman	W/M	W/M	Berkeley	9	5/28/1991		Life Imprisonment
87	Rocheville, David	W/M	W/M	Spartanburg	7	7/15/1991		Executed
88	Longworth, Richard	W/M	W/M	Spartanburg	7	9/10/1991 ¹²		Executed

APPENDIX A*							
South Carolina Death Sentences - List of Those Sentenced to Death 1977-2015							
Name	Defendant Race	Victim Race	County of Conviction	Circuit of Conviction	Original Sentence Date	Sentence Date After Reversal	Final Result
		W/M	Spartanburg	7	9/10/1991 ¹²		
89 Hall, Larry Eugene	W/M	2 W/F	Pickens	13	1/28/1992 ⁸		Life Imprisonment
90 Southerland, Robert	W/M	W/F	Lexington	11	3/9/1992		Life Imprisonment
91 Franklin, Ellis	B/M	W/F	Williamsburg	3	1/22/1993		Life Imprisonment
92 Holmes, Bobby Lee	B/M	B/F	York	16	4/20/1993	3/28/2001	Life Imprisonment
93 Nance, Robert Lee	B/M	W/F	Florence	12	6/25/1993		Life Imprisonment
94 Hudgins, Joseph	W/M (16)	W/M	Anderson	10	7/27/1993		Life Imprisonment
95 Tucker, Richard	B/M	W/F	Spartanburg	7	10/28/1993		Life Imprisonment
96 Williams, Luke, III	W/M	W/F W/M	Edgefield	11	11/23/1993		Executed
97 Tucker, James N.	W/M	W/F W/F	Calhoun Sumter	1 3	12/8/1993 12/16/1994	7/17/1996	Executed (Sumter County)
98 George, Ricky	B/M	W/M	Horry	15	1/20/1994		Life Imprisonment
99 McWee, Jerry	W/M	W/M	Aiken	2	1/23/1994		Executed
100 Conners, Robert	B/M (16)	W/F	Clarendon	3	2/17/1994		Life Imprisonment
101 Whipple, James	W/M	W/F	Horry	15	2/18/1994		Life Imprisonment
102 Rogers, Timothy D.	B/M	W/F	Dorchester	1	3/5/1994	12/1/1996	50 Year Sentence
103 Humphries, Shawn	W/M	W/M	Greenville	13	8/9/1994		Executed
104 Simpson, Keith L.	B/M	W/M	Spartanburg	7	9/20/1994		Life Imprisonment
105 Ivey, Thomas	B/M	W/M W/M	Orangeburg Orangeburg	1 1	1/20/1995 7/17/1995		Executed
106 Byram, Jason	W/M	W/F	Richland	5	3/9/1995		Executed
107 Kelly, Theodore	B/M	B/ M	Spartanburg	7	8/14/1995		Life Imprisonment
108 Hughes, Herman	B/M (17)	W/M	Calhoun	1	9/12/1995		Life Imprisonment
109 Hughes, Mar-Reece	B/M	W/M	York	16	9/22/1995 ¹³		Pending
110 Bennett, Johnny	B/M	B/M	Lexington	11	10/19/1995	7/16/2000	Pending
111 Hill, David Clayton	W/M	W/M	Georgetown	15	10/31/1995		Executed
112 Gardner, Joseph	B/M	W/F	Dorchester	1	12/13/1995		Executed
113 Powers, Ted	W/M (17)	W/F	Lexington	11	2/23/1996		Life Imprisonment
114 Johnson, Roger Dale	W/M	W/F	Calhoun	1	2/27/1996		Died on Death Row
115 Rosemond, Andre	B/M	W/F	Spartanburg	7	3/30/1996		Life Imprisonment
116 Ard, Joseph	W/M	W/F &	Lexington	11	4/25/1996		Released
117 Hicks, William	B/M	W/M	Aiken	2	4/30/1996		30 Year Sentence
118 Reed, James Earl	B/M	B/F B/	Charleston	9	6/9/1996		Executed
119 Huggins, Titus	B/M	W/M	Horry	15	9/12/1996		Life Imprisonment
120 Council, Donnie	B/M	W/F	Aiken	2	10/23/1996		Pending Resentencing
121 Stone, Bobby Wayne	W/M	W/M	Sumter	3	1/28/1997	2/27/2005	Pending
122 Williams, George Allen	B/M	B/F	Lexington	11	2/7/1997		Died on Death Row
123 Starnes, Norman	W/M	W/M	Lexington	11	4/25/1997	11/17/2007	Pending
124 Terry, Gary	W/M	B/F	Lexington	11	9/21/1997		Pending
125 Hughey, John	B/M	B/F	Abbeville	8	10/30/1997		Pending
126 Shafer, Wesley	W/M	W/M	Union	16	1/21/1998		Life Imprisonment
127 Quattlebaum, Robert Joseph	W/M	W/M	Lexington	11	3/4/1998		Life Imprisonment
128 McClure, David, Jr.	W/M	W/M	Barnwell	2	4/29/1998		Life Imprisonment
129 Aleksey, Bavan	B/M	B/M	Orangeburg	1	9/1/1998		Pending
130 Kelly, William	W/M (17)	W/M	Lexington	11	9/19/1998		Life Imprisonment
131 Locklair, Jimmy	W/M	W/F	Spartanburg	7	9/22/1998		Life Imprisonment
132 Jones, Jeffrey L.	B/M	W/F W/M	Lexington	11	11/10/1998	3/14/2007	Life Imprisonment
133 Shuler, Calvin	B/M	W/M	Dorchester	1	11/12/1998		Executed

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South Carolina Death Sentences - List of Those Sentenced to Death 1977-2015								
	Name	Defendant Race	Victim Race	County of Conviction	Circuit of Conviction	Original Sentence Date	Sentence Date After Reversal	Final Result
134	Owens, Freddie	B/M	B/F	Greenville	13	2/17/1999	2/14/2003 11/11/2006	Pending
135	Simmons, Kenneth	B/M	B/F	Dorchester	1	3/2/1999		Pending
136	Robertson, James	W/M	W/F W/M	York	16	3/26/1999		Pending
137	Weik, John Edward	W/M	W/F	Dorchester	1	5/29/1999		Pending
138	Stokes, Samuel Louis	B/M	W/F	Orangeburg	1	10/31/1999		Pending
139	Hill, David Mark	W/M	W/M W/F B/F	Aiken	2	2/14/2000		Executed
140	Burkhardt, Troy Alan	W/M	2W/M 1W/F	Anderson	10	3/18/2000	3/31/2004	Life Imprisonment
141	Tench, Christopher Dale	W/M	W/M	Anderson	10	5/8/2000		Died on Death Row
142	Passaro, Michael	W/M	W/F	Horry	15	8/17/2000		Executed
143	Wise, Arthur Hastings	B/M	1W/F 3W/M	Aiken	2	2/1/2001		Executed
144	Haselden, Jeffrey	W/M	W/M	Lexington	11	2/13/2001		Life Imprisonment
145	Shuler, Charles	W/M	3W/F	Orangeburg	1	3/22/2001		Died on Death Row
146	Bryant, James Nathaniel	B/M	W/M	Horry	15	6/25/2001	10/9/2004	Pending
147	Crisp, Demiona	W/M	2B/M	Anderson	10	10/19/2001		Life Imprisonment
148	Lancey, Michael	W/M	2B/F	Greenville	13	10/19/2001		Life Imprisonment
149	Moore, Richard Bernard	B/M	W/M	Spartanburg	7	10/22/2001		Pending
150	Wood, John Richard	W/M	W/M	Greenville	13	2/16/2002		Pending
151	Bowman, Marion	B/M	W/F	Dorchester	1	5/23/2002		Pending
152	Downs, William, Jr.	W/M	W/M	Aiken	2	6/27/2002		Executed
153	Sigmon, Brad Keith	W/M	W/M W/F	Greenville	13	7/21/2002		Pending
154	Binney, Johnathan Kyle	W/M	W/F	Cherokee	7	11/14/2002		Pending
155	Sapp, Jesse Waylon	W/M	W/M	Berkeley	9	5/19/2003		Died on Death Row
156	Vasquez, Angel Joe Pierre	B/M	W/M B/M	Horry	15	10/5/2003		Life Imprisonment
157	Roberts, Tyree Alfonso aka: Abdyyah ben Alkeshulmullah	B/M	W/M B/M	Beaufort	14	10/22/2003		Pending
158	Norheutt, Clinton	W/M	W/F	Lexington	11	11/14/2003	6/18/2009	Pending
159	Morgan, Eric Dale	W/M	W/M	Spartanburg	7	3/9/2004		Life Imprisonment
160	Lindsey, Marion	B/M	W/F	Spartanburg	7	5/24/2004		Pending
161	Evans, Kamell Delshawn	B/M	W/M W/M	Greenville	13	9/21/2004		Pending
162	Evins, Fredrick	B/M	W/F	Spartanburg	7	11/19/2004		Life Imprisonment
163	Williams, Charles Christopher	B/M	W/F	Greenville	13	2/19/2005		Pending
164	Allen, Quincy	B/M	W/M B/F	Richland	5	3/18/2005		Pending
165	Cottrell, Luzenski Allen	B/M	W/M	Horry	15	4/6/2005	9/27/2014	Pending
166	Mercer, Kevin	B/M	B/M	Lexington	11	4/22/2006		Pending Resentencing
167	Stanko, Stephen	W/M	W/F W/M	Georgetown Horry	15 15	8/18/2006 11/19/2009		Pending
168	Mahdi, Mikal D.	B/M	W/M	Calhoun	1	12/8/2006		Pending
169	Woods, Anthony	B/M	W/F	Clarendon	3	12/8/2006		Pending
170	Bixby, Steven Vernon	W/M	W/M B/M	Greenwood	8	2/21/2007 ¹⁴		Pending
171	Finklea, Ron Oneal	B/M	B/M	Lexington	11	9/6/2007		Pending
172	Motts, Jeffrey Brian	W/M	W/M	Greenville	13	12/4/2007		Executed
173	Winkler, Louis Michael	W/M	W/F	Horry	15	2/7/2008		Pending

APPENDIX A*							
South Carolina Death Sentences - List of Those Sentenced to Death 1977-2015							
Name	Defendant Race	Victim Race	County of Conviction	Circuit of Conviction	Original Sentence Date	Sentence Date After Reversal	Final Result
174	Bryant, Stephen C.	W/M	W/M W/M B/M	Sumter	3	9/11/2008	Pending
175	Torres, Andres Antonio	H/M	W/M W/F	Spartanburg	7	10/23/2008	Pending
176	Justus, Kenneth H.	W/M	W/M	Dorchester	1	12/23/2008	Died on Death Row
177	Inman, Jerry "Buck"	W/M	W/F	Pickens	13	4/22/2009	Pending
178	Dickerson, William Jr.	B/M	B/M	Charleston	9	5/7/2009	Pending
179	Rivers, Raymondze	B/M	B/F	Anderson	10	2/18/2010	Life Imprisonment
180	Barnes, Steven	B/M	B/M	Edgefield	11	11/17/2010	Pending Retrial
181	Blackwell, Ricky Lee	W/M	W/F	Spartanburg	7	3/16/2014	Pending

* The information in Appendix A was obtained from the reports completed by the trial judge in all cases in which a death sentence was imposed as required by S.C. Code § 16-3-25(A). *See also State v. Shaw*, 273 S.C. 194, 219-42, 255 S.E.2d 799, 811-28 (1979) (including a template of the report as Appendix B to the opinion). Copies of the sentencing reports are on file with the authors.

LEGEND FOR APPENDIX A:

¹ Tried in Chester County
² Jury from Newberry County
³ Tried in Union County
⁴ Tried in Sumter County
⁵ Jury from Greenwood County
⁶ Tried in Berkeley County
⁷ Tried in Pickens County
⁸ Tried in Kershaw
⁹ Jury from Lancaster County
¹⁰ Tried in Aiken County
¹¹ Jury from Florence County
¹² Jury from York County
¹³ Jury from Aiken County
¹⁴ Jury from Chesterfield County

TOTALS FOR APPENDIX A:

Race/Gender	#	%
Black defendants sentenced to death	86	47.51%
White defendants sentenced to death	93	51.38%
Hispanic defendants sentenced to death	1	0.55%
Native Americans sentenced to death	1	0.55%
Defendants sentenced to death for killing black victims	33	17.65%
Defendants sentenced to death for killing white victims	151	80.75%
Defendants sentenced to death for killing Asian victims	3	1.60%
Black Defendants/White Victims	63	33.69%
Black Defendants/Black Victims	22	11.76%
Black Defendant/Asian Victim	2	1.07%
White Defendants/White Victims	86	45.99%
White Defendants/Black Victims	11	5.88%
White Defendant/Asian Victim	1	0.53%
Hispanic Defendant/White Victim	1	0.53%
Native American Defendant/White Victim	1	0.53%
Male defendants	180	99.45%
Female defendants	1	0.55%
Male Defendants/Female Victims	99	52.94%
Male Defendants/Male Victims	87	46.52%
Female Defendant/Male Victim	1	0.53%

APPENDIX B*					
South Carolina's Current Death Row					
(As of 12/31/2015)					
Name	Defendant Race	Victim Race	County	Original Sentence Date	Time on Death Row (years)
1 Singleton, Fred	B/M	W/F	Newberry	9/17/1983	32.31
2 Jones, Donald Allen	B/M	W/F	Lancaster	2/8/1984	31.92
3 Bell, William Henry, Jr.	B/M	W/M	Anderson	3/14/1989	26.82
4 Wilson, James William	W/M	2B/F	Greenwood	5/9/1989	26.66
5 Sims, Mitchell	W/M	W/M	Berkeley	5/13/1989	26.65
6 Hughes, Mar-Reece	B/M	W/M	York	9/22/1995	20.29
7 Bennett, Johnny	B/M	B/M	Lexington	10/19/1995	20.21
8 Council, Donnie	B/M	W/F	Aiken	10/23/1996	19.20
9 Stone, Bobby Wayne	W/M	W/M	Sumter	1/28/1997	18.93
10 Starnes, Norman	W/M	W/M	Lexington	4/25/1997	18.70
11 Terry, Gary	W/M	B/F	Lexington	9/21/1997	18.29
12 Hughey, John Kennedy	B/M	2B/F	Abbeville	10/30/1997	18.18
13 Aleksey, Bayan	B/M	B/M	Orangeburg	9/1/1998	17.34
14 Owens, Freddie	B/M	B/F	Greenville	2/17/1999	16.88
15 Simmons, Kenneth	B/M	B/F	Dorchester	3/2/1999	16.84
16 Robertson, James	W/M	W/M	York	3/27/1999	16.78
17 Weik, John Edward	W/M	W/F	Dorchester	6/21/1999	16.54
18 Stokes, Sammie Louis	B/M	W/F	Orangeburg	10/31/1999	16.18
19 Bryant, James Nathaniel	B/M	W/M	Horry	6/25/2001	14.53
20 Moore, Richard Bernard	B/M	W/M	Spartanburg	10/23/2001	14.20
21 Wood, John Richard	W/M	W/M	Greenville	2/16/2002	13.88
22 Bowman, Marion, Jr.	B/M	W/F	Dorchester	5/23/2002	13.62
23 Sigmon, Brad Keith	W/M	W/M	Greenville	7/21/2002	13.45
24 Binney, Johnathan Kyle	W/M	W/F	Cherokee	11/14/2002	13.14
25 Roberts, Tyree Alfonso (aka Abdiyyah ben Alkebulanyahh)	B/M	W/M	Beaufort	10/22/2003	12.20
26 Northcutt, Clinton Robert	W/M	W/F	Lexington	11/14/2003	12.14
27 Lindsey, Marion	B/M	W/F	Spartanburg	5/24/2004	11.61
28 Evans, Kamell Delshawn	B/M	2 W/M	Greenville	9/21/2004	11.28
29 Williams, Charles Christopher	B/M	W/F	Greenville	2/18/2005	10.87
30 Allen, Quincy	B/M	W/M	Richland	3/21/2005	10.79
31 Cottrell, Luzenski Allen	B/M	W/M	Horry	4/6/2005	10.74
32 Mercer, Kevin Jermaine	B/M	B/M	Lexington	4/22/2006	9.70

APPENDIX B*					
South Carolina's Current Death Row					
(As of 12/31/2015)					
Name	Defendant Race	Victim Race	County	Original Sentence Date	Time on Death Row (years)
33 Stanko, Stephen	W/M	W/F	Georgetown	8/18/2006	9.38
		W/M	Horry	11/19/2009	
34 Mahdi, Mikal D.	B/M	W/M	Calhoun	12/8/2006	9.07
35 Woods, Anthony	B/M	W/F	Clarendon	12/8/2006	9.07
36 Bixby, Steven Vernon	W/M	W/M	Greenwood	2/21/2007	8.86
37 Finklea, Ron Oneal	B/M	B/M	Lexington	9/6/2007	8.32
38 <i>Winkler, Louis Michael</i>	W/M	W/F	<i>Horry</i>	2/8/2008	7.90
39 Bryant, Stephen C.	W/M	2W/M 1B/M	Sumter	9/11/2008	7.31
40 Torres, Andres Antonio	H/M	W/M	Spartanburg	10/23/2008	7.19
41 Inman, Jerry "Buck"	W/M	W/F	Pickens	4/22/2009	6.70
42 Dickerson, William, Jr.	B/M	B/M	Charleston	5/7/2009	6.65
43 <i>Barnes, Steven</i>	B/M	B/M	<i>Edgefield</i>	11/17/2010	5.12
44 Blackwell, Ricky Lee	W/M	W/F	Spartanburg	3/17/2014	1.79

* The information in Appendix B was obtained by comparing the information in Appendix A, Appendix C, Appendix E, Appedix F and information about relief granted in other proceedings maintained by Justic 360 and the authors. Cases in *italics* indicate the individual has been granted either guilt or penalty phase relief. These cases are either pending retrial or resentencing or have been appealed by the State to a higher court and the appeal remains pending.

TOTALS:

Race/Gender	#	%
Black Defendants	26	57.78%
White Defendants	18	40.00%
Hispanic Defendants	1	2.22%
Defendants sentenced to death for killing black victims	11	23.91%
Defendants sentenced to death for killing white victims	35	76.09%
Black Defendants/White Victims	17	36.96%
Black Defendants/Black Victims	9	19.57%
White Defendants/White Victims	17	36.96%
White Defendants/Black Victims	2	4.35%
Hispanic Defendant/White Victim	1	2.17%
Male defendants	45	100.00%
Female defendants	0	0.00%
Male Defendants/Female Victims	24	52.17%
Male Defendants/Male Victims	22	47.83%

APPENDIX C*									
South Carolina Executions - List of Those Executed 1976-2015									
Name	Defendant Race & Sex	Victim Race & Sex	County of Conviction	Original Sentence Date	Execution Date	Time on Death Row (years)	Execution Method	Other	
1	Shaw, Joseph Carl	W/M	W/F W/M	Richland	12/16/1977	1/11/1985	7.08	Electrocution	
2	Roach, James Terry	W/M	W/F W/M	Richland	12/16/1977	1/10/1986	8.07	Electrocution	Juvenile
3	Woomer, Ronald	W/M	W/F	Horry	7/20/1979	4/27/1990	10.78	Electrocution	
4	Gaskins, Donald Henry	W/M	B/M	Richland	3/26/1983	9/6/1991	8.45	Electrocution	
5	Adams, Sylvester	B/M	B/M	York	3/3/1980	8/18/1995	15.47	Lethal Injection	Intellectually Disabled
6	South, Robert	W/M	W/M	Lexington	11/17/1983	5/31/1996	12.55	Lethal Injection	Volunteer
7	Kornahrens, Fred	W/M	W/F 2W/M	Charleston	11/19/1985	7/19/1996	10.67	Lethal Injection	
8	Torrence, Michael	W/M	W/M	Lexington	5/28/1988	9/6/1996	8.28	Lethal Injection	Volunteer
9	Bell, Larry Gene	W/M	W/F	Saluda	2/27/1986	10/4/1996	10.61	Electrocution	Competency to be executed
10	Lucas, Doyle Cecil	W/M	W/F W/M	York	7/27/1983	11/15/1996	13.32	Lethal Injection	Volunteer
11	Middleton, Frank	B/M	B/F	Charleston	2/4/1985	11/22/1996	11.81	Lethal Injection	Intellectually Disabled
12	Elkins, Michael	W/M	W/F	Jasper	3/30/1991	6/13/1997	6.21	Lethal Injection	Volunteer
13	Matthews, Earl	B/M	W/F	Charleston	5/13/1985	11/7/1997	12.50	Lethal Injection	
14	Arnold, John	W/M	B/F	Beaufort	2/9/1979	3/6/1998	19.08	Lethal Injection	
15	Plath, John	W/M	B/F	Beaufort	2/9/1979	7/10/1998	19.43	Lethal Injection	
16	Roberts, Sammy David	W/M	2W/M B/M	Berkeley	1/19/1981	9/25/1998	17.69	Lethal Injection	
17	Gleaton, J.D.	B/M	W/M	Lexington	10/7/1977	12/4/1998	21.17	Lethal Injection	
18	Gilbert, Larry	B/M	W/M	Lexington	10/7/1977	12/4/1998	21.17	Lethal Injection	Evidence of Intellectual Disability
19	Truesdale, Louis	B/M	W/F	Lancaster	12/11/1980	12/11/1998	18.01	Lethal Injection	
20	Smith, Andy Lavern	B/M	B/F B/M	Anderson	1/17/1984	12/18/1998	14.93	Lethal Injection	
21	Howard, Ronnie	B/M	Asian/F	Greenville	6/15/1986	1/8/1999	12.58	Lethal Injection	
22	Atkins, Joseph	NA/M	B/F W/M	Charleston	6/28/1986	1/22/1999	12.58	Lethal Injection	
23	Drayton, Leroy	B/M	W/F	Charleston	10/8/1984	11/12/1999	15.10	Lethal Injection	
24	Rocheville, David	W/M	W/M	Spartanburg	7/15/1991	12/3/1999	8.39	Lethal Injection	
25	Young, Kevin Dean	B/M	W/M	Anderson	5/22/1989	11/3/2000	11.46	Lethal Injection	
26	Johnson, Richard	W/M	B/M	Jasper	2/15/1986	5/3/2002	16.22	Lethal Injection	
27	Green, Anthony	B/M	W/F	Charleston	10/1/1988	8/23/2002	13.90	Lethal Injection	
28	Passaro, Michael	W/M	W/F	Horry	8/17/2000	9/13/2002	2.07	Lethal Injection	Volunteer
29	Hill, David Clayton	W/M	W/M	Georgetown	10/31/1995	3/19/2004	8.39	Lethal Injection	
30	McWee, Jerry	W/M	W/M	Aiken	1/23/1994	4/16/2004	10.24	Lethal Injection	
31	Byram, Jason	W/M	W/F	Richland	3/9/1995	4/23/2004	9.13	Lethal Injection	
32	Tucker, James N.	W/M	W/F	Sumter	12/8/1993	5/28/2004	10.48	Electrocution	
33	Longworth, Richard	W/M	2 W/M	Spartanburg	9/10/1991	4/15/2005	13.61	Lethal Injection	
34	Wise, Arthur Hastings	B/M	1 W/F 3 W/M	Aiken	2/1/2001	11/4/2005	4.76	Lethal Injection	Volunteer
35	Humphries, Shawn	W/M	W/M	Greenville	8/9/1994	12/2/2005	11.32	Lethal Injection	
36	Downs, William, Jr.	W/M	B/M	Aiken	6/27/2002	7/14/2006	4.05	Lethal Injection	Volunteer
37	Shuler, Calvin Alphonso	B/M	W/M	Dorchester	11/12/1998	6/22/2007	8.61	Lethal Injection	
38	Hill, David Mark	W/M	W/M W/F B/F	Aiken	2/14/2000	6/6/2008	8.32	Lethal Injection	Volunteer
39	Reed, James Earl	B/M	B/M B/F	Charleston	6/9/1996	6/20/2008	12.04	Electrocution	Volunteer
40	Gardner, Joseph	B/M	W/F	Dorchester	12/13/1995	12/5/2008	12.99	Lethal Injection	

APPENDIX C*								
South Carolina Executions - List of Those Executed								
1976-2015								
Name	Defendant Race & Sex	Victim Race & Sex	County of Conviction	Original Sentence Date	Execution Date	Time on Death Row (years)	Execution Method	Other
41 Williams, Luke, III	W/M	W/F W/M	Edgefield	11/23/1993	2/20/2009	15.25	Lethal Injection	
42 Ivey, Thomas	B/M	W/M W/M	Orangeburg	1/20/1995	5/8/2009	14.31	Lethal Injection	
43 Motts, Jeffrey Brian	W/M	W/M	Greenville	12/4/2007	5/6/2011	3.42	Lethal Injection	Volunteer

* The information in Appendix C has been systematically maintained by Justice 360 and the authors since the first modern South Carolina execution in 1985. It was confirmed by a similar list maintained by the Death Penalty Information Center (www.deathpenaltyinfo.org).

TOTALS:

Race/Gender	#	%
Black Defendants	16	37.21%
White Defendants	26	60.47%
Native American Defendants	1	2.33%
Defendants sentenced to death for killing black victims	10	23.26%
Defendants sentenced to death for killing white victims	32	74.42%
Defendants sentenced to death for killing Asian victims	1	2.33%
Black Defendants/White Victims	11	25.58%
Black Defendants/Black Victims	4	9.30%
Black Defendant/Asian Victim	1	2.33%
White Defendants/White Victims	20	46.51%
White Defendants/Black Victims	6	13.95%
Native American Defendant/White Victim	1	2.33%
Male defendants	43	100.00%
Female defendants	0	0.00%
Male Defendants/Female Victims	25	58.14%
Male Defendants/Male Victims	18	41.86%

APPENDIX D*																									
South Carolina Death Sentences (Listed by Aggravating Circumstances) 1977-2015																									
Name	Sentence Date	Rape/SC	Assault - Ravish**	Kidnaping	Armed Robbery	Burglary	Armed Larceny	Home Breaking**	Drugs/ Trafficking	Poison	Torture	Disembowelment	Arson	Priest Murder	Monetary Value	Judicial Officer	Agent	Law Enforcement	Law or Judicial Officer/ Family	2 Murders	Child <11	Whites	SVP	Total	
Tucker, Richard	10/28/199	x		x		x										x									4
Tyner, Rudolph	8/11/1978						x																		1
Tyner, Rudolph	10/11/198						x																		1
Vasquez, Angel Joe Pierre	10/5/2003			x			x													x					3
Victor, William Keith	10/1/1988			x																					1
Von Dohlen, Herman	5/28/1991						x																		1
Weik, John Edward	5/29/1999					x					x														2
Weldon, Dana	6/15/1986			x			x																		2
West, Floyd	10/21/198						x																		1
Whipple, James	2/18/1994	x					x																		2
Williams, Charles	2/19/2005			x																					1
Williams, George Allen	2/7/1997					x	x																		2
Williams, Luke, III	11/23/199															x					x				2
Wilson, James William	5/9/1989																			x	x				2
Winkler, Louis Michael	2/7/2008					x																x			2
Wise, Arthur Hastings	2/1/2001					x														x					1
Wood, John Richard	2/16/2002																	x							2
Woods, Anthony	12/8/2006	x				x																			2
Woods, Stanley Eugene	1983						x				x														2
Woomer, Ronald (Horry)	7/20/1979	x		x																					2
Woomer, Ronald (Colleton)	6/7/1981							Ins								x									2
Woomer, Ronald (Horry)	7/23/1981	x		x																					2
Yates, Dale Roberts	5/2/1981						x																		1
Young, Kevin Dean	5/22/1989						x																		1
Young, Kevin Dean	6/12/1993						x																		1
Total Per Aggravating		4	3	7	0	4	11	4	9	1	0	3	0	1	1	1	1	1	4	2	0	3	1	1	0

Total Number of Single Agg. Cases: 83
Average Number of Aggs. Per Case: 2.05

* The information in Appendix D was obtained from the reports completed by the trial judge in all cases in which a death sentence was imposed as required by S.C. Code § 16-3-25(A). See also *State v. Shaw*, 273 S.C. 194, 219–42, 255 S.E.2d 799, 811–28 (1979) (including a template of the report as Appendix B to the opinion). Copies of the sentencing reports are on file with the authors.

** Aggravating circumstances removed from earlier version of the S.C. Code § 16-3-20.

APPENDIX E*	
South Carolina Capital Direct Appeal Cases 1977-2015	
Case Name	Result
<i>State v. Gill</i> , 273 S.C. 190, 255 S.E.2d 455 (1979)	Reversed-NT ¹
<i>State v. Shaw</i> , 273 S.C. 194, 255 S.E.2d 799 (1979), <i>cert denied</i> , 444 U.S. 957 (1979) ²	Affirmed ³
<i>State v. Tyner</i> , 273 S.C. 646, 258 S.E.2d 559 (1979)	Reversed-S ⁴
<i>State v. Gilbert</i> , 273 S.C. 690, 258 S.E.2d 890 (1979) ⁵	Reversed-S
<i>State v. Goolsby</i> , 275 S.C. 110, 268 S.E.2d 31 (1980), <i>cert. denied</i> , 449 U.S. 1037 (1980)	Reversed-S
<i>State v. Woomer</i> , 276 S.C. 258, 277 S.E.2d 696 (1981)	Reversed-S
<i>State v. Linder</i> , 276 S.C. 304, 278 S.E.2d 335 (1981)	Reversed-NT
<i>State v. Hyman</i> , 276 S.C. 559, 281 S.E.2d 209 (1981), <i>cert. denied</i> , 459 U.S. 1122 (1982)	Affirmed
<i>State v. Gilbert</i> , 277 S.C. 53, 283 S.E.2d 179 (1981), <i>cert. denied</i> , 456 U.S. 984 (1982) ⁶	Affirmed
<i>State v. Adams</i> , 277 S.C. 115, 283 S.E.2d 582 (1981)	Reversed-NT
<i>State v. Plath</i> , 277 S.C. 126, 284 S.E.2d 221 (1981) ⁷	Reversed-S
<i>State v. Woomer</i> , 277 S.C. 170, 284 S.E.2d 357 (1981)	Reversed-NT
<i>State v. (James) Butler</i> , 277 S.C. 543, 290 S.E.2d 420 (1982)	Reversed-NT
<i>State v. Thompson</i> , 278 S.C. 1, 292 S.E.2d 581 (1982), <i>cert. denied</i> , 456 U.S. 938 (1982)	Affirmed
<i>State v. (Wardell) Patterson</i> , 278 S.C. 319, 295 S.E.2d 264 (1982)	Reversed-NT
<i>State v. Truesdale</i> , 278 S.C. 368, 296 S.E.2d 528 (1982)	Reversed-NT
<i>State v. (Horace) Butler</i> , 277 S.C. 452, 290 S.E.2d 1 (1982), <i>cert denied</i> , 459 U.S. 932 (1982)	Affirmed
<i>State v. Sloan</i> , 278 S.C. 435, 298 S.E.2d 92 (1982)	Reversed-NT
<i>State v. Woomer</i> , 278 S.C. 468, 299 S.E.2d 317 (1982), <i>cert. denied</i> , 463 U.S. 1229 (1983)	Affirmed
<i>State v. Smart</i> , 278 S.C. 515, 299 S.E.2d 686 (1982), <i>cert. denied</i> , 460 U.S. 1088 (1983)	Reversed-S
<i>State v. Koon</i> , 278 S.C. 528, 298 S.E.2d 769 (1982)	Reversed-S
<i>State v. Copeland</i> , 278 S.C. 572, 300 S.E.2d 63 (1982), <i>cert denied</i> , 460 U.S. 1103 (1983) ⁸	Affirmed
<i>State v. Adams</i> , 279 S.C. 228, 306 S.E.2d 208 (1983), <i>cert. denied</i> , 464 U.S. 1023 (1983)	Affirmed
<i>State v. Spann</i> , 279 S.C. 399, 308 S.E.2d 518 (1983), <i>cert. denied</i> , 466 U.S. 947 (1984)	Affirmed
<i>State v. Elmore</i> , 279 S.C. 417, 308 S.E.2d 781 (1983)	Reversed-NT
<i>State v. Plath</i> , 281 S.C. 1, 313 S.E.2d 619 (1984) ⁹	Affirmed
<i>State v. Yates</i> , 280 S.C. 29, 310 S.E.2d 805 (1982), <i>cert. denied</i> , 462 U.S. 1124 (1983)	Affirmed
<i>State v. (Stanley) Woods</i> , 282 S.C. 18, 316 S.E.2d 673 (1984)	Reversed-NT
<i>State v. Stewart</i> , 283 S.C. 104, 320 S.E.2d 447 (1984)	Reversed-S
<i>State v. Gaskins</i> , 284 S.C. 105, 326 S.E.2d 132 (1985), <i>cert. denied</i> , 471 U.S. 1120 (1985)	Affirmed
<i>State v. Singleton</i> , 284 S.C. 388, 326 S.E.2d 153 (1985), <i>cert. denied</i> , 471 U.S. 1111 (1985)	Affirmed

APPENDIX E*	
South Carolina Capital Direct Appeal Cases 1977-2015	
Case Name	Result
<i>State v. Koon</i> , 285 S.C. 1, 328 S.E.2d 625 (1985), <i>cert. denied</i> , 471 U.S. 1036 (1985)	Affirmed
<i>State v. (Wardell) Patterson</i> , 285 S.C. 5, 327 S.E.2d 650 (1984), <i>cert. denied</i> , 471 U.S. 1036 (1985)	Affirmed
<i>State v. Truesdale</i> , 285 S.C. 13, 328 S.E.2d 53 (1984), <i>cert. denied</i> , 471 U.S. 1009 (1985)	Affirmed
<i>State v. Chaffee</i> , 285 S.C. 21, 328 S.E.2d 464 (1984), <i>cert. denied</i> , 471 U.S. 1009 (1985) ¹⁰	Affirmed
<i>State v. Lucas</i> , 285 S.C. 37, 328 S.E.2d 63 (1985), <i>cert. denied</i> , 472 U.S. 1012 (1985)	Affirmed
<i>State v. Skipper</i> , 285 S.C. 42, 328 S.E.2d 58 (1985), <i>rev'd</i> , 476 U.S. 1 (1986)	Affirmed
<i>State v. Norris</i> , 285 S.C. 86, 328 S.E.2d 339 (1985)	Reversed-S
<i>State v. Damon</i> , 285 S.C. 125, 328 S.E.2d 628 (1985), <i>cert. denied</i> , 474 U.S. 865 (1985)	Affirmed
<i>State v. South</i> , 285 S.C. 529, 331 S.E.2d 775 (1985), <i>cert. denied</i> , 474 U.S. 888 (1985)	Affirmed
<i>State v. Elmore</i> , 286 S.C. 70, 332 S.E.2d 762 (1985), <i>rev'd in part and remanded</i> , 476 U.S. 1101 (1986) (per curiam)	Affirmed
<i>State v. Plemmons</i> , 286 S.C. 78, 332 S.E.2d 765 (1985), <i>rev'd in part and remanded</i> , 476 U.S. 1102 (1986) (per curiam)	Affirmed
<i>State v. (Andrew Lavern) Smith</i> , 286 S.C. 406, 334 S.E.2d 277 (1985), <i>cert. denied</i> , 475 U.S. 1031 (1986)	Affirmed
<i>State v. Drayton</i> , 287 S.C. 226, 337 S.E.2d 216 (1985)	Reversed-NT
<i>State v. Peterson</i> , 287 S.C. 244, 335 S.E.2d 800 (1985) ¹¹	Reversed-NT
<i>State v. (Donald) Jones</i> , 288 S.C. 1, 340 S.E.2d 782 (1985), <i>rev'd on other grounds</i> , 479 U.S. 102 (1986) (per curiam)	Affirmed
<i>State v. Middleton</i> , 288 S.C. 21, 339 S.E.2d 692 (1986)	Reversed-NT
<i>State v. Stewart</i> , 288 S.C. 232, 361 S.E.2d 789 (1986)	Reversed-S
<i>State v. Patrick</i> , 289 S.C. 301, 345 S.E.2d 481 (1986)	Reversed-S
<i>State v. Pierce</i> , 289 S.C. 430, 346 S.E.2d 707 (1986)	Reversed-NT
<i>State v. Brown</i> , 289 S.C. 581, 347 S.E.2d 882 (1986)	Reversed-NT
<i>State v. Kornahrens</i> , 290 S.C. 281, 350 S.E.2d 180 (1986), <i>cert. denied</i> , 480 U.S. 940 (1987)	Affirmed
<i>State v. Arthur</i> , 290 S.C. 291, 350 S.E.2d 187 (1986)	Reversed-S
<i>State v. (Raymond) Patterson</i> , 290 S.C. 523, 351 S.E.2d 853 (1986), <i>cert. denied</i> , 482 U.S. 902 (1987)	Reversed-S
<i>State v. Riddle</i> , 291 S.C. 232, 353 S.E.2d 138 (1987)	Reversed-S
<i>State v. (Kamathene) Cooper</i> , 291 S.C. 332, 353 S.E.2d 441 (1986)	Reversed-NT
<i>State v. Matthews</i> , 291 S.C. 339, 353 S.E.2d 444 (1986)	Reversed-S
<i>State v. Hawkins</i> , 292 S.C. 418, 357 S.E.2d 10 (1987)	Reversed-NT
<i>State v. Bellamy</i> , 293 S.C. 103, 359 S.E.2d 63 (1987)	Reversed-NT
<i>State v. (Alvin) Owens</i> , 293 S.C. 161, 359 S.E.2d 275 (1987), <i>cert. denied</i> , 484 U.S. 982 (1987)	Affirmed
<i>State v. Atkins</i> , 293 S.C. 294, 360 S.E.2d 302 (1987)	Reversed-S
<i>State v. (Richard) Johnson</i> , 293 S.C. 321, 360 S.E.2d 317 (1987)	Reversed-NT

APPENDIX E*	
South Carolina Capital Direct Appeal Cases 1977-2015	
Case Name	Result
<i>State v. (Larry) Bell</i> , 293 S.C. 391, 360 S.E.2d 706 (1987), <i>cert. denied</i> , 484 U.S. 1020 (1988)	Affirmed
<i>State v. Drayton</i> , 293 S.C. 417, 361 S.E.2d 329 (1987), <i>cert. denied</i> , 484 U.S. 1079 (1988)	Affirmed
<i>State v. Reed</i> , 293 S.C. 515, 362 S.E.2d 13 (1987)	Reversed-S
<i>State v. Cockerham</i> , 294 S.C. 380, 365 S.E.2d 22 (1988)	Reversed-NT
<i>State v. Middleton</i> , 295 S.C. 318, 368 S.E.2d 457 (1988), <i>cert. denied</i> , 488 U.S. 872 (1988)	Affirmed
<i>State v. Howard</i> , 295 S.C. 462, 369 S.E.2d 132 (1988), <i>cert denied</i> , 490 U.S. 1113 (1989) ¹²	Reversed-S/Affirmed
<i>State v. Gathers</i> , 295 S.C. 476, 369 S.E.2d 140 (1988), <i>aff'd</i> , 490 U.S. 805 (1989)	Reversed-S
<i>State v. Plemmons</i> , 296 S.C. 76, 370 S.E.2d 871 (1988)	Reversed-S
<i>State v. Brown</i> , 296 S.C. 191, 371 S.E.2d 523 (1988)	Reversed-NT
<i>State v. Diddlemeyer</i> , 296 S.C. 235, 371 S.E.2d 793 (1988)	Reversed-NT
<i>State v. Matthews</i> , 296 S.C. 379, 373 S.E.2d 587 (1988), <i>cert. denied</i> , 489 U.S. 1091 (1989)	Affirmed
<i>State v. Arthur</i> , 296 S.C. 495, 374 S.E.2d 291 (1988)	Reversed-S
<i>State v. Cain</i> , 297 S.C. 497, 377 S.E.2d 556 (1988), <i>cert. denied</i> , 497 U.S. 1010 (1990)	Affirmed
<i>State v. (Donald) Jones</i> , 298 S.C. 118, 378 S.E.2d 594 (1989), <i>cert. denied</i> , 494 U.S. 1060 (1990)	Affirmed
<i>State v. (Andrew Lavern) Smith</i> , 298 S.C. 482, 381 S.E.2d 724 (1989), <i>cert. denied</i> , 494 U.S. 1060 (1990)	Affirmed
<i>State v. (Raymond) Patterson</i> , 299 S.C. 280, 384 S.E.2d 699 (1989), <i>vacated</i> , 493 U.S. 1013 (1991)	Affirmed
<i>State v. Elmore</i> , 300 S.C. 130, 386 S.E.2d 769 (1989), <i>cert. denied</i> , 496 U.S. 931 (1990)	Affirmed
<i>State v. Victor</i> , 300 S.C. 220, 387 S.E.2d 248 (1989)	Reversed-NT
<i>State v. Caldwell</i> , 300 S.C. 494, 388 S.E.2d 816 (1990)	Reversed-S
<i>State v. Riddle</i> , 301 S.C. 68, 389 S.E.2d 665 (1990)	Reversed-S
<i>State v. Truesdale</i> , 301 S.C. 347, 393 S.E.2d 168 (1990), <i>cert. denied</i> , 498 U.S. 1074 (1990)	Affirmed
<i>State v. Green</i> , 301 S.C. 347, 392 S.E.2d 157 (1990), <i>cert. denied</i> , 498 U.S. 881 (1990)	Affirmed
<i>State v. (Larry) Bell</i> , 302 S.C. 18, 393 S.E.2d 364 (1990), <i>cert. denied</i> , 498 U.S. 881 (1990)	Affirmed
<i>State v. (Raymond) Patterson</i> , 302 S.C. 384, 396 S.E.2d 366 (1990), <i>vacated</i> , 500 U.S. 950 (1991)	Affirmed
<i>State v. Atkins</i> , 303 S.C. 214, 399 S.E.2d 760 (1990), <i>cert. denied</i> , 501 U.S. 1259 (1991)	Affirmed
<i>State v. Orr</i> , 304 304 S.C. 185, 403 S.E.2d 623 (1991)	Reversed-NT
<i>State v. Sims</i> , 304 S.C. 409, 405 S.E.2d 377 (1991), <i>cert. denied</i> , 502 U.S. 1103 (1992)	Affirmed
<i>State v. (William) Bell</i> , 305 S.C. 11, 406 S.E.2d 165 (1991), <i>cert. denied</i> , 502 U.S. 1038 (1992)	Affirmed

APPENDIX E*	
South Carolina Capital Direct Appeal Cases 1977-2015	
Case Name	Result
<i>State v. Torrence</i> , 305 S.C. 45, 406 S.E.2d 315 (1991)	Reversed-S
<i>State v. Young</i> , 305 S.C. 380, 409 S.E.2d 352 (1991)	Reversed-S
<i>State v. Manning</i> , 305 S.C. 413, 409 S.E.2d 372 (1991), <i>cert. denied</i> , 503 U.S. 914 (1992)	Reversed-NT
<i>State v. (Richard) Johnson</i> , 306 S.C. 119, 410 S.E.2d 547 (1991), <i>cert. denied</i> , 503 U.S. 993 (1992)	Affirmed
<i>State v. (Wilbert Ray) Davis</i> , 306 S.C. 246, 411 S.E.2d 200 (1991)	Reversed-NT
<i>State v. Wilson</i> , 306 S.C. 498, 413 S.E.2d 19 (1992), <i>cert. denied</i> , 506 U.S. 846 (1992)	Affirmed
<i>State v. (Tommy Lee) Davis</i> , 309 S.C. 326, 422 S.E.2d 133 (1992), <i>cert. denied</i> , 508 U.S. 915 (1993)	Affirmed
<i>State v. (Rebecca) Smith</i> , 309 S.C. 442, 424 S.E.2d 496 (1992)	Reversed-NT
<i>State v. Rocheville</i> , 310 S.C. 20, 425 S.E.2d 32 (1993), <i>cert. denied</i> , 508 U.S. 978 (1993)	Affirmed
<i>State v. Ray</i> , 310 S.C. 431, 427 S.E.2d 171 (1993)	Reversed-S
<i>State v. (Jonathan) Simmons</i> , 310 S.C. 439, 427 S.E.2d 175 (1993), <i>rev'd</i> , 512 U.S. (1994)	Affirmed
<i>State v. (Gene Tony) Cooper</i> , 312 S.C. 90, 439 S.E.2d 276 (1994)	Reversed-NT
<i>State v. Hall</i> , 312 S.C. 95, 439 S.E.2d 278 (1994), <i>cert. denied</i> , 512 U.S. 1246 (1994)	Affirmed
<i>State v. Elkins</i> , 312 S.C. 541, 436 S.E.2d 178 (1993), <i>cert. denied</i> , 511 U.S. 1063 (1994)	Affirmed
<i>State v. Charping</i> , 313 S.C. 147, 437 S.E.2d 88 (1993)	Reversed-NT
<i>State v. Longworth</i> , 313 S.C. 360, 438 S.E.2d 219 (1993), <i>cert. denied</i> , 513 U.S. 831 (1994)	Affirmed
<i>State v. Riddle</i> , 314 S.C. 1, 443 S.E.2d 557 (1994), <i>cert. denied</i> , 513 U.S. 1003 (1994)	Affirmed
<i>State v. Southerland</i> , 316 S.C. 377, 447 S.E.2d 862 (1994), <i>cert. denied</i> , 513 U.S. 1166 (1995)	Affirmed
<i>State v. Franklin</i> , 318 S.C. 47, 456 S.E.2d 357 (1995), <i>cert. denied</i> , 516 U.S. 856 (1995)	Affirmed
<i>State v. Young</i> , 319 S.C. 33, 459 S.E.2d 84 (1995), <i>cert. denied</i> , 516 U.S. 1051 (1996)	Affirmed
<i>State v. Hudgins</i> , 319 S.C. 233, 460 S.E.2d 388 (1995), <i>cert. denied</i> , 516 U.S. 1096 (1996)	Affirmed
<i>State v. (Richard) Tucker</i> , 319 S.C. 425, 462 S.E.2d 263 (1995), <i>cert. denied</i> , 516 U.S. 1080 (1996)	Affirmed
<i>State v. (James) Tucker</i> , 320 S.C. 206, 464 S.E.2d 105 (1995)	Reversed-S
<i>State v. Holmes</i> , 320 S.C. 259, 464 S.E.2d 334 (1995), <i>cert. denied</i> , 517 U.S. 1248 (1996)	Affirmed
<i>State v. Nance</i> , 320 S.C. 501, 466 S.E.2d 349 (1996), <i>cert. denied</i> , 518 U.S. 1026	Affirmed
<i>State v. Rogers</i> , 320 S.C. 520, 466 S.E.2d 360 (1996)	Reversed-S
<i>State v. (Luke) Williams</i> , 321 S.C. 327, 468 S.E.2d 626 (1996), <i>cert. denied</i> , 519 U.S. 891 (1996)	Affirmed

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<i>State v. Van Dohlen</i> , 322 S.C. 234, 471 S.E.2d 689 (1996), <i>cert. denied</i> , 519 U.S. 972 (1996)	Affirmed
<i>State v. McWee</i> , 322 S.C. 387, 472 S.E.2d 235 (1996), <i>cert. denied</i> , 519 U.S. 1061 (1997)	Affirmed
<i>State v. Torrence</i> , 322 S.C. 475, 473 S.E.2d 703 (1996)	Affirmed
<i>State v. George</i> , 323 S.C. 496, 476 S.E.2d 903 (1996), <i>cert. denied</i> , 520 U.S. 1123 (1997)	Affirmed
<i>State v. (Raymond) Patterson</i> , 324 S.C. 5, 482 S.E.2d 760 (1997), <i>cert. denied</i> , 522 U.S. 853 (1997)	Affirmed
<i>State v. Whipple</i> , 324 S.C. 43, 476 S.E.2d 260 (1996), <i>cert. denied</i> , 519 U.S. 1045 (1996)	Affirmed
<i>State v. (James) Tucker</i> , 324 S.C. 43, 478 S.E.2d 260 (1996), <i>cert. denied</i> , 520 U.S. 1200 (1997)	Affirmed
<i>State v. Humphries</i> , 325 S.C. 28, 479 S.E.2d 57 (1996), <i>cert. denied</i> , 520 U.S. 1268 (1997)	Affirmed
<i>State v. Simpson</i> , 325 S.C. 37, 479 S.E.2d 57 (1996), <i>cert. denied</i> , 520 U.S. 1277 (1997)	Affirmed
<i>State v. Ivey</i> , 325 S.C. 137, 481 S.E.2d 125 (1997)	Affirmed
<i>State v. Byram</i> , 326 S.C. 107, 485 S.E.2d 360 (1997)	Affirmed
<i>State v. Conyers</i> , 326 S.C. 263, 487 S.E.2d 181 (1997)	Affirmed
<i>State v. (Herman) Hughes</i> , 328 S.C. 146, 493 S.E.2d 821 (1997), <i>cert. denied</i> , 523 U.S. 1097 (1998)	Affirmed
<i>State v. Bennett</i> , 328 S.C. 251, 493 S.E.2d 845 (1997)	Reversed-S
<i>State v. Manning</i> , 329 S.C. 1, 495 S.E.2d 191 (1997)	Reversed-NT
<i>Ray v. State</i> , 330 S.C. 184, 498 S.E.2d 640 (1998), <i>cert. denied</i> , 525 U.S. 905 (1998) (per curiam)	Affirmed
<i>State v. Hicks</i> , 330 S.C. 207, 499 S.E.2d 209 (1998), <i>cert. denied</i> , 525 U.S. 1022 (1998)	Affirmed
<i>State v. Powers</i> , 331 S.C. 37, 501 S.E.2d 116 (1998), <i>cert. denied</i> , 525 U.S. 1043 (1998)	Affirmed
<i>State v. (David Clayton) Hill</i> , 331 S.C. 94, 501 S.E.2d 122 (1998), <i>cert. denied</i> , 525 U.S. 1043 (1998)	Affirmed
<i>State v. Ivey</i> , 331 S.C. 118, 502 S.E.2d 92 (1998), <i>cert. denied</i> , 1075 U.S. 1075 (1999)	Affirmed
<i>State v. (Theodore) Kelly</i> , 331 S.C. 132, 502 S.E.2d 99 (1998), <i>cert. denied</i> , 525 U.S. 1077 (1999)	Affirmed
<i>State v. George</i> , 331 S.C. 342, 503 S.E.2d 168 (1998), <i>cert. denied</i> , 525 U.S. 1149 (1999)	Affirmed
<i>State v. Reed</i> , 332 S.C. 35, 503 S.E.2d 747 (1998), <i>cert. denied</i> , 525 U.S. 1150 (1999)	Affirmed
<i>State v. Ard</i> , 332 S.C. 370, 505 S.E.2d 328 (1998)	Affirmed
<i>State v. Gardner</i> , 332 S.C. 389, 505 S.E.2d 338 (1998), <i>cert. denied</i> , 526 U.S. 1022 (1999) (per curiam)	Affirmed
<i>State v. Charping</i> , 333 S.C. 124, 508 S.E.2d 851 (1998), <i>cert. denied</i> , 527 U.S. 1007 (1999)	Affirmed

