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August 27, 2018

Via Email

The Honorable Isaac McDuffie Stone, III
Chair, S.C. Commission on Prosecution Coordination
Post Office Box 11561
Columbia, SC 29211-1561

Dear Solicitor Stone:

The Law Enforcement and Criminal Justice Subcommittee appreciates the S.C. Commission on Prosecution Coordination's (SCCPC) partnership in the oversight process. As follow up from the meeting on August 20, 2018, the Subcommittee seeks additional information from the agency. Please provide this information by Tuesday, September 11, 2018.

Statistics and Costs

1. What would be required for solicitors to provide, on an annual basis, the total number of prosecutions statewide, and by county?
2. Please provide a breakdown of how much it costs to prosecute different types of cases, similar to the information the S.C. Commission on Indigent Defense provided the Committee, which is available on the Committee's webpage, under "Indigent Defense, Commission on," and "Products and Services of Agency."

Evidence Data

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

Distribution of Information

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

Legal Education, Training, and Assistance

5. In regards to the agency developing, coordinating, and conducting legal education and other training for solicitors' offices, has the agency considered conducting any type of testing at the end of training sessions as a way to gauge the level of knowledge and understanding gained by those attending the training? If no, how does the agency objectively determine whether the training it offers is effective?
6. In the agency's July 16, 2018, letter, it states one of the non-profits established by the fourteenth judicial circuit (Justice Institute) was created to develop training programs for prosecutors and law enforcement. Does SCCPC approve the curriculum for any training provided at individual circuit solicitor offices?
7. In regards to providing legal assistance and research, does the agency provide this assistance and research to any law enforcement entity, state, county, or local, that contacts the agency?
8. When prosecutors contact the agency for legal assistance, are the questions recorded or aggregated to assist in training? (e.g., frequently asked questions section of a training book or on the agency's new website)
 - a. Could tracking this type of information be more easily accomplished if there was a way for individuals to submit questions through an online form on the agency's website? If so, has the agency considered including a feature like this in its new website?

Domestic Violence and Driving Under the Influence

9. Please explain the purpose of the Domestic Violence Fatality Review Committees?
 - a. What data is the agency tracking to evaluate the outcomes obtained?
10. The agency notes one of its successes is updating procedures and resources to improve the prosecution of domestic violence cases, including efforts to have all domestic violence cases prosecuted by attorneys rather than law enforcement officers. Does the agency have any data which shows better outcomes or efficiencies have been gained by having dedicated prosecutors for domestic violence?
11. What evidence, if any, suggests having attorneys prosecute all driving under the influence cases, instead of law enforcement officers, would achieve better outcomes or efficiencies?
12. Does the agency interact with the Law Enforcement Training Council to ensure best practices are taught to law enforcement officers regarding matters involving domestic violence and driving under the influence?

Diversion Programs

Juvenile

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

Traffic Education

14. Why is the agency, instead of the S.C. Department of Motor Vehicles or Highway Patrol, creating and overseeing the traffic education programs?
 - a. Are the programs taught by state employees or is there a list of approved programs that are provided by private vendors? If there is a list of approved programs, how does the agency determine which programs to approve?
15. What outcomes does the agency hope to achieve through the traffic education programs, and how is it evaluating whether those outcomes are being obtained?¹

¹ The Act that created the statutes applicable to traffic education does not include the intent of the General Assembly. However, the Act that created Chapter 22 of Title 17, which is where the traffic education statutes are located, addresses pretrial intervention programs and states, "The General Assembly finds that cost effective methods of allocating financial resources in the criminal justice system are necessary to the safety and welfare of the citizens of South Carolina. It further finds the **diversion of certain persons charged with non-violent crimes who have no prior significant criminal history relieves the State of a significant financial burden and assists the offender in achieving rehabilitation by allowing the offender to fund and participate in an intervention program under the direction of the circuit solicitor.** It further finds that it shall be the policy of this State to require restitution to the victims of such crimes so as to mitigate the psychological and financial burden of such victims." (emphasis added)

Diversion Programs (cont.)

Alcohol Education

16. Since the agency indicated in the Program Evaluation Report that it is not evaluating the outcomes for alcohol education programs, how does the agency, or General Assembly, know if the time and resources being invested in the programs are effective?
 - a. What outcomes does the agency hope to achieve through the alcohol education programs?
17. While the alcohol education programs must be created in consultation with the S.C. Department of Alcohol and Other Drug Abuse Services (DAODAS), why is DAODAS not creating and overseeing the entire program, then just sending your agency whatever data it needs?
 - a. Are the programs taught by state employees or is there a list of approved programs that are provided by private vendors? If there is a list of approved programs, how does the agency determine which programs to approve?
18. How does the information required for the annual report on statewide diversion programs show whether or not the diversion programs are helping to reduce recidivism, the purpose for which the applicable statutes were created²?
 - a. Is there any additional information about diversion programs the agency believes may assist lawmakers in determining whether the programs are helping accomplish the purpose for which they were created?
 - b. Who is the report provided to each year?

