

# SOUTH CAROLINA SHERIFFS' ASSOCIATION

*"Serving the Sheriffs of South Carolina Since 1913"*

[www.sheriffsc.com](http://www.sheriffsc.com)

Jarrod M. Bruder  
Executive Director

Sheriff Steve Mueller  
President

September 13, 2018

Via Email

Representative Edward R. Tallon, Sr.

House Legislative Oversight Committee's Law Enforcement and Criminal Justice, Chairman

[eddieltallon@schouse.gov](mailto:eddieltallon@schouse.gov)

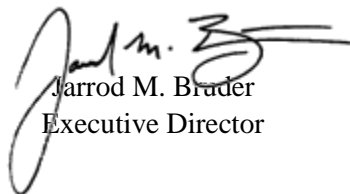
Dear Mr. Tallon,

I would like to thank you for reaching out to our Association in an effort to gain better understanding regarding the S.C. Prosecution Coordination Commission (SCCPC) and current law enforcement practices, procedures, and positions. Generally speaking, South Carolina's Sheriffs are interested in exploring and further investigating any proposal that may increase the efficiency and effectiveness of prosecution in our state. As you may have heard in previous testimony, the amount of criminal charges made in our State has actually increased in recent years. Therefore, many local detention facilities across the State are at or above their rated capacity as thousands of individuals are waiting for their cases to be adjudicated. Numerous factors have led to this reality. The Sheriffs of South Carolina are willing to further discuss and investigate those factors and any suggestions that may cause our prosecution processes to be more efficient and effective.

With that in mind, I have provided the responses to the letter you sent on August 27, 2018 in the pages below. Please understand, however, that our Association has not had a Business Meeting since we received your letter. Therefore, the responses below reflect my opinion or the opinion of select Sheriffs on my Board of Directors and/or Legislative Committee. We will discuss these issues in greater detail with our full membership at the next regularly scheduled Business Meeting, which is scheduled for Thursday, October 18, 2018. Naturally, our official position as an Association may differ from the position stated below once all of our members have had an opportunity to provide input at our Business Meeting.

Should you have any questions or need further clarification, please do not hesitate to contact me directly.

Sincerely,



Jarrod M. Bruder  
Executive Director

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## ***Communication between law enforcement and circuit solicitors***

### ***1. Please indicate whether your organization is supportive of the general concept of encouraging more dialogue between law enforcement and circuit solicitors about cases prior to any arrests.***

Generally speaking, South Carolina's Sheriffs welcome the opportunity to have greater, more meaningful communication with the Solicitor prior to arrest. In many circuits, law enforcement agencies already work hand in hand with prosecutors to prepare cases in the best manner possible to ensure successful prosecutions. Despite their combined best efforts, however, greater communication does not always guarantee a conviction. So, while greater communication is always welcome, it cannot become a prerequisite to an arrest.

Law enforcement, especially local law enforcement, must react and respond in a moment's notice. The exigent nature of our work demands an immediate response that would be tremendously hindered, if not completely prohibited, by requiring communication with the prosecutor or warrant approval by the prosecutor.

### ***2. Please list any pros and cons your organization sees and questions your organization has, if any, about the concept of granting solicitors immunity to provide advice about cases prior to any arrests.***

We completely understand the Solicitors' desire to have immunity in the event they provide advice prior to arrest. In fact, we wish the same immunity extended to law enforcement, especially the elected Sheriff as the Sheriff can be held personally liable for the actions of his deputies. Unfortunately, that is not the case and law enforcement agencies face civil actions daily for actions they make -- sometimes even after they have received advice from the Solicitor. There are several current Sheriffs who have been sued civilly for actions they took following the advice of their Solicitors. Regretfully, civil actions are a part of doing business in this profession. Again, the exigent nature of our work demands immediate responses that can sometimes result in mistakes. In the event our mistake violates another's rights, we generally do not object to a settlement of some sort. It should be noted, however, that those mistakes are generally the exception rather than the rule. An overwhelming majority of police actions made by local law enforcement officers are performed with expedience and excellence.

The idea of granting immunity may be more welcomed if our State operated in a system that mirrored the federal Department of Justice, which is significantly slower and more deliberate. This slower pace allows for greater communication between law enforcement and prosecutors. Unfortunately, local law enforcement officers must respond more quickly due to the exigency of their cases. Therefore, local law enforcement does not enjoy the same methodical, deliberate process as others do. Yet, we are still held to the same standard and must ensure Constitutional and statutory rights are not violated.

### ***3. If your members are law enforcement organizations, approximately how many have an attorney on staff?***

There are less than a dozen attorneys who work directly for the elected Sheriffs in South Carolina. It is important to distinguish between attorneys dedicated to the Sheriff and the Sheriff having access to an

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attorney. With all due respect, many county attorneys do not have the knowledge, expertise, or experience to give sound legal advice to law enforcement agencies, especially the Sheriff. Moreover, the best interests of the Sheriff and the best interests of the county council do not always agree. Ultimately, the county attorney's client is the county council (administrator/supervisor), not the Sheriff.