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<i>State v. (James) Tucker</i> , 334 S.C. 1, 515 S.E.2d 508 (1999), <i>cert. denied</i> , 527 U.S. 1042 (1999)	Affirmed
<i>State v. Council</i> , 335 S.C. 1, 515 S.E.2d 508 (1999), <i>cert. denied</i> , 528 U.S. 803 (1999)	Affirmed
<i>State v. Rosemond</i> , 335 S.C. 593, 518 S.E.2d 588 (1999)	Affirmed
<i>State v. Huggins</i> , 336 S.C. 200, 519 S.E.2d 574 (1999) (per curiam), <i>cert. denied</i> , 528 U.S. 1172 (2000)	Affirmed
<i>State v. (Mar-Reece) Hughes</i> , 336 S.C. 585, 521 S.E.2d 500 (1999), <i>cert. denied</i> , 529 U.S. 1025 (2000)	Affirmed
<i>State v. (Roger) Johnson</i> , 338 S.C. 114, 525 S.E.2d 519 (2000), <i>cert. denied</i> , 531 U.S. 840 (2000)	Affirmed
<i>State v. Rogers</i> , 338 S.C. 435, 527 S.E.2d 101 (2000)	Affirmed
<i>State v. Quattlebaum</i> , 338 S.C. 441, 527 S.E.2d 105 (2000)	Reversed-NT
<i>State v. Terry</i> , 339 S.C. 352, 529 S.E.2d 274 (2000), <i>cert. denied</i> , 531 U.S. 882 (2000)	Affirmed
<i>State v. Hughey</i> , 339 S.C. 439, 529 S.E.2d 524 (2000), <i>cert. denied</i> , 531 U.S. 946 (2000)	Affirmed
<i>State v. Shafer</i> , 340 S.C. 291, 531 S.E.2d 524 (2000), <i>rev'd</i> , 532 U.S. 36 (2001)	Affirmed
<i>State v. Starnes</i> , 340 S.C. 312, 531 S.E.2d 907 (2000)	Reversed-NT
<i>State v. Locklair</i> , 341 S.C. 352, 535 S.E.2d 420 (2000), <i>cert. denied</i> , 531 U.S. 1093 (2000)	Affirmed
<i>State v. McClure</i> , 340 S.C. 403, 537 S.E.2d 273 (2000)	Reversed-S
<i>State v. Aleksey</i> , 343 S.C. 20, 538 S.E.2d 248 (2000), <i>cert. denied</i> , 532 U.S. 1027 (2001)	Affirmed
<i>State v. (William) Kelly</i> , 343 S.C. 350, 540 S.E.2d 851 (2001), <i>rev'd</i> , 534 U.S. 246 (2002)	Affirmed
<i>State v. (Jeffrey) Jones</i> , 343 S.C. 562, 541 S.E.2d 813 (2001)	Reversed-NT
<i>State v. Shuler</i> , 344 S.C. 604, 545 S.E.2d 805 (2001), <i>cert. denied</i> , 534 U.S. 997 (2001)	Affirmed
<i>State v. Stokes</i> , 345 S.C. 368, 548 S.E.2d 202 (2001)	Affirmed
<i>State v. (Freddie) Owens</i> , 346 S.C. 637, 552 S.E.2d 745 (2001)	Reversed-S
<i>State v. Burkhart</i> , 350 S.C. 252, 565 S.E.2d 298 (2002)	Reversed-NT
<i>State v. Stone</i> , 350 S.C. 442, 567 S.E.2d 244 (2002)	Reversed-S
<i>State v. Passaro</i> , 350 S.C. 499, 567 S.E.2d 862 (2002)	Affirmed
<i>State v. Weik</i> , 356 S.C. 76, 587 S.E.2d 683 (2002), <i>cert. denied</i> , 539 U.S. 930 (2003)	Affirmed
<i>State v. Shafer</i> , 352 S.C. 191, 573 S.E.2d 796 (2002) ¹³	Reversed-S
<i>State v. Shuler</i> , 353 S.C. 176 , 577 S.E.2d 438 (2003)	Affirmed
<i>State v. Haselden</i> , 353 S.C. 190, 577 S.E.2d 445 (2003)	Reversed-S
<i>State v. Tench</i> , 353 S.C. 531, 579 S.E.2d 314 (2003)	Affirmed
<i>State v. (James Nathaniel) Bryant</i> , 354 S.C. 390, 581 S.E.2d 157 (2003)	Reversed-NT
<i>State v. Moore</i> , 357 S.C. 458, 593 S.E.2d 608 (2004)	Affirmed
<i>State v. Wise</i> , 359 S.C. 14, 596 S.E.2d 475 (2004), <i>cert. denied</i> , 543 U.S. 948 (2004)	Affirmed

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<i>State v. (Kenneth) Simmons</i> , 360 S.C. 33, 599 S.E.2d 448 (2004), <i>cert. denied</i> , 543 U.S. 1124 (2005)	Affirmed
<i>State v. Downs</i> , 361 S.C. 141, 604 S.E.2d 377 (2004)	Affirmed
<i>State v. (David Mark) Hill</i> , 361 S.C. 297, 604 S.E.2d 696 (2004), <i>cert. denied</i> , 544 U.S. 1020 (2005)	Affirmed
<i>State v. Holmes</i> , 361 S.C. 333, 605 S.E.2d 19 (2004), <i>rev'd</i> , 547 U.S. 319 (2006)	Affirmed
<i>State v. Wood</i> , 362 S.C. 135, 607 S.E.2d 57 (2004), <i>cert. denied</i> , 545 U.S. 1132 (2005)	Affirmed
<i>State v. (Freddie) Owens</i> , 362 S.C. 175, 607 S.E.2d 78 (2004)	Reversed-S
<i>State v. Binney</i> , 362 S.C. 353, 608 S.E.2d 418 (2005), <i>cert. denied</i> , 546 U.S. 852 (2005)	Affirmed
<i>State v. Crisp</i> , 362 S.C. 412, 608 S.E.2d 429 (2005)	Reversed-NT
<i>State v. Vazquez</i> , 364 S.C. 293, 613 S.E.2d 359 (2005)	Affirmed
<i>State v. Sapp</i> , 366 S.C. 283, 621 S.E.2d 883 (2005), <i>cert. denied</i> , 547 U.S. 1133 (2006)	Affirmed
<i>State v. Bowman</i> , 366 S.C. 485, 623 S.E.2d 378 (2005), <i>cert. denied</i> , 547 U.S. 1195 (2006)	Affirmed
<i>State v. Sigmon</i> , 366 S.C. 552, 623 S.E.2d 648 (2005), <i>cert. denied</i> , 548 U.S. 909 (2006)	Affirmed
<i>State v. Morgan</i> , 367 S.C. 615, 626 S.E.2d 888 (2006)	Vacated-Roper ¹⁴
<i>State v. Laney</i> , 367 S.C. 639, 627 S.E.2d 726 (2006)	Reversed-S
<i>State v. Bennett</i> , 369 S.C. 219, 632 S.E.2d 281 (2006), <i>cert. denied</i> , 549 U.S. 1061 (2006)	Affirmed
<i>State v. Roberts</i> , 369 S.C. 580, 632 S.E.2d 871 (2006), <i>cert. denied</i> , 549 U.S. 1279 (2007)	Affirmed
<i>State v. Evans</i> , 371 S.C. 27, 637 S.E.2d 313 (2006)	Affirmed
<i>State v. Burkhardt</i> , 371 S.C. 482, 640 S.E.2d 450 (2007)	Reversed-S
<i>State v. Lindsey</i> , 372 S.C. 185, 642 S.E.2d 557 (2007), <i>cert. denied</i> , 552 U.S. 917 (2007)	Affirmed
<i>State v. Northcutt</i> , 372 S.C. 207, 641 S.E.2d 873 (2007)	Reversed-S
<i>State v. (James Nathaniel) Bryant</i> , 372 S.C. 305, 642 S.E.2d 582 (2007), <i>cert. denied</i> , 552 U.S. 899 (2007)	Affirmed
<i>State v. Evins</i> , 373 S.C. 404, 645 S.E.2d 904 (2007), <i>cert. denied</i> , 552 U.S. 1046 (2007)	Affirmed
<i>State v. Stone</i> , 376 S.C. 32, 655 S.E.2d 487 (2007)	Affirmed
<i>State v. Cottrell</i> , 376 S.C. 260, 657 S.E.2d 451 (2008)	Reversed-NT
<i>State v. Stanko</i> , 376 S.C. 571, 658 S.E.2d 94 (2008), <i>cert. denied</i> , 555 U.S. 785 (2008)	Affirmed
<i>State v. (Freddie) Owens</i> , 378 S.C. 636, 664 S.E.2d 80 (2008), <i>cert. denied</i> , 555 U.S. 1141 (2009)	Affirmed
<i>State v. Mercer</i> , 381 S.C. 149, 672 S.E.2d 556 (2009), <i>cert. denied</i> , 558 U.S. 843 (2009)	Affirmed
<i>State v. Woods</i> , 382 S.C. 153, 676 S.E.2d 128 (2009)	Affirmed
<i>Mahdi v. State</i> , 383 S.C. 135, 678 S.E.2d 807 (2009)	Affirmed
<i>State v. (Jeffrey) Jones</i> , 383 S.C. 535, 681 S.E.2d 580 (2009)	Reversed-NT

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Case Name	Result
<i>State v. (Quincy) Allen</i> , 386 S.C. 93, 687 S.E.2d 21 (2009), <i>cert. denied</i> , 560 U.S. 929 (2010)	Affirmed
<i>State v. (Charles Christopher) Williams</i> , 386 S.C. 503, 690 S.E.2d 62 (2010), <i>cert. denied</i> , 131 S. Ct. 230 (2010)	Affirmed
<i>State v. Flinklea</i> , 388 S.C. 379, 697 S.E.2d 543 (2010)	Affirmed
<i>State v. Bixby</i> , 388 S.C. 528, 698 S.E.2d 572 (2010), <i>cert. denied</i> , 131 S. Ct. 2154 (2011)	Affirmed
<i>State v. Winkler</i> , 388 S.C. 574, 698 S.E.2d 596 (2010), <i>cert. denied</i> , 131 S. Ct. 2155 (2011)	Affirmed
<i>State v. Starnes</i> , 388 S.C. 590, 698 S.E.2d 604 (2010), <i>cert. denied</i> , 131 S. Ct. 1504 (2011)	Affirmed
<i>State v. Torres</i> , 390 S.C. 618, 703 S.E.2d 226 (2010)	Affirmed
<i>State v. (Stephen) Bryant</i> , 390 S.C. 638, 704 S.E.2d 344 (2011)	Affirmed
<i>State v. Justus</i> , 392 S.C. 416, 706 S.E.2d 668 (2011), <i>cert. denied</i> , 132 S. Ct. 1095 (2012)	Affirmed
<i>State v. Dickerson</i> , 395 S.C. 101, 716 S.E.2d 895 (2011), <i>cert. denied</i> , 132 S. Ct. 1972 (2012)	Affirmed
<i>State v. Inman</i> , 395 S.C. 539, 720 S.E.2d 31 (2011), <i>cert. denied</i> , 133 S. Ct. 219 (2012)	Affirmed
<i>State v. Rivera</i> , 402 S.C. 225, 741 S.E.2d 694 (2013)	Reversed-NT
<i>State v. Stanko</i> , 402 S.C. 252, 741 S.E.2d 708 (2013), <i>cert. denied</i> , 134 S. Ct. 247 (2013)	Affirmed
<i>State v. Barnes</i> , 407 S.C. 27, 753 S.E.2d 545 (2014)	Reversed-NT

* The information in Appendix E was obtained from the Justice 360, which has systematically maintained a list of all capital cases decided by the South Carolina Supreme Court. It was confirmed by the authors' independent legal research.

¹ "Reversed-NT" means the South Carolina Supreme Court found the error in the guilt-or innocence phase of the proceedings and ordered an entirely new trial.
² This affirmed the death sentence of two defendants.
³ "Affirmed" means the South Carolina Supreme Court found no reversible error in the case.
⁴ "Reversed-S" means the South Carolina Supreme Court affirmed the defendant's conviction(s) but vacated the death sentence and ordered a new sentencing proceeding.
⁵ This reversed the death sentence of two defendants.
⁶ This affirmed the death sentence of two defendants.
⁷ This reversed the death sentence of two defendants.
⁸ This affirmed the death sentence of two defendants.
⁹ This affirmed the death sentence of two defendants.
¹⁰ This affirmed the death sentence of two defendants.
¹¹ This reversed the death sentence of two defendants.
¹² One of the defendants was affirmed and one was given a new sentencing hearing.
¹³ Case decided on remand from the Supreme Court of the United States.
¹⁴ Sentence vacated under <i>Roper v. Simmons</i> , 543 U.S. 551 (2005) (prohibiting execution of juveniles).

APPENDIX F*								
Types of Error Detected in South Carolina Death Cases 1977-2014								
	Direct Appeal	Cert to SCOTUS	State PCR	Cert to SCOTUS	Federal Habeas	State Habeas	New Trial Motion	Total
Guilt Phase								
Prosecutorial Misconduct	13		2					15
Instructional Error	17			1	1			19
Evidentiary Error	19	1						20
Juror Qualification or	2	2						4
Other	14					1		15
Inadequate Assistance of			7					7
New Evidence							1	1
Penalty Phase								
Prosecutorial Misconduct	16		3					19
Instructional Error	25	3	3			1		32
Evidentiary Error	18	4	9	3				34
Juror Qualification or	3							3
Other	11							11
Inadequate Assistance of			19					19
Proportionality								0

* The information in Appendix F was obtained from the authors' review of the decisions listed in Appendix E, Appendix G, research for decisions reported in Westlaw at other levels of the appellate process, and the authors' tracking of unpublished opinions granting relief.

APPENDIX G* Post-Conviction Relief Reversals in South Carolina Courts 1977-2015
<i>Thompson v. Aiken</i> , 281 S.C. 239, 240, 315 S.E.2d 110, 110 (1984)
<i>Chaffee v. State</i> , 294 S.C. 88, 91, 362 S.E.2d 875, 877 (1987) ¹
<i>Damon v. Aiken</i> , 86-CP-38-211 (S.C. 1st Cir. C.P. June 22, 1987)
<i>Smith v. Aiken</i> , 86-CP-04-995 (S.C. 10th Cir. C.P. June 26, 1987)
<i>Owens v. McKellar</i> , 88-CP-26-605 (S.C. 15th Cir. C.P. Apr. 5, 1988)
<i>Cain v. Evatt</i> , No. 90-CP-13-382 (S.C. 4th Cir. C.P. May 4, 1995)
<i>Whipple v. Moore</i> , No. 97-CP-26-417 (S.C. 15th Cir. C.P. Dec. 10, 1998)
<i>Holmes v. Moore</i> , No. 96-CP-46-966 (S.C. 16th Cir. C.P. Jan. 15, 1998)
<i>Southerland v. State</i> , 337 S.C. 610, 617, 524 S.E.2d 833, 836 (1999)
<i>Hudgins v. Moore</i> , 337 S.C. 333, 339, 524 S.E.2d 105, 108 (1999)
<i>Patterson v. State</i> , No. 98-CP-32-0097 (S.C. 11th Cir. C.P. Sept. 23, 1999)
<i>Ray v. State</i> , (S.C. 7th Cir. C.P. May 30, 2001)
<i>Kelly v. State</i> , No. 99-CP-42-1174 (Oct. 6, 2003)
<i>Hall v. Catoe</i> , 360 S.C. 353, 365, 601 S.E.2d 335, 342 (2004)
<i>Von Dohlen v. State</i> , 360 S.C. 598, 614, 602 S.E.2d 738, 746 (2004)
<i>Charging v. State</i> , No. 99-CP-32-2316 (S.C. 11th Cir. C.P. Sept. 3, 2004);
<i>Huggins v. State</i> , No. 00-CP-26-1446 (S.C. 15th Cir. C.P. July 18, 2005)
<i>Riddle v. Ozmint</i> , 369 S.C. 39, 47-48, 631 S.E.2d 70, 75 (2006)
<i>Simpson v. Moore</i> , 367 S.C. 587, 608, 627 S.E.2d 701, 712 (2006)
<i>Nance v. Ozmint</i> , 367 S.C. 547, 558, 626 S.E.2d 878, 883 (2006)
<i>Locklair v. State</i> , No. 01-CP-42-0272 (S.C. 7th Cir. C.P. Aug. 22, 2006)
<i>Ard v. Catoe</i> , 372 S.C. 318, 336, 642 S.E.2d 590, 599 (2007)
<i>George v. State</i> , No. 99-CP-26-1715 (S.C. 15th Cir. C.P. Jan. 9, 2007)
<i>Rosemond v. Catoe</i> , 383 S.C. 320, 330, 680 S.E.2d 5, 11 (2009)
<i>Council v. State</i> , 380 S.C. 159, 181, 690 S.E.2d 356, 368 (2009)
<i>Sapp v. State</i> , No. 06-CP-08-2204 (S.C. 9th Cir. Aug. 17, 2009)
<i>Vasquez v. State</i> , 388 S.C. 447, 464, 698 S.E.2d 561, 570 (2010)
<i>Rogers v. Ozmint</i> , No. 00-CP-18-575 (S.C. 1st Cir. C.P. Dec. 10, 2010)
<i>Hughey v. State</i> , No. 00-CP-01-0212 (S.C. 8th Cir. C.P. May 14, 2010)
<i>Elmore v. State</i> , No. 05-CP-24-1205 (S.C. 8th Cir. C.P. Feb. 1, 2010)
<i>Evans v. State</i> , No. 06-CP-23-7719 (S.C. 13th Cir. C.P. Aug. 29, 2011)
<i>Mercer v. State</i> , No. 09-CP-32-5465 (S.C. 11th Cir. C.P. June 27, 2011)
<i>Franklin v. Moore</i> , No. 96-CP-45-117 (S.C. 3d Cir. C.P. Jan. 26, 2011)
<i>Binney v. State</i> , No. 2006-CP-11-223 (S.C. 7th Cir. C.P. May 11, 2012)
<i>Weik v. State</i> , 409 S.C. 214, 239, 761 S.E.2d 757, 770 (2014)
<i>Evins v. State</i> , No. 07-CP-42-2849 (S.C. 7th Cir. C.P. June 27, 2014)
William Hicks (reversing conviction pursuant to <i>Brady</i>) ²
Ted Powers (vacating sentence pursuant to <i>Roper</i>) ²
Herman Hughes (vacating sentence pursuant to <i>Roper</i>) ²
Robert Conyers (vacating sentence pursuant to <i>Roper</i>) ²
Tommy Lee Davis (vacating sentence pursuant to <i>Atkins</i>) ²

* The information in Appendix G was obtained from Justice 360, which has systematically maintained a list of all post-conviction capital cases considered in the South Carolina courts. It was confirmed by the authors' independent legal research.

¹ This reversed the sentence of two defendants.

² Orders granting relief were not available. The reason for reversal was confirmed with attorneys who formerly represented the individual clients in post-conviction proceedings.

APPENDIX H*				
Pretrial Death Penalty Case Outcomes 2008-2015				
	Defendant	County	Outcome	Year of Disposition
43	Kelly, Theodore	Spartanburg	Plea to life ¹	2012
44	Lynch, Kenneth	Lexington	LWOP²	2012
45	McClure, David	Barnwell	LWOP/Plea ¹	2012
46	Nance, Robert	Florence	LWOP ⁴	2012
47	Nelson, Robert	Dillon	DP	2012
48	Owens, Shawn	Oconee	LWOP/Plea	2012
49	Stewart, Thomas J.	Chesterfield	DP Withdrawn	2012
50	Whatley, Julian	Richland	LWOP/Plea	2012
51	Barker, Montez	Florence	LWOP/Plea	2013
52	Brown-Kelly, Tyler	Berkeley	45 years/Plea	2013
53	Daise, Earnest Stewart	Beaufort	LWOP	2013
54	Delaine, Fonnelize Travis	Florence	LWOP/Plea	2013
55	Hall, Joshua Anthony	Laurens	LWOP/Plea	2013
56	Haselden, Jeffrey	Lexington	LWOP/Plea ¹	2013
57	Patrick, Quentin	Sumter	DP Not	2013
58	Rivera, Raymondeze	Anderson	LWOP/Plea⁴	2013
59	Rosemond, Andre	Spartanburg	DP	2013
60	Vasquez, Angel	Horry	LWOP¹	2013
61	Blackwell, Ricky Lee	Spartanburg	Death	2014
62	Cottrell, Luzenski Allen	Horry	Death⁴	2014
63	Carter, Stephon	Aiken	LWOP/Plea⁷	2015
64	Evins, Frederick	Spartanburg	LWOP/Plea ¹	2015
65	Huggins, Titus	Horry	LWOP/Plea ¹	2015
66	Nickolas Miller	Kershaw	LWOP/Plea	2015
67	Rogers, Timothy D.	Dorchester	50 Years/Plea ¹	2015
68	Philips, Jacob	Charleston	LWOP/Plea⁸	2015
69	Smith, Cass Franklin	Cherokee	LWOP/Plea	2015

* The information in Appendix H was obtained from the South Carolina Commission on Indigent Defense Capital Trial Division, which has systematically maintained a list of all potential capital trials since the Division's creation in 2008. Cases in **bold** indicate the Capital Trial Division was appointed to represent the defendant.

¹ Resentencing
² Judge sentencing
³ Prosecutor elected not to seek death in a death eligible case considered by the Trial Division to be a likely capital case
⁴ Retrial
⁵ Death penalty withdrawn due to intellectual disability
⁶ Found incompetent to stand trial
⁷ Plea offered and accepted after jury selection

**DIVISION OF APPELLATE DEFENSE
YEAR-END CASELOAD DATA
REPORT
FY 2017-2018**

**Robert M. Dudek
Chief Appellate Defender**

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YEAR END SUMMARY – FY 2017-2018

The Division of Appellate Defense, of the Office of Indigent Defense, provides excellent quality representation for clients in direct appeals and post-conviction relief appeals statewide. The division began the fiscal year with one thousand and fourteen (1014) cases and opened six hundred and twenty one (621) cases during Fiscal Year 2017-18. The division closed five hundred and nine (509) cases during the same period. The Appellate Division is currently handling one thousand one hundred and twenty six (1126) cases.

Chief Appellate Defender Robert Dudek gave the case law update presentation, and participated in a “Preserving the Record for Appeal” demonstration, at the annual Public Defender Conference on September 26, 2017, in Myrtle Beach, South Carolina. On September 29, 2017, Dudek was a trainer at the post-conviction relief seminar for the Rule 608 contract attorneys, which was held in Columbia, South Carolina.

On November 21, 2017, Dudek presented at the Public Defender 101 seminar on properly preserving objections and motions for appellate review, and on post-conviction relief in Columbia, South Carolina. On November 30, 2017, Dudek gave a presentation on “Winning Issues on Appeal” for the Indigent Defense-Bar Association Appellate Project seminar held for the pro bono attorneys at the Bar Building in Columbia, South Carolina. He also served as a group leader for one of the break-out sessions on issue spotting for appeal at that seminar.

On December 14, 2017, Dudek did a videotaped presentation on the case law update for the South Carolina Bar Association, which uses the presentation for its online CLE courses. Dudek also presented at the Criminal Practice CLE held February 23, 2018, at the South Carolina Bar Building.

In addition, Dudek did a presentation on case law and trial objections at the Magistrate Court training held on March 9, 2018 in Columbia, South Carolina. Further, on March 16, 2018, he presented on error preservation for the Charleston and Berkeley County public defenders, and Rule 608 attorneys in Charleston, South Carolina. Dudek also gave a case law presentation at the Investigators’ Conference, on March 30, 2018, in Myrtle Beach, South Carolina.

Dudek did a presentation on error preservation for the Anderson and Oconee County public defenders on April 26, 2018, in Anderson, South Carolina. He was also a trainer and judge on the motions arguments portion of Public Defender 103, which was held in Greenville, South Carolina, April 30 – May 2, 2018.

Chief Deputy Wanda Carter was a speaker at the Public Defender 101 CLE seminar on November 20, 2017, in Columbia and at the Appellate Practice Project on November 30, 2017.

Appellate Defender Kathrine Hudgins assisted with teaching Criminal Trial Advocacy at USC School of Law in the fall of 2017. She also served on the 5K Race Committee for See Spot Run benefitting the Humane Society in the spring of 2018. She continues to serve as an articles editor for the South Carolina Lawyer Magazine.

Appellate Defender LaNelle DuRant volunteered at a fund raiser for SisterCare on October 12, 2017. She did a presentation to the Board of Directors for SisterCare on February 27, 2018, and to the Palmetto Paralegal Association on April 18, 2018, for SisterCare. She is a member of the Wellness Committee of the S.C. Bar.

Appellate Defender David Alexander taught at the Post-Conviction Relief CLE on September 29, 2017, and the Appellate Practice Project CLE on November 30, 2017.

Appellate Defender Susan Hackett was a speaker at the BBQ, Blues & Bar Seminar sponsored by SCACDL in Greenwood, on July 7, 2017, on the topic of Considering Current Cases. She was a speaker at the Summary Court Judge's Orientation presented by Court Administration on the topic of the Defendant's Constitutional Rights, on July 27, 2017. She, was a co-presenter at the 2017 Annual Public Defender Conference in Myrtle Beach, South Carolina, on September 26, 2017. The topic was Defending Juvenile LWOP cases.

On September 29, 2017, Hackett spoke at the Post-Conviction Relief Representation: Don't Mangle Your Case sponsored by SCCID. The topic was Get it in the Order: Proposed Orders and Rule 59(e) Motions & Who's Steering and Other Ethical Issues in PCR cases. On October 4, 2017, she spoke at the Annual Fall CLE Seminar sponsored by the Lexington County Bar Association. The topic was Error Preservation and Making the Record. On November 20,

2017, Ms. Hackett spoke at the Public Defense 101 sponsored by SCCID in Columbia. She discussed topic the Fifth Amendment Right to Silence. On November 30, 2017, she spoke at the Appellate Practice Project: Presenting Cases to the Appellate Courts. On June 21, 2018, she spoke at the Rule 608 Contract Attorney Orientation and Training sponsored by SCCID in Columbia regarding Ethical Considerations for Contract Lawyers. Hackett is a member of South Carolina Bar Professional Responsibility Committee, and she served on a subcommittee to review Model Rule 3.8(g-h) of the Rules of Professional Conduct. She is a member of the South Carolina Bar Fee Disputes Resolution Board, the South Carolina Bar Law Related Education Committee for which she served on the awards subcommittee, as scoring judge on November 4, 2017, in Conway, SC for Regional Middle School Mock Trial, and as presiding judge on February 24, 2018, in Columbia for Regional High School Mock Trial.

Appellate Defender Lara Caudy was a group leader during the breakout sessions at the Presenting Cases to the Appellate Courts CLE held on November 30, 2017.

Appellate Defender Laura Baer was a joint speaker during the breakout sessions on “Defending Juvenile LWOP Cases” at the South Carolina Public Defender Conference on September 26, 2017, in Myrtle Beach. On December 15, 2017, Ms. Baer attended a multi-disciplinary meeting in Columbia to discuss litigation in juvenile LWOP resentencing cases, where she reported on relevant pending appellate issues. She was a scoring judge for the State Middle School Mock Trial regional competition on November 4, 2017, in Lexington, and a scoring and presiding judge for the American Mock Trial Association regional tournament on February 10 and 11, 2018, at the University of South Carolina School of Law in Columbia. Ms. Baer attends Awaken Church, through which she volunteers at various community events.

Appellate Defender Taylor Gilliam was named a “Star of the Quarter” by the South Carolina Bar Young Lawyers Division for a second time in March 2018. He serves on the U.S.C. School of Law Pro Bono Advisory Council with Appellate Defender Susan Hackett and other attorneys in the Midlands. He is also a member of the South Carolina Bar Pro Bono Advisory Committee with South Carolina Supreme Court Justice John Few. He is member of the South Carolina Bar Technology Committee and co-chair of the South Carolina Bar Young Lawyers Division Technology Committee. Gilliam is a member of the South Carolina Bar Young Lawyers Division Disaster Relief Committee. He serves on the Board for the Mount

Hebron United Methodist Day School in West Columbia. Gilliam is also on the Board of Directors for the Brookland-Cayce High School Foundation. In that capacity, he chairs the Student Scholarships and Teacher Grants Committee. Additionally, he is a Board Member on his neighborhood Homeowners' Association, where he chairs the Common Area and Covenants Committees. He is in the middle of his fifth consecutive year as the Lexington Citadel Club President, an organization that raised over \$8,000 for a scholarship at its annual oyster roast on February 24, 2018. Gilliam helped judge a mock trial competition at the University of South Carolina School of Law on February 11, 2018. He spoke at a career fair on behalf of the Commission of Indigent Defense, Appellate Division at the University of South Carolina School of Law on March 1, 2018. Gilliam also spoke at the Lake Murray Elementary School career fair in 2017. He volunteered at a mock mediation as part of the Civil Litigation Capstone course offered at the University of South Carolina School of Law on April 10, 2018, where he played the part of the plaintiff in a three-car automobile accident.

Gilliam is a member of the Richland County Public Service Committee which organizes the homeless legal clinic (Homeless Experience Legal Protection- HELP) at Transitions in Columbia. He moderated a CLE hosted by this group on April 26, 2018. The title was "Practical Knowledge for Any Attorney" and it covered the topics of expungements, family law, social security and social security disability benefits, veterans' benefits, and Columbia's Homeless Court. Gilliam attended, donated, and volunteered at the Annual Bowling Buddies event benefitting the Special Olympics on May 1, 2018, hosted by the South Carolina Bar Young Lawyers Division. He also participated in a Q&A at St. Lawrence Place in Columbia during Community Law Week on May 2, 2018. He read to students at Jackson Creek Elementary School on May 3, 2018. He also attended a Technology CLE offered by the South Carolina Bar Young Lawyers Division on May 3, 2018. Gilliam volunteered to help paint and perform yardwork at SisterCare on May 19, 2018 as part of the South Carolina Bar Young Lawyers Division Voices Against Violence Committee.

In June 2018, he was nominated as an Emerging Leader by the South Carolina Bar Young Lawyers Division and attended the American Bar Association Annual Meeting as a Young Lawyers Division Delegate in August 2018 in Chicago, Illinois. Gilliam also participated in part of the Appellate Practice Project CLE on November 30, 2017. Gilliam spoke

about technology on June 19, 2018 at one of the mentoring lunches hosted by Judge J. Michelle Childs at the United States District Court.

The Division welcomed two new appellate defenders this year, Joanna Delany and Victor Seeger.

Appellate Defender Joanna Delany is a 2007 graduate of the University of South Carolina School of Law. She was a cum laude graduate of Augusta University in 2002. She was a resource attorney with the Children's Law Center before becoming an Appellate Defender. She taught a four hour CLE at South Carolina Commission on Indigent Defense, Children's Law Center joint training on juvenile criminal defense in April, 2018. She also is a member of the SC Bar Children's Law Committee.

Victor Seeger graduated cum laude from the University of South Carolina Law School, in 2014. He also graduated cum laude undergraduate from the University of South Carolina, majoring in Political Science. Seeger was in private practice in Bluffton, South Carolina prior to becoming an Appellate Defender.

The Division also welcomed two new staff members, Adriane Burke and Tyler Cheney.

Adriane Burk replaced Rhonda Foxworth as the Legal Services Coordinator in November 2017. She moved from Pennsylvania to South Carolina in July of 2017. Adriane graduated from Westmoreland County Community College with a Degree of Associate in Applied Science in Legal Assisting in 1993. She worked at Flickinger Barr in Ligonier, Pennsylvania for 13 years assisting in the areas of Real Estate and Estates and Trusts.

Tyler Cheney replaced Scott Leverett who became our newest assistant. Tyler moved from Michigan to South Carolina seven years ago. He graduated with a Bachelors in Media Arts from the University of South Carolina.

Rhonda Foxworth is now the document coordinator responsible for requesting and obtaining documents and exhibits needed for the appeals from all forty-six Offices of the Clerks of Court

Christine Berdeguez, an administrative specialist, also serves as the Program Coordinator/ Administrator of the Mid-State Region for the South Carolina Public Record Association. She spoke to the Association at luncheons on August 2, 2018, and April 18, 2018. She also volunteers as a Richland County (CASA) Court Appointed Specialist Advocate. In addition, she volunteers as a Guardian ad Litem for children, and as a Youth Arbitrator with the Richland County Sheriff's Department which includes an emphasis on young people avoiding illegal drugs.

Karen Rogers, our receptionist, is very active with her Church and she feeds the homeless at Finlay Park three times a month. She also volunteers at Austin Wilkes Boys home, at the Family Shelter, and at Magnolia Nursing Home.

Year-End Case Count Summary - FY 2017-2018

●Active Cases as of June 30, 2017	1014*
●Cases opened from July 1, 2017 to June 30, 2018	621
●Cases closed from July 1, 2017 to June 30, 2018	509
●Cases Pending in Supreme Court (As of June 30, 2018)	
<u>Direct</u>	<u>PCR</u>
44	468
●Cases Pending in Court of Appeals (As of June 30, 2018)	
<u>Direct</u>	<u>PCR</u>
556	58
●Total Number of Cases pending June 30, 2018	1126
●Oral Arguments	
<u>Supreme Court</u>	<u>Court of Appeals</u>
19	20
●Certiorari Granted (PCR)	● Certiorari Granted (COA)
19	20

*Appellate Project Counsel was not counted in the FY 16-17 Year End Report.

Active Cases by Attorney

Attorney	Direct	PCR	Total
Alexander	79	38	117
Baer	32	35	67
Brooks	01	01	01
Burk	38	38	76
Butler	00	02	02
Carter	27	60	87
Caudy	33	35	68
Delany	16	23	39
Dudek	82	24	106
DuRant	29	55	84
Gilliam	38	49	87
Hackett	69	33	102
Hudgins	61	37	98
Murdoch	32	33	65
Pachak	43	34	77
Seeger	16	29	45
*Tripp	05	00	05
Grand Total	600	526	1126

***Grand Total: 1126**

*Note: Cases assigned to Burk and Murdoch are awaiting transcripts before they are assigned to an attorney.

*Ben Tripp left the Division of Appellate Defense on March 2016 and Tiffany Butler on August 2016.

Active Death Penalty Cases

DIRECT

14-486 Luzenski Allen Cottrell

PCR

12-034 Marion Alexander Lindsey

* 16-253 Quincy Jovan Allen

* 17-41 Stephen Christopher Stanko

* 17-458 Stephen Christopher Stanko

Total 5

* cases associated for costs

Appellate Defense - Cases Opened

Period of 07/01/17 through 06/30/18

DIRECT	261
DNA	0
Juvenile	3
Death Penalty	2
Normal	227
Probation	21
SVP	9
WAR	0
Grand Jury	0

PCR	360
Cross Appeal	1
Death Penalty	1
DNA	0
Normal	358
WAR	0

Total Cases Opened 621

Appellate Defense – Cases Filed by Attorney

Period of 07/01/17 through 06/30/18

Appeal Type		Documents Filed
DAA		
	DIRECT	33
	PCR	06
		Attorney Total 39
LRB		
	DIRECT	20
	PCR	14
		Attorney Total 34
WHC		
	DIRECT	21
	PCR	13
		Attorney Total 34
LMC		
	DIRECT	21
	PCR	16
		Attorney Total 37
JKD		
	DIRECT	06
	PCR	00
		Attorney Total 06

Appeal Type		Documents Filed
RMD		
	DIRECT	34
	PCR	05
		Attorney Total 39
LCD		
	DIRECT	05
	PCR	09
		Attorney Total 14
TDG		
	DIRECT	33
	PCR	09
		Attorney Total 42
SBH		
	DIRECT	31
	PCR	19
		Attorney Total 50
KHH		
	DIRECT	39
	PCR	10
		Attorney Total 49
RMP		
	DIRECT	20
	PCR	05
		Attorney Total 25

VRS

DIRECT 05

PCR 03

Attorney Total 08

Total Documents Filed 268

Totals are based on the filing of Initial Brief and Designation of Matter in a Direct Appeal and Petition for Writ of Certiorari in a Post Conviction Relief Appeal. Also include are cases where Appellate Defense is the respondent.

County Report

Abbeville

DIRECT	5
PCR	2
County Total	7

Aiken

DIRECT	13
PCR	23
County Total	36

Allendale

DIRECT	3
PCR	1
County Total	4

Anderson

DIRECT	17
PCR	17
County Total	34

Bamberg

DIRECT	5
PCR	2
County Total	7

Barnwell

DIRECT	5
PCR	1
County Total	6

Beaufort

DIRECT	26
PCR	14
County Total	40

Berkeley

DIRECT	20
PCR	22
County Total	30

Calhoun

DIRECT	3
PCR	0
County Total	3

Charleston

DIRECT	60
PCR	49
County Total	109

Cherokee

DIRECT	3
PCR	11
County Total	14

Chester

DIRECT	11
PCR	1
County Total	12

Chesterfield

DIRECT	1
PCR	5
County Total	6

Clarendon

DIRECT	5
PCR	3
County Total	8

Colleton

DIRECT	3
PCR	7
County Total	10

Darlington

DIRECT	3
PCR	11
County Total	14

Dillon

DIRECT	2
PCR	3
County Total	5

Dorchester

DIRECT	18
PCR	6
County Total	24

Edgefield

DIRECT	5
PCR	2
County Total	7

Fairfield

DIRECT	3
PCR	2
County Total	5

Florence

DIRECT	14
PCR	21
County Total	35

Georgetown

DIRECT	8
PCR	10
County Total	18

Greenville

DIRECT	47
PCR	39
County Total	86

Greenwood

DIRECT	13
PCR	9
County Total	22

Hampton	
DIRECT	6
PCR	2
County Total	8

Horry	
DIRECT	32
PCR	38
County Total	70

Jasper	
DIRECT	9
PCR	4
County Total	13

Kershaw	
DIRECT	4
PCR	2
County Total	6

Lancaster	
DIRECT	12
PCR	6
County Total	18

Laurens	
DIRECT	16
PCR	6
County Total	22

Lee

PCR	2
County Total	2

Lexington

DIRECT	37
PCR	20
County Total	57

Marion

DIRECT	8
PCR	3
County Total	11

Marlboro

DIRECT	4
PCR	6
County Total	10

McCormick

DIRECT	1
County Total	1

Newberry

DIRECT	9
PCR	5
County Total	14

Oconee

DIRECT	9
PCR	8
County Total	17

Orangeburg

DIRECT	13
PCR	4
County Total	17

Pickens

DIRECT	26
PCR	12
County Total	38

Richland

DIRECT	32
PCR	14
County Total	46

Saluda

DIRECT	4
PCR	3
County Total	7

Spartanburg

DIRECT	24
PCR	61
County Total	85

Sumter

DIRECT	17
PCR	29
County Total	46

Union

DIRECT	4
PCR	5
County Total	9

Williamsburg

DIRECT	6
PCR	9
County Total	15

York

DIRECT	34
PCR	26
County Total	60

Grand Total: 1126

CAPITAL TRIAL DIVISION

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE YEAR END REPORT

August 2018

INTRODUCTION

The Capital Trial Division of the South Carolina Commission on Indigent Defense is an office wherein three (3) attorneys are charged with representing capital defendants at the trial level. The attorneys in the Capital Trial Division are required to practice law at a level that meets the very high standards of capital defense demanded by the federal and state constitutions.

When the Capital Trial Division became fully staffed in early 2009, there were approximately forty (40) death penalty trials pending in South Carolina. Presently, there are approximately twenty (20) capital cases pending. The Capital Trial Division represents or is about to represent (18) of these (20) defendants. The Capital Trial Division has represented approximately fifty (50) capital eligible defendants since early 2009.

Constitutional Requirement of Heightened Reliability in Death Verdicts

What is expected of capital defense attorneys in terms of their performance in a capital case can also be found in the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, American Bar Association, revised 2003. The South Carolina Supreme Court has looked to these guidelines to determine what constitutes constitutionally sufficient performance by defense counsel in capital cases. See *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (citing *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* and reversing capital trial due to defense counsel's fact investigation falling below that required by the guidelines); see also *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008)(citing *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* and reversing death sentence due to inadequate mitigation investigation).

The constitutional demands placed on trial counsel regarding his performance in a death penalty case are enormous and extraordinarily time consuming. The Capital Trial Division is required to meet these high demands in its mission to provide constitutionally adequate capital defense.

THE CAPITAL TRIAL DIVISION

The Capital Trial Division currently consists of five (5) full-time staff members. There are three (3) attorneys, a paralegal, and Fellowship Attorney.

The primary mission of the Capital Trial Division is to undertake direct representation of indigent defendants facing a death penalty prosecution in South Carolina at the trial level. The Division also provides consulting services for lawyers engaged in representing a defendant at a

capital trial in South Carolina. The Division is also committed to providing capital defense training to lawyers in South Carolina.

Attorneys

The Capital Trial Division employs three (3) full-time attorneys. Two are certified by the South Carolina Supreme Court as “death penalty qualified,” and all are eligible to be lead counsel on any death penalty case in South Carolina. The third attorney is second chair qualified and will become first chair qualified next year.

The Chief Attorney, Boyd Young has over fourteen (14) years of capital defense trial experience. He clerked for South Carolina Circuit Court Judge A. Victor Rawl (now retired). Before returning to South Carolina in 2008, Young worked as a full-time capital defender in Georgia for a number of years. Young teaches capital voir dire annually for the National Association of Criminal Defense Lawyers and has taught or lectured regarding capital defense in Alabama, Colorado, Georgia, Ohio, Pennsylvania, Louisiana and South Carolina. He has served as faculty at the Southern Public Defender Training Institute (now Gideon’s Promise) and the National Criminal Defense College. Young is also a founding faculty member of the South Carolina Trial College, and institution that provides trial skill instruction to new South Carolina public defenders.

The Deputy Attorney, William S. McGuire, has twenty (20) years of experience as a criminal defense trial lawyer. He also clerked for two South Carolina Circuit Court Judges; the Honorable Rodney Peoples (now retired), and the Honorable Daniel Pieper (now retired from the South Carolina Court of Appeals). McGuire has approximately twelve (16) years of experience representing defendants facing the death penalty. Before returning to South Carolina in 2008, McGuire was a full-time capital defender in Atlanta, Georgia. McGuire instructs attorneys from across the nation, annually, on the subject of capital voir dire at a CLE seminar co-sponsored by National Association of Criminal Defense Lawyers and the Southern Center for Human Rights. He has also served as faculty at the Southern Public Defender Training Institute (now titled Gideon’s Promise). McGuire has taught or lectured regarding capital defense, or criminal defense in general, in Alabama, Georgia, North Carolina, Oregon, Pennsylvania, Colorado, Louisiana and South Carolina. The South Carolina Association of Criminal Defense Lawyers named McGuire as the inaugural recipient of that organization’s Champion of Justice Award in 2009. In 2013 McGuire was named the South Carolina Public Defender of the year. McGuire is also a recipient of the American Jurisprudence Award. More recently, McGuire is also a founding faculty member of the South Carolina Trial College, and institution that seeks to provide trial skill instruction to new South Carolina public defenders.

Emily Kuchar, has four (4) years of capital defense experience and training. She was a Fellow Attorney with the Capital Trial Division for one year and then became a Public Defender with the Richland County Public Defender’s Office before returning to the Capital Trial Division as a full-time trial attorney.

Paralegal/Office Support Staff

Mrs. Mulligan-Green is the Division's paralegal and office manger. In essence she, manages an office responsible for undertaking the complex litigation involving numerous death penalty trials.

The Fellowship Attorney position is currently open.

TRIAL LEVEL REPRESENTATION

The Division has enrolled as counsel in approximately fifty (51) death penalty matters to conclusion. Only three of the defendants represented by the Division are currently under a sentence of death. One defendant had his death sentence reversed by the South Carolina Supreme Court on a judicial error and was resentenced to Life in Prison Without Parole.

There are approximately sixteen (20) death penalty cases in South Carolina that are pending and are appropriately considered to be capital cases. The three attorneys in the Capital Division are currently involved in the direct representation of eighteen (18) defendants facing death penalty prosecutions. One defendant is a co-defendant to a client represented by the Capital Trial Division and we are conflicted from representing him. We have offered representation in the other case, but his private counsel has rejected our offer for now.

In addition to the cases currently pending in the courts, in the past year the Capital Trial Division has resolved six (6) capital cases in the past year. **Steven Barnes** was a trial in the 11th Circuit resulting in a LWOP sentence. **Jerry Manigault, Kenneth Ancrum, and Carlos Perez** were all pending cases which we were able to resolve with pleas this year. **Crystal Johnson** was a double homicide from the 7th Circuit, the Capital Trial Division investigated the case and determined that Ms. Johnson was actually innocent of the charges. This information along with who was the likely perpetrator was turned over to the Solicitor's office and the charges against Ms. Johnson were dropped. **Christian McCall** was a case from the 16th Circuit, he was charged with shooting four police officers in an ambush resulting in one of the officer's death. The Capital Trial Division was able to get involved very early on, and work with the 16th Circuit Public Defenders Office to resolve the case with a plea to LWOP in under 5 months.

Respectfully submitted,
S. Boyd Young
Chief Attorney, Capital Trial Davison

INDIGENT SCREENING WORK GROUP

I. INTRODUCTION

The South Carolina Commission on Indigent Defense (SCCID) oversees the delivery of indigent defense services in those matters in which a person has a constitutional, statutory, or rule based right to counsel, if the person is “indigent”. Thus, the type of case must be one in which the party has a right to counsel and the party must be indigent. If one of those conditions is not met, indigent defense services are not provided.

This work group has discussed and submits this report to address a statewide process for the accepting of applications for appointed counsel and the determination of indigency in a way that will be cost efficient and will not create an undue burden to those applying for indigent defense services or undue delay within the court system.

II. INDIGENT STANDARD

A person is indigent if it is determined that he is financially unable to retain/employ adequate legal counsel.

III. HOW TO APPLY

A. Where to Apply

A person seeking indigent defense services must go to the office of the Clerk of Court (**Chief Magistrate**) for the county where the case is pending to apply for the appointment of counsel.

In criminal cases, if the person is incarcerated in the local county detention center, the Circuit Public Defender, or his designee, shall visit the jail to take the person’s Affidavit of Indigency & Application for Counsel. The Circuit Public Defender shall forward all applications to the Clerk of Court (**Chief Magistrate**) office for determination on eligibility and qualification.

The Clerk of Court shall file the application and supporting documents in the Court’s file for the case. (**The Chief Magistrate shall forward the application and supporting documents to the Clerk of Court for filing the documents in the Court’s file for the case**)

B. Application Process

Applications for appointed counsel shall be made on the current Affidavit of Indigency and Application for Counsel (Form II), as provided and approved by the South Carolina Supreme Court. The person should be reminded that the information they provided on this application form is given under oath and penalty of perjury applies, and that false information could result in penalties.

A person seeking indigent defense services has the burden of showing that he qualifies for indigent defense services. Appointed counsel will not be provided unless a properly completed affidavit/application is submitted, with supporting documentation, and it has been determined that the person qualifies for appointed counsel.

1. When to apply?

If a person believes he needs counsel and is financially unable to employ/retain counsel, he should apply as soon as possible to allow for the early appointment of counsel to assist in his case. This will assist case processing and protect constitutional rights.

The Bond Court Judge or Family Court Judge at detention hearings (in juvenile matters) shall advise a person before the court of his right to counsel and right to the appointment of counsel if he is financially unable to employ/retain counsel and provide in writing the requirements to apply for the appointment of counsel.

2. Who should apply?

The person in need of the indigent defense services must personally complete the application at the Clerk of Court (**Chief Magistrate**) office. If the person is incarcerated, a representative of the Circuit Public Defender's office will meet with them to complete an application and forward the completed application to the Clerk of Court (**Chief Magistrate**) for approval.

In juvenile matters, the parent(s) or legal guardian(s) should complete the application based upon their financial status. If the parent(s) refuse to complete the application, the court should order the parent(s) to do so. If the parent does not do so, or is absent from the jurisdiction, the child can fill out the application with the parent's information to the best of the child's ability.

3. Application Fee

Pursuant to SC Code § 17-3-45, there is a \$40 application fee which is due at the time an application is submitted.

The application fee shall be retained by the screening entity to defray the costs of the screening of applications.

This fee should be paid at the time the application is submitted. However, if the applicant is unable to pay the fee when the application was submitted, the amount is added to any costs that are ordered to be reimbursed after the case. The applicant may pay the fee at any time after submission of the application and prior to the conclusion of the case on the trial level. The fee shall be waived while the applicant is incarcerated.

An application cannot be declined because the application fee is not paid at the time the application is submitted.

4. Supporting Documentation

All persons submitting an Affidavit of Indigency & Application for Counsel shall submit documentation to support the information provided in their application. Supporting documentation includes:

- a. Paystubs for past 30 days.
- b. Printout of any assistance any household member is or has received within the last 12-months that may be considered income. (FS, Disability, SSI, unemployment, retirement.) (*obtained from Agency providing assistance*)
- c. Printout of any child support that is either being paid or received. (*obtained from Family Court*)
- d. A copy of tax returns from previous year.
- e. Social Security Income report for past 12 months (*obtained from the SS Administration.*)
- f. Letter from current or former employer (if no longer working).
- g. Letter from parents, family members, friends or anyone who provides any type of support or accommodations. Letter must be signed and a copy of his/her photo ID attached.

One of the above supporting documents must be provided for each source of income. *For example, if a person has a part-time job, is receiving Disability and get child support, then the person can provide copies of pay stubs, a Disability printout and a child support printout.*

IV. DETERMINING INDIGENCY

A. Review of Application

1. Review of applications for indigent defense services should be done by the Clerk of Court (**Chief Magistrate**) or his designee. Review of applications should be delegated only to those persons who have been provided appropriate training on (1) the circumstances under which a person is entitled

to appointed counsel; (2) the circumstances under which additional information is required before determining eligibility; and (3) the financial guidelines for eligibility.

The Screener shall be a Notary Public would can place the applicant under oath.

2. In reviewing the application, the Clerk of Court (Chief Magistrate) shall determine the following:
 - a. The household income of the applicant.
 - b. If there are any applicable presumptions of indigency.
 - c. If the applicant's income, debts, assets and family situation create an exception to the person's income exceeding the poverty guidelines or if it rebuts the presumption of indigency.
3. Review of applications should be made within 24 hours of submission of the completed application with supported documentation and payment of the application fee, unless waived or otherwise deferred, and the applicant shall be promptly notified of the decision.

If the decision is that the applicant is eligible, an Order Appointing the Public Defender shall be forwarded to the Circuit Public Defender or his designee. If the decision is that the applicant is not eligible, **Clerk should notify the Chief Administrative Judge and the Solicitor to arrange a date/time to present applicant to the Judge to review the decision.**

B. Determining Eligibility

1. General Guidelines
 - a. Close questions regarding a person's indigency should be resolved in favor of eligibility. The Circuit Court Judge may review and determine if the person will be assessed to pay a portion of the cost of representation.
 - b. Early appointment of counsel is desirable. Therefore, it is important that prompt determination be made as to eligibility.
 - c. Any indication of anticipatory transfer of assets by an applicant to create the conditions for eligibility for indigency should be scrutinized and dealt with decisively.
 - d. The initial determination of indigency is subject to review by the Court if there appears to be a substantial change in the applicant's financial status, no longer making the applicant indigent. The appointed counsel may have the person re-screened to review their status. If it is determined that the

applicant no longer qualifies for services, the Court shall issue an order to that effect and may release counsel from the representation. The Court may find that the case has progressed to the point that releasing counsel will have an extreme disruption on the flow of the court proceeding or affect the applicant's rights and order that the representation continue and assess a portion or all the cost of the representation to the applicant.

2. Presumption of Indigency

A presumption that a person is indigent shall be created if any of the following circumstances exist:

- a. The applicant's net household income is less than or equal to the Poverty Guidelines established and revised annually by the United States Department of Health and Human Services and published in the Federal Register. Net income shall mean gross income minus deductions required by law.
- b. The applicant is personally receiving any state or federal government benefits including but not limited to Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP) (food stamps, employment and training services), Food and Nutrition Programs, SC Voucher Program, Supplemental Security Income (SSI), and Medical Assistance for the Elderly. These benefits are determined based on poverty threshold guidelines, and include asset limitations. The applicant must attach documentation that he personally receives one of these benefits to be presumed indigent.
- c. The applicant has been incarcerated in the local detention or a state prison for 10 consecutive days.

If the person is released from custody within 60 days of being appointed counsel, the representation shall continue for 10 days to allow the person to re-apply for appointed counsel by submitting an Affidavit of Indigency & Application for Counsel form, supporting documentation, and the application fee at the office of the Clerk of Court (Chief Magistrate). If the person does not re-apply within the 10 days of release, counsel shall be relieved from the representation. If the applicant is released more than 60 days of being appointed counsel, the representation may continue. The applicant shall be re-screened and the Court shall determine if the applicant shall have to pay an amount towards the cost of the representation.

3. Factors to be Considered in Determining Indigency

When determining whether an applicant is eligible for an appointed counsel, consideration should be given to the following factors:

a) Income Resources

The financial guidelines use to assess indigency are set at 100% of the federal poverty guidelines or less. The US Department of Health and Human Services makes an annual determination of the poverty level threshold and publish them each year in January.

Applicants with income resources in excess of 100% of the federal poverty level will not generally qualify for indigent defense services. However, consideration should be given to documented exceptional factors.

To determine income resources, the Clerk of Court (Chief Magistrate) must determine the applicant's total income resources and the applicant's household size.

The applicant's income resources include the net income of the applicant and those persons who are legally responsible for the applicant. Net income shall mean gross income minus deductions required by law.

1) Sources of Income Resources

- a. Money, wages and salaries minus deductions required by law
- b. Income from self-employment minus deductions required by law
- c. Regular payments from Social Security, veteran's benefits, training stipends, alimony, child support and military allotments or regular support from an absent family member or someone not living in the household, or foster care payments;
- d. Public or private employee pensions or regular insurance or annuity payments;
- e. Income from dividends, interest, rents, royalties, estates or trusts;
- f. Benefits from a governmental income maintenance program (unemployment, state or county assistance, home relief)
- g. Money received from the sale of real or personal property; or from tax refunds, gifts, insurance payments or compensation for injury;
- h. Value of Public Assistance Benefits.

2) Who is legally responsible for the Applicant

A husband and wife have a mutual duty of support. Therefore, the spouse's income and assets should be considered when determining whether the applicant qualifies for appointed counsel. If there is some reason in a specific case why the spouse's income or assets should not be considered, the applicant should indicate this on the application form, and give a detailed explanation. Documentation may be required.

A natural parent or adoptive parent is legally responsible for any applicant who is under the age of 18 years.

Indigency of a child under the age of 18 should be determined by the financial status of the parents.

A step-parent, guardian, or parent whose rights have been terminated is not legally responsible for an applicant.

Parents or other relatives who provide housing or other care for the applicant who is 18 years of age or older generally will not have a legal responsibility for the applicant.

Eligibility for appointed counsel for an adult under guardianship is based upon the resources of the applicant, not the resources of the guardian.

3) Household Size

All individuals who are dependent on the applicant for financial support should constitute a single household for purposes of assessing income levels.

The applicant, the applicant's spouse, and children who are the legal responsibility of the applicant are included as members of a single household. Adult children, stepchildren, grandchildren, parents, other relatives, girlfriends/boyfriends or their children, and other non-related persons who reside in the home will generally not be considered the legal responsibility of the applicant and should not be counted as part of the household for purposes of determining eligibility. In exceptional circumstances, such persons can be considered as part of the household (for example, applicant's grandchildren live with the applicant but the parents of the children are absent and not supporting the children).

The applicant has the burden of providing a specific reason why the income and assets of his/her spouse should not be included in the determination of the household size.

b) Non-Income Resources

Non-income resources include, but is not limited to, real property, line of credit, insurance proceeds, inheritances, investments, and other property that can be liquidated to pay for the services of an attorney.

Absent exceptional circumstances, an applicant with equity in real and/or personal property more than \$15,000 will be NOT be considered indigent.

c) Exceptional Factors

(Factors to consider that may or may not justify a finding that an applicant is eligible for the appointment of counsel even though the applicant otherwise does not meet the eligibility criteria.)

An applicant whose income resources and/or non-income resources exceed the poverty guidelines may still be eligible to receive an appointed attorney based on the following factors:

1. Seasonal variations in income.
2. Age or physical infirmity of household member(s).
3. Extraordinary medical bills or other necessary expenses which the applicant is paying for the applicant or a household member.
4. Liquidity or non-liquidity of applicant's non-income resources.
5. Court ordered child support obligation is a large percentage of the applicant's income AND the applicant is currently paying towards the obligation.
6. Estimated cost of private attorney fees and costs with respect to the matter for which representation is sought.
7. The nature of the criminal charge (Class A or B Felony).

To consider exceptional factors, written documentation must be provided to support the exceptional factor.

C. Denial of Eligibility

(A more definite process on handling denials and getting them reviewed by Circuit Court Judge)

V. Review of Determination of Eligibility

It is in the interest of all parties, the court and the public, to ensure that indigent defense services are available and provided in appropriate cases. At times, review screening is necessary to curb abuses, and to ensure that services are being provided to those who are truly indigent. The initial determination that a person is indigent shall be subject to review by the Circuit Court if it subsequently appears that the applicant is no longer indigent, has obtained counsel of his own, or for other good cause shown. This review may be held at the request of the State, appointed counsel or sua sponte by the Judge.

If it is determined that the applicant is no longer indigent, the Court may enter an Order relieving appointed counsel. If the case has progressed to the point where relieving counsel from representation will have an extreme disruption on the flow of the court proceedings, representation may be continued and the Court shall order the applicant to reimburse the Office of Indigent Defense the cost, or a portion thereof, of the representation.

ATTACHMENT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE COURT OF GENERAL SESSIONS
_____ JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
)
vs.)
)
_____)

AFFIDAVIT OF INDIGENCY AND
APPLICATION FOR COUNSEL

REQUIRED FEE: You must pay a \$40 application fee when submitting this application. If you cannot pay the entire fee at the time of your application, you may sign an Acknowledgement of Debt Form and pay the fee prior to your case being resolved or the unpaid amount will be due at the conclusion of your case including being added to any costs you are ordered to pay by the Court.

NOTICE: You are required to submit verification of your household income which may include (1) most recent pay stub, or (2) most recent W-2, or (3) most recent Tax Return, or (4) a Written Statement from your Employer. All questions must be answered truthfully. False information in the application may lead to criminal prosecution for perjury.

Section A: Case Information

Type of Case: ___ Criminal ___ Juvenile ___ Family Court

Charging Document/Case Numbers: _____

Name(s) of Co-Defendant(s): _____

Section B: Personal Information

Full Name: _____

Alias: _____

Address Where You Live: _____

Phone Number(s) You Can be Reached at: _____

Email Address: _____

Have you ever had an appointed lawyer? ___ Yes ___ No If yes, who? _____

Are you currently in jail? ___ Yes ___ No If no, how much was your bond? _____

Do you personally receive any State or Federal governmental benefits? ___ Yes ___ No

If yes, what benefits? _____

Section C: Household Information

Please list the total number of persons in your home that you are financially responsible for:

Name (or Initial if under 18)	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Are you court ordered to pay child support? Yes No (Provide Printout from Family Court)

Amount court ordered to be paid per month? _____ Actual amount paid per month? _____

Section D: Job Information

For Applicant:

Employer Name: _____ Job Title: _____

Supervisor's Name: _____ Phone: _____

Hours Worked Per Week: _____ Monthly Net Pay (after deductions) _____

If in jail, is your job waiting? Yes No Unemployed? Yes No

If unemployed, what type of work you do and when do you expect to return to work?

If your income is different than it has been in the last 12 months, please describe why: _____

MOST RECENT PAST EMPLOYMENT (LIST ALL EMPLOYERS FOR THE PAST 2 YEARS)

Employer	Dates of Employment	Net Monthly Income
_____	_____	_____
_____	_____	_____
_____	_____	_____

For Applicant's Spouse:

Employer Name: _____ Job Title: _____

Supervisor's Name: _____ Phone: _____

ATTACHMENT 5

Hours Worked Per Week: _____ Monthly Net Pay (after deductions) _____

If in jail, is your job waiting? ___ Yes ___ No Unemployed? ___ Yes ___ No

If unemployed, what type of work you do and when do you expect to return to work?

If your income is different than it has been in the last 12 months, please describe why: _____

MOST RECENT PAST EMPLOYMENT (LIST ALL EMPLOYERS FOR THE PAST 2 YEARS)

Employer	Dates of Employment	Net Monthly Income
_____	_____	_____
_____	_____	_____
_____	_____	_____

For Other Household Member:

Employer Name: _____ Job Title: _____

Supervisor’s Name: _____ Phone: _____

Hours Worked Per Week: _____ Monthly Net Pay (after deductions) _____

If in jail, is your job waiting? ___ Yes ___ No Unemployed? ___ Yes ___ No

If unemployed, what type of work you do and when do you expect to return to work?

If your income is different than it has been in the last 12 months, please describe why: _____

MOST RECENT PAST EMPLOYMENT (LIST ALL EMPLOYERS FOR THE PAST 2 YEARS)

Employer	Dates of Employment	Net Monthly Income
_____	_____	_____
_____	_____	_____
_____	_____	_____

Section E: Other Money Received

The following is a list of different kinds of other money received. Circle yes for the other money received by yourself or spouse.

Child Support/Spousal Support	Y	N	Money from Friends, Relative, Other	Y	N
Rental Income	Y	N	Money from Inheritance	Y	N
Lottery Winnings	Y	N	Pension/Retirement	Y	N
Insurance/Lawsuit Settlement	Y	N	Railroad Benefits	Y	N
Interest/Dividend Income	Y	N	Social Security Benefits	Y	N
Workers Compensation	Y	N	Unemployment Benefits	Y	N
Veteran's Benefits	Y	N	Other (specify) _____	Y	N

For all items above circled yes, provide the following:

Type of Other Money Received	Who Received	How Much	When Received

Have you or your spouse applied for benefits not yet received? Yes No

If yes, please explain: _____

Section F: Assets

Do you or your spouse own or are purchasing the following:

Annuities/Money Market Account	Y	N	Inheritance/Trust	Y	N
Business Accounts/Inventory	Y	N	Life Estate/ Life Lease	Y	N
Cash on Hand	Y	N	Real Property	Y	N
Certificates of Deposit	Y	N	Retirement Funds (IRA etc)	Y	N
Checking/Credit Union Accounts	Y	N	Savings Bonds	Y	N
House/Mobile Home	Y	N	Stocks/Bonds/Mutual Funds	Y	N
Income Producing Equipment	Y	N	Other (specify) _____	Y	N

For all items above circled yes, provide the following:

Type of Other Money Received	Who Received	How Much	When Received
------------------------------	--------------	----------	---------------

How many vehicles do you own? _____

List all vehicles you own, jointly own, or being purchased by you and/or your spouse.

Make/Model	Year	Value	Amount Owed
------------	------	-------	-------------

Section G: Extraordinary Financial Considerations

Are there any extraordinary financial conditions that would prevent you from hiring a private lawyer?

Yes No If yes, please explain: _____

Section H: Acknowledgement

I have answered all questions honestly and truthfully to the best of my knowledge and I am requesting that a lawyer be appointed to represent me. I understand that if I have supplied false information in the application, it may lead to criminal prosecution and conviction. I understand that I have a continuing duty to inform the court of any changes in my financial condition, employment status or household size. I understand that I may be required to pay back the attorney fees and related expenses to the Commission on Indigent Defense. By signing this application, I authorize the screening entity to investigation my income, assets and benefits and that this form will serve as a Release of Information to any source which might have such information regarding my financial condition and employment.

SWORN to before me this _____ day

of _____, _____

Signature: _____

Date: _____

Notary Public for South Carolina
My Commission Expires: _____

FOR USE BY SCREENER ONLY

Application Fee: ___ Paid ___ Reduced to \$_____ ___ Due

Supporting Document(s) Provided: ___ Yes ___ No

Applicant is found to be:

___ Not Indigent. The application for counsel is denied.

Reason for denial: _____

___ Indigent. Counsel is to be assigned by the Public Defender in Criminal and Juvenile cases and by the Clerk of Court in Family Court cases.

Date: _____
Clerk of Court or Designee

RIGHT TO COUNSEL & HOW TO APPLY FOR APPOINTED COUNSEL

You have been charged with a criminal offense and you have the right to be represented by an attorney. If you are financially unable to hire an attorney to represent you (and you meet certain guidelines), you may apply to have an attorney appointed to representing in certain cases. To apply for an appointed counsel, you must:

1. Go to the Clerk of Court (Chief Magistrate) office to complete the Affidavit of Indigency & Application for Appointed Counsel form. The Clerk of Court (Chief Magistrate) office is located at:

2. You must take the following documents with you when you apply:
 - a. Paystubs for past 30 days.
 - b. Printout of any assistance any household member is or has received within the last 12-months that may be considered income. (FS, Disability, SSI, unemployment, retirement.) (obtained from Agency providing assistance)
 - c. Printout of any child support that is either being paid or received. (obtained from Family Court)
 - d. A copy of tax returns from previous year.
 - e. Social Security Income report for past 12 months (obtained from the SS Administration.)
 - f. Letter from current or former employer (if no longer working).
 - g. Letter from parents, family members, friends or anyone who provides any type of support or accommodations. Letter must be signed and a copy of his/her photo ID attached.
3. A \$40 non-refundable application fee

To qualify to have an attorney appointed to represent you, several factors are considered to determine if you are indigent. Those factors include, but are not limited to, your income, property you may own, the number of people in your household and their income, your debts, and the US Poverty Guidelines. The Poverty Guidelines changes every year.

NOTICE: The information you provide to apply for an appointed attorney must be true and accurate. If it is determined that you have provided false information, your court appointed attorney may be relieved from representing you and you may be prosecuted for perjury.

INDIGENCY APPLICATION REVIEW CHECKLIST

Is the Application complete?

- Application completed and signed?
- Supporting documentation attached?
 - Paystubs for past 30 days.
 - Printout of any assistance any household member is or has received within the last 12-months that may be considered income. (FS, Disability, SSI, unemployment, retirement.)
 - Printout of any child support that is either being paid or received.
 - A copy of tax returns from previous year. (if no paystubs)
 - Social Security Income report for past 12 months
 - Letter from current or former employer (if no longer working).
 - Letter from parents, family members, friends or anyone who provides any type of support or accommodations. Letter must be signed and a copy of his/her photo ID attached.
- Application fee paid?

What is the Applicant's Household Net Annual Income? _____

What is the Applicant's Number of Household Members? _____

Does a presumption exist?

- Applicant's Net Income is less than or equal to Poverty Guidelines
- Applicant personally receives State/Federal Government Poverty Benefit(s)
- Applicant is currently incarcerated and has been for 10 or more consecutive days

Does Applicant have any Non-Income Assets that can be used to hiring counsel?

Are there any extraordinary factors to be considered? _____

Application Reviewed by: _____

Print Name: _____

SAMPLE DENIAL LETTER

DATE: _____

TO: _____

FROM: Clerk of Court (Chief Magistrate)

CASE NUMBER: _____

Your request for appointment of counsel has been denied because you do not meet the income/asset eligibility guidelines to be considered indigent.

You may request that a Circuit Court Judge review this decision. If you want the Judge to reconsider your application, you should submit the attached written request for review with an explanation of why you think the decision is incorrect to the Solicitor's office (this office). The Solicitor's office will schedule a hearing date/time for you to go before the Judge for your request. (This office notifies the Judge of your request and a hearing date/time will be set for the Judge to consider your request.)

Your case will not be postponed or continued because you have filed a request for review. If you intend to file a request for review, you should do so as soon as possible.

cc: Solicitor
Public Defender

SAMPLE REQUEST FOR REVIEW

STATE OF SOUTH CAROLINA	)	IN COURT OF GENERAL SESSIONS
)	
COUNTY OF)	
)	
STATE,)	
	)	CASE NO.: _____
vs.)	
)	
_____	)	REQUEST FOR REVIEW OF APPLICATION
	)	FOR APPOINTED COUNSEL
_____)	

Now comes the Defendant, _____, asking the Circuit Court Judge to review the denial decision of the Affidavit of Indigency and Application for Appointment of Counsel in the above matter. The Defendant believes the decision is incorrect because: _____

WHEREFORE, the Defendant pray that the Court set a hearing to review this decision and determine if the Defendant is indigent and able to receive appointed counsel in this case.

 Defendant signature

 Defendant's Printed Name

Date: _____

SAMPLE ORDER UPON JUDGE’S REVIEW

STATE OF SOUTH CAROLINA	)	IN COURT OF GENERAL SESSIONS
)	
COUNTY OF)	
)	
STATE,)	
	)	CASE NO.: _____
vs.)	
)	
_____	)	ORDER UPON JUDGE’S REVIEW OF
	)	INDIGENCY DETERMINATION
_____)	

The above-named Defendant requested a review of the denial of the Affidavit of Indigency and Application for Appointment of Counsel. Upon review of the same, and based on

the Court hereby finds that the defendant is:

_____ Not Indigent.

_____ Indigent. The Public Defender is appointed to represent the defendant in this case.

_____ Indigent but can afford to pay a portion of the cost of the indigent defense services. The Public Defender is appointed to represent the Defendant. The Defendant shall reimburse the Office of Indigent Defense: _____ payable at the rate of

_____ through the Clerk of Court office.

Dated this _____ day of _____, 20____

Circuit Court Judge

cc: Defendant
Solicitor
Public Defender



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

1330 Lady Street, Suite 401
 Post Office 11433
 Columbia, South Carolina 29211-1433
 Telephone: (803) 734-1330
 Facsimile: (803) 734-1397

J. Hugh Ryan, *Executive Director*
 Hervery B. O. Young, *Deputy Director and General Counsel*
 Lori Frost, *Assistant Director*

TO: Honorable W. Brian White, Chairman of House Ways and Means Committee
 Honorable F. Gregory Delleney Jr., Chairman of House Judiciary Committee
 Honorable Hugh K. Leatherman Sr., Chairman of Senate Finance Committee
 Honorable Luke A. Rankin, Chairman of Senate Judiciary Committee
 Commissioners, SC Commission on Indigent Defense

FROM: Office of Indigent Defense (SCCID)

RE: Indigency Screening, Proviso 117.142

Date: November 15, 2017

BACKGROUND

SCCID began to hear concerns from some members of the General Assembly, prior to the start of the 2017 Legislative Session, regarding whether defendants were being adequately screened to assess their financial status for appointed counsel. It was determined this issue should be studied and budget proviso 117.142 was adopted. It states:

117.142. (GP: Indigent Defense Screening Review) The Commission on Indigent Defense and the Judicial Department Court Administration Program shall consult with the Summary Court Judges' Association and Clerks of Court Association on issues regarding the screening of applicants for indigent defense representation. The Commission on Indigent Defense and Court Administration shall make recommendations to the Chairman of the House Ways and Means Committee, the Chairman of the House Judiciary Committee, the Chairman of the Senate Finance Committee, and the Chairman of the Senate Judiciary Committee no later than December 1, 2017 regarding: requirements for applicants to verify their financial status, supporting documentation that should be required of all applicants; who should conduct the screening, what resources are necessary to properly screen applicants and any other recommendations that will assist in ensuring only those applicants that are truly indigent qualify for the services of a public defender or other appointed counsel

ACTIONS TAKEN

In accordance with proviso 117.142, SCCID has commenced an extensive process of researching, meeting with, interviewing, etc. those involved in the screening process and judicial system as a whole. Among those with which meetings, teleconferences, etc. have been held include but are not limited to the following:

- Chief Justice Don Beatty
- Representative Mike Pitts
- Representative Murrell Smith
- Court Administration
- Clerks of Court/ Registrar of Deeds Advisory Committee
- Chairman of Summary Court Judges Association, Judge Phil Newsom
- 16 Circuit Public Defenders
- Judge Ava Bryant (Magistrate Berkeley County)
- Judge Nancy Devine (Magistrate Anderson County)
- Greenville County Office of Indigent Defense
- DSS General Counsel Tony Catone
- DSS Child Support Enforcement (regarding databases available to assess individual's financial status)
- The Clerk of Court or staff member from all 46 Clerk of Court offices
- A Magistrate or Magistrate Court personnel from all 46 counties
- Other state indigent defense systems

INITIAL FINDINGS

Our initial findings confirm data from our most recent Circuit Defender HR survey, that screening is currently being conducted by either the bond court judge (summary court), Clerk of Court or Public Defender Office. Based on the information we have received, the breakdown of what entity screens is as follows:

Clerk of Court Office:	21
Summary Court:	14
Public Defender Office:	10
(3 additional PD offices presume jail cases are indigent and the PD accepts the case)	

***Greenville County has their own screening office (Greenville Indigent Defense). This office also conducts the screening for Pickens County jail cases while the Clerk screens non-jail cases.

In several counties the summary court judge may do an initial screening but the clerk of court office may rescreen someone if there is still a question of indigency or they “reapply”. Also in accordance with Rule 602, SCACR, if “that officer” is unable to make a determination of whether the accused is indigent the determination shall be made by the court in which the matter is to be heard.

Rule 602 addresses many of the steps in the appointment of counsel (screening) process as follows:

RULE 602 DEFENSE OF INDIGENTS

Rules promulgated under the Defense of Indigents Act (Act No. 309) passed by the General Assembly and approved by the Governor on June 17, 1969, were adopted by this Court on January 1, 1970. By Order of this Court dated September 20, 1972, the Rules were amended and now read as

follows:

- (a)** Every person arrested for the commission of a crime within the jurisdiction of the Court of General Sessions, every juvenile to be brought before any court on any charge for which he may be imprisoned, and every person charged with the violation of a probationary sentence shall be taken as soon as practicable before the Clerk of the Court of General Sessions in the county where the charges are preferred, or such other officer or officers as may be designated by the resident judge of the circuit, for the purpose of securing to the accused the right to counsel.

In cases involving criminal charges within the jurisdiction of magistrates' courts, municipal courts, or other courts with like jurisdiction, if a prison sentence is likely to be imposed following any conviction, the presiding judge of the court in which the matter is to be determined shall inform the accused as provided in Rule 2 when the case is called for disposition. The procedures concerning juveniles, as provided in Rule 1 and Rule 2 hereof, shall continue to be followed.

(b) The officer before whom the arrested person is taken shall:

- (1)** Inform the accused of the charges against him and of the nature of the charges.
- (2)** Advise the accused of his right to counsel and of his right to the appointment of counsel by the court, if the accused is financially unable to employ counsel.
- (3)** If the accused represents that he is financially unable to employ counsel, take his application for the appointment of counsel or for the services of the Public Defender where the latter is available in the county.

Upon examination of a completed Affidavit of Indigency (Form II), the officer designated to make a determination of indigency shall determine if the accused is indigent. If that officer is unable to make this determination, the final determination whether the accused is indigent shall be made by a judge of the court in which the matter is to be heard.

For purposes of this rule, a person is indigent if that person is financially unable to employ counsel. In making a determination whether a person is indigent, all factors concerning the person's financial condition should be considered including income, debts, assets and family situation. A presumption that the person is indigent shall be created if the person's net family income is less than or equal to the Poverty Guidelines established and revised annually by the United States Department of Health and Human Services and published in the Federal Register. Net income shall mean gross income minus deductions required by law.

- (b)** If application for counsel is approved for the accused, the Clerk of Court or other officer shall immediately notify the Office of Public Defender,

if one exists in the county, and the Public Defender shall immediately thereafter enter upon the representation of the accused. If there is no Public Defender for the county, then the Clerk of Court or other officer shall immediately notify the court, or such person as the resident judge may designate, of the request for counsel and appointment of counsel shall be made immediately with prompt notification thereof to the accused and counsel so appointed.

The initial designation of the Public Defender of appointment of counsel to represent an accused shall be subject to review by the court if it subsequently appears that the accused is in fact financially able to employ counsel, has obtained counsel of his own, or for other good cause shown.

CURRENT SCREENING ISSUES

In almost all circumstances the only requirement for screening is for the defendant to fill out the Affidavit of Indigency form (PD application) without any requirement for supporting documentation. Nearly all of the screening entities assert they check the information provided against the poverty guidelines, referenced in Rule 602. All screening entities have stated it would require additional personnel to conduct an in-depth screening such as a search of property records, financial databases, etc. to verify the information provided by the applicant.

While some Public Defender Offices currently screen there are legitimate concerns about such an arrangement. To ensure the legitimacy of the screening process, it is essential that screeners be free of any conflict of interest or other potential ethical pitfalls. The screening process should not overly empower the solicitor nor cast doubt on the public defender's loyalty to the client or on the presiding judge's impartiality.

Public Defender offices also report it is not uncommon for a defendant to be screened and found ineligible for appointed counsel but then appear before the court and have an attorney appointed. Several circuit judges have acknowledged this does sometimes occur because with the PDs in the courtroom a case can often be quickly disposed of by appointing a public defender.

WHAT IS THE SCOPE OF THE ISSUE?

To state it as concisely, we do not know. There has been no statistics recorded that provides a breakdown of the number of applicants accepted or rejected. Information needs to be collected to analyze the scope of the issue. But first, as we will address later in this memo, there needs to be adequate data available for the screener to make an accurate determination of indigency. It should then be mandated that the screening entity maintain detailed records regarding the number of applications accepted or rejected. This data will allow a proper cost benefit analysis to be conducted as to the scope of this issue and the resources that might be necessary.

POSSIBLE SOLUTIONS

1. The “Greenville Model”

Who Conducts the Screening:

Greenville has its own screening entity called the Office of Indigent Defense. The office is funded by Greenville County and has 3 employees. These independent screeners screen jail cases and those that have already posted bond to determine if defendants qualify for appointed counsel.

Under this option, trained, independent screeners would be set up in each County or Circuit to conduct all screening for indigency.

Process/Requirements for Applicants:

Each person wanting to apply for appointed counsel is provided with a list of documentation that is required to submit an application. Documentation includes, but is not limited to, pay stubs, statements from employer, proof of income for others within the household that are dependents of the defendant, proof of residence and household bills, proof of child support obligations, and proof of real estate ownership.

These screeners meet with each defendant and “pre-screens” them to determine if they are likely to qualify before they complete the application and have to pay the required \$40 fee. If it is likely the person will qualify, the screener will go through the application and supporting documentation with the applicant. A qualified applicant will be assigned to the Public Defender office or conflict counsel. If the person does not pre-qualify, they are not allowed to apply and pay the \$40 fee. However, an applicant that does not qualify, may request the decision to be reviewed by the court.

Necessary Resources:

Greenville County funds this Office of Indigent Defense at around \$200,000 per year for the 3 employees. SCCID estimates a Greenville Model across the State would cost at a minimum approximately \$2.6 million. This is based on 37 screeners at a cost of \$35,000 salary and \$35,000 fringe. This does not include an overhead cost such as office space, equipment, supplies, etc. (Number of screeners in a circuit would be based on population, caseloads, etc.). There is also the issue of what entity would fund this. In Greenville, the screeners are county employees and as noted, it is funded by Greenville County. As would be expected, county officials we have spoken with raised concerns about any requirement to provide such funding.

2. Database Verified Screening

Who will Conduct Screening:

It is our position that best practices indicates that screening should take place as soon as possible after arrest thus during bond court. It is our understanding from the SC Supreme Court, that these judges (courts) should have the technology infrastructure in place to log into a verification database to conduct screening. While we understand these courts may have concerns this will slow

down the bond court process, this is the crucial time to address the issue of the appointment of counsel and would make for a more efficient process as the case moves forward.

Process/Requirements for Applicants:

Under this option, the bond court will have access to The Work Number database to verify information provided by the application to determine indigency. The Work Number is currently being used by the SC Department of Social Services. The database includes employment verification, amount and date of last pay check, amount and date of public assistance benefit or disability benefits. Not being in the database can be verification when someone reports being unemployed.

Necessary Resources:

a. The Work Number Database Access

Whoever is assigned the screening role, one thing is clear, they need the ability to actually conduct a proper screening. The Department of Social Services Child Support Enforcement Division has numerous databases to conduct a financial assessment. They have access to many federal databases such as Social Security and the IRS. They can also request information from the SC Department of Employment and Workforce and SC Department of Revenue. However, they also have a private service called the Work Number (run by Equifax) which provides the most complete picture with one search.

DSS reports they made payments to the Work Number last year of a little over \$1 million dollars for database searches. DSS had a contract for \$800,000 for 180,000 searches and then at a cost of \$4.90 per search above the 180,000 threshold, which they exceeded, thus the bill of over \$1 million.

SCCID estimates the number of searches required would be at a minimum approximately 133,000. This is based on data that the PD office open on average 52,000 cases per year (this only includes general session's cases as to avoid a double count with magistrate court numbers compiled by Court Administration) and that Magistrate Courts handle approximately 70,000 non-traffic related cases per year. This also includes screening for those that do not qualify for a PD which we will estimate as 20% of the applicants.

In discussions with the Work Number representatives they report that in only about 40% of cases does the search actually result in a "hit" in their system, as many people applying for the PD are paid in cash, have a limited financial history, etc. The Work Number only charges for searches where there is actual data (a hit) on an applicant. Thus the estimated price for an annual contract would be in the range of \$350,000 to \$430,000.

For this analysis, we have not included municipal court cases, as PD offices only handle municipal cases where they have a contract with the municipality to handle cases in those courts. This was approximately 3,000 cases in the most recent FY out of over 100,000 non-traffic related cases.

b. Pilot Program

The Agency believes the best course of action is to establish a pilot program to test this

screening process.

The pilot program would include a mixture of large, medium and small counties as well as a mixture of counties where the screening is conducted by the bond court judge, the clerk of court or the Public Defender. After discussions with the Circuit Defenders, the suggestion is to include the following counties in this pilot program:

Allendale	Chester	Clarendon	Marlboro	Laurens
Florence	Aiken	Spartanburg	Horry	Richland

SCCID estimates the cost of using The Work Number database for these counties at between \$99,000 and \$120,000. This is based on an estimated 26,433 cases with a hit rate of 40%.

3. **Enhanced Status Quo** (with mandated documentation required, modified affidavit)

If funding is not available for options 1 or 2, then a potential option would be to mandate certain documentation be provided to verify the information in the application. To put some “teeth” in this requirements would likely require an Administrative Order of the Supreme Court or statute. One recommendation would be to amend or revise the Affidavit of Indigency form to require information similar to a financial declaration required in Family Court. Documents required could include the applicant’s most recent federal and state income tax returns, W-2 forms and schedule C, if self-employed and Copies of current pay stubs or in the absence of such documentation, a written statement of income and deductions from an employer. In Tennessee, they also have a requirement that an applicant show proof they have spoken with at least two private attorneys prior to seeking appointed counsel.

Incarcerated applicants would be presumed indigent. Even upon release on bond, applicants may be prohibited from returning to places any records are stored. Unless the applicant is lawfully prohibited from accessing their records, they should be required to provide proof to the appropriate authority within a specified time from release.

SUMMARY

Indigent screening is an issue that requires constant review. The options herein present a range of possible solutions seeking to ensure that only those applicants that are truly indigent qualify for the services of a public defender or other appointed counsel.