Essential Resources

19. The agency's Objective 3.1.3 is to "provide sufficient resources for staff." What resources for staff does the agency consider essential?
 - a. Does the agency have any regular replacement plans for these resources?
 - b. Would the agency be open to requesting a specific line item in the budget which addressed only these essential resources?

² S.C. Code 17-22-1120. Diversion program data and reporting, was part of the Omnibus Crime Reduction and Sentencing Reform Act of 2010. At the beginning of the Act, the General Assembly included the following language, "the purpose of this act to reduce recidivism, provide fair and effective sentencing options, employ evidence-based practices for smarter use of correctional funding, and improve public safety." Additionally, the General Assembly included specific intents for each part of the Act. S.C. Code 17-22-1120 was created by Section 56 of the Act, which falls in Part II. At the beginning of Part II of the Act, the General Assembly included the following language, "It is the intent of the General Assembly that the provisions in PART II of this Act shall provide cost-effective prison release and community supervision mechanisms and cost-effective and incentive-based strategies for alternatives to incarceration **in order to reduce recidivism and improve public safety.**" (emphasis added)

Agency Recommendations for Law Changes

20. Since each of the statutes the agency recommends eliminating in the agency's law recommendations number one through fourteen from the Program Evaluation Report seem slightly different, has the agency reached out to the respective circuit solicitors to confirm the solicitors agree the statutes are no longer needed? If not, please do this before the next meeting.
21. In the agency's law recommendation number fifteen, the agency recommends the General Assembly remove the statutory requirement that the agency provide blank indictments to solicitors' offices because the forms are now generated on the solicitors' computers. Who is responsible for providing the standardized form the solicitors' offices print from their computers?
- a. Upon further consideration, would the agency recommend completely deleting the statute, or revising it to say the agency is responsible for providing the "format" of the standardized indictment form, instead of providing the actual forms?

Responsibilities of Circuit Solicitors

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

The Subcommittee looks forward to working collaboratively with the agency during the oversight process. Please work with Committee staff to determine a format for responding to the questions. As a reminder, the Committee's expectations are provided in its Standard Practice 9. Thank you and your team for your service to the citizens of South Carolina.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward R. Tallon Sr.", with a stylized flourish at the end.

Edward R. Tallon Sr.
Subcommittee Chair

cc: The Honorable Wm. Weston J. Newton
The Honorable Katherine E. "Katie" Arrington
The Honorable William M. "Bill" Hixon
The Honorable Jeffrey E. "Jeff" Johnson

SECTION 17-3-520. Circuit public defender; qualifications; responsibilities.

(B) A circuit public defender is responsible for:

- (1) administering and coordinating the day-to-day operations of their respective offices, supervising the public defenders and other staff serving in the offices, and actively participating in the representation of clients throughout the judicial circuit;
- (2) keeping and maintaining appropriate records, which includes:
 - (i) the number of persons represented pursuant to the provisions of this chapter, including cases assigned to other attorneys because of conflicts of interest;
 - (ii) the offenses charged; the outcome of each case; the expenditures made in carrying out the duties imposed by this article; and
 - (iii) other information and data as the commission may from time to time require;
- (3) establishing a juvenile offender division within the circuit public defender office to specialize in the criminal defense of juveniles;
- (4) preparing and submitting annually to the executive director of the commission a proposed budget for the provision of circuit-wide indigent defense services, an annual report containing pertinent data on the operation, costs, and needs of the circuit defender office, and other information as the commission or executive director may require;
- (5) assisting the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to the applicable provisions of Section 17-3-310;
- (6) developing and presenting for the commission's approval a circuit plan for the delivery of criminal indigent defense services;
- (7) establishing processes and procedures consistent with commission standards to ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically;
- (8) negotiating and entering into contracts, as appropriate and when authorized by the commission, with independent counsel actively practicing within the circuit for the provision of indigent defense services in cases in which a conflict of interest exists in the circuit public defender office and in other criminal cases in the circuit in which indigent defense representation by independent counsel is necessary or advisable;
- (9) establishing processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;
- (10) establishing administrative management procedures for circuit and county offices;
- (11) establishing procedures in conformity with commission standards for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of the charges, potential punishments, and the legal skills required to provide effective assistance of counsel;
- (12) establishing policies and procedures consistent with commission standards and Supreme Court Rules for assigning counsel for indigent persons in capital cases;
- (13) establishing and supervising consistent commission standards, a training and performance evaluation program for attorneys and non-attorney staff members and contractors;
- (14) establishing procedures consistent with commission standards to handle complaints involving indigent defense performance and to ensure that public defenders, office personnel, contract and appointed attorneys and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the rules and disciplinary jurisdiction of the South Carolina Supreme Court; and
- (15) performance of other duties assigned by the commission.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.