## ***Investigative Grand Juries***

### ***4. Please indicate whether your organization is supportive of the concept of county grand juries having investigative authority.***

Again, our Association has not had a chance to discuss the pros and cons of county grand juries gaining greater investigative authority. Therefore, we have no official position on the concept yet. With that said, the idea seems to be a solution in search of a problem. Quite frankly, giving Solicitors the unilateral authority to initiate a county grand jury investigation contradicts the checks and balances of our current process and seems to be inching towards "mission creep". Why is it necessary to give the Solicitor, through the county grand jury, such broad investigative authority? Would the Solicitor have investigative authority in all cases or only for special circumstances? Can the Sheriff's Office and/or SLED not adequately investigate the same matters? If the General Assembly wants to allow county grand juries to have greater investigative authority then the process on the county level should mimic that of the state grand jury. The Attorney General of the State cannot initiate a grand jury investigation without the consent of the Chief of SLED. The same should be true on the county level. If the General Assembly sees it necessary to grant the county grand jury greater investigative authority, then the Solicitor should be required to seek the consent of the Sheriff as well. Simply put, a county investigative grand jury should not be used to circumvent the Sheriff's or local law enforcement's authority to investigate crimes and it should not be funded in a way that would diminish local law enforcement budgets.

### ***5. Please list any pros and cons your organization sees and questions your organization has, if any, about the concept or how the process would work.***

See the answer to question number 4.

## ***Evidence***

### ***6. Please indicate whether your organization is supportive of the concept of modernizing how evidence is transferred between law enforcement and prosecutors.***

With all due respect, it is becoming increasingly worrisome for the Sheriffs to support ideas in concept. While we may like the general intent behind the concept, the devil is always in the details. Historically speaking, supporting a general concept without a firm understanding of the details associated with the concept has resulted in statutory mandates that are either unfunded or severely impact public safety.

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When unfunded, the cost of these concepts is generally shifted to the local government which causes reductions in other needed personnel and equipment for the Sheriffs' Offices.

With that being said, the Sheriffs would likely support the concept of modernizing the transfer of data provided it did not lead to an unfunded mandate or duplication of duties. Some Solicitors in South Carolina have led the modernization efforts in their circuits in a way that did not cost the Sheriffs' Offices any additional funds. Internal processes had to change, but in the end, the Sheriffs were willing to change their processes because it led to a more seamless transfer of evidence and did not significantly impact their already strained budgets. Then again, some Solicitors in the state have attempted to modernize the transfer of evidence in a manner that was tremendously more cumbersome and time consuming for the law enforcement agencies and came at a significant cost. It should also be understood that many law enforcement agencies and local governments have already invested significant resources in pursuit of this goal. Their investments must not be minimized or ignored.

In summary, the Sheriffs would likely welcome the opportunity to explore this concept further, but their concerns, including the time to upload evidence and all costs associated with the process, must be taken seriously and addressed before the concept manifests in a statutory mandate. Moreover, the decision on how to modernize and which system to use should be made in a collaborative manner rather than an edict being issued from a single agency or elected official. We begin to tread on dangerous ground when we give one constitutional officer authority over another constitutional officer.

***7. To assist lawmakers in analyzing the efficiency, costs, and security of current processes/systems versus potential modernized processes/systems, please indicate approximately how long your organization believes it may take to work with law enforcement associations, the Law Enforcement Training Council, and the S.C. Commission on Prosecution Coordination to accomplish the following:***

- a. Determine a method to collect data related to the secure storage and transfer of electronic evidence; and***
- b. Collect the data.***

Again, some Circuit Solicitors and law enforcement agencies have already begun the process of modernizing the transfer of evidence. It seems it may be helpful to have some of the experts in the field (actual practitioners) to come and testify before the Oversight Subcommittee. With their input, the Committee and all involved stakeholders will be able to get a true assessment of the effectiveness and efficiency of this concept and the time it may take to implement it statewide. It is important, however, to attempt to get as equal of a comparison between systems, software, and processes as possible. Despite great efforts to the contrary, all judicial circuits (like counties, municipalities, law enforcement agencies, etc.) do not operate in the exact same manner. Therefore, it will be critically important to have actual practitioners offer their thoughts and evaluations instead of individuals who merely support or oppose the concept.

***8. In regards to the question above, please provide a list of the data your organization believes may be important for lawmakers to have as part of their analysis. Examples include, but are not limited to: (1)***



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***current policies and practices relating to the security of electronic evidence when stored and transferred (lost/stolen computer/flash drive, access by separated employee, hacking of cloud systems); (2) personnel time and costs related to the storage and transfer of electronic evidence (compact discs/flash drives, uploads to a cloud); and (3) number of times an audit of an evidence transfer has been needed in court; etc.***

The examples given in your question are the root questions that need to be answered. Overall, it is important to remember that a lot of money and effort has already been spent on the local level on Record Management Systems (RMS). Most, if not all, RMS have an evidence module that agencies utilize to record evidence. Many agencies have spent tremendous amounts of local and state money on collection and storage of electronic evidence. With the proliferation of body worn cameras and in car video, storage of electronic evidence has quickly become a large part of law enforcement's RMS needs. We cannot ignore the amount of money that has already been invested in pursuit of this objective. Therefore, it may be more prudent to determine how and if Solicitors can gain access to law enforcement agencies' current record management systems instead of creating a completely new system or forcing law enforcement agencies to duplicate their efforts.

***9. Are there any situations in which law enforcement personnel may not provide all electronic evidence to prosecutors? If so, please explain.***

Not that we are aware